

THE CODE OF OUR LORD THE MOST HOLY EMPEROR JUSTINIAN.

SECOND EDITION.

BOOK VIII.

TITLE I.

CONCERNING INTERDICTS.

1. *The Emperor Alexander to Evocatus.*

As you allege that the roots of trees planted on the neighboring land of Agathangelus threaten the safety of your house, the Governor, by virtue of the edicts published by the Praetor, and which begin as follows, "If the tree extends over the house of another," or "If it projects over the field of another," and it is proved to those who have charge of such matters that no injury can be caused to the neighbor by said trees, the question will be decided as justice requires.

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

2. *The Emperors Valerian and Gallienus to Messia.*

The Governor of the province cannot, even by means of an interdict, proceed against a person who is not a resident of the province.

Published on the seventh of the Kalends of May, during the Consulate of Secularis and Donatus, 261.

3. *The Emperors Diocletian and Maximian, and the Cassars, to Pompeianus, Prsetorian Prefect.*

It is a well-known rule of law that where legal proceedings have been instituted with reference to the possession or ownership of property, the question of possession must first be determined by a proper action, and after this has been done, the proof of the disputed ownership shall be required of him who was defeated in the case involving possession. But although interdicts are not properly applicable in extraordinary proceedings, still a case of this kind must be decided in the same manner.

Published at Sirmium, on the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

4. *The Emperors Arcadius and Honorius to ^Emilianus, Prsetorian Prefect.*

When anyone wishes to avail himself of an interdict, he must be ordered to make his allegations, and state his case in the ordinary manner in court, avoiding the technicalities employed by the ancients in proceedings of this description.

Published on the thirteenth of the *Kalends* of . . . , during the Consulate of Arcadius, Consul for the sixth time, and Probus, 406.

TITLE II.

CONCERNING THE INTERDICT QUORUM BONORUM.

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

If you intend to claim the estate which you allege belonged to your father, prove the facts upon which you base your claim before the judges having jurisdiction of the case. For although, after having been passed over in the will, you have accepted praetorian possession of the estate, still, you cannot obtain possession by virtue of the interdict *Quorum bonorum*, unless you can prove that you are a son of the deceased, and that you have acquired the estate itself, or praetorian possession of the property constituting the same.

Published on the eighth of the *Kalends* of January, during the Consulate of Lateranus and Rufinus, 198.

*2. The Emperors Diocletian and Maximian, and the Cassars, to Marcus.*

If, by virtue of the Edict, you demanded the estate after having obtained possession of the same (it having belonged to the sister of your paternal uncle who died intestate, without leaving any children), and you were successful in your application, the Governor of the province will cause the property which belonged to her at the time of her death and which was held by others, either as heirs or possessors of or which they have fraudulently relinquished possession to be delivered to you, in accordance with the tenor of the interdict *Quorum bonorum*.

Published on the sixth of the *Kalends* of April, during the Consulate of the Caesars.

*3. The Emperors Arcadius and Honorius to Petronius, Vicegerent of the Spains.*

It is established that a husband is excluded from the estate of his wife who died intestate, leaving brothers, as the opinions of all jurists, as well as the Law of Nature itself, make them her heirs. Therefore We order, all efforts to the contrary notwithstanding, that the property shall be transferred to the claimant under the interdict *Quorum bonorum*, and that the action with reference to the ownership of the same shall not be barred.

Given at Milan on the sixth of the *Kalends* of August, during the Consulate of Olybrius and Probinus, 395.

TITLE III.

CONCERNING THE INTERDICTION QUORUM LEGATORUM.

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

There is sufficient provision made for the appointed heir by the Falcidian Law, which authorizes him to retain the fourth of the estate where it is proved to have been exhausted by the legacies. Wherefore, if the legatee, or the beneficiary of the trust, whom you assert succeeded the testator, accepted possession of the estate without the consent of your father, and retained the legacy or other property left to him by the terms of the trust, you can begin proceedings under the interdict by which provision is made for the appointed heirs, as against the legatees, and after having furnished the security which must be given, you can be placed in possession of the property and retain the fourth of the same to which you are entitled.

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

TITLE IV.

CONCERNING THE INTERDICTION UNDE VI.

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

A person lawfully in possession has the right to use a moderate degree of force to repel any violence exerted for the purpose of depriving him of possession, if he holds it under a title which is not defective.

Published on the fifteenth of the *Kalends* of December, 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 Alexander.*

It is a positive rule of law that, by the employment of an interdict, those who have been forcibly ejected from property can have it restored to them if the available year has not expired, and that the heirs shall be liable for the amount which in the meantime has come into their hands.

Ordered during the Consulate of the above-mentioned Emperors.

*3. The Same Emperors and Csesars to Ulpia and Proculina.*

You made an exceedingly improper demand when you requested Us to grant you the authority of an Imperial Rescript to confirm your possession of property which you acknowledge you obtained by violence.

Ordered on the eighth of the *Ides* of April, during the Consulate of the Caesars.

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

If you have been forcibly dispossessed, you can bring suit under the *Lex Julia* having reference to private violence against the guilty party and, under the terms of the interdict, you, as the former possessor, can compel him to give you possession, and there is no doubt that he can also be compelled to surrender the income which he may have obtained from the land.

Ordered at Sirmium, on the sixth of the *Ides* of April, during the Consulate of the Csesars.

5. *The Emperor Constantine to Tertullians.*

Anyone who has seized land is liable to the penalty prescribed by law, provided he is proved to have been guilty of violence, for, when the possession of property is obtained by others, either through mistake or the negligence of the owner, it should be restored without the imposition of a penalty.

Given on the sixth of the *Kalends* of May, during the Consulate of Gallicanus and Symmachus, 330.

6. *The Emperors Gratian, Valentinian, and Theodosius to Potitus, Prefect of the City.*

All persons are informed that, in every instance where the owners of property are sued either under a Rescript published by the Emperor, or by virtue of the decision of any judge, and the parties are absent, notice should be served upon their agents or attorneys, in order that no occasion for injury may arise from the source of the law. If the litigants should fail to obey Our orders, they shall be deprived of all rights to the matter in dispute.

(1) When the curators or guardians of minors, acting in collusion, cause the said minors to lose their cases, and be deprived not only of the property which they are entitled to, but of the profits as well, We come to their relief in order that they may not suffer injury through the culpable rashness of others. Possession shall at once be restored to him who was deprived of it, and the curators or guardians shall be punished by perpetual banishment, and their property confiscated.

Given on the second of the *Nones* of April, during the Consulate of Antoninus and Syagrius, 382.

7. *The Emperors Valentinian, Theodosius, and Arcadius to Mes-sianus, Count of Private Affairs.*

If anyone should be so bold as to forcibly seize property in possession of the Treasury, or of any persons whomsoever, before a judicial decision has been rendered, the owner of the same, after having established his right to the possession of what he took, shall restore it to the possessor, and shall lose all title to the said property.

If, however, he forcibly took possession of what belonged to another, he shall not only restore it to the possessor, but shall also be compelled to pay him the value of said property.

Given on the seventeenth of the *Kalends* of June, during the Consulate of Timasius and Promotus, 389.

8. *The Emperors Arcadius and Honorius to Paliphilus.*

The interdict of temporary possession, which does not always have reference to public or private violence, shall be heard at once, and without being reduced to writing.

Given at Milan, on the sixth of the *Ides* of June, during the Consulate of Olybrius and Probinus, 395.

9. *The Emperor Zeno to Sebastian, Praetorian Prefect.*

If, after the act of violence has been proved in court, the question with reference to the property removed or seized is taken up, as well as the damage sustained at the time, and the person who suffered the violence cannot prove the loss of each individual article, an estimate having been made by the judge in accordance with the character of the person, and the nature of the transaction, the plaintiff must establish by his oath the general value of the property which he lost, but he shall not be permitted to swear to an estimate higher than that fixed by the judge, and the amount having been stated under oath in this manner, the court must render judgment accordingly.

Given at Constantinople, on the *Ides* of December, after the fifth Consulate of Armatius, 477.

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

It is not unreasonable for an ancient constitution, as well as the present one, to declare that those who unlawfully seize the possession of another should be punished. Hence those who lease or retain possession of property belonging to others cannot, with impunity, attempt to prevent the lessors of said property from recovering possession of it according to law, which possession they only granted them temporarily, when the latter can advance no legal right to the same, and prefer to offer resistance, and not suffer the owners to recover the possession to which they are justly entitled, but wait for an order of court. If the decision should, under such circumstances, be against them, We decree that, for their impudence and injustice, they shall not only be compelled to surrender to the successful party possession of the property which they were unwilling to voluntarily restore to the owner until a final decision had been rendered, but also to pay him a sum equal to its value.

Given at Constantinople, on the fifth of the *Kalends* of April, during the Consulate of Theoderic and Venantius, 424.

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

When a doubt arose among the members of the Illyrian Bar, as to what course should be pursued concerning those who, without the authority of a judicial decree, retained possession of property left vacant during the absence of the owner, for the reason that the ancient laws did not provide for the recovery of possession of this kind, either by the interdicts *Unde vi* or *Quod vi out clam*, or by any other legal proceeding, violence not having occurred in taking possession of the property, and as no action was allowed the owner except the one *in rem*, We, not permitting anyone to seize the property or possession of others by his own authority, do hereby order that a possessor of this kind shall be understood to be a thief, and held liable under the general provisions set forth in the ancient laws treating of the restitution of possession against persons of this kind. For it is ridiculous to say or believe that anyone could, through ignorance, occupy property belonging to another as his own. All persons should know that what is not theirs must assuredly belong to someone else, as a provision of this kind was long ago prescribed by the ancient laws in the action of theft, for they declared that if anyone should take the property of another without the consent of the owner, he will be liable in an action of theft; and the laws which have been promulgated by Us with reference to the recovery of possession shall be applicable to these cases, if the term of thirty years from the time when possession was taken has not elapsed.

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

TITLE V.

WHERE THE POSSESSION OF AN ABSENT PERSON IS INTERFERED WITH BY  
FORCE OR IN ANY OTHER WAY.

1. *The Emperor Constantius to Severus.*

The judges of absent persons who have been deprived of the possession of property must

admit their legal demands, as well as exert the full force of their authority to protect them, and diligently inquire whether the possession of him who is absent for any reason was retained in his behalf, by one of his neighbors, ascendants, relatives, friends, tenants, freedmen or slaves. Nor shall the claims of those who have possession in the name of the absent party be rejected, even if they are slaves, on the ground that they were not authorized to institute legal proceedings by the owner, although it is not lawful for persons of this condition to appear in court.

But after the time for recovering possession prescribed by law has elapsed, temporary possession shall be granted without any delay to the parties bringing suit, just as if the owner of the property, having returned, was conducting the case.

We, however, grant the owner the right of action to recover possession, no matter when he may return, because restitution of possession might, in the meantime, be deferred on account of the bad faith of slaves, or the negligence of neighbors, parents, friends, tenants, or freedmen, as the expiration of the time prescribed by law for the recovery of possession should not prejudice the rights of those who are absent.

Everything unjustly interfered with having been restored to its former condition, whatever relates to the discussion of the case shall remain unaltered, and decision shall be reserved until the appearance of the just and lawful owners, who are absent, as it is amply sufficient for protection against acts of violence to be afforded those holding possession of the property in the name of the absent parties.

Given at Constantinople, on the *Kalends* of November, during the Consulate of Constantius, Consul for the seventh time, and the Csesar Constans, Consul for the third time, 326.

## 2. *The Emperors Arcadius and Honorius to Petronius, Vicegerent of the Spains.*

No answer of the Emperor obtained by the petition of a litigant, nor any interlocutory decree of a judge can, in any manner, change the condition of the possession so far as an absent person who is entitled to the ownership of the property is concerned, because the merits of the case must be determined by the evidence of the parties interested.

Given at Milan, on the fifteenth of the *Kalends* of January, during the Consulate of Caesarius and Atticus, 397.

## TITLE VI.

### CONCERNING THE INTERDICT UTI POSSIDETIS.

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

The Governor of the province, by employing the interdict *Uti possidetis*, will prevent any violence being done to you because of the land in dispute, provided you have not obtained possession of the same from another, either by force, clandestinely, or under a precarious title, and he will examine the question of ownership after the provisions of the Perpetual Edict with reference to furnishing security or transferring possession have been complied with.

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

## TITLE VII.

### CONCERNING THE PRODUCTION OF WILLS.

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

If the children under the age of puberty were subject to the control of their father, and you were substituted for them, and they died before reaching puberty, the estate will belong to you, and you can avail yourself of the interdict to compel the production of the will.

Published on the seventh of the *Kalends* of May, during the Consulate of Secularus and Donatus, 261.

## TITLE VIII.

### CONCERNING THE PRODUCTION OR INTRODUCTION OF CHILDREN AND FREEMEN IN COURT.

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

If (as you allege) you are your own master, and have obtained a judgment with reference to the property of the mother's estate, you can sue the persons against whom a decision was rendered in your favor. If, however, anyone should appear who asserts that you are his son and under his control, recourse having been had to the interdict, the truth of his claim shall be investigated.

Published on the sixth of the *Ides* of April, during the Consulate of the two Aspers, 213.

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

Go before the Governor of the province and demand that your sons be produced.

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

#### 3. *The Same Emperors and Csesars to Evodia.*

If you think that Philip should, by means of an interdict, be compelled to produce his daughter, the Governor of the province, having been applied to, will take cognizance of your dispute.

Ordered at Nicomedia, on the twelfth of the *Kalends* of December, during the Consulate of the above-mentioned Emperors.

## TITLE IX.

### CONCERNING THE PRECARIOUS AND SALVIAN INTERDICTS.

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

If your debtor should, without your releasing the lien, sell property which has been pledged to you, you will have the right to claim the said property, but not under the Salvian interdict, for it can only be employed against a lessee or a debtor; but you must proceed by the Servian Action, or the one which has been devised in imitation of it, and which should be brought against the purchaser.

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

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

It is clearly stated in the interdict to be filed against them that the heirs of one who had a precarious right of habitation are required to surrender the house to which the right attaches.

## TITLE X.

### CONCERNING PRIVATE BUILDINGS.

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

You can (as you desire to do) construct a bath, and place a building above it, provided, however, that you observe the law enacted with reference to those who build above a bath; that is to say, you must erect the superstructure as well as the bath itself upon arches, and do not raise it above the ordinary height.

Without date or designation of Consulate.

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

It is forbidden both by an Edict of the Divine Vespasian and a Decree of the Senate to

demolish a building and remove the marble composing it for the purpose of selling the same, but an exception is made where the marble is to be transferred from one building to another, as this can be done. Owners, however, are not permitted to transfer the materials in such a way that, when the buildings are demolished, the general appearance of the neighborhood will be rendered less attractive.

Published on the eleventh of the *Kalends* of January, during the Consulate of Alexander, 225.

3. *The Same Emperor to Evocatus.*

The Governor of the province, after proper investigation, and in accordance with what is frequently done in controversies of this kind which arise in towns, must decide whether you will be permitted to demolish your entire house, not for the purpose of rebuilding it in the city, but in order to convert it into a garden, and whether this can be effected with the consent of a magistrate and that of your neighbors.

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

4. *The Emperor Philip and the Caesar Philip to Victor.*

If (as you allege) the other joint-owner of the building refuses to pay his share of the expense incurred for necessary repairs, you will not be obliged to have recourse to extraordinary proceedings, as you propose to do, for if you alone have rebuilt the house, and your partner does not pay his share of the expense with interest at the rate of twelve per cent within the term of four months, or if it should be proved that he is to blame for not having done so, you can demand and obtain the ownership of the entire property in accordance with the provisions of the ancient laws.

Published on the fourth of the *Kalends* of April, during the Consulate of Philip and Titian, 346.

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

If he against whom you have petitioned, being aware that the part of the land in question belongs to you, and well knowing that he had

no rights either as a partner of a joint-owner, proceeded to construct a bath under the assumption of joint-ownership, with the intention of acquiring the entire property if you did not pay your share of the expense, and also attempted to rebuild a bath which had been demolished, and as all structures placed on the land of another belong to the soil, and the expense incurred in their construction should not be refunded to those who wrongfully erected them, under the terms of an ancient Edict of the Divine Hadrian, the Governor of the province, mindful of the public law on this point, shall act as legally required in the settlement of the controversy.

Published on the sixth of the *Nones* of October, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

6. *The Emperor Constantine to Elpidius, acting as Deputy of the Praetorian Prefect.*

If anyone, after the promulgation of this law, should remove from the city to the country any ornaments taken from a house, that is to say, any marble or columns, he shall be deprived of the building which he decorated in this way. Where, however, anyone desires to transfer any columns or marble from a house which is falling into ruin in a city to another house of his own in a different town, he shall be permitted to do so, as these materials continue to be public ornaments, remaining as they do in both instances, in cities.

The same authority is also granted to transfer ornaments of this kind to another place of the same description, even though it may be necessary to transport them through the middle of a city, or beyond the walls, provided that those materials which have been taken from one town shall only be used in another.

Given on the sixth of the *Kalends* of June, during the second Consulate of Crispus and Constantius, 321.

7. *The Emperor Julian to Vitianus, Vicegerent of Africa.*

No one shall be permitted to remove or transport any columns or statues, of any material whatsoever, out of a province.

Given on the sixth of the *Kalends* of November, during the Consulate of Julian, Consul for the fourth time, and Sallust, 363.

8. *The Emperors Valens, Gratian, and Valentinian to Modestus, Prsetorian Prefect.*

The decurions of each city are required, even against their consent, either to repair houses within cities in which they formerly resided, or to entirely rebuild them, when this becomes necessary, because they are always obliged to discharge their duties in the same city in which they live, and should, so far as they can, contribute to the size of the same.

The possessors of houses, who are not decurions, must repair them if they have fallen into decay and have been neglected, and the judges shall exert their authority to enforce observance of this law.

Given on the thirteenth of the *Kalends* of November, during the Consulate of Gratian, Consul for the fourth time, and Nerobaudus, 377.

9. *The Emperors Theodosius, Arcadius, and Honorius to JEmili-anus, Prefect of the City.*

Where anyone who owns property in the neighborhood of a public building intends to erect a house upon it, he must remember when building it to leave the space of fifteen feet between the two edifices, so that, by means of this space, the public building will not be endangered, and the private individual will not, hereafter, run the risk of having his house demolished for having constructed it in a place where he had no right to do so.

Given on the tenth of the *Kalends* of November, during the Consulate of Arcadius, Consul for the sixth time, and Probus, 406.

10. *The Emperors Honorius and Theodosius to Monaxius, Prie-torian Prefect.*

Persons who desire to do so shall be permitted to surround their own lands, or premises known to belong to them, with a wall, in the provinces of Mesopotamia, Osdroena, Euphrates, Second Syria, Phoenicia, Libanus, Second Cilicia, both the provinces of Armenia, both the Provinces of Cappadocia, Polemoniac, Pontus, the Hellespont, and all other provinces where it may be desirable to do so.

Given at Constantinople, on the third of the *Nones* of May, during the Consulate of Theodosius, Consul for the eleventh time, and Con-stantius, Consul for the third time, 421.

11. *The Same Emperors to Severinus, Prsetorian Prefect.*

Balconies (called in Greek *re^osa?*), whether they have already been, or may hereafter be, built in the provinces, shall, without exception, be demolished, unless they have a space of ten feet between them for the free circulation of air. Moreover, in places where the buildings of private individuals adjoin public warehouses, the space of fifteen feet must be left between the balconies. We have established this interval in the case of buildings so that, if anyone should attempt to encroach upon the space prescribed, that is to say, erect a balcony projecting over the distances of ten and fifteen feet above mentioned, he may know that not only what he built will be demolished, but that the house will itself be confiscated to Our Treasury.

Given on the third of the *Kalends* of October, during the Consulate of Asclepiodotus and Marinianus, 423.

12. *This Law is not Authentic.*

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

As a doubt arose whether the Constitution of the Emperor Zeno, of Divine Memory, addressed to Amantius, Prefect of the City, and relating to servitudes, was only local in its effect, and intended to be observed in this most flourishing City, and whether the ancient laws which conflict with it were applicable to the provinces, We, thinking that it would be unworthy of Our reign for one law to be obeyed in this way in this Imperial City, and another by the inhabitants of Our provinces, do hereby decree that the same constitution shall prevail in all the cities of the Roman Empire, and that everything shall be done in accordance with its provisions, and if the ancient law was, in any way, altered by the present one, the latter shall be observed by the Governors of the various provinces; in other words, all regulations which are not changed by the law of Zeno, but are contained in the ancient enactments, shall everywhere remain in full force.

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

## TITLE XI.

### CONCERNING THE NOTICE PROHIBITING THE ERECTION OF A NEW STRUCTURE.

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

We are aware that a doubt arose among the ancients with reference to a notice not to erect a new structure, and that where one person had warned another not to proceed with it, he could not again prohibit him from doing so after a year has elapsed from the time when the notice was served. This appears to Us to be doubly unjust, for either he did not have good grounds for forbidding him to erect the building (and if this was the case it was not right that he should prevent him from doing so for an entire year), or if he did have good cause to serve the notice, he should be permitted again to forbid its construction after the expiration of a year.

Therefore We, for the purpose of preventing such injustice, do order that if anyone should serve a notice of this kind in this Imperial City, the case shall be brought before the Urban Prefect, and if this is done in any province, the matter shall be disposed of by the Governor of the same within the term of three months. If, however, any impediment should arise to prevent the decision of the case, he who was erecting the building shall be allowed to proceed with the work, after having furnished security to the Urban Prefect, or the Governor of the province, that if his building should be ascertained to have been constructed contrary to law he will demolish, at his own expense, all of it that he erected after notice was served upon him.

This law is enacted in order that the construction of buildings may not be prevented by notices which are unreasonable, and at the same time that the interests of those who have good reason for serving such notices may be protected.

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

## TITLE XII.

### CONCERNING PUBLIC WORKS.

#### 1. *The Emperors Constantius and Constans to Catulinus.*

Many persons have, through the concessions of judges, obtained exemption from the construction of public works, and therefore We decree that unlawful privileges of this description shall, hereafter, be of no force or effect.

Given at Sirmium, on the sixth of the *Kalends* of August, during the Consulate of Ursus, Lupulus and Polemius, 338.

#### 2. *The Same Emperors to Marcellinus, Count of the East.*

You understand that where expenses have been incurred in the construction of public works,

credit should be given for the same.

Given at Constantinople, on the fifth of the *Nones* of October, during the Consulate of Limenius and Catulinus, 349.

3. *This Law is not Authentic.*

4. *The Same Emperors to Ecdicius, Prefect of Egypt.*

Buildings for the use of judges, and public edifices, must always be devoted to the dispensation of justice, and the use of the people.

Published at Antioch, on the fourth of the *Nones* of December, under the Consulate of Mamertinus and Nevitta, 362.

5. *The Emperors Valentinian and Valens to Symmachus, Prefect of the City.*

No judge shall, without Our sanction, erect a new building within the limits of ancient and modern Rome, unless he wishes to do so at his own expense. We, however, grant all of them permission to repair any building of which they make use, if it is shown that it is about to fall into ruin.

Given on the eighth of the *Kalends* of June, under the Consulate of Jovian and Varonianus, 364.

6. *The Emperors Gratian, Valentinian, and Theodosius to Proculus.*

No prescription of time, nor even the authority of a rescript, shall be pleaded in favor of what has been done contrary to public law, and therefore all buildings or other structures, which are known to have been erected in different cities, either in the Forum or in any other public place, and are injurious to the ornamentation, convenience, and suitable appearance of the City, shall be demolished.

Given at Constantinople, on the third of the *Ides* of June, during the Consulate of Merobaudus, Consul for the second time, and Satur-ninus, 383.

7. *The Same Emperors to Cynegius, Prssotorian Prefect.*

All persons should emulously and in unison assist in the repair or construction of harbors, aqueducts, and walls; nor shall anyone's rank, no matter what it may be, exempt him from the performance of this duty.

Given at Constantinople, on the fifteenth of the *Kalends* of February, during the Consulate of Richomer and Clearchus, 384.

8. *The Same Emperors to Cynegius, Prssotorian Prefect.*

All those to whom have been committed the construction of public works, where money for this purpose has been advanced to them in the ordinary way, shall, with their heirs, be liable for their completion within the term of fifteen years, so that if any defect of construction should be discovered within the prescribed time, it may be made good out of their estates, except in cases which are the result of accident.

Given at Constantinople, on the third of the *Nones* of February, during the Consulate of Arcadius and Bauto, 385.

9. *The Emperors Theodosius, Arcadius, and Honorius to Aurelian, Prefect of the City.*

Your Highness knows that where a grant is made by Us for the construction of public buildings, the rule must be observed that no house shall be demolished, under the pretext of the erection of a building, whose value is estimated at more than fifty pounds of silver; and where the houses are worth more than that sum, We must be applied to, and the Imperial authority exerted, if a larger amount is demanded.

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

Theodosius, Consul for the third time, and Abundantius, 393.

10. *The Same Emperors to Rufinus, Praetorian Prefect.*

Judges shall be considered guilty of high treason who cause their names to be inscribed upon buildings erected at the public expense, without mentioning that of the Emperor.

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

11. *The Emperors Arcadius and Honorius to Eusebius, Count of the Sacred Largesses.*

In order that Our magnificent cities and towns may not become ruined through the effect of age, We hereby set aside the third part of the income from the public lands for the repair of public buildings and baths.

Given at Milan, on the eleventh of the *Kalends* of July, during the Consulate of Olybrius and Probinus, 395.

12. *The Same Emperors to Csesarius, Praetorian Prefect.*

All Governors of provinces are hereby notified that the inhabitants of cities, without distinction of rank, are obliged to contribute to the construction of new city walls, or the repair of the old ones, and that the expense of the same must be distributed so that the allotment of each will be in accordance with his means, and the real property of the citizens be taxed in proportion to the estimate of the structure to be erected, so that no more may be demanded than necessity requires, and no less, for fear construction may be prevented.

This tax must also be equally imposed upon lands which yield a revenue, and everyone shall be compelled to pay his share of the expense, and no excuse shall be accepted, and no immunity from contribution granted under any pretext whatsoever.

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

13. *The Same Emperors to Theodore, Praetorian Prefect.*

No judge shall be so rash as to presume to erect a new building without Our authority, or remove from different edifices any ornaments, marbles, or other materials which are proved to have been for the use and adornment of the City, and transport them somewhere else without the order of Your Highness, for if anyone should do so in violation of this law, he shall be fined six pounds of gold.

