THE CODE OF OUR LORD THE MOST HOLY EMPEROR JUSTINIAN.

SECOND EDITION.

BOOK VI.

TITLE I.

CONCERNING FUGITIVE AND MUNICIPAL SLAVES, FREEDMEN, AND ARTISANS ASSIGNED TO DIFFERENT WORKS WHO BELONG TO PRIVATE INDIVIDUALS OR TO THE STATE.

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

It is clear that a fugitive slave commits a theft of himself, and therefore that he is not entitled to either usucaption or prescription based upon long time, in order that the flight of slaves may not, for any reason whatsoever, result in loss to their masters.

Given on the *Ides* of December, during the Consulate of Maximian, Consul for the second time, and Aquilinus, 386.

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

It is the duty of the Governor to grant authority to seek for fugitive slaves.

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

3. *The Emperor Constantine to Probus.*

If fugitive slaves are captured while on the way to the country of the barbarians, they may either be punished by the amputation of a foot, or they may be condemned to the mines, or any other penalty whatsoever may be imposed upon them.

Without date or designation of consulate.

Extract from Novel 134, Last Chapter. Latin Text. If the nature of the crime requires the loss of a member, under the new law one hand only shall be cut off, and the slave convicted of theft shall not be put to death, nor shall he lose another member, but he shall be punished in some other way.

Persons are called thieves who commit this offence secretly and without arms; those, however, who employ violence either with or without arms, by entering houses, or by depredations on the highway or the sea, shall be subjected to the penalty prescribed by law.

4. *The Emperor Constantine to Valerian.*

Whoever harbors a fugitive slave in his house, or on his land, without the knowledge of his master, must surrender him, together with another of the same value, or pay twenty *solidi.* If he should harbor the same slave for the second or third time, he will be required, in addition to the said slave, to give up two or three others to the master, or the aforesaid valuation of each one of them.

Where minors are guilty of this offence, their guardians or curators are liable for a similar sum. If the guilty party is not able to pay the penalty above-mentioned, he shall be punished according to the discretion of a competent judge.

If a slave falsely stated that he is freeborn, and was hired by anyone, the person who employed him cannot be accused. It is necessary for the slave to be tortured in order to determine whether or not he who received him fraudulently induced him to leave his master, in order that his house or his land might be profited. If it should be disclosed by the examination of the slave that the act was malicious, he who was guilty of it shall be deprived of one of his own slaves who will belong to the Treasury.

Given on the fifth of the *Kalends* of July, during the Consulate of Gallicanus and Bassus, 317.

5. *The Same Emperors to Januarius.*

It is established that slaves belonging to the public, who are skilled in certain trades, must remain in their respective towns, and if anyone should induce such a slave to betake himself elsewhere, he must surrender him whom he has instigated to do so, together with another of the same value, and the sum of twelve *solidi* must be paid by him to the Treasury of the town whose slave he took away. Freedmen, also, who have trades, when induced to leave, shall be returned in the same manner to the city.

If the fugitive slave is not sought for and returned by the efforts of the defender of the city, the said defender shall be required to furnish two other slaves in his stead, nor can he profit by the indulgence of the Emperor, and no sale of the said slave made by him personally or through another will be valid.

Given on the sixteenth of the *Kalends* of March, during the Consulate of Constantine, Consul for the fifth time, and the Caesar Lici-nius, 319.

6. *The Same Emperor to Tiberianus, Count of the Spains.* When anyone claims a fugitive slave, and the person having possession of him alleges that he is the owner, for the purpose of evading the law which establishes a certain penalty for those who conceal fugitive slaves, or he instigates the slave himself to say that he is free, the worthless scoundrel whose status is in question shall immediately be subjected to torture, in order that, the truth having been ascertained, an end may be put to the dispute. This will not only be a benefit to both claimants, but it will also deter slaves from taking to flight.

Given on the fifteenth of the *Kalends* of September, during the Consulate of Pacatianus and Hilarianus, 332.

7. *The Emperors Valens, Valentinian, and Gratian to Felix, a Man of Consular Rank.*

Anyone who conceals a fiscal slave shall not only be compelled to restore him, but also to pay twenty pounds of silver to Our Treasury, by way of penalty.

Given on the eleventh of the *Ides* of April, during the Consulate of Gratian, Consul for the second time, and Probus, 371.

8. *The Emperors Valentinian, Theodosius, and Arcadius to Albinus, Prefect of the City of Rome.*

If a slave employed in a workship or in any other public establishment, unmindful of his own condition, should marry a female slave in the house of another, not only himself, but also his wife and children, shall forthwith be returned to their former condition and labor.

Given on the eighth of the *Kalends* of August, during the Consulate of Timasius and Promotus, 389.

TITLE II.

CONCERNING THEFTS AND THE OFFENCE OF CORRUPTING A SLAVE.

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

If any persons have purchased land with your money, under the direction of your slave, you must choose whether you will bring a personal action of theft or one on mandate. For justice will not suffer you, at the same time, to bring a criminal action, and require a *bona fide* contract to be carried out.

2. *The Same Emperors to Merchants.*

You demand what is contrary to law when you ask that property which you state has been stolen from you must be paid for by the owners before being returned by you. Therefore, take care to be more cautious in your business transactions hereafter, lest you may not only sustain

losses of this kind, but also be liable to suspicion of crime.

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

3. *The Emperor Antoninus to Secundus.*

If the property which your stepfather stole from you has not yet been dedicated to the service of the divine temple, you will be entitled to an action of theft against him.

Given on the sixth of the *Ides* of September, during the Consulate of Laetus, Consul for the second time, and Cerealis, 216.

4. *The Emperor Alexander to Aurelius Herod.*

You can bring the suit for corrupting a slave only against him who you allege induced your slave to leave you, if he rendered him more vicious than he formerly was. You can also bring an action of theft against him, if he harbored him after having caused him to take to flight. You are not, by any means, forbidden to bring these actions by an attorney.

Given on the *Ides* of September, during the Consulate of Alexander, 223.

5. *The Same to Cornelius.*

What your adversary requires of you, namely, that you should produce the vendor of the property which you acknowledge is in your possession, is in accordance with law; for it is not proper to say that you purchased it from some passerby who was unknown to you, if you wish to avoid suspicion, which should not attach to an honest man.

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

6. *The Same to Pythidorus.*

Anyone who, knowingly, has sold a slave belonging to another, without the consent of the owner, or has given him away, or has disposed of him in any other manner, can in no respect affect the rights of the owner. If he conceals him, or retains him in his possession, he is guilty of theft.

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

7. *The Same to Datus.*

If he to whom you allege you entrusted money to be given to your mother only paid over a portion of it, and converted the remainder to his own use, he committed a theft.

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

8. *The Same to Valentinus.*

The collector of taxes is also liable to an action of theft if, after you have paid the tax which you owed, he, aware that nothing is due from you, takes away your female slave, or sells her. A transaction of this kind does not permit the purchaser to obtain a title to the said slave by usucaption, and an action for her recovery will lie in your favor.

Given on the tenth of the *Kalends* of March, during the Consulate

of Pompeianus and Pelignus, 232.

9. *The Emperors Diocletian and Maximian to Edisius.*

Whether your slave has been taken from you by theft, or you have been deprived of him by force, even though the said slave may be dead, the responsibility will still attach to the robber or the thief, and either one of them will be liable to the punishment prescribed by law.

Given on the seventh of the *Kalends* of February ....

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

If the Governor of the province should ascertain that the slave who was sold was stolen or kidnapped, as the purchaser cannot acquire him by usucaption, on account of the defect in the title, before possession of the slave is returned to his master, Ije must take measures for him to be restored to you, if he should find that you have succeeded to the person to whom he previously belonged.

Without date or designation of consulate.

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

Have recourse to the Governor of the province with reference to the property which you allege in your petition that the stepmother of your ward appropriated, and if he should ascertain that she took it after he in whose behalf you apply has become the owner of the said property, he will not be ignorant that she is liable to the payment of quadruple damages for manifest theft; and if this should not be the case, she should be condemned to pay double damages for non-manifest theft.

Given on the seventh of the *Kalends* of September, during the Consulate of the Cassars.

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

The children of a female slave, who were born while she was in possession of a thief, cannot be acquired by usucaption, before they have gone into possession of their owner, and it is established that he who stole the mother will be liable to an action of theft on their account. Therefore, you will not be prevented from making use of an action of theft, as well as a personal action, or one against the possessor for the recovery of the slaves, as the one which includes the penalty can, by no means, deprive you of the employment of the other. For there is no question that in law the action for recovery can be brought at the same time as the criminal action, as even those who have purchased slaves belonging to others, where they were aware of the fact, will be liable to an action of theft.

Given on the *Ides* of October, during the Consulate of the Csesars.

13. *The Same Emperors and Csesars to Domnus.* The laws forbid suit to be brought after a theft has been compromised. If, however, you did not compromise, but only a portion of the property stolen from you was returned, you can bring suit to recover the remainder, or a personal action, or an action of theft, before the Governor of the province.

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

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

You can bring suit against those who have knowingly received property stolen by a slave, not only as receivers of stolen goods, but you can also bring a penal action of theft against them.

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

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

You should not be ignorant that heirs are not under any circumstances liable to the action of theft, but you can bring an action *in rem* against them, with reference to documents which have been stolen and retained.

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

16. *The Same Emperors and Csesars to Artemidorus and Others.*

If he who received your slave for the purpose of furnishing him with provisions should sell him, he commits a theft.

Given on the *Kalends* of October, under the Consulate of the Csesars.

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

Although ordinary custom does not permit a wife who has been guilty of the crime of plundering an estate to be liable to the action of theft, still, the heirs, who were also the children of the deceased, will be prevented from bringing an action *in rem* against her, on account of the property belonging to their father's estate, which she has in her possession.

Given on the *Ides* of December, during the Consulate of the Csesars.

18. *The Same Emperors and Csesars to Dionysiodorus. "* The terms of the Perpetual Edict set forth that he who has obtained property by shipwreck or fire, or is said to have caused any loss under such circumstances, is liable for quadruple damages, if the action is brought within the available year, but only for simple damages in addition to the penalty already prescribed by law if it is brought after the expiration of a year.

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

NEW CONSTITUTION OF THE EMPEROR FREDERICK HAVING REFERENCE TO THE ABOLITION OF LAWS AND CUSTOMS PROMULGATED AGAINST THE FREEDOM OF THE CHURCH, COLL. 10.

No matter where ships may approach the land, when they are wrecked by accident or run aground, the vessels themselves, as well as the goods which they contain, shall be preserved for those to whom they belonged before the ships met with this accident; and every custom in violation of this law, no matter in what place it may be observed, is hereby abolished, unless the ships are employed in piracy, or are hostile to Us, or to the Christian name.

Those who violate this Our constitution shall be punished by confiscation of their property, and, if the circumstances demand it, their audacity in disobeying Our mandate shall be repressed by other measures.

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

When a false agent receives a deposit or collects a debt without the consent of the owner, he is guilty of theft, and is liable to be sued for double damages, as well as to an action for non-manifest theft, in addition to being compelled to return the property.

Without date or designation of consulate.

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

If anyone should induce a slave belonging to another to steal the property of his master, and bring it to him, and the slave reveals this to his master, and the latter permits him to take the property to the guilty person who has instigated him to steal it, and the former should be found in possession of the said property, the ancient authorities were in doubt as to what action he who had received it was liable, whether to that of theft, or to the one for having corrupted a slave, because he attempted to corrupt him, or whether he is liable to both. Therefore, for the purpose of settling controversies of this kind, We have decided that not only the action of theft can be granted against him, but also the one for having corrupted a slave; for although the slave was not made any worse on this account, still, the advice of the person attempting to corrupt him was given with the intention of impairing his honesty. And just as according to the rule of law, while a theft may not actually be committed, the culprit who handles property against the will of the owner is considered to have stolen it, and should be liable to the action of theft on account of his fraudulent act; so, it is not unreasonable that the action for the corruption of a slave will lie against him on account of his criminality, in order that he may be sued in a penal action, just as if he had actually corrupted the slave, lest, encouraged by impunity, he might attempt to pursue the same course with another slave who could easily be corrupted.

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

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

The question arose among the ancient authorities, if a slave, whom someone possessed in good faith, should commit theft of the property of others, or of him who had possession of him, whether the latter would be entitled to a noxal action for theft against his true owner, or whether the above-mentioned action could be brought against him by the person against whom the theft was committed. Some authorities, on the assumption that a general rule can be formulated from the ancient laws in favor of a man of this kind, by which he against whom the action of theft is not granted could have a noxal action brought against him, held that this rule was based upon mere conjecture, and that the action of theft could, under no circumstances, include the *bona, fide* possessor of the slave; and that the noxal action of theft could lawfully be granted to him, if the property was stolen from him, against the true owner of the slave. Hence the *bona fide* possessor of the slave could, on account of the theft which he had sustained, have a noxal right of action against the owner; even though the slave was proved not to have been in the possession of the latter. He would also be entitled to an action against the true owner, not only for the property which the slave took away while under his control, but also for that which he stole from his *bona fide* possessor, even if it should be proved that he was not yet under the control of his true owner. This is the interpretation which the authorities conjectured was to be given to the ancient laws.

We, however, examining this point thoroughly, and more in conformity with the truth, have adopted the rule promulgated in the beginning. Therefore, as a *bona fide* possessor is in possession of the thief as his master, it is reasonable that while he is under his control he should be liable in a noxal action to others, if they had property stolen by the slave, and that he himself should have no right of action against the true owner of the slave, in accordance with the rule that he who is entitled to the action of theft against another cannot himself be liable to one based on the same offence.

Where, however, the *bona fide* possessor has lost control of the said slave, and he is found in the hands of his true owner, then he himself will, by no means, be liable to the noxal action of theft, but he will have the right to bring a noxal action of theft against the true owner for property which the slave stole when under his control, as well as for any thefts of which he was previously guilty after having been released from the control of his *bona fide* possessor, and before he came into the possession of his true owner.

Thus, a second time, the case stated conforms to the general rule, for he who has a right of action of theft against the owner cannot himself be held liable to others in the action of theft; and hence the doubt formerly entertained by the ancient jurists, and disclosed by their contrary opinions is disposed of by Our interposition, and a *bona fide* possessor is entitled to an action during the prescribed term, and is not responsible; while the owner himself at one time is not liable to the action, and at another it can be brought against him.

Moreover, where a man who, while actually free, is, nevertheless, held by another in good faith as a slave, commits a theft, and it should be legally and undoubtedly ascertained that he is free, he can be sued for the theft by him who had possession of him in good faith; and the latter, if the said freeman should steal from a stranger, cannot be sued, but the former must be liable for his own theft, as the general rule promulgated with reference to a slave and for the benefit of one who is not a slave but a freeman, and his own master, is that a noxal action cannot be brought against the latter, and is unknown to our laws.

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

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

It is a clear rule of law that, where a theft has taken place, an action will lie in favor of him who is interested in not having had it committed. Where, however, anyone lent another property belonging to himself, and it was stolen, the question arose among the ancient legal

authorities whether an action of theft could be brought by the person who received it for his use, against the thief, of course where the latter was solvent; for the reason that the borrower himself was liable to an action of loan by the owner of the stolen property. It was, however, hardly conceded that he himself would have a right of action, unless he was known to be in poverty, for then the authorities held that the action of theft would lie in favor of the owner. For here the doubt increased, if at the time when the theft was perpetrated, the person who borrowed the property was solvent, but afterwards was reduced to indigence before the suit was brought to which he was previously entitled, whether the right of action which he had once acquired should still remain in him, or revert to the owner of the property; and then the question arose whether, in a case of this kind, the right of action was alterable, or not.

Another subdivision remains to be made with reference to this discussion, namely, where the person who received the property for use was partly solvent so that he could not make payment of all that was due, but only of a portion of the same, whether or not he would be entitled to the action of theft.

(1) Hence, We have resolved the doubts of the ancients so far as these matters are concerned; nay, it is better to say that We have finally disposed of these perplexing distinctions by an opinion which is more simple than the difficulties were great, and We hold that the owner shall be authorized to choose whether he shall proceed by an action of loan against the person who received the property, or bring an action of theft against the one who stole it; and having selected one of these methods of procedure, the owner cannot change his mind, and have recourse to the other, and if he decides to sue the thief, he who received the property for use shall be absolutely released from liability.

Where, however, as the lender, he proceeds against him who borrowed the property, he can, under no circumstances, bring the action of theft against the thief, and he who is sued on account of the property which was loaned will himself be entitled to the action of theft against the thief; provided that the owner, being aware that the property has been stolen, proceeds against him to whom it was lent.

(2) When, however, he brings suit, not knowing that the property was in possession of the person to whom it had been lent, or, being in doubt whether this was the case, and, after the property has been found, he wishes to abandon the action of loan, and have recourse to that of theft, permission shall be granted him to do so, and to proceed against the thief, and he cannot successfully be opposed, as he was uncertain who had the property when he brought the action of loan against him who received it for use, unless the owner of the same has been indemnified by him. For in this case, the thief will be absolutely released from liability to the action of theft by the owner, but he will be substituted for the person who made good to the owner the property lent to him, as it is perfectly evident that if, in the beginning, the owner brought the action of loan, being ignorant at the time that the property had been stolen, and after he ascertained this and proceeded against the thief, he who borrowed the property will be absolutely released, no matter what the result of the action brought against the thief by the owner of the property may be.

The same rule will apply where he who borrowed the article for use is partly, or entirely, solvent.

(3) A second doubt arose among the ancient authorities, that is to say, what should be decided where someone borrowed property for use, and another stole it from him, and the latter, having been sued, had judgment rendered against him, not only for what was stolen, but also for the penalty of theft, and the owner afterwards came in and desired to collect the entire amount of the judgment, as being rendered for property belonging to him?

In cases of this kind the ancient jurists were also in doubt whether only his property, or the value of the same, should be delivered to the owner, or whether the sum exacted as a penalty should also be paid to him. And although various opinions were held by them on this point,

and Papinianus himself made different statements regarding it, We have decided that notwithstanding the conflicting opinions of Papinianus, not his first, but his second conclusion, should be adopted, in which he held that the profit ought, by no means, to come into the hands of the owner of the property. For he who has borne the risk should also obtain the advantage; so that he who received the property as a loan will not suffer any loss, but will be permitted to enjoy the benefit resulting from his efforts.

(4) In the resolution of the doubts above set forth, a third question arose, and why should We not decide it, also? For, as it is a perfectly plain rule of law that a husband cannot, during the existence of the marriage, bring the action of theft against his wife, for the reason that the law is ashamed to grant such an atrocious proceeding against a person so intimately connected with him, the point raised by the ancient jurists was as follows: where property which was lent to a man for use was stolen from him by his wife, the question arose whether the owner would have the right to bring suit for theft against the woman, or whether, on account of the necessity of the case, her husband, being liable to the action of loan, would have a right to bring the action of theft against her? Many arguments on this point were advanced by the authorities.

It can, however, clearly be settled by the present law, and by Our former decisions which are included in this constitution.

For if We grant the choice to the owner to proceed against either of the parties whom he may select, that is, either against the one who borrowed the property, or against him who committed the theft, in this instance, the husband, on account of the respect attaching to marriage, shall have a right to bring, not an action of theft, but one for the surreptitious removal of property, if the owner should choose to proceed against him.

The owner has perfect liberty to bring an action of loan against the husband, or an action of theft against the wife, with the understanding that where he who borrowed the article is solvent, the action of theft cannot be brought against the wife, lest where husband and wife do not live in harmony, this may be made the occasion of some artifice, and the wife may, with the consent of the husband, be given up by him, and suffer the penal condemnation for theft.

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

TITLE III.

CONCERNING THE SERVICES OF FREEDMEN.

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

If, at the time of your manumission, services were imposed upon you as a condition of the same, you are advised that you must render them. It is, however, usually agreed between patrons and freedmen that something in the way of service shall be given for the latter, although a price cannot be demanded for what is done, unless when, on account of poverty, necessity may require this to be paid for support, which is unusual; and even though no services have been imposed upon you, still, if your patron should lose his property, you will be obliged to support him.

Given on the third of the *Kalends* of January, during the Consulate

of Chilo and Libo, 205.

2. *The Same Emperors to Eutyches.*

A slave who has been manumitted cannot again be reduced to servitude by the person who liberated him, nor can he be compelled to perform services subsequently imposed upon him.

Given on the sixth of the *Kalends* of May, during the second Consulate of Antoninus and Geta, 206.

3. *The Same Emperors to Quintiniamis.*

He who has received money from a stranger with the understanding that he shall manumit his slave, and also exacts money from the slave on account of work performed, whether services were imposed upon him or not, shall be forced to return the money paid as constituting a debt which is not due.

Given on the *Kalends* of November, during the Consulate of Albinus and .^Emilianus, 207.

4. *The Emperor Antoninus to Valerian.*

If you prove that you are entitled to money derived from the sale of the services of your freedman, the Governor will order it to be paid to you by him. The freedman has perfect liberty to execute a will, provided that the agreement which he made was not entered into for the purpose of oppressing liberty.

Given on the fourteenth of the *Kalends* of May, during the Consulate of the two Aspers, 213.

5. *The Same Emperors to Terentius.*

Your mother cannot claim services imposed upon one whom she manumitted, in accordance with the terms of a trust, unless the time when she manumitted him preceded that fixed by the trust. If, however, he should not show her the respect due to a patroness, she can apply to a competent judge to claim what she is entitled to.

Given on the third of the *Ides* of May, during the Consulate of the two Aspers, 213.

6. *The Emperor Alexander to Cecilius.*

The freedmen and freedwomen of deceased persons do not owe services to the foreign heirs of their patrons, or to the husbands of their patronesses.

Given on the *Kalends* of November, during the Consulate of Alexander, 225.

7. *The Same to Minicius.*

It is not lawful for patrons to receive money for the services of their freedmen, although if the services are not performed, a want of proper respect cannot furnish a good ground for its collection. He who has had two sons under his control at the same, or different times, is, by the *Lex Julia* relating to Marriages, released from the obligation of rendering services.

Given on the twelfth of the *Kalends* of June, during the Consulate of Julian, Consul for the second time, and Crispinus, 276.

8. *The Same Emperor to Augustinus.*

If you have been purchased with your own money from him who manumitted you, you do not owe him any services, nor can you be punished by him for ingratitude. You will not, however, be allowed to deny that he is your patron.

Given on the third of the *Ides* of September, during the Consulate of Julian, Consul for the second time, and Crispinus, 226.

9. *The Same to Lictorius.*

You have exalted the rank of your freedwoman by having married her, and therefore she should not be compelled to perform services for you, as you should be satisfied with the benefit of the law which provides that she cannot legally marry another without your consent.

Given on the tenth of the *Kalends* of March, during the Consulate of Fuscus and Dexter, 226.

10. *The Same Emperor to Herculianus.*

Titius executed a will conferring freedom upon his slave Gaius, under the following condition: "I desire that my slave, Gaius, shall be manumitted when three years have elapsed

from the time of my death, provided he performs for my heirs the same services which he was accustomed to perform for me in my lifetime."

As the said slave always rendered the same services to the testator every day, and after his death continued to render them to his heirs until the time when he obtained his freedom, it is clear that, having become free, he cannot be compelled to perform the same services afterwards.

Given on the seventh of the *Ides* of August, during the Consulate

of Fuscus and Dexter, 226.

11. *The Emperor Gordian to Africanus.*

A child born of a freedwoman is freeborn. Where a man has given his consent in the marriage of his freedwoman, although he cannot exact services from her, still he does not lose his rights as a patron.

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

12. *The Emperors Diocletian and Maximian to Veneria.*

Persons who have been manumitted are at perfect liberty to reside wherever they choose, nor can they again be reduced to slavery by the children of their patrons, to whom they only owe respect, unless they are proved to be ungrateful; nor do the laws compel freedmen to live with their patrons.

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

13. *The Emperors Valens, Valentinian and Gratian to Probus, Prsetorian Prefect.*

Punishment shall be inflicted upon anyone who harbors the freedman of another who owes services to his patron.

Given on the third of the *Ides* of July, during the Consulate of Gratian, Consul for the second time, and Probus, 371.

TITLE IV.

CONCERNING THE PROPERTY OF FREEDMEN AND THE RIGHTS OP PATRONAGE.

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

It makes a great deal of difference whether a slave obtains his freedom by means of his own money, and is manumitted by his purchaser, or whether he is entitled to his liberty by reason of a sum paid by his master; for, in the first instance, it is established that the patron cannot be admitted to the possession of the estate contrary to the will of his freedman; but in the second instance, he retains all the rights of patronage. Therefore, when the property of Sabinianus, the son of a patron, who, during his lifetime, was entitled to all the rights of patronage, was claimed by the Treasury on account of his being a public enemy, according to the regulations established by the Divine Pertinax, and adopted by Us, Our Treasury will succeed to the rights imposed upon his freedmen.

Given on the fifth of the *Nones* of July, during the Consulate of Faustinus and Rufinus, 211.

2. *The Emperors Valens and Valentinian to Florian, Count of Private Affairs.*

If freedmen, with the consent of their patrons, choose to marry Our female slaves or serfs, their patrons are hereby informed that they will hereafter forfeit the benefits of patronage.

Given on the third of the *Ides* of October, during the fifth Consulate of Lupicinius and Jovinus, 367.

3. *The Emperor Justinian to Demosthenes, Pr&torian Prefect.* When a patron hereafter

expects his freedman to be released from the rights of patronage, either by the execution of instruments between the parties while living, or by a will or codicil, or by means of verbal statements, the ancient interpretation of the law having been abolished, no doubt can exist that the freedman will be released from the right of patronage solely by the expression of words of this kind; nor are those rights reserved by Us for patrons, unimpaired, where successions descend *ab intestato;* and which the ancients decided should be preserved with reference to the property of freedmen, even -after the execution of such instruments.

As everyone is aware that, just as in the case of the restitution of birth, all rights of patronage are abolished, so under these circumstances the same effect should be observed. This rule of law applies where manumission takes place *inter vivos,* and the release of the right of patronage has been granted by last wills; so that restitutions of birth, in all instances in which freedmen are only entitled to their liberty, may obtain as much force as possible in Our Empire, as We prefer that it be inhabited rather by freeborn persons than by those who have been emancipated from slavery.

The respect, however, which is due from freedmen to patrons, and the rights which can be exerted by them against ungrateful freedmen, shall remain unimpaired; and if the right of patronage should be lost through the effect of words, in accordance with the rule established by Us, the restitution of birth alone will not entirely dispense with this right due to individuals who are freeborn.

Moreover, in those instances in which unworthy persons have been deprived of the rights of patronage by means of penal actions, the latter shall continue to have full effect.

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

Given on the third of the *Kalends* of November, during the fifth Consulate of Decius, 529.

TITLE V.

WHERE AN ALIENATION HAS BEEN MADE BY FREEDMEN IN ORDER TO DEFRAUD THEIR PATRON.

1. *The Emperors Diocletian and Maximian, and the Csssars, to Claudius.*

If a freedman should alienate any property for the purpose of defrauding his patron, it is established that power should be granted to revoke the alienation for the amount of the lawful share to which the patron is entitled.

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

2. *The Same Emperors and Csssars to Julia.*

When a patron succeeds to the inheritance of a freedman, who dies intestate, he can, by means of the Calvisian Action, revoke any alienation fraudulently made. But, as you assert that the patron has confirmed the donation of the land after the death of his freedman, the heirs of the patron cannot, in any way, invalidate the act of the person granting the manumission.

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

TITLE VI.

CONCERNING THE DEFERENCE TO BE SHOWN TO A PATRON.

1. *The Emperor Alexander to Zoticus.*

You cannot bring an action involving infamy against your patron. Given on the second of the *Ides* of May, during the Consulate of Maximus, Consul for the second time, and JElianus, 224.

2. *The Same to Leontogonus.*

Freedwomen who have been lawfully married with the consent of their patron cannot be compelled to render him services.

Given on the fourteenth of the *Kalends* of August, during the Consulate of Maximus, Consul for the second time, and JElianus, 224.

3. *The Same to Xanthus.*

Slaves who are manumitted by their masters in compliance with an agreement owe them all the respect ordinarily required by law.

4. *The Same to Victorinus.*

If you have offered violence, and shown insolence towards him who manumitted you, that is to say, him who, by generously releasing you from servitude, enabled you to become his adversary, the Governor of the province shall decide how he shall punish such audacity, for if money was due to you from your patron, or if any controversy existed between you on the subject of property, you should not immediately have recourse to litigation. If, however, you should venture to do a thing of this kind, you can readily convince the judge of the justice of your claim without the use of injurious expressions, and still preserve all the deference due to your patron.

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

5. *The Emperor Gordian to Sulpitia.*

There is no doubt that freedmen should show the children of their patron ordinary respect, even though the latter may have been convicted of crime. Hence, if they do not recognize their duty to manifest towards them the reverence to which they are entitled, they will not unreasonably appear to have given provocation for being' treated with severity.

Given on the *Nones* of September, during the Consulate of Sabinus, Consul for the second time, and Venustus, 341.

6. *The Same to Cornelius.*

There is no doubt that freedmen or freedwomen, especially those upon whom no services have been imposed, are required to evince ordinary respect for those who have manumitted them, rather than to perform servile labors for their benefit, and that they cannot be placed in chains.

Given on the third of the *Kalends* of April, during the Consulate of Atticus and Pratextatus, 243.

7. *The Emperors Diocletian and Maximian to Metrodorus.*

Authority ought not to be granted to freedmen to injure in any way the stepchildren of their patronesses. It is intolerable that the freedmen of your stepfather should be permitted to injure you, as you allege, and hence the Governor of the province will have no hesitation in punishing those who are guilty, in accordance with their condition.

Given on the fifth of the *Ides* of May, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

8. *The Same Emperors to Hermia.*

It is not right for you to refuse to your patroness the respect to which she is entitled.

Given on the twelfth of the *Kalends* of February, during the Consulate of Diocletian and Maximian, 287.

TITLE VII.

CONCERNING FREEDMEN AND THEIR CHILDREN.

1. *The Emperor Antoninus to Daphnus.*

It is well known that a woman who has manumitted a slave under the terms of a trust cannot afterwards accuse him of being guilty of ingratitude, for this power is only granted to one who gratuitously bestows freedom upon a slave, and not to one who gives it when it is due.

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

2. *The Emperor Constantius to Maximus, Prefect of the City.*

If a slave, who has been manumitted, has manifested ingratitude to his patron, and has behaved towards him with insolence or obstinacy, or has been guilty of some slight offence against him, he shall again be placed under the control and authority of his master, if the latter can prove that he was ungrateful in a complaint brought before an ordinary judge, or judges specially appointed. Any children that may have been subsequently born to him shall also be reduced to slavery, as the crimes of their parents do not affect those who were proved to have been born at the time that the former obtained their freedom.

Anyone, however, who has been formally liberated in Our Council, and, after punishment, shows by his repentance that he is worthy of again being invested with Roman citizenship, shall not enjoy the benefit of freedom, unless his patron obtains this favor for him in consequence of his entreaties.

Given at Rome, on the *Ides* of April, during the Consulate of Constantius, Consul for the fifth time, and the Caesar Constans, 319. 8. *The Emperors Honorius and Theodosius to the Senate.* Freedmen shall not only not be heard against their patrons, but they must also manifest the same respect for their heirs that they do for the patrons themselves, for they will have a right to proceed against them for ingratitude, just as those who manumitted them can do, if, unmindful of the freedom which was bestowed upon them, they are guilty of servile wickedness.

Given at Ravenna, on the seventh of the *Ides* of August, during the Consulate of Marinianus and Asclepiodotus.

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

When persons of the condition of freedmen, or their children, are shown to have been ungrateful, they can undoubtedly again be reduced to slavery.

Given at Ravenna, on the *Kalends* of April, during the Consulate of Theodosius, Consul for the eleventh time, and Valentine, 425.

TITLE VIII.

CONCERNING THE RIGHT TO WEAR GOLD RINGS, AND THE RESTITUTION OF BIRTH.

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

The Order of Decurions cannot restore birth and grant the right to be freeborn, but this can be requested of Us.

Given at Ravenna, on the fifteenth of the *Kalends* of April, during the Consulate of the above-named Emperors.

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

The use of gold rings, granted by the indulgence of the Emperor to freedmen, gives them the appearance of being freeborn, but does not confer the condition itself. Where freedmen are

restored to the rights of former birth, they become freeborn by virtue of Our favor.

Granted on the thirteenth of the *Kalends* of . . . , under the Consulate of the Caesars.

Extract from Novel 78, Chapters I, and II. Latin Text.

At present, however, those who manumit their slaves declare them to be Roman citizens (for this cannot be done otherwise) and by virtue of this manumission they have the right to wear gold rings, and be regenerated; but although they are considered freemen and freeborn, the rights of patronage still remain unimpaired.

TITLE IX.

WHO CAN BE ADMITTED TO THE PRAESTORIAN POSSESSION OF PROPERTY AND WITHIN WHAT TIME THIS SHOULD TAKE PLACE.

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

The praetorian possession of an estate granted to a son under paternal control can be demanded even when his father is ignorant of the fact, and it also benefits the latter if he ratifies the demand; but it is lost, if the time prescribed by law has elapsed.

Without date or designation of consulate.

2. *The Same to Crispinus.*

If you alone have a right to the possession of an estate on account of your near relationship to the deceased, you will be entitled to the term of a hundred available days from the time when you knew that your relative was dead, for the purpose of obtaining possession of it. Given on the third of the *Nones* of November, during the Consulate of Geta.

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

There is no doubt that the possession of an estate which has been accepted in the name of an infant will legally descend to his heirs, even though he died before being able to speak.

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

4. *The Same Emperors and Csesars to Marcellus.*

If an emancipated girl did not accept the possession of an estate within a year, under the privilege granted to children in such cases, she cannot transmit the claim to the succession to her heirs.

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

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

You are unduly apprehensive if you think that the time fixed for the acceptance of the possession of the estate will elapse, while the question remains uncertain whether you are entitled to it by the terms of the will, as the heir at law, or under what other title possession should be granted you.

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

It is clear that ignorance of the law will be of no advantage to women in accepting praetorian possession of property, so far as the time prescribed by the Perpetual Edict is concerned.

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

7. *Part of a Letter of the Emperors Constantius and Maximian, and the Csesars Severus and Maximian.*

It is plainly stated that a guardian can accept praetorian possession in the name of his ward. The ward, however, cannot do so without the authority of his guardian, unless, not having

reached the age of puberty, he petitions for it, and a competent judge, being aware of the fact, should grant him possession of the estate; for, under such circumstances, the benefit of the succession is considered to have been obtained by him under praetorian law.

Given on the sixth of the *Ides* of September, during the Consulate of Constantius and Maximian, 306.

8. *The Emperor Constantine to Dionysius.*

Anyone who thinks that he is entitled to property belonging to the estate of his parents or other relatives is hereby notified that he will not be prevented from acquiring it, if, through rusticity, or ignorance of the facts, or absence, or any other good reason, he is known to have failed to have demanded praetorian possession within the time prescribed by law, as this provision relaxes the strictness of the former practice.

Given at Heliopolis, on the day before the *Ides* of March, during the Consulate of Constantine and the Caesar Constans.

9. *The Same Emperors to the People.*

As we have already excluded the subtleties of empty verbiage, We decree that the following rule shall be observed, namely, that when any statement is made in a will with reference to the acceptance of an estate, before any judge, or even before duumvirs, it shall be done within the time fixed by former laws, and if relatives in a more distant degree than those entitled to it have acquired possession, it shall, nevertheless, have the same validity after the time has elapsed as if the ordinary course had been pursued.

Given at Laodicea on the *Kalends* of February.

TITLE X.

WHEN THE SHARES OF AN ESTATE TO WHICH THOSE WHO DO NOT DEMAND THEM ARE ENTITLED ACCRUE TO OTHERS, WHO ASK POSSESSION OF THE SAME.

1. *The Emperor Gordian to Marthana.*

Whenever lawful succession does not take place, and the possession of the estate is granted to several children, some of whom neglect to take advantage of the benefit granted by the Perpetual Edict, there is no doubt that those alone who acquire possession of the estate will have their shares of the same increased by the addition of those of the others who did not formulate a demand for them.

TITLE XL.

CONCERNING THE PRAETORIAN POSSESSION OF PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF THE WILL.

1. *The Emperor Alexander to Vitalis.*

While an appeal from the decision by which a will is declared to be forged is pending, and it is still uncertain whether the deceased died intestate or not, there is no ground to grant praetorian possession of the estate on account of proximity of relationship.

Given on the third of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and ^lianus, 224.

2. *The Emperor Gordian to Corneliiis.*

There is no doubt that, in accordance with the Edict of the Praetor, possession of an estate cannot be demanded in accordance with the provisions of the will, unless it bears the seals of seven witnesses. If, however, it can be shown that this same number of witnesses were present when an unwritten will was made, it is a well-established rule of law that a will of this kind

has been legally executed, and in accordance with it possession of the estate should be granted.

Given on the twelfth of the *Kalends* of March, during the Consulate of Atticus and Praetextatus, 243.

TITLE XII.

CONCERNING THE POSSESSION OF AN ESTATE IN OPPOSITION TO THE PROVISIONS OF THE WILL WHICH THE PRAETOR PROMISES TO CHILDREN.

1. *The Emperor Alexander to Rufus.*

Where the possession of an estate contrary to the provisions of a will has been granted to descendants, they should, in accordance with the Edict, only pay the legacies bequeathed by the testator to his ascendants and to his children.

Given on the fourth of the *Ides* of October, during the Consulate of Maximus, Consul for the second time, and .^Elianus, 224.

2. *The Same to Clara.*

When a posthumous child is born, who was neither appointed an heir by his father nor disinherited by name, the will is broken; and if praetorian possession of the estate contrary to the provisions of will is demanded by its guardian in the name of the infant, possession in accordance with its provisions cannot take place.

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

TITLE XIII.

CONCERNING PRAETORIAN POSSESSION OF THE ESTATE OF A FREEDMAN CONTRARY TO THE PROVISIONS OF THE WILL GRANTED TO HIS PATRONS OR THEIR CHILDREN.

1. *The Emperor Gordian to Herculianus.*

Although you allege that he who was manumitted by you and your sister was liberated in accordance with the terms of the trust contained in your father's will, still, if he appointed foreign heirs, you can obtain possession of your lawful share of the estate contrary to the provisions of the will, if you make the demand; or you can do so in opposition to an unwritten will, if one of this kind was executed, provided you file your claim for the said lawful share of the estate within the time prescribed by the Edict.

Given on the sixth of the *Kalends* of December, during the Consulate of Gordian and Aviola, 240.

2. *The Emperor Anastasius to Asclepiodotus.*

The patron of a freedman upon whom certain duties and services have been imposed is excluded from prastorian possession of his estate contrary to the provisions of the will.

Given on the thirteenth of the *Kalends* of March, during the Consulate of Viator and Emilianus.

TITLE XIV.

CONCERNING THE PROCEEDING UNDE LIBERI.

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

If your grandfather should die, leaving three emancipated sons, and they acquire possession of his estate *unde liberi,* it is clear that they will be his heirs *pro rota.*

Given on the fourth of the *Nones* of . . . , during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

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

Where a son or a grandson, who is a proper heir, is called to the succession *ab intestato,* no one else can be the heir at law.

Given on the third of the *Ides* of March, during the Consulate of the same Emperors and Csesars.

3. *The Emperor Constantine to Leontius, Count of Private Affairs in the East.*

He who rejects the estate of his father will not be entitled to that of his deceased paternal grandfather, to whom his father succeeded as heir at law, above all if he has been emancipated, unless he obtains this advantage by means of praetorian possession of their estates.

Given on the eighth of the *Ides* of April, during the Consulate of Liminius and Catulinus, 349.

TITLE XV.

CONCERNING THE PROCEEDINGS UNDE LEGITIMI AND UNDE COGNATI.

1. *The Emperor Alexander to Ulpia.*

You cannot be prevented from claiming the estates of your cousins who died intestate, if they did not belong by law to a nearer relative, and you accepted possession of the same.

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

2. *The Emperors Diocletian and Maximian to Zeno.* As you allege that your second cousin, that is to say, the son of your female cousin, died intestate, you understand that you cannot claim his succession without demanding praetorian possession of his estate.

Given at Laodicea, on the seventh of the *Kalends* of June, during the Consulate of the above-named Emperors.

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

Succession is also granted by praetorian law in equal shares to grandsons of a maternal grandmother.

Given on the *Ides* of October, during the Consulate of the Caesars.

4. *The Same Emperors to Syrista.*

It should not be asked whether anyone who retains possession of an estate does or does not do so with the intention of acquiring it for himself, or whether he has lost his hereditary right to the estate, or to praetorian possession of the same.

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

5. *The Same Emperors to Plato.*

It is certain that no cognate can legally succeed to an estate, except by means of praetorian possession, but if the cognates of the deceased should be unwilling to succeed him, they cannot be compelled to demand praetorian possession of his estate.

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

TITLE XVI.

CONCERNING THE EDICT REGULATING THE SUCCESSION.

