THE CODE OF OUR LORD THE MOST HOLY EMPEROR JUSTINIAN.

SECOND EDITION.

BOOK VII.

TITLE I.

CONCERNING FREEDOM GRANTED BY THE WAND OR THE PRAETOR, AND MANUMISSION CONFERRED IN THE COUNCIL.

1. *The Emperor Antoninus to Tertius.*

The condition of those who are manumitted in the Council, after the ground for it has been approved by the court, and the manumission has taken place, is not usually called in question, even when it is alleged that enfranchisement was obtained by false representations.

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

It is perfectly certain that where Roman citizenship has once been granted, a second manumission can neither add anything to, nor take anything from it.

Given on the day before the *Kalends* of May, during the Consulate of the above-mentioned Emperors.

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

There is no doubt that a woman cannot legally manumit anyone either through her husband, or an agent, by means of a wand.

4. *The Emperors Constantius to Maximus, Prsetorian Prefect.*

A slave can obtain his freedom through the efforts of his patron in the presence of Our Council, or before consuls, praters, presidents, governors, or municipal magistrates, to whom this right has been conceded.

TITLE II.

CONCERNING TESTAMENTARY MANUMISSION.

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

It is certain that if anyone over twenty years of age should make a codicil, leaving a slave his freedom, the date of confirmation will not prejudice the manumission; for, in this instance, the intention of the deceased, and not his legal capacity, must be considered.

2. The Same Emperors to Philetus.

Freedom cannot be granted by the will of a deceased person when the estate has not been entered upon, or if the disposition of the property was set aside, because of some crime which was not punished on account of death.

3. *The Same Emperors to Euphrosinus.*

Where freedom has been granted by the will of the deceased and the estate has been entered upon, even though the appointed heir may have rejected it for the purpose of obtaining complete restitution, this will, nevertheless, in no respect interfere with the grant of freedom.

Ordered on the seventeenth of the *Kalends* of May, during the Consulate of Aper and Maximus, 208.

4. *The Same Emperors to Archelaus.*

Although your father obtained his freedom directly by will, and you were his heir, still, you cannot be compelled to render accounts of any business which he transacted while he remained in slavery, as he did not receive his freedom upon that condition. Again, he to whom

freedom has been bequeathed either directly or under the terms of a trust, on condition that he would render his accounts, cannot obtain his freedom before having submitted them and returned any property which he may have abstracted with evil intent. If, however, having rendered his accounts, he should not be found to be indebted to the estate, he will obtain his freedom absolutely after the estate has been entered on.

Published on the *Kalends* of December, during the second Consulate of Lsetus, and Cerealis, 216.

5. *The Emperor Alexander to Quintilicm.*

A testamentary grant of freedom made for the purpose of defrauding creditors, even though the heir of the debtor may be solvent, is not valid under the *Lex JElia Sentia.*

6. *The Emperor Gordian to Pisistratus.*

If the estate of him, by whose will you say you were manumitted, has been rejected by the heirs on account of its indebtedness, you do not unjustly demand that the will of the testator shall be observed with reference to you, for the purpose of protecting the interests of freedom, if you offer to satisfy the creditors of the estate; especially as this has already been decreed by that most learned Emperor, the Divine Marcus.

This rule shall also be observed in the case of strangers.

7. *The Same Emperor to Justa.*

You should not, against the wishes of your mother, bestow freedom upon a slave whom she forbade to be liberated, lest you may appear to have violated the rights of filial affection.

8. *The Emperor Philip and the C&sar Philip to Tremellius.*

When a testator has ordered that freedom shall be granted to a certain slave, at the time of the marriage of his son or daughter, he did not definitely fix the date of his liberation from servitude, but he merely made it conditional, so that if the marriage did not take place, freedom could not legally be demanded by the slave.

9. *The Emperors Cams, Carinus, and Numeriamis to Maurus.*

The deceased could not directly bestow freedom upon your slave, although it is stated that he appointed you his heir; for no one can, in accordance with law, grant freedom directly to the slaves of others.

10. *The Emperors Diocletian and Maximian and the Caesars to Germans.*

When freedom is legally granted in direct terms to slaves, not only by the imposition of the cap of liberty, but also by acceptance of the estate, such slaves become freedmen under the wills of their masters if no legal impediment exists.

11. *The Same Emperors and Csssars to Laurina.*

If a will is void in law, any grants of freedom bestowed under it will not be considered properly made, even if, as you allege, it was not added that the instrument should be valid as a codicil.

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

If the heirs appointed under a will, which was legally executed, enter upon the estate with the usual formalities, you cannot be deprived of the freedom to which you were entitled under said will, if the appointed heirs, acting in collusion with those who claim the estate on the ground of intestacy, should refuse to accept it. Where, however, they voluntarily reject the estate left to them, everything included in the will is considered to be of no effect.

If, however, the Governor of the province should ascertain that the heirs are in collusion for

the purpose of defrauding you of your freedom, he will provide for your obtaining it, in accordance with the Constitution promulgated by the Divine Pius Antoninus.

13. *The Same Emperors and Csssars to Martial.*

It is certain that where freedom has been left to a slave conditionally, he cannot be deprived of it by the heir, nor can either alienation or usucaption injure a slave who is to be conditionally free, as long as he will be entitled to his liberty if the condition is complied with.

14. *The Emperors Theodosius and Valentinian to Florentine, Prse-torian Prefect.*

Direct grants of freedom can be made by wills drawn up in the Greek language, so that such grants, when made directly, shall be considered of the same force as if the testator had ordered them to be stated in the terms prescribed by law.

15. *The Emperor Justinian to John, Praetorian Prefect.*

As a Constitution of the Divine Marcus declares that where anyone either makes a will or dies without doing so, thus furnishing ground for an intestate succession, and bequeathes grants of freedom, and no one desires to accept the estate of the deceased because there is reason to suspect it of being insolvent, and the grants of freedom have been left under a trust, without having been reduced to writing, any stranger whosoever, or any one of the slaves to whom freedom has been left and whose status is in danger, can enter upon the estate, on condition of giving security that he will satisfy all the creditors, and confer freedom upon those whom the testator intended should receive it.

Various doubts have arisen with reference to the interpretation of this constitution, for if the property of the estate should be sold because no heir could be found, it was asked whether, after the sale of the said property, it would be possible for either a slave, or anyone else to accept the estate, recover from the purchasers what had been sold, execute the grants of freedom, and satisfy the creditors? Although the Divine Severus did not permit this to be done after the property had once been disposed of, still We have adopted the opinion of Ulpianus (especially with reference to the grants of freedom, in order that they may not be lost) who held that, after the sale of the property, a remedy would be afforded by the Constitution of the Divine Marcus within a year; provided all the creditors were paid during that time, and the purchasers suffered no other inconvenience by submitting to the rescission of the sale before the aforesaid period had elapsed. Hence the slave who was entitled to his liberty, or any stranger, will be permitted to enter upon the estate, either before the sale or afterwards, within the term of a year, and recover the property, having first furnished security that the grants of freedom will be carried out, and the creditors satisfied.

(1) Moreover, if anyone, having entered upon an estate, should promise to carry out all grants of freedom, and to pay the creditors not in full, but only in part, and the latter accept this proposal, We decree that, in a case of this kind, the Constitution of the Most Wise Emperor aforesaid shall be applicable, and We hold that it should by all means be adopted, especially when the creditors consent, but when they are unwilling, We do not permit any such agreement to take effect.

(2) Where, however, some of the slaves are willing to accept freedom and others think that it should be rejected, in this instance, the Rescript of the Divine Marcus will apply, and there is no doubt that in this case the petitioner for freedom should be heard, and the slaves have perfect liberty to decide whether they prefer to be free or to remain in servitude. For while no slave is allowed to refuse Roman citizenship, still, in this instance, lest through the ingratitude of some the others may remain in bondage, all slaves who desire to obtain their freedom shall be permitted to do so; and if any of them are unwilling, or reject it, they shall be immediately reduced to servitude, and those who would not accept a patron will obtain a master, and perhaps a severe one.

(3) When, however, the person who accepts the estate does not promise to carry out all the grants of freedom, but only to liberate a certain number of slaves whose manumission was provided for, if the property of the estate is sufficient for the payment of the creditors in full, the better course will be for all the slaves to receive their freedom, even though this may not have been promised. But when there are not enough assets to settle the claims of the creditors, it is more advantageous for only a few of the slaves to be emancipated.

(4) In this way We have found a remedy for the doubts of the ancients, by adding an excellent provision to the constitution aforesaid; and hence We order that if no single claimant of the estate appears, but several do, and two or more appear at the same time, all of them shall be given permission to enter on the estate, all having previously furnished security that they will satisfy the creditors, and carry out the grants of freedom.

But if they should appear at different times, the one who comes first shall take precedence, if he can give security; but if he is unable to do so, the others shall be entitled to the privilege in their order, according to the time when they make the demand; and this must be done within a year.

(5) Where one of the applicants promises to free certain slaves, but not all, and another is prepared to furnish security that all the creditors will be satisfied, and all grants of freedom be carried into effect, it will be perfectly just for the latter to be accepted, so that all the grants of freedom without distinction may be executed. We grant this favor not only to a slave to whom freedom was bequeathed, but also to him to whom it was not left by will; so that the result may be commendable, and others receive their freedom by means of one to whom it was not left by will.

(6) If, however, anyone should first receive the property of the estate and his liberty, We decree that the preceding provision shall apply to the second or the third claimant, or to any others who promise more generous donations of freedom. But when the slave who was the first to demand the inheritance has already received it, and freedom has been conferred by him upon certain other slaves belonging to the estate, and some slave forming part of the same, or a stranger who is free, appears and offers better terms, he shall be permitted to take the estate, if he promises to do more, and gives proper security. The first applicant shall, however, retain his freedom, even though the property may have been sold by him, and all these things must take place within a year from the time when the first claimant presented himself, in accordance with what has already been stated.

TITLE III.

CONCERNING THE ABOLITION OF THE LEX FUSIA CANINIA.

1. *The Emperor Justinian to Henna, Praetorian Prefect.*

We decree that where grants of freedom are left to slaves by will, whether this is done directly, or under the terms of a trust, they shall be valid without distinction, just as where freedom is bestowed by the acts of persons who are living.

The *Lex Fusia Caninia* shall not apply to other cases, and no impediment shall be placed in the way of testators who desire to exercise their beneficence by the emancipation of their slaves.

TITLE IV.

CONCERNING GRANTS OF FREEDOM BY MEANS OF TRUSTS.

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

As you allege that the estate of the testator, by whom freedom was bequeathed to you by the terms of a trust, was not entered upon, and another heir than the one appointed obtained possession of the estate on the ground of intestacy, if you do not demand the freedom which

was granted you under the trust, with the execution of which the heir 'at law was charged, you can not legally demand it from him who was not requested by the testator to bestow it. It is clear that if you can prove that the appointed heir neglected to give you your freedom, after having received money for doing so, the heir at law can be compelled to grant it to you.

Published on the thirteenth of the *Kalends* of March, during the Consulate of Lateranus and Rufinus, 198.

2. *The Emperor Antoninus to Valerius.*

Although the codicil by which it appears that you were bequeathed to the uncle of the deceased has been declared forged, still, if you obtained your freedom from the legatee in a proper manner, before any question arose with reference to the crime, what happened afterwards will not invalidate the grant of freedom made in this way. According to the Constitution of the Divine Hadrian, it is evident that the heir will have the right to demand the twenty *aurei.*

3. *The Emperor Alexander to Lucius.*

As you allege that freedom was conditionally granted to the female slaves, why should there be any doubt that children who came into the world before this was done were born slaves, and became the property of the heirs by the right of ownership? For relief should only be granted to those who were born after he who was charged with the grant of freedom was in default, in order that they may appear to have been born free.

4. *The Same Emperor to Julianus.*

Where a female slave, to whom freedom was left under a trust by the will of her master, has received her liberty, she, having become a Roman citizen in accordance with the Decree of the Senate, and the constitutions promulgated with reference thereto, her children will be freeborn. If, however, she has never claimed her freedom, she should only blame herself if the children born to her in the meantime are slaves.

5. *The Same Emperors to Dionysius.*

A minor of twenty years of age cannot, by his last will, bequeath freedom under a trust to his slave, unless he is able to prove that he was legally authorized to do so.

6. *The Same Emperor to Maximus.*

It has been decided that freedom granted under the terms of a trust should be given to a female slave, nor will she be the less entitled to it, if, in the meantime, her mistress was unwilling to sell her, provided she received nothing from the will of the person who bequeathed the freedom, for the reason that she might be liberated in the course of time, whenever an opportunity to purchase the slave might arise.

7. *The Same Emperor to Nicomedes.*

Slaves, to whom freedom has been granted under a trust by the last will of the testator, become the freedmen of those who have been charged with their manumission.

Published on the *Kalends* of April, during the Consulate of Fus-cus and Dexter, 226.

8. *The Same Emperor to Eutyches.*

As you state that freedom was granted you by a trust, on condition that the widow of the testator agreed to it, even though she did not enter upon the estate, and all of it, in consequence, passed to his son, if he manifests no opposition, you can demand your freedom.

9. *The Emperors Valerian and Gallienus to Daphnis.*

Even if a testator, when he appointed his slave the guardian of his children, did not, at the same time, grant him his freedom, it will be considered that he manumitted him under the

terms of a trust, and that this was done for the sake of liberty and in behalf of the wards. If he had appointed not his own slaves but those belonging to another, being at the same time aware of his condition, it was held by jurists that he likewise would be entitled to his freedom as under a trust, unless it clearly appeared that the intention of the deceased was otherwise.

10. *The Same Emperors to Mercurialis.*

You will still be entitled to the grant of freedom left you by the terms of the trust, subject to the condition that you shall receive it when the testator's son attained his twenty-fifth year, even though, as you allege, the heir should have died before reaching the designated age. For it was held by the ancients that the hope of freedom should not be destroyed after the time had elapsed when, if the son of the testator had lived, he would have attained the prescribed age.

11. *The Emperors Diocletian and Maximian, and the Csesars, to Flavianus.*

If you were a slave, and freedom was bequeathed you under the terms of a trust, you are hereby notified that you cannot obtain your liberty without manumission. Hence if, while a slave, you obtained a fiduciary grant of freedom, you must appear before the Governor of the province, so that, after having investigated your case, he may decide whether or not you have the right to be set free, and may compel him to manumit you, whose duty it is to do so; or, if the latter conceals himself he can, by means of a decree, protect your interests against the person who cannot be found.

12. *The Same Emperors and Cassava to Hyrenius.*

It is stated by legal authority that freedom under a trust shall not be considered as bequeathed, on account of the insertion of the phrase, "I recommend," into a will or codicil.

13. *The Same Emperors and Consuls to Pythagorida.*

If the testator, having before his marriage given you to his future wife, afterwards left her a legacy, and by his will or codicil charged his heirs to manumit you, there is no doubt that they, as well as she, by accepting the legacy bequeathed to her, approved the will of the deceased, and will be liable, and that you will be entitled to your freedom under the terms of the trust.

14. *The Emperor Justinian to Julianus, Prsetorian Prefect.*

As a doubt arose among the ancients whether it was possible for freedom to be left under the terms of a trust to a slave who was, as yet, unborn, and was expected to be a boy, We, for the purpose of settling this dispute, order that, in favor of freedom, both the grant of it under a trust, as well as one made directly, shall be valid, whether the unborn child is male or female, as only the question of freedom is considered, even if the mother who brought him forth still remained in slavery.

If, however, several children of different sexes were born at the same time, and only one or more were mentioned, all of them will be entitled to their freedom as soon as they are born; as it is better, in case of doubt, to adopt the more humane opinion, and especially where liberty is concerned.

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

15. *The Same Emperor to Julianus, Prsetorian Prefect.*

We decree that when freedom has been bequeathed to a male or female slave under a trust, and the debtor is in default in granting it,

the slave shall be liberated from servitude by a decision of the Governor, without any act of the heir, or without waiting for his consent. Such a slave shall be entitled to his or her freedom, just as if he or she had obtained it directly from the testator himself, as it is wicked as well as absurd for heirs to delay to carry out the wishes of the testator, especially where liberty is involved.

16. *The Same Emperor to Julianus, Prsetorian Prefect.*

If a testator, in his will, should charge his heir to grant freedom to any one of the children of his female slave, whom he designated by name, and the said slave brought forth one or more children, and the heir did not, during his lifetime, grant freedom to any of them, or, while deliberating which one he would set free, died; a doubt arose among the ancient authorities whether all, one, or none of the said children would be entitled to be free.

We, desiring to punish the evil intention of the heir for not complying with the wishes of the testator, and for not selecting one of the children of the female slave and giving it its freedom when he was able to do so, do hereby decree that not only he, but also his heirs and successors, shall be compelled to liberate all the children of the said female slave; for this is not contrary to the intention of the testator, since, when he provided that any of said children whom the heir might select would be free, he did not have in mind any certain one, but all of them; and if the heir did not comply with his wishes, there is no doubt that, according to the intention of the testator, all of them would be entitled to their freedom.

We order that the same rule shall apply when the testator charged not the heir, but a legatee or beneficiary of a trust, with the grant of freedom, so that, for this reason, heirs, legatees, or beneficiaries of trusts, being actuated by a just fear, may carry out the will of the testator, and may not themselves suffer loss by being compelled to liberate all the slaves.

Any complaints they make shall be to no purpose, for they can only blame themselves for the loss which is not due to Our legislation, but is the result of their own contumacy.

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

17. *The Same Emperor to Julianus, Prsetorian Prefect.*

Where anyone has bequeathed his slave under the condition that the legatee should grant him his freedom, and the heir, acting dishonorably with reference to the legacy, refused to surrender the slave to the legatee, and suit having been brought against him, and the judge having ordered him not only to give up the slave, but also to pay his appraised value, the ancient interpreters of the law were in doubt whether an obstacle was not placed in the way of freedom by a decision of this kind; and when it was decided that freedom must be granted, whether this should be done by the heir or the legatee, and if the heir granted it, whether the legatee would be entitled to retain the amount which he had received as a pecuniary fine, either entirely, partially, or not at all.

We, in disposing of this controversy, are surprised to learn that the judge, who had jurisdiction of the case aforesaid, did not require the heir not to surrender the slave but only to pay his value, as such a fault offers an occasion for a dispute. Wherefore, if such a question should arise, We think that no judge would be so foolish as to render a decision of this description.

If, however, the legatee should demand that the slave be delivered to him, and the term of two months should elapse after issue had been joined in the case, We decree that the slave shall immediately obtain his liberty and become free, and that the heir, on account of his evil behaviour, shall be condemned to pay four times the amount of court costs incurred by the legatee, and that the right of patronage shall be preserved unimpaired for the benefit of the latter.

TITLE V.

CONCERNING THE ANNULMENT OF CONDITIONAL GRANTS OF FREEDOM.

1. *The Same Emperor to Julianus, Prsetorian Prefect.*

Those known as *dediticii* shall not hereafter, under any circumstances, be permitted to interfere with the administration of Our government, for the reason that We find this term has

fallen into disuse, and that the freedom obtained by the aforesaid class exists only in name; for We, who endeavor to cultivate the truth, only desire those things to appear in Our laws which can actually become operative.

Given during the Consulate of Lampadius and Orestes.

TITLE VI.

CONCERNING THE ABOLITION OF LATIN FREEDOM, AND ITS TRANSFERENCE IN CERTAIN WAYS TO THE ENTIRE BODY OF ROMAN CITIZENS.

1. *The Emperor Justinian to John, Prtetorian Prefect.* As the class of dedititian freedmen, having already been abolished, the freedom of the Latins, for this reason, becomes in some respects unstable, and though to a certain extent identified with the former, whatever remained that was available We have confirmed as law. For as Latin freedom, like that originally introduced into the ancient Latin colonies, resulted only in civil war, it would be absurd for its appearance to remain when the thing itself was abolished.

Therefore, as the condition of freedom was obtained by the Latins in almost innumerable ways, and different laws and decrees of the Senate were enacted with reference to the same, and in the application of these the greatest difficulties arose from the *Lex Junia,* the Largian Decree of the Senate, and the Edict of the Divine Trajan, of which Our laws are full, for they were introduced before any experience had been acquired in matters of this kind. Hence it appears to Us perfectly proper to remove all these difficulties, abolish Latin freedom, and having selected other methods different from those by which Latin freedom was formerly acquired, give authority, at the present time, to such persons to obtain the status of Roman citizens, so that all the rules enumerated in the present law, which have originated in Roman States, and all the other ways by which the name of Latins was acquired shall be absolutely abolished, and shall not create Latin citizens, but shall be considered void. For who will tolerate a condition by which, at the time of his death, freedom and slavery can exist at once in the same person, and that he who lived as free may die in servitude ?

(1) Therefore, We order that if anyone should desire to grant his slave freedom by means of a letter he can do so, provided he signs it himself, in the presence of five witnesses called together for that purpose; or when the letter, written in his own hand, discloses the permanency of his intention. If he, having either drawn up the instrument himself, or having had it done by a notary, should state therein that his slave was entitled to his freedom, as in the case of a codicil, he may, even during the lifetime of his patron, enjoy liberty and the rights of Roman citizenship.

(2) When anyone desires to liberate his slave in the presence of friends, he shall be permitted to do so in the same way that he could perform such an act after having called together five witnesses, provided he announces that he wishes his slave to be free, where this is done in writing, and attested by the signatures of the witnesses, and the person granting the manumission; and if it is made before a public official, it must also bear his signature as well as that of the witnesses.

Slaves who obtain their freedom in this manner become Roman citizens, just as if they had obtained it by virtue of a codicil.

(3) We know that, in ancient times, under an Edict of the Divine Claudius, if anyone ejected his slave publicly from his house when he was suffering from a dangerous illness, and did not aid him in any way, or commit him to the charge of others when he himself was unable to take care of him, or place him in a hospital, or provide for him in some other manner, the said slave would formerly enjoy Latin freedom, and if his master should die before he did, he would, with his property, belong to his successor.

A slave of this kind shall hereafter become absolutely free, even against the consent of his

master, and, having been given his property, he shall immediately become a Roman citizen, nor shall any of the rights of patronage be enjoyed by his former owner, for he who publicly drove him away from his house and family, without either assisting him, recommending him to the mercy of others, placing him in a hospital, or even paying him ordinary wages, shall be deprived of the ownership of the said slave, not only during the entire lifetime of the said freedman, but also at the time of his death, as well as afterwards.

(4) In like manner, if anyone should alienate his female slave on condition that she would not prostitute herself, and her new master, through the infamous desire of gain, should attempt to compel her to do so, or if her former master should, by the imposition of his hands, make a reservation for himself when alienating her, and she having been returned to him, cause her to prostitute herself, she will immediately obtain the privileges of a Roman citizen, and he who prostituted her will be excluded from all the rights of patronage, for is anyone so degenerate and wicked as to pursue such a calling worthy to have either a female slave or a freedwoman?

(5) Slaves who have received the cap of liberty by virtue of the last will of the testator, and the consent of the heir, immediately become Roman citizens, and have the right to march first in the funeral procession, and to stand by the bed on which the body of their master has been laid.

No one shall be permitted to make a display of vain liberality, so that the people may praise the deceased for his humanity, when they see a great number of such slaves in the funeral procession wearing the liberty cap, for they will all be deceived, as the slaves remain in their former servile condition, and the evidence given in public shall go for naught. When any such slaves become Roman citizens, the right to patronage is reserved unimpaired for the benefit of their patrons.

(6) It should undoubtedly be observed that, when anyone manumits a slave either by his will or under the wand of the Praetor, although he may say or write that he wishes the slave to enjoy Latin freedom, the superfluous addition of "Latin" shall be abolished, and he shall become a Roman citizen, lest the methods by which men were formerly invested with citizenship may seem to have been annulled by the wills of private persons.

(7) But if anyone should bequeath freedom to his slave conditionally, and while the condition was still pending, a foreign heir should grant him his freedom, he will become a Roman citizen, and not a Latin one as in former times. When the condition is not complied with, the slave shall remain the freedman of the heir who liberated him.

If, however, the condition should be fulfilled, anyone manumitted by will shall be considered a freedman of the deceased, in order that children and cognates may not be deprived of the rights of patronage, and that he who was entitled to those rights by law may enjoy them.

(8) The opinion held by the ancients seems to Us to be very harsh, that is to say, where a slave has been defeated by his master in a suit brought to declare him free, and his value was afterwards paid by someone to his master, but he still remained subject to Latin law; for how can it be reasonable for his master to receive the price of the slave, and at the time of the death of the latter, again reduce him to slavery, since these two things are not consistent? In the present instance, the slave will be entitled to Roman freedom, but the rights of patronage will continue to be enjoyed by his master, for the reason that the slave himself is, to a certain extent, his freedman.

(9) Where, however, anyone gives his female slave in marriage to' a freeman, and provides her with a dowry, which is only customary in the case of those who are free, the said female slave becomes a Roman citizen, and not a Latin one. But if this is done, which very frequently takes place among Roman citizens, and especially where they are noble, that is to say, where a dotal instrument is drawn up and delivered to a person of this kind, such an instrument will necessarily take effect, and the slave will become a Roman citizen.

(10) In like manner, if a master in a public instrument refers to a certain slave as his son, his statement must be believed so far as the free condition of the former is concerned; for if he was inspired with such an affection for his slave that he did not consider him unworthy to be mentioned as his son, and he did not do this secretly, or only among friends, but in a public document, just as he would have done so in court, how can the slave again be reduced to servitude at the time of his death? He must, however, become a Roman citizen, receive absolute freedom, and not depend upon a false statement of his master.

(11) Again, the most recent manner of changing Latin into Roman citizenship should be adopted, namely, the instrument by which the condition of the slave was established shall either be given to him or destroyed. But in order that no opportunity may be afforded to slaves to steal it, and obtain their freedom by their own wicked act, this manner of enfranchisement must be proved by certain and undoubted evidence, and the owner of the slave must either give the instrument to his slave in the presence of not less than five witnesses, or tear or destroy it in some other way. Hence, to enable the slave to acquire Roman citizenship, We decree that one who obtains his freedom in this way shall, in this instance, as well as in others, be subject to the rights of patronage, except where We have expressly denied these rights to patrons.

(12) With the exception of these cases alone, which have been selected from the entire body of ancient jurisprudence relating to Latin citizenship, all the other methods enumerated either in the books of jurists, or in the Imperial Constitutions, are absolutely abolished ; and slaves shall not become Latin citizens by their means, but, as has already been stated, shall remain in their former condition, and shall not be permitted to profit by this remedy.

And, in order that hereafter no enactment with reference to Latin freedom may conflict with Our Laws, the *Lex Junia* is hereby repealed, the Largian Decree of the Senate shall no longer be operative, and the Edict of the Divine Trajan, which follows, shall be of no force or effect, and if any other law, or Decree of the Senate, or even an Imperial Constitution should treat of Latin manumission, it shall be void, so far as this subject is concerned, and notice is hereby given that, instead of the three kinds of freedom which formerly existed, and which were the cause of much ambiguity, but one direct method shall prevail.

If any law or constitution should hereafter make mention of freedom, it shall be understood to be that conferred by Roman citizenship, and not Latin freedom.

(13) Where, however, Latin freedmen are dead, and their property, as such, has passed to those.entitled to the same, or if they are still living, no innovations shall be made by the provisions of this law, but the title to the property shall vest to the persons aforesaid, and shall remain firm and indisputable.

The present constitution shall only be applicable to freedmen in the future.

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

TITLE VII.

CONCERNING THE MANUMISSION OF A SLAVE OWNED IN COMMON.

1. *The Emperor Justinian to Julianus, Prxtorian Prefect.*

With reference to slaves owned in common and their freedom, and whether the share of the person who gave them liberty accrued to the other master, or not, and especially among soldiers, when they grant freedom in this way, much doubt arose among the ancient legal authorities ; and a constitution is cited in the Commentary of Martian on the Constitutions of the Divine Severus, by whose terms this Emperor imposed the necessity upon the heirs of a soldier to purchase the share of the other joint-owner, and give the slave his freedom.

Another constitution, however, promulgated by the Emperors Severus and Antoninus, has been found, by which one partner is generally required to sell his share to the other.

When freedom is granted to a slave, even though no benefit may accrue from the estate of the dead partner to the other, and the price is required to be fixed by the decision of the Praetor in accordance with what Ulpian, in the Sixth Book on Trusts, and Paulus in the Third Book on the same subject, say, where it is stated that Sextus ^lius, one of the ancient jurists, also held that the other partner could be compelled by the Praetor to sell his share, in order that the slave might become free, this Marcellus also notes in his work on the Digest of Julianus, and it is clear that he in his commentary on Julianus only adopted the opinion of the latter.

(1) Hence, these matters having been found in the works of the ancient legal authorities, We, desiring to dispose of all such disputes, do order that, generally speaking, no distinction shall be made between slaves owned in common by soldiers or private persons, but in the case of all slaves who are common property, where anyone desires to give them lawful freedom, either while alive or by his last will, he can do so, and the other joint-owner shall be required to sell his share of the slave, whether this be half, a third, or any other portion whatsoever.

When there are several joint-owners, and one of them desires to liberate the slave, all the others shall be compelled to sell the shares which they have in said slave to the one who wishes to manumit him, or to his heir, even though the common slave himself may have been appointed the heir of his master, and he only made the appointment immediately before his death, in order that he who purchased the shares of the other joint-owners, or his heirs, might liberate the slave.

