THE INSTITUTES OF OUR LORD JUSTINIAN.

BOOK I.

TITLE I.

CONCERNING JUSTICE AND LAW.

Justice is the constant and perpetual desire to give to each one that to which he is entitled.

(1) Jurisprudence is the knowledge of matters divine and human, and the comprehension of what is just and what is unjust.

(2) These divisions being generally understood, and We being about to explain the laws of the Roman people, it appears that this may be most conveniently done if separate subjects are at first treated in a clear and simple manner, and afterwards with greater care and exactness; for if We, at once, in the beginning, load the still uncultivated and inexperienced mind of the student with a multitude and variety of details, We shall bring about one of two things; that is, We shall either cause him to abandon his studies, or, by means of excessive labor — and also with that distrust which very frequently discourages young men — conduct him to that point to which, if led by an easier route, he might have been brought more speedily without much exertion and without misgiving.

(3) The following are the precepts of the Law: to live honestly, not to injure another, and to give to each one that which belongs to him.

(4) There are two branches of this study, namely: public and private. Public Law is that which concerns the administration of the Roman government; Private Law relates to the interests of individuals. Thus Private Law is said to be threefold in its nature, for it is composed of precepts of Natural Law, of those of the Law of Nations, and of those of the Civil Law.

TITLE II.

CONCERNING NATURAL LAW, THE LAW OF NATIONS, AND THE CIVIL LAW.

Natural Law is that which nature has taught to all animals, for this law is not peculiar to the human race, but applies to all creatures which originate in the air, or the earth, and in the sea. Hence arises the union of the male and the female which we designate marriage; and hence are derived the procreation and the education of children; for we see that other animals also act as though endowed with knowledge of this law.

(1) The Civil Law and the Law of Nations are divided as follows. All peoples that are governed by laws and customs make use of the law which is partly peculiar to themselves and partly pertaining to all men; for what each people has established for itself is peculiar to that State, and is styled the Civil Law; being, as it were, the especial law of that individual commonwealth. But the law which natural reason has established among all mankind and which is equally observed among all peoples, is called the Law of Nations, as being that which all nations make use of. The Roman people also employ a law which is in part peculiar to them, and in part common to all men. We propose to set forth their distinctions in their proper places.

(2) The Civil Law derives its name from each state, as, for example, that of the Athenians; for if anyone wishes to designate the laws of Solon or of Draco as the Civil Law of Athens, he will not commit an error; for in this manner We call the law which the Roman people use the Civil Law of the Romans, or the *Jus Quiritium* employed by Roman citizens, as the Romans are styled *Quirites* from Quirinus. When, however, We do not add the name of the state, We mean Our own law; just as when We mention *the poet* but do not give his name, the illustrious Homer is understood among the Greeks, and Virgil among us.

The Law of Nations, however, Is common to the entire human race, for all nations have established for themselves certain regulations exacted by custom and human necessity. For

wars have arisen, and captivity and slavery, which are contrary to natural law, have followed as a result, as, according to Natural Law, all men were originally born free; and from this law nearly all contracts, such as purchase, sale, hire, partnership, deposit, loan, and innumerable others have been derived.

(3) Our Law, which We make use of, is either written or unwritten, just as among the Greeks, written and unwritten laws exist. The written law consists of the Statutes, the *Plebiscita*, the Decrees of the Senate, the Decisions of the Emperors, the Orders of the Magistrates and the Answers of Jurisconsults.

(4) A Statute is what the Roman people have established as the result of an interrogatory of a senatorial magistrate, for example, a consul. The *Plebiscitum* is what the plebeians have established upon the interrogatory of a plebeian magistrate, for instance, a tribune. Plebeians differ from the people as a species does from a genus; for all citizens, including even patricians, and senators, are understood by the word people, and by the term plebeians all other citizens, exclusive of patricians and senators, are designated. *Plebiscita* have had the same force as statutes since the passage of the *Lex Hortensia*.

(5) A Decree of the Senate is what the Senate orders and establishes, for since the Roman people have increased in numbers to such an extent that it is difficult for them to be convoked in an assembly for the purpose of adopting a law, it has seemed advisable for the Senate to be consulted instead of the people.

(6) Whatever is approved by the sovereign has also the force of law, because by the *Lex Regia*, from whence his power is derived, the people have delegated to him all their jurisdiction and authority. Therefore, whatever the Emperor establishes by means of a Rescript or decrees as a magistrate, or commands by an Edict, stands as law, and these are called Constitutions. Some of these are personal and are not considered as precedents, because the sovereign does not wish them to be such; for any favor he grants on account of merit, or where he inflicts punishment upon anyone or affords him unusual assistance, this affects only the individual concerned; the others, however, as they are of general application unquestionably are binding upon all.

(7) The Edicts of the Prætors also possess more than ordinary authority, and we are accustomed to designate them "honorary" laws, because they derive their force from those who are invested with honors, that is to say magistrates. The Curule Ædiles, likewise, formerly published edicts relative to certain matters which also constitute part of the honorary law.

(8) The Answers of Jurisconsults are the decisions and opinions of persons upon whom has been conferred authority to establish laws; for it was decided in ancient times that the laws should be publicly interpreted by those to whom the right to answer had been granted by the Emperor, and who were called jurisconsults, and the unanimous decisions and opinions of the latter had such force that, according to the Constitutions, a judge was not permitted to deviate from what they had determined.

(9) The unwritten law is that which usage has confirmed, for customs long observed and sanctioned by the consent of those who employ them, resemble law.

(10) Not improperly does the Civil Law appear to have been divided into two branches; since in its origin it seems to have been derived from the institutions of two states, namely, Athens, and Lacedæmon; for in these states it was the practice for the Lacedæmonians to commit to memory the rules which served them as laws, and the Athenians, on the other hand, observed whatever legal regulations which they had reduced to writing.

(11) Natural Laws that are observed without distinction by all nations and have been established by Divine Providence remain always fixed and unchangeable; but those which every State establishes for itself are often changed either by the tacit consent of the people, or

by some other law subsequently enacted.

(12) Every law of which We make use has reference either to persons, to things, or to actions. We shall first treat of persons, for there is little advantage in being familiar with the law if the persons on account of whom it was adopted are unknown.