1. *The Emperor Alexander to Julian.*

If your mother did not accept possession of the estate of her uncle, on account of her being insane, you, her son, will be admitted to prse-torian possession of the said estate of your great-uncle, in accordance with the terms of the Edict, by which, if the nearest relatives do not demand it, it will be granted to those next in succession.

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

2. *The Emperors Diocletian and Maximian to Firmus.*

If the brother of the grandmother of those whose succession is in question entered upon the estate under the will, and, as you assert they died intestate, and the will was forged, and the person above mentioned also died intestate without having demanded praetorian possession, and you, although in the fifth degree, demanded praetorian possession of his estate on the ground of being his successor, before the prescribed time had elapsed, you can legally claim their estate. But if there is no doubt that if he who is in the fourth degree of relationship made the demand in conformity with the Edict, and did not conceal it from you, you will petition Us in vain.

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

TITLE XVII.

CONCERNING THE CARBONIAN EDICT.

1. *The Same Emperors and Csesars to Flora.*

If a question relative to your status and that of your son is raised by the person against whom you petition, you will perceive that the demand for the delivery of the property which your son claims as belonging to the estate of his father has been made prematurely; for if your son still remain under the age of puberty, praetorian possession of the estate should be given him in accordance with the terms of the Carbonian Edict, and security should be furnished by him, until it is proper for him to be placed in possession.

If, however, security is not furnished, possession should be given to all the claimants, and the question of the servitude postponed until your son has arrived at puberty.

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

2. *The Emperors Theodosius, Arcadius, and Honorius to Rufinus, Prsetorian Prefect.*

The Carbonian Edict has reference to persons born in undoubtedly lawful marriage, and to such as are born afterwards, where their legitimacy has been satisfactorily established, and their title to succession proved to be legal. Hence anyone who has been appointed a new heir, and who has been placed in possession of the estate, can enjoy the property of the others without fear of molestation, until he arrives at the age of puberty.

Given on the fourth of the *Kalends* of October, during the Consulate of Theodosius, Consul for the third time, and Habundantius, 293.

TITLE XVIII.

CONCERNING THE SUCCESSION UNDE VIR ET UXOR.

1. *The Emperors Theodosii's and Valentinian to Hierius, Praetorian Prefect.*

A husband and wife succeed one another reciprocally, as heirs at law to their entire estates, in accordance with the terms of the ancient laws, whenever neither has any ascendants or descendants, or any other lawful or natural relatives, to the exclusion of the Treasury.

Given on the twelfth of the *Kalends of* March, during the Consulate of Hierius and Ardaburius, 427.

Extract from Novel 117, Chapter V. Latin Text.

Moreover, if the marriage took place without any dowry having been given, and the husband or wife who dies first is wealthy, and the survivor is poor, the latter, along with the common children or those of another marriage, will succeed to one-fourth of the estate, where there are three children or less. Where there are more than three, they will succeed to equal shares, so that the property may be preserved for the issue of the same marriage if there is any; or if there are no children living, or the survivor never had any, he or she will acquire the ownership, and will be considered to have obtained his or her share as a legacy.

TITLE XIX.

CONCERNING THE REJECTION OF THE POSSESSION OF THE PROPERTY OF AN ESTATE.

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

An emancipated person who has rejected the praetorian possession of an estate will, in vain, attempt to again bring up the question, under the pretext that his decision was made during the absence of his patron.

Without date or designation of consul.

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

A father will not be permitted to reject the possession of property given to him by his son, for the purpose of defrauding the latter.

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

TITLE XX.

CONCERNING HOTCHPOT.

1. *The Emperor Alexander to Deuteria.*

It is clearly a rule of law that emancipated children, who have been appointed heirs by the will of their father, and have obtained the estate under it, are not compelled to contribute what was given to them by their father as a donation to the common mass of the estate for the benefit of their brothers, unless he provided by his last will that this should be done.

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

Extract from Novel 18, Chapter VI. Latin Text.

The hotchpot of the dowry and other gifts does not apply to estates left by will, or which are *ab intestato,* even though the father should have expressly directed that this should be the case. All other provisions which have been made with reference to hotchpot remain in full force.

2. *The Same to Primus.*

If a father, dying intestate, should leave two sons, and a daughter in whose name he had promised a dowry, the three children shall inherit equally, and the dowry shall still be subject to hotchpot; so that the brothers will be released from the necessity of furnishing it as heirs of their father

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

3. *The Same Emperor to Alexander.*

A clause included in a dotal instrument providing that the woman shall be contented with the dowry given at marriage, and shall have no right to the estate of her father, is disapproved by the law, and the daughter cannot for this reason be prevented from succeeding to the estate of her father if he dies intestate. She must, however, account to her brothers, who remained under the control of their father, for the dowry which she received.

Given on the fourteenth of the *Kalends* of July, during the Consulate of Agricola and Clementinus, 231.

4. *The Emperor Gordian to Marinus.*

Daughters are required to bring their dowries into the common mass of the estate only where they succeed to their father who died intestate, or demand praetorian possession contrary to the provisions of the will. Nor is there any doubt that a profectitious or adventitious dowry bestowed or constituted by the father should be accounted for to the brothers who were under his control. It has finally been decided, after many conflicting opinions have been given by learned jurists, that those who did not die while members of the family will only be entitled to hotchpot of the profectitious dowry.

Given on the fourth of the *Ides* of March, during the Consulate of Gordian and Aviola, 240.

5. *The Same to Alexandria.*

You have no right to demand the dowry during the existence of the marriage. For, although your father died intestate, you should account to your brother for your dowry, but you have not, on this ground, any right of action against your husband to recover it, as you can set off the share of the estate to which you are entitled against the dowry.

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

Extract from Novel 97, Chapter VI. Latin Text.

This law applies whether the husband is solvent or not, and if he is not, the woman will be to blame for not having exacted her dowry during marriage according to the Law of Justinian, when she saw that her husband was becoming poor, which she could do, being her own mistress and of legal age.

When the mother gives the dowry, and the father consents to her doing so, the daughter can sue to collect it. If her parents are dead, she can contribute her right of action alone (even though it may be worthless) in order to recover the dowry from the estate. This is the case when it is small, but where the dowry subject to hotchpot is of considerable value, the daughter can exact it even against the consent of her father.

These rules shall be observed whenever reason for hotchpot exists, even if the succession to the estate of a grandmother is in dispute.

6. *The Same to Claudius.*

Emancipated brothers are accustomed to contribute, for the benefit of their other brothers who remained under the control of their father, whatever property belonged to them at the time that he died, of course, with the exception of anything due from them to others.

Given on the seventh of the *Kalends* of May, during the Consulate of Peregrinus and Emilianus, 245.

7. *The Emperor Philip to Tymnnia.*

It is an established rule of law that a daughter who was appointed heir by the will of her father is not required to bring her dowry into the mass of the estate for the benefit of her brothers, who are also her co-heirs, unless her father expressly stated that this should be done.

Given on the sixth of the *Kalends* of May, during the Consulate of Prsesens and Albinus, 247.

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

If your sister deceived you in the division of your father's estate, and did not bring the dowry which she received from your father, who died intestate, into the common mass of the same, the Governor of the province, after the allegations of the parties have been examined, will order that the dowry shall be included with the other property, and after having deducted the excess to which he thinks she is entitled, shall direct it to be returned to you.

The same rule applies where a division has been made by the award of an arbiter.

Given on the sixth of the *Ides* of July, during the Consulate of the above-mentioned Emperors.

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

If you have both been emancipated by your father, hotchpot will not be required. If, however, your brother was under the control of your father at the time of his death, and the latter left no will or any other final distribution of his property, and it is proved that you were emancipated, and are entitled to the estate of your father as heir at law, the terms of the Perpetual Edict certainly call for hotchpot.

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

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

Where a daughter receives property left to her by a codicil of her father, or from someone outside the family, she cannot be compelled to place her dowry in the common mass of the estate, even though her father may have urged that this be done.

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

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

When, by the birth of a posthumous child, who was passed over by his father, the will of the latter is broken, and the child succeeds as heir, at law, it is provided by the Perpetual Edict that an emancipated son shall contribute all his property to the mass of the estate, after having demanded possession of the same; for it is clearly shown that he would have been obliged to do so if the child born subsequently had come to the world during the lifetime of his father, and there is no doubt that all actions should be denied to emancipated children if they do not make the contribution required by law.

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

12. *The Same and the Csesars to Philantea.*

There is no question that hereditary actions should be refused to a daughter who, although she was under the control of her father, refuses to account to her brothers of the same family for the dowry which she had at the time of her father's death. Wherefore, you should wisely Snd in accordance with law contribute your dowry for the benefit of your brothers, who you state were under the control of your common father when he died.

Moreover, as long as your brothers remain in the family of your father, they will not be entitled' to their *peculium,* (unless it was *castrense,* or bequeathed to them as a preferred legacy), but it must be brought into the common mass of your father's estate to be divided; and it is an absolute and plain rule of law that no change can be made in any property derived from this source, and that it must remain in the same condition in which it was originally.

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

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

If you acquired a tract of land by donation after the death of your father, your sister cannot claim your share of the same; but if it was given to you by your father, while you were under

his control, as you with your sister succeed to the estate of your common father, your demand to hold said property as a preferred legacy is contrary to law.

Given on the sixth of the *Ides* of February, during the Consulate of the Cffisars.

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

If your former husband became the heir at law of your father, and his posthumous child succeeded you, the Governor will not hesitate to refuse the hereditary actions to the aunt of your son, to which she was entitled at the time of the death of her father, if she does not bring her dowries to the mass of the estate.

Given on the seventh of the *Kalends* of March, during the Consulate of Tuscus and Anulinus, 295.

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

Emancipated children are not compelled to contribute property which they have acquired after the death of their common father, but, retaining the same, they will be entitled to their hereditary share of their father's estate.

Given on the *Ides* of December, during the Consulate of the Csesars,

297.

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

It has been held, with the greatest propriety, that a daughter, who with her brothers, succeeded as co-heirs to her father, who died intestate, cannot recover anything by an action in partition, if she does not contribute her dowry to the mass of the estate, in addition to what her father may have left her by a codicil.

Given on the fifth of the *Kalends* of January, during the Consulate of the Csesars, 297.

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

In order that children of either the male or female sex, whether they are their own masters or are under the control, and entitled by any right whatsoever to the intestate succession of their father, that is to say, because no will was made, or if one was made, on account of having demanded praetorian possession contrary to its provisions, or if it has been set aside in consequence of being attacked as inofficious, may be treated alike and with justice, We have thought that, in the interests of equity, it should be inserted into the present law that in dividing the property of parents who have died intestate, a dowry as well as an ante-nuptial donation should be placed in the mass of the estate, whether the father or mother, the grandfather or grandmother, the great-grandfather or the great-grandmother, on either the paternal or the maternal side, gave or promised the dowry or ante-nuptial donation in behalf of either a son or a daughter, a grandson or a granddaughter, or a great-grandson or a great-granddaughter.

No exception shall be made, whether the above-mentioned relatives contributed a donation to the wives in behalf of their children, or to the husbands in behalf of theirs, in order that the said donation might enure to the benefit of their wives, so that in the division of the property of the father who died intestate, and whose estate is in question, the said dowry or ante-nuptial donation must be brought into the mass of his estate.

As it has been provided by the terms of former laws, in the case of children of both sexes who have been emancipated, whatever property they acquired from their parents at the time of their emancipation, as is customary, or what they may have obtained from them after emancipation, must be placed in the common mass of the estate.

Given on the fifth of the *Kalends* of March, during the Consulate of Buscus and John, 467.

18. *The Emperor Anastasius to Constantine, Prtetorian Prefect.*

We order that children who, by the authority of Our law, can become their own masters through petitions presented to Us, and by virtue of Imperial Rescripts, shall be ordered to make contribution to the common mass of the estate, in the same manner as others who have been emancipated in accordance with the ancient laws, in conformity with those provisions which have been enacted with reference to other emancipated persons.

Given at Constantinople, on the twelfth of the *Kalends* of August, during the Consulate of Probus and Avienus the Younger.

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

We have thought it proper to completely remove the doubt which has arisen with reference to the hotchpot of a dowry or ante-nuptial donation, and which has already been thoroughly discussed by certain persons. For, if a man should die intestate, and leave one or several sons, or one or several daughters, and any of said daughters should die, leaving a number of grandchildren of either sex; or if, on the other hand, a woman should die intestate in like manner, leaving one or several sons, or one or several daughters, and any of said sons or daughters should die, leaving a number of grandchildren of either sex, and there was no doubt whatever about the succession, it was clear that the grandchildren are entitled to two-thirds of the estate of their father or mother, and that the other third should be reserved for their paternal or maternal uncles or aunts, as has already been provided by a former constitution.

With reference, however, to the hotchpot of the dowry or antenuptial donation which the defunct person had given for his or her surviving daughter, and in behalf of his or her deceased son or daughter, serious doubt arose. For the surviving children of the decedent contended that they were not obliged to surrender the dowry or ante-nuptial donation which had been given for their benefit, by their father or mother, to be placed in the estate, and shared by the children of their deceased brother or sister, on the ground that no constitution had been promulgated with reference to a contribution of this kind.

On the other hand, however, the grandchildren of the deceased not only disputed this, but even asserted that the burden of contribution was imposed by the Constitution of the Emperors Arcadius and Honorius, of Divine memory, only upon maternal uncles, and did not apply to paternal uncles, or to paternal or maternal aunts. Therefore, for the sake of disposing of this subtle distinction, We order that not only the sons and daughters of a deceased person shall also contribute to the mass of the estate any dowry or ante-nuptial donation given to them by their parents, for the benefit of the grandchildren of both sexes, who were the children of the deceased person, but that the said grandsons and granddaughters shall also contribute in like manner to the estates of their paternal or maternal uncles, or paternal and maternal aunts, any dowry or ante-nuptial donation which they may have received from their father or mother, in order that all these contributions, having been mingled with the mass of the estate of the deceased, the children or grandchildren may obtain two-thirds of the portion of the same which their fathers or mothers would have had if they had lived, and that the third share shall, together with that to which they themselves are entitled, go to the sons or daughters of the deceased person whose estate is concerned.

Given at Constantinople, on the *Kalends* of June, during the Consulate of Our Lord Justinian, Consul for the second time, 528.

Extract from Novel 18, Chapter IV. Latin Text.

This diminution of the third of the estate is altered by the new law, which requires an equal distribution in the case of all such persons.

20. *The Same to Menna, Prxtorian Prefect.*

We hereby explain clearly a matter which has unreasonably been brought into controversy by

certain authorities; namely, that all property included in the legitimate fourth share of an intestate succession shall, by all means, be brought into hotchpot for the benefit of their co-heirs by those who bring suit on the ground of the will being inofficious, even if they are called to the estate of the person who died intestate. This shall not only apply to other property, but also to that acquired by one of the heirs by means of the money of the deceased, who served in the army; so that the profit which he obtained at the time of the death of the soldier, whether the latter executed a will or died intestate, shall be charged to the fourth part of the estate, and be contributed to the common mass of the same.

The rule also, that all the property composing the fourth legitimate portion shall be brought into hotchpot in case of intestacy, will by no means hold in the contrary case, so that anyone can say that all the property contributed should, by all means, be included in the fourth portion of those who instituted proceedings against the will as inofficious, as only such property should be included in the said portion as is expressly stated by the laws can be done.

(1) As the question arose whether an ante-nuptial donation or dowry given by a father, mother, or other relative in behalf of a son or daughter, a grandson or a granddaughter, or any other descendants, shall be liable to hotchpot, if any one of the children before marriage had received or should receive only an ante-nuptial donation or a dowry, and not merely a simple donation, and another of either sex had received or was entitled to receive neither an ante-nuptial donation or dowry from either parent, but merely a simple gift, in order that no injustice may be done, if the person who received the ante-nuptial donation or dowry should be forced to account for it, and one who had only received an ordinary donation should not be compelled to place it in the mass of the estate, if anything of this kind should occur, We order that the said person shall be compelled to account for the same, just as in the case of one who had received an ante-nuptial donation or a dowry, and that also the one to whom no dowry or ante-nuptial donation had been given, but who merely received an ordinary present from his or her parents, shall account for it; nor can he or she refuse to do so on the ground that an ordinary gift is not placed in hotchpot, except where the donor imposed a condition of this kind at the time when it is donated.

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

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

In order that no one may hereafter entertain any doubt with reference to contributions of this kind, We have considered it necessary to add the following provision to the Constitution which We have already promulgated in favor of children, namely, to forbid that property partially acquired by parents should be subject to hotchpot between children after their death. For as in the distribution of an estate they cannot be compelled by the terms of a former law to place any *castrense peculium* in its common mass, so We decree that any other property which has not been wholly acquired by the parents shall also belong to the children.

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

TITLE XXI.

CONCERNING THE WILL OF A SOLDIER.

1. *The Emperor Antoninus to the Soldier Floras.*

If your brother, while a soldier, appointed you his heir, especially for property which he had at home, you cannot claim that which he left in the camp, even if he who was appointed heir of the same refuses to accept it. But those entitled to the estate become his heirs at law, provided no one has been substituted in the place of the said heir, and it is clearly proved that your brother did not consent that the castrensian property should go to you, for the will of a soldier

in active service is observed as law.

Given on the fifth of the *Ides* of September, during the Consulate of the two Aspers, 213.

2. *The Same to the Soldier Septimus.*

When a soldier appointed a comrade of his heir only to his castrensian property, his mother will be entitled by law to all his other possessions, on the ground of his dying intestate. If, however, he appointed a foreign heir, and he accepted the estate, your demand that his property be transferred to you is contrary to law.

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 Vindicianus.*

Although the wills of soldiers are not subject to the ordinary legal formalities, as, on account of military simplicity, they are permitted to make them in any way they desire, and in any way they can, still, the testamentary disposition made by the late Valerian is based upon the authority of the Common Law. For as, being the head of a household, he appointed his daughter heir to two-twelfths of his estate, and his wife heir to one-twelfth, but did not make any disposition of the remaining portion, it is clear that he divided his estate into three parts, with the evident intention that she should have two-thirds who received two-twelfths, and that she who was appointed heir to one-twelfth should obtain the remaining third.

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

4. *The Emperor Alexander to Junius.*

If Rufinus, an illustrious tribune of senatorial rank, after having arrived at his majority, made a will and manumitted you, you should know that you are entitled to your lawful freedom. If, however, he was under the age prescribed by law when he executed his will, you cannot obtain your freedom, as it was given contrary to law, for, under such circumstances, the legal restitution is not abolished in favor of a soldier. If, however, the said testator had intended to manumit you, and it was his probable intention to do so during his lifetime, for the reason that freedom should be given when conferred by the terms of a trust by a minor of any age, and if his said intention can be proved, the result will be that slaves are legally entitled to their freedom under a military will of this kind.

Given on the sixteenth of the *Kalends* of December, during the Consulate of Alexander, 224.

5. *The Same Emperors to Sozomenus.*

Hence an estate and legacies are due to those to whom they have been bequeathed by the will of a soldier, whether he was still in the service, or they were left within a year after he was honorably discharged, because, among other privileges granted to soldiers, they are freely permitted to bequeath their property by their wills to whomever they may select, unless the law expressly forbids them to do so.

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

6. *The Same Emperor to Valentine.*

Where anyone, who is not a soldier, appointed two heirs by his will, for one of whom his father had the right to make a will up to the time when he arrived at puberty, and for the other he would not be able to make substitution, if he afterwards became the heir, as it had been made reciprocally by the terms of the will, it has been established by the opinions of persons learned in the law and by the constitutions of My Divine ancestors, which apply to a case of this kind alone, that he who executed the will could make a reciprocal substitution of the said

heirs, and that they both stood on the same footing.

But as the controversy to which you allude has reference to a military will by which you were appointed heir with reciprocal substitution, conjointly with his little daughter who afterwards died, and her mother claimed the estate of her daughter for herself on the ground of intestacy, and you assert that it belongs to you, because of the substitution which was made, the rule of law is clear that soldiers are permitted by a peculiar privilege to substitute foreign heirs for their own heirs, in case the latter should die, but you must prove that this was your brother's intention.

Given on the eleventh of the *Kalends* of May, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

7. *The Same Emperor to Fortunatus.*

You cannot claim your freedom on account of the words, "I give and bequeath to my freedman, Fortunatus," if this is inserted in the will of someone who is not a soldier. But if, as you allege, the testator was a soldier, and did this with the intention of granting you freedom, and not because he erroneously believed you to be free, you will indeed be entitled to your liberty directly, and to the right to claim the legacy by virtue of the peculiar privilege to which soldiers are entitled.

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

8. *The Emperor Gordian to the Soldier JEternus.*

It is a certain rule of law that a soldier can appoint an heir for a specified time.

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

9. *The Same Emperor to Valerius.*

It is also well established by law that where a soldier, being aware that he had a son, appointed other heirs, he is understood to have tacitly disinherited him, just as when, being ignorant that he has a son, he appoints other heirs, the said son will not be deprived of his estate; but the will will be void if the son is under his control, and there is no doubt that he will be entitled to the estate.

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

10. *The Emperor Philip and the Csesar Philip to the Soldier Justinus.*

When an unborn daughter has been passed over in the will of her father who is a soldier, or where the father thought that she was dead, .in consequence of a false report, and did not mention her in his will, silence under these circumstances does not, by any means, cause disinheritance. But if the soldier who appointed his daughter in his will left her a legacy, but did not appoint her his heir, he disinherited her.

Given on the twelfth of the *Kalends* of June, during the Consulate

of Prsesens and Albinus, 247.

11. *The Same Emperors and C&sars to the Soldier JEmilianus.*

It is clear that the appointment of heirs who have been solicited to become such even by the will of a soldier are of no force or effect.

Given on the seventh of the *Kalends* of July, during the Consulate of Praesens and Albinus, 247.

12. *The Same Emperors and Csssars to Domitia.*

It is a well-established rule of law that in the will of a soldier the Falcidian Law does not apply to legacies and trusts. If, however, a claim should be made for more than the amount of the estate, you can protect yourself by a competent defence.

Given on the sixth of the *Nones* of July, during the Consulate of Praesens and Albinus, 247.

13. *The Emperors Valerian and Gallienus to Claudia.*

Our soldiers and centurions who have been convicted of military offences are only permitted to make wills disposing of their cas-trensian property, and the remainder goes to the Treasury by the right of intestacy.

Given on the *Nones* of August, during the Consulate of Valerian and Gallienus, Consuls for the third and second time, respectively, 256.

14. *The Emperors Diocletian and Maximum to the Heirs of Maximus.*

If your mother, having been appointed heir by her brother who was a soldier, obtained the estate for herself, although the will did not conform to the requirements of the law, it is legally settled that, nevertheless, neither the brother of the testator nor his children can evict her from the estate on the ground of intestacy.

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

15. *The Emperor Constantine to the People.*

Where soldiers in active service wish to appoint their wives, children, or friends, or any other persons whomsoever, their testamentary heirs, they can do so in any way which they can, or desire; and neither the merit, the freedom, nor the rank of their wives or children shall be called in question when they produce the will of their father. Hence it is permitted, and always shall be permitted by the rules of law, that, if they have written their intentions on the scabbards of their swords, or on their shields, with the crimson letters of their own blood, or have traced them in the dust with the points of their swords, at the time when they were dying in battle, a will of this kind shall be valid.

Given at Nicomedia on the third of the *Ides* of August, during the Consulate of Optatus and Paulinus, 334.

16. *The Emperor Anastasius to Hierus, Praetorian Prefect.*

We order that the secretaries and attendants who draw up the papers, or obey the orders of the officers of the army, shall by no means have the power to make last wills for themselves, in accordance with military law, even though their names appear to be inscribed upon the rolls of the army.

Given at Constantinople, on the *Ides* of February, under the fifth Consulate of Paulus, 496.

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

In order that all those attached to the army may not think that they are permitted to make their wills at any time and in any way that they desire, We order that the above-mentioned privilege of executing last wills shall be granted to those alone who are in active military service.

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

18. *The Same Emperor to John, Prsetorian Prefect.*

Although minors who had obtained the rank of tribune were permitted by the ancient laws to make last wills, still, it appears to be unworthy of Our aid that one whose judgment is not yet mature should, by reason of military privilege, enjoy the rights of men of full discretion, and while at such tender age, through the exertion of a concession of this kind, perhaps injure his parents or other relatives by leaving his property to strangers. Therefore, We order that this

shall under no circumstances be done.

Given during the *Kalends* of November, after the fifth Consulate of Lampadius and Orestes, 532.

TITLE XXII.

WHO CAN MAKE A WILL AND WHO CANNOT.

1. *The Emperor Gordian to the Soldier Petronius.*

Although as your father-in-law and his brother are partners in all the property belonging to you, still, the brother of your father-in-law, at the time of his death, was able to appoint anyone whom he wished his testamentary heir. Likewise, he was not deprived of the right to make a will, for the reason that it is alleged that the estate in which he was jointly interested with his sister was as yet undivided.

Given on the twelfth of the *Kalends* of August, during the Consulate of Arianus and Pappus, 244.

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

If he who appointed you his heir, along with his wife, was of sound mind at the time when he executed his will, and was not afterwards oppressed with the consciousness of some crime, but committed suicide on account of his being incapable of enduring pain, or while impelled by an attack of insanity, and his innocence can be clearly established by you, his last will should not be rejected under the pretext of his voluntary death. If, influenced by the fear of future punishment, he anticipated it by suicide, the laws forbid that his last will shall be considered valid.

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

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

It is certain that persons of advanced age who are suffering from bodily disease cannot be deprived of the right of testation, provided they are of sound mind. It is, however, a positive rule of law that a son who is under paternal control cannot make a will.

Given on the fourth of the *Nones* of April, under the Consulate of the Csesars.

4. *The Same Emperors and Csesars to Rado.*

As your first cousin died before reaching his fourteenth year, and hence did not have testamentary capacity, nothing can legally be demanded by virtue of his last will. But if, having passed the abovementioned age, even though the evidences of his virility may not yet have appeared, he executed a last will in compliance with the formalities of the law, you will, in vain, attempt to have it set aside.

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

5. *The Emperor Constantius to Rufinus, Prsetorian Prefect.*

Eunuchs, like everyone else, shall be permitted to execute wills and make final distribution of their property, and also to draw up codicils, provided that all the formalities required in the execution of wills are observed.

Given on the fifth of the *Kalends* of March, during the Consulate of Constantius, Consul for the fifth time, and the Caesar Constans, 339.

6. *The Same Emperor to Volusius, Prsetorian Prefect.*

If anyone should appoint the Emperor his heir, he shall, in accordance with the laws relating to wills, have the power to change his will, and appoint anyone else whom he may wish.

Given at Milan, on the twelfth of the *Kalends* of March, during the Consulate of Arbitio and Lollianus, 355.

7. *The Emperors Valens, Valentinian, and Gratian to Maximus.*

When the Emperor or the Empress are appointed heirs, they are subject to the same laws as other persons. The same rule shall be observed in the execution of codicils, and the creation of trusts legally drawn up on the form of letters. And (as was provided by former laws) both the Emperor and the Empress have a right to make and change their own wills.

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

8. *The Emperor Justinian to Demosthenes, Prastorian Prefect.*

We order by this well-considered law that persons who have become blind either through disease or accident can dispose of their property by verbal wills, provided seven witnesses as well as a notary are present, which is required by law when other wills are executed, all of them having been collected in the same place expressly for this purpose, and notified by the testator that a nuncupative will is to be made. The names of the heirs should then be specifically mentioned, as well as the rank of each, and all other information necessary to prevent the mere mention of their names from causing any ambiguity to arise. It should also be stated what the share of each shall be, how many parts of the estate they will be permitted to have, and how much the testator wishes each legatee or beneficiary of a trust to receive; and finally, everything should be enumerated which is included in the list of final dispositions authorized by law.

All these matters having been mentioned in their order at one and the same time and place, and the will having been drawn up by the hand of the notary in the presence of seven witnesses, as previously stated, and having been signed by their hands, and the said witnesses, as well as the notary, having duly sealed the instrument, it shall obtain full authority as the will of the testator. These formalities should be observed in the same manner, even though no heirs are appointed, but legacies or trusts are alone bequeathed, or the document executed resembles a codicil.

But, as human weakness is, above all, troubled by the thought of death, and memory may not be able to recall many things at once, permission is hereby given to such persons to entrust to whomever they may select the duty of drawing up their wills or codicils; so that the witnesses and the notary having been assembled in the same place, and they (as previously stated) having been informed for what purpose they were brought together, the instrument shall be produced, and shall be read by the notary to the testator and the witnesses, in order that its contents may be known to all, and that the testator may acknowledge it as his last will, and declare that it was his intention to make the dispositions which have been read; and finally, the signatures as well as the seals of the witnesses, and the notary, as has been previously stated, shall be affixed to the instrument. But as there may not be a notary in all places where his presence is desired, We order that when one cannot be found, an eighth witness shall take his place, and what We have provided shall be done by the notary in the manner aforesaid shall be performed by the eighth witness; and free power is hereby granted to all persons executing wills in the manner aforesaid to commit the document signed and sealed in this manner—as the preceding rules prescribe—to any one of the witnesses for safe-keeping. We have provided for this to be done, not only that persons who are blind may have testamentary capacity, but in order that there may be no ground for fraud, the will having been seen by so many eyes, understood by so many minds, and above all placed in safe hands.

Given at Constantinople, on the *Kalends* of June, during the Consulate of Justinian and Valerius, 521.

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

It has been decided by Us, and by the Princes who have preceded Us, that an insane person can execute a will during a lucid interval, although this was doubted by the ancient authorities. The following question must be decided now (and this, in like manner, exercised the wits of the ancients), namely: what course should be taken if insanity should again attack a testator after he has begun to make his will? Therefore, We order that a will of this kind, where the testator became insane while in the very act of making it, shall be void. If, however, he should, during a lucid interval, wish to execute a will, or make any final disposition of his estate, and, being all the time of sound mind and without the return of his affliction he began and finished the will, or other final disposition of his estate, We decree that it shall stand, provided all the formalities required by law in instruments of this kind were observed.

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

10. *The Same Emperor to John, Praetorian Prefect.*

With reference to persons who are either deaf or dumb, for the reason that these defects are generally found together, We order that if anyone is, at the same time, afflicted with both of them, by having been born in that condition, so that he is unable to either hear or speak, he cannot make a will nor a codicil, nor lease a trust, nor be permitted to make a donation *mortis causa,* or grant freedom, either by the wand of the Praetor, or in any other way, and We direct that males as well as females shall be subject to this law.

Where, however, a misfortune of this kind, not derived from nature, but from disease resulting after birth, afflicts either a male or female, and deprives them of the power of speech, and closes their ears, if We assume that such a person knows how to read and write, We permit him to do everything which We have above forbidden, if he can inscribe it with his own hand. But when the misfortune is single, which rarely happens, We allow one who is deaf, although naturally this sense is different in degree, to perform all acts having reference to wills, codicils, donations *mortis causa,* grants of freedom and all other matters of this kind.

Where, however, the power of articulate speech has been granted him by nature, nothing shall prevent him from doing everything that he wishes; because We know that certain persons learned in the law have very properly been of the opinion, and have stated that no one is absolutely deaf who hears when spoken to near the head, which is in accordance with what was held by Jubentius Celsus. So far as he whom an attack of disease has deprived of hearing is concerned, it cannot be doubted that he can perform any legal act without hindrance.

In the case of one whose ears are open, and who can understand speech, but who has almost no use of his tongue (although this point was frequently discussed by the ancient authorities), still, if We suppose such a person knows how to write, he will not be prevented from drawing up all kinds of instruments, if he writes them out with his own hand, whether he has been afflicted with this misfortune by nature or by an attack of disease.

No distinction with reference to males or females shall be observed in the interpretation of this entire constitution.

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

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

Let no one think that any alteration should be made in the law which We have recently promulgated concerning property which cannot be acquired by parents, or that children under paternal control, of any degree or sex whatsoever, can make wills, whether they are the possessors of property without the consent of their fathers, in accordance with the distinction established in the provisions of Our law, or whether they have their consent to hold it, for under no circumstances do We permit them to do so; but the ancient law which does not

concede testamentary capacity to children under paternal control except in certain cases, and which also has reference to others to whom power of this kind has already been granted, shall be absolutely observed.

Given at Constantinople, during the *Kalends* of September, after the fifth Consulate of Lampadius and Orestes, 531.

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

All those persons who are permitted by the laws to have *quasi castrense peculia* shall have permission only to dispose of such property by their last wills in accordance with the terms of Our Constitution, which affords immunity from a complaint of inofficiousness to testaments of this description.

Given at Constantinople, on the third of the *Nones* of December, after the fifth Consulate of Lampadius and Orestes, 531.

TITLE XXIII.

CONCERNING WILLS, AND IN WHAT WAY THEY SHOULD BE DRAWN UP.

1. *The Emperor Hadrian to Catonius.*

It need not be discussed in this case whether the witnesses are slaves or freemen, as at the time when the will was sealed, the witnesses were present with the consent of all the children, and no one, up to this time, has raised any controversy with reference to their condition.

Without date or designation of consul.

2. *The Emperor Alexander to Expeditus.*

Where a will has once been published, it is none the less valid, even though the instrument itself, in which the written bequest was made by the testator, is proved to have been destroyed by accident.

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

3. *The Same Emperor to Antigonus.*

It has frequently been decided that even the Emperor cannot claim an estate under an imperfect will, for although the jurisprudence of the Empire exempts the sovereign from complying with the ordinary legal formalities, still, no duty is so incumbent upon him as to live in obedience to the laws.

Given on the eleventh of the *Kalends* of January, during the Consulate of Lupus and Maximus, 233.

4. *The Emperor Gordian to Rufinus.*

If the testator made a mistake in the name, title, surname, or family designation, but no uncertainty exists as to what he intended, an error of this kind will not in any way affect the truth.

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

Neither the statement nor the assurance made by testators, when appointing heirs, that certain persons are their children, when they are not, will prejudice the truth, and it is a positive rule of law that property bequeathed to persons as children who are not such, is not due, according to what has been decided by the Emperors.

Given on the sixth of the *Nones* of July, during the Consulate of Valerian, Consul for the third time, and Gallienus, Consul for the second time, 226.

6. *The Emperors Diocletian and Maximian to Terentia.*

The terms of a will by which your mother, at the time of her death, stated that she had donated nothing to anyone, will not affect the truth, if the case should be found to be otherwise.

Given on the third of the *Nones* of November, during the Consulate of Diocletian and Aristobolus, 285.

7. *The Same Emperors to Rufina.*

The formal effect of the law can never be annulled by an error occurring in a written will, for it is regarded rather as nuncupative than written. Hence, where a will is properly drawn up, although the words "Let him be my heir," are lacking, the result is that the legal heir will be obliged to pay the legacies, or execute the trusts, in accordance with the intention of the testator.

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

8. *The Same Emperors to Marcellinus.*

The strictness of the law is somewhat relaxed in a case where one of the witnesses, on account of a serious and unusual occurrence, is attacked by a contagious disease, which deters others from acting, still, the remaining formalities attending the execution of the will should not be absolutely abandoned. Witnesses who are attacked by a disease of this kind are excused from assembling and associating with one another, for the time; but the rule for calling together the legal number of witnesses to a will must be observed.

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

9. *The Same to Patroclia.*

If the formalities of the law of your country were not relaxed by a special privilege in favor of the testator, and the witnesses did not perform their duties as such in his presence, the will is void.

Given on the tenth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors, 290.

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

If a will has been legally executed, and the heir is capable of receiving the estate, the will cannot be rescinded by the authority of Our Rescript.

Given on the fifteenth of the *Kalends* of August, during the Consulate of the above-mentioned Emperors.

11. *The Same Emperors and Csesars to Zeno.* A will which has been executed in accordance with law is none the less valid, if it is proved to have been abstracted after the death of the testator.

Given on the day before the *Ides* of November, during the Consulate of the above-mentioned Emperors.

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

If one of the witnesses necessary is lacking, or if all the witnesses have not attached their seals to the will in the same place and in the presence of the testator, using for that purpose their own rings, or those of others, the will is void in law.

With reference to the erasures and additions to which you refer, they do not affect the requirements of the law, but they raise the question of good faith; so that it must be established whether the said corrections and erasures were made at the suggestion of the testator, or were caused undesignedly by another, or are to be attributed to the fraudulent act

of someone else.

Given at Philippopolis, on the day before the *Nones* of July, during the Consulate of the above-mentioned Emperors.

13. *The same Emperors and Csesars to Euryphida.*

Although the power to make a will for the purpose of disposing of anyone's property is granted by certain laws, no one is permitted to change the form of jurisdiction, or to derogate from the public law.

14. *The Same Emperors and Csesars to Achilleus.* The appointment and disinheritance of heirs made by your grandmother evidently proves that she intended to execute a will, and not a codicil.

Given on the *Ides* of December, during the Consulate of the Csesars.

15. *The Emperor Constantine to the People.*

For the reason that it is unworthy that the last wills and dispositions of estates by persons who are deceased should become void on account of the failure to observe a vain technicality, it has been decided that those formalities shall be abolished whose use is only imaginary, and that, in the appointment of an heir, a particular form of words is not required, whether this be done by imperative and direct expressions, or by terms which are indefinite. For it makes no difference whether the terms "I make you my heir," or "I appoint you my heir," or "I wish," or "I desire you to be my heir," or "Be my heir," or "So-and-So shall be my heir," are employed; but no matter in what words the appointment is made, or in what form of speech it is stated, it shall be valid, provided the intention of the testator is clearly shown by the language used. Nor are the words which a dying and stammering tongue pours forth necessarily of importance.

Therefore, in the execution of last wills, the requirement of formal expressions is hereby abolished, and those who desire to dispose of their own property can write their wills upon any kind of material whatsoever, and are freely permitted to use any words which they may desire.

Given on the *Kalends* of February, during the Consulate of the Emperors Constantius and Constans, 339.

16. *The Emperors Gratian, Valentinian, and Theodosius to Eutro-pius, Praetorian Prefect.*

It is neither doubtful nor uncertain that an estate, as well as a legacy or a trust, can be left to persons invested with any office or authority, just as they can be left to Emperors. It must also be added that where one who becomes either the testamentary or legal heir of another, although the will of the deceased may not have been executed in conformity with the laws relating to legacies, trusts, or grants of freedom, still, if he acknowledged it voluntarily as his own, the heir will be obliged to carry it out.

Given at Thessalonica, on the *Kalends* of July, during the Consulate of Gratian, Consul for the fifth time, and Theodosius, 380.

17. *The Emperors Arcadius and Honorius to &ternalis, Proconsul of Asia.*

A will should not be considered void for the reason that the testator mentioned persons therein by different names, as what is superfluous does not cause any injury, for where what is necessary is omitted, it affects the validity of contracts and thwarts the intention of the testator, but abundant caution does not do so.

Given on the twelfth of the *Kalends* of April, during the Consulate of Arcadius, Consul for the fourth time, and Honorius, Consul for the third time, 396.

18. *The Same Emperors to Africanus, Prefect of the City.*

All wills and other documents, which are usually published in the presence of the Superintendent of the Census, shall always be kept in the same place, nor shall any transfer of them ever be permitted to be made; for the custom of antiquity should be carefully observed, and if anyone in this City should attempt to change it, he will be considered to have the intention of invalidating the will of the deceased.

Given at Constantinople, on the twelfth of the *Kalends* of October, during the Consulate of Caesarius and Atticus, 397.

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

He who has notified the Emperor of the execution of his will is considered to be released from complying with all the formalities required in wills, for the reason that the testimony of the Emperor, as well as that of the noble and distinguished members of his household, dispenses with their observance. Therefore, he will rest secure who publishes his last will by placing it on record before any judge, or municipal magistrate, or by entrusting it to the ears of private persons; as no dispute can arise with reference to a succession, where an heir is appointed in Our presence, and in entire accordance with the law established by Our Council. Nor, indeed, do We permit the rights of heirs to be prejudiced where no rescript has been issued by Us with reference to said will, for We wish to hear the last wills of testators and not to order them, lest, after Our opinion has been rendered, any charges in them may appear to have been prohibited; since that which has been communicated to Our ears by means of a petition must be confirmed, if it is proved to be a last will, and the deceased is subsequently shown to have done nothing contrary to its provisions.

And in order that We may not be thought to have omitted anything, We order that the heirs appointed in this way shall have all those rights which written heirs are entitled to enjoy, and that no controversy shall be permitted to arise with reference to a claim for the possession of an estate, since it is sufficient for all things to be done by anyone as an heir, and the acceptance of the estate is considered to comply with all the provisions of the law.

We decree, then, that all those who have testamentary capacity shall be permitted freely to appoint their heirs by the presentation of a petition to the Emperor, and when this is the case, they are hereby informed that what they have done is valid.

Nor shall an appointed heir be under any apprehension, if he can prove by competent witnesses that he has presented a petition in compliance with the will of the deceased, provided other matters cannot prejudice him.

Given at Ravenna, on the twelfth of the *Kalends* of March, after the Consulate of Honorius, Consul for the eighth time, and Theodosius, 499.