(2) If, however, the joint-owner or joint-owners refuse to accept the price, We give him permission to tender it through a public official, and having sealed it, to deposit it in a temple, and thus be authorized to give the slave his freedom, which he shall enjoy to the fullest extent, as well as the privilege of Roman citizenship; and he shall have nothing to fear from the other joint-owners, for they will have no one to blame but themselves, if, when they were able to benefit by the price of the slave, they refused to accept it.

(3) But in order that no doubt may arise with reference to the *peculium* of the slave, We decree that his *peculium* shall be divided among all the joint-owners in proportion to the ownership of each one in the slave; permission being granted to him who, at the time of his death, liberated the slave, to transfer to his freedman his share of the *peculium* of the former. Moreover, there is no doubt that the rights of patronage will pass to him who gave the slave his freedom.

(4) Where, however, the slave is obliged to render accounts in order that no loss may occur, or any impediment be placed in the way of emancipation, the Governor of the province, or some competent magistrate, must fix the time within which his accounts shall be rendered, and any debts which may appear by them to be due shall be discharged, and he shall then obtain his liberty.

(5) Again, in order that there may be no doubt as to the amount of the price to be paid for the slave, but that this may be perfectly clear, We order that the valuation of a slave, whether male or female, provided he or she is not skilled in any trade, shall be twenty *solidi,* and that those slaves who have reached their tenth year shall be valued at only ten *solidi.* When, however, they are skilled in any trade, with the exception of writers and physicians, their price shall be established up to thirty *solidi,* whether they are men or women. A writer or a physician, either male or female, shall be valued as follows: a writer up to fifty *solidi,* and a physician up to sixty. When eunuchs, who are common slaves and are over ten years of age, are not familiar with any trade, they shall be valued at fifty *solidi,* but if they are skilled artisans they shall be valued up to seventy. We do not wish eunuchs under ten years of age to be valued at more than thirty *solidi.*

Joint-owners shall accept the amounts due to them according to the above-mentioned standard, and shall be compelled by competent judges to grant the slave his freedom.

(6) If one or more of the joint-owners of a slave desire to liberate him, or release him at his own solicitation, the latter paying the price, or one or more of them say that they desire to free him and pay his value, he shall be preferred who first manifested this generous intention. But when all of them come forward with the object of manumitting the slave, then a competent judge shall compel them all to grant him his freedom without compensation, and his *peculium,* shall be distributed among all the joint-owners in proportion to their shares in the slave. All those who granted freedom to the slave shall be equally entitled to the rights of patronage.

(7) The right of accrual, introduced by the ancient laws with reference to the manumission of slaves owned in common, is hereby annulled, and We shall not hereafter, under any circumstances, permit it to be considered.

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

2. *The Same to Julianus, Prastorian Prefect.*

It was held by all the ancient jurisconsults that a slave owned in common belonged partly to one master and partly to another, so that he could be bequeathed to himself, or to others, hence the following question arose. Two or more persons owned a slave in common, and one of them bequeathed his own share to the slave, and this having caused perplexity, a serious controversy arose among the ancients. Therefore We, having examined this bequest with great care, think that it is capable of two interpretations, for the testator either thought that the slave would become free, so far as his share, which he bequeathed to him in this way, was concerned, or if this was not the case, he was actuated by affection for his other joint-owner, in order that the slave might be acquired by him, intending that his heirs should not gain possession of the slave, so that it would be clear that he should not, by any means, be included in the property of his estate.

We, however, who are partisans of freedom, after investigation have come to the conclusion that, with reference to the doubtful intention of the testator, since he desired to liberate the slave, so far as his own share was concerned, and as slaves owned in common are manumitted, We have already decided what was necessary to be done under such circumstances, and the present case shall be determined by the provisions of the aforesaid law. The slave shall therefore become free, so far as the share of the testator is concerned, in compliance with the will of the latter; and with reference to the other share, in accordance with Our ruling, the price must be paid by the heir to the other joint-owner, or owners, in obedience to the above-mentioned constitution, and if they refuse to accept it, he shall tender it, seal it up, and deposit it at their risk, as it is an attribute of Imperial Majesty to adopt the more humane course instead of the harsher one.

TITLE VIII.

CONCERNING THE MANUMISSION OF A SLAVE WHO HAS BEEN GIVEN IN PLEDGE.

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

Although a husband, who is solvent, can manumit a dotal slave, still there is no doubt that if it should appear that you have been given in pledge to his wife, you cannot obtain your freedom without her consent.

2. *The Same Emperors to Abascantus.*

Where freedom is granted to a slave by a debtor of the Treasury, and the slave has not been pledged by the terms of a special agreement but only under the general privilege of the

Treasury, the manumission cannot be annulled, unless it is established that it was made with fraudulent intent.

3. *The Same Emperors to Antony.*

It is certain that he who has pledged the property which he now has, or may hereafter acquire, can grant freedom to his slaves. This rule of law does not apply to slaves who have been expressly encumbered by way of pledge, or delivered for that purpose.

4. *The Emperor Alexander to Sabiniamis.*

If (as you allege) you, together with other slaves, after having been pledged, were manumitted by the debtor, with the consent of his creditor, you are entitled to your freedom.

Published on the sixth of the *Ides* of May, during the Consulate of Alexander, 223.

5. *The Same Emperor to Extritatianus.*

If the creditors have been paid, the female slaves who were pledged and manumitted by the debtor will be free. If the person who manumitted them, or his heirs, should, for the purpose of revoking their freedom, venture to say that he had granted the manumission for the purpose of defrauding his creditors, neither he nor his heirs shall be heard.

6. *The Same Emperor to Auctionus.*

If your guardian manumitted slaves purchased with your money, and said slaves, together with other property belonging to or purchased with the property of the wards, have been pledged in accordance with the constitution of the Emperors, My Parents, the said slaves shall not, on account of the indulgence shown to wards, become free.

7. *The Emperor Gordian to Juliana.*

If, at the time of your marriage, whether you gave slaves by way of dowry, or whether, after the dowry was given, your husband purchased them with money forming part of your dowry, the ownership of said slaves will justly belong to you, and therefore you are vainly attempting to raise a question with reference to their status after manumission, as they can legally be manumitted by him who purchased them, or received them as dowry.

TITLE IX.

CONCERNING THE MANUMISSION OF SLAVES BELONGING TO THE STATE.

1. *The Emperor Gordian to Epigonus.*

If, as is provided by the municipal law and the Imperial Constitutions, you have been regularly manumitted, when you were a public slave (with the consent of the Governor of the province), you should not again be reduced to slavery on the ground that you were not entitled to manumission because the slave whom you gave instead of yourself took to flight.

2. *The Same Emperor to Hadriana.*

If the Governor of the province approved the decree by which he with whom you afterwards (as you allege) were united in marriage received his freedom, there is no doubt that the child born of a marriage of this kind is a Roman citizen and under the control of his father.

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

The freedman of a municipality does not become a slave where the title by which the ownership of slaves is usually established cannot be produced. If, therefore, you have been manumitted according to the law of Vectibulicius (whose authority it was held extended to the provinces under the Decree of the Senate issued during the Consulate of Jubentius Celsus, Consul for the second time, and Neratius Marcellus), you will be entitled to the rights of Roman citizenship, nor did you afterwards, while a freedman, by discharging the duties of a

notary, lose the liberty which you obtained, and your act does not offer any impediment to the acceptance of your son as decurion, as he was born of parents who were free.

TITLE X.

CONCERNING SLAVES MANUMITTED BY OTHERS THAN THEIR MASTERS.

1. *The Emperor Antoninus to Cornelius.*

It has frequently been stated in rescripts that anyone who manumits slaves belonging to another, as if they were his own, will be required to pay to the owners of the same their value, or the amount of damages which the latter may have sustained.

Published during the *Kalends* of March, during the Consulate of Antoninus and Balbinus, 214.

2. *The Emperor Alexander to Mercurialis.*

If Felicissima, who you say purchased a slave by your order, manumitted him without transferring his ownership to you, you, in vain, demand that he whom you allege was manumitted should be refused his freedom, and that possession of him should be delivered to you.

3. *The Same Emperor to Pompeius.*

He who sold you the estate will continue to be the owner of the property until he delivers it to you, and, therefore, by manumitting a slave belonging to the estate, he grants him his freedom.

Published on the sixth of the *Kalends* of August, during the Consulate of Agricola and Clement, 231.

4. *The Emperors Valerian and Gallienus to ZoUus.*

If you did not give the ownership, but merely the services of the female slave referred to, when granting her her freedom, the person to whom she was given shall only have the use of her dependent upon your will, and your right of ownership will not, in the slightest degree, be prejudiced, for no one can bestow freedom upon a slave belonging to another by manumitting him as if he was his own.

5. *The Emperors Diocletian and Maximian, and the Csesars, to Marcellina.*

Where slaves have been given by way of donation, the donor has no right to manumit them.

6. *The Same Emperors and Csesars to Milius and Others.*

If your father manumitted your slave, even with your consent, and you were under the age of twenty years, he could not grant him his freedom.

7. *The Emperor Constantine to Bassus.*

Where freedom is granted to the slave of another than his master, and the consent of judges who have a right to give it is obtained, there need be no apprehension of the imposition of a penalty. If, however, it is established that the act was legally performed by Our order, and it is proved that the owner did not petition for authority to manumit the slave of another, then he who is shown to have obtained his freedom by Our generosity to a person who was not his master shall be immediately restored to him to whom his ownership belongs, and he who manumitted the slave of another by deceiving the Emperor shall be compelled to give two slaves of the s'ame sex, age, and occupation to the master of the one whom he manumitted, and he shall also be compelled to give three of the same kind to the Treasury.

This penalty should not always be imposed, but should preferably not be inflicted if the manumitted slave is able to plead lawful prescription when a question is raised as to his status, as the owner can only blame himself for his loss, if he, by his silence, confirmed the act to his own disadvantage.

Published during the *Ides* of July, during the Consulate of Constantine, Consul for the fifth time, and Licinius, 319.

TITLE XI.

WHO CANNOT MANUMIT SLAVES, AND CONCERNING THE PREVENTION OF MANUMISSION FOR THE PURPOSE OF DEFRAUDING CREDITORS.

1. *The Emperor Alexander to Antiochus.*

It is a certain rule of law established by the *Lex &lia Sentia,* that grants of freedom for the purpose of defrauding creditors, when made directly, can only be revoked where an intention to commit fraud exists; that is to say, when this is the design of the person who granted the manumission, and a loss ensues as a result of the intent.

It was formerly decided that the beneficiaries of a trust should be classed as creditors.

Published on the third of the *Ides* of November, during the Consulate of Maximian, Consul for the fifth time, and Elianus, 224.

2. *The Same Emperor to Natalianus.*

It is set forth in the Imperial Mandates that my slaves cannot, by means of the interposition of other persons, confer freedom on slaves who constitute part of their *peculium.*

3. *The Same Emperor to Justina.*

The Senate, at the suggestion of the Divine Marcus, provided that no one could manumit his own slave, or the slave of another who was a performer in an exhibition which was being given, and that, if this took place, the manumission should be considered void.

4. *The Same Emperor to Felicissimus.*

If, while under twenty years of age, you delivered slaves for the purpose of rendering them free, it has been decided by a Decree of the Senate that your act is void.

Extract from Novel 119, Chapter II. Latin Text.

At the present time, however, those who have testamentary capacity can bequeath freedom to slaves, the ancient law having been repealed.

5. *The Same Emperor to Priscus.*

When it can be proved that freedom was fraudulently granted by persons indebted to the Treasury, the act will not be valid. If, however, he who you state is your father paid the purchaser the money, and the slave, having been redeemed by him, obtained his freedom, it cannot be said that the property of a debtor to the Treasury has been, in any respect, diminished.

6. *The Emperor Diocletian and Maximian, and the Gsesars, to Olympia.*

It is a positive rule of law that a guardian cannot grant freedom to slaves under a trust with which his female ward has been charged. Hence, if you were charged with their manumission, and did not liberate them when you arrived at the age fixed by the testator, but your guardian did so, they will still remain in servitude.

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

If your master, who was indebted on account of his administration of a curatorship, having been proved to be insolvent, should bequeath you your freedom under a trust, this will be of no advantage to you, as in all fiduciary grants of freedom the condition of the estate must only be considered.

TITLE XII.

WHO CANNOT OBTAIN THEIR FREEDOM.

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

As my Father, the Divine Claudius, decided that persons condemned to perpetual imprisonment could not be liberated by the Governors of provinces, or by other officials who have authority to punish crime; and that those sentenced for a term of years, who have been appointed heirs, or have received legacies or bequests under a trust cannot, during their imprisonment, obtain their freedom; nor can any one of those to whom such bequests have been made acquire them; but if they have served out the time for which they were condemned, and have been released from all restraint, and, as it were, restored to their former simple condition of slavery, they will be entitled to their freedom, if it was left to them by the will of a deceased person during the period of their sentence, without any question being raised as to the punishment which they have undergone.

2. *The Emperors Valerian and Galliemis to Theodore.*

He who has been forbidden by will to be manumitted cannot obtain his freedom. But in the case proposed, it makes a difference whether or not those whom the testator forbade to be sold or manumitted, stating that they had been brought up with his children, did so because he considered their services necessary to his household, and for the benefit of his children, or whether he imposed this restriction as a penalty for bad behavior: for, in the first instance, the slaves can obtain their liberty after the death of those whose interests were consulted, but in the second, what has been decided with reference to the punishment of slaves will remain in full force.

It was decided by My Divine Parents that the provisions of wills imposing perpetual servitude upon undeserving slaves should be observed, in order that they might not obtain their freedom through a fraudulent purchaser.

TITLE XIII.

FOR WHAT REASONS SLAVES CAN RECEIVE THEIR FREEDOM AS A REWARD.

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

Since scrupulous care as well as the authority of the law should be exercised for the purpose of increasing and encouraging the practice of fidelity by slaves, if you can establish by undoubted proof that you have strenuously exerted yourself to avenge the death of your master, the freedom which was long since ordered by Decrees of the Senate and Laws of the Emperors to be granted to slaves who avenge the death of their masters cannot be conferred upon you, even after having rendered so great a service, merely through the performance of your act, but you must obtain it by appearing before the tribunal of the Governor, and in consequence of his decree.

Published on the seventh of the *Ides* of December, during the Consulate of Maximus.

2. *The Emperor Constantine to Januarius.*

Slaves who publicly denounce those who engage in the nefarious occupation of counterfeiting money shall be given Roman citizenship, and their master shall be paid their value by the Treasury.

Given at Rome, on the fifteenth of the *Kalends* of December, during the Consulate of Crispus.

3. *The Same Emperor to the People.*

If a slave should publicly denounce someone guilty of ravishing a virgin, who has escaped arrest through the connivance of the injured person, or because a compromise has been effected, he shall be given his freedom.

Given on the day before the *Kalends* of April.

4. *The Emperors Gratian, Valentinian, and Theodosius to Syag-rius.*

When a slave betrays a deserter from the army, he shall be presented with his freedom.

Given on the *Ides* of July at Rome, ...

TITLE XIV.

CONCERNING THE MANUMISSION OF FREEBORN PERSONS.

1. *The Emperor Alexander to Philetus.*

If, although you have been manumitted by will, you state that you are freeborn, you should bring your case before the proper court, and if you have a lawful opponent, that is to say, one who alleges that he is your patron, you must remember that the Senate decreed that those who, after their manumission, claimed to be freeborn, must leave in the house of the person who manumitted them any property which they may have acquired while there. It has been decided by authorities learned in the law that whatever was bequeathed or given to a freedman is included under this head.

2. *The Emperor Gordian to Pompeia.*

Neither provision for support, nor the services exacted of servitude, will render a freeborn woman a slave, nor will manumission render her a freedwoman.

Published on the fifth of the *Ides* of May, during the Consulate of Sabinus, Consul for the second time, and Venustus, 241.

3. *The Emperor Philip to Felicissimus.*

If it is proved that your grandmother, although manumitted as a slave, was afterwards solemnly declared to be freeborn, and her condition was established by the authority of a judicial decision, and you brought this matter to the attention of persons learned in the law, you must have readily ascertained that her children, even though they were born before the decision was rendered, have good reason to demand their liberty, as being freeborn.

4. *The Emperors Diocletian and Maximian, and the Csssars, to Agrippa.*

As you state that one of your freeborn relatives, who was made prisoner under the rule of the faction of Palmyra, and sold as a captive, the Governor of the province will see that he recovers his status as a freeborn citizen.

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

It is extremely unjust for the condition of freeborn persons to be disputed through the mistake or malice of others, especially as you allege that one Governor after another has been applied to by you to summon the adverse party, in order that he might oppose your claim, if he thought that he had a valid defence. As the result of this, it appears that the Governor of the province, being influenced by your statements, rendered a decision that you should not hereafter be subjected to annoyance. Therefore, if the other party should still remain obstinate, the Governor, having been applied to, shall take measures to have you protected from wrong.

Given on the day before the *Nones* of ....

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

It is a perfectly clear rule of law that a person who is free cannot become the slave of one who is aware of his condition. Therefore, as you allege that the father of the ward of whom you have made mention in your petition kept you in his service as a freeman for a long time, he could not have changed your condition without having a legal title by which the ownership of property is ordinarily acquired.

Ordered on the seventh of the *Kalends* of May, during the Consulate of the above-mentioned Emperors.

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

If it is established that you and your children are freeborn, the fact of your birth will be a sufficient defence, for he who raises the question of slavery by renouncing any claims which he may have, can, in no way, weaken the evidence of freebirth, or gain any advantage by doing so.

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

Freeborn persons come into the world as such. Freedmen can only be created by manumission. Moreover, an agreement cannot confer the privilege of free birth upon either slaves or freedmen, nor can the rights of those who have not given their consent to a transaction of this kind be prejudiced in any way.

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

It is a clear and manifest rule of law that a woman born of a mother who has been manumitted is born free, and therefore, as you allege that since your mother was a freedwoman, and was afterwards captured by the enemy, and returned home under the rule of *postliminium,* and that now the question is raised whether or not you are a slave, you must appear before the Governor of the province, who has jurisdiction of cases in which freedom is involved, and he will render a decision according to law, knowing that neither the status of your mother under such circumstances nor the captivity which she endured will change her former condition in any respect.

10. *The Same Emperors and Csssars to Athenodora.*

Names are given by public consent for the purpose of recognizing individuals, and no damage results if they are changed for the purpose of concealing the origin of persons who are freeborn; and the possession of anyone as a slave (even though he may perform the services of one) does not render him such if he was born free.

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

If no title establishes the right to possess you as a slave, but, on the other hand, you can prove that you were born free, and performed services for wages, which were agreed upon, your condition is in no respect injuriously affected, nor will you be forbidden to institute legal proceedings to compel the fulfillment of the contract.

Ordered on the *Nones* of March, during the Consulate of the Csesars.

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

The commission of the crime of kidnapping has no effect in changing the status of a freeborn woman; but it is established that one who has been abducted can, even afterwards, remain in the condition in which she was born.

Ordered on the third of ....

13. *The Same Emperors and Csesars to Melander.* Anyone who contends that he is freeborn, but is unable to prove it, does not necessarily lose his status as a freedman. Ordered on the seventh of the *Ides* of December.

14. *The Same fflmperors and Csesars to Aristotle.* The condition of a freeborn woman can, in no way, be prejudiced, merely from the fact that she has been given in betrothal as a female

slave.

Ordered on the seventh of the *Kalends* of January, ...

TITLE XV.

GENERAL PROVISIONS WITH REFERENCE TO MANUMISSIONS.

1. *The Emperor Justinian to Julianus, Praetorian Prefect.*

We order that if the owner of a slave, whose usufruct belongs to another, should grant him his freedom, he shall not, according to the ancient rule, be deprived of it, but shall be considered as having no master, so that no one can be found to whom any property which may be acquired by him will belong.

If, however, both the owner and the usufructuary should agree to liberate him, he will become free without any restriction; and if he should afterwards acquire any property, it shall be his. But when the owner alone sets him free, without the consent of the usufructuary, he who, in this way, obtains his liberty from his owner, shall be included among the freedmen of the latter; and if he should afterwards obtain any property, he shall acquire it in his own name and be permitted to leave it to his descendants, the right of patronage being always reserved, unless his emancipator was deprived of it by the laws.

The freedman himself, however, shall remain with the usufructuary as a slave, as long as the former lives, unless he is deprived of the usufruct in a lawful manner. Where the usufruct is terminated in any way, then the slave shall be permitted to reside wherever he pleases. If, however, the freedman should die during the lifetime of the usufructuary, his estate shall descend according to law. Where the usufructuary alone grants freedom to the slave, the usufruct reverts to the owner, and he will enjoy complete authority over the slave, and the latter will acquire all property for him, in accordance with what has been generally provided with reference to slaves and masters. If the usufructuary should release the slave from the usufruct, for the purpose of doing him a favor, and then present him with his freedom, the slave will remain under the control of the owner, but the necessity is not imposed upon slaves during the life of the usufructuary, or for the time that the usufruct may exist, to obey the owner, and perform the services required of a slave, but Our judge shall see that he remains unmolested.

After the death of the usufructuary, or where the usufruct has been extinguished in any way, he shall serve the master as a slave, and all property which may, in the meantime, come into his hands, he will acquire for his master.

This separation shall exist between masters and slaves as provided by the terms of Our Constitution, and not in accordance with the ancient law by which the said slaves remained without a master.

(1) We make the following addition to this law, namely, that the ancient distinction of persons having been abolished, parents of either sex shall be permitted, in the case of sons and daughters who are under their control or emancipated and their descendants of every degree, to impose their commands upon them by will, so far as granting freedom to slaves is concerned; whether the testator desired that this should be done in a church, or in any other lawful manner which he might select. For, since in successions, as well as in almost all other things, no distinction is made between children, this rule must be observed (and above all in the present instance) in favor of freedom which is especially and peculiarly Our care to cherish and protect by the Roman laws.

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

2. *The Same Emperor to Julianus, Prsetorian Prefect.*

Where anyone bestows freedom upon a slave, either in a church or any other sacred edifice, or in any tribunal, or before any judge who has authority under the law to grant freedom, whether this be done by will, or by any final disposition of property, either directly or under the terms

of a trust, the age of those who obtain their freedom shall, under no circumstances, offer any impediment. For We do not wish that those only who have passed the age of thirty shall acquire Roman citizenship, as was formerly done, but, as in the case of ecclesiastical enfranchisement, no distinction of age exists, so whenever freedom is granted by masters to slaves either under last wills, before magistrates, or in any other legal manner, We order that they shall all become Roman citizens; for We think that the number of those should rather be increased than diminished.

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

Where a man who has no wife keeps his female slave as a concubine, and persists in this practice until his death, whether he had children by her or not, We order that the said female slave shall, under no circumstances, belong to his heirs, and that her children, if she has any, shall not be reduced to slavery; but that, after the death of her master, she, together with her offspring, if she has had any by the deceased, shall obtain their freedom in the manner to be explained hereafter.

We grant permission to the master, during his lifetime, to make use of his female slaves, as well as of their offspring, in any way that he may desire, and to dispose of them by his last will in accordance with his wishes; that is to say, bequeath them as slaves to others, or leave them by name to his heirs to remain in servitude.

But if he should pass them over in silence, then, after his death, they shall obtain their freedom, which will date from the death of their master. Neither the ancient laws nor Our own, however, permit men who have wives to keep either freedwomen, or slaves as concubines.

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

TITLE XVI.

CONCERNING CASES INVOLVING FREEDOM.

1. *The Emperor Antoninus to Saturninus.*

You confess that you have committed an unlawful and dishonorable act, as you state that your own children, who were born free, have been sold by you; but, for the reason that what you have done cannot injure your children, go before a competent judge (if you desire to do so) in order that the case may be decided in conformity with the law.

Published on the fifth of the *Ides of* February, ...

2. *The Same Emperor to Veronianus.*

If those who you allege are your slaves are declared by others to be free, their status must be determined in the ordinary way, for even where a decision has been rendered with reference to their ownership, this cannot be advanced in opposition to a matter involving freedom.

Given at Rome on the *Nones* of February, during the Consulate of Messala and Sabinus, 215.

3. *The Emperor Alexander to Quirinus.*

If a freeman cohabits with the female slave of another, he does not become the slave of her master, even if he has been notified to abandon her.

Published on the *Nones* of February, during the Consulate of Fuscus and Dexter, 226.

4. *The Same Emperor to Jocundus.*

If he whom you claim as a slave has, after proper investigation, been decided to be free (although this may have been done in your absence), another opportunity to claim him as a slave shall not be afforded you. If, however, after you ascertained the fact, you appealed from

the decision of the judge, it shall be determined by the appellate court whether judgment was rendered in accordance with law.

5. *The Same Emperor to Sabinus.*

The woman whom you declared to be your slave is none the less entitled to demand her freedom, because you purchased her from the Treasury. Nor can recourse to prescription be had at the present time, because, when the sale took place, the woman was more than twenty years old, as age cannot be pleaded by way of prescription against Roman citizenship, unless the slave is shown to have consented to become such in consideration of sharing the price.

The burden of proof is placed upon one who, being a slave, asserts that he is free, and if he cannot establish his assertion, you will obtain the undisputed right of possession.

6. *The Emperors Valerian and Gallienus, and the Csesar Valerian, to Versimenus.*

Even if you voluntarily stated in writing that you were a slave, and not free, you would not, by doing so, prejudice your rights in any respect, and this is all the more true as you allege that you are compelled to do this.

7. *The Emperor Aurelian to Secundus.*

If you have been manumitted by the person whose slave you were, there is no reason for you to maintain the controversy with reference to your freedom, and above all, with the heir who manumitted you; for even if your freedom was not legally obtained, the heir, on account of his acceptance of the estate, has confirmed the will of the deceased by his consent.

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

As you allege that it was agreed between your former owner and yourself that he should, upon the payment of a certain sum of money, manumit you as well as your daughter, and he only liberated you, you should appear before the Governor of the province and he will urge your former master to abide by his agreement, all respect which freedmen are accustomed to display toward their patrons being shown him.

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

9. *The Same Emperors and Ciesars to Proculus.*

As the terms of your petition set forth, he against whom you filed it is the son of your female slave, still as you refer to him by a name which can only be borne by persons who are free, and state that he is not a slave, but only bears the stigma of servitude, you are notified that your petition is directed against one who is not a slave.

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

It is a positive rule of law that freemen cannot become slaves, and their condition be changed either by a private agreement, or by any act of administration whatsoever.

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

Slaves will not change their status if they unlawfully and dishonorably obtain public office. Wherefore, if a question arises with reference to yours, you are advised that it is of no advantage to you that your father enjoyed civil distinction. Hence, after all the legal formalities have been complied with, your condition must be determined by the Governor of the province.

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

If you were born of a female slave, and someone purchased you, you will remain in the condition in which you formerly were; but if, being the child of a female slave, your natural father, who was also your master, sold you, and afterwards you paid the price to the purchaser,

you will not, for that reason, obtain your freedom.

Published on the eighteenth of the *Kalends* of May, ...

13. *The Same Emperors and Caesars to Paulus.*

A judicial tribunal cannot concern itself principally with the status of a deceased person. If, then, property is claimed, as part of the *peculium* belonging to the estate of him whom you mention as having bequeathed it, or if any question arises as to the status of his children, all these points must be formally decided by the Governor of the province.

Given on the fifth of the *Kalends* of May, ...

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

When proceedings have been instituted with reference to one whose liberty is in dispute, and he is in possession of it, he will, in the meantime, be considered free.

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

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

The loss of a document establishing anyone's birth does not exclude other evidence to prove the same, nor can a forged document of this kind affect the truth. Therefore, in order to ascertain the truth every proof allowed by law should be admitted, and the Governor of the province having been applied to, and all requisite formalities having been observed, he will decide the case between you in accordance with the legal requirements.

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

If you, being a free woman, have served as such, and, without your knowledge, an instrument was drawn up under whose terms you were given by way of dowry as a female slave, these things can, in no way, prejudice your freedom; and, above all, as you state that you were a minor at the time, and it has been decided that minors less than twenty years old can, under no circumstances, change their status and become slaves instead of freemen, in order that no one may unintentionally lose his liberty before reaching the age at which others cannot confer it without authority.

Published on the sixth of the *Ides* of May, during the Consulate of Hadrian.

17. *The Same Emperors and Caesars to Resinus.*

In numerous instances, the status of brothers who are freeborn varies, on account of the commission of crime, or other events which have taken place. Therefore, there is nothing to prevent the question of status being raised with reference to those whom you assert are your brothers, and whether they shall be claimed as slaves, or maintained in servitude. Hence, other evidence is necessary to establish their freedom, for it is clear that the fact that your liberty has not been questioned is not sufficient proof.

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

The lease made to you by the person against whose heirs you have brought suit is not sufficient evidence of your free origin, nor does this alone show conclusively that you are a slave.

Given on the *Ides* of July, at Philippi, under the Consulate of the above-mentioned Emperors.

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

In Our opinion, he against whom you have filed your petition, rather than you yourself, has the principal interest in the case, for as you state that you have given him his freedom, it is more to his interest to formally defend his status, and consequently your case also is included in his;

for if he is declared to be a slave by the party against whom you have filed your petition, he can claim his freedom on the ground of your manumission, and, by proving his original servitude, and showing that he obtained his freedom through your having manumitted him, your right of patronage will be preserved.

