THE CODE OF OUR LORD AND MOST HOLY EMPEROR JUSTINIAN.

SECOND EDITION.

BOOK V.

TITLE I.

CONCERNING BETROTHALS, BETROTHAL PLEDGES, AND MARRIAGE BROKERS.

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

She who has already been betrothed to one man is not forbidden to repudiate her contract, and marry another.

2. *The Emperor Constcmtius, and, the Csesar Constans, to Cozlius Probinus, Prefect of the City.*

If a man should, while residing in the same province agree to marry a girl and fail to do so within the term of two years, and the girl, after the expiration of the said time, should afterwards form an union with another, she will not be guilty of fraud who, by contracting marriage, did not any longer suffer her vows to be treated with contempt.

3. *The Emperors Gratian, Valentinian, and Theodosius to Eutro-ffius, Prsetorian Prefect.*

If, after the pledges of betrothal have been given, either of the parties should die, We order the gifts to be returned, unless the deceased person had already given cause for not celebrating the marriage.

4. *The Emperors Honorius and Theodosius to Marianus, Prsetorian Prefect.*

When a father makes a contract with reference to the marriage of his daughter, and is not able to carry it out on account of his death, whatever is proved to have been agreed to by the betrothed parties shall remain inviolate, and any compromise shown to have been made for the benefit of a minor by a guardian.or curator shall be of no force or effect; for it would be extremely unjust for the decision of a guardian or a curator which was perhaps purchased, to be adopted in opposition to the wish of a father; especially as the greater number of women are even found to favor opinions contrary to their own interests.

Given on the third of the *Nones* of November, during the Consulate of Honorius, Consul for the thirteenth time, and Theodosius, Consul for the tenth time, 422.

5. *The Emperors Leo and Anthemius to Erythrius, Prsetorian Prefect.*

A woman, who is her own mistress, is liable for double the amount of the betrothal gift, that is to say, for what she received and as much again; but no more than that, if, at the time she had completed her twenty-fifth year, or had obtained indulgence on account of her age which was proved in a competent court. She will be liable for the simple amount, that is to say, for only what she received, if she was a minor, whether she was a virgin or a widow, and had received the pledge of betrothal herself, or by her guardian or curator, or anyone else.

It is, however, established that when either a father or a mother of lawful age has either jointly or severally received a betrothal gift for their daughter, or a grandfather or a great-grandfather has received it for a granddaughter or a great-granddaughter, he shall be liable for double the amount.

We order that these rules shall be observed if the intended marriage has not been prevented, on account of the person, or his or her condition, or any other cause prohibited by the laws or general constitutions; for then We order that the betrothal gift shall be returned as having been given without a cause, just as if nothing had been done.

(1) We also add to this that, even when the intended marriage is not prohibited by law, if, after the pledge has been given, the girl refuses to marry her betrothed on account of his being of

low character, or a spendthrift; or because of his shameless conduct; or for the reason that he belongs to a different religion or sect; or because he is a man incapable of performing the sexual act (from which the hope of offspring arises) ; or on account of some other just excuse; or if, indeed, it should be proved that before the betrothal gift was made, the woman herself, or her parents knew these facts; they themselves will be to blame. If, however, not being aware of them, they accepted the betrothal gift, or if, after it was given, some good reason arose to induce them to change their minds, after returning the gift, they shall be free from any penalty.

We decree that all these rules shall likewise be observed with ref-. erence to men who are betrothed, whether they have received or bestowed such gifts, and that the penalty of quadruple damages, which was mentioned in former laws by which the amount of the betrothal gift was prescribed, shall be abolished; unless something with reference to the said quadruple damages should be especially agreed upon by the common consent of the contracting parties.

Where anything providing for a penalty exceeding that prescribed by the terms of this law has been inserted in the stipulation, it shall be void, so far as both parties are concerned, as when marriage is contracted absolute freedom should exist.

Given on the *Kalends* of July, during the Consulate of Martian and Zeno, 469.

TITLE II.

WHERE THE GOVERNOR OF A PROVINCE OR ANY OF HIS SUBORDINATES GIVE BETROTHAL PLEDGES.

1. *The Emperors Gratian, Valentinian, and Theodosius to Eutro-pius, Prsetorian Prefect.*

When anyone placed in a public position, and invested with the administration of a province, who is able to inspire fear in parents, guardians, curators, or the parties themselves that are about to contract matrimony, bestows betrothal gifts, We order that if, hereafter, either the parents or the parties themselves should change their minds, they shall not only be released from the restraints of the law, but also be free from the prescribed penalty, and, moreover, shall profit by the gifts bestowed, if they do not think that they should be returned.

We desire that this law shall not only include public officials, but also their children, grandchildren, relatives, and subordinates; that is to say, that it shall apply to their counsellors and attendants, whom the said public officials employ in the matter. We do not forbid the marriage to take place after the functionary has relinquished his office, when the betrothed parties consent that the obligation for the articles donated during the term of the persons of whom We have spoken shall continue to exist.

Given at Thessalonica, on the fifteenth of the *Kalends* of July, under the Consulate of Gratian, Consul for the fifth time, and Theodosius, 280.

TITLE III.

CONCERNING ANTENUPTIAL DONATIONS, OR THOSE GIVEN ON ACCOUNT OF MARRIAGE AND BETROTHALS.

1. *The Emperors Severus and Antoninus to Metrodorus.* It makes a great deal of difference whether the property that a prospective husband donates to his future wife is delivered to her, and is afterwards received by him as dowry; or whether by giving it he intended to increase the dowry, so that he might appear to have received a larger sum than actually came into his hands.

In the first instance, the gift is not prohibited by law, and the property given by way of donation is included in the dowry, and can be recovered by the action of dowry. In the latter instance, however, the donation has no legal effect, and what has been given as part of the

dowry cannot be recovered.

2. *The Emperor Alexander to Attains.*

If you prove before the Governor of the province that you have given presents to the parents of Eutychia, in order to be able to marry her, he will order that unless Eutychia marries you what you have given shall be returned to you.

3. *The Same to Marcella.*

Where a promise has already been made by your brother on account of his betrothal, even if it is included in the stipulation, it still cannot be enforced, as the wife deceived her husband with reference to the dowry. Therefore you can properly interpose an exception on the ground of bad faith against an action brought under the stipulation.

4. *The Emperor Gordian to Marcellus.*

Anything which is given to a betrothed woman by her intended husband, under the condition that she shall acquire the ownership of the property when the marriage takes place, is without any effect.

5. *The Emperors Valerian and Gallienus to Theodora.*

You cannot legally recover anything which the person who pretended to be unmarried promised you as his betrothed, and who at the time that he asked you to marry him had another wife at home, as you are not his betrothed, for the reason that he already had a wife.

6. *The Emperor Aurelian to "Donata.*

As you state that a simple donation was made to you on the day of your marriage, and as it seems to be doubtful whether it was given by your betrothed or your husband, a distinction must be made; for if the gift was received in your own house, it will be considered as an ante-nuptial donation. If, however, your betrothed gave it in his house, it can be revoked, for you then were his wife.

7. *The Emperors Cams, Carinus, and Numerian to Luciana.*

If, when ante-nuptial gifts are made, it is agreed, and the agreement is reduced to writing, that if anything should happen to prevent one of the contracting parties from carrying out his or her intention, and the marriage from taking place, then whatever was given shall be returned to whoever gave it, or to his heir; he who obtains the estate of the person from whom the girl received the gifts under the abovementioned condition can recover the same by law.

8. *The Emperors Diocletian and Maximian to Euphrosina.*

Where anyone, over the age of twenty-five years, before marriage, has (even previous to the betrothal) given to his intended wife a tract of land, and she has been placed in possession of the same, it is a positive and clear rule of law that he cannot alienate it afterwards under any title, if he lives; or leave it by will, if he dies.

9. *The Same Emperors and Ctesars to Julian.*

As you acknowledge that you have given a present to the betrothed of your son, such a perfected donation which your consent and the authority of the law have ratified cannot be rescinded by Our Rescript.

10. *The Same Emperors and Csesars to Dionysius.*

If the betrothed of your daughter gave her a slave, and you, by way of liberality, presented her with beasts of burden, and the marriage did not take place, and he, contrary to the provisions of the law, took away what he gave, a reciprocal restitution of what was donated on both sides will not take place, but an action for the recovery of what he unlawfully removed will lie.

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

If your betrothed, as a mark of his generosity, gave you property which belonged to him, the donation does not become void for the reason that he was afterwards killed by the enemy.

12. *The Same Emperors and Czesars to Timothea and Cleotina.*

If your mother has given certain lands to the betrothed or husband of her daughter without stating any condition as to their recovery, and has placed him in the possession of the same, and the marriage should be dissolved by divorce, the donation, being perfect, will not be annulled.

13. *The Same Emperors and Csesars to Alexander.*

The creditors of a husband cannot sue his betrothed to obtain the property given to her by way of donation, unless they can prove that it was previously encumbered to them.

14. *The Same, and the Csesars, to Aurelia.*

If the betrothed of your daughter gave her some slaves, with the consent of her mother, they having been received as dowry without any appraisement, and he should die after marriage, the mother, who was also the heir of the deceased husband, will not make proper restitution by offering their value in their stead.

15. *The Emperor Constantine to Maximus, Urban Prefect.*

As the opinion of the ancients, which declared that donations made to a betrothed woman were valid, even if the marriage was not cele-

brated, is displeasing to Us, We order that anything legally given by way of donation to betrothed persons by one another shall be subject to the following rule, namely, that whether it was given in consideration of marriage or not, or whether the parties are under the control of their parents or independent, the gift shall be considered as having been given in consideration of future marriage, if it is bestowed with the consent of their parents; and if, indeed, the man or his parents are unwilling to consent to the marriage, whatever has been donated by him cannot be recovered if it has been delivered, and if any of the property should be in the hands of the donor, it shall be transferred to the betrothed woman, and her heirs, without any attempt at evasion. Where, however, the betrothed woman, or the person under whose control she is, is responsible for the marriage not being contracted, then the gift shall be returned to the betrothed man himself, or to his heirs, without any deduction, by means of a personal action for recovery, or by an equitable action *in rem.*

This rule must also be observed where the donation is made by the woman to her betrothed.

Given at Rome, on the sixth of the *Kalends* of September, during the Consulate of Constantine, Consul for the fifth time, and Licinius, 319.

16. *The Same to Tiberianus, Vicegerent of the Spains.*

If, after a donation has been made by a man to his betrothed, and the kiss has taken place, one of the parties should happen to die before the marriage, We order that half of the property which was given shall belong to the survivor, and the other half to the heirs of the deceased, no matter to what degree they may belong, or under what right they may succeed; so that the donation may appear to stand so far as half of it is concerned, and be annulled with reference to the other half. If the kiss did not take place, and either of the parties should die, the donation shall be wholly void, and be returned to the donor and his heirs. Whether the kiss took place or not, if either of the parties should die before the marriage, and anything was given to the man by way of donation (which rarely happens) it shall be entirely annulled, and the ownership of the property bestowed shall be transferred to the woman who donated it, or to her successors.

Given on the thirteenth of the *Kalends* of May, during the Consulate of Nepotian and Pacatus, 336.

17. *The Emperors Theodosius and Valentinian to Hierus, Prse-torian Prefect.*

The interests of female minors are very properly provided for, when they are deprived of the assistance of their fathers, by confirming donations made before marriage, where the acknowledgment of the parties has been omitted.

Given at Constantinople, on the tenth of the *Kalends* of Marc'h, during the Consulate of Taurus and Felix, 428.

18. *The Emperor Zeno to Sebastian, Prsstorian Prefect.*

If a father, after having had children by a former marriage, should marry a second time, or not, he cannot be compelled to leave any part of an ante-nuptial donation to the children of his first wife, which either he himself, or someone else gave to the said wife the mother of their common children; as a mother cannot be compelled to preserve anything for any children by her first marriage (after she has contracted a second one) out of the dowry which she gave to their father, or that any other person gave him in her behalf, and with all the more reason if she did not take a second husband.

19. *The Emperor Justinian to Archelaus, Prsetorian Prefect.*

If, during marriage, the wife, or anyone else in her name, should form the design to increase her dowry, it shall still be permitted the husband, or anyone else in his behalf, to increase the antenuptial donation to the extent that the dowry is augmented; and it cannot be objected to generosity of this kind that it was forbidden at the time of the marriage, for indulgence should be granted to the common consent of the parties, for fear that if the power of increasing the donation is refused, the increase of the dowry may be interfered with.

We order that the same rule shall also apply to those marriages in which it sometimes happens that no ante-nuptial donation is given, but that the woman only offers a dowry to her husband; so that when she increases her dowry, the husband shall likewise be permitted to increase his donation to his wife, to the same extent that the dowry is known to be increased, if the parties have consented to the return or retention of the increased dowry or donation; whether this has been done in compliance with the agreements prescribed by the ancients, or with those at present established, which, having reference to the ante-nuptial donation and the constitution of the dowry, were entered into at the commencement of the marriage.

Again, the rights of hypothecation, which arise from the increase of the dowry or donation, acquire their force from the date when the said hypothecation was contracted, and should not be referred to the time of the former dowry, or to that of the ante-nuptial donation.

If, however, on the other hand, both the husband and wife should agree to diminish the dowry and the ante-nuptial donation, they shall be permitted to diminish the latter in the same way that the diminution of the dowry is effected, and any agreements entered into with reference to the diminution of both shall be understood to be valid and legal, except, for instance, in those cases in which either the husband, having children by a former marriage, marries again, or the wife in like manner, while children by a former marriage are living, Unites herself to a second husband; for in this second marriage, whether the husband or the wife, or both of them are concerned (if this should happen), We decree that any diminution of the dowry or the ante-nuptial donation shall be prohibited, in order to avoid any advantage being taken of children by a former marriage.

Extract from Novel 97, Chapter VII. Latin Text.

Now, however, if one party makes an increase the other must also do so, and if the husband is not prevented by his debts, the increase can be made of any kind of property whatsoever. But

if he is in debt, in order to avoid any suspicion of fraud against his creditors, all his immovable property will be liable for the increase of the dowry, for if the woman, while owning real estate, should give movable property to increase her dowry, she cannot avail herself of her privilege against other creditors with reference to this portion of it.

20. *The Emperor Justinian to John, Prsetorian Prefect.*

As many complaints have been made to Us against husbands who, for the purpose of deceiving their wives, have made them donations which from ancient times have been designated ante-nuptial, but have neglected to have them recorded in order that they may remain imperfect, and they themselves enjoy the advantages of the dowry, while their wives are left without any remedy, so far as the antenuptial donation is concerned, We order that this abuse shall be corrected by changing the name of the gift, which shall hereafter be called not an ante-nuptial donation, but a donation on account of marriage.

Therefore, as a woman is allowed to give a dowry to her husband during marriage, why should the husband only be permitted to give a donation to his wife before marriage? Can this difference be considered reasonable, since, because of the weakness of the sex it is better to come to the relief of wives than of husbands? For as the dowry can only be given on account of marriage, and none can be held to exist without it, and marriage can even be celebrated without a dowry, so, in the case of gifts donated by husbands, or by others in their behalf, the latter should be absolutely free to make such donations during marriage, because a present of this kind can be regarded as an advantage to be enjoyed by the wife, and not as a simple present; and for this reason the founders of the ancient law included dowries among donations.

Hence if an ante-nuptial donation does not differ either in name or fact from a dowry, why should it not, in like manner, be given during marriage? Therefore, We order that all persons, whether they have contracted marriage before or afterwards, shall be permitted to give donations to their wives on account of the gift of the dowry, in order that they may not be understood to be simple gifts, but bestowed in consideration of the dowry and the marriage.

Extract from Novel 61, Chapter I. Latin Text.

An action *in rem,* founded on a donation of this kind, is granted to the woman against all possessors.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

Simple donations are not made on account of marriage, but they are forbidden to be made for this reason; lest this may be done for other considerations, for instance, on account of licentiousness, or because of the poverty of one of the parties, and not be attributable to the affection growing out of the marriage itself; therefore if the dowry has already been given, and the husband, not having made an antenuptial donation, prefers to make his wife a present (provided it does not exceed the amount of the dowry, and he states that the said present is not made as a simple donation, but on account of the dowry which has already been given, and which itself amounts to as much as the donation), he shall be permitted to do so, and the said present shall be inserted in the dotal contracts. Where, however, a donation of this kind has taken place, even though the dotal instrument may previously have been drawn up, and no mention of a post nuptial donation included therein, it shall be understood to have been agreed upon in accordance with the provisions of the dotal contract, to enable both the dowry as well as the donation to stand upon the same footing, in order that the Leonine Constitution (which has reference to the quality of the agreement, and not to the amount of the property, but to the shares thereof), may, in cases of this kind, remain intact, and not only be observed without alteration, but that any ambiguity which it contains may be removed by the interpretation which We have made. For where unequal contracts have been entered into, We decree that the

greater part of the benefit shall be reduced, so as to be equal to the less, and both parties enjoy the smaller amount to the same extent.

Extract from Novel 91, Chapter II. Latin Text.

When a dowry has been given, it should be followed by a donation on account of marriage. Moreover, if the woman is ready to pay her dowry, and her husband refuses to accept it, she can call witnesses to establish this fact, and if the dowry is composed of personal property, she can deposit it, after sealing it up; or having appeared in court, she can demand that her husband be notified, and, under such circumstances, the acceptance of the donation cannot be declined. If, however, there is any delay in giving the husband the dowry, the donation can also be refused.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(1) In like manner, if a gift of this kind should be made (which was formerly designated an ante-nuptial donation but is now styled one on account of marriage), and it has not been evidenced by the execution of an instrument, it will be lawful to do this during marriage; and no objection can be raised on account of the marriage having taken place. If, however, this is permitted to be done after marriage, much more reason exists for the instrument to be drawn up.

Moreover, the Constitution which We have promulgated with reference to the increase of dowries and ante-nuptial donations shall remain intact and inviolate; and all other laws either enacted by the ancients or by Us, with reference to simple donations made between husband and wife during marriage, shall remain in full force.

Extract from Novel 127, Chapter I. Latin Text.

The result of this is that a gift in consideration of marriage is effected by means of a special contract, which does not require to be recorded, even if the donation is bestowed by another, provided it is done in the name of the husband, and he himself mentions this in the contract. This rule also applies to the woman. If, however, the husband, or anyone else who made the donation, did not have it recorded, and the amount is legal, and by the dotal agreement it is granted to the husband, he will not be entitled to any action with reference to it. A father is not compelled to preserve for the children by a former marriage a donation which he made to his wife in consideration of marriage, even if he should marry again. The case, however, is otherwise when a part of the dowry remains in the hands of the husband, or a part of the donation in the hands of the wife; for then it should be preserved for the children by the former marriage.

Extract from Novel 127, Chapter II. Latin Text.

At present, a diminution is forbidden to avoid fraud being committed against the children by a former marriage; and as much must be given to each of them as the husband gave to his second wife, even though one child may have received a smaller amount.

The same rule also applies to the woman.

TITLE IV.

CONCERNING MARRIAGE.

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

When a question arises with reference to the marriage of a young girl, and the guardian, the mother, and the relatives cannot agree as to the selection of a husband, the decision of the Governor of the province must be obtained.

2. *The Same to Trophima.*

If your father consented to your marriage, it makes no difference, so far as you are concerned, if he did not sign the marriage contract.

3. *The Same to Valeria,.*

You can, before a competent judge, accuse a freedman who has dared to marry his patroness, or the daughter, the wife, the granddaughter, or the great-granddaughter of his patron, in order that a decision may be rendered in accordance with the customs of the present times, which very properly regard an union of this kind as odious.

4. *The Emperor Alexander to Perpetuus.*

Children cannot marry the concubines of their ascendants, for the reason that an act of this kind when committed by them is not praiseworthy, and indicates a lack of filial duty. Those who violate this law are guilty of the crime of fornication.

5. *The Same to Maxima.*

If (as you allege) your husband's father, under whose power he was, having learned of your marriage, did not oppose it, you should not fear that he will not recognize his grandson.

6. *The Emperor Gordian to Valeria.*

When, contrary to the command of the Emperor, a marriage with an official has taken place in a province with the consent of the woman, still, if she remains of the same mind after the man has relinquished his employment, the marriage becomes legal, and hence any children who have been conceived and born of it are legitimate, as is set forth in the opinion of the most learned Paulus.

7. *The Same to Aper.*

If (as you state) after a complaint has been made to you by your daughter against her husband, the marriage was dissolved, and the parties again became united without your consent, the marriage is illegitimate, as it was contracted without the consent of the father, under whose control the woman was, and therefore, as your daughter does not claim her dowry, you will not be prevented from bringing suit to recover it.

8. *The Same to Romanus.*

In questions relating to marriage, neither the authority of the curator (which only extends to the administration of the property of the minor) nor that of the blood-relatives or connections can be interposed, but the will of the person whose marriage in question should be considered.

9. *The Emperor Probus to Fortunatus.*

When, with the knowledge of your neighbors or others, you keep your wife at home for the purpose of having children, and a daughter is born of this marriage, although neither the nuptial contract nor the birth certificate of the daughter may have been published, the fact of the marriage and the legitimate birth of your daughter are none the less established on that account.

10. *The Emperors Diocletian and Maximian, and the Csesars, to Paulina.*

As you allege that you did not attain to the rank of an illustrious woman because your father was a senator, but for the reason that you contracted marriage with a member of the Senate, you will lose the exalted position which you obtained from your first husband, and be reduced to your former status, if you should subsequently marry a man of inferior degree.

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

If your wife is detained by her parents without her consent, and Our friend the Governor of the

province is notified of the fact, he will grant your request, and having caused the woman to be produced, you can consult her wishes in the matter.

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

The policy of the law does not permit that even a son under paternal control shall be compelled to marry against his consent. Therefore if you observe the ordinary legal precepts, you will not be prevented from marrying the wife whom you may choose, if you desire to do so, provided, however, that your father consents to the marriage.

13. *The Same Emperors and Csesars to Onesimus.*

Instruments drawn up for the proof of marriage are not suitable for that purpose when the ceremony does not take place and they contain what is not true; but where no instruments have been drawn up, a marriage which has been contracted with the requisite formalities is not void, since by the failure to reduce the contract to writing, the other evidence of its solemnization is not invalidated.

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

No one can be compelled either to contract marriage in the beginning, or to renew it after it has once been dissolved. Therefore you understand that the unrestrained power of dissolving and contracting marriage cannot be rendered a matter of necessity.

15. *The Same Emperors and Csssars to Tatian.*

Anyone who has manumitted a slave is not forbidden to marry her, if he does not belong to one of those classes of persons especially prohibited from doing so; and it is absolutely certain that legitimate children can be born to a father by such a marriage.

Extract from Novel 78, Chapter III. Latin Text.

By the new law, however, no rank prevents anyone from marrying his freedwoman, provided dotal instruments are drawn up with reference to the marriage.

16. *The Same Emperors and Csesars to Rhodonus.*

It is proper that a father who exposed his daughter, who was taken by you and brought up at your expense, and under your care, should consent for her to be married to your son. If, however, he refuses to give his consent, he should be compelled to do so only in case he indemnifies you for the maintenance which you provided for his daughter.

17. *The Same Emperors and Csesars.*

No one shall be permitted to contract marriage with his daughter, his granddaughter, or his great-granddaughter, his mother, his grandmother, or his great-grandmother; and, in the collateral line, with his paternal or maternal aunt, his sister, the daughter of his sister, or her granddaughter; nor with the daughter of his brother, or his granddaughter; and among connections by marriage, with his stepdaughter, his stepmother, his daughter-in-law, his mother-in-law, or any other persons prohibited by ancient law, with whom We desire that all persons shall abstain from contracting marriage.

18. *The Emperors Valentinian, Valens, and Gratian to the Senate.*

Widows under the age of twenty-five, even though they may have obtained the freedom of emancipation, still cannot marry a second time without the consent of their fathers. If, however, in the choice of a husband, the desire of the woman is opposed to that of her father, and other relatives, it is established (just as has already been decreed with reference to the marriage of virgins), that judicial authority should be interposed for the purpose of examination, and if the parties are equal in family, and in morals, he shall be considered preferable whom the woman has selected for herself. But in order to prevent those who are nearest in degree to the succession of widows, from hindering the latter from contracting

honorable marriage, where any suspicion of this kind arises, We desire that authority of the courts should be invoked to prevent her estate from descending to them, if death should occur.

Given on the seventeenth of the *Kalends* of August, during the Consulate of Gratian, Consul for the second time, and Probus, 371.

19. *The Emperors Arcadius and Honorius to Eutychianus, Prse-torian Prefect.*

Marriage between first cousins is permitted by this salutary law, so that the former one having been annulled, and the temptation to calumny having been restrained, marriage between such cousins shall be considered lawful, whether they are the children of two brothers, or of two sisters, or of brother and sister; and any children by such a marriage shall be legitimate and can become the heirs of their parents.

Given during the Consulate of Stilicho, Consul for the second time, and Anthemius, 405.

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

The wishes of the father are to be considered in case of the marriage of daughters under paternal control. Where, however, a girl is her own mistress, and is under twenty-five years of age, the consent of her father must be obtained. Where she is deprived of the aid of her father, the consent of her mother and her kindred, as well as of herself, will be necessary.

If, however, having lost both her parents, she has been placed under the protection of a curator, and a dispute should arise between several honorable candidates for marriage, so that it may be doubtful to which one it would be advantageous for the girl to be united, and she, through modesty, is unwilling to express her preference in the presence of her relatives, the judge is authorized to decide to which suitor it is best that she be married.

21. *The Emperors Theodosius and Valentinian to Bassus, Prse-torian Prefect.*

We grant free permission to soldiers, from those of no military rank up to that of protector, to contract marriage with freeborn women, without any of the usual formalities.

22. *The Same to Hierius, Prsetorian Prefect.*

If the instruments relating to an ante-nuptial contract or a dowry are lacking, and the ceremony and other formalities associated with marriage have been omitted, let no one think that, on account of this neglect, marriage which has otherwise been legally performed is not valid; or that on this account children born of it can be deprived of their rights as legitimate; for among persons of equal standing, whose union is not prevented by any law, matrimonial union will take place by their own consent and the testimony of their friends.

Given at Constantinople, on the tenth of the *Kalends* of March, during the Consulate of Felix and Taurus, 428.

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

Believing that it is a peculiar duty of Imperial beneficence at all times not only to consider the convenience of Our subjects, but also to attempt to supply their needs, We have determined that the errors of women on account of which, through the weakness of their sex, they have chosen to be guilty of dishonorable conduct, should be corrected by a display of proper moderation, and that they should by no means be deprived of the hope of an improvement of status, so that, taking this into consideration, they may the more readily abandon the improvident and disgraceful choice of life which they have made.

For We believe that the benevolence of God, and His exceeding clemency towards the human race, should be imitated by Us (as far as Our nature will permit), who is always willing to pardon the sins daily committed by man, accept Our repentance, and bring us to a better condition. Hence, We should seem to be unworthy of pardon Ourselves were We to fail to act in this manner with reference to those subject to Our empire.

(1) Therefore, as it would be unjust for slaves, to whom their liberty has been given, to be raised by Imperial indulgence to the status of men who are born free, and, by the effect of an Imperial privilege of this kind, be placed in the same position as if they had never been slaves, but were freeborn; and that women who had devoted themselves to theatrical performances, and, afterwards having become disgusted with this degraded status, abandoned their infamous occupation and obtained better repute, should have no hope of obtaining any benefit from the Emperor, who had the power to place them in the condition in which they could have remained, if they had never been guilty of dishonorable acts, We, by the present most merciful law, grant them this Imperial benefit under the condition that where, having deserted their evil and disgraceful condition, they embrace a more proper life, and conduct themselves honorably, they shall be permitted to petition Us to grant them Our Divine permission to contract legal marriage when they are unquestionably worthy of it. Those who may be united with them need be under no apprehension, nor think that such marriages are void by the provisions of former laws; but, on the other hand, they shall remain valid, and be considered just as if the women had never previously led dishonorable lives, whether their husbands are invested with office, or, for some other reason, are prohibited from marrying women of the stage, provided, however, that the marriage can be proved by dotal contracts reduced to writing. For women of this kind having been purified from all blemishes, and, as it were, restored to the condition in which they were born, We desire that no disgraceful epithet be applied to them, and that no difference shall exist between them and those who have never committed a similar breach of morality.

(2) Children born of a marriage of this kind shall be legitimate, and the proper heirs of their father, even though he may have other lawful heirs by a former marriage; so that such children may also, without any obstacle, be able to acquire the estates of their parents, either *ab intestato,* or under the terms of a will.

(3) If, however, women of this description, after an Imperial Rescript has been granted them in accordance with their request, should defer contracting marriage, We order that their. reputations shall, nevertheless, remain intact, as in the case of all others who may desire to transfer their property to anyone; and that they shall be competent to receive anything bequeathed to them, in accordance with law, or an estate which may descend to them on the ground of intestacy.

Extract from Novel 51. Latin Text.

These privileges shall be granted them, even if they may have sworn that they will continue in their former profession, because it is expressly stated by the laws that an oath to perform an unlawful act must not be observed, and that the penalty for perjury, if any exists, shall be inflicted upon him who exacts an oath of this description.

END OF THE EXTRACT.

THE TEXT OP THF CODE FOLLOWS.

(4) We also decree that such of these women as have obtained a privilege from the Emperor shall occupy the same position as those who have obtained some other benefit which was not bestowed by the sovereign, but was acquired by them as a voluntary donation before their marriage; for, by a concession of this kind, every other stigma on account of which women are forbidden to contract lawful marriage with certain men is absolutely removed.

(5) To this We add that when the daughters of women of this kind are born after the purification of their mother from the disgrace of her former life, they shall not be considered as the children of females belonging to the stage, or be subject to the laws which forbid certain men to marry such women. Where, however, they were born before that time, they shall be permitted to petition the Emperor for a Rescript, which should be granted without any opposition, by means of which they may be permitted to marry, just as if they were not the

daughters of actresses; and those men shall not be prohibited from marrying them who are forbidden to take as wives girls belonging to the stage, either on account of their own rank, or for some other reason; provided, however, that in every instance, dotal instruments in writing are executed by the parties concerned.

(6) If, however, a girl born of a theatrical mother, who practiced her profession until the time of her death, should, after her mother's decease, petition for Imperial indulgence, and obtain it, she shall be freed from the blemish of her mother's reputation, and herself be granted permission to marry; and she also can without the fear of former laws be united in matrimony with those who not long ago were prohibited from marrying the daughter of an actress.

(7) Moreover, We have thought that what was prescribed by former laws (although this was somewhat obscure) should be abolished, namely, that a marriage contracted between persons of unequal rank shall not be considered valid, unless dotal instruments with reference to it were executed. When, however, this does not take place, such marriages shall still be absolutely valid, without any distinction of persons, provided the women are free and freeborn, and that no suspicion of any criminal or incestuous union arises, for We, under all circumstances, annul criminal and incestuous unions, as well as those which were especially prohibited by the provisions of former laws; with the exception, however, of such as We authorize by the present decree, and direct shall be considered legal, in accordance with the rights of marriage.

Extract from Novel 117, Chapter IV. Latin Text.

Those who are invested with exalted dignity, up to persons styled illustrious, cannot legally contract matrimony, unless dotal instruments have been drawn up in writing, although marriages previously contracted will stand. Barbarians are excepted from this rule, but all others can legally marry under the inducement of affection alone.

THE TEXT OF THE CODE FOLLOWS.

(8) Therefore these matters having been settled in this manner, by this general law which must hereafter be observed, We order that any such unions which have subsequently been made shall be regulated in accordance with the aforesaid provisions; so that where anyone has married a wife of this kind during Our reign (as has already been stated), and has children by her, they shall be legitimate, and be entitled to succeed to their father *ab intestato,* as well as under a will, and the wife, as well as any children hereafter born of her, shall also be considered legitimate.

24. *The Same to the Senate.*

We order that if anyone should, in any agreement whatsoever, whether it is drawn up for the purpose of giving something, or for the performance of some act, or for not giving anything, or for the non-performance of some act, either refer to the time of his marriage or merely mention the marriage itself, the condition of the contract shall not be understood to have been complied with, or not to have been dispensed with, unless the ceremony of marriage actually takes place; and that the age at which marriage can be solemnized, which in the case of a female is after she has completed her twelfth year, and in case of a male after he has completed his fourteenth year, should not be considered, but the time when the marriage was performed shall only be taken into account; for in this way all disputes arising from the ancient law are disposed of, and the immense number of volumes on this subject are reduced to very few.

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

The question was discussed by the ancients whether the children of insane parents, under whose control they were, could marry. Almost all the legal authorities admitted that the daughter of an insane person could marry, for they thought it was sufficient if the father did

not object, but it was doubted whether a son could do so. Ulpian refers to a Constitution of the Emperor Marcus, which does not mention lunatics, but in general terms alludes to children of persons of weak minds, whether they are males or females, who contract marriage; and he states that they can do so without applying to the Emperor.

Another doubt arises from this constitution, that is to say, whether what it provides, with reference to persons of weak minds, should also apply to those who are insane; and whether the children of lunatics are also entitled to relief, just as those of a person of feeble intellect. Therefore, for the purpose of disposing of these doubts and difficulties, We order that whatever appears to be lacking in the Constitution of the Divine Marcus shall be supplied by the following provision, that is to say, that not only the children of a person of weak intellect, but also those of one who is insane, of either sex, can legally contract marriage; and that the dowry, as well as the ante-nuptial donation, shall be furnished by their curators. The amount of the dowry, as well as that of the ante-nuptial donation, must, in this Imperial City, be determined by the estimate of the most excellent Urban Prefect, and in the provinces by that of the illustrious Governors, or by the bishops of the various dioceses; and the curator of the person who has lost his mind or has become insane should be present, as well as those highest in rank in their families, so that nothing may arise in a case of this kind, either in this Imperial City, or in the provinces, to cause any loss of the property of said insane person, or of him of enfeebled intellect; and these proceedings shall be undertaken gratuitously, so that a human misfortune of this description may not be aggravated by any expense.

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

If anyone should grant freedom to his foster-daughter, and marry her, a doubt arose among the ancients whether a marriage of this kind should be considered lawful or not. Therefore We, desiring to resolve this long-existing doubt, decree that such a marriage is not prohibited, for if these marriages have their origin in affection, and We find nothing impious or contrary to law in such a union, why should We think that they ought not to be allowed? No man can be found who is so wicked as to afterwards marry a girl whom, in the first place, he treated as his daughter; but it should be believed that he did not originally bring her up as his daughter, but gave her her freedom, and afterwards deemed her worthy to be married to him. A woman should, by all means, be prevented from marrying her godfather who received her in baptism whether she is his foster-child or not, as nothing else can be so productive of paternal affection and just prohibition of marriage as a tie of this kind, by means of which, through the mediation of God, the souls of the parties in question are united.

27. *The Same to John, Prsetorian Prefect.*

We order that marriages which take place between men and women who are more or less than fifty or sixty years of age, and which are prohibited by the *Lex Julia et Papia,* cannot be prevented in any way, or on either side, where the men consent.

28. *The Same to John, Prsetorian Prefect.*

Where a man has a wife who is a freedwoman, and afterwards becomes illustrious by being raised to the dignity of Senator, the question is raised by Ulpian whether the marriage is dissolved by his promotion, because the *Lex Papia* does not permit marriages to exist between senators and freedwomen. Hence We, following the judgment of God, do not permit that, in one and the same marriage, the happiness of the husband should become the misfortune of his wife, so that his wife may be debased to the extent that he is elevated, and indeed that she should absolutely be lost to him; therefore, as severity of this kind ought not to exist in our times, and the marriage should stand, and the wife rise with her husband and share his distinction, the marriage shall remain valid, and shall be, to no extent, affected by an occurrence of this description.

In like manner, where the daughter of a private person marries a freedman, and her father is

afterwards raised to the senatorial dignity, the cruel provision of the Papian Law is silent on this point, and the marriage celebrated between the daughter of one who has become a senator and a freedman must not be dissolved on this account, so that the prosperity of the father-in-law may not be attained without the loss of his son-in-law; for it is better that the harshness of the Papian Law should be mitigated in both instances, rather than, by observing it, the marriages of men should be annulled, not on account of any vice of the wife or the husband, but because of the good fortune of both, for, as this defect proceeds from one source, the result is that it is removed by one law.

TITLE V.

CONCERNING MARRIAGES WHICH ARE INCESTUOUS AND VOID.

1. *The Emperor Alexander to Amphigonus.*

If your freedwoman, who is also your wife, leaves you without your consent, she cannot marry another if you desire to retain her as your wife.