20. *Edict of the Same Emperors Addressed to the People of the City of Constantinople, and all the Inhabitants of the Provinces.*

We are unwilling that wills which have been drawn up in accordance with the legal formalities should be declared void on the ground that the testator subsequently made another which was not in writing, even if at the time of his death he desired that We should have his estate. We forbid all persons, including soldiers, to give testimony of this kind, and We order that they shall be guilty of perjury where, when the wills of deceased persons have been drawn up properly with all the solemnities required by law, they falsely attempt to add anything not in writing, by mentioning Our name.

Therefore, let no one who has been appointed an heir, or who has been called to the succession by law, be alarmed at the mention of Our name or of that of any powerful person; and let no one dare to furnish evidence for this purpose, or hear any statements with reference to matters of this kind, in Our name, or in that of any private person in authority.

Given at Constantinople, on the seventh of the *Ides* of March, during the Consulate of

Theodosius, Consul for the seventh time, and Palladius, 407.

21. *The Emperors Theodosius and Valentinian to Florentius, Praetorian Prefect.*

We order by this carefully considered law that those who make a written will and do not wish anyone to know what is contained therein, shall seal it, tie it, roll it up, or conceal the writing in any other manner, whether it has been written by the hand of the testator himself, or by that of someone else; and, then, having called together seven Roman citizens, who have arrived at puberty, shall oifer the said will to them all at the same time to be signed and sealed, provided, however, that the testator shall say to the said witnesses that the instrument which he offers is his will, and shall sign it with his own hand in their presence. This having been done and the witnesses having signed and sealed the will on one and the same day, and at the same time, it shall be valid, and shall not be rendered void for the reason that the witnesses did not know what was written therein. When, however, the testator does not know how, or is unable to write his name, We decree that an eighth witness, having been called in by him for that purpose, can sign it in his stead.

Where wills are dictated in the presence of witnesses, it is useless to require the testator to summon them, and dictate and complete his will at the same time, for, although it may have been dictated and written at another time, it will be sufficient for the witnesses all to sign and seal it together on the same day, and not at different times, when no other instrument has been executed. We decree that the attaching of the signatures and seals of the witnesses shall indicate the completion of the will. It is settled that a will which has not been signed and sealed by witnesses shall be considered as not having been executed.

(1) We do not desire that the wishes of the deceased shall be carried out by an imperfect will, unless this is done solely by a parent for the benefit of his children of both sexes. When, however, any strangers, in addition to the children, are interested in a will of this kind, it is certain that it must be considered void only so far as they are concerned, and their shares shall accrue to the children.

Extract from Novel 107, Chapter I. Latin Text.

Where a will is drawn up without having been signed, and the father, knowing how to write, has put down with his own hand the date and the names of his children, as well as the number of shares they are to receive, or has indicated any particular property in said will, it shall be valid. He can, by a will of this kind, bequeath legacies to strangers, as well as create trusts, and grant freedom to slaves.

Extract from the Same Novel, Chapter II. Latin Text.

A will executed by a father for the benefit of his children will be revoked if he declares in the presence of seven witnesses that he is unwilling for it to stand, and makes another disposition of his estate, either by a perfect will, or by a nuncupative one.

END OF THE AUTHENTIC EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(2) We order that a nuncupative will, that is to say one that is not written, shall not be valid unless (as is above stated) seven witnesses are called together at one and the same time, and hear that it is the intention of the testator to make an unwritten will.

(3) When anyone, having executed a will with all the legal requirements, afterwards desires to execute another, We decree that the former ones shall not be revoked if the second one made by the testator was executed with the proper formalities, unless persons were mentioned by the testator in the first will who would not be entitled to the inheritance or succession in case of intestacy, and in the second one he appointed those who could be called to the succession of the estate as heirs at law. For, in this instance, although the second will may appear to be

imperfect, the first one having been revoked, We order that the second shall not be considered a testament, but shall be valid as the expression of the last wishes of the testator. The oaths of five sworn witnesses shall be sufficient to establish the validity of a will of this description. If this is not done, the first will shall be valid, although by it strangers may have been appointed heirs.

(4) We deem it advisable to insert into this law that all persons shall be permitted to write their wills in the Greek language.

Given on the *Ides* of September, during the Consulship of Theodosius, Consul for the seventeenth time, and Festus, 439.

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

There is no doubt that a testator can leave to the person to whom he dictates his will, or by any other method of disposing of his property, either a legacy, a trust, or anything else which he can bequeath in a lawful way. Moreover, a testator is not prevented from leaving whatever he pleases to the witnesses called together at the time of the execution of his will.

Given at Constantinople, on the *Kalends* of May, during the Consulate of Basilius Junior, 480.

23. *The Emperor Justinian to Archelaus, Praetorian Prefect.*

We sanction the Imperial Rescripts by which it has been carefully provided that the last wills of deceased persons, which have been executed in this Imperial City, cannot be opened in the presence of anyone else than the illustrious Superintendent of the Census in office at the time, the documents requisite for that purpose having been properly drawn up; and it is hereby decreed that neither those in control of the office of the census, nor anyone attached to it, shall exact any fee or charge for expense with reference to an estate, in the case of the registry of a will disposing of property which does not exceed the value of a hundred *aurei.*

We now confirm the above regulations, and by the repetition of the same, decree that not only the judges of all the tribunals, but also the defenders of the churches, who have received documents for registry, shall be notified not to meddle with any matters which, according to the provisions of all constitutions, only belong to the jurisdiction of the Superintendent of the Census. For it is absurd for the duties of officials to be interfered with through the promiscuous transaction of business by others, and that one should arrogate to himself the functions of another; and this is especially reprehensible in the case of ecclesiastics, as it is a matter of reproach for them to desire to be considered skilled in matters pertaining to the legal profession. The penalty for persons violating the present law shall be a fine of fifty pounds of gold. For it must not be permitted that the last wishes of dying persons shall be thwarted by an illegal registry, when the functions of the proper officials have been insolently usurped by persons not entitled to discharge them.

Given at Constantinople, on the thirteenth of the *Kalends* of December, during the Consulate of Justin, Consul for the second time, and Opilio, 524.

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

We think that the doubts which may arise through the ignorance or negligence of those who draw up wills should be removed, and therefore We do not grant permission to anyone to overthrow the will of a testator, either because the appointment of heirs has been made after the donation of legacies, or where any other formality has been omitted, not intentionally by the testator, but through the fault of the notary or of some other person who drew up the document; and We decree that the will of the testator shall not be set aside or altered on this account.

Given on the *Kalends* of January, during the Consulate of Our Lord Justinian, Consul for the second time, 528.

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

We hereby remove the blame attaching to clauses inserted out of their regular order, which a New Constitution of the Divine Leo is known to have sanctioned in the case of dotal instruments, not only with reference to all contracts, but also in the case of wills, so that where no exception can be pleaded, a stipulation and other contracts, as well as the will of a testator, shall unquestionably be valid; provided, of course, that the exaction of compliance shall take place after the condition has been complied with, or the time has elapsed.

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

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

In the case of unwritten wills, We absolutely abolish the observation of all verbal formalities, so thfat after the seven witnesses have assembled, it will be sufficient for the will of the testator or testatrix to be communicated to all at the same time, he or she indicating or designating to whom they desire their estate to go; or to whom they wish to give legacies or trusts; or upon whom they wish to confer freedom; even if, before a disposition of property of this kind occurs, the testator or testatrix should not have made use of the following formula, namely: "These witnesses have been called together in order that they may attest the unwritten last will or testament which he intends to execute."

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

27. *The Same Emperor to Julian, Prietorian Prefect.*

We order that where anyone makes a will in accordance with law, and the term of ten years has elapsed since its execution, and no alteration or change of intention by the testator has appeared, it shall be valid. For why should what has not been changed be forbidden to stand? And why should a person who has made a will, and revoked nothing in it, be declared intestate? If, however, in the meantime, the testator is shown to have executed a second will, and it is perfect in all respects, the first one is revoked by operation of law. But where he merely stated that he did not wish his first will to stand, or by the use of other words showed that he intended to revoke it, or manifested such an intention either in the presence of not less than three competent witnesses, or by means of some public document, and the term of ten years has elapsed, the will shall then be void, as well on account of the change of intention by the testator as by the Japse of time.

We do not, however, under any circumstances, suffer the will of a deceased person to become void through the mere fact that the period of ten years from the time of its execution has expired, and all former constitutions promulgated with reference to the annulment of wills of this kind are hereby entirely repealed.

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

28. *The Same Emperor to Julian, Prsetorian Prefect.*

The ancient law required wills to be continuously executed, and, as its meaning was not properly interpreted, this has resulted in the injury of both witnesses and wills, hence We order that, during the time in which a will is drawn up, or a codicil executed, or any other final disposition of property made, it shall be done in accordance with the ancient custom (for We do not think that on this account any change should be made) and that their execution should not be suspended for any reason which is not necessary, as no such important transaction should be interrupted by matters which are of but trifling consequence.

If, however, any exigency having reference to the corporeal suffering of the testator should

arise, that is to say, if the offering of necessary food or drink, or the administration or application of medicinal remedies should be required, which, if omitted, the health of the testator would be in danger, or if any necessary call of nature should, in the case of either the testator or the witnesses, compel interruption of the proceedings, the will shall not be set aside for this reason, even though one of the witnesses may be attacked by epilepsy, which We understand took place, but as soon as the cause which produced a temporary delay has been removed, the customary formalities accompanying the execution of a will shall be complied with.

But where anything is done by the testator while the witnesses have been withdrawn for a short time, because he was ashamed to satisfy a demand of nature in their presence, the witnesses having been again introduced, and the execution of the will resumed, it shall proceed. If, however, one or more of the witnesses should be compelled to withdraw for a reason of this kind, provided that only a brief term of absence is required, We order that those present shall await their return, and that the formalities shall again be resumed. But when some contingency demands longer absence of the witness, and the condition of the testator being dangerous, threatens to grow worse, then, the said witness or witnesses in question being absent,

others shall be called in their stead, and shall be informed by the testator, as well as by the other witnesses of everything that has taken place, before they were summoned. This having been made clear in every respect, all that is necessary must be done by them, along with the other witnesses, even if the signatures of the latter have in the meantime already been attached to the will, for in this manner We relieve nature, and permit the execution of the last wills of deceased persons to remain in their former condition without the risk of becoming void.

(1) As, however, it has been provided by another constitution, which was promulgated with reference to the execution of wills, that the presence of as many as seven witnesses should be required, and the signature of the testator should be made by himself or by someone else for him; and as this constitution set forth that if he could not write, an eighth witness might be called to sign for him; and if he had written his will with his own hand, and afterwards the witnesses who were called attached their signatures to the same, and all the other formalities exacted in the execution of a will took place, and then a doubt arose whether the will was void or not, We, for the purpose of amending the said constitution, do hereby decree that if anyone should write an entire will or codicil with his own hand, and expressly state therein that he had done so, the writing of the entire will shall be deemed sufficient, and no other signature either of the testator or of anyone else in his behalf shall be required, but the signatures of the witnesses must be attached to the instrument, and all other required formalities be observed, and the said will or codicil shall be valid, if the signatures of five witnesses are affixed to the document written by the testator; and its validity shall be permanent, and no unscrupulous schemer shall hereafter call it in question on this account.

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

29. *The Same to John, Prs&torian Prefect.*

We order that where a testator has sufficient strength to be able to write, he shall insert the name or names of the heir or heirs, by the side of his signature, or in some other part of his will, in order that it may be clear that his estate has been transferred in accordance with his wishes. If, however, through the severity of disease, or on account of his ignorance of letters, he is unable to do this, the name or names of the heir or heirs must be mentioned by him in the presence of the witnesses to the will, in order that the latter may, by all means, know who have been appointed, and that the succession may pass without question to those designated for that purpose.

But when the condition of the testator is such that he can neither write, nor speak so as to be

understood, he should be considered as dead, and any will produced under these circumstances shall be regarded as spurious. We, desiring that any person who produces such a document shall become an exile from our Empire (especially where this is done in the execution of wills), do publish this law as an Edict throughout the entire world. If it should not be obeyed, and the name or names of the heir or heirs should not be written by the testator, or mentioned in the presence of witnesses, We will not suffer a will of this kind to stand either as a whole, if all the names of the heirs were omitted, or so far as the appointment of an heir, whose name was neither indicated by the voice or in the handwriting of the testator, is concerned.

But, in order that the witnesses may not forget where the names of the heirs have been mentioned, they must not delay to write them down by the side of their own signatures (when the testator did not himself write them down or mention them) to insure that what has been done may always be remembered.

If, however, the testator himself wrote the names of the heirs in any part of the will (as has been already stated), it will be superfluous for the witnesses afterwards to add the said names to their signatures, as perhaps the testator might not wish for them to know who his heirs were, and also for the reason that they are designated in the handwriting of the testator himself. It is by all means necessary that the names of the heirs should be made known either by the written statement or voice of the testator, or by the writing of the witnesses who have been called together to attest the will. For just as in the case of a nuncupative will it is necessary for the testator to pronounce the name or names of his heir or heirs, so, in the execution of written wills, if the testator himself is unwilling to write their names down with his own hand, or is unable to do so, they must be designated by his voice.

We order that these provisions shall only be observed hereafter, and that any wills executed shall, in the future, be attended with this formality, for how could anyone commit an offence who, ignorant of the provisions of the present law, did what was formerly required? Clerks and notaries, as well as others employed in drawing up wills, shall not escape the penalty of forgery if they venture to do otherwise, and act fraudulently in a transaction of such importance.

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

Extract from Novel 119, Chapter IX. Latin Text.

A will is valid at present if the preceding law is not complied with in this respect, whether the name of the heir has been written by the hand of the testator, or by anyone else.

30. *The Same Emperor to John, Prs&tormn Prefect.*

We now proceed to provide for other matters, and especially for the last wills of deceased persons. Therefore, when We find that any controversy has arisen among the ancient interpreters of jurisprudence, with reference to a will which was lawfully executed, bearing the seals of seven witnesses, and which afterwards, by some accident, or through the act of the testator himself, was wholly erased, or the greater portion of it torn, and its meaning thereby rendered doubtful, for the purpose of remedying this, as is usually done, We order that if the testator cuts the cord or removes the seals, the will shall be void, as indicating that he has changed his mind. Where, however, this happens for any other reason whatsoever, the will shall remain valid, and the heirs mentioned therein shall by all means be called to the inheritance; as the Constitution which We promulgated for the protection of wills provided that the testator shall write the name of the heir with his own hand, or if, through his not knowing how to write, or on account of his illness, or for any other reason, he should not be able to do so, the witnesses, after having heard the name of the heir mentioned by the testator, shall, in the presence of the latter, write the name of the said heir by the side of their own

signatures.

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

31. *The Same Emperor to John, Praetorian Prefect.*

Rustic ignorance has always been provided for by the ancient laws, and by the different Princes who have preceded Us, and the latter have dispensed with the strict observance of many legal formalities, which we find in the documents themselves relating to these matters. For, as the execution of wills has been established under certain legal rules, how can persons who reside in the country, and have no knowledge of letters, strictly comply with the prescribed formalities in the execution of their last wills ? Therefore, considering- the beneficence of God, We have deemed it necessary to come to the relief of their ignorance by means of this law. Hence, We order that, in all the towns and camps of the Roman Empire, where Our laws have been promulgated, and the science of letters flourishes, all the provisions contained in the books of Our Digest and Institutes, as well as in Our Imperial Decrees and regulations providing for the execution of wills, shall be observed, and that no change shall be made in them by the present law.

In those places in which educated men are rarely found, We grant, by the present enactment, that residents of the country shall observe their ancient customs instead of the law, so that, wherever persons who know how to write can be found, seven witnesses who are required for the attestation of a will shall be called together, and each one shall affix his own signature thereto. Where, however, educated persons cannot be found, seven witnesses shall be permitted to attest the will without signing the same. But when seven witnesses cannot be found in that neighborhood, We order that witnesses to at least the number of five shall be called together, but We do not, under any circumstances, permit a smaller number to be sufficient.

Where one, two, or more are educated, they are authorized to write the signatures of the others in their presence, in order that the witnesses themselves may be aware of the intention of the testator, and by all means may know what heir or heirs he desires to appoint, and they must state this on oath after the death of the testator. Therefore, every resident of the country (as mentioned above) may make this disposition of his estate, and the rigor of the law having been relaxed, it shall remain incontrovertible and valid.

Given at Constantinople, on the third of the *Nones* of July, during the Consulate of Our Lord Justinian, Consul for the fourth time, and Paulinus, Consul for the fifth time, 534.

TITLE XXIV.

CONCERNING THE APPOINTMENT OF HEIRS, AND WHAT PERSONS CANNOT BE APPOINTED HEIRS.

1. *The Emperor Titus JElius Antoninus to Anthestianus.*

Persons who have been deported and afterwards appointed heirs are considered as foreigners, and not entitled to take under the will; but the right of inheritance remains in the same condition in which it would have been if no heirs had been designated.

Without date or designation of consul.

2. *The Emperor Antoninus to Cselitius.*

If your father has been appointed heir to a residuary estate, which another testamentary heir cannot take, the latter will not be entitled to any portion of the estate on account of his condition, and your father will be the heir to the whole of it, for the designation of the residuary estate is understood to mean all of the same.

Given at Rome on the fifteenth of the *Kalends* of July, under the Consulate of the two Aspers,

213.

3. *The Emperor Alexander to the Soldier Vital.*

You state that the knight Alexander appointed by his will Julian, who was his freedman, his heir in the first place, and made a substitution for him in the following words: "If, for any reason, my first heir should decline to accept my estate, or should be unable to do so, I then substitute Vital, my second heir, in his stead."

After the death of the testator, it was ascertained that Julian was the common slave of the deceased soldier and his brother Zoilus, and the question arises whether you should be admitted to the substitution, for if a testator, believing that Julian was his own private freedman, appointed him his heir, and did not wish that the estate should belong to anyone else through him, the condition of the substitution is fulfilled, and you are entitled to the estate.

But where the terms of the written substitution were referred by him to the law, so that if he did not appoint another heir through Julian (for he could refuse to accept the estate even if his master ordered him to do so) the substitute would be called to the succession. If, however, he should obey his master, and enter on the estate, there would be no ground for the substitution.

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

4. *The Emperor Gordian to Ulpius.*

If your father appointed as his heir one whom he falsely believed to be his son, and it is shown that he would not have appointed him if he had known that he was a stranger, and the latter is afterwards proved to be supposititious, it is established by the decisions of the Divine Severus and Antoninus that he should be deprived of the estate.

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

5. *The Same Emperor to Cassianus.*

Your wife is none the less considered to have been legally appointed your heir, if she is mentioned in the will, not as your wife, but as a connection by marriage.

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

6. *The Emperor Philip and the Csesar Philip to Antoninus.*

If your wife appointed you her heir for the purpose of setting off a debt, not only the strict construction of the law, but also the will of the deceased are opposed to your claim demanding payment of the obligation, in addition to the share of the estate which was bequeathed to you.

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

7. *The Emperors Diocletian and Maximmn to Zizo.*

No one can adopt any person as a brother among foreigners. Therefore, as you state that your father did this, his act is void, and that portion of the estate which he against whom you have filed your petition holds under the title of an adopted brother, the Governor of the province will take care shall be restored to you.

Given on the third of the *Nones* of December, during the Consulate of Diocletian, Consul for the second time, and Aristobolus, 285.

8. *The Same Emperors to Hadrian.*

There is no doubt that a corporate body, if it does not enjoy any special privilege, cannot acquire an estate.

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

9. *The Same Emperors and Ceesars to Julia.*

It has been decided that when anyone dies he can appoint a stranger his heir.

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

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

The rule of law declares that persons who are not permitted to receive an inheritance cannot acquire it either through themselves as appointed heirs, or by means of their own slaves.

Given on the sixteenth of the *Kalends* of September, during the Consulate of the Caesars, 293.

11. *The Emperors Theodosius and Valentinian to Hierius, Praetorian Prefect.*

Anyone can appoint a stranger his heir, even if he is entirely unknown to him.

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

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

This Renowned City, or any other town, can obtain by inheritance a legacy, a trust, a donation, a yearly supply of provisions, any buildings whatsoever, or slaves.

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

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

Whenever heirs are designated with reference to any specified property, or are ordered to be content with their appointment as heirs to a certain portion of an estate, it is settled that they are considered to occupy the place of legatees, and We order that when any others, who are appointed heirs to a certain share, or without the designation of a share, but, in accordance with the tenor of the ancient laws, are mentioned as being entitled to a definite number of twelfths of the estate, they can only employ all hereditary actions, or be sued, where they have been appointed heirs to a specified part of the inheritance, or without any share being designated, and that their right to said actions shall not be affected by the testamentary appointment of heirs to any certain portion of said estate.

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

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

The following case contained in the books of Ulpian, which he published on the works of Masurius Sabinus, seems to Us to require to be more plainly stated. A certain person when executing a will made an appointment as follows, "Let Sempronius be the heir of Plotius." Some of the ancient authorities thought that there was a mistake in the name, and that the appointment should be as valid as if the testator had actually been named Plotius, and had mentioned Sempronius as his heir. We, however, hold that this opinion is incorrect, for no man can be found who is so ignorant, or rather such a fool, as not to know his own name.

But if the testator himself was the heir of a certain Plotius, it is clear that he appointed Sempronius his heir, so that, by means of the testator himself, he might become the heir of Plotius. We arrive at this conclusion from consideration of the ancient law which stated that the heir of the heir should also inherit from the testator. If, however, nothing of this kind

occurred, such an appointment is superfluous and void, unless before Plotius was appointed his heir the testator had added, "Let Sempronius be the heir of Plotius," for then it should be held that if Plotius did not become his heir, Sempronius would be called by way of substitution to the entire share of Plotius, so that Plotius, having been appointed heir as the result of fhe words of the testator, Sempronius would become his substitute.

But if the testator himself was not the heir of Plotius, and had not previously appointed Plotius his heir, and wished Sempronius to be the heir of Plotius, an appointment of this kind is of no force or effect whatever, as it is not probable that anyone would make a mistake in his own name.

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

TITLE XXV.

CONCERNING APPOINTMENTS, SUBSTITUTIONS, AND RESTITUTIONS MADE CONDITIONALLY.

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

As you allege that the maternal grandfather of your daughter appointed her his heir, provided she married the son of Anthyllus, it is clear that she cannot become his heir without complying with the condition, and that the son of Anthyllus, by refusing to marry her, will prevent her from obtaining the estate.

Given on the *Kalends of* October, during the Consulate of Anulinus and Fronto, 200.

2. *The Emperor Antonimts to Cassia.*

If you did not comply with the condition under which you were appointed the heir of your mother, the substitution will take effect, for it cannot be held that you were released under the pretext that the marriage would be dishonorable because your mother desired you to be united in matrimony with the son of her sister, who is your cousin, probably with the design of acquiring his father's estate. You are not entitled to any extraordinary relief as is stated in the prayer of your petition, for it was not his fault that the condition imposed by the last will of your mother, the testatrix, was not complied with.

Given at Rome, on the eighth of the *Ides* of March, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

3. *The Same Emperor to Maxentius and Others.*

If your mother appointed your heirs under the condition of your emancipation, and, before the will of the deceased was complied with, your father incurred the sentence of deportation, or died, and you were freed from his control by his death, or in any other way, you have in consequence acquired the right to enter upon his estate.

Given on the day before the *Kalends* of May, during the Consulate of Sabinus and Anulinus, 217.

4. *The Emperor Alexander to ^mylianus.*

When a father appoints his son, who is subject to his authority, his heir, under the condition that he shall be emancipated, and did not disinherit him, in case he should fail to be emancipated, he is not considered to have died testate.

As you allege that you had gone beyond seas, and to a far distant country, and that you were appointed his heir under the condition that you should return to your own country, which is in the province of Mauritania, and you do not state that you would be disinherited if you did not return, it is evident that you were not able to comply with the condition on account of the occurrence of many events which were not under your control, but accidental, and therefore

you are not prohibited from entering upon the estate.

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

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

You are more to blame than your mother, for if she wished you to be her heir, she should not have ordered you to separate from your husband, a provision which is of no effect; but you have, nevertheless, complied with the terms of her will by obtaining a divorce. It would, however, have been better to have preferred marital concord to gain, even if a condition of this kind was valid, for as good morals forbid such conditions to be observed, you could have retained your marriage without suffering any loss. Therefore, return to your husband, being aware that, even if you do so, you can acquire your mother's estate, as you will certainly be entitled to do, as you would have acquired it even if you had not separated from him.

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

6. *The Same Emperor to the Senate.*

Generally speaking, We order that if a testator should make use of the following words in his will, "If either my son or daughter dies intestate, or without issue, or unmarried; and either one of them should have children, or marry, or make a will," there will be no ground for either substitution or restitution.

If, however, nothing of this kind took place, the condition will be valid, and the estate shall be transferred in accordance with the terms of the will, and the result of the uncertain succession of the deceased be finally determined by either substitution or restitution.

But what course must be pursued if he did not make a will, and has descendants? Would his children be entirely deprived of their father's estate, on account of the perplexity attaching to expressions of this kind ? Therefore, with the design of preventing such iniquitous provisions, and that no one else may deviate from the proper path, We promulgate the following law, and declare that it shall always remain valid, and be as advantageous to parents as to children, and by it we also protect the interests of other persons, even though they may be strangers, with reference to whom anything of this kind has been inserted in the will. We have found that the eminent Papinianus rendered a decision characterized by the greatest wisdom in a case of this kind, in which a father made a substitution for his children without providing for any issue which they might have, which would be of no effect, if he who was injured by it became a father and had children, understanding that it was not probable that if the father had thought of grandchildren which he might have, he would have made such a substitution.

We think that, on general principles of humanity, this interpretation ought to be rendered broader and more explicit, so that if anyone should have any natural children, and should leave them a share of his estate, or give them an amount of property within the limits which We have prescribed, and subject them to substitution without having mentioned any issue which they might have, the substitution will be void, and the estate will go to the children who have been excluded; and, in accordance with the excellent opinion referred to, those who are called to the substitution shall not be entitled to the said share of the estate, but it will pass to the sons or daughters, grandsons or granddaughters, and great-grandsons or great-granddaughters of the deceased. The substitution cannot take place unless the children themselves die without lawful issue, and whatever has been decreed with reference to legitimate children shall also extend to natural ones.

We order that all these provisions shall also apply to legacies and special trusts.

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

7. *The Same to John, Prtetorian Prefect.*

Where anyone appoints an heir under the following conditions, "Provided he becomes Consul or Prsetor," or appoints his daughter his heir, "Provided she marries," and if, during the lifetime of the testator, the son should be made Consul or Prsetor, or the daughter should be married; or, while the testator is still living, the son should retire from the consulship or praitorship, or the daughter should separate from her husband, for the purpose of removing all doubts entertained by the ancient jurists on this point, We order that whenever the condition shall have been complied with, either while the testator was living, at the time of his death, or subsequently, it shall be considered to have been legally fulfilled.

We decree that this shall also apply to legacies, trusts, and grants of freedom; lest if We countenance too much subtlety in the interpretation of matters of this kind, the dispositions of testators may be fraudulently evaded.

Given at Constantinople, on the ninth of the *Kalends* of August, after the fifth Consulate of Lampadius and Orestes, 531.

8. *The Same to John, Praetorian Prefect.*

If the following clause is found in a will, namely, "Let him be my heir in accordance with the conditions contained herein," and nothing is added, nor any condition is inserted in the will, We order that the condition referred to shall be considered void, and the appointment under the will be absolute. We base our opinion upon that of Papinianus, who said: "Tracts of land left to the State, which have their own boundaries, are none the less due under the terms of the trust, because the testator promised that he would in another document describe their boundaries, and the order of the games which he desired to be celebrated every year, but having been afterwards prevented by death, failed to do so."

Where, however, he inserted any conditions in his will, then the appointment will be held to have been conditional from the beginning, and everything stated in the will must be complied with, just as if the testator had made the said appointments dependent upon the conditions.

Given at Constantinople, on the sixth of the *Kalends* of August, after the fifth Consulate of Lampadius and Orestes, 531.

9. *The Same Emperor to John, Prsetorian Prefect.*

When anyone whose wife is pregnant appoints her heir to a part of his estate, and his unborn child heir to the remainder, and adds that if the posthumous child should not be born, someone else shall be his heir, and the posthumous child, having been born, dies before reaching the age of puberty, a doubt arose as to what the law would be, and those learned men, Ulpianus and Papinianus, held that the question of intention was involved; and Papinianus thought the testator intended that if the posthumous child should be born, and die before reaching the age of puberty, his mother would be entitled to the succession in preference to the substitute, for if he left a part of his property to his wife, there is still more reason to believe that he intended that the estate of his deceased son should go to his mother.

Therefore, We, for the purpose of removing all ambiguity, have adopted the conclusion of Papinianus, and order that where substitution has been made in a case of this kind, and, after a posthumous child has been born, he dies before the age of puberty, during the lifetime of his mother, it should be rejected; for We only admit substitution where the posthumous child was not born, or where, after his birth, his mother died before him.

Given at Constantinople, on the third of the *Kalends* of August, after the fifth Consulate of Lampadius and Orestes, 531.

TITLE XXVI.

CONCERNING PUPILLARY AND OTHER SUBSTITUTIONS.

1. *The Emperor Marcus JElius Antoninus to Secundus.*

Where heirs have been appointed to unequal shares of an estate, and have been reciprocally substituted for one another, and in the substitution mention is not made of any other shares, it is certain that the testator did not, in making the substitution, intend tacitly to insert any others than those which are plainly stated in the appointment of his heirs.

Given during the Consulate of Clarus, Consul for the second time, and Severus, 171.

2. *The Emperors Severus and Antoninus to Frontinia.*

There can be no doubt that you are entitled to the inheritance of your son, who died intestate; for the substitution made by the will of his father cannot be extended to the time of puberty, because your son and the other heirs were not appointed under the same condition, and were reciprocally substituted, and reason suggests that the Divine Marcus, Our Father, intended that the same rule should be observed with reference to those who could only be substituted under certain circumstances, as well as to a son who died before reaching puberty.

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

3. *The Emperor Alexander to Achilla.*

If, having been appointed the testamentary heir of your mother, you have failed to claim the succession under the will, and intend to demand praetorian possession of the estate *ab intestato,* there is no doubt that you have established ground for the substitution. Hence, if the substitute has accepted the estate, you can sue him in the actions which you were entitled to bring against your mother, but you cannot claim the succession on the ground of intestacy.

Given on the eleventh of the *Kalends* of September, during the Consulate of Maximus, Consul for the second time, and E1ianus, 224.

4. *The Same Emperor to Firmianus.*

Although it may be held that a substitution for a child under puberty, who is under the control of the testator, made by the father, as follows, "If he should not be my heir," will include the case where the child dies before reaching puberty, after becoming the heir (provided it is proved that he did not become the heir contrary to the intention of the deceased), and as you state that the substitution was in these words, "If my son Firmianus, and my wife Elia, should not become my heirs (which God forbid), let Publius Firmianus be my heir in their stead," it is clear that in this instance a substitution was created by which Firmianus could be substituted for both the heirs mentioned.

Given on the fourth of the *Kalends* of July, during the Consulate of Fiscus, Consul for the second time, and Dexter, 226.

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

Direct substitutions made in the case of children who have not reached the age of puberty are usually annulled after the estate has been entered upon.

Given on the tenth of the *Kalends* of June, 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 Quintianus.*

When a will has been legally executed, and several heirs have been appointed and reciprocally substituted, some of whom accept their shares of the estate, and others do not, the shares of the latter are acquired by those who accept.

Without date or designation of consul.

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

When a will has been properly executed, and there are daughters under the age of puberty subject to the control of their father, and the latter substituted you, in case a daughter should die before reaching puberty; it is settled that you will become the heir under the will, after the condition has been fulfilled, and that you exclude the intestate succession.

Given on the *Kalends* of January, under the Consulate of the abovementioned Emperors.

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

You should, in your petition, state more clearly whether your former husband, who died in the army, and whom you allege appointed your common son his heir by his will, and substituted for him another heir in the first instance, intended, in the second, to substitute the latter for the son who was under his control at the time he died, and whether he designed that the substitution should take effect before he reached his fourteenth year, or after his death. For it is a positive rule of law that where anyone, who is under the control of his father, who is a soldier, and has a substitute only in the first instance, and becomes the heir of his father, and then dies, his estate will certainly go to you.

If, however, the substitution found to have been made in the second instance is either manifest or indefinite, but has no reference to any age, and the child should die before reaching puberty, he will have as heirs those whom the father appointed for him, and they can enter upon the estate. But if he should die after reaching puberty, then you will obtain his estate, just as property which belonged to the father at the time of his death can be claimed by you under the terms of a trust.

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

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

On the ground of humanity, We permit all relatives in the ascending line, who have sons, grandsons, great-grandchildren of either sex, but no other descendants, whose said sons or daughters, grandsons or granddaughters, great-grandsons or great-granddaughters are permanently deprived of intelligence, to substitute others for them; or if two or more of the above-mentioned descendants are weak-minded, their parents shall, after having left them their legitimate shares of the estate, be authorized to make such substitutions for them as they may desire, so that, as in the case of pupillary substitution, no contest of their wills may be instituted; provided, however, that any of them afterwards recover their senses, the substitution shall be abrogated.

Where, however, a daughter, or any other descendants of any such demented person are sane, the testator or testatrix shall only be allowed to make substitution in favor of one, or several, or all of said descendants, as the case may be. When the testator or testatrix have other children who are of sound mind, and those who are insane have no descendants, substitution must be made for one, or several, or all of the latter, as aforesaid.

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

10. *The Same to John, Praetorian Prefect.*

Where anyone, having appointed his two sons, who are under the age of puberty, his heirs, adds that if both of them should die before reaching that age, So-and-So shall become his heir, a doubt arose among the ancient legal authorities whether he intended the substitution to take effect if both his sons should die under the age of puberty, or, if only one of them should die, whether the substitute would immediately succeed to his share of the estate. It was held by

Sabinus that the substitution would only take effect if both of them should die, and that the father had in mind that if one son should die, his brother would succeed to his share. We think that the opinion of Sabinus is preferable, and decree that the substitution shall not become operative unless both the sons should die before attaining the age of puberty.

Given at Constantinople, on the sixth of the *Kalends* of August, after the fifth Consulate of Lampadius and Orestes, 531.

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

A certain man appointed two heirs, substituted them with another for his son who was under the age of puberty, and made the following provision in his will: "Let whoever shall become my heir be, with Titius, the heir of my son." According to what we find in Ulpianus, the son having died before reaching puberty, the question arose in what way the parties were called to the substitution; whether the first two who were appointed by the father were entitled to half his estate, and the third to the remaining half, or whether each of the three could claim a third under the substitution.

Another doubt would arise if someone should appoint his heirs as follows: "Let Titius, along with my children, and Sempronius, be my heirs." In the present instance, as Ulpianus held, the question was whether it was the intention of the testator that Titius should be entitled to half of the estate, with the children, and Sempronius to the other half, or whether all of them would share alike.

It seems to Us that, in the first instance, each of the three substitutes would be entitled to a third of the estate, but in the second, as the father and the son are understood to be practically but one person by nature, half of the estate should be allotted to Titius and the children, and the other half to Sempronius.

Given at Constantinople, on the sixth of the *Kalends* of August, after the fifth Consulate of Lampadius and Orestes, 531.

TITLE XXVII.

CONCERNING THE APPOINTMENT AND SUBSTITUTION OF SLAVES AS NECESSARY HEIRS.

1. *The Emperor Antoninus to Aufidius and Others.*

If, notwithstanding you were slaves, you were appointed heirs under the designation of freedmen, your appointment as such should be liberally interpreted, just as if you had been liberated and appointed heirs at the same time. This does not apply to a legacy.

Given on the seventh of the *Kalends* of March, during the Consulate of Priscus and Apollinaris, 170.

2. *The Emperor Pertinax to Lucretius.*

A person who is not solvent can appoint a necessary heir, even if he defrauds his creditors. If, however, you were given in pledge and still remain in the same condition, you cannot become free and a necessary heir of your master, who was a debtor, and insolvent.

Published on the eleventh of the *Kalends* of April, during the Consulate of Falco and Clarus, 194.

3. *The Emperors Diocletian and Maximian, and the Caesars, to Felix.*

As your guardian married your female slave, and afterwards appointed her his heir, he could not, by an act of this kind, deprive you of your title to her, and you will be legally empowered to order her to enter upon the estate for the purpose of acquiring it.

Given on the sixteenth of the *Kalends* of January, during the Consulate of the above-mentioned Emperors, 193.

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

A certain man appointed his son, who had not yet reached the age of puberty, his heir, and in positive terms bequeathed his slave his freedom. He then, by a pupillary substitution, substituted the said slave for his son, in the second degree, without granting him his freedom, and the question arose among persons learned in the law whether, by a substitution of this kind, the slave would become the necessary heir of the minor. The reason for this dispute arose from the ancient rule, by which it was universally held that such a slave becomes the necessary heir of his master, when the estate and his liberty are left to him at the same time.

In the present instance, however, the grant of freedom and the substitution are not combined in the same act, but take place at different dates. Hence, for the purpose of deciding this controversy, it appeared to Us extraordinary for anyone to think that the intention of the testator should be thwarted by a subtle distinction of this kind, especially where the testator is a master, and to think that the slave does not become his necessary heir, but that he gave him the right to obtain his freedom and reject the estate, and in this way oppose his will. Anyone who attempts to do this should be punished. Therefore the slave should become free during the lifetime of the minor, because this was the intention of the testator, and if the minor should die, the slave will become his necessary heir, because the testator desired that this should be the case.

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

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

When anyone makes a will and appoints two heirs, one of them to a certain portion of his estate, and makes a slave (mentioning him by name) heir to the remaining portion without giving him his freedom, and afterwards leaves said slave to another person, or, after the appointment of the slave as his heir, bequeaths him by a legacy, and then appoints him his heir without giving him his freedom, a doubt arose whether a legacy or an appointment of this kind could have any force in law, and as to who would be entitled to the legacy or the appointment. There was some ground for doubt, because he appointed the slave, who still belonged to'him, his heir without his freedom, and such a dispute arose among the ancient authorities that it seemed scarcely possible to settle it. Leaving aside this ancient controversy, We have discovered another way of disposing of the matter, as We always follow the indications of the intention of the testator. Therefore, as We find it has been established by Our law that if anyone should appoint his slave guardian of his children, without bestowing upon him his freedom, by the mere appointment of guardianship he is presumed to have been granted his freedom on account of his wards, for which reason We have considered that it is only for the benefit of the estate, as well as more humane and in favor of liberty, that if anyone should appoint his slave his heir without his freedom, he, through that very fact, becomes a Roman citizen. Relying upon this conclusion, We hold that the slave cannot be acquired, and that the protracted and inexplicable discussions of the ancients are not applicable. For it should not be presumed that persons are so destitute of understanding as to appoint their own slaves as heirs without granting them their freedom, and afterwards by a legacy bequeath the same slaves to others.

(1) But the ancient authorities raised .another doubt, by stating that if anyone should appoint his slave his heir to a part of his estate by his will, without granting him his freedom, and then should grant him his freedom by a codicil, whether such an appointment would be valid, and whether he would become the heir as well as be free, lest it might appear that the estate was granted by the codicil, as an estate could not under the ancient rules be left in this way.

We, however, being inclined to a liberal and beneficent interpretation in a disposition of this kind, even though it may have been inserted in a codicil, order that freedom and the estate shall be granted at the same time to slaves, in order to render them grateful to Us that they do not remain in servitude, but become free, and heirs. Our benevolence is exerted in their behalf to such an extent that, although their freedom may not have been granted to them either by a will or a codicil, nevertheless, when an estate is left to slaves it should be considered that they have obtained their liberty.

(2) It should, however, be observed that when a legacy or a trust is bequeathed to slaves without their freedom, they will remain in servitude; but it is to be hoped that heirs do not exist who are so wicked as to thwart the liberality of the testator, and fraudulently deprive the slaves of the remuneration to which they are entitled, and that they will not be ignored, even though the bequest was made to them while still in servitude.

(3) This legal regulation of Ours is also extended to another ambiguous case; for if anyone should, by the principal part of his will, bequeath a slave to another person, and then by pupillary substitution substitute the said slave for his son without granting him his liberty, the question arose whether a substitution of this kind would be valid, and if it would be acquired by the legatee through the slave who was bequeathed after the death of the minor; or whether such a substitution would be void because it was made with reference to the slave without bestowing his freedom upon him.

The better opinion seems to Us to be to hold that the title to him was not immediately acquired by the legatee, but that the substitution remains in suspense, and if the minor should die, there will be ground for the substitution, and the slave will at once become free and the heir. If, however, there should be no ground for the substitution and the minor should reach the age of puberty, then the title to the slave will pass to the legatee. For, just as the ancient authorities, when substitution was made at the same time with the grant of freedom, came to the conclusion that the grant of freedom should remain in abeyance, and the slave should be considered entitled to it under a condition, so, by Our interpretation, where the grant of freedom does not accompany the substitution, the slave becomes free and the heir of the minor.