When, however, he prefers to remain a slave, then, after having appeared before the Governor of the province, you will be permitted by law to defend him even against his own consent.

20. *The Same Emperors and Caesars to Mternalis.*

Just as when freedom has once been conferred it cannot be revoked, so, where masters take any steps whatever against their own slaves, without the intention of manumitting them, they will sustain no loss.

Ordered on the sixth of the *Kalends* of September, during the Consulate of the above-mentioned Emperors.

21. *The Same Emperors and C&sars to Thrasylla.*

It is provided by the Perpetual Edict that a woman who is found in the possession of freedom fraudulently obtained occupies the same position as one who is still in servitude. If, however, any controversy should arise, whether she who is in slavery petitions for freedom, or whether it is clearly proved that, while free, an attempt has been made to enslave her, no fraud committed by a female slave should deprive her master of his rights.

Ordered on the *Nones* of October, during the Consulate of the above-mentioned Emperors.

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

It is a man's parents, and not his own statements, that establish the fact of his birth. Wherefore, if, having been born of a female slave, and afterwards manumitted, you obtained your freedom, you can, by no means, lose it, either through fraudulently or erroneously contending that you are the child of another female slave, for slaves are known to be born in that condition, and are not rendered such merely by their own assertions.

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

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

If freedom was directly bequeathed to you by your master in his will, and his daughters succeeded him as his appointed heirs, it does not follow that, either according to his will, or in opposition to it, if you serve one of his daughters, the others can revoke your freedom.

24. *The Same Emperors and Csesars to Sebastian.*

A woman is not excluded from demanding her freedom, if she has been interrogated and has publicly acknowledged that she is a slave.

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

When the instruments evidencing manumission, which was legally effected, have not been drawn up, this, in no way, prejudices the grant of freedom, so that, if you have liberated a slave, the failure to execute such instruments cannot possibly injure him.

Ordered on the fifth of the *Ides* of February, during the Consulate of the Caesars.

26. *The Same Emperors and Csesars to Modestus.*

A patron cannot revoke freedom when it has once been bestowed upon a manumitted slave; and he can be compelled to produce the instrument evidencing the manumission.

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

If Arianus was declared to be free, after the question as to his status had been raised by Leonis, he cannot again be claimed as a slave by the former, after he has lost his case. A co-heir having been given to you by Arianus, who was in collusion with the person who raised the controversy with reference to the status of the deceased, or his heirs, cannot injure you in any respect, nor can admissions made by them affect the truth, or change the condition of the estate of the deceased.

28. *The Same Emperors and Csesars to Eurymedontus.*

The fact that a paternal grandfather was invested with the dignity of a magistrate can be of no advantage to his grandson, in proving that he is free, as in a case involving freedom the status of the mother and not that of the father must be considered. The civil condition of the maternal grandmother is not of itself sufficient, for although she was proved to be free, still, a person's status may be lost in many ways.

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

29. *The Same Emperors and Csesars to Troila.*

There is no doubt that a daughter born of a female slave, and who was purchased by the man with whom she afterwards lived in concubinage, will remain in servitude if she is not manumitted.

30. *The Same Emperors and Caesars to Eutychia.* Freedom, when once bestowed, cannot be revoked under the sole pretext that proper respect has not been shown to the patron.

31. *The Same Emperors and Csesars to Cassiana.*

If an inquiry has been wrongfully instituted for the purpose of proving you to be a slave, and you have brought suit for malicious prosecution, or for injury committed (whichever one you may select), and it has been decided that you were a slave, you can afterwards ask that judgment be rendered against the adverse party, and that restitution be made of the property of which you can prove that you are deprived, after a decision has been given declaring you to be free.

32. *The Same Emperors and Csesars to Athenais.*

The signature of the son of the master who manumitted you does not add anything to, or if it is omitted, does not detract in any way from a grant of freedom.

33. *The Same Emperors and Csesars to Melitiana.*

Although your master manumitted you after you had paid him a sum of money, still the freedom which you have received cannot be revoked.

Ordered on the third of the *Ides* of November, during the Consulate of the Csesars.

34. *The Same Emperors and Csesars to Eremonia.* A free woman does not become a slave on account of living in concubinage.

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

35. *The Same Emperors and Csssars to Attatus.*

The fact that a person is said to have administered the affairs of a minor in the capacity of his guardian does not release him from defending himself, when the question as to whether or not he is a slave is raised.

Given on the *Nones* of November, during the Consulate of the Caesars.

36. *The Same Emperors and Csesars to Theodore.*

When a mistress agrees with her female slave that, after having served her for a certain time,

she shall become free, she will, by no means, be required to observe her contract. On the other hand, it is also true that a free woman can not be compelled to comply with her agreement, if she is proved to have promised to give you her own children as slaves.

37. *The Same Emperors and Csesars to Olympius.*

If you sold your son, who is free, to your son-in-law, who, being so closely connected with you, could not pretend ignorance of his condition, you cannot accuse one another of crime.

38. *The Same Emperors and Caesars to Philesarphus.*

An action to determine your status can be brought against you, in the name of the State, notwithstanding the fact that no one denies that you have been created limenarch.

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

39. *The Same Emperors and Caesars to Potesenticus.*

It is settled that freemen who allege that they are slaves cannot change their condition.

Ordered on the seventh of the *Kalends* of January, during the Consulate of the Caesars.

40. *A Copy of the Imperial Letters of the Above-Mentioned Emperors and Ctesars to Verutus.*

According to the provisions of Our Edict, nothing will prevent a case involving freedom from being heard and a decision rendered in accordance with justice, notwithstanding the absence of one of the parties, whether the controversy arose with reference to manumission or free birth.

41. *The Emperors Constantine and Licinius to Eutychius, Governor of Cappadocia.*

We order that all the letters that the mistress of the slave ^lius wrote to him as Chief Decurion shall be null and void and revoked as of no effect, and that the investigation to determine the free birth of the said ^lius shall proceed, nor shall the rights of the woman be prejudiced for the reason that she addressed him as Chief Decurion, or that he himself pretended to be a decurion or the head of that body, when his servile condition has been ascertained not only by the testimony of witnesses, and that of his relatives, but also by the admissions made by himself in the presence of another magistrate.

42. *The Emperor Constantius to Maximus, Prsetorian Prefect.*

It has been decided that children born of a mother whose condition is contested shall follow her after judgment has been rendered in the case. Any, however, whose birth occurred before the suit was instituted, shall have their status determined separately, since those alone who were born during the proceedings are to be included in the decision given with reference to their mother, and shall either be delivered to their lawful owners, or enjoy their freedom with their parents.

Given on the day before the *Ides* of July, ...

TITLE XVII.

CONCERNING THE ABOLITION OF LEGAL, ASSERTIONS THAT A MAN IS FREE.

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

We order that actions involving the servile condition which have been begun shall be regarded with favor, as well as shortened; and direct that if anyone who, up to the time, has served as a slave, should declare himself to be free, or while enjoying freedom should be claimed as a slave, he shall, in neither instance, be required to provide a defender, but shall himself answer in his own proper person the claim of him who alleges that he is his master; and if, after having been in the possession of freedom, he should be reduced to slavery, he shall be

forbidden to employ an attorney, We absolutely forbid those who have passed from slavery to freedom to defend themselves in this way, all the laws which provide that cases requiring defenders shall be heard a second and a third time being, for the future, repealed; for it is just that the first decision should remain in full force, where no appeal is taken. If one is taken, the judge shall examine the case just as he would any other which has been appealed, without a second examination being required by the laws enacted with reference to cases in which defenders appear, and which We have rescinded.

(1) We also abolish the ancient rule requiring defence in actions involving the *peculium* or other personal effects of slaves, directing that not ,only the *peculium* of those who, while in servitude, have tak.en legal steps to become free, but also any other property which is claimed shall be placed in safe-keeping, by order of court.

(2) Moreover, all those whose freedom is in danger through their being claimed as slaves shall be compelled to furnish a surety, if they wish to do so; but when it is impossible for them to provide one, and this is clearly proved to the judge, they shall be bound by being sworn.

If, after proceedings of this kind have been instituted, they purposely absent themselves, and, having been summoned to appear, remain absent for more than a year; they shall, by all means, be reduced to slavery, and decided beyond question to be the property of him who brought suit against them.

(3) Again, We wish those who claim anyone as a slave to know that, if after the first demand has been presented in any court, or made by virtue of an Imperial Rescript, and he who is alleged to be a slave has been notified, and, having been released, the parties bring another claim against him in a different court, even if the reputed slave should have given occasion for this to be done, the plaintiffs, although they may be his legal masters, shall be deprived of their right.

Given on the third of the *Ides* of December, ...

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

We think that the difficulty which may arise under Our present law, authorizing *adsertores,* should be disposed of by a comprehensive remedy. As the action with reference to freedom was usually conducted by them, if, while this was taking place, the principal party in interest should die, the necessity was, nevertheless, imposed upon the *adsertor* to conduct the case to a conclusion, so that if the purchaser should be defeated, and a decision be rendered in favor of freedom, he can have recourse against the vendor, and the latter return to him what was contained in the bill of sale, or what the nature of the contract required, on account of having sold him a person who was free.

Moreover, as the empty name of *adsertor* is abolished by the present law, if any person whose status is the subject of litigation should die, how can the judgment be executed where only one party is left to appear in court? Therefore We decree that, in the present instance, the purchaser shall be permitted to proceed against the vendor to the extent of proving that the latter sold him a freeman as a slave, or if he cannot do this, that he should be subjected to the risk of eviction for having sold a person who was free.

TITLE XVIII.

WHAT SLAVES ARE NOT PERMITTED TO DECLARE THAT THEY ARE FREE, AND CONCERNING THE PROPERTY OF THOSE WHO ARE FORBIDDEN TO DO SO.

1. *The Emperor Gordian to Proculus.*

The case of him who, concealing his condition, permitted himself to be sold as a slave, differs from that of him who shared in the price paid for himself; for the former is not denied the right to demand his freedom, but if the latter was a Roman citizen, and shared in the price, he

cannot claim this right. The most eminent legal authorities have decided that the same rule is applicable to one who is entitled to his freedom under the terms of a trust.

Published on the *Kalends* of May, during the Consulate of Gordian and Aviola, 240.

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

Our predecessors, the Emperors, decreed that freedom should be denied to the descendants of the families of robbers who had been made slaves by Imperial donation, or by the authority of the Treasury.

3. *The Emperor Constantine to Maximus, Prsetorian Prefect.*

When anyone demands his freedom, he will be entitled to any of his property which he states is in the hands of his alleged master, since, if there is no question as to his status, the judge must at once order it to be restored, and delivered to him. When, however, there is any doubt as to the ownership of property which he claims, because the master refuses to surrender it, a bond shall be executed to preserve it, and the hearing of the case shall be postponed. If the freedom of the reputed slave should be established (as those must be protected who have entrusted him with their property) an account of his administration must be rendered, and everything which is due shall be paid, so that if he is proved to be free, he who formerly acted as his master may acquire what was given to the slave by the right of ownership, as well as whatever was derived from the possession and profits of the said property, and anything obtained surreptitiously from it by the alleged slave; as that could not be free which the master placed in the hands of his slave as *peculium.*

Property, however, obtained either by will or donation, or which was purchased or acquired with the profits of the same, shall belong to the said alleged slave as being freeborn. After judgment has been rendered declaring him to be free, all this property should be sequestered, after having been separated from that above mentioned; so that, both having been set aside and placed in full view, each of the parties may claim that to which he is entitled.

Given at Thessalonica, on the fifteenth of the *Kalends* of March, under the Consulate of Severus and Rufinus, 343.

TITLE XIX.

CONCERNING THE ORDER OF JUDICIAL INQUIRIES.

1. *The Emperor Alexander to Vitalius.*

As you, yourself, have acknowledged that a controversy has arisen concerning your status, with what reason do you demand that, before it has been established, you should be granted authority to accuse him who contends that you are his slave?

Therefore, as you allege that you are confident of success, appear before the Governor of the province, who, in accordance with the general rule, will not hesitate to render a proper decision with reference to the crime said to have been committed, dependent, of course, upon the result of the case involving your freedom, which must first be determined.

Published during the *Ides* of . . . , during the Consulate of Maximus, Consul for the eleventh time, and Julianus, 224.

2. *The Same Emperor to Gallits.*

Where a controversy has arisen both with reference to the title to an estate and the right of someone to freedom, the latter must first be heard. Where only the ownership of the estate is directly concerned, any question involving freedom must first be decided; but it will be sufficient for him who enjoys his liberty to have succeeded, where judgment was rendered in his favor in an action brought to recover the estate.

Published on the fifth of the *Ides* of August, during the Consulate of Maximus, Consul for the

second time, 224.

3. *The Same Emperor to Valerius.*

If an accusation of crime is brought against a woman whom you say is freeborn, the Governor must not take cognizance of this case before deciding the one in which her liberty is involved, as, if the crime should be proved, it will be necessary in the first place to ascertain whether she must be punished as a woman who was free and freeborn, or as a female slave.

4. *The Emperor Gordian to Menedemits.*

If a controversy has arisen with reference to your status, and a decision should be rendered in your favor at the termination of the case, you will not be prevented from proceeding against him who asserted that he was your master. If, however, he did not claim you as his own slave, but accused you of being the slave of another, no judgment should be rendered on the question of freedom, and the examination of the case before the judge will show whether the accusation should be heard in order to determine your condition, or whether it should be rejected.

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

5. *The Emperors Diocletian and Maximian, and the Csesars, to Al-phenus.*

As you allege that a controversy has arisen with reference to your status, and that you desire to bring suit to collect certain debts, the ordinary practice, under such circumstances, is for the case involving your freedom to be decided by the Governor of the province, after the usual formalities have been complied with (if the law permits this to be done) ; and if you should become free, or the decision should be that you are not a slave, then the magistrate will order your debts to be paid to you, provided they are lawfully due; as, if the decree should set forth that you are a slave, it is uncertain whether they are due to you as a freeman, or to your master, and their payment cannot be exacted from your debtor.

Ordered on the day before the *Kalends* of May, during the Consulate of the above-mentioned Emperors.

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

If you allege that your property has been stolen or carried away by those whom you claim as your slaves, and they should apply to a court to grant them freedom, and the case should be decided against them, actions for damages and for property clandestinely removed must then be brought before the Governor of the province, and if the persons in question are decided to be free, or not slaves, the actions for damages and to recover whatever has been removed can be tried; and, after proper evidence has been offered, they shall be sentenced.

If, however, the result should be otherwise, and they should be found to be slaves, the suits having reference to the clandestine removal of the property shall be dismissed.

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

7. *The Emperor Constantine to Bassus, Prsetorian Prefect.*

If, when a question as to status arises, the person alleged to be a slave is accused of having stolen something from his master, it must first be considered whether the reputed slave, being in servitude, believes that he has a right to his freedom; or whether, while in the enjoyment of his freedom, an attempt is being made to reduce him to slavery. When he who is in slavery demands his freedom, it is proper that his condition should first be decided, and afterwards the case of the theft should be investigated, if circumstances demand it.

But where he who is alleged to be a slave is said to have stolen something, whatever is proved

to have been taken must be returned to him, provided he furnishes proper sureties for its preservation. If, however, he should be unable to furnish them, then it is proper that all the property in dispute should be sequestrated, until the controversy is settled, but this should be done in such a way that, if the party interested has no other resources, whatever is necessary for the expenses of litigation and for the support of the said alleged slave must be reserved from the said property to the amount that the judge may decide to be reasonable.

But if the question with reference to status has not been raised, but someone has stolen certain articles, and has been ordered to restore possession of them to the owner for the purpose of avoiding the execution of the sentence, he will be required to return the said property without asking for security, and then the case involving his freedom shall proceed according to law.

TITLE XX.

CONCERNING THE DETECTION OF COLLUSION.

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

As you state that your mother's slave has not only been guilty of committing sexual intercourse with her, but, in addition to this disgraceful conduct, has, in collusion with her and under the pretext of false captivity, planned to have himself declared freeborn by a competent judge, and your mother did not grant him his freedom, but, as you assert, attempted to establish his free birth by fraudulent representations, it is clear that he still remains her slave; for as you say that she did not manumit him, the slave does not appear to have become free, and cannot have recourse to the Rescript of the Divine Pius, published with reference to captivity, nor could the mere statement that you had consented confer upon him the right of freedom.

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

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

It is clearly stated by the Noninian Decree of the Senate that a freedman is not permitted to change his status by means of a private contract, and a penalty for collusion is fixed by it, and as well as a reward promised to the informer.

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

TITLE XXI.

THE STATUS OF A DECEASED PERSON CANNOT BE BROUGHT IN QUESTION AFTER THE EXPIRATION OF FIVE YEARS.

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

A competent judge, after having been applied to, will examine the question of prescription, and whether the patron of Domitia, who lived as a Roman citizen until his death, can be proved to have died five years before the controversy with reference to the property of the said woman arose; for her condition as a freedwoman cannot be revoked on account of the alleged incapacity of the person who manumitted her.

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

If he who appointed you his heir is said to have been a slave on account of the condition of his mother, and she died five years before any controversy on this point aroise, there will be ground for prescription, as no inquiry can be instituted with reference to his status without also investigating that of his mother.

This rule only applies to cases where the persons concerned lived as Roman citizens, without dispute, until the time of their death.

Published during the second Consulate of Antoninus and Geta, 206.

3. *The Emperor Alexander to Olympias.*

Although your husband, concerning whose condition a controversy has arisen, is dead, the case shall be continued notwithstanding his death, on account of his estate, and it must be decided by the court having jurisdiction over estates, or property forming part of the same.

4. *The Same Emperor to Martianus.*

If he whom you allege to have been your slave, and who was manumitted by your brother, and appointed his heir, lived as a Roman citizen after his manumission, and you did not begin proceedings for the purpose of determining his status within five years after his death, you understand that you cannot, in violation of the provisions of the Decree of the Senate, raise any controversy, either with reference to the heirs appointed by your brother, or concerning the condition of those whom he intended to be free.

If, however, you instituted proceedings before that period of time has elapsed, and claimed his *peculium* in accordance with the legal formalities required, and also brought suit to recover the slaves who were manumitted, you will not be prevented from proceeding in accordance with the terms of the Edict.

Published on the fifth of the ... of June, during the Consulate of Modestus and Probus, 229.

5. *The Emperor Gordian to Severus.*

The rule which has been established, namely, that no question can be raised with reference to the condition of deceased persons after the lapse of five years, does not, in any way, apply to an apparent emancipation which has not been perfected by law.

6. *The Emperors Valerius and Gallienus to Polla.*

If your mother, while living, was generally believed to be freeborn, and five years have elapsed since her death, you can plead the well-known prescription on this point against the State and the minor heirs, if they should attempt to raise a question as to your condition.

Moreover, a judicial inquiry must be instituted to determine whether or not she passed as a freeborn woman when she died, and if it was found that she was not always considered such, the general opinion at the time of her decease must be taken into account.

Published on the sixth of the *Ides* of June, during the Consulate of Secularis and Donatus, 261.

7. *The Emperors Diocletian and Maximian, and the Csesars, to Heliodorus.*

If your father lived as a freeborn man until his death, and no controversy as to whether he was a slave of the Treasury or not arose before the Governor of the province, who is accustomed to decide questions of this kind, but the matter was brought before the Imperial Procurator, who is not a competent judge of such cases, and five years elapsed after your father's death, your condition is protected by the prescription derived from the Decree of the Senate.

8. *The Same Emperors to Theodora.*

The right to claim the property composing the *peculium* of your slave is not barred by prescription, if the said property is in possession of another under an unlawful title. For the Decree of the Senate which was enacted to prevent the revoking of the condition of deceased persons does not apply, if the decedent, having taken to flight, died a fugitive.

Given at Milan, on the tenth of the *Kalends* of December, during the Consulate of Diocletian and Maximian.

TITLE XXII.

CONCERNING THE PRESCRIPTION OF LONG TIME WHICH IS PLEADED IN BEHALF OF AND NOT AGAINST FREEDOM.

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

The benefit of prescription based on long time cannot be claimed by anyone who, for an extended period, has enjoyed freedom fraudulently obtained. Therefore, as you acknowledge that you fled from the person whom you mentioned, you understood that you are not in possession of liberty without being guilty of fraud.

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

The possession of freedom lawfully acquired can be resolutely maintained by prescription, since the favor with which it is regarded— and good reason as well—argue that prescription should benefit those who have been in possession of liberty for the term of twenty years, without their right being challenged by anyone seeking to disturb them, so that they may become both free, and Roman citizens.

Given at Antioch, on the *Kalends* of July, during the Consulate of Constantius, Consul for the fourth time, and Maximus, Consul for the second time, 302.

3. *Copy of the Imperial Letter of Constantine and Licinius addressed to Dionysius, Temporarily in Charge of a Prefecture.*

It is consistent with equity that the rights of freedom should, in no way, be interfered with, solely on account of lapse of time, even if the term of sixty years has passed.

Given on the fourth of the *Kalends* of May, during the Consulate of Volusianus and Annianus, 314.

TITLE XXIII.

CONCERNING THE PECULIUM OF HIM WHO HAS OBTAINED HIS FREEDOM.

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

You should not forget that a great difference exists between the cases of those who have been manumitted by persons who were living at the time, and those to whom freedom has been bequeathed by will, as, in the first instance, they are tacitly entitled to their *peculium* if they were not specifically deprived of it, and in the second, the heirs will have the right to it, unless it was expressly left to the manumitted slave. This rule of law is perfectly clear.

TITLE XXIV.

CONCERNING THE ABOLITION OF THE CLAUDIAN DECREE OF THE SENATE.

1. *The Emperor Justinian to Hermogenus, Master of the Offices.*

As We think that during oar reign (when We have exerted ourselves so greatly in favor of the liberty of Our subjects) it would be extremely wicked for certain women to be deprived of their freedom, and that from the lust of unprincipled men there should result a state of affairs which could only be caused by the ferocity of enemies in violation of natural law, We desire that the Claudian Decree of the Senate, as well as all denunciations and legal decisions having reference to the same, shall hereafter be abolished, so that any woman who is free and has been deceived, or rendered the victim of unfortunate affection, shall not, for this or any other reason, be reduced to slavery, and the liberty to which she was entitled by birth lost; and the worst dishonor tarnish the glory of her kindred, as she may, perhaps, have relatives of distinguished rank, and the master under whose control she comes may be inferior to her relatives. This rule shall also apply to freedmen, for the principles by which My reign is governed do not suffer that a person who once has obtained freedom shall, under any

circumstances, be reduced to slavery for such a cause.

But to prevent slaves and serfs from thinking that they can go unpunished for the commission of such acts (and this is especially provided in the case of serfs in order that their condition may not be gradually changed through their marriage with free women), We order that if anything of this kind should be perpetrated by either a slave or a serf, his master shall have full authority, either in his own person or by the Governor of the province, to administer proper punishment to the said slave or serf, and separate him from the said woman. If he should fail to do this, he is hereby notified that his own loss will be the result of his neglect.

TITLE XXV.

CONCERNING THE ABOLITION OF THE MERE CIVIL RIGHT OF ROMANS.

1. *The Emperor Justinian to Julianus, Prsetorian Prefect.*

With the intention of abolishing by this law a ridiculous example of the subtlety of the ancient jurists, We shall not hereafter permit any distinction to be made between owners who hold property merely by the civil right of Romans, and those who hold it as part of their own possessions, for the reason that We do not wish this distinction to exist any longer, as the term *"Ex jure Quiritium"* is enigmatical, is nowhere seriously considered, and does not strictly apply to property, but is a phase void of meaning, and superfluous, and by it the minds of youths who are beginning the study of the law are bewildered, and they are compelled to learn the useless provisions of ancient enactments. Therefore, anyone who is the owner of a slave, or of any other property which belongs to him, shall become its full and lawful proprietor.

TITLE XXVI.

CONCERNING USUCAPTION EITHER IN FAVOR OF THE PURCHASER OR ACQUIRED BY VIRTUE OF THE TRANSACTION.

1. *The Emperor Antoninus to Flavianus.*

If your slaves have been stolen by persons who did not have the right to sell them, you can bring suit to recover them, for they are not susceptible of usucaption by the purchasers, as theft may be committed by an illegal sale.

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

2. *The Emperor Alexander to Marcellinus.*

If the guardians, contrary to the intention of the deceased, sold the slaves which he directed by his will to go to his heirs on account of their skill as artisans, they cannot be acquired by usucaption.

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

3. *The Same Emperor to Nepotilla.*

If you purchased and now hold possession in good faith of the mother of him with reference to whose condition you have instituted legal proceedings, you can obtain by usucaption the child which she brought forth afterwards while under your control, even if she herself formed part of the stolen property.

4. *The Same Emperor to Achilles.*

If you establish that the other party gave his consent to the sale of the female slave, and then rescinded the contract which he himself had ratified, he shall not be heard. If, however, he cannot produce this proof, but can show that the slave was purchased in good faith from a *bona fide* vendor, you can acquire her by usucaption on the ground of lapse of time, and the

attempt of the claimant to hold the property will be of no avail.

5. *The Emperor Gordian to Marinus.*

When a possessor in bad faith sold a part of the property, the remainder which he still retains can certainly, with all its profits, be recovered from him. The portion which was sold, however, can only lawfully be demanded from the possessor, where he knowingly bought what belonged to another, or when, as a purchaser in good faith, he has not held it long enough to acquire usucaption.

Possession which has been lost by violence cannot be acquired by a purchaser through usucaption, even though he bought it in good faith before it had again come under the control of the owner.

6. *The Emperor Philip to C&lius.*

If it is proved that the property was pledged and afterwards sold by the debtor, it is clear that, being, as it were, stolen, it cannot be acquired by usucaption.

Without date or designation of Consulate.

7. *The Same Emperor and Csesar to Compedius.*

He who knowingly sells the slave of another without the consent of the owner commits a theft, and this defect of title does not permit usucaption to take place before the property is returned to the possession of the owner, even though possession was obtained in good faith.

Given on the fifth of the *Ides* of February, during the Consulate of the Caesars, 248.

8. *The Same Emperor and Csesar to Sevens.*

Those who have a legal right to possession growing out of a compromise can acquire property by usucaption.

9. *The Same Emperor and Csesar to Gaius.*

No kind of prescription will protect one who has purchased property sold by a ward without the authority of his guardian, but if the ward is found to have been benefited by the money of the purchaser, he will be barred by an exception on the ground of bad faith if, after having arrived at puberty, he attempts to rescind the contract by law on the ground that it is unjust.

Given during the Consulate of the Csesars.

TITLE XXVII.

CONCERNING THE USUCAPTION OF PROPERTY WHICH HAS BEEN DONATED.

1. *The Emperor Alexander to Macedonius.*

Whether the owner himself gave you the lands with reference to which you have filed your petition, or whether you received them as a donation in good faith from a person who was not their owner, you have acquired the right to them by usucaption, and you cannot be deprived of what you have legally obtained.

Published on the fifth of the Ides of March, ...

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

There is no doubt that, in law, the rights of the master are not affected by the donation of a female slave belonging to another, for a theft is committed by the disposal of property without the consent of the owner, and usucaption of such property cannot be acquired.

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

3. *The Same Emperors and the Csesars to Rhodamts.*

No one is permitted to revoke a donation which has been lawfully made, but it is also true that a mistake cannot be defended on the ground of good faith. This rule applies where ownership is claimed on the ground of usucaption.

TITLE XXVIII.

CONCERNING USUCAPTION IN THE CASE OF A DOWRY.

1. *The Emperor Alexander to Taurinus.*

When movable property is given by way of dowry, even though none of it belongs to another, if there is no defect in the title, and it is accepted in good faith, it can be acquired by usucaption as part of the dowry.

TITLE XXIX.

CONCERNING USUCAPTION WITH REFERENCE TO AN HEIR.

1. *The Emperor Antoninus to Theophilus.*

As usucaption, in this instance, does not apply to the heir, you are advised that neither your mother, whose heir you are, nor you, yourself, can acquire the slaves referred to, by usucaption.

Published at Rome, on the seventh of the *Kalends of* July, during the Consulate of Lsetus and Cerealis.

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

It has been established that nothing can be acquired through usucaption by some one acting as heir, when there are any proper heirs.

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

The possession of the property of an absent person by anyone acting in the capacity of heir will not authorize usucaption, if the report of the death of the said person is false.

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

Usucaption cannot be claimed except under a lawful title, nor can it be taken advantage of, nor can it avail the possessor or the heir, nor will the right of the owner be affected by lapse of time, even if property belonging to another is claimed under the pretext of its having formed part of an estate.

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

TITLE XXX.

GENERAL RULES WITH REFERENCE TO USUCAPTION.

1. *The Emperor Alexander to Savinus.*

Anyone who holds property under a lease, although he holds it corporeally, is not considered to possess it in person, but for the owner, as prescription based on long possession cannot be acquired by either a tenant or a lessee.

Published on the seventh of the *Kalends* of April, during the Consulate of Alexander, Consul for the fifth time, and Marcellus, 227.

2. *The Same Emperor to Onesima.*

You say that sometime ago you purchased the slave with reference to whom you petition, but, if you reflect, you will remember that property belonging to My Treasury cannot be acquired by usucaption, and you are hereby notified that you will be compelled to answer in any actions brought by My Treasury, nor can the owership of the slave in question be acquired by you through usucaption, unless he was not born of a female slave belonging to the Treasury.