TITLE III.

CONCERNING THE RIGHTS OF PERSONS.

The principal division of the law of persons is this, that all men are either free or slaves.

(1) Freedom (from which is derived the designation free) is the natural right enjoyed by each one to do as he pleases, unless prevented by force or by law.

(2) Slavery is a provision of the Law of Nations by means of which one person is subjected to the authority of another, contrary to nature.

(3) Slaves are so called because generals order captives to be sold, and in this way to be preserved instead of being put to death; and they dealt rather with moral duties and the ceremonial of pagan worship than with secular regulations, and bear convincing evidence of sacerdotal origin, which is especially apparent in those attributed to Numa Pompilius. These rules were compiled during the infancy of the Republic by Papirius, a member of the College of Pontiffs.

(4) Moreover, slaves are either born or become such. They are born such when they owe their origin to our female slaves, and they become such by the Law of Nations through captivity, or in accordance with the Civil Law; as where a man who is free and over twenty years of age permits himself to be sold in order to obtain a portion of the price.

(5) No difference exists in the condition of slaves, but among freemen there are several distinctions for they are either born free, or manumitted.

TITLE IV.

CONCERNING FREEBORN PERSONS.

A freeborn person is one who is free from the instant of his birth, whether he be the issue of a marriage between two freeborn persons, or that of two persons who have been liberated from slavery, or that of a person who has been liberated and one who was born free. Moreover, anyone who is born of a free mother and whose father is a slave is, nevertheless, born a freeman; just as he who is born of a free mother and an unknown father, because he was conceived in promiscuous intercourse. It is also sufficient if his mother was free when he was born, although she may have been a slave at the time of conception. And, on the other hand, if a freewoman should conceive, and afterwards having become a slave should bring forth, it has been decided that the child is born free, because the misfortune of the mother should not be a source of injury to her unborn child. From this fact the following question arose, namely, whether a pregnant female slave who has been set free and having again become a slave, brings forth a child, shall it be considered freeborn or a slave? It is the opinion of Marcellus that the child is born free, for it is sufficient while yet unborn for its mother to have been free, even for an intermediate period, which we hold to be true.

(1) Anyone who has been born free is not prejudiced by having been reduced to slavery and subsequently manumitted, for it has very frequently been determined that manumission is not detrimental to the privileges of birth.

TITLE V.

CONCERNING FREEDMEN.

Freedmen are those who have been manumitted from legal servitude. Manumission is the bestowal of freedom, for so long as anyone is in slavery he is subject to the control and

authority of a master, but when manumitted he is delivered from his power. This proceeding derives its origin from the Law of Nations, since, according to Natural Law all men are born free, manumission could not exist as long as slavery was unknown, but after it was introduced by the Law of Nations the privilege of manumission followed; and although, originally, all men were designated by a common name, afterwards, by the Law of Nations, three different kinds of persons began to be recognized, namely: freemen; their opposite, slaves; and a third class, freedmen, who had ceased to be slaves.

(1) Manumission is accomplished in many ways, in the holy churches in accordance with the Imperial Constitutions; by the wand of the Prætor; in the presence of friends; by letter; by testament, or by any other indication of one's last will. There are also many other methods that have been introduced by ancient Constitutions as well as by Our own, by means of which freedom may be bestowed upon a slave.

(2) Again, masters can always manumit their slaves, and they can even do so while walking in the street; for instance, while the Prætor, the Proconsul, or the Governor is going to the bath or the theatre.

Moreover, the condition of freedmen in former times was threefold, for as soon as they were manumitted they sometimes obtained entire and legal liberty and became Roman citizens; sometimes they acquired an inferior species of freedom and, by the *Lex Junia Norbana* they became Latins; and then, again, they obtained a still less degree of freedom, and according to the *Lex Ælia, Sentia* they were classed among the *dedititii.* This lowest condition of *dedititii* has long ago fallen into desuetude, and, indeed -the name of Latins is no longer frequently employed. Hence, Our good-will being desirous to improve all things and to ameliorate the condition of mankind has corrected this by two Constitutions, and restored the matter to its former status; because at the foundation of the City of Rome only one kind of freedom existed, which was the same that the manumitting party enjoyed; except where he who was liberated was a freedman, and the party who manumitted him was freeborn. Wherefore We have abolished the class of *dedititii* by one of Our Constitutions which We promulgated among Our Decisions, by means of which, at the suggestion of that illustrious man the Quæstor Tribonian, We have settled the disputed question of the ancient law. At the suggestion of the same Quæstor We have also reformed the condition of the Junian Latins and everything relating to them, by another Constitution which is conspicuous among the Imperial Edicts, and have rendered all freedmen Roman citizens without making any distinction with reference to age, the mode of manumission, or the authority of the manumitting party, as was formerly the practice; and have added several other methods by means of which freedom, together with Roman citizenship, which is the only kind that exists at the present time, may be conferred upon slaves.

TITLE VI.

WHO CANNOT MANUMIT OTHERS, AND WHY THEY ARE UNABLE TO DO SO.

No one, however, has the right to confer manumission whenever he wishes to do so; for if it is done to defraud creditors the act is void, because the *Lex Ælia Sentia* prevents freedom under such circumstances.

(1) A master who is not solvent may, however, by will appoint his slave his heir, and give him his liberty so that he becomes free and his sole and necessary heir; provided no other heir is created by said will, either because no one has been appointed an heir by the same, or because he who was appointed did not for some reason or other become the heir. This provision has been made by the said *Lex Ælia, Sentia*, and justly, for it was necessary to provide that persons in reduced circumstances who had no other heirs, might constitute their slaves their necessary heirs for the purpose of satisfying their creditors; or, if they did not do this, the creditors could sell the property of the estate in the name of the slave, so that no ignominy might attach to the memory of the deceased.

(2) The same rule applies even where the slave has been appointed an heir without receiving his freedom, and this Our Constitution has established on a new basis of humanity, not only with reference to a master who is insolvent but generally; and liberty is bestowed upon the slave by the very document in which he was appointed an heir, for it is not probable that he who selected him as his heir and omitted to grant him freedom wished him to remain a slave, and that there should be no heir to his estate.