2. *The Emperors DiocletioM and Maximum to Sebastiana.*

It is a matter of common notoriety that no one who is subject to the jurisdiction of the Roman Empfre can have two wives at once; as, by the Edict of the Praetor, men of this description are branded with infamy, and a competent judge will not suffer a crime of this kind to go unpunished.

3. *The Emperor Constantine to Patroclus.*

Marriage to a female slave cannot exist, for only slaves are born of an union of this kind. Therefore, We order that decurions, induced by licentious desires for female slaves, shall not resort to the houses of powerful men; and if a decurion, without the knowledge of the stewards or superintendents of the same, shall be found living with the female slave of another, We order that the woman shall be sentenced by the judge to the mines, and the decurion himself shall be deported to an island; and if he has been freed from the control of his father, and has neither children, parents, nor any near relatives who can be called to his succession as heirs at law, his property shall be confiscated for the benefit of the city in which he held the office of decurion. If, however, the stewards or superintendents of the house in which the offence was committed were aware of it, or, after it had been discovered, were unwilling to make it known, it is proper that they also should be sentenced to the mines.

If the owner of the house permitted this to be done, or, after having heard of it, concealed it, and the act was committed in the country, the land, together with the slaves and the cattle, as well as all other property requisite for agriculture, shall be confiscated to the Treasury. If, however, the act was committed in a city, We order that half of all the property shall be confiscated by way of increasing the penalty, because the offence, having been perpetrated in the owner's residence, he was unwilling to disclose it as soon as it became known to him.

4. *The Emperors Valentinian, Theodosius, and Arcadius to Andro-macus, Count of Private Affairs.*

When anyone marries contrary to the provisions of the laws, or in violation of the Mandates and Constitutions of the Emperors, nothing shall be acquired through such a marriage, whether an antenuptial donation of any kind was given before or afterwards. We order that everything which was bestowed by the liberality of one of the parties upon the other shall be taken from him or her, as being unworthy of having it, and confiscated to the Treasury; there being excepted from this rule such men and women as, through some serious mistake, which was neither affected nor simulated, have been deceived for any good cause, or have erred on account of their youth. It has, however, been decided that they alone shall be free from the restraints of Our law who, having discovered their error, or having arrived at their majority, take steps to dissolve an union of this description without delay.

5. *The Same to Cynegius.*

We absolutely prohibit marriage with the wife of a brother, or with two sisters, even where a previous marriage has been dissolved in any way whatsoever.

6. *The Emperors Arcadius and Honorius to Eutychianus, Prss-torian Prefect.*

If anyone should pollute himself by an incestuous or prohibited marriage, he can retain possession of his own property as long as he lives, but he must not think that he has a wife, or any children by her, nor can he, during his lifetime, donate anything to the aforesaid persons even through the interposition of a third party; nor can he leave them any property at the time of his death. If a dowry has been formally given or promised, it shall, in compliance with the ancient laws, be confiscated to Our Treasury. He can bequeath nothing to strangers by his will, but, whether he dies testate or intestate, his heirs will succeed him by law, provided he has children born in just and lawful wedlock; that is to say, if he has among his descendants a son, a daughter, a grandson, a granddaughter, a great-grandson, or a great-granddaughter; or among his ascendants, a father, a mother, a grandfather, or a grandmother; or in the collateral line, a brother, a sister, a paternal uncle, or a paternal aunt. He shall have a right to make a will, and leave what he wishes only to such persons as he may select, and who, according to the tenor of Our Imperial Rescript, are entitled to the succession.

Where any of the persons whom We have mentioned is shown to have advised the contraction of the incestuous marriage, he shall be absolutely excluded from the estate of the deceased, and the heir who is next in degree shall succeed in his stead.

Moreover, what We have provided with reference to men shall also be observed with regard to women who have polluted themselves with such marriages as those above mentioned. When, however, the persons referred to as being next of kin are not living, the estate shall be confiscated to Our Treasury.

Given at Constantinople, on the sixth of the *Ides* of December, during the Consulate of Arcadius, Consul for the fourth time, and Honorius, Consul for the third time, 396.

Extract from Novel 12, Chapter I. Latin Text.

The penalty imposed upon anyone who contracts an incestuous marriage is the confiscation of his property, including not only the dowry, but everything else, exile, and the loss of rank (if he enjoys it), and also scourging when he is of inferior degree; and any woman who commits a similar offence shall suffer the same punishment. If the offender has legitimate children, who become their own masters by the crime of their father, his property shall pass to them, provided that he is supported by them, but if there are no children, it shall be confiscated to the Treasury.

Extract from Novel 89, Last Chapter.

Children should not be called natural who are born of an execrable, incestuous or prohibited marriage, but should be considered as unworthy of inheriting their father's estate, or of being supported by him.

7. *The Emperors Valentinian and Martian to Palladius, Praetorian Prefect.*

We do not understand a low or abject woman to be one who, although she may be poor, is descended from freeborn parents. Therefore We have decided that Senators and persons of the highest rank can marry women who are the children of freeborn parents, even though they are poor; and that no distinction exists between freeborn women and those who are more opulent, on account of the good fortune of the latter. We only consider those women to be low and abject persons who are slaves, the daughters of slaves, freedwomen, and the daughters of freedwomen, actresses, and their daughters, the daughters of tavern-keepers, of proprietors of houses of prostitution, and of gladiators; or women who make their bodies articles of

merchandise; therefore it is only proper for Us to forbid the marriage of Senators with women belonging to the classes which We have just enumerated.

Given at Constantinople, on the day before the *Nones* of April, during the Consulate of Jstius, and Asterius, 454.

8. *The Emperor Zeno to Epinicus, Prsstorian Prefect.*

Although certain Egyptians have married the wives of their deceased brothers, for the reason that they were said to have remained virgins after their marriage, being of the opinion that sexual intercourse had not taken place between them (which has been held by certain legal authorities), and that, on this account, no marriage was considered to have been actually consummated; and while matrimonial unions of this description which took place under such circumstances were valid, still, We order by the present law that, if any such marriages should be celebrated, those who contract them, as well as their children, shall be subject to the provisions of the ancient laws, and that the marriages shall not, according to the example of the Egyptians above referred to, be considered to be either valid, or capable of being rendered so.

9. *The Emperor Anastasius to Severianus, Pr&torian Prefect.*

All persons governed by Our Empire are notified that they must abstain from incestuous marriages. For We decree that all rescripts, pragmatic sanctions, or impious constitutions which, during the period of tyranny, permitted certain persons to give the name of marriage to wicked unions, and allowed anyone to marry his niece, his sister, or his sister-in-law, and to live in the basest associations with her, or sanctioned any other unions of this kind, to be of no force or effect, lest, by culpable dissimulation, such abominable license may be confirmed.

TITLE VI.

CONCERNING THE PROHIBITION OF MARRIAGE BETWEEN A FEMALE WARD AND HER GUARDIAN OR CURATOR, OR HIS SON.

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

The authority of the Decree of the Senate, by which marriage between a female ward and the son of her guardian is very properly forbidden, must not be evaded under the pretext of ignorance and want of experience.

2. *The Emperor Alexander to Byruus.*

The mother of a female ward is not prohibited from contracting marriage with the guardian of her daughter, or the son of her guardian.

3. *The Same to Rogatianus.*

As you allege that your father, at a time when you say that you were not under his control, was appointed curator of the woman whom you married, after you had had children by her, and as the marriage already solemnized cannot be vitiated by a subsequent occurrence, you need have no apprehension that, under a just interpretation of the law, the children which you have will be considered not to have been legitimately born. In order, however, that all doubt may be removed, your father, as well as your wife, should insist that another curator be appointed in his stead; for your wife will have the power to demand an account of his administration from the person who was substituted for him.

4. *The Emperor Philip to Higina.*

There can be no doubt that a freedman who gave his female ward, the daughter of his patron, in marriage to his natural son who was born in slavery and was afterwards manumitted, is liable under the provisions of the Decree of the Senate, which forbids marriages of this description.

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

You have been falsely informed that a curator cannot marry his daughter to a minor in his charge.

6. *The Emperors Valerian and Gallienus to Lucius.*

If you married your father's female ward before the account of the guardianship was rendered, or even after it was rendered, but before she attained her twenty-fifth year, or before the available year expired, you cannot be considered to have contracted marriage with her, or to have had a child by such an union. Where, however, the father of the girl requested that the marriage should take place at the time of his death, and this was done in accordance with law, the child will be considered legitimate.

7. *The Emperors Diocletian and Maximian, and the Ctesars, to Paragonius.*

If a guardian or a curator should, without having obtained an Imperial Rescript for that purpose, marry his ward or a minor in his charge either to himself or to his son, he shall be branded with infamy as having confessed that he had been guilty of mismanagement of the guardianship, because, by an union of this kind, he had attempted to conceal fraud committed during his administration; and hence any dowry which was given can be recovered by a personal action.

8. *The Emperors Leo and Anthemius to Erythrius, Prsetorian Prefect.*

If anyone, having fraudulently assumed the name of guardian or curator, that is to say has, without proper authority, administered the affairs of a female minor in the capacity of her guardian, curator, or agent, and has either married her himself, or given her in marriage to his son, We decree that a matrimonial alliance of this kind shall stand, and not be annulled like that of an actual guardian; in order that where children are born of marriages contracted in this designing or malignant manner, or dowries have been given or promised on account of them, they may not be subjected to injury or annoyance.

TITLE VII.

WHERE ANYONE CLOTHED WITH POWER, OR ANY OF HIS SUBORDINATES, ATTEMPTS TO MARRY A FEMALE SUBJECT TO HIS JURISDICTION.

1. *The Emperors Gratian, Valentinian, and Theodosius to Theodore, Prsetorian Prefect.*

When any person invested with ordinary power, or other authority, makes use of it for the purpose of contracting marriage, if the woman herself, or her parents are unwilling (whether she is a ward, a virgin living with her father, or a widow who is her own mistress, no matter what position she may occupy), and he is convicted of either employing or of having employed threats against the persons who are unwilling, for the purpose of accomplishing his design, We decree that he shall be liable to a fine of ten pounds of gold for having made such an attempt, even though he may not have effected a marriage forbidden by law; and, as he has forfeited his honor, We prohibit him from availing himself of the dignity which he has acquired, and as he has made such bad use of his office, if he refuses to obey Our laws, he shall, by way of penalty, be forbidden by the judge to live for the term of two years in the province in which he so exceeded his authority.

It is also added that, if he still retains his office, the person whom he attempted to take advantage of by conduct of this kind shall be permitted to bring a complaint immediately, and, with her household, decline to submit to the jurisdiction of the magistrate concerned; and the execution of this law shall devolve upon the defenders of every city, and the subordinate officials of the court. And, indeed, if an ordinary judge is accused of an offence of this kind, all the affairs of his household, as well as all the civil and criminal business, shall be brought before his deputy, as long as the said judge remains in office. Where, however, his deputy, or

anyone else invested with similar authority, has undertaken to employ violence in the contraction of a marriage of this kind, the ordinary judge, on the other hand, shall interpose his authority. But where both of them are liable to suspicion, the protection of such households shall be especially undertaken by the illustrious prefecture, as long as the aforesaid magistrates remain in office.

Given at Thessalonica, on the fifteenth of the *Kalends* of May, during the Consulate of Gratian, Consul for the second time, and Theodosius, 380.

TITLE VIII.

CONCERNING MARRIAGE DEMANDED IN ACCORDANCE WITH THE TERMS OF A RESCRIPT.

1. *The Emperors Honorius and Theodosius to Theodore, Prsetorian Prefect.*

Certain persons, in violation of the provisions of the ancient law, think that they have a right to demand authority to contract a marriage which they understand is forbidden, by means of a fraudulent request made to Us; and they often pretend that they have obtained the consent of the girl. For this reason We, by the present law, forbid all marriages of this description. Hence, if anyone, by means of a fraudulent petition, obtains permission to contract a marriage of this kind, contrary to the provisions of this law, let him entertain no doubt that he will suffer the loss of his property, and the penalty of deportation, and that the marriage which he has made by such forbidden means having been annulled, he will not have any legitimate children born of such an union, nor any pardon or indulgence, as the rescript or-annotation will be considered void, except in those cases where the marriage or the betrothal has been requested by the parents of the girl, or where, in conformity with the provisions of the law, they demand that what has been given as a betrothal pledge shall be returned, together with the prescribed penalty.

Given on the *Kalends* of February, during the Consulate of Honorius, Consul for the eighth time, and Theodosius, Consul for the third time, 409.

2. *The Emperor Zeno to Basilius, Prsetorian Prefect.*

We again absolutely forbid, under all circumstances, the abominable crime of the marriage of an uncle and a niece, which has already been prohibited under the severest penalties by the Imperial Constitutions. We also hereafter refuse to all persons permission to ask for such a marriage (or rather for such a contagion), in order that everyone may know that if he should fraudulently obtain consent for what even the right of a petition is hereby denied, it will be of no advantage to him.

TITLE IX.

CONCERNING SECOND MARRIAGES.

1. *The Emperors Gratian, Valentinian, and Theodosius to Eutro-pius, Prsetorian Prefect.*

Any woman, who hastens to contract a second marriage without having properly mourned for her first husband, becomes infamous by the effect of a well-known law; and besides, she cannot give to her second husband by way of dowry more than a third part of the property, nor can she leave him by her will more than a third of her estate.

Moreover, she will not be entitled to any inheritances, legacies, or trusts left to her by a last will, or by a donation *mortis causa,* for We order that all these things shall be claimed by the heirs, the co-heirs, or successors *ab intestato* of the deceased, lest We may not seem to have in view the benefit of the Treasury while We are attempting to correct this violation of morality. She shall also lose whatever her husband left her by his last will, even though the property bequeathed to her by her first husband may be without an owner, on account of her premature marriage; and in the first place, We decree that it shall descend to the ten persons enumerated

in the Edict of the Praetor, that is to say, to the ascendants and descendants, and next in the collateral line as far as the second degree (the regular order of degrees being, of course, observed), and then it shall be acquired by the Treasury. Again, We do not permit such a woman, who has become infamous, to claim any estate on the ground of intestacy, either by the civil or praetorian law, beyond the third degree.

Given on the fifteenth of the *Kalends* of January, during the Consulate of Gratian and Theodosius, 380.

Extract from Novel 22, Chapter XL; and Novel 34, Chapter II. Latin Text.

A woman who brings forth a child within the time prescribed for mourning shall be liable to the same penalty, provided there is no doubt that the said offspring does not belong to the deceased, for she should also be deprived of the usufruct of the ante-nuptial donation.

The same rule applies to a woman who, having accepted the guardianship of her children, marries a second time, in violation of her oath, without having previously applied for a guardian, rendered an account, and paid everything that she owed. At present, however, by a subsequent law, the oath is not exacted of her, but if she contracts a second marriage, she will be deprived of the guardianship.

2. *The Same to Eutropius, Praetorian Prefect.*

Where a woman who has lost her husband hastens to marry another within the term of a year (for We have added a short time to be observed after the ten months formerly prescribed, although We think that the entire period is extremely brief), she shall be branded with opprobrium, and be deprived of the rights and honors due to persons of noble and distinguished rank, and shall lose everything which she acquired from the estate of her first husband, either at the time of betrothal, or by the last will of the deceased.

Given at Constantinople, on the third of the *Kalends* of June, during the Consulate of Eucherius and Syagrius, 381.

3. *The Same to Theodore, Prtetorian Prefect.*

Women who have had children by their first husbands, and marry a second time after the prescribed term of mourning has elapsed, transmit intact to their children all the property which they have received from their former husbands, whether they obtained anything by marriage, by donations *mortis causa,* directly by will, under a trust, by virtue of a legacy, or through any other evidence of liberality from the estates of their first husbands (as has been previously stated), and they can transmit it to any one of their children (provided the latter is one of those whom We have decided to be entitled to such a succession), and whom the mother may, in consideration of its merits, consider worthy of her bounty.

Such women shall not presume to alienate property of this description to any stranger, or to a child born of the second marriage, and they shall have only the right of the possession and enjoyment of such property during their lives, but the authority to alienate it is not granted them. For, if any of such property should be transferred by a woman of this kind to any person whomsoever, it shall be restored out of her own estate, in order that it may come unimpaired and intact into the hands of those children who We have decided are entitled to it.

(1) We also add to this law, that if any of the children who are proved to have been born of the former marriage should die after the mother has disgraced herself by a second one, all the surviving offspring of the same marriage shall have a right to whatever the mother would be considered entitled to *ab intestato,* or under the will of her child by the same succession; and she shall only have possession of the share due to her for the term of her life, and must leave everything to the surviving children of the former marriage; nor shall she have power to bequeath property of this kind to any stranger whomsoever, or to alienate any of the same.

If she should not have had issue by her first marriage, or her child or children should die, she is hereby fully authorized to dispose of everything which she has acquired in any way, and shall be legally entitled to complete ownership of the same, and can leave it by will to anyone whom she may select.

Given at Constantinople, on the sixth of the *Kalends* of June, during the Consulate of Antoninus and Syagrius, 382.

Extract from Novel 22, Chapter XXIII. Latin Text.

A woman shall not be entitled to the ownership of property included in a donation made on account of marriage, even if another person gave it for the benefit of her husband.

Extract from Novel 22, Chapter XXV. Latin Text. This profit is equally divided among the children by law and its distribution is not left to the discretion of the parent.

Extract from Novel 22, Chapter XLVI; and Novel 2, Chapter III. Latin Text.

A woman who has hastened to contract a second marriage succeeds to her children under the terms of their wills, just as any other person who was appointed heir. She also is called to an intestate succession, whether she married the second time before the death of her child, or afterwards. In case of an intestate succession, however, she will only receive the usufruct of such property as came into the hands of the child from his father's estate. The same rule applies to antenuptial donations, as to other property, but the ingratitude of the mother and the brothers should, in this instance also, by all means be taken into consideration.

Extract from Novel 2, Chapter II; and Novel 22, Chapter XXVI. Latin Text.

If, however, any one of them should die first without issue, the ownership of a part of the property left will go to the mother, in accordance with the agreement made in case there should be no children, and the remainder will pass to the heirs of the deceased, whoever they may be; therefore, if she should dispose of any of said property, the sale will be valid so far as the portion above mentioned is concerned. But when the mother is the only heir, she herself will be entitled to the entire estate, and she can follow any alienation of it that she pleases.

4. *The Emperors Honorius and Theodosius to Marinus, Prsetorian Prefect.*

While We have previously ordered by other laws that the estate of the mother shall descend intact to the children, still, where she has acquired any property through the generosity of her husband, the children born of the first marriage are informed that they have a right to make a special claim to it, as constituting part of their father's estate. Therefore, if a woman who had children should contract a second marriage, only the issue of said second marriage shall have a right to the possession of all the property which the second husband gave to his wife at the time of their betrothal; and it will be of no advantage to those by the former marriage that the woman did not marry a third time.

If, however, the second husband should die without leaving any children, whatever his wife obtained from him as a betrothal gift shall belong to her by law, even if the donor is shown to have left children by a former marriage. So far as the estate of the mother is concerned, any offspring which she may leave, no matter from what husband the property was obtained, or whether it was derived from this or from some other source, shall have the share to which they are entitled from their mother's estate, whether it became theirs by gift, or under the terms of a will. For We decree that it is expressly provided by this law, that children, no matter of what marriage they are born, shall be entitled to any property donated by their father at the time of his betrothal.

Given at Ravenna, on the third of the *Nones* of November, during the Consulate of Honorius, Consul for the thirteenth time, and Theodosius, Consul for the tenth time, 422.

5. *The Emperors Theodosius and Valentinian to Florentius, Prsetorian Prefect.*

Generally speaking, We decree that, in every instance where, before the promulgation of this law, the constitutions direct that a woman shall preserve for the benefit of their common children all the property which came into her hands from the estate of her husband where the marraige was dissolved by death this shall be done; and also, under the same circumstances, that the husband shall preserve for the common children everything which came into his hands from the estate of his wife, where the marriage was terminated by the death of the latter. It makes no difference whether someone else made an ante-nuptial donation for the benefit of the husband, or gave a dowry for the benefit of the wife.

We order that this rule shall be observed, even though the property included in the ante-nuptial donation (as is usually the case), was given by the wife by way of dowry. We decree, moreover, that the ownership of the property preserved for the children by the provisions of this law, or by those of former constitutions, shall belong to them. Therefore, where the person who was keeping the said property for the children dies, all surviving children shall have a right to recover it from any possessor whomsoever, and if it has been consumed, can exact its value from the heirs of him who had the right to preserve it. The right to alienate or encumber property which should be preserved, or which has been ordered to be kept for their benefit, is not permitted. We, however, grant to the father the right to administer the business of his children in a proper manner; nor do We deny to the parents permission to divide their property between their children according to their own judgment, or even to select any one of them whom they may prefer.

(1) Still, in those instances in which the mother is directed to preserve the property for the common children, because it belonged to their father, that is to say, where the marriage has been dissolved by the death of the husband, and the woman marries a second time; or where We order that the father shall preserve the property of the mother for the benefit of their common offspring, when the marriage has been dissolved by the death of the wife, and the husband marries again; if the children should not enter upon the estate of their father, who died first, they shall only be permitted to claim for themselves the property of the parent who died last; that is, if they should decide to accept the estate of the one who died last, in order that what was established for the benefit of the said children may not, in certain cases, appear to have been devised for their injury.

Extract from Novel 23, Chapter XXIII, XVI. Latin Text.

Any profit obtained during marriage belongs to the children, although they may not be heirs of their father or mother, or of both of them; unless they have been ungrateful, and their ingratitude is proved.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(2) We have thought that, for the sake of humanity, the following should be inserted in this law, that is to say, in every instance in which profit is obtained, where property comes into the hands of the wife from the husband, or the husband obtains anything from the estate of his wife when the first marriage is dissolved by the death of one of the parties, and the survivor does not marry again; and if the husband of the wife, that is to say, the survivor, does not consume or alienate the property (which there is no doubt belongs to them as owners when they do not contract a second marriage), the children are entitled to the property which formed part of their father's estate, as well as to that derived from the estate of their mother.

Extract from Novel 98, Chapter I. Latin Text.

When the wife dies, the profits that the husband obtained from the dowry, the usufruct of which is granted to him, are absolutely reserved for the common children, so far as their ownership is concerned.

The same rule applies to the share of the woman, if she has profited to any extent by the betrothal gift. Likewise, where the marriage is dissolved in any other manner, these profits are disposed of by the same constitution.

Extract from Novel 127, Chapter III. Latin Text.

If, however, the mother should not marry a second time, she herself will be entitled to a share of the property, in proportion to the number of her children. This rule also applies to the father and all relatives in the ascending line, who do not contract a second marriage.

6. *The Emperors Leo and Anthemius to Erythrius, Prsetorian Prefect.*

We order by this published law, which shall be valid for all time, that where there are any children by a former marriage, and either the father or the mother contracts matrimonial vows a second or a third time, or more, it shall not be permitted to leave to the stepmother or stepfather, either by a will written or unwritten, or by a codicil, or by the right of inheritance, or by virtue of a legacy or a trust, or by way of dowry or ante-nuptial donations, or by a donation *mortis causa* or one *inter vivos* (although these last donations are forbidden by the Civil Law to be made during marriage, still they are, for certain reasons, usually confirmed, after the death of the donor), more than they could have left or given to a son or daughter, if either one of them were living. Where, however, there are several children, they will all be entitled to equal shares, and no more can be acquired by any one of them than is permitted to be given to their stepfather or their stepmother. When, however, the above-mentioned property was not transmitted in equal shares to the said children, then it shall not be lawful to leave to the stepmother or stepfather by will, or to donate by way of dowry or as an ante-nuptial donation, any more than a son or a daughter would be entitled to, to whom a smaller share of the estate was left or given by the last will of the testator; provided, that the fourth part due to the said children under the law cannot, in any way, be diminished, unless for those reasons which prevent the complaint of inofficiousness.

We decree that this rule shall also apply to the grandfather or the grandmother, the great-grandfather, and the great-grandmother, as well as to the grandchildren and great-grandchildren of both sexes; in either the paternal or maternal line of descent whether they are under paternal control, or have been emancipated or not.

If, however, any property in excess of what has been prescribed by law should be left to the stepmother or the stepfather, or donated or presented to either of them, the surplus shall be considered as not having been referred to, left, donated, or given; and We order that it shall belong to the children, and be divided among them; for the purpose of avoiding every evasion of the law which may be attempted, either by the interposition of a third person, or in any other manner whatsoever.

(1) We add to these provisions that a woman, in those instances in which ante-nuptial donations or other property has come to her from her husband, shall be compelled to preserve the same for their common children, as constituting part of their father's estate, in accordance with the terms of former laws; that is to say, when, after the marriage has been dissolved by the death of the husband, she contracts another, she can only enjoy the usufruct of the movable property and the slaves, as well as the civil allowance of support, during her lifetime; all alienation of the same being absolutely prohibited. With reference to the movable property, however, she shall, in like manner, be entitled to its usufruct, after a just appraisement has been made by arbiters chosen with the consent of all parties, and after an oath has been administered ; provided she furnishes good security that she will restore the said property or the value of the same to the sons or daughters who are the issue of this marriage; or, after their death, to all her grandsons and granddaughters descended from the said children, or to any one of them who may happen to survive; and that she will do this in accordance with the laws. But if she should fail, or be unwilling to furnish proper security, the aforesaid property shall remain in the hands of the children, if it has not yet been transferred by them to their mother;

and where it has been delivered to her, or is retained by her, it shall be returned to the children. If proper security is offered by them to their mother, by which it is agreed to pay her annually three per cent on the estimated value of said property, instead of the usufruct or the sum at which it was appraised; the children must not fail at any time to make said payments.

It should also be provided by the bond that (if all the said children or their descendants should happen to die before their mother) the above-mentioned movable property shall be restored to her in accordance with the distribution prescribed by law in order that she may have the benefit of the profit derived from misfortune. Hence, if anyone of those who has furnished security should consider it advantageous for himself, he shall be permitted to use and enjoy the said movable property, and either to lend, encumber, or sell the same; in order that the children may, by means of what is acquired by them, be enabled to provide for their mother, without suffering any inconvenience themselves. But if either of them should neglect, or be unable to furnish the security aforesaid, the property shall remain in the hands of the woman during her lifetime.

Extract from Novel 22, Chapters IV and XLV. Latin Text.

If a quantity of gold was mentioned in the donation made in consideration of marriage, the contract must state that the interest on the same shall be paid, but the gold itself cannot be exacted, unless it, as well as the other property mentioned in the donation, was included in the estate of the husband.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(2) All the property which the woman received from her husband, as well as what she herself has, or will be entitled to, is encumbered to the children who were the issue of her first marriage, just as if it had been pledged or hypothecated to guarantee the ante-nuptial donation or any other property which may have come into her hands as part of the estate of her husband, from the very day when she obtained possession of the same; so that if anyone should make a contract with the woman after the said property was delivered to, or retained by her, and she marries a second time, there is no doubt that, when it is claimed, the children born of the first marriage, and any grandsons or granddaughters descended from them, will be preferred to those born of the second marriage.

(3) When, however, retaining parental affection for their children, either the father or the mother is unwilling to contract a second marriage, the husband shall not be prohibited from using according to his wishes, or selling, or alienating in any way whatsoever, or pledging or hypothecating (if he or she should wish to do so) as owner of the same, any property which belonged to the estate of his wife, or the latter what belonged to that of her husband, and which may have come into the possession of either.

The children shall be permitted to recover any of said property, if it has not been alienated, consumed, or pledged; even though they may not have accepted the estates of their parents.

Given on the second of the *Kalends of March,* during the Consulate of Martian and Zeno, 469.

7. *The Emperor Zeno to Sebastian, Prsetorian Prefect.*

In some cases, the father, in others, the mother, is required to preserve an ante-nuptial donation, or property which is derived from some other source for the children of both sexes. If one of the sons or daughters should happen to predecease the father or the mother (either before one of them has contracted a second marriage, or afterwards) and leaves a son or a daughter, a grandson or a granddaughter, or several of them, during the lifetime of his or her father or mother, We decree that the share to which the deceased son or daughter was entitled, or any profit derived therefrom, shall not pass to the brothers or sisters of the deceased, but to their sons and daughters, or grandchildren of both sexes; or to their great-grandchildren; or to

their grandparents or great-grandparents, if they are living; and that they shall not be prevented from selecting such of their surviving children as they may desire to favor.

Given on the *Kalends* of March, during the fifth Consulate of Ellus, 478.

8. *The Emperor Justinian to Menna, Prxtorian Prefect.*

If any of the children by a former marriage should die before the father or the mother marries again, leaving either children, grandchildren, or great-grandchildren, We decree that the share of the deceased shall not go to his brothers or sisters, or, if he should have none, to his father or mother, but to his own children, grandchildren, and great-grandchildren, and, whether there be one or more, they can only claim the share of the estate to which the defunct was entitled.

(1) We have determined to prescribe by a positive law that, where anyone having children by a first marriage does not marry a second time, either of his parents shall, in the same manner, be permitted to alienate or administer property obtained by the former marriage in any way that he or she may desire. If, however, none of this property has been alienated, the children shall have a right to claim it, even if they do not accept the estate of their father or mother.,

(2) We order that any alienation of property of this kind, which has been made by the will of either the father or mother, or which has been either generally or specially bequeathed at the time of the appointment of the heir, shall be considered valid.

Extract from Novel 22, Chapter XX. Latin Text.

Now, however, profits of this kind are presumed to have been reserved for the benefit of the children, unless they have been expressly transferred to others.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(3) Permission is granted to children to claim any profits derived from the marriage, even if they do not enter upon the estate of their father or mother, where neither of their said parents contracted a second marriage, and did not alienate the property acquired by them; but We by no means permit them to demand for themselves any such property, if they have acquired any part of their father's or mother's estates, when the deceased parent has any other children by a former marriage.

(4) In order to confirm the ancient law We order, as in the case of a mother whose property, after a second marriage, is held to be hypothecated to the children by the first one, for the purpose of preserving the profits to which they are entitled, that also the property of the father, which he either has, or may hereafter acquire, and which, after a second marriage, must be preserved by him for the benefit of children by a former one, if he obtained it from their mother, shall also be considered as hypothecated.

We decree that the property of the said father, who has one or more children of this kind under his control, shall be encumbered to that of the mother for the benefit of the said children, and that its preservation shall be compulsory if it comes to them from the maternal line of descent; nevertheless, the children must not scrutinize the administration of their father or their mother too closely, under the pretext of such an hypothecation; nor should they seek to raise any question on this point, as it is a clear rule of law that if any property not included in that above mentioned, or which forms part of their mother's estate, should be alienated, the right of hypothecation will remain unimpaired, so far as the said children are concerned.

Given on the third of the *Ides* of December, during the Consulate of Our Lord Justinian, Consul for the second time, 528.

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

As laws previously enacted have settled that everything which a wife or a husband, having

children by a former marriage, has given or bequeathed after a second one, either by way of donation or in any other manner, to a larger amount than should be donated or left to a single son or daughter, the issue of a former marriage, should be revoked for the benefit of the sons and daughters alone who are the children by the said former marriage; and, as in this Section, no reference was made to children who are the issue of the second marriage, We, for the purpose of correcting this omission, do hereby decree that everything which is revoked, as aforesaid, shall not only go to the children of the first marriage, but also to those who are the issue of the second, and shall be equally distributed among all of them.

(1) In addition to this, We direct that any profits obtained by either the wife or the husband through a dowry or an ante-nuptial donation, shall be subject to the same rule, in case of repudiation, and after the second marriage of either of the parties, shall be preserved indiscriminately for the benefit of the children who are the issue of the former marriage, just as in the case of divorce or death; nor can any attempt be made to call the divorce in question, or to institute any other inquiry concerning the matter.

Given at Constantinople, on the *Ides* of April, during the Consulate of Decius, Consul for the fifth time, 486.

Extract from Novel 22, Chapters I, XIX, XXVII. Latin Text.

Children by a first marriage are now alone entitled to this benefit, and if any one of them should die, leaving issue, his share shall pass to them.

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

It has been clearly provided by law that ungrateful children should with reason be excluded from the inheritances of their ancestors, where the latter have mentioned this in their wills, and it has actually been shown that the Divine Constitution of the Emperor Leo, of illustrious memory, which was promulgated with reference to children who were the issue of a former marriage, seems to contradict a provision of this kind. For, as either the father or mother, who contracted a second marriage, is required, for any reason whatsoever, to give to the second husband, or stepmother, only as much as he or she could leave to that son or daughter, the issue of the former marriage, who was entitled to the smallest share of the estate, the greatest injustice to parents was caused by this law; for, in every instance, children, being aware that their parents could, even against their will, be prevented from leaving them only as much as the second husband or the stepmother was entitled to receive, injured their parents by all kinds of dissipation and excesses. Therefore, We decree that any children who are actually ungrateful shall not hereafter have any right to enjoy the benefit conferred upon them by the Divine Constitution of the August Leo, but shall be excluded as unworthy from every privilege of this description.

We also decree that this provision shall be observed with reference to grandfathers and grandmothers, great-grandfathers and great-grandmothers, grandsons and granddaughters, as well as great-grandsons and great-granddaughters, whether they are under paternal control, or have been emancipated, and whether they are in the paternal or maternal line of descent.

But as We provide for the protection of the parents, so also, We do not suffer their innocent posterity to be subjected to injury, nor permit their parents, who have contracted a second marriage, and perhaps may entertain an unreasonable hatred of their children, to stigmatize them as ungrateful, without good reason. Hence We desire that children shall be excluded from this privilege who, through the efforts of the heirs of their parents, have been convicted by clear and undoubted evidence of being ungrateful toward the latter, in those instances which have been enumerated in former laws.

Given at Chalcedon, on the fifteenth of the *Kalends* of October, during the Consulate of Decius, Consul for the fifth time, 486.

TITLE X.

WHERE A WOMAN, TO WHOM HER HUSBAND LEFT AN USUFRUCT, MARRIES A SECOND TIME.

1. *The Emperors Valentinian, Theodosius, and Arcadius to Tatian, Prsetorian Prefect.*

When a husband, at his death, leaves his wife the usufruct of his property, and she contracts a second marriage, she shall lose the usufruct which she obtained from her first husband, and must surrender it to her children by him, from the day on which she married a second time. If, however, the children by the first marriage should still be in the weakness of infancy, and she does not give them the assistance of a guardian, but seizes an opportunity of this kind to appropriate the property which was left to them, all of it can be recovered by law, and she must surrender it with its profits, after having deducted the necessary expenses.

This applies to the usufruct which a man, when making his last will, bequeathed out of his own property for the benefit of his wife. We, however, decree that where the usufruct of ante-nuptial donations is concerned, the rules established by previous constitutions shall be observed.

Given on the *Ides* of March, during the Consulate of Arcadius, Consul for the second time, and Rufinus, 392.

Extract from Novel 22, Chapter XXXII. Latin Text.

This law applies where the usufruct is given or left under the condition that it shall be extinguished in case of a second marriage; otherwise, it will remain in full force, provided it has been left or donated under circumstances which render it legal. An usufruct given as a dowry or an ante-nuptial donation, which is authorized by law, cannot be revoked by a testator.

TITLE XI.

CONCERNING THE PROMISE OF A DOWRY, AND ONE MADE WITHOUT CONSIDERATION.

1. *The Emperor Alexander to Claudius.*

You are wrong in your opinion that you are entitled to an action to recover a dowry which has been promised, but not delivered to you, as no specific property or sum was agreed upon, and it was only stated in the nuptial contract that the woman who was married promised to give a dowry.

2. *The Emperor Gordian to Herodotus, Prsetorian Prefect.*

If your father-in-law contracted to pay interest on the dowry which he promised you, a competent judge will order you to be given what you prove is due to you.

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

3. *The Same to Claudius.*

If the person whom you mentioned promised legally to give you a dowry for the woman who marries you, without mentioning the amount, but stating that it would be whatever he himself might decide upon, and he does not comply with the terms of the stipulation, you, having availed yourself of the proper action, can obtain by a judgment what was promised you, for it is considered that a sum which would be approved by a good citizen was included in the stipulation.

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

4. *The Emperors Diocletian and Maximian, and the Cassars, to Rufus.*

If you stated in the dotal contract with the consent of the person who gave the dowry that more was given than you received, you are informed that you can, in accordance with the agreement, recover whatever is lacking.

Given on the *Nones* of April, during the above-mentioned Consulate.

5. *The Same Emperors and Cassars to Desumiana.*

If your father promised a dowry to your husband who entered into the stipulation, an action to recover it will not lie in your favor, but in favor of your husband, against the heirs of his father-in-law.

6. *The Emperors Theodosius and Valentinian to Hierius, Prsetorian Prefect.*

We decree that any words whatsoever will be sufficient for the exaction of a dowry after it has once been agreed to be given, whether they have been reduced to writing or not; and even if the stipulation did not follow the promise of the dotal property.