Published during the *Nones* of March, during the Consulate of Pompeianus and Pelignus.

3. *The Emperor Philip and the Csesar to Pantinus.*

If Antiochus knowingly held your slave in bad faith, he cannot be acquired by usucaption by his successor, even though he may possess him in good faith, because of the original defect in the title.

TITLE XXXI.

CONCERNING THE TRANSFER OF THE RIGHT OF USUCAPTION AND THE ABOLITION OF THE DISTINCTION OF RES MANCIPI AND RES NEC MANCIPI.

1. *The Emperor Justinian to John, Praetorian Prefect.*

As We, by Our care, have disposed of the name and substance of acquisitions *ex jure Quiritium,* and have provided that ordinary prescription shall be valid everywhere, whether it arises from possession for ten, twenty, or thirty years, or even for a much longer time, it would be useless to admit the right of usucaption only with reference to property situated in Italy, and to exclude it from application to that situated in the provinces. Where, however, anyone has had in his possession in good faith, for the term of two years, property belonging to another, which is situated in Italy, the unfortunate owner of the same shall lose his right to it, and shall be entitled to no recourse with reference to said property, which was lost without the knowledge of the said owner, for which reason there is nothing more unjust than for him, who is ignorant of the fact, to be deprived of his possession in so short a time.

Therefore, We order by the present law, that where property situated in Italy is either immovable, or is understood to be such, the term of usucaption shall be extended (like that for a year), so that it will now run with those of ten, twenty, or thirty years, and others of still longer duration, and that the present limited period shall be abolished.

Moreover, as the ancients fixed the time for the acquisition of movable property, or that which was capable of moving itself, or which was, in any way retained (of course when held in good faith), whether situated in Italy or anywhere else in the world, and allowed ownership to vest after possession for a year, We consider that this should be amended, so that where anyone has had possession in good faith of any movable property, or of any which was capable of moving itself, either in Italy, or in any of the provinces, for the continuous term of three years, he can acquire a legal title to the same, just as if it had been acquired by usucaption, it being only observed that in all such cases he must, in the first place, obtain it in good faith, just as is required by a prescription of long time, and that the possession acquired by any preceding lawful possessor shall be included in the term of ten, twenty, or thirty years.

We decree that, in the case of movable property, the legal retention of the preceding holder under a just right of possession, which he exercised over the said property, shall not be interrupted by the fact that the subsequent holder may have been aware that the property belonged to another, even though it was obtained under a lucrative title. The time has been extended by this law with reference to the usucaption of property which is the subject of the same, and We have limited that of usucaption, productive of such loss and injury to owners, and abolished the ancient practice of dividing property into *mancipi,* and *nee mancipi,* which is only in conformity with reason, so that a similar rule may apply to all property and all localities, and useless ambiguities and differences be finally disposed of.

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

TITLE XXXII.

CONCERNING THE ACQUISITION AND RETENTION OF POSSESSION.

1. *The Emperors Severus and Antoninus, and the Csesars, to Atticus.*

It is established by the principles of public convenience, as well as by those of law, that possession can be acquired by anyone without his knowledge, through another who is free; and that usucaption will begin to run as soon as he becomes aware of the fact.

Published on the sixth of the *Kalends* of December, during the Consulate of Fuscus and Dexter, 226.

2. *The Emperor Alexander to Maurus.*

He who has caused you anxiety is not well informed when he asserts that you did not obtain possession of the property which you purchased through an agent, as you yourself allege that you have been in possession of the same for a long time, and have, as the owner, transacted all the business relating to it; for although transfer of the property whose possession has been delivered to you was not mentioned in the instrument, you, nevertheless, in fact acquired it if the vendor knew that you were in possession.

3. *The Emperor Decius to Rufinus.*

The possession of property donated by anyone to an infant is actually acquired, for although the opinions of legal authorities differ on this point, still it is more proper to hold that, in the meantime, possession is acquired by delivery, although the infant is not capable of giving his full consent to the transaction. For otherwise, in accordance with the opinion of the most learned jurist Papinian, possession could not be acquired by the infant through his guardian.

Published on the fifth of the *Kalends* of April, during the Consulate of Decius, Consul for the fifth time, and Gratus, 251.

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

Although possession cannot be acquired by mere intention, still it can be retained in this way. Therefore, if you have failed to cultivate your land for a certain time, not with the intention of relinquishing possession, but only because of fear, your rights cannot be prejudiced on account of the time which has elapsed.

Published during the *Kalends* of August, 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 Menno.*

As no one can change his own title to possession, and you allege that the tenant, without any external cause arising, allowed the farm which he unjustly occupied to be sold, the Governor of the province, after having ascertained the truth, will not permit you to be deprived of your right of ownership.

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

If the Governor of the province should ascertain that your field or your vineyard has been seized without good reason by the person whom you mentioned, and that your claim is not barred by any prescription, he will not hesitate to restore to you possession of the land with all its appurtenances.

Ordered during the *Ides* of April, during the Consulate of the above-mentioned Emperors.

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

Unjust possession does not confer a valid title upon the possessor. Wherefore it is certain that anyone who takes possession of the land of another, without the consent of the owner, or of his agent who has authority to transfer it, cannot obtain legal ground for possession of the same.

Published on the fifth of the *Ides* of December, during the Consulate of the above-mentioned Emperors.

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

It has been decided on the ground of the public welfare that the ownership, as well as the possession of property, can be acquired through an agent, as the two cannot be separated.

Published on the eighteenth of the *Kalends* of March, during the Consulate of the Csesars.

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

A purchaser cannot legally hold possession of property which he occupied on his own responsibility by virtue of a genuine sale, and much less does he who, falsely representing himself as the purchaser, for the reason that he lent money without the obligation of a pledge and seized the land of another, have just cause to retain it.

Published on the third of the *Nones* of April, ...

10. *The Emperor Constantine to Maternus.*

No one can entertain any doubt that there are two grounds of possession, one based on the law, and the other on the fact; and both of them are legal when they are confirmed by the silence and want of opposition of all adversaries. Where, however, a controversy arises, he cannot be considered the possessor who, although he may have actual possession of the property, still his right to occupy it having been questioned, a contest has been begun, and the case brought into court.

Published on the eleventh of the *Kalends* of February, under the Consulate of Volusianus and Annianus, 314.

11. *The Emperors Arcadius and Honorius to Petroneus, Lieutenant of the Spains.*

Previous defects of possession are transferred by former owners, and the imperfection of the original proprietor passes to his successor.

Given on the fifth of the *Kalends* of January, during the Consulate of Csesarius and Atticus, 397.

12. *The Emperor Justinian to John, Praetorian Prefect.*

We, intending to dispose of the question which has been brought to Our attention by the works of the Sabinians, hereby order that, if either a slave, an agent, a tenant, a lessee, or anyone else through whom we are permitted to hold possession has, either through negligence or fraud, abandoned or delivered to another the actual occupation of any property which he held, so that the said third party may have ground for obtaining possession of the same, no prejudice whatever can result to the owner, nor can any injury be inflicted upon him by the malignity of his representative, but the latter, if he is free, will be liable to suitable actions at law, and all loss must be made good by him to the owner of said property, or to him with reference to whom he has acted negligently or fraudulently.

But where possession has not yet been acquired by the said agent, tenant, lessee, or slave, but the latter, through negligence or fraud, has failed to secure it, then the person himself who appointed him shall suffer the damage resulting from his bad selection of the individual directed to take possession of the property, and attributable either to the evil design or negligence of the latter.

We also order that the owner shall only be entitled to redress when he has sustained any injury through the agency of him whom he appointed, but not when he has failed to reap any benefit through his acts, as the ancient rule of law which states that the condition of a master can, under no circumstances, be made worse through the conduct of his slave, only applies when he suffers actual loss, and not when he unsuccessfully attempts to obtain some advantage for himself by means of his slave. In this instance, all legal rights of action are reserved for the owner of the property, or for him who appointed any of the above-mentioned persons to hold

possession, as against the latter, if he is entitled to the same under the law.

TITLE XXXIII.

CONCERNING THE PRESCRIPTION OF LONG TIME BASED UPON OCCUPANCY FOR TEN OR TWENTY YEARS.

1. *The Emperors Severus and Antoninus to Julian, Prsstorian Prefect.*

If, after the question of possession has been disposed of, the ownership of the property passes in good faith to another, and remains in his possession without any interruption for the term of twenty years, the party then in possession should not be disturbed, but if the latter does not take advantage of the occupancy of the former owner, there is nothing to prevent him from being disturbed by a dispute as to the title. If, however, the right of the former possessor was disputed, even though he remained in possession for a long time without interruption, he will, nevertheless, not be able to avail himself of prescription based on long time.

This rule also must be observed with reference to property belonging to the State.

Extract from Novel 119, Chapter VII. Latin Text.

Where a possessor in bad faith alienates property, prescription based upon long time will not apply if the true owner is ignorant of his rights, and the alienation has been made, but his defence will be valid in case he acted in good faith, and the period of thirty years has elapsed. But where he who knew that the property belonged to him did not prosecute his claim in court within ten years, if the parties were present, and within twenty if they wer.e absent, the possessor being protected by prescription, will be entitled to hold the property.

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

Where, however, one of the parties was present during certain years, and absent during others, there must be added to the ten years out of the other ten as many as he was absent.

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

The prescription of long time can usually only benefit those who, after having obtained possession of property in good faith, have enjoyed it continuously, without its being interrupted by legal proceedings.

Published on the fifth of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

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

If the vineyard which your mother gave to your step-father by way of dowry belonged to you, and no prescription has arisen oh account of lapse of time, the Governor of the province must cause it to be restored to you.

4. *The Same Emperors and Csssars to Hermogenes.*

Long-continued possession which has been acquired only by the right of succession, and without any legal title can, for this reason alone, be of no advantage in claiming prescription.

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

5. *The Same Emperors and Csesars to Sotericus.* It is a perfectly clear rule of law that anyone who claims ownership from one who is indebted to some mistake alone for his possession of certain property to which he holds a legal title cannot be excluded by prescription of long time.

Ordered on the eleventh of the *Kalends* of May, during the Consulate of the Emperors.

6. *Extract from a Letter of the Same Emperors and Csesars to Primosus, Governor of Syria.*

If the sale was fraudulently and deceitfully made, even though the parties were over twenty-five years of age, the time which has elapsed cannot confirm it, as the prescription of long time does not apply to contracts entered into in bad faith.

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

The loss of documents does not legally prejudice the right of persons whose title is protected by long possession, nor can the evil designs of another disturb security acquired by long-continued possession.

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

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

If he against whom you petitioned alleges that the slaves of your late mother belonged to him as her adopted son, the fact of an illegal adoption is not alone sufficient to enable him to acquire the ownership of the property, for which reason you will not be prevented from claiming the slaves, without being under any apprehension that prescription can be successfully pleaded against you, if he, against whom you have filed your petition, only obtained possession of the said slaves under the title above mentioned.

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

A purchaser in good faith, who pleaded an exception against the prescription of ten years advanced by the other party who was present during that time, from the beginning of the controversy, and who proved this after the plaintiff had disclosed his claim, has shown that he has a right to legal possession, and very properly asks to be released from liability.

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

The prescription of long time cannot benefit those who have obtained possession in good faith, after being in default in joining issue, because the time should be reckoned after legal proceedings have been instituted.

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

We directly order that, with reference to prescription of long time, and which is based upon occupancy for either ten or twenty years, that where anyone is proved to have held possession of property for either ten or twenty years, which property has been acquired by donation, or by any other lucrative title, and the time it was occupied by the former possessor is added to that during which he held it, he will undoubtedly be entitled to the above-mentioned prescription of long time, nor can he be excluded on the ground that he acquired the property by a lucrative title.

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

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

Three difficulties arose among the ancient authorities concerning prescription based upon long time: the first, with reference to where the property was situated; the second, relating to the persons, whether the presence of one or of both should be required; and the third, whether the claimant as well as the possessor should be in the same province, or even in the same city where the property was in dispute; and We shall include all these matters in the present law, so that no doubt may remain on the subject. Therefore We decree that, in cases of this kind, the domicile of the claimant as well as that of the possessor shall be taken into account, so that he who raised the question of the ownership or of the hypothecation of the property, as well as he who is in possession, must reside in the same place, that is to say, in the same province. For We think that We should decide in favor of considering the province rather than the city as the domicile of the parties, and if both of them have their domicile in the same province, the case will be considered as having arisen between them while present, and any longer prescription

than that of ten years will be excluded.

Moreover, with reference to the doubt arising concerning the property, there shall be no distinction whether it is situated in the same province, or in a neighboring one, or whether it is situated beyond seas or even in a far distant country.

If, however, both parties should not reside in the same province, but one should have his domicile in one province, and the other in another, then the case will be one as between absent parties, and the prescription of twenty years shall apply, for there is nothing to prevent the action with reference to the property, whether it is situated in one province or in another, from being brought in a provincial court, and still less to prevent this being done in this Most Flourishing City. For what advantage would it be for possession to be held in one province or another, as the right to claim property is incorporeal, and wherever it is situated, the ownership of the same can revert to the owner or the creditor? Hence our ancestors, with great shrewdness, and with a species of divine inspiration, established the rule that rights of action existed wherever the claims or^ the property itself could be situated.

Therefore, after the promulgation of this law, let no one doubt what should be decided, whether the parties are present or absent; for if the occupant acquired possession in good faith in the beginning, and the domicile of both parties is ascertained, then let the question

be determined, no matter where the property may be situated, without taking into consideration either knowledge or ignorance, in order that no other embarrassing occasion for doubt may arise.

The same rule must be observed if the property is not attached to the soil, but is incorporeal and consists merely of rights, as, for instance, usufructs and other servitudes.

TITLE XXXIV.

TO WHAT CASES PRESCRIPTION OF LONG TIME DOES NOT APPLY.

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

If he to whom you have given your land for the purpose of cultivation afterwards, through the agency of your step-mother, secretly removed the documents by which it could be proved that the ownership of the land belonged to you, he cannot defend himself on the ground of long possession alone.

2. *The Same Emperors and Csesars to Dionysius.* It is superfluous to have recourse to the prescription of long time in matters relating to the ownership of slaves.

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

One of two joint-owners, who has possession of all the common undivided property, cannot plead prescription of long time to prevent the other joint-owner from claiming his share of the property, or for bringing suit in partition; as neither the action in partition, nor that brought for the division of property owned in common, is barred by the prescription of long time.

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

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

The prescription of long time does not injure those who are claiming an estate. None of the provisions of this law, however, shall prejudice the rights of those who do not hold possession of property which belongs, or has belonged to an estate, either as heirs or possessors, but have obtained it by purchase, gift, or some other title, as the succession cannot be demanded by them.

Given on the third of the *Ides* of September ....

5. *The Same Emperors and Caesars to Hosimus.*

If you have cared for a boy slave who had not been abandoned, but had been wounded by the enemy, and you did this at your own expense (as you assert) believing him to be free, you cannot legally plead the prescription of long time to prevent his master from recovering him, provided he tenders you the amount which you have legitimately expended in his behalf.

TITLE XXXV.

IN WHAT CASES PRESCRIPTION OF LONG TIME CANNOT BE PLEADED.

1. *The Emperor Alexander to Venuleius.*

The time passed in an expedition cannot be included in pleading prescription against a claim for land, if it can be legally established.

Given on the sixth of the *Nones* of July, under the Consulate of Julian and Crispus, 225.

2. *The Emperors Diocletian and Maximian and the Caesars to Aurelius, Chief Physician.*

As you assert that, during your absence, those of whom you complain seized your property, and it is clear that you could not leave Our retinue on account of your profession as a physician, Our Praetorian Prefect, after summoning all the parties interested, will decide between you. It is not necessary for you to request that prescription based on lapse of time shall not be pleaded against you, since the fact that you were lawfully absent, and engaged in the public service, will protect you from damage in this respect.

Published at Nicea, on the fifteenth of the *Kalends* of March, during the Consulate of Maximus, Consul for the fifth time, and Aquilinus, 286.

3. *The Same Emperors and Csesars to Numidius, Governor of Italy.*

It is well known that time passed in minority cannot be included in prescription, for the latter only begins to run when the owner of the property attains his majority.

Published on the fourth 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 Caesars to Crispinus.*

If uninterrupted possession has continued without dispute, you have a right to plead prescription. We, however, decree that it shall never be valid against persons who are absent on business for the State, and especially where this takes place unexpectedly.

Published on the sixth of the *Kalends* of March, during the Consulate of Ambalianus and Asclepiodotus, 292.

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

It is a positive rule of law that prescription cannot be pleaded in suits growing out of loans for consumption, or for use, or deposits, legacies, trusts, guardianships, or in any other personal action.

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

6. *The Same Emperors and Csesars to Dulcius.* Having been taken captive by the enemy, and returned under the right of *postliminium,* you have no reason to apprehend that the pos-

session of your adversary based upon long time can be legally pleaded in a direct action *in rem,* or in any other which you may bring for the purpose of recovering your ownership of the property, as an act of this kind is of no avail against those who, for any reason, have the right to invoke the aid of restitution.

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

Possessors of property in good faith are protected by prescription against those who have been

present for ten years, or have been absent for twenty. If the relief of restitution is demanded by anyone with reference to a share of the plaintiffs, as much of the time should be deducted as would usually be counted in case anything had been done, and the remainder should be computed, which is reasonable.

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

We order that, exclusively in the case of soldiers who are engaged in expeditions only, that time which has elapsed during the expedition shall be pleaded in opposition to prescription, but this privilege shall not be enjoyed by them, so far as the time which they may have passed either at home, or in other places, while they were not in active service, is concerned.

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

TITLE XXXVI.

WHERE PRESCRIPTION IS PLEADED AGAINST A CREDITOR.

1. *The Emperor Gordian to Veneria.*

Unbroken silence is strengthened by the prescription of long time, and renders an action brought by creditors for the recovery of a pledge of no effect, when the debtors, or those who have succeeded to their rights, have possession of the property pledged. When, however, prescription of long time is pleaded by a possessor against his creditor, a personal action will lie in favor of the latter against the debtor.

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

If you were not the heir of a debtor, but obtained the property as a donation, and have had lawful possession of the same for the term of twenty years, the rule of law does not permit a personal action to be brought against you (for the reason that you did not succeed the debtor), nor can you be deprived of land given in pledge after the necessary time has elapsed, even when prescription based upon ten years occupancy can be pleaded against creditors, who have been present, a principle which has not only been established by Our Rescripts but also by those of the Emperors, Our predecessors.

TITLE XXXVII.

CONCERNING THE PRESCRIPTION OF FORTY YEARS.

1. *The Emperor Constantine to Orphitus.*

It is well known that no question can be raised by the Treasury with reference to property which has no owner, after continuous occupancy of the same for the term of forty years.

2. *The Emperor Zeno to ^Eneas, Count of Private Affairs.* We order that when persons who have purchased any property, whether it be movable, immovable, or capable of moving itself, or which consists of rights of action, or of any other rights whatsoever, from Our Most Sacred Treasury, or, where any movable or immovable property, or any capable of moving itself, or any rights of action, or any other rights whatsover, have been given to them by the munificence of the Emperor, they shall be entitled to all the privileges to be obtained from the divine laws of the Emperor Leo, of illustrious memory, and from Our own, as well, with reference to certain estates, in preference to purchasers, and that all of them shall enjoy benefits or privileges of this description, just as if they had already been, or may hereafter be granted, in the case of individual property or inheritances.

Nor can any suits for the ownership of property, or on account of its hypothecation, or any civil, praetorian, or personal action based upon laws or Imperial Constitutions, or any other statutory provisions whatsoever (even though they may not be expressly enumerated in the present law), be brought against the purchasers of the property aforesaid, whether they already are, or may subsequently become such, or against those who, in the case of property of this

kind, have been the recipients of Our generosity, or who may become such hereafter. Permission is, however, given to those who desire to do so, to institute proceedings against Our Treasury within the term of forty years, but after the said term has elapsed, they are advised that they will not be allowed to bring any actions whatsoever against it.

(1) With a view to the consideration of the rights of purchasers of property from the Treasury, We decree that whenever a person competent to sell such property states in writing that he has received the price of the same, purchasers who have paid money shall not, under such circumstances, be molested on the ground of non-payment, nor shall the said purchasers be required to prove that the price was paid, even though they may not have obtained the security of a receipt for the same. But, as it is in the power of him who receives the price not to give a receipt at a time when it was not paid, so it is proper that purchasers should enjoy perfect security by the payment of the price in this manner, and not be obliged to furnish other proof, as has already been stated.

3. *The Emperor Justinian to Florus, Count of Private Affairs.* It was very properly provided by the Emperor Zeno, of Divine Memory, in the case of fiscal alienations, that persons who obtain property from Our Treasury by way of donation, purchase, or any other kind of alienation—if anything should arise to impugn the validity of the contract, either on the ground of eviction, or to produce any other annoyance with reference to the ownership or hypothecation of the property—shall not suffer any loss; and that no suits can be brought against the purchasers, or those who have received the property by way of donation, or who have possession of the same under any other title; but they can only be brought against the Treasury within the term of four years, which, having elapsed, no action will lie against the Treasury.

We know that this rule is constantly observed in fiscal alienations, but that it is not observed in the case of property acquired from private resources of the Emperor, and not from the funds of the Treasury. This is unreasonable, for why should such a difference be established when everything is understood to belong to the Emperor, and what is alienated is derived from his private property, or from that belonging to the Treasury?

In like manner, when anything is alienated by the Empress, why should it not enjoy the same privilege? Our stewards, by whom We are accustomed to administer Our estates when anything is sold, are required to attach to the bills of sale agreements with reference to eviction, and others having a view to private convenience, and to acknowledge obligations of this kind in instruments relating to alienations, as well as those concerning changes or compromises, where such transactions take place. This also refers to those who do not acknowledge the Imperial Majesty, nor realize what a distance exists between private fortune and Imperial rank, but attempt to injure and cause loss to Our stewards, by whom the affairs of the Imperial household are conducted.

For the purpose of correcting all these things, We order by this general rule, which shall be valid for all time, that every alienation proceeding from the Imperial Palace, whether it is made by Us or by Her August Majesty the Empress, or by those who may hereafter be worthy of the Imperial Name—whether the property has already been alienated, or may be alienated hereafter—shall remain irrevocable; whether the transfer has been made by Us in person, or by Our agents in pursuance of Our authority. And let no one be so bold as to bring suit against those who acquire such property under any title whatsoever, whether the said property be movable, immovable, or capable of moving itself, or whether it consists of incorporeal rights or civil privileges, or think that there is any way open for him to molest them, but every avenue shall be closed, and every method of procedure, and every hope of the tolerance of such malignancy, shall be excluded.

They shall, however, have the right to bring actions *in rem* or hypothecary actions against Us within the term of four years, as they can do against the Treasury, if they think that they are

entitled to such actions; and such a cause shall proceed by Our order and be decided in the proper manner. When, however, the said term of four years has elapsed, no one will be entitled to bring any suit whatsoever against Us. Therefore, because We know that not only We, Ourselves, but also Our Illustrious Consort, the Empress, has already given, sold, and alienated much property in other ways, and that Our liberality, as well as that of Our Illustrious Consort, the Empress, has been, above all, displayed with reference to churches, hospitals, poorhouses, as well as bishops, monks, and innumerable other persons, We order that they also shall hold by an indisputable title what they have acquired, and that no proceeding shall be instituted against them, and that, within the term of four years from the present time, they shall all have a right to bring suit against Us to recover said property; but they are hereby notified that, after the said term of four years has expired, they shall be entitled to no recourse against Us. For as Imperial rank is entitled to many privileges, all Imperial donations shall be irrevocable, without being recorded, and the title to any property which the Illustrious Emperor may have given to his August Consort temporarily, or during marriage, or which he himself may have received from his Illustrious Consort, the Empress, as a donation, shall immediately become complete, without being subject to confirmation by time, and this shall be considered an Imperial privilege. For why should those who, giving their advice and their efforts, toil day and night for the benefit of the entire world, not enjoy privileges becoming their rank?

Therefore, Your Excellency, as well as all Our other judges, shall cause these provisions to be observed which We have promulgated for the honor of the Imperial Name, and for the security of those who have experienced Our bounty, and which shall be valid from the time when, by the Divine Will, We assumed the Imperial insignia.

Given at Constantinople, on the fifth of the *Kalends* of December, after the fifth Consulate of Lampadius and Orestes, 581.

TITLE XXXVIII.

THE CLAIM TO PROPERTY BELONGING TO THE CROWN, OR TO THAT BELONGING TO THE TEMPLES, SHALL NOT BE BARRED BY PRESCRIPTION.

1. *The Emperors Valens and Valentinian to Probus, Praetorian Prefect of Gaul.*

It has repeatedly been ordered that freedmen and serfs attached to the Imperial domain, as well as their offspring and other descendants, who have left Our land and engaged in other different occupations, shall be restored to Our estates and stripped of any dignity which they may have fraudulently obtained, and shall not be permitted to avail themselves of any prescription.

2. *The Emperors Valentinian, Theodosius, and Arcadius to Dexter, Count of Private Affairs.*

We order that all lands held by tenants or under emphyteusis, and which are the property of the State or the Emperor, or belong to the sacred temples, or have been sold in any province, or alienated in pursuance of any other contract, by persons who had possession of them wrongfully and contrary to law, shall be restored; and that no prescription can be pleaded against their restoration, so that those who have purchased them legally cannot demand the repayment of the price of the same.

Given at Constantinople, on the fifth of the *Nones* of July, during the Consulate of Valentinian, Consul for the fourth time, and Eutro-pius, 387.

3. *The Emperors Arcadius and Honorius to Paulus, Count of the Imperial Domain.*

If anyone should have the boldness to take possession of land forming part of the Imperial Domain, its rights shall be recovered in accordance with the provisions of the ancient census. Therefore Your Highness should not pay any more attention to rescripts which have been fraudulently obtained than to prescription of long time, or to the new census; and hence you

must restore everything which has been taken away to its proper place, for temporary possession or a new return cannot abolish the privilege enjoyed by Our property.

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

TITLE XXXIX.

CONCERNING THE PRESCRIPTION OF THIRTY AND FORTY YEARS.

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

As you allege that, during your absence, certain persons who coveted your lands purposely caused them to be sold at a low price, by the Governor of the province, under the pretext of the collection of taxes, if the lawful time from the day of the sale within which you can claim said land has passed, the Governor of the province shall take cognizance of your case, and shall decide whatever the law directs.

If, however, the time prescribed by law from the day of the public sale has not yet elapsed, the judge, having examined your allegations, shall decide what the nature of the case requires, being aware that if he should ascertain the sale to be unjust, the price paid under a fraudulent contract of this kind must be returned to the purchaser, in accordance with the tenor of the Imperial Constitutions.

2. *The Emperor Valens and Valentinian to Volusianus, Prastorian Prefect.*

Improper action is taken with reference to the owners of land when such a precarious title is granted to possessors that they cannot be molested for any cause after the lapse of forty years, as the law of Constantine provides that no other title whatever shall be required by possessors who have held property for themselves but not for others. It is established that those shall not be designated possessors who occupy property on the condition of the payment of a certain fixed sum as rent. Therefore, no one who has obtained possession as a lessee, by retaining the property of another for a long time, can obtain the ownership of the same for himself; for otherwise, the owners might lose the land which they have leased, or be obliged to exclude valuable tenants, or to publicly proclaim their ownership every year.

Given on the eighth of the *Kalends* of August, during the Consulate of Valens and Valentinian, 365.

3. *The Emperors Arcadius and Honorius to Asclepiodotus, Pree-torian Prefect.*

The right to bring special actions *in rem,* or general personal actions, cannot be extended beyond the term of thirty years. When any property or right is claimed, or anyone has a suit or a prosecution of any kind brought against him, the prescription of thirty years can be pleaded against the plaintiff.

The same law is applicable in the case of a person who endeavors to recover property which has been pledged or hypothecated, not from his debtor, but from another who has had it in his possession for a long time; therefore, where actions have not been brought within thirty year's from the time in which this could be done, they cannot longer be prosecuted. Nor will it be sufficient to obtain a special and favorable answer, even though this be secured by personal application and petition to the Emperor, or even to state this in court, unless, after the Imperial Rescript has been mentioned, or the demand formally made, an agreement has been effected through a bailiff, nor can a defence based on infirmity of sex, or on absence, or service in the army, be set up in opposition to this law, but only on the ground of the minority of the defendant, even though he may be represented by his guardian.

For, after persons who have been subject to the care of a curator become of age, their rights, as well as those of others, must necessarily be dependent upon possession for the term of thirty years. Rights of action, considered perpetual, are extinguished by the prescription cf thirty

continuous years, but not those which were limited in former times to a certain term.

We decree that, after this period has elapsed, no one shall have the power to proceed, even if he should attempt to excuse himself by professing ignorance of the law.

Given at Constantinople, on the *Kalends* of September, during the Consulate of Victor.

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

We, desiring to permanently dispose of every opportunity to cause injury, do decree that all prescriptions having reference to time, which are derived from the ancient laws or from Imperial decrees, shall endure in full force, just as if they had been specifically and definitely enumerated in this law; and those who now have a right to avail themselves of them, or may in the future acquire such a right, shall, in accordance with their tenor, be able to do so for all time hereafter.