Municipal magistrates shall be liable to the same sentence if, relying upon this Decree, they do not protect the ornaments of their birthplace. Judges, however, can, by their own authority, erect warehouses or stables by way of manifesting their laudable devotion to Us.

Given at Milan, on the third of the *Kalends* of January, during the Consulate of Honorius, Consul for the fourth time, and Eutychi-anus, 398.

14. *The Same Emperors to Severus, Prefect of the City.*

We order that the buildings commonly called *parapetasia*, or others which are attached to the walls of cities, or to public buildings, and on account of whose condition the neighborhood is threatened with fire or some other danger, or which occupy the space of public squares, or interfere with the porticos of public edifices, shall be demolished and destroyed.

Given at Constantinople, on the fifth of the *Ides* of October, during the Consulate of Honorius, Consul for the fourth time, and Eutychianus, 398.

15. *The Same Emperors to Eutychiamts, Praetorian Prefect.*

If, at any time, certain men should appear and request Us to grant them the use of a public building, and a rescript is granted to that effect, they shall not be allowed the use of said building unless it is ruinate, almost destroyed, and of very little value to the city, after the

rescript has been presented to Your Highness and you have ascertained that this is the fact. Given on the *Ides* of December, during the Consulate of Honorius, Consul for the fourth time, and Eutychianus, 398.

16. *The Same Emperors to JEmilianus, Prsetorian Prefect.*

When, either on account of age, or because of some accident, necessity demands that a portico or some other public building should be repaired, it shall be permitted, even without consulting the Emperor, to remove with all due reverence either his statue or those of former sovereigns, provided that, after the building has been repaired, they are returned to their proper places.

Given at Constantinople, on the fifth of the *Kalends* of July, during the Consulate of Arcadius, Consul for the sixth time, and Probus, 406.

17. *The Emperors Honorius and Theodosius to Monaxius, Prae-torian Prefect.*

Any place within the precincts of Our palace, in this city, which is occupied by private buildings to the inconvenience of the former, shall be immediately demolished, as it is not proper for the palace to be confined by the walls of private residences, for the home of the Emperor should be separate from those of all other persons; and they alone shall have the right to live near the palace who have lawfully been granted this privilege by the Emperor, or who are required to do so by their public duties; and, for the future, all persons are hereby prohibited from any encroachment of this description.

Given at Constantinople, on the ninth of the *Kalends* of March, during the Consulate of Honorius, Consul for the eighth time, and Theodosius, Consul for the third time, 409.

18. *The Same Emperors to Anthemius, Prsetorian Prefect.*

We order that the towers of the new wall, which was built for the protection of this magnificent City, shall, after the work has been completed, be set apart for the use of those on whose land the said wall has been erected by your care and foresight, and with Our consent. This privilege is granted to them forever by the terms of this law, but under the condition that every year those who have surrendered their rights to said land shall make the necessary repairs at their own expense, and while they enjoy the use and benefit of public property, they must not forget that the care and responsibility for said repairs are part of their duty. In this manner the splendor of the work and the defence of the city will be connected with the utility and advantage of private individuals, and both will be preserved.

Given on the second of the *Nones* of April, during the Consulate of Lucius, 413.

19. *The Same Emperors to Severinus, Prsetorian Prefect.*

For the reason that several houses, with their workshops, are said to have been erected in the porticos of Zeuxippus, We order that, without any exception, the rents of the aforesaid buildings shall be appropriated proportionally for the construction of new windows, as well as for the repair of the roofs, and the maintenance of the baths of this Imperial City.

Given on the fifth of the *Ides* of January, during the Consulate of Victor, 424.

20. *The Emperors Theodosius and Valentinian to Cyrus, Prefect of the City.*

We order those persons who, without the authority of an Imperial Rescript communicated to them by Your Highness, have included entire ends of streets or portions of the same in their houses, or have appropriated porticos, to return to the public use of the city what they have in this way taken for their own use, and if anyone should hereafter be guilty of such audacity, he shall be liable to a fine of fifty pounds of gold.

Given on the *Kalends* of November, during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 439.

21. *The Same Emperors to Cyrus, Prsetorian Prefect.*

We order that the Basilica, which has been embellished with gold and marble, shall remain intact for all time, and that its ornamentation shall not be obscured by the introduction of the statue of anyone, nor by paintings placed there in anyone's honor; and We decree that, in no part of said Basilica, shall any assembly be held, or any banquet be given; and We also decree that no one shall be permitted to introduce horses, or celebrate marriages therein.

Given at Constantinople, on the eleventh of the *Kalends* of February, during the Consulate of Valentinian, Consul for the fifth time, and Anatolius, 440.

## 22. *The Emperor Leo to Erythrius.*

No judge shall be allowed to construct a new building either in this renowned City, or in any of the provinces, before those which one or more of his predecessors may have left unfinished, or which have been demolished on account of age, or abandoned through neglect, have been completed by his diligence and industry, for just as much distinction is acquired by repairing buildings which are old, and require to be rebuilt, and in finishing those which have been begun by others but left imperfect, as in erecting new ones.

Given at Constantinople, on the second of the *Kalends* of March, during the Consulate of Martian and Zeno, 448.

## TITLE XIII.

### CONCERNING THE CONTRACTORS OF PUBLIC WORKS AND THE SENATORS OF CITIES.

1. *The Emperor Zeno to Arcadius, Prssstorian Prefect.* We order that the Governors of provinces and the illustrious judges of different districts, that is to say, the Augstal Prefect, the Count of the East, and all Proconsuls and Vicegerents, together with those composing their retinues shall, in conformity with the tenor of the general regulations established by Your Highness, refrain from interfering with any public works or aqueducts which either have been constructed at the public expense, or by the voluntary munificence of anyone, or which may hereafter be constructed; nor shall they, in any way or at any time, claim for themselves a single *siliqua* of the *solidi* out of the amount to be expended in handling the public revenues, whether the work has been completed or is to be undertaken hereafter; nor shall they acquire for themselves any gain, for they have no concern in matters of this kind, as the municipal bodies are charged with them when they are placed under their supervision.

Any persons, however, who promise to erect a public building at their own expense, shall not be required by law to do the work, even though it was certain that it depended upon a promise or a contract alone; and We decree that their heirs shall not, in any way, or at any time, be subjected to annoyance, or be compelled to render an account of the work performed, or that any controversy shall be raised on the ground that the entire amount of money promised has not been expended on the work, or that it was done in such a way as to be useless, or under any other pretext whatsoever.

If the illustrious Governor of the province or his subordinates should, in opposition to what has been prescribed, violate the provisions of this Our most sacred law by interfering with the expenditure of the public revenues on any public work, or by claiming a single *siliqua* or any other sum whatsoever out of the said revenues, or on account of the works above mentioned, the five principal officers of his retinue shall be condemned to perpetual exile, and their property shall be confiscated to the city which they have injured, and the Governor of the province himself shall be fined fifty pounds of gold. The distinguished judges, also (even though they may have been decorated with the highest honors), as well as their subordinates (as above stated), shall be liable to the same penalties.

## TITLE XIV.

### CONCERNING PLEDGES AND HYPOTHECATIONS.

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

A debtor who alleges that he has transferred to his creditors the property which he pledged to them is by no means released from liability.

Published on the fifth of the *Kalends* of March, during the Consulate of Severus, Consul for the second time, and Albinus, 195.

*2. The Same Emperors to Lucius.*

Although it is established that your adversary received certain property specially, by way of pledge, and that the remainder has been pledged to him in general terms and hence he has an equal right to all of it, the strictness of the rule should, nevertheless, be relaxed. Therefore, if it is certain that he can collect the entire debt from the sale of the property which was specifically pledged to him, the Governor of the province will order that you shall not be deprived of that portion of the same property which was subsequently encumbered.

Published on the second of the *Kalends* of June, during the Consulate of Chilo and Libo, 205.

*3. The Same Emperors to Maximus.*

Creditors, who have made an agreement with their debtors that if the money due is not paid to them at the designated time they may take possession of their property, are not considered to have used violence if they do so, but they should, nevertheless, obtain possession by authority of the Governor.

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

*4. The Same Emperors to Bellius.*

As you acknowledge that you have received the money and hypothecated your lands, you have no reason to complain that you have been compelled to encumber them; therefore, if you wish to recover your property, pay your creditor the money which you owe him.

Given on the third of the *Kalends* of June, during the third Consulate of Antoninus and Geta, 209.

*5. The Emperor Antoninus to Domitius.*

The illustrious Governor of the province will hear you when you apply to him for the enforcement of your right to the property pledged to you, and it will not be prejudiced by the judgment rendered against your debtor if it should be proved that he acted in collusion with your adversary, or (as you allege) the case was not heard, but that your debtor was defeated by the proof of prescription.

Published at Rome, on the *Ides* of March, under the Consulate of the two Aspers, 213.

*6. The Same to Quintus.*

In calculating the amount of a debt, that also is computed which has been paid out of the property pledged for the repair of highways, or anything else which it is proved that the creditor was obliged to disburse.

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

*7. The Emperor Gordian to Martianus.*

The usucaption of a pledge does not annul the agreement made with the creditor.

Published on the Nones of September, during the Consulate of Pius and Pontianus, 234.

*8. The Same Emperor to Festus.*

Although you have obtained a judgment in a personal action which is brought either against the principal debtor, his sureties, or his mandators, you will, nevertheless, still retain the right to the property pledged.

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

9. *The Same Emperor to Atticus.*

If the ownership of the property which has been given in pledge has been transferred to you by the woman who owned it, and afterwards the creditor, or his heirs, attempt to hold said property, claim it before the Governor of the province, who will see that possession is restored to you, under the condition that you pay the balance due after the crops obtained by the creditor has been deducted.

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

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

When debtors are present, notice should first be served upon them; therefore, if, after having been notified, they do not pay the debt, you can have recourse to the pledge, or the property which has been hypothecated, and which you state has been specifically described in a certain instrument, and the Governor of the province will not hesitate to afford you his assistance by means of the actions to which you are entitled.

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

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

It is not lawful for the property of anyone appointed to an office to be pledged to the person who appointed him, without the authority of the Governor.

Ordered on the third of the *Ides* of March, during the Consulate of the above-mentioned Emperors.

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

If your deceased wife, having borrowed money, pledged her own property, and you became her heir, although it may not have been provided by the instrument evidencing the obligation that, after the debt was paid you could sue the creditor, still, if this was done, you have a right to bring suit and compel him to return to you the articles that were pledged.

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

13. *The Same Emperors and Csesars to Matrona.* As you state in your petition that the property pledged has been transferred to you and given in payment of the debt by your mistress, who was over the age of twenty-five years, the contract and the will of your debtor will be sufficient confirmation of your ownership.

Ordered at Heraclia, on the third of the *Kalends* of May, under the Consulate of the above-mentioned Emperors.

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

When pledges are sold by the debtor, it is a positive rule of law that the creditors have power to bring a personal action against him, or one *in rem*, against those who are in possession of the pledges.

Ordered at Heraclia, on the *Kalends* of May, during the Consulship of the above-mentioned Emperors.

*Extract from Novel 112, Chapter I. Latin Text.*

This takes place when the debtor does not pay his creditor out of the proceeds of the property sold, for he is permitted to sell it for the purpose of doing this.

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

It is certain that a debtor cannot prejudice the rights of a creditor by either selling, donating, bequeathing, or leaving under a trust the property pledged, and therefore if you can prove that it was pledged to you, you can assert your right to the same.

Ordered at Heraclia, on the fifth of the *Nones* of May, during the Consulate of the above-mentioned Emperors.

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

Although your brother did not lend his own money, but lent yours in his name, and received a pledge as security, he could not acquire any right to the article pledged.

Signed at Adrianople, on the third of the *Ides* of May, during the Consulate of the above-mentioned Emperors.

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

Even though your brother purchased land with the money which you lent him, still, if he did not hypothecate the said land to you either specifically or in general terms, the payment of your money is not secured by the pledge of the land, but you will not be prevented from bringing a personal action before the Governor of the province to collect the debt.

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

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

Legal proceedings instituted on account of pledges or hypothecations are *in rem*.

Ordered at Sirmium, on the *Kalends* of December, during the Consulate of the above-mentioned Emperors.

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

As a creditor is not responsible for pledges where irresistible force is employed, so he is required to use ordinary diligence with reference to such property, and is responsible for both fraud and negligence.

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

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

A creditor can, by no means, legally be compelled to demand the payment of his claims, but if you tendered what you alleged that you owed to the heirs of Evodianus, and they refused to accept it, you should seal it up and deposit it, and then you can bring suit before the Governor for the purpose of forcing them to return the property pledged.

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

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

Where a third party, by payment of the debt, releases property which has been hypothecated, he can demand the amount that he paid, but he cannot acquire the ownership of said property.

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

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

A second creditor, by paying the prior creditor his debt, acquires for himself the right to the property pledged, and is entitled to receive from the debtor both the principal and interest which he paid, but he cannot collect compound interest.

Published at Nicomedia, on the third of the *Ides* of December, during the Consulate of the Caesars.

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

Anyone over twenty-five years of age cannot claim pledges the right to which he has relinquished, as the agreement alone which he entered into, as well as the law which considers his intention, will prevent him from doing so.

Ordered at Nicomedia, on the eighteenth of the *Kalends* of January, under the Consulate of the Csesars.

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

A creditor cannot be compelled to bring a personal action against his debtors if he has neglected to bring one of pledge.

Ordered at Nicomedia, on the fifteenth of the *Kalends* of January, during the Consulate of the Csesars.

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

This rule applies where the debtor is in possession of the property encumbered, but if another is in possession of it, the hypothecary action cannot be brought until the principal and his surety have been sued in the personal action. If the debt is not satisfied out of the property hypothecated by the debtor, then recourse can be had to that hypothecated by the surety, if there is any. This rule is also applicable to heirs.

*25. The Same Emperors and Cassars to Dracontius.*

Even though the slave who was pledged may have died, the right to payment of the debt remains unimpaired.

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

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

If your debtor pledged to you his secretary, who is a slave, sue him by whom you allege that the slave was removed, before the Governor of the province.

Signed at Sirmium, on the fourth of the *Kalends* of January, under the Consulate of the Caesars.

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

We, for the purpose of permanently remedying all the abuses which have arisen with reference to the hypothecation of property, which money-brokers, bankers, or business men of every other description practice against those who lend them money, do hereby order that if, having made a contract of this kind, they should acquire for their children, or for any of their relatives some office which can be sold, or transmitted to heirs under certain conditions, even if it is not established that the money by which the children were benefited came from the said creditors, or that the relatives obtained the office purchased (for it is sufficient that the contrary should not be proved, namely, that others have furnished the money out of their own estates), the creditors shall have the right to collect the entire debt from those who have possession of the said office, or to exact from them as much as the office can be sold for.

We order that this rule shall apply, even if it is proved that the said merchants obtained the offices for strangers by the payment of their creditor's money, so that as, generally speaking, debtors themselves are permitted to sell the offices or transmit them to their heirs, creditors also, who can claim the offices aforesaid by the right of hypothecation, shall be allowed to sell them, even during the lifetime of the debtors, unless their debts are paid; and after their death they can collect from the incumbents of the offices the payment of their claims according to the average value of the same, or the appraisement made when they were bestowed by the Emperor.

This rule shall be observed for the protection of creditors as against merchants personally,

although those who hold the offices may, under no circumstances, be liable for the indebtedness. We order that this law shall in the future apply to offices obtained not only when bankers or merchants have acquired them for their children or other relatives, but also for strangers, by the payment of money belonging to their creditors.

Given on the *Kalends* of June, during the Second Consulate of Our Lord the Emperor Justinian, 526.

*Extract from Novel 53, Chapter V. Latin Text.*

This rule only applies where the money has been borrowed for the purpose of purchasing the office; otherwise, the children or wife of the deceased shall be preferred to other creditors. If, however, there should be none of these, then We grant this privilege to the creditors.

TITLE XV.

CONCERNING CASES IN WHICH PROPERTY IS TACITLY PLEDGED OR HYPOTHECATED.

1. *The Emperor Antoninus to Speratus.*

The entire property of those who are liable to the payment of taxes is encumbered by pledge to secure the collection of the same.

2. *The Same Emperor to Proculus.*

It is certain that the property of him who makes a contract with the Treasury is encumbered, as by a pledge, although this may not have been expressly provided.

Given on the sixth of the *Kalends* of March, during the Consulate of Messala and Sabinus, 215.

3. *Extract from a Rescript of the Emperor Alexander Addressed to Demosthenes.*

Although the income of land given in pledge (even where this has not been explicitly stated) is, by tacit agreement, included in the property encumbered, still, land which has been purchased with the proceeds of the crops is considered by no jurist to be embraced in this category.

Published during the *Ides* of October, during the Consulate of Maximus, Consul for the second time, and Jelianus, 224.

4. *The Emperor Carus, Carinus, and Numerianus to Africanus.*

It is well enough known, and sufficiently based upon reason, that property given by way of dowry to women who marry Chief Centurions of the Triarii is liable for the indebtedness incurred during the administration of the latter. This, however, is true with certain restrictions, as the woman does not become liable, except where the entire property of the Centurion and of those who appointed him, having been exhausted, nothing is found to remain.

Given on the fifth of the *Ides* of August, during the Consulate of Carus and Carinus, 285.

5. *The Emperors Diocletian and Maximum, and the Csesars, to Corinthia.*

If it is shown that the slaves in question were not transferred with the property which it was decided was encumbered, and that they were not specially pledged for the payment of the debt, the Governor of the province will order them to be returned. Nor can their restitution be delayed under the pretext that rent is due, since, if the woman who was the owner of the property can prove that there is anything due to her as rent, or for any other reason, it is proper for her to exact payment by law.

Ordered on the twelfth of the *Kalends* of February, during the Consulate of the Cassars.

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

When a mother who has obtained the legal guardianship of her children contracts a second

marriage in violation of the oath which she took before causing another guardian to be appointed for them, she shall pay to the said children what is due to them under her administration of the guardianship, and the property of her deceased husband, as well as her own, will be considered as pledged for the discharge of any indebtedness contracted by her during her administration of the guardianship.

Given on the sixth of the *Ides* of . . . , during the Consulate of Theodosius, Consul for the seventeenth time, and Festus, 409.

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

We order that the property brought into a house by a tenant shall be tacitly pledged to the owner for the rent, and this law shall apply not only to ancient and modern Rome and their territory, but also to the provinces of Our Empire, for We desire that all the inhabitants shall have the benefit of this equitable presumption.

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

TITLE XVI.

WHERE PROPERTY BELONGING TO ANOTHER IS PLEDGED.

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

The agent did not lawfully pledge the house of his principal without the consent of the latter. If, however, it is established that he employed the money of the creditor for the benefit of the property of his principal, an exception can be pleaded, if the former desires what has been loaned to be collected.

Published on the eleventh of the *Kalends* of November, during the Consulate of Severus, Consul for the second time, and Albinus, 195.

2. *The Same Emperors to Latina.*

If you prove before the Governor of the province that the fields or gardens in dispute are yours, you understand that they cannot be hypothecated to a creditor by another person, even though this was done without your knowledge, unless you concealed your title to said property for the purpose of defrauding the creditor.

Published on the first of the *Ides* of October, during the second Consulate of Antoninus and Geta, 206.

3. *The Emperors Antoninus to Martia.*

Neither the curator of an adult, nor the guardian of a minor, can legally pledge the movable property of him whose affairs he administers, unless he borrows money on what is pledged.

Published on the fifth of the *Kalends* of February, during the Consulate of the two Aspers, 213.

4. *The Emperor Alexander to Secundus.*

Even if your son was more than twenty-five years of age, if he was still under your control he could not hypothecate any of your property against your consent.

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

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

As property which did not yet belong to the debtor was pledged by him, and afterwards became his own, it is clear that an ordinary action on pledge will not lie, but equity requires that a praetorian action resembling that of pledge should be granted.

Published on the thirteenth of the *Kalends* of June, during the Consulate of Maximus, Consul

for the second time, and Aquilinus, 286.

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

She who gave in pledge to her creditor land which she had already transferred as a donation to her children has rendered herself liable to the counteraction of pledge, and could not injure the owners in any respect, as the Servian Action plainly shows that property cannot be held by the right of pledge unless it belongs to the person incurring the obligation, and it is also perfectly certain that the property of another cannot be encumbered by anyone against the consent of the owner.

Ordered at Philippopolis, on the fifth of the *Ides* of July, during the Consulate of the above-mentioned Emperors.

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

If your guardian gave your slave in pledge to secure the payment of borrowed money employed for his own use, and, after you attained your majority, you did not give your consent to the transaction, the property will not be encumbered as a pledge.

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

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

Land cannot be encumbered except by someone who has the legal right to do so. Hence, in accordance with justice, and by the authority of the laws it is stated that no lien can, without the knowledge or consent of the owner, be placed upon such property by a slave, an agent, a tenant, a steward, or a lessee.

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

## TITLE XVII.

### WHAT PROPERTY WHEN PLEDGED CAN OR CANNOT BE RENDERED LIABLE FOR A DEBT, AND IN WHAT WAY A PLEDGE IS GIVEN.

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

It is not reasonable to suppose that your children by a concubine, and other effects which usually are only pledged under a special agreement, constitute part of property encumbered by a general contract including your possessions.

Published on the twelfth of the *Kalends* of April, during the Consulate of Lateranus and Rufinus, 198.

2. *The Same Emperors to Rogatus.*

As it is settled that the obligation of pledge is created by consent, We entertain no doubt that he who pledged the agreements for the purchase of his lands intended to hypothecate the lands themselves.

Published on the fifth of the *Kalends* of July, during the Consulate of Aper and Maximus, 208.

3. *The Emperor Antoninus to Restitutus.*

If you have placed the body of your daughter in a tomb, you have made the tomb religious. This having been done, there is no doubt that the tomb cannot be encumbered by anyone, as the laws concerning religion forbid it.

Published on the third of the *Kalends* of April, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

4. *The Emperor Alexander to Evocatus.*

It was long since decided that the claim of a debtor can be pledged either generally or specifically. Therefore, if the debtor to whom you lent the money should not discharge his obligation, he whose claim was given to you by way of pledge can be compelled by equitable actions, unless he pays the person whom he himself owes, and security has not been furnished for the settlement of your obligation, to pay you the amount that you can prove is due to you from his creditor, to the extent that he himself is indebted.

Published on the day before the *Kalends* of March, during the Consulate of Fuscus, Consul for the second time, and Dexter, 226.

5. *The Same Emperor to Septimius.*

To pledge, by a private agreement, the prizes to be obtained in an athletic contest is, under no circumstances, allowed, and therefore they are not considered included even if a general contract for the pledge of all property should be made.

Published on the third of the *Kalends* of May, during the Consulate of Maximus, Consul for the second time, and Paternus, 234.

6. *The Emperors Diocletian and Maximian, and the Caesars, to Rufus.*

Anyone who received either your children or persons who are free, by way of pledge for the money which he lent you, deceives himself in attempting to evade the law, as it is clear that the obligation of pledge was not contracted, except with reference to such property as the debtor could legally encumber.

Ordered at Heraclia, on the *Kalends* of May, under the Consulate of the above-mentioned Emperors.

7. *The Emperor Constantine to all the Inhabitants of the Provinces.*

We order that the officers appointed by any judge for the collection of debts which are the subject of a civil action shall not remove from the possession of others any slaves, oxen, or implements used for the cultivation of the soil, on the ground that they have been pledged, by which act the payment of taxes may be delayed. Therefore, if any agent, creditor, prefect of a district or village, or decurion, should be convicted of having done this, he shall be subjected by a penalty to be determined by the judge.

Given at Sirmium, on the third of the *Nones* of June, during the Consulate of Constantine and Licinius, 312.

8. *The Emperors Honorius and Theodosius to Probus, Count of the Imperial Largesses.*

It is settled that nothing which is used for the cultivation of the soil can be removed under the pretext that it has been pledged.

Given on the sixth of the *Ides* of June, during the Consulate of Constans and Constantius, 414.

*Constitution of Frederick.*

Agricultural laborers, who are occupied in rustic pursuits, whether they reside on farms or merely cultivate the land, shall be secure in every part of Our Empire, so that no one can be found so audacious as to presume to seize, take, or carry away either their persons, their oxen, their tools, or anything else used for the tillage of the soil.

If, however, anyone should rashly presume to violate this decree, he shall restore fourfold the amount of what he carried away, and shall be branded with infamy by the law, in addition to being punished with the displeasure of the Emperor.

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

If anyone should insert the following words into the instrument evidencing a contract, namely, "For the liability, and at the risk of the property which belongs to me," or "I promise to pay you at the risk of my property," We decree that these words shall be sufficient for the

hypothecation of any property which the debtor has at the time, or may thereafter acquire, notwithstanding that the terms of former laws do not seem to apply to special hypothecation, as it is just rather to consider the intention of the contracting parties than the meaning of their words.

With reference to general hypothecations, and for the purpose of carrying out the wishes of the contracting parties, We decree that even if the debtor should not, when he encumbers his property, add, "The property which I have at present, as well as that which I may acquire in the future," the general right of hypothecation will include anything that he may subsequently obtain.

Given at Constantinople, on the third of the *Ides* of December, during the Consulate of Our Lord the Emperor Justinian, Consul for the second time, 538.

## TITLE XVIII.

### WHO ARE PREFERRED CREDITORS WHEN PROPERTY IS PLEDGED.

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

Anyone who receives property in pledge which has already been encumbered in this way can confirm his right by paying the prior creditor the money which is due to him; or, if he should tender it, and the other should refuse to accept it, he must seal it up, and deposit it, and not convert it to his own use.

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

#### 2. *The Emperor Antoninus to Chrestus and Others.*

If you were placed in possession of land belonging to an estate for the purpose of preserving the same, under a decree of the Praetor, who rendered a decision with reference to the trust before your adversary obtained the said land through hypothecation, by virtue of a judgment, you become preferred creditors by the decree of the Praetor who gave the decision in your favor; and where several parties claim the property because of a pledge, he who is first in order shall be preferred by law.

Published on the fifth of the *Ides* of May, during the Consulate of the two Aspers, 213.

#### 3. *The Same Emperor to Varus.*

If you receive a tract of land in pledge before it was encumbered to the State, as you were first in time, so you will be preferred by law.

Published on the fifth of the *Ides* of October, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 213.

#### 4. *The Same Emperor to Sylvanus.*

As you allege that the municipality of the Heliopolitans has, under the terms of the decree, been placed in possession not only of the private property of the heir but also of that belonging to the estate, you understand that although your father made a contract with Sosianus, still, if the city had the right to bring a personal action against him, it should be preferred under the law of pledge, so far as any property which it seized to protect a judgment rendered by a magistrate is concerned.