Given on the *Kalends* of March, during the Consulate of Felix and Taurus, 428.

7. *The Emperor Justinian to John, Prsetorian Prefect.*

If a father should simply give a dowry to his daughter, or should make an ante-nuptial donation for his son, the latter, whether he is under the control of his father or has been emancipated, will be entitled to the estate of his mother, or any property obtained in some other way, of which he cannot now obtain the acquisition, and the usufruct of which solely remains with his father, or of actions of any description which he has the right to bring against his father.

A doubt arose among the ancient authorities whether the father released himself from liability from this obligation, when he promised or gave the dowry or the ante-nuptial donation, or whether the obligation would continue to retain its character and paternal liberality suggest the payment of the said dowry or ante-nuptial donation. In a doubtful matter of this kind, a division of opinion existed between the greater number of jurists, and the difficulty was increased by the addition of the question (in case the father had stated in the dotal contract that the dowry or ante-nuptial donation was bestowed out of the property of both father and mother) whether the gift or promise should be considered to have been made in proportion to half of his entire estate, or *pro rata,* in accordance with the value of the estate of each.

Therefore, for the purpose of positively putting an end to both of these ambiguous points, We decree that if the father had thought that nothing further should be added, but simply gave the dowry or the ante-nuptial donation, or made a promise to do so, he must be understood to have done this induced by his own generosity, and that what was due should retain its proper character; for these laws are well known by which it has been provided that it is, by all means, the duty of the father to give a dowry or an ante-nuptial donation for the benefit of his offspring. Hence, an act of liberality of this kind shall remain valid and irrevocable, and it, with the obligation, will enure to their benefit.

Where, however, a father declares that he grants liberalities of this kind out of his own property, or out of that of the mother, or of other persons which cannot be acquired, or out of what he himself owes, then, if he is in absolute want, the dowry or the ante-nuptial donation must be considered to have been given out of the property belonging to his sons or his daughters. But if he himself possesses considerable property, in this instance he will be understood to have bestowed the dowry or the ante-nuptial donation out of his own estate;

for he would have been able to have given a dowry for his daughter or an ante-nuptial donation for his son, in proportion to his means, and to have consented that his children, if they desired to do so, might add a part, or even all of that to which they were entitled through the generosity of their father in giving the dowry or the ante-nuptial donation; so that it will

actually be apparent not only what he himself intended to give, but also what was derived from the property of his children, and he would not be compelled to rely upon vain statements, and thereby incur serious risk.

Given on the *Kalends* of November, during the Consulate of Lam-padius and Orestes, 530.

TITLE XII.

CONCERNING THE LAW OF DOWRIES.

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

If property given as dowry is evicted, and an agreement or a promise has been interposed, the son-in-law can bring a personal action, or one based on the stipulation, against his father-in-law, his wife, or their heirs. When, however, no agreement or promise was made, an action on purchase will lie after the eviction, if an appraisement of the property was made. But where this was not done, and the property was given in good faith by way of dowry, no action will lie in favor of the husband. If, however, fraud for which the donor was responsible existed, an action on the ground of fraud can be brought against you, provided no fraud was committed by the woman; for then he will be entitled to an action *in factum* to avoid one involving infamy being granted against her.

Given on the *Kalends* of August, during the Consulate of Mutian and Favian, 202.

2. *The Emperor Antoninus to Alluvias.*

Where a stipulation was made with reference to the return of a part of the dowry given, and the condition upon which this depended is fulfilled, he in whose favor the agreement was planned and entered into will be entitled to an action. In accordance with this, if your sister Polla is entitled to an action for the recovery of half of the dowry because your mother, with the intention of making a donation, permitted her daughter to stipulate for the return of half of the dowry after her death, she need not apprehend an exception on the ground of fraud, for the reason that she is the heir to less than half of the estate of her mother, who made the agreement; unless it should be clearly proved that the latter changed her mind with reference to the agreement for the dowry, and desired that her daughter should be content with the preferred legacy instead of her hereditary share of the estate, and intended that her husband should be released from the necessity of making restitution.

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

3. *The Emperor Alexander to Euphemius.*

Although the father has a right to demand restoration of the dowry when his daughter dies during marriage, still, where the husband has by will legally conferred freedom, both directly and under a trust, upon the dotal slaves, his father cannot revoke it after it has once been granted, as the husband has free power during marriage to manumit dotal slaves *inter vivos.*

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

4. *The Same to Valens.*

It is not prohibited by any laws for a woman to give all the property to her husband by way of dowry.

Given on the fourth of the *Ides* of July, during the Consulate of Maximus, Consul for the second time, and JElianus, 224.

5. *The Same to Statia.*

Whenever the property given as dowry is appraised, the husband obtains the ownership of the

same, but he becomes, as it were, the debtor for its value. Therefore, if no agreement is made that the property shall be restored in case the marriage is dissolved, and it has been legally appraised, he can retain it if he tenders you the money.

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

6. *The Emperor Maximian to Sulpitius.*

If you have become the heir of your grandmother, she can transmit to you the right of action based on the agreement for the recovery of the property which she gave as dowry for your daughter, even though a verbal obligation may not have been assumed. For the rule is not the same where the father or mother makes a contract of this kind, as that of the mother gives a right to the *Actio prsescriptis verbis,* and that that of the father is, by no means, considered to change by a simple agreement the right .of action founded on the profectitial dowry.

Given on the third of the *Ides* of February, during the Consulate of Maximian and Africanus, 237.

7. *The Emperor Gordian to Marcus.*

Where a dowry is given by your father-in-law to you for the benefit of your wife, and a stipulation is not added to it at the time when it is given, or afterwards, your father-in-law, in making an agreement with you against the consent of his daughter, cannot injure his own legal position; for when she alone institutes proceedings with reference to the dowry, it is forbidden by law for the agreement to operate to his disadvantage.

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

8. *The Same to Agrippina.*

Even if the mother does not actually stipulate that the dowry shall be returned to her, but that what she gave by way of dowry shall follow her, or belong to her, in case her daughter should die during marriage, and the daughter does die, We decree that it is perfectly just that the mother shall be held to have acquired a right of action under the stipulation. The result of this is that even property given as an addition to the dowry can be recovered by the same action.

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

9. *The Emperor Decius, and the Csesar, to Urbicana.*

Your claim for your dowry is preferable to that of the State to which your husband subsequently became indebted.

Given on the sixth of the *Ides* of June, during the Consulate of Decius and Gratus, 251.

10. *The Emperors Diocletian and Maximian to Ingenuus.*

As you allege that the dowry which you received was appraised, it is apparent, according to the Common Law, that under the agreement inserted in the dotal contract, an action on purchase will lie, for who can doubt that the value of the dowry is due from you to your wife; and that the property of which it is composed will become deteriorated at your risk; or that its increase will enure to your benefit?

Given on the twelfth of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Acquilinus, 286.

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

There is no doubt that your husband will have a right of action with reference to the property which you allege was given by way of dowry and subsequently removed.

Given at Heraclea, on the tenth of the *Kalends* of May, during the above-mentioned Consulate.

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

The land purchased by your husband with money forming part of the dowry is not acquired by you, for a husband cannot acquire for his wife a right of action on purchase, and only an action on dowry will lie in your favor. Therefore, if the Governor of the province, after having been applied to, should find that you have not made a compromise, but have obtained the larger part of the dowry, he will provide for the return of the remainder.

Given at Heraclea, on the eighth of the *Kalends of* May, during the above-mentioned Consulate.

13. *The Same Emperors and Csesars to Catula and Statia.* If any property belonging to you has been given by your mother to your stepfather by way of dowry, and he is aware that it is yours, you are informed that such a gift has no validity in law, when no promise or stipulation was made.

Given at Heraclea, on the day before the *Kalends* of May, under the above-mentioned Consulate.

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

A mother cannot be compelled to give a dowry for her daughter, unless some good and sufficient cause exists for doing so, or she is expressly required to do so by law, nor has a father any power to bestow a dowry out of the property of his wife against her consent.

Given at Philippopolis, on the *Nones* of November, during the above-mentioned Consulate.

15. *The Same Emperors and Csesars to Ulpian.*

Where it is proved by other evidence that a dowry was given without the execution of dotal instruments, it is established that, after a divorce has taken place, the dowry of your former wife should be restored to her in accordance with good faith, for if the documents are lost, any other legal proofs which may be introduced will undoubtedly not be considered void.

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

16. *The Same Emperors and Csesars to Mmilius.*

Your sister having succeeded to your father, who died intestate, is not prohibited from giving, as her dowry, her undivided share of a tract of land, before a division of the estate has been made.

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

17. *The Same Emperors and Csesars to Sabinus.*

Your mother-in-law, by selling the usufruct which he had reserved for herself out of the property that she gave you by way of dowry, can not deprive you of the same.

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

18. *The Same to Menestratus.* _ If your mother-in-law conveyed a tract of land to your wife with the reservation of the usufruct, and your wife gave the said property to you by way of dowry, and then your mother-in-law transferred to you the usufruct of the same, and if your wife should die during marriage, there is no doubt that the land will remain in your hands in accordance with the terms of the agreement entered into between you. If, however, your mother-in-law gave her daughter the usufruct in consideration of receiving a certain sum of money annually, and the latter should die, the usufruct will by no means be extinguished.

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

19. *The Same Emperors and Csesars to Achilles.* As you state that your father-in-law, when giving you a dowry for his daughter, made an agreement to the effect that if, after his own death, his daughter should die during marriage, half of the said dowry should be given to Amnia; and, after having made his will, and appointed Amnia his heir, along with others, he directed that Amnia should not claim or agree to anything under the stipulation, no action based on a contract made with another will lie in her favor, unless it is proved that Amnia stipulated under the terms of the agreement that the property should be returned to her.

If, however, by the interpretation of the contract, Amnia should have acquired an obligation for herself, and, after the fulfillment of the condition, she demands that the stipulation be carried out, and it is shown that the testator had your interests in view, you can avail yourself of an exception against her, on the ground that, after the deduction of the Falcidian portion, she has received all that was agreed upon, according to the intention of the deceased.

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

20. *The Same Emperors and Cassars to Tiberia.*

It is a perfectly clear rule of law that the husband, on account of the burdens imposed by marriage, is entitled to the enjoyment of the income of the entire dowry which he has obtained; and that if he should permit his wife to have it, as a donation, he can bring suit for the amount to which she has been pecuniarily benefited for this reason.

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

21. *The Same Emperors and Csesars to Geminius.*

If an agreement has been made between husband and wife that, if their marriage should be dissolved in any way within the term of five years, the property constituting the dowry, which was appraised, shall be returned in the same condition and at the same value as the amount of the appraisement, it is clear that the value of the property should not be paid, but that the very thing itself must be returned; as, in agreements for its restoration, the value was only mentioned to prevent the property from being diminished or destroyed, and it should not be demanded at any other valuation than that at which it was estimated.

Given at Agrippina on the *Nones* of August, during the Consulate of the Csesars.

22. *The Same Emperors and Csesars to Libyana.*

A son-in-law cannot alienate property given by his father-in-law as dowry for his daughter.

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

23. *The Same Emperors and Csesars to Diogenes.* If your wife should sell land forming part of her dowry, it makes no difference whether she did so voluntarily or ratified the contract after it was made; for she cannot deprive you of the ownership of the same against your consent.

Given on the fifth of the *Kalends* of October, during the Consulate

of the Caesars.

24. *The Same Emperors and Csesars to Aurelius and Lysimachus.*

If you gave a dowry to the husband of your freedwoman, and did not provide by an agreement or stipulation that it should be immediately returned to you, in case the marriage was dissolved, it is established that if it should be dissolved through the fault of the wife, the dowry will remain in the hands of the husband, even if you can show that she has been guilty of ingratitude towards you.

Given at Antioch, on the sixth of the *Kalends* of November, during the Consulate of the Caesars.

25. *The Same Emperors and Csesars to Eutychianus.*

Where a woman stipulates that the dowry shall be given her by her husband in order that she may leave it by will, as, in this instance, the thought of death precedes the time of the execution of the will, it does not contain a condition but a consideration, and hence, if the woman should die intestate, it is proper for the stipulation to take effect.

Given at Antioch, on the third of the *Ides* of November, during the Consulate of the Csesars.

26. *The Same Emperors and Cassars to Demosthenes.*

If your father at the time he gave a dowry to his son-in-law stipulated for his daughter that it should be transferred to you, who were emancipated, he will acquire a right of action for you, if he does not change his mind, and the law does not forbid you to receive the dowry.

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

27. *The Same Emperors and Csesars to Pompeianus.*

Although the dowry may lawfully remain in the hands of the husband, the heirs of the estate of the wife, and not the former husband, are liable for public contributions due from the estate.

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

28. *The Emperor Zeno to Mlianus, Prsstorian Prefect.*

A woman, who is a minor, can legally give to, or demand from her husband a dowry, with the general or special consent of her curator ; although he himself, at the time of the constitution of the dowry, may have furnished a surety for a sum less than the dowry is said to amount to.

This rule shall also be observed where a minor has made an antenuptial donation with the consent of his curator, as previously stated.

Given on the *Kalends* of January, during the Consulate of Basilius, Consul for the second time, and Armatius, 476.

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

Where the husband has been reduced to poverty during the marriage, and his wife desires to provide for herself, and to hold the property encumbered to her as dowry, as well as any given to her by an ante-nuptial donation, in addition to the dowry, We grant her the benefit of an exception for the purpose of disposing of the hypothecation in favor of a second creditor, not only if she holds the property of her husband, and is brought into court on this account, but also if she herself institutes proceedings with reference to the same property which has been hypothecated to her, in accordance with the provision of the law against persons who have in their possession property belonging to a husband, and We decree that the existence of the marriage cannot be pleaded against her, but that she can recover the said property from subsequent creditors, or from other parties who are not recognized by the law as having a better claim to it; and this she can do just as if the marriage had been dissolved, and she was thereby enabled to recover the dowry or ante-nuptial donation; provided, however, that the same woman shall not have the power to alienate the property during the lifetime of her husband, and while the marriage between them is still in existence.

She, however, will be entitled to use the income of said property for the maintenance of herself and her husband, as well as for that of her children, if she has any. The creditors of the husband will undoubtedly retain their rights unimpaired against him and any property which he may subsequently acquire, and the husband and wife themselves, if the marriage should be dissolved, also shall enjoy their rights so far as any dowry or ante-nuptial donation given in accordance with the terms of the dotal agreement is concerned.

Given on the third of the *Ides* of December, during the Consulate of Our Lord Justinian, Consul for the second time, 528.

Extract from Novel 97, Chapter VI. Latin Text.

In a case of this kind, a donation made in consideration of matrimony can be recovered during the continuance of the marriage.

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

With reference to dotal property, whether it is movable or immovable, or capable of moving itself (if it is still in existence) and whether it has been appraised or not, We order that a wife shall have a perfect right to recover it, after the marriage has been dissolved, and that no creditor of the husband, even though he may be first in point of time, shall be able to claim preference for himself through the hypothecation of said property, as it in the first place belonged to the wife, and naturally remains subject to her ownership; for the truth of the matter is not destroyed or confused by the subtlety of the law which presumes that it has become a part of the estate of the husband. Therefore, We desire that she shall be entitled to the action *in rem* relating to property of this kind, as being her own, and can, in preference to all other persons, bring the hypothecary action, so that whether the property of the wife is considered to be hers in accordance with natural law, or through legal subtlety is held to have become part of the estate of the husband, her interest shall be fully protected by either of these two actions, that is to say, the one *in rem,* or the hypothecary action.

Every exception based upon time, such as those of usucaption, the prescription of ten or twenty years, or of thirty or forty years, or any other whatsoever, authorized by the lapse of a longer or shorter period, may be pleaded against women from the time when they begin to institute legal proceedings. These terms will run against those who are married to wealthy husbands from the day when the marriage was dissolved, and against those whose husbands are insolvent they will run from the time when misfortune came upon them,; for while matrimony exists, women can exercise their hypothecary rights against the property of husbands who are poor, as has already been prescribed by the humane provisions of Our law; and all pretense of divorce is absolutely forbidden in cases of this kind to which Our law has reference.

Read seven times in the New Consistory of the Palace of Justinian.

Given on the third of the *Kalends of November,* during the fifth Consulate of Decius, 539.

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

When persons giving dowries for the benefit of women, whether they are their mothers or other blood-relatives, or strangers, the husbands can receive them without being obliged to have them recorded. When, however, a woman stipulates for the return of a dowry under certain conditions, and the accidental occurrence takes place, she herself is required to assign her rights of action, or transfer the property to the person who gave the dowry, for the gift has been decided to be void, because no record was made of it; and the result is that the unfortunate woman may remain unendowed after many years of marriage have passed, and even after children have been born.

Therefore We decree that, in all these cases, no record shall be required, but that such donations shall be valid, no matter who the parties are, and that the woman herself shall be entitled to her dowry (when any accidental circumstance has benefited her in this way), and that it shall remain absolutely in her possession, unless he who gave it in the first place stipulated for its return in a case of this kind. For then, as in the beginning, there was no supposition that there would be any children, because he who gave the dowry stipulated that the entire property should be returned to him; hence a discussion of this point would be out of place. In all other instances, however, in which the owner himself did not make such a stipulation, the woman shall, by an action of dowry, have this peculiar consolation for the misfortune which she has undergone.

(1) Likewise, a stranger (that is to say, one to whose authority the beneficiary is not subject) has given an ante-nuptial donation in behalf of another to a woman who is about to be married, and has made the necessary record of the same, whether the donation is in excess of the lawful amount, or the woman about to be married was not a minor, but independent, not only will the record be sufficient for her to whom the ante-nuptial donation was given, but will also be sufficient for the persons on whose account it was bestowed; so that if any profit should be derived from the dotal agreement, this shall not belong to the donor, but the husband shall benefit by it, and shall hold it intact and irrevocable, unless the donor stipulated for it to be returned to him under such circumstances; in order that, in the abovementioned instance, a defect similar to the previous one may not arise. Where, however, the donation is of trifling value, or the transaction has been effected in such a way that the record is absolutely void, the donation shall then be valid so far as both parties are concerned, and the husband will profit by it, unless the donor stipulated that he himself should have this advantage.

(2) Again, We decree that where anyone has promised lands, or a certain income, or a house, or a public allowance of provisions, by way of dowry, or has contracted to furnish the same, and two years have elapsed since the marriage took place, he shall immediately furnish the income, or the rent, as well as the public allowance of provisions, to the person entitled to the same, even if the principal property has not yet been delivered.

When the entire dowry consists of gold and the said term of two years has expired, he shall be required to pay interest on the same at the rate of three per cent. But where other property, instead of land or gold, is given as dowry, whether it consists of silver, female ornaments, clothing, or any other articles whatsoever, and it has been appraised after the lapse of two years, interest at three per cent can, in like manner, be collected. The appraisement (for the reason that it is necessary to explain this clearly) is understood to mean a valuation of articles of the same kind, or of every species of dotal property, that is to say, when it consists of silver, ornaments, clothing, or other personal effects, and it must not be expected that, after the separate appraisement of each article, a combination of all of them will be made, as this would be unnecessary and pernicious, because of offering temptation for the exercise of too much subtlety.

If, however, the movable property should not be appraised after the lapse of two years, those rules must be observed which the laws have prescribed with reference to everything oT this kind, after issue has been joined in court.

When the property is of a mixed description, consisting partly of gold, and partly of other movable or immovable possessions, everything shall proceed as if a division had already been made, and the husband shall not be refused permission to claim the dowry whenever he desires to do so. Nor shall he who owes it think that if he pays the income, the rents, the interest, or any other accessories, he has a right to defer the delivery of the dowry itself, but the husband can demand it, either before the expiration of two years, or afterwards, and can exact it in accordance with the laws.

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

TITLE XIII.

CONCERNING THE CONSOLIDATION OF THE ACTION TO RECOVER THE PROPERTY OF THE WIFE AND THAT BASED ON A STIPULATION, AND CONCERNING THE NATURE OF THE PROPERTY GIVEN AS DOWRY.

1. *The Emperor Justinian to the People of the City of Constantinople, and to Those of all the Provinces.*

We now come to a matter of no small importance at the present time, and which is to be found in almost all the body of the law, namely, the action with reference to the property of the wife,

and that based on a stipulation. Now, after disposing of the resemblances and differences of the two, We intend to unite in a single proceeding every right of action pertaining to the property of the wife with the one resulting from the stipulation, which We think to be worthy of attention. Therefore, having abolished the *Actio rei uxoriss,* We decree that all dowries shall be recovered by means of the action based on a stipulation, whether the latter was reduced to writing or not, in order that, by the transaction itself, it may be understood that the stipulation was entered into. In the same manner, if the stipulation was improperly made, it must rather be remedied than annulled. For if one stipulation contained in the document is found to be valid, it shall be considered to confer validity upon others which are void; and why should not legal force be conferred by Our Decree upon stipulations of this description? For if it is proper for Us, who promulgate the decree, to suppose that a stipulation was made where one does not exist, there is much more reason for one to be rendered valid which is void.

(1) And, in order that complete relief may be afforded to dowries, as in the case of the administration of the property of wards, and many other legal matters, We have admitted the existence of tacit hypothecation; so also, in a proceeding of this kind We assume hypothecation to have taken place on both sides, on the part of the husband for the restitution of the dowry, arid on the part of the wife for furnishing it, or against the eviction of the property of which it is composed; whether the principal parties interested have given, promised or received the dowry themselves, or others have done so for them; and whether the dowry is adventitious or profectitious, in accordance with the provisions of the ancient law.

In this law, the rusticity and ignorance of men cannot operate to their prejudice, since in this instance We have made provision for their inexperience and want of knowledge. For as stipulations and hypothecations are understood to form part of dotal transactions, and stipulations which are invalid may be corrected, so, hereafter every dotal contract shall be held to be valid and perfect, just as if all the documents relating thereto had been drawn up by men thoroughly learned in the law. And let no one think that, in the case of dowries, We only have reference to such as are included in written instruments, for. as there is nothing to prevent a dowry being given, promised, or received without the agreement having been reduced to writing, in like manner, a stipulation, or an hypothecation made by either party, must be understood to exist, just as if it had been written. These matters are understood to indicate the character of the proceeding based on the stipulation, the *Actio rei uxorise* being from this time abolished.

(2) But although We are aware that the action based on a stipulation is one of strict law, and was not a *bona fide* one; still, for the reason that the stipulation acquires a new character for itself from the dowry, the *Actio rei uxorise* shall be applied to it, as well as those derived from good faith.

All the effects which the dowry obtains from the stipulation it shall continue to exercise in accordance with its nature; for when, indeed, We found anything better in the *Actio rei uxoriss,* We especially added it to the present one, so that the action on stipulation which We have established may be new, and not only adorned with its own excellence, but also with that of the ancient proceeding.

(3) In the first place, the nature of the action on stipulation will be explained, and if anything remains to be added from the *Actio rei uxorise* it shall be done. Hence, it should be known that the Edict of the Praetor, which was introduced with reference to these actions, is annulled, so far as the one on stipulation is concerned; so that the wife can receive what was left to her by her husband, and can obtain her dowry, unless her husband has specially left her property in lieu of it, since it is perfectly evident that a testator who did not make this provision intended that she should have both.

(4) The right of action based on the stipulation shall pass intact, and without delay of

transmission, to the heirs.

(5) Nothing shall be stated with regard to the retention of the dowry. For why should it be necessary to retain it on account of the morals of the woman, when she is granted other relief by the Imperial Constitutions? Or for what reason should retention be made of the dowry on account of any property which has been given, when the donor has a right, by means of a direct action *in rem,,* or a praetorian action, or a personal one for recovery, to provide his own remedy? Nor is retention necessary where property has been removed, as all husbands are entitled to an action on this ground. Let no allusion be made to retention on account of children, as the natural impulse itself induces parents to rear their children.

In order to prevent husbands from inventing all kinds of offences against their wives to enable them to retain their dowries, it has already been established by the Imperial Constitutions that marriage can be dissolved if the wife is to blame, when it becomes necessary for this to be done. The retention of the dowry because of expense incurred to preserve the property of which it is composed does not seem to Us to be a sufficient cause; for, while necessary expenses diminish the amount of the dowry, the useful ones should not be deducted, when the *Actio rei uxorisa* is employed, unless with the consent of the woman; and it is not foreign to the question that her consent should be obtained, for the action on mandate can be granted by Our authority to the husband against the wife, to enable him by this means to obtain what he has expended for the benefit of her property. If the consent of the woman should not be given, and the expenses have been properly incurred, the action on the ground of voluntary agency will be sufficient if brought against her. When, however, the expenses were incurred for pleasure, even though this may have been done with her consent, the husband will be permitted to remove whatever he constructed (without, however, causing any injury to the property as it previously existed), so that the discussion of all of these methods of retention may finally be disposed of, and the action based on the stipulation shall, in accordance with its nature, and with good reason, admit of no retention.

(6) In maintaining the right of action under the stipulation, there is no doubt whatever that if the woman should die during the existence of the marriage, her dowry will not benefit her husband, unless some agreement was made for this purpose. But the right of action based on the stipulation will, in accordance with its provisions, be transmitted to the heirs of the woman, whether this was expressed in the agreement or not, or is understood to do so by virtue of this law.

(7) As in the case of the exaction of a dowry, the action based on the stipulation naturally requires that restitution of the whole amount of the dowry shall immediately be made by the husband, and it directs that this shall be done in three annual payments, where the property is such that it can be weighed, counted, or measured, and that not the entire amount, but only so much as the husband can furnish, shall -be returned where he has not, with fraudulent intent, diminished his estate. Under these circumstances, We grant the remedy of the action on stipulation, so that where the marriage has been dissolved, and no agreement has been made, the husband shall only have judgment rendered against him for an amount which he is able to pay, for the reason that this is perfectly just, and due to the respect which the husband has a right to claim, if he has not been guilty of fraud; and he should also provide security that, if his fortune improves, he will attempt to make good the deficiency. The restitution of the dowry shall be made, not in payments in one, two, and three years, but entirely within a single year, where it consists of movable property, or of such as can move itself, or of such as is incorporeal; and any other which is attached to the soil shall be restored without delay; which rule applies to both actions.

If, however, the husband should fail to return the movable property, or that which can move itself, or that which is incorporeal, after the lapse of a year, or the land immediately after the dissolution of the marriage, he must pay interest at the rate of three per cent upon the

valuation of all which is not immovable, which can be collected in good faith, and he must give up the crops which have been gathered from the time that the marriage was dissolved; and, in like manner, all rents and profits derived from transportation by ships or beasts of burden, or from the labors of slaves, and whatever is obtained from the public distribution of provisions, or from any other similar source, shall be surrendered to the woman.

(8) Therefore, with reference to the following Section, the action based on the stipulation still retains its distinctive character; so that where a woman has been appointed heir by her husband, and a question as to the reservation of the portion of the Falcidian Law arises, she will be permitted to deduct her dowry from the estate of her husband, just as in the case of other debts, and afterwards deduct the Falcidian fourth.

(9) As the action on the stipulation maintains its own character in those instances which We have enumerated, it is necessary in the following Sections to explain what is common to both proceedings, and show what can only be obtained by the action on stipulation, or what is peculiar to that for the recovery of the property of the wife, so that it may all be combined in the action on stipulation. Hence the offspring of female slaves forming a part of the dowry, that is to say, such as have not been appraised, as well as whatever property the dotal slaves may have acquired in any way (except through the use of the property of the husband, or by their own labor), is in both actions also considered to belong to the woman. The young of beasts of burden, and everything included under the name of crops, belong to the husband during the time of marriage, whether they have been appraised, or not. The crops of the last year, during which the marriage was dissolved, should be transferred to both parties *pro rata,* according to the time, and of course where the property has not been appraised, this rule applies to both actions. The husband who, as the purchaser of property which has been appraised, enjoys the benefit of it, must bear the loss, and is liable for the risk attending the same.

(10) The son of the deceased person who, through preference, obtains the dowry of his wife or his daughter-in-law, by means of an action in partition, must, in accordance with a rule peculiar to the action on stipulation, furnish his co-heirs security that he will defend the title to the property constituting the dowry.

(11) Therefore, let us see what ought to be taken from the action to recover the property of the wife and added to that on stipulation. It is a positive and undoubted rule of law that if a relative in the ascending male line, after having provided a dowry for his daughter or granddaughter, should emancipate her, or should himself die, by employing the *Actio rei uxorise,* the dowry will absolutely belong to the woman, even if she had been disinherited (which was not the case in the action on stipulation, for it, like other actions, was divided among all the heirs).

It seems to Us to be perfectly just that the woman should receive her dowry through preference by an action on stipulation, whether she was emancipated or disinherited, or appointed with other heirs.

(12) This rule having been adopted by Us, many others have been promptly disposed of, as the dowry can exclude the action for in-

officiousness (especially if it is equal in amount to the fourth prescribed by law), and can be placed in the mass of the estate, if the head of the household should die intestate; or if, having executed a will, the testator made this provision. All these matters have been derived from the *Actio rei uxorise,* and incorporated into the action on stipulation.

(13) Another provision derived from the action to recover the property of the wife has been added to the action on stipulation. For when a stranger, no matter who he might be, gave a dowry, without having made any stipulation or agreement with reference to its return to himself, the woman could bring the *Actio rei uxorise,* which right was not formerly included

in the action on stipulation.

Where a stipulation was made, or an agreement entered into, the stipulator, or he who made the agreement, was entitled to a civil action under the stipulation, or one *prgsscriptis verbis.* At the present time, however, We do not wish this to be done, but where the stranger, in giving the dowry, did not especially stipulate or provide that it should be returned to him, it is then presumed that the woman herself made the stipulation, and that, under the circumstances, the dowry should be acquired by her. Nor do We desire that, in an instance of this kind, a stranger shall be considered to have made a tacit stipulation, in order that what We have introduced for the benefit of women may not be employed to their disadvantage; nay more, in dowries like these, which are either given or promised by .strangers, the woman herself is considered to have made a tacit stipulation, unless the stranger expressly agreed or stipulated that the dowry should be returned to him; as, by not having entered into a stipulation, he is considered rather to have made a donation to the woman than a provision for his own benefit.

We understand by the term "stranger" every person, with the exception of a relative of the male sex in the ascending line, who does not have the female who is endowed under his control, for We grant a tacit right Of action based on the stipulation to a relative of this description.

(14) The following provision, also derived from the *Actio rei uxorise,* has also been included in the action'on stipulation. For when, after the marriage has been dissolved, the dowry is claimed by the father of the woman, if there was ground for the action to recover the property of the wife, he could not proceed alone without the consent of the daughter. And if he should die before suit was brought, or even after issue had been joined, the dowry would revert to the daughter as a part of her own property. This, however, was not the case in the action on stipulation, for there the father alone had the right to exact the dowry, without waiting for the consent of his daughter, and if he died, he transmitted it to his heirs. But it is sufficiently humane, sufficiently dutiful, and sufficiently advantageous to marriage, for the right attaching to the action, to recover the property of the wife to be transferred to the action on stipulation.

Extract from Novel 97, Ciiapter V. Latin Text.

But although the dowry may be returned to the father, either by the right of paternal control, or under the terms of an agreement, he, nevertheless, is not permitted to diminish the original amount of it, when his daughter marries a second time, unless his estate has been lessened by some accidental misfortune, for then he is not compelled to furnish any larger dowry to the second husband than his means will permit.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(15) And as the *Lex Julia* forbade the alienation of dotal land situated in Italy to be made by the husband, without the permission of his wife, and also did not permit him to hypothecate it, if his wife had not consented, We have been asked if it was not necessary for a provision of this kind to apply not only to lands in Italy, but to all others. Hence We have decided to extend this rule so as to include not only lands in Italy, but also to those of the province. As, however, We have, by this law, given the right of hypothecation to the woman, she has a sufficient remedy, if her husband should desire to alienate the land, but to prevent her from voluntarily impairing her right of hypothecation, it becomes necessary under such circumstances to come to the relief of women; and hence We have added that a husband cannot only not hypothecate land forming part of the dowry, without the consent of his wife, but that he cannot alienate it, lest, through the weakness of his nature, he may suddenly be reduced to poverty.

For although the Anastasian Law treats of the consent of women, and of those who renounce their rights, still, it must be understood with reference to the property of the husband, or to a dowry which has been appraised, that, as the ownership of the same belongs to the husband,

he will also be responsible for the risk.

So far, however, as land which has not been appraised, and which is very properly styled dotal is concerned, the right which was incomplete under the Julian Law, but has been fully provided for by Ours, shall remain intact, and shall not only be observed in Italy, but in all other lands, and can be abrogated solely by hypothecation.

(16) We have considered it necessary to add as a general provision to the present law, that, when any agreements have been made for the restitution of the dowry, or for time, or for interest, or for anything else which is not contrary to the laws or constitutions, they shall be executed. Where, however, the marriage has been dissolved by repudiation, all the rights included either in the Theodosian Law or Ours shall be preserved intact.

In like manner, the provisions enumerated in the Anastasian Law, with reference to persons separated by common consent, shall remain firm and unimpaired.

And, generally speaking, whatever has been provided by the Sacred Constitutions, or by the works of learned jurists, which is not found to be opposed to this law, shall remain in full force, and be included in the action on stipulation; even though it may have been discussed under the action for the recovery of the property of the wife.

We direct that these rules shall only apply to dowries which have been given or promised after the promulgation of this law, even if they have not been reduced to writing. For We do not permit instruments that have been already drawn up to be deprived of their force, but time must be given for them to take effect.

Given on the *Kalends* of November, during the Consulate of Lam-padius and Orestes, 530.

TITLE XIV.

CONCERNING AGREEMENTS MADE WITH REFERENCE TO DOWRIES AND ANTE-NUPTIAL DONATIONS, AS WELL AS SUCH AS RELATE TO THE PRIVATE PROPERTY OF THE WIFE.

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

The condition which you impose when you give a dowry to a ward whom you have brought up must be observed, and the objection ordinarily interposed, namely, that a right of action is not derived from the contract, cannot be raised, for We only state this when a contract is without consideration. It is otherwise when money is given, and an agreement is entered into with reference to its repayment ; for then an equitable action will lie for its recovery.

Given on the seventh of the *Kalends* of February, during the Consulship of Albinus and Emilianus, 207.

2. *The Emperor Antoninus to Theodota.*

You should entertain no doubt that the income from land given by way of dowry cannot be recovered, where, in accordance with an agreement, it has been used for your expenses.

Given on the eleventh of the *Kalends* of April, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Emperor Gordian to Torquata.*

Although your father, when he gave you in marriage, may have agreed that, if your husband should die leaving children belonging to you both, a portion of the dowry should be retained in their name, still, an agreement of this kind can be of no benefit so long as you are entitled to an action to recover the entire amount of the dowry.

Given on the sixth of the *Ides* of January, during the Consulate of Gordian and Aviola, 214.

4. *The Same to Agathus.*

When you allege that, by the dotal contract in accordance with which your mother agreed with your father that if she died during marriage, the dowry should be restored to you and your brothers, the stipulation with reference to you will not be legal, if you were not all under the control of your father, and if she should die during the marriage, an action in your behalf will not lie. Where, however, a verbal obligation was properly contracted, you will have the right to demand the dowry, and will not be prevented from asserting your claim, especially if you are no longer subject to paternal authority.

Given on the fifth of the *Ides* of June, during the Consulate of Sabinus and Venustus, 241.

5. *The Emperors Diocletian and Maximian to Claudius.*

An estate passes by will to strangers. Therefore, when you assert that by a dotal instrument, an agreement instead of a will was interposed, by the terms of which, after the death of the wife, her property, to which you are not entitled as dowry, will belong to you, you are advised that you cannot, by any proceeding, sue her heirs or successors, in order that what is in no way due may be delivered to you.

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

6. *The Same Emperors and Czesars to Rufus.*

Where it was agreed that if the wife should die during marriage, the dowry should remain in the hands of the husband, it is established by law that an agreement of this kind precludes the recovery of the dowry which came from the father, as it has frequently been determined by legal authority that the condition of the dowry, of which the father has the sole right of recovery, cannot be rendered worse by a contract.

7. The Same Emperors and Cassars to Philetus.

Where a father agreed that a dowry given for his daughter to his son-in-law should be transferred to his grandchildren, if she should die first during the marriage, although he cannot bring suit in their behalf, still, a pratorian action will lie for their benefit in accordance with the principles of equity.

Given at Nicomedia, on the fourteenth of the *Kalends* of January, during the Consulate of the Csesars.