Given at Constantinople, on the second of the *Kalends* of May, after the fifth Consulate of Lampadius and Orestes, 531.

6. *The Same to John, Praetorian Prefect.*

The decision which We have just rendered, declaring that a slave appointed heir by his master without the grant of freedom must be considered free, shall remain undisputed; and if anyone should absolutely appoint his slave his heir, but grant him his liberty under a condition, and the condition is such that it can be complied with by the slave, and he should be guilty of negligence and fail to fulfill it, he, through his own fault, shall forfeit both his freedom and the estate.

Where, however, the condition was accidental, and fails on account of the vicissitudes of fortune, then, on the ground of humanity, the slave will undoubtedly be entitled to his freedom, but the estate, if it is solvent, shall go to those legally entitled to it, if no substitute was appointed. But, if it should not be solvent, and the slave should have been appointed a necessary heir, he shall obtain both his liberty and the estate at the same time, for he will then be free and a necessary heir, not only by the ruling of the ancient authorities, but also in accordance with Our decision.

Given at Constantinople, on the second of the *Kalends* of August, after the fifth Consulate of Lampadius and Orestes, 531.

TITLE XXVIII.

CONCERNING PASSING OVER AND DISINHERITANCE.

1. *The Emperor Antoninus to Favianus.*

As a disinheritance clause should be inserted in the will after all the appointments of heirs, if the testator should add that his son is disinherited in all the degrees of succession, there is no doubt that the requirements of the law will be satisfied. And, indeed, if he did not add this clause, it would still be apparent that this was his intention, if he mentioned the disinheritance in general terms, and the testament will be considered to have been legally executed. Therefore, if the head of a family should disinherit his son after having appointed his sons his heirs, and substituted them for one another, he must be understood to have made the disinheritance with reference to both degrees; for the same heirs having been appointed, no good reason can be advanced why the testator should have intended to apply the disinheritance only to the last case.

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

2. *The Emperor Alexander to Heraclida.*

If your grandfather appointed your father and your step-mother heirs to equal portions of his estate but did not disinherit you by name, although you were under your father's control at the time, and your father died during the lifetime of your grandfather, you will have a right to succeed to your father, notwithstanding the provisions of the Velleian Law, for you have broken the will of your grandfather and his entire estate will belong to you.

Published on the sixth of the *Ides* of April, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

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

Where anyone disinherits his own son, as follows, "Let So-and-So, my son, have no share of my estate," a son under the construction of a clause of this kind is understood not to have been passed over, but to have been disinherited. For where the intention of the testator is perfectly clear, the interpretation of the words is never important enough to prevail over it.

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

4. *The Same Emperor to John, Prsetorian Prefect.*

By the present law, We correct the greatest defect to be found in the legal enactments of the ancients, which held that different rules should be observed in the testamentary disposition of the estates of parents, so far as males and females were concerned, while both sexes enjoyed the same rights under an intestate succession. They decided that a son should be disinherited by a certain form of words, and a daughter by another, and in some instances they introduced the Civil, and in others the praetorian law, in the case of grandchildren.

Where a son was passed over, he either annulled the will under the law, or he obtained praetorian possession of the entire estate contrary to the testamentary provisions. A daughter, however, who was passed over, was entitled to the right of accrual by the ancient law, so that at the same moment that the will of her father was set aside with reference to a certain portion of the estate, the right of accrual vested, and she herself was considered as included among the legatees; and, moreover, under prsetorian law she was entitled to complete possession of the property of the estate contrary to the terms of the will.

A constitution of the Great Antoninus provided that under praetorian law she could only take what she was entitled to by the right of accrual. Jurists who established such distinctions as those above mentioned appear as accusers of Nature for not having solely produced males, so that those from whom they spring should not have been created.

In order to remedy this, We follow in the path of our ancestors, who clearly appear to have entertained the same idea, for We know that in former times it was permitted to include both sons and daughters, and all others, among those disinherited in general terms.

The centumvirs afterwards made another distinction, and from their injustice a second defect arose which has been brought to Our knowledge through the works of Ulpianus, which he composed on the Edict of the Praetor, and those of Tribonian, Our most illustrious Quaestor, and other eminent jurisconsults. The last resort of children who have been passed over is the complaint of inofficiousness in a will, and as a daughter could not have recourse to it, if she were passed over, her position was worse than if she had been disinherited. For since a daughter who was passed over would receive half of the estate either through prsetorian possession contrary to the provisions of the will, or by the right of accrual, and she was compelled to contribute to the payment of all legacies up to the amount of three-quarters of her share, she would, in fact, only be entitled to a twelfth and a half of the estate. If, however, she were disinherited, a fourth part of the entire estate must, by all means, have been given to her; and hence she whom her father thought worthy of being excluded from participation in his estate would receive more than a daughter whom he silently passed over in the appointment of his heirs.

And if, in accordance with the terms of Our Constitution which We have promulgated with reference to the supplementing of the fourth part, the deficiency should have been made up, in like manner, the deficiency of the disinherited daughter, so far as the fourth part of her share of the estate was concerned, still existed, and thus the defect remained in existence and was not corrected by Our Constitution. Therefore, We order, as in the succession of parents which passes by intestacy, both males and females shall stand upon an equal footing; that females shall be benefited by the terms of wills; that specific disinheritances shall be stated in identical language; and that a daughter shall have praetorian possession of an estate contrary to the provisions of the will in the same manner as a son, who is his own master or emancipated, is entitled to; so that, if passed over, she can cause the will to be set aside by law in the same way as an emancipated son, or one who is independent, whether he causes the will to be annulled by process of law, or obtains praetorian possession of the estate in contravention of its terms. This rule shall apply not only to daughters, but also to grandsons and granddaughters, and We decree that it shall be observed with reference to other descendants, provided they are derived from males.

But, for the reason that still another defect has arisen under the pretext of a difference, and one set of rules is observed with reference to the disinheritance of posthumous children, and another concerning those already born, as it was necessary for a posthumous female child to be disinherited with the others, and to be benefited by a legacy, but a daughter already born was not entitled to the legacy, We have extended this principle to the utmost by means of a very brief additional clause, directing that the same rule shall apply to the disinheritance of posthumous children, either of the male or female sex, which We have already established with reference to other sons and daughters; that is to say, that they must be disinherited by name, so that, in the case of posthumous children, they shall be specifically designated.

Given at Constantinople, during the *Kalends* of September, after the fifth Consulate of Lampadius and Orestes, 531.

Extract from Novel 113, Chapter HI. Latin Text.

A parent is not allowed to disinherit or pass over any of his children, unless the child is proved to have been ungrateful, and the testator specifically mentions the acts of ingratitude in his will. Fourteen kinds of ingratitude are enumerated by a new constitution.

Extract from the Same Novel. Latin Text.

A will is void only with reference to the appointment of heirs, where disinheritance or the

passing over of other heirs is involved. The other testamentary provisions remain unaltered.

TITLE XXIX.

CONCERNING THE APPOINTMENT, DISINHERITANCE, AND OMISSION OF POSTHUMOUS HEIRS IN A WILL.

1. *The Emperor Antoninus to Brutatius.*

If, after having made his will by which the testator omitted all mention of his posthumous children, a son or daughter should be born to him, he is considered to have died intestate, as the will is broken by the birth of a posthumous child of either sex, who was not mentioned therein. It is a well-established legal principle that nothing is due, or can be demanded under the terms of a will which has been broken.

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

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

The will of a husband is not annulled by a miscarriage of his wife; but it is a perfectly clear rule of law that, when a posthumous child has been passed over, the will is broken and cannot be renewed, even if the child should die immediately after birth.

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

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

We now decide a matter which has been the subject of controversy among the ancients. Therefore, while an unborn child, who was passed over in its father's will, became the heir of its father when it came into the world, provided no other child had preceded it, and by its birth broke the will; where a posthumous child, having been born, died without uttering a cry, it was doubted if such a child could break the will by its birth; and the minds of the ancient authorities were at a loss to determine what opinion should be rendered with reference to the will of the father.

The Sabinians held that if the child was born alive, and did not utter a cry it broke the will; but it is evident that if it was born dumb it could not do so. We also adopt this opinion, and order that when a child is born alive, even though it should immediately die, or perish while in the hands of the midwife, the testament will, nevertheless, be broken. It is, however, absolutely necessary for it to come into the world alive, and not have the shape of a monster, or be horribly deformed.

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

4. *The Same Emperor to John, Prsstorian Prefect.*

Where a man, when making his will, used the following language, "If a son or a daughter should be born to me, within the term of ten months after my death, he or she shall be my heir," or if he wrote as follows, "Let my son or my daughter, who may be born within ten months after my death, be my heir," a dispute arose among the ancient interpreters of the law whether the said posthumous heir should be considered as not having been included in the will, and to have broken it. Hence, as We have promulgated many laws for the purpose of aiding the intention of testators, We, for the purpose of deciding this question, now direct that a will shall not be considered as having been broken by the use of either of these forms of expression; but if a son or a daughter should be born within ten continuous months from the death of the testator, or during his lifetime, his will shall remain unaltered, in order that he who did not pass over his children in his will may not suffer the penalty for having done so.

Given at Constantinople, on the twelfth of the *Kalends* of December, during the fifth

Consulate of Lampadius and Orestes, 530.

TITLE XXX.

CONCERNING THE RIGHT OF DELIBERATING, AND OF ENTERING UPON OR ACQUIRING AN ESTATE.

1. *The Emperor Antoninus to Titia.*

If, having been emancipated by your father, you did not take possession of his estate after his death, you need be under no apprehensions that you will be obliged to do so, because you manumitted some of his slaves without authority, and sold certain property and other slaves for the purpose of paying the funeral expenses.

Published on the *Kalends* of July, during the Consulate of Messala and Sabinus, 215.

2. *The Emperor Alexander to the Soldier Florentinus.*

As you state that you have paid a certain debt of your father's, there is no doubt that you should be considered to have accepted his estate, so far as your share of it is concerned.

Published on the sixth of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

3. *The Emperor Gordian to the Soldier Florentinus.*

If your brother, at the time of his death, was under the control of his father, whether he was appointed heir to his entire estate, and would have been the heir even if the will had not been opened, or whether he was the heir only to a portion of the same, he will, none the less, become at once the proper heir of his father; and therefore, for the reason that he died a few days after the latter, you cannot succeed to the estate of your brother. If, however, he was his own master, and died before entering upon the estate, you are the lawful heir of your brother, whether you obtained possession of the estate within the time prescribed by the Edict, or whether the property belonging to it is unjustly retained by someone else, the Governor of the province will cause restitution to be made to you.

Published on the fifteenth of the *Kalends* of September, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

4. *The Emperor Decius to Athenais.*

It has frequently been stated in rescripts that where the son of a family has obtained an inheritance, and his father has acted in behalf of the heir with his consent, the legal formalities shall be considered to have been complied with.

Published on the tenth of the *Kalends* of March, during the Consulate of Decius and Gratus, 251.

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

A ward can acquire an estate through his guardian acting as heir, but the consent of the latter will be necessary; for if the guardian should do anything without his knowledge, he cannot acquire the estate for him.

Published on the sixteenth of the *Kalends* of July, during the Consulate of Valerian, Consul for the fourth time, and Gallienus, Consul for the third time, 258.

6. *The Emperors Diocletian and Maximian to Philip/pa.*

If your grandmother appointed your father her heir to two-twelfths of her estate, your father will become her heir solely by the disclosure of her intention. Therefore, if she stated in her will that you were to receive the said two-twelfths, you can obtain possession of the amount by applying to the Governor of the province.

Published on the sixteenth of the *Kalends* of August, during the Consulate of the above-mentioned Emperors, 290.

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

As you allege that your sister died before she knew that any of the estate of her brother had been left to her, it is perfectly clear and evident that the estate of the deceased could not be transmitted to her heirs, before she herself performed some act as heir, or obtained prse-torian possession of the property.

Published during the *Kalends* of May, during the Consulate of the above-mentioned Emperors.

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

Although the proper heirs did not immediately busy themselves with the property of the estate of their father, still, if they were ignorant that it was left to them, they_cannot be excluded by prescription of long time from claiming it according to law.

Ordered on the seventeenth of the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

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

If, by the properly executed will of your former curator, or on the ground of intestacy, you have obtained legal succession of his estate, in this instance he who did not reject it will be permitted to enter upon the same. Therefore, the Governor of the province, having been applied to, should interrogate those who are the heirs, and have not yet bound themselves, as to whether they will accept the estate, or not; and if they demand time for deliberation, he shall grant it to them as he thinks best.

Ordered on the sixteenth of the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

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

If, having passed the age of twenty-five years, you have interfered with the property of your father's estate, the insolvency of your father will not excuse you, nor will the violence of your brother who has appropriated your share, or suppressed the will, release you from the demands of the creditors, who have a right, under the Civil Law, to sue you for your hereditary share of the estate.

Ordered on the sixteenth of the *Kalends* of January, during the Consulate of the Csesars.

11. *The Same Emperors and Cxsars to Philumena.*

Your father, under whose control you were, can not, against your consent, accept an estate which has been legally left to you, nor can he confer freedom upon the slaves belonging to the same by manumitting them.

Ordered on the sixth of the *Ides* of February, during the Consulate of the Csesars.

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

There is no doubt that a child, who has arrived at the age of puberty, by accepting possession of the property of an estate after it has been left to him, acts in the capacity of heir.

Ordered on the third of the *Kalends* of December, during the Consulate of the Csesars.

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

It is an established rule of law that a proper heir can obtain the estate of his father by rejecting prsetorian possession of the same.

Ordered at Nicomedia, on the third of the *Ides* of December, during the Consulate of the Csesars.

14. *The Same Emperors and C&sars to Flavia.*

If your brother was the legal successor of your sister, under both the Civil and praetorian law, even though it cannot be proved that he was in possession of the property of the estate, he, nevertheless, becomes the heir, and can institute proceedings against those who are in possession.

Ordered at Nicomedia, on the twelfth of the *Kalends* of January, during the Consulate of the Caesars.

15. *The Emperor Constantius to Leontius, Count of the East.*

There is no doubt that if a son should become his own master before he accepts an estate by order of his father, he can voluntarily claim the estate for himself.

Given on the seventh of the *Kalends* of April, during the Consulate of Limeneus and Catulinus, 349.

16. *The Emperors Arcadius and Honorius to Annodius.*

No one can be compelled, against his will, to purchase anything, to accept a donation, or to enter upon an estate which is onerous.

Given on the sixth of the *Kalends* of January, during the Consulate of Olybrius and Probinus, 295.

17. *The Emperors Arcadius, Honorius, and Theodosius to Anthe-mius, Prsetorian Prefect.*

We decree by this law that the vain formality of declaring that an estate is accepted is absolutely abolished.

Given at Constantinople, on the fifth of the *Kalends* of April, during the Consulate of Honorius, Consul for the seventh time, and Theodosius, 307.

18. *The Emperors Theodosius and Valentinian to the Senate.*

Where an estate is left to an infant, that is a child under the age of seven years, who is still under the control of its grandfather or great-grandfather, or where it becomes the heir at law of its mother or of anyone in the descending line of the latter, or of any other person whomsoever, the relative having charge of it shall be permitted to accept the estate, or praetorian possession of the same, in the name of the said child.

(1) If the said relative should fail to do this, and the infant should die under the above-mentioned age, the surviving relative can then obtain the entire estate by paternal right, no matter by what succession it descended to the said infant, just as if it had been acquired by the latter.

(2) Where, however, the relative is not living, and some other person has become, or has been appointed guardian of the infant after the death of said relative, the guardian can, while the child is still in the age of infancy, accept the estate in its name, whether it became entitled to it during the lifetime of its parents, or after his death; or he can demand prsetorian possession of the property, and in this manner acquire the estate for the said infant.

(3) But when there is no guardian, or if there is one and he should neglect to do these things, and the child should die in infancy, all the estates to which he had been entitled but had not accepted are understood to be in the same condition as if they had never been transmitted to him, and then they will pass to those persons who would have been called to the succession, if the infant had not been entitled to the same. These rules which we have established with reference to an infant under the control of its parents will also apply if the said infant should,

under any circumstances, be ascertained to be his own master.

(4) If, however, the said minor has passed the age of seven years, and on account of the death of his father was under the care of a guardian, and died before reaching the age of puberty, We order that the regulations contained in the ancient laws shall prevail; and there can be no doubt that the minor, after having attained the age of seven years, can himself enter upon the estate and demand prsetorian possession of the same with the consent of his relative if he is still under his control, or by the authority of his guardian if he is independent; or where he has no guardian, he can appear before the Praetor and obtain this right in pursuance of his decree.

Given at Ravenna, on the sixth of the *Ides* of November, during the Consulate of Theodosius, Consul for the twelfth time, and Valentinian, Consul for the second time, 426.

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

As We have found in the ancient laws, and especially in the Questions of Julius Paulus, that sons under paternal control who die while deliberating whether they will accept the estate of their father or not, can transmit the same to their own posterity, together with other privileges to which persons of this kind are entitled, We hereby declare that this right of deliberation shall be granted to all their successors, whether they are cognates or strangers. Therefore, We order that when anyone is called to a succession either under a will, or as heir at law, he shall be entitled to deliberate, and if he has not done so, and has not rejected the estate, so that he appears to be deliberating on this account, and if he has performed no act which may indicate his acceptance, or his conduct as an heir, he can transmit this right of deliberation to his successors; provided, however, that the said transmission shall be terminated within the period of one year after the estate could have been entered upon. And, indeed, if anyone, knowing that he is entitled to an estate either as heir at law, or under the terms of the will, should, without having requested time for deliberation, die within a year, this right shall descend to his heirs, if it is exercised within the prescribed period. For if, after the will has been recorded, or after the heir kn,ows that he has been called to the succession either on the ground of intestacy or under the terms of the will, or under any other title, he should allow the term of a year to elapse without doing anything to manifest his intention of either accepting or rejecting the estate, he, together with his successors, shall be deprived of this privilege.

If, however, he should die within a year, he undoubtedly will leave to his successors the right to decide as to the acceptance of the estate during the unexpired time. When this has elapsed, however, neither he nor his heirs will have any claim to the possession of the estate.

Read in the New Consistory of the Palace of Justinian.

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

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

Where a testator, having made a will, appointed an heir to certain shares of his estate, and afterwards by the same will appointed the said person heir to other shares of no matter what amount, and then, a third time, left him a certain number of shares of the same estate; the heir, having accepted his appointment to one or more of the shares, and having decided that one or more of the others should be rejected by him, the question arose among the ancient authorities whether he should be permitted to do this.

In like manner, when a testator appointed his son, who was under the age of puberty, his heir to a portion of his estate, and a certain stranger to the remaining portion, and made a pupillary substitution of the latter, and the testator afterwards died, and the minor became the heir .of his father, and the stranger entered upon the estate, and subsequently the minor died before reaching the age of puberty, it was doubted whether the pupillary substitution would take effect. The substitute being unwilling to accept the said share of the estate, the question also arose whether the testamentary heir could reject the pupillary substitution.

We think that both of these doubts should be removed by Us at the same time; hence, in the case of the appointment of the heir, or in that of pupillary substitution, in order that everything may be accepted or rejected, We have decided that the necessity is imposed upon the heir who is especially appointed to accept either one or both parts of the estate, and that the pupillary substitution should also either be accepted or rejected.

Given at Constantinople, on the day before the *Kalends* of May, after the fifth Consulate of Lampadius and Orestes, 531.

21. *The Same Emperor to John, Praetorian Prefect.* Where a testator appointed as his heir a person who had a contest in court with a third party with reference to his status, and who claimed him as a slave, and he who alleged that he was his master ordered him to accept the estate, in order that the acquisition of the same might be obtained through his agency, and the latter refused to obey him as his master, a doubt arose among the ancient authorities whether any penalty should be inflicted for insolence of this kind. They held diiferent opinions on this point, and We, desiring to dispose of this discord, direct that the question should be decided in such a way that a nice distinction may be established in the case. For if the appointment was made in the following terms, "I appoint So-and-So, the slave of So-and-So, my heir," for the reason that it is perfectly clear that the appointment was made with reference to the master, it will, by all means, be necessary for the slave to be compelled by a competent judge to enter upon the estate, and acquire it for his alleged master; and if he should afterwards be declared to be free, he will not be subjected to any injury on this account, but all loss or gain will be sustained or enjoyed by the person who attempted to reduce him to servitude; and all actions having reference to the estate, both for and against him, will be refused, and his rights will not be prejudiced in any way for this reason.

If, however, he should be appointed heir as one who is free, without any mention of a master or a slave being made in his appointment, then, under no circumstances, can he be compelled to accept the estate, nor shall unrestricted choice be denied him, but the disposition of the estate will depend upon his condition, and will remain in abeyance till a decision is rendered, whether he be plaintiff or defendant in the case; so if he should be decided to be a slave, he will then acquire the estate for his master, but if he is found to be free, he himself will obtain it if he should desire to do so.

Given at Constantinople, on the second of the *Kalends* of May, after the fifth Consulate of Lampadius and Orestes.

22. *The Same Emperor to the Senate.*

We know that two constitutions have already been promulgated by Our authority, one having reference to those who thought they should deliberate with reference to the acceptance of estates which had been left to them, and the other concerning the appearance of unexpected debts, and the uncertain result to which heirs are subjected by the discovery of conflicting claims. We are not, however, ignorant of the existence of certain ancient constitutions which the Divine Gordian addressed to Plato concerning soldiers who, through ignorance, entered upon an estate, and which provides that they can only be sued for the amount of property which belonged to the deceased, and that their own possessions cannot be interfered with by the creditors of the latter. This provision of the above-mentioned constitution has been adopted by Us, for the Imperial legislator was of the opinion that soldiers should rather be versed in arms than learned in the law. Therefore it appeared to Us to be beneficial to consolidate all these provisions in the same enactment, and not only to relieve soldiers by a privilege of this kind, but also to extend it to all other persons, as well where an unforeseen indebtedness appears as where anyone finds an estate which he had accepted to be onerous. Hence the privilege of deliberation would not be sufficient, unless in the case of men who are timorous and apprehensive of things which are unworthy of suspicion.

(1) Therefore, when an estate, either wholly or in part, vests in anyone, either under the terms

of a will or on the ground of intestacy, and the heir prefers to accept it directly, and does so with a certain expectation of acquiring it, or meddles with it in such a way that he cannot afterwards reject it, in this instance, no inventory is required, as he is liable to all the creditors just as if he had voluntarily assumed the financial responsibilities of the estate. In like manner, if he thought that the estate should either be rejected or repudiated by him without hesitation, and within the term of three months after he knew that he was appointed heir, or called to the succession on the ground of intestacy, he publicly renounces the estate, he will not be obliged to make an inventory, or comply with any other formalities, and shall be considered as having no interest in the said estate, whether it be an onerous or a profitable one.

(2) Where, however, he is doubtful whether or not the estate of the deceased should be accepted, and does not think it necessary for him to deliberate, but enters upon it, or occupies himself with its management in any way, then an inventory should be drawn up by him without fail, so that, within thirty days after the will has been opened, or after he has been notified that this has taken place, or he has learned that the estate has descended to him as heir at law, he must begin the inventory of the property which the deceased possessed at the time of his death. This inventory must, by all means, .be completed within the other sixty days, in the presence of the notaries and other persons who are necessary for its preparation. The heir will be required to sign it, and state that it mentions the property belonging to the estate, and' that he has not committed, and will not commit any fraudulent act with reference to said property, which shall remain in his possession; or if he is ignorant of letters, or is unable to write, he can summon a special notary for the sole purpose of signing his name, and the venerated sign of the cross shall be prefixed to his signature by the hand of the heir; and this shall be done in the presence of witnesses who are acquainted with the latter, and who are present by his order to witness the signature of the notary in his, behalf.

(3) If, however, the heir should happen to be absent from the place where the property of the estate or the greater part of the same is situated, then We grant the period of one year dating from the death of the testator for the completion of the above-mentioned inventory ; for the time aforesaid will be sufficient, even though the property may be situated at a great distance. We concede to persons the power of drawing up an inventory either themselves or by attorneys instructed by them to do so, and who are sent to the places where the property is situated.

(4) Where the inventory has been drawn up in accordance with what has been previously stated, the heirs shall be entitled to the estate without running any risk, and can avail themselves of the benefit of the Falcidian Law against the legatees, so that they will only be liable to the heirs of the estate to the amount of the value of the property which may come into their hands, and they must satisfy those creditors who first appear; and, if after this is done, nothing remains, any creditors who afterwards appear shall be dismissed, and the heirs shall lose absolutely nothing of their own property, lest when they expect to make a profit they may suffer loss. If, however, in the meantime, the legatees appear, they must satisfy them either out of the actual property of the deceased, or out of its proceeds when sold.

(5) But when creditors, who have not yet been paid, appear after the estate has been exhausted, they shall not be allowed to annoy the heir himself, nor those who have purchased property from him, the proceeds of which have been used for the payment of legacies or trusts, or for the satisfaction of other creditors.

Creditors shall not be refused the right to appear against legatees, either in the hypothecary action, or in that to collect money which was not due, and to recover what they have received, as it would be perfectly absurd for laws enacted to benefit legatees to deny to creditors their right to obtain legal relief, as well as for legatees who are seeking for gain to be given their bequests in full.

(6) When, however, the heirs have surrendered the property of the estate to the creditors of the

same, in satisfaction of debts, or have done so by the payment of money, the other creditors who have prior liens secured by hypothecation can appear against them, and recover the property from the subsequent creditors in accordance with the laws, either by an hypothecary action, or by a personal one for recovery, unless they voluntarily offer to discharge the indebtedness.

(7) As has frequently been stated, no action shall be granted against the heir himself, who has exhausted all the property belonging to the estate.

(8) They shall not, however, be permitted to proceed against the purchasers of property belonging to the estate which the heir himself sold for the payment of debts or legacies, as We have sufficiently provided for prior creditors by allowing them to proceed against subsequent ones, or against legatees who have been paid, and in this way to assert their rights.

(9) In estimating the amount of the estate, We grant the heir permission to accept and retain anything disbursed in funeral expenses, or for the registry of the will, or for drawing up the inventory, or for any other necessary matters connected with the estate, which he can prove that he has paid. If, however, he himself had any rights of action against the deceased, these shall not be merged, and he shall share equally with the other creditors in every respect, but the right of priority shall be enjoyed by the latter.

(10) Permission should be given to creditors, legatees, and beneficiaries of trusts, if they think that the amount of the estate left by the deceased was larger than that stated by the heir in the inventory, to prove the excess by any lawful means which they may adopt, either by torturing the slaves of the estate, in accordance with the former law promulgated by Us, which treats of putting slaves to the question or by the oath of the heir, if other evidence should be lacking; and the truth must be ascertained whenever this can be done, in order that the heir may not obtain profit, or suffer loss through acceptance of an estate of this kind.

It must, however, be observed that if the heirs should abstract or conceal property belonging to the estate, or should take measures to remove anything, they shall restore double the amount, after they have been convicted, or shall be compelled to account for the same to the estate.

(11) While the inventory is in course of preparation, and is completed within three months when the assets are at hand, or within three years when they are elsewhere, in accordance with the former provision, neither creditors, legatees nor beneficiaries of a trust shall be permitted to either molest the heirs or bring them into court, or claim property belonging to the estate on the ground of its having been hypothecated, but this term shall be legally granted to the heirs for the purpose of deliberation, and during the interval no prejudice shall be created by the hereditary heirs on the ground of prescription.

(12) Where, however, after the heirs have entered upon the estate, or if, being either present or absent, they have occupied themselves with its management, and have neglected to draw up an inventory, and the time prescribed by Us for doing so has elapsed, then, for the very reason that they did not make an inventory in accordance with the provisions of this constitution, they shall undoubtedly be considered as heirs, and shall be liable for the entire amount of the indebtedness due from the estate, nor shall they enjoy the advantages of Our law, as they saw fit to treat it with contempt.

(13) We have established these regulations with reference to those who did not deem it advisable to ask for time to deliberate, which We hold is entirely superfluous, after the passage of this law, and should be refused. For as they are permitted by the authority of the present law to enter upon the estate and subsequently reject it, what ground remains for deliberation? But for the reason that certain men, either through unfounded fear or sinister design, think it necessary to petition Us to allow them to deliberate for the term of a year for the purpose of examining the affairs of the estate, and perfecting their insidious plots against it, and, by the employment of repeated supplications and weak arguments they often request

further delay, in order that no one may think that We absolutely despise the customs of antiquity, We allow them to ask time for deliberation, either from Us personally, or from Our judges, but no more than a year shall be granted by the Emperor, and no more than nine months by Our judges, so that they can obtain no further time through the indulgence of Imperial generosity. If any longer period should be granted, it shall be considered void; for We only concede one term for deliberation, and no more.

(14) When, however, anyone has fulfilled all these requirements, and drawn up the inventory (for it is necessary for the heir, while he is deliberating, to make it out with the greatest exactness), he shall not be permitted to enjoy the benefit of Our law after the prescribed time (that is, if he does not reject the estate, but decides to accept it), but he shall be liable to all the creditors for the full amount of their claims in accordance with the ancient laws. As, however, two ways are open, one of them derived from former enactments which allowed time for deliberation, the other more direct and recent adopted by Us, by which heirs accepting an estate are protected against loss, We give the heir his choice to make use of Our law and enjoy the benefit of the same, or, if he thinks that the estate ought to be rejected, and that he should have recourse to the aid of deliberation, he can do so; but if he does not reject the estate within the prescribed time he will be liable for the entire indebtedness due to the estate, and not merely to the amount of the property constituting it, but if it is found to be too small to pay all the claims, he shall, as heir, be bound for all the claims, and he can only blame himself for having chosen the ancient burden, instead of the modern benefit.

Hence, We wish that to the grant of time for deliberation and the Imperial Rescript promulgated with reference to the same, the following shall be added, namely: that all persons shall be notified that, if after having requested time for deliberation, they enter upon an estate, or perform any acts in the capacity of heir, or do not reject the estate, they will be liable for the full amount of the debts due to the same. When anyone rashly demands time for deliberation, but neglects to draw up an inventory, and either enters upon the estate or fails to reject it, he shall not only be liable to the creditors for the entire amount of their claims, but shall also be excluded from the benefit of the Falcidian Law. If, however, after having deliberated, he should reject the estate without having made out the inventory, he shall then be compelled by law to surrender the property of the estate to the creditors of the same, or transfer to those entitled to the succession the property which he has received, after having established the amount by his oath, which valuation must also be verified by the judge. Our former constitutions, promulgated with reference to these matters, have been repealed by a recent enactment which provides for all contingencies. In one of these constitutions is contained the confirmation of that of the Emperor Gordian, as this one has been found to be better as well as more comprehensive than the other; and as the three constitutions above mentioned have been consolidated into one, which seems to apply to soldiers, as well as to all other persons, and because We do not wish the subjects of Our Empire to be annoyed by the enforcement of the former constitutions, We decree that soldiers who, on account of their ignorance, may not have fully complied with the provisions of the present law, shall only be liable for the amount of the assets of the estate.

We order that, in cases of this kind, this rule shall hereafter also apply to senators.

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

TITLE XXXI.

CONCERNING THE REJECTION OR REFUSAL TO ACCEPT AN ESTATE.

1. *The Emperor Antoninus to Mutatius.*

If it is established that you have declined to accept the estate of your father, and it should be clearly proved that you did not reside in his house as an heir, but as a tenant or a custodian, or

in any other legal capacity, my attorney will prevent you from being sued as the representative of your father.

Published on the *Ides* of July, during the Consulate of Messala and Sabinus, 215.

2. *The Same Emperor to Severus.*

If you declined to accept the estate of your father, you cannot legally be sued by other subsequent creditors who lent money to your father under the same obligations, on the ground that you purchased property belonging to the estate from certain creditors of the same (provided you acted in good faith).

Ordered on the fifth of the *Kalends* of July, during the Consulate of Laetus, Consul for the second time, and Cerealis, 216.

3. *The Emperors Diocletian and Maximum, and the Csesars, to Theodotianus.*

Where a proper heir, by means of an exception based on an agreement, alleges that a will is unjust, and afterwards claims nothing from his father's estate, and does not appear in court on account of the donation, but for the purpose of compromise, as he could not reject the estate after having once acquired it, and as a compromise will be void by which nothing has been granted or retained, or any promise given, he cannot be deprived of the inheritance.

Without date, during the Consulate of the Csesars.

4. *The Same, and the C&sars, to the Soldier Modestinus.*

Just as a person more than twenty-five years of age, having rejected an estate to which he was entitled before having accepted it, cannot afterwards acquire it, so he who rejects an estate which he has once acquired performs an act void in law, but retains the right which he originally possessed; and because it has been decided that a confession in court shall be considered as equivalent to a decision, this does not apply to one who rejects an estate, but only to him who acknowledges that he owes a certain amount of money.

Ordered on the fifth of the *Kalends* of January, during the Consulate of the Emperors.

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

The rejection by wards of an estate to which they were entitled, without the authority of their guardian, does not prejudice their rights in any way.

Ordered on the second of the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

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

When anyone rejects the estate of his father, and afterwards desires to accept it, he should unquestionably be permitted to do so, as long as the estate remains in the same condition, and he should be allowed to claim it even after a long time has elapsed.

We, desiring to correct this, do hereby order that if any of the property of the estate has been sold, it cannot be entered upon, which was the rule in ancient times. But where none of the property has been alienated, and the heir is of age, and the entire time for demanding restitution has expired, permission shall only be granted to him to do this within three years.

If, however, he is a minor, and has been appointed during the legal time, then, after the period of four years has elapsed (which term was prescribed instead of the available year conceded to those who enjoyed the right of restitution), another term of three years shall be granted to the heir, within which he can accept the estate, if the property belonging to it remains in the same condition, and he can revoke his former rejection of the same.

After this period has passed, however, no right whatever to enter upon the estate of his father shall be granted him, unless, while he was still a minor, property forming part of it was sold;

for then he shall not be denied the right to enter upon the estate, obtain complete restitution, recover the property, and satisfy his father's creditors.

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

TITLE XXXII.

IN WHAT WAY WILLS ARE OPENED, EXAMINED, AND COPIES OF THEM MADE.

1. *The Emperor Alexander to Procula.*

A competent judge will order the will which you allege has been executed to be produced and publicly read.

Published on the second of the *Kalends* of April, during the Consulate of Maximus, Consul for the second time, and Julianus, 224.

2. *The Emperors Valerian and Gallienus to Alexander.*

As you state that the will made by your father was given to you in order that it might be taken to his country, you can take it there and have it recorded in compliance with the laws and customs of the place; but if the witnesses should not be present, you must personally appear before the tribunal of the province, or present a petition to the Governor, and with his consent have honorable men summoned, and the will opened in their presence, and signed by them also.

Published on the fourth of the *Kalends* of January, during the Consulate of Maximus, Consul for the second time, and Glabrio, 237.

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

With reference to the new will executed by your father, concerning which you took the oath of calumny, the Governor of the province will grant you the privilege of examining and copying said will, with the exception of that part which the deceased forbade to be opened, or which is alleged to disgrace someone, and also omitting the date and the designation of the Consulate.

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

4. *The Emperors Gratian, Valentinian, and Theodosius to Hes-perius, Prsetorian Prefect.*

Codicils, or any instruments in writing, no matter what may be their tenor, which have reference to the final disposition of property, must be produced in public with the same formalities with which wills are published.

Given at Milan, on the third of the *Kalends* of August, during the Consulate of Ausonius and Olybrius, 379.

TITLE XXXIII.

CONCERNING THE ANNULMENT OF THE EDICT OF THE DIVINE HADRIAN, AND IN WHAT WAY AN APPOINTED HEIR MAY BE PLACED IN POSSESSION OF AN ESTATE.

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

When a controversy arises between an appointed heir and his substitute, he who was appointed in the first place shall be placed in possession of the estate.

Published on the twelfth of the *Kalends* of December, during the Consulate of Dexter and Priscus, 197.

2. *The Emperor Alexander to Eutactus.*

Although the son of the deceased may allege that he has been passed over, or the will is stated

to be forged or inofficious, or have some other defect, or the deceased is said to have been a slave, it is, nevertheless, customary for the heir to be placed in possession.

Published on the sixth of the *Kalends* of November, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

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

As the Edict of the Divine Hadrian, which was promulgated concerning the twentieth part of an estate, gave rise to many ambiguities, difficulties, and complicated statements, because it prevented the twentieth part of the inheritance from being exacted in Our Empire, and abolished all those provisions which had been promulgated with reference to the fulfillment and interpretation of the said edict, We hereby order that if anyone should be appointed heir to the whole or a portion of an estate, and should produce in the presence of a competent judge a will which had not been cancelled or annulled, and was not defective in any respect, but appears in its original form without alteration, and is fortified by the attestation of the legal number of witnesses, he shall be placed in possession of the property which belonged to the testator at the time of his death, and cannot lawfully be held by anyone else, and which he received in the presence of public officials.

If, however, any contestant should appear, then the claim to possession and its subsequent denial must be argued before a competent judge, and possession shall be acquired by him who can show the best legal right to the estate, whether it be the one who was first placed in possession, or he who, on the other hand, has present control of the property. No delay shall ensue in placing the proper person in possession; and, whether anyone obtained it too soon or too late, the decision of *the* law must be adhered to, and the reason must be considered why one of them was granted possession, and the other disputed his right.

When anyone has been placed in possession of an estate after the expiration of a year, or even after a longer period (provided this was done in accordance with the terms of a legally executed will), no objection on the ground of prescription can be raised, unless a sufficient time has elapsed to afford complete security of ownership to the possessor, or to exclude every claim of him who was granted possession. For it is perfectly clear that if prescription can be pleaded on either side, not only the act of placing the party in possession, but also the principal cause of action will be disposed of.

Given at Constantinople, on the twelfth of the *Kalends* of April, after the fifth Consulship of Lampadius and Orestes, 531.

TITLE XXXIV.

WHERE ANYONE HAS FORBIDDEN OR COMPELLED ANOTHER TO MAKE A WILL.

1. *The Emperor Alexander to Severa.*

Where a testator did not make his will voluntarily, but was compelled to do so by him who was appointed his heir, or was forced by some other person to appoint heirs whom he did not wish to designate, a crime is added to the civil cause of action.

Ordered on the fourteenth of the *Kalends* of January, during the Consulate of Alexander, 223.

2. *The Emperors Diocletian and Maximian to Nicogoras.*

It is a well-known rule of law that those who are shown to have prevented the execution of a will by placing obstacles in the way of the testator should be deprived of the right of succession as being persons unworthy of it.

Published on the *Kalends* of January, under the Consulate of Diocletian, Consul for the second time, and Aristobulus, 285.

3. *The Same Emperors and Csssars to Eutyches.*

It is not a criminal act for a husband, by his representations, to induce his wife to make her will in his favor.

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

TITLE XXXV.

CONCERNING THOSE WHO ARE DEPRIVED OF ESTATES AS BEING UNWORTHY, AND ON THE SYLLANIAN DECREE OF THE SENATE.

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

It is established that heirs who have neglected to avenge the death of a testator can be compelled to surrender all the property of the estate, for they who knowingly have failed to perform the duty demanded by affection cannot be considered to have been possessors in good faith before the controversy arose; and they shall be required to pay interest on the price paid for property belonging to the estate, which has been sold, or on money collected from debtors after the contest for the estate has been begun in court.

There is no doubt that this will also apply to the crops acquired with the land belonging to the estate, or which they have sold after they have been gathered. The payment of six per cent interest will be sufficient.

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

2. *The Saane Emperors to Verus.*

It is not necessary that any business which Polla, who had the free administration of her father's estate, has finished, should be made the subject of dispute for the reason that a minor has become her heir. But if you, in behalf of the minor, intend to allege that the will under which Polla has transacted the affairs of the estate is forged, you can bring suit, provided you bear in mind that if you should not gain the case, you must make good the share to which the minor is entitled under the will, and of which it will be necessary to deprive the said minor in conformity to the requirements of the law; and the Governor of the province will take cognizance of the false accusation of which you have been guilty, even though you are considered to have acted in the name of the minor when you attempted to have the acts performed by a co-heir set aside.

Published on the seventh of the *Kalends* of May, during the Consulate of Antoninus, Consul for the third time, and Geta, 209.

3. *The Emperor Alexander to Antiochianus,*

If the following point can be raised against the children of her whom you allege to be your cousin, namely, that the will of their father, who is said to have been killed by his slaves, has been opened and read before the slaves were put to the torture, according to the provisions of the Decree of the Senate, the estate will be confiscated to the Treasury. Therefore the case should be brought before My representative, because at that time the children were not minors.

Published on the second of the *Nones* of April, during the Consulate of Alexander, 223.

4. *The Same to Philomusus.*

The testamentary disposition of an estate cannot be revoked, even in direct terms, by a letter or a codicil. But even if the testatrix stated in her will that one of her heirs was not worthy of her bounty, it is not reasonable that his share should be transferred to another, but it ought to be confiscated to the Treasury. The grants of freedom bestowed by the said letter can, however, be demanded.

Published on the second of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and Julianus, 224.