(3) He is deemed to have granted manumission in fraud of his creditors who, either at the time when he did so was insolvent, or who having bestowed freedom became insolvent by that act. Still, it seems to have been established that the grant of freedom would not be prevented, unless the manumitting party had the intention to defraud, even though he did not have sufficient property to satisfy his creditors; for men often except more from their resources than they are worth. We understand then that the grant of freedom is void when creditors are defrauded in one of two ways, that is to say by the design of the manumitting party and by the fact itself, where the property is not sufficient to pay the creditors.

(4) According to the same *Lex Ælia Sentia*, where the master is under twenty years of age he is not permitted to manumit anyone except by means of the wand of the Prætor, and after a legal cause for doing so has been established in the presence of the Council.

(5) The legal causes of manumission are the following: for example, where anyone desires to liberate from slavery his own father, mother, son, daughter, brother or sister, or his attendant, his nurse, his foster-father, his foster-child, his foster-son or foster-daughter, his foster-brother, a male slave for the sake of making him his agent, a female slave for the purpose of marrying her (provided she becomes his wife within six months and no lawful impediment exists). Where a slave is manumitted in order to be made an agent he must be at the time not less than seventeen years of age.

(6) When a reason has once been approved, whether it be true or false, it shall not subsequently be reconsidered.

(7) Therefore, as a particular method of manumission by will was established by the *Lex Ælia Sentia* in the case of masters who are minors under twenty years of age, the result was that while anyone who was fourteen years old could make a will and thereby appoint an heir for himself and bequeath legacies, still he could not grant freedom to a slave if he was at the time less than twenty years old. As it, however, appeared intolerable that power to dispose of all his property by will should be conferred upon anyone, and that he should not be allowed to grant liberty to a single slave; then why should We not permit him to dispose of his slaves by his last will in any manner he wishes — just as he can do with his other property — in order that he may be able to grant them freedom? But as liberty is an invaluable possession, and for this reason antiquity forbade it to be conferred upon a slave by anyone under twenty years of age; therefore We, to a certain extent, selecting a middle course, have granted the right to a minor under twenty years of age to confer freedom upon his slave by will, provided he has completed his seventeenth year and entered his eighteenth. For as the ancients permitted persons of this age to appear in court in behalf of others, why should it not be believed that their soundness of judgment is sufficient to entitle them to enjoy the privilege of granting freedom to their slaves?

TITLE VII.

CONCERNING THE ABROGATION OF THE LEX FURIA CANINIA.

A certain method was prescribed by the *Lex Furia Caninia* for the testamentary manumission of slaves; but We have determined that this should be abrogated as being a hindrance to liberty and to some extent odious; for it was positively unkind to permit living persons to have the power to manumit all their slaves where no other impediment existed, and to refuse that privilege to dying persons.

TITLE VIII.

CONCERNING THOSE WHO ARE THEIR OWN MASTERS, OR ARE UNDER THE CONTROL OF OTHERS.

Another division of the law of persons follows here, for some persons are independent, and some are subject to the authority of others; and again of the latter some are under the control of their parents, and others under that of their masters. We shall first treat of those who are subject to the authority of others, for when We ascertain who these persons are, We shall, at the same time, know who those are that are independent.

In the first place let Us consider those who are under the control of their masters.

(1) Slaves are under the control of their masters, and this authority is derived from the Law of Nations, for We can perceive that among almost all nations masters have the right of life and death over their slaves, and that whatever is acquired by a slave belongs to his master.

(2) At the present time, however, no persons who are subject to Our authority are permitted, unless for a reason recognized by the laws, to exercise unusual cruelty against their slaves; for by a Constitution of the Divine Pius Antoninus he who kills his slave without a reason shall not be punished with less severity than he who kills the slave of another; and by the Constitution of the same sovereign the excessive severity of masters is still further repressed; for, having been consulted by certain governors of provinces with reference to slaves who flee for refuge to a sacred edifice or to the statues of the Emperors, he decreed that if the barbarity of the masters appeared to be intolerable, they could be forced to sell their slaves under favorable conditions and have the price paid to them, which is a just provision; for it is to the interest of the State that no one abuse his property.

The following are the terms of the rescript addressed to Ælius Martianus: "It is necessary that the power of masters over their slaves should be unimpaired, and that no man should be deprived of his right, but it is to the interest of masters that relief against rage, starvation, or intolerable injury should not be denied to those who justly implore it. Therefore, take cognizance of the complaints of the slaves of Julius Sabinus who have fled for refuge to the statue; and if you find that they have been treated with more harshness than is just, or have suffered any infamous injury, order them to be sold, so that they may not be restored to the power of their master; and if he seeks by fraud to escape the effect of My Constitution let him know that I will take more rigorous measures."

TITLE IX.

CONCERNING PATERNAL AUTHORITY.

Our children, the issue of lawful marriage, are in our power.

(1) Marriage, or matrimony, is the union of man and wife entailing the obligation to live together.

(2) The authority which We exercise over Our children is peculiar to Roman citizens, for there are no other men who have such control over their children as We have.

(3) Therefore, whoever is born of yourself and your wife is under your authority just as he who is born of your son and his wife, that is to say, your grandson and your granddaughter are also under your authority, just as your great-grandson and great-granddaughter, and all others in succession; but a child born of your daughter is not under your authority, but under that of its father.

TITLE X.

CONCERNING MARRIAGE.

Roman citizens unite in legal marriage when they are joined according to the precepts of the law, and the males have attained the age of puberty and the females are capable of child-birth, whether they are the heads of families or the children of families; if the latter have also the consent of the relatives under whose authority they may be, for this should be obtained and both civil and natural law require that it should previously be secured. Wherefore it has been asked whether the daughter of an insane person could be married, or the son of an insane person take a wife; and as various opinions prevailed with regard to the son, We have rendered a decision by which it is permitted that the son of an insane person, just as the daughter of one, can also in a way prescribed by Our Constitution contract marriage without the intervention of his father.

(1) We cannot, however, marry every woman, for we must refrain from contracting matrimony with some of them.

Hence, marriage cannot take place where the relationship of parents or children exists; as, for instance, between father and daughter, grandfather and granddaughter, mother and son, grandmother and grandson, and so on with respect to all other degrees; and if such persons cohabit with one another they are said to have contracted an infamous and incestuous marriage.