Published on the second of the *Ides* of December, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

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

The prior creditor cannot be compelled to discharge your debt, as you took a pledge on the property after he did, but if you pay him all that is due to him, you will have the exclusive right to the pledge.

Published on the third of the *Kalends* of May, during the Consulate of Maximus, Consul for

the second time, and Paternus, 234.

6. *The Same Emperors Valerian and Gallienus to Philoxenus.*

When property is encumbered in general terms and is afterwards specifically pledged to another, as the creditor who made the first contract has the prior lien by virtue of the general obligation, if you purchased the property before the second pledge was given, you cannot be molested by him who made the subsequent loan.

Published on the second of the *Ides* of May, during the Consulate of Secularis, Consul for the second time, and Donatus, 261.

7. *The Emperors Diocletian and Maximian, and the Caesars, to Julianus.*

Although the same pledges may have been given to several creditors at different times, and those who are first in point of time are entitled to the preference, still, he who proves that the land in question was purchased with his money is declared by the law to be preferred to all others, for the reason that it is settled that the land was especially encumbered to him by the pledge.

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

*Extract from Novel 18, Chapter X. Latin Text.*

Likewise, the possessor of a pledge who denies that the property belongs to him whom his adversary alleges is the owner, and this having been proved, claims the right to retain the property, stating that he should be preferred to the party who brought the suit on the ground of hypothecation, or for some other reason, he must surrender possession before an investigation of his right can take place.

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

It is a clear and positive rule of law that where the same property has been pledged at different times to two different persons, he who first received the pledge for the money lent shall be preferred, and that the second creditor cannot obtain authority to sell the pledge before the amount due to the prior creditor has been paid.

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

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

As those who have received pledges are entitled to a real action, it is established that they should be preferred to all those in whose favor personal actions will lie.

Given on the third of the *Nones* of December, during the Consulate of the Csesars, 293.

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

As your husband encumbered the property which he received from you as dowry, and then died, those to whom he pledged it can, under no circumstances, assert their claims before tendering the amount which is due, for it is clear that creditors whose obligations have been reduced to writing cannot bring either real or personal actions against those who are not proved to have succeeded the debtor.

Published on the *Nones* of December, during the Consulate of the Caesars, 293.

11. *The Emperor Leo to Erythrius, Praetorian Prefect.*

We order that those written instruments which are often secretly made by certain persons, in the presence of their friends, for the purpose of sale, compromise, contract, the loan of money at interest, partnership, or for any other reason, and any other agreements whatsoever, called in Greek iSiox<sup>κ</sup>pa, whether they were entirely written by the hands of the contracting parties or have been drawn up by a notary or any other person whomsoever, whether they bear the

signatures of the contracting parties or not, or whether witnesses were called to attest them or not, or whether they are conditional or not, that is, such as are commonly reduced to writing, they shall be considered as having been publicly executed; and if any personal action based on them should be brought, it shall have full force and effect.

(1) If, however, anyone should claim for himself the right of pledge or hypothecation, by virtue of any instrument of this description, We order that he who founds his demand upon a document publicly executed shall be preferred, even if he comes after another in point of time, unless the privately executed instrument of the prior creditor bears the signature of three witnesses, all of approved and honorable reputation, for, in this instance, the document shall be considered to have been publicly executed.

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

*Extract from Novel 73, Chapters I and II. Latin Text.*

Where anyone prudently desires to deposit a sum of money with another, he should not solely rely upon the written receipt of the person who receives it, but should summon not less than three competent witnesses who are worthy of confidence.

But if anyone should draw up an instrument evidencing a loan or any other contract whatsoever, and not wish the transaction to become publicly known, the instrument executed with reference to the loan shall not, of itself, be worthy of faith, unless this was done in the presence of three trustworthy witnesses, whether they appeared and attached their own signatures to the instrument, or whether others testify that it was signed in their presence; for then, in either instance, it shall be considered as publicly executed and valid. If, however, anyone who either deposits or lends money, or makes any other kind of a contract, is satisfied with the signature of the individual with whom he makes it, he is hereby notified that a mere written statement of this description is not sufficient for the proof of the same.

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

We are continually annoyed by the persistent applications of women who complain that they have lost their dowries, for the reason that the property of their husbands has been seized by creditors whose claims are prior to their own. Hence, We have examined the ancient laws, and, with reference to personal actions, find that the *Actio rei uxoris* which We have abolished was granted by them to the wife, and that they conferred the great privilege of precedence over all other personal actions, as well as over other creditors, even though the claims of the latter were prior in point of time. And, while this related to personal actions, when these laws came to discuss the hypothecary action, they at once relax the severity of justice, and exclude the recent hypothecations of women, if they had any rights of action, in favor of creditors who held prior ones, without having any regard to the weakness of the sex, and that husbands made use of their bodies, property, and all their lives, since almost the entire fortune of a woman is included in her dowry.

It was proper to decree that husbands should satisfy their creditors out of their own property, and not out of the dowries of their wives, as a woman possesses the dowry for the purpose of her subsistence, whether it was given by herself, or by someone else for her benefit.

(1) After having carefully examined and considered all these matters, as well as the other two Constitutions which We have promulgated concerning dowries, We, for the purpose of coming to the relief of women, and to consolidate all these rules into one, do hereby decree an action on the ground of stipulation which We have already granted to women with reference to their dowries, and in favor of whom We have permitted a tacit hypothecation on the property of their husbands, as well as the preference over all other creditors of the former, even though the said creditors may enjoy the advantage of priority of time. For, as the *Actio rei uxoris* enjoyed this privilege in case of personal actions (as We have already stated) for this reason, We now grant the wife this advantage, even where no hypothecation has taken place, although the dotal property, or any other which has been purchased with it, may not be

in existence, or has been wasted or consumed in some way or other, provided it was actually given to the husband. For who does not pity those who have had to bury their husbands, and who may incur the risk of childbirth and the rearing of their children, on account of which things many privileges have been bestowed by Our laws?

Therefore, what the ancients began but did not carry to completion We have fully consummated; and We grant this privilege to a woman, whether she has children, did not have them in the first place, or has lost them. Children born of a former marriage are, however, excepted, and are preferred to their stepmothers, and We grant them a tacit hypothecation against the estate of their father, as well as against his creditors on account of their mother's dowry, and We confer the same privilege upon them by the present law, so that what was conceded to the second wife may not be refused to the first, but the rights of both remain unimpaired, just as if the mother of the children were still living. Where two dowries are due from the same estate, We desire that the one which is first in point of time shall be preferred to the other.

(2) We order that these rules shall only apply to a dowry, and not to an ante-nuptial donation, which We decree shall preserve its order of priority, and be in this way regulated among creditors, for We do not favor women for the sake of gain, but only take care that they shall suffer no loss, and be defrauded of their property.

(3) We decree that this law shall only take effect from the present time and shall not be retroactive.

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

*Extract from Novel 96, Chapter II. Latin Text.*

A woman can avail herself of this right against those who are protected by a personal privilege, as, for instance, where property is purchased, or repairs are made with her money, except those who are exempted by a new constitution, for example wives who have lent their husbands money under a written contract for the purchase of an office.

*Extract from Novel 93, Chapter I. Latin Text.*

When any of the property composing the dowry is in existence, it shall be preserved for the wife, who is entitled to an action *in rem*, or for her children; and, on the other hand, if there are two wives, and both are living, or both are dead, or if only one of them survives, the first one, or her offspring, shall be entitled to the preference, which is clearly provided for by a new constitution.

## TITLE XIX.

### CONCERNING THOSE WHO SUCCEED TO THE PLACES OF PRIOR CREDITORS.

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

Those who satisfy the creditor of another, whose debt is secured by hypothecation, do not, merely by the payment of money, take his place; for, in order that this may be done, he who subsequently discharges the obligation must do so under the agreement that the same property will be pledged to him, and that he will succeed to the rights of the creditor. As this was not done by you (for it has been decided in court that you did not receive the pledges) it is useless for you to think that you are entitled to the benefit of Our Constitution which has reference to cases of this kind.

Published on the *Ides* of July, during the Consulate of Pompeianus and Abvitus, 210.

2. *The Emperor Antoninus to Felix.*

As you paid money to the Treasury for your father, at a time when you were not under his control, and by so doing have succeeded to the rights of the Treasury, and have taken the place of the creditor to whom you have the money, your father's creditors, not only those in

favor of whom a personal action will lie, but also those who afterwards made a contract with him secured by pledges, cannot prejudice your rights in any way by selling the pledges without your knowledge.

Therefore you understand that if anything was paid by your agents in your name, during your absence, this should be returned to you as money which was not due, and you can institute proceedings to recover the pledges to which you are entitled.

Published at Rome, on the *Kalends* of October, during the Consulate of Sabinus, Consul for the second time, and Anulinus, 217.

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

If the preferred creditors, in whose favor the possession of the property was encumbered, which property you say you purchased with the understanding that the price would come into their hands, have been paid with your money, you will succeed to their rights, and you have a good defence against those whose claims are of more recent date than theirs.

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

### 4. *The Emperors Diocletian and Maximian to Carpophorus.*

If the State has the prior lien upon the land, you, as the creditor second in point of time, by tendering the money due will succeed to the rights of the State.

Published on the fifteenth of the *Kalends* of June, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 285.

## TITLE XX.

### WHERE A PRIOR CREDITOR SELLS THE PROPERTY PLEDGED.

#### 1. *The Emperor Alexander to Athenio.*

If the creditor who first received the pledge should sell it, you will not be entitled to the hypothecary action for its recovery; but if the debtor gave the said pledge to the prior creditor in payment of the debt, or sold it to him, you will not be deprived of the right to recover it any more than if he had sold it to a third party.

You understand that you can only assert your right to the encumbered property if you tender to the person who holds possession of the same what is due to him under the terms of a contract which was made before yours.

Published on the *Ides* of May, during the Consulate of Agricola and Clementinus, 231.

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

Where property has been pledged according to law, and the creditor makes a legitimate sale of the same, the debtor by afterwards offering to refund the price to the purchaser, or by tendering the amount of the debt to the creditor, cannot evict the possessor of the property.

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

#### 3. *The Same Emperors and Csesars to Theophilus.*

If the second creditor does not tender the amount of the debt to the first, he cannot prevent him from selling the property pledged.

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

## TITLE XXI.

### WHERE PROPERTY OWNED IN COMMON IS PLEDGED.

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

As your brother could not encumber the share of the property which belongs to you, without your consent, so, by giving an obligation, he has only hypothecated his own share to the creditor, therefore you understand that his contract can, in no way, prejudice your ownership.

Adopted on the third of the *Kalends* of December, during the Consulate of Messala and Sabinus, 215.

## TITLE XXII.

### CONCERNING THE PRAETORIAN PLEDGE AND ITS APPLICATION EVEN TO THE ACTIONS OF DEBTORS.

#### 1. *The Emperor Justinian to Menna, Praetorian Prefect.*

If any judges should be of the opinion that the right of praetorian pledge should be granted to someone, not only with reference to movable or immovable property, and such as is capable of moving itself, but also with regard to actions to which the debtor is entitled, We decree that they shall render judgment permitting this to be done.

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

#### 2. *The Same Emperor to Julian, Praetorian Prefect.*

With the intention of disposing of the doubts raised under the ancient laws, We have considered the two kinds of hypothecation, one arising from the contracts and agreements of men, and the other sanctioned by judges, and designated praetorian. And, as We have found in agreements made with reference to pledges or hypothecations that relief is not only ordinarily granted to the creditor in possession, but also, when he is deprived of the property pledged, whether by his own fault, or not, or through accident, We have thought it to be more humane to assist the creditor by means of the praetorian pledge, no matter how he may have lost possession of the property, whether by his own fault or not, or accidentally. For even though he ought to take such care of his pledge that it may not suffer any damage, still, in order not to deal harshly with creditors, We incline to a liberal interpretation of the law, and grant them the right of recovery.

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

## TITLE XXIII.

### WHERE PROPERTY IS SEIZED IN PURSUANCE OF A JUDGMENT.

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

It has frequently been stated in rescripts, that property taken in execution under a judgment by order of a magistrate who had the right to issue it can be held as a pledge and be sold, for the authority of the judge who issues the order takes the place of a legal obligation based upon a contract.

Published at Rome, on the fifth of the *Kalends* of August, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

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

When property is seized as a pledge under a judgment, it is usually sold officially by the judge who rendered the decree, and not by him

who asked that the order should be issued. If another purchaser should not appear, or if one does appear, but should not offer a reasonable price, he in whose favor the judgment was rendered shall be permitted to bid on the property, according to law, and purchase it, just as anyone else can do.

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

*3. The Emperor Gordian to Antigonus.*

It is more customary for pledges seized under a judgment by the Governor of the province to be sold than to be taken possession of by the right of ownership. Where, however, a purchaser cannot be found on account of the machinations of the party against whom judgment was rendered, then the ownership of the property is usually granted to the creditor by authority of the Emperor.

Published on the *Ides* of August, during the Consulate of Gordian and A viola, 240.

TITLE XXIV.

WHERE PROPERTY IS PLEDGED A SECOND TIME.

*1. The Emperor Gordian to Lampo and Others.*

It has already been decided that where property has been already pledged, it can be repledged by the creditor, and the result is that an equitable action should be granted to the subsequent creditor, provided he who has the right to the pledge is protected as long as it remains subject to the lien of him who encumbered it a second time.

Where, however, you have only pledged the usufruct of land and he who received it pledged the land itself, the usufruct of which alone he was entitled to without your consent, his creditor, by selling what was not liable to encumbrance, cannot deprive you of the ownership of the same. But when it was not the usufruct, but the land itself which was pledged to your creditor, and, before the debt was paid by the owner, the second creditor sold the property, the sale cannot be rescinded after the money has been paid, as this rule has been established by the Imperial Decrees.

Published on the *Ides* of September, during the Consulate of Pius and Potnianus, 240.

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

If the creditor did not sell the land which was pledged by your parents, but himself encumbered it to another creditor of his own, after the facts have been ascertained, you can recover the said land by application to the Governor of the province, after having paid the sum due to the creditor.

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

TITLE XXV.

CONCERNING THE OFFSPRING OF PROPERTY WHICH HAS BEEN PLEDGED AND  
ALL OTHER INCREASE OF THE SAME.

*1. The Emperor Alexander to Mestrianus.*

It was long since decided that the issue of a female slave who has been pledged has the same status as its mother.

Published on the *Ides* of May, during the Consulate of Agricola and Clementinus, 231.

*2. The Emperors Diocletian and Maximian to Annosus and Antoninus.*

As you gave certain slaves in pledge to secure the payment of a sum of money which you had borrowed, and you allege that the proceeds of the labor of said slaves which the creditor obtained, or could have obtained, should first be credited upon the interest, and afterwards upon the principal, and the debt having been satisfied, if the creditor should refuse to accept the balance due, it having been formally tendered and deposited under seal, the Governor of the province will order the slaves to be returned to you.

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

TITLE XXVI.  
CONCERNING THE RELEASE OF PLEDGES.

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

If you can prove before the Governor of the province that you have been manumitted, and in possession of your freedom, and that she to whom you state you were given in pledge was aware of this fact, the creditor will appear to have consented to release the pledge, and, this being the case, it is certain that you were legally manumitted, and you cannot again be reduced to slavery by the heir of the creditor.

Published on the twelfth of the *Kalends* of May, during the second Consulate of Antoninus and Geta.

*2. The Same Emperors to Maternus.*

If you can establish that the land in question was bought by you, and that possession of the same was delivered to you with the knowledge and consent of the woman who alleges that it was encumbered in her favor by the vendor, you can plead an exception against her, for the obligation of a pledge is both contracted and released by consent.

Published on the second of the *Ides* of February, during the third Consulate of Antoninus and Geta.

*3. The Emperor Alexander to Taurus.*

If your debtor, who without your knowledge, or against your consent, encumbered all his property to you to secure the payment of money loaned by you to him, should subsequently enter into a contract with the State, this does not prejudice your rights.

Published on the third of the *Ides* of April, during the Consulate of Albinus and Maximus.

*4. The Emperor Gordian to Aquilinus.*

As you state that you purchased from your debtor certain property which was pledged to another, and you made the purchase with the knowledge of the person holding the pledge, and he released the same, the encumbrance of the pledge disappeared with his consent. If no new arrangement was made by which the obligation was renewed, the property cannot be claimed on the ground that it is subject to a lien.

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

*5. The Same Emperor to Asclepiades.*

You are not even now prevented from collecting the debt which you refer to, and which you released by means of a contract which was void, and you can recover the pledges in the ordinary way.

Published on the sixth of the *Ides* of September, during the Consulate of Gordian, Consul for the second time, and Pompeianus.

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

If, at the time when the land was sold, creditors to whom it was encumbered had been notified by publication, and being present, did not assert their rights, they can be considered to have forfeited their claims to the property pledged.

Published on the third of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Aquilinus.

*7. The Same Emperors to Paulinus.*

It is evident that if the creditor in whose favor the land was encumbered by your uncle, which had been evidenced by an instrument in writing, should order the said bond to be returned to

your uncle, she will be considered to have also relinquished her right to the pledge.

Published on the fifth of the *Ides* of September, during the Consulate of Diocletian, Consul for the third time, and Maximian.

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

If the Treasury sold the property which was hypothecated, and the other creditors permitted this to be done in silence, it is clear that they have lost the right of action which they had in the property, for public sales made by the Treasury should not readily be set aside.

Published on the thirteenth of the *Kalends* of September, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time.

9. *The Same Emperors and Ctesars to Hermianus.* As you allege that you paid a sum of money bearing interest for your father-in-law in an action on mandate, the Governor of the province will provide for your indemnification by the restitution of the money which you have paid for him, as well as the interest on the same; for if, having received from the creditor the slaves which were pledged for the debt, you delivered them to your father-in-law with the intention that your lien on them should be released, the obligation having once been extinguished, cannot be renewed.

Published on the tenth of the *Kalends* of October, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time.

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

Debtors who, without the consent of their creditors, alienate property which has been pledged or hypothecated to the latter, do not thereby release the preceding obligation.

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

11. *The Emperor Jiustinian to John, Prsetorian Prefect.*

We, employing Our customary foresight, do hereby make provision with reference to the pledging or hypothecation of property encumbered for the benefit of creditors, and afterwards sold or disposed of in any other way by the debtors, where the creditor has given his consent to the contract, and the title to the property has again become legally vested in the former owners.

In cases of this kind, the opinions of the legal authorities vary, some of them holding that the creditor is entitled to have his right to the pledge renewed on account of the clause, "Property which he may hereafter acquire," which is usually inserted in general hypothecations ; and others think that his right is entirely extinguished.

It, however, appears to Us that he who has once consented to the alienation of hypothecated property, and in this manner has relinquished his right, is not entitled to claim it afterwards, on the ground that it had been encumbered to him in the beginning, or to molest the person in possession of the same.

Given at Constantinople, after the fifth Consulate of Lampadius and Orestes.

TITLE XXVII.

PLEDGES CAN EVEN BE HELD TO SECURE THE PAYMENT OF MONEY  
EVIDENCED BY A WRITTEN INSTRUMENT.

1. *The Emperor Gordian to Festus.*

Your right to the pledge is lost if, after a novation has been made, you have transferred the right of encumbrance to another, and security has been given you that the property will not be held by way of pledge. If an agreement was made between you and the person who, having afterwards become the owner of the land, assumed a new obligation, in order that the said

land might be held by you in pledge, although you have brought a personal action and obtained a judgment, you still have a right to the property as being encumbered. But if you were placed in possession, unless the money due, which was not secured, was either paid or tendered to you by your debtor, you will not be compelled to restore the property by means of an exception on the ground of fraud.

For you very properly assert that, if the debtors only tender the money which they have given the said pledges to secure, they should not be heard, unless they also pay the other which they simply received as a loan.

The rule does not apply to the second creditor, for he is not obliged to tender to the first the amount of the debt which is evidenced by a written instrument.

Published on the *Ides* of March, during the Consulate of Gordian and Aviola.

## TITLE XXVIII.

### CONCERNING THE SALE OF PLEDGES.

#### 1. *The Emperor Alexander to Pacata.*

A tract of land, which has been pledged, can by no means be sold if the creditor has collected the amount due out of the profits of the same, as the pledge is, under such circumstances, released by operation of law.

Published on the *Ides* of January, during the Consulate of Maximus, Consul for the second time, and Julianus.

#### 2. *The Same Emperor to Maxima.*

A creditor who has alienated property which has been either hypothecated or pledged to him is not considered to have sold the same subject to litigation, because the debtor holds it by a precarious title.

Published on the twelfth of the *Kalends* of October, during the Consulate of Maximus, Consul for the second time, and Julianus.

#### 3. *The Same Emperor to Lucianus.*

An action will lie against the principal debtor or his surety in favor of creditors who have sold property which has been hypothecated or pledged to them for the amount which is lacking to satisfy their claims.

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

#### 4. *The Same to Crescens.*

When a creditor is about to sell property which has been hypothecated or pledged to him, he should notify the debtor, and act in good faith, and when the sale takes place he should make the announcement in the presence of a witness. Therefore, if you can prove that fraud was committed in the sale of the country seat in question, which was pledged, apply to the judge having jurisdiction of such matters, in order that the action to which you are entitled in a case of this kind may be brought.

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

#### 5. *The Same Emperor to Sossianus.*

If you are ready to pay the balance of the debt, the Governor of the province will give you the selection of the judge by whom the amount shall be ascertained, and if the adverse party fails to appear in court, or proceeds to sell the property after you have tendered him more than the sum to which he is entitled, the fraudulent alienation will not affect your right.

#### 6. *The Emperor Gordian to Rogatus.*

So long as the amount due is not paid in full to the creditor, he does not lose his right to sell the property, even if he has already collected the greater part of the debt.

Published on the thirteenth of the *Kalends* of September, during the Consulate of Pius and Pontianus.

7. *The Same Emperor to Carus.*

If payment has not been made, and the creditor should sell the property which had been pledged to him when the contract does not contain any provision to the contrary, it would be unjust to set the sale aside as if fraud had been committed, and you should not sue the purchaser, but the creditor.

Published on the fifth of the *Kalends* of November, during the Consulate of Pius and Pontianus.

8. *The Same Emperor to Maximum.*

If, before the property pledged was sold, you tendered your creditor the money which you owed him, and he refused to accept it, and witnesses were called to attest this, and you deposited the money, and matters to-day remain in the same condition, the sale of said property is not valid. But if you tendered the payment of the money before the sale was completed, and it was legally made, it cannot be rescinded.

Published on the third of the *Nones* of April, during the Consulate of Gordian and Aviola.

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

Where property has been specifically encumbered in your favor, and your debtors refused to make payment, and the indebtedness was incurred in good faith, you, observing the legal formalities, should sell the property, for it will be apparent from the price obtained for the pledge whether it is sufficient to satisfy the debt, since if anything is lacking, We do not forbid you to have recourse to other property of the debtors, by virtue of the agreement.

Published on the thirteenth of the *Kalends* of June, during the Consulate of Diocletian, Consul for the third time, and Maximian.

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

Anyone who has possession of property which has been pledged, and it is purchased by another person who represents him, continues to hold it; for as he conducts the business for himself, he is not considered to have alienated it. The creditor who buys land that has been pledged, but not through someone who represents him, or does not appropriate it for himself, cannot prejudice the rights of the debtor; but the property remains in the same condition in which it was before this fraudulent act took place.

If, however, he should purchase it from the debtor, who sold it to him, it would establish a bad precedent to set aside the sale made with the consent of both parties, if neither the fraud of the adverse party, nor the employment of duress by him is proved. Therefore, if you can show by clear, positive evidence that the creditor always held possession through a fictitious purchaser, and that he afterwards bought in good faith the property which was fraudulently disposed of, you can compel the creditor to make restitution of the same, after having tendered him the payment of the debt with interest.

Published on the third of the *Nones* of October, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time.

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

Although a woman may have specially pledged her property for another, her creditor has no right to sell it, unless she took advantage of his ignorance and deceived him, by allowing her husband to pledge her property as his own.

Published at Heraclia, on the fifth of the *Kalends* of May, during the Consulate of the above-

mentioned Emperors.

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

If your debtor sold the property, which was pledged to you, without your consent, the ownership of the same together with its encumbrance passes to the purchaser.

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

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

Anyone who buys land which has been pledged to a creditor, and has not been placed in possession, is not entitled to a real action to recover it.

Published at Sirmium, on the sixteenth of the *Kalends* of December, during the Consulate of the above-mentioned Emperors.

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

If your debtors have not paid you that to which you are legally entitled, the Governor of the province, having been applied to, will authorize you to sell the property hypothecated by your debtors, and which is in their possession.

Published at Sirmium, on the sixteenth of the *Kalends* of December, during the Consulate of the above-mentioned Emperors.

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

If a debtor should corrupt the slaves that he had pledged to his creditor, and who were afterwards sold and delivered by the latter, an action *in rem* against the party in possession will lie not in favor of the vendor, but of the purchaser.

Given at Sirmium, on the *Kalends* of March, during the Consulate of the Csesars.

16. *The Same Emperors and Caesars to Sylvanus.*

Where one of several heirs of a debtor pledges property which he can recover by a personal action, he does not, by doing so, deprive the creditor of the right to sell the article pledged.

Ordered on the third of the *Nones* of April, during the Consulate of the Csesars.

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

A creditor does not lose his right to property which has been encumbered by a general or special agreement, on account of its sale by another creditor who had nothing to do with the transaction.

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

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

Anyone who legally purchases from a creditor property which has been pledged cannot be molested on account of the ownership of the same.

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

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

If your husband lent money, even though it was your own, you will have no right to sell in your own name the property pledged to him for the debt, if you did not succeed to him as heir.

Ordered at Heraclia, on the sixth of the *Ides* of November, during the Consulate of the above-mentioned Emperors.

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

If nothing was specially agreed upon, and the pledges were sold by the creditor, in accordance with the terms of the contract, for a larger sum than was due to him, even though he may have

purchased land with the proceeds, an action *in rem* will not lie for the surplus, but one *in personam* must be brought, that is to say, an action on pledge.

Ordered at Byzantium, on the sixth of the *Ides* of November, during the Consulate of the Csesars.