And wishing to supplement what may have been omitted, either in words or meaning in prescriptions formerly in force, We order, by this law (which shall be valid for all time) that if there should be any contract or action which has not been expressly provided for by the rules governing the prescriptions above mentioned which, by means of either an accidental or an intentional interpretation, appears to afford means to evade the restrictions imposed by the prescriptions aforesaid, it shall be included in this Our most salutary law, and it shall, unquestionably, be extinguished after the lapse of forty years, and no private or public action relating to any cause or person which has been extinguished by the silence of the aforesaid forty years shall be brought.

Anyone, however, who, under some title which has been undisputed during the above-mentioned period, has had possession of property without any judicial controversy having been raised with reference to it, still holds the same, shall remain secure in its ownership; and any slave who, after the expiration of said term, without having his case submitted to judicial investigation, has obtained an advantage of this kind, shall become free under the provisions of this most salutary law.

Given at Constantinople, on the third of the *Kalends* of . . . , during the Consulate of Olybrius.

5. *The Same Emperor to Thomas, Prsetorian Prefect of Illyria.*

We do not permit the prescription of forty years to be pleaded by those who are called to the office of decurion, but We order that they shall always be-compelled to remain in the civil condition in which they were born. For the law which We have promulgated applies to other conditions, and former constitutions are not repealed by the said new law, which plainly directs that decurions and their children shall be returned to their former status without reference to any prescription whatsoever.

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

We, having ascertained that certain persons have attempted to apply the Imperial Constitutions which treats of the prescription of forty years to the prejudice of the payment of public contributions, alleging that if anyone had failed to pay anything for that time or longer, or had paid less than he should, he would be released from liability for taxes, and that they cannot be collected or he be compelled to pay them, as an attempt of this kind is well known to be contrary to both the spirit and the letter of Our law, We, therefore, order that those who have had possession of any property continuously for the term of forty years, without any lawful interruption, shall not, in any way, be deprived of the possession or ownership of the said property, but that they can be compelled to pay any public tax imposed upon them by the civil law, and that no prescription of any time can be pleaded in a case of this description.

7. *The Emperor Justin to Archelaus, Praetorian Prefect.*

As it is a well-known rule of law that an hypothecary action is extinguished after the lapse of

thirty years, so far as foreign possessors of the encumbered property are concerned, if the silence is not interrupted as provided by law, that is to say, by an agreement, or where the incapacity of one of the parties who has not arrived at the age of puberty is demonstrated, he will have recourse against the debtors or heirs of the possessors, either immediate or remote, who will not be entitled to take advantage of any prescription.

We have taken occasion to amend this law, to prevent possessors of this kind from being subject to constant apprehension.

(1) Therefore, We order that the right to bring the hypothecary action on the ground of property remaining in the hands of debtors or their heirs shall not be extended beyond the term of forty years within which said action can be brought, unless some agreement has been made, or the minority of the party enjoying the right is involved (as has already been stated), so that the difference existing between the actions brought against the debtor or his heir, and against strangers, for the recovery of the property, shall only consist in the number of years, but that the two shall be similar in all other respects.

With reference to personal actions, those rules shall be observed which have been prescribed by former constitutions.

(2) But as the question frequently arose in judicial controversies as to whether a creditor claiming prior rights could, after the lapse of thirty years, molest a subsequent creditor, who had possession of the land under hypothecation, the latter being the representative of the debtor, and holding possession like him, We hav^e considered it necessary to dispose of it. Hence, We order that while a common debtor is living, the prescription of thirty years cannot be pleaded against a prior creditor, but that there will be ground for the prescription of forty years, because, while the debtor is living, the prior creditor should reasonably think that the subsequent creditor holds possession of the property for and in the name of the common debtor. And therefore, if the debtor should die, the subsequent creditor having possession in his name can, with good reason, plead prescription of thirty years.

In accordance with this distinction, the computation of time should be made in such a way that the prescription of the subsequent creditor will date from the death of the debtor. If, however, he should wish to add the time during which he had possession after the death of the debtor to that which he had during the lifetime of the latter, or while the common debtor himself had possession, then the rights conferred by prescription of forty years must be considered, and the subsequent creditor must show that he had possession for a term sufficient to complete the period of forty years, by which the debtor himself would have been able to exclude him, in his turn.

(3) The same rule must be observed in the computation of time, where the subsequent creditor is ready to tender payment of the debt to the prior creditor, and the latter attempts to bar him by pleading the prescription of long possession.

(4) It is more than manifest that, in all contracts in which either promises or agreements are entered into subject to any condition, depending upon a fixed, or indefinite time, after the condition has been fulfilled, or the certain or uncertain time has elapsed, the prescription of thirty or forty years, which is pleaded in personal or hypothecary actions, begins to run.

The result of this is that in marriages, in which the restitution of the dowry is provided for, or in the case of ante-nuptial donations, in which it is customary to specify the indefinite date of death or divorce, after the dissolution of marriage, the prescription which can be pleaded in personal as well as in hypothecary actions, begins to run.

(5) Moreover, there is no doubt that if any one of those to whom something is due holds property which has been hypothecated to him without the employment of violence, an interruption of prescription takes place by means of this possession, if less than thirty or forty years has passed; and much more is this the case, if the interruption was caused by an

agreement, as such possession bears a resemblance to the joinder of issue.

If one of the debtors should give his creditor additional security for the purpose of securing his obligation, the time of the abovementioned prescription will be considered as having been interrupted, so far as the original security is concerned, and the prescription in both personal and hypothecary actions will run from the date of the novation; for it would be dishonorable for the debtor to dispute this, in order to avoid his liability to his creditor, after having given him a second security for the former debt.

(6) With reference to promises, legacies, and other obligations which require the giving or payment of something every year, or every month, or at any other prescribed date, it is clear that the times of the above-mentioned prescription should not be computed from the date of such an obligation, but from the beginning of each year, or each month, or from any other time which may be specified.

Moreover, permission should not be given to anyone who has held any property under emphyteutical right, for the term of forty, or any other number of years, who alleges that he is entitled to ownership of the said property, to acquire the same on account of the time which has elapsed; as what is granted under emphyteutical right must always remain in the same condition, since the lessee, or the agent who has charge of the business of another, is obliged to restore the said property to the owner, if he wishes him to do so, even though he may allege that he is not obliged to surrender it, and is entitled to possession of the same by prescription, after the expiration of a certain time.

Given during the *Kalends* of December, ...

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

When anyone has held possession of any property which was obtained in good faith by purchase, agreement, donation, or any other contract, for ten or twenty years, and has acquired for himself the right of prescription based on long time, against the owners of said property, or creditors who claim that they are entitled to it through hypothecation, and he afterwards loses possession of said property by accident, We order that he shall be entitled to an action to recover the same. If anyone carefully examines the ancient laws, he will ascertain that they authorize this.

(1) If, however, anyone should cease to hold possession of property, where the owner or someone who has a lien on it has been barred by prescription of thirty or forty years, We direct that the abovementioned relief shall be afforded him, not indiscriminately, but in moderation; and if anyone should, in the beginning, have held the said property in good faith, he can avail himself of the same advantage.

But where he acquired it in bad faith, he shall, for this reason, be considered unworthy, so that he who was the original owner of the property, or held it under a pledge and was barred by the effect of the above-mentioned prescription, can acquire the benefit of possession for himself, in the capacity of a new possessor.

If, however, he had no right to such property at any time, then the original owner, or the creditor who had possession of it under hypothecation, shall, with their heirs, be permitted to recover it from the unlawful possessor, notwithstanding that the former possessor has already excluded him by means of the prescription of thirty or forty years, unless the illegal possessor himself is protected by the prescription of thirty or forty years, to be computed from the time when the former possessor, who evicted him, lost possession of said property.

(2) We, however, decree that these rules shall only apply to possessors who have obtained control of the property without violence, for if anyone should forcibly remove it, the former possessor shall, by all means, be entitled to it without any opposition.

(3) If, anyone, however, should obtain the property, not by violence, but by a judicial decision,

he shall only be responsible for the time when the former possessor was absent, and was summoned to court, and he, like others entitled to the ownership of the property, shall be permitted, within a year, to take the said property if he presents himself, and offers security for the conduct of the case, and to obey the decision with reference to the matter in litigation.

(4) We decree that the prescription of thirty or forty years shall, in the case of contracts in which interest is promised, begin to run from the time when the debtor has failed to pay it.

Given at Constantinople, on the third of the *Ides* of December, during the Consulate of our Lord the Emperor Justinian.

9. *The Same to Demosthenes, Prsetorian Prefect.* Certain persons frequently call their opponents into court, and in the prosecution of judicial proceedings are not able to bring their cases to a definite conclusion, and as the conditions of life are subject to constant variation, they, in the meantime, having preserved silence either on account of the superior power of their adversaries, or their own weakness, or for innumerable other reasons which can neither be mentioned nor enumerated, appear to have forfeited their rights, because, after the last trial of the case, the term of thirty years has elapsed, and having been opposed by a prescription of this kind see their property transferred to others, which in former times caused them much sorrow and with good reason, as they had no remedy.

We, desiring to correct this, do not permit such a prescription based upon the lapse of thirty years to be pleaded in a case of this kind, but even though a personal action was brought in the first place, We authorize it to be extended to the fortieth year, as he who is in the beginning absolutely silent as to his rights does not resemble him who filed his complaint, came into court, and went to trial, but for some cause or other was prevented from finishing his case. And, although the plaintiff himself may have died, We decree that he can leave the conduct of his action to his posterity, and that his heirs or successors shall be permitted to conduct it to a conclusion, and not be in any way barred by the prescription of thirty years.

The period available (that is to say, the term of forty years), We decree shall be computed from the time when the last judicial investigation took place, after both parties failed to proceed.

TITLE XL.

CONCERNING THE ABOLITION OF THE PRESCRIPTION OF A YEAR AFFECTING CONTRACTS MADE IN ITALY, AND THE DIFFERENT TERMS, EXCEPTIONS, PRESCRIPTIONS, AND INTERRUPTIONS OF THE SAME.

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

With reference to the exception of a year which is applicable to contracts made in Italy, such an enormous mass of controversies has arisen in all the tribunals that it is difficult to enumerate and impossible to explain them; for, in the first place, it has been attended with so many technicalities and difficulties that it is necessary for many things to agree in order for it to take effect. Then some authorities have interpreted the said period in such a liberal way that it can be extended as long as ten years; others have held that it should be limited to five, and in Our time, different constructions have been made by judges with reference to this computation; hence this exception does not readily produce any effect upon litigation.

Therefore, as other exceptions of time or prescriptions appear to Us to be sufficient, We are not willing for the subjects of Our Empire to be embarrassed by difficulties of this kind, and therefore the abovementioned exception of a year having been absolutely abolished, all other lawful exceptions and prescriptions shall have full force in the courts, whether they depend upon the lapse of ten, twenty, thirty, or forty years, or whether they run for a shorter time.

(1) As nothing prevents matters which are in any way doubtful from being explained by clearer or more comprehensive laws, We direct that all personal actions which any

voluminous interpretation has attempted to extend beyond the limit of thirty years shall be terminated by the said period of thirty years, unless the lawful method, which was mentioned by the ancient laws as well as ours, introduced an interruption of the time, and that the hypothecary action alone shall be extinguished after the expiration of forty years.

Hence, let no one venture to decide that a suit in partition, or for the division of property owned in common, or for the establishment of boundaries, or of partnership, or of theft, or of property seized with violence, or any other personal action, can be brought after a longer time than thirty years. But where a suit could properly be brought in the beginning, and, having once been instituted, was not renewed by repeated false allegations (as was stated in the action of theft) it may be terminated after the above-mentioned time has expired.

All actions which have been brought in the courts, even though they are personal ones, and have been argued, and afterwards abandoned, are hereby excepted; for, in the case of these, Our former law provided that not thirty, but forty years must elapse from the time when the litigants last became silent with reference to their claims.

(2) In order that this law may not appear to be imperfect, since provision has already been made for prescription to run against the sons of a family with reference to their mother's estate, from the time when they were released from paternal control, but nothing was especially provided with reference to other property which cannot be acquired, We order, by this clearly stated law, that no prescription can be pleaded against the sons of a family in all cases in which property is not acquired for their parents, except from the time when they could have brought suit, that is to say, after they had been released from the control of their father, or of him in whose power they were; for who could blame them for not doing this, even if they were willing, when they could not act on account of the opposition of the law?

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

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

In order that We may protect the interests of all persons in a more thorough manner, and that neither absence, superior authority, nor the infamy of an adversary may injure anyone, but that a distinction may be made between the negligent and the vigilant, We decree that if he who has possession of property belonging to another, or which is pledged to a creditor, should be absent, and the owner of the said property or the creditor, desires to exercise his right of action, he shall not be permitted to do so in the absence of his adversary, who has possession of the property, or who labors under the disadvantage of either infancy or insanity, and has no guardian or curator to represent him, or is subject to superior power, and that the owner or creditor aforesaid cannot seize the property by his own authority; but permission is hereby given him to appear before the Governor of the province, or to send him a statement in writing, and file his complaint within the time prescribed by law, and, by so doing, interrupt the prescription, and this shall be amply sufficient for the purpose. If, however, he should be unable to appear before the Governor, he can apply to the bishop of the diocese, or the Defender of the City, and state his wishes in writing without delay. When the Governor, the bishop, or the Defender of the City is absent, he shall be permitted to publish his intention in the place where the possessor has his domicile, by means of a statement signed by a notary, or if there are no notaries in the city, by one signed by three witnesses, and this shall be sufficient for the interruption of any prescription, whether it be of three years, or for a longer time, or even for thirty or forty years.

All other prescriptions of long time, whether they are of thirty or forty years, which have been established either by ancient legislators or by Ourselves, shall remain in full force.

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

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

Where one person is indebted to another on account of several different claims, and, having brought suit, did not include in his petition the separate amount of each, but only stated the entire indebtedness, a doubt arose among the ancient authorities whether all of the debts had been brought into court, or whether the proceedings only related to the oldest one, or whether the act of the creditor was void, as his intention appeared to be uncertain.

We have found disputes of this kind in many cases which have been brought in the courts, and, above all, with reference to the interruption of prescription. If, for instance, a personal action had been brought, and no mention of an hypothecary action was made, certain authorities held that the personal action was affected by the interruption of prescription, but that the hypothecary action was extinguished on account of its not having been referred to.

And if someone had alleged in general terms that another was indebted to him, additional doubts arose whether all competent actions should be considered to be included in a mere statement of this kind, or whether, as they were passed over in silence, they were barred by prescription, as they acquired no support from the uncertain wording of the petition.

Therefore, We order that no doubt of this kind shall be entertained hereafter in cases in court, but anyone who has instituted proceedings against his debtor, and has produced the document evidencing his agreement, whether it only refers to his indebtedness in a general way, or specifically mentions a single obligation, the plaintiff shall be considered to have brought all his claims into court, and his petition shall be held to include all personal as well as hypothecary causes of action; and the course of prescription will be interrupted, as prescriptions pleaded against persons who are negligent and careless of their own rights are odious.

TITLE XLI.

CONCERNING ALLUVION, MARSHES, AND PASTURES BROUGHT INTO ANOTHER CONDITION.

1. *The Emperor Gordian to Marcus.*

Although it is not lawful to divert the natural course of a stream to another place by artificial means, still it is not forbidden to protect a bank against a rapid current. But where a river, having left its former channel, makes another for itself, the land which it surrounds remains the property of the former owner. If, however, it does this by degrees, and carries soil elsewhere, this is acquired under the right of alluvion by the person to whose land it is added.

2. *The Emperors Arcadius, Honorius, and Theodosius to Csesarius, Prastorian Prefect.*

Persons whom the inundations of the River Nile enrich are required to pay taxes in proportion to the lands which they hold. Those, however, who deplore the loss of their estates from this cause are, on the other hand, released from the burden of taxation. The new proprietors protected by Our generosity should remain content with the possession of what they hold, and gratefully pay the taxes assessed upon them.

3. *The Emperors Valentinian and Theodosius to Cyrus, Prsstorian Prefect.*

Land acquired by the possessors by virtue of the right of alluvion either in Egypt on account of the inundations of the Nile, or in other provinces through the overflow of different rivers, can neither be sold by the Treasury, claimed by anyone, assessed separately, nor be the subject of additional taxation, and this We decree by this law, which shall remain forever valid, lest We may appear to ignore the defects of alluvial titles, or render the property injurious to the possessors of the same.

In like manner, We do not permit lands which, in former times, were either marshes or devoted to pasture, and are now rendered fertile at the expense of the possessors of the same,

to be sold, claimed, or assessed separately as capable of cultivation and subject to increased taxation, lest those who are diligent may not regret that their labors have been dedicated to the culture of the soil, and may realize that their industry did not result in their injury.

We decree that violators of this law shall be punished by a fine of fifty pounds of gold, and Your Highness will also be included, if you should make any other construction of this law, in order to countenance the claims of those who may demand it.

TITLE XLII.

CONCERNING THE DECISIONS OF PRAETORIAN PREFECTS.

1. *The Emperors Diocletian and Maximian to Thalassius, Prse-torian Prefect of Illyria.*

We grant the right of petition to litigants against whom a decision has been rendered by the Praetorian Prefecture, if they allege that they have been injured contrary to law, but We do not concede them the right of appeal, even though the decision was said to have been rendered with reference to a *curia,* or for some other object of general utility, or for any other reason, as it is not conducive to the public welfare to deny to individuals the assistance of a law; and hence the right of petition against decisions of the Prastorian Prefecture is given them only within the term of two years after the judge who decided the case has retired from office.

Given at Constantinople, on the third of the *Ides* of August, during the Consulate of Theodosius, Consul for the thirteenth time, and Festus, Consul for the fifth time, 439.

TITLE XLIII.

HOW AND WHEN A JUDGE SHOULD RENDER A DECISION IN THE PRESENCE OF BOTH PARTIES, OR IN THE ABSENCE OF ONE OF THEM.

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

You will not always be obliged to decide against an absent party under the Rescript of My Father, by which it was provided that decisions could even be rendered against those who are absent, for by this it is meant that you can decide against one who is not present, but not that it is absolutely necessary for you to do so.

2. *The Emperor Gordian to Severus.*

It is certain that although judgment has not been rendered under the terms of the Peremptory Edict, a decision can be given by the judge against those who, having been notified, have refused to appear in court.

Given on the fourth of the *Kalends* of April, under the Consulate of Gordian and Pontianus, 139.

3. *The Same Emperor to Antistius.*

You cannot avoid complying with the judgment on the ground that it was rendered during your absence, and without your knowledge, and as you allege, no defence was made, if, when you first learned of it, you did not immediately file a complaint; for the decision which has been rendered will not be valid if you did not consent to it.

Published on the fourth of the *Ides* of June, during the Consulate of Gordian and Aviola, 240.

4. *The Emperor Philip to Domitian.*

If, as you state, the adverse party obtained a judgment against you on the ground of contumacy, on a holiday when you were absent, or while you were ignorant that it had been rendered by the judge, the Governor will, not without reason, assign the case to another judge to be settled by his decision.

Published on the fifth of the *Ides* of October, during the Consulate of Peregrinus and Slianus, 245.

5. *The Same Emperor and the Csesar Philip to Longinm.*

If (as you allege) the Governor of the province, after having appointed a certain place for hearing the case, fraudulently decided it against you elsewhere during your absence, whatever was done shall have no effect whatever in law.

6. *The Emperors Valerian and Galliemis to Domitius.*

If the Governor refused to admit the appeal made by the guardian of your wards at the time when they, having become adults, had no curator, he will be required to hear the case again; for any decision rendered at that time should not prejudice the rights of said minors, they having been deprived of a just defence and the assistance of a curator.

7. *The Emperor Diocletian and Maximian to Marinus.*

It is certain that judgments rendered against absent parties not guilty of contumacy, and who have not been notified in the usual way, cannot be considered as *res judicata.*

Published on the third of the *Kalends* of April, during the Consulate of Diocletian, Consul for the fifth time, and Maximian, Consul for the fourth time, 293.

8. *The Same Emperors to Claudia.*

It is in conformity with law that the Governor of the province, after having observed all the legal formalities and notified the adverse party three times by means of letters, or once for all by a peremptory edict to appear as is required, if the latter perseveres in his obstinacy, to hear the allegations of the party who is present, or take care that his successor shall do so. Wherefore, if the other party has been summoned three times and still obstinately refuses to appear, it will not be unreasonable for the judge to either compel him to do so, or transfer the possession of the property in dispute to you, and make your adversary the plaintiff, or, having heard your defence, render his decision as the law may require.

Published on the third of the *Kalends* of October, ...

Extract from Novel 112, Chapter III. Latin Text.

He who has once brought suit, whether by instituting proceedings in court or by the presentation of a petition to the Emperor, can notify the judge, and the latter having served notice on his adversary, the plaintiff will be required to prosecute the suit to the end.

If, however, he should defer doing so on the demand of the defendant, he shall be summoned by three edicts at intervals of thirty days, for the reason that the voice of the public crier reaches but few persons. This citation may be issued by persons appointed by the Emperor, and applies even if the case has not yet begun.

If, after having been summoned, the plaintiff refuses to proceed, he shall be allowed the term of a year, and if he fails to act during that time, the judge, having heard the allegations of the party who is present, and ascertained the truth, shall render his decision. But where the plaintiff appears within a year, he shall not be allowed to proceed, unless he first pays the defendant the expenses which he has incurred. If, when these are paid, he again fails to prosecute the case for a year, after having been summoned three times, and the aforesaid term has expired, he shall lose all his rights of action.

9. *The Same Emperors to Leontius.*

It has very properly been provided that three summonses have all the force of a peremptory edict against persons guilty of contumacy.

Published on the eleventh of the *Kalends* of November, during the ^Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time.

10. *The Same Emperors to Blesius.*

As you went on a journey, not of your own free will, but through necessity, the law will not permit any judgment to be rendered against you so as to injure you in any way, when your absence was the result of necessity.

Published on the third of the *Ides* of May, during the Consulate of Tiberanus and Dio, 291.

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

As you state that the suit was begun when all the parties were present, and that afterwards judgment was rendered against you, although you were absent, and you did not appeal within the time prescribed by law, many Imperial Constitutions oppose your demand to have the judgment rendered against you set aside.

TITLE XLIV.

CONCERNING OPINIONS RENDERED WITH REFERENCE TO STATEMENTS MADE IN A WRITTEN PETITION.

1. *The Emperors Valerian and Gallienus to Quintus.*

The decision of an arbiter is void if he himself did not deliver it to the parties litigant, even though he may have notified them in writing. Therefore, if what you allege is true, your case can be heard again by the Governor of the province, without taking into account the fact that you did not appeal.

2. *The Emperors Valens, Valentinian, and Gratian to Probus, Prse-torian Prefect.*

We think that it should be perpetually established by this law that judges who are required to hear and determine cases should not arrive at sudden conclusions, but should render their decisions after careful consideration and reflection; and, after having revised them, and reduced them to writing with the greatest accuracy, they ought to deliver them in this form to the parties interested, and not afterwards be permitted to correct or change them, with the exception of the Illustrious Praetorian Prefect and others who administer important offices, and eminent judges to whom permission is granted to read their final decisions, or have this done by their attendants and the other officers in their service.

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

3. *The Same Emperors to Probus, Praetorian Prefect.*

We order by Our general laws that all judges whom We have invested with the power of dispensing justice in the various provinces, after having heard the cases, shall render their final decision in writing. We add to this law that any judgment rendered without having been reduced to writing shall not be worthy of the name, and the formality of an appeal shall not be required for the annulment of such a wrongful decree.

Given on the third of the *Nones* of December, under the Consulate of Gratian, Consul for the fourth time, and Equitius, 374.

Extract from Novel 117, Chapter III. Latin Text.

When the suits are of little importance, and the property involved of trifling value, or the parties of inferior rank, the Governor must hear them and render judgment orally, and without any costs, nor shall the bishop be required to reduce his decision to writing in cases where persons subject to his authority are concerned.

TITLE XLV.

CONCERNING THE FINAL AND INTERLOCUTORY DECISIONS OF ALL JUDGES.

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

The decision of your predecessor does not appear to Us to be legal, as he, in rendering it between the plaintiff and the defendant's attorney, did not decide against the latter but the client represented by him, who did not appear personally in court. You can, therefore, hear the cause again, just as if it had never been tried.

Given on the fourth of the *Kalends* of July, during the Consulate of Antoninus, Consul for the third time, and Geta, 209.

2. *The Emperor Antoninus to Sextilius.*

If the arbiter appointed by the magistrate was in possession of his freedom when he rendered his award, even though he was subsequently reduced to slavery, the award rendered by him will, nevertheless, have the authority of *res judicata.*

3. *The Emperor Alexander to Vecti^ls.*

The Governor of the province is aware of the fact that a final decision, which does not include either condemnation or acquittal, is not considered legal.

Published during the *Kalends* of October.

4. *The Same Emperor to Severus.*

It is certain that a decision rendered by a Governor contrary to the usual formalities required in judgments does not obtain the authority of *res judicata.*

Published on the fifteenth of the *Kalends* of January, during the Consulate of Alexander and Dio, 230.

5. *The Emperor Philip and the Csesar Philip to Montanus.*

If the Attorney of the Treasury ordered the property of those indebted to it to be delivered to their sureties, under the condition that they should indemnify the Treasury, no appeal will lie from his decision, and it consequently must be obeyed as rendered.

6. *The Emperors Cams, Carinus, and Numerianus to Zoilus.*

As you allege that the decision of the Governor is void for the reason that he did not render it in public, but in a secret place, and without the presence of his attendant, no injury can result to you from anything that he decided.

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

7. *The Emperors Diocletian and Maximian, and the Csesars, to Isidora.*

The Governor of the province, by persuading you to compromise with your relatives in the action on stipulation which you brought against them, does not extinguish the verbal obligation, which can only be annulled in a way provided by law, for the mere act of a judge has not the force of a judicial decision, as his authority is confined within certain limits, as has been frequently established. Wherefore, if, having heard the case, the Governor did not decide in accordance with the rules of law, his words persuading you to permanently dispose of the action (if you had one) could not produce this effect.

8. *The Same Emperors and Csssars to Licinius.*

If Theodora, whom you allege was liberated either on account of a purchase or because of her delivery to a creditor in discharge of a debt, has been decided to be free, the judgment cannot

be set aside without having recourse to an appeal. But if suit was brought, and a decision rendered after he who is said to be the owner of the woman was notified, you will not be prevented from recovering the amount of your interest in the purchase, if you bought her, or to recover the debt, if she was given in payment for one.

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

After final judgment in a case, anything decided by the magistrate who rendered it, or his successor, with reference to the question already disposed of, does not obtain the force of *res judicata,* nor do decisions involving possession in any way prejudice the ownership of the property, and interlocutory decrees do not, for the most part, terminate an action.

Ordered on the *Nones* of April, during the Consulate of the Caesars.

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

Anyone invested with judicial authority is not allowed to forbid a person to remain in his own country. Given on the third of the *Nones* ....

11. *The Same Emperors and Csssars to Lucian.*

When the judge, by a final decision, merely orders that an oath shall be tendered, without adding what shall be done if the oath is taken, or refused, it is clear that his decision will be of no force or effect.

12. *The Emperors Arcadius and Honorius to Julian, Proconsul of Asia,.*

Judges can render their decisions in the Latin as well as in the Greek language.

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

Let no judge or arbiter think that he is compelled to abide by any of the results of Imperial consultations which he does not consider to have been stated properly and in accordance with law, and this applies with still greater force to the decisions of the Illustrious Prefects and other dignitaries, for if any matters have not been properly disposed of, this defect should not be extended to the decrees of other judges, as the decisions of courts should not be founded upon the examples set by others, but upon the laws. The final decisions of the Prefecture, or the court of any other supreme magistrate, are not binding if not legal, and We order all Our judges to conform to the truth, and to follow the principles of law and justice. Given on the third of the *Kalends* of November ....

14. *The Same Emperor to Demosthenes, Prastorian Prefect.*

As that distinguished man, Papinian, very properly stated in his book of Questions, that a judge could not only discharge the defendant from liability, but could render a decision against the plaintiff himself, if, on the other hand, he should find that he was indebted to the defendant, We also order this rule to be extended so that the judge may be permitted to render a decision against the plaintiff, and require him to either pay or do something without allowing any exception to be pleaded against him on the ground that he is not a competent judge of the plaintiff, for he should not object to have the same judge whom he had accepted in the beginning of the case decide against him at the end.

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

Extract from Novel 96, Chapter II. Latin Text.

In consequence of this, if I have been sued by anyone, and desire to sue him in return, I will not be permitted to do so except before the same judge; and, if he is displeasing to my adversary, he can reject him within twenty days, and have another appointed before whom the case can be tried a second time. Then the case against me having been first disposed of, I shall be permitted to have my own heard.

15. A *Law which is not Authentic.*

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

As it is customary for magistrates to render interlocutory decrees setting forth that the parties shall not be permitted to have recourse to an appeal, or to call their jurisdiction in question before a final decision has been given, certain authorities held that before issue has been joined, a judge cannot be objected to, nor can an appeal be taken from his interlocutory decree. For as the same terms are applicable to an appeal as to an objection to jurisdiction, and an appeal cannot be taken before issue has been joined, they thought that no one would be permitted to refuse a judge before issue had been joined, which is by no means prohibited. Hence judges must be careful to use terms of this kind together, and without making any distinction between them.

TITLE XLVI.