These principles are so generally applicable that even if the parties stand in the relationship of parents or children to one another by adoption they cannot be united in matrimony; and even after the adoption has been dissolved the same legal restriction exists; and therefore you cannot take as a wife any woman who has been your adopted daughter or granddaughter, even though you may have emancipated her.

(2) A similar rule applies to persons related in the collateral degree, but this is not so strict. Marriage is indeed prohibited between brother and sister, whether they are the issue of the same father or mother, or of either of them; but where a woman becomes your sister by adoption, marriage cannot be contracted between yourself and her as long as the adoption exists, but after the adoption has been dissolved by emancipation, you can marry her, and also if you have been emancipated no impediment to the marriage exists. For this reason the rule has been established that if anyone desires to adopt his son-in-law, he must first emancipate his daughter; and if anyone wishes to adopt his daughter-in-law, he must previously emancipate his son.

(3) It is illegal to marry the daughter of your brother or sister; nor can anyone marry the granddaughter of his brother or sister, although they are related in the fourth degree; for whenever it is not lawful to contract matrimony with the daughter of anyone, marriage with his granddaughter is also prohibited. You are, however, not prevented from marrying the daughter of a woman adopted by your father, for the reason that she is not related to you either by natural or civil law.

(4) The children of two brothers or sisters, or of a brother and a sister, can marry.

(5) Moreover, a man cannot marry his paternal aunt, even though she may have been adopted, nor can he marry his maternal aunt, because they stand in the relationship of progenitors; and for the same reason you are very properly forbidden to marry your great aunt, either on your father's or your mother's side.

(6) It is also necessary to avoid matrimony with some women on account of the respect entertained for affinity. For example, to marry either a step-daughter or a daughter-in-law is not permitted for the reason that they both stand in the relationship of daughters; but it must be understood that the woman in question has been either a daughter-in-law or a step-

daughter, for if she is still a daughter-in-law and married to your son you cannot take her as a wife for another reason, that is, because the same woman cannot be married to two men; and if she is still your step-daughter, that is to say, if her mother is married to you, you cannot contract matrimony with her because it is not lawful to have two wives at the same time.

(7) To marry a mother-in-law or a step-mother is also prohibited, because of their maternal relationship, and this rule also applies only after the affinity has ceased to exist; otherwise, if she is still your step-mother and married to your father, you are prevented from marrying her by the general rule that the same woman cannot be married to two men; and if she is still your mother-in-law, that is, if her daughter is still married to you, the marriage cannot take place for the reason that you cannot have two wives at the same time.

(8) The son of a husband by another wife and the daughter of a wife by another husband, or *vice-versa*, can lawfully contract matrimony, although they may have a brother or sister who is the issue of the marriage subsequently contracted.

(9) Where your wife after having been divorced has a daughter by another husband, the latter is not your step-daughter, but Julianus says you should abstain from marriage with a woman of this kind; for the betrothed of your son is not your daughter-in-law, nor the betrothed of your father, your mother-in-law, still those who avoid marriage with persons of this description act more properly and legally.

(10) That relationship existing among slaves is an impediment to marriage is certain where a father and daughter, or a brother and sister have been manumitted.

(11) There are also other persons who, for different reasons, are prohibited from contracting matrimony, and these We have permitted to be enumerated in the books of the Digest or Pandects compiled from the ancient law.

(12) Where persons cohabit in violation of the laws which We have prescribed, neither the relationship of husband or wife, nor a nuptial ceremony, marriage or dowry is understood to exist; hence those who are born from this intercourse are not under the authority of their fathers, but so far as relates to said authority are in the same category as those whom a mother has conceived in promiscuous intercourse; for these also are understood to have no father, as the latter is uncertain; hence they are ordinarily designated spurious children, either from a Greek word meaning "conceived at random", or because they are children without a father. It follows, therefore, that where an union of this kind is dissolved there is no claim for the return of the dowry; and, moreover, those who contract prohibited marriage are liable to other penalties which are set forth in the Imperial Constitutions.

(13) It sometimes happens that children are not under paternal authority when they are born, but are afterwards subjected to it. Such a one is he who being a natural son, is subsequently brought under the control of his father through becoming a member of the *curia*. He also belongs to this class who is born of a free woman with whom matrimony was by no means forbidden by the laws but with whom his father was accustomed to cohabit; and who was afterwards brought under the authority of his father by means of dotal instruments executed in accordance with the provisions of Our Constitution. Our Constitution likewise gives him this advantage, even though there are other children the issue of the same marriage.

TITLE XI.

CONCERNING ADOPTION.

Not only are Our natural children under Our authority as We have already stated, but those whom We adopt as well.

(1) Adoption is accomplished in two ways, either by Imperial Rescript or by the order of a magistrate. By the authority of the Emperor anyone can adopt persons of either sex who are their own masters, and this kind of adoption is styled arrogation. By order of a magistrate it is

lawful for anyone to adopt persons of either sex who are under paternal control, whether they belong to the first degree of descendants, as, a son or a daughter, or to an inferior degree, as a grandson or a granddaughter, a great-grandson or a great-granddaughter.

(2) At present, however, in compliance with one of Our Constitutions, when the son of a family is bestowed in adoption by his natural father upon a stranger, his natural father's rights to authority are by no means abrogated, nor do any of them pass to the adoptive father, nor is the son subject to his control, although he is permitted by Us to enjoy the rights of succession if his adoptive father dies intestate. Where, however, his natural father gave his son in adoption, not to a stranger, but to the maternal grandfather of his son; or if his natural father had been emancipated and gave him in adoption even to his paternal grandfather or great-grandfather, or to his maternal greatgrandfather in like manner; in these instances, as both the natural rights and those of adoption are united in one and the same person, the power of the adoptive father remains fixed, being connected by the natural bond and strengthened by the legitimate method of adoption, so that the son both belongs to the family and is subject to the paternal authority of an adoptive father of this kind.

(3) When, however, a person who has not reached the age of puberty is arrogated by Imperial Rescript, arrogation is only permitted after the circumstances have been thoroughly investigated, and the reason for arrogation examined to ascertain whether it is honorable and beneficial to the minor; and the arrogation must be established under certain conditions, that is to say, the adopting party must give security to some public personage, namely a notary, that if the minor should die before reaching puberty, he will surrender his property to those who would have been entitled to the succession if the adoption had not taken place.