## TITLE XXIX.

### A DEBTOR CANNOT PREVENT THE SALE OF THE PROPERTY PLEDGED.

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

If there are any persons who desire to purchase the land which has been encumbered to you, they will not be prevented from doing so by the terms of the will, under which the debtor is forbidden to sell any real property belonging to him, and the penalty is added that, if he does, the land shall be forfeited to the Treasury, for it is clear that by a provision of this kind the rights of the creditor are prejudiced.

Given on the sixth of the *Kalends* of May, during the Consulate of Aper and Maximus.

#### 2. *The Emperor Gordian to Nepos.*

The notice given to a debtor by his creditor not to sell any of the property pledged to him, or to those who wish to purchase it from him not to buy it, is only effective where he tenders the entire amount of the debt, both principal and interest, to the creditor, and the latter refuses to accept it, and the debtor then deposits the money in the presence of competent witnesses, as is required. Even if he only pays a certain proportion of the principal and interest due, the sale of the property pledged cannot be prevented. Under these circumstances, the purchaser does not become a possessor in bad faith, although he may be aware that notice has been served upon the creditor by the debtor.

Published on the third of the *Nones* of August, during the Consulate of Gordian and Aviola.

## TITLE XXX.

### WHERE PROCEEDINGS ARE INSTITUTED ON ACCOUNT OF THE SALE OF A PLEDGE.

#### 1. *The Emperor Alexander to Agrippa.*

If, having applied to the Governor of the province, it should be proved that your creditor, who had a right to sell the pledges, made a fraudulent sale of the tract of land, the Governor will order him to pay you damages and interest. When, however, the said creditor, against whom judgment was rendered, is unable to pay the money, and it is proved that the purchaser bought the land in bad faith, and you tender him the amount for which the land was sold with interest, the Governor will order the purchaser in bad faith to restore you the land with its profits.

Published on the *Kalends* of September, during the Consulate of Alexander.

#### 2. *The Same Emperor to JEmilius.*

Your father, or yourself (if his estate belongs to you as his heir) can demand from the possessors the slaves whom you allege were illegally sold by your father's creditor. If, however, title to them has been acquired by usucaption, your father can collect the price paid for the same from the creditor who illegally disposed of them.

Published on the third of the *Kalends* of January, during the Consulate of Alexander.

#### 3. *The Same to Claudius.*

If your wife should prove before the Governor of the province that she owed thirty *aurei*, and that her creditor sold her slaves who had been pledged for that sum, for twenty *aurei*, and afterwards became insolvent, he will order the slaves to be restored to her, after the price paid for them has been refunded.

Published on the sixteenth of the *Kalends* of October, during the Consulate of Maximus, Consul for the second time, and <sup>A</sup>lianuſ.

4. *The Emperor Gordian to Eudemus.*

As you state that a sale of the land encumbered was not made by your creditor in good faith, for the reason that the formalities which are customary in the sale of property pledged were not observed, having gone before the Governor of the province, you will have a right to proceed by a competent action, not only against your creditor, but also against the party in possession, if you can prove that he participated in the fraud with your creditor; so that the transaction which is proved to have taken place in bad faith, having been rescinded, an account of the profits and of the loss which it may appear that you have sustained, may be rendered.

Published on the *Kalends* of April, during the Consulate of Sabinus, Consul for the second time, and Venustus.

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

If the purchaser, without being guilty of fraud, bought the property pledged which was sold by the creditor before his debt was paid, the successor of the latter, and not the heir of the purchaser who is in possession of the property, should be sued.

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

TITLE XXXI.

CONCERNING THE RELEASE OF PLEDGES.

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

The heir of a portion of the estate cannot receive his share of the pledges unless he pays the entire debt.

Published on the third of the *Kalends* of April, during the Consulate of Albinus and Emilianus, 207.

2. *The Emperor Gordian to Domitius.*

You should understand that the lien of a pledge continues to exist even after a personal action has been brought.

Published on the twelfth of the *Kalends* of June, during the Consulate of Sabinus and Venustus, 241.

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

If the amount of the debt has been paid either by the delivery or the sale of property, and the claim of the person against whom you filed your petition has been satisfied, and you can prove this before the Governor of the province, or if any balance is due, and you have tendered it, and the creditor having refused to accept it, you have sealed and deposited it, the Governor will see that the property pledged is restored to you, for it is clear that by the Perpetual Edict an action is granted to the debtor where the money has been paid to the creditor; or, if it was his fault that it was not paid, it is perfectly evident that he can legally be compelled to return the pledge.

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

TITLE XXXII.

WHERE ONE OF SEVERAL HEIRS OF THE DEBTOR OR CREDITOR EITHER PAYS  
OR RECEIVES HIS SHARE OF THE DEBT.

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

It is a clear and undoubted rule of law that where a creditor dies leaving several heirs, while a personal action is divided among all by the Law of the Twelve Tables, the entire amount of the property pledged is encumbered to each one of them.

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

*2. The Emperors Diocletian and Maximian, and the C&sars, to Claudia.*

The personal action is divided among the heirs in proportion to their respective shares of the estate, but where several pieces of property are pledged, and possessed by different individuals, the case is different, as the right to claim the same does not attach to the person but to the property, and as those who are in possession are not liable in proportion to their shares of the estate, but for the full amount of the claim, so they must either pay all that is due, or relinquish possession of what they hold.

Signed at Antioch, on the fifth of the *Nones* of ....

TITLE XXXIII.

WHERE THE PAYMENT OF MONEY IS NOT MADE AFTER A CONTRACT FOR THE PLEDGING OF PROPERTY HAS BEEN ENTERED INTO.

*1. The Emperors Severus and Antoninus to Illarus.* If (as you assert) you have given security for money which was not paid to you, and you can prove that the pledge was delivered, you can bring a real action; for the mere delivery of a pledge where no money was paid will not hold, unless it appears that an obligation has been contracted. Under these circumstances, the actual facts of the case will protect you, if you have possession of the property pledged, and your adversary institutes proceedings against you.

Published on the *Kalends* of September, under the Consulate of Lateranus and Rufinus, 198.

*2. The Emperor Alexander to Peregrinus.*

If (as you now assert) the alleged creditor did not pay your wife, who gave the pledge, any money, but extorted from her security which is not valid, her property will not be encumbered by the terms of a fraudulent document executed in violation of the truth.

Without date or designation of Consulate.

TITLE XXXIV.

CONCERNING THE RIGHT TO OBTAIN OWNERSHIP OF THE PROPERTY OF A DEBTOR.

*1. The Emperor Alexander to Nicola.*

When you desire to obtain the ownership of property which has been pledged, the names of the debtors who you say have failed to make payment must be given, and you must state whether you have complied with the requisite formalities, for you are informed that you cannot obtain the ownership of the entire property pledged by your debtor, even though all of it was, in general terms, encumbered in your favor.

Published on the fourteenth of the *Kalends* of October, during the Consulate of Alexander, Consul for the third time, and Dio, 230.

*2. The Emperor Gordian to Justa.*

If your creditor obtained from Us the right to ownership of the property pledged, and a year after the rescript was issued accepted interest from you, he is considered to have relinquished the benefit of the said rescript.

Published on the day before the *Nones* of December, during the Consulate of Pius and

Pontianus, 239.

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

We think that the ancient rule which, however, so far as documents are concerned, never appeared to be clear, should be absolutely abolished, and, in fact, should be replaced by better remedies. Therefore, the right of public sale and the power of release within a year, which were granted by the ancient law in the case of pledges which anyone wished to acquire by the right of ownership, We have ascertained only by the perusal of books, for We have never seen a pledge publicly sold in this way.

(1) Hence, We decree that if anyone should pledge his property to his creditor, and it was provided in the agreement how the pledge should be sold, whether at a certain time, or in some other way, whatever was agreed upon in the contract between the creditor and the debtor with reference to the sale of said property shall be observed. If, however, no agreement was made, the creditor shall be given permission to sell the pledge two years after notice has been given to the debtor, or after judgment has been rendered, the term to be computed from the day when the notice was issued, or the judgment published.

(2) But when no one appears who desires to purchase the property and it becomes necessary for the creditor himself to acquire it by the right of ownership, We decree that, in cases of this kind, the following shall be observed, namely: that if the debtor is present, notice shall be served upon him, even after the lapse of two years; or if he is absent, the creditor shall apply to the tribunal of the province, and ask the judge to issue a summons for the debtor to appear at a time which he shall designate, which summons shall be served by the court attendant, and contain what is claimed by the creditor, and a certain date shall be fixed, within which, if the debtor should be found, he can pay the debt and recover the pledge.

If, however, he should not be found, the judge must designate a certain time within which he shall be permitted to appear, tender the money due, and release the pledge.

(3) If, however, after the designated time has expired, the debtor should either not be found, or refuse to pay the full amount claimed, the creditor can then apply to the Emperor and petition him for the right to acquire the ownership of said property, and permission shall be granted him to do so. After this has taken place the debtor shall, through motives of humanity, be entitled to the term of two years to redeem his property, which shall be reckoned from the day when the Imperial Decree was issued; and he shall be allowed to pay the creditor, who has become the owner of the property, his debt, with interest, and reimburse him for any losses which he may have sustained, the amount of which the creditor must prove by his oath, and the debtor will then be entitled to recover his pledge.

Where, however, the said term of two years has elapsed, the creditor shall have a perfect title to the property, and his ownership will become irrevocable.

(4) But if the pledge should be found to be worth less than the debt, the creditor shall have the right to proceed against his debtor for the deficiency. When the value of the pledge and the amount of the debt are found to be equal, there is no doubt that the creditor can retain the entire property previously pledged. If, however, the debt should amount to less than the value of the pledge, then, by Our law, the excess shall be reserved for other creditors to whom the property was not pledged, or for the debtor himself.

And, that no difficulty may arise with reference to the excess, permission is hereby granted to the creditor or owner to furnish proper security for the payment of the said excess to the debtor.

(5) When, however, the creditor, after having, as owner, obtained possession of the property pledged, desires to sell it, he shall have permission to do so, and if anything over and above the amount of his claim should be collected it shall be reserved for the debtor.

But when any doubt arises with reference to the sale, for instance, if it should be asserted that

a lower price was paid than the property was worth, the creditor will be obliged to make oath that he was guilty of no machination or fraud, but that he sold the property for as much as he could obtain for it; and he shall only be compelled to return to the debtor any surplus which he may have sworn to. If, however, it should be ascertained from the oath of the creditor that he received less than the amount of the debt from the sale, he will have a right to bring suit against the debtor for the remainder.

(6) We desire that there shall be a judicial decision as to the value of the property pledged, if it should remain in the hands of the creditor, and the judge must determine whether it is more or less than the indebtedness, and whatever he may hold on this point will establish the value of the pledge.

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

#### TITLE XXXV.

### CONCERNING CONTRACTS RELATING TO PLEDGES AND THE ABOLITION OF THE LAW OF CONDITIONAL AVOIDANCE WITH REFERENCE TO PLEDGES.

#### 1. *The Emperor Alexander to Victorinus.*

He who entered into an agreement that, unless within a certain time he paid the money which he had borrowed, his creditors could sell the property hypothecated, did not make a valid contract, for he included in it the right to which his creditor was entitled when he received the pledge. Therefore, according to the Common Law, the creditor can sell the property.

Published during the *Ides* of October, during the Consulate of Alexander, 223.

#### 2. *The Emperors Diocletian and Maximian, and the Cassars, to Dionysius.*

If a third party has questioned the title of the purchaser to the property which you sold him, and you have given the latter a written pledge or hypothecation of another tract of land to protect him against eviction, under the condition that if he should not be evicted from the land which you sold him he will return to you the premises encumbered to him by the second contract, and that, if judgment should be rendered in this case against the person who raised the question of title, the judge will order the terms of the agreement to be complied with, if the matter remains in its former condition, and as the purchaser is secure, against eviction, the land which was hypothecated shall be restored to you.

Ordered at Sirmium, on the *Kalends* of December, during the Consulate of the Cassars.

#### 3. *The Emperor Constantine to the People.*

As the harshness of the law of conditional avoidance is conspicuous among other abuses, We have decided to declare it void, and to abolish it. Therefore, if anyone has been oppressed by a contract of this kind, he shall be relieved by this law, which annuls all past and present agreements of this kind, and forbids them to be made hereafter. We, however, order that creditors who have lost their property by this law shall have a right to recover what they have paid.

Given on the second of the *Kalends* of February, during the Consulate of Constantine, Consul for the seventh time, and Constantius, 326.

#### TITLE XXXVI.

### CONCERNING EXCEPTIONS OR PRESCRIPTIONS.

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

In accordance with the terms of the ancient law, those who are indebted to an estate are liable to each one of the heirs in proportion to his share of said estate; but if you have paid all the money due to those only whom the testator mentioned by name when making the distribution, you can defend yourself against the others, by an exception on the ground of bad faith, if they

should bring suit.

Published on the tenth of the *Kalends* of August, during the Consulate of the two Aspers, 213.

*2. The Same Emperor to Julius.*

If judgment has not been rendered against you, you can bring an action to recover your share in the house to which you allege that you are entitled, for an exception on the ground of *res judicata* can only be pleaded against the party, or his heirs between whom the case was heard, and judgment rendered.

Published on the fifteenth of the *Kalends* of March, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

*3. The Same Emperor to Vital.*

If you did not bring the action of guardianship against your brother, who was formerly your guardian, do so now, and do not fear that an exception based on an agreement will be filed, provided you can prove that fraud and deceit have been committed, for a replication on the ground of deception, when pleaded, renders the action a *bona fide* one, and excludes the effect of any fraud which may have been committed.

*4. The Emperor Alexander to Julianus and Others.*

As you state that the case has not yet finally been decided but merely continued, there is no doubt that your right to defend yourself still remains unimpaired.

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

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

Although the interdict *Unde vi* must be resorted to within a year, still it is evident that, by the authority of the law, a perpetual exception can be pleaded by him who, although having been violently attacked, has, nevertheless, retained possession of the property.

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

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

If an agreement was made with reference to an exception, you can, without restriction of time, reply by pleading an exception on the ground of fraud.

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

*7. The Same Emperors and Caesars to Menander.*

If your debtor paid you a smaller amount than he owed you, and you did not give him a release, you will not be prevented from bringing suit to recover what is proved not to have been paid, and you can in your replication plead an exception on the ground of fraud against the One founded on the agreement.

Ordered on the second of the *Kalends* of March, during the Consulate of the Csesars.

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

The peremptory exception which it was sufficient to plead in the first place, even though this may have been neglected, can be filed at any time before judgment is rendered.

Ordered on the fifteenth of the *Kalends* of November, during the Consulate of the Caesars.

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

If you think that the plaintiff cannot prove his claim, it is not necessary for you to make any defence. When, however, while acknowledging the validity of it, you allege that you are protected by an exception, cognizance of the exception alone should be taken. For if you have

any doubt of the justice of your opponent's cause, your exception ought only to be considered after the plaintiff has proved his claim in accordance with his allegations, for then it will be proper for it to be examined.

Ordered on the third of the *Nones* of November, during the Consulate of the Caesars.

10. *The Same Emperors and C&sars to Aquilina.*

Plaintiffs do not protect themselves by means of exceptions, the benefits of which are granted to defendants under certain circumstances, but they can establish their claims by means of replications, if they have any which are valid.

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

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

It is settled that while the case remains unchanged, those who represent the parties can avail themselves of the same exceptions and defences to which their principals would have been entitled.

12. *The Emperor Julian to Julian, Count of the East.*

If an advocate, during the progress of a case, should desire to avail himself of a dilatory exception which he neglected to make use of in the beginning, and he is deprived of this resource, but still perseveres in setting up this ill-timed defence, he shall be fined a pound of gold.

Given at Antioch, on the seventh of the *Ides* of March, during the Consulate of Julian, Consul for the eighth time, and Sallust, 363.

13. *The Emperors Honorius and Theodosius to Symmachus, Proconsul of Africa.*

The authority of the law declares that exceptions to jurisdiction must always be pleaded by litigants at the beginning of a case.

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

TITLE XXXVII.

CONCERNING DISPUTED PROPERTY.

1. *The Emperors Severus and Antoninus to Paulina.* As the creditor has sold the pledge, a purchase of property subject to contest cannot be considered to have been made, even though the debtor may have forbidden the sale to take place.

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

*Extract from Novel 112, Chapter I. Latin Text.*

Disputed property is that with reference to whose ownership a question has arisen between the possessor and another person who claims it, where either an action has been brought, or a petition presented to the Emperor, and a judge been appointed by him subsequently to take cognizance of the case.

2. *The Emperor Constantine to the People of the Provinces.*

While a suit is pending, the plaintiff is not permitted to transfer any rights of action which are in litigation, or any property which he alleges is retained by the defendant, to any person connected with him, or to any stranger, either by donation, sale, or any other kind of a contract whatsoever; and, if he should do so, the case shall still proceed just as if nothing had been done.

Given on the *Kalends* of March, during the Consulate of Bassus and Ablavius, 331.

3. *The Emperors Gratian, Valentinian, and Theodosius to Tattian, Praetorian Prefect.*

Where anyone who has bequeathed, either by a will or a codicil, any property, the title to which is in dispute, or any claim of doubtful validity, or any movable or immovable property, to Our Treasury or to a person in authority, or to anyone else, or has left the same under a trust, or as part of an estate, neither Our Treasury, nor anyone else shall have the right to contest the ownership of the same, or appear in court, but a judicial appraisement of it must be made, and it shall be delivered to those to whom the rights of action for property in dispute have been bequeathed. The heirs, themselves, should conduct the case, and claim, at their own risk, the said property whose title is contested, and which has been left by will. It has been decided with reference to written claims which are of doubtful validity that the heirs of persons who have left bequests to the Treasury, or to other legatees, after having estimated the value of the same, can sue those who they may consider liable.

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

4. *The Emperor Justinian to John, Praetorian Prefect.* We decree that if anyone should, while a case is pending, transfer to any person whomsoever either the rights of action or the property involved, whether the latter knows or is ignorant that the title to said actions or property is in dispute, a certain distinction shall be observed between the contracting parties, so that when anyone knowingly receives such property either through a sale, a donation, or by virtue of any other kind of a contract, he is hereby notified that he will be compelled not only to return the property, but also will be deprived of the price of the same, but the profit shall not accrue to him who made the sale but to the Treasury, to which he shall be required by law to pay an equal sum.

If, however, the purchaser should buy property whose title was in dispute, without being aware of the fact, or should obtain it by any other kind of a contract, then the alienation shall be considered void, and the price shall be returned to the purchaser, together with a sum equal to one-third of the amount of the same; for it is only just that on account of the fraudulent intent and secret duplicity of the vendor, who did not inform the purchaser that the title to the property was being contested in court, he should be punished by being forced to pay a sum equal to the third part of the price, as We have already decreed.

This penalty shall not only be imposed in the case of other contracts, but also with reference to donations, so that a true appraisement having been made, he who transferred the property to another shall be fined, and all instruments evidencing transactions of this kind shall have no force or effect.

All contracts relating to dowries, ante-nuptial donations, compromises, or the distribution of estates, as well as those providing for the disposal of property by means of legacies or trusts, or where rights of action have been given or accepted, are, however, not subject to the provisions of this law.

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

*Extract from Novel 112, Chapter I. Latin Text.*

At present, if the heir is successful, he must deliver to the legatee the property of which he appears to be the owner, but when judgment is rendered against him, and he loses the case, only the result of a lawsuit is considered to have been bequeathed to him, and therefore the other party interested should be present at the trial, to see that there is no collusion.

TITLE XXXVIII.

CONCERNING THE CONTRACTION OF A STIPULATION.

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

Although the letter which you have inserted in your petition does not set forth that he to

whom security was given did not stipulate, still, if the transaction took place between parties who were present, it must be believed that the stipulation preceded, and the response followed.

Adopted on the seventeenth of the *Kalends* of May, during the Consulate of Severus, Consul for the third time, and Victorinus, 201.

*2. The Same Emperors to Petronius.*

If you stipulated that the money should be paid to your daughter, whom you had under your control, you will not be prevented from requiring the obligation to be complied with.

Published on the *Nones* of November, during the Consulate of Faustinus and Rufinus, 211.

*3. The Emperor Antoninus to Hadrian.*

If, when you lent the money, you did so in the name of Julianus, the stipulation was made with reference to a person who was absent.

As a stipulation entered into under such circumstances is void, you understand that no obligation exists, except that contracted through the property, hence if Julianus should collect the money from your debtor, and you have ratified the payment of the same, you will be entitled to an action against him on the ground of voluntary agency. Published on the sixth of the *Kalends* of March, during the Consulate of Prassens and Extricatus.

*4. The Emperor Alexander to Sabina.*

According to the opinion of my friend, the Jurist Domitius Ulpianus, Prefect of Subsistence, the woman who wished to have power to bequeath half of her dowry at the time of her death and made a stipulation to that effect is considered to have stipulated that the said portion of her dowry should be restored to her when she died.

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

In accordance with what has been frequently decided, the laws do not always permit a man to be compelled to do what he agreed to by a mere promise without consideration. But as you allege that your adversary agreed under the stipulation to pay you, in addition, an amount equal to the value of the property, if he did not fulfill his contract, and as, after the case was brought into court, this condition of the obligation is shown to have existed, it is established that you have good ground to demand the payment of the said sum which was also included in this stipulation.

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

You ought to have known that where, under a compromise, something was agreed to be given, whether a certain or an uncertain amount was stipulated for, it can be recovered.

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

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

The absence of either a guardian or a curator does not, in any way, affect the validity of a stipulation, as there is no doubt that a woman, who is under the age of twenty-five years, can enter into a stipulation during the absence of her curator.

Ordered on the sixteenth of the *Kalends* of February, during the Consulate of the Ceesars.

*8. The Same Emperors and Csesars to Posidonius and Others.*

The promise to furnish a slave who will never die is impossible of execution, but anyone who stipulates for the payment of money after the death of a slave can legally demand it.

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

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

*If*, when terrified by the fear of death or corporeal suffering, you bound yourself to Zeno under a stipulation, you can defend yourself against him by an exception on this ground, if he should bring an action. Where, however, nothing of this kind was proved, your promise will not be void merely because you brought a criminal accusation against your adversary, or intend to do so, as the stipulation was not entered into from some base motive, but for a commendable reason. But if the money was promised as a consideration for not bringing a criminal accusation, the demand will be refused, as it is not legal to make agreements of this kind.

Ordered on the fifth of the *Ides* of October, during the Consulate of the Csesars.

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

All stipulations, even if they are not expressed in formal or direct words, but in any words whatsoever, with the consent of the contracting parties, and they are in conformity with the laws, shall be valid.

Given at Constantinople, on the *Kalends* of January, during the Consulate of Martianus and Zeno, 469.

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

We, intending to absolutely abolish certain technical difficulties of the ancients, namely: that where anyone has made a stipulation, or left anything by way of legacy, or under a trust, by the terms of his will, in the following words: "After my death," "At the time of my death," or "The day before my death," We decree that everything included in a stipulation, a contract, an agreement, or any disposition made by a testator in his will, which is to take effect after his death, or the day before he dies, shall, nevertheless, be valid, in accordance with the tenor of said contract or will.

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

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

Desiring to elucidate the great obscurity of the ancient laws, which, up to this time, has afforded a great opportunity for the protraction of litigation, We order that where anyone stipulates that he will either do or give something at a certain time, or both, or promises what the stipulator desires, and then adds that if what was promised should not be done at the designated time, he will pay a certain penalty, the debtor is hereby advised that he cannot avoid the penalty to which he subjected himself, on the ground that no one notified him, but he will be liable to the said penalty according to the terms of the stipulation, even without any notice, as he should retain in his memory what he agreed to do, and not require to be reminded of it by others. Given at Constantinople, on the ninth of the *Ides* of April, during the fifth Consulate of Decius, 529.

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

In order to settle the disputes arising out of the ancient law, We decree, in general terms, that every stipulation, whether it consists in giving anything, doing anything, or both giving something or performing some act, shall be transmitted both to and against heirs, whether any special mention has been made of them or not, for why should what is just, so far as the principal parties are concerned, not be transmitted both in favor of and against their successors?

And, as it is held that stipulations of this description, having reference to something which should be given, can still be performed by heirs, the subtle and superfluous opinion, by which it is decided that what is imposed on one person cannot possibly be executed by another, is hereby abolished. For, as the nature of all men is more or less similar, why cannot any of them do what others can, and why should the wills of men be void on account of an over nice distinction

of this kind?

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

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

It is now proper to dispose of an important question which frequently comes up in the tribunals, in order to prevent it from causing any further annoyance to the Government. In many contracts, and especially in those having reference to the payment of interest, it is usual for the stipulations to be entered into through the agency of slaves, who, induced by want of fidelity, at times avail themselves of this opportunity to raise controversies; as, in some instances, it is contended that the slave did not make the stipulation, or asserted that he did not belong to the person by whom the terms of the written contract should be carried out; and in others, it is alleged that the papers were not drawn up by slaves but by the parties themselves, who were present, hence a doubt arose whether proof should be offered that the parties were present.

Therefore, as it is convenient for slaves to be employed in making contracts, and where it is stated that the principals themselves were present, and this was not the case, on account of the dignity of the persons involved, or because they are women (as the natural modesty of the latter does not permit them to be present during every transaction), We order that documents of this kind shall be valid under all circumstances; and, whether they set forth that they were drawn up by slaves, who were said to belong to certain persons, or not, the slave shall, by all means, be considered to have been present, and to have drawn up the stipulation, and that it has been acquired by the person stated therein to be his master, and that no question shall arise whether the slave himself, or his master, in whose behalf it is stated in the document that the stipulation was made, was present. And if the transaction is said to have taken place between the parties, who were present, this also shall" be believed, provided both of them were in the town at the time when the instrument was drawn up; unless he who alleges that he himself or his adversary was absent can prove by the clear and manifest testimony of perfectly reliable witnesses to whom no exception can be taken, or better still, by documentary evidence, that either he or his adversary was not in the town on the day when the stipulation was made. Written documents of this kind should be considered valid on account of their advantage to the contracting parties.

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

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

Where anyone promises the stipulator to build him a house at the time of his death, an agreement of this description would have appeared impossible to the ancient authorities. If the intention of the contracting parties is considered, it seems to Us to be very probable that a transaction of this kind can take place, so that an obligation which began at the time of the death of the promisor would render his heirs liable until it was carried into effect. For no one can be found who is so foolish as to make a stipulation with the idea that a building could be erected in a moment of time, or that anyone at the point of death could think that he himself would be able to finish such a work.