8. *The Emperors Theodosius and Valentinian to Hormisdas, Prse-torian Prefect.*

We decree by this law that the husband shall not interfere with any of the property which his wife has exclusive of her dowry, and which the Greeks designate as *parapherna,* if she forbids him to do so, nor can he impose any necessity upon her in this respect. For, although it is well that the wife, who entrusts herself to her husband, should also permit her property to be controlled by his judgment, still, as it is only proper that the legislators should comply with the rules of equity, We are not willing (as has already been stated) that the husband should in any way meddle with the property of the wife against her consent.

Given during the *Ides* of ...

9. *The Emperors Leo and Anthemius to Necostratus, Prsetorian Prefect.*

We decree that, at the death of either the husband or wife, he or she shall be entitled to the same share, and not the same amount of money that the husband would be entitled to from the dowry, or the wife from the ante-nuptial donation; for instance, if the husband had given an ante-nuptial donation of a hundred *solidi,* the wife shall be permitted to give a dowry of a smaller or a larger amount; and the husband shall be allowed to give an ante-nuptial donation in the same way.

It should, however, be observed that whatever amount the wife stipulates to give up out of the ante-nuptial donation, if her husband should happen to die first, the husband also should

stipulate for himself concerning the dowry (but not with regard to a sum of money), if the wife should be the first to die during marriage. When an agreement is made contrary to what is herein provided, We order that it shall be null and void, and that no recovery can take place by virtue of it.

We decree that the same rule shall be observed where a father has given or promised an ante-nuptial donation, in behalf of his son, or a mother, or the future husband, provided he is his own master, or anyone else whosoever, has done so in behalf of the future bride. In like manner, if the father or mother, or the future wife, if she is her own mistress, or someone else, should give or promise a dowry in her behalf to her future husband, she herself will be considered to have tendered the dowry, when it is offered by any other person for her benefit. This is true to the extent that she can claim for herself the dowry tendered by another in her behalf, unless he who tendered it may have stipulated or agreed immediately (that is to say, at the time of the offer or promise), that the aforesaid dowry should be returned to him.

Given on the fifteenth of the *Kalends* of September, during the second Consulate of the Emperor Anthemius, 408.

Extract from Novel 97, Chapter I. Latin Text.

Equality should, by all means, be observed with reference to dowries and ante-nuptial donations, not merely concerning the profit which may be derived from them, but also with regard to the guarantee and constitution of both, and no increase in the same shall be made by anyone; or, in case this is done, the amount of the augmentation must be the same on both sides, in order that the equality may not in this way be destroyed.

Extract from Novel 2, Last Chapter. Latin Text.

Where, however, the wife has given nothing of the dowry agreed upon, she can receive nothing whatever from the ante-nuptial donation, in case of the death of her husband. Likewise, if she gave less than she promised, she can only benefit by an amount in proportion to what she bestowed.

10. *The Emperor Justinian to Menna, Pr&torian Prefect.*

In accordance with a law of the Emperor Leo, of Divine Memory, it is provided that agreements with reference to dowries and antenuptial donations should agree with reference to the amounts, but nothing was added as to what should be done if this rule was not observed; and We, desiring that everything should be clear, do hereby order that, where the amounts are unequal, the larger one should be reduced so as to correspond with the smaller, in order that, in this way, both parties may obtain amounts equal to the smaller one.

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

11. *The Same to John, Prastorian Prefect.*

Where a woman has given evidences of debt to her husband (that is to say notes, bearing interest) which are not included in her dowry, with the intention that they shall remain in the hands of her husband as her own private property, and this has been inserted into the dotal contract, the question arose whether the husband would be entitled to any action either direct or equitable, growing out of the transaction, or whether the notes would all remain with the wife, and under what circumstances the right to bring suit should be granted to the husband. Therefore, We order that if anything of this kind should take place, the right of action shall by all means remain with the wife, but that permission shall be granted the husband to institute proceedings before competent judges; that no guarantee of ratification shall be required of him; and that any interest derived from said securities shall be expended for the benefit of himself and his wife, but any money forming part of the principal which he may collect, shall be used for the benefit of the wife, or shall be employed for any purpose to which she may

give her consent.

If, however, it is expressly stated in the dotal instrument that the said securities shall be hypothecated for the property of the husband, the wife must remain content with this hypothecation. But if this is not found to be included in the dotal contract, under Our present law, she will be entitled to a lien on the property of her husband, from the time when he collected the money. For, before the wife herself will have the power (if she should desire to exercise it) to bring any actions, either by her husband or by other parties, collect the money, and receive the said notes from her husband, proper security should be given him. While the said notes remain in his hands, he will be responsible for fraud, and must display the same diligence with reference to them which he is found to exercise concerning his own property, in order that his wife may not suffer loss through neglect or criminality on his part. If this should happen, he himself will be compelled to indemnify the wife out of his own property.

Given on the *Kalends* of November, during the Consulate of Lam-padius and Orestes, 530.

TITLE XV.

CONCERNING DOWRY PROVIDED FOR BUT NOT PAID.

1. *The Divine Severus and Antoninus to Dionysia.*

Payment, and not the contents of the dotal instrument, constitutes a dowry; therefore you are aware that you cannot be permitted to demand your dowry unless you prove that it has actually been given by you.

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

2. *The Emperor Alexander to Papiniana.*

Whatever a husband has added out of his own property to the dowry, with the intention of giving it during the existence of the marriage, can be demanded by the heirs of the husband, to the extent that his liberality was exercised, if he should die during the marriage and did not revoke the said donation which was lawfully made and given as a dotal increase.

Given on the *Nones* of December, during the Consulate of the Emperor Alexander, Consul for the third time, and Dio, 230.

3. *The Emperor Justinian to Menna, Prastorian Prefect.*

With reference to dowries which it is customary to mention in dotal instruments as having been given, when in fact they have not yet been paid, but only a promise has been made to pay them, it shall be lawful to interpose the exception based on the non-payment of money, not only by the husband against the wife or her heirs, when the marriage has been dissolved either by the death or the repudiation of the wife, but also by the heirs of the husband, where the marriage has been dissolved by his death, and by the father-in-law or his heirs; if it was stated in the dotal instrument that he received a dowry along with his son, as well as against every person who is stated in writing to have received the dowry with the husband, and his heirs; provided, however, that this privilege shall be granted only within a continuous year from the death of the husband or the wife, or from the date of the notice of repudiation.

Given on the *Kalends* of July, during the Second Consulate of Our Lord, the Emperor Justinian.

Extract from Novel 100, Chapter II. Latin Text.

This takes place where the marriage is dissolved within the space of two years. If this should occur after the expiration of two years, but before the tenth year has elapsed, the husband himself, as well as his heir, shall have the right to make complaint within the term of three months. Where, however, the period of ten years has elapsed, no complaint shall, under any

circumstances, be permitted, but the right to complete restitution shall be allowed, above all, if minority is involved in the case.

TITLE XVI.

CONCERNING DONATIONS MADE BETWEEN HUSBAND AND WIFE, AND BY PARENTS TO THEIR CHILDREN, AND CONCERNING RATIFICATION.

1. *The Emperor Antoninus to Triphena.*

Since the Treasury has taken possession of the property of your husband as being without an owner, he having left no heirs, any donations made by him cannot be revoked, if he continued in the same mind to the end of his life.

Given on the third of the *Ides* of January, under the Consulate of the two Aspers, 213.

2. *The Same to the Soldier Marcus.*

If you prove before the Governor of the province that the female slave in question was purchased with your money, even though it was stated in the bill of sale that she was destined as a gift to your concubine, he must order her to be restored to you; for although this donation may be valid where matrimony does not exist, still I am unwilling that my soldiers should, by means of perfidious blandishments, be plundered in this way by their concubines.

Given on the twelfth of the *Kalends* of March, during the Consulate of the Emperor Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Same to Epictetus.*

The donation of slaves and other property which you say was made to you by your wife was confirmed by a Constitution of mine and my Divine Father Severus, provided that she was her own mistress when she made the donation, or did so with the consent of her father, and remained of the same mind with reference to it until the last day of her life. If, however, the donation was made by your father-in-laW after the death of his daughter, it also will be valid as a donation *inter vivos.*

Given on the fourth of the *Nones* of March, during the Consulate of the Emperor Antoninus, Consul for the fourth time, and Balbinus, 214.

4. *The Same to Claudian.*

Donations cannot, under the Civil Law, be made between persons to whom the husband and wife are legally subject, and where either of them is under their control.

Given on the third of the *Ides* of August, under the Consulate of the two Aspers, 213.

5. *The Emperor Alexander to Quintilla.*

If (as you state) your father was under the control of the same person that you were, and gave as a donation to your husband (his son-in-law) a certain instrument executed by a debtor, and died during your marriage, and you were afterwards separated from your husband, the transaction is not valid.

Given on the *Ides* of February, under the Consulate of Albinus and Maximus, 228.

6. *The Same to Nepotianus.*

Although property which belonged to you by law was deposited in the name of your wife, the title to the same cannot be affected on this account, even though anyone may suppose that by this transaction you have donated your property to her, as a donation made during marriage, and before the death of the wife who profited by the liberality, is void. Nor is it unknown that the ancient legislators very correctly held the opinion that, when a wife cannot explain how she acquired property honorably during marriage, she is presumed to have obtained it from the

estate of her husband.

Given on the *Nones* of December, during the Consulate of the Emperor Alexander, Consul for the third time, and Dio, 230.

7. *The Same to Theodota.*

Where, in accordance with the will of your father, you married the son of your guardian, the donation made to your husband is void in law. If, however, the marriage is not legally valid (although the donation in this case is not void) for the reason that the person who cannot be called your husband, is unworthy, equitable actions for the recovery of the donation will lie in your favor.

Given on the *Kalends* of October, during the Consulate of Rufus and Maximus, 233.

8. *The Same to Leo.*

If you permitted your wife to take the crops of the land which you received as dowry, during the time of marriage, and she consumed them, you demand without reason that they shall be restored to you, after a divorce has taken place. If, however, she was enriched by them, she can be sued for the excess.

Given on the fifth of the *Kalends* of October, during the Consulate of Maximus and Paternus, 234.

9. *The Emperor Gordian to Origen.*

Although slaves have been purchased by your wife with your money, still, if they were delivered to her, their ownership belongs not to you but to her, and you only have a right to recover the money, whether you made the payment while transacting her business, or you gave her the amount of the price as a donation. Hence you can bring a competent action against her for the entire sum or for the amount by which she has become enriched.

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

10. *The Same to Valerian.*

If the former husband of your wife, being his own master, gave her lands or other property as a donation, and' continued in the same mind up to the time of his death, the donation will be confirmed by a Rescript of the Divine Severus. But if the father of the deceased unjustly took the property, he will be compelled by the Governor of the province to return it; for even if the death of the husband was caused by the wickedness of his wife, he, while imputing to her the offence, should not, under the pretext of the accusation, deprive her of the property given to her, as a case where liberality is involved differs from a criminal accusation.

Given on the seventh of the *Kalends* of February, during the Consulate of Arian and Pappus, 244.

11. *The Same to Maximus.*

Just as a claim for the amount which the husband promised his wife every month, or every year, for her own private use, cannot be allowed, so, it is clear that, for the same reason, money paid and expended on this account cannot be recovered.

Given on the fifth of the *Kalends* of July, during the Consulate of the Emperor Gordian, Consul for the second time, and Pompeianus, 242.

12. *The Same to Secundina.*

If your husband, having become involved in debt, encumbered to his creditors land previously given to you as a donation, and which you, on this ground, claim under your rights, you are advised that the said obligation interferes with your defence; for it is evident that a donation

made by a husband to his wife is not only revoked by an obligation of this kind, but also by a donation or sale of his property, or by any other mode of alienation of the same whatsoever.

Given on the third of the *Kalends* of February, during the Consulate of Arian and Pappus, 244.

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

If (as you state) the land given to you as a donation by your husband was encumbered by him to his creditors, there is no doubt that the alienation will be valid after the deduction of the amount of the indebtedness (that is, where the policy of the law does not deprive the creditor of his right of action). If, however, the donation was legally made, either because this was done before marriage, or under the circumstances in which a donation is allowed to take place during its existence, the obligation is invalid, for it is certain that the act of your husband, whom you allege is dead, cannot affect your rights.

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

14. *The Same to Octaviana.*

The right to demand a legacy or a trust is not, by any means, conferred by the mere insertion of words in last wills, although they

may be useful for the purpose of trusts or legacies, but this is only the case where expressions are inserted with the intention of bequeathing the property; hence, it is clear that the matter contained in your petition involves a question of intent, and not of law. Therefore, after having read the will, We notice that your husband, by a preceding donation, reserved the ownership of the property for you, and afterwards stated that you should obtain it for your greater security, and the meaning of the words does not indicate that a trust was left, but that your husband authorized by the Decree of the Senate, when about to die, provided that the gift of the ownership of the property should be confirmed, and secured to you, as far as this could be done at the time of his decease.

Given on the third of the *Nones* of October, under the Consulate of the same Emperors.

15. *The Same to Justus and Others.*

If your father did not enter into a true contract, but donated the possession of certain property to your mother by a species of sale, and the remainder of his estate was not sufficient to satisfy the Treasury for what was due from him as Chief Centurion of the Triarii, although he did not change his mind with reference to the donation, still, recourse must be had to the identical property for the purpose of making up the amount which could not be collected from what was left by him. If, however, your father, by changing his mind, interrupted the course of his bounty, there is no doubt that the ownership of the said property will revert to his estate.

Given on the fourth of the *Kalends* of February, during the Consulate of Tyberianus and Dio, 291.

16. *The Same to Theodore.*

If your emancipated sons should acquire for themselves the estate of their mother, prove before the Governor of the province that you did not purchase the land in question in the name of your wife for the purpose of giving it to her, but that you have already made use of her name, which you can do by showing that the ownership of the said land was transferred to you by the vendors, through their giving possession of the same, so that the injustice of your children having been exposed, your title to the property may remain unimpaired.

If, however, you did this with the intention of bestowing the land upon her, the right of action to recover the purchase-money will lie in your favor.

Given on the sixth of the *Ides* of March, during the Consulate of Tyberianus and Dio, 291.

17. *The Same Emperors and Cassars to Capitolina.*

With reference to the property brought into the house in addition to the dowry, and which you allege has been consumed by your husband, if this was done by you for the purpose of making a donation, you are informed that you will only have a right of action against the heirs for the amount by which your husband profited. If, however, he used the property against your consent, the whole of it must be returned to you.

Given at Heraclea, on the eighth of the *Kalends* of March, during the Consulate of the same Emperors, 291.

18. *The Same Emperors and Csesars to Materna.*

Where a donation is made by a husband to his wife during marriage, the ownership of the property cannot be transferred in the beginning; nor afterwards, if a divorce should take place, or if the person who is the recipient of the bounty should die first; nor can it subsequently become valid, if it has been revoked by him who gave it.

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

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

If your mother transferred a house to you during your marriage she renders it part of your property.

Given on the *Ides* of July, at Philippopolis, during the Consulate of the Csesars.

20. *The Same Emperors and Csesars to Claudia.*

A creditor, after his debt has been paid, cannot transfer to the wife of his former debtor any of the pledges which has been released, nor will the consent of the said debtor, acceded to by his former creditor, avail to any extent to transfer the ownership of the property by a fictitious sale; as not only simulated transactions, but also such as have reference to donations of property to a wife by her husband during marriage, are considered as never having been made on account of their prohibition by the Civil Law (when you suppose the case that a wife is survived by her husband).

21. *The Same Emperors and Csesars to Maucalia.*

Where, by engagements which you yourself contracted, you borrowed money and spent it for your husband, with the intention of considering it a donation, as this has been done for a worthy purpose, and your husband has not been enriched thereby, you should understand that an action will not lie in your favor against him.

Given on the third of the *Ides* of August, during the Consulate of the Caasars.

22. *The Same Emperors and Csesars to Archinoa.*

A husband can give a slave to his wife during marriage, with the intention of manumitting him.

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

23. *The Same Emperors and Csesars to Csecilianus.*

If your mother-in-law placed you in possession of a certain tract of land as a donation, either before or after your marriage, her change of mind will avail nothing for the purpose of revoking the gift.

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

24. *The Emperors Constantine to Petronius Probinus.*

Any property of a wife, which may have come into her possession through inheritance,

purchase, or the gift of her husband made before he was criminally accused, if the latter should be condemned to death, or reduced to a servile condition by way of penalty, shall remain intact; nor shall she be oppressed by the misfortune of another's crime, as it is only just that she should, in accordance with the laws, enjoy the property derived from her father or mother, as well as that which she herself has acquired; and any donation made by the husband before he was accused of crime, for the reason that it is regarded as the recompense of modesty, should stand, just as if the course of nature, and not punishment, had removed him.

When, however, he has been forbidden the use of water and fire, or has been sentenced to deportation, and death did not result from the penalty, any donations made by him to his wife will remain in abeyance, because in cases of this kind the marriage is not dissolved; so that if the husband should not revoke them during his lifetime, they will be confirmed by his death, and Our Treasury will not afterwards have any claim upon such property.

Given on the second of the *Kalends* of March, at Sardinia, during the second Consulate of the Csesars Crispus and Constantius, 321.

Extract from Novel 22, Chapter Vill. Latin Text.

But, at the present day, no one originally well born can be rendered a slave by way of punishment for crime, and therefore marriage is not dissolved for this reason.

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

We order that donations made by parents for the benefit of their children of either sex, who are under their control, or those made by a wife for the benefit of her husband, or by a husband for the benefit of his wife, or by either of them in behalf of a third party to whom it is not lawful to make a donation during marriage, or for the benefit of any person to whom they cannot make a donation, shall be rendered valid by the silence of the donor, if they reach the amount authorized by law or exceed it, and have been recorded, for We do not permit a donation of a larger sum than is legal to be recorded, or confirmed by the silence of the person who made it.

When, however, the donor specifically confirms such donations by his or her last will, they shall be considered as ratified without any distinction, so that if they exceed the amount provided for by law, and have not been recorded, their explicit confirmation shall be valid from the time when this took place. But if the donation is not excessive, or if it is larger than is sanctioned by law, and has been recorded, then the silence of the donor, and the special confirmation by either him or her shall revert to the time when the donation was made, just as it is necessary to refer other ratifications of business matters to the date of the execution of the contracts. Nor can any subtle distinction between law and fact be introduced.

Given on the *Ides* of December, during the second Consulate of Our Lord, the Emperor Justinian, 528.

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

We order that the donations which the Divine Emperor has made in favor of the most pious Queen, his wife, and those which she has made in favor of her most serene husband, shall immediately be valid, and be fully confirmed, for the reason that Imperial Contracts take the place of laws, and require no external assistance.

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

27. *The Same to John, Prsetorian Prefect.*

Where anyone who was united in marriage, after having made a donation for the benefit of another, is taken by the enemy and reduced to slavery, and subsequently dies in captivity, the question arose whether a gift of this kind, which he had previously made, would be confirmed or weakened by this occurrence. It was also asked if the donor should die in Roman territory,

and he who received the donation was in captivity at the time of his death, and afterwards returned, whether the donation would then be held to have been confirmed. Therefore, as in both these instances, the doubt should be removed by an Imperial remedy—for there is nothing so peculiar to the majesty of the Empire as humanity, by means of which alone the imitation of God is preserved—We decree that, in both these cases, the donation shall be valid.

Given on the *Kalends* of December, under the Consulate of Lam-padius and Orestes, 530.

TITLE XVII.

CONCERNING REPUDIATION AND THE ABOLITION OF THE ACTION DE MORIBUS.

1. *The Emperor Alexander to Abutiniana.*

Marriage is not dissolved by deportation or by the interdiction of water and fire, if the state into which the husband has fallen does not alter the affection of the wife. Therefore the exaction of the dowry is not competent by law, but neither the rules of equity nor any examples permit that she whose attachment is worthy of praise should remain unendowed.

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

2. *The Emperors Valerian and Gallienus, and the Cassar Valerian to Paulina.*

Your daughter is free to marry if, having waited for her betrothed for three years, and all hope of this union having been lost, she does not think that she should wait any longer, and thereby miss an opportunity for marriage, as, even if the man is present and she should change her mind, she can serve notice on him to that effect.

Given on the seventh of the *Kalends* of April, during the Consulate of .aCmilianus and Bassus, 260.

3. *The Emperors Diocletian and Maximian to Tullius.*

There is no doubt that everything transacted properly and after due consideration is, by law and reason, rendered firm and valid. Wherefore, if you gave a dowry for the benefit of a woman, and stipulated for its return at the time of her death, and a fictitious repudiation has been made for the purpose of deceiving you, and the marriage is rescinded for a short time, the Governor of the province shall entertain no doubt that you are entitled to receive the dotal property which you offered before the marriage, for it is certain that the above-named official should see that whatever has been done contrary to justice does not profit those who have resorted to cunning to evade the law, for schemes of this kind are displeasing to Us.

It has also been decided by the ancient legal authorities that fictitious notices, that is to say those of repudiation, are of no effect, whether the parties pretend to have renounced either their marriage or betrothal.

Given on the second of the *Kalends* of September, during the Consulate of the same Emperors and Caesars.

4. *The Same Emperors and Csesars to Piso.* The divorce of a daughter is not under control of her mother. Given on the third of the *Kalends* of January, during the Consulate of the Caesars.

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

Our Father, and most religious Emperor the Divine Marcus, decided that the consent of a parent should not be considered as ratified where he gave his consent to the marriage in the beginning and afterwards revoked it, and the daughter under paternal control decided to remain with her husband, unless the act of the father was caused by some good and sufficient reason. No rule of law directs a wife to return to her husband against her consent. The father

of an emancipated daughter cannot, at will, authorize her divorce.

Given at Nicomedia, on the fifth of the *Kalends* of September, during the Consulate of the Caesars.

Extract from Novel 22, Chapter XIX. Latin Text.

And, on the other hand, a new constitution with reference to marriage sets forth what is the law where the children subject to paternal authority desire to be divorced against the wishes of their parents. That is to say, that marriages shall not be dissolved to the injury of the parents, who either alone, or along with their children, have offered or received a dowry, or an ante-nuptial donation; for the reason that as the consent of parents is required in contracting marriage, so, also, it is necessary for the purpose of dissolving it.

6. *The Same Emperors and Cassars to Phcebus.*

Although the written notice of repudiation may not have been delivered to the husband, or he may not have been aware of it, the marriage will, nevertheless, be dissolved.

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

7. *The Emperors Constantine to Dalmatius.*

A wife who, after the lapse of four years from the time of the departure of her husband for the army, has been unable to obtain any tidings of his safety, and therefore is thinking of contracting another marriage, still should not do so before sending notice of her intention to the general of the army, for then she will not be considered to have contracted a clandestine marriage; nor will she sustain the loss of her dowry, or be liable to capital punishment, who, when so long a time has elapsed, is proved to have married, not rashly or stealthily, but after a public announcement of her intention has been made. Therefore it should be noted that, where no suspicion of adultery exists, and no clandestine marriage is disclosed, no danger need be apprehended by those who have contracted matrimony under such circumstances, since, if the marriage has been knowingly and secretly violated, the law will impose the proper punishment.

Given during the Consulate of Felicianus and Titian, 337.

Extract from Novel 117, Chapter XI. Latin Text.

To-day, no matter how many years the husband may remain in the army, the wife should be patient, although she may have received neither letters nor tidings from him. If she hears that he is dead, she ought not to marry again before either going herself, or sending someone to the officer under whom her husband served, and interrogating him as to whether he is actually dead or not, so that the said officer may swear in court that the husband is no longer living, which having taken place, the woman may marry after a year has elapsed. If, however, she should do so without taking this precaution, she, as well as the man who marries her, shall be punished as guilty of adultery.

Where the person who took the oath is convicted of having sworn falsely, he shall be dismissed from the army, and shall pay ten pounds of gold to him whom he falsely stated to be dead, and the latter shall have permission to recover his wife if he desires to do so.

8. *The Emperors Theodosius and Valentinian to Hormisdas, Prse-torian Prefect.*

We decree that legal marriage may be contracted by consent, but this having once been done, that it cannot be dissolved unless by notice of repudiation, for the favor to which children are entitled demands that its dissolution should be rendered more difficult.

(1) We clearly enumerate the causes of repudiation by this most salutary law, for as We (with proper limitations) forbid marriage to be dissolved without good cause, so that where one of

the parties is compelled by necessity, or the other is oppressed by some misfortune, We desire that he or she shall be liberated by Our aid, when this becomes necessary.

(2) Therefore, if a woman should ascertain that her husband is an adulterer, a homicide, a poisoner, or one who is plotting anything against Our government; or has been convicted of perjury or forgery, or is a violator of sepulchres, or has stolen anything from sacred buildings; or is a robber or a harborer of robbers, a cattle thief or a kidnapper; or, in contempt of his house and of her, or in her presence, has consorted with dissolute women (which is especially exasperating to females who are chaste) ; or if he has attempted to deprive her of life by poison, or by the sword, or in any other way; or if she should prove that he had beaten her (which is not allowed in the case of freeborn women), We then grant her permission to avail herself of the necessary aid of repudiation, and to present legal reasons for divorce.

Extract from Novel 117, Chapter IX. Latin Text.

By the new law, however, a husband who has done this without any cause shall be compelled to surrender to his wife, even during marriage, out of his other property, an amount equal to the third part of the ante-nuptial donation which he made, but the marriage shall not be dissolved on this account.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(3) The husband, also, is controlled by similar restrictions, for he shall not be permitted to repudiate his own wife, except for reasons which have been clearly designated; nor can she be driven away under any circumstances, unless he should find her to be an adulteress, a poisoner, a homicide, a kidnapper, a violator of sepulchres; or one who has stolen something from sacred buildings; or an accomplice of thieves; or one given to frequenting banquets where strange men are present, her husband either being ignorant of the fact or having withheld his consent; or where, without his permission, and without good and reasonable cause, she has passed the night in some public resort, or frequented the circus, theatre, or the exhibitions of the arena, in those places in which they are usually conducted, in spite of his opposition; or if she has attempted to kill him by poison, by the sword, or by any other means; or where she is cognizant of any plots against Our government; or has been implicated in the crime of forgery or perjury; or he can prove that she has laid violent hands upon him. For, under these circumstances, We necessarily grant him the right of separation, and the power to establish the causes of divorce in accordance with the laws.

(4) If neither the husband nor the wife should observe these regulations, he or she shall be punished with the avenging penalty of this most provident law. For if a woman, in contempt of the law, should attempt to send a notice of repudiation, she shall forfeit her dowry and her ante-nuptial donation, and shall not have the power to marry again within five years, for it is just that, in the meantime, she should be forbidden marriage, of which she has shown herself unworthy.

If, however, she should marry in spite of this provision, she herself shall become infamous, and We are unwilling that her union shall be designated marriage, and, in addition to this, We grant authority to anyone to attack it who desires to do so. But if she should prove the case which she has stated, she shall then recover her dowry, and profit by her ante-nuptial donation; and We decree that she shall have the right to claim them by law, and We grant her permission to marry after the expiration of a year, in order that no doubt may arise with reference to her offspring.

(5) We order by the following just regulation that the husband, also, who can prove that his wife has attempted to commit unlawful acts, can claim not only the dowry but also the ante-nuptial donation, and that he can immediately take another wife, if he wishes. But if, on the other hand, he should merely desire to repudiate his wife, he must return the dowry, and lose

the ante-nuptial donation.

(6) Where the crime of adultery or treason is alleged, the male and female slaves of both the husband and wife who have 'reached puberty should be subjected to torture for the purpose of ascertaining the cause of repudiation, by which the truth may the more readily be ascertained, or more clearly revealed, provided other sources of proof are lacking. We desire that the same evidence shall be admitted in the case of wounds having been inflicted by either of the parties (as has already been stated), since the truth of matters which take place in the household is not easily established by the testimony of strangers.

(7) If notice of repudiation is given and there are any children, either sons or daughters living, We order that whatever was obtained by the marriage shall be preserved for the benefit of the said sons or daughters, after the death of the person who received it; that is to say, if the father should rashly serve notice of repudiation, the antenuptial donation shall be preserved by the mother; if the mother should do so, the dowry, on the death of the father, shall be transferred to the child, or children. Still, the father or mother will have the right to appoint as heir or heirs one, or all of the children, or to make a donation of his or her property to any one of them, in accordance with his or her choice. We do not grant the power to alienate or substitute any of the above-mentioned property. When, however, any of it is lacking, We order that it shall be made good, either by the heirs, or by those having it in their possession (provided the parties do not appoint any heirs, or the children who were appointed do not enter upon the estate) so that, in this way, the children may not suffer injury through the inconsiderate notice of repudiation.

(8) Where any agreements are made in opposition to Our present decree, We desire they shall have no validity, as being contrary to law.

Given on the fifth of the *Ides* of January, during the Consulate of

Protogenes and Astorius, 449.

9. *The Emperor Anastasius to Theodore, Prsetorian Prefect.*

Where a marriage has been dissolved by common consent, rather than by the repudiation of the wife, and not on account of any cause included in the most wise Constitution of the Emperors Theodosius and Valentinian of Divine Memory, the woman shall not be required to wait for the expiration of the term of five years, but can contract a second marriage after the lapse of one year.

Given on the fifteenth of the *Kalends* of March, during the second Consulate of the Emperor Anastasius, 497.

Extract from Novel 117, Chapter X. Latin Text.

At the present time, a divorce of this kind cannot take place except where the husband and wife desire to live in chastity, and under such circumstances the dowry, as well as the ante-nuptial donation, shall be preserved for the benefit of the children. If, however, the parties subsequently contract another marriage, or are found to be living in debauchery, their property shall be delivered to their children, and they shall lose control of the same. In case there are no children, it shall be forfeited to the Treasury. Those who are guilty of such offences shall be subjected to the penalties prescribed by law.

10. *The Emperor Justinian to Menna, Pr&torian Prefect.*

We add the following to the causes specifically enumerated by reason of which repudiation can legally take place; namely, when a husband on account of natural impotence is unable to have coition with his wife for two consecutive years, from the beginning of the marriage, the wife, or her parents, can serve notice of repudiation upon him, without risk of losing the dowry; provided, however, that the ante-nuptial donation is preserved for the benefit of the

husband.

Given on the third of the *Ides* of December, during the second Consulate of Our Lord Justinian, 528.

Extract from Novel 22, Chapter VI. Latin Text.

At the present day, We decree that instead of the term of two years, that of three shall be reckoned from the time of cohabitation.

11. *The Same to Hermogenes, Master of the Offices.*

We order that where anyone has taken a wife with the consent of her parents, or, if she had no parents, actuated by true marital affection, even if no dotal instruments were drawn up, nor any dowry given, the marriage of the parties shall be considered valid, just as if it had been accompanied with dotal instruments; for marriages are not contracted by means of dowries but through mutual attachment.

(1) When anyone desires to separate from a woman whom he married without a dowry, he shall not be permitted to do so, unless some fault has been committed which is condemned by Our laws. If, however, he should reject her without her having been guilty of any fault, or he himself should commit such a fault against an innocent woman, he shall be compelled to give her the fourth part of his own property, in proportion to its amount; so that if he has an estate with four hundred pounds of gold, or more, he must pay his wife a sum not exceeding a hundred pounds of gold, and no more. If, however, his estate should amount to less than four hundred pounds of gold, then, a calculation having been made, the fourth part of his property shall be given to the wife, as the smallest amount to which she is entitled.

The same rule should be observed with reference to women who have not been endowed, and who have repudiated their husbands, without the fault of the latter, and contrary to law; or where they themselves have given cause for divorce to husbands who were innocent, so that, on both sides, justice and the punishment may be equally administered.

The benefit of the aforesaid share of the property shall be enjoyed by the husband or the wife where there are no children, and shall be disposed of by them in any way which they may desire. When there are children or descendants of the latter by the said marriage, the property shall in every respect be preserved by them, just as in the case of a dowry or a donation in consideration of marriage, as has been previously decided with reference to the same.

(2) We add to the causes of divorce of husbands and wives already enumerated by the laws, the following; namely, if the wife should by her own efforts produce an abortion; or if she should be so lascivious as to dare, for the sake of debauchery, to bathe with other men; or, while she is still married, attempt to take another husband. In cases of this kind, We decree that the law shall apply which treats of the guilt of both husband and wife, so, just as a dowry or a donation made in consideration of marriage is lost, in like manner, women who have not been endowed shall run the risk of losing the fourth part which, by the terms of this law, We have destined for husbands and wives.

The *Actio de moribus,* which was formerly inserted in ancient laws, but which was not often resorted to, is hereby absolutely abolished.

We decree that none of the former causes for divorce, which were requisite and set forth in ancient laws, except those which have been confirmed by the present enactment, and those which the latter has introduced, shall be valid.

Given on the twelfth of the *Kalends* of December, during the second Consulate of Our Lord, the Emperor Justinian, 528.

TITLE XVIII.

IN WHAT WAY THE DOWRY CAN BE RECOVERED WHEN THE MARRIAGE HAS BEEN DISSOLVED.

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

After the dowry has been estimated, and an agreement or stipulation has been entered into with reference to the same, there is no doubt that if the property of which it is composed should be in existence at the time of the dissolution of the marriage, it should be restored to the wife; and any female slaves, together with their offspring, which constitute part of the same, must also be returned by virtue of the action based on the stipulation.

Given on the third of the *Ides* of April, under the Consulate of Lateranus and Rufinus, 198.

2. *The Same Emperors to Aquilia.*

It is in accordance with the principle of the law that you think that your dowry should be restored to you by the Treasury, which confiscated the property of your father after his conviction. For although your father was the heir of your former husband, still this cannot derogate from your rights, as your father could neither exact nor receive your dowry without your consent.

Given on the day before the *Nones* of April, during the Consulate of Aper and Maximus, 208.

3. *The Emperor Antoninus to Hostilia.*

If, being ignorant of the condition of Eros, you married him and gave him a dowry, as a freeman, and he afterwards was decided to be a slave, you can recover your dowry out of his *peculium,* and anything else in addition which it appears that he owes you. Your children, however, being born of a free woman, but of a father whose status was uncertain, are understood to be illegitimate freeborn children.

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

4. *The Emperor Alexander to Apollonius.*

The dowry provided by a father, where the woman dies in marriage while still under paternal control, should be returned to him.

Given on the eighteenth of the *Kalends* of September, during the Consulate of Fuscus and Dexter, 226.

5. *The Emperors Valerian and Gallienus, and the Csesar Valerian, to Taurus.*

If your wife lives among enemies, her brother cannot yet, as her heir, claim her dowry. If, however, she is dead, and he has a right to her estate, he can also legally recover her dowry, as this was set forth in the stipulation.

Given on the second of the *Nones* of May, during the Consulate of ^milianus and Bassus, 360.

6. *The Emperors Diocletian and Maximian to Alexander and Nero.*

If your mother has been deceived, and the dotal property has been appraised at its true value, what has been decided with reference to a defect of this kind in contracts is well known. Hence, if your mother has been misled as to the appraisement of the dowry by the fraudulent artifices of her husband, and you can prove this by conclusive evidence, before the Governor of the province, he can, by his authority, grant you an exception on the ground of bad faith for the purpose of obtaining the lands of which you are already in possession; and he will know to what extent to perform the duties of his judicial office. If, however, after the truth has been ascertained, the husband should allege that he has been injured by the appraisement, he cannot be compelled to return more than the just price.

These rules apply when the property is in existence, but if it has been destroyed, the sum stated in the dotal instrument must be adhered to.

Given on the eleventh of the *Kalends* of November, during the Consulate of the above-mentioned Emperors.

7. *The Same Emperors and Csesars to Erotius.*

You are not prohibited from depriving your daughter of money, if she is under your control. Where, however, you have given her property as dowry, you cannot do this during the existence of the marriage, if she does not give her consent; nor, even after the marriage has been dissolved, can you claim the said property if she is unwilling for you to do so.

Given on the fifth of the *Ides* of February, under the Consulate of the Csesars.

8. *The Same Emperors and Csesars to Sallustia.*

The husband (even though, after a divorce, he may have had judgment rendered against him to the extent of his means) cannot refuse the payment of the balance of the dowry, if he should after wards become solvent, provided he has not already paid it in full. There is no doubt that his heirs can be sued for the entire amount; and hence you, without good cause, apprehend that you cannot bring suit against them, although they may be solvent.

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

9. *The Same Emperors and Caesars to Martia.*

You should sue the heirs of your husband in an action of dowry to recover what was given to him by way of dowry; but you have no right to take possession of the dotal property without the authority of a competent court, if your husband's heirs do not give their consent.

Given on the eighth of the *Kalends* of November, under the Consulate of the Csesars.

10. *The Same Emperors and Csesars to Epigonus.*

If you have given a dowry to the father-in-law of your daughter, although your son-in-law may have died while under his father's control, the latter must return the dowry to you, not merely to the extent of his son's *peculium,* but for the entire amount, if you bring suit against him with the consent of your daughter.