Again, an arrogator cannot emancipate his adoptive children unless, after proper investigation, they are found worthy of emancipation, and he must then restore their property to them. And again, if a father, when dying, disinherits his adoptive son, or, while living, emancipates him without just cause, he is required to give him the fourth part of his property, in addition to what he brought to his adoptive father and of which he subsequently obtained for him the benefit.

(4) It is held that a minor cannot adopt anyone older than himself, for adoption imitates nature, and it is monstrous that a son should be older than his father. Therefore, he who takes for himself a son either by arrogation or adoption should do so by full puberty, that is he should be his senior by eighteen years.

(5) It is also lawful to adopt a person to occupy the place of a grandson, or a great-grandson, a granddaughter or a great-granddaughter, or of any descendant further removed, although the party may have no son.

(6) Anyone can also adopt the son of another as his own grandson, or another person's grandson as his son.

(7) Where, however, anyone adopts a person instead of his grandson either as the child of a son whom he has already adopted, or in the place of the child of a son under his authority, in this instance the son should consent, in order that he may not be given a proper heir in spite of himself; but, on the other hand, where a grandfather gives his grandson in adoption it is not necessary for his son to consent.

(8) An adopted or arrogated son in many respects resembles one born into lawful wedlock, and therefore if anyone adopts another by Imperial Rescript, or before the Prajtor or the Governor of a province and the adopted party is not a stranger, he can give him in adoption to another.

(9) It is a regulation common to both kinds of adoption that those who cannot beget, for instance, such as are born without procreative power, like natural eunuchs, can adopt; but persons who have been castrated cannot do so.

(10) Women also cannot adopt because they have not even control over their own children, but by the indulgence of the Emperor they can do so by way of consolation of the children they have lost.

(11) It is also peculiar to the adoption which is effected by rescript that where a man who has children under his authority permits himself to be arrogated, not only he himself is brought under the power of the party adopting him, but his children are also subjected to the authority of the latter as grandchildren; and in accordance with this rule, the Divine Augustus did not adopt Tiberius until he himself had adopted Germanicus, so that he might begin to be the grandson of Augustus immediately after the adoption occurred.

(12) Antiquity ascribes an appropriate statement to Cato, namely, that where slaves are adopted by their master they are liberated by his very act; and therefore We, accepting this opinion, have inserted in one of Our Constitutions that when a master has mentioned his slave as a son in a public instrument he shall be free, although this is not sufficient to invest him with the rights of a son.

TITLE XII.

IN WHAT WAYS THE RIGHT OF PATERNAL POWER IS ABROGATED.

Let Us examine now by what methods those subjected to the authority of others are liberated from this authority.

We can learn from what We explained above with regard to the manumission of slaves in what way they are released from this restraint.

Those, however, who are under the control of a relative become independent at his death, but this admits of a distinction; for, without question, when a father dies, his son and daughter, in every instance, become their own masters. Where, however, a grandfather dies, his grandsons and granddaughters do not invariably become independent, but only where after the death of their grandfather they do not again become subject to the authority of their father. Therefore, if when the grandfather dies their father is still living and under the authority of his father, then, after the death of their grandfather they become subject to the authority of their father; but if at the time their grandfather died their father was either dead, or had passed from under the control of his father, then the said grandchildren become their own masters, because they cannot become subject to his authority.

(1) But when one who has been banished to some island on account of a crime forfeits his citizenship, it follows that the children of a person removed in this way from the body of Roman citizens cease to be under his control, just as if he were dead. For a similar reason, if anyone under paternal authority is banished to an island, he ceases to be under the control of his relatives; but if restored by Imperial clemency, such a person regains his former status in every respect.

(2) Fathers who have been temporarily banished to an island retain authority over their children, and, on the other hand, children banished under such circumstances, remain subject to parental control.

(3) Anyone who is made a slave by way of punishment ceases to have authority over his children, and persons are made slaves by way of punishment who are sentenced to the mines or are exposed to wild beasts.

(4) Where the son of a family serves in the army or becomes a Senator or Consul, he still continues in the power of his father, for neither military service nor the consular dignity releases a son from paternal control. However, in accordance with one of Our Constitutions, the highest patrician rank releases him who receives it from paternal authority as soon as the Imperial grant is delivered; for who could tolerate that a father should have the power to release his son from the ties of his authority by means of emancipation, while the Imperial

Dignity could not avail to liberate from the control of another him whom he selected as a father for himself.

(5) Where a father has been captured by the enemy, although he temporarily becomes the slave of the latter, nevertheless, by the law of *postliminium* his power over his children only remains in abeyance; because if those who have been captured by the enemy return, they recover all their former rights; and therefore, on his return, he will have his children under his authority, because the law of *postliminium* gives rise to the fiction that a captive has never been absent; but if he should die in captivity, his son becomes his own master from the moment when his father was made prisoner. Again, if a son or a grandson is captured by the enemy, We declare that, in like manner the right of paternal authority is suspended by the law of *postliminium*.

The term *postliminium* is derived from *limen* and *post,* so that We speak correctly when We say that a man who has been captured by the enemy and afterwards comes within our boundaries returns by *postliminium:* for as threshholds form a kind of boundary in houses, the ancients also considered the boundary of the Empire as a threshhold. From this likewise is derived the term *limes* which is, as it were, an end and boundary. *Postliminium*, therefore, is so designated because a person returns by the identical threshhold from which he was lost. Anyone who is recovered from conquered enemies is deemed to have returned by *postliminium*.

(6) Children also cease to be under the control of their ascendants by emancipation, and this emancipation was formerly brought about by the ancient observance of the law, which was effected by means of fictitious sales and intermediate manumissions, or by Imperial Rescript. Our foresight, however, has, by means of a Constitution, brought about a change for the better, so that the ancient fiction having been exploded, relatives can go directly before competent judges or magistrates, and personally release from their authority their sons or daughters, grandsons or granddaughters, or other more remote descendants. And then, according to the Edict of the Prætor, the same rights are granted to the relatives with reference to the property of the said son or daughter, grandson or granddaughter who has been manumitted by the said relative, as are conferred upon a patron with reference to the property of his freedman; and, moreover, if the son or daughter, or the other descendants have not arrived at puberty, the relative obtains guardianship over them by reason of the emancipation.