CONCERNING DECISIONS WHICH ARE RENDERED WITHOUT STATING THE EXACT AMOUNT TO BE PAID.

1. *The Emperors Severus and Antoninus to &liana.*

It is clear that the judge did not render his decision against the rule of law in providing, as you allege, that interest must be paid until the amount mentioned in the judgment has been settled.

2. *The Emperor Alexander to Marcellinus.*

Although the sum of money due is not stated in the decision of the Curator of the State, his decision, nevertheless, is valid, since he ordered the State to be indemnified.

3. *The Emperor Gordian to JEmylius.*

The following decision, namely, "Pay the entire amount due with legal interest," does not comply with the requirements of the action to enforce judgment, as a judicial decision which does not specify a certain sum only obtains the authority of *res judicata* when the amount has been mentioned in some other part of the documents belonging to the case.

4. *The Same Emperor to Saturnina.*

The following decision, namely, "Pay what you have received in good faith," as it is uncertain how much the debtor received, and how much is demanded of him—and especially when the judge who promulgated the decision out of the regular order has rendered an interlocutory decree that the dowry which had been given and which was claimed had not been paid—does not obtain the authority of judgment.

Therefore, if another judge should afterwards render a judgment and decide against you, and you do not appeal from his decision, you will confirm it by your own act.

TITLE XLVII.

CONCERNING DECISIONS RENDERED FOR DAMAGES.

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

As an infinite number of doubts with reference to damages arose among the ancients, it seems best to Us, as far as is possible, to reduce this prolixity into more narrow limits. Hence We order that, whenever the amount or the nature of the property is certain, as in the case of sales, leases, and all other contracts, the damages shall not exceed double the value of the property. In other instances, however, where the value seems to be uncertain, the judges having jurisdiction shall carefully ascertain the actual amount of the loss, and damages to that amount shall be granted, and it shall not be reduced by any machinations and immoderate perversions of values leading to inextricable confusion, lest, when the calculation is indefinitely reduced, it may become impossible of application; as We know that it is in conformity with Nature that

those penalties alone should be exacted which can be imposed with a proper degree of moderation, or are definitely prescribed by the laws.

Our Constitution not only applies where loss, but also to where profit is involved, for the reason that the ancient authorities held that damages could be collected from him who did not obtain any profit, when he could have done so.

Let the promulgation of this Constitution put an end to verbosity in all cases, in accordance with what has been already stated.

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

TITLE XLVIII.

WHERE A DECISION HAS BEEN RENDERED BY A JUDGE WHO IS SAID NOT TO BE COMPETENT.

1. *The Emperor Alexander to Sabinianus.*

When a judge has been appointed to decide a certain matter, and renders an opinion with reference to others which have no connection with it, he performs an act which is void in law.

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

2. *The Emperor Gordian to Licinia.*

If a military judge, who was not appointed by one who had authority to do so, should hear a case which ought to have been determined by means of a civil proceeding, his act will not have the authority of a legal decision, and an appeal need not be taken.

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

If a judge appointed to determine the right of ownership did not render judgment against you on this point, the Governor of the province, after having been applied to, shall take cognizance of your case, and decide it, and the right of ownership will, by no means, be prejudiced because it is established that a decision has been rendered with reference to possession.

Ordered at Herculaneum, on the *Nones* of November, during the Consulate of the Caesars, 297.

4. *The Emperors Gratian, Valentinian, and Theodosius to Potitus, Vicegerent.*

This rule also applies to the cases of private persons, namely, that a decision rendered by a judge without authority does not bind any of the litigants.

Given on the tenth of the *Kalends* of October ....

TITLE XLIX.

CONCERNING THE PENALTY TO WHICH A JUDGE IS LIABLE WHO HAS RENDERED AN IMPROPER DECISION, AND THE PUNISHMENT WHICH MAY BE INFLICTED UPON ANYONE WHO ATTEMPTS TO CORRUPT A JUDGE, OR HIS ADVERSARY.

1. *The Emperor Antoninus to Gaudius.*

It is established that, where in any case, either public or private, or in which the Treasury is interested, money is paid by anyone, whether to the judge or to the adversary of the former, he who, doubtful of the justice of his cause, placed a corrupt hope of success in the payment of money, will lose his action.

Given on the seventh of the *Kalends* of January, during the Consulate of the two Aspers, 213.

Extract from Novel 124, Chapter II. Latin Text.

By the new law, which provides that where any person acknowledges that he has given or promised something to another, and can prove it, he shall be pardoned, but he who received the bribe or accepted the promise, if the case involves the payment of money, shall be required, by the Count of Private Affairs, to pay three times the amount of what was given, and double the amount of what was promised, and shall be deprived of his office, and when the case is a criminal one, all his property shall be confiscated, and he shall be sent into exile.

If, however, the litigant should be unable to prove that anything was either given or promised, and he who is said to have accepted it swears that he did not receive anything from him or from anyone else, or that no promise was made, he shall be discharged. The litigant who was unable to prove his allegations shall be compelled by the Count of Private Affairs, to deposit in his hands a sum equal to the amount involved in the suit, which shall be prosecuted to a conclusion, and in a criminal case, all his property having been confiscated, a decision shall be rendered by a competent judge in conformity with law. If the person indicated by the litigant should refuse to take the oath aforesaid, he shall be subjected to the abovementioned penalty.

When, however, one of the parties litigant swears that he did not either give or promise anything, and if it should be proved within the term of ten months after the decision has been rendered that he did give or promise something, both those who gave and those who received the money or other property shall suffer the penalties aforesaid.

2. *The Emperor Constantine to Felix.*

He who has been corrupted by money, or who, through partiality, has rendered a wrongful decision, shall be required to indemnify the party whom he injured, not only for the costs of the suit, but also to assume the risk of the same.

Given at Constantinople, on the eighth of the *Kalends* of November, during the Consulate of Constantine, Consul for the fifth time, and Licinius, 319.

TITLE L.

A DECISION WHEN ONCE RENDERED CANNOT BE REVOKED.

1. *The Emperor Gordian to Secundus.*

There is no doubt that anyone cannot revoke either his own decision or that of his predecessor, and it is a well-known rule of law that it is not necessary to take an appeal from a decision of this kind.

Published during the *Kalends* of March, ...

2. *The Emperors Diocletian and Maximian, and the Caesars, to Alexander.*

The Perpetual Edict clearly states that peremptory exceptions which have been omitted in the beginning can be pleaded subsequently before judgment is rendered. If this has not previously been done, complete restitution will be permitted; for where judgment has been rendered against persons over the age of twenty-five years, on the ground that prescription was not contested, it cannot be annulled without having recourse to the remedy of appeal.

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

3. *The Emperor Constantine to Proculus.*

It has been decided that rescripts which have been granted shall not have authority when the cases to which they relate have once been terminated by a judicial decision which admitted of no appeal, but those who have obtained rescripts of this kind should also be excluded from making use of them in court.

Given at Constantinople, on the sixth of the *Kalends* of January, during the Consulate of the Emperor ....

TITLE LI.

CONCERNING THE PROFITS AND THE EXPENSES OF LITIGATION.

1. *The Emperors Diocletian and Maximian, and the Cassars, to Alexander.*

The term "profits" only includes what remains after the deduction of the legitimate expenses.

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

2. *The Emperor Valentinian to Olybrius, Praetorian Prefect.*

The defeated party litigant is not only required to restore the property, but also to pay over the profits which he himself has obtained, as well as those which he could have acquired, and he must pay them from the time that he knew that he was a possessor in bad faith, as established by the action brought in court.

This rule shall also apply to an heir whose property is held by the same defective title.

Given on the third of the *Kalends* of March, ...

3. *The Emperors Honorius and Theodosius to Asclepiodotus, Prse-torian Prefect.*

After a matter has been terminated and settled by compromise, no action, even if based upon a rescript, will be granted for the purpose of recovering the expenses, unless, all the parties being present, the judge who rendered an opinion in the first matter stated in his decision that the expenses of the case should be paid to the successful party, or that he had a right to resort to legal proceedings to collect them, for where anyone has been released from future liability when the case was decided, it would be infamous to authorize another action to be brought with reference to what had been settled by the first one.

Given at Constantinople, on the third of the *Kalends* of April, during the Consulate of Asclepiodotus and Marinianus, 423.

4. *The Emperors Valentinian. Theodosius, and Arcadius, Edict to the People.*

He by whose demand someone has been summoned in accordance with the legal formalities to a place far from his residence, and the hearing of his case protracted, is hereby notified that, if by his fault the trial was deferred, or if he should not himself be present, or should be unable to prove his allegations, he must pay the penalty prescribed by the laws for malicious litigations; and if the expenses were incurred in a pecuniary case, the value of the property claimed, as well as the time consumed in the journey, having been considered, the judge shall render a decision in accordance with his estimate of the damages sustained.

Given at Constantinople, on the fifth of the *Ides* of October, during the Consulate of Valentinian, Consul for the seventh time, and Avienus, 450.

5. *A Law which is not Aiithentic.*

6. *The Emperor Anastasius to Stephen, General of the Army.*

As certain persons allege that they enjoy privileges, some of them under the laws and Imperial constitutions, and others through special favors which have been granted them, as well as with reference to the payment of taxes by agreement for which they are only liable to a specified amount, and are not required to pay the costs of litigation at all, or only a small part of the same, We decree by this law that whoever enjoys a privilege of this kind, or may hereafter obtain it in any way, is hereby notified that those against whom he has instituted any civil or criminal proceeding will also enjoy the same right; as it would be intolerable for those who are entitled to the privileges aforesaid to be permitted to collect, as plaintiffs, anything more from their adversaries than they themselves, as defendants, if beaten, would be compelled to

surrender to them, in turn; so, in order that this rule may be observed in every instance involving privileges granted through liberality, or generally attaching to certain offices, classes, or dignities, or which have been specially bestowed upon certain persons, or which may hereafter be conferred, whether this has been expressly stated in the Imperial grants or Rescripts or whether it has been omitted, We order it to be enforced.

TITLE LII.

CONCERNING RES JUDICATA.

1. *The Emperor Antoninus to Stellator.*

A judicial decision must be adhered to, but if you can prove that the party in whose favor judgment was rendered against you has received what he appeared to have lost by theft, you can defend yourself by an exception on the ground of fraud, if he attempts to carry the judgment into execution.

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

2. *The Same Emperor to Pacatianus.*

If a case which has been decided could be revived under the pretext of a mistake in calculation, litigation would never end.

Published at Rome, on the day before the *Nones* of . . . , during the Consulate of Lsetus and Cerealis, 216.

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

If it should appear that you have collected money by means of fraudulent accounts, and you have been ordered to refund it with a penalty, and you did not appeal from the decision of the Governor, you will be obliged to pay the entire amount of the judgment.

4. *The Emperor Gordian to Antoninus.*

It is a bad precedent to revive a case which has been decided, under the pretext of the discovery of new documents. Given on the eighth of the *Ides* of March.

5. *The Emperors Diocletian and Maximian, and the Csesars, to Valentine.*

It is clearly proved that the party demanding a delay for payment acquiesced in the decision, and he is in the same position as one who in any other way has agreed to it; for a case which has been terminated should not be suffered to be revived.

6. *The Emperors Honorius and Theodosius to Julian, Proconsul of Africa.*

We desire that matters which have been transacted by public authority shall remain forever valid, as the public faith should not pass away with the death of the official having jurisdiction.

Given on the third of the *Kalends* of September, during the Consulate of Constans, 414.

TITLE LIII.

CONCERNING THE EXECUTION OF JUDGMENT.

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

The court was too hasty in ordering the pledges of Marcella to be taken in execution and sold, for in order that the procedure prescribed by law may be observed, you must first bring suit against your adversary, and the case having been heard, have judgment rendered in your favor.

Published on the third of the *Kalends* of February, during the Consulate of Albinus and jEmilianus, 207.

2. *The Same Emperors to Agrippa.*

If you have not changed the judgment by novation, the Governor of the province, after the pledges have been taken in execution and sold, shall order the proceeds to be disposed of for your benefit. If, however, the case has been altered by novation, an action on stipulation will lie in your favor, and a competent judge having been appointed, you can proceed in accordance with the legal formalities.

3. *The Same Emperors to Agrippa.*

The nature of the transaction and the delay in payment which has resulted demand a more speedy remedy; therefore, if you appear before the Governor of the province, whose duty it is to see that the judgment is executed, and state that although the land given in pledge has, in accordance with the contract, for a long time been offered at public sale, it has not yet found a purchaser on account of the intrigues of the adverse party, he will place you in possession of the said land, in order that by this means the execution which has been so long delayed may be issued.

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

4. *The Same Emperors to the Soldier Marcellus.*

The Governor of the province will not permit your pay to be withheld for the purpose of satisfying the judgment which has been rendered against you, since this can be accomplished by having recourse to other measures.

Published on the third of the *Nones* ....

5. *The Emperor Gordian to Amandus.*

It is well known that the claims of a debtor can be taken in execution where judgment has been rendered against him.

Published on the third of the *Ides* of October, during the Consulate of Atticus and Prsetextus, 243.

6. *The Emperor Philip and the Caesar to Titian.*

If (as you allege) the court officer appointed to execute the judgment assumed judicial duties, and thought that a decision should be rendered contrary to what had previously been determined with reference to your case, the opinion given by him can never obtain the torce of a judgment.

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

If the restoration to which you were entitled has been delayed by the protracted and unconcealed efforts of the adverse party, and the slaves who were the subject of controversy have died, their value should be paid to you by him who prevented you from receiving them. The animals, also, together with their offspring, shall be delivered to you by the intervention of the Governor.

8. *The Same Emperors and Caesars to Nicomachus.*

It is clear that the official whose duty it is to see that the judgment is executed after it has been rendered, and the case has been heard and argued by the parties, is the only person who can give force and effect to the decision.

Without date or designation of Consulate.

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

Bring suit before the Governor of the province against those whom you allege to be your

debtors, whether they acknowledge the obligation or deny it, and having had judgment rendered against them, if they do not satisfy it by payment within the time prescribed by law, the Governor, observing the legal formalities shall, after the pledges have been seized and sold, see that execution takes place in the manner repeatedly mentioned in the Imperial constitutions.

Ordered on the *Nones* of November, during the Consulate of the Csesars.

TITLE LIV.

CONCERNING INTEREST ON A JUDGMENT.

1. *The Emperor Antoninus to the Managers of Estates.* He who proceeds against the property of a defeated party litigant in accordance with the judgment rendered shall, in addition to the principal, be entitled to interest at twelve per cent for the time which elapsed during which he refused to obey the judgment.

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

Those who have been ordered to pay a certain sum of money, and have failed to do so for more than four months from the date of the judgment, or, if an appeal was taken, have failed to satisfy it from the day of its confirmation, We decree shall be required to pay interest at twelve per cent; and what has been prescribed by former laws which imposed upon them interest at twenty-four per cent, or by Our law which fixed the rate at six per cent, shall not apply to the cases of such persons.

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

3. *The Same Emperor to John, Praetorian Prefect.* We decree that if anyone should have judgment rendered against him, and a further delay of four months has been granted by Us, he shall, after that time has expired, be compelled to pay interest at the rate of twelve per cent in accordance with the terms of the judgment; but this shall only be on the principal and not on the interest which was originally included in the judgment, for We have already decided that the collection of interest on interest shall be abolished, and have left no case in which this can be done. For if this was left without correction, something absurd and awkward must necessarily result, as interest arising from contracts is legally payable, and is very frequently fixed by Our laws at a lower rate than twelve per cent; and compound interest would necessarily be imposed at a higher rate than simple interest. If interest ran at twelve per cent at all times on a judgment, this would rarely happen under the provisions of contracts, and if, by certain articles of Our law exceptions have, in some instances, been made, the necessities of the case were responsible for the apparent injustice.

Hence, We, desiring to correct this by means of a proper remedy, do hereby order that interest only on the principal to the amount of twelve per cent shall be collected on a judgment, and that interest on interest, no matter at what rate, shall not be exacted; since if the original contract was changed by the judgment, interest should not be collected on the contract after the judgment was rendered, for otherwise, it would only be payable on the principal as a result of the judgment ; and because both principal and interest were included in a single sum, it should not be concluded that interest on the entire amount could be collected, but only on the principal.

(1) As the ancients, by an exceedingly pernicious regulation under which, in the satisfaction of a judgment, indulgence was granted for two months to persons who had lost their cases, their sureties, however, were not permitted to enjoy this privilege, as the successful parties (the principals who had judgment rendered against them being left for the time on account of the provisions of the law) were authorized to collect the money or take the property which was the object of the judgment from the sureties or mandators of the former, We, desiring to abolish

this injustice, do hereby order that the delay

of four months which We granted to the principals in the case shall also be extended to their sureties and mandators, in order that the law may not be evaded, for when anyone who volunteers to defend a case is compelled to make payment, and he, in his turn, forces the defendant involuntarily to satisfy him, the defeated party does not experience the benefit of Our indulgence, because, through his surety, he was compelled to pay the money which he owes.

TITLE LV.

WHERE JUDGMENT IS RENDERED AGAINST SEVERAL PERSONS AT ONCE.

1. *The Emperor Alexander to Victor.*

If you and your colleagues have not had judgment in full rendered against you severally, but only jointly for a single and specified sum, and it is not stated in the judgment that what cannot be collected from one shall be made up by the other, the effect of the decision is that each party shall be liable for an equal portion. Therefore, if, in obedience to the judgment, you have paid your share, you cannot be compelled to pay that of the other party if he should fail to do so.

2. *The Emperor Gordian to Annianus.*

Whenever judgment is rendered against two guardians, each of whom had employed an attorney to defend him, liability for the amount of the judgment is considered to have been divided between them, hence it is a well-established rule of law that what cannot be collected from one cannot be recovered from the other.

TITLE LVI.

WHO ARE NOT INJURED BY A JUDGMENT.

1. *The Emperor Alexander to Masculinus.*

If you did not commit the defence of your property to your brother, and did not ratify his acts, the exception of *res judicata* will not affect you, and therefore you will not be prevented from conducting your case without prejudice on account of the judgment.

Published during the *Nones* of May, under the Consulate of Alexander, 223.

2. *The Emperor Gordian to Athenius.*

Where judgment has been rendered between certain parties, those who did not appear in the case will experience neither benefit nor injury, and therefore your granddaughter cannot be prejudiced where a judgment has been rendered against her co-heirs, if nothing was decided against her.

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

It is a perfectly clear rule of law that, even in criminal cases, those who did not appear in court will not be affected, if, perchance, they should seem to have sustained any injury.

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

It has frequently been held that where a case has been decided between certain parties, the rights of one who is absent, and equally interested, will not be prejudiced.

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

TITLE LVII.

NOTICES, LETTERS, PROCLAMATIONS, AND SIGNATURES DO NOT POSSESS THE AUTHORITY OF JUDGMENTS.

1. The Emperor Antoninus to Rogatianus.

Notification by a judge who directs certain interest to be paid by persons who failed to discharge a debt within a specified time does not have the force of a stipulation.

Given on the day before the *Ides* of January, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to Maximus.*

The fact that the Governor of the province, by a letter, ordered you to pay a certain sum of money to the State, does not have the effect of a judicial decision.

Given on the fourth of the *Ides* of March, during the Consulate of Maximus, Consul for the second time, and Julianus, 234.

3. *The Same Emperor to Zoticus.*

It has frequently been stated in Rescripts that a decision rendered after the trial of a case cannot be revoked by the signature of the Emperor.

Published on the sixth of the *Ides* of September, during the Consulate of Albinus and Maximus, 228.

4. *The Emperor Gordian to Asclepiodotus.*

The interlocutory decree of a Governor, which has been duly recorded, ordering the party sued to obey it by making payment of a debt or be liable to double or quadruple damages, is rather the act of one who gives warning than the decision of a magistrate, as the rule of law declares that an act of this kind does not obtain the force of a judgment.

5. *The Same Emperor to Jucundus.*

The judge who admitted the controversy should have heard and examined the allegations of both parties, for there is no doubt that the note which he appended to the petition, and by which he placed one of the parties in possession of the land, cannot be considered to take the place of a judgment.

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

It is clear that a proclamation published by the Governor of a province cannot have the force of a judgment any more than a summons.

7. *The Emperor Constantine to Bassus, Prsetorian Prefect.*

It is not proper or customary for a judgment rendered after a prolonged contest to be stated in a few written phrases.

Given on the fifteenth of the *Kalends* of April, during the Consulate of Constantine, Consul for the sixth time, and Maximus, 306.

TITLE LVIII.

WHERE A JUDGMENT IS BASED ON FORGED DOCUMENTS OR FALSE EVIDENCE.

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

If you desire to declare a will to be forged, in accordance with the terms of which the illustrious Proconsul has rendered a judgment, he will grant you a hearing, notwithstanding this is barred by the judgment, because the question as to the forgery of the will has not yet been decided.

2. *The Emperor Alexander to Optatus.*

Those who did not appeal when they were able to prove that they had lost their case by reason of forged documents should be heard just as if the suit was begun for the first time, as they are giving information with reference to a crime.

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

3. *The Same Emperor to Clement.*

You will not be prevented from proving in the ordinary way that the evidence which the adverse party produced against you in court is (as you allege) false. The judgment, however, shall not be set aside unless you can show that he who rendered it decided against you, because he relied upon the genuineness of an instrument which is proved to have been forged.

Published on the seventh of the *Kalends* of September, ...

4. *The Emperor Gordian to Herennius.*

The execution of a judgment is usually suspended, and recovery of what has been paid granted, if it can be shown by positive evidence that the judge was deceived by *a* forged instrument, the commission of the crime having afterwards been established.

Published on the fifth of the *Ides* of September, ...

TITLE LIX.

CONCERNING CONFESSIONS.

1. *The Emperor Antoninus to Julianus.*

It has been decided that confessions made in court have the effect of judgments, therefore you have no right to revoke your confession, as you will be compelled to make payment.

Adopted on the third of the *Kalends* of October, during the Consulate of Gentian and Bassus, 212.

TITLE LX.

ACTS PERFORMED OR JUDGMENTS RENDERED BETWEEN SOME PERSONS CANNOT PREJUDICE THE RIGHTS OF OTHERS.

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

It has frequently been decided that matters transacted by certain persons cannot prejudice the rights of others. Wherefore, although you state that some of the heirs of him whom you allege to have been your debtor have paid you, the others should not be pressed for settlement unless the indebtedness is proved to be due.

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

2. *The Same Emperors and Cassars to Epicrates.*

It is a well-known rule of law that a compromise made between certain parties cannot prejudice the rights of another who is absent. Therefore, having appeared before the Governor of the province, prove that your grandmother gave you the slave in question, and if the Governor should find that he legally belongs to you for this reason, he will cause him to be restored to you, for if the others divided the slave during your absence, they could not deprive you of any of your rights.

3. *The Same Emperors and Cassars to Fortunata.*

If you, along with your brother, succeeded to your mother, and your brother entered into a

compromise with the creditors of the estate with reference to your share of the same, and did so without your consent, he could not extinguish the right acquired by you to your share of said estate.

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

TITLE LXI.

CONCERNING REFERENCES TO THE EMPEROR.

1. *The Emperor Constantine to Profuturus, Prefect of Subsistence.*

When a judge thinks that the case should be referred to Us, and does not decide between the parties, but concludes that the point upon which he is in doubt ought to be left to Our wisdom, or if he has rendered a judgment, he must not prevent the litigants from afterwards appealing from it, for fear that it may be reversed, being well aware that if he does so, an appeal can, nevertheless, legally be taken. Nothing should be sent to Us which needs a complete examination. Whenever the judge believes that a case should be referred to Us, he must immediately order all the litigants to be notified that a consultation is about to take place, and if the point referred is not sufficiently explicit, or appears to be contrary to law, the judge shall, without any unnecessary delay, be required to place the petition upon record.

Given at Sirmium, on the fourth of the *Kalends* of February, during the Consulate of Constantine, Consul for the fifth time, and Licinius, 312.

Extract from Novel 125, Chapter I. Latin Text.

Under the provisions of the new law, where a case has been thoroughly examined it should be terminated by the decision, which should be formally executed, unless an appeal is taken.

2. *The Emperors Valentinian and Valens to Viventius, Prsetorian Prefect.*

The Governors of provinces must not think that criminal cases originating in their jurisdiction should be referred to Us unless they have previously notified the parties that this is to be done, for only the truth will be established when the matters are referred, whether their allegations are refuted or confirmed by their consent.

Given on the twenty-third of the *Kalends* of January, during the Consulship of Valentinian and Valens, 365.

3. *The Same Emperors and Gratian to Apodemius.*

If when either reason or necessity requires Our decision in any instance, and an opinion is expected, the submission of the reference must include the whole case, so that, having been read, it will not be necessary for all the documents to be reviewed; still, all of them should accompany the application.

Given on the sixth of the *Ides* of May, during the Consulate of Our Noble Prince Valentinian, and Victor, 369.

TITLE LXII.

CONCERNING APPEALS AND IMPERIAL DECISIONS.

1. *The Decree of the Divine Severus, Published with Reference to Marcus Priscus, on the Ides of January, during the Consulate of Pom-peianus and Avitus, 210.*

The Governor of the province must first determine the question of possession, and then inquire into the crime of violence, and if he should not do so, there will be good ground to appeal from his decision.

2. *The Emperor Alexander to Plautianus.*

What you demand is not new, hence you must not be denied the right to appeal, even though one of My Rescripts is pleaded against you.

3. *The Emperor Gordian to Victor.*

It has frequently been established that, where an appeal was taken, although it may have been rejected by the court, nothing took place to prejudice the decision, and that everything remains in the same condition that it was when judgment was rendered.

Published on the fourth ....

4. *The Emperor Philip and the Csesar Philip to Probus.*

If, having been appointed to the office of clerk, you did not appeal, the laws cannot be violated by your refusal.

5. *The Emperors Diocletian and Maximian, and the Csesars, to Valens and Others.*

If the Governor of the province, to whom you have appealed, should decide that you were not to blame because you did not file your petition within the time prescribed by law, but that this resulted from the death of the person who had been charged with presenting it, he will grant you relief in accordance with the terms of the Perpetual Edict.

6. *The Same Emperors and Csesars decree:*

It is proper for those who have jurisdiction of appeals, and hear them, to dispose of them in such a way that it may be understood that the appeal was filed after a decision was rendered by the court below, as it is not right that, under any pretext whatever, the case should be sent back to the trial judge, but in every instance it must be ended by its own decision; as the salutary law enacted with reference to this provides that, after the appellate judge has passed upon the appeal, recourse cannot be had to the magistrate from whose decision the appeal was taken. Wherefore, judges are hereby notified that, under no pretext whatever, can litigants be sent back to their own provinces, as appellate judges in every instance are only permitted to determine whether the appeal was properly taken or not.

(1) If one of the litigants should think that he has failed to make use of some good defence in his allegations before the lower court, he can avail himself of it before the judge who has cognizance of the appeal, as it is Our desire that judges should only decide in conformity with justice, and that no important evidence which may have been omitted should be excluded.

(2) When anyone, after having taken an appeal, thinks that the presence of certain persons is necessary for him to establish the truth before the judge who has jurisdiction of the appeal, because he believes that it was concealed, and the judge decides that this ought to be done, the appellant should pay the said witnesses their travelling expenses, for justice demands that he who thinks that he is interested in having them summoned should do this.

(3) However, with reference to those who, accused of capital offences, have appealed from the sentences passed upon them, neither they themselves nor those who appeal in their behalf, can do so until the case has been fully heard and argued and judgment has been rendered, and We order that this rule shall be observed, in order that if the defendant is unable to obtain a solvent surety he may be kept in custody, and that the judges shall send their decisions as well as copies of the documents filed by the appellants, together with the replies made to them, to the court of appeal, so that the condition of the case may be made clear to the appellate judge, and its merits having been considered, judgment be rendered in accordance with the rights of each of the parties.

(4) In order that the power to appeal may not be rashly and indiscriminately granted, We decree that he who has failed to establish his case on appeal shall be compelled by a competent judge to pay a reasonable penalty.

(5) Where, however, anyone having conducted his own case in court, and having been

defeated, desires to appeal, he must file his petition on the same day, or on the next after judgment has been rendered. He who is transacting the business of another must, under the same circumstances, appeal within three days.

Extract from Novel 23, Chapter I. Latin Text. At present, the term of ten days from the date of the judgment is granted in which to file an appeal.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS .

(6) The judge shall, without delay, notify the other party that an appeal has been taken, even when the appellant does not request it, but the former is by no means required to furnish security to conduct his side of the appeal.

Without date or designation of Consulate.

7. *The Same Emperors and Caesars to Nero.*

If those who have been appointed to civil offices, to the decurionate, or to any other honors, even though they may have been released from the discharge of their duties by the Emperor, do not avail themselves of the aid of an appeal, they will be considered to have confirmed their appointments by their own consent. Therefore, as you have been appointed to a public office, and have appealed, prove before the Governor of the province that you have done so for a good reason.

8. *The Same Emperors and Csesars to Opimiamiis.* Where a decision has been rendered against someone who is more than twenty-five years of age, and an appeal was not taken within the time prescribed by law, and the Governor of the province ascertains that the matter was not settled by compromise while the appeal was pending, he shall see that the judgment is executed.

9. *The Same Emperors and Caesars to Our Dear Haberad.*

The principal party in the case can himself prosecute an appeal which his attorney has taken in the course of the proceedings, even during the absence of the latter.