5. *The Same to Tyrannus.*

It is not necessary that unworthy heirs should be deprived of an estate under the pretext that they did not comply with the provisions of the last will of the deceased with reference to his burial.

Published on the seventh of the *Ides* of March, during the Consulate of Julianus, Consul for the second time, and Crispinus, 225.

6. *The Same to Venustus and Clementimis.*

It has been decided that heirs under the age of twenty-five years shall not be charged with the offence of having left unavenged the death of a testator. As, however, you allege that you have brought an accusation, and that some of the guilty parties have been punished, you should be under no apprehension of suffering the loss of your father's estate by confiscation to the Imperial Treasury, even though he who is said to have ordered the murder to be committed has appealed, for it is your filial duty to contest the appeal. If, however, you should be of age at the time, you will not necessarily be required to contest the appeal, as you can enter upon the estate.

Published on the fifteenth of the *Kalends* of July, during the Consulate of Alexander, Consul for the third time, and Dio.

7. *The Same to Vitalia.*

If, therefore, revenge for the death of the testator has not been demanded, for the reason that those who committed the murder could not be found, no objection can be urged against the heirs on this account, as they are not to blame.

Published on the *Ides* of March, during the Consulate of Lupus and Maximus, 233.

8. *The Emperor Gordian to Tatia.*

The position of a person who has attacked a will as being forged, conducted the case to a conclusion, and lost it, is different from that of one who, having begun an accusation of this kind, has abandoned it; for the Treasury will obtain the share of the former, but the latter, against whom a judgment was not rendered, does not forfeit the right to claim his share of the estate.

Published on the thirteenth of the *Kalends* of February, during the Consulate of Gordian and Aviola, 240.

9. *The Emperors Diocletian and Maximian, and the Cxsars, to Mlianus.*

As you allege that your brother was killed by poison, it is necessary for you to avenge his death to prevent your being deprived of your right to his estate; for although those who are heirs at law are not forbidden to enter on the estates of persons who have lost their lives through treachery, still, if they should not avenge their death, they cannot obtain their estates.

Published during the Consulate of Tyberianus and Dio, 291.

10. *The Same Emperors and Cassars to Sylvana.* It is not proper for a sister, after having avenged the death of her brother as required by law, to deprive his wife of an estate to which she has been legally appointed heir. In accordance with this, if you are confident of your innocence, and are certain that you can prove that your husband did not lose his life through any malicious act of yours, and that you were not, for some other reason, unworthy of the estate, you can rest secure against any false accusation.

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

11. *The Emperor Justinian to John, Prsetorian Prefect.* The Syllanian Decree of the Senate is considered by Us not only to be meritorious, but also worthy of confirmation, together with

the Rescript of the Divine Marcus published with reference to it, but since We find in it no mention of grants of freedom, and a question arose among the ancient authorities concerning grants of freedom left by the will of a murdered testator, it seems to us to be necessary to dispose of this question. For those who have been given their liberty by a will of this kind, and accept it, can acquire for themselves any advantage which they may receive in the meantime, that is to say, during the delay resulting from taking vengeance for the death of the deceased ; but if they fail to avenge it, they risk the loss of this privilege, even though they may afterwards obtain their freedom. But in order that, in the interval, the slaves may sustain no loss, and especially if, being female slaves, they have brought forth children, and where the estate was afterwards accepted, it seems to Us to be perfectly proper to adopt the Rescript of the most wise Emperor Marcus relating to grants of freedom, in order that this prince, who was well versed in philosophy, may not appear to have sanctioned anything which was imperfect. As his Rescript also extended to inheritances, legacies, and trusts, and especially to grants of freedom with which philosophy is always concerned, to the end that any profits which may accrue to the slaves in the interim may be restored to them after they have been liberated, and any children born may be considered to be free as well as freeborn, and that through no machinations whatever an impediment of this kind may cause them any loss, so that their offspring may also be free if in the meantime they should die, and have the right to succeed to them as heirs.

We have deemed it reasonable to confirm in every respect the Constitution of the Emperor Marcus, for We consider that no act has been performed when something remains to be added, in order to render it complete.

Given at Constantinople, on the second of the *Kalends* of May, after the fifth Consulate of Lampadius and Orestes, 531.

12. *The Same to John, Prietorian Prefect.*

A doubt which arose among the jurists of antiquity with reference to the Syllanian Decree of the Senate has been submitted to Us; that is to say, that slaves shall be subjected to the punishment of death when they lived under the same roof as their master, and did not afford him aid when he was assassinated. The ancients did not agree upon what was meant by the words "under the same roof," whether this should be understood to signify in the same bedchamber, in the same dining room, in the same gallery, or in the hall; adding that if the master was killed on the highway, or in a field, those slaves should be punished who were present and did not extend their aid to avert the danger, but they made no distinction in the interpretation of the term "present."

Therefore We, desiring to deprive them of every opportunity to escape punishment on account of their neglect of the safety of their master, do hereby decree that all slaves, no matter where they may be, whether in the house, on the highway, or wherever their cries can be heard, or an attack can be perceived, who do not bring assistance, shall be subjected to the punishment provided by the Decree of the Senate. They are required to go to the aid of their master for the purpose of preventing him from being the victim' of treachery whenever they see that he is in danger.

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

TITLE XXXVI.

CONCERNING CODICILS.

1. *The Emperor Alexander to Mocimus and Others.*

It is certain that when a will is broken by the birth of a posthumous child, any codicils having reference to said will will not be valid. If, however, as you allege, after the will was broken,

the father of the minors published a certain instrument by which he confirmed the preceding will, the Prsetor did nothing contrary to law, when, following the provisions of this last expression of the wishes of the deceased, he decided that a testamentary trust bequeathed to the State should be carried out, just as if it had been left by a codicil.

Published on the third of the *Kalends* of July, during the Consulate of Maximus, Consul for the third time, and Paternus, 234.

2. *The Emperor Philip and the Csesar Philip to Asclepiodota.* It is clear that an estate cannot either be given or taken away by a codicil. In the execution of a new disposition of property of this kind.

However, the laws do not render void wishes which are expressed as requests. Therefore you entertain an erroneous opinion when you think that you have, to no purpose, been asked by a codicil to be content with certain property, and to give to others what has been bequeathed to you by will.

Published during the *Ides* of October, during the Consulate of Peregrinus and J3milianus, 245.

3. *The Emperors Diocletian and Maximian to Hyacinihus and Others.*

As you state that the mother of your wards executed two codicils at different times, which are distinct from one another so far as their provisions are concerned, there is no doubt that what she inserted in the first codicil is revoked by that in which she afterwards secretly manifested her intentions, provided it differs from the first in its tenor and shows a contrary purpose.

Published on the sixth of the *Ides* of September, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

4. *The Same Emperors and Csesars to Stratonicus.*

Those persons to whom property was left under a request shall none the less be entitled to the same, although your mother executed a codicil during your absence, and died intestate.

Without date or designation of Consulate.

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

It is a positive rule of law that an insane person cannot execute a codicil. Therefore if a document is produced which purports to be a codicil made by your father, in order to claim anything under it you must prove your allegation, namely, your denial that your father was not of sound mind at the time that it was executed.

Given on the sixth of the *Kalends* of December, during the Consulate of the Caesars, 293.

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

Whether the testator in general terms directed that his dispositions contained in a recently executed codicil or those which he had made in a former one should be observed, you will have no just cause for anxiety, as you can rely upon the confirmation made by the last codicil.

Given at Nicomedia, on the third of the *Ides* of December, during the Consulate of the Caesars, 294.

7. *The Emperor Constantine to Maximus, Praetorian Prefect.*

If codicils and wills have the same effect, why are different names given to instruments which have equal force and power ?

The answer is, that authority is not given by law to appoint or substitute an heir by means of a codicil.

Given on the third of the .... of June, during the Consulate of Pacatianus and Hilarianus, 332.

8. *The Emperor Theodosius to Asclepiodotus, Praetorian Prefect.*

When anyone, for the purpose of obtaining an estate, institutes proceedings on any ground whatsoever, under either a written or verbal will, and then claims the estate under the terms of a trust, he should not be permitted to do so. For We by no means grant permission to anyone to enter upon an estate merely because he has changed his mind; and We order that if a testator, having made a will, has stated that it shall also be valid as a codicil, anyone who claims the estate can, in the beginning, have the power to choose which of these he will consider it to be, knowing that, after having made his choice, he will be excluded from adopting the other view; so that if he claims possession of the real estate in accordance with the terms of the will, or only according to what is stated in the codicil, as well as other things of this kind; or if he should absolutely demand to be placed in possession of the estate as is customary, he shall be deemed to have explicitly stated his intention under the provisions of this law.

(1) In like manner, the following rule shall be observed, namely, that when a testator began to make a will but was unable to finish it, he must be considered to have died intestate, and the document shall not be interpreted as a trust, or as his last wishes expressed by a codicil, unless he expressly stated therein that it should have the same force as a codicil, and if he did so, the heir shall have the right to decide whether or not to act under the will; and if this be the case, he cannot change his mind and consider the document a codicil.

(2) Where anyone who is descended from parents of both sexes, and from children as far as the fourth degree of agnation, or belongs to the third degree of cognation, becomes an heir under the provisions of either a written or a nuncupative will, which the testator intended should be regarded either as a testament or as a codicil, and, having brought suit for the estate under the will of the deceased has lost his case; he shall be permitted to have recourse to a trust in order to acquire it, if he does so voluntarily; for reason does not permit him to lose that to which he is entitled under the will, and not obtain the benefits under the same instrument when regarded as a codicil.

(3) In every expression of the last will of a deceased person, with the exception of a testament, five witnesses who have been summoned, or are there accidentally, should be present, whether the will of the deceased is expressed in writing or not, and when it has been committed to writing they must affix their signature to the instrument.

Given at Constantinople, on the tenth of the *Kalends* of March, during the fifth Consulate of Victor, 424.

TITLE XXXVII.

CONCERNING LEGACIES.

1. *The Emperor Antoninus Pius to the Freedmen of Sextilia.* Although food and clothing were bequeathed to you as long as you may reside with Claudius Justus, I, nevertheless, interpret the intention of the testator to have been that these things should be furnished you even after the death of Claudius Justus. Without date or designation of Consulate.

2. *The Emperors Severus and Antoninus to Sabinianus.*

Even though the testamentary heir may have sold the estate, still, the legacies and trusts can be collected from him, and the vendor can recover from the purchaser, or his sureties, whatever he has obtained in this way.

Published on the tenth of the *Kalends* of September, during the Consulate of Lateranus and Rufinus, 198.

3. *The Same Emperors to Victorinus.*

Anyone who, after having made a will, pledges or hypothecates the lands which he devised, is

not considered to have changed his mind with reference to the legatees. Therefore it has been decided that if a personal action is brought, the lien on the land must be released by the heir.

Published on the sixth of the *Kalends* of May, during the Consulate of Gentianus and Bassus, 212.

4. *The Emperor Antoninus to Sulpitius.*

A legacy or a trust left to slaves by the will of their master without the bequest of their freedom is not valid, nor can it be made so, even if, after the death of the testator, they have obtained their freedom in some other way.

Published on the fifth of the *Kalends* of July, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 213.

5. *The Same Emperor to Donatus.*

There is no doubt that an action for the share to which he is entitled out of property, which it appears he has abstracted from the assets of the estate, should be refused a legatee.

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

6. *The Same Emperor to Julianus.*

If the first legatee has received his bequest, the substitution for the same in favor of Pontiana no longer exists.

Published at Rome, on the eighth of the *Kalends* of May, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

7. *The Same Emperor to Faustus.*

If your father bequeathed in the first place the Fortidian Estate as a preferred legacy to your brothers, and subsequently bequeathed it to you, the title to said estate is acquired by you in common with them.

(1) The mistake of a name made in writing does not affect the right of a legacy bequeathed, provided there is no doubt with reference to the slaves or land which constitute the legacy.

Published on the fifth of the *Ides* of July, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

8. *The Same Emperor to Demetrius.*

The military oath by which Marcellus was, as you allege, bound, deprived him of the administration of the guardianship of yourself, to which he was appointed by the will of your father; but this circumstance does not prevent him from obtaining the legacy bequeathed to him. For his claim could not legally be rejected, since, even if he wished to administer the guardianship, he is prohibited from doing so.

Published at Rome, on the eighth of the *Ides* of March, under the Consulate of Sabinus, Consul for the second time, and Anulinua, 217.

9. *The Emperor Alexander to Antiochus.*

If an accuser who, in order to defraud persons to whom property has been left by a will, states that the said will is forged, is allowed to be heard, the Governor of the province must order the legacies to be paid in accordance with the rules of his court, provided a bond is furnished that if the estate is evicted, it shall be restored to those entitled to it, although there is reason that a bond should be furnished, even when the legacies are paid without any controversy.

Published on the seventh of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Elianus, 234.

10. *The Same Emperor to Ingenua.*

When anyone knowingly bequeaths property which belongs to another, whether it be a legacy or has been left under a trust, it can be claimed by him who has a right to it under either of these titles. If, however, when the testator bequeathed it, he believed it to be his own, the bequest will not be valid unless it was left to a near relative, to his wife, or to some other such person; and this will be the case even if he was aware that the property did not belong to him.

Published on the fifth of the *Kalends* of February, during the Consulate of Albinus and Maximus, 228.

11. *The Same Emperor to Albinianus.*

The daughter of a legatee has no right of action, if her father, during his lifetime, afterwards gave to her by way of dowry the same property which he left to her by his will.

Published on the fifth of the *Nones* of March, during the Consulate of Pompeianus and Pelignus, 232.

12. *The Emperor Gordian to Mutiamis.*

As, by the opinion of that most learned legal authority, Papinianus, which you inserted in your petition, it is stated that a preferred legacy can be claimed without the acceptance of the remainder of the estate, you understand that your interests have been protected in conformity with law. This is the text of his opinion: "A mother devised land to her daughter in the following terms," "Take it as a preferred legacy, in addition to your share of the estate."

Even if the daughter should reject the estate of her mother, still, it is held that she can legally claim the legacy.

Published on the fifth of the *Ides* of July, during the Consulate of Sabinus, Consul for the second time, and Venustus, 241.

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

It is evident that your own property cannot be bequeathed to you as a legacy or a trust.

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

14. *The Same Emperors to Tatianus.*

It is clear that tombs cannot be left by will, but no one is forbidden to bequeath the right to inter the dead therein.

Published on the second of the *Kalends* of September, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

15. *The Same Emperors to Terentius and Others.*

If the entire assets of the estate which your father left are exhausted by debts due to the Treasury or to private individuals, no testamentary disposition of said property made by him is valid. If, however, anything remains after the debts have been satisfied, the law does not permit grants of freedom to be interfered with, and legacies as well as trusts must be paid after the Falcidian portion has been deducted.

Published on the third of the *Kalends* of October, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

16. *The Same Emperors and Caesars to Sylla.*

If a creditor contends that certain property which has been given to him in pledge by his debtor has been bequeathed to him by the latter, he cannot be compelled to surrender it, even after the amount of the debt has been tendered by the heirs.

Ordered on the eighteenth of the *Kalends* of February, during the Consulate of the Csesars.

17. *The Same, and the Cassars, to Eutychianus.*

It has been decided that where a legacy has been bequeathed either absolutely or conditionally, it can be revoked where either freedmen or freeborn persons are the beneficiaries of the same.

Given on the third of the *Nones* of March, during the Consulate of the Ca3sars, 293.

18. *The Same Emperors and Ciesars to Justinus.*

A legatee is not entitled to direct actions to collect his legacy, when he has not been authorized to do so by the heirs, but he can bring praetorian action in his own name.

Given on the sixth of the *Ides* of December, during the Consulate of the Caesars, 293.

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

A husband who has been appointed heir by the will of his wife cannot only succeed to her estate where the marriage has lasted only two months, but even where the time has been less, and the shortness of the time does not prevent him from acquiring legacies, trusts, or donations under such a will.

Given at Nicomedia, on the fifth of the *Ides* of September, during the Consulate of the Caesars, 293.

20. *The Same Emperors to Eutychianus.*

If the testatrix, who is the wife of your uncle, should die, she can not bequeath your property of which she only enjoys the usufruct.

Given on the seventh of the *Kalends* of January, during the Consulate of the Caesars, 293.

21. *The Emperors Constantine, Constantly, and Constans to the People.*

No special form of words is required for the bequest of legacies, or the creation of trusts, and it makes very little difference, at the present time, what expressions one makes use of, or what terms of speech he employs to indicate his will.

Given on the *Kalends* of February, during the Consulate of Constantius, Consul for the second time, and Constans, 339.

22. *The Emperor Jmtinian to Menna, Prsetorian Prefect.*

We direct that legacies or trusts which are to be paid annually, and which the testator intended not only to be given to a certain designated person, but to his heirs, can be collected by all his heirs, as well as by the representatives of the latter, in accordance with the will of the testator.

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

23. *The Same Emperor to Julian, Prsstorian Prefect.*

A question arose among the ancient authorities as to the signification of words: for instance, if anyone should devise the Cornelian Estate, or any other in its entirety, and afterwards should leave half of the same land to someone else, how much the first legatee would be entitled to, and what share the second could obtain; and, as a similar doubt arose with reference to estates and trusts, and as many computations were introduced which entailed innumerable discussions, We decree that all such computations shall be rejected as being superfluous, and contrary to the intentions of the testator. For it is clear that as he who, in the first place, left an entire piece of property to anyone, and afterwards bequeathed half of it to another, changed his mind, and intended that the prior bequest could be diminished by one-half, since he offered that amount to another, the present question is susceptible of a very easy solution. Therefore, if anyone should, in the first place, leave a tract of land or an estate in its entirety to

one devisee, and afterwards half of it to another, each of them will be entitled to half of what was bequeathed, or of the whole estate; but where all of it was left in the first place, and the third part of the same was bequeathed in the second, in accordance with the aforesaid rule, eight-twelfths of the land or estate would belong to the first legatee, and the remaining third, or four-twelfths of it, would be acquired by the second.

This same rule shall apply to all kinds of property, whether it consists of estates, legacies, or trusts, for the indications of the intention of the testator cannot be ascertained otherwise than by this method.

(1) It appears to Us to be humane to settle another similar controversy which arose in the interpretation of the ancient laws. This originated in the case where a testator bequeathed the Cornelian Estate, or any other, or certain property, to anyone, and afterwards bequeathed the same property once or more frequently, as a legacy, or under a trust to the same person, and then left it in similar terms by will to Sempronius; so that Titius was mentioned frequently, but Sempronius only once, what conclusion should be arrived at? And what would be the law if the property was left to them jointly or severally, and if it consisted of a legacy or an estate?

We, therefore, for the purpose of deciding this ancient dispute, do hereby order that if the estate or the tract of land, in the instances above cited, was left either jointly, or to one person, or several times to the same individual, the said estate, land, or other property shall be equally divided among the legatees, and each one of them shall be entitled to half of the same; unless the testator expressly stated and specified how many shares he wished one of the parties to have, and how many the other was to receive, for We think that the will of the testator, if it is legal, should prevail in every instance.

Given on the fifteenth of the *Kalends* of December, during the fifth Consulate of Lampadius and Orestes, 530. 24. *The Same to John, Prsetorian Prefect.*

A certain man disinherited his son, who was under his control and had not yet reached the age of puberty, and having appointed other heirs by his will, he appointed a substitute for the said minor, and manifesting the greatest affection for his said son (to whom, however, he left none of his estate) but, after unjustly disinheriting him, appointed a substitute for him, and charged the latter with a legacy for his benefit, the question arose whether a legacy or *a* trust left or created under such circumstances would be valid. If the father left a legacy to the said disinherited son, and substituted a stranger for him, after having disinherited him, a dispute again arose whether he could even leave a trust in the same manner. Hence, as the ancient authorities chose to discuss this question in different ways, and as controversies of this description seem to be superfluous, We order that no substitute appointed for a disinherited minor shall, under such circumstances, be liable in any fiduciary capacity, not even if, by the terms of a legacy or a trust, the testator intended to charge him with the delivery of the same property which he had already left to the minor.

Given at Constantinople, on the second of the *Kalends* of May, after the fifth Consulate of Lampadius and Orestes.

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

When a legatee or the beneficiary of a trust conceals a will, and it afterwards comes to light, it was doubted whether he who concealed it could claim the legacy left to him by said will. We think that he should, by all means, be prevented from doing so, so that he who wished to defraud the heir of his inheritance will not obtain any benefit from his deceit, but may be deprived of his legacy, and be considered as not mentioned in the will. The legacy will belong to the heir, and he who thought that he was injuring another shall himself suffer a loss, just as where a legatee, to whom something was bequeathed in consideration of his administering a guardianship does not do so, is deprived of his legacy, which is assigned to the ward whom he refused to assist.

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

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

We purpose to amend the rule laid down by legislators declaring legacies or temporary trusts void, by ordering that this description of legacies and trusts shall be considered valid, and shall stand. For as it has already been decided that temporary donations and contracts can be made, it follows that legacies and trusts also, which are left for a stated period, can, in the same way, become effective; and that after the expiration of the time, the right to said legacies or trusts gihall be vested in the heir. The legatee or beneficiary of the trust is required to furnish a bond to the heir, to deliver the property to him not deteriorated through his fault, after the specified term has elapsed.

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

TITLE XXXVIII.

CONCERNING THE MEANING OF WORDS AND THINGS.

1. *The Emperor Antoninus to Antipatra.*

It was decided by the ancient legislators that where land with its appurtenances was devised, and there was merchantable wine or oil forming a part of the crops of said land, as well as any other articles which happened to be temporarily placed on said land for the purpose of preventing the depredations of robbers, they did not constitute any portion of the bequest.

You should not, however, be ignorant that wine in storehouses, when left on the land for the use of the mother of the family, is included in the devise.

Published on the sixth of the *Ides* 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 Rufinus.*

Where land with all its appurtenances is bequeathed as a legacy, or left under the terms of a trust, the overseer, the slaves, and everything which the head of the household made use of, or with which the land was provided, and was not left there temporarily, is held by law to have been bequeathed. Moreover, it is a positive rule of law that everything employed for the gathering of the crops, as well as for preserving them, and for collecting manure, or feeding cattle in order to obtain the increase of the latter, or which can be used for cultivation, is included in the legacy or trust.

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

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

We order that what is known by the name of a bond, or *asphaleia,* shall not be considered as a gift of the surety, unless this has been expressly stated in either the Greek or the Latin language; for if it has not been generally referred to as a security, or specifically mentioned as a bond, the *asphaleia* shall not be understood to mean a security, but a mere promise.

Given at Constantinople, on the *Kalends* of March, during the fifth Consulate of Lampadius and Ojestes, 530.

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

When anyone appoints an heir, leaves a bequest, creates a trust, makes a grant of freedom, or establishes a guardianship, in the following words: "Let either So-and-So, or So-and-So be my heir," or "I give and bequeath to So-and-So," or "I wish property to be given to So-and-So," or "I desire that So-and-So, or So-and-So, shall become free, and act as guardian," or "I order this

to be done," a doubt arose whether the appointment, the bequest, the trust, the grant of freedom, or the appointment of a guardian made in this way was not void; and whether the position of the party in possession was the better; or whether both parties were called to enjoy or assume benefits or burdens of this kind, and whether they should be admitted to any order, or whether both should be admitted without distinction.

In the case of the appointment of heirs, some authorities thought that the first one named should be considered as the designated heir, and the second as the substitute; and others held that in the case of trusts, only the last one mentioned would have the right to accept it, as availing himself of the final intention of the testator.

Anyone who desires to succinctly dispose of the disputes of these jurisconsults will have no insignificant number of volumes to examine, as there is a great variety of opinions to be reconciled, for not only the legal authorities, but also the Imperial Constitutions which the said authorities have cited, are known to differ.

Therefore having rejected all this verbosity, it has seemed to Us preferable that the conjunction "or" should be taken to mean "and," so that it may be understood in a certain sense to be copulative, and hence admit the first person mentioned without excluding the second ; just as, for the sake of example, in the interdict *Quod vi aut clam,* the conjunction *aut* is clearly used in the sense of *et;* and, in all cases of this kind having reference to either the appointment of heirs or of the beneficiaries of a trust, or to grants of freedom, or to guardianships, it may be understood that both parties are entitled to equal shares of the estate, and can, in like manner, receive legacies, and that both will be entitled to their freedom, and that both can discharge the duties of guardianship, so that no one will be prevented from enjoying the liberality of the testator, and greater protection will be afforded to wards, and when a doubt exists as to who are entitled to the guardianship, the property of the wards may not, in the meantime, be lost.

We order that these rules shall be observed when the instrument in question has reference to persons. Where, however, only one person is mentioned, but property is left as follows, "I do give and bequeath such-or-such property to So-and-So," or "I leave it to So-and-So in trust," then, in accordance with the ancient regulations, and the provisions of antiquity, the laws remain unimpaired, no change having been introduced in them by this Constitution.

We order that this rule shall also apply to contracts.

Given at Constantinople, on the day before the *Kalends* of May, after the fifth Consulate of Lampadius and Orestes. 531.

5. *The Same Emperor to John, Prsetorian Prefect.* By way of answer to questions submitted by the Bar of Illyria, We decree that the term "family" shall include parents and children, as well as all relatives and property, and even freedmen and patrons as well as slaves. When a testator leaves a trust to his "family," without specifying by any addition those who are entitled to it, this shall be considered to mean not only his near relatives, but even in case there should be none of these, his son-in-law and daughter-in-law; for it seems to Us to be only equitable that they should be called to the trust, even where the marriage has been dissolved by the death of either the son or the daughter. But, under no circumstances, can a son-in-law or a daughter-in-law obtain the benefit of such a trust while any children are living, as the latter undoubtedly will be preferred to the former; and this of course takes place according to degree, so that the freedmen may come last.

This rule shall be observed where anyone has left immovable property, or made it the subject of a trust and forbidden its alienation, adding that if the beneficiary should decline to accept it, the property shall belong to his family. Again, in other cases, the term "family" must be understood to mean property; for the reason that slaves and other effects forming part of an estate are considered as classed under the same head.

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

TITLE XXXIX.

WHERE PROPERTY LEFT BY WILL IS REJECTED.

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

If you can prove that the estate has been transmitted to the substitute in fraud of the legatees, an equitable action will lie in your favor against the person who was an accomplice in the fraud. It is evident that if he, having received a sum of money, failed to enter upon the estate, he can be compelled to surrender the legacies and the trusts.

Adopted on the *Kalends* of October, during the Consulate of Fuscus and Dexter, 226.

2. *The Emperor Philip and the Ciesar Philip to Victoria.*

It has already been decided that when he who was appointed a testamentary heir prefers to obtain the succession on the ground of intestacy, he can not refuse to carry into effect the grants of freedom bestowed by the will. If, however, he could not enter upon the estate by virtue of the will, or demand praetorian possession of the same, the will of the deceased shall not be executed but shall be revoked as void in law, and claims for the bequests cannot legally be prosecuted. But where the will was legally drawn up, and the appointed heir having declined to accept the estate, another obtains it as heir at law, it is clear that neither the grants of freedom can be perfected, nor the legacies paid under the testamentary provisions.

Published during the *Kalends* of January, during the Consulate of Philip and Titian, 246.

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

If Proculina by her will left property to your father whose heirs you are, and the appointed heirs have acquired the estate either in accordance with the testamentary provisions, or on the ground of intestacy, because of the non-acceptance of the will, a competent judge, having been applied to, must order what was bequeathed to your father to be given to you, to the extent authorized by the Falcidian Law.

Given on the fifteenth of the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

TITLE XL.

CONCERNING WHAT IS REQUIRED OF WIDOWHOOD, AND THE ABROGATION OF THE LAW OF JULIA MISCELLA.

1. *The Emperor Gordian to Bonus.*

When a legacy has been left to a woman under the condition that she shall not marry again after the death of her husband, and, by doing so, she fails to comply with the condition, the legacy can, for this reason, under no circumstances, be claimed.

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

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

For the purpose of disposing of the ambiguities arising from the general interpretation of the *Lex Julia Miscella,* We do not permit the oath to be taken hereafter in accordance with the aforesaid law, and We direct that the said law, together with the Mucian Bond, shall be rescinded, and that women shall be permitted to disregard the restriction imposed upon them by their husbands, which enjoins widowhood, and that, not having taken the oath, they can marry again for the purpose of having children, and that the penalty shall have no effect whether they already have children or not, and that they shall be entitled to what their

husbands have left.

From all this it is perfectly clear that where they already have children, the estate shall not belong to them, but they shall only be entitled to the usufruct of the same; and that the title to the property shall vest in the child of the first marriage, in accordance with what has been decided with reference to second nuptials and the benefits accruing to women therefrom, in order that perjury may not be committed through the requirements of the law. For Nature has created women for the purpose of having children, and their greatest desire is directed to this end, so why should We knowingly and deliberately allow perjury to be committed?

Therefore, let this oath be disregarded, and the *Lex Julia Miscella,* together with the Mucian Bond introduced for this purpose, be abolished, as We desire Our Empire to be enlarged, and to be inhabited by a numerous population legitimately begotten, rather than to be weakened by wicked perjury; for it appears to Us to be extremely inhuman to open the way for the commission of perjury by the enactment of laws which punish the offence.

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

Extract from Novel 22, Chapter XLIII. Latin Text.

Where anything has been left by one married person to another, or by anyone else, on the condition that he or she will not contract a second marriage, it cannot be claimed within a year, unless the person referred to is absolutely incapable of marriage; but he or she will be entitled to it after the expiration of a year, provided a bond is furnished to return the property with its profits, in case the condition should be violated. A bond, executed under oath with hypothecation, must be furnished where the property is immovable, and in case of that which is movable (if the person is solvent) a bond alone shall be required; otherwise, a surety must be furnished, if one can be obtained. When a second marriage takes place, the property given can be recovered, just as if it had never been left or donated.

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

The *Lex Julia Miscella,* which We have rescinded so far as women are concerned, should unquestionably also be abolished with reference to men, in accordance with the terms of the law which We have promulgated on this subject. But that no doubts may arise in the minda of ignorant persons, We hereby expressly order that the *Lex Julia Miscella,* and the Decree of the Senate enacted with reference thereto, as well as the Mucian Bond which was introduced to regulate marriages of this kind, shall cease to apply to males as well as females. But, for the reason that we have found certain expressions in Ulpian's treatise on the Sabinian Books that there are cases to which the *Lex Miscella* is not applicable, in order that no one may think that where anything is left to women by a clause like the following, namely, "If she should remain a widow," or "If at any time she should become a widow," or "When she becomes a widow," or on the other hand, with reference to husbands, "If he should lose his wife," or "When he becomes a widower," We direct that they shall not be prevented from claiming or taking possession of what was left to them in a legal manner. For the property is considered to have been bequeathed in ^order that women may not remain in widowhood, or men in celibacy, and that the *Lex Julia Miscella,* which has already been rescinded, should be applicable before Ours. But if this should take place first, those persons to whom the property was left will immediately have the right to demand the same, because it is considered to have been bequeathed subject to a condition; and this liberality should be enjoyed either once, or every year, as a consolation for the sorrow of the bereaved person.

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

TITLE XLI.

CONCERNING PROPERTY MENTIONED IN OR LEFT BY A WILL OR A CODICIL, UNDER A PENALTY.

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

We hereby abolish the superfluous observance of the ancient Iaw3 by which the wills of testators are weakened and prevented from being carried into effect, ordering that where anything has been given or taken away by the last will of the testator, through the provision of a penalty, it shall be void; but a testator shall be permitted to order money to be paid, or impose any other pecuniary penalty upon whatever he wishes, in order to secure the execution of his will, not only by depriving him of estates, legacies, trusts, or freedom, but also by directing that these shall be transferred to others by the person to whom they were originally left; or that something shall be given by him to them, if the heir, legatee, or former slave should fail to comply with the terms of the will.

Where, however, any of them is ordered to do something prohibited by law or reprehensible in other respects, or impossible, the will shall then stand without anyone suffering loss, even if the order of the testator has not been obeyed.

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

TITLE XLII.

CONCERNING TRUSTS.

1. *The Emperor Antoninus.*

If you can prove that Demetrius required his mother, who was his heir, to furnish you with provisions every month, and clothing every year, and she obeyed the wishes of her son and furnished the articles mentioned for a long time, that is to say, in a case of this kind for not less than three years, you will be entitled to have them furnished in the future, even if this has not been done without interruption in the past.

Published on the seventeenth of the *Kalends* of September, during the Consulate of the two Aspers, 213.

2. *The Same Emperor to Eupatrius.*

Where a trust has been left which is void, and the heirs, notwithstanding, in compliance with the will of the deceased, transferred to your grandfather certain lands under the terms of the trust, you will, to no purpose, raise any question with his heirs with reference to the said property, as the wishes of the testator appear to have been complied with, not only as set forth by the terms of his will, but also in accordance with the consciences of those who carried out the provisions of the trust.

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

3. *The Same to Rufinus.*

If, as you allege, the little girl, Chrysis, was manumitted by the heirs in compliance with the will of the deceased, and died intestate before the estate was transferred to her, the succession will belong to those who manumitted her, if they accept it; and the rights of action having been merged, they will be released from the obligation of the trust.

Published on the fifth of the *Ides* of December, during the Consulate of Laetus, Consul for the second time, and Cerealis, 216.

4. *The Emperor Alexander to Victorinus.*

The will of a father which forbids his children to sell lands outside of the family, or to encumber them, is not considered to prevent a brother from conveying them to his sister.

Published on the fifth of the *Kalends* of July, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

5. *The Same Emperor to Regina.*

If your brother, who afterwards became the heir of your father, having reached the age of puberty died without leaving any children, his estate does not pass to you as the result of pupillary substitution; but if it has been confirmed in any part of the will under the form of a trust, you will not be prevented from demanding the execution of the trust by the heirs.

Published on the fifteenth of the *Kalends* of February, during the Consulate of Julianus, Consul for the second time, and Crispinus, 225.

6. *The Same to Nilius.*

The heir should see that the liens on lands which are encumbered and have been devised or left under a trust are released, and, by all means, when the testator was aware of their condition, or, knowing it, intended that a legacy which was of no less value than the aforesaid lands should be left to you. If, however, they have been sold by a creditor, the heir will be obliged to pay you the price received, unless it can be shown by him that the intention of the testator was otherwise.

Published on the sixteenth of the *Kalends* of March, during the Consulate of Julianus, Consul for the second time, and Crispinus, 225.

7. *The Same to Septimus.*

The question of the intention of the deceased must be decided by the judge.

Published on the fifteenth of the *Kalends* of March, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

8. *The Same to the Emperor Masculus.*

Anyone who has obtained his freedom by virtue of a trust can legally demand any legacies, or property left to him in trust by the deceased.

Published on the fifteenth of the *Kalends* of June, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

9. *The Emperor Gordian to Paulina.*

No one can be charged with a trust who has not received either a legacy, a fiduciary bequest, an estate, or a donation *mortis causa.*

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

10. *The Same Emperor to Firmus.*

The expression, "I wish," even though it may be lacking, is, nevertheless, understood to be added, when, by doing so, the meaning of the sentence will become perfect.

Published on the third of the *Ides* of December, during the Consulate of Gordian and Aviola, 240.

11. *The Same Emperor to Papyrianus.*

Whenever property left under a trust is sold by all the heirs who have the right to demand the execution of the same, the property is alienated, or where some of them have given their consent for others to sell it, the validity of the contract can, under no circumstances, be

attacked.

Published on the second of the *Kalends of* January, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

12. *The Emperor Philip, and the Caesar Philip, to Rufinus.*

It is a well-established rule of law that, where a woman has been appointed heir and requested by the will of the deceased to transfer his estate after his death, she can, before he dies, comply with this request, that is to say, transfer .the estate, if she wishes to do so, whether the lawful fourth of the same is retained or not.

Published during the *Ides* of October, during the Consulate of Peregrinus and ^milianus, 245.

13. *The Same Emperor and Csesar to Sempronius.*

Whenever the heir appointed in the first place succeeds the testator, any legacies or trusts with which the substitute was charged cannot legally be claimed.

Published on the eighth of the *Kalends* of March, during the Consulate of Prsesens and Albinus, 247.

14. *The Emperors Valerian and Gallienus to Falco.*

If she whom your brother appointed his heir should die without having obtained the estate, and her death occurred before she reached her twelfth year, and in making his will, the testator requested substitutes to be appointed; nothing will prevent the execution of the trust from being demanded by her heirs, or by those who have possession of her estate on the ground of intestacy. For, in this instance, the rule by which any testamentary dispositions are not valid if the estate is not entered upon as provided, will apply, for while one which has been left in direct terms can be entered upon, one of this kind is bequeathed in such a way that it can be claimed by the heirs at law *ab intestato.* We have stated this in a Rescript, relying upon your statement that the appointed heir was not legally adopted.

The case would be otherwise if the heir, having actually become one of the family, should die, and consequently her heirs would be compelled to execute the trust.

Published on the fourteenth of the *Kalends* of September, during the Consulate of Valerian, Consul for the third time, and Gallienus, Consul for the second time, 256.

15. *The Same Emperors to Philocrates.*

Although a certain man who simply appointed you and your brothers his heirs, desired that you should enjoy the benefit of the estate by being emancipated from your father's control, still, as by the last words of his will the testator tried to render you independent, it is understood that your father will be required to surrender the estate to you subject to a trust.

Published at Rome, on the sixth of the *Ides* of October, during the Consulate of Maximus, Consul for the second time, and Glabrio, 257.

16. *The Emperors Cams, Carinus, and Numerianus to Isidora.*

We are aware that the learned legal authority, Papinianus, rendered an opinion that legacies are embraced in a trust like the following: that is to say, where an heir is requested, after his death, to transfer any of the estate which may have come into his hands, for We note that a preferred legacy is also included in the words of the testator. But as, in the case of trusts, the intention of the deceased is much more worthy of consideration than the language which he employs, if you have, in addition, any evidence which you can bring forward to establish the truth, and show that the intention of your father was what you allege it was, you will not be prevented from instituting proceedings before the Governor of the province.

Published on the day before the *Ides* of September, during the Consulate of Carus and

Carinus, 283.

17. *The Emperors Diocletian and Maximian to Fortunatus.*

If it can be shown that it was the intention of the testator (who was also your creditor) to release you, in conformity to the law, from the debt which you owed him, it is clear that, even before your release has been solemnly acknowledged by his heir, an exception based on the will of the deceased will lie in your favor against his successor.

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

18. *The Same Emperors to Apolaustus.*

As the deceased requested that you should be excused from rendering an account, it is a positive rule of law that what he desired should remain unaltered.

Published during the *Ides* of March, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

19. *The Same to Ampleatus.*

It is a clear and manifest rule of law that, in the case of trusts, the last will executed should prevail.

Published on the eighth of the *Ides* of September, during the same Consulate of the above-mentioned Emperors, 290.

20. *The Same Emperors to Julianus.*

Trusts with which the guardians of minors are charged should be executed, just as if the minors themselves have been required to do so.

Published on the third of the *Nones* of December, during the same Consulate, 290.

21. *The Same Emperors and Cassars to Tiberius.*

If the time for the execution of a trust of which your father was the beneficiary, and whom you say you have succeeded, has arrived, although it is established that when it was created you were not yet born, you can, under the said trust, as the heir of your father, sue the wife of your paternal uncle, whom you allege was requested by your father, in case he should die without children and you should become his heir, to surrender the property left by your grandfather. But if your uncle's estate should be directly acquired by you, there will be no necessity to make a claim under the trust, but the property itself can be recovered from her.

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

22. *The Same Emperors and C&sars to Plautianus.*

There is no doubt that a trust can be left in the presence of witnesses, by means of an ordinary letter or written request, and even without writing, but merely by a sign.

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

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

When the truth has not been ascertained, or any of the legal formalities have not been complied with, and you have not carried out the alleged will of your father by paying the bequests mentioned therein, or, for the purpose of making a compromise, you have bound yourself by a stipulation, and the matter still remains unaltered, you cannot be compelled to make payment.

Given on the fifth of the *Kalends* of February, during the Consulate of the above-mentioned Emperors, 293.

24. *The Same Emperors and Csssars to Menostratus.*

Heirs are not required to surrender any instruments having reference to land left under the terms of a trust, which serve to establish the title to the same. They should, however, furnish security to deliver them to the legatee or the beneficiary of the trust, if this should be necessary, and they are in their possession.

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

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

There is no doubt that the private property of heirs can be left by the terms of a trust.

Given on the second of the *Kalends* of March, during the Consulate of the Csesars, 293.

26. *The Same Emperors and Csesars to Fortunatus.*

Where proper cause is shown, the exception on the ground of fraud can be pleaded when a trust is rejected, and he to whom it was left attempts to avail himself of his rejection; this, however, cannot be pleaded against you, as you allege that not you, but your father, who was not able to injure you, committed this act.

Given on the second of the *Ides* of April, during the Consulate of the Caesars, 293.

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

Where anyone who left a trust is proved to have changed his mind, his heirs cannot be compelled to execute it.

Given on the fifth of the *Kalends* of October, during the Consulate of the Caesars, 294.