(7) We must also bear in mind that anyone who has a son under his control as well as a grandson or granddaughter by him, is perfectly free to release his son from his authority and to retain his grandson or granddaughter under it; and, on the other hand, to retain his son in his own power and manumit his grandson or granddaughter (and it must be understood that the same rule is applicable to a great-grandson or a great-granddaughter), or to render them all their own masters.

(8) But where a father who has a son under his control gives him in adoption to his natural grandfather, or great-grandfather, in accordance with Our Constitutions enacted for this purpose; that is to say, if he manifests this intention by a proper instrument executed in the presence of a competent magistrate, the party who is to be adopted being present at the time and not offering any opposition — and if the party who makes the adoption does not do so — the right of the natural parent is extinguished and passes to the adoptive father in this manner; with respect to whom, as We previously stated, the adoption is absolutely complete.

(9) It should also be noted that if your daughter-in-law conceives by your son and you subsequently emancipate the latter, or give him in adoption while your daughter-in-law is pregnant, the child brought forth by her is nevertheless born under your authority; but where it is conceived after emancipation or adoption, it is subject to the authority of its adoptive father or grandfather.

(10) It is further to be noted that there is scarcely any way by which either natural or adopted children can force an ascendant to liberate them from his control.

TITLE XIII.

CONCERNING GUARDIANSHIP.

Let Us pass now to another division of persons; for of those who are not under paternal authority some are under guardianship or curalorship, and others are subject to neither of these rights. Let Us, therefore, direct Our attention to those who are under guardianship or curatorship, and in this manner We shall become familiar with those other persons who are subject to neither of these restraints.

Let Us first consider those who are under guardianship.

(1) Guardianship, as Servius defines it, is the right and authority over a free person granted and allowed by the Civil Law for the protection of one who, on account of his age, cannot protect himself.

(2) Guardians are those who are invested with this power and authority, from which very fact they have obtained their name, and they are therefore called guardians from being protectors and defenders, just as those who have charge of temples are called guardians of temples.

(3) Parents, therefore, are allowed to appoint guardians by will for children not arrived at puberty and who are under their control, and this applies to all cases where a son or daughter are concerned.

For grandsons or granddaughters, however, parents can only appoint guardians where, after their death, they will not be again brought under the authority of their fathers. Hence, if at the time of your death, your son is under your control, your grandsons by him cannot have a guardian appointed by your will, even though they were under your authority; because it is evident that, when you are dead they will again come under the control of their father.

(4) But, as in many instances posthumous children are considered as already born, it has been decided that under such circumstances testamentary guardians can be appointed as well for posthumous children as for those already in existence, provided their condition is such that if they had been born while their parents were living, they would have been their heirs and under their control. Where, however, a guardian is appointed by the will of a father for an emancipated son, he must in every instance be confirmed by order of the Governor, and this is to be done without investigation.

TITLE XIV.

WHO CAN BE APPOINTED TESTAMENTARY GUARDIANS.

Not only the father of a family but also a son who belongs to it can be appointed a guardian.

(1) The slave of a testator can be legally appointed guardian and at the same time given his freedom; but it must be noted that when he is appointed guardian without being set free, he is presumed tacitly to have received his freedom, and on this account he can legally act; but it is evident that if he is appointed guardian under the presumption that he is free, the case is different. The slave of another cannot, however, unreservedly be appointed a testamentary guardian, but the appointment is valid when it is stated that it will take effect when he shall become free. It is, however, not valid for a person's own slave to be appointed in this manner.

(2) An insane person or a minor under twenty-five years of age when appointed guardian by will can act as such when he becomes sane or reaches the age of twenty-five years.

(3) There is no question that a guardian can be appointed up to a certain time, or from a certain date, or under some condition, or before the institution of an heir.

(4) A guardian cannot, however, be appointed on account of some certain transaction or property, for the reason that the appointment is made with reference to the person, and not on account of any business transaction or property.

(5) Where anyone has appointed guardians for his daughters or sons, it is understood that he has appointed them also for any posthumous daughter or son, because such children are included in the term "posthumous". But in case there are many grandsons, are guardians to be appointed for them under the designation of sons? It must be held that they also appear to be appointed for them, if the party made use of the word "children"; but the case is otherwise if he used the word "sons", for sons are designated by one term and grandsons by another. It is evident that if he made the appointment for posthumous children both posthumous sons and other descendants will be included.

TITLE XV.

CONCERNING THE LEGAL GUARDIANSHIP OF AGNATES.

By a law of the Twelve Tables agnates are the guardians of those for whom no testamentary guardian has been appointed and these are called legal guardians.

(1) Agnates are persons connected by relationship through individuals of the male sex, that is to say, related on the father's side; as, for instance, a brother born of the same father, the son of that brother, and his grandson by the said son; also a paternal uncle, the son of that paternal uncle, and his grandson by that son. Those who are connected by relationship through individuals of the female sex are not agnates but, on the other hand, are cognates by natural law; therefore, the son of your father's sister is not your agnate but your cognate; and, on the other hand, you are certainly connected with him by the same rule, because children follow the family of the father and not that of the mother.

(2) The law which appoints agnates guardians in case of intestacy not only has this application where a man who has the right to appoint guardians does not make a will, but also when he dies intestate so far as the guardianship is concerned; which is also understood to take place where the party appointed guardian dies while the testator is still alive.

(3) The law of agnation is usually abrogated in every respect by the forfeiture of civil rights; for consanguinity on the male side is merely a legal term. The law of relationship on the female side is not, however, entirely altered for the above reason, because while a Civil Law principle may abrogate civil rights, it can under no circumstances abrogate those which are natural.

TITLE XVI.

CONCERNING THE LOSS OF CIVIL RIGHTS.

The loss of civil rights is a change of former status, and takes place in three ways, for it may be the greatest; the lesser, which some persons call intermediate; or the least.