Given at Heraclea, on the seventh of the *Ides* of November, under the Consulate of the Csesars.

11. *The Emperors Honorius and Theodosius to Marinianus, Praetorian Prefect.*

When the husband dies during marriage, the dowry which is alleged to be given or promised out of the property of the wife shall be returned to her, and the heir of the deceased cannot claim for himself any of what the death of the husband causes to revert to his wife.

Given at Ravenna, on the *Nones* of December, during the Consulate of Honorius, Consul for the eighth time, and Theodosius, Consul for the third time, 409.

TITLE XIX.

WHERE A DOWRY HAS BEEN PAID DURING MARRIAGE.

1. *The Emperors Honorius and Theodosius to Marinianus, Prse-torian Prefect.*

Where the dowry was illegally given by the husband to the wife, during marriage (which cannot stand, because it is considered a donation), and the wife dies, the property, together with the profits of the same from the day when the dowry was bestowed, must be delivered to the husband by her heirs.

The ownership of the same, however, vests in the children of the wife, and cannot be alienated

by the husband, as this would be contrary to law.

Given on the fifth of the *Nones* of November, during the Consulate of Honorius, Consul for the eighth time, and Theodosius, Consul for the third time, 409.

TITLE XX.

NEITHER TRUSTEES NOR MANDATORS FOR DOWRIES SHALL BE APPOINTED.

1. *The Emperors Gratian, Valentinian, and Theodosius to Cyne-gius, Praetorian Prefect.*

No matter whether the law providing that a husband shall furnish a surety for the preservation of the dowry for his wife is derived from legal enactment, or from custom, We direct that it shall be abolished.

Given on the eighth of the *Nones* of September, during the Consulate of Eucherius and Syagrius, 381.

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

For the purpose of extending the scope of the preceding constitution by a general provision, We decree that no security or mandate with reference to a dowry shall be exacted either from a husband or his father, or from any of those who may have received it; for if the wife thought that she herself and her dowry could be entrusted to her husband's father, why should a surety or any other bondsman be required, in order that reason for distrust might be introduced between the parties during their marriage?

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

TITLE XXI.

CONCERNING PROPERTY SURREPTITIOUSLY REMOVED.

1. *The Emperor Alexander to Polydeuca.*

It is with justice that you assert the right of set-off, for it is only equitable that you should not be obliged to pay what it is established that you owe before an answer has been made to your claim for money loaned; and there is all the more reason for this, because you allege that you are demanding property which you complain has been removed on account of divorce. Therefore, after you have been sued under the stipulation before a competent judge, you must prove to him that the property taken formed part of the dowry, and that it was yours.

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

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

An action for the recovery of property which has been fraudulently removed is granted by the Perpetual Edict; where, in case of divorce, it has been taken by the husband from the wife, or by the wife from the husband. Still, while marriage exists, neither a penal action nor one involving infamy will lie against either of the parties, but an action *in factum* for indemnity is granted.

Given on the fifth of the *Kalends* of October, during the Consulate of the above-mentioned Emperors.

3. *The Same Emperors and Csesars to Quartinus.*

You are not prohibited from asserting ownership of the property which you allege your former wife removed on account of the divorce, by bringing the *Actio perum amotarum* against her successors, not, however, for the entire amount, but only for as much of it as has come into their hands.

Given on the fifth of the *Nones* of December, during the Consulate of the above-mentioned Emperors.

TITLE XXII.

THE ESTATE OF A HUSBAND CANNOT BE GIVEN TO A WOMAN INSTEAD OF HER DOWRY.

1. *The Emperors Diocletian and Maximian to Apollinaria.* It is prohibited by law for the estate of a deceased husband to be given to his widow instead of dowry. When, however, he died insolvent without leaving any heir, you will not be prevented from seeking indemnification in accordance with the provisions of the law, to the extent that the condition of the succession will permit.

Given on the fifth of the *Nones* of December, during the Consulate of the above-mentioned Emperors.

TITLE XXIII.

CONCERNING DOTAL LANDS.

1. *The Emperor Severus and Antoninus to Didia.*

Where lands which have been appraised are given by way of dowry, and the choice of either the land or its value is reserved for the woman, the *Lex Julia* will, nevertheless, apply. Alienation is every act by means of which the ownership is transferred.

Given on the twelfth of the *Kalends* of March, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 213.

2. *The Emperor Gordian to Domitia.*

Husbands who have received as dowry land held in common with another, and which has not been appraised, cannot bring suit in partition; although they themselves can have an action of this kind brought against them.

Given on the fifth of the *Nones* of October, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

TITLE XXIV.

WITH WHOM CHILDREN SHOULD RESIDE OR BE BROUGHT UP, WHEN A DIVORCE HAS TAKEN PLACE.

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

Although it has not been provided by any of Our Constitutions, or by any of those of Our Divine Ancestors, that a division of children should be made among parents according to sex, a competent judge must decide whether the children shall live with, and be brought up by their father, or their mother, after the marriage has been dissolved.

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

Extract from Novel 117, Chapter VII. Latin Text.

Where the father has given cause for divorce, the children shall be brought up by the mother at his expense, if she has not contracted a second marriage. Where, on the other hand, the mother is to blame, then the children shall be reared by the father at the expense of the mother, if she is wealthy; for when he has not sufficient means to care for them, and she has, this duty devolves upon her. For, just as children who are rich are compelled to provide their mother with a livelihood, if she is poor, so We decree that it is but just that children shall be supported by their mother. We order that what has been stated concerning a mother and children who are without means shall also be observed with reference to all ascending and

descending relatives of both sexes.

TITLE XXV.

CONCERNING THE SUPPORT OF CHILDREN AND RELATIVES IN THE ASCENDING LINE.

1. *The Emperor Antoninus Pius to Bassus.*

It is but just that children should relieve the necessities of their relatives in the ascending line.

Without date, or designation of Consul.

2. *The Divine Imperial Brothers to Celer.*

A competent judge will order you to be supported by your son, if his means are such that he can provide you with food.

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

3. *The Same Emperors to Titiana.*

If you prove before a competent judge that the child which you allege was born to you and Claudius is actually the son of the latter, he will order support to be furnished him in accordance with the means of his father. The same judge must decide whether the child shall be brought up by him.

Given at Rome, on the thirteenth of the *Kalends* of March, during the Consulate of Rusticus and Aquilinus.

4. *The Emperors Severus and Antoninus to Sabinus.*

If you have properly discharged the duties which you owe to your father, he will not refuse you his paternal affection. If he should not do this voluntarily, a competent judge, having been applied to, shall order him to support you in proportion to his means. If, however, he denies that he is your father, the same judge must, in the first place, investigate this point.

Given on the *Nones* of February, during the Consulate of Lateranus and Rufinus, 198.

TITLE XXVI.

CONCERNING CONCUBINES.

1. *The Emperor Constantine to the People.*

Permission is given to no one to have a concubine in his house during marriage.

Given on the eighteenth of the *Kalends* of July, during the Consulate of the Constantines, Father and Son, 321.

TITLE XXVII.

CONCERNING NATURAL CHILDREN AND THEIR MOTHERS, AND FOR WHAT REASONS THEY BECOME LEGITIMATE.

1. *The Emperor Constantine to Gregorius.*

It is decided that Senators, or Prefects, and persons in the cities who have been invested with the dignity of duumvirs, or with that of the priesthood (that is to say, such as are attached to the government of Phoenicia or Syria), shall be branded with infamy, and excluded from the protection of the Roman law, if they give their consent to place among the number of legitimate persons either the children of female slaves, or the daughter of a female slave; or a freedwoman, or her daughter; or a public actress, or her daughter; or the daughter of a tavern-keeper, or her daughter; or the offspring of anyone of low and degraded social position; or the daughter of a procurer, or of a gladiator; or that of a woman publicly engaged in business as a merchant; whether they do this by their, own authority or by that of one of Our Rescripts. In

case a father should give anything to such children (whether he states that they are legitimate or natural), it shall be taken from them, and delivered to his lawful offspring, or to his brother, his sister, his father, or his mother. If anything should in any way be bestowed upon a wife of this kind, or even transferred to her by way of sale, We order that it shall be taken from her and given to those legally entitled to it.

We also order that those women with whose poison the minds of ruined persons are affected shall be subjected to torture; and if anything is demanded of them, or is said to have been entrusted to them, it shall be restored to those whom We have mentioned, or confiscated to Our Treasury. Therefore, whether the donation was made either by him who is alleged to be the father, or by someone else, or by an individual introduced for that purpose, or whether the property has been purchased by him or by another, or in the names of the children themselves, it shall immediately be restored to those whom We have designated; and if no such persons are in existence, it shall be legally claimed by the Treasury.

Where, however, such persons exist, and, with the property before them, decline to act, they having been excluded either by agreement or by oath, the Treasury shall take possession of all such said property without delay. When they remain silent, or are guilty of dissimulation, the time for offering a defence to the Treasury shall be limited to two months, within which period, if they do not assert their claim, or apply to the Governor of the province for that purpose, whatever an illegal generosity may have bestowed upon such children or wives shall be seized by Our Treasury, which shall demand any such property which has been donated or entrusted to them, under the severe penalty of quadruple damages.

Given at Carthage, on the twelfth of the *Kalends* of August, during the Consulate of Nepotian and Facundus, 336.

Extract from Novel 127, Chapter IV. Latin Text.

By a new law, however, such women can contract marriage with men of every description, even where they are incumbents of the aforesaid offices, provided dotal instruments are executed for this purpose by persons of illustrious rank. All others, with the exception of those who are invested with the highest dignities, can contract marriage through affection alone, provided the women with whom it is lawful for them to contract marriage are free.

2. *The Emperors Arcadius and Honorius to Antemonius, Praetorian Prefect.*

Where the mother, or any legitimate children, grandchildren, or great-grandchildren of either sex, to the number of one or more, are living, a father can only give or leave one-twelfth of his estate to his natural sons or daughters, or to their mother; or if only his concubine is living, he is authorized to give or bequeath to her one-twelfth of his estate. Anything which may be left beyond the amount prescribed by law shall go to his legitimate children, or to their mother, or to his other heirs.

Given on the *Ides* of November, under the Consulate of Stilicho, Consul for the second time, and Anthemius, 405.

Extract from Novel 89, Chapter XII. Latin Text.

At present, only natural and legitimate children are subject to this limitation. This is not the case with the mother.

3. *The Emperors Theodosius and Valentinian to Apollonius, Prse-torian Prefect.*

Where anyone has only natural children, whether he himself is free, or bound by the restrictions of the *curia,* and he prefers to transfer his natural children wholly or in part to the *curia* of the city from which he himself derived his origin, We grant him the power to do so, and to appoint them heirs to his entire estate. If, however, a person who is not the native of a city but of a village, or was born upon any tract of land whatsoever, should have natural

children, and desires them to be benefited by the honorable distinction of the *curia,* as foresaid, and profit by their father's estate, they should be attached to the city within whose jurisdiction the village or farm, which was the birthplace of the father, is considered to be. But where the father claims as his birthplace either of the two Imperial Cities, he shall be entitled to place his children born out of wedlock among the decurions of either of them, provided the one which he may select has jurisdiction over the entire province; for it is disgraceful for anyone who boasts of being a native of a most Holy City not to be able to give his natural children the benefit of a residence in it; and this disposition the father can either make for the benefit of his natural children by his last will, or by a donation of any amount whatsoever.

And what We have desired to be observed with reference to the rank of decurion, whether it be conferred by will or by any other legal document, We decree shall be observed as valid and established; so that if the children abstain from accepting the estate, or reject the donations, and wish to avoid the condition of decurion, and are afterwards found to be in possession of the estate of their father, either wholly or in part, they shall, by all means, be compelled to accept the position which their father desired them to occupy with his wealth, even though they may have alienated the property, and are unwilling to discharge the duties of the office.

Where, however, the father has a natural daughter or daughters, and disposes of her or them in marriage to the decurions of the city in which he was born, or upon which the village or farm where he derived his origin is dependent, or of that city which has jurisdiction over the entire province, these regulations shall, so far as the said children are concerned, apply, as in the case of a husband. For what difference does it make whether cities are benefited by means of sons or sons-in-law, or whether the law creates new decurions, or favors those already in existence?

Given on the twelfth of the *Kalends* of January, during the Consulate of Eudoxius and Dioscorus, 442.

4. *The Emperors Leo and Anthemius to Armasius, Prsetorian Prefect.*

As, not without good reason, We ascertain the desires of the dying from the opinions of the living, so, where anyone, having a natural son, desires to have him invested with the office of decurion for the purpose of making him legitimate, and rendering him a citizen of his birthplace, he shows unquestionably that, induced by paternal affection, he has selected him as the successor to his entire estate. A person of this kind cannot, by virtue of the Imperial Constitutions, be granted the power either of alienating or rejecting the estate or donation of his father, for the purpose of defrauding the *curia;* but he shall be compelled to accept the duties imposed upon him by the will of his father; and We do not suffer that, in any way whatsoever, the claims of calumnious persons shall be admitted, contrary to Our present regulations; but We order that Philocalus himself, the heir at law of the entire estate of his father, and attached to the *curia* of Our city, shall perform the duties which have been, or should be enjoined upon him; and that any children whom he may now have, or who may hereafter be born to him, shall likewise be subject to the condition imposed by his father.

We decree that this rule shall hereafter be observed in all cases which may hereafter occur, no matter in what Order or *curia* of any city.

Given at Constantinople, on the *Kalends* of January, during the Consulate of Jordanus and Severus, 470.

5. *The Emperor Zeno to Sebastian, Prsetorian Prefect.* Renewing the most Sacred Constitution of the Divine Constantine, who provided the Roman Empire with the revered faith of the Christians, which Constitution had reference to the taking as concubines of freeborn married women, and stated that any children born to them either before or after marriage should be considered legitimate, We order that if those who, before the promulgation of this law, had, without the ceremony of marriage, lived in concubinage with freeborn

women, and had children of either sex by them; the latter shall not be considered legitimate, for the reason that their mothers were not their father's wives. If, however, they should desire to marry the women who were formerly their concubines, they can contract lawful matrimony with freeborn women of this description, as previously stated; and the children of both sexes begotten of the former union with the same women shall, immediately after the marriage with their mothers has been celebrated, become legitimate, and be under the control of their fathers, and shall succeed to the entire estates of the latter along with those who may afterwards be begotten during the said marriages, or alone; and, if no child should afterwards be born, they can claim their estates not only under the last will of their fathers, but also as heirs at law. And so far as any agreements which may have been entered into during marriage with reference to dowries or ante-nuptial donations, in which they themselves are interested are concerned, they shall, none the less, be entitled to the benefit of the same, either alone (if no other child has been begotten) or along with their brothers born to the same parents, in accordance with the provisions of the laws.

Those, however, who, up to the time of the promulgation of this most Sacred Decree, have had no issue by freeborn concubines, shall, by no means, enjoy the benefit of this law; for as they are permitted to unite themselves in matrimony with these women, when there are no free children or wives living, they can, by marrying said women, beget lawful offspring; and persons who have had issue by freeborn concubines, but have neglected to marry them after the promulgation of this law, must not presume to urgently demand that their children shall hereafter be considered legitimate.

Given on the tenth of the *Kalends* of March, during the Consulate of Basilius, Consul for the second time, and Armatius, 476.

6. *The Emperor Anastasius to Sergius, Prsetoria/n Prefect.*

We order that those who have no legitimate children living, and who at the present time are keeping women instead of wives, shall consider any issue born to them to be legitimate, and subject to their control; and that they can transfer to them their private property by their last wills, by donations, or by any other method recognized by law, if they should desire to do so.

We also decree that the said children shall be entitled to succeed to the estates of their fathers, and that neither the agnates nor cognates of the latter, nor anyone else, shall hereafter have the right .to raise any question or dispute, by availing themselves of the subtleties of the laws or constitutions, for the purpose of depriving them of the succession. Nevertheless, where anyone keeps a woman of this kind as a wife, and dotal instruments have been executed, the same rule shall be observed with reference to his offspring, in order that, in no way, he may be deprived of acquiring his own patrimony by means of his children.

In addition to this, We decree that any children who have, by virtue of Imperial Rescripts, been arrogated by their fathers, shall enjoy the benefit and assistance of this Our most salutary law.

Given on the *Kalends* of April, during the Consulate of Anastasius, Consul for the fourth time, and Agapitus, 508.

7. *The Emperor Justin to Marinus, Prsetorian Prefect.*

We decree that the law of Anastasius, of Divine memory, which was promulgated with reference to natural children, shall only be valid in those cases which, up to this time, have come under the terms of the same law with reference to the marriages then existing, or which have subsequently been contracted; provided, however, that it shall not be held to benefit children born of a wicked or incestuous union. Moreover, We have decided, not without reason, that relief should be afforded to children of both sexes who, not the issue of an incestuous or wicked marriage, have, through the efforts of some woman, been arrogated or adopted by virtue of an Imperial Rescript, whether before the said law was promulgated, or

afterwards, up to the present time; so that said adoption or arrogation may be valid, and no question may be raised alleging that what the parties have obtained was forbidden by some law; as mercy dictates that, if any doubt on this point should arise, it ought not to be entertained, for the reason that those who suffer from the faults of others are not to blame. Therefore, children of this kind, after arrogation or adoption, come under the control of their fathers, and are entitled to succeed to their estates, not only as heirs at law, but also under a will.

Moreover, all persons are hereby notified that lawful posterity can only be sought in legal marriage, just as if the above-mentioned Constitution had not been published, for hereafter no excuse can be alleged for the unlawful desires of libertinage. No encouragement shall be given for this purpose beyond what is provided by the ancient laws, nor shall dependence any longer be placed upon the aforesaid Constitution which Our pious judgment declares shall be repealed from this day; nor shall the pretext of arrogation or adoption be advanced, as these will no longer be tolerated; nor shall any subtleties or claims based upon Imperial Rescripts be made use of, nor any dependence be placed upon unlawful schemes; for it is extremely unworthy as well as wicked to demand protection for vices in order that persons may be permitted to indulge their wantonness, and claim for themselves, under color of law, the rights and name of father which are legally denied them.

Given on the fifth of the *Ides* of November, during the Consulate of Justinus and Euthericus, 519.

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

On the ground of humanity, We grant permission to the fathers of natural children, when they have no legitimate offspring, or their mother is living, to appoint their said natural child or children their heirs, not only to three-twelfths of their estates (which former laws sanctioned), but to half, that is to say, six-twelfths of the same. So that, although they have no claim as heirs at law to the estate of their natural father, permission is given to them to take by his last will as aforesaid six-twelfths of the same, if their natural father is willing for them to do so; provided, however, that the testator does not, under any circumstances, exceed the above-mentioned amount of six-twelfths, in making bequests to all his natural children and their mother.

We also grant the natural father free permission to bequeath his estate to the amount of six-twelfths, in legacies and trusts, as well as in dowries and donations to his children begotten before marriage.

These provisions only apply to wills, bequests, dowries, and donations to be given or made hereafter.

Given at Constantinople, on the *Kalends* of January, during the second Consulate of Our Lord, the Emperor Justinian, 528.

Extract from, Novel 89, Chapters XII, and XV. Latin Text.

A father who dies without leaving any children, or relatives in the ascending line, to whom he would be required to bequeath his estate, can either transfer all of it to his natural children by will, or can give it to them by a donation *inter vivos.* Where only relatives in the ascending line survive him, he is permitted, after leaving them the share to which they are legally entitled, to distribute the remainder among his natural children. If, however, he leaves no legitimate offspring, and is not survived by a lawful wife, and dies intestate, but has natural children by a concubine, who was united to him solely by undoubted affection, the said children shall succeed to two-twelfths of their father's estate, and their mother shall receive her legitimate share of the same, if she is living. For whether there are any surviving legitimate children or not, or whether there are other heirs, and the wife is living, it is necessary for natural children of this kind to be supported in accordance with the judgment of

a good citizen. Hence such children are required to furnish the same service to their parents, if there is need of it; but those who are born of an unlawful connection are excluded from all benefits whatever.

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

We, very properly being of the opinion that the public welfare demands that the subjects of Our Empire should be governed by laws which are clear and free from all ambiguity, do promulgate the following decree, by which all doubt prevailing up to the present time having been removed, We establish it as certain that, whenever natural children are assigned to the *curia* of the domicile of their father, during the lifetime of the latter, or even after his death, they, in this manner, acquire a legitimate right to his estate; so that (as is manifestly entirely just), even though the said natural children may have previously attained to some illustrious dignity by which the condition of decurion cannot be effaced, they shall not be permitted to claim for themselves any rights to the estates of the ascendants or descendants of their said natural father, or of any of his agnates or cognates through their relationship to him; although they themselves, on account of the above-mentioned attachment to the *curia,* become the lawful heirs of their natural father.

These provisions apply to those who have already been assigned by their natural fathers to the condition of decurion, and are still living; and, in like manner, none of the legitimate descendants, ascendants, or collateral relatives can legally claim anything for themselves out of the estates of the said natural children. Where, however, a natural child of this kind, having subsequently been made the lawful heir of his father, whether he has children formerly born in lawful marriage or has other issue descended from him, they shall, by all means, be called to his succession without the execution of a will by the deceased, and the rule relating to the *curia* shall not apply; but if a fourth part of the estate should be due to the *curia,* none of the children of the deceased can be compelled to discharge the duties of decurion. The rule that any children which the said natural son may beget after he has been assigned to the *curia,* will undoubtedly be born decurions, and be compelled to discharge the duties of that office, must be observed.

(1) If, however, the decurion should die without leaving any children, and only the mother should survive, she will be entitled to the third part of his estate, and the *curia,* to whom the father has been attached shall have the other two-thirds. If, however, the mother of the deceased should not be living, others of her cognates, either of the descending or ascending lines, or in the collateral line, shall be called to her succession; and then whatever property came into the hands of the deceased through his natural father shall belong to the same *curia.* But where, after a natural son has been rendered a lawful heir, he has acquired anything from his mother, or from any other legitimate source, this shall go to the nearest maternal cognates of the deceased.

The following rule must, however, be observed; namely, whether the mother is living, or whether she died before her son, if anyone of the same family is ready to attach himself to the same *curia,,* he will be permitted to receive the property of the deceased which came into his hands from his father's estate, and he shall discharge the duties of decurion; and when this takes place, the mother of the deceased, if she is still living, shall not only be entitled to the third part of the property which her son has acquired from other sources than his father's estate, but she shall also receive all the property which she, as sole heir, is entitled to, or she shall share the same with her coheirs, if any there be.

(2) The rules which We have established with reference to the succession of a natural son who dies after having obtained the position of decurion, not only shall apply to those who were assigned to the *curia* by their natural father, but also to such as have previously been assigned to it, if they are still living. Where, however, they have died before the promulgation of the present law, We do not include their succession in its provisions.

(3) And, since the *curias* of cities should, by all means, be favored, We order that the following shall be added to what has preceded it, namely, that it shall be lawful for fathers to attach their natural sons to the *curise* of their places of residence, not only where they have no lawful children living, but also where they have any sons or other descendants by a lawful marriage, and that by this means their natural children shall also become their lawful successors; provided, however, that they shall, by no means, be permitted to give or leave either by donation or by last will to a natural child any more than they may have given or left to a child born in lawful marriage, to whom the smallest share has been either donated or bequeathed.

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

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

Where anyone has lived for a time in the pleasant society of a free woman with whom marriage is not forbidden by the laws, and has children by her, without any dotal instruments having been drawn up, and afterwards, induced by the same affection, he marries her, and begets other children after the marriage, in order to prevent the latter, being legitimate and under his control, from claiming for themselves the entire estate of their father, thereby excluding their brothers, who were born before the marriage, from sharing in the estate, We decree that injustice of this kind shall not be tolerated. For as affection for the first offspring was instrumental in bringing about the marriage, and gave occasion to the birth of the more recent children, why is it not most inequitable for the offspring born after marriage to exclude the others, when the former should be grateful to their brothers through whose means they themselves have become legitimate, and have obtained the name and standing of children of this description? For it is not probable that the man who afterwards made a donation, or gave a dowry to a woman of this kind, did not from the beginning entertain for her sufficient affection to consider her worthy of being his wife. Wherefore, We decree that in such cases all children, whether they have been born before marriage or subsequently, shall be equal in every respect; that all those belonging to the father shall be held to be under his control; and that no distinction shall exist between the former and the latter, but that all who are the issue of the same marriage shall enjoy similar advantages.

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

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

We formerly promulgated a law by which We ordered that if anyone should live with a woman without having for her the attachment

of a husband from the beginning (provided she was one with whom lawful marriage could be contracted), and he should have children by her, and afterwards, induced by affection, should marry her, and have other sons and daughters by her, not only the second children who were born after marriage shall be legitimate, and under paternal control, but also those previously born, who have afforded those who came into the world subsequently the opportunity of obtaining legitimacy.

Certain authorities have held that this law should be interpreted in such a way that if any children were born after the marriage, or even if there were some who had died, those born previously should not be considered legitimate, unless the children born under these different conditions should be living at the same time. We decree that excessive subtlety of this description shall be absolutely disregarded, as it is sufficient for a man to have sufficient affection after the birth of children to induce him to execute an instrument of marriage with the hope of having others. For even though what was hoped for may not have taken place, an accidental circumstance should, by no means, be conceded to derogate from the rights of children previously born. Where anyone has been living with a woman and causes her to

become pregnant, and subsequently, while she is still in this condition, enters into a contract of marriage with her, and a boy or girl is born, a much better reason exists that this offspring should be the legal issue of the father, be brought under his control, and be his heir in case of his death, whether he dies testate or intestate. For it would be extremely absurd if children born after marriage should confer the benefit of legitimacy upon others previously born, and that a boy or girl of this kind could not secure this advantage for themselves.

And, generally speaking, with reference to the various opinions given in such cases, We decree, and include in a definite provision -that, always, under such circumstances, where any doubt exists as to the status of children, the time of their birth, and not that of their conception, should be taken into account. This We do in order to favor children by providing that the date of birth should be considered, except in those instances in which the welfare of infants demands that the time of conception should rather be noted.

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

Extract from Novel 12, Chapter III. Latin Text.

This rule shall also apply where a father, previous to this union, had legitimate children by another wife from whom he has been legally separated, or where she is dead.

Extract from Novel 18, Last Chapter. Latin Text.

A new constitution, however, does not permit this rule to apply to the case of a female slave, unless where a man has no other children who are legitimate.

Extract from Novel 78, Chapter HI. Latin Text.

Another new constitution is considered generally to provide with regard to the children of a female slave that, by the sole fact of the bestowal of a dowry, she, as well as her offspring, will receive their freedom.

Extract from Novel 74- Latin Text.

Moreover, anyone who has no legitimate offspring, but only natural children the issue of a union of this description, can, by presenting a petition to the Emperor, render them legitimate, even without marriage, if the woman is already dead, or if she has left him, or remains concealed, or for any other reason is prevented from appearing, or where some impediment to matrimony exists, as for instance, the priesthood.

Extract from Novel 74, Chapter II. Latin Text.

Likewise, where a man dies without leaving legitimate offspring, and states in his will that he wishes his natural children to be his lawful heirs, he shall be permitted to do this, so that, after his death, the said children may petition the Emperor, and, after having produced the will, they can become the heirs through the indulgence of the sovereign and the law, provided they carry out the provisions of their father's will. This rule shall generally be observed. If, however, some of them desire to become legitimate, and others do not, the wishes of the first shall be granted, and the others shall remain in their condition of natural children.

Extract from Novel 13, Chapter II. Latin Text.

Where anyone who has natural children by a free woman capable of being his wife who states either in a public document or in one drawn up in his own hand and subscribed by three witnesses worthy of confidence, or says in his will or in any instrument, that such-and-such children are his, and does not use the term "natural," offspring of this kind shall be his lawful heirs; and if, to any one of the said children, he should make a statement in the manner above mentioned, it will be sufficient to confer the rights of legitimacy upon all others born of the same woman.

12. *The Same-to John, Prsetorian Prefect.*

A man, who had a legitimate son, had a natural grandson by the latter, and the question arose whether the name of grandson could legally be given to a child of this kind, for the grandfather desired to leave his entire estate to this grandson, his legitimate son, the father of the latter, having died; as it was only prohibited by the Sacred Constitutions that the entire inheritance, or such a part as 'he desired to leave them, should be left to natural children, and at .the same time their interest was limited to a certain amount.

A doubt of this kind gives rise to another, for what would be the case where a grandfather has either a legitimate grandson or a natural grandson by a natural son? Hence, as in all ambiguous questions of this kind, no definite conclusion can be arrived at with reference to such persons, and by the introduction of natural offspring no legal right can arise; to the end that the necessity of leaving something to them may be provided for by the laws, they shall be permitted to bestow upon these descendants as much of their estates as they may desire (of course, where there is no legitimate issue living). For the Imperial Constitutions prohibited that as much should be left to natural children as their parents might desire to give them, because they considered that, by so doing, the debauchery of their fathers could be restrained.

With reference to grandchildren, however, the rule in the instance above mentioned should not be observed, where there is no legitimate offspring to offer an impediment. But where such offspring exists, We extend the provisions of the ancient constitutions, which have been established concerning natural sons, to grandsons, as well; but We decree that they shall only apply to those who can obtain a share in their grandfather's estate by virtue of his will, for We do not allow any of them to become his heirs at law.

We decree that they shall not only have the benefit of the estate of their natural paternal grandfather, but also those of their greatgrandfather, and of his cognates; if anyone should desire to apply this term to men of such degenerate character.

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

TITLE XXVIII.

CONCERNING TESTAMENTARY GUARDIANSHIP.

1. *The Emperor Severus and Antoninus to Sperata.*

The person whom you state was appointed guardian for you by the will of your patroness is not liable to you in any action, if he did not interfere in the administration of the guardianship, for he was not legally appointed your guardian. Where, however, he, of his own accord, transacted your business, you can proceed against him in an action based on voluntary agency.

Given on the *Kalends* of August, during the Consulate of Asper and Maximus, 208.

2. *The Emperor Antoninus to Sabinianus.*

Although the guardian who was legally appointed for you by your father's will was living at the time when you became his heir, still, as another was also legally appointed for you by a codicil, both of-them will be your guardians under the will of the testator; unless your father revoked the testamentary appointment by designating the other mentioned in the codicil, for then the latter alone will be your guardian.

Given on the *Ides* of April, under the Consulate of the Aspers, 213.

3. *The Emperor Alexander to Gordius and Others.*

Where testamentary guardians are appointed for you, even though one of you may have attained his majority, that is to say, have passed the period of tutelage, your guardianship will not belong to him.

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

4. *The Same to Feliciana.*

A mother cannot appoint guardians for her children unless she has made them her heirs. However, when she has not designated them as her heirs, it is customary for the testamentary guardian to be confirmed by the Governor. Where, however, none of these things take place, and the testamentary guardians have administered the affairs of the trust, they will be liable in an action of guardianship.

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

5. *The Emperors Valerian and Gallienus to Daphna.*

If the father of certain minors desired that a slave belonging to another, with reference to whom you petition, should become the guardian of said minors, and be free, another guardian previously appointed retaining his office in the meantime, it will be necessary for the said slave to be purchased and manumitted in the presence of the Governor, and be added to the administration as curator.

Given on the third of the *Kalends* of March, during the Consulate of Secularis and Donatus, 261.

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

If your father legally appointed your uncle your guardian by will, and he was not excused, an action of guardianship can be brought against him, not only with reference to the affairs which he administered, but also on account of what he neglected (and which he Should have administered), before a competent judge, who shall order that satisfaction be given you in accordance with good faith.

Given on the *Nones* of April, during the Consulate of the CaBsars.

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

As you intend to proceed in an action against the guardian appointed for you by the will of your father, under whose control you were, a competent judge, having been applied to, will order anything due to you to be paid; for there is no doubt that a curator cannot be appointed by will.

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

8. *The Emperors Theodosius and Valentinian to Florentius, Prse-torian Prefect.*

It is legal for testamentary guardians to be appointed in the Greek language, so that those appointed in this manner may be

considered to have been appointed by the testator in terms authorized by law.

Given on the day before the *Ides* of September, during the Consulate of Theodosius, Consul for the fourteenth time, and Maximus, 439.

TITLE XXIX.

CONCERNING THE CONFIRMATION OF A GUARDIAN.

1. *The Emperor Alexander to Prisons.*

Guardians appointed by the will of the mother have no reason to be excused, unless, after proper examination, they are found to have also been appointed by a decree in accordance with the will of the deceased.

Given on the third of the *Nones* of March, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

2. *The Same to Valerius.*

There is no doubt that a guardian cannot legally be appointed either by a letter, or by an imperfect testament, but the wishes of the father with reference to the appointment of guardians or curators, in cases of this kind, is accustomed to be observed by the judge who has jurisdiction of such matters. In accordance with which, you should be under no apprehension that the prescribed time has expired before you have been confirmed.

Given on the eighth of the *Ides* of August, during the Consulate of Alexander, Consul for the second time, and Marcellus, 217.

3. *The Same to Sossianus, Prsetorian Prefect.*

If (as you allege) your father illegally appointed testamentary guardians for the minor whom you have mentioned, and that, before they were confirmed, others were also appointed by someone who" had the right to do so, what was properly done by law cannot be revoked; but a competent judge, having been applied to, will decide, in accordance with the welfare of the minor, whether the guardians appointed by the will of the father should be appointed his curators.

Given on the third of the *Ides* of April, during the Consulate of Modestus and Probus, 229.

4. *The Emperor Justinian to Julian, Prsetorian Prefect.*

With a view to providing for the welfare of natural children, We grant permission to their fathers to appoint guardians for them, to insure the administration of such property as they may have given or bequeathed them in any manner whatsoever; provided this is done within the limits prescribed by Our laws, and the said guardians are confirmed by a competent judge, and then administer the affairs of the guardianship.

Given at Constantinople, on the fifteenth of the *Kalends* of April, during the Consulate of Lampadius and Orestes, 530.

TITLE XXX.

CONCERNING LEGAL GUARDIANSHIPS.

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

The guardianship of males is not granted to maternal uncles by the Laws of the Twelve Tables, but this right is accorded to paternal uncles if they are not excused.

Given on the eighth of the *Kalends* of June, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

Extract from Novel 118, Chapter V. Latin Text.

As the right of inheritance is conceded to relatives without taking agnation into account, so also is the burden and benefit of guardianship granted to relatives, provided they are of the male sex and of full age, and are not forbidden by any law to undertake it. Where, however, there are several relatives of the same degree, and they are called to the guardianship, We order that, when one or more of them is present in court, a choice shall be made. The guardianship should be committed to him or them who are the best qualified to attend to it; responsibility attaching to all called to its administration and their property being tacitly encumbered to their wards to secure the proper management of the trust.

2. *The Same Emperors and Csesars to Asclepiodotus.*

It is perfectly clear that the administration of guardianship legally belongs to the agnates of the minor, unless they have undergone a change of condition.

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

3. *The Emperor Leo to Erythrius, Prsetorian Prefect.*

The *Lex Claudia* having been abrogated by a Constitution of the Emperor Constantine, of Divine Memory, and the right of agnation remaining unimpaired by virtue of the authority of the ancient law, the blood-relatives, that is to say, the brother, as well as the paternal uncle and the other kindred legally authorized, are called to the guardianship of females.

Given on the *Kalends* of July, during the Consulate of Martian and Zeno, 469.

4. *The Emperor Anastasius to Polycarp, Prsetorian Prefect.*

An emancipated man who, by Our present law, in the succession to his brother's or sister's estate is ordered to take precedence of all other cognates and agnates of inferior or more distant relationship, shall also be called to the legal guardianship of his brothers and sisters, as well as to that of their children, although he has been liberated from the control of his father by emancipation, unless he can avail himself of some other excuse provided by law; for We are not willing for him to claim that under this pretext he is released from the administration of the guardianship.

Given on the *Kalends* of April, under the Consulate of John and Paulinus, 498.

5. *The Emperor Justinian to Demosthenes, Praetorian Prefect.*

No brother, nor any other relative authorized by law, shall be called to the guardianship of either a freeborn person or a freedman before he has completed his twenty-fifth year; for each person must be liable only for his own administration, to prevent one from being burdened with the charges of another. For in this way both minors and adults will be subjected to proper guardianship, and the natural order will be reserved in every respect. How can it be tolerated that anyone should be a guardian, and at the same time subject to guardianship, or that the same individual should be a curator, while he himself is under tutelage? This is indeed an abominable confusion of names and things. All these matters are distinct, and testamentary or legal guardians or curators must be of such an age as to be competent for the management of their own affairs, and have all their property liable to hypothecation.

All those provisions which have been established by former laws with reference to the succession of freeborn persons, as well as freedmen, shall remain in full force, and shall not, in any way, be demin-ished in efficiency by the operation of the present law; and this particularly applies to the inheritances of freedmen, in order that they may not appear to lose the advantage of succession, for the reason that they do not assume the burden of guardianship.