28. *The Same Emperors and Csesars to Tiberius.*

Freedom cannot be demanded by slaves under the terms of a trust which was illegally created subject to a condition, and without granting freedom to the slaves.

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

29. *The Same Emperors and Csesars to Achilles.*

A trust which is not legally valid cannot be claimed under the terms of a will, if the heirs charged with it are not proved to have succeeded on the ground of intestacy.

Given on the eighth of the *Kalends* of December, during the Consulate of the Csesars, 294.

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

As that wise and shrewd man, Papinianus, who deservedly excels all others, has stated in his Opinions that where anyone appointed his son his heir, and subjected him to the burden of giving up his estate after his death, he will not be considered to have made such a testamentary disposition, unless his son should die without issue, We, having adopted this opinion as reasonable, do give it full effect, so that, if anyone should make such a disposition of his estate, and should not only appoint his son his heir, but also his daughter, or, in the first place, should appoint his grandson or granddaughter, or his great-grandson or his great-granddaughter, or any of his other descendants, and subject them to the burden of giving up his estate after his death, he shall be considered not to have had any other intention, if those who were charged with the transfer of the estate should die without leaving either sons or daughters, grandsons or granddaughters, or great-grandsons or great-granddaughters; in order that the testator may not appear to have preferred foreign heirs to his own descendants.

Read for the seventh time in the New Consistory of the Palace of Justinian.

Given on the third of the *Kalends* of November, during the fifth Consulate of Decius, 529.

31. *The Same Emperor to John, Prsetorian Prefect.*

A certain man liberated his son from paternal control, and afterwards, having made his will and appointed other heirs, passed him over, leaving him absolutely nothing. He, however, charged him with the execution of a trust, although he had neither appointed him his heir, nor disinherited him.

The question arose whether a trust of this kind was valid; therefore, for the purpose of removing all doubts formerly entertained on this point, We have decided in this case that an emancipated son (as he has been injured by his father), shall not be compelled to execute a trust with which he has been charged; and We order that this rule shall apply to other persons whom it is necessary to disinherit.

Given at Constantinople, on the day before the *Kalends* of March, after the fifth Consulate of Lampadius and Orestes, 531.

32. *The Same to John, Praetorian Prefect.*

For the purpose of deciding any question of fact which may hereafter arise, and with a view to consulting the wishes of deceased persons, We order that where a trust has been left without having been reduced to writing, and without the presence of witnesses, and the beneficiary of the same chooses to tender the oath to the heir, or to the legatee, or the trustee, whenever any of them has been charged with a trust, either generally or in specified terms, the heir, the legatee, or the trustee must be sworn before the oath of calumny is taken, and will divest himself of all anxiety.

When, however, he thinks that he ought to refuse to take the oath, or is unwilling to produce the certain share or amount left to the beneficiary of the trust, and the latter has reason to expect a larger sum, he shall, by all means, be compelled to do what is required by the beneficiary, and satisfy him, as he himself acts as both judge and witness whose honor and good faith has been conceded by the beneficiary of the trust, and no witnesses, or other evidence shall be necessary.

But whether five witnesses or a smaller number, or, indeed, none at all, were present, for the reason that the oath was neither taken nor refused, the case shall be proved as required, whether a father or a stranger was the person who created the trust, so that justice may equally be done to all parties. For when the facts are established by the solemn oaths of witnesses, then the number of the latter prescribed by law must be obtained, and all the formalities complied with. The law requires several witnesses, in order to prevent a forged will from being established by the evidence of only two, so that the truth may be ascertained more perfectly by the testimony of a larger number.

But when anyone who profits by the will of the deceased (and above all, the heir himself, to whom is committed the entire authority in a case of this kind) is compelled to speak the truth by the administration of the oath, what ground will there be for the introduction of witnesses; or why should recourse be had to the evidence of strangers, when a certain and undoubted truth is established by a refusal to be sworn?

In framing this legislation, We have taken into consideration the fact that heirs,are, by all means, obliged to carry out the just dispositions of deceased persons; and these laws are so strict that they even provide that the benefit of an estate shall be lost by those who fail to obey the orders of the testator.

Extract from Novel 1, Chapter I. Latin Text.

Moreover, if anyone, having been warned by the judge, does not, within a year, carry out the

wishes expressed in the will of the deceased, he shall be excluded from the benefit of what he would obtain under the said will, with the exception of what he is naturally entitled to, and this should only be granted under the condition of his giving a bond to comply with the testamentary provisions; in the first place so far as the substitutes are concerned, and afterwards with reference to the co-heirs in their regular order, or to the general beneficiary of a trust, or a sole legatee; or, when there are several legatees, to the one having the preference; or to the special beneficiary of a trust; or to a legatee entitled to the largest amount; or to all of the legatees; to those who consent; or to slaves who have received their freedom by the will; according to the order in which each of the preceding persons is mentioned. In this instance, however, disinherited children shall not be considered, and finally, in default of other heirs the estate shall go to the heirs at law, or be forfeited to the Treasury.

TITLE XLIII.

REGULATIONS WHICH ARE EQUALLY APPLICABLE TO LEGACIES AND TRUSTS, AND CONCERNING THE ABOLITION OF THE ACT OF PLACING THE PARTY INTERESTED IN POSSESSION OF THE PROPERTY BEQUEATHED.

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

While those who are favored in the bequests of legacies and trusts are known to be fully entitled to every personal right of action, who approves of bringing a suit for recovery of property, either on the ground of permission, or of any other subtle distinction applicable to other kinds of legacies, when such measures are not now adopted, or readily undertaken, and those involved methods are no longer sanctioned? Who at present makes use of the minute technicalities relative to the placing of a legatee in possession?

Hence We think that it is better to absolutely abolish the latter proceeding, and to render all legatees as well as beneficiaries of trusts subject to a single rule, and We grant them not only the personal but also the real action, so that they may be permitted to recover by means of a real action whatever has been left them by a bequest of any kind, or under the terms of a trust, and, in addition to this, We grant them the equitable Servian or hypothecary action, for any property left them, out of other assets forming part of the estate of the deceased.

By this law of Ours, the testator is permitted to hypothecate any of the property disposed of by his will, to whomever he chooses; and the New Constitutions, in many cases, introduced tacit hypothecations, so that it is not unreasonable for Us to grant the hypothecary action in the present instance, which could not be inferred, through any previous expressions, to be found in the law itself. For when a testator left legacies or trusts in such a way that those benefited by them could obtain them, it is apparent from his will that the abovementioned actions ought to be brought against the property of the testator, and his will be complied with in every respect, and especially when the legacies or trusts are of such a nature as to be attributable to motives of affection.

We make these provisions, not only where a legacy or a trust has been created to be executed by the heir, but where a trust was left to anyone to be executed by a legatee or a trustee, or any other person whom we can charge with a trust. For as a trust is not valid unless it confers some advantage upon the party charged with its execution, there is nothing oppressive in granting not only the personal, but also the real and the hypothecary actions against him, with reference to the property which he obtained from the testator.

In all cases of this kind, however, We desire every one to be sued by the hypothecary action only to the extent of his liability in the personal one, and the hypothecary action does not affect the property of the heir himself, or that of any other person charged with the administration of the trust, but solely that which came to him from the testator.

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

2. *The Same Emperor to Julian, Praetorian Prefect.*

Every word which clearly indicates the intention of a testator who desires to bequeath property as a legacy, or under a trust, shall be lawful and valid; whether this is done by direct statements, such as "I order," or whether the testator makes use of those denoting a request, for instance, "I beg," "I desire," "I direct," "I leave in trust;" or whether he requires an oath, which has been done in Our presence, the testator making use of the expression, "I call God to witness," the other parties in turn repeating this after him.

Therefore as We have already stated, a will shall not be considered without force so far as its general construction is concerned, no matter what the words bestowing the legacies or trusts may be; and everything which is naturally inserted in legacies is understood to belong there; and when something is inserted in a trust which should not have been, it is understood to be bequeathed; and if anything appears which does not partake of the nature of a legacy, this shall be held to have been left under the terms of a trust; so that every disposition of this kind may be carried out, and actions *in rem,* as well as hypothecary and personal actions, may be founded" upon any of them.

Where, however, something contrary to law appears in the bequests of legacies and trusts, this will either be added to the trust or the legacy, as the case may be; which is more consonant with justice, and will, in this way, be disposed of in accordance with its character. Let no one, at the time of his death, think that his lawful will shall be rejected, but he can always rely upon Our assistance, and as We provide for those who are living, so also care is taken of the interests of the dead. Where the testator only makes special mention of a legacy, this may be considered both a legacy and a trust; and if anything is committed to the care of the heir or legatee, it shall be considered as a legacy; for We do not impose laws upon words but upon the property itself.

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

3. *The Same Emperor to John, Praetorian Prefect.*

When the selection of a slave or other property is left to two or three men, or more, or if the choice of a slave or some other property is bequeathed to one legatee and the latter, at his death, left several heirs, it was doubted by the ancient authorities what decision should be made, if a dispute should arise among the legatees or the heirs of the aforesaid legatee, and one of them wished to choose one slave, or some article, and another another.

Hence We order that, in all cases of this kind, the casting of lots shall be resorted to, and fortune decide the question, and whoever succeeds shall have the right to make the choice; and with reference to the others, the amount of their shares shall be placed with the appraised value of the other assets; that is to say, in the case of a male or a female slave, if he or she is over ten years of age, and has no trade, the valuation shall be twenty *solidi;* but those who are under ten years of age shall not be considered as worth more than ten *solidi.* Where, however, they are skilled artisans, whether they are males or females, their value shall be appraised up to thirty *solidi,* except in the cases of notaries and physicians of both sexes, as We desire notaries to be valued at fifty *solidi,* and physicians and midwives at sixty. Eunuchs under the age of ten years shall be valued as high as thirty *solidi,* and those who are older up to fifty, but if they are skilled in some trade, they shall be valued up to seventy *solidi.*

(1) Where anyone leaves the choice of a slave or other property, not to the legatee himself, but to someone else, for instance, to Titius; and Titius refuses to make the choice, or is unable to do so, or is prevented by death; in this instance, a doubt arose among the ancients as to what conclusion should be arrived at; whether the legacy should be held to have been annulled, or whether relief could be granted so that the selection might be made in accordance with the judgment of a good citizen.

Therefore, We decree that if the person who was directed to make the choice, should fail to make it within the term of a year, or should be unable, or should die at any time before doing so; the right shall be considered to have been granted to the legatee himself, provided, however, that he does not select the best one of the slaves or other property, but only such as is of average value, in order that, while We think that the legatee should be favored, the heir may not be deprived of the advantages to which he is entitled.

(2) But, for the reason that We have, in many instances, provided for the interests of the beneficiaries of legacies and trusts, and have granted them not only personal actions but real and hypothecary ones, and have abolished the perplexing formality required in granting possession of property; We now promulgate the following law.

No heir shall hereafter be permitted under the authority of the ancient laws to alienate, or encumber by pledge or hypothecation, or by the manumission of slaves, any property which has been bequeathed either absolutely as a legacy, or left dependent upon a condition of time, or to be transferred to others, or delivered under a substitution; but he is hereby notified that he cannot subject to the control of another what does not belong to him also, just as if it was a part of his patrimonial estate; because it would be both absurd and unreasonable for him to be able to transfer to others property which he does not possess as his own, or to encumber the same either by hypothecation or pledge, or to manumit slaves which are not his, and thwart the expectations entertained by others.

(3) Where, however, a legacy or a trust has been left either generally or specially under a condition, or to take effect at some uncertain time, or subject to substitution or restitution; the party interested will do well in cases of this kind to avoid making any sale or hypothecation, in order not to expose himself to the serious difficulties resulting from eviction. But if, induced by avarice, and with the hope that the condition will not be complied with, he should venture to sell or hypothecate the property, he is hereby notified that, in case the condition should be fulfilled, the transaction will be considered void from the beginning, and be understood as not having been written, or to have taken place; so that neither usucaption nor prescription of long time will run against the legatee or the beneficiary of the trust.

We decree that the same rule shall also apply to legacies of this description whether they have been left absolutely, or to vest at a certain date, or conditionally, or at some uncertain time. In all these instances, the legatee or the beneficiary shall have full authority to bring suit to recover the property in question, and to obtain possession of the same, without the person who holds it being able to interpose any obstacle to prevent him from doing so.

Extract from Novel 39, Chapter I. Latin Text.

Property which is subject to restitution is forbidden to be alienated or encumbered. If, however, the lawful share of the children does not prove sufficient to satisfy the obligations of the dowry, or donation on account of marriage, it is permitted to alienate or encumber the above mentioned property for this purpose, in a manner suitable to the positions of the persons interested; for We desire to make provision for those matters which are of advantage to all parties, rather than for those which only affect the interests of a few.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(4) A purchaser who knows that the property is encumbered will only be entitled to an action against the vendor for the recovery of the price, and not for double damages under a stipulation; nor will he be allowed anything for improvements, as it will be sufficient for him to recover the price which he knowingly paid for what belonged to another.

Where the property has been pledged, the counter action of pledge will lie in favor of the creditor against the debtor; and We make this provision so that, under all circumstances, the

effect of which We always desire to accomplish may be produced, and the last wills of deceased persons may be observed. There is no doubt that the rights of purchasers in good faith will remain unimpaired, and in no respect affected by the terms of this Constitution, as they will continue to enjoy them against vendors.

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

TITLE XLIV.

CONCERNING FALSE STATEMENTS MADE IN THE CASE OF LEGACIES OR TRUSTS.

1. *The Emperor Antoninus to Septimus.*

The words of the will which you have inserted in your petition, either state that the money due the testator has been paid, or they plainly show that his intention was to discharge the debtor. Therefore, either what has been paid cannot be collected, or proceedings must be instituted as under a trust, in order that the debtor may be released from liability; unless it can clearly be established that the testator did not intend to release him, but, erroneously thought that the money had been paid to himself.

Published on the seventh of the *Kalends* of March, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to Faustina.*

Even if the truth with reference to a debt does not appear, the false statement does not render the bequest void, and an action based on the will will lie in the name of the testator.

Published on the seventh of the *Ides* of November, during the Consulate of Alexander, 223.

3. *The Same Emperor to Verina.*

If your husband left you property by way of dowry without designating the amount of the same, but stated that whatever had come or might come into his hands, should be considered as your dowry, and you bring suit for it under the will; proof of the amount of money which he received will be necessary. If, however, he mentioned the sum, it will be due; and if it is not paid as dowry but as something else that is bequeathed, it will not be subject to the same rules of law as a dowry.

Published on the *Nones* of May, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

4. *The Emperor Gordian to Alexander.*

If, as you allege, your wife having died during marriage you returned her dowry to her father; or, even if you did not return it, if you can prove by the words of the will (as you assert you can) that your father-in-law received all of said dowry, an action will not lie against you on this ground, and you should be under no apprehension, for the dowry has either been paid, and you can not be sued; or, if it has not been paid, you will be entitled to an exception against the person claiming under the will of the deceased.

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

5. *The Emperors Diocletian and Maximian and the Caesars to Severn.*

It makes a great difference whether your husband bequeathed your dowry to you as a legacy, or whether he left you, in general terms, whatever was inserted in the dotal instrument; for, in the first instance, you can only claim what you prove was given; and in the second, whatever is mentioned in the dotal instrument can be demanded under it, without a false allegation

having any effect.

Given on the fourteenth of the *Kalends* of December, during the Consulate of the Caesars, 293.

TITLE XLV.

CONCERNING LEGACIES OR TRUSTS LEFT FOR A SPECIFIC PURPOSE.

1. *The Emperor Antoninus to Saturnina.*

The purpose for which legacies and trusts were bequeathed must be observed, just as in the case of a condition. But you are not obliged to obey the will of the testator, as this duty devolves upon him whom you were ordered to marry, and if his wishes are not complied with, you will still obtain what was left to you.

Published on the fifth of the *Kalends* of January, during the Consulate of Gentianus and Bassus, 212.

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

Although no ground for the demand of a legacy or a trust arises from the following words: "I leave to Titius ten thousand *solidi,* or an island, in order that he may pay five thousand *solidi* out of the above mentioned sum to Msevius, or transfer to him the said island"; still it is admitted as valid by the Divine Severus; provided a bequest of freedom is'involved. But in pecuniary matters, for the purpose of protecting the wills of testators, it is not unreasonable that such a bequest should be allowed; so that, by expressions of this kind, whether they have reference to a condition or to a purpose, or to the gift of any property, or the performance of any act, an action based on the trust will always lie, as in the case of conditions after they have been fulfilled.

If, however, while leaving a legacy or a trust, the testator should forbid the legatee or the beneficiary or his heir, or anyone else, to collect a certain debt, the debtor will be entitled to an exception against the legatee or the beneficiary of the trust, if he brings suit for a sum equal to that left as a legacy or a trust.

Published on the sixth of the *Ides* of August, during the Consulate of Sabinus, Consul for the second time, and Venustus, 261.

TITLE XLVI.

CONCERNING CONDITIONS INSERTED IN THE BEQUESTS OF LEGACIES, TRUSTS, AND GRANTS OF FREEDOM.

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

As you allege that the testator left a trust to Trallianus to be carried out by him whom he appointed heir to a portion of his estate, provided the person appointed should die without children, and he should appoint his grandson, born of his daughter, his heir; it is evident that the condition attached to the trust has failed to be fulfilled, unless the intention of the testator is clearly proved to have been otherwise.

Published on the *Nones* of December, during the Consulate of Lateranus and Rufinus.

2. *The Same Emperors to Gallianus.*

As you assert that a father left a bequest to his daughter in trust, to be paid at a certain time, and ordered that security should be given that this would be done, if she did not separate from her husband; it is proper that the ordinary rules of law should be observed in this case, and that no rescript should be issued with reference thereto. The example of a legacy or an estate to which the condition of a divorce is sometimes attached, should not be adduced in this instance; as it would be absurd for the rule of the perpetual Edict to be disregarded for the

reason that the daughter did not obey the wishes of her father.

Published at Antioch, on the eleventh of the *Kalends* of August, under the second Consulate of the Emperors Antoninus and Geta, 206.

3. *The Emperor Antoninus to the Soldier Aurelius.*

If Aulazanus bequeathed the legacy by his will, under the condition that the legatee should reside with his concubine and her mother, and that he was to blame for not obeying the wishes of the testator, as he, of his own accord, failed to comply with the terms of the will, he should not be permitted to claim the legacy.

Published on the sixth of the *Ides* of July, during the Consulate of Laetus, Consul for the second time, and Cerealis, 216.

4. *The Emperor Alexander to Licinia.*

You have no reason to believe that you are entitled to a legacy or a trust left to you by your uncle under the condition that you would marry his son, on the ground that the condition was not complied with, because the son died before you could marry him.

Published during the *Kalends* of December, during the Consulate of Alexander, Consul for the second time, and Marcellus, 227.

5. *The Emperors Diocletian and Maximian, and the Csssars, to Faustinus.*

If it is shown that your wife, when you married her, was under the control of her father, the property left to her under a trust at that time will undoubtedly be acquired by her father, where nothing else exists to prevent it from vesting in him. If, however, she was emancipated before her marriage, and afterwards died leaving her father, her husband, and her children, she will transmit to her heirs the right of action which she was entitled to bring for the execution of the trust.

Ordered on the sixth of the *Kalends* of February, during the Consulate of the Caesars, 293.

6. *The Emperor Justinian to John, Prastorian Prefect.*

When several persons are directed to comply with a certain condition, it was doubted by Ulpian whether all of them should comply with it at once, or whether each of them should be required to do so singly.

It appears to Us, however, that each of them should be required to comply with the condition, in order to receive the share of the estate to which he was entitled, so that those who obeyed the commands of the testator might enjoy the benefit, and those who failed to do so could only blame themselves if they were excluded from the advantages attaching to the observance of the condition.

Given at Constantinople, on the third of the *Kalends* of August, after the fifth Consulate of Lampadius and Orestes, 531.

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

A certain man, when making his will, granted freedom to his slave under the condition that he should pay a certain number of *solidi* to his heir, or should give him some other property or another slave in his stead. As soon as the slave (who did not reside in the same place as the heir) learned of the will of his master, he hastened to the heir with what he had been ordered to give him, but while on the way, he was deprived of the property which he was taking by an attack of enemies, or some other accident, and the question arose among the ancient authorities whether he should be prevented from obtaining his freedom, because he could not, on account of the above-mentioned accidental occurrence, give what was required by the condition. Hence, for the purpose of removing the doubts of the ancients, We have decided that the slave is unquestionably entitled to his freedom, and that the heir, or the stranger, shall

not be deprived of the benefit of what was left to him. Therefore, no matter from what source the obstacle was derived, whether from the heir, or from him who was ordered to give something to the latter, or whether it was the result of accident, the slave shall, by all means, obtain his freedom, unless he himself should refuse to comply with the condition; and even after he has obtained his freedom he will be liable to the heir, or to the person to whom he was ordered to give something (unless the latter refused to accept the money, and if this was once rejected by him We do not permit him to change his mind), and he will certainly be compelled to give what he was ordered, or to furnish the slave designated by the testator, if he is still living; and if he is not, his value shall be computed at not more than fifteen *solidi;* or if he was ordered to give some other property, he must do so, provided it is still in existence, and if it is not, he must pay the true value of the same.

Given at Constantinople, on the day before the *Kalends* of May, after the fifth Consulate of Lampadius and Orestes, 532.

TITLE XLVII.

CONCERNING THE INTEREST AND THE PROFITS OF LEGACIES AND TRUSTS.

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

It is clear that interest on legacies and trusts can be collected from the time when issue was joined. The income of property and the wages of slaves, due under a will, must likewise be paid.

Published on the day before the *Kalends* of August, during the Consulate of ^milianus and Frontonus, 200.

2. *The Emperor Antoninus to the Freedman of Cassianus.*

It is well known that relief is afforded under the law against those who, under* the pretext of witholding the Falcidian portion, are in default in the payment of legacies. Therefore, if after a stipulation has been entered into, you furnish security that you will return anything which you may receive over and above what is allowed by this law, the judge having jurisdiction over trusts will order the entire amount of the legacies to be paid to you.

If, however, you cannot furnish security, an arbiter having been appointed, he shall designate a certain time for you, and if the other party fails to appear within that time, he must perform his duty, and if he should find that there is no ground for the operation of the Falcidian Law, you will receive the interest and profits due from the time when issue was joined in the case.

Published on the sixteenth of the *Kalends* of June, during the Consulate of the two Aspers, 213.

3. *The Emperor Alexander to Paternus.*

If certain slaves have been left to you under the terms of a trust, they will be at the risk of the debtor of the trust from the time when he begins to be in default.

Published on the twelfth of the *Kalends* of April, during the Consulate of Julian, Consul for the second time, and Crispinus, 225.

4. *The Emperor Gordian to Dionysius.*

In the case of legacies and trusts, the profits of the same shall be acquired from the day when issue was joined in the case, and not from the time of the death of the testator, whether a real or a personal action is brought.

Published on the *Nones* of September, during the Consulate of Gordian and Aviola, 240.

TITLE XLVIII.

CONCERNING UNCERTAIN PERSONS.

THIS TITLE IS LACKING.

TITLE XLIX.

CONCERNING THE TREBELLIAN DECREE OF THE SENATE.

1. *The Emperors Severus and Antoninus to Probus. If,* in accordance with the Decree of the Senate, you retained the fourth part of the estate, and delivered the remaining three-fourths to the beneficiary of the trust, you can recover from the latter the amount which you paid to the creditors of the estate, instead of nine-twelfths of the same.

Published on the fifteenth of the *Kalends* of April, during the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Philip and the Csesar Philip to Julianus.*

It is an undoubted rule of law that he to whom a share of an estate is left in accordance with the Trebellian Decree of the Senate must assume the burdens of the estate, or the payment of the legacies, in proportion to the share to which he is entitled.

Published on the eighteenth of the *Kalends* of November, during the Consulate of Peregrinus and Emilianus, 245.

3. *The Emperors Cams, Carinus, and Numerianus to Zoticus and Others.*

If the inheritance has been transferred to the State by means of a trust, you will be entitled to restitution of the fourth part of the same, and its profits, in accordance with the terms of the Trebellian Decree of the Senate, and this also applies in case of intestacy.

Without date or designation of Consulate.

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

We do not see that you have any just reason for anxiety on account of the trust which disposes of the remainder of the estate, apprehending that you will lose the profits of the trust which has been bequeathed, because the grandmother of the testator, having been appointed heir to a portion of his estate, and requested by him to deliver it to you, deceitfully and fraudulently rejected the same, in order that a share of the said estate might go to another grandson, who was your co-heir, and through whom the trust was not expressly left to you; and, having been compelled to enter upon the estate which was suspected of being insolvent, she died before she performed any act as heir.

It was long since decided by the Divine Antoninus, Our relative, that a trust was due even from substitutes, in consideration of the wishes of the testator, just as if this had tacitly been required of them. You should have no fears, as she who rejected the estate, and was compelled to enter upon it, could not retain the fourth part in question.

Ordered at Philippopolis, on the sixth of the *Ides* of July, during the Consulate of the above-mentioned Emperors.

5. *The Same Emperors and Ciesars to Verissimus.*

An estate can legally be left under a trust without writing. Therefore, if your wife, being at the point of death, designated you and her step-son her heirs to the amount of three-fourths of her estate, it is settled that her will must be observed, she having provided that her heirs at law, who had agreed to the execution of the trust, should, after the deduction of the indebtedness, only obtain the amount which the Decree of the Senate authorized to be left them in addition to the Falcidian fourth.

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

6. *The Emperor Zeno to Dioscorius, Praetorian Prefect.*

We direct that whenever a father or mother, after having appointed their son or daughter, or sons or daughters, heirs to equal or unequal shares of their estates, substituted them simply for one another, or charged any one of them who might die without issue to transfer his or her share of the estate to either his or her surviving heir or co-heir; so that, in accordance with the provisions of the Trebellian Decree of the Senate, the fourth part of the estate might, under all circumstances, be reserved, and not be restored to the bulk of the estate by implication (even though the testator requested or ordered this to be done); but the other three-fourths of the property belonging to the estate shall be transferred.

We order that the same rule shall apply to the reservation of the portion provided for by the Falcidian Law, even though the father or mother, after having appointed their son or daughter their heir (as above stated) should charge him or her to deliver the estate to their grandsons or granddaughters, their great-grandsons or great-granddaughters, or the descendants of the latter.

(1) We order that in the above-mentioned cases no bond shall be required to insure the execution of the trust, unless the testator expressly stated that such a bond should be furnished, or when the father or mother thought that the person charged with the execution of the trust ought not to contract a second marriage. For in these two instances, that is to say, first, when the testator expressly directed that security should be given, or second, where the father or mother might marry again, it is necessary for the same security to be furnished in accordance with the provisions of the law.

(2) If, however, he who has been charged with the execution of the trust should die, leaving one son or a grandson by his son, or a daughter by his son, or a great-grandson, or a posthumous child, the condition will not be considered to have been complied with, and therefore the request for the execution of the trust cannot be granted.

(3) We also give notice that what We have stated with reference to the Falcidian portion being retained, not out of the income but out of the property of the estate itself, and also concerning security being furnished by the beneficiaries of a trust (as above mentioned) shall only apply to the persons and cases above enumerated.

Published at Constantinople, on the *Kalends* of September, during the Consulate of Probinus and Eusebius, 489.

Extract from Novel 123, Chapter XXXVII. Latin Text. If those who have been charged to transfer property given by way of dowry, or as a donation on account of marriage, or under the condition that they shall marry and have children, should enter a monastery, or any other religious house, or a transfer or substitution should be made under the aforesaid conditions, or if this has been done for the ransom of captives, or for the support of persons who are in want, the execution of the trust cannot be demanded.

Extract from Novel 108, Chapter I. Latin Text. On the other hand, when anyone is charged to transfer what remains of the estate at that time in case he should die without issue, or where he is burdened with other provisions contained in a trust of this kind, he will be compelled to deliver to the beneficiary of the trust, the fourth part of what he has received as heir, and he must furnish security to do so, unless he has been excused by the deceased. If, however, the fourth should happen to be diminished, or should be obtained from the property of the estate, or if this should be lacking, permission shall be given to the beneficiary of the trust to proceed by a real and an hypothecary action against those who have received the property. The diminution of the said fourth is allowed in the case of a dowry, or a donation in consideration of marriage, or where captives are to be ransomed, or sufficient assets are not available to pay expenses.

7. *The Emperor Justinian to Julian, Prsetorian Prefect.* We order that permission shall be given to make restitution to a sole guardian of the entire trust left to his ward, without his being required to furnish security, whenever the ward cannot speak for himself, or is known to be absent, in order that We may not prescribe to too many restrictions with reference to the affairs of wards, and these restrictions redound to their injury.

The same rule shall apply where an estate is due to an insane person under a trust, so that restitution shall be made to his curator alone, in the name of the insane person. For what understanding and what reason can be attributed to one who is not of sound mind, when, in both instances, those who make the restitution enjoy the greatest security under Our law?

This rule shall also be observed if the ward himself, or the insane person, is required to make restitution.

(1) When anyone is directed to transfer an estate to others, and fraudulently or obstinately conceals himself either before or after issue has been joined in the case; or where he is charged with the execution of a trust, and, before he transfers the estate dies, leaving no heir or successor; or where the beneficiary of a trust to whom an estate has been transferred under the Trebellian Decree of the Senate is ordered under the terms of the same to transfer the property belonging to the estate to a third party; a doubt arose among the ancient authorities as to how the assignments of the rights of action in these three cases should be made. Domitius Ulpianus was of the opinion that a constitution should be promulgated with reference to these cases, and therefore We order that where he who was required to transfer the property absented himself through perverseness, or, having died, left no successor, or was the first beneficiary of the trust and was charged to transfer the property to a second, the praetorian rights of action pass by operation of law.

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

8. *The Same Emperor to John, Praetorian Prefect.*

A certain man, having made his will, directed his heir to transfer to another the entire estate which he left to him, and then charged him with a special trust. The question arose from whom the special beneficiary could obtain what was bequeathed to him, whether from the heir, so that, after the transfer, the first beneficiary might receive something else, or whether this, together with the other property, should all be included in the trust, so that the general might transfer it to the special beneficiary, when what was embraced in the trust consisted of money or other property. Therefore, We order that all the estate shall be delivered to the general beneficiary in accordance with the Trebellian Decree of the Senate, and that he shall be required to deliver to the special beneficiary what was bequeathed to him.

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

TITLE L.

ON THE FALCIDIAN LAW.

1. The Emperors Severus and Antoninus to Priscus.

You ought to know that if you have rejected the Falcidian portion, in order that you may be the better able to transfer your share, you will not be considered to have paid more than you owed.

Published on the third of the *Ides* of May, during the Consulate of Lateranus and Rufinus, 198.

2. The Same Emperors to Sactianus.

It is a certain and established principle of law that the rule of the Falcidian portion applies to

all persons in proportion to the amount of the legacies and trusts.

Published on the *Kalends* of July, during the Consulate of Lateranus and Rufinus, 198.

3. *The Emperor Alexander to Hermagoras.*

Even if it should appear that the heir administered an implied trust, there is no doubt that, notwithstanding this, the legacies and trusts left by the will must be paid in the same proportion permitted by the Falcidian Law, as it has been decided that the legatee cannot profit by the fourth of which the heir was deprived, because he endeavored to dispose of the estate contrary to law.

Published on the *Ides* of October, during the Consulate of the Emperor Alexander, 223.

4. *The Same Emperor to Philetianus.*

It was very properly decided by the Divine Hadrian that the Falcidian Law applies to legacies left to the Emperor.

Published on the fifth of the *Kalends* of January, during the Consulate of the Emperor Alexander, 223.

5. The Same Emperor to Damosata.

If you can prove that your mother made excessive donations *mortis causa* to your sister, you can legally avail yourself of the Falcidian Law in accordance with the Constitutions of My grandfather, the Divine Severus.

Published on the fifteenth of the *Kalends* of November, during the Consulate of Maximus, Consul for the second time, and Julianus, 224.

6. *The Same Emperor to Secondina.*

All debts are deducted in the enforcement of the Falcidian Law, even those due to the heir himself at the time of the death of the testator, although the actions are merged by acceptance of the estate.

(1) Moreover, all legacies, even though intended to be expended in public works, or for the erection of statues, are required to contribute pro *rata,* according to their amounts, in order to make up the Falcidian portion.

(2) The computation of the lawful amount shall not be affected if the heir should pay more than what is due, or perform more than is required.

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

7. *The Same to Primus and Pomponius.*

The Falcidian Law does not apply to military wills, but if the deceased had possession of property belonging to you, it can, by no means, be considered part of his estate, and therefore you can legally require an account to be rendered of it in the case of a debt.

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

Extract from, Novel 1, Chapters II and III. Latin Text.

If the testator expressly forbade any restrictions to be placed upon the distribution of his estate, the Falcidian Law will not apply, and if the heir does not obey the deceased in this respect, the estate shall pass to the persons enumerated under the Title having reference to legacies and trusts.

Again, if the heir, being aware of the amount of the assets of the estate, pays some of the

legacies in full, and others only in part, he cannot recover or retain anything from either, unless some unexpected occurrence should take place. Where nothing of this kind occurs, there will be ground for the Falcidian Law, provided, at the time of the acceptance of the estate, an inventory is drawn up in accordance with the method and term prescribed by law.

The inventory shall be made in the presence of all the legatees of the city, or in that of their agents, if this can be done; and when any one of them is absent, or refuses to be present, his place shall be supplied by three witnesses of the same town, who are men of wealth and good reputation, without prejudice to ascertaining the truth by the torture of slaves, and the heir and the witnesses shall be sworn.

If these formalities are not observed, the heir must pay the legacies in full, even though their value may exceed that of the estate. No controversy or legal proceeding of this kind shall be prolonged for more than a year, for after the lapse of that time, through the fault of the heir, the estate shall pass to the others.

Extract from Novel 131, Chapter XII. Latin Text.

The Falcidian Law does not apply where property is bequeathed under the condition that it shall not be alienated, but shall remain in the hands of the successors of him to whom it was left.

Extract from Novel 119, Chapter XI. Latin Text.

In like manner, the Falcidian Law does not apply to property left for pious uses.

8. *The Same Emperor to Aurelius.*

The will of your brother cannot be considered void for the mere fact that he was bound, under the terms of the trust, to transfer your father's estate to you if he should die first without issue. But although, as you assert, he appointed you his heir, and burdened you with the payment of legacies, what was due under the trust should be deducted as indebtedness, and, in addition to this, you can claim the benefit of the Falcidian Law with reference to the remainder of the estate.

Published on the *Ides* of September, during the Consulate of Maximus, Consul for the second time, and Paternus, 234.

9. *The Emperor Gordian to Mestrianus.*

An heir is not prevented from claiming the lawful fourth when, through an error of fact, he failed to retain it in the execution of a trust; but if he, being aware that he could retain it, transferred the entire estate, he will not be entitled to a personal action for recovery,

for the reason that if he had been ignorant of the law, he would have had no right to make the demand.

Published on the thirteenth of the *Kalends* of November, during the Consulate of Pius and Pontianus.

10. *The Same Emperor to Diogenes.*

Although your father charged your brother to transfer a share of his estate to you, in case he died without issue, still, if he died intestate, what he was entitled to under the Falcidian Law will belong to his legal successor; and therefore, not without reason, your sister, who as heir at law, succeeded to him along with you, can clearly claim her share of what he could have retained.

Published on the fifth of the *Ides* of November, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

11. *The Same Emperor to Maximus.*

If (as you allege) your father ordered you to transfer to your brothers the share of his estate to which he made you the heir, and directed you to be content with certain specified articles in lieu of the Falcidian portion, you will not be prevented from demanding the aid of the Falcidian Law for which you petition.

Published on the seventh of the *Kalends* of November, during the Consulate of Arianus and Pappus, 244.

12. *The Emperors Diocletian and Maximian to Justin.*

It is stated in many legal opinions that the Falcidian Law applies to donations between husband and wife, when they carry out the provisions enjoined by a trust.

Published on the *Kalends* of July, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

13. *The Same Emperors and Ciesars to Zethus.*

If she, who you say holds your son as her slave, obtained anything by the will of the deceased, who bequeathed freedom to the said slave under the terms of a trust, it is not unjust for her to be compelled to grant the slave his liberty, in accordance with the provisions of the will; for the execution of the trust with which she was charged can be demanded, even where the value of the slave whom she was requested to manumit exceeds that of the legacy.

Ordered at Heraclea, on the fifth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors, 293.

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

Although you have entered upon the estate of your father, and the right of action, to which you assert you were entitled, has been extinguished by merger with the share to which you succeeded through him, for which reason you allege that you became liable for a considerable sum on account of your administration of the guardianship, you will not be prevented from suing your co-heirs in proportion to the remaining shares, and you will be required to transfer the land left to you in trust, after having deducted the fourth part to which you are entitled.

Given on the sixth of the *Kalends* of October, during the Consulate of the above-mentioned Emperors, 293.

15. *The Same Emperors and Cassars to Pomponius.*

If your wife, either by her will or by a codicil, ordered that the instruments evidencing the title to lands forming part of her dowry, and to which you were legally entitled, should be given to you under a trust, her successors can be compelled to carry out the provisions of her will; for the instruments evidencing the title to the lands having been bequeathed to their owner, there can be no question whatever as to the application of the Falcidian Law.

Published on the sixteenth of the *Kalends* of February, during the Consulate of the Caesars, 294.

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

If the debts due from the estate of the deceased have exhausted its assets, neither the Falcidian Law nor the Trebellian Decree of the Senate will permit the successors to be liable to any legacies or trusts.

Ordered on the sixteenth of the *Kalends* of February, during the Consulate of the above-mentioned Emperors, 299.

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

It is a positive rule of law that where legacies have been bequeathed, they can be collected from the heirs after deducting the amount prescribed by the Falcidian Law.

Published on the fifth of the *Kalends* of November, during the Consulate of the Csesars, 294.

18. *The Emperor Justinian to John, Prtetorian Prefect.*

Where anyone, having an estate, for instance of the value of four hundred *solidi,* directs his heir not to enter upon it, unless he first pays to a certain person three hundred and eighty *solidi,* or any sum which will diminish the Falcidian fourth, We order that if the heir should enter upon the estate, he shall still have the benefit of the Falcidian portion, and can reserve whatever is lacking to make it up, and before either giving or retaining it (whether there is but one transfer provided by the will, or whether the estate is to be divided among several persons) he shall be entitled to the benefit of the above-mentioned law without any alteration.

Where, however, a donation *mortis causa* was made, and it exceeds the amount fixed by the Falcidian Law, the heir, after entering upon the estate, can recover the excess which was actually given over and above the sum allowed by the said law, but which remains as part of the estate of the testator; for why, in the present instance, should We not provide for the interests of both the living and the dead, by seeing

that the last wills of the latter are executed, and that the advantages derived from the estate to which the former are entitled are not diminished?

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

19. *The Same Emperor to John, Praetorian Prefect.*

As it is certain that the heir who has fully carried out the wishes of the testator by paying all the legacies in full cannot afterwards, by claiming the benefit of the Falcidian Law, recover anything from the legatees on the ground that he has complied with the will of the testator, therefore, We order that this principle shall also obtain where the heir has furnished security for the payment of the legacies in full, which is a question with reference to which a doubt arose among the ancient jurists. For to both cases, that is to say, whether he paid the legacies or furnished security that he would do so, the rule of equity would seem to be equally applicable.

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

TITLE LI.

CONCERNING THE ABOLITION OF THE FORFEITURES OF SUCCESSIONS TO THE STATE.

1. *The Emperor Justinian to the Senate of the City of Constantinople.*

We have considered it necessary, 0 Conscript Fathers, in the peaceful days of Our Empire, to banish from the Roman world both the name and substance of forfeiture of property, which originated in and was augmented by the civil wars in which the Roman people were formerly engaged, and that what the calamity of war introduced the beneficence of peace should abolish. And as the *Lex Papia* has, in many respects, been amended by former emperors, and has finally fallen into desuetude, We desire that the practice of forfeitures may, by Our agency, lose its invidious force, which was displeasing to the most eminent jurists, who invented many ways to prevent it from taking effect.

Its observation appeared so grievous to testators themselves that they introduced substitutions to avoid complying with it, and, by means of them, caused their estates to pass to certain persons, thus evading the regulations which the *Lex Papia* imposed upon estates left without heirs, which We also permit to be done. And as the *Lex Papia,* by its contrivances and technicalities, practically annulled the ancient law which, before its passage, was strictly enforced against everyone, and did not hesitate to impose its yoke upon the ascendants and

descendants of the testator, as far as the third degree, only preserving for them the benefits of the ancient law, if they had been appointed heirs, We, on the other hand, concede this advantage to all Our subjects without distinction of person.