10. *The Same Emperors and Csssars to Titian.*

If an attorney appointed by a curator should lose the case, he himself as well as the curator can invoke the aid of appeal, or the curator alone can exercise that right. If, however, the minor should, in the meantime, claim the indulgence due to his age, or attain his majority, he can, in his own name, conduct the appeal.

Ordered on the day before the *Kalends* of October, during the Consulate of the Caesars.

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

Citizens, and the inhabitants of towns who have good excuses and did not appeal after having legally been appointed to office, will not be permitted to establish the trust of their allegations.

12. *The Emperor Constantine to Catulinus.*

Where an appeal has been filed in a civil case it is, under no circumstances, allowed for the appellant to be kept in prison, or subjected to any kind of injury whatsoever, or be tortured or even exposed to insult. It is, however, otherwise in criminal prosecutions, for in these, even if an appeal can be taken, the defendant must be kept in custody until the case has been decided after the appeal, if he is not able to furnish a surety who is solvent.

Adopted on the fifteenth of the *Kalends* of May, during the Consulate of Volusianus and Annianus, 314.

13. *The Same Emperor to Petronius Probianus, Greeting.*

From the time when proceedings in civil cases were instituted between private individuals, and you determined to consult or refer them to Us, or you admitted the appeal, and complied with the requisite legal formalities, nothing afterwards should be permitted or performed by you in any way, even if any evidence of Our favor should be produced, but you must, in obedience to former laws, do all that is required and see that the case is sent to the Imperial Court.

Published during the *Ides* of October, during the Consulate of Sabinus and Rufinus, 316.

14. *The Same Emperor to Bassus, Prefect of the City.*

Litigants have a right to immediately appeal orally, without doing so in writing, if the circumstances of the judgment demand it, and this applies to civil as well as to criminal cases.

Given at Sirmium, on the eighth of the *Ides* of June, during the Consulate of Gallicanus and Bassus, 317.

15. *The Same Emperor to Severus Vicegerent.*

In order that it may not be necessary for cases which have been brought before Us on appeal to be sent back to the lower court, We order that all necessary information be inserted in the papers. We are compelled to be lenient in rendering Our Decrees, as there is reason to apprehend that where a case has not been thoroughly investigated the opportunity for further examination may be lost. Therefore, a judge shall be liable to perpetual infamy if all the matters stated by the litigants in the examination and the evidence are not inserted, and cannot be found in the documents accompanying the appeal.

Given at Aquileia, on the tenth of the *Kalends* of July, during the Consulate of Constantine, Consul for the fifth time, and Licinius, 319.

16. *The Same Emperor to Maximus.*

Those also are entitled to the benefit of an appeal against whom judgment has been rendered by a deputy appointed by the Emperor.

Given at Sirmium, on the day before the *Ides* of January, during the Second Consulate of Crispus and Constantine, 321.

17. *The Same Emperor to Julian, Prefect of the City.*

When, after a case has been heard by any of the Praetors, an appeal is taken by either party, the appellant must obey the judgment of the Prefect of the City.

Given at Heraclea on the third of the *Nones* of August, during the Consulate of Constantine, Consul for the seventh time, and the Caesar Constantius, Consul for the third time, 326.

18. *The Same Emperor to Victor, Collector of Taxes of the City of Rome.*

As some debtors of the Treasury, when ordered to pay certain sums of money, are accustomed to evade execution by having recourse to an appeal, which they do not afterwards attempt to prosecute, it has been decided that if they do not comply with all the formalities prescribed by law within the proper time, the appeal shall be held to have been abandoned, and the amount due shall immediately be collected.

Given on the day before the *Kalends* of August, during the Consulate of Constantius and Maximus, 327.

19. *The Same Emperor to All the Inhabitants of the Provinces.*

We permit appeals to be taken from the decisions of Proconsuls, counts, and those who preside in the place of prefects, whether the decisions have been made on appeal, after delegation, or under ordinary jurisdiction, but the judge must give a copy of the decision to the appellant, as well as send to Us all the pleadings of the parties, together with the arguments on

both sides, as well as his own decision.

We do not permit an appeal to be taken from the decisions of Praetorian Prefects. If the defeated party can show that he applied for an appeal, but that the judge refused to entertain it, he can go before the Prefect and begin the case again just as if an appeal had been taken. If the appellant is shown not to have appealed on proper grounds, and loses his case, he shall be. branded with infamy. If, however, he should succeed, the judge who refused to receive his appeal must be prosecuted before Us, in order that he may be properly punished.

Given at Constantinople on the *Kalends* of September, during the Consulate of Bassus and Ablavius, 331.

20. *The Same Emperor to Albinus.*

The power of appeal is granted in cases of great as well as minor importance, and the judge should not think that he has sustained any injury because the litigant has had recourse to an appeal.

Given on the seventh of the *Ides* of April, during the Consulate of Marcellinus and Probinus.

21. *The Emperors Constantius and Constans to Lollianus, Prse-torian Prefect.*

As ordinary judges frequently hold that appeals should be rejected, it is hereby decreed that if any judge should refuse to permit an appeal to be taken, which is not against the execution of the judgment but against the judgment itself, which has been finally rendered, he shall be compelled to pay thirty pounds of gold to the Treasury of Our Largesses, and his officer shall also be required to pay the same amount, unless he can show that he obstinately resisted, and opposed, in writing, the decision rendered by the judge.

Given on the eighth of the *Kalends* of August, during the Consulate of Arbitio and Lollianus, 355.

22. *The Same Emperor to Volusianus, Prsetorian Prefect.*

Where a judgment has been rendered with reference to property which has no owner, or that of which persons have been deprived by law as being unworthy to hold it, and anyone thinks that an appeal should be taken, his right to do so shall be admitted.

Given on the third of the *Kalends* of August, during the Consulate of Arbitio and Lollianus, 355.

23. *The Same Emperor to the Senate.*

When an appeal is taken from judgments rendered in Bithynia, Paphlagonia, Lydia, the Islands of the Hellespont, Phrygia, Europe, Rodope, and Mount Hemus, the appellant must comply with the decision of the Prefect of this City.

24. *The Emperor Valentinian and Valens to the Council of the City of Carthage, Greeting.*

The necessity is imposed upon judges not only to permit an appeal to be taken, but also to remember that the term of only thirty days is

granted from the date of the judgment within which the parties litigant are to be notified that an appeal has been granted. The judge and his officer shall be liable to a fine if they fail to observe these rules in every particular.

Given at Milan, on the day before the *Nones* of February, during the Consulate of the Divine Jovian and Varonianus, 364.

25. *The Emperors Gratian, Valentinian, and Theodosius to Sya-grius, Prsetorian Prefect.*

We order that appeals from judgments imposing fines shall be permitted.

Given on the fourteenth of the *Kalends* of July, during the Consulate of Gratian, Consul for

the fifth time, and Theodosius, 380.

26. *The Same Emperors to Pelagius, Count of Private Affairs.*

Let an appeal to Your Excellency be taken from the decision of the Imperial Procurator, so that if the trifling value of the property involved, or the distance, does not permit the litigants to appear in your court, refer the matter to the Governor of the province for his decision, if you should approve of this being done.

Given at Milan, on the fifteenth of the *Kalends* of March, during the Consulate of Arcadius and Bauto, 385.

27. *The Emperors Theodosius, Arcadius, and Honorius to Evodius, Proconsul of Africa.*

Appointments made by notices or edicts without public authority are not valid, and if the proper formalities have not been complied with, it is not necessary to appeal from them.

Given at Milan, on the seventeenth of the *Kalends* of January, during the Consulate of Olybrius and Probinus, 395.

28. *The Same Emperors to Neridius, Proconsul of* Asia-Anyone who has taken an appeal is hereby notified that he has a right to change his mind, and withdraw his petition, in order that the opportunity for just repentance may not be lost.

Given at Constantinople, on the eleventh of the *Kalends* of August, during the Consulate of Arcadius, Consul for the fourth time, and Honorius, Consul for the third time, 396.

29. *The Same Emperors to Eutychianus, Prsetorian Prefect.* It shall not be lawful for persons sentenced to punishment, after having been condemned for the enormity of their crimes, to be arbitrarily removed and held by force, and from humane considerations, We do not refuse to persons of this kind the power to appeal in criminal cases, provided this is done within the time prescribed by law; so that a more careful examination may take place, where injustice is thought to have been committed, and the safety of a man endangered through the error or prejudice of the court.

However, if a Proconsul, the Count of the East, the Augustal Prefect, or any of the Imperial Deputies were among the judges, it is hereby decreed that an appeal cannot be taken to Us, but they shall have the most ample power to execute sentence; for We desire them to have full authority to punish those who are condemned in the manner prescribed by law, if circumstances and the crime demand it.

Given on the sixth of the *Kalends* of August, during the Consulate of Honorius, Consul for the fourth time, and Eutychianus, 393.

30. *The Same Emperors to Theodore, Prsstorian Prefect.*

When anyone appeals for the reason that he wishes to avoid the judgment rendered against him by a judge whom he regards as suspicious, he shall have full power to do so; nor need he be apprehensive of the undue severity of judges, as he can easily appeal from any injurious decision which they may render, and especially as the Praetorian Prefect is the only one from whom he is not permitted to appeal without losing his case. Therefore, all persons are informed that the right of appeal is granted to them from the unjust decisions of judges, and from the rulings of those who are suspected, in capital cases, as well in those involving the loss of their fortunes.

Given at Milan, on the seventh of the *Ides* of June, during the Consulate of Theodore, Consul for the fifth time, 399.

31. *The Emperors Theodosius and Honorius to Asclepiodotus, Prse-torian Prefect.*

If the judge of the lower court refuses to permit an appeal to be taken against his decision, to the tribunal of Your Highness, or to the Prefecture of the City, or if the appeal having been

admitted, he should refuse to notify the parties, the appellant shall, according to the ancient law, be entitled to the term of a year from the date of the decision to file a complaint on account of this injustice, as well as to prosecute the judge; or where an appeal of this kind was not allowed after having been requested of the judge of the lower court, the appellant will be entitled to six months for the purpose of doing these things.

If, however, the judge should refuse to grant the appeal, or to refer the case to the proper magistrate, four months shall be granted, so that those acts which We have prescribed having been performed, the appellant may proceed during the time known to have been fixed by law for the prosecution of appeals.

Given at Constantinople, on the third of the *Kalends* of April, during the Consulate of Asclepiodotus and Marinianus, 423.

32. *The Emperors Theodosius and Valentinian to Cyrus, Prsetorian Prefect.*

We order that hereafter there shall be no recourse to Us by appeal from the decisions of judges of distinguished rank, lest the rights of others may seem to be infringed if We are called upon to consider them, and are called away from the occupations which We are pursuing for the general welfare. If, however, a case should be appealed from the decision of any of the Proconsuls, or the Augustal Prefect, or from that of the Count of the East, or of any of the Vicegerents of the Emperor, We order that the illustrious Praetorian Prefect, who is a member of Our retinue, as well as the illustrious Quaestor of Our Palace, shall take cognizance of the appeal in the same order, and with the observation of the same formalities, and at the same times as other actions taken up in one appeal are decided in the Imperial Council; and this shall be done, even though some of the eminent magistrates aforesaid have the right, as judges, to hear appeals.

(1) When an appeal is taken from a decision of a duke who is at the same time a Governor, the Prefect shall be required to hear and determine the same, in accordance with the ordinary rules of his tribunal.

(2) In all the different judicial proceedings which We have introduced instead of references to Us, or the notices or other matters connected with the same, where an appeal is taken from the decision of a judge, the above-mentioned distinguished magistrates must hear the appellants and take cognizance of their demands, and We order Our secretaries to obtain the papers and record them, and notify the parties litigant, and the officials associated with the illustrious Quaestor shall execute the judgments.

(3) These rules shall apply where an appeal was taken from the decision of a judge who did not hear the case by virtue of a special appointment, for when the time of the execution of a judgment is extended by an appeal from the decision of a judge who was specially designated for that purpose, it will be necessary for the magistrate who appointed him to ascertain whether or not there is good ground for an appeal.

(4) We think that it is eminently proper to add to this most salutary law that if the Emperor, after having been applied to, should assign the case to a private individual, or to one or more persons who are not of illustrious rank, to be heard (as is customary), and an appeal should be taken from the decision of the person thus appointed, the illustrious Praetorian Prefect, who is one of Our retinue, shall hear and decide the case along with the illustrious Qusestor, at the proper time.

Our secretaries shall receive and record all matters heard and decided by Our arbiters, and notify the litigants in writing, and they shall also receive and examine any appeals taken from the awards of arbiters especially appointed by Us (even though they be of illustrious rank) provided the cases are referred to the Council of the Empire.

(5) But when an appeal is taken from the decision of the illustrious and distinguished judges

who do not belong to the court of last resort, We order that it shall be heard by Us, even though it may have been taken from the decision of someone who was appointed by Us to decide it, and who was not originally of illustrious rank, but was afterwards raised to the dignity of a noble.

The same rule shall also be observed when another arbiter also not of noble birth is associated with him.

(6) Moreover, anything which has not been expressly stated in this law shall be understood to remain subject to the rules of the ancient laws and constitutions.

33. *The Same Emperors to Cyrus, Prsetorian Prefect.*

In a case in which the attendant of an officer of the rank of general, with reference to whose status a controversy arises in a province on the ground that he is a decurion, or is a member of the retinue of the Governor, and is detained in the province for the reason that he has not paid his taxes, or discharged his official duties, and the decision of the Governor of the province is not executed, for the reason that an appeal has been taken from the same, We order that the case shall be decided by Your Highness, along with the distinguished general, according to its merits, even though the general may have appointed the Governor of the province to hear it.

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

We decree that when any judge of superior or inferior rank suggests that a matter which We appointed him to decide, or which he should determine as belonging to his jurisdiction, should be referred to Us, the case which has been appealed shall be decided by Us in Council, whether his opinion accompanied the reference or not (provided he did not state it to the parties) ; or if nothing of this kind was added, but he simply requested a reply from Our Majesty, the case should not be determined until Our order, two illustrious men who are either of patrician, consular, or prefectorian rank, and whom We have selected for that purpose, are ordered to be joined with the illustrious Quaestor of Our Palace, and with him examine the appeal (whether they do so in the presence or the absence of the parties to the suit), and give their opinion concerning the case; and the decision made by these most eminent magistrates shall be considered as final; and permission shall not be given to appeal from it, or to raise any doubt whatever concerning the same.

We decree that this rule shall not only apply where a single judge has referred a case of this kind to Us, but where two or more judges were appointed and none of them agreed, but each one submitted a different opinion for Our consideration; or where they all consulted Us as to what disposition should be made of the case.

35 *and* 36. *Laws which are not Authentic.*

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

We think that the following should be added where appeals are taken by which it is customary to bring matters for final determination to the Imperial Palace, namely, when the amount in dispute does not exceed ten pounds of gold, one judge alone, and not two (as was formerly the practice) shall be appointed to decide it. If, however, the value of the property exceeds that amount but is not more than twenty pounds of gold, the matter shall be submitted to two illustrious judges, who will take cognizance of the question involved, which must be reduced to writing by the clerks, so that if they differ, they may call in the illustrious Quaestor, and the doubt be disposed of by his decision.

In actions, however, where the property involved exceeds in value the sum of twenty pounds of gold, they should be brought before the distinguished nobles who compose the Council of State of Our Sacred Palace, so that, in accordance with what has already been established, not only the defeated party but also the one who is successful may have the case referred to one or two judges, but this must be done within the term of two years, as, after that time has elapsed,

We refuse to authorize it. Any decisions made by one or more of these judges shall, under no circumstances, be subject to appeal. We, however, permit new allegations to be made by the litigants before the said judge or judges, just as in the case of a reference to the Council of Our Sacred Palace.

Given at Constantinople, on the eighth of the *Ides* of April, during the Consulate of Decius, 329.

38. *The Same Emperor to Demosthenes, Prsetorian Prefect.*

Where an appeal was taken from the decision of a duke, whether under his regular jurisdiction, or whether he was especially appointed to hear the case by the Emperor, or whether he himself was included among the eminent magistrates, or was of illustrious rank, or even if he was of higher position (as military men as well as those of consular rank often discharge duties of this kind when required to do so by the public welfare), no distinction being made on this account, but only the ducal dignity being considered, the appeal having been taken from the decision of any duke whomsoever, shall not, as was formerly the case, be disposed of by the judges, but We order that it shall be referred to and decided by the most sublime Master of the Offices, and the most excellent Qusestor of Our Palace, who shall hear it together, as is done in Our Council of State, and that it shall be recorded by Our Imperial Secretaries, and that none of the provisions of the ancient law with reference to such cases shall be observed, but it shall only be brought before the said most eminent magistrates.

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

We, having greater consideration for Our subjects than they themselves would perhaps display, do hereby amend an ancient rule, that is to say, in cases of appeal, he alone who had recourse to such a proceeding is entitled to have the decision of the judge corrected, but the other party who failed to do this is compelled to obey the decision, no matter what it may be.

Hence We order that if the appellant should come into court, and state the grounds for appeal, and his adversary wishes to contest the judgment, and is prepared, he can do so, if his position is worthy of the attention of the court. But when he is absent the judge must, nevertheless, use his authority to protect his rights.

(1) Moreover, with reference to the legal documents required for the appeal, which, by all means, must be read before the distinguished and learned men composing the Imperial Council, the parties litigant, as well as those who draw up said documents, must be careful not to use too many words, and not to repeat statements which have already been made therein, but they must only insert those things which set forth the causes for the appeal, expressed in concise language, and must see that they do not contain any new matter, or make additions to supply what was omitted, for they are hereby notified that if this is not done, those who drew up the papers will be liable to the just indignation of the judges of the court of appeal, for a succinct statement of the facts and an abridgment of the opinions of the eminent magistrates who originally heard the case will be amply sufficient.

(2) We remember that, by a law which We recently promulgated, We order that one judge should be appointed to hear cases in which a sum up to the value of ten pounds of gold is involved, and that two should be appointed when the value was twenty pounds of gold, in accordance with the custom observed in cases brought before the Imperial Council.

But as, at first sight, the amount might not appear to be so large, and in the final decision the judge or judges concluded that a greater one should be considered, and since it was not possible for them to exceed the limits by which they were bound, We grant them full power in cases of this kind to adopt a larger sum than that above mentioned, if the value of the property was more than originally estimated by them, and they shall be permitted to render their decision in conformity to the truth, and not in accordance with the first appraisement, in order that magistrates may not be impeded in the discharge of their duties, but may strictly enforce

observance of the laws, and in every respect exert their judicial authority.

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

TITLE LXIII.

CONCERNING DELAYS, AND THE AMENDMENTS OF APPEALS OR REFERENCES TO THE EMPEROR.

1. *The Emperor Constantine to Crispinus.*

If anyone, having been appointed duumvir, or honored with any other office, or invested with any public charge during his absence, should invoke the aid of appeal, he will only be entitled to the term of two months in which to file his application, to be computed from the time when he can show that he was first notified of his appointment; but if he was present, the said term of two months must be computed from the very day when his appointment was made.

Given on the eighth of the *Ides* of July, during the Consulate of Constantine, Consul for the sixth time, and the Caesar Constantius, 820.

2. *The Emperors Theodosius and Valentinian to Cyrus, Praetorian Prefect.*

We think that it will be to the advantage of Our reign for the provisions of the laws having reference to time granted to litigants to be amended, and that pretexts for delay should, under all circumstances, be abolished. We order that, after an appeal has been granted, the time allowed for the prosecution of the same, whether this has been done by the illustrious Governor of the province, or by an eminent judge, shall, in the first place, be six months. If the appellant permits this time to go by, We grant him an additional term of thirty-one days. If he should let this pass, We allow him, in like manner, a third term of the same number of days. If the third term should also expire, We decree that he shall be entitled to a fourth and final term of thirty-one days. If the appellant should also let this fourth term elapse, We decree that he shall be granted the term of three months longer, to petition Us to have his right to appeal restored. This application having been made, We decree that it will not be necessary to notify his adversary or to mention the time which has expired, in his petition, but We direct that the term of three months shall be computed from the date of the expiration of the fourth and last term, even though restoration of his right of appeal was granted one day before, or the judgment was not rendered by one of the illustrious Prefects.

These rules shall not prejudice the adverse party, as the expiration of the time is not uncertain, but is well known to all persons, and they apply to appeals from the decisions of the illustrious Governors of provinces, as well as from those of eminent judges. Where an appeal is taken from the decision of an arbiter in a province, who has been specially appointed by the Emperor, We authorize three similar terms, after the first one has expired (as above stated) to which the appellant shall be entitled, but he shall have no restoration of his right to appeal granted by Us, so that, after the ninety-three days shall have elapsed, the execution of the judgment must be ordered.

If, however, the arbiter was specially appointed in this Most Holy City, by the Praetorian Prefect,, the Master of the Offices, or any other official of exalted rank, and the appeal should be taken against either the ruling or decision rendered by the lower court, the first term within which it can be brought shall consist of two months, but the other three shall be computed as above set forth. Anyone who takes an appeal from the decision of an arbiter, who has been specially appointed by the Governor of a province, or an eminent judge, shall be entitled to two months in which to file it, and also for three other terms as above enumerated.

With reference to the observance of the terms aforesaid, We order that if they should happen to occur during holidays, those which precede them may be counted by the litigants as available.

If anyone, without observing the provisions of the law, should permit the time to elapse, he can be opposed in the first instance by his adversary, or by the judge if the appellant alone is present in court, and the latter shall be considered as having accepted the decision without having been subjected to any restraint.

Given on the twelfth of the *Kalends* of May, during the Consulate of Valentinian, Consul for the fifth time, and Anatolius, 440.

Extract from Novel 29, at the Beginning. Latin Text.

A year is granted to the party who takes an appeal, within which time he must prosecute it, either alone or in company with his adversary ; or, where there is good reason for doing so, he may be granted still another year, and if the case has not been disposed of at the expiration of that time, the decision will stand confirmed.

If the appellant has failed to proceed when only one month remains of the term of two years, the successful party will have the right to have him summoned, and whether he is found or not, the former can make his allegations, and the decision shall be either affirmed or set aside; and, in every instance, judgment for the costs, dependent upon the number of terms which have been granted, shall be rendered against the absent party. If, after the lapse of the term of two years, neither of the parties should appear, the decision shall be affirmed.

Extract from Novel 93, Chapter I. Latin Text.

Where, however, arbiters are chosen by the parties after an appeal has been taken and brought before the appellate court, whether it has been heard or not, and, in the meantime, the term of two years within which the appeal must be disposed of in accordance with law has expired, and, for this reason, the case again comes under the jurisdiction of the appellate judge, the parties will not be prejudiced by the lapse of time; but the case can proceed and reach a legitimate termination, even if ten thousand more terms of two years have elapsed, unless the said term of two years shall have expired after the judgment was rendered without an appeal having been taken.

Extract from Novel 23, Chapter II. Latin Text.

Where a case is intended to be referred to the Imperial Council, it will not be prejudiced by delay until the Emperor himself has brought it to the attention of the Council, and it has been finally disposed of in the ordinary way by the illustrious dignitaries composing the same.

Extract from Novel 119, Chapter IV. Latin Text.

When an appeal has been taken, and one or both of the parties have been granted more time, or only one of them has availed himself of the right to appeal, and has appeared before the judge who is to examine the appeal, or before his advisors, or those who present cases to the court, and the judge appoints a certain time for the case to be heard, We do not wish the rights of either or both of the parties to be prejudiced on this account, but that, after this, appeals of this kind shall be examined and terminated by decisions in accordance with law.

3. *The Emperor Justini-an to Appio, Praetorian Prefect.* Let no one think that, in the future, he will be permitted to appeal to the members of the Imperial Council after the legally established terms have expired, either by means of a petition, or through a Rescript of the Emperor granting him restitution of his right, nor in any other way whatsoever; but all persons shall be required to use due diligence for the purpose of taking advantage of appeals within the time fixed by law, and a statement of what has taken place in the lower court and has been made the basis of appeal shall not be filed in the office of the Imperial Secretary near the expiration of the term, lest, by evil schemes, the termination of the case may be interfered with, but this shall be done immediately after the appeal has been taken, or at least before half of the prescribed period has elapsed, in order that the party who has appealed may not lose his right on account of the little time that remains.

4. *The Same Emperor to Tatianus, Master of the Offices.*

We decree by this Imperial lav; that where appeals are taken to the Emperor permission shall be given to the appellant, as well as the adverse party, to make use of new allegations or exceptions which may, indeed, not be applicable to the new proceeding, but arise from and are connected with questions known to have been brought up before the lower court.

If, however, it should be shown that any allegation was made, or any document introduced before the lower court, proof of which the party employing it was not able to present at that time, but which can now be done without delay before the members of the Imperial Council, they should admit it, in order that, by doing so, more light may be thrown upon the matters in dispute.

5. *The Same Emperor to Tribonian, Qusestor of the Imperial Palace.*

As by former laws, in case of appeals, provision was not made for the time occupied by parties residing at a distance from Our Most Sacred Court, it appears to Us to be necessary to establish a proper scale for these distances. Therefore, We order that when any case is appealed from the frontier of Egypt, or Lydia, or from the Orient, or from both Cilicias, or from the Armenians, as well as from all Illyria, the term of six months shall be granted, as by the ancient law, and this shall neither be diminished or increased. When, however, a case is appealed from any other portion of Our Empire, as, for instance, from the Departments of Asia, Pontus, or Thrace, to this Royal City, We order that, instead of the term of six months above mentioned, only that of three shall be conceded, and the other three terms which follow shall consist of three months, that is to say ninety-three days, whether the first term of six months or the other one of three is allowed, according to the enumeration of the places which We have just made; but the other period of three months, which .is usually granted by the Council for the purpose of reinstating the party in his right of appeal, shall remain unaltered, and shall be added to those previously designated, so that, in one instance, the term allowed shall consist of a year, and in the other of nine months.

(1) As, in former times, one day was granted by the ancient legislators at the end of each term, which was designated "The Fatal Day," and it often happened (as mortals are exposed to many accidents) when appeals were taken, that either from illness, length of time, or other causes (which would not be easy to remember or enumerate), the said fatal day passed without the parties taking advantage of it, and the time for appealing expired, and the estates of men were thereby endangered, We, for the purpose of disposing of these injurious vicissitudes of fortune, do order that hereafter not merely one fatal day shall be reckoned, but if the appellant shall have appeared at any time within four days preceding the fatal day, or within five days after that time, and shall bring his action before a competent judge, the law shall be considered to have been complied with. He should not be expected to deplore the loss of his case, but he ought to rejoice in the privilege We bestow upon him, as We are aware that suits are frequently endangered through an error in calculation as to the time within which the judge should act, which it is to be hoped will not occur hereafter, because of the remedy afforded under the present law.

This privilege is applicable to all delays, whether they have been granted by specially appointed judges or by others, and which the laws have mentioned as being required to be kept or observed, so that ten fatal days, instead of only one, shall everywhere be established.

(2) In those instances, however, with reference to which the term of two years has been prescribed, whenever cases are heard in this Imperial City by the assembled Council of the Nobles of Our Sacred Palace, We limit the time to one instead of two years, so that within that period the papers in the case may be collected, and delivered to Our devoted Secretaries, and the arguments in opposition be made', if this should be desirable, and the litigants be compelled to bring the case before Our Imperial Council. A successful party shall, in accordance with what has already been decided, be permitted to present his case there at once,

without waiting for the expiration of a year, if he should wish to do so.

(3) When, however, proceedings have been begun in Our Imperial Council, and have not been concluded on the same day, We permit them to be continued, as it would be unjust for men to lose their cases for the reason that the Imperial Council was occupied with matters brought before it by the Emperor.

(4) We think that it is reasonable for what follows to be added to this law, namely: that if anyone should have taken his case before an appellate judge, prior to the expiration of the time prescribed by law (whether one or both parties were present), and, having formulated his appeal, should afterwards depart and abandon it, and the remainder of the time should pass in inactivity, and the term of a year elapse after the case was begun, the successful party not being able to have the judgment executed on account of the case being still incomplete, and not having the power to bring it to a conclusion, as the absence of the appellant, did not, of itself, cause it to be terminated, We, for the purpose of removing this injustice (as the adverse party can, even in the absence of the appellant, proceed with the case, for the reason that the special privilege enjoyed by the magistrate having jurisdiction of an appeal authorizes him to dispose of it when only one party is present), do hereby order that if the said appellant does not attend to the case, and conduct it to the end, when he was to blame because the trial did not proceed, he will forfeit his right of appeal, and the judgment rendered against him shall remain in full force and effect, just as if an appeal had not been taken in the first place, unless the said appellant can establish by perfectly clear evidence that he intended to use every effort to have the case heard, but was unable to do so, either through the fault of the judge, or for some other cause over which he had no control. For, under such circumstances, We grant him another term of a year, and if this should elapse, and the case not be terminated within that time, We decree that he shall be deprived of the benefit of an appeal, because he had full power to appear before Us, and complain of the delay of the judge, and profit by Our indulgence.

(5) In conformity with the above, the same rule shall apply to appeals from the decisions of Our distinguished Prefects brought before Our Imperial Council, on the application of one or both parties, not only because of the absence of one of them, but also on account of the expiration of the terms prescribed by law.