Read seven times in the new Consistory of the Palace of Justinian.

Given on the third of the *Kalends* of November, during the fifth Consulate of Decius, 539.

TITLE XXXI.

CONCERNING THOSE WHO DEMAND GUARDIANS OR CURATORS.

1. *The Emperor Antoninus to Chrysantha.*

Notify the young man against whom you wish to appear to demand that curators be appointed for himself, with whom you can confer in accordance with the forms of law. If, however, he should not make this demand, you can apply to a competent judge, and he must perform his duty, and appoint curators.

Given on the second of the *Nones* of February, during the Consulate of Messala and Sabinus, 215.

2. *The Same to Epaphroditus.*

If your patron's children are of such an age that their affairs should be administered by guardians, be sure to appear before the Praetor, and give him the names of those for whom guardians ought to be appointed; and if you fail to do so, you will run the risk of being punished for your neglect of duty to your patron.

Given on the *Nones* of July, during the Consulate of Messala and Sabinus, 215.

3. *The Same to Atalanta.*

Ask a competent judge to appoint a capable guardian for your children, who is a resident of the same province, instead of the one that is deceased, or has been banished for life, who, in accordance with his duty, will provide for their welfare.

Given on the fourth of the *Ides* of July, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

4. *The Same to Domninus.*

If there are no near relatives who can demand that guardians be appointed for the children of your debtor, you yourself can take measures for that purpose, in order that the said children may be legally defended.

Given on the third of the *Ides* of July, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

5. *The Emperor Alexander to Fusciana.*

A maternal aunt is not forbidden to petition for guardians to be appointed for the children of her brother.

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

6. *The Same to Otacilia.*

Maternal affection will suggest to you whom you should ask to have appointed guardians for your son, and it should also induce you to see that nothing but what is proper is done in the administration of the affairs of your minor child. However, the necessity of demanding curators for their sons is not imposed upon mothers, as minors who have arrived at puberty, but are under twenty-five years of age, can petition to have curators appointed for themselves, if their affairs require it.

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

7. *The Emperor Gordian to Dionysius.*

Notify her, who was formerly your ward, to ask that a curator be appointed for herself, as she has not yet arrived at puberty, and you intend to give her in marriage. If she should neglect to do this, you will not be prevented from demanding a curator before a judge having jurisdiction of such matters, in order that you may be able the more readily to render an account of your administration.

Given on the sixth of the *Ides* of January, during the Consulship of Gordian and Aviola, 240.

8. *The Emperors Diocletian and Maximian to Musicus.*

As the positive duty of demanding guardians for their children is imposed upon mothers who are not to be held liable for fortuitous occurrences, and you state that an attorney who was appointed by the mother for the purpose of applying for a guardian for her minor son was killed by robbers, and the demand was postponed on account of this accident, it would be exceedingly unjust for the mother to be excluded from the succession of the estate of her son, as you assert that she was in no way responsible for the delay.

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

9. *The Same Emperors to Asclepiodotus.*

As a guardian cannot be appointed for a person who already has one, you will understand that the mother has not neglected her duty as a parent, in demanding the appointment, but that she cannot reasonably ask that a guardian be appointed where her son has already been legally provided with one.

Given at Byzantium, on the third of the *Nones* of April, under the Consulate of the same Emperors.

10. *The Same Emperors and Csssars to Prisons.*

You can formally petition for guardians to be appointed for the grandsons of your brother, if their mother does not perform her duty by making such an application.

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

11. *The Emperor Zeno to Dioscorus, Prsetorian Prefect.*

Mothers shall be subjected to the necessity of demanding the appointment of guardians for their natural children, just as in the case of those who are born in lawful wedlock, and neither ignorance of the law, nor its assumption for the purpose of evading the Imperial Constitutions, will profit them, if they should fail to apply for such an appointment.

Given at Constantinople, on the *Kalends* of September, during the Consulate of Zeno, Consul for the second time, 479.

TITLE XXXII.

WHERE A PETITION MUST BE MADE FOR THE APPOINTMENT OF GUARDIANS OR CURATORS.

1. *The Emperor Antoninus to Aristobula.*

The magistrates of the town from which your children derive their origin through their father, or where their property is situated, must see that guardians or curators are appointed for them at once, in accordance with the provisions of the law. If, however, your children do not possess any property in the province where they reside, and do not derive their paternal origin therefrom, they must return to their own country, or the place where their patrimony is situated, and establish their residence there, and legal defenders will, then be appointed for them.

Given on the *Kalends* of October, during the Consulship of Lsetus, Consul for the second time, and Cerealis, 216.

TITLE XXXIII.

CONCERNING THE GUARDIANS AND CURATORS OF ILLUSTRIOUS OR DISTINGUISHED PERSONS.

1. *The Emperors Valentinian, Theodosius, and Arcadius, to Proculus, Prefect of the City.*

Let the Prefect of the City, after having associated with himself ten men taken from among the senators, together with the distinguished Praetor, who has jurisdiction over matters relating to guardianships, appoint illustrious persons of any rank whatsoever, who are properly qualified, guardians or curators; and let them, as judges and experts, freely make such appointments without liability for any damages which may result from their acts. And if any of those who are eligible are not equal to the management of the property of the wards, it is proper that several be designated for this purpose in accordance with the ancient laws; so that he whom the assembly determines to be most worthy of administering the guardianship of said wards may obtain the appointment by the sole decision of the Prefect; and after all the formalities

have been complied with, the decree shall be issued by the Praetor. Therefore, all those who were present will be free from apprehension, and a just defence will be provided for the noble children and adults by the deliberation of these learned men.

It is, however, evident that We have established this regulation with reference to persons who have neither testamentary nor legal defenders to protect their lives, their age, or their property. Where men of this kind are appointed, and take no action for the defence of the rights of their wards, We prescribe by law that they can be held liable. We also decree that everything else which has been provided by former laws with reference to the cases of minors shall remain unaltered.

In the provinces governed by decurions, where guardians and curators are to be appointed for noble persons, they must give proper security, and, mindful of the risk they run, recognize that the property shall hereafter be liable to indemnify the said minors for any losses which they may sustain.

Given at Milan, on the third of the *Kalends* of January, under the Consulate of Timasius and Promotus, 389.

2. *The Emperors Valentinian, Theodosius, and Arcadius to Aure-lian, Prefect of the City.*

It is provided by this general law that decurions, occupied with the duties of their office, shall not be called to the guardianship of senators.

Given on the eighth of the *Kalends* of August, during the Consulate of Theodosius, Consul for the third time, and Abundantius, 393.

TITLE XXXIV.

WHO CAN APPOINT GUARDIANS AND CURATORS AND WHO CANNOT BE APPOINTED.

1. *The Emperor Alexander to Amphibulus.*

As you are at such an age that it is clear that your affairs should be administered by guardians or curators, for the reason that you allege that a dispute has arisen with reference to your freedom, it is not necessary for an obstacle to be placed in the way of the appointment of a curator, by whom your case may be defended, because in the meantime you are considered to be free.

Given on the *Kalends* of November, during the Consulate of Alexander, 223.

2. *The Same to Arthemisia.*

Although a husband should attend to the business of his wife, still, he cannot have a curator appointed for her.

Given on the *Kalends* of July, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

3. *The Emperor Philip- to Dolens.*

The statement made to you that a curator should be appointed for one who is blind is false.

Given on the thirteenth of the *Kalends* of August, during the Consulate of Peregrinus and ^Emilianus, 245.

4. *The Same to Emeritus.*

A soldier engaged in the performance of military duties cannot be appointed a guardian or a curator, whether he is legally entitled to hold the office, or has been designated by will, or in any other way, even though he may consent. When, however, being unaware of his incapacity, he administers the office, he will be liable to an action on the ground of business transacted.

Given on the tenth of the *Kalends* of August, during the Consulate of Peregrinus and Emilianus, 245.

5. *The Emperors Diocletian and Maximian, and the Ctesars, to .zEmiliana.*

It is a certain rule of law that a person who is born in another state, and who does not have his domicile where he is named, cannot legally be appointed a guardian by the Governor of another province, or by the municipal magistrates of the same, when he is not subject to their jurisdiction. Hence, when he ceases to discharge the duties of the office wrongfully imposed upon him, this does not render him liable.

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

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

Apply to the Governor of the province for the decision of the question referred to, namely, that a mother refuses to demand guardians for her children; and if he ascertains that she has neglected her duty, the said magistrate will not be prevented from appointing guardians, or he can order the names of persons to be presented to him, so they can be confirmed by his decree.

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

7. *The Same Emperors and Csesars to Rufus.*

There is no doubt that a guardian or curator cannot legally be appointed by a Governor for a person of servile condition.

Given at Philippopolis, on the second of the *Nones* of July, during the Consulate of the same Emperors.

8. *The Same Emperors and Csesars to Evelpistus.*

There is no doubt that when a creditor is appointed the guardian of his debtors, he not only loses his right of action against them, but that also he can pay himself.

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

Extract from Novel 72, Chapter II. Latin Text.

The debtor of a minor, or one to whom a minor is liable, or one who has the property of the latter in his possession, is prohibited from acting as his curator. If a curator should subsequently become the creditor of the minor, he cannot administer his affairs without the addition of another curator; for, in this instance, he who is appointed must either prove or swear in the beginning that the minor is indebted to him, or that his property is in his possession. If he remains silent, he shall lose his right of action. Likewise, if the debtor remains silent, he will not be entitled to rescind his contract, or pay the debt during the existence of the curatorship. If, however, the curator receives the assignment of an action against the minor, he will not be permitted to make use of it, even after the expiration of his term of office; nor can the person who assigned it to him bring suit, as he has violated the law, although the assignment may have been made for just reasons; but the minor will be pecuniarily benefited.

These provisions are valid, and apply to every curatorship, including those of spendthrifts and insane or demented persons, as well as to all others introduced by the laws.

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

If you have been appointed guardian of your sister's children whose paternal uncle has already been made their guardian, and who has not yet claimed any privilege of exemption, there is no doubt that, as the minors already have a guardian, the laws forbid another to be appointed, and

that the former must discharge the duties of the administration ; and you will not be liable under the said appointment.

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

10. *The Same Emperors and Csesars to the Soldier Florentinus.*

There is no doubt in law that a curator cannot be added when the person in question already has one, unless where proper cause is shown; and one cannot be substituted instead of another, if the latter . has not previously been removed. Therefore, you will be liable for the injury sustained by the business of your wards in the meantime, as you should have appointed an agent to act in your stead at your own risk; since it is certain that a magistrate cannot appoint another curator to act for you during your absence.

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

11. *The Emperor Constantius, and the C&sar Constantine, to Bassus, Prefect of the City.*

It is decreed that, in all kinds of actions, no one can appear in court before he reaches the age of puberty, unless by a special decree, or where a curator has been appointed for the purpose of administering his patrimony, or conduct the litigation, in order that any disputes which may arise during the course of the proceedings may be terminated promptly in accordance with law.

Given at Aquileia, on the third of the *Ides* of October, during the Consulate of Constantius and Licinius, 312.

12. *The Emperors Valentinian, Gratian, and Theodosius to Eutro-pius, Prsetorian Prefect.*

A curator appointed for a minor cannot abandon a case after issue has been joined, or withdraw from the administration of the trust under the pretext that, after the suit was commenced, a special curator to conduct it was appointed by himself.

Given at Constantinople, on the fourth of the *Kalends* of October, during the Consulate of Eucherius and Syagrius, 381.

13. *The Emperors Honorius and Theodosius to Monaxius, Urban Prefect.*

In order that the authority of magistrates may not be exceeded, We give notice that no tenant of the Emperor, nor anyone else who has a right to protect himself by special privilege from such an appointment, shall be compelled to discharge the duties of guardianship.

Given during the Consulate of Honorius, Consul for the eighth time, and Theodosius, Consul for the third time, 409.

TITLE XXXV.

WHEN A WOMAN CAN DISCHARGE THE DUTIES OF GUARDIANSHIP.

1. *The Emperor Alexander to Otacilia.*

It is the privilege of men to administer the office of guardian, as duties of this kind cannot be undertaken by women on account of the weakness of their sex.

Given on the tenth of the *Kalends* of October, during the Consulate of Julian, Consul for the second time, and Crispinus, 409.

2. *The Emperors Valentinian, Theodosius, and Arcadius to Tatian, Praetorian Prefect.*

Mothers who, after the death of their husbands, petition for the guardianship of their children and the administration of their affairs, must, before they are confirmed in office in accordance with law, state solemnly in writing under oath that they will not marry again. No woman, however, shall be forced to accept an office of this kind, but shall be free to do so under the conditions which We have established; for if she prefers to contract a second marriage, she

should not administer the guardianship. But in order that it may not be easy for her to violate her obligations, after she has once undertaken the legal guardianship, We order that the property of the husband who married her while she was administering it shall become encumbered, and be liable to the little children in order that none of their property may be lost by neglect or fraud.

We add to these provisions that if the woman is of full age, she shall have the right to demand the guardianship, when either a testamentary or a legal guardian is lacking, or when such a one is, by special privilege, excused from acting, or has been removed from office by reason of suspicion, or where he has been ascertained to be unfit to administer the property through weakness of either mind or body. If, however, the woman should refuse the guardianship, and prefer to marry again, then the Illustrious Prefect of the City, having summoned the Praetor who has jurisdiction of the appointment of guardians, or the judges who dispense justice in the provinces, shall, after investigation, direct defenders selected from another order to be appointed for the said minors.

Given at Milan, on the twelfth of the *Kalends* of February, during the Consulate of Valentinian, Consul for the fourth time, and Neo-terius, 373.

Extract from Novel,8, Chapter V. Latin Text. We permit the mother and grandmother, in their order, to assume the guardianship even before agnates, when either of them has declared in writing that she will not contract another marriage, and renounces the benefit of the Velleian Decree of the Senate. Testamentary guardians, however, will alone be preferred to the mother and grandmother, and will take precedence of legal and other guardians that may be appointed, as We desire the intention of the deceased to be carried out. With the exception of these women, We forbid all others to discharge the duties of guardians.

Extract from Novel 91, Chapter II. Latin Text.

The oath is not required at present, but it is settled that where a woman contracts a second marriage, she can be removed from the guardianship, and that she shall be fully liable to the minors, so far as is provided by law.

Extract from Novel 94. Latin Text.

In addition to this, if indebtedness of any description exists between the mother and her children, she cannot be permitted to act as their guardian as long as the obligation remains unpaid. The mother, however, can administer the guardianship of her natural children, if she observes all the formalities which are prescribed in the case of legitimate children.

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

If a father did not, in accordance with Our Constitution, appoint any testamentary guardian for his natural children, for the administration of the property which came to them from him, and their mother should desire to assume their guardianship, whether they are girls or boys, it shall be lawful for her to do so, as in the case of legitimate offspring, provided she previously swears before a competent judge that she will not contract a second marriage, but will preserve her chastity intact, and will renounce the benefit of the Velleian Decree of the Senate and every other legal privilege, and render her own property liable. Under such circumstances, We consent for her to be the guardian of her natural sons or daughters, and that all the provisions of the Imperial Constitutions which have reference to mothers, and their children born in lawful marriage, shall be observed by parents of this description. For if they can be appointed guardians of legitimate children who have a right to testamentary or legal guardians, and are themselves permitted to be the guardians of their children where others are lacking, there is much more reason, and it is much more humane in cases of this kind, where no legal guardianship can exist, for their mothers to be appointed.

Given at Constantinople, on the fifteenth of the *Kalends* of April, during the fifth Consulate of

Lampadius and Orestes, 530.

TITLE XXXVI.

IN CASES WHERE A MINOR ALREADY HAS A GUARDIAN OR CURATOR, ANOTHER GUARDIAN OR CURATOR CAN BE APPOINTED.

1. *The Emperor Antoninus to Tyberian and Rufus.*

When the guardian in whose stead you have been temporarily appointed, having been absent on public business, has performed the service which was imposed upon him, and returned, you should entertain no doubt that the affairs of the female ward come within the scope of his duty and care, and you will act for the benefit of your own interest if you appear before the eminent Governor of the province, and request that the guardian be compelled to resume the administration of the trust.

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

2. *The Emperor Alexander to Valentinian.*

A competent judge could and should have appointed a curator instead of the one who has been excused, even though the minor may already have had other guardians. Moreover, although he may have been substituted, together with others, in the place of the guardian who has been excused, still, you will not be liable for the risk of the administration after the age of puberty.

Given on the fifth of the *Ides* of June, during the Consulate of Modestus and Probus, 229.

3. *The Same to Hylas.*

If the Governor of the province does not consider that you are sufficiently solvent, as the property of your wards is scattered, that is to say, situated in different places, or if you alone are not competent to undertake the administration of the same, he must decide whether it is necessary for other curators to be joined with you for the purpose of administering the guardianship.

Given on the eighth of the *Ides* of December, during the Consulate of Pompeianus and Pelignus, 232.

4. *The Emperors Valerian and Gallienus to Euploius.*

Although a guardian cannot be appointed for a person who already has one, still, another who is suitable can, under certain circumstances, be substituted by the decree of a competent court, instead of one who, having been suspected, has been convicted and removed; and also instead of a guardian who has been excused, or who is dead, or who has been relegated.

Given on the *Ides* of March, during the Consulate of Secularis, Consul for the second time, and Donatus, 261.

5. *The Emperors Diocletian and Maximian, and the Csesars, to Zeno.*

As it is usual to add new curators on account of the increase of the property of the wards, those last appointed are not released from responsibility for the administration of the guardianship. For certainly if he who has ceased to administer the trust was solvent at the time of its termination, it is clear that no liability will attach to you for any subsequent period.

Given on the third of the *Kalends* of April, during the Consulate of the Csesars.

TITLE XXXVII.

CONCERNING THE ADMINISTRATION OF GUARDIANS AND CURATORS, AND OF MONEY BELONGING TO THE WARDS WHICH HAS EITHER BEEN LENT AT INTEREST, OR DEPOSITED.

Extract from Novel 72, Chapter VI. Latin Text.

It has very recently been provided that money belonging to a ward shall not be lent at interest by his curator, and if the latter should do so, he must assume the risk of the loan, except when the entire property subject to his administration is movable, for then the curator is only compelled to lend a sum sufficient for the support of the minor, and for the preservation of his estate. Any property in excess of this must be carefully preserved, unless the guardian is compelled by necessity to lend it, as, for instance, for the purpose of paying the expenses , of his ward.

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

It is without good reason that you hesitate to administer the property of the youth whose curator you are, on the ground that someone may think that you are liable for the time preceding your appointment; but do those things which you think should be done, and (as is the interest of all parties) see that the judge appointed to decide between you and the guardians discharges his duty as soon as possible.

Given on the twelfth of the *Kalends* of October, during the Consulate of Albinus and Emilianus, 207.

2. *The Same Emperors to Timon and Elpidophorus.*

You cannot bring suit against the curator of a youth with whom you have been appointed a colleague, as long as your common administration exists.

Given on the second of the *Kalends* of May, during the Consulate of Aper and Maximus, 208.

3. *The Emperor Antoninus to Eumosus.*

If it is proved before the judge who has jurisdiction of matters of this kind that the expenses incurred by you were necessary for your ward, and are due to just and honorable causes, he will direct that an account be taken of the same, even if a decree of the Praetor was not issued with reference to their payment; for whatever has been expended in good faith by guardians or curators is rather confirmed by justice than by the authority of others.

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

4. *The Same to Procula.*

Unless it is established that the money which was due (according to his accounts) from the paternal freedman who was the guardian of your daughter was either deposited by him, or expended in the purchase of land, it must be paid over to the Prefect'of the City, and the guardian shall be punished by him in accordance with what is prescribed by law.

Given on the twelfth of the *Kalends* of October, during the Consulate of the Emperor Antoninus, Consul for the fourth time, and Balbinus, 214.

5. *The Same to Rufinus.*

It is in vain that the former guardians of the young men, whose curatorship you are administering, refuse to comply with the judgment rendered against them, as the money collected can be placed on deposit by order of the Governor.

Given on the *Kalends* of June, during the Consulate of Laetus, Consul for the second time, and Cerealis, 216.

6. *The Emperor Alexander to Poconius.*

It is not unknown that, where guardians or curators purposely institute vexatious actions in the name of their wards or minors, they must, on that account, be punished, lest they may think that they can fraudulently and with impunity bring actions of their own, under the pretext of acting in behalf of their wards, or minors.

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

7. *The Same to Valerius.*

You should administer the guardianship of your wards in such a way as not to sell the building which was left to them, as it was devised under the condition that it should not be alienated.

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

8. *The Same to Aprilus.*

If you are aware that you have been appointed curator and you do not administer the trust, an action cannot be brought against you, if there are other curators who have administered the curator-ship and are solvent. If, however, you did not know that you were appointed curator, no liability will attach to you, even if the others should be insolvent.

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

9. *The Same to Inclyta.*

If you have curators, and they are unwilling to endow you with your own property, having appeared before the Governor of the province, you can have them compelled to provide a dowry suited to a person of honorable rank.

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

10. *The Same to Rufina.*

If you have suffered any injury through the negligence or fraud of the freedman who is your curator, the Governor of the province will take measures that the damage shall be made good by him who is responsible for it, and you should entertain no doubt that more severe measures will be taken, if fraud has been so openly committed that the freedman, after having been convicted of the crime, should be punished for having perpetrated it.

Given on the eleventh of the *Kalends* of August, during the Consulate of Agricola and Clementinus, 231.

11. *The Emperor Gordian to Csecilius.*

If the female ward, whose guardian you are, had a good case, and you did not take an appeal from the judgment rendered against her; or if, after the appeal, you did not comply with the formalities required by such a proceeding, you must indemnify your ward in an action on guardianship.

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

12. *The Same to Octaviana.*

You should take action with reference to the matters which you allege have been fraudulently or negligently conducted by the guardian or curator of those to whom you have succeeded, provided you have reached lawful age, for you are not ignorant that the number of children is of very little advantage to women in the administration of their affairs, if they are under lawful

age.

Given on the third of the *Nones* of October, during the Consulate of Gordian and Pompeianus, 242.

13. *The Same to Longinus.*

It is clear that guardians have a right to demand anything that is due to their wards, or placed on deposit, without being required to furnish security.

Given on the eighth of the *Kalends* of May, during the Consulate of Arian and Pappus, 244.

14. *The Emperor Philip, and the Csssar Philip, to Clement.*

It is certain that the accounts of the administration of a curator-ship cannot legally be demanded during the term of office of the curator, that is to say, before the minor has attained his twenty-fifth year.

Given on the day before the *Nones* of August, during the Consulate of Philip, Consul for the second time, and Titian, 246.

15. *The Emperors Diocletian and Maximian to Licinius.*

If you have not signed as surety, you need be under no apprehension of having suit brought against you as curator, on account of your having signed in that capacity, as you state that you have been released from liability by a decree of the Governor.

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

16. *The Same Emperors and Czesars to Proculus.*

Guardians have not the power to alienate the property of their wards without restriction, but they should, in making a sale, do so only for the advantage of the administration of such property as they are permitted to dispose of, and must furnish to the purchasers a just title to possession. Therefore, as guardians, under no circumstances, have authority to give away the property of those whose affairs they are managing, you will not be prevented from claiming the ownership of the property in question from those now in possession.

Given at Heraclea, on the tenth of the *Kalends* of May, during the Consulate.of the above-mentioned Emperors.

17. *The Same Emperors and Caesars to Martialis.*

Guardians need be under no apprehension with reference to their succession, as the execution of a will is not denied to those who have administered a guardianship, and they are not forbidden to give away any of their own property.

Given on the sixteenth of the *Kalends* of November, during the Consulate of the above-mentioned Emperors.

18. *The Same Emperors and Csesars to Sotericus.*

As you state that you have been appointed a guardian, notify the debtors of your female ward to make payment as is required by your office, for liability for the collection of the claims attaches to you. If they fail to satisfy their debts, you can have recourse to the Common Law by selling the pledges.

Given on the day before the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

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

When a guardian is appointed by a decree during his absence, and he is not excused according

to law, after having been notified, he will remain liable for the administration of the guardianship.

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

20. *The Emperor Constantine to Euphemiana.*

Minors are not prevented from claiming for themselves the property of their guardians or curators, on account of their liability for their administration, just as if the said property had been pledged to them.

The same rule applies where a guardian or curator is appointed, and does not administer the property of the minors.

Given on the seventh of the *Kalends* of April, during the Consulate of Volusianus and Annianus, 314.

21. *The Same Emperors to Maximus, Praetorian Prefect.*

The guardians of wards or minors are responsible for any loss of property, if the conditions upon which donations are dependent are neglected by them.

Given at Rome, on the third of the *Kalends* of February, under the Consulate of Sabinus and Rufinus, 316.

22. *The Same to the People.*

The law which requires guardians and curators to sell and reduce to money all gold, silver, jewels, clothing, and other valuable personal effects, as well as urban estates and slaves, buildings, baths, and warehouses and other property in the city, excepting rustic estates and slaves, is a rule which operates greatly to the disadvantage of minors. Hence, We order that no guardian or curator shall be permitted to sell any property of this description, unless required to do so by necessity, or by former laws, under which he is authorized to dispose of rustic estates and slaves, or pledge them or give them as a donation on account of marriage, or by way of dowry; this, of course, having been done after judicial investigation, proof of the case and rendition of a judgment, in order that there may be no room for fraud.

Therefore urban slaves, who- alone are familiar with the entire personal property, shall by all means always be retained as a part of the estate and household. For good slaves prevent the commission of fraud, and bad ones, where circumstances demand it, having been subjected to torture, can be compelled to reveal the truth; and all things shall be done in such a manner that the guardian cannot diminish, change, or suppress anything from the inventory. This is necessary with reference to clothing, pearls, gems, vases, and other personal property. In such cases it is better for slaves to die in the houses of their masters than to serve strangers. Responsibility for their flight should attach to the guardian, who has either caused discipline to be relaxed by his negligence, or has punished the slaves with undue severity, or subjected them to starvation or scourging, for they love their masters more than they hate them. This law is better than the ancient one, for, under the terms of the latter, the custody of slaves was relaxed, and the life of minors frequently endangered.

It is not permitted to sell the house in which the father died or the minor was brought up, for it would be sad enough not to see the statues of the family ancestors fastened therein, or to have them torn away. Therefore the house and all other immovable property shall remain as part of the patrimony of the minors, and no building of any kind originally belonging to the estate shall be destroyed, or allowed to fall into ruin through the fraudulent acts of the guardian. If, however, the father or any other person of whom the minor is the heir should leave a building in bad condition, the guardian, after having taken the evidence of several persons with reference to it, shall be compelled to repair it, so that the annual rent will bring more to the minors than the value of the same will lose by neglect.

Slaves, who are familiar with any trade, must contribute their labors to the profit of the minor, and the others who have no trade and cannot be of any use to their master, shall be supported partly by their labor, and partly by provisions forming part of the estate. This law has in view not only the interests of minors, as against their guardians, but also as against prodigal and dissolute women, who, for the most part, not only abandon the property of their children but also the lives of the latter to their new husbands.

It happened under the old law, by whose provisions the practice of loaning at interest money belonging to minors (on which the ancients based the entire force of patrimony), that this practice was no sooner temporary than it became permanent and established; and that the money loaned under such circumstances was often lost, and the inheritance of the minors reduced to nothing. Hence a sale of property made by a guardian without the authority of a decree shall be null and void, with the exception solely of such clothing as, being worn out by use, or, having been spoiled, can serve no purpose by being preserved. We do not forbid superfluous animals to be sold, even though they may be the property of minors.

Given on the *Ides* of March, during the Consulate of Constantine, Consul for the seventh time, and Constantine-Csesar, 326.

23. *The Same to Felix.*

If, through the negligence or fraud of his guardian or curator, the land of a minor should be lost because he was unwilling to pay the rent imposed upon said land by emphyteutical contract, the said guardian or curator shall be required to indemnify the minor out of his own property for any loss which he may have sustained.

Given at Constantinople, on the thirteenth of the *Kalends* of May, during the Consulate of Dalmatius and Xenophilus, 333.

24. *The Emperors Arcadius and Honorius to Eutychianus, Prse-torian Prefect.*

Guardians or curators, immediately after their appointment, must, in the presence of public officials, be careful to make a formal inventory of all the property and credits of the minors. They must also place all gold, silver, and other personal property which is not changed by lapse of time, that is found among the effects of the ward, in as safekeeping as possible, so that they can purchase suitable lands with the proceeds of said property; or if none can be found (as is usual) they can, in compliance with the terms of the ancient law, provide for the increase of said property by means of loans at interest, the collection of which is at the risk of the guardian.

Given at Constantinople, on the seventh of the *Kalends of* March, during the Consulate of Arcadius, Consul for the fourth time, and Honorius, Consul for the third time, 396.

25. *The Emperor Justinian to John, Prsetorian Prefect.* We order that the debtors of wards or minors shall be permitted to make payment to them through the medium of their guardians and curators, who have previously given proper security, provided that this has been done by virtue of a judicial decision without any loss. After this has taken place, and the judge has rendered his decision, and the debtor has discharged the obligation, he shall then enjoy perfect security, and no one shall subsequently be subjected to annoyance on this account; for whatever has been done properly and in accordance with law in the beginning should not be revived in any event whatsoever.

We do not, however, extend the operation of this law to rents, income, or anything else of this kind to which the ward or the minor may be entitled; but if a foreign debtor should desire to make payment and release himself from liability arising from a loan at interest, or from any other such obligation, he can do so, for then We order that the above formalities shall be observed.

Given at Constantinople, on the tenth of the *Kalends* of March, after the fifth Consulate of

Lampadius and Orestes, 531.

26. *The Same to John, Prsetorian Prefect.*

A certain woman, having drawn up her will, passed over her son, and the latter became the guardian or curator of his brother, or of a stranger who had been appointed heir by the mother of the guardian or curator. In the present instance, it is perfectly plain that the guardian or curator occupies a dangerous position; for whether he refuses his authority or consent for the ward or minor to enter upon the estate, lest by doing so his rights may be prejudiced (for if he does, he runs the imminent risk of an action of guardianship on the ground of voluntary agency being brought against him by either the ward or the minor to indemnify him for loss suffered through his delay), or whether he, being alarmed by apprehensions of this kind, gives his consent, he still runs a risk, as by acquiescence he loses his rights, for he appears to have confirmed the will of his mother, which he thought should be attacked.

In addition to this, many other cases arise in which a guardian or curator may be apprehensive of prejudicing his interests, as, for instance, where hypothecation and various other matters are involved.

We find that it has been generally laid down that all rights of action to which a guardian or curator is liable on account of his conduct in office should be assigned against the former ward or minor, after the guardian or curator has relinquished his trust. Induced by this excellent example, We desire to remove the fear of a guardian or curator in all other cases also, in which he may apprehend that his rights will in some manner be prejudiced; therefore We grant him the power to administer the affairs of his wards or minors with the greatest confidence, being aware that this Our law preserved for him his rights unimpaired, and that he will suffer no loss through giving his authority or consent under such circumstances.

Given at Constantinople, on the tenth of the *Kalends* of September, after the fifth Consulship of Lampadius and Orestes, 531.

27. *The Same to John, Prsetorian Prefect.*

We extend the scope of the Constitution that We have recently promulgated, which has reference to payments to be made in the case of the contracts of minors, whether they relate to rents, income, or other similar sources, as well as to interest. It is, however, only applicable to interest recently due, and not to that accrued for several years, the total of which does not exceed the sum of a hundred *solidi.*

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

28. *The Same to John, Prsetorian Prefect.*

We decree that no guardian or curator of a ward, a minor, a madman, or any other person for whom curators are appointed under the ancient laws, as well as under Our Laws and Constitutions, shall refuse to undertake the defence of such a person which he has agreed to conduct, but that he shall defend all those above mentioned from the beginning of the suit, in every way authorized by law, and shall prepare their cases in a proper manner, being well aware that this is a necessary duty of his guardianship or curatorship. If, however, he should refuse to do so, or delay to act, he can not only be removed on the ground of suspicion, and be considered infamous, but he shall also be compelled to make good out of his own property all losses which the persons aforesaid may sustain through his refusal to undertake their defence.

(1) Where, however, anyone, after having been notified that proceedings have been instituted against him, furnishes the ordinary security required in proceedings of this kind, either after issue has been joined in which he has appeared by himself and not by an attorney, or if he should become demented or insane, We order that he shall at once have a curator appointed for him by a competent court, through the care and foresight of the judge before whom the

action is pending, as well as through that of the cognates and other relatives of the party in question, and even through the agency of the plaintiff, if he should desire this to be done, so that the suit brought by him may not be too greatly prolonged, and the curator who has been appointed may be required to conduct the defence, and attend to the other matters growing out of the action.

(2) Those also (whether they be mothers or any other persons) who, at their own risk, have asked that guardians and curators of their own property be appointed, should compel the individuals whom they have designated as guardians or curators to prepare to undertake the defence of the parties whom they represent. If they should be unwilling to do this, and, on account of their refusal, should be removed from the guardianship or curatorship, We require the persons aforesaid to designate other guardians or curators for the administration of those matters for which guardians or curators are appointed, who will declare openly that they will conduct the defence. Lest such persons may be abandoned without proper protection, or the rights of the parties interested may remain too long without being decided, We decree that immediately, that is to say, after the refusal of those who were designated to undertake the defence, in cases (as has already been stated) when this can be done, the appointment of other guardians and curators shall be made, the cognates, other relatives, connections by marriage, creditors, and all other persons who are interested being present, and advising those who, according to the laws, have a right to appoint guardians or curators.

(3) In this instance, wishing to state and define more clearly what kind of a defence should be conducted, lest guardians or curators may think that too heavy a burden is imposed upon them, We decree that they shall make such a defence as does not require security to be furnished with a view to the termination of the action; but only that they will proceed in behalf of the ward or minor or any other person whom they represent, in conformity with the provisions of the laws, and by the authority of this enactment, they are granted permission to give the property subject to their administration as security for the lawsuit, without any decree.

(4) Desiring to remove all doubt with reference to the defence of wards, minors, and other persons, We order that guardians and curators shall not be appointed, unless they first solemnly declare that every step for the administration of the property of those entrusted to their care will be taken by them, not only in the conduct of their affairs, but also in whatever relates to furnishing security for the same. They must also state in plain terms that they will conduct the defence of their wards and minors, and the other persons previously mentioned, without any delay whatever, as they are required to do.

(5) In order to leave no doubt on this point, We add to these provisions that all guardians and curators shall be permitted to sell at a just price, and without any decree of court, all crops of every description, that is to say, wine, oil, and grain, whether these are obtained from the rents of land, or have been derived from property of the persons under their control, at the price at which they are worth at the time and place of the sale, and any money which may be collected from the sale of said crops shall be administered along with the other property of the said wards, minors, or other persons.

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

TITLE XXXVIII.

CONCERNING THE LIABILITIES OF GUARDIANS AND CURATORS.

1. *The Emperor Alexander to Quantus.*

Freedmen who are appointed guardians on account of their knowledge of the circumstances of their wards, although they alone may not be invested with the power of administering the property of the said wards or minors on account of their poverty, are, nevertheless,

all liable, whether they conceal from their fellow-guardians or curators those things which they ought to know, as being connected with the welfare of their wards, or whether they are guilty of fraud, either alone or in complicity with others, or whether they should be regarded as suspicious, or whether they fail to discharge the duties of their office, or do not manifest the respect which they should do.

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

2. *The Same to Saturus.*

Personal liability for the administration of guardians who transact the affairs of wards in one province does not extend to those who administer the guardianship in another.

Given on the *Nones* of July, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

3. *The Emperor Philip and the Csesar Philip to Graticm..*

If the property belonging to your ward, which was deposited in a warehouse and which you should have sold, has been consumed by fire in your lodging, as you allege, you assert without good reason that you should not bear the loss resulting from your negligence or inactivity, but that it should be sustained by your ward.

Given on the third of the *Kalends* of April, during the Consulate of Philip and Titian, 246.

4. *The Same Emperor and Caesar to Florus.*

It has frequently been stated in rescripts that guardians and curators are not responsible for accidental occurrences which could not be provided against.

Given on the twelfth of the *Kalends* of September, during the Consulate of Philip and Titian, 246.

5. *The Emperors Diocletian and Maximian to Severus.*

If you have been appointed guardian on petition, or by will, and have not learned of your appointment, not because of negligence, but through excusable ignorance, and you establish this fact by clear proofs, you will not be liable for the administration of the guardianship during the time you were ignorant that it had been conferred upon you.

Given on the third of the *Ides* of September, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

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

It is reasonable that a guardian should not be responsible for the administration of the guardianship, for any time following the termination of the same.