(1) Therefore, as the *Lex Papia* derived its object and origin of forfeitures from the acceptance of the possession of estates of deceased persons, and for that reason the Decrees of the Senate enacted with reference to the Papian Law ordered the forfeiture of legacies riot to date from the death of the testator, but from the time when the will was opened, it was held that if, in the meantime, they failed to vest, this would cause a forfeiture. We, in the first place, correcting this rule, and renewing the ancient law, do hereby order that all persons shall have the right to enter upon an estate from the day of the death of the testator; and that, in like manner, legacies and trusts, whether they are left absolutely, or to vest at a certain time, shall be payable from the date of the testator's death.

(2) And as testamentary bequests were annulled in three ways, it is proper to plainly designate the times and the names of the same, so that whatever is repealed or amended may not remain unknown. One of these is where property is left to persons who were not living at the time when the will of the testator was executed, he perhaps being ignorant of the fact, and the laws considered such bequests as not having been written; or, in another instance, when the person entitled to something under the will died after it was executed, but during the lifetime of the testator; or when a legacy left under a condition failed to vest because the condition was not complied with, a case to which the ancients applied the term *"in causa caduci."*

Another instance was where, after the death of the testator, what was left did not vest in the legatee, because it was plainly stated to be forfeited.

(3) Therefore, in the first instance, where the testator left property to persons who had died before his will was executed, which were dispositions considered as not having been made, it was decided that legacies of this kind should remain in the hands of those to whom they had been left, unless they were already deceased, or a substitute had been appointed, or a co-legatee had been added, for then they did not fail to vest, but came into their hands without any burden, unless (which very rarely occurred) when they were considered as not having been bequeathed at all. We, approving of the benevolence of the ancients, and induced by natural reason, have decreed that this provision shall remain unaltered, and shall be observed hereafter for all time.

(4) With reference to the second case, which occurred when the property came under the head of *in causa caduci,* We, for the purpose cf amending the ancient law, do hereby order that when this takes place the property shall, in like manner, remain in the hands of those who were charged with its distribution, as for instance, the heirs, the legatees, or other persons who can be compelled to execute a trust; unless in the case where a substitute, a co-heir, or a co-legatee has previously been appointed. All persons, however, who will profit by such a disposition, must also sustain the burdens which were imposed by it in the beginning, whether this consists of giving something, performing some act, complying with a condition, or carrying out what has been planned in any other way whatsoever; for it should not be tolerated that he who enjoys the benefit of a bequest should be able to reject the inconveniences attaching to the same.

(5) In the last instance, where the property, properly speaking, becomes forfeited, as We have previously stated, We decree that as long as the will remains unopened, the persons mentioned therein can not only appear as heirs, but can also enter upon the estate, whether they have been appointed heirs to a portion, or to the whole of the same; and the time for the vesting of legacies and trusts shall, as We have already mentioned, date from the death of the deceased. For the ancient authorities did not permit the estate to pass, unless it was entered upon, nor do We suffer it, except in the case of children, concerning whom the law of the Emperor Theodosius, which was introduced with reference to cases of this kind, makes provision; still,

with reference to those who die while still deliberating, it has been decided by us that the law shall remain in full force.

(6) There is no doubt whatever that execution of grants of freedom, which, on account of their nature, are dependent upon the acceptance of the estate by the heir, can be demanded, according to the present law, from the time the estate is entered upon, as well as other provisions by which slaves were manumitted by the will, or bequests were left to other legatees. The usufruct of property, however, as it cannot, on account of its nature, be transmitted to the heirs of the legatee, because so far as its transfer is concerned, the time when it vests does not date from the death of the testator, nor from the day of the acceptance of the estate.

We order that all these provisions shall be observed in accordance with the aforesaid regulations relating to property which has been left unconditionally, or the right to which is to vest at a specified time.

(7) When, however, anything has been left under a condition, whether accidental, potential, or mixed, the fulfillment of which is dependent upon chance or the will of the person to be benefited, or upon both; or upon an indefinite time; the fulfillment of the condition under which the bequest was made, or the date must be waited for; as the condition should be complied with, or the indefinite time arrive. But if, meanwhile, he who is to be benefited by the provisions of the will should die, and the condition was not complied with during his lifetime, and the property, on this account, did not go to the person to. whom it was intended, We decree that it shall, in like manner, remain in the hands of those charged with its delivery; unless, in this instance also, a substitute may obtain the bequest, or a co-heir or a co-legatee may acquire it for himself, as it is a positive rule of law that a substitution can be made in the case of the appointment of heirs, in the bequest of legacies, in the creation of trusts, and in donations *mortis causa.*

(8) But in order that it may clearly appear what shares can be obtained by those charged with the delivery of legacies, through the failure of conditions, or otherwise, We order that if any profit accrues to the heirs, the distribution of the same shall be made in proportion to their shares of the estate, as they would have been compelled to transfer it in the same manner if the bequest had been valid, unless one or several of the said heirs had been expressly charged with its delivery; for then, just as he or they alone must have paid the legacy, so they will be entitled to enjoy the benefit of the same. When, however, the legatees or beneficiaries of the trust, or persons favored with a donation *mortis caMsa,* or indeed any others who can be designated for this purpose, were charged with the delivery of the property, the right to the same disappears, and We direct it to be divided into equal shares among the persons above mentioned, that is to say, according to their number.

(9) In order that what that most accomplished man, Ulpianus, so properly and so clearly stated may not be passed by without notice, We publicly give it Our sanction. For as We have already decided that property which is bequeathed shall pass with all its charges to the person who is benefited by it, We order that, if when granting it, any condition or other burden should be prescribed, those who are benefited shall, by all means, accept it along with the advantages. If, however, some act is required to be performed, and this can be done by another, it must, in like manner, be accepted by the beneficiary; for instance, if he who was charged is directed to purchase, at his own expense, an island, a monument, or something of this kind, either for the heir or the legatee, or anyone else who may have been designated by the testator; or some property is to be bought or leased by the heir of the testator; or a trust is to be executed; or some other duty is to be performed; for it makes no difference whether the act is to be done by the person mentioned by the testator, or by someone else who profits by the bequest.

But if the meaning of the word, or the nature of the act, is such that what is required by the bequest cannot be performed by another, then, although one person may have the benefit, still

he will not be compelled to sustain the burden, because nature does not permit this, nor was it the intention of the testator.

What course should be pursued where the testator ordered him to go to a certain place, or take up liberal studies, or build a house with his own hands, or paint a picture, or marry a wife? The intention of the testator is understood to be that the person alone to whom he evinced his generosity should perform all these acts.

This rule shall apply to all the above cases, so that the parties interested may enjoy the benefit, and suffer the inconvenience, when this can be done. It shall also apply to every instance to which the ancients gave the name of *in causa caduci* or *caduca* (as has been previously stated). It will, however, only be applicable under certain circumstances, where the bequests are considered as not having been written; for the reason that some of them are of such a nature that they still pass with the charges imposed. We have directed that these shall be especially enumerated in Our collection of new laws, in order that no one may think that the prolixity of the ancient enactments should be, as it were, necessary for the transaction of business, or to the science of jurisprudence.

(10) These matters having been disposed of in this way, as in several places in the first part of this law We made mention of the term "conjointly," We deem it necessary that this part of Our Constitution shall be more carefully examined, and more thoroughly discussed, so that, like the others, it may appear perfectly clear to everyone. A bequest can not only be made conjointly, but also separately. Therefore, if all the heirs are co-heirs, and appointed conjointly, or all are appointed separately, or when they are substituted in these ways, We decree that if the property which was left in any way was a portion of the estate, but consisted of different shares, it shall be acquired by the other co-heirs, together with its charges, in proportion to their respective shares of the estate; and this shall accrue to them by operation of law, even though they be unwilling to accept it, if they have already agreed to take their shares of the estate, as it is absurd to accept one portion of an estate and reject another, which point has already been settled by Our Imperial decisions. Where, however, a distinction exists among the appointed heirs or their substitutes, and some of them are named conjointly, and others separately, then, if one of those mentioned conjointly should fail to accept his share, it shall, by all means, go with its charges to those alone who have been appointed conjointly, that is to say, in proportion to the shares of the estate to which they are respectively entitled. But if any one of those who have been appointed separately should fail to receive his share, it shall not go to those alone who have been mentioned separately, but to all of the heirs who have been mentioned conjointly, as well as separately, together with its charges, in proportion to their shares of the estate.

This distinction has been introduced because those mentioned conjointly by the same words of the testator are thereby constituted, as it were, a single person, and acquire the share of their co-heir, just as if it was their own. The separate heirs are, however, plainly distinguished by the words of the testator, so that they can obtain what they are entitled to, but they cannot individually acquire the share of another, but must obtain it conjointly with all their co-heirs. These rules have been adopted only with reference to heirs. (11) Moreover, where there are two or more legatees, or beneficiaries of a trust, and something is left to them by will, if the bequest is made conjointly, all will be entitled to the legacy, each one in proportion to his share. If, however, one share, for some reason or other, cannot be given, We decree that it shall accrue to all, in equal proportions if they wish to have it, together with any charge with which it may be burdened; or if all are unwilling to accept it, it shall then remain in the hands of those to whom it was left as trustees. When, however, some of them are willing to accept it, and others are not, it shall all go entirely to those who desire to have it. But whenever the bequest was made separately, and all of them can and wish to receive it, each one shall do so in proportion to his share. Let them, however, not flatter themselves that one of them can obtain the entire estate and pay to the others the value of their shares; for the ancients

entertained different opinions with reference to this avaricious disposition of legatees, as they adopted it with reference to one kind of a legacy, and held that it should be rejected where others were concerned. We now absolutely abolish this distinction, and give the same character to all kinds of legacies and trusts, establishing, under such circumstances, an agreement instead of the ancient dissension. Hence We order that unless the testator has clearly and expressly provided that the entire estate shall go to one of the legatees, the appraised value of the same shall be paid to the others.

When, however, all the legatees to whom the property was left separately do not agree as to its acquisition, but only one, for instance, is willing to accept it, it shall all belong to him, because the intention of the testator seems, at first sight, to have been to give the entire property to all the legatees; but in case they are all willing to accept, their shares shall be taken from that of the other legatee who obtained the entire estate, so that by the cooperation of the others, the legacy of the former will be exhausted.

But where no one else appears, or can appear, then the share which was not accepted shall not be considered to be without an owner, nor shall it accrue to another, in order that the legacy of him who first accepted it may appear to be increased, but it shall remain in the hands of him who has possession of the same, without any diminution whatever.

Therefore, if the charge was imposed upon him, to whom in the first place the legacy was left, he must, by all means, carry it out, in order to obey the will of the testator. If, however, the one on whom it was imposed should fail to execute it, he only who received the legacy directly, as his own, and not he who succeeded him, will have his legacy diminished. But in order that the reason for this distinction may not be obscure, We declare that the rule was established so that the testator might seem to have left the property separately, to enable each one to recognize that he was charged with a trust as his own, and not as the representative of another, for if the deceased had intended otherwise, there would have been no difficulty in disposing of the property conjointly.

(12) We also retain unimpaired those provisions of the ancient laws which state that persons who are unworthy shall be deprived of bequests, whether the said bequests have been left to Our Treasury, or to someone else.

(13) We laid down in a preceding section of this law that an estate which has not been accepted is not always transmitted to the heirs of the deceased, but sometimes to other persons, and if the heir should not enter upon the estate as a whole, it must go to his substitute, if he has one, and the latter can and will accept it. When, however, this is not the case, the successors shall be entitled to the estate on the ground of intestacy, or if there are none, or they are unwilling to enter upon it, or for some reason are not entitled to take it, it shall then go to Our Treasury.

(14) We decree that all these rules shall apply to both written and nuncupative wills, as well as to codicils, and to every final disposition of property, as well as to anything left by an intestate, and to all donations *mortis causa.* For We have bestowed Our clemency to such an extent that, although We are aware that Our Treasury is entitled to all estates which have no owners, still, We have abstained from claiming them, nor have We demanded the privilege of the Emperor Augustus, but have decided that the common welfare of all should be preferred to Our own advantage, considering that the interest of Our subjects is identical with Our own.

(15) We have promulgated this law with reference to the last wills of deceased persons, in order that it may be applicable to such cases as may occur hereafter, for We permit former ones to be determined by the rules in force at the time.

(16) We have decreed that all these regulations shall be brought before you, 0 Conscript Fathers, for your approval, in order that the efforts of Our benevolence may not remain unknown to anyone, but that the Edicts, having been solemnly published .by Our magistrates,

may become familiar to all.

Given at Constantinople, on the *Kalends* of June, during the Consulate of Our Lord Justinian, Consul for the fourth time, and Paulinus, Consul for the fifth time, 534.

TITLE LII.

CONCERNING THOSE WHO CAN TRANSMIT AN ESTATE BEFORE THE WILL HAS BEEN OPENED.

1. *The Emperors Theodosiiis and Valentinian to Hormisdas, Prse-torian Prefect.*

We order by this law that hereafter sons, daughters, grandsons, granddaughters, great-grandsons or great-granddaughters, who have been appointed heirs by the written wills of their fathers or mothers, grandfathers or grandmothers, and great-grandfathers or great-grandmothers, even though they may not have been substituted for one another, whether they have been appointed with strangers, or alone, can, before the will is opened (whether they know that they have been appointed heirs or not), transmit such shares of the estate as have been left to them to their descendants, without distinction of sex or degree. And the aforesaid persons, provided they do not reject the estate, can claim it as due to them, without any prescription being allowed against them. This rule is applicable to legacies or trusts which have been left by a father, a mother, a grandfather, a grandmother, a great-grandfather, or a great-grandmother. It certainly would be very oppressive if, on account of some accidental circumstance, or any of the events of life, that either grandsons or granddaughters, great-grandsons or great-granddaughters should be deprived of the estate of their grandparents or great-grandparents, and that others should enjoy the unexpected benefit of a legacy contrary to the wishes of grandparents or great-grandparents, as disclosed by the provisions of their wills. And, indeed, as they are entitled to consolation for their affliction, it is only reasonable that it should be granted them.

Given on the third of the *Nones* of April, after the Consulate of Protogenes and Asterius, 450.

TITLE LIII.

AT WHAT TIME A RIGHT TO LEGACIES OR TRUSTS VESTS.

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

If you can prove before a competent judge that legacies of trusts, payable annually, have been left to you, you will have the right to collect them at the beginning of every year.

Published on the third of the *Kalends* of June, during the Consulate of Saturninus and Gallus, 199.

2. *The Same Emperor to Priscus.*

We have ascertained that a tract of land was left to several persons by name, and that provision was made that it should belong to the survivor; therefore, whoever he may be, he can transmit the ownership to his heir, and he will not be bound by the terms of any trust of this kind.

Published on the fifteenth of the *Kalends* of August, during the Consulate of Chilo and Libo, 205.

3. *The Same Emperors to &lia.*

If Pontionilla has arrived at the age when she is entitled to receive the legacy or trust bequeathed to her, she can transmit to her heirs the right to demand the same even before she has actually acquired the said legacy or trust.

Published on the fifth of the *Kalends* of August, during the Consulate of Chilo and Libo, 205.

4. *The Same Emperors to Ammia.*

When the usufruct of land is bequeathed to a wife, and the ownership of the same when she shall have children, she will be entitled to the ownership of the property as soon as a child is born, and it makes no difference if the latter should immediately die.

Published during the *Kalends* of August, during the third Consulate of Antoninus and Geta, 209.

5. *The Emperor Alexander to Maximus.*

An uncertain condition is not imposed upon either a trust or a legacy by the following words, "I do give and bequeath to my daughter, *JElia* Severina, and to Secunda, ten *aurei,* which she should accept as a legacy when she attains her majority," but only the right to demand the legacy or trust is granted when the girl becomes of age. Therefore, if ^Elia Severina, the daughter of the testator, to whom the legacy was left, died upon the day when it became due, she transmitted the right to recover it to her heir, provided that payment is made at the time when Severina would have reached the twenty-fifth year of her age, if she had not died; for it has been decided by persons learned in the law that not the beginning of the year, but the end of the same, must be taken into consideration, where the benefit arising from a trust, which has been bequeathed, is concerned.

Published on the thirteenth of the *Kalends* of January, during the Consulate of Alexander, Consul for the second time, and Marcellus, 311.

6. *The Emperors Diocletian and Maximian and the Csesars to Eusebius.*

If a trust should be left by an intestate to your sister under the terms of a codicil, and, after the day for the vesting of the trust arrived, she should die in ignorance that such a trust had been bequeathed, you cannot pretend not to be aware that she was entitled to an action of this kind, of course, after the deduction by the heirs of the fourth portion of the estate of the deceased.

Published on the *Kalends* of May, during the Consulate of the above-named Emperors.

TITLE LIV.

WHEN SECURITY SHOULD BE FURNISHED TO PROVIDE FOR THE PLACING OF LEGATEES OR BENEFICIARIES OF A TRUST IN POSSESSION OF WHAT HAS BEEN BEQUEATHED TO THEM.

1. *The Divine Antoninus Pius to Salvius.*

If the claimant demands nothing more than that security should be given him that the trust will be executed, the judge who has jurisdiction ought not to decide whether or not the trust is due, but only compel security to be furnished.

Without date or designation of Consulate.

2. *The Divine Marcus to Stratonica.*

We have learned, by experience, that it is conducive to the public welfare for security which has been furnished for the purpose of protecting the last wills of deceased persons with reference to legacies and trusts to be dispensed with in compliance with the wishes of the testator. Hence, hereafter, in accordance with the will of the deceased, the bond usually required in the case of a legacy or a trust need not be exacted.

3. *The Emperors Severus and Antoninus to Symphorus.*

If, after you are placed in possession of a legacy or a trust for the purpose of preserving it, the property has been either encumbered by pledge, or sold by the heir, it is clear that your case will be entitled to the preference, for the property is, as it were, pledged to you under praetorian law.

4. *The Emperor Antoninus to Protagoras.*

If, as you allege, Arthemidora has become the heir of the father of your wards, the latter will have no right of action against the debtors of the estate, although a demand may be made that the estate held in trust be restored to them after the death of the heir. It is clear that they can apply to the judge to compel Arthemidora to furnish sufficient security for the execution of the trust, provided the testator did not forbid this to be done.

Published on the third of the *Kalends* of July, during the Consulate of Laetus, Consul for the second time, and Cerealis, 216.

5. *The Emperor Alexander to Paulina.*

Those who are placed in possession of a legacy or a trust do not acquire the ownership of the property, but only the right of pledge. A competent judge, however, will, upon your application, and after you have received the pledge, see that the wishes of the deceased are carried out.

Published on the third of the *Ides* of August, during the Consulate of Julianus, Consul for the second time, and Crispinus, 225.

6. *The Same to Donatus.*

That rule of law is well established by which he to whom security has not been given for the preservation of a legacy or a trust, even to the extent of encumbering the private property of the heir, can be placed in possession of the property of the estate, even if it has been fraudulently removed, when the heir does not furnish security within six months from the time when the demand can be made in accordance with the Constitution of My Father, the Divine Antoninus.

Published on the sixth of the *Ides* of January, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

7. *The Same to Proculianus.*

You should know that the Divine Marcus and Commodus decided that security for a trust or a legacy can be dispensed with, but security can not be dispensed with, even by a will, which guarantees that the person to whom the usufruct of property had been left will use and enjoy it as a good citizen should do.

Published on the tenth of the *Kalends* of March, during the Consulate of Fuscus and Dexter, 226.

8. *The Emperors Diocletian and Maximian, and the Cassars, to Zenodorus.*

It is certain that an action for damages can be brought against those persons, or their successors, who should have taken security in the capacity of magistrates administering the affairs of a municipality, but failed to do so, as required by their duty, in order to provide for the delivery of property left conditionally to the said municipality under the terms of the trust, to the extent that the public was interested in having such security furnished.

Published on the seventh of the *Kalends* of March, during the Consulate of the Caesars.

TITLE LV.

CONCERNING PROPER HEIRS, AND LEGITIMATE CHILDREN AND GRANDCHILDREN, BORN OF A DAUGHTER, WHO ARE ENTITLED TO AN ESTATE AS HEIRS AT LAW.

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

If you can become the legal heir of your brother, you will not be excluded from obtaining his estate, on account of the provision that demand for the same shall be made within a hundred days.

Published on the third of the *Nones* of November, during the second Consulate of Antoninus and Geta, 206.

2. *The Emperors Diocletian and Maximian to Avia.*

Grandchildren, who are the issue of different brothers, do not succeed to the estate of their grandfather, who died intestate, equally, but *per stirpes.*

Ordered at Adrianople, on the third of the *Kalends* of March, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 209.

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

It is clearly provided by the Law of the Twelve Tables that the son, and the grandson of another son, who died intestate, succeed equally, if they are under paternal control.

This rule also applies to the praetorian law.

Ordered on the fifth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors.

4. *The Same Emperors and Csesars to Marcella.*

It is perfectly evident that, in accordance with the order of succession prescribed by the Law of the Twelve Tables, where a man dies intestate, his posthumous child should be preferred to his own sister.

Ordered on the sixth of the *Ides* of December, during the Consulate of the above-mentioned Emperors.

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

If your father, under whose control you were, formally gave you in adoption, you can succeed to the estate of your adoptive father, who died intestate, along with his own children born before or after your adoption.

Given on the sixth of the *Kalends* of March, during the Consulate of the Caesars.

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

A child born of a freeborn woman and a slave is considered illegitimate, and cannot claim to be the son of a decurion, even though his natural father may have been manumitted, and have obtained the restitution of his birth.

Published on the sixth of the *Ides* of February, during the Consulate of the Csesars.

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

A freedman, just as one who is freeborn, is not forbidden to have his son under his control, since he is not, on account of his former condition, prohibited from contracting marriage and having children.

Ordered on the sixteenth of the *Kalends* of March, during the Consulate of the Caesars.

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

Your daughter became the heir of her father, who died in the hands of the enemy, in which instance proof of his death is not required, and she can transmit the estate to you.

Ordered at Nicomedia, on the twelfth of the *Kalends* of December, during the Consulate of the Csesars.

9. *The Emperors Valentinian, Theodosius, and Arcadius to Constantine, Prastorian Prefect.*

If a deceased person should leave children of either sex, or of any number, and one of his daughters should die leaving children of either sex or any number, the said grandchildren by

the said daughter shall be entitled to two-thirds of the share which the deceased daughter would have obtained with her brothers, if she had survived her father; and the remaining third part shall go to the brothers and sisters of the deceased; that is, to the sons and daughters of him whose estate is in question, who are the maternal uncles and aunts of those whose interests We are providing for by this law.

We decree, under the same equitable rule, that what We have decided with reference to the estate of a maternal grandfather shall also apply to that of a maternal or a paternal grandmother, unless the grandmother shall have, in just and severe terms, excluded her grandchildren from her will, under circumstances approved by the laws. If the grandmother or grandfather should die intestate, We not only maintain unimpaired the rights which We have established as belonging to the grandchildren, but if either of them, having grandchildren of this kind, should die testate, and pass over their grandchildren, or disinherit them, the same rule shall also apply, and the wills of their grandparents can be attacked as unjust.

Where any of the daughters are entitled to actions to recover property, and have the right to appear in court, We, in accordance with the equitable provisions of Our law, concede to the grandchildren the same rights to complain of the wills of their parents, on the ground of inofficiousness, as children are entitled to.

Given on the fifth of the *Kalends* of March, at Milan, during the Consulate of Timasins a.nH Prnmntiio a«a

10. *The Emperors Theodosius and Valentinian to Maximus, Prastorian Prefect.*

When the succession to grandmothers is discussed after their death, it is not necessary to inquire whether the father of the grandchildren has changed his condition; for when inheritances of this kind are involved, the personal status of the children is only considered with reference to the property of him who has the right of paternal control.

Given at Ravenna, on the fifteenth of the *Kalends* of October, during the Consulate of Theodosius, Consul for the thirteenth time, and Valentinian, Consul for the third time, 420.

11. *The Emperors Theodosius and Valentinian to the Senate of the City of Rome.*

If a son or a daughter should die during the lifetime of their mother and leave children, the latter will, by operation of law, succeed to their father or mother without restriction. We decree that this rule shall unquestionably be observed in the case of grandchildren.

Given on the *Ides* of November, during the Consulate of Theodosius, Consul for the fifteenth time, and Valentinian, Consul for the third time, 420.

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

Whenever a man or a woman dies intestate, leaving grandchildren or great-children of either sex, or other descendants, not entitled to the possession of the estate as children, and in addition to them, collateral agnates, the said agnates shall not be allowed to claim for themselves the fourth part of the estate of the deceased, but the descendants alone shall be called to his or her succession.

We decree that this law shall be observed with reference to future questions, but shall not apply to such matters as have already occurred.

Given at Constantinople, on the *Kalends* of July, during the Consulate of Our Lord Justinian, Consul for the second time, 528.

Extract from Novel 118, Chapter I. Latin Text.

With reference to the succession of the deceased head of a family, or that of a son under paternal control, his children, if there are any, shall be preferred to all others. Those of the first degree shall succeed equally *per capita;* grandchildren, and others more removed, *per stirpes,*

without distinction of sex, or consideration of the right of paternal control, but only their natural condition shall be taken into account.

TITLE LVI.

ON THE TERTULLIAN DECREE OF THE SENATE.

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

Although children do not succeed as heirs to their mothers, who die intestate, unless they are able to speak, still, there is no doubt that mothers can succeed to their children, even if the latter should perish in infancy.

Published on the tenth of the *Kalends* of April, during the Consulate of Tyberianus and Dio, 291.

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

In determining the succession of a common son or daughter who died without leaving children, brothers, or sisters, the father, who manumitted him or her, shall be preferred to the mother, because he is still in the enjoyment of his ancient right.

Ordered on the sixth of the *Ides* of December, during the Consulate of the Csesars, 293.

3. *The Emperor Constantius to Catulinus, Proconsul of Africa.*

It is certain that mothers who have lost their children after the latter arrived at puberty should not be excluded from the succession to their estates by an exception on the ground that they did not demand guardians for them before they reached that age.

Given on the sixth of the *Kalends* of August, during the Consulate of Constantius, Consul for the seventh time, and Constans, 354.

4. *The Emperors Gratian, Valentinian, and Theodosius to Eutro-pius, Prastorian Prefect.*

If a woman, without manifesting due respect for her deceased husband, by whom she had no children, should marry too soon, she will be branded with infamy under the well-known law enacted for this purpose, unless this stigma is removed from her by the clemency of the Emperor. When, however, she has either sons or daughters, and has obtained permission to marry, We consent that she shall not be rendered infamous, nor shall she be liable to the other penalties prescribed, provided that she transfers to her son or daughter, or sons and daughters, half of the entire property that she had at the time of her second marriage, the said transfer having been made with all the legal formalities, and not even the usufruct of said property retained.

And if one of the said children, where there were two or more sons and daughters, to whom the property was given, should die intestate, We decree that his or her half shall belong to his or her surviving brothers or sisters. But if all the said children should die intestate, all the property shall revert to their mother as a consolation for her misfortune, so that she herself shall again be entitled to half of what she gave to her sons or daughters, who died intestate, from the estate of the last son or daughter who died.

Published on the fifteenth of the *Kalends of* January, during the Consulate of Gratian, Consul for the fifth time, and Theodosius, 380.

5. *The Emperors Theodosius and Valentinian to the Senate.*

A mother who, either under the will or as heir at law, succeeds her son or daughter dying without issue, and does not contract a second marriage after the death of her child, will acquire absolutely everything left by the said son or daughter either by will or *ab intestato.* If, however, she should choose to marry again, she shall be entitled to any property obtained by her son or her daughter from other sources, but she shall only have a right to the usufruct of

the property of the estate of the deceased father on the ground of humanity, and the ownership of the same shall pass to the sisters and brothers of the latter.

Given at Ravenna, on the fifth of the *Ides* of November, during the Consulate of Theodosius, Consul for the twelfth time, and Valentinian, Consul for the seventh time, 246.

6. *The Same Emperors to Florentius, Prastorian Prefect.*

If a mother, having undertaken the legal guardianship of her children, should contract a second marriage in violation of the oath which she took, before having another guardian appointed for her son, and rendering an account to the said guardian of the amount due for the time that she administered the guardianship, We decree that she shall be excluded from all the estate of her husband, whether he died intestate or whether she was appointed a substitute for her son in case he should die under the age of puberty.

Given on the seventh of the *Ides* of July, during the Consulate of Theodosius, Consul for the sixteenth time, and Festus, 439.

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

If a man or a woman should die intestate, leaving a mother and a brother whether by the same father or not, the mother shall not be excluded from the succession of the son, but will be entitled to the estate along with the brother of the defunct man or woman, if he is living, or his son or step-son if he is dead, just as in the case of sisters of the deceased.

When, however, only sisters, who are agnates or cognates, and the mother of the deceased man or woman survive, the mother, in accordance with the tenor of the ancient laws, shall be entitled to one-half of the estate, and all the sisters to the other half. But when the mother and the brother, or several brothers alone, or sisters with them survive, and the man or woman dies intestate, his or her estate shall be distributed *per capita,* and the mother shall not be permitted to claim for herself a larger amount than the *pro rata* share of the *per capita* demands, under the pretext that the sisters of the deceased are living; and, on the other hand, where an uncle of the deceased person, together with his son or grandson are living, they shall have no right to the estate of the deceased, if the mother, who is the heir, is still alive, for her share cannot be diminished either by the ancient laws, or the more recently enacted Imperial Constitutions.

(1) Where, however, the deceased person left not only a mother and brothers and sisters who survived him, but a father as well, and died while his own master, for the reason that the intervention of the father is understood to dispose of the rights of the mother, We, actuated by humane intentions, and desiring to provide for all, so hereby order that the brothers and sisters of the deceased person shall be called together to the succession of his or her estate, that the father and mother shall conjointly be entitled to the usufruct of half of the entire property, which shall be equally divided between them; and that the brothers and sisters shall have the remaining half of the usufruct of the same.

But where the deceased died while under paternal control, the father shall retain the usufruct, which he enjoyed during the lifetime of his son, unimpaired as long as he lives; and the mother with the brothers of the deceased shall be called to the ownership of his estate, because she could not hold the said usufruct during the lifetime of the father, he having a right to all of it; so that, if only sisters were living, she could take half the estate, and in case there were only brothers, or both brothers and sisters, she would, in accordance with the above-mentioned distribution, be entitled to a proportionate share with them; it being understood that everything which has been promulgated with reference to women contracting second marriages shall remain unaltered.

Given at Constantinople, on the *Kalends* of June, during the Consulate of Our Lord Justinian, Consul for the second time, 528.

Extract from Novel 22, Chapter XLVII. Latin Text.

Mothers are called to the succession of individual shares, where there are brothers, or sisters, or where both brothers and sisters survive.

Extract from Novel 115, Chapter IV. Latin Text.

Children are not allowed to exclude their parents by their wills, unless one of the just causes of disinheritance enumerated in the New Constitution under No. 7 is stated therein. Otherwise, the testament will be void, so far as the appointment of heirs is concerned, but it will remain valid in.other respects.

Extract from Novel 118, Chapter II. Latin Text.

Where a son dies without issue, but leaving ascendants alone as his heirs, they succeed in the prescribed order of degrees. If they are equal in degree, they succeed to equal shares of the estate, those on the father's side being entitled to half, and those on the mother's side being entitled to the other half of the property, even though their number may be unequal.

When, however, brothers and sisters are left, with ascendants, as heirs by the deceased, they shall be called to the succession with the ascendants in the next degree, so that the shares may be equal, all distinction of sex and parental control being disregarded, where no mention is made of a second marriage.

TITLE LVII.

ON THE ORPHITIAN DECREE OF THE SENATE.

1. *The Emperor Alexander to Evangelus.*

When a woman dies intestate, leaving brothers or sisters, as well as a mother and daughter, her estate shall, by virtue of the Orphitian Decree of the Senate, belong to her daughter alone.

Published on the fifteenth of the *Kalends* of February, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

2. *The Emperors Diocletian and Maximian, and the Caesars, to Metrodora.*

The estate of a deceased mother is not divided in proportion to the number of heirs surviving at the time of her death, but according to the number of those entitled to the succession, and therefore, if your mother died leaving you and your brother, who have been emancipated, and two other children, who were still under paternal control, and the latter died before claiming their share of your mother's estate, there is no doubt that you and your brother will each be entitled to half of the same.

Ordered on the seventh of the *Kalends* of April, during the Consulate of the above-mentioned Emperors.

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

A daughter who acts in the capacity of heir can, in accordance with the Orphitian Decree of the Senate, succeed to her mother, who died intestate, without demanding praetorian possession of the estate.

Ordered on the twelfth of the *Kalends* of November, during the Consulate of the above-mentioned Emperors.

4. *The Emperors Gratian, Valentinian and Theodosius to Httari-anus, Prefect of the City.*

Whenever a discussion with reference to the succession of an emancipated son or daughter arises, the inheritance shall pass intact and entirely to the children left by him or her, nor shall either the father or mother, under such circumstances, be granted any right to the succession of their child who died intestate.

Given at Milan, on the thirteenth of the *Kalends* of March, during the Consulate of Merobaudus, Consul for the second time, and Saturninus.

5. *The Emperor Justinian to Demosthenes, Pr&torian Prefect.*

Where a woman of illustrious birth has a son born in lawful wedlock, and another one who is illegitimate, and whose father is uncertain, a doubt arose to what extent they would be entitled to their mother's estate, and whether it would only descend to legitimate children, or whether it would also go to those who are bastards. Therefore, We order that, while any legitimate children are living, no portion whatever of their estates shall pass from mothers of illustrious birth to their bastard offspring, either by will, on the ground of intestacy, or by donations *inter vivos;* for the preservation of chastity is the first duty of freeborn and illustrious women, and We hold that it would be unjust, and very oppressive and unworthy of the spirit of our age, for bastards to be acknowledged.

We have, in accordance with reason, devoted this law to the encouragement of modesty, which We think should always be observed. If, however, the woman was a concubine of free condition, and had a son or a daughter by a freeman under a connection recognized by law, he or she will also, along with the legitimate children, be entitled to a share of their mother's estate, which she had possession of as her lawful patrimony, and no bad feeling should be engendered in consequence.

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

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

A certain woman bequeathed freedom to a female slave in trust, and while the trustee charged with granting her her liberty was in default in doing so, the said female slave had a child. All the ancient legal authorities held that the boy or girl born after the default had taken place was free, but a doubt arose among them whether, if the mother should die, the child could succeed to her estate. Therefore We, intending to remove this doubt,, do not permit it to continue any longer, and order that, by virtue of the Orphitian Decree of the Senate having reference to the preservation of offspring, the said child can become the heir at law of its mother, if she should die intestate; and that the mother, as well as her child, shall, under the provisions of both the Tertullian and Orphitian Decrees of the Senate, be entitled reciprocally to the inheritance of one another's estates.

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

TITLE LVIII.

CONCERNING HEIRS AT LAW.

1. *The Emperor Alexander to Cassius and Hermiona.*

It is a positive rule of law, both with reference to intestate successions, as well as praetorian possessions of estates, that brothers and sisters enjoy equal rights, through the bond of consanguinity, to which rights they were entitled on the ground of being the next of km (even though they were not born of the same mother); and this rule does not cease to be applicable because you assert that your paternal aunts have been endowed by your grandfather.

Published on the *Nones* of May, during the Consulate of Maximus, Consul for the second time, and Julianus, 224.

2. *The Emperor Gordian to Tatiana and Others.*

If you did not acquire for your father the estate of him who appointed you his heirs, and your father having subsequently died, you accepted the succession of the deceased, after having rejected your father's estate; the Governor of the province will not fail to see that the property

of the deceased is separated from that which belonged to your father.

Published on the sixth of the *Ides* of April, during the Consulate of Gordian and A viola, 240.

3. *The Emperor Decius to Asclepiodota.*

It is a well-established principle of law that females can be admitted to intestate estates by the right of consanguinity. Hence, as the estate of your brother, who died intestate, belongs to you by the right of consanguinity, the sons of another of your brothers have no ground for claiming said estate; for, without taking into consideration the right of agnation, with reference to all who are interested, the estate will go to you by the terms of the praetorian law, because you are in the second degree, rather than to the sons of your brother, who are only in the third degree.

Published on the second of the *Nones* of December, during the Consulate of Decius and Gratus, 251.

Extract from Novel 127, Chapter I. Latin Text.

Where there are no heirs in the descending line, the brothers and only sister of the ancestor shall first be called to the succession, along with the sons of a brother previously dead, *per stirpes.* I refer to a brother, and the children of a brother descended from the same parents, whose estate is now in question, which persons are entitled to the succession, even if there are no ascendants of the deceased, and together with those nearest in degree, if there are any. And even if the son of the aforesaid brother is in the third degree, he shall be preferred to the brothers of the deceased, who are only related through one parent.

In a succession of this kind all distinctions of sex and emancipation shall be disregarded.

Extract from Novel 118, Chapter III. Latin Text.

After brothers born of the same parents, and their children, brothers and sisters on one side are admitted along with the children of those who may have already died. The children of these brothers, however, as they inherit (along with the brothers of the deceased), are undoubtedly to be preferred to the paternal uncles, and other similar relatives of the defunct.

In a succession of this kind, all distinctions of sex and agnation shall be disregarded.

Extract from Novel 118, Chapter HI. Latin Text.

After sons or brothers, those next in degree are called to the succession, so that when there are several in the same degree they will be admitted together, all distinction of males and females being abolished; for in cases of this description relationship alone is taken into account, and a division of the estate shall be made *per capita,* and not *per stirpes.*

4. *The Emperors Diocletian and Maximum and the Csesars to Csecilius.*

If the grandson of your paternal uncle failed to make a will, or did so before he reached the age of fourteen years, his estate will pass to you by the right of agnation, and you can obtain it as heir at law, without having recourse to the demand for praetorian possession.

Published on the *Ides* of July, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

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

It is certain that persons entitled to an intestate succession by the right of agnation are to be preferred to those who claim it under the right of proximity of degree.

Published on the sixteenth of the *Kalends* of July, during the Consulate of the above-mentioned Emperors.

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

When anyone dies without leaving proper heirs, or where they refrain from accepting the estate, or reject it, a brother can succeed to the same by the right of consanguinity.

Published on the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

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

An intestate succession is not equally transmitted to a paternal uncle and a paternal aunt, although they both belong to the third degree, but the brother of the father is, by the right of agnation, preferred to the sister of the mother.

Ordered on the seventeenth of the *Kalends* of March, during the Consulate of the Caesars.

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

If the estate has been entered upon by those whose succession is in question, and who died while in the hands of the enemy, and this has been done by the right of agnation, in accordance with the privilege of the Cornelian Law, or you have succeeded after praetorian possession has been demanded, you will not be prevented from claiming the estate.

Ordered on the *Nones* of July, during the Consulate of the abovementioned Emperors.

9. *The Same Emperors and Cassars to Demagora.*

There is no doubt whatever that, in the case of an intestate succession, a sister is entitled to the preference over a grandmother or a maternal grandfather.

Ordered at Nicomedia on the sixth of the *Kalends* of July, during the Consulate of the Csesars.

10. *The Emperors Theodosius and Valentinian to Florentius, Prss-torian Prefect.*

Those who are called to the succession of a deceased minor are hereby notified that if his father is no longer living, they cannot, for a year, legally demand that a guardian be appointed for him; and if the minor should die before reaching puberty, they will have no right to his estate either on the ground of intestacy, or under the rule of substitution.

Given at Constantinople, on the fifth of the *Ides* of July, during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 439.

11. *The Emperor Anastasius to Constantine, Praetorian Prefect.*

If he who, in accordance with Our Constitution, has applied for a rescript to enable him to emancipate his children, in order that the son or daughter who is to be emancipated may not, on that account, have his or her legal rights extinguished, these same rights shall be preserved for the emancipated son or daughter as against all other persons connected with them in this way, as well as against others, so far as inheritances, successions, guardianships, or any other matters whatsoever are concerned.

Contribution, however, shall be made them in accordance with the laws passed in connection with emancipated persons, whenever a case of this kind arises, inasmuch as emancipation has taken place.

Given on the fifteenth of the *Kalends* of August, during the Consulate of Probus and Avienus Junior, 503.

12. *The Emperor Justinian to John, Praetorian Prefect.*

We have been asked by the Bar of Csesarea, if a woman over fifty years of age should have a child, whether it could succeed to its father, and We decree that, although a birth of this kind is extraordinary and rarely occurs, still, nothing which is known to be produced by Nature should be rejected, but every right granted to children by any law whatsoever must be observed unimpaired and unchanged for the benefit of such sons and daughters, with reference to all successions, whether they are granted by will, or proceed from intestacy. And, upon the

whole, they are not dissimilar from others whom Nature causes to resemble one another, and, especially, as by a former law of Ours We permitted marriage to take place between persons of this description, not admitting that they should be considered improper.

Given at Constantinople, on the ninth of the *Kalends* of November, under the fifth Consulate of Lampadius and Orestes, 532.

13. *The Same Emperors to John, Praetorian Prefect.*

A doubt has arisen with reference to emancipated children who have obtained this advantage from their parents under an Imperial Rescript.