(1) Therefore, We order that if anything of this kind should happen, the heirs of the promisor will be liable to execute what he promised at the time of his death, just as if the heir was expressly mentioned, although this may not have been done. For if the stipulation provided that something should be given, as this could be transmitted against the heirs, so, where some act was to be performed, even though it was promised at the time of death, the heirs will still be obliged to carry it out, just as in the case where the stipulation provided for something to be given, in order that no distinction may exist between the performance of an act and the bestowal of a gift, but Our law may be consistent in every respect.

We decree that this rule shall be observed in the same way with reference to legacies.

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

## TITLE XXXIX.

### CONCERNING STIPULATIONS WHICH ARE VOID.

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

You are not bound by a stipulation which you made, while under the age of puberty, without the intervention of your guardian.

Published during the *Kalends* of July, during the Consulate of Laetus, Consul for the second time, and Cerealis, 216.

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

The freedom of marriage has been established from ancient times, and therefore agreements providing that it shall not be lawful for the parties to be separate are void, and it has been decided that stipulations by whose terms penalties are imposed upon those who obtain divorces are not to be considered valid.

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

#### 3. *The Emperors Diocletian and Maximian to Isidora.*

As a verbal obligation cannot be contracted by persons who are absent, so no one can stipulate for anything to be given or restored to another, who is not subject to his authority, unless he is present. Therefore, as your daughter died during marriage, and you consented that half of her dowry should be held by her husband, in the name of a surviving son, and the other half be given to your grandson, or if he should not be alive, that it should be restored to Julian in accordance with the terms of a contract which you allege was entered into, and your grandson having died first, you state that on account of his absence the stipulation made in favor of Julian was not valid, and for this reason you ask that all the property which you provided for by the terms of your stipulation shall be restored to you, apply to the Governor of the province with reference to your stipulation, so that the allegations of the parties having been examined, the amount which it is to your interest should be restored to Julian, and which is now uncertain, may be determined, and he may decide how much shall be paid to you.

Published on the *Ides* of December, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

#### 4. *The Same Emperors and Csesars to Domna.*

It is clear that you have no right of action under the instrument in which a stipulation contrary to good morals was made with reference to a succession, as all provisions against good morals, whether set forth in a contract or in a stipulation, are of no force or effect.

#### 5. *The Same Emperors and Czesars to Aquilina.*

A right of action, indeed, arises where a stipulation is entered into through fraud or fear; still, it can be barred by an exception on either of these grounds.

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

6. *The Same Emperors and Csesars to Septimius.* , If your grandmother stipulated that the money which she lent should be paid to herself, and to Eustolius, she cannot by such a stipulation obtain anything for the benefit of someone not under her control. But if Eustolius, himself, stipulated in his own name that the money should be paid to him, there is no doubt that the right to the obligation is not personally acquired by him.

Ordered on the fifth of the *Kalends* of October, during the Consulate of the Caesars.

## TITLE XL.

### WHERE TWO OR MORE PERSONS STIPULATE AND PROMISE.

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

Where two or more persons jointly enter into an agreement for the delivery of certain property, an action for the full amount of the same will lie against either one of them, if circumstances require it, as long as the property remains in the same condition.

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

#### 2. *The Same Emperors to Diogenes.*

Where two persons have promised to pay the money, a creditor cannot be prevented from collecting his debt from whichever one he may choose to sue. Therefore, if you can prove that you, having been sued, have paid the entire indebtedness, the Governor of the province will not hesitate to assist you against him with whom you jointly borrowed the money.

Ordered on the fifth of the *Kalends* of March, during the Consulate of Diocletian, Consul for the third time, and Maximian.

#### *Extract from Novel 99, Chapter I. Latin Text.*

The above-mentioned rule will apply where a special agreement was made by the parties that each one of them should be liable for the entire amount of the debt, and if one of them was insolvent, a part or all of it could be collected from the other, even if he were absent, for when both of them are present they should appear in court, the case be heard with reference to both, and judgment be rendered against both; and this may be done by administration if the judge was specially appointed for that purpose.

When, however, a special agreement was not made with reference to payment, as above stated, they will each be liable for half of the debt. But if they agreed that both should be liable, and both of them are present and solvent, they must be compelled to discharge the indebtedness.

#### 3. *The Same Emperors and Caesars to Fabianus.*

You should have stated in your petition whether each of you bound yourselves for only a part, or for the entire amount of the obligation, and whether you promised jointly as two debtors, as if each of you only bound himself for a portion, the terms of the contract cannot be violated; if, however, both of you obligated yourselves for the full amount, the creditor cannot by a rescript be deprived of his right to sue either of you.

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

#### 4. *The Same Emperors and Csesars to Andronicus.* Where money has been lent to one person alone and others have promised jointly with him to pay it, the laws do not permit them to be released from liability, if the money should not be paid in accordance with the terms of the contract.

Ordered at Sirmium, on the fifth of the *Ides* of February, during the Consulate of the Csesars.

#### 5. *The Emperor Justinian to John, Prsetorian Prefect.* Where several debtors have agreed to pay different debts to their creditors, or one creditor has two or more debtors, or, on the other hand, where several creditors have but one debtor, and some of the debtors acknowledge the obligation due to certain creditors either by making payment, or in other ways of interrupting prescription, which We have found inserted in former laws whose scope We have enlarged, or where certain debtors have acknowledged the claims of one creditor, or where there are several creditors and there being but one debtor, he acknowledges the indebtedness to one or more of said creditors, and the question arose whether he or they ought to be granted

permission to sue the others, whose portions of the debt they have paid without the latter being permitted to plead prescription, or, in case some of the debtors having acknowledged the debt, or having been defeated in court, the others should be excluded from making any defence, it seems to Us to be consistent with the dictates of humanity that, where prescription has been interrupted, or acknowledgment of the debt has been made with reference to one and the same contract, all the parties should be compelled to pay the debt at the same time, whether there are several debtors, or only one of them, or whether there are several creditors, or not more than one.

Hence We decree that in every case above mentioned, where part of the debt has been paid or acknowledged, or the other debtors have been notified in writing that they are liable, the other creditors shall enjoy the benefit. Therefore they shall be jointly responsible and none of them will be permitted to profit by the unfairness of another, as a single contract is derived from one source or liability, and a debt is incurred by the same act.

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

#### TITLE XLI.

#### CONCERNING SURETIES AND MANDATORS.

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

If Lysias was sentenced to exile and a loss of part of his property, he is only liable to his creditors for the part which he retained. But those who became his sureties can be sued under former laws.

Published on the *Ides* of October, during the Consulate of Severus, Consul for the third time, and Victorinus.

##### 2. *The Same Emperors to Plautius.*

A creditor who received both pledges and a surety for the same debt shall be permitted to sue the surety for the money for which the

latter rendered himself liable (if he desires to do so), but if he does sue him, he should transfer to him his right to the pledges. When, however, the creditor has a lien on the said pledges or hypothecations because of some other claim, he cannot be compelled to transfer them until the entire indebtedness has been paid.

Given on the fifth of the *Kalends* of February, during the Consulate of Aper, Consul for the second time, and Maximus, 208.

##### 3. *The Same Emperors to Maximus.*

If your allegations are correct, or Our procurators have unlawfully refused to hear you with reference to your recovery of the money out of the property of the surety, which had been placed in the Treasury, but directed you to sue the principal debtor, since power is given to a creditor to select whichever one he prefers, as, however, you allege that you obtained two sureties, if one of them is solvent, you understand that the amount having been divided, you can demand from Our procurator only half of the debt, and must proceed against the other surety for the remainder. For although you state that it was mentioned in the obligation that each of the sureties should be liable in full, still, this provision, in no respect, changes the requirements and rules of the law, for even if this had not been added, each of them would still be liable for the entire indebtedness. Where, however, all of the sureties are solvent, the obligation shall be divided in proportion to their number.

Published on the seventeenth of the *Kalends* of September, during the third Consulate of Antoninus and Geta, 209.

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

Where, however, both parties are present, the surety cannot be sued before the principal debtor has been ascertained to be either wholly or in part insolvent. But when the principal debtor is absent, the surety, if present, can be proceeded against by law, but the judge is obliged to fix a time within which the principal debtor must first be sued, holding the surety himself in reserve. When this time has expired, the surety can be compelled to pay the debt, and all rights of action should be assigned to him by the creditor without distinction of contract or suretyship.

4. *The Emperor Antoninus to Rufa.*

Where a novation has been lawfully made, or the claim transferred to another, there is no doubt that the sureties or mandators of the first contract will be released, provided they do not obligate themselves by the last one.

Published on the fifteenth of the *Kalends* of October, during the Consulate of Antoninus, Consul for the fourth time, and Balbinus, 214.

5. *The Same Emperors to Potamon.*

Under Our law, a creditor is not empowered to bring suit against the sureties without including the principal debtor, unless it has been proved to have been otherwise agreed upon by the contracting parties.

6. *The Same Emperor to Polla.*

If your father did not bind himself for Cornelius when the latter borrowed money, you are sued to no purpose merely because you signed the contract as a witness.

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

7. *The Same Emperor to Erotus.*

If the creditor whom you directed to lend a certain sum of money on your account did not take pledges as you directed him to do, he has brought an action of mandate against you in vain, as you understand that you are not liable unless the obligation was contracted with pledges given as security.

Published on the *Kalends* of July, during the Consulate of Lsetus, Consul for the second time, and Cerealis, 216.

8. *The Emperor Alexander to Longus.*

The son under paternal control who became surety for his father even where the sale of land is involved, is liable.

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

9. *The Same Emperor to Aristocrates.*

Even if an action has been brought by the creditors for the purpose of selling the pledges, this does not release the sureties.

Published on the fifth of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

10. *The Same Emperor to Vitalus.*

When a surety or a mandator has also obligated himself for the interest, he has no legal reason for refusing to pay it.

Moreover, one who became surety with another cannot be sued alone, but the action must be divided among those who are solvent, and this demand must be made by the defendant surety, in its proper place, before judgment has been rendered.

#### *11. The Same Emperor to Sallust.*

When one of the sureties has paid the entire debt, an action will not lie in his favor against the other sureties. After you have paid the Treasury, you can undoubtedly ask that the right to the pledge which the Treasury had shall be transferred to you, and if this is done, you can avail yourself of any rights of action which have been assigned.

This rule shall also be observed in the case of private obligations.

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

#### *12. The Same Emperor to Theodosius.*

He flatters you who tells you that you will not be liable for the reason that when you became security for another you said in Greek

"*I will do whatever you wish*", as it was long since decided that a verbal obligation can be contracted by words in Greek.

Published on the sixth of the *Kalends* of September, during the Consulate of Agricola and Clementinus, 231.

#### *13. Extract from a Letter of the Emperor Gordian to Auxins.*

If the decurion stipulated that he would find the robber Barsatoras, he ought to be compelled to produce him, or give information to the Praetorian Prefect or the Governor of the province, so that he may be arrested.

#### *14. The Same Emperor to Salivus.*

The action of mandate is a personal one, and can be brought in the name of a surety against either the debtor or his heirs, and the Governor of the province will order payment to be made of the amount which he may ascertain to be due. The property pledged by the principal debtor under the terms of the stipulation must be transferred to you, if the claim has been settled and the rights of action have been assigned to you. When this has been done, the same illustrious official will grant you an extraordinary action for the purpose of asserting your right against the parties in possession of the pledge.

Published on the third of the *Nones* of July, during the Consulate of Gordian and Aviola, 240.

#### *15. The Same Emperor to Claudian.*

If you, through mistake, have given security, and, as surety, are compelled to pay money which you did not owe, you can make use of the exception based on bad faith, as well as bring a personal action to obtain your release from an obligation which you did not, in reality, contract.

Moreover, there is no doubt that the surety of a debtor is released, when the property of the latter has been seized by the Treasury, and suit been brought against the Treasury for the recovery of the debt, which has been paid.

Published on the fifth of the *Kalends* of December, during the Consulate of Gordian and Aviola.

#### *16. The Same Emperor to Maximus.*

A creditor has the right to choose any one of the sureties (provided he does not consider them all to be solvent) if he makes his selection before suit has been brought against all of them together, but, after issue has once been joined, the rule of law does not permit his application for a division to be granted.

Published on the second of the *Ides* of June, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

17. *The Same to Brasida.*

It is a well-settled legal principle that a surety can be sued by the creditors, without reference to any pledges which may have been given, unless he has been accepted for an amount which could not be made good out of the pledges.

Published on the sixth of the *Ides* of March, during the Consulate of Atticus, and Prsetextatus, 243.

18. *The Emperor Philip to Smyrna.*

If (as you allege) you did not sell the land hypothecated for the debt at a fair price, you cannot legally demand that the remaining amount, which you might have obtained from the sale of the property, shall be refunded to you by the surety.

Published on the fifth of the *Kalends* of August, during the Consulate of Peregrinus and Emilianus, 245.

19. *The Emperors Diocletian and Maximian, and the Cassars, to Sabinus.*

If you have assumed an obligation either as surety or mandator, or in any other way for a principal debtor, you should be aware that the creditor cannot press him who borrowed the money any more than he can you, as he has a right to make his choice, even if this had not been specifically included in the contract.

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

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

The creditor is not deprived of the right of electing to sue any of the sureties of the principal debtor, even though the latter may have been convicted of a crime, and all his property confiscated by virtue of a sentence.

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

As the creditor has a right to sue the sureties instead of the principal debtor, so it is settled that they cannot be pressed to make payment before the creditor has assigned to them his right to the property hypothecated, or the pledges he has received, unless it was agreed that he should do so.

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

22. *The Same Emperors and Caesars to Hermianus.*

If you have agreed to give more than she for whom you have become responsible as mandator received, the Governor of the province will not suffer any excess above what was paid on your mandate to be exacted from you.

Ordered on the twelfth of the *Kalends* of May, during the Consulate of the Csesars.

23. *The Same Emperors and C&sars to Antipater.* You are allowed to choose any of the principal debtors or their mandators, and sue them, either for their proportion, or, if he against whom you first proceed should not be able to pay the entire amount, you can afterwards have recourse to another, as none of them should be released by the selection you have made.

Ordered at Nicomedia, on the *Nones* of December, during the Consulate of the Caesars.

24. *The Same Emperors and Ctesars to Pergamius.*

The heir of a surety is equally liable with the principal debtor, but if he succeeds to both of them, the obligation of surety becomes extinguished, and he can only be sued as the heir of the principal debtor.

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

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

When pledges given by the principal debtor have been sold by the creditor, the latter is not forbidden, even after the interval of a long time, to collect the balance of the claim from the surety.

Ordered on the sixth of the *Kalends* of January, during the Consulate of the Cassars.

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

We order that, if anyone should bind himself under a stipulation for another that he will produce him at a certain time, or will pay a certain amount of money for him, and, after the designated period has elapsed, he should not be able to produce him, and does not immediately tender the money which he agreed to pay in his behalf, a penal action can certainly be brought against him after the time has expired, as aforesaid, but the sum of money for which he became surety need not immediately be collected.

If, however, the time fixed was the term of six months, We order that another term of the same duration shall be granted the surety within which, if he can produce the other party and deliver him up, he shall be released from the penalty. But where the term granted in the beginning consisted of more than six months, another of equal length should be given, to be reckoned from the expiration of the first six months (no matter what the original term may have been), within which he shall have the right to produce the defendant and not pay the money. If the second term granted should expire without his doing so, he will then be absolutely required to pay the pecuniary penalty. When, after the expiration of the first term, the surety wishes to defend the accused person, he shall be permitted to do so, unless the terms of an agreement forbade this, and he became surety for him without reserving the right to make a defence. If, however, he should undertake the defence, he must conduct it to the end, and permission shall not be given him to deliver up the accused in the meantime, and evade payment of the money.

After the second term has elapsed, permission shall, under no circumstances whatever, be granted him to have recourse to a defence, but he must unquestionably pay the penalty, unless the principal debtor died during the first term which was granted; for, in this instance, he must be absolutely released from the exaction of the penalty. If, however, the defendant should die during the second term, the penalty for which the surety has become liable shall be exacted; and We decree that, in all cases in which sureties are subject to penalties of this kind, the rule shall also apply to their heirs.

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

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

If the surety did not sign any bond, but merely represented himself as such, and acknowledged in the presence of notaries that he would be responsible for the party accused, it was doubted by the Bar of Palestine whether he should not be released after two months had expired, as his liability had been incurred without any written instrument executed in conformity with the general edicts of the tribunal of the Praetor, or whether he could be held liable just as if a written instrument to that effect had been drawn up.

Another distinction was also introduced, namely, as to whether the same rule of law should apply to both public and private cases.

Therefore We order that unless a written undertaking has been executed by sureties for the production of the persons of the parties accused, even though the acknowledgment of their liability had been made in the presence of witnesses, still such an acknowledgment ver.-bally made shall not be binding in private cases; and after two months have elapsed the sureties shall be released from any obligation of this description unless they bound themselves for a certain period, for then it should be extended for the time stated in the presence of witnesses.

But, in public cases, necessity requires that any acknowledgment of this kind in the presence of witnesses shall, under all circumstances, be considered to have been committed to writing; for it is not unreasonable that many legal privileges have been granted to the people on the ground of public necessity, and this privilege is hereby confirmed by Us.

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

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

Generally speaking, We order that what has been decided with reference to mandators, namely, that where proceedings have been instituted against one the other shall not be released from liability, shall also be observed with reference to sureties, for We have ascertained that in the bonds of sureties provision has, for the most part, been made for this by an agreement.

Hence We order by this general law that through the selection of one of the sureties, or of the principal debtor, the others shall not be released, nor will the debtor himself be released where both the sureties, or one of them is chosen, unless he should satisfy the creditor, but the rights of the latter shall remain unimpaired until the entire sum of money to which he is entitled has been paid, or his claim is satisfied in some other way.

We decree that the same rule shall apply where there are two sureties; for We do not allow the rights of action of creditors against the other surety to be prejudiced, where one of them has been selected, but they shall remain intact, whether they are based on personal or hypothecary actions, until the claim has been completely satisfied. For as this is permitted to be done under the terms of agreements, and We see that it takes place every day in practice, so, for this reason, it is not conceded by the authority of this law, that the inadvertence of those who make contracts should, on any ground whatsoever, be able to impair the rights of the creditor.

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

TITLE XLII.

CONCERNING NOVATIONS AND ASSIGNMENTS.

*1. The Emperor Alexander to Timothy.*

The assignment of a debt, made under a stipulation, cannot be effected unless with the consent and approval of the debtor, but the sale of the claim can be made without the knowledge or acquiescence of the person against whom the actions at law are directed.

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

*2. The Emperor Gordian to Firminus.*

An action arising from a contract for the loan of money is brought to no purpose, where a delegation of the person has been properly made as the former contract is extinguished by the right of novation.

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

*3. The Same Emperor to Mutmnus.*

If the delegation of your debtor did not take place, and on this account you have retained your rights of action, even though you may have assigned them to your creditor against your debtor, in order to obtain payment, still, before the case is brought to trial, or your creditor has collected any of the debt, or has served notice on your debtor, you will not be prevented from exacting the amount due from your debtor, and in this way prevent your creditor from doing so.

Where, however, an assignment has been made of your rights of action, you will be released

by the novation, and will have no reason to apprehend that your creditor will not collect the debt, because the party in question is his client, as you were released from liability for it through the novation having been confirmed by the verbal obligation.

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

4. *The Same Emperor to Stratonicus.*

Your attorney did not deprive you of your right of action, if, when you commissioned him to collect the money which the parties against whom you have filed your petition owed you, and he, having accepted a part of the debt, released them from payment of the remainder, as he had no right to make a novation without your consent, nor could he release them from liability for what they did not pay.

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

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

If your father, whom you say that you have succeeded, promised by a stipulation to pay a certain sum of money to the creditor, and receive from him in return a claim on Alexander, who was indebted to him, although Alexander dishonestly refused to pay him, still, it would be dishonorable for you to refuse payment of the amount promised by your father.

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

A person cannot, against his consent, be delegated to the creditor of his creditor.

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

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

If Eucarpus, having been assigned, promised to pay you a sum of money, or has acknowledged the debt, he can be sued in his own name, otherwise you will gain nothing by proceeding against him in the name of your debtor, who was bound by a written obligation.

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

8. *The Emperor Justinian to the Senate.*

We, desiring to amend the harmful rules which apply to novations, and to dispose of the ambiguities of the ancient law, do hereby order that, if anyone should offer another person, or change any one of those who are liable, or accept a pledge, or diminish or increase the amount of the obligation, or extend or shorten the time specified, or accept security of a later date, or perform any of those acts by which, in the opinion of the ancient legal authorities, novations were created, no change whatever will thereby be made in the former claim, but every provision made in the first place will stand, and anything subsequently done will be considered as supplementary to the same, unless it plainly cancelled the former obligation, and expressly stated that the second one should take the place of that previously made.

And, generally speaking, We decree that novation is effected rather by the intention than by law, and if it is not stated in so many words

that there should be no innovation (which is ordinarily indicated in Greek by the expression ..... it shall not take place; for We wish novations to be created in the course of business transactions, and not merely through the utterance of words which have no connection with them.

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

TITLE XLIII.

CONCERNING PAYMENTS AND RELEASES.

1. *The Emperor Antoninus to Aristenetus.*

He who owes money on several debts to the same creditor has the right, at the time of payment, to state upon which one the money shall be credited. If the debtor does not do this, he who receives the money shall have the choice of applying the amount to whichever claim he pleases. If neither one of them should express his wishes in this respect, the sum paid shall first be applied to the interest, and afterwards to the principal.

Published on the second of the *Nones* of November, during the Consulate of the two Aspers, 213.

2. *The Emperor Alexander to Basso.*

It is unquestionably the law that sureties are released whenever the Treasury succeeds (even under different rights) the creditor or the debtor. My procurators will see that this rule is observed so far as you personally are concerned.

Published on the *Kalends* of July, during the Consulate of Lupus and Maximus, 233.

3. *The Emperor Gordian to Apollonius.*

If you borrowed money from a slave who had the free administration of his *peculium*, and you paid the debt before he was deprived of his *peculium*, or before you were aware that this had been done, you will be released from liability for payment.

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

4. *The Same Emperor to Rufina.*

It makes no difference whether you have paid the money which you have borrowed to your creditor himself, or with his consent to his slave, for although the creditor may have died before the slave rendered an account of the payment, the force of an extinguished obligation cannot be renewed.

Published on the second of the *Ides* of October, during the Consulate of Pius and Pontianus, 239.

5. *The Same Emperor to Celsus.*

You have no right of action against another creditor on the ground that, having tendered him the amount of the debt, you desired his obligation to be transferred to you, as you do not state that you purchased the claim from him, although where payment is made by another in the name of the debtor, the obligation is ordinarily extinguished.

Published on the fifteenth of the *Kalends* of November, during the Consulate of Pius and Pontianus, 239.

6. *The Same Emperor to Alexander.*

If a compromise was made between your father and those whom you allege to have been his debtors, and this was not done with reference to a lawsuit, the issue of which was doubtful, and your father only received a part of the debt, but acknowledged that he had received it all, he did not (having given a receipt or made a donation) by doing so release those who had verbally bound themselves for the payment of the balance, and his right to the recovery of the remainder of the debt remains unimpaired.

Published on the third of the *Ides* of February, during the Consulate of Gordian and Aviola, 240.

7. *The Emperor Philip and the Caesar Philip to Antiochus.*

It is clear that interest cannot be claimed on that part of a debt the right to which has been extinguished by set-off.

Published on the fifth of the *Kalends* of August, during the Consulate of Peregrinus and Emilianus, 245.

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

The rule of practice does not permit the annual payment of interest, which was agreed to be made in a certain city, to be paid elsewhere, unless some good reason exists for this being done.

Published on the fifth of the *Ides* of May, during the Consulate of Philip and Titian, 246.

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

It is clear that a release from liability for a debt takes place where the entire sum of money due is sealed up and deposited, in accordance with the legal formalities required, but in order for the tender of the amount of the debt to effect a release of liability, it should be made in the same place where the money is due.

Published on the fifth of the *Ides* of May, during the Consulate of Maximus and Acquilinus, 286.

10. *The Same Emperors and Csesars to Ambrosius.* It is settled that the heirs of one who, being over twenty-five years of age, legally gave certain slaves in satisfaction of a debt, cannot claim them.

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

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

If your husband received a certain sum of money from your debtors on account of an obligation due to you, and you were under the age of twenty-five years, and did not give your consent to the transaction, your rights will not be prejudiced to any extent, unless after you attained your majority you ratified the payment which was made.

Ordered at Heraclia, on the fifth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors.

12. *The Same Emperors and Cassars to Euty chins.*

Anyone who pays a debt to a third party without the consent or knowledge of his creditor does not release himself from the obligation. Where, however, this was done by the direction of the creditor, or if he afterwards ratified the payment which was made, the debtor will be entitled to a release, just as if he had paid the creditor himself.

Ordered on the third of the *Ides* of May, during the Consulate of the above-mentioned Emperors.

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

If, by means of a receipt, and not by a novation made under a stipulation, you released a man who was bound under the terms of a mandate, and you erroneously stated in writing that you had received the entire sum to which you were entitled, the obligation will not be extinguished by this appearance of the truth.

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

14. *The Same Emperors and Cassars to Cohorta.*

The acknowledgment of money paid, by means of an instrument in writing, is better proof of the transaction than where the documentary evidence of the loan which was made has been returned.

Ordered on the fifth of the *Ides* of July, during the Consulate of the above-mentioned

Emperors.

15. *The Same Emperors and Cassars to Quartinus.*

Your rights are in no way affected for the reason that (as you allege) the evidence of the debt was returned to your debtor. Therefore, if you can legally prove the existence of this obligation by any evidence whatsoever, the judge will compel the payment of the debt which is legally due by the debtor who did not obtain a release from liability by an act of this kind.

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

16. *The Same Emperors and Cassars to Charidemus.*

The rule of law does not permit him from whom you have borrowed money to accept, against his will, an obligation due from your debtor.

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

This rule is not applicable unless the debtor is unable to discharge the debt, either by the payment of money, or by the transfer of other property; for, in this instance, the best real estate which the debtor possesses can be conveyed in satisfaction of the debt, after an exact estimate has been made by the court, in order that the debtor may be permitted to make payment with said property, and the creditor to demand it, the debtor being compelled to furnish the creditor with the best security against eviction that he can possibly obtain, which applies to all actions at law.

Where, however, the creditor is ready to provide a purchaser, the debtor, after having furnished security to the creditor, with the approval of the court, will be required to sell the property, and satisfy the claim of the creditor with the proceeds of the same.

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

It is a clear rule of law that an obligation is extinguished just as much through payment by another party for the debtor, as where with the consent of the creditor himself property is transferred to him instead of payment being made of the money which is due.