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

TITLE XXXIX.

WHEN MINORS CAN SUE OR BE SUED ON ACCOUNT OF THE ACTS OF THEIR GUARDIANS OR CURATORS.

1. *The Emperor Antoninus to Septimius.*

If Juliana, against whose curators a decision has been rendered in your favor, has passed her twenty-fifth year, a praetorian action to enforce judgment can be brought by you against her, and her property, for it has frequently been decided that guardians and curators cannot be sued on account of their administration of the affairs of wards or minors after the termination of their office.

Given at Rome on the eighth of the *Kalends* of July, under the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to Sorarchus.*

Although your guardians, when they lent your money, made stipulations in their own names, you will be entitled to an equitable action.

3. *The Emperor Gordian to Prudentianus.*

If the money lent in the name of the minor to the guardian or curator has been employed for the benefit of the property of the former, it is only reasonable that a personal action should be granted against the said minor.

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

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

If those who have been appointed your guardians or curators while you were under age should afterwards continue to administer your affairs, and lease your lands, sue them in accordance with the forms of the law. An equitable action based on their contracts can be demanded by you against the heirs of the lessee.

Given on the third of the *Nones* of March, under the Consulate of the above-mentioned Emperors.

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

A right of action cannot be transferred by a guardian to his ward unless for certain reasons.

Given on the *Ides* of December, during the Consulate of the Csesars.

TITLE XL.

WHERE THERE ARE SEVERAL GUARDIANS OR CURATORS, ALL OR ONE OF THEM CAN SUE OR BE SUED IN THE NAME OF THE MINOR.

1. *The Emperor Antonins to the Soldier Cassius.*

You should not be ignorant that a case can be defended by one of the guardians or curators of a minor, when the others refuse to undertake the defence.

Given on the *Nones* of November, during the Consulate of Mes-sala and Sabinus, 215.

2. *The Emperor Constantine, and the Csesar Licinius, to Sym-machus.*

If liability for the administration has been divided among guardians by provinces, it *is* settled that those only can sue and be sued who are discharging the duties of the guardianship and curatorship in each province, to prevent the guardians of minors in one province from being brought into court in another.

Given on the day before the *Nones* of February, during the Consulship of Constantine and Licinius, 319.

TITLE XLI.

NEITHER A GUARDIAN NOR A CURATOR SHALL ACT AS A COLLECTOR OF TAXES.

1. *The Emperor Antoninus to Sextus.*

A competent judge is well aware that those who are conducting the affairs either of the guardianship or curatorship of wards or minors, and have not yet rendered the account of their administration, should not be permitted to act as collectors of taxes. But although you accepted an office of this kind contrary to law, as you have voluntarily appeared before me, you will not be guilty of the crime of deceit, if you satisfy the Treasury as well as your wards.

If, however, being already liable to the Treasury on this account, you state that you have subsequently been appointed a guardian, you can be released from liability for the guardianship.

Given at Rome on the eighth of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

TITLE XLII.

CONCERNING THE GUARDIAN OR CURATOR WHO DOES NOT FURNISH SECURITY.

1. *The Emperors Valerian and Gallienus to Titus and Flavianus.*

If you have not yet reached lawful age, demand security from those who you state have been appointed your curators by your adversary while he was performing the functions of a magistrate, and who are not solvent, for they should be prevented from administering your affairs, unless they provide for your security by means of a bond.

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

2. *The Same Emperors, and the Ctesar Valerian, to Euploius.*

Application having been made to the Governor of the province, he will order that if the remaining guardian does not furnish security in accordance with his order and the requirements of the law, he shall be removed from office if, without being branded with infamy, he did this on account of poverty; but if he has acted fraudulently he will be considered infamous, and the Governor shall order other suitable guardians to be substituted in the place of those who are deceased, especially as you allege that the patrimony of the ward has been increased by the addition of another estate. The guardians who have been appointed must demand an account of the guardianship from the heirs of those who you say have died.

Given on the *Ides* of May, during the Consulate of Secullaris and Donatus, 261.

3. *The Emperors Diocletian and Maximian to Stratonicus.*

There is no doubt that guardians who have not been appointed by will have no authority to administer property unless the guardianship is protected by security previously furnished. Therefore, where a guardian who has not given security for his administration is sued, the judgment rendered against him cannot affect your rights, nor can the business which he has transacted be considered as possessing any validity. Hence you will in vain apply for the relief of complete restitution, when whatever has been done by him is void in law.

Given at Nicomedia, on the eighteenth of the *Kalends* of January, during the Consulate of Diocletian, Consul for the third time, and Maximian, 287.

4. *The Same Emperors and Csesars to Tertullus.*

The condition of all guardians is not the same. For example, where a testamentary guardian has been confirmed by a Governor, or one is appointed after investigation, it is clear that he is not required to give security for the preservation of the property of his ward; still, it has long been the practice that where several guardians have been appointed after investigation, and one of them has, in accordance with the terms of the Edict, furnished security for the preservation of the property of his ward, he shall be preferred to the others in the administration of the guardianship.

Given at Nicomedia, on the *Ides* of December, during the Consulate of the Caesars.

5. *The Emperors Constantine and Maximian to the Csesars Sev-erus and Maximus.*

A guardian who is obliged to furnish security, but has not done so, cannot in any manner alienate any of the property of his ward. But it is perfectly evident that, after he has been

chosen for the administration of the guardianship, he can demand possession of the property in the name of his ward, and that he should perform any other acts which are necessary to be done at the time.

Given on the eleventh of the *Kalends* of January, during the Consulate of Constantius and Maximian, 305.

TITLE XLIII.

CONCERNING SUSPECTED GUARDIANS AND CURATORS.

1. *The Emperor Antoninus to Domitia.*

You can cause your freedman, who is the guardian of your son, to be declared liable to suspicion, if you think that he has fraudulently administered the property of his ward, provided his office has not been terminated by the arrival of the ward at the age of puberty; for if he has ceased to be a guardian by law, an action of guardianship should be brought against him.

Given at Rome on the *Ides* of August, during the Consulate of the two Aspers, 213.

2. *The Same to Longinus.*

Where, through the fault of curators, the transfer of their trust to them is delayed, they become liable. If, however, you think that this delay has been caused by fraud, demand that they be declared suspicious, and you can have others appointed in their stead.

Given on the *Ides* of January, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

3. *The Emperor Alexander to Fortunata.*

The Governor of the province will, by the employment of more severe measures, compel the guardians of your children to discharge the duties of their administration. If, however, they persist in the same obstinacy, you will not be prevented from asking that they be declared suspicious, in order that others may be appointed in their stead.

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

4. *The Same Emperor to Thalida.*

You can demand that the guardian who has been appointed by the will of your father be declared suspicious, if you think that he has committed fraud while acting in that capacity.

Given on the eighth of the *Kalends* of January, during the Consulate of Maximus, Consul for the second time, and Paternus, 234.

5. *The Same to Asclepias.*

In applying for the removal of guardians or curators on the ground of suspicion, it is necessary in the first place to carefully consider not only the amount of their property, but whether anything has been done by them either negligently or fraudulently.

Given on the sixth of the *Kalends* of January, during the Consulate of Maximus, Consul for the second time, and Paternus, 234.

6. *The Emperor Gordian to Felix.*

You are performing the duty required by affection when you attempt to protect the children of your brother, as blood relationship demands. Therefore, if their guardians or curators should not properly administer their affairs, and, having demanded that they be declared suspicious, you proved that this is the case, you can easily have others appointed in their stead. If, however, they have committed no fraudulent act, but are so poor that the property of the

children of your brother will be endangered by their administration of the same, the Governor of the province must decide whether a curator, who is solvent, should be added to them. The right to demand their removal is not restricted to their ascendants of either sex, but is also enjoyed by their cognates, as well as strangers and connections by marriage, and even by him who has the administration of the property, if he is not under the age of puberty; which step must be approved by his cognates of good reputation.

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

7. *The Same to Gorgonia.*

The Governor of the province shall order him whom you accuse of being a suspicious guardian or curator to abstain from the administration of all your property during the hearing of the case, and until it has been terminated. In the meantime, another may be appointed in his stead for the management of the property.

Given on the seventh of the *Kalends* of March, during the Consulate of Sabinus, Consul for the second time, and Venustus, 341.

8. *The Emperor Philip and the C&sar Philip to Proculus.*

If you have not made application for your fellow-guardian to be declared suspicious, and be removed from the administration of the property of your ward, the demand that you now make for him to transfer the guardianship to you in the name of said ward, can, by no means, be admitted.

Given on the fourteenth of the *Kalends* of November, during the Consulate of Peregrinus and Emilianus, 245.

9. *The Emperors Diocletian and Maxvmian to Hammianus.*

It is clear that guardians who have been declared suspicious on account of fraud committed by them, and not those who have been removed on account of negligence, become infamous.

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

TITLE XLIV.

CONCERNING A GUARDIAN OR CURATOR APPOINTED TO CONDUCT LITIGATION.

1. *The Emperor Antoninus to Miltiades.*

If you have any action to bring against your wards, you can bring it, provided your fellow-guardians appear and defend the case; and if you have no fellow-guardians, curators should be appointed for the purpose of defence in litigation of this kind.

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

2. *The Emperor Alexander to Evarestus.*

The judge having jurisdiction of such matters shall decide whether you are entitled to an action for the recovery of the land belonging to your father's estate. You should, however, take into consideration your duty as guardian (which office you say you hold), in order that, if eviction should take place in consequence of the proceedings, you will not subject your ward, as the heir, to the payment of a larger price than was given by the other party, if you undertake the defence, and you can either set it off against your accounts, or you can bring a counter action of guardianship.

Your rights, if you have any, will not be prejudiced under these circumstances; and curators can be appointed for the ward for the purpose of defending the case, which should be brought against you as claimant of the property.

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

3. *The Emperor Galliemis to Valerius.*

A guardian or curator appointed for the purpose of defending the case of a ward cannot be sued for the acts of his administration, as the guardianship has only been undertaken for a special purpose. Therefore if (as you allege) you have transacted no business with the exception of that for which you were appointed, suit will in vain be brought against you.

Given on the *Kalends* of April, during the Consulate of Valerian and Lucian, 266.

4. *The Same Emperor to Irenseus.*

If, acting as a guardian appointed to conduct a lawsuit, you have expended anything in good faith, you can collect it in the customary manner from your fellow-guardians.

Given on the *Kalends* of November during the Consulate of Pa-ternus and Arcesilaus, 263.

5. *The Emperors Diocletian and Maximian to Tigranus.*

When, either under the terms of a will, or through legal relationship, the responsibility of the guardianship of the children of your brother has been imposed upon you, you should be under no apprehensions with reference to any disputes which you state formerly existed between you and your deceased brother; for if suit should be brought, an attorney having been appointed, and a curator designated to conduct the case of the wards, which should be done with the formalities required by law, the interests of all parties will be protected.

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

TITLE XLV.

CONCERNING ONE WHO TRANSACTS BUSINESS IN THE PLACE OF A GUARDIAN.

1. *The Emperors Valerian and Gallienus to Marcellus.*

Women, also, who administer the affairs of wards in the capacity of guardians, are required to render accounts.

Given during the Consulate of Emilianus and Bassus, 260.

2. *The Emperors Diocletian and Maximian, and the Cazsars, tc Marcus.*

A person who has not been legally appointed guardian, but who acts in the name of minors, can be removed by an exception (if he is not a guardian), although he may discharge the duties enjoined upon persons of this kind.

Given on the *Nones* of December, during the Consulate of the Caesars.

TITLE XLVI.

WHERE A MOTHER PROMISES INDEMNITY.

1. *The Emperor Alexander to Brutia.*

The guardians who have been appointed by the magistrates upon your application, are at their risk, rather than that you, contrary to the condition of your sex, should be liable to anyone for the reason that you have demanded guardians to be appointed for your children on your own responsibility.

Given on the third of the *Ides* of March, during the Consulate of Maximus, Consul for the third time, and Urbanus, 225.

2. *The Emperor Philip and the Csesar Philip to Asclepias and Menander.*

You allege that indemnity has been promised to you in the name of your wards by their

mother and paternal uncle, who have desired to transact certain business, and, under such circumstances, if the said wards have reached lawful age, they can proceed against you legally, and not against their mother or their uncle; hence, it is not without reason that you ask to be indemnified against what you state was undertaken at their risk, during their administration of said business.

Given on the fourth of the *Ides* of July, during the Consulate of Praesens and Albinus, 247.

3. *The Emperors Diocletian and Maximian to Caianus.*

You improperly contend that the mother is liable to you for the administration of an incapable guardian appointed at her instance, as this cannot take place unless it was specifically stated in the decree authorizing his appointment that she would be liable.

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

TITLE XLVII.

WHERE A GUARDIAN IS APPOINTED AGAINST THE WISHES OF THE MOTHER.

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

If you prove that Fuscinius was appointed guardian of your son in opposition to the last will of his deceased mother, the Praetor will decree that he shall be removed from the guardianship, without being considered infamous. This provision, however, will not apply if the guardian should be convicted of having been guilty of fraud.

Given on the thirteenth of the *Kalends* of March, during the Consulate of Lateranus and Rufinus, 198.

TITLE XLVIII.

A GUARDIAN SHOULD ASSIST IN THE TRIAL OF A CASE OF HIS WARD AFTER THE LATTER REACHES PUBERTY.

1. *The Emperor Philip to Dexter.*

It has been frequently stated in rescripts that guardians who have not yet transferred their administration to curators must assist in the defence of the cases of their wards. Therefore if, as you allege, the parties whom you mention have in their possession any documents which can be of assistance in the appeal of the case, the Governor of the province, after application has been made to him, shall order them to produce said documents, or be liable for not doing so.

Given on the twelfth of the *Kalends* of November, during the Consulate of Philip and Titian, 246.

TITLE XLIX.

WHERE MINORS SHOULD BE BROUGHT UP.

1. *The Emperor Alexander to Dionysodorus.*

The bringing up of your wards should be entrusted to their mother in preference to all other persons, if she has not given them a stepfather. Where, however, a dispute with reference to this point arises between her and the cognates and guardians, the Governor of the province, after having taken into consideration the rank and relationship of the parties, should decide where the child is to be brought up; and when he renders such a decision, he whom he charges with this duty will be obliged to perform it.

Given on the seventh of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Julianus, 224.

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

The Governor of the province will decide whether your grandson by your daughter shall reside with you, or with his paternal uncle,

after having- taken into account the affection which each of you entertains for him, and which one he is most likely to succeed as heir.

TITLE L.

CONCERNING THE SUPPORT TO BE FURNISHED TO A WARD.

1. *The Emperor Antoninus to FoMstinus.*

When a ward is not furnished support by his guardian, he should apply to the Governor of the province who will perform his duty in seeing that no delay takes place in providing him with food.

The same rule applies if a suit is pending with reference to the status of the ward or minor, or concerning his property.

Given at Rome, on the sixth of the *Ides* of July, during the Consulate of La3tus, Consul for the second time, and Cerealis, 216.

2. *The Emperor Alexander to Euphidus.*

Although for the most part it is required that the support given to wards or minors by a decision of the Prsetor should be regulated in proportion to their means, still, sometimes those who transact the business of others make provisions for them at their own instance, to avoid having any controversy in court. Hence, where a guardian, being a good and innocent man, provides for his ward in accordance with his own judgment, which it is sometimes necessary for him to do in order to avoid revealing the secrets of the estate, and exposing debts which may be doubtful, since, in the meantime, it is better to keep silent than to have any inquiry made concerning the amount of their property, by voluntarily applying to the judge to establish their allowance and giving him information against the interests of the wards, there is no doubt that they should be reimbursed for any expenses which they may have incurred for the support, the bringing up, and the education of the wards, in accordance with the opinion of a good citizen. For it should not be tolerated that a young man who has received instruction and has been supported should refuse to pay such expenses, if he cannot prove that they have been incurred by someone else, just as if he had lived on wind, and was not imbued with the principles of a freeman.

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

TITLE LI.

THE DECISION OP GUARDIANSHIP.

1. *The Emperor Antoninus to Leo.*

As an account of the administration of your guardianship has been demanded by you, it is not in conformity with the trust or with legal evidence (as you allege), for you to be compelled to show that the testator either increased or diminished the estate of the wards by the terms of his will.

2. *The Same to Prsesentinus.*

The judge who has jurisdiction over the case shall examine whether the debts due to the estate were good at the beginning of the guardianship, and whether they have subsequently become uncollectible through the gross negligence of the guardian; and if it is clear that they have been depreciated through the fraud or evident negligence of the guardian, he must provide for indemnification of the ward by an action of guardianship growing out of the negligence of the guardian.

Given on the *Nones* of July, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Same to Vitalius.*

If your curator, after a decree of the Governor, appropriates a sum of money which had been deposited for the purchase of a certain tract of land, and purchases it for himself, you can take your choice whether you will claim the property as having been bought with your money, or whether you will demand it with interest as having been converted by him to his own use. The judge before whom the action is brought shall render his decision in accordance with the circumstances.

Given on the third of the *Kalends* of July, during the Consulate of Lastus, Consul for the second time, and Cerealis, 216.

4. *The Emperor Alexander to Aglaiis.*

There is no reason why he who rejects the estate of his father in conformity with the terms of the Edict should have an action of inheritance brought against him. Nor does it make any difference if an action will lie in his favor against his curators or guardians, where he did not designedly reject the estate. In a proceeding of this kind, which has reference to what the guardians did, or should have done, their negligence alone is considered; and no account is taken of the damages sustained by the ward through not accepting the estate. The result of this is that, if you have compromised with your guardians or curators, no action will lie in favor of the creditors of your father as against you.

Given on the third of the *Kalends of* May, during the Consulate of Alexander, 223.

5. *The Emperor Gordian to Victorinus.*

It has been established for a long time that all guardians or their heirs should appear before the same judge. Therefore, as you allege that your father administered the guardianship with another person, the Governor of the province should appoint the same judge for the purpose of determining how much you, as well as the heirs of the fellow-guardians of your father, should each be required to pay.

Given on the tenth of the *Kalends* of August, during the Consulate of Pius and Pontianus, 239.

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

As it is alleged that your guardian is not only guilty of having made a forbidden sale, but also of fraud with reference to the price, the Governor of the province should not hesitate to order the remainder of the price, together with interest for" which your property was sold, immediately to be returned to you, if you desire to have the sale confirmed. It is superfluous for you to petition Us to have the heirs of him who sold the property pay you the price of the same, which you have demanded from them, for the reason that this cannot be concealed from the knowledge of the Governor.

The guardians who are concerned in the transaction, or their heirs, should be sued in the first place, on account of the affairs which have been administered by them, and the other guardians can only be held liable for damages for business which they have transacted as substitutes. If, however, it is shown that all of them administered the guardianship together, you will have the right to select which one you will sue, so that the rights of action which you have against the others may be assigned to the one whom you have chosen.

Given on the fourth of the *Kalends* of September, during the Consulate of the Emperor Diocletian, Consul for the fourth time, and the Emperor Maximian, Consul for the third time, 290.

7. *The Same Emperors and Csesars to Alexander.*

It is a certain rule of law that anything that minors have lost through the fraud, or gross or slight negligence of a guardian or curator, they can recover by the action of guardianship, or by the praetorian action of voluntary agency, even if the said guardian or curator did not acquire the property when he could have done so.

Given on the day before the *Ides* of April, during the Consulate of the above-mentioned Emperors.

8. *The Same Emperors and Csesars to Dalmatius.*

The prescription of long time does not prevent guardians from being sued in the action of guardianship. Therefore, if you have not released your guardians by a compromise, a novation, or a receipt, you will not be prevented from demanding whatever is due to you before the Governor of the province.

Given on the fourteenth of the *Kalends* of May, under the Consulate of the above-mentioned Emperors.

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

You can sue your former guardian before the Prsetor to compel him to render an account, or to restore what you are entitled to and which remains in his hands. For although it is alleged that your mother, having received the administration of your property from the

hands of your guardian, promised to indemnify him for any loss you might sustain in consequence, still, a right of action based on the stipulation will lie in your favor against your mother's heirs.

Given on the day before the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

10. *The Same Emperors and Csesars to Pomponius.*

If the deceased administered your guardianship, you cannot claim or hold the ownership of his property, but an action of guardianship will lie in your favor against his heirs. It is, however, necessary for the debt to be proved by other evidence; for as neither he nor his wife had possession of the property previous to the administration of the guardianship, the evidence which you offer is not sufficient; for neither industry, nor the increase of their property which is obtained by their labor or in many other ways should be forbidden to the poor.

Ordered on the tenth of the *Kalends* of February, during the Consulate of the Caasars, 293.

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

Where a guardian continues in the administration of the guardianship after a girl has arrived at the age of puberty, he can be compelled by an action of guardianship to render an account for the entire time. If, however, he does not interfere in the management of the affairs of the ward after his administration has been terminated, he will not be responsible for the time which has subsequently elapsed.

Given on the *Kalends* of December, during the Consulate of the

Caesars, 293.

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

An action of guardianship will lie in favor of the heirs of a ward against those of the guardian.

Given on the tenth of the *Kalends* of December, during the Consulate of the Csesars, 293.

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

In order to dispose of the doubt attaching to the ancient law, We order that if a guardian or curator has stated that the property of a ward or minor is greater in amount than it really is,

whether he did so for the welfare of the ward, or minor, or through his own mistake, or for any other reason whatsoever, it shall, in no way, prejudice the truth, but this shall prevail; and the estimate of the property of the ward or minor shall not be calculated on any other basis than that which the nature of the property requires. Where, however, the said guardian or curator publicly stated the amount of the property of the ward or minor in an inventory, and by means of a document of this kind made it greater than it really was, the value of said property shall not be estimated in any other way than by means of the said inventory, and the guardian or curator shall be compelled to render an account of the estate in accordance with the terms of that document. For no man can be found who is so stupid (even if he is a fool) as to suffer anything against himself to be inserted in a public inventory.

(1) The rule should be strictly observed that a guardian or curator shall not venture to have anything to do with the property of his ward or minor, or claim for himself any right to administer it before an inventory has been publicly drawn up, and the said property transferred to him in the usual manner, unless the testator from whom it was derived especially forbade an inventory of the same to be made. All guardians and curators are notified that, if they have failed to make an inventory, and are removed from office as being suspected, and are subjected to the penalties provided by the laws, and are afterwards branded with perpetual infamy, they cannot enjoy the benefit of the Imperial absolution from this dishonor.

Given at Constantinople, on the *Ides* of August, during the Consulate of Lampadius and Orestes, 530.

TITLE LII.

CONCERNING THE DIVISION OF GUARDIANSHIP, AND FOR WHAT PORTION OF THE SAME EACH GUARDIAN IS LIABLE.

1. *The Emperor Gordian to Optatus.*

If, when the administration of the guardianship was terminated, your colleagues were solvent to the extent to which they were liable, and afterwards not having been called to account, they became insolvent, the rule of law does not permit that the fault of others should be atoned for at your expense.

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

2. *The Emperors Carinus and Numerianus to Primigenius.*

If the division of the administration has not yet been made between guardians or curators in the same place or province in which they were appointed, the minor has a right to select one of them and collect the entire indebtedness from him, and, by doing so, he will release any other rights of action against the other guardians or curators to which he may be entitled. But where the division of the administration has been made either by the Governor, or by the will of the testator, the minor can sue either one of the said guardians or curators on account of his share of the administration.

In a case of this kind, the guardians or curators are only responsible for the share of the administration with which they have been entrusted, unless they have failed to remove one of their number on account of his being suspected of being guilty of fraud or negligence; or they stated their suspicions of this, when it was too late, and the said guardian or curator had become insolvent; or whether, in proceeding against the suspected person, they have voluntarily betrayed the interests of the ward; it will be of no advantage to them to allege that their fellow-guardian did not administer the affairs of the trust.

Where, however, they themselves divided the administration between them, the minor will not be prevented from suing any one of them for the entire amount, provided he transfers to the one whom he selects all the rights of action which he has against the others.

Given on the twelfth of the *Kalends* of April, during the Consulate of Carinus, Consul for the second time, and Numerianus, 284.

3. *The Emperors Diocletian and Maximlan, and the Csesars, to Zoticus.*

Although guardians cannot, by means of a mutual agreement, release one another from liability, still, there is no doubt that the one who administered the trust, as well as his heirs, can be sued in the first place, if he is solvent.

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

TITLE LIII.

CONCERNING THE OATH TO BE TAKEN DURING LITIGATION.

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

When receiving a judge for the transfer of the guardianship as against the heirs, you desire that all the documents having reference to the ward shall be returned to you at the time of the commencement of the suit. If, through fraud, they are not produced, you will have a right to be sworn, provided you wish to extend the affection due to your former ward by invoking the sanction of religion.

Given on the *Kalends* of August, during the second Consulate of Antoninus and Geta, 206.

2. *The Emperor Antoninus to Sevenis.*

He who demands an account of the administration of a guardianship or a curatorship cannot be compelled against his will to take the oath in court, but if he wishes to do so, he should be heard, if the heir of the guardian either through fraud, or for the purpose of deceiving the ward, refuses to produce the documents in which the latter is interested. When, however, he is not convicted of fraud, gross negligence, or an intention to deceive the heir, as the oath under such circumstances does not apply, the judge shall ascertain the truth which he can do by means of convincing evidence.

Given on the eleventh of the *Kalends* of October, during the Consulate of the two Aspers, 213.

3. *The Same to Priscianus.*

The sum mentioned in the decree which the judge, after having caused you to be sworn, has rendered against your former curators, cannot be diminished by an agreement.

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

4. *The Emperor Gordian to Mutian.*

A guardian is subject to one law and his heir to another, for if the guardian should not produce the inventory and other documents demanded, the oath in court can be admitted against him; and the same rule applies to his heir, if he has found the documents among the papers of the estate, and fraudulently refuses to produce them. But as you allege that as proceedings were instituted against the guardian himself, they must be transferred by you against his heirs; and, unless the documents in question are produced, the Governor of the province must perform his duty, being well aware what it is as prescribed by the terms of the constitutions.

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

5. *The Emperors Diocletian and Maximian, and the Csesars, to Artemidorus.*

Although it has been decided that, in an action of guardianship, the oath should not be taken against the heirs for the reason that they have not made the inventory, still, it is proper for the

judge to render a decision against them after having ascertained by other evidence that fraud has been committed by the guardian.

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

TITLE LIV.

CONCERNING THE HEIRS OF GUARDIANS OR CURATORS.

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

The heirs of a guardian should not be held liable for his neglect, which is not comparable to gross negligence, if proceedings were not instituted against him, as they have neither profited by the loss of the ward, nor have done nothing by way of favor.

Given on the sixth of the *Ides* of March, during the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Antoninus to Valentine and Maternus.*

Your father, having been appointed a guardian or curator, and not having been excused, you can, none the less, as his heirs, be sued in an equitable action or one on guardianship, although you allege that he did not administer the guardianship or curatorship; for liability exists on account of his failure to administer the same. It has, however, frequently been stated in rescripts that proceedings should first be instituted for their acts against those who administered the trust.

Given on the eleventh of the *Kalends* of March, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Same to Vita.*

Proceed against the heirs of your former guardian by an action of guardianship, and whatever he was liable to you for on account of being a surety, will also be included in the action.

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

4. *The Emperor Alexander to Frontimis.*

The heirs of those who have administered a guardianship or curatorship are required to restore whatever may have come into their hands which forms part of the property of the ward or the minor. There is also no doubt that an account should be rendered of whatever the guardian or curator should have administered, but did not.

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

TITLE LV.

WHEN A GUARDIAN OR A CURATOR DOES NOT ACT.

1. *The Emperor Alexander to Zodicus.*

It is certain that not only those who administered the affairs of a guardianship, but also those who ought to have done so, and did not, will be liable in an action of guardianship for what could not be recovered from their fellow-guardians, for the reason that they failed to have them declared suspicious when they should have done so.

Moreover, although you could not bring an action involving infamy against your patron, you still were able to provide that you should lose nothing by the administration of the guardianship, by making the necessary application to the court having jurisdiction of such matters.

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

2. *The Same to Justus.*

Where persons do not interfere in the affairs of a guardianship or curatorship, they are not liable when those guardians or curators who have administered the guardianship are solvent. If, however, they have failed to perform certain acts which they should have performed, all will be equally liable for gross negligence.

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

TITLE LVI.

CONCERNING INTEREST BELONGING TO WARDS.

1. *The Emperor Antoninus to Crescentina.*

It was long ago settled that a gu'ardian or curator who has employed the money of his ward for his own benefit will be liable for legal interest on the same.

Given on the *Nones* of June, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to Ampliatus.*

There is no doubt that interest should be paid on what is due on account of the guardianship, although payment is required for what is due from a fellow-guardian who is insolvent, as this would not have happened if the removal of the guardian had been accomplished by means of a statement that he was liable to suspicion.

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

3. *The Same to Vitalius.*

If you have not been able to lend the money belonging to your ward to persons who are solvent, or employ it in the purchase of land, the judge will know that interest on said money cannot be collected from you.

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

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

Your ward cannot be compelled to bring an action of guardianship against you, but if you owe him anything, try to bring him into court by frequently serving notice upon him, so that interest may not run on what you owe; and if, through dissimulation, he protracts the affair, file your statement in writing before the Governor of the province. In this way, you will provide for your own security, as well as that for your children. This also applies to curators.

Given on the third of the *Kalends* of September, during the Consulate of the Csesars, 293.

TITLE LVII.

CONCERNING THE SURETIES OF GUARDIANS AND CURATORS.

1. *The Emperor Alexander to Felix.*

You must choose whether you will proceed against the guardians or curators themselves, their heirs, or those who became their sureties; or you can divide your action if you prefer to do so; for suit cannot be brought against a defendant and his sureties for the entire amount, at the same time.

Given on the tenth of the *Kalends* of February, during the Consulate of Julian, Consul for the

second time, and Crispinus, 225.

2. *The Same to Priscus.*

It is a certain rule of law that if the principal is chosen to be sued, and is solvent, the surety will be released, and therefore if the surety is merely accepted for the amount for which the guardian or curator will be liable (as you state that the guardian or curator having had judgment rendered against him has made payment), how can any doubt arise as to the release of the surety? If, however, any stipulation has been entered into with reference to the integrity of the property of the ward, or security has been given for anything which cannot be made good by the guardian or curator, the surety will remain bound to make up the deficiency.

Given on the seventh of the *Kalends* of August, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

TITLE LVIII.

CONCERNING THE COUNTER ACTION OF GUARDIANSHIP.

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

If you have paid a sum of money for your fellow-guardian, after judgment has been rendered against you, no action will lie in your favor against the ward to compel him to assign his right of action to you against him who has been released by your having made payment. Where, however, you have purchased the claim, having been appointed attorney in your own behalf, you can bring an action to enforce judgment against the heirs of the person for whom you made payment.

Given on the second of the *Kalends* of March, during the Consulate of Fabian and Mutianus, 202.

2. *The Emperor Antoninus to Primitivus.*

If you, through no fault of your own, have had judgment rendered against you in favor of your female ward, and while absent and undefended you acquiesced in the decision, as you have taken measures to satisfy the judgment, you can have her rights of action against your fellow-guardian assigned to you by your ward, or you can avail yourself of the praetorian action.

Given on the second of the *Ides* of October, during the Consulate of the two Aspers, 213.

3. *The Emperors Diocletian and Maximian to Thesis.*

If your father, whom you allege administered the estate of his step-son, died after having executed a will according to law, and by it appointed his former ward his heir, as it is established that a claim for the hereditary share of the guardianship has not been extinguished by merger, it will be proper for you as the co-heir of your father to render an account for the remaining portion of the guardianship before a competent judge.

In accordance with the requirements of good faith, set-off will be admitted for the amount which you allege your father expended for the benefit of his ward, and if, after this, any more is due, you will be obliged to pay it. Where, however, being aware that more has been expended for his benefit than you are liable for, he does not think that an action of guardianship should be brought on this ground, you can sue him in a contrary action.

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

TITLE LIX.

CONCERNING THE AUTHORITY WHICH SHOULD BE GRANTED BY A GUARDIAN OR CURATOR.

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

The absence of neither the guardian nor curator will prejudice, in any way, a stipulation made in behalf of a ward or a minor.

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

2. *The Same Emperors and C&sars to Serena.*

By releasing them while you were a minor without the authority of your guardian, you can, by no means, lose your right of action.

Given on the seventeenth of the *Kalends* of May, during the Consulate of the Caesars, 293.

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

The prescription of long time does not protect anyone who has purchased something from a ward without the authority of his guardian.

Given on the third of the *Kalends* of December, during the Consulate of the Csesars, 293.

4. *The Emperor Justinian to John, Prtetorian Prefect.*

In order to make Our statement clear to posterity, We order that guardians or curators must, by all means, be present when minors under the age of twenty-five years either institute criminal proceedings, or are defendants under circumstances where the laws permit minors and wards to be accused, as it is more prudent and better that minors should make their defences or prosecute their cases with the full advice of their guardians, in order that they may not either say or suppress anything through their want of experience or juvenile impetuosity, which, if it had been stated on the one hand, or not mentioned on the other, might have been of advantage to them, or have prevented them from being injured.

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

5. *The Same to John, Prsetorian Prefect.*

Desiring to remove all doubt which formerly existed as to whether a single testamentary guardian, or one appointed after investigation, could act by his sole authority (even though there were several guardians who were not appointed for different places), or whether all those who were legally or judicially appointed could be compelled to give their consent, We order that where several guardians have been appointed either by the will of the father, or called by law, or named by the judge either after an investigation or without ceremony, the consent of one guardian alone shall be sufficient, where the administration is not divided either by localities, or by portions of the estate. For it is necessary for each one to give his consent to the ward with reference to the part of the estate, or the locality for which he has been designated, and We order that, in this respect, testamentary guardians shall not differ from those appointed after investigation, or such as are called by law, for which reason they are all equally obliged to furnish security, and a subsidiary action in favor of their wards will lie against them.

These provisions, however, must be understood only to be applicable where the dissolution of the guardianship is involved, as, for instance, where the ward desires to give himself in arrogation; for it would be absurd if the guardianship should be abolished, not only without the consent, but perhaps without the knowledge of the person appointed. For then, whether the guardians are designated by will, or after investigation, or whether they are called by law or appointed without ceremony, it is necessary for all of them to consent, so that what concerns them all may be approved by all. These provisions must likewise be observed with reference to curators.

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

TITLE LX.

WHEN GUARDIANS OR CURATORS CEASE TO DISCHARGE THE DUTIES OF THEIR OFFICE.

1. *The Emperor Antoninus to Hernula.*

When curators are added to guardians, it is perfectly clear that the duties of both are terminated by the arrival of the minor at the age of puberty, and therefore that other curators should be appointed on account of the weakness attaching to the age of the minors.

Given at Rome, on the fourth of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

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

It is perfectly evident that the duties of a guardian cannot be terminated merely by the will of the ward.

Given on the thirteenth of the *Kalends* of February, during the Consulate of the Caesars, 292.

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

Abolishing the indecent examination established for the purpose of ascertaining the puberty of males, We order that just as females are considered to have arrived at puberty after having completed their twelfth year, so, likewise, males shall be held to have arrived at that age after having passed their fourteenth year, and the disgraceful examination of the bodies of such persons is hereby terminated.

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

TITLE LXI.

CONCERNING THE APPOINTMENT OF AN AGENT BY A GUARDIAN OR CURATOR.

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

If your children, who are their own masters, have succeeded their mother, although it may be shown that you were their guardian, still it is settled that you may petition for their affairs to be managed during your absence, not by an attorney, but by an agent appointed by you under a decree.

Given on the *Nones* of January, during the Consulate of the Caesars, 293.

TITLE LXII.

CONCERNING THE EXCUSES OF GUARDIANS AND CURATORS AND WHEN THEY MAY BE OFFERED.

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

You are laboring under an erroneous idea when you think that because you are an eunuch you are exempt from performing the duties of guardianship.

Given on the *Kalends* of May, under the Consulate of Chilo and Libo, 205.

2. *The Same to Habentianus and Cosconius.*

If you have been appointed curators in general terms, and it has not been mentioned in the decree that you are only to discharge your duties in Italy, you should go before a competent judge and obtain your release from administration in the province. If this should be done, the minors can petition to have curators appointed for them in the province.

Given on the eighth of the *Kalends* of September, during the Consulate of Chilo and Libo,

205.

3. *The Same to Crispinus.*

It is certain that if you, being freeborn, have been appointed guardian of a freedman, you can be excused, but as the Governor of the province did not think that you should be heard because your application was barred by prescription, as you applied to him too late, and did not appeal from this decision, you are advised that you must comply with it.

Given on the *Ides* of March, during the Consulate of Albinus and

Jelianus, 207.