(1) The greatest loss of civil rights is where anyone forfeits at the same time both citizenship and freedom. This occurs in the case of those who are made slaves by way of punishment through the severity of their sentences; or where freedmen are condemned for having been ungrateful to their patrons; or where parties suffer themselves to be sold for the purpose of sharing in the price.

(2) Less, or intermediate loss of civil rights, is where citizenship itself is lost but freedom is retained; which occurs when a person is interdicted from fire and water, or is banished for an indefinite term to some island.

(3) The least loss of civil rights is when both citizenship or liberty are retained, but the condition of the individual is altered; which happens when those who were formerly their own masters are subjected to the authority of another, or *vice-versa*.

(4) A manumitted slave loses no civil rights because he did not possess any.

(5) Those persons whose dignity rather than their condition is altered do not forfeit their civil rights; and therefore it is settled that expulsion from the Senate involves no such forfeiture.

(6) When it was stated that the right of cognation persisted after the loss of civil rights, it is to be understood that this is the case where the least of such losses takes place, for it is under such circumstances that the cognation remains. But where the greatest loss of civil rights occurs, the right of cognation is lost; for instance, by the enslavement of any relative on the female side, and even when such a person is manumitted he does not recover his right; and also where anyone is deported to an island his cognation is lost.

(7) When guardianship devolves upon persons related on the male side it does not devolve upon all of them at once, but only upon such as are related in the nearest degree, or upon all, if they are of the same degree.

TITLE XVII.

CONCERNING THE LEGAL GUARDIANSHIP OF PATRONS.

By the same Law of the Twelve Tables the guardianship of male and female persons who have been set free belongs to their patrons and to the children of the latter, which is also called legal guardianship; not because by that law special provision has been made for it, but for the reason that the interpretation of said law justifies this conclusion just as if it had been verbally set forth in the same. For from the very fact that the law prescribed that the estates of freedmen and freedwomen who died intestate should belong to their patrons and to the children of the latter, the ancient authority determined that the intention of the law was that their grandchildren shall also belong to them, since it directed that those agnates on whom it bestowed the estate should also be guardians; because, generally speaking, where the benefit of the succession is, there also the burden of guardianship should be placed. We say generally speaking, because where a slave who has not reached puberty is manumitted by a woman, she herself is entitled to the estate although some one else will be appointed guardian.

TITLE XVIII.

CONCERNING THE LEGAL GUARDIANSHIP OF ASCENDANTS.

There is another guardianship allowed which follows the example of that of patrons, and this also is called legal; for where anyone emancipates a son or a daughter, a grandson or a granddaughter by a son, and so on through other degrees, so long as the party has not reached puberty, he will be their legal guardian.

TITLE XIX.

CONCERNING FIDUCIARY GUARDIANSHIP.

There is another kind of guardianship which is called fiduciary. For where an ascendant emancipates a son or a daughter, a grandson or a granddaughter, and so on, in succession, before they have reached the age of puberty, he acquires a legal guardianship over them; and where, at his death, he leaves children of the male sex, they become the fiduciary guardians of their sons, of their brother, their sister, or their relatives. But when a legal guardian dies, his children become legal guardians, for the son of the defunct, if he has not been emancipated by his father while the latter was still living, would have become his own master after his father's death and would not have come under the control of his brothers, and for this reason not under their guardianship; while the freedman, if he had remained a slave, would have sustained the same relation to the children of his master after the death of the latter.

Persons entitled to exercise the office of guardian must be of full age, a rule which one of Our Constitutions has directed to be generally observed in the case of all guardianships and curatorships.

TITLE XX.

CONCERNING THE ATILIAN GUARDIAN, AND THE ONE APPOINTED UNDER THE LEX JULIA ET TITIA.

Where no guardian at all had been appointed for a person it was customary for one to be given him in the City of Rome by the Urban Prætor and the majority of the Tribunes of the people under the *Lex Atilia;* and in the provinces the appointment was made by the Governors, in compliance with the *Lex Julia et Titia*.

(1) But where a guardian had been appointed by will under some condition or to act upon a certain day, as long as the condition was not fulfilled or the day had not arrived, another guardian could be appointed under these laws. Moreover, if the appointment had been made without qualification, as long as there was no heir under the will, by the same laws application was required to be made for another guardian to act during that time, and he ceased to be a guardian if the condition was complied with, or the day arrived, or an heir appeared.

(2) Moreover, a guardian was usually applied for under the same laws when the existing guardian had been captured by the enemy; and he ceased to hold his office if the former returned from captivity, for having returned he recovered the guardianship by the law of *postliminium*.

(3) Guardians, however, are no longer appointed for minors under those laws, since, in the first place, the Consuls, and afterwards the Prætors, began to appoint guardians for minors of both sexes after examination, in accordance with the Constitutions; for by the aforesaid laws no provision was made for exacting bonds from guardians to preserve the property of their wards, or for requiring them to properly administer their guardianship.

(4) The practice now prevails at Rome for the Prefect of the City, or the Prætor, as far as he has jurisdiction, to appoint guardians; and in the provinces the Governors do this after investigation, or the magistrates do so by order of the Governors, where the property of the minor is not of great value.

(5) But We, by means of one of Our Constitutions, having removed the uncertainties of men on questions of this description, and having caused the order of the Governors to be no longer expected, have determined that if the property of a minor or an adult is of the value of five hundred *solidi* the Defenders of the City — together with the most reverend Bishop of the same, or in the presence of other public officials or magistrates, or of the judge of the City of Alexandria — shall create guardians or curators, lawful security having been given according to the provisions of the said Constitution, that is to say, at the risk of those who accept it.

(6) That persons not arrived at puberty should be under guardianship is conformable to natural law, so that he who has not arrived at full age may be directed by the guardianship of another.

(7) For this reason, as the guardians of male and female wards transact their business, they must render an account to them in an action of guardianship after they have arrived at puberty.

TITLE XXI.

CONCERNING THE SANCTION OF GUARDIANS.

The sanction of a guardian in some instances is requisite for wards and in some instances it is not. For example, when a ward makes *&* contract for something to be given him, the guardian's consent is not necessary, but when wards promise something to others it is necessary; for it has been decided that they have power to improve then condition even without the authority of their guardians, but that they cannot make it worse unless their guardians consent for them to do so. Wherefore, under circumstances in which mutual obligations arise for instance, in purchases, sales, letting and hiring, commissions, deposits, if the authority of the guardian is not interposed, those persons who enter into contracts with

wards shall be liable; but, on the other hand, the wards shall not be responsible.