Ordered at Sirmium, on the *Kalends* of December, during the Consulate of the above-mentioned Emperors.

18. *The Same Emperors and Cassars to Domitius.*

An inquiry into the truth cannot be prevented for the reason that you allege that the papers drawn up by your attorney were received, and restored to you by his heir, with the statement of your attorney to the effect that nothing is due to the creditors, as it is possible that the said creditors have been satisfied by payment, not with your money, but with that of him whom you directed to transact the business.

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

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

If you have paid your creditor the money you borrowed through her slave, acting as her agent, and appointed by her to collect her debts, no loss can result to you if the receipt for the same is found to be void. It would be otherwise, however, if you had paid a slave not authorized to receive the money, and you would not be released from liability to an action brought by his mistress.

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

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

When a creditor has consented to accept the services of a certain slave in payment for money loaned, after the terms of the agreement have been complied with, its provision with reference to the return of the slave should be observed.

Ordered at Adrianople, on the fifth of the *Kalends* of November, during the Consulate of the Caesars.

21. *The Same Emperors and Csesars to Rufus.* It makes a great deal of difference whether, in the hope of future payment, you stated that you had received the amount mentioned in the rescript, or whether you accepted, by way of compromise, a smaller sum than you were entitled to, and was stated in the receipt; for in the former instance, the right to collect the balance remains unimpaired, but in the latter, it is proper that the compromise made by common consent should stand.

Ordered on the third of the *Nones* of December, during the Consulate of the Caesars.

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

It is of no consequence whether or not your note was erased, that is to say, cancelled, if you can prove that payment of the debt was once made to him who had the right to collect the same.

Ordered on the fifth of the *Ides* of December, during the Consulate of the Csesars.

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

Where Auxenon sent a letter to Aristo, directing him to pay you a sum of money, which he owed to him, and you wrote in reply that you had received the amount of the debt from Aristo, without the mandate having yet been complied with, the right to collect the debt remains unimpaired, and nothing can prevent its recovery by law.

Ordered at Nicomedia, on the fifteenth of the *Kalends* of January, during the Consulate of the Cassars.

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

As you acknowledge that you have, as provided by the agreement, transferred the land in question to Evander in satisfaction of the money which you borrowed from him, you cannot legally claim that he is liable to you for the results of his industry, or for any profit derived from some accidental circumstance; for if the land should depreciate in value, you would certainly not ask to be permitted to share the loss.

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

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

The burden of proof of payment lies upon the party making the allegation, and when this is done, you can bring suit for the recovery of the note.

Ordered at Nicomedia, on the third of the *Kalends* of January, during the Consulate of the Csesars.

## TITLE XLIV.

### CONCERNING VERBAL RELEASES.

1. *The Emperor Antoninus to Apronius.*

I have already written to you that you can inquire of the judge whether your sister released her debtor by the authority of her guardian, and in compliance with the ordinary formalities. Therefore, if the adverse party continues to demand a debt which was paid, you can use the proper means to defend yourself.

Published on the third of the *Ides* of February, during the Consulate of the two Aspers, 213.

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

If, by giving him a receipt, you released your debtor on account of a novation made by means of a gift, you are deprived of every cause of action.

Ordered on the sixth of the *Kalends* of January, during the Consulate of the above-mentioned Emperors and Cassars.

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

When both the obligation and the receipt have been extinguished by the Aquilian stipulation, under an agreement, he who has no good cause for restitution is precluded from any further legal action.

Ordered on the fifth of the *Kalends* of December, during the Consulate of the Caesars.

TITLE XLV.

CONCERNING EVICTIONS.

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

The purchaser of an estate can, at his own risk and expense, recover property belonging to it from those in possession. For it is settled that when an estate has been legally sold, eviction is not guaranteed with reference to individual articles of property composing the said estate, unless an express agreement to that effect has been made between the contracting parties.

Published on the sixth of the *Kalends* of March, during the Consulate of Severus, Consul for the third time, and Victorinus, 201.

2. *The Same Emperors to Quarta.*

If, when your grandfather gave you the land in question, he guaranteed you against eviction of the same, you can proceed against your co-heirs under the terms of the stipulation, on account of the eviction of the land aforesaid, that is to say, in proportion of the interest of each of them in the estate. It is certain, however, that if the donor had only made a mere agreement without consideration concerning said eviction, he would not be bound by it.

Published on the second of the *Kalends* of March, during the second Consulate of Antoninus and Geta, 206.

3. *The Same Emperors to Aurelian.*

Anyone who purchases property, and afterwards obtains possession of it, cannot, as long as he is not evicted, bring suit against the vendor on the ground that he is said to have sold him property which belonged to another, or was encumbered.

Published on the eighth of the *Kalends* of August, during the Consulate of Faustinus and Rufinus, 311.

4. *The Emperor Antoninus to Georgius.*

If land has been transferred to you in satisfaction of a debt, and it was previously hypothecated to other creditors, the condition of the encumbrance is not altered. Therefore, if you should be evicted on this account, a praetorian action will lie in your favor against the debtor, for a contract of this kind resembles one of sale.

Published on the eleventh of the *Kalends* of August, during the Consulate of the two Aspers, 213.

5. *The Same Emperor to Patronia.*

If, among the lands which you have purchased, one tract, encumbered by the vendor, has not yet been transferred to you, you can bring suit on the ground of purchase to compel its release by the creditor. The result will be the same if you should plead an exception based on fraud against the vendor, after he has brought an action on sale to recover the price of the land.

Published on the fifteenth of the *Kalends* of October, during the Consulate of the two Aspers, 213.

6. *The Emperor Alexander to Octavius.*

There is no doubt that if the vendor did not expressly guarantee you against eviction, an action of purchase will lie, if eviction should take place.

Published on the eighth of the *Ides* of March, during the Consulate of Alexander, 223.

*7. The Same Emperor to Hilarian.*

There is no doubt that when the property is evicted, and satisfaction cannot be obtained from the vendor, suit can be brought against his surety because of the eviction, even if he was not aware that it had taken place.

Published on the third of the *Nones* of April, during the Consulate of Alexander, 223.

*8. The Same Emperor to Clementinus.*

If the purchaser of land should be evicted, he will have no right of action under a stipulation, or for double damages, or of purchase, against either the vendor or his surety, unless he has previously served notice on the vendor or his heir. But where the purchaser does not appear in court, or has judgment unjustly rendered against him during the absence of the vendor or his surety, he will have no recourse against them afterwards.

Published on the eighth of the *Ides* of December, during the Consulate of Alexander, 223.

*9. The Same Emperor to Terentius.*

Where a controversy is raised by anyone with reference to land which you state you purchased in good faith, notify the vendor or his heir, and if you gain the case, you will have what you purchased. If, however, you should be evicted, you can recover damages from the vendor, or his heir, and the expenses incurred by you in the improvement of the property which you purchased will also be included.

Published on the eleventh of the *Kalends* of January, during the Consulate of Alexander, 223.

*10. The Same Emperor to Largus.*

If the vendor established the boundaries of the land, and fixed a limit which no one should pass, and any of the said land should be evicted, it will be at the risk of the vendor. Hence, if he sold the land with the boundaries which he himself established, the expense of any litigation with reference to them must be borne by him.

Published on the seventh of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and JElianu, 224.

*11. The Same Emperor to Clement.*

He whom you accepted as surety for your vendor can be legally barred by an exception on the ground of fraud if he raises a controversy in his own name, stating that he, through the agency of his wife, purchased the land in question before you did, as he gave his consent to the sale, and by so doing, rendered himself responsible for eviction.

Published on the *Nones* of February, during the Consulate of Pompeianus and Pelignus, 232.

*12. The Emperor Gordian to Philip.*

If a slave whom you purchased should obtain his freedom, and it was agreed when you bought him that if any question should arise on this point, even if he was not yet evicted, you could recover the price you paid for him, the Governor of the province, after having ascertained that the price should be refunded to you, will order this to be done.

Published on the seventh of the *Ides* of March, during the Consulate of Gordian and Aviola, 240.

*13. The Same Emperor to Zoilus.*

When, as the result of a judicial decision, pledges have been seized by the authority of the judge having jurisdiction of the case, and you purchased those you mention, your right to the

same will be questioned to no purpose by the party against whom judgment was rendered, or his heir, as it has very properly been held that where eviction of property is obtained by anyone else, an action should be granted against those who had the benefit of the price.

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

*14. The Same Emperor to Secundinus.*

Whether the possession of the land belonging to the vendor and his son and heir ineffectually raises a question as to its ownership, or whether it did not belong to the father, but to the son himself, who can claim it by hereditary right, he cannot bring about a controversy with reference to the title.

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

*15. The Emperor Philip to Menander.*

If you lost your case, not through the injustice of the judge, but in consequence of the application of a legal principle, you can formally establish your right to the property pledged as a guarantee against eviction.

Published on the *Kalends* of August, ....

*16. The Emperors Diocletian and Maximian to Alexander and Diogenes.*

The Governor of the province will examine the question of the purchase of the land, and if he should ascertain that a portion of the same belongs to the adverse party, he will order that the expenses, which it is proved you have incurred in improving the property, be refunded to you, after an account has been rendered of the profits. The vendor, however, should be sued for the price of the part which was evicted, and not he who actually evicted the ownership of the premises.

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

*17. The Same Emperors to Mutianus.*

If, when a question arose with reference to a slave whom you purchased, you notified the vendor of this fact, and did not surrender the said slave until after a judicial decision had been rendered against you, the Governor of the province will, in accordance with law, fix the amount of the damage which you allege you have sustained.

Published on the fifth of the *Ides* of November, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

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

When a question arises with reference to the status of a slave who was sold to you, and, after you have complied with the formalities prescribed by law, the decision should be in favor of his freedom, and you purchased him while ignorant of his condition, you can, without any doubt, proceed on the ground of eviction against the vendor, his sureties, or their heirs. If the decision should declare him to be a slave, you understand that you will have no recourse against the vendor.

*19. The Same Emperors and Caesars to Theodore.*

If you sold the land which was encumbered, and the purchasers were able to protect themselves by the ordinary prescription of long time, you need not fear the danger of eviction.

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

*20. The Same Emperors and Csesars to Solidus and Others.*

If your parents sold certain slaves, and the question of their ownership was raised against the purchasers, you will not be prevented from appearing and defending the case.

Where, however, the slaves have already been evicted, and you did not take an appeal, your demand that the case should be revived is, so far as you are concerned, contrary to law. If an action on the ground of eviction is brought against you, and it is proved that notice was given to enable you to make a defence, you are aware to what extent you can protect yourselves.

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

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

The action of purchase is not barred by the prescription of long time even though it should be proved that a very extended period has elapsed since the eviction of the property. Therefore if the slave, whom you state you purchased, is now proclaimed to be free, you should summon the vendor or his heir, in order that they may assist you in conducting the suit. If, however, it should have been decided that the man was free, and not a slave, and it is proved that you were not released from the risk of eviction, the Governor of the province (if the case has not been heard) will see that you are indemnified.

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

22. *The Same Emperors and Caesars to Julius.* As you allege that the land was sold to you by the vendor as being unencumbered, but it was not, and you paid the amount of a former obligation which was due, it is clear that the stipulation which you say provided for your indemnity with reference to the property sold should be carried into effect.

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

23. *The Same Emperors and Csesars to Eustochia.* As the heirs of a vendor can be held liable in case of eviction, if the City of Thessalonica attempts to obtain by law the property which you purchased on the ground that it was pledged to it, notify the heirs of the vendor, no matter in what degree they may be, to assist in the conduct of the case. Whether they were present or absent at the time of the eviction of the land which was purchased, it is a well-known fact that they will be liable to the extent of your interest in not having it evicted, and not for the amount of the price which you paid, unless it was otherwise agreed.

Ordered at Sirmium, on the second of the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

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

If a question should arise as to the title of the property disposed of, after the sale has been concluded, but before the price was paid, or the slaves who were sold have been declared to be free (as in this instance), the eviction relates back to the beginning of the contract, and it is declared by the authority of the law that if the purchaser is not offered enough to satisfy his claim, he cannot be compelled to pay the balance of the price. Therefore, after a part of the price has been paid, as you allege that you were notified by another person not to complete the purchase, as the house which you bought was pledged to him, the judge will see that you are paid what you are legally entitled to under the contract of sale.

Ordered at Sirmium, on the sixth of the *Kalends* of February, during the Consulate of the Csesars.

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

If Saturninus sold you a female slave of whose condition he was ignorant, who now maintains that she is free, and she should be decided to be free, you can sue the vendor for double damages under the stipulation; or you can proceed by an action on purchase against him for

the damage which you may have sustained.

Ordered on the *Ides* of February, during the Consulate of the abovementioned Emperors.

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

If anyone sold you a slave who afterwards died, the vendor cannot be sued by you, as your risk of eviction is at an end.

Ordered at Sirmium, on the second of the *Kalends* of April, during the Consulate of the Caesars.

*27. The Same Emperors and Caesars to Theophilus.*

If Athenocles purchased land belonging to another, knowing that this was the case, or that it was encumbered, he cannot bring suit on the ground of eviction, because, contrary to the rules of law, he claims that he paid a consideration. If, however, he was ignorant of the facts, the law does not oppose your demand that the purchase money should be refunded.

Ordered on the fifteenth of the *Kalends* of October, during the Consulate of the Csesars.

*28. The Same Emperors and Csesars to Maximian and Others.* There is no doubt that the rights of the vendor can be exercised by the purchaser. Therefore, if your right to the ownership of the property is questioned, you can avail yourself of the same means of defence as the vendor could make use of.

Ordered on the third of the *Nones* of October, during the Consulate of the Csesars.

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

If your mother gave the curators of your brother certain lands in exchange for others, and afterwards they were notified to defend the title, or were evicted when they did not have power to make a defence; it is reasonable that you should have a right to sue them for damages.

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

*30. The Same Emperors and Csesars to Hastius.*

He who purchased a slave from your mother cannot be presumed to have had knowledge that he belonged to another, by the mere fact that he stipulated for double damages in case of eviction, nor will his reputation suffer and he be considered a fraudulent purchaser on this account. You can, however, prove this by other evidence, if you desire to do so.

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

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

The heir of the surety for the property on account of which the deceased rendered himself liable to the purchaser is not prevented from claiming the ownership of it in his own name, that is to say, while the action for eviction is still pending.

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

## TITLE XLVI.

### A CREDITOR IS NOT RESPONSIBLE FOR EVICTION.

*1. The Emperor Alexander to Publicius.*

As My procurator sold the land referred to by the right of a creditor, on account of debts due to the Treasury, he is not liable for eviction, and a private creditor enjoys the same advantage, unless this was expressly renounced by him.

Where, however, the Treasury succeeded to the rights of another creditor, the title of the purchaser cannot legally be disputed in the name of the Treasury, whether his claim was preferred when he sold the property, or whether it was not, as he who sells property which is

pledged must prove that his claim is prior to that of all other creditors.

Published on the fifteenth of the *Kalends* of November, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

2. *The Emperor Gordian to Sabina.*

If your father purchased from a creditor lands which were encumbered by the right of pledge, and they are evicted, you have a right of action against the vendor, if at the time she sold them she guaranteed the title in case of eviction, or you can bring suit on the ground of fraud, if she knew that the title to the property was defective, and sold it to your father, whom you succeeded as heir. For as a contract of this kind does not, in case of eviction, bind a creditor who is ignorant of the facts, so it does not release one who commits a fraud, or is guilty of deception.

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

TITLE XLVII.

CONCERNING PATERNAL CONTROL.

1. *The Emperors Antoninus and Verus to Titius.*

If you allege that your son is under your control, the Governor of the province will determine whether he ought to hear you, as you have for a long time permitted his affairs to be transacted as those of the head of a family, by the persons appointed his guardians under his mother's will.

2. *The Emperor Antoninus to Maronia.*

Whatever property you have obtained while under the control of your father belongs to him, excepting such as he cannot legally acquire.

Published on the sixteenth of the *Kalends* of March, during the Consulate of Lsetus and Cerealis, 216.

3. *The Emperor Alexander to Artemidorus.*

While your son is under your control, he cannot alienate any property which he has acquired for you. If he should not show you the respect due to a father, you will not be prevented from punishing him by the right of paternal authority, and you can use even a harsher remedy if he should persevere in his obstinacy, for having brought him before the Governor of the province, the latter will impose the sentence which you desire.

Published on the sixth of the *Ides* of December, during the Consulate of Albinus and Maximus, 228.

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

It seems to be more proper for the disputes which have arisen between you and your children to be settled at home. If, however, the matter is of such a nature that you deem it necessary to have recourse to the law in order to punish them for the wrong which they have inflicted upon you, the Governor of the province, if applied to, will order what is usually prescribed by law with reference to pecuniary disputes, and will compel your children to show you the respect which is due to their mother, and if he should ascertain that their disgraceful conduct has proceeded to the extent of serious injury, he will severely punish their want of filial affection.

Published on the fifteenth of the *Kalends* of June, during the Consulate of <sup>^</sup>milianus and Bassus.

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

If your daughter does not show you proper respect, but also refuses to furnish you with the necessities of life, she can be compelled to do so by the Governor of the province.

Published on the *Kalends* of March, during the Consulate of Diocletian, Consul for the third time, and Maximian, 287.

6. *The Same Emperors to Hermogenes.*

Repudiation, which was employed by the Greeks for the purpose of being rid of their children, and was styled ....., is not recognized by the Roman laws.

Published on the seventeenth of the *Kalends* of December, during the Consulate of Maximus, Consul for the second time, and Januarius.

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

If your husband, although a soldier, was still under the control of his father, and himself had a son in lawful marriage, there is no doubt that he will remain subject to the authority of his grandfather.

Ordered on the second of the *Nones* of April, during the Consulate of the Csesars.

8. *The Same Emperors and Csesars to ^miliiana.* Freedmen are not prevented from having their children, born in lawful marriage after they had obtained their liberty, under their control.

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

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

The Decrees of the Senate enacted with reference to the acknowledgment of offspring clearly set forth that no one can deny his child, as is shown by the penalty prescribed, as well as the prejudicial action authorized by the Perpetual Edict, and the fact that support can be demanded before the Governor by a child over three years of age, if applied for in its own name.

Ordered at Sirmium, on the fifth of the *Kalends* of May, during the Consulate of the Csesars.

10. *The Emperor Constantine to Maximus, Prefect of the City.*

Such importance was attached to liberty by our ancestors that fathers, who in former times had the right of life and death over their children, were not permitted to deprive them of their freedom.

Given at Thessalonica, on the fifteenth of the *Kalends* of June, during the Consulate of Severus and Rufinus, 323.

## TITLE XLVIII.

### CONCERNING ADOPTIONS.

1. *The Emperor Gordian to Martia.*

Those who are subject to the power of others cannot be adopted under the Civil Law, unless before a magistrate who has complete jurisdiction.

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

2. *The Emperors Diocletian and Maximian, and the Ctesars, to Timothy.*

If the blood-relatives of the child under the age of puberty, whom you desire to arrogate as your natural son, consent to this before the Governor of the province, you can have him as your son, but a fourth part of your estate must be left to him by your last will or given to him by you at the time of his emancipation, and security with reference to his patrimony shall be provided with proper sureties in the presence of a public official, in order that you may not, under the pretext of adoption, seize his property, which should be diligently preserved by you for his benefit.

Arrogation granted by the indulgence of the Emperor, and carried out before the Praetor or the

Governor, has the same validity that it formerly had when, under the ancient law, it took place in the presence of the people.

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

3. *The Same Emperors to Martianus.*

As you state that the person whom you desire to arrogate is your freedman, and you do not set forth in your petition any good cause for doing so, that is to say, that you take this step for the reason that you have no children, you are advised that the authority of the law refuses your request.

Published on the sixteenth of the *Kalends* of July, during the Consulate of Maximus and Aquilinus, 286.

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

Adoption should not be made by means of private documents, even though they may be acknowledged before a notary, but the ceremony with all the formalities required by law usually takes place in the presence of the Governor.

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

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

It is certain that a woman cannot arrogate, as she cannot have children under her control. However, as you desire the privilege of having your stepson take the place of your lawful offspring, as a consolation for the children whom you have lost, We grant your request in conformity with what We have already provided on this point, and hence We permit you to have your stepson occupy the position of your natural and legitimate son just as if he had been born to you.

Published on the third of the *Nones* of December, during the Consulate of Tiberianus and Dio, 291.

6. *The Same Emperors and Caesars to Melianus.*

The arrogation of those who are their own masters cannot be effected either in this Imperial City, or in the provinces, unless under a rescript of the Emperor.

Published at Byzantium, on the sixth of the *Nones* of April, during the Consulate of the Csesars.

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

Anyone who has legally been given in adoption to the resident of another town than that in which he resides does not thereby change his citizenship, and therefore you will see that your right to obtain public honors and offices in your birthplace and your duty to discharge them is not affected by adoption.

Ordered at Sirmium, on the eleventh of the *Kalends* of February, during the Consulate of the Csesars.

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

The patron of a mother is not forbidden to adopt the daughter of the latter, when the father, under whose control she is, gives her in adoption. The arrogation of a woman who is her own mistress, however, can never take place, except by virtue of an Imperial Rescript.

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

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

An adoptive father is not forbidden to remove his adopted son from his family by the solemn

act of emancipation, even when the adoption was granted by Our indulgence.

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

A doubt arose among legal authorities in ancient times with reference to children who are under the control of their fathers, being given in adoption by the latter to others, whether a child of this kind, if it was passed over by its natural father, would have a right of action against his estate on the ground of the will being inofficious. Papinianus denies him this right of action; Paulus failed to give an opinion on this point; but Martianus made a distinction, and, in order that the child might not lose the estate of both fathers, he held that it would be entitled to the estate if it had not been mentioned in the will of its natural father, and its adoptive father was poor.

Another inconvenience arises in a case of this kind, for if, after the death of the natural father, the adoptive father should relinquish his right of adoption by means of emancipation, the adopted child would have no hope, as it could not attack the will of its natural father for the reason that at the time of the death of the latter it belonged to another family; nor could it attack that of its adoptive father because it had been removed from his family by emancipation; and therefore, for the purpose of disposing of this doubt, and correcting this defect, We decree that where an adoption of a strange person is made, the rights of the natural father are, by no means, lost, but he still retains them, just as if his son had not been transferred to another family. For the tie of adoption is so fragile that a person can become a son and a stranger through emancipation, upon the same day. And who would suffer the rights of a natural father, created by the bond of nature, to be lost by this species of mockery? In this instance, permission is given to the son by the ancient law to oppose his adoption, and he cannot be compelled to pass into another family without his consent.

Therefore, as We have already stated with reference to the transfer of a son to a strange father by adoption, the rights of said son remain unimpaired, so far as an action to declare a will inofficious is concerned, as well as with reference to all other successions which are transmitted to children either as heirs at law, or by testamentary provisions, so that he himself can both be a source of profit to his natural father, and be entitled to what is due to him from the latter. If, however, his natural father should have given him in adoption to his maternal or paternal grandfather, or if he himself, having been emancipated, should, in like manner, have given his son in adoption to either his maternal or paternal great-grandfather, for the reason that, in this instance, the rights of nature and adoption are combined in one and the same person, the right of the adoptive father will stand, and be joined to the natural tie by legitimate adoption, and the son will only consider who is connected with him by nature, and to whom the law has assigned him by adoption. Under such circumstances, the opinion of Papinianus shall prevail, and the adoptive son can direct all his hopes towards his adoptive father, and will not be permitted to interfere with the estate of his natural father, and he must manifest filial respect only for his grandfather or great-grandfather, and acquire for him whatever property can be so acquired, and exist for his benefit, and he alone shall be considered his father whom the law created, and whom Nature did not reject.

We do not find that the distinction of Martianus is applicable in this case, where no suspicion of fraud can be said to exist, as the affection of a grandfather or a great-grandfather does not permit any such suspicion to arise, and all matters shall remain as they are, unless the grandfather or great-grandfather should emancipate his adopted son; for then it will be necessary for him again to be brought under the authority of his natural father, as the adoption of any one is annulled by means of emancipation.

(1) But in order that We may not leave the question of the adoption of a strange person unregulated by law, We grant permission to an adoptive father of this kind, that is to say, to a stranger, to leave his adoptive son nothing by his will, if he should desire to do so; but if he does leave him anything, it shall be considered as due to his generosity, and not because he was legally required to do so. For as We have preserved for the son everything to which he is entitled by natural law, it is perfectly clear that all property which, in accordance with Our

enactments, can come into the hands of the son of a family, will be acquired, not by the strange adoptive father, but by the natural father, so far as the usufruct of the same is concerned, and shall belong to him as having been acquired by a fictitious and recent affection, and not through the diminution of his former blood-relationship.

Where, however, the son remains permanently adopted in this way, without being emancipated, We desire that the only benefit accruing to him from the adoption shall be that he cannot be defrauded out of the succession of his adoptive father if the latter should die intestate, but shall have the advantage of acquiring the property of his natural father by will. For according to the ancient laws, the bond of relationship which connected the son with his natural father was not dissolved by adoption, but the rights which accrued to him under it were added to certain others, which he retained under natural law, and he who was legally a member of the adoptive family remained a blood-relative of the natural family. For what authority can abolish maternal rights when, even according to the ancient law, the child had an adoptive father, but no other mother than the one whom nature had given him?

Therefore, We order that a child of this kind shall preserve his natural rights unimpaired, still, if a stranger, who is his adoptive father, should die without making a will, he will only be entitled to his estate as a proper heir, and will have no other lawful rights with respect to the family of his adoptive father and nothing in common with it, but will be considered a stranger, so far as the said family is concerned.

(2) When, however, all adoptive rights are extinguished by emancipation, then there can be absolutely no claim advanced to the estate of the adoptive father, if he is a stranger, even though he should die intestate; but the son shall only recognize his natural father, just as if he had not been in the first place transferred by adoption.

(3) Moreover, the rules which We have established with reference to other adoptions, We also prescribe concerning those made *ex tribus maribus*, by strangers under the Sabinian Decree of the Senate, for absolutely no difference should exist between those and other adoptions.

(4) What We have already stated concerning a son given in adoption by his father also applies to a daughter, a grandson, and a granddaughter, and We extend the rule to include their descendants of both sexes who are under paternal control; provided, at the death of their grandfather, they do not again come under the authority of their father, for if they should do so (when the grandfather is not required to leave anything to his grandson or granddaughter), all the rights relating to adoption remain unimpaired, so far as the child is concerned.