(1) As the Anastasian Law is known to protect brothers in their legal rights, when any one of them died intestate and without issue, the question arose whether his succession would pass to his brother or sister, or to his father who survived him. We think that this doubt should be disposed of by a comprehensive opinion, and therefore We order that, as in the case of the property of mothers and of other persons, concerning whom the law has already been laid down by Us, an estate of this kind can entirely pass to brothers or sisters by the right of ownership, but that the entire usufruct of the same shall be acquired by the father, whether he had had but one wife, or had contracted a second marriage, and whether the emancipation was effected by means of an Imperial Rescript, or the brothers were released from paternal control by any other legal method.

(2) For as the father enjoys the usufruct, and his desire is that his estate shall go to his children, the interests of the brothers are consulted in this respect by the Anastasian Law, under another head; and now, in the present instance, We grant them further relief, so that the father may have the usufruct, and the brothers and sisters the ownership of the property which was bequeathed, with the exception of the maternal estate to which, if they are all brothers and sisters by the same mother, they alone shall be entitled. If, however, this should not be the fact, then, as in the case of other property, the ownership of the estate shall be shared by all of them equally, in order that the procedure may, under all circumstances be perfectly clear, and that there may be no doubt growing out of any distinction of persons or property.

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

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

The interests of the human race were well provided for by the Law of the Twelve Tables, which declared that no distinction should exist between legitimate male and female children, and that this rule should be observed as well with reference to their inheritance, as in the case of the children themselves, no difference being allowed in their succession, as Nature gave them the same body in order that it might remain immortal through the changes it underwent, and that one of them might require the aid of the other, so that, if one was removed, the other would cease to exist.

Posterity, however, established too subtle a distinction, and made an unjust discrimination between the sexes, as Julius Paulus plainly stated in the beginning of his book, which he wrote on the Tertullian Decree of the Senate. For it is proper that daughters should succeed to the intestate succession of their parents in the same way as their brothers; and, again, sisters can claim for themselves the same privilege by the right of consanguinity; but should their legitimate descendants, if they do not enjoy the privileges of consanguinity, be excluded from legitimate succession when they have the same right to it as males? Why is the sister of the father not called to the succession of the son of her brother along with the male heirs, but one rule is observed with reference to aunts, and another where uncles are concerned? Or with what reason is the son of a brother called to the succession of his uncle, and his sister excluded from it? Therefore We think that, in this respect, the ancient law should be preferred to the recent one, and We decree that all legitimate relatives, that is to say, those who are

descended through the masculine sex, whether they are males or females, shall be legally called to the rights of intestate succession in accordance with the privilege of their degree, and that sisters shall not be excluded, because they are not subject to the rule of consanguinity; for why should the claims of consanguinity remain unquestioned in the male sex, and wherefore should We commit an offence against Nature, and derogate from legitimate right? This discrimination entails the greatest injury, and inflicts, as it were, a deep wound upon many persons. For, as males are called to the succession of females by the right of agnation, why should the estates of the latter be permitted to go to them by law, and females not succeed to one another, or to males under the same rule, but be punished for the sole reason that they were born women, and their innocent offspring be afflicted with the defect caused by their fathers, if it can be called a defect?

(1) In these instances, however, We, following the Law of the Twelve Tables, and amending the new enactment by one still more recent, and induced by motives of humanity, desire that there shall be but one degree, and that the succession shall be transferred to the legal heirs by the right of cognation, without any distinction of sex; so that not only the son and daughter of a brother (in accordance with what We have already stated), shall be called to the succession of their paternal uncle, but also sisters of the same blood, or the sons and daughters alone of the sister by the same mother, but no other descendant shall, together with the males, be entitled to the estate of their maternal uncle; and, in case the latter should die, the paternal uncle shall become the heir of children of his brother, and the maternal uncle of those of his sister, thus succeeding in the same manner on both sides, just as if they did so by legal right, that is to say, where the brother and sister are no longer living. For when persons of this kind take precedence, and are entitled to the estate, those of other degrees are entirely excluded.

It should undoubtedly be noted that the inheritance is not divided *per stirpes,* but *per capita,* and that the rule of descent above mentioned applies to intestate successions, the rules governing all others, and which have been legally observed up to the present time, remaining unaltered. If, however, any cases should occur to which the former laws are applicable, distribution must be made in accordance with them.

Given on the fifteenth of the *Kalends* of December, after the fifth Consulate of Lampadius and Orestes, 532.

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

We remember the Constitution formerly promulgated by Us, by which, in accordance with the Law of the Twelve Tables, We ordered that all lawful descendants, whether males or females, should acquire an estate by the right of descent, and that as the succession came to the former as heirs at law, the latter also obtained it in the same manner.

By the above-mentioned Constitution, We established but one degree of lawful succession, with reference to cognates, namely, that of the sons and daughters of a full sister and of the sons and daughters of a half sister.

We decree that this Constitution shall remain in full force, as its tenor has been set forth by Us in Our Institutes. But, for the purpose of rendering legislation more perfect, We have deemed it necessary, in case anything advantageous should be found in the prastorian law, to include it among Our enactments.

(1) It is clear, therefore, that the Prsetor calls the emancipated son, without any reservation, to the succession of his father, even though, strictly speaking, he has undergone a change of status; but he was not, under the same law, called by him to the succession of his brothers, nor did his sons, as heirs at law, succeed to their paternal uncles. We have considered it necessary to amend this, and to render the Anastasian Law perfect by making additions thereto, so that an emancipated son and daughter shall not only succeed to the estate of their father, as where they are proper heirs; but that they shall also succeed to the estates of their brothers or sisters

(whether they are all proper heirs, or all emancipated, or include both these classes) equally and reciprocally, and not with any difference of shares as provided by the Anastasian Law.

It seems to Us perfectly proper to establish these regulations with reference to emancipated children.

(2) We are not willing for an uterine brother or sister to be left among cognates, for they are in such a near degree that it is only reasonable that they should be called without any distinction, just as if they were of full blood, along with their other brothers and sisters; so that they, being in the second degree, and found worthy of legal succession, shall be preferred to all others of a more remote degree, even though the latter may be heirs at law.

These rules with reference to the succession of persons of the second degree have been established by Us as productive of the greatest convenience.

(3) When the third degree in the collateral line, in which the ancient laws placed uncles and nephews is considered, We order that the sons and daughters of an emancipated brother or sister alone, whether they themselves were emancipated, or remained under the control of their parents, and no one else in a more remote degree, as Well as the sons and daughters of a uterine brother and of a full or uterine sister, shall only be called reciprocally, as being in the legitimate line of descent; just as We have already decreed that all those who, either by the ancient law, or by Our indulgence, have obtained the privileges of heirs at law and who are likewise in the third degree shall be called in the same way; and that the right of succession shall also be preserved in this instance; so that if any one of those in the second degree should reject the estate to which they were called, and fail to enter upon it, and there is no one else in the second degree who can succeed, or is willing to do so, then those who are in the third degree, and whom We have enumerated in the present law, will succeed instead of the heirs who refuse to accept the estate.

It should also be noted that the estate must be divided, not *per stirpes* but *per capita,* and that, in all other successions, the law which has been observed up to the present time shall prevail, and no cognate of the degrees above mentioned shall be classed as an agnate, but shall, in accordance with his proximity of degree, retain his right of succession unimpaired.

(4) On the other hand, We impose the charge of guardianship upon those persons whom We have transferred from the rank of cognates to that of agnates; that is to say, if they are males and of full age, as provided by the terms of Our Constitution, so that they may not only enjoy the benefits of their position, but also be subjected to its responsibilities.

(5) If, however, any cases should arise which have already been settled by judicial decisions, or amicable compromise, they shall not be liable to reconsideration under this law.

Given at Constantinople, on the *Ides* of October, during the Consulate of Our Lord the Emperor Justinian, Consul for the fourth time, and Paulinus, Consul for the fifth time, 534.

TITLE LIX.

MATTERS COMMON TO SUCCESSIONS.

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

You should have known that, although your brother was emancipated, you who remained in the family would not be entitled to the preference, so far as the estate of your emancipated brother was concerned, but that both of you would succeed if you had demanded Praetorian possession of the estate in accordance with the forms of law.

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

2. *The Same Emperors and Caesars to Apollinarus.*

If your own father, having become the heir of your cousin, who was your agnate and died

intestate, entered upon his estate by virtue of the Civil Law, or if he did not intervene in the beginning, or was deprived of his right by a change of status, but succeeded to him after having regularly obtained praetorian possession, and you have acquired the estate of your father, you should appear before the Governor of the province and bring suit against his guardian with reference to the administration of the guardianship.

Given at Verona, on the fourteenth of the *Kalends* of June, during the Consulate of the above-mentioned Emperors.

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

It is absolutely certain that a step-father is not, either by the Civil or the praetorian law, entitled to the estate of his step-son, who died intestate.

Ordered on the fifteenth of the *Kalends* of March, during the Consulate of the Csesars.

4. *The Same Emperors and Cassars to Asterius.*

A slave cannot have any successors.

Given on the *Nones* of April, under the Consulate of the Caesars.

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

You do not lawfully demand, in your own name, the estate of your aunt whose children have, as you allege, succeeded her; but, since you assert that the said children died intestate, if those whom you say are the step-children of your aunt should prove to be their blood-relatives, there is no doubt that the brothers who, by the right of both cognation and agnation, are in the second degree, should be preferred to you. If, however, the step-children of your aunt were by another father, they are not the step-children of their mother, and, in this case, you can claim their estates, if you can show that you have been admitted to praetorian possession of the property.

Ordered on the twelfth of the *Kalends of* March, during the Consulate of the Csesars.

6. *The Same Emperors and Csssars to Publicianus.*

It is a positive rule of law that an intestate succession should go to a paternal uncle, who is in the third degree, rather than to a cousin who is in the next degree following.

Published on the *Kalends* of October, during the Consulate of the Caesars.

7. *The Same Emperors and Csssars to Nicholas.* No succession is permitted on the ground of relationship by marriage.

Ordered on the *Ides* of October, during the Consulate of the Caesars.

8. *The Same Emperors and Cseso.rs to Justa.*

No one can, on the ground of intestacy, succeed to a person who has left a will, before the appointed heir, who is legally capable and entitled to a share of the estate, rejects it. Therefore, you will perceive that the estate of the deceased cannot be legally claimed as long as there is any prospect of testamentary succession.

Ordered on the sixth of the *Ides* of March, during the Consulate of the Caesars.

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

The master of a female slave who has cohabited with a freeman cannot claim the succession on the ground of this connection.

Ordered at Nicomedia, on the fifteenth of the *Kalends* of January, during the Consulate of the Caesars.

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

An estate cannot, either by the Civil or the Praetorian Law, pass to anyone on the ground that he has supported the deceased.

Ordered on the sixth of the *Kalends* of January, during the Consulate of the Caesars.

Extract from the Novel which Treats of Laws and Customs; Section Beginning, "All Strangers," etc. Latin Text,

All foreigners and strangers shall be freely entertained wherever they desire; and if, while this is being done, they should wish to make their wills, they shall have free power to dispose of their estates, and the disposition of the same shall remain undisputed. When they die intestate, their host will not be entitled to anything, but their property shall be transmitted to their heirs by the hands of the bishop of the diocese, if this can be done; or it shall be devoted to pious uses. If a host should, in violation of this Our Law, acquire anything from an estate of this kind, he must restore threefold the amount to the bishop, by whom it shall be given to those whom he considers worthy; notwithstanding any statute, custom, or privilege, which may previously have provided for any other disposition of such estates up to this time.

If any persons should presume to violate this Our Constitution, We hereby deprive them of the power of disposing of their estates by will; otherwise, they may be punished for the offence which they have committed, to the extent that the nature of the offence demands punishment.

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

As in the case of property which is acquired by children through the marriage of their fathers, the rule in cases of this kind being as follows, namely: if one of the children should die, the share which he would have obtained shall go to his children or grandchildren, and if there are none living, to his brothers born of the same marriage, and when none of them survive, to the brothers born of other marriages, and where none of them remain, it shall then go to the father; so, We decree that the same order shall be preserved with reference to property, which, for any reason, has come down through the maternal line, and has either been disposed of by donations *inter vivos,* by last wills, or *ab intestato.*

In the first place, the issue of a son or daughter shall be called to the succession, and if none of these can be found, the brothers or sisters, born of the same or another marriage, shall be called in the order previously mentioned; and finally the father shall be called by the law, and the unacceptable estate which was left by his son shall be acquired by him as a melancholy source of profit.

In all the instances above referred to, where any issue of children survives, and brothers have a right to claim the estate of the deceased in preference to their father are still living, the usufruct of the property to the ownership of which the sons are entitled shall belong to the parents of the latter.

Given at Chalcedon, on the thirteenth of the *Kalends* of October, under the fifth Consulate of Decius, 529.

Extract from Novel 84, Chapter I. Latin Text.

Hence, the father being dead, if the son should die intestate without issue, but should leave brothers and sisters, some of full blood and others of half blood, and others again born of both parents, he will transmit the estate to those alone who are related on both sides.

TITLE LX.

CONCERNING THE ESTATES OF MOTHERS AND OF THOSE IN THE MATERNAL LINE.

1. *The Emperor Constantine to the Consuls, Prsetors, Tribunes of Ihe People, and the Senate, Greeting.*

Property derived from the estate of a mother, either under the terms of a will, or on the ground of intestacy, and which has gone to the children, will remain under the control of the father, who shall have the right to the use and enjoyment of the same during his lifetime, but the ownership shall belong to the children. Fathers, however, to whom only the right of use and enjoyment of the mother's estate is granted, must use all diligence for the preservation of the same, and they must, either in their own proper persons or by an attorney, demand what the children are legally entitled to and promptly pay all expenses out of the crops, as well as defend any suits which may be brought, and act in all respects so that the ownership may be acquired by the children perfectly and indisputably, just as if they •were transacting their own business; and if they should attempt to dispose of any of their children's property, the purchaser, or he to whom it is given, may take care not to either knowingly or ignorantly accept any portion of the same which it is forbidden to alienate; for the father should prove that what he either gives or sells is his own, and the purchaser will be permitted to take a surety (if he desires to do so) because he cannot plead any prescription against the children, whenever they claim the property as their own.

Given at Aquileia, on the fifteenth of the *Kalends* of August, during the Consulate of Sabinus and Rufinus, 316.

Extract from Novel 22, Chapter XXIII. Latin Text. The possessor becomes the owner after the term of thirty years has elapsed, and the retention of property for that period makes or constitutes the person who has received it the proprietor of the same. This time begins to run against the children from the day on which they become their own masters, unless some of them have not yet attained the age of puberty.

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

Anything which a grandfather or a grandmother, a great-grandfather or a great-grandmother, in the maternal line, have left to a grandson or granddaughter, a great-grandson or a great-granddaughter by will, under a trust, as a legacy or donation, or by any other title, or which may be acquired by intestate succession, the father shall take charge of unchanged and unimpaired for the benefit of his son or his daughter, as he cannot sell, donate, bequeath, or encumber it to another, just as he cannot do with property of the mother's estate, and he shall only be entitled to the usufruct of the same; so that he loses all control over such property in case of his death, for his son or his daughter will be entitled to it as a preferred legacy; nor can it be claimed by those who are co-heirs only on one side.

Given on the *Ides* of October, during the Consulate of Olybrius and Probinus, 395.

3. *The Emperors Theodosius and Valentinian to the Senate of the City of Rome.*

If the mother is living when her children are emancipated, and afterwards dies, as the father is deprived of all benefit from the property, and does not even retain the usufruct, We grant him shares of the usufruct, according to the number of children, whether there is one, or more of them. Where, however, the mother, when dying, left some of her children emancipated by their father, and others still under his control, the husband will enjoy the unequal benefit of a portion of the usufruct of the estate of the deceased. In this instance, We make provision for both, that is to say, the father shall, by th,e authority of the law, retain the usufruct of the shares of those who are still under his control, and shall receive the price of the emancipation which was granted, if he desires to do so. But of the shares of those who it is established were released from paternal control during the lifetime of their mother, he will only be entitled to the usufruct of a single share, in accordance with what has already been provided.

With reference to grandsons and granddaughters, We decree that the following rule shall be observed, namely: a husband, when his wife dies without leaving any children, is called under this law to enjoy the benefit of the estate with his grandsons and granddaughters alone; and if one or several grandchildren are born to one or several sons who died while under paternal

control, he or they can enjoy the same right which has been provided in the case of children. For, although the present law establishes this innovation, so far as grandchildren are concerned, still, it is not reasonable that, under such circumstances, the children should be in a worse condition than the grandchildren.

Therefore, let the grandfather, along with the grandchildren remaining under his control, enjoy the usufruct of all the property constituting the estate of the deceased grandmother. And when he bestows freedom upon them also by emancipation, let him receive the price of manumission from them, just as has been provided in the case of children; or, if he manumits some of them and retains others under his control, let him enjoy the usufruct of the share of those still subject to his authority, and withhold the lawful price from the share of those who have been manumitted.

Where grandsons or granddaughters have been born to an emancipated son or daughter, or liberated from paternal control by the former during the lifetime of their grandmother, the said grandfather shall be entitled to the usufruct of an equal share with them.

If, however, at the time when the grandsons or granddaughters are called to the succession of their grandmother, some of them are under the control of their grandfather, that is to say, of the husband of the deceased, and some are independent, the above-mentioned rule shall be observed with reference to such as are still subject to paternal authority, both so far as the acquisition of the usufruct and the payment of the price of emancipation are concerned, but those who are their own masters shall have the power to enjoy the usufruct of a single share among them.

We order that these regulations shall apply to great-grandchildren of either sex, the same rule which was promulgated with reference to them separately remaining in force where there are both children and grandchildren.

Given on the sixth of the *Ides* of November, during the Consulate of Theodosius, Consul for the thirteenth time, and Valentinian, Consul for the third time, 430.

4. *The Emperor Leo to Cattistratus, Praetorian Prefect of Illyria.*

For the purpose of disposing of all doubt and confusion, We order by this clear and comprehensive law that there shall be no distinction with reference to the usufruct of the estate of a mother, whether the father chooses to remain in the former matrimonial condition under which he had children, or to give the latter a step-mother, but the laws which have been enacted concerning the estates of mothers shall remain firm and unshaken. Therefore, a father should undoubtedly enjoy the usufruct of the mother's estate, even when he marries a second time; nor will the children, or anyone else acting in their behalf, be permitted to file improper accusations and complaints against their father.

Given on the *Kalends* of September, during the Consulate of An-themius, Consul for the second time, 468.

TITLE LXI.

CONCERNING PROPERTY ACQUIRED BY CHILDREN WHILE UNDER THE CONTROL OF THEIR FATHER, EITHER BY MARRIAGE OR IN ANY OTHER MANNER, AND ITS ADMINISTRATION.

1. *The Emperors Theodosius and Valentinian to the Senate of the City of Rome.*

As Our sacred laws forbid fathers to acquire, under any title whatsoever, by the right of paternal control, anything which a grandfather or a grandmother, a great-grandfather or a great-grandmother in the maternal line, have left to their children, it is proper to state that whatever a wife has given to her husband, who is not emancipated, or a husband to his wife who is under paternal control, by any title or right, or transmitted to him or her in any way,

shall, under no circumstances, be acquired by his or her father. Therefore, the property will only legally belong to him to whom it has been conveyed.

Given at Ravenna, on the third of the *Ides* of November, during the Consulate of Theodosius, Consul for the twelfth time, and Valen-tinian, Consul for the second time, 426.

2. *The Same Emperors to Hierius, Prsetorian Prefect.*

For the purpose of rendering a clearer interpretation of a point in Our New Constitution, We decree that whatever has been given by a husband or a wife, no matter under what title, or transmitted by a last will through sons, grandsons and great-grandsons, as well as daughters, granddaughters, and great-granddaughters, cannot be acquired for their father, even though they are under paternal control; but let no one think that this rule applies to what has been bestowed by the parent himself, either by way of dowry, or as an antenuptial donation, which was given in behalf of the persons above mentioned, so that it may not, under any circumstances, return to him if opportunity should occur; for care must be taken to prevent the generosity of parents towards their children from being influenced by apprehension of this.

But, in order that the property of this kind may return to the father by law, as well as the ownership of any other which may pass to the survivor from the estate of a husband or wife, even though he or she may be under paternal control, We decree that where the parent had only the right to the usufruct, the ownership shall be reserved for him who is entitled to the same, from an estate of either a wife or a husband; and that the father shall be entitled to the price of emancipation on account of the benefit resulting from the latter, if he should so desire, just as in the case of the estate of a mother, or where property is obtained through the paternal line.

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

3. *The Same Emperors to Florentinus, Prsetorian Prefect.*

What is contained in former laws, namely, that an ante-nuptial donation shall not be acquired by a daughter for the benefit of her father, if she is under paternal control, nor a dowry be acquired by a son under the same conditions, We confirm the above rule, and add thereto that where the said children, while still subject to the authority of their father, die leaving issue, the said property shall be transmitted to the children by virtue of the law of inheritance, and not to their father by the right of *peculium.* Nor can property be acquired in this way by a grandfather through his grandson.

If, however, a grandson, while both his father and his paternal grandfather are both living, should die childless, the ownership of the property which came to him from his mother, or through her line, shall belong, not to his grandfather, but to his father, the usufruct of it, in cases of this kind, being reserved for the grandfather as long as he lives.

Given at Constantinople, on the seventh of the *Ides* of September, during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 439.

4. *The Emperors Leo and Anthemius to Erythrius, Prsstorian Prefect.*

The father, grandfather, or great-grandfather shall have, during life, the usufruct of whatever property comes into the hands of a son, a daughter, or grandchildren and great-grandchildren of both sexes, under paternal control, who are the issue by the first, second, third, or any other marriage, which property is derived from a dowry, a donation of any description, an estate, a legacy, or a trust, and they are hereby absolutely prohibited from alienating it in any way whatsoever, or encumbering it by either pledge or hypothecation; and the ownership of the same shall belong to the children, grandchildren, or great-grandchildren of both sexes, even when they are not the issue of the same marriage from which the said property came into the hands of the parents of those subject to paternal authority.

It should also be observed that the shares of brothers and sisters, the issue of the same marriage, who have died, shall, in the first place, go to their children, as has been already stated, when there are any, and if there should be none, to the surviving brothers and sisters, or to the sole survivor, if only one of said brothers and sisters remains alive.

Where, however, all who are the issue of the same marriage are dead, We then decree that the said property shall go, share and share alike, to those born of another marriage, and that where none of the above-mentioned persons have survived, their parents shall be entitled to the property. The parents, under whose control the children were, shall, however, only be entitled to the usufruct, and We refuse them permission to alienate or encumber the said property by the right of paternal control; but the said children, when they become their own masters, are not forbidden to claim it in every legal manner ; nor can any prescription of time be pleaded against them, unless it should happen that, when they were liberated from their fathers' control, so long a time had elapsed that their claim was barred by the continuous and undisputed possession of the person holding the same. Given on the fifth of the *Kalends* of March, during the Consulate of Martian and Zeno, 469.

5. *The Same Emperors to Nepotianus, Military Governor of Dal-matia.*

The dispute which has arisen with reference to the affairs of the woman to whom you refer, and her brother, is not unreasonable, and Your Excellency, having cited different authorities on both sides, thinks that We should be consulted, as the woman, relying upon different laws, is attempting to prove that the words husband and betrothed mean the same thing, while her brother contends that the name of husband is not applicable to one who has contracted a marriage; he, basing his opinion upon the Constitution of the Divine Princes Theodosius and Valentinian, Our predecessors, by which it is provided that whatever a husband or a wife, while under paternal control, may leave to one another, cannot be acquired by the father, but legally belongs to him or her.

Therefore, although the term husband and wife are, according to their ordinary signification, understood to apply only after the marriage has been celebrated, on which point the doubt arose; still, because it is proper that ambiguous questions which arise from different interpretations of legal enactments should be decided liberally, and in accordance with natural law, We do not hesitate, in the present instance, brought before us by Your Highness, to adopt the opinion of the distinguished authority Julianus, renowned for his knowledge of jurisprudence, and which is in conformity with justice; who, in a case involving a dotal estate, decided that the same rule should be observed in the case of a wife which applied to a woman who was betrothed (although the *Lex Julia* only referred to a wife), for which reason We think that it would be a more liberal construction to hold that the betrothal donation, as well as the estate which the aforesaid betrothed man desired to bestow upon his intended wife, shall not be acquired by her father, but shall belong to her individually.

Given during the *Kalends* of June, during the Consulate of Leo, 471.

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

As it is necessary to provide for parents as well as children, in the examination of the ancient law We have found that many things which are derived from external sources by sons under paternal control should not be acquired by their ascendants, just as is the case with anything derived from the estate of a mother, or which they obtained as the result of marriage, so, We have introduced certain regulations with reference to property which children under paternal control obtain. Therefore, if a son, who is under the control of his father, his grandfather, or his great-grandfather, should acquire property, not from the estate of him under whose power he is, but which came into his hands from any other source whatsoever, either through the generosity of fortune, or as the result of his own labors, he shall not absolutely acquire it for the benefit of his parents, as has hitherto been the law, but they shall be entitled solely to the usufruct of said property; and the said usufruct shall belong to the father, the grandfather, or

the great-grandfather, under whose control the dependent son may be; the ownership of the same, however, shall remain in the son, just as in the case of property forming part of the estate of the mother, and acquired by the son through the marriage.

Thus.no loss results to the father, as he enjoys the usufruct of the property, and sons have no reason to complain that what they have obtained by their labor has been transferred to others, either strangers or their brothers, which appears to many to be even more deplorable.

Castrense peculium is excepted from the operation of this rule, as the enjoyment of its usufruct is forbidden by the ancient laws to the father, the grandfather, or the great-grandfather.

We have introduced no innovation in these matters, but have preserved the ancient regulations intact; and We have established the same rule with reference to that species of *peculium* which is acquired in the same way, and is designated *quasi castrense.*

Extract from Novel 117, Chapter I. Latin Text.

Anything which is either given or left to children by any of their ascendants, under the condition that their father shall not enjoy the usufruct of the same, is hereby excepted from the above-mentioned rule.

Extract from Novel 118, Chapter II. Latin Text.

The same rule shall apply to the estate of a brother or sister to which the survivor, along with his or her father, is admitted.

Extract from Novel 134, Chapter VII. Latin Text.

The same rule also applies to property to which children are entitled by law, where their parents have ventured to dissolve their marriage without valid reasons.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(1) Under this head We place the following provision of the law, namely, that with reference to the succession to property which is acquired from external sources by sons under paternal control, the same rule shall be observed which has been established concerning maternal estates and property obtained through marriage.

(2) The sons of a family must not believe that the property of their father is hypothecated by reason of the usufruct he enjoys, whether he be living or dead, nor that they have any right to administer the same. The alienation or hypothecation of such property is only refused to a father in his own name, but he shall be entitled to complete control of it, and to use and enjoy whatever has been acquired by his son in the manner aforesaid, and he shall have absolute power over said property without liability to be called to account for the same; and no son or daughter, or any of their descendants shall, under any circumstances, dare to forbid him, to whose authority they are subject, to retain possession of said property, or to administer it in any way which he may desire, and if they should do so, the power of their father must be exerted over them; but he, as well as the other persons above enumerated, shall have full right to use, enjoy, and administer what has been acquired as aforesaid.

And if the father, grandfather, or great-grandfather should obtain anything by the use of said property, he shall have permission to dispose of it in any way that he may wish, and to transmit it to his heirs; or if he should purchase, with the proceeds of the same, any property which is movable or immovable, or which is capable of moving itself, he shall be able to hold and transmit it in any way that he may decide, and transfer the same to others, whether they be strangers, his own children, or anyone else whosoever.

But when the father, having acquired property in the manner aforesaid, is unwilling to retain

the same, but bequeaths it to his son or daughter, or to any of their descendants, the other heirs of the father, grandfather, or great-grandfather shall not, after his death, be permitted to claim for themselves, the said usufruct, or any of the proceeds thereof which may have come into the hands of his son, as a debt due to his father.

He who enjoyed the usufruct to which his father was entitled shall be considered to have received it as a daily donation from him, and hence he shall be understood to have enjoyed the said usufruct after the death of his father, and that the latter has transmitted the right to collect what was, as it were, due to himself from his son who held the usufruct by his consent; and that he did not transmit it to his posterity or his heirs, so that the latter may remain in peace with one another, and no occasion for any dispute arise, especially among brothers.

(3) As, however, it was provided by a law of the Emperor Constantine that, if a son under paternal control had been released by emancipation, his father could receive or reserve the third part of the property, the ownership of which he was not permitted to acquire, by way of remuneration for emancipation, and, as under this pretext, children were deprived of no small part of their inheritance, We order that, when a case of,this kind occurs, and they obtain their emancipation, their father shall not acquire the third part of the ownership of the property, but only half of the usufruct shall remain with the parent who grants the emancipation, except in the case of *peculium castrense* and *quasi castrense,* from which nothing shall be deducted on this account, in order that children of either sex may not be deprived of the ownership of property, and the usufruct of the greater portion of their estates be transferred to their fathers.

This rule shall also apply even if, when the emancipation was made, the father reserved nothing for himself, unless he expressly, either at that time, renounced all claim to this compensation, or, when he made a donation, deprived himself of this advantage, and transferred it to his children. The right and benefit of retaining the usufruct shall remain in possession of those who enjoy it, even if they are silent as to its disposition, and, after their death, the usufruct in all the above-mentioned cases shall vest in those to whom the ownership of the property belongs; although (as We have already stated) the rules of succession, which have been established by Our laws published on this subject, must be observed with reference to property derived from maternal estates, and marriages.

(4) As, however, the ancient laws introduced tacit hypothecations in certain cases, and We found it necessary to introduce them also in maternal and other donations, a doubt arose from what time the hypothecation should be reckoned, whether from its origin or from the date when affairs were badly administered, We, giving the law a liberal interpretation, do hereby decree that to ascertain the date of abandonment the commencement of the hypothecation should be considered, and not the time when the business began to be badly conducted.

Read in the New Consistory of the Palace of Our Lord Justinian.

Given on the third of the *Kalends* of November, during the Consulate of Decius, 529.

1. The Same Emperors to Julianus, Prsetorian Prefect.

As many privileges relating to Imperial donations have already been granted, We think that it is worthy of Our dignity to add still another to them. Hence, if anyone, without distinction of sex, has received either from the Emperor or the Empress a donation of movable or immovable property, or of such as is capable of moving itself, We direct that, even where a son or a daughter under parental control has acquired the absolute ownership of property of this kind, and has not obtained the same for the benefit of anyone, then, neither his father, grandfather, nor great-grandfather shall have the right to claim the usufruct of it, but the sons or daughters under paternal control shall, as in the case of *castrense peculium,* have complete ownership of said property. For, as property derived from the Imperial Family is pre-eminent above other kinds, so the generosity of princes must take precedence of that of all others.

Given at Constantinople, on the twelfth of the *Kalends* of April, during the fifth Consulate of

Lampadius and Orestes, 530.

8. *The Same Emperor to John, Prsetorian Prefect.*

As, not only in the case of property obtained by a son from his mother's estate, but also in all other cases in which the father is not entitled to acquire it (and above all after the publication of Our new law relating to all property acquired by sons under parental control from external sources, and not from the estates of their fathers, the said law having provided that such property shall not be acquired by the father but only the usufruct of the same) ; different controversies have arisen, and unforeseen events and discussions have taken place, and as these matters are constantly being brought before the courts, it becomes necessary to dispose of them all advantageously and clearly. Therefore, with reference to all property of which the ownership cannot be acquired by the father, but where he is entitled to only the usufruct of the same, or where the ownership cannot be acquired by other ascendants from children of either sex under parental control, or where a father compels his son, subject to his authority, and who has attained his majority, to enter upon an estate, and the latter thinks that he should reject it, or where the son desires to accept it, and his father is of the contrary opinion, he shall have full power to do so; and his father can accept the estate for himself, if the son refuses, and he shall be responsible for all loss and enjoy all the benefit, and the son shall not be, in any way, prejudiced by his act.

If, on the other hand, the son should desire to enter upon an estate, and his father should refuse to permit him to do so, the latter shall not be entitled to the acquisition or usufruct of the same, but the son shall only have himself to blame if any loss results from his act, and no suit shall be brought against his father when his son, contrary to his wishes, desired to acquire an estate, legacy, trust, or other property, under any title whatsoever, whether it be by gift, or through the contract of another.

Nor, in like manner, shall any right of action be granted against the son when, after his refusal, his father claims the property for himself by his own authority; for, under the present law, by an acceptance of this kind, all responsibility attaches to the father. The latter, however, shall have full permission to bring all suits, and be defended by others, where he is entitled to the sole benefit; and the son also shall have both the disadvantage and the benefit in the institution and defence of actions, the father being required by the judge to appear and consent, whether the son is acting as plaintiff or defendant, in order that legal proceedings may not appear to have been conducted without the acquiescence of the father.

This rule is also applicable where the son has attained his majority, and is no longer obliged to comply with the wishes of his father.

(1) But if the son is still a minor, and his father refuses to permit him to accept an estate left to him, or he himself claims it with the consent of his father, just as in the case where the son refused to accept it, We, in like manner, grant his father permission to enter upon the estate and to acquire full right to the same, subject to all the regulations which We have mentioned above.

If, however, the father should refuse to accept the estate, and the son desires to accept it, We give him permission to do so. When the father is unwilling to manage the property of his son on account of the exigencies of the case, the son shall have power to appear before a competent judge, and ask him to appoint a curator for the estate, to whom the administration may be committed; and, in both instances, the son under paternal control shall, by no means, be refused complete restitution.

(2) In like manner, where a son under paternal control belongs to the army, and refuses to accept an estate acquired through his *castrense peculium,,* permission is hereby granted his father to accept it in such a way that he will have full right to the same, and shall possess it, not only so far as its usufruct is concerned, but with reference to its ownership as well, just as

if he himself had been appointed heir in the beginning; he being, of course, liable for all the charges of the estate, and entitled to all the benefits accruing therefrom, without any responsibility whatever attaching to his son.

These rules shall also be observed in cases in which a difference of opinion arises between the father and the son.

(3) Where, however, both agree, the father will receive the usufruct, and the son the ownership of the property, no matter what the age of the son may be, and the father must bring and defend all suits and thus take charge of all litigation. The consent of the son ought always to be obtained, unless he is an infant, or in a distant country, and the expenses must be paid by the father, for the reason that he is entitled to the income of the property. For how would it be possible for the son to meet the expenses of litigation growing out of the property, when he is only entitled to the mere ownership of the same?

(4) But if the estate is encumbered by debts incurred by the deceased, as, among the ancient authorities, the amount of an estate was understood to be what was left after the indebtedness had been deducted, the father shall have permission to sell a sufficient part of the property, in the name of his son, in order that the debts may immediately be settled, and the estate not be burdened with the payment of interest, the personal effects being first disposed of, and if they should not be sufficient, the remainder of the indebtedness to be discharged out of the real property.

If, however, the father should fail to do this, he himself will, by all means, be compelled to pay the interest, either out of the income of the property, or out of his own pocket. Where either legacies, trusts, annuities, or only one sum is left as a charge upon persons of this kind, the father will be obliged to pay the claims out of the income of the estate, if it is sufficient; but if the estate does not yield sufficient revenue for the discharge of the legacies or trusts, or does not yield any at all, or includes either real or personal property which, although unproductive, is, nevertheless, valuable, as for instance, houses situated in the provinces, or elsewhere, or suburban villas, the proceeds of which would be sufficient for the payment of legacies of this kind, the father shall be given permission to sell enough of them in the name of his son to discharge the indebtedness.

It should undoubtedly be noted that the father himself, as usufructuary, is obliged to support the slaves belonging to the estate, and to do everything with reference to the usufruct which will, in no way, cause deterioration of the property; but, on account of the respect to which he is entitled from his children he will be excused from rendering accounts and furnishing security, as well as from all the other requirements ordinarily imposed by the laws upon usufructuaries, in accordance with the terms of Our Constitution which We have promulgated concerning cases of this description.

(5) The father is also compelled to provide support for his sons or daughters, and their descendants, not because he is in the enjoyment of the estate, but on account of the demands of Nature and the laws which have ordered that children must be maintained by their parents, as well as parents by their children, if either of them should be reduced to poverty.

The father, however, shall, only in the cases previously mentioned, be legally permitted to sell the property of his son, in the name of the latter, or, if he should be unable to find a purchaser, to encumber it, and, under no circumstances, shall children be allowed to repudiate such sales or hypothecations. Permission should not be granted to fathers to alienate, or subject to pledge or hypothecation any property, the ownership of which belongs to their children, except in the instances above referred to. If, notwithstanding this warning, they should do this, they are hereby notified that they will be liable to punishment under the laws by which sales or hypothecations are prohibited; except, of course, where personal or real property is burdensome to the estate or in some way injurious to it, and this the father is authorized to sell with a view to the interests of his children, and without himself incurring any liability,

provided the price received is placed with the other property of the estate, or employed for its benefit, or preserved for the children.

Again, We do not allow sons under paternal control to dispose of property of this kind by will, in cases in which the usufruct of the same is vested in their ascendants during the lifetime of the latter; nor shall permission be granted them to alienate the ownership of any property belonging to them, or to hypothecate or pledge the same, against the consent of those to whose control they were subject. For it is better to restrain the ardor of young persons, in order to prevent them from suffering the unpleasant consequences, which, through having yielded to their desires, await them after the dissipation of their patrimony. For, as has already been stated, their parents being obliged to support them in accordance with the laws and the dictates of Nature, why then should they wish to hasten the sale of their property?

(6) Moreover, when the extreme youth of a child permits his father to accept the estate in his name, even without his consent, and he does so, We grant complete restitution to the child after he has been released from the control of his father, or has grown up; and We, under all circumstances, impose all the charges of the estate upon the father (even though he entered upon it in the name of his son). Why should he have accepted such an estate, when neither he himself, nor his son, who is now grown up, thinks this to be advantageous to the latter? We do not, however, grant the son permission —in case he demands complete restitution if he, while still a minor, thought that the estate should be rejected—to accept the estate aforesaid a second time after restitution, lest the laws may become a mockery if he should frequently be allowed to accept and reject the same inheritance.

But when he did not ratify the act of his father, and obtained restitution on this ground, why should he be allowed to adopt a course which, contrary to the decision of his father, he thought should have been rejected? If, however, the father refused the estate while his son was in infancy, and the latter subsequently being still under his father's control, or after he had been released from it, should think that the said estate ought to be accepted, We grant him permission, if he is his own master, to enter upon it by his guardians or curators, without any liability attaching to his father on account of the refusal of the latter. In like manner, on the other hand, permission shall not be granted either him or his guardians or curators, to demand complete restitution in opposition to his former decision.

These regulations are applicable to legacies and trusts which have been left in specific as well as in general terms, and they shall also apply to the other cases, which We have previously enumerated, in the same manner as to these. Moreover, with reference to slaves who have been donated to children of either sex (whether they were under paternal control or not) either during marriage, by strangers, or under the condition that they would immediately grant them their freedom, no impediment shall be interposed by paternal authority; for what usufruct can be acquired by the father which can only exist for a moment? If it is necessary for him to possess the slave and grant him his liberty at the same instant, how can he acquire the usufruct of him under such circumstances?

TITLE LXII.

CONCERNING THE ESTATES OF DECURIONS, MASTERS OF SHIPS, ATTENDANTS OF MILITARY COHORTS, AND EMPLOYEES IN ARSENALS.

1. *The Emperor Constantius to Mastichianus, Prefect of Subsistence.*

We decree that if the master of a ship dies intestate, and without leaving children or other heirs, his estate shall not go to the Treasury, but to the association of shipmasters from which he was taken by death.

Published on the fifth of the *Kalends* of . . . , during the Consulate of Constantius, Consul for the seventh time, and the Caesar Constantius, 354.

2. *The Same Emperor to Bonosus, General of Cavalry.*

It is your duty to notify the legions, as well as all other bodies of troops, that, if any individual member of them should die intestate, without leaving lawful heirs, his estate shall absolutely belong to the corps in which he served.

Given at Hieropolis, on the fifth of the *Ides* of May, during the Consulate of Rufinus and Eusebius, 347.

3. *The Same Emperor to Rufimis, Praetorian Prefect.*

When anyone attached to a cohort dies intestate and without leaving heirs, We order that his estate shall belong, not to the Treasury, but to other members of the corps in the same province.

Given on the fifth of the *Kalends* of January, during the Consulate of Limenius and Catulinus, 349.

4. *The Emperors Theodosius and Valentinian to Florentine, Praetorian Prefect.*

We direct that the property of decurions who die intestate and without heirs shall be acquired by the other decurions of the same province.

Given on the fifth of the *Ides* of March, during the Consulate of Florentius and Dionysius, 429.

5. *The Same Emperors and Csesars to Aurelian, Count of Private Affairs.*

When any workman employed in the arsenals dies intestate, without leaving any children, or legal heirs, We order that his estate, no matter what the amount of it may be, shall belong to those who are, as it were, the creditors of deceased persons, and are required to be responsible to the Treasury for their dead comrades. The result of this is that no loss will be sustained by the State, and the workmen, who are held liable for all losses and injuries, will enjoy the property of their defunct colleagues.