4. *The Emperor Antoninus to Agathus Demon.*

It has been established by a Decree of the Senate that anyone who marries his female ward is understood to contract an illegal marriage, and will be branded with infamy. If, however, you, while absent and ignorant of the fact, were appointed the curator of Demetria, to whom you were married, you can rest secure, provided someone is substituted in your stead; for the ignorance of a husband should not be considered as fraud under the Decree of the Senate.

Given on the eleventh of the *Kalends* of July, during the Consulate of Sabinus and JSmilianus, 207.

5. *The Emperor Alexander to Basilius.*

The illustrious order of the Senate, at the suggestion of the Divine Marcus, decreed that freedmen could, under no circumstances, be excused from the guardianship or curatorship of the children of their patron or patroness; therefore, it would be of no advantage to them to allege that they have been appointed curators for said children, against the consent of their patron or patroness, in order to avoid administering the guardianship of said children.

6. *The Same to Maximian.*

The same constitution which established the term of fifty days, within which persons who have been appointed guardians or curators can excuse themselves, also provided that the time shall run from the date when the decree of the Praetor or the will of the father was brought to the attention of the person appointed to discharge this duty. If, however, anyone, after the time when notice was served upon him, should be unjustly treated by the court, and does not appeal, he must comply with the decision.

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

7. *The Same to Antoninus.*

No one is excused from guardianship or curatorship for the reason that he is either a creditor or a debtor of the person for whom he has been appointed; but he ought to have an associate, so that, if circumstances should demand it, the minor who needs the assistance of others may be protected.

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

8. *The Same to Maximus.*

Tenants, that is to say, the lessees of lands belonging to the Treasury, cannot allege this as an excuse for exemption from civil functions, and therefore they should discharge the duties of guardianship imposed upon them.

Given on the fourth of the *Kalends* of February, during the Consulate of Fuscus and Dexter, 226.

9. *The Same to Romanus.*

Your brother should not be excused from guardianship or curator-ship for the reason that he has lost an eye, hence you understand that he cannot avoid the duty imposed upon him.

Given on the *Kalends* of February, during the Consulate of Modes-tus and Probus, 229.

10. *The Same to Crispinus.*

You should have had no doubt that collectors of taxes while performing their duties are exempt, not only from civil charges, but also from guardianship.

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

11. *The Same to Hylas.*

You, having been appointed a testamentary guardian, should have applied within fifty days to be excused from the administration of the property of your ward, which is situated in another province from the one in which you are, and where you reside. If you failed to do this, your application to be excused will be barred by prescription; but if the Governor of the province is of the opinion that you are not capable of administering the property, on account of its being widely scattered, he will provide for curators to be joined with you in the management of the same.

Given on the eighth of the *Ides* of December, during the Consulate of Pompeianus and Pelignus, 232.

12. *The Emperor Gordian to Valentine.*

Voluntary acceptance of guardianship does, in no way, deprive a person of the privileges to which he is entitled.

Given on the eleventh of the *Kalends* of November, during the Consulate of Pius and Pontianus, 239.

13. *The Same to Apollinarus.*

Neither the freedman of senators or others are exempt from civil charges merely for the reason that they are transacting the business

of their patrons. The freedman of a senator, however, who is transacting the affairs of his patron, may be excused from guardianship or curatorship.

Given on the tenth of the *Kalends* of February, during the Consulate of Gordian and Aviola, 240.

14. *The Same to Heraclida.*

The Governor of the province must severely punish the magistrates who appointed your uncle guardian, if he should ascertain that this has been done with the expectation of his paying them money to be excused from performing his duties.

Hence if he is entitled to any excuse, and can show that he has not been nominated for any other reason than to be annoyed by a lawsuit, he who appointed him shall, in compliance with the terms of the constitution, be required to return to him everything which he has expended in the proceedings.

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

15. *The Same to Taurus.*

Although you have been retained in the guardianship because the excuse which you offered was not accepted, and you have had recourse to an appeal, and, in the meantime, the persons

whom you mentioned have reached the age of puberty, the examination of the appeal must, nevertheless, proceed in the manner prescribed by law, on account of the risk attending the administration of the trust.

Given on the eighth of the *Kalends* of November, during the Consulate of Arian and Pappus, 244.

16. *The Emperor Philip to Theodotus.*

If (as you state) you have been appointed guardian of those with whom you have a dispute concerning an estate, and, the time formerly prescribed within which your excuse must be offered has not yet expired, you can appear before the Governor of the province, who will render a decision in compliance with the Decrees of the Emperors according to the importance of the case.

Given on the tenth' of the *Kalends* of August, during the Consulate of Peregrinus and . ZEmilianus, 245.

17. *The Emperors Gallienus and Valerian to Epagathus.*

Although the question is not specifically mentioned in an Address of the Divine Marcus on this subject, still, he who has been appointed curator of his daughter-in-law after the marriage has taken place, should be excused, lest he may act contrary to the terms of the said address and be guilty of want of propriety.

Given on the sixth of the *Ides* of January, during the Consulate of Valerian, Consul for the second time, and Lucian, 266.

18. *The Emperors Diocletian and Maximian, and the Csesars, to Sabinus and Others.*

It is a positive rule of law that guardians are not required to appeal after having been appointed. Therefore, although you have not appealed, still, if you think that you have a good excuse, you will not be prevented from presenting it to the Governor of the province within the time prescribed by the Constitution of the Divine Marcus. For the fact that the father of your ward has left the usufruct of all his property to his former wife, as you allege, will not be sufficient to release you from the guardianship.

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

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

You desire something unusual when you petition to be excused from the guardianship of a son, for the reason that you contend that his mother can sue you by the contrary action of guardianship.

Without date or designation of consulate.

20. *The Same Emperors and Csesars to Cratinus.*

If you have been appointed the curator of minors whose guardian you previously were, you cannot be required to administer the curator-ship against your will. Hence, if the time prescribed for offering excuses has not yet expired, you can make use of a proper defence.

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

21. *The Same Emperors and Caesars to Parammon.*

You have not a valid excuse for being released from guardianship, because you allege that you hold property in common with your uterine brothers, as a division of it can be made by the appointment of a curator.

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

22. *The Same Emperors and Csesars to Hermodorus.*

If, after having been appointed guardian, your excuse has been admitted by the Decree of the Governor, you will be released, for it is clear that no responsibility for the administration will attach to you.

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

23. *The Same Emperors and Ctesars to Neophytus.*

The principles of humanity and affection do not permit you to be compelled to bring suit against your sister or her children, on account of matters connected with the guardianship, as the welfare of the ward himself, of whom you have been appointed guardian, appears to require another course, that is to say, that he should have a guardian who will not be prevented from conducting his defence through affection for his adversary. Therefore, in accordance with the rule which We have formulated after having been consulted, you must go before the Praetor and he will act in accordance with your wishes, as well as for the welfare of your ward.

Given on the sixth of the *Kalends* of February, during the Consulate of Tuscus and Amulinus, 295.

24. *The Emperors Arcadius and Honorius to Flavian, Prastorian Prefect.*

We have, up to this time, granted exemption from guardianship or curatorship to the owners of vessels, so that they are only required to serve in this capacity where the minors belong to their association.

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

25. *The Emperor Anastasius to Antiochus, Imperial Chamberlain.*

We order that the illustrious men belonging to Our Imperial palace, known as *silentiarii,* shall be exempt from guardianship and curator-ship while in attendance on Our person.

Given on the *Kalends* of January, during the Consulate of John and Asclepio, 300.

TITLE LXIII.

WHERE A GUARDIAN OR CURATOR HAS BEEN EXCUSED BY MEANS OF FALSE ALLEGATIONS.

1. *The Emperor Alexander to Symmachus and Diotimus.*

If, during the absence of your relatives or of those who have volunteered to defend you, the person appointed your guardians or curators have caused themselves to be released from the discharge of their duties by means of improper allegations, in order that they may not profit by having deceived the judge, the Governor of the province shall hear you, and if it appears that they have extorted an unjust decree, he shall decide that they must assume the responsibility for the administration from the time of their appointment.

Given on the twelfth of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and ^Elianus, 214.

2. *The Emperor Philip and the Csesar Philip to Aulizanus.*

It is clear that the guardians whom you assert have, after administering the property of their wards, obtained their release from the Governor of the province just as if they had done

nothing with reference to the guardianship, they can, by no means, avoid responsibility for the administration.

Given on the fourteenth of the *Kalends* of June, during the Consulate of Philip and Titian, 246.

3. *The Same Emperors and C&ssars to Octavius.* If (as you allege) the other party has been excused from the administration of the guardianship or curatorship of your brother and

yourself, rather through favor than for any lawful reason, he will not be released from liability for the charge imposed upon him. Without date or designation of consulate.

TITLE LXIV.

WHERE A GUARDIAN OR CURATOR IS ABSENT ON BUSINESS FOR THE STATE.

1. *The Emperor Gordian to Guttius.*

Those who have been appointed guardians or curators, and are about to be absent on public business, should have themselves excused for the time, in order that they may not be held liable in the meanwhile. Therefore, if you have done this, you ought not to be apprehensive of being called to account for the time during which you were absent. If, however, you have neglected to do so, demand in court that the person who administered the trust in your absence be sued first.

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

2. *The Same to Reginius.*

It is certain that those guardians who have ceased to discharge their duties on account of being absent on business for the State ought to be exempt for an entire year following their return.

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

TITLE LXV.

CONCERNING THE EXCUSES OF VETERANS.

1. *The Emperor Antoninus to Saturninus.*

Those who have been honorably discharged after having served in the army for twenty years, and retain their reputations untarnished, shall enjoy the privileges conceded to veterans.

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

2. *The Emperor Gordian to the Veteran Celer.*

Although it has been decided that veterans can only be compelled to administer the guardianship or curatorship of the sons of their fellow-veterans, or of soldiers, and only one of these at a time, still, if they should be appointed the guardians or curators of others, they must present their excuses before a competent judge within the time prescribed by law.

Given on the third of the *Kalends* of July, during the Consulate of Gordian and Aviola, 240.

TITLE LXVI.

CONCERNING THOSE WHO ARE EXCUSED ON ACCOUNT OF THE NUMBER OF THEIR CHILDREN.

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

Those who are appointed guardians or curators, and have three children at Rome, concerning whose condition no doubt exists, or four in Italy, or five in the provinces, have a right to be excused.

Given on the *Nones* of April, during the Consulship of Geta and Plautianus, 204.

2. *The Emperor Antoninus to Marcellus.*

A deceased daughter is of no advantage to anyone for the purpose of declining the acceptance of a municipal office, nor shall any grandchildren be counted whose father is living, as they only benefit a father in a case of this kind.

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

TITLE LXVII.

CONCERNING THOSE WHO ARE EXCUSED ON ACCOUNT OF ILLNESS.

1. *The Emperor Philip, and the Czesar Philip, to Sabinus.*

Anyone who is blind, deaf, dumb, insane, or is suffering from an incurable chronic disease, has a valid excuse for declining a guardianship or curatorship.

Given on the thirteenth of the *Kalends* of April, during the Consulate of Praesens and Albinus, 247.

TITLE LXVIII.

WHO CAN BE EXCUSED ON ACCOUNT OF AGE.

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

If your father is over seventy years of age, and is appointed either a guardian or a curator, he can legally be excused.

Given on the fifth of the *Ides* of September, during the Consulate of Chilo and Libo, 205.

TITLE LXIX.

WHO CAN BE EXCUSED ON ACCOUNT OF THE NUMBER OF GUARDIANSHIPS.

1. *The Emperor Severus and Antoninus to Pompeianus.* If you are administering three guardianships or curatorships at the same time, which you have not undertaken without due consideration, you shall not be oppressed with the responsibility of a fourth guardianship or curatorship of guardians or minors. Where, however, your duties have been terminated by the arrival of the wards at the age of puberty, or the minors at majority, other trusts can be substituted for them, whose administration you will be obliged to assume, even though you may not yet have rendered your accounts of that of the former guardianships or curatorships. Different kinds of excuses which are not well grounded, although they may be mingled with good ones, are of no avail in obtaining a release; therefore you should know that he who has two children and is administering two guardianships is not entitled to be released from another to which he has been appointed.

Given on the fourth of the *Ides* of October, during the second Consulate of Antoninus and Geta, 206.

TITLE LXX.

CONCERNING THE CURATOR OF AN INSANE PERSON OR A SPENDTHRIFT.

1. *The Emperor Antoninus to Mariniana.*

It is customary for curators to be appointed for spendthrifts and insane persons, though they may have attained their majority.

Given on the fourth of the *Kalends* of August, during the Consulate of Messala and Sabinus, 215.

2. The Emperor Gordian to Avitius.

The benefit of the Rescript of the Divine Severus, by which the rustic estates of wards or minors are forbidden to be sold or encumbered without a decree of the Governor, does not cause any injury to the agnates of an insane person. Hence, if a tract of land belonging to a person who has lost his mind is encumbered to you by one of his agnates, by way of pledge, contrary to the Decree of the Governor, the obligation of pledge with reference to it, will stand; but you will have the right to an equitable personal action against him, if the money which was loaned was employed for his benefit.

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

3. *The Same to Aurelia.*

If your father is not sane, petition to have curators appointed for him, by means of whom, if any business he transacted should be revoked, after proper examination, matters may be restored to their former condition.

Given on the seventh of the *Ides* of April, during the Consulate of Gordian and Aviola, 240.

4. *The Emperors Diocletian and Maximian to Asclepiodotus.* As you allege that the mother of an insane woman, who is her own mistress, and repudiated her husband, who alone had the right to repudiate her, executed, along with him, certain instruments relating to the affairs of her daughter, you are informed that she could not do anything contrary to the interests of the said insane person, because she has legally no right to represent her.

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

5. *The Emperor Anastasius to the People.*

In order that We may not appear to have intended to unduly benefit an emancipated brother or brothers, in their succession to other brothers, without imposing upon them the burdens of guardianship, We decree by the terms of this law that, notwithstanding the provision of the Twelve Tables concerning the appointment of curators, they can legally be appointed for their insane brothers and sisters.

6. *The Emperor Justinian to Julian, Prietorian Prefect.*

It sometimes happens that the affliction of insane men remains continuous, and with others the attacks of disease are suspended, and lucid intervals occur, and in this latter instance a great difference exists, for some of the lucid intervals are short, and others are of long duration. In former times the question arose whether the authority of the curator continued to exist during the lucid intervals of insanity, when it temporarily ceased, and when the disease returned, it was restored. Hence We, desiring to decide this doubtful point, do hereby decree that, as when insane persons of this kind recover their senses it is uncertain and impossible to determine whether this will endure for a long or for a short period, and as the parties in question frequently remain on the border line of insanity and health, and after they continue for a considerable time in this condition, the lunacy seems in some cases to be removed, We decree that the appointment of the curator shall not be considered as ended, but to exist as long as the insane person lives, for generally a disease of this kind is incurable; and We also decree that, during their perfectly lucid intervals, the curator shall not exercise his authority, and that the demented person, while he is temporarily in possession of his senses, can enter upon an estate and do everything else which sane men are competent to do.

If, however, he should again become insane, the curator must intervene in his affairs, so that everything may be done in the name of the latter, as often as the disease returns, in order that the appointment of a curator may not be made frequently, or in such a way as to be ridiculous, and seem to be appointed as often as he is required to cease to exercise his functions.

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

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

An insane person, who remains constantly under the care of his parents, undoubtedly cannot have a curator, for paternal solicitude is sufficient for the management of his property, which he obtained as *castrense peculium,* or from other sources, whether he acquired it before he became insane, or whether it came into his hands while he was in that condition; and this also applies to the cases of those who have only the mere ownership of property. For where can such affection as influences a father be found in a stranger? Or to whom is the authority of managing the property of children to be entrusted, if their parents are excluded? Although Tertullian, the interpreter of the ancient law, in the single book which he wrote on *castrense peculium,* appears to have discussed this point in an obscure manner, We now have stated it with perfect clearness.

(1) When, however, the parents of an insane person happen to die, Our Constitution, which We have promulgated with reference to what should be left to an insane person by will, as well as concerning the substitution which can be made on his account, shall remain in full force.

(2) But where a man incurably insane is legally his own master, there is no doubt that, under the ancient law, he can share in the estate of his father which has been left to his children, when it plainly appears that he is a proper heir of his parents.

(3) If, however, for any cause, another inheritance or succession should descend to him, then a great and inexplicable doubt arose under the ancient law whether, while still insane, he should be admitted to enter upon the estate, or demand praetorian possession of the same, or not; and whether his curator could be permitted to demand praetorian possession of the estate. An important discussion on both sides of this question took place among jurists. Hence We, for the purpose of reconciling the authorities, do hereby decree that an insane person can, under no circumstances, accept an estate or obtain praetorian possession of it; but We grant permission to his curator, nay more, We require him, if he should think that the succession would be advantageous, to accept the prsetorian possession of the estate which resembles that formerly granted by a decree, as the demand for it was abolished by a law of the Emperor Constantine, by which a new proceeding was introduced which took the place of the ancient application.

(4) As the ancients established many regulations with reference to the appointment of a curator of an insane person, for example, in what manner a bond or security should be furnished by him with reference to certain property and certain persons, as they were in doubt whether every curator should furnish the same security, it appears necessary to Us, having a view to the interests of the human race, to remove all this obscurity and inextricable confusion, and provide for the entire matter a complete and luminous remedy. And as We first issued a decree authorizing the appointment of a curator for insane persons of both sexes, We now proceed to the consideration and removal of other difficulties.

(5) Where a father, in his last will, by which he either appointed or disinherited his heirs, designated a curator for an insane son or daughter, when it is necessary for security to be given, the will of the father is sufficient, and the person appointed shall obtain the curator-

ship, provided that, in this most flourishing City he appears before the Prefect of the same, and in a province before its Governor in the presence of the most pious bishop of the diocese and his three coadjutors, and, having placed his hands on the most Holy Gospels, he declares that he will conduct all the affairs of the said insane person lawfully and for his benefit, and that he will not omit anything which he may think to be for his welfare, or permit anything to be done which he believes will be to his disadvantage.

Extract from, Novel 72, Last Chapter. Latin Text. Generally speaking, this oath is required of all curators, but they are not exempt from rendering accounts. The same rule applies to guardians.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

The curator shall undertake the administration of the estate after an inventory has been publicly drawn up with all the requisite formalities, and he can dispose of said estate as he may desire, his own property being hypothecated as security for his administration, as in the case of the guardians and curators of minors.

(6) If, however, the father did not execute a will, and the law calls an agnate as the curator, or if there is none, or a suitable one does not exist, it will be necessary for a curator to be appointed by the court; and in this instance, the appointment shall be made according to the aforesaid division, in this most nourishing City before the most distinguished Urban Prefect, but if the said insane person is of noble birth, the Senate must be called together, and, after investigation, a curator of the best reputation and the highest integrity shall be appointed. Where no such person can be found, the appointment shall be made under the sole direction of the most distinguished Urban Prefect.

Where the curator is the possessor of a considerable amount of property, this will suffice for the faithful management of his trust, and his appointment can be made without his being obliged to furnish security. If, however, it should be ascertained that he does not possess sufficient property, then the best security possible shall be required of him; and in every instance his appointment shall, by all means, be made with his hands placed on the Most Holy Scriptures.

The curator himself, no matter what his wealth or rank may be, must take the aforesaid oath to properly manage the affairs of the trust, and draw up a public inventory, in order that all the estate of the insane person may be everywhere administered as well as possible. In the appointment of the above-mentioned curator all these formalities must be observed in the provinces before the Governor of the same, and the most reverend bishop of the diocese, and his three coadjutors. The regulations concerning the appointment, the oath, and the inventory, the security, and the hypothecation of the property of the curator, must by all means be complied with.

(7) When the curator of an insane person has been appointed in this manner, and the said insane person afterwards becomes entitled to any property either by inheritance, succession, legacy, trust, or from any other source whatsoever, it shall be added to his estate, and, together with the remainder, be given into the hands of the curator, he of course making an inventory of all said property, and it shall remain in his charge; but if the insane person should afterwards recover his senses, and approve of the acquisition of said property, it shall be restored to him.

(8) If, however, the insane person should die in that condition, or, having recovered his senses, should reject the property, for example it should be an inheritance, it will go to those who have been substituted for him if they are willing to accept it, or to the heirs at law, and in their default, to Our Treasury. It must, however, be observed that those persons are entitled to the succession who were the next of kin to the insane person at the time of his death, provided that, when they are called to the succession, the person has not in the meantime been insane. All securities or bonds which the authorities of the ancient law introduced, and which have caused inextricable confusion, are hereby absolutely abolished. All legacies, trusts, and other acquisitions obtained by the insane person should undoubtedly be added to the remainder of his estate.

(9) If, however, he should recover his senses, and be unwilling to accept the property, and

should openly reject it, or his heirs should do the same thing, it must at once be separated from the remainder of his estate, just as if it had never belonged to it in the first place, and should pass by lawful descent in such a way as to neither be a disadvantage nor a benefit to the estate of the said insane person.

(10) If, however, the curator of the insane person who was appointed in accordance with the provisions of Our laws should die, another shall be appointed in the same manner and with the same formalities, just as if the first one had been found to be liable to suspicion, and the other was subrogated to him. This rule, also, was established by the ancient laws.

(11) All these regulations relating to the appointment of curators which have been introduced by this new law are applicable to future cases, and any curators which have previously been appointed shall not be removed on account of it; nor shall any new restrictions be imposed upon them, but, having been appointed under the ancient law, its rules having reference to their appointment shall remain unaltered. No bond or security formerly required in the succession to which insane persons are entitled shall be furnished.

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

TITLE LXXI.

LANDS AND OTHER PROPERTY BELONGING TO MINORS SHALL NOT BE ALIENATED OR ENCUMBERED WITHOUT A DECREE.

1. *The Emperor Antoninus to Minutianus.*

The sale of a tract of land made on account of its having been pledged and in pursuance of a judicial decision is not included in the Decree of the Senate which provides that the real property of wards or minors shall not be alienated, unless this is done by the authority of the Prsetor or Governor of the province. If, however, you are of such an age as to be entitled to relief, having applied to a competent judge, he will order that complete restitution be given you, after having examined the case in the presence of the adverse party.

Given on the thirteenth of the *Kalends* of December, during the Consulate of the two Aspers, 213.

2. The Emperor Gordian to Clearchus and Others.

It is not necessary for you to demand complete restitution, if your guardians or curators have sold the property without the authority of a decree, even though it may have been hypothecated. If, however, the creditors did this, you will be entitled to the benefit of the Edict, if the sale was fraudulent, and it is shown that you have sustained injury with the connivance of the purchaser.

Given on the third of the *Kalends* of February, during the Consulate of Gordian and Aviola, 240.

3. *The Emperors Valerian and Gallienus to Theodosius and Others.*

As the property which you acquired after you were emancipated could not have been alienated by your father as your curator, without the authority of the Governor, especially if the said property was sold by him as his, and not as belonging to you, you have a right to recover it by law.

Given on the third of the *Nones* of January, during the Consulate of Tuscus and Bassus, 259.

4. *The Same to Mithridates.*

Neither urban estates nor property in a city can be sold or alienated by wards or minors, and it cannot be transferred from their ownership either by means of set-off or exchange, and much less by gift, or in any other way, without a decree of court. Hence, if you have conveyed a tract

of land to your brothers by way of set-off, you can bring suit to recover it, and if, on the other hand, you have obtained anything from them under the same contract, you should return it.

Given on the fifteenth of the *Kalends* of May, during the Consulate of Secularis, Consul for the second time, and Donatus, 261.

5. *The Same to Serenus.*

Although the Governor decided that an urban or rustic estate belonging to a ward could be alienated or encumbered, still, the Senate reserved a right of action in favor of the ward if he could prove that the judge had been deceived by false allegations, and you also are not forbidden to institute proceedings of this kind.

Given on the third of the *Kalends* of May, during the Consulate of Secularis, Consul for the second time, and Donatus, 261.

6. *The Emperors Cams, Carinus, and Numerianus to Varus.*

The sale of the real property of minors cannot be made through an application made by an attorney to the Prastor, or the Governor of a province, as this cannot legally take place unless documents are produced before either of the above-mentioned officials, which show the necessity of the sale, and a decree to that effect is formally issued.

Given on the *Nones* of May, under the Consulate of Carus and Carinus, 283.

7. *The Same Emperors to Isidor.*

If, while you were a minor under the age of twenty-five years, you executed a bond to your father for the return of a donation which he made to you when you were emancipated, as an instrument of this kind is in violation of the Decree of the Senate, it will not prejudice your rights.

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

8. *The Emperors Diocletian and Maximian to Theodota.*

It is clear that the ownership of the rustic estates which', in violation of the Decree of the Senate, were given to you before marriage as a betrothal gift (this having been done at your request) cannot be transferred to you, as this has been prohibited by law, they will remain part of the property of your husband.

Given on the third of the *Nones* of November, during the Consulate of Diocletian and Aristobolus, 285.

9. *The Same Emperors to Mutianus.*

Although he who you allege sold the rustic estate of a minor did so at the time when he was acting as curator, the sale having been made contrary to the terms of the Rescript of the Divine Severus, it was very properly set aside by the decision of the Governor. You will not, however, be prevented from claiming the pledges of his own property which the curator encumbered as a guarantee against eviction.

Given during the *Nones* of November, during the Consulate of Diocletian and Aristobolus, 285.

10. *The Same to Gratits.*

The Governor will grant you relief in your claim for the ownership of lands which were alienated without the authority of a decree, and if he should ascertain that the entire amount of the purchase-money paid to your curator was not added to your property, he will allow you to be sued only for that amount which may be proved to have been expended for your benefit, or added to your estate.

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

11. *The Same to Trophinus.*

If your patron, who is a minor, sold your rustic estate without the authority of a judicial decision, it is unnecessary to mention the low price at which it was sold, as the Decree of the Senate prohibits an alienation of this kind, and the title does not pass. If, however, acting under the authority of a decree, he sold the said land at a very low price, he being ignorant of the true value of the same, complete restitution in accordance with the terms of the Perpetual Edict will, after proper investigation, be granted you.

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

12. *The Same Emperors and Csesars to Leontius.* The rustic estate of a minor, situated in a province, can only be sold on account of a debt after a decree of the Governor has been issued.

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

13. *The Same Emperors and Csesars to Zenophila.*

It is not lawful for a rustic estate belonging to a minor, whether the same be tributary, patrimonial, or emphyteutical, to be sold without a decree of the Governor.

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

14. *The Same Emperors and Csssars to Phrominius.*

Adopt the opinion of the most learned Papinianus and the other authorities whom you have mentioned in your petition, and file an exception on the ground of bad faith, if the wards demand the principal and interest which belongs to the Treasury, and you can prove that they did not tender you the amount of the debt paid on their account, and they claim the lands in the province which, with their crops, were sold without the authority of a Decree of the Governor.

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

15. *The Same Emperors and Caesars to Sabina.*

If, while you were a minor under the age of twenty-five years, you gave in payment a certain rustic estate when you should have given another, the Decree of the Senate does not permit you to be deprived of the ownership of the property.

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

16. *The Same Emperors and Csesars to Eutychia.*

If, while you were a minor, you sold a rustic or urban estate (as not the situation of the latter, but its nature, should be considered), and you did this with the authority of your guardian, or, being beyond the age of puberty, you acted without the Decree of the Governor of the province in which the property was situated, by the terms of the Decree of the Senate you cannot be deprived of its ownership or your rights to the same, but an action will lie in your favor for its recovery, together with its crops, and if there are none of the latter, you will be entitled to a personal action. If, however, the purchaser can prove that he could not pay your expenses or discharge your obligations out of his other property, and that besides the money received by way of price has been entirely expended for your benefit, he can, by the aid of an exception oh the ground of bad faith, contest your claim, until you repay him the purchase-money and interest which you have received, as well as the expenses which he has incurred for the improvement of the land.

Given on the sixth of the *Ides* of April, during the Consulate of the Csesars.

17. *The Emperors and the Csesars to Philip.*

The terms of the Decree of the Senate do not permit land held in common by minors to be disposed of without a decision of the Governor of the province, for it was long since settled that an alienation of such property cannot be made without a judicial decree, except where the person having the largest share demands a division of the same.

18. *The Emperor Constantine and the Cassar Constantine to Severus.*

Where minors, either in the name of their father or on their own account, are oppressed with debts, whether they are due to the Treasury or to private individuals, the Constantinian Prsetor, after having examined the case, shall render a decree confirming the sale, if the truth of the allegations should be established.

Given on the twelfth of the *Kalends* of January, during the Consulate of Probianus and Julian, 322.

TITLE LXXII.

WHEN THERE IS NO NEED OF A DECREE.

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

If you can prove that the father of the ward, against whose guardians you have brought suit, consented that the land should be transferred to you if he received the price of the same, the agreement shall be observed. In this case, the authority of the Governor is not necessary, as the interests of the guardians will be protected if the latter conform to the will of the deceased.

Given on the sixth of the *Kalends* of January, during the Consulate of Antoninus and Geta, 306.

2. *The Emperor Aurelian to Pulcher.*

It was necessary to ascertain whether the illustrious Saturninus, having appeared before the Emperor, received a special right to make the sale, for the consent of the Emperor takes the place of a decree of the Governor.

Given during the *Ides* of January ....

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

A rustic or an urban estate can, under no circumstances, be alienated by a minor under the age of twenty-five years without a decree of the Governor, unless a will of his father, or that of the testator whose estate has come into the hands of the minor, is understood to have made provision for such alienation.

Given at Nicomedia, on the twelfth of the *Kalends* of April, during the Consulate of the above-mentioned Emperors.

4. *The Emperor Constantine to the People.*

We permit the guardians and curators of persons of every description to sell clothing which is worn, and superfluous animals, without the authority of a decree.

Given on the *Ides* of March, during the Consulate of Constantine, Consul for the seventh time, and the Caesar Constantius, Consul for the fourth time, 326.

TITLE LXXIII.

WHERE ANYONE, NOT BEING AWARE THAT PROPERTY BELONGS TO A MINOR, PURCHASES IT WITHOUT A DECREE.

1. *The Emperor Gordian to Felix.*

If she who succeeded to the rights of the guardian, either by an hereditary or a praetorian title,

should sell your land as belonging to a ward, the purchaser who knowingly bought it from the heir of the deceased guardian can acquire no defence by prescription through the purchase of another's property. If, however, the heir sold the property as his own, and the purchaser ignorantly bought it as belonging to another, he does not immediately become the owner of the land by delivery, but he can only make use of the defence of prescription for the established time, as you do not deny that you are of lawful age.

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

2. *The Same to Crispina.*

If your property has been sold contrary to the Decree of the Senate, bring suit against the possessor of the same, so that if you can prove the fact, you may recover possession, and all the profits may be restored to you, especially if it is established that he who bought it is not a *bona fide* purchaser.

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

3. *The Emperors Diocletian and Maximian to Agatha.*

Your rustic or urban estates which have been alienated contrary to the Decree of the Senate, without investigation, or the promulgation of any decree, are not legally held even by a second purchaser, unless the time fixed by law has elapsed.

Given at Nicomedia on the *Ides* of February, during the Consulate of the Csesars.

4. *The Same Emperors and Csesars to Alexander.*

As the property in question was transferred as against the purchaser to him to whom the property was donated contrary to the Decree of the Senate, and then acquired by a lawful title, it must be ascertained whether the present owner has held said property without dispute and in good faith for the term of ten years, the former owner being present; or whether the latter being absent, the defendant is shown to have been the undisputed possessor for the term of twenty years. If this should be plainly established before you, the claimant must be excluded without delay on the ground of long-time prescription.

Given on the *Ides* of June, during the Consulate of the Caesars.

TITLE LXXIV.

WHERE A MINOR, AFTER ATTAINING HIS MAJORITY, RATIFIES AN ALIENATION MADE WITHOUT A DECREE.

1. *The Emperor Gordian to Licinia.*

You allege that your father's curator sold a rustic estate to the heir of the creditor, or the former guardian of your father, without obtaining a Decree from the Governor, and that your father, having been deceived, ratified the sale. If it should be proved that the land was sold for too low a price, and that your father, having been led into error, consented to the sale through mistake, it is not unreasonable that what is lacking of the proper price should be paid. This should be ordered by the Governor of the province, who must know that if the other party did not act in good faith, he should be given the choice of returning the land with the profits, or of making up the deficiency by paying the money with the lawful interest.

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

2. *The Same to Alexander.*

If your lands have been alienated by your guardian without the authority of a decree, and you have not expressly confirmed the sale, or if the possessor is one in good faith, but has not had possession for a sufficient time to render legal what in the first place was wrongfully done, the Governor of the province shall order the property to be returned to you.

Given on the seventh of the *Kalends* of January, during the Consulate of Pius and Pontianus, 239.

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

Where the property of minors has been alienated or encumbered without a decree, while they were still in charge of regularly appointed curators, or the said minors, having attained their majority, have been released from their care through the benefit of age, and, after a long silence, have filed a complaint on this ground, so that the illegal alienation or encumbrance has been confirmed by their protracted silence, We decree that a certain time shall be fixed for the establishment of such a confirmation. Therefore We order that if no complaint is made with reference to an alienation or encumbrance of this kind, for the term of five continuous years after the minor has attained his majority, that is to say, after he has reached the full age of twenty-five years, by him who did this, or his heir, the act can, by no means, be revoked under the pretext of the omission of judicial sanction, but shall stand, just as if the property had been legally alienated or encumbered in the beginning by virtue of a lawful decree.

Donations by minors cannot be confirmed by a decree, for even if, after they are entitled to the benefit of age, they should transfer any immovable property to another as a donation (except in the case of one made in consideration of marriage), this cannot be confirmed, unless the donor should acquiesce, and ten years have elapsed after the minor has reached the age of twenty-five years, the parties being present; or twenty years after, if they are absent; so that, in the case of an heir, the time only can be counted which passed in silence after the latter attained his majority.

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

TITLE LXXV.

CONCERNING LEGAL PROCEEDINGS TO BE INSTITUTED AGAINST MAGISTRATES.

1. *The Emperor Antoninus to Mutianus.*

If the magistrates by whom guardians or curators were appointed for you compelled them to stipulate in their own names that they would make good any losses, and if anything was paid they would receive it, and they took sureties for this purpose, the actions which you have brought against your guardians or curators will not annul the obligation against the magistrates for any amount over and above that which is secured.

A praetorian action can be brought by you against the magistrates who appointed the curators, if, after having exhausted all their property, and having recovered what is proved to have been fraudulently alienated, you have not been satisfied in full. If you bring such a suit, and the magistrates assign to you their rights of action against the sureties whom they have accepted, you can proceed against them, although you have a prsetorian action without the assignment.

Given on the *Nones* of January, during the Consulate of the two Aspers, 213.

2. The Emperor Alexander to Paternus.

An action is not usually granted against the heirs of a magistrate, when a guardian has not been guilty of gross negligence in providing proper security for his ward.

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

3. *The Emperor Gordian to Probianus.*

If you and your colleague, while discharging the duties of the magistracy, appointed a guardian who was insolvent, without requiring him to furnish proper security, the ward cannot be indemnified except by calling both of you to account, and you will not unjustly demand that a right of action be granted you for your colleague's share of the liability.

Given on the eighth of the *Kalends* of November, during the Consulate of Pius and Pontianus, 239.

4. *The Same to Anuntianus.*

Proceedings cannot be instituted against a person who has appointed an insolvent guardian or curator before the property of the latter, as well as that of his surety and his colleagues, has been exhausted, as you have assumed the risk of the administration together, and the ward or minor has not been fully indemnified.

Given during the *Ides* of March, during the Consulate of Atticus and Prsetextatus, 243.

5. *The Emperors Diocletian and Maximian to Eugenia.*

With reference to municipal magistrates who have appointed guardians, it is established by a Decree of the Senate proposed by Our Divine Father, Trajan, that if the said guardians, at the end of their administration, should prove to be insolvent, and the entire amount cannot be collected from the surety; an equitable action for the deficiency will lie in favor of the wards against the magistrates.

Given on the seventh of the *Ides* of December, during the Consulate of the same Emperors.

6. *The Emperor Zeno to &lianus, Prsetorian Prefect.*

When, as is customary, a decree of appointment was added to the decision of the Pra?tor authorizing the general administration of a curator, it is clear that the appointment is not valid; but it is the fault of the clerk who, in appraising the property of the minor, did not assign to the estate a value of more than two hundred pounds of gold, and accepted security for that amount.

In this instance, the account of the curator should not be called in question, if any injury to the property of the minor is proved to have resulted contrary to the provisions of the law, but legal proceedings should be instituted on the ground of the negligence or fraud of the clerk, who suffered the true valuation of the property of the minor to be concealed.

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