All the provisions of this law which apply to sons, daughters, grandsons, granddaughters and their descendants who are under paternal control, have been introduced to remove any doubt as to what should be decided where there are two fathers of one child, one bestowed by nature, and the other appointed by law.

(5) Where a man, who is his own master, gives himself in adoption by Imperial authority, he still retains intact all his filial rights with respect to his adoptive father, for, in this instance, no distinction exists between the two fathers, as when an adopted son becomes the heir of his father (who is the arrogator) he is added to his family, and all the provisions which the ancient legislators introduced with reference to an arrogated son remain intact and unimpaired.

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

#### 11. *The Same Emperor to Julian, Praetorian Prefect.*

We, desiring to amend, or rather to abolish the ancient technicalities generally employed in adoptions, and by means of which three emancipations and two manumissions usually took place in the case of sons, and a single emancipation in the case of daughters and other descendants, decree that a father who desires to give children, who are under his control, in adoption, shall be permitted to do so without observing the old formalities connected with emancipations and manumissions, by appearing before a competent judge, and complying

with the ordinary legal requirements, the person making the adoption as well as the one adopted both being present, provided the latter does not withhold his consent.

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

## TITLE XLIX.

### CONCERNING THE EMANCIPATION OF CHILDREN.

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

If the law of the town in which your father emancipated you conferred authority upon the duumvirs to allow parents born elsewhere to emancipate their children, the act of your father is valid.

Published on the third of the *Nones* of December, 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 Gennadia.* In the emancipation of children, as in the case of donations, the truth should rather be considered than anything stated in writing.

Published on the fifth of the *Ides* of March, during the Consulate of Tiberianus and Dio, 291.

#### 3. *The Same Emperors and Csesars to Heliodorus.*

Children are not released from paternal authority by mere consent, but by a formal proceeding or an accident, and inquiry is not made as to the motives which may have induced the father to emancipate his son, but whether the legal formalities were observed.

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

#### 4. *The Same Emperors and Caesars to Colona.*

A grandfather cannot be compelled to release his granddaughter from his authority, and it is not Our custom to confer a benefit to another's injury.

Given on the *Ides* of October, ....

#### 5. *The Emperor Anastasius to Constantine, Prsetorian Prefect.*

We order that ascendants, that is to say a father, a paternal grandfather or great-grandfather, and other persons of the male sex in degrees further removed, shall have permission to emancipate children who are under their control, namely: their sons or daughters, grandsons or granddaughters by their sons; great-grandsons or great-granddaughters, and all other persons of both sexes connected with them in the direct descending line, whether they are absent and away on a journey, or whether they reside in the same places, provinces, or cities, even if they are not present in court at the time that they desire to render them independent; and, under such circumstances, they should petition for a rescript which shall be recorded and deposited with a competent magistrate having jurisdiction of emancipation proceedings; and after this has been done and the deposit and registry made in accordance with the prayer of the petition, under the authority granted by the rescript, the emancipation shall obtain full force, and the persons entitled to this benefit shall be released from the control of others, just as if they had been emancipated by their parents; provided, however, the said persons have agreed to the emancipation as proposed by their fathers, and this has been provided by the testimony of witnesses, in presence of the same judge or any other whomsoever, either before the petition was filed and the rescript issued, or afterwards, unless they are infants, who become their own masters in this way without their consent.

Given at Constantinople, on the eleventh of the *Kalends* of August, during the Consulate of Probus and Avienus Junior, 503.

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

As We have observed that numerous vain formalities take place after emancipation, and as the fictitious sale of free persons, as well as much perplexing verbiage and injurious boxes on the ear, for which no reasonable cause exists, We, for the purpose of disposing of all these modes of expression, do order that he who desires to emancipate another shall be granted permission to do so under the Anastasian Law, or to appear before the tribunal of a competent judge, without being provided with an Imperial Rescript, or to apply to other magistrates who have been invested with jurisdiction of emancipation, either expressly by the laws, or in conformity with long-established custom; and release from paternal authority and the observance of all the legitimate rights to which he may be entitled (even though he did not expressly reserve this for himself), his sons or daughters, grandsons or granddaughters, or any of their descendants who may be under his control, and as an act of generosity to give them their *peculium*, or transfer to them any other property as well as such as they are not permitted to acquire, but of which, in accordance with the terms of Our Constitution, they are entitled to the usufruct; and all these things they can do, the empty formalities of the ancient laws having been abolished by these provisions, as has already been stated.

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

#### TITLE L.

##### CONCERNING UNGRATEFUL CHILDREN.

1. *The Emperors Valentinian, Valens, and Gratian to Pr&textatus, Prefect of the City.*

The laws punish, by the revocation of emancipation and the deprivation of undeserved freedom, sons, daughters, and other descendants who have been guilty of disobedience, or who have inflicted any verbal insult or atrocious injury upon the parent who emancipated them.

Given at Milan, on the twelfth of the *Kalends* of September, during the Consulate of Lupicinus and Jovian, 367.

#### TITLE LI.

##### CONCERNING PERSONS WHO RETURN BY THE RIGHT OF POSTLIMINIUM, AND THE RANSOM OF CAPTIVES FROM THE ENEMY.

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

A girl born of two captives in Sarmatia is considered to follow the condition of her father, if both her parents return to Our territory, for although she cannot, properly speaking, enjoy the right of *postliminium* because she was not a captive, still the return of her parents restores the girl to her father. If the latter should be killed by the enemy, she must necessarily be considered to follow the condition of her mother, who brought her daughter with her. For the fiction of the Cornelian Law, which grants legal heirs to anyone who dies in the hands of the enemy, does not apply to one who is born in their hands, for the reason that her father is considered to have died at the time when he was captured.

Without date or designation of Consulate.

2. *The Emperor Gordian to Publicanus.*

Persons who have been ransomed from the enemy are deemed rather to be pledged than reduced to a servile condition, until the price of their ransom has been paid; therefore, if the amount expended for that purpose is given to them as a donation, it is clear that they are restored to their former condition.

Hence, if you have married a captive, who was ransomed from the enemy after she had been released from this condition of natural pledge, you should have no apprehension with reference to either her condition or that of your common children.

Published on the second of the *Ides* of June, during the Consulate of Gordian, Consul for the

second time, and Pompeianus, 242.

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

As you allege that your relatives have not yet returned under the right of *postliminium*, but are still living, and that their property is being fraudulently squandered by the adverse party, the Governor of the province, if applied to, will provide for the appointment of a public official who will take charge of said property, after having furnished proper security.

Published on the fifth of the *Kalends* of September, during the Consulate of Diocletian, Consul for the third time, and Maximian, 287.

4. *The Same Emperors and C&sars to Hermogenes and Others.*

It has not escaped Our notice that the estate of a woman, as long as it is not known whether she is dead, or is held a prisoner by the enemy, cannot be entered upon by her son, as the property of those who have fallen into the enemy's hands can only be acquired by the right of succession from the time when they are known to have died in captivity, and no compromise can take place, or judgment be rendered, involving the property of one whose life and fortune are uncertain.

Wherefore, after it has been ascertained that your maternal aunt died in the hands of the enemy, you will be permitted to obtain possession of her estate under the Praetorian Law, and your rights will not be prejudiced by any acts which have been wrongfully performed with reference to the estate, and if you are in the nearest degree, the whole of it will belong to you.

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

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

As you say that your son, although not ransomed from the enemy, was, without the execution of any contract, delivered by the barbarians to the prefect of the legion, he will be entitled to the right of *postliminium*, and the Governor of the province must immediately order him to be restored to his former status of a freeborn citizen.

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

6. *The Same Emperors and Caesars to Justus.*

As both the right of *postliminium* and considerations of public utility demand that those who have ransomed captives from the enemy should restore them to their condition of freeborn citizens, after they have received the amount of their ransom, and you allege that the person who ransomed you refused to accept the amount of the ransom from you, or from another, the Governor of the province will compel him, by the employment of the proper means, to obey the laws, and having received the sum which he expended by way of ransom, not to further annoy you with regard to your condition.

Published on the *Kalends* of February, during the Consulate of Tiberianus and Dio, 291.

7. *The Same Emperors and Caesars to Claudius.*

We are impelled to suppress the infamy of a profligate female, and therefore, as you state that your daughter was captured by the enemy, and after having been prostituted by the woman who ransomed her, fled to you for the purpose of preserving her chastity and the honor of her family, if the Governor of the province should ascertain that the above-mentioned injury was inflicted upon your daughter by a woman who knew that she was freeborn, as a person of this kind is unworthy to have the amount of the ransom refunded on account of the odium attaching to the detestable profit which she has obtained, even though she may not already have been fully compensated by what she has gained from the wretchedness and disgrace of your daughter, you can make a good defence against the baseness of this wicked woman.

Published on the third of the *Nones* of February, during the Consulate of Tiberianus and Dio, 291.

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

The Governor of the province will take care that you are no longer kept in slavery, and he is too intelligent not to know that the status of your children—whom you allege were born after you were ransomed —should be protected, as no authorities hold that children born after the ransom of their parents are liable as pledges, on account of the price which has been paid for the ransom of their mother.

Published on the fifth of the *Ides* of February, during the Consulate of Tiberianus and Dio, 291.

9. *The Same Emperors and Caesars to Gregorius.* The *Lex Cornelia* constitutes a son the proper heir of his father who died during captivity if, in the meantime, he should return, and provided that, when he was captured, he was under his father's control. Therefore, if you can prove before the Governor of the province that you are entitled to the estate of your father, either by his will or on the ground of intestacy, he will order the property of the estate to be delivered to you, unless, after your return, so long a time has elapsed that your claim will be barred by prescription.

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

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

As free persons captured by the enemy, who have returned under the law of *postliminium*, are restored to their former status, so, likewise, slaves are returned to their masters. Hence, if the woman whom you mention was your father's female slave was not ransomed in the course of trade, having returned, she will again belong to her master, or to the heir of him who lost her through captivity.

Ordered at Adrianople, on the third of the *Kalends* of May, during the Consulate of the Csesars.

11. *The Same Emperors and Caesars to Eutychius.*

If Sabinus ransomed you from the enemy in the course of trade, and you were free, and it is proved that he had released the lien which he had on you by way of pledge for the ransom, you will not become a freedman, but will be restored to the condition of a freeborn person, which you had lost, and you will owe no services to the children of Sabinus.

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

12. *The Same Emperors and Caesars to Quintiana.*

Persons who have been captured by the enemy and not ransomed, but liberated by the bravery of Our soldiers, at once recover the status which they had lost by the accident of their captivity, and slaves are, moreover, restored to their owners; for We should hold that those who are taken in this way are not captured, and it is proper for Our soldiers to be their protectors, and not their masters.

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

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

If he who ransomed you, a freeborn woman, from the enemy, then married you, it is but reasonable that you should be released from the pledge for your ransom, and restored to the condition in which you were born, by the dignity of marriage, and the hope of future legitimate offspring.

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

14. *The Same Emperors and Caesars to Severa.*

The right of *postliminium* gives a daughter, as heir at law, the estate of her mother, where the latter died in slavery due to captivity, by the mere fact of the occurrence; and, in the meantime, We shall not permit any injury to be done to you by which you may be prevented from obtaining the property belonging to your mother's estate.

Ordered on the sixteenth of the *Kalends* of April, during the Consulate of the Caesars.

15. *The Same Emperors and Caesars to Macrotraulus.*

When a freedman, who has been captured by the enemy, is ransomed, he can, by virtue of his free birth, claim for himself any rights that he has in the succession, even before he has refunded the money expended for his ransom, in order that he may be able to repay it out of the funds of the estate.

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

It is settled that, where the sons of a woman who has been ransomed from captivity (even though born while she was a captive, of a father who was a slave) shall, in accordance with the liberal interpretation of the law, enjoy the freeborn condition of their mother.

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

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

A freeman captured by the enemy, and afterwards ransomed, recovers his former status from the time when he refunded the amount of his ransom, or was released from its payment in any way whatsoever. In this instance, the son was ransomed by his mother, and, as a contract of this kind is considered not to have been made for the sake of reward, but through maternal affection, the intention of receiving the son under the most desirable conditions at once restores him to his mother, so that he will not be excused from the performance of civil duties, on account of the former circumstances of his having been a prisoner of war.

Therefore, as you ransomed your son from the enemy through motives of pecuniary interest, it is not proper that you should repent of having done so, and that you should claim any part of the sum that you paid; you can, however, justly demand from him the dowry which he owes you.

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

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

Persons who have been captured by the enemy, and have returned under the law of *postliminium*, are entitled to a direct action to recover any property which they have lost through the event of their captivity, and whatever has been lost either by usucaption, release, or non-user shall be restored to them within the available year by means of the action to re-establish them in their rights.

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

19. *The Emperors Gratian, Valentinian, and Theodosius to the General Severinus.*

Those whose captivity was due to necessity are hereby notified that, if they did not go over to the enemy, but were carried away during a hostile attack, they should hasten to return to their own country, and that under the right of *postliminium* they will receive any property they formerly possessed in lands, slaves, or other effects, even though it may be in the possession of Our Treasury. Nor let any of them anticipate any delay resulting from a contest, as proof will only be required whether the party in question voluntarily accompanied the barbarians, or whether he was compelled to go.

Given at Rome, on the sixth of the *Kalends* of July, during the Consulate of Gratian, Consul for the fifth time, and Theodosius, 366.

20. *The Emperors Honorius and Theodosius to Theodore, Prse-torian Prefect.*

No one shall detain, against their will, any of the inhabitants of Our different provinces, no matter what their sex, condition, or age may be, whom the cruelty of the barbarians has subjected to captivity, but they shall have full power to return to their country, if they desire to do so. And, where any expenditure has been made for clothing or provisions in their behalf, it should be provided on the ground of humanity, nor should the return of such supplies be demanded; except, however, where it is shown that the captives were purchased from the barbarians, since it is only just that the price paid for their freedom should be refunded to the purchasers on account of the public welfare; for by the denial of this right, the prospect of loss may cause the sale of captives reduced to such necessity, as they should refund to their purchasers the amount paid for their ransom, or should compensate them by their labor, or remain in their service during the term of five years, in return for the benefit conferred upon them, at the end of which time they will recover their freedom, that is to say, if they were born free. Therefore, they shall be returned to their homes upon the terms which We have specified, and, even according to the opinions of the ancient jurists, all their rights will remain intact under the law of *postliminium*.

If anyone should attempt to violate this law, whether he be an agent, a lessee, or an attorney, he shall be sentenced to the mines, as well as to the penalty of deportation; and if he is the owner of property he is notified that it will be confiscated to the Treasury, and that he himself will be liable to deportation.

To the end that this law may be the more readily enforced, We desire the Christians of neighboring places to cause it to be carried into effect. And We decree that where cases of this kind arise, the decurions of adjoining cities shall be notified to assist in the execution of this Our law; and all Governors are warned that if they neglect to enforce it, a fine of ten pounds of gold will be exacted from them, as well as from their subordinate officers.

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

TITLE LII.

CONCERNING THE ABANDONMENT OF CHILDREN BOTH FREE AND SLAVE,  
AND CONCERNING THOSE WHO RECEIVED NEWBORN CHILDREN FOR THE  
PURPOSE OP REARING THEM.

1. *The Emperor Alexander to Claudio.*

If, without your consent or knowledge, the child of your female slave or serf has been abandoned, you will not be prevented from recovering it. Its restitution, however, provided it is not recovered from a thief, must take place in such a manner that where anything has been expended for its support, or instruction in a trade, you must refund the amount.

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

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

Every person should support his own offspring, and anyone who thinks that he can abandon his child shall be subjected to the penalty prescribed by law. We do not give any right to masters or to patrons to recover children who have been abandoned, when children exposed by them, as it were, to death, have been rescued through motives of pity, for no one can say that a child whom he has left to perish belongs to him.

Given on the third of the *Nones* of March, during the Consulate of Gratianus, Consul for the third time, and Equitius, 274.

### *3. The Emperor Justinian to Demosthenes, Praetorian Prefect.*

We decree that no one shall be permitted to claim as his, under the title of ownership, vassalage, or tenancy, any child born either to freeborn parents, or to freedmen, or to slaves, who has been abandoned. And We do not permit those who have taken such children for the purpose of rearing them to do so with any distinction, so as to bring them up and educate them, whether they are males or females, in such a way as to hold them as slaves, freedmen, serfs, or vassals; but children brought up by men of this kind shall, without distinction, be considered free and freeborn, and can acquire property for themselves, and transmit everything which they possess, in any way they may desire, to their posterity, or to foreign heirs, without being branded with the stigma of servitude, vassalage, or the restrictions attaching to the conditions of tenancy or serfdom.

Nor do we concede that those who have received them have any right to their property, and this law shall be enforced throughout the entire extent of the Roman Empire. Nor shall those who, in the first place, have abandoned their children and perhaps entertained the hope of their death, and rendered their destiny uncertain, have any right to recover them from the persons by whom they were rescued, and reduced them to slavery. Nor shall those who, through motives of compassion, have supported these children, be allowed to change their minds, and make them slaves, even though, in the beginning, they took charge of them with this intention, lest it may appear that what was dictated by benevolence has become merely a mercenary transaction.

These provisions shall be observed, not only by the illustrious Governors of provinces, but also by the holy Bishops, the officers of the Governors, the Senators and Defenders of cities, and all other Civil authorities.

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

### *Extract from Novel 54, Chapter I. Latin Text.*

There was an ancient law which provided that children born of a free person and a serf followed the condition of the serf, and this case has been submitted by Justinian to the general rule that the child, so far as its freedom is concerned, follows the condition of its mother.

## TITLE LIII.

### WHAT IS MEANT BY LONG-CONTINUED CUSTOM.

#### *1. The Emperor Alexander to Aper.*

The Governor of the province shall, after the case has been heard, decide in accordance with the practice observed in the settlement of controversies of the same description in the town where the suit was brought. For where a custom exists, the reason which established it should be taken into consideration, and the Governor of the province must be careful not to render a judgment which may violate long-established usage.

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

#### *2. The Emperor Constantine to Proculus.*

The authority and observance of long-established custom should not be treated with contempt, but it should not prevail to the extent of overcoming either reason or law.

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

#### *3. The Emperors Leo and Anthemius to Alexander.*

A custom adopted and observed steadfastly for a long period of time resembles a law and obtains the force of one, and therefore We decree that any custom which has reference to, and

is observed by, offices, *curiess*, cities, public institutions, or corporate bodies, shall have the effect of a perpetual law.

Given on the seventh of the *Ides* of September, during the Consulate of Martianus and Zeno, 469.

## TITLE LIV.

### CONCERNING DONATIONS.

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

You understand that where written instruments conveying the title to slaves, who have been purchased, have been given and delivered, the donation and transfer of the slaves themselves are considered to have taken place, and therefore you can proceed by an action *in rem* against the donor.

Published on the fifth of the *Kalends* of July, during the Consulate of Faustinus and Rufinus, 211.

#### 2. *The Emperor Gordian to Leonis.*

If, after having been emancipated, your father assigned to you, as a donation, the right to collect a claim, the heir of your debtor will in vain allege that the consent of the latter was necessary to the transfer, as it will be sufficient if the rights of action for that purpose have been assigned to you.

Published on the second of the *Ides* of March, during the Consulate of Gordian, Consul for the second time, and Pompeianus, 242.

#### 3. *The Emperor Deems to Marcellinus.*

It has been held, not without reason, that the right of action to a future expectation can be transferred with the full consent of the donor.

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

#### 4. *The Emperor Probus to Marsia.*

Your rights cannot be prejudiced if the taxes were paid by someone to whom the property was not given, or by his agent, in his name.

Published on the fifth of the *Kalends* of January, during the Consulate of Messala and Gratus, 280.

#### 5. *The Emperors Carinus and Numerianus to Flaconilla.*

If the donation does not appear to have been made by means of a letter, still, the words of the will, by which the generosity of the testatrix is confirmed, no doubt have reference to a trust.

Published at Rome, on the sixth of the *Kalends* of February, during the Consulate of Carinus, Consul for the second time, and Numerianus, 284.

#### 6. *The Emperors Diocletian and Maximian to Christiana.*

It cannot be doubted that donations are valid, even when made between absent persons, and, above all, if those upon whom the donations were bestowed have, with the consent of the donors, acquired possession of the articles donated.

Published on the third of the *Ides* of February, during the Consulate of Maximus, Consul for the second time, and Aquilinus, 286.

#### 7. *The Same Emperors and Caesars to Julius.*

The census return made by another does not usually prejudice the owner of the property, but if you consented for your stepson to return your slaves as his, you will be considered to have given them to him.

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

8. *The Same Emperors and Caesars to Flora.*

If the Governor of the province should find that you returned the fields in question to the census in the name of your sons, without the intention of donating them, he will decide in accordance with what the truth may suggest.

Published on the eighth of the *Ides* of September, during the Consulate of Diocletian, Consul for the fourth time, and Maximian, Consul for the third time, 290.

9. *The Same Emperors and Csesars to Augustiana.* You can, by means of the action of stipulation, proceed to enforce compliance with the condition which you prescribed, in the donation of your property; or you can bring suit for an indeterminate amount, that is the *Actio Prsescriptis Verbis*, before the Governor of the province, who will see that it is fulfilled.

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

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

No one gives either ignorantly or unwillingly, and therefore if you did not have in your mind the tract of land which it is stated in the instrument you consented to donate, you understand that you will not lose what you did not intend to convey, or did not specially indicate, as the force of truth is greater than that of any written document.

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

11. *The Same Emperors and Caesars to Sabinus.*

According to your statement, you have retained a certain portion of your property, and have transferred the remainder to him who is under your control, as a donation. It is a plain rule of law that an act of this kind made in favor of someone under paternal control is considered as having been done rather as an evidence of the intention of the father than as a perfect donation. The assignment of claims in favor of an emancipated son, however, operates as a complete donation of the rights of action.

Ordered on the second of the *Kalends* of May, during the Consulate of the Caesars.

12. *The Same Emperors and Caesars to Aurelian.*

No one can be prevented from transferring to another, as a donation, his share of any property which has not yet been divided.

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

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

If it is proved that anything was given to you by means of a letter, the brevity of the document evidencing the donation (if it is proved to have been legally executed), will not affect your rights in any respect.

Given at Sirmium, on the fifteenth of the *Kalends* of June, under the Consulate of the above-mentioned Emperors.

14. *The Same Emperors and Caesars to Idasus.*

If your son, without your consent, gave property to his betrothed which belonged to you, he could not transfer it to her because it was not his.

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

15. *The Same Emperors and Caesars to Severn.* Liability for debts due from an estate does

not attach to a person who has received any portion of it by way of donation, but renders the heir of the entire estate responsible. Therefore, if the land which you obtained as a donation was not hypothecated to anyone, you need have no anxiety that either the heirs, the donor, or her creditors, can legally bring suit against you.

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

16. *The Same Emperors and Caesars to Theodore.* Old age alone is not an impediment to making a donation. Given on the fifth of the *Kalends* of December, during the Consulate of the above-mentioned Emperors.

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

Whether you have donated property to your emancipated sons, or whether they were still under your control, if, after they became independent, you did not deprive them of their property donated, and which was in their hands, you must not flatter yourself that, having changed your mind, you can deprive them of what you gave them.

If, however, the property which you gave was obtained by them while under your control, and after their emancipation they kept possession of it against your consent, you will still retain the ownership of the same, as they could not have obtained any of your property as long as they were subject to your authority, even though you might have wished them to do so when they were emancipated, because you subsequently were unwilling.

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

18. *The Same Emperors and Caesars to Audianus.*

If it is proved that you are released from liability for an action of theft, because the property in question was donated to you, you need have no apprehensions.

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

19. *The Same Emperors and Caesars to Alexandria.*

If your grandmother has bestowed her own property, as a gift, upon him against whom you have filed your petition, there is nothing to prevent the gift from being valid, whether the property was derived from the estate of your father or your grandfather.

Ordered at Sirmium, on the sixteenth of the *Kalends* of February, during the Consulate of the Caesars.

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

A donation legally effected is not considered void, even though made by a third party, if the donor gave her consent.

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

21. *The Same Emperors and Caesars to Antonia.*

Your grandmother could not have given you her dowry, which was in the hands of her husband during her marriage.

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

22. *The Same Emperors and Caesars to Diomede.*

If, as you allege, you have given your property to your emancipated son under the condition of his paying your creditors, whether you agreed to this condition with reference to the property under a stipulation, or by a contract which was entered into, an action will not lie in favor of your creditors against your son, under the terms of your agreement, but it can be

brought against you.

It is, however, settled that he to whom you have given certain lands conditionally can have an action for an indeterminate amount brought against him, to compel him to fulfill the contract in accordance with the condition prescribed.

Ordered at Sirmium, on the seventh of the *Kalends* of April, during the Consulate of the Cassars.

*23. The Same Emperors and Caesars to Olympias.*

If the person who received the donation has, under a subsequent agreement, returned to you, as a gift, the property which you donated to him, the instrument evidencing the prior donation does not, by any means, annul the one which followed.

Ordered on the fifth of the *Kalends* of October, during the Consulate of the Caesars.

*24. The Same Emperors and Caesars to Macarius,* If you were not your father's heir, it is a perfectly clear rule of law that your rights cannot be prejudiced by his donation of property which belongs to you.

Published at Antioch, on the *Nones* of February, during the Consulate of Diocletian, Consul for the ninth time, and Maximian, Consul for the eighth time, 304.

*25. The Emperor Constantine to Maximus, Praetorian Prefect.*

A donation, whether or not it is direct, or made in anticipation of death, or held in abeyance because dependent upon a condition, or promised at some specified time, or regulated by the intention of the donor and donee (to the extent permitted by the law), should be subject to the following rule, namely: it must contain only those conditions and agreements which are authorized by the laws, and only such as are in conformity with this rule can be accepted, and any contrary to it shall be rejected.

Where the donation has been evidenced by a written instrument, the name of the donor, the title, and the description of the property shall be set forth, and this must not be done either secretly or privately, but be written upon a tablet, or upon any other kind of material which may be at hand, either by the donor himself, or by some other person who is present and has a right to do so; and the document should be registered after having been drawn up in the presence of a judge, or a magistrate, whenever the laws require this to be done.

Given on the third of the *Nones* of February, during the Consulate of Sabinus and Rufinus, 323.

*26. The Same Emperor to Catulinus, Proconsul of Africa.*

If anyone should desire to convey a tract of land to his emancipated minor son before the latter is able to speak for himself, or hold any property donated to him, he must comply with all the legal formalities required in the execution of the instruments of this kind. It has been decided that a slave, whom the donor may consider suitable, can be introduced, in order that the property may be acquired by the infant through him.