(6) Moreover, if the parties came to the conclusion that their dispute should be settled by means of a written agreement, neither of them shall have the right to invoke the aid of an appeal, or take advantage of the lapse of time, and We decree that a compromise of this kind shall stand, for under such circumstances, We desire the harshness of the laws to be mitigated by the agreement of the litigants.

Given at Chalcedon, on the fifteenth of the *Kalends* of December, during the fifth Consulate of Decius, 526.

TITLE LXIV.

WHEN IT IS NECESSARY TO APPEAL.

1. *The Emperor Alexander to Apollinarus and Others.*

You allege that the sentence has no force, as it was pronounced in opposition to a judgment from which no appeal was taken. If you can prove this readily, without having recourse to an appeal, what has been decided will not have the authority of a judicial decision.

Published on the eighth of the *Kalends* of April, during the Consulate of Alexander, 223.

2. *The Same Emperor to Capilaneis.*

When a question with reference to the succession of the deceased arose between you and your grandmother, and a judge appointed by the Governor of the province decided that the

deceased, although under the age of fourteen years, could make a will, and by this means you obtained the advantage over your grandmother, it is evident that the decision having been rendered in violation of a plain rule of law can have no force; therefore, in this instance, it will not be necessary to have recourse to an appeal. If, however, an inquiry was made as to the age of the deceased, and it was ascertained that he had completed his fourteenth year, and the judge decided that for this reason he could make a will, and you did not appeal, or you failed to prosecute the appeal after it was taken, you cannot again bring up a matter which has been decided.

3. *The Emperor Gordian to Ingenuus.*

If (as you allege) you were appointed to the duumvirate, and your previous designation as decurion was suspended on account of the appeal which you made to the eminent judges against your selection for the latter office, it is clear that your appointment to the duumvirate will not be prejudiced before your appeal has been disposed of by the above-mentioned judges.

4. *The Emperors Valerian and Gallienus, and the Caesar Valerian to Julianus.*

As you state that several magistrates have been appointed judges in your case, and that only one of them has rendered a decision, there does not seem to be any necessity to appeal, as the decision is not valid in law.

5. *The Emperors Cams, Carimis, and Numerianus to Domitian.*

Governors can impose fines within certain limits. If the Governor of the province should exceed his authority, and fine you more than the amount prescribed by law, there is no doubt that what appears to have been done illegally is void, and can be set aside without appeal.

Published during the *Ides* of January, during the Consulate of Carus and Carinus, 283.

6. *The Same Emperors to Germanus.*

If the judge appointed by the Governor of the province to hear the case is said not to have rendered his decision on the day that the Governor appointed, but a considerable time afterwards, in order to avoid the introduction of technicalities and the delay which will result from a fruitless appeal, the Governor of the province must decide the entire case, without it being necessary to have recourse to an appeal.

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

It has already been decreed by our Imperial Predecessors that decisions rendered by corrupt judges for the sake of reward are void in law, even if no appeal should be taken.

8. *The Same Emperors to Constantine.*

If your father did not give his consent to your appointment as decurion, and you were still in the fifteenth year of your age, and the Governor of the province, having been applied to, should find that you are not eligible to the said office of decurion, he will revoke the unjust appointment as being void on account of your age, even if no appeal was taken.

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

We grant to veterans who, after service in the legions or under the standards for twenty years, have obtained an honorable and regular discharge, the privilege of being exempt from onerous public duties. Moreover, desiring to remunerate the faithful devotion of Our soldiers by this mark of Our indulgence, We hereby release them from the necessity of appealing, when judgments are rendered against them.

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

For the sake of maintaining unimpaired the honor of judges, where one of the parties,

considering himself injured by their final decision, takes an appeal, We forbid the other party, who was successful, to appeal from the same judgment on the ground that he did not receive anything as costs and damages in the case, or received less than he ought to have done, as he himself admits that the decision was justly rendered. The judges, however, or the nobles of Our Imperial Palace, when the amount involved in the case is not of great value, and they think that the successful party is entitled to his expenses, have power to grant him a reasonable sum for that purpose, without rendering it necessary for him to appeal. And as he is permitted by former laws to apply for this relief, if his adversary should fail to appeal to Our Council, We nevertheless authorize this to be done, but We forbid any imputation to be cast upon the court by taking an appeal when it is unnecessary.

Given on the eighth of the *Ides* of April, ...

TITLE LXV.

WHOSE APPEALS SHOULD NOT BE RECEIVED.

1. *The Emperor Antoninus to Sabinus.*

The appeal of a party who, being absent through obstinacy, has had judgment rendered against him after having been regularly summoned to conduct his case, cannot be received, if the matter has previously been summarily examined.

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

2. *The Emperors Constantius and Constans to Hierocles, Consular of Syria.*

You will be careful to note that no homicide, poisoner, malefactor, adulterer, or any person who has been guilty of manifest violence, who has been convicted by witnesses, or with his own mouth has confessed that he is guilty of vices and crimes, shall be heard, if he takes an appeal.

We, however, wish it to be observed that justice requires that where witnesses have been called, instruments produced, and other evidence offered, and a judgment has been rendered against the culprit, and the latter does not confess his guilt, or, terrified by the fear of torture, states anything against himself, he shall not be denied the right of appeal.

Given on the fifth of the *Ides* of December, during the Consulate of Leontius and Sallust, 344.

3. *The Emperors Valentinian and Valens to Modestus, Praetorian Prefect.*

An appeal from the decision of his own judge is not permitted to any official, except solely where, in a civil proceeding, he has brought suit before his own judge with reference to an estate, but any official can, under other circumstances, appeal from the sentence of the said judge, and the right is granted him by law to appear by an attorney.

Given on the fourth of the *Ides* of June, during the Consulate of Valentinian and Valens, 365.

4. *The Emperors Valentinian, Valens, and Gratian to Olybrius, Prefect of the City.*

We order that no appeal shall be taken where satisfaction of a claim is demanded by the Treasury, or where the payment of public taxes is in question, or the recovery of a debt, either public or private is involved (provided that the indebtedness has been clearly proved), so that judicial authority may be severely exercised against the delinquent if guilty of contumacy.

Published at Rome, on the fifteenth of the *Kalends* of September, during the second Consulate of Valentinian and Valens, 368.

5. *The Emperors Valens, Gratian, and Valentinian to Thalassius, Proconsul of Africa.*

It has been thoroughly established by the laws and Imperial Constitutions that an appeal cannot be taken from an execution, unless the officer charged with it has exceeded the terms

of the judgment. When an appeal of this kind is taken, We think that it should be held that the execution is suspended, and if the property, which the officer charged with the execution attempted to return, is movable, it should be taken from the possessor and sequestered after the appeal, to be restored eventually to the party whom the judge may decide is entitled to it.

Where, however, execution was issued with reference to either the possession or the ownership of property, and it is suspended by an appeal, all the profits acquired therefrom during the time of the appeal, or subsequently obtained, shall be placed on deposit, and the land left temporarily in the hands of the appellant. Litigants, however, are notified that, if they appeal either from the execution of the judgment, or from the judgment itself, and it should appear that they have done so wrongfully, they shall be fined the sum of fifty pounds of gold.

Given on the third of the *Kalends* of February, during the Consulate of Valens, Consul for the sixth time, and Valentinian, Consul for the second time, 378.

6. *The Emperors Gratian, Valentinian, and Theodosius to Hypa-tius, Prefect of the City.*

Anyone who has ventured to appeal against the opening of the will of a deceased person, or to prevent those who, it is evident, have been appointed heirs, from being placed in possession of the estate, if the judge having jurisdiction should hold that the appeal which has been interposed in such a matter ought to be received, he who appealed so improperly shall pay a fine of twenty pounds of silver, and the judge who connived at such a base proceeding shall be fined an equal sum.

Given.on the *Nones* of April, during the Consulate of Ausonius, Consul for the tenth time, and Olybrius, 379.

7. *The Same Emperors and Arcadius to Pelagius, Count of Private Affairs.*

No appeal shall be permitted either from interlocutory decrees or from other judicial acts, before a final decision has been rendered in its proper order.

8. *The Emperors Arcadius and Honorius to Apollodorus, Count of Private Affairs.*

The interest of the public as well as that of Our Private Treasury requires that claims due to Our Household should not be deferred by the cunning arts of debtors. Wherefore, We decree that the following rule shall be obeyed, namely: that those who have been openly and manifestly ascertained to be public debtors shall be denied the privilege of appeal, and their application for the same shall be rejected.

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

TITLE LXVI.

WHERE THE APPELLANT DIES WHILE THE APPEAL IS PENDING.

1. *The Emperor Alexander to Julianus.*

Even after the death of the party who appealed, his heirs are required either to continue the case on appeal, or to acquiesce in the original decision.

Published on the third of the *Nones* of December, during the Consulate of Alexander, 223.

2. *The Same to Marcellina.*

My Parents ordered that the property of him who, having been accused of a capital crime, did not appear, and died before the case was heard, should belong to his heirs.

Published on the third of the *Nones* of December, during the Consulate of Alexander, 223.

3. *The Same Emperor to Ulpius.*

If anyone sentenced to exile with confiscation of his property should appeal, and should die

while the appeal is pending, although the crime vanished with his death, still the case involving his property must proceed. For it makes a great difference whether a capital penalty which deprives the accused of his property has been imposed (in which case the crime, having been extinguished by his death, no question with reference to it can survive), or whether the property is taken, not as the result of condemnation for the crime, but by a special decision of the Governor, for the defendant being dead, the question of the crime alone is removed, but that of the disposition of the property remains.

Published during the *Ides* of March, during the Consulate of Modestus and Probus, 279.

4. *The Emperor Gordian to Alexander.*

If your father, having been appointed to the decurionate and appealed, died while the appeal was pending, the question of the appointment is terminated by his death.

5. *The Same Emperor to Felix.*

Although the female slave, with reference to whose ownership a controversy arose and a decision was rendered against you by the Governor of the province, died, still, as an appeal was taken in the case, and as you allege that it was pending along with other cases, this appeal should be heard and decided in its regular order, so far as the disposal of the *peculium* of said slave is concerned.

6. *The Emperor Constantine to Bassus, Prefect of the City.*

If one of the litigants should die while the appeal is still pending, his heirs will be entitled not only to the remaining time which remained to the deceased, but also to four months in addition. Where, however, a certain time was granted to the heirs for deliberation, after this has expired, the term of four months more shall be granted them, in order that they, being ignorant of business, or having doubts as to whether they should accept the estate or not, may not suffer loss before acquiring any benefit.

Published at Sirmium, on the twelfth of the *Kalends* of June, during the second Consulate of the Csesars Crispus and Constantine, 331.

TITLE LXVII.

CONCERNING THOSE WHO DO NOT APPEAL THROUGH FEAR OF THE JUDGE.

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

If a judicial decision was rendered against you and you did not invoke the aid of an appeal, you understand that you must abide by the decision, for you need fear nothing in the presence of the Imperial Council.

Given on the fifteenth of the *Kalends* of June, ...

2. *The Emperor Julian to Geminianus.*

The privilege of having the right to appeal restored to them is denied to those who did not apply within the time prescribed by law. Therefore, all who, under the pretext of fear, fail to appeal from the decisions of Prefects of the City, Masters of the Offices, Generals of the Army, Proconsuls, Counts, Prefects of the East, Augustal Vicegerents, or any other magistrates whomsoever, shall be excluded from reviving their cases. But persons who have suffered violence, and make a public statement of the facts within the lawful time during which they have a right to appeal, or show by their statements that they intended to do so, shall, by reason of this fact, have the support of equity, just as if an appeal had been taken.

Published on the fifteenth of the *Kalends* of July, during the Consulate of Mamertinus and Nevitta, 362.

TITLE LXVIII.

WHERE ONE OR MORE OF THE PARTIES APPEAL.

1. *The Emperor Alexander to Licinius.*

If it is proved to the court that the same judgment was rendered against you as against the party whose appeal was decided to be just, and that there was no separation on account of any difference of facts in the case, he will not fail to see that you also, who did not appeal, shall profit by the success of the other party, in accordance with what has frequently been decided.

Published on the fourteenth of the *Kalends* of September, ...

2. *The Same Emperor to Serenus.*

When one of several parties in the same case appeals and his 'appeal is decided to be just, it will also benefit those who did not appeal. Where, however, one of them obtained restitution in opposition to the judgment, on the ground of his age, this will be of no advantage to another who is older, but did not appeal in his own name.

TITLE LXIX.

WHERE AN APPEAL IS TAKEN AGAINST TEMPORARY POSSESSION.

1. *The Emperors Valentinian, Theodosius, and Arcadius to Eusig-nius, Praetorian Prefect.*

Where proceedings have been instituted with reference to temporary possession, even though an appeal may have been taken, the judgment rendered will, nevertheless, be effective, as the question of possession must be decided, in order that that of ownership may remain intact.

Given at Milan, on the fourteenth of the *Kalends* of December, during the Consulate of our Prince Honorius, and Evodius, 386.

TITLE LXX.

NO ONE SHALL BE PERMITTED TO APPEAL FOR THE THIRD TIME IN ONE AND THE SAME CASE, OR TO REFUSE TO OBEY THE JUDGMENT OF A COURT WHICH HAS BEEN RENDERED TWICE AND CONFIRMED BY THE DECISION OF A PREFECT.

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

When a party has appealed a second time in a case, he shall not be permitted to do so again with reference to the same matters, in the same suit, or to refuse to comply with the judgment of the distinguished Praetorian Prefect. Permission, however, is granted to litigants for whom an arbiter has been appointed to question the jurisdiction of the judge who appointed him, before issue had been joined, for a proceeding of this kind has by no means the effect of an appeal.

TITLE LXXI.

WHO CAN MAKE AN ASSIGNMENT OF THEIR PROPERTY.

1. *The Emperor Alexander to Iren&us.*

When the creditors of those who make an assignment of their property are not paid in full, the latter are not released from liability, for the only advantage they derive from doing so is that, if judgment should be rendered against them, they cannot be placed in prison.

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

2. *The Emperor Philip and the Csesar Philip to Abascantus.* If you are prepared to pay what you owe, after judgment has been rendered against you in favor of the State, because you have

hastily consented to assign your property, you need have no apprehension that you will be deprived of your right to the same, if it has not yet been sold.

Published on the thirteenth of the *Kalends* of February, during the Consulate of the Emperor Philip, and Retianus, 246.

3. *The Emperors Valerian and Gallienus to Julianus.*

If your father made an assignment of his property on account of civil liabilities which he had incurred, an inquiry should be made as to his means, and the estate which you allege you acquired after your emancipation should not be interfered with. In order that this may be accomplished, you should invoke the justice of the Governor.

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

It is a well-known fact that the benefit of the *Lex Julia,* having reference to the assignment of property for the benefit of creditors, was extended by the Constitutions of Our Divine Predecessors to the Provinces, so that such assignments may take place there, but creditors are not allowed to divide the said property on their own authority, and hold it by the right of ownership, but they are obliged to sell it, and can then indemnify themselves as far as the proceeds permit this to be done.

Therefore, you, having the possession of the property of him who assigned it to you on the sole ground that you are his creditor, against the rule of law, it is clear that the claimant will not be barred by the prescription of long time, but if it is shown that he did not assign the property, but gave it to you in payment of his debt, the Governor of the province will grant you a hearing with reference to your ownership of the same.

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

The assignment of property by anyone on account of his being unable to meet some indebtedness incurred on account of municipal offices or duties, can, by no means, be admitted, but those who are liable must discharge their obligations in proportion to the pecuniary resources of each.

6. *The Emperor Theodosius.*

In every assignment of property, no matter for what cause it is made, the statement of the assignor alone should be required, and the precise formalities introduced by former laws are hereby abolished.

(1) The same Emperor said: "In every assignment of property the sole statement of the intention of the party who makes it is sufficient."

Given on the *Kalends* of May, during the Consulate of Our Prince Honorius, and Evodius, 386.

7. *The Emperor Justinian to Julian, Prsetorian Prefect.* As sons under paternal control can hold property which is forbidden to be acquired by their fathers, as well as *peculium,* not only *castrense,* but also what they can obtain with the consent of the former, why should the power to assign their property be refused them? The reason for this is that those who are under paternal control are understood to possess nothing in their own right, still, in order that they may not suffer injury, they should be allowed to make an assignment, for if the head of a family is permitted to have the weak aid of assignment on account of the fear of some injury to which he may be subjected, why should We deny this right to children of either sex who are under paternal control ? For it is a perfectly clear rule of law that, where those who are under the control of others, subsequently, as heads of families, acquire anything, this can legally be seized by creditors to the amount of the indebtedness.

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

8. *The Same Emperor to John, Prsetorian Prefect.* When, as is customary, a petition is presented to Us to allow someone to have recourse to the wretched expedient of making an assignment of his property, and his creditors are given the choice to grant him five years for payment of their claims, or to accept the assignment, that by so doing his reputation may be preserved, and the prospect of all bodily suffering be removed, where some of the creditors are willing to allow the term of five years, but others insist that an immediate assignment be made, it was constantly doubted which of them should be heard.

Where a doubt of this kind exists, We think that Our opinion should be readily accepted by everyone, that is to say, We choose and authorize the more humane, instead of the harsher course, and decree that the case shall be decided either by the amount of the indebtedness, or according to the number of the creditors.

Where, however, there is one creditor whose claim is found to be greater than all the others, that is to say, if all of them were united into one, and the entire indebtedness computed, it would be greater in amount than the rest combined, this decision shall prevail, whether the creditor is willing to grant the time above mentioned or to accept an assignment of the property. But if there are several creditors who have different claims, the one who has the largest should be preferred to the others, whether the creditors are equal or unequal in number, as the case should be decided, not in accordance with the number of creditors, but by the amount of the indebtedness.

If the claims are found to be equal in amount, but the number of the creditors is unequal, then the majority of the creditors shall obtain the preference, and the decision shall be made in compliance with their wishes. When, however, the debts, as well as the number of creditors are equal, then those shall be preferred who incline to the more humane course, and do not require an assignment of the property, but are willing to grant the time, and, with reference to this choice, no difference shall be observed between hypothecary and other creditors.

When an assignment is made, the judge shall exercise his authority by dividing the property among the individual creditors, as prescribed by law, and no prejudice shall result to any creditor from the delay of five years, so far as prescription is concerned.

TITLE LXXII.

CONCERNING THE SEIZURE AND SALE OF PROPERTY BY AUTHORITY OF COURT, AND THE SEPARATION OF THE SAME.

1. *The Emperor Antoninus to Attica.*

With reference to the estate of a deceased person it is clear that the case of legatees is preferable to that of those to whom his heir has bequeathed property, since they can sue them, as they could have done his heir, for the first bequest can be collected as a debt, and what has been left by the deceased will only be available after the failure to pay it.

2. *The Emperor Gordian to Aristo.*

It is part of the jurisdiction of the Praetor under the Edict, after it has been established that the creditors of an estate are entitled to indemnity, that they shall be granted a separation of the property, whenever they demand it, and proper cause is shown. Therefore, you will obtain what you desire, if you can prove that you did not proceed against the heir as representing the estate, but that you were compelled by necessity to bring him into court.

3. *The Same Emperor to Claudiana.*

The suit which you have brought against your debtor on the contract which preceded the assignment of his property is contrary to the rule of law, as equity furnishes him with the relief of an exception. You can, however, again bring suit against him, if he has subsequently acquired other property, and the Governor of the province should authorize you to do so.

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

The demand which you make, namely, that one of the creditors who has a written claim against the debtor, and has seized the property of the latter, is obliged to satisfy all the other creditors, is contrary to law.

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

If it is established that the property of your debtor is unoccupied, and it has not been seized by the Treasury, you can lawfully demand to be placed in possession by a competent judge.

Given on the seventeenth of the *Kalends* of January, under the Consulate of ....

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

Creditors cannot legally demand that the property of their debtor be transferred to them in satisfaction of their claims. Therefore, if the other creditors of your debtor have received property by way of pledge, there is no doubt that their claims will be preferred to yours, as you have only a written obligation. If, however, it should be proved that the property of your creditor is not encumbered to anyone either specially or generally, and the common debtor himself, or his heir, died without leaving any successor, the interest of all the creditors will be protected, not by asserting their right to the ownership of the property, but by obtaining possession of and selling the same, and each one should receive a share of the proceeds in proportion to the amount of nis claim.

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

If your wife has been appointed heir by her uncle, who was her debtor for the third part of his estate, she will not be prevented from collecting the debt from his co-heirs in proportion to their two-thirds, as the right of action is not merged, except so far as the share of the estate to which she succeeded is concerned. If, however, the co-heirs should be insolvent, and a separation of property is demanded, she will not be allowed to suffer any loss.

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

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

The wife of the deceased, or other creditors who have been placed in possession of the property of the estate for the purpose of preserving it can, by no means, be considered to have acquired the ownership of the same for this reason.

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

As you allege that he of whom you complain is indebted to you on account of the administration of your business, having appeared before the Governor of the province, you can legally bring suit against him. If it is established that he is your debtor, and that in an attempt to defraud you of your rights, he has concealed himself, and does not make any defence, you can, by virtue of the Edict, obtain possession of his property, and the time prescribed by law having expired, you will not be forbidden by a competent judge to sell the same.

Given on the fourteenth of the *Kalends* of December, during the Consulate of Diocletian and Maximian.

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

In cases where money was due, and property which belonged to the debtor had not been hypothecated to secure payment, and he, fearing the harshness of his creditors, concealed himself, and they, having instituted proceedings with reference to said property, demand that possession of the same should be transferred to them, We find that the question arose among the ancient authorities whether other creditors, to whom he was also indebted, could share in the possession of the property, and desiring to remove this doubt, do order by this general

Imperial Constitution that, where not all the creditors, having claims of this kind, but only certain ones, are placed in possession of the property under a judicial decree, not only they, but all others having such claims shall enjoy the same privilege, and have a common interest with those who first obtained possession, and in whose favor a decree was rendered, as above stated; for what could be more just than that all those who are admitted to the possession of the property of the debtor should share an advantage of this description?

But, in order that the negligence of the others may not be a source of perpetual annoyance to those creditors who are shown to have been more diligent in the collection of their claims, it seems to Us to be equitable to direct that the other creditors who are not known, to have exerted such diligence shall share in the possession of said property, and that they shall be entitled to the term of two years if they are present and live in the same province in which those who have possession of it reside, and in case of their absence shall have the term of four years in which to prove their claims to the creditors in possession and pay the expenses *pro rata* to those who obtained the judgments. Those who incurred such expenses in order to obtain possession of the property, must prove the amount of the same under oath, because it is an established rule that they shall be reimbursed in proportion to the amount of their claims. After the time above mentioned has expired, however, the creditors who have obtained possession as aforesaid shall not be molested or subjected to loss, and they can bring any actions against their debtors to which they think that they are entitled under the laws.

(1) But if those creditors who hold possession should sell the property, either by virtue of a judicial decree or for any other lawful reason, or if they should transfer every right which they are known to have in said property to other persons, after the time which has been prescribed by Us, and receive a certain sum of money in payment for the same, anything which is found to be in excess of what is due to them, they will, by all means, be required to seal up in the presence of notaries, and deposit in the strong box of the Holy Church of the town in which the said transaction took place, after a statement has been drawn up by the notaries aforesaid, in the presence of the person who sold the property or transferred it to other persons, in which not only the amount of money which was paid for the sale or transfer of said property, as well as that of the surplus which remained after the discharge of the debt, shall be set forth, so that if any creditor should subsequently appear and produce evidence of a debt, he can be paid out of said surplus.

If another creditor should appear, the Governor of the province shall make an examination of his claim without any charge, and if he should not admit it, the reverend Stewards or Treasurers of the Holy Church in which the money is deposited shall not be subjected to any loss or expense, but the creditor shall be entitled to receive the amount of his debt, *pro rata,,* out of the money deposited under the decree of the Governor. To prevent the creditors from practicing any fraud, machination, or evasion in the sale or transfer of said property, We order that the statement drawn up with reference to the transaction shall, with all the customary formalities, be recorded in the office of the Defender of the City, whether the amount of the price was equal to that of the debt, or whether it was more, or less; and this should take place, not only in the presence of notaries, as aforesaid, but also in that of the most reverend Treasurer of the Church in whose hands the excess of the money, if there was any, was deposited under seal.

The vendor, or the person who transferred the property, shall be required to make oath on the Holy Scriptures that this was not done to favor either the purchaser or him to whom the property was delivered, and that he did not fraudulently receive a lower price for the same than it was worth, but the highest one in fact which, after every effort, it was possible for him to obtain.

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

TITLE LXXIII.

CONCERNING THE PRIVILEGE OF THE TREASURY.

1. *The Emperor Antoninus to Eutropia.*

If the property of your husband was seized by the Treasury for the payment of claims incurred during his administration as Chief Centurion of the Triarii, any of it that you can prove beyond question to be yours shall be separated from the rest, and returned to you.

2. *The Same Emperor to Valeriana.*

Although your former husband may have had judgment rendered against him on account of your dowry, still, if he made a contract with the Treasury before his property was encumbered to you, the claim of the Treasury will be preferred to yours. If, however, he became liable to the Treasury after you had obtained a lien on his property, the claim of the Treasury to said property will not take precedence of yours.

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

3. *The Same Emperor to Juliana.*

If, when you paid money for your husband, you did not have the claim of the Treasury transferred to you, and did not receive a house or any other property from him by way of security, you will be entitled to a personal action, but your claim by which you allege that the taxes have again been farmed out to him cannot be preferred to that of the Treasury, as, under the terms of that contract, whatever property he has or did have at the time the agreement was entered into, is encumbered to the Treasury by the right of pledge. Therefore, with the exception of the indemnity to which the Treasury is entitled, you will not be prevented from suing your debtor, in the ordinary way, for the sum which you have paid in his behalf to the Treasury.

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

4. *The Same Emperor to Quintus.*

If the debtor, to whom you state that the land in question belonged, sold it before he owed anything to the Treasury, My attorney will see that you are not subjected to annoyance on this account, for even though he afterwards became the debtor of the Treasury, still, any property which did not belong to him at that time cannot, for this reason, be encumbered to the Treasury by the right of pledge.

Published on the third of the *Kalends* of July, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

5. *The Emperor Alexander to Menna.*

If the money which a creditor received from his debtor should afterwards be decided to justly belong to the Treasury, it will be due without interest, because it was acquired, not under a contract for interest, but as being the property of the Treasury by special privilege.

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

6. *The Emperor Gordian to Severiana.*

As you yourself state that your father was a debtor of the Treasury, and you allege that, at the time of your marriage, he gave you possession of certain property, you understand that the Attorney of the Treasury can institute proceedings to revoke said gift, on the ground that said property was pledged to the Treasury.

Published on the *Nones* of June, during the Consulate of Sabinus and Venustus, 241.

7. *The Emperors Valerian and Gallienus, and the Csssar Valerian, to Diodorus.*

If, after you have paid for a debtor to the Treasury the balance which he owed, and a competent judge has assigned to you the right of the Treasury, and deprived the creditors (to whom the Treasury had a preferred claim) of the property in your favor, they cannot molest you for the reason that you hold it by this title.

Published on the fifteenth of the *Kalends* of June, during the Consulate of ^milianus and Bassus, 260.

TITLE LXXIV.

CONCERNING THE PRIVILEGE OF DOWRY.

1. *The Emperors Severus and Antoninus to Firm/us.*

You should know that the dotal privilege which women avail themselves of in an action of dowry does not pass to their heirs.

Published on the *Kalends* of May, during the Consulate of Pompei-anus and Avitus, 210.

TITLE LXXV.

CONCERNING THE REVOCATION OF CONTRACTS BY WHICH PROPERTY HAS BEEN ALIENATED FOR THE PURPOSE OF DEFRAUDING CREDITORS.

1. *The Emperor Antoninus to Cassia.*

An heir who, after having entered upon the estate, transfers it to another, remains liable to the creditors of the estate. Therefore, if he did this for the purpose of defrauding you, and you have seized and sold his property in the ordinary way, you can revoke the contract by which it is proved that the property was fraudulently alienated.

Published on the second of the *Ides* of October, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

2. *The Emperor Alexander to Symphoriana.*

If you did not accept the estate of your father, his creditors cannot proceed against you on account of the property which was given to you by way of dowry, when it is not shown that the said property was previously pledged to them, unless, after the estate of the deceased was found to be insufficient to pay his debts, it should be proved that the dowry had been constituted for the purpose of defrauding his creditors.

3. *The Emperors Diocletian and Maximian, and the Ctesars, to Acindynus.*

If you refused to accept the estate of your father, and none of the property of the same was transferred to you as a donation for the purpose of defrauding creditors, the Governor of the province will not permit you to be sued by the private creditors of your father.

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

It is a well-known rule of law that the sons of a debtor have no power to revoke contracts made by their father for the purpose of defrauding his creditors.

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

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

It is a well-recognized legal principle that the interests of creditors shall be protected against a person who, after judgment has been rendered against him, does not satisfy it within the time prescribed; and no defence is made by bringing an action *in factum* against the purchaser,

where property has been sold after the remaining assets have been found to be insufficient, and the purchaser knowingly and fraudulently bought the property, or against him who has possession under a lucrative title, whether he was aware of the fraud or not.

Ordered on the tenth of the *Kalends* of November, during the Consulate of the above-mentioned Emperors.

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

If you have formally released an obligation, you are advised that the right to sue is only granted by the Perpetual Edict against the party guilty of fraud, within the year during which he could be compelled to make payment, or committed a fraudulent act by which he became unable to do so.