Given on the twelfth of the *Kalends* of May, during the Consulate of Sabinus and Rufinus, 316.

*27. The Same Emperor to Severus, Count of the Spains.*

We have decreed by a previously enacted law that donations shall be publicly registered, and this rule should be especially observed by persons who are merely related by blood, as anyone can, by means of clandestine and domestic fraud, readily find an opportunity to feign a transaction, or to revoke an act which has been lawfully performed. Therefore, as Our law does not except either children or parents from the necessity of registering instruments evidencing such donations, what We have already decreed with reference to their registry will apply to all cases of this description. It is, however, sufficient for their validity that such acts

should take place everywhere, even when the property is situated in some other place.

Given on the third of the *Nones* of May, during the Consulate of Dalmatius and Zenophilus, 333.

*28. The Emperors Honorius and Theodosius to Monaxius, Prse-torian Prefect.*

Where anyone who donates property, bestows it by way of dowry, or sells it, retains the usufruct of the same for himself, he will be considered to have immediately delivered the property, even if no stipulation has been made on this point, and nothing else will be required to establish the fact of its transfer; but, in every instance, the reservation of the usufruct shall be considered to imply delivery.

Given on the second of the *Ides* of March, during the Consulate of Honorius, Consul for the eleventh time, and the Caesar Constantius, Consul for the second time, 417.

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

It has been decided that a donation made for the benefit of strangers, and even of persons who are unknown, is valid. If anything should be donated without the transaction having been reduced to writing, but all the other legal formalities have been complied with, it will stand.

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

*30. The Emperor Leo to Constantine, Prsetorian Prefect.*

Donations of property made in this Imperial City, no matter where it may be situated, shall be recorded with the Master of the Census. Where, however, they are made in other cities, whether the Governor of the province is absent or present, or whether the said city has any magistrates or not, or only a defender resides there, the donor shall have full power to register the donation of his property, no matter where it may be situated, either before the Governor of any province, or before a magistrate or defender of any city, whom he may select; for just as a donation itself is dependent upon the intention of the donor, so he shall be permitted to register it in the presence of any of the above-mentioned officials. Donations of this kind which have been registered in the different provinces and cities, before any of the officials aforesaid, shall have incontestable and perpetual validity.

Given at Constantinople, on the fifth of the *Nones* of March, during the Consulate of Patricius and Richomer, 459.

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

We decree that it is not necessary for neighbors or other witnesses to be called in the case of donations which have been publicly recorded, for the evidence of private persons is superfluous where public records can be produced. We also decree that as it is not necessary to record such donations, if they have been drawn up by a notary or any other person, and are without the signature of witnesses, as they will still be valid; provided, however, that the donor himself or someone else, with his consent, has signed the document as required by law. Donations made without having been committed to writing are valid, in accordance with the Constitution of Theodosius and Valentinian, addressed to Hierius, Prastorian Prefect.

Given at Constantinople, on the *Kalends* of March, during the Consulate of Ello, 478.

*32. The Emperor Anastasius to Euphemius, Prsetorian Prefect.*

In accordance with the Constitution of the Divine Leo, We order that donations shall only be recorded before the illustrious Master of the Census, and the same rule shall be observed with reference to instruments of this kind as applies to those which have been drawn up or executed in this Imperial City; nor shall anyone be permitted to register them either in the presence of the defenders or magistrates of other cities, or in any other places whatsoever than the one above mentioned; and those who resort to this method of registry as well as those who allow it to be done, and notaries who aid persons with their testimony in any place or city not authorized by this law (as previously stated) are hereby notified that, in addition to other

penalties, they will be subject to a fine of twenty pounds of gold.

Given on the day before the *Kalends* of May, during the Consulate of Paulus, Consul for the fifth time, 496.

33. *The Emperor Justinian to Menna, Praetorian Prefect.* We hereby abolish that perplexing rule under which persons who receive the assignment of actions as donations are not permitted to transmit them to their heirs, unless they have already instituted proceedings in court with reference to the same, or obtained an Imperial Rescript releasing them from this requirement. For as it is permitted for rights of action attaching to sales to be transmitted to heirs after assignment, and before issue has been joined, so We desire that such as have been donated shall be transferred to them, even though no proceedings have been instituted, nor any demand made for payment. This rule shall also be applicable to an attorney appointed to conduct cases of this kind, so that the person to whom the rights of action have been assigned will not be prevented from employing an attorney to bring suit, even though issue has not been joined, or though any legal demand has previously been made.

We decree that these provisions shall only apply to persons who are known to be living at this time, and to whom rights of action by means of a donation have been assigned. For where persons of this kind are dead, We permit the ancient laws enacted with reference to such assignments to be observed.

Given at Constantinople, during the month of June, under the second Consulate of the Emperor Justinian, 528.

34. *The Same Emperor to Demosthenes, Praetorian Prefect.* We order that every donation which amounts to three hundred *solidi*, whether it be an ordinary one or one made before marriage, shall follow the common rule, and that their registry shall not be required.

Where, however, a donation is made over and above the amount fixed by law, it will not be valid, so far as any excess is concerned, but the remainder which comes within the limits of the law shall continue in full force, just as if no more had been added to it, which will be considered not to have been either expressed or implied. Imperial donations, however, as well as such as are devoted to pious uses are excepted, for it is reasonable that those made by the sovereign should not be subjected to the rule requiring registry, but that the Imperial source from which they are derived establishes their validity, a provision which has been adopted by Our predecessors as well as by Ourselves.

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

The same rule applies, and registry is not required, where a donation is made by a private individual to the Emperor.

END OF THE EXTRACT.

THE TEXT OF THE CODE FOLLOWS.

(1) We, however, decree that donations made for pious uses up to the sum of five hundred *solidi* shall be valid without registry, and, moreover, where ante-nuptial donations are made to adult minors, who are their own mistresses, no matter what sums they amount to, they shall be valid in accordance with the provisions of the ancient laws, even though they may not have been publicly registered.

When the donation did not consist of gold coin, but of movable or immovable property or such as is capable of moving itself, an appraisement should be made of the same, and if its value should be equal to that of the number of *solidi* prescribed by law it will be valid, and shall stand without being registered; but where it is found to exceed the sum specified, and it has not been registered, it will only be void so far as the surplus is concerned.

(2) In order to prevent any dispute from arising with reference to the transaction between the donor and the beneficiary of his generosity, We permit him who is entitled to the larger

amount of the property donated to have the choice of tendering the remainder of what has been appraised to the person who has the smaller share, so that he may have the whole of it. If, however, he should not wish to do this, then the property shall be entirely divided according to the share to which each one is entitled, if it is possible for this to be done without loss. In cases of this kind, in which the division cannot advantageously be made, if the owner of the larger amount is unwilling to offer his portion to the others, then he who has the smaller share shall be permitted to tender its value, and obtain the whole of it for himself.

(3) Moreover, if anyone has, at different times, made several donations to the same person, some of which did not exceed the legitimate amount, although when all were added the total was more than the sum authorized by law and appeared to exceed it, they shall not be considered to be united and form but one sum, and no rule shall be adopted by which the said donations may be decided to be of no effect, and be revoked as void; but, on the other hand, they shall be regarded as several in number and distinct, and each of them shall preserve its character, and not require the formality of registry. For as different opinions upon this point were held by the ancient authorities, some of them thinking that the donations were several in number, others that they constitute but a single one, We have believed it to be more humane that they should be designated as several, and all be valid, and that those who have profited by the liberality of the donors may know that the gifts of the latter were not void.

(4) If, however, anyone should receive a donation in which it was stipulated that the payment of a certain sum of money to him should be made every year, which sum did not exceed that prescribed by law, in the case of donations, there was a difference of opinion whether he who made this particular donation did not, in fact, make several, and that they did not require to be registered, or whether the annual donations proceeded from the source and origin of the entire stipulation, and should be considered as but one donation, and undoubtedly required the formality of registry.

The ancient authorities greatly differed on this point; but We, desiring to permanently dispose of all these questions, hereby positively order that if a donation of this kind should be made payable annually during the life of either the donor or the donee, it shall be held to consist of several donations, and to be exempt from the requirement of registry.

The uncertainty of fortune has suggested this rule to Us, as it is possible that the donor or the donee may only survive for the term of one year, or for a longer or a shorter time than this, and thus it may be ascertained that the entire amount of the donation did not exceed that prescribed by law. If, however, a mention of heirs has been made by either party, or the duration of the life of either the donor or of him who received the donation, was added, then the donation was, as it were, perpetuated, and rendered greater and more valuable by means of the extension of time, and it should be understood to be a single gift, and in its total amount to exceed that prescribed by law, and it must, by all means, be registered, otherwise it will be void.

Read for the seventh time in the New Consistory of the Palace of Justinian, and given on the third of the *Kalends* of November, during the Consulate of Decius, 529.

### 35. *The Same Emperor to Julian, Praetorian Prefect.*

When anyone gives a donation of money, and states a certain weight, but does not mention anything else, either generally or specifically, We require him, by all means, to give the stated weight of silver, whether he should prefer to do so in the form of vases, which shall not be less in value than the entire mass of which they are composed, or whether the estimate is made of silver in ingots, at the valuation that metal of this kind is worth in that part of the country.

(1) If, however, anyone has donated a certain income from his lands without specifying them, he will be obliged to transfer real-property from his estate that will return as much income as he mentioned in the donation, but the said real property need not be either the best or the worst which he has, but shall be of the average value of the same.

(2) In like manner, if anyone should donate a certain number of slaves, without designating them by name, he should not deliver such as will be a burden rather than an advantage; nor, on the other hand, is he compelled to deliver those who are of greater value than any of his other slaves, but, under these circumstances, a proper average should be considered.

(3) Where, however, the donor, having neither money nor slaves to give, or not having the full amount which he gave, donates something, an appraisement should be made of the deficiency, so that an estimate may be had of the amount of silver or slaves (as We have previously stated) and, in appraising the slaves, not more nor less than fifteen *solidi* shall be estimated as the value of each one, and in estimating the income from land the valuation shall be based upon what it has been worth for fifteen years.

In all these cases, however, if the donation is made within the limit prescribed by law, no registry shall be required. But if it should exceed that amount, then recourse must be had to registry, so that, with reference to what exceeds the sum authorized by law, the excess alone, and not the entire amount, shall be extinguished, in accordance with the rule which We already have established.

(4) If, however, anyone should make a donation of his entire property, or of the sixth, the half, the third, the fourth, or any other portion of the same, and the law has not been invoked to declare his donation inofficious, he will be compelled by the provisions of Our law to furnish the donee as much as he gave him, and in this instance, as We have previously ordered, registry of the donation shall by all means be required.

(5) If, however, in all of the above-mentioned cases, the usufruct of the property should have been reserved by the donor, delivery shall be understood to have been legally made. But if the donor did not expressly reserve it, and any stipulation was inserted in the donation, delivery of the property can be compelled to be made by virtue of the stipulation. But when this has been omitted, and the donor did not reserve the usufruct, still, by Our law, the necessity will be imposed upon him to also transfer what he intended to donate, and the donation shall not be void for the reason that the property was not turned over; nor shall it be confirmed merely by delivery, but the necessary effect of the latter will render the donation complete, and it shall be considered perfected according to Our law, and the donor will certainly be required to deliver either the property in question, or a part of the estate which he donated, or the whole of the same. For, as it depends upon the will of everyone to do what he intended, he must either not carry out his intention, or, after he has agreed to do so, he must not fail by having recourse to any carefully considered artifice, and must show as much zeal in complying with his engagements as in the invention of lawful excuses.

These rules will be all the more binding if the donation was made for pious purposes, or to members of the clergy, and such donations must be registered in accordance with the rule which has been specially laid down by Us in cases of this kind, and where they have been made for pious purposes, as aforesaid, and not carried into effect, the donor may be considered as irreverent and even impious, and must remember that he will be liable, not only to the penalties prescribed by law, but also to those inflicted by Heaven for fraudulent acts of this description.

In all the instances above mentioned not only the persons themselves, but also their heirs, will be compelled not only to deliver the property donated to those to whom the gift was made, but to their heirs as well.

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

### 36. *The Same Emperor to. John, Prsetorian Prefect.*

If anyone should contribute money for the ransom of captives, or bind himself by giving security to do so, for any amount whatsoever, he is advised that he cannot claim what he has given, or dispute the enforcement of his bond, on the ground (as in the case of donations) that

the sum is not payable for the reason that the donation was not registered.

On the other hand, he who received the money, whether immediately or after security had been furnished, will be obliged to discharge his pious duty, and he shall not be molested or annoyed either by him who gave him the money, or by others who were authorized by the law to require this to be done; but he shall only make oath that he actually paid the entire amount for the redemption of captives, without the commission of fraud or any diminution of the sum which was given him.

(1) In like manner, We release from the necessity of registry all donations of movable property, or of such as is capable of moving itself, which Our distinguished generals may bestow upon Our brave soldiers, whether derived from their own estates, or from the spoils of the enemy, at a time when they were either engaged in actual military service, or were residing in any place whatsoever.

(2) We also grant the same liberality of Our law to those whose houses have been destroyed by fire or other casualty, and such persons, who have received any sums of money, or in whose favor bonds have been executed, need not apprehend any demand for the same, and they can only claim the amount which is admitted to be due, even though no record has been made of the transaction; and permission shall not be granted them to spend it for any other purpose than the reconstruction of their houses. If any doubt should arise as to whether the entire sum, or only a portion of it has been expended upon the building, this shall be settled by the oath of the owner of the same.

(3) With reference to other donations We decree by the present law that they, without distinction, shall not be required to be registered up to the amount of five hundred *solidi*, for We think that donations above that amount should be registered; and hence We amend Our law, previously enacted, by which donations up to the sum of three hundred *solidi* were held to be valid without registry.

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

### *37. The Same Emperors to John, Prsetorian Prefect.*

We decree that superfluous words which are ordinarily inserted in donations, as, for instance, one *sestertius*, one drachma, four *asses*, should absolutely be abolished. For what need is there to employ words which have no effect? Therefore, We order that, under no circumstances, shall terms of this kind be mentioned, either in Imperial donations or in any others; but if anyone should make such insertions through mere verbosity, or omit to do so, it will make no difference.

## TITLE LV.

### CONCERNING DONATIONS WHICH AKE MADE PROVISIONALLY OR UNDER A CONDITION, OR TO TAKE PLACE AT A CERTAIN TIME.

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

If you can prove, as you allege, that a donation was made by you to your granddaughter, under the condition that she should furnish you with a certain sum for your support, you are, in this instance, entitled to relief on the ground that she refused to comply with the condition, that is to say, the right of action by which the former ownership may be recovered will be restored to you. For not only will you be legally entitled to a personal action, but the Divine Emperors have decreed that, in a case of this kind, an action for the recovery of the property should also be granted.

Published on the sixth of the *Kalends* of December, during the Consulate of Tuscus and Bassus, 259.

#### *2. The Emperors Diocletian and Maximian to Zeno.*

If you donated the ownership of your property, under the condition that after the death of the person who received it, it shall revert to you, the donation will be valid, as it can be made either to take place at a certain or an uncertain date, and the donee is required to comply with the condition imposed upon him.

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

3. *The Same Emperors and Caesars to Marcella.*

Whenever a donation is made under the condition that what is given shall, after a certain time, be transferred to another, it is stated on the authority of ancient rescripts that if he who is the beneficiary of a donation did not enter into a stipulation, and did not comply with the condition of the agreement, a personal action for recovery would lie in favor of the party who made the donation, or his heirs. But as the Divine Emperors afterwards, through a more indulgent interpretation of the law and in accordance with the wishes of the donor, permitted a praetorian action to be brought by him who did not enter into the stipulation, the action which your sister, if she had been living, could have instituted, will be granted to you yourself as her successor.

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

4. *The Same Emperors and Caesars.*

A donation which has been perfected does not admit of subsequent conditions; and therefore, if your father, after having made a donation, added certain conditions a short time afterwards, there is no doubt whatever that this fact cannot to any extent prejudice the rights of his grandchildren, the issue of your brother.

Given on the *Kalends* of October, during the Consulate of Tiberi-anus and Dio, 291.

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

If a mother should give something to her daughter, who is under the control of her father, subject to the condition that she will be emancipated within two years, although she did not become her own mistress in accordance with the condition imposed by her mother, still, if the husband should die first, and she should become independent in any way whatsoever, this case resembles the bequest of a legacy, and she will be either entitled to the property donated, or to an action to recover the same.

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

TITLE LVI.

CONCERNING THE REVOCATION OF DONATIONS.

1. *The Emperor Philip to Cosminus.*

Even if, by means of perfect donations, a freedman at any time whatsoever should obtain possession of property given to him, so as to have the full right of possession as owner, still, if he should be ungrateful, the entire donation can be revoked, if his patron should change his mind.

This rule shall also be observed with reference to property purchased in the names of freedmen with the money of their patrons, and for their benefit, as those who, through their faithful service, have enjoyed the generosity of their patrons, are not worthy to retain what has been given them when they begin to neglect their duties; since liberality should rather induce them to discharge their obligations than to be guilty of insolence.

This law, however, shall only apply to him who made the donation, but neither his children nor heirs will be entitled to its benefit, for it is not just that donations should in any way be interfered with which he who made them did not revoke in this lifetime.

Given on the fifteenth of the *Kalends* of July, during the Consulate of Emilianus and Aquilinus, 250.

2. *The Emperor Probus to Felix.*

If it should be proved before the Governor of the province that your daughter's grandmother, impelled by regret for what she had done, destroyed by fire the documents evidencing her donation, you need not fear that what has once been lawfully valid can, by any subsequent act, be rendered doubtful.

Published on the *Nones* of May, during the Consulate of Probus and Paulinus, 279.

3. *The Emperors Carinus and Numerianus to Januarius and Felix.*

Your mother cannot, by having merely changed her mind, alienate the land which she donated to you after you had been emancipated.

Published on the second of the *Ides* of January, during the Consulate of Carinus, Consul for the second time, and Numerianus, 284.

4. *The Emperors Diocletian and Maximian, and the Caesars, to Procula.*

As you allege that you have donated property for the purpose of defrauding another person, you understand that your confession is dishonorable; and therefore, if you have perfected the donation, you cannot revoke it merely by making the above allegation under the pretext of having changed your mind.

Published at Heraclia, on the *Kalends* of April, during the Consulate of the above-mentioned Emperors.

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

If you made the donation in conformity with law, it cannot be rescinded by the authority of Our Rescript.

Ordered at Heraclia, on the fifth of the *Kalends* of May, during the Consulate of the above-mentioned Emperors.

6. *The Same Emperors and Caesars to Herennia.*

In the beginning you were perfectly free to give, or not to give, to your son the lands and slaves referred to; therefore, cease to ask that the donation which you perfected be revoked on the ground of the absence of your husband, and your other children, as the validity of the donation is not dependent upon their presence.

Ordered on the fifth of the *Kalends* of October, during the Consulate of the Csesars.

7. *The Emperors Constantine and Constantius to Philip.*

To those mothers alone who have not contracted a second marriage, but have only been married once, We grant the power to revoke any donations which they have made to their children, when they are guilty of ingratitude towards them. Therefore, he who is accused of ingratitude by his mother will, by order of the presiding judge, be compelled to restore to her whatever he holds under the title of donation, from the very day on which issue was joined in the case. We, however, by no means permit to be revoked any gift of property acquired by the son while on good terms with the mother, and which has been sold, donated, exchanged, bestowed by way of dowry, or alienated for any other lawful reason, before judicial proceedings were instituted.

Moreover, We desire that the action granted to the mother shall be a personal one, and shall only have the effect of recovering the property, and that it shall not be granted against, or in favor of an heir. We think that enough has already tacitly been provided with reference to other mothers, who lead disreputable and dissolute lives; for who can imagine that any favor should be granted them, as We are willing to accord none of these privileges to women who

have merely contracted a second marriage?

Given on the twelfth of the *Kalends* of October, during the Consulate of Liminius and Catulinus, 349.

*Extract from Novel 22, Chapter XXXV. Latin Text.*

What a mother gives to her son cannot be revoked on the ground of ingratitude after she has contracted a second marriage, except for three reasons. First, if an attack is made by him upon her life; second, if he has laid violent hands upon her; third, if he has attempted to cause her to lose all her property.

*8. The Same Emperor to Orphitus, Praetorian Prefect.*

If a patron who has no children should, by way of donation, ever bestow all his property, or a portion of the same, upon his freedmen, and afterwards should have issue, everything which was donated shall revert to him who gave it, and remain subject to his will and at his disposal.

Given on the fifth of the *Kalends* of April, during the Consulate of Arbitio and Lollianus, 355.

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

Neither a father, a grandfather, nor a great-grandfather can revoke donations made to a son or a daughter, a grandson or a granddaughter, or a great-grandson or a great-granddaughter, who has been emancipated, unless it is proved by perfectly clear evidence that the person to whom the donation was made has been guilty of ingratitude and want of filial affection, in one of the cases enumerated by the laws.

Given at Ravenna, on the fifth of the *Ides* of November, during the Consulate of Theodosius, Consul for the thirteenth time, and Valentinian, Consul for the third time, 430.

*10. The Emperor Justinian to Julian, Prs&torian Prefect.*

We decree, in general, that all donations made in conformity with law shall be valid and irrevocable, and if he who receives the donation is not found to be guilty of ingratitude towards the donor, as, for instance, where he has inflicted atrocious injury upon him, or has been guilty of personal violence towards him, or of having, by treachery, caused him to suffer great pecuniary losses which sensibly diminished his estate, or has exposed him to the danger of losing his life, or is unwilling to comply with any agreements inserted in the document evidencing the donation, or even if these were not committed to writing, and he, as the recipient of the donation, promised to observe them, but failed to do so.

But only for causes of this kind, where they have been regularly proved in court by indisputable evidence, do We permit donations made to such persons to be revoked, in order that no one may have permission to accept the property of another, and then ridicule his liberality, subject him to loss, and cause him to suffer the injuries above mentioned from the ungrateful beneficiary of his bounty.

We, however, decree that this provision shall only apply to the persons originally interested, as permission is not granted to the heirs of the donor to file complaints upon such grounds; for if he who suffered these indignities remains silent, his silence should always continue; and his posterity ought not to be allowed to institute legal proceedings either against the individual alleged to be ungrateful, or his heirs.

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

TITLE LVII.

CONCERNING DONATIONS CAUSA MORTIS.

*1. The Emperor Alexander to Daphna.*

Where it is stated in the donation that if one of the donees should die, and his share accrue to

the others, an action based on a trust will lie if the condition should be fulfilled, and the donation be perfected by the death of the donee.

Published on the fourth of the *Kalends* of October, during the Consulate of Maximus, Consul for the second time, and Elianus, 224.

2. *The Emperor Gordian to Zoilus.*

Your granddaughter, born of your son and daughter-in-law, will succeed to her mother who died intestate; but still, the former, after the death of your son by whom she had the daughter, was not, when she married a second time, prevented from imposing any condition which she may have wished upon her dowry when she gave it.

If she stipulated that her dowry was to go to her brother as a donation *mortis causa*, in case of her own death, as it was provided by a Constitution of the Divine Severus, that where donations *mortis causa* were involved and the deceased did not leave other property, the heir would not be entitled to the amount prescribed by the Falcidian Law, he who is the heir of your daughter-in-law will not be prevented from claiming the benefit of this constitution.

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

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

A sister is not permitted to rescind a donation *mortis causa* which has been legally made by her brother.

Ordered at Sirmium, on the third of the *Kalends* of January, during the Consulate of the above-mentioned Emperors.

4. *The Emperor Justinian to Julian, Praetorian Prefect.* A doubt arose with reference to the effect of a donation *mortis causa*, and certain authorities placed it among last wills, and were of the opinion that it should be compared to a legacy; others held that it should be classed among donations *inter vivos* are living.

For the purpose of resolving this doubt, We order that all donations *mortis causa*, whether they were made at the time of death, or previous to it after long consideration, shall, by no means, require to be registered; nor shall the presence of public officials be exacted, or compliance with the legal formalities which are customary in the execution of instruments of this kind be necessary; but their validity shall be the same as if anyone desired to make a donation *mortis causa* in the presence of five witnesses, or by an instrument in writing; or, even if nothing was written, the transaction shall remain perfectly valid without having been registered, and no attack can be made upon it on this ground; nor shall it be considered without force and void for this reason, but it shall have the same effect that last wills possess, and shall not be understood to differ from them in any respect.

Given at Constantinople, on the *Kalends* of September, during the fifth Consulate of Lampadius and Orestes, 532.

TITLE LVIII.

CONCERNING THE ABOLITION OF THE PENALTIES OF CELIBACY AND  
WIDOWERHOOD AND THE ABROGATION OF TITHES.

1. *The Emperors Constantine, Constantius, and Constans to the People.*

Those who were considered celibates by the ancient law are hereby released from any apprehension of legal penalties, but can live just as if they were performing the duties of matrimony, and were included among husbands; and all of them shall have the same right to take under a will which others enjoy.

Nor shall anyone be considered to bear the stigma of a widower, and such penalties as have previously been prescribed on this account shall no longer have any force.

We decree that this same rule shall also apply to women, and We release all persons, without distinction, from this yoke which has been imposed upon their necks by the authority of the law.

Given at Rome, on the *Kalends* of April, during the Consulate of Constantius, Consul for the second time, and Constans, 239.

2. *The Emperors Honorius and Theodosius to Isidore, Prefect of the City.*

We decree that the provision of the *Lex Papia* with reference to tenths, affecting man and wife, shall be abolished, and even though there may be no children, each of them shall be allowed to receive the entire amount of the estate of his or her consort when left by will (unless some other law should prevent this from being done). Hence, hereafter, a husband or a wife can leave to one another as much of their respective estates as affection for the survivor may dictate.

Given on the *Nones* of September, during the Consulate of Varana.

TITLE LIX.

CONCERNING THE RIGHT OF CHILDREN.

1. *The Emperors Honorius and Theodosius to Isidore, Prefect of the City.*

Let no one hereafter apply to Us for the right of children, for by this law We grant it to all without distinction.

Given on the *Nones* of September, during the Consulate of Varana, 410.

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

In accordance with the principles of equity, We abolish the injustice which was, in former times, committed against the mother of a deceased person of either sex, and We order that she shall be fully entitled to the legal rights granted by the Tertullian Decree of the Senate, even though, being a freeborn woman, she may not have had three children, or if being a freedwoman, she may not have had four.

Given at Constantinople, on the *Kalends* of June, during the second Consulate of Justinian, 528.