(1) Nor can they enter upon an estate or demand possession or property, or accept an inheritance given in trust for their benefit, in any other way than with the sanction of their guardian, even though it be profitable, and no loss can arise therefrom.

(2) The guardian should also, at once, and while the transaction is pending, give his approval, if he thinks that it will be a benefit to the ward; but if he does this afterwards or sanctions it by a letter, his act is void.

(3) When an action-at-law is to be conducted between guardian and ward — for the reason that the guardian cannot give his sanction to anything relating to his own affairs — a curator is appointed in his place (not a Prætorian guardian as was formerly the practice), and the case is carried on by the former who ceases to be curator when it is terminated.

TITLE XXII.

IN WHAT WAYS A GUARDIANSHIP IS TERMINATED.

Male and female wards are released from guardianship as soon as they reach puberty. The ancients were disposed to fix the age of puberty, as far as males were concerned, not only by their years but by their corporeal development. Our Majesty, however, has considered it proper and worthy of the purity of the age that what seemed to be immodest to the ancients in the case of females, that is the inspection of the condition of their bodies, should also be extended to males; and, therefore, by the promulgation of ah Imperial Constitution, We have decreed that puberty in males shall begin immediately after the completion of the fourteenth year, leaving without alteration the excellent rule of antiquity respecting females, namely, that they should be considered marriageable after the completion of their twelfth year.

(1) Guardianship is also ended where persons who have not yet reached puberty are either arrogated or banished; and the same rule applies where a ward is reduced to slavery or is captured by the enemy.

(2) Moreover, if a guardian is appointed by will to hold office until a certain condition has been complied with, it also happens that when the condition has been fulfilled he ceases to be a guardian.

(3) In like manner guardianship is terminated by the death of either the guardian or the ward.

(4) Again, every guardianship is also determined by any impairment of civil rights through which either the liberty or the citizenship of the guardian is lost. By the least forfeiture of civil rights by a guardian, for example, if he gives himself in adoption, only the legal guardianship terminates, but other kinds do not. The loss of civil rights, however, by either male or female wards, even though it be of the least important class, terminates all kinds of guardianships.

(5) Moreover, guardians appointed by will for a certain period surrender their guardianship when it terminates.

(6) Those, also, cease to be guardians who are removed from office either because they are suspected, or excuse themselves for some just cause and lay down the burden of guardianship, as We shall explain hereafter.

TITLE XXIII.

CONCERNING CURATORS.

Males who have attained puberty and women who are nubile receive curators until the completion of their twenty-fifth year, for even though they have reached puberty they are still of such an age that they are not capable of transacting their own affairs.

(1) Curators are appointed by the same magistrates as guardians, but a curator is not appointed by will, but after his appointment he is confirmed by a decree of the Prætor, or Governor.

(2) Minors are not required to accept curators if they are unwilling, except in lawsuits; for a curator may also be appointed for a specific purpose.

(3) Insane persons, likewise, and spendthrifts, even though they may be over twenty-five years of age, are nevertheless under the curatorship of their relatives in the male line, according to a law of the Twelve Tables; but it is the practice for the Prefect of the City or the Prætor at Rome, and in the provinces for the Governors, to appoint curators for them after investigation.

(4) Curators must also be appointed for feeble-minded persons, those who are deaf and dumb, and those who are suffering from chronic disease, because they are not able to attend to their own affairs.

(5) Again, curators are sometimes appointed for wards; for instance where the legitimate guardian is not a suitable person, because a guardian cannot be appointed for a person who already has one.

(6) Where a guardian is hindered by bad health or some other pressing necessity from transacting the business of the ward, and the latter is either absent or an infant, the Prætor, or the Governor of the province may by an order appoint anyone whom the said guardian desires to act for the latter, but at his risk.

TITLE XXIV.

CONCERNING THE GIVING OF SECURITY BY GUARDIANS AND CURATORS.

In order that the property of male and female wards and of other persons under curatorship may not be wasted or diminished by their guardians or curators, the Prætor takes care that guardians and curators shall furnish proper security for this purpose. This rule does not apply to every case, however, for testamentary guardians are not compelled to give security, for the reason that their good faith and diligence have been vouched for by the testator himself; nor are guardians or curators appointed after investigation burdened with providing sureties because proper persons are chosen.

(1) Still, where two or more are appointed by will or after investigation, one of them may offer sureties for the indemnification of the ward or minor, and have the preference over his fellow-guardian or fellow-curator, to such an extent that he may administer the trust alone; or so that his fellow guardian, by offering equal security, may have the preference over him, and he himself alone administer the trust. Therefore, he cannot himself require security from his fellow-guardian or fellow-curator, but he should make the offer, so as to give his fellow guardian the choice of either taking security or giving it. Where, however, neither of them offer security, and it has been stated by the testator which one shall act, the one designated must do so: but if this was not done, he whom the majority selects must act in compliance with the Edict of the Prætor. But where the guardians themselves disagree concerning the choice of the one or more who are to act, the Prætor should exercise his authority.

This rule also applies where several persons are appointed after investigation; that is to say, the majority can choose by whom the administration shall be conducted.

(2) It should further be noted that not only are guardians and curators held accountable for their administration to their wards, to minors, and to other persons, but also that a subsidiary action lies against those who accept security, and provides the former with a final safeguard. This subsidiary action is permitted against those who have either entirely neglected to take security from guardians or curators, or have accepted such as is not sufficient. This action, in accordance with the opinions of jurists as well as under the Imperial Constitutions, can also be brought against the heirs of those who are responsible.

(3) In these Constitutions it is also set forth that where guardians or curators do not give security they may be forced to do so by pledges being required of them.

(4) But neither the Prefect of the City, nor the Prætor, nor the Governor of a province, nor anyone else who has the right to appoint guardians is liable to the aforesaid action, but only those who are accustomed to demand security.

TITLE XXV.

CONCERNING THE REASONS FOR EXCUSING GUARDIANS OR CURATORS.

Guardians or curators may be excused for various reasons, but most frequently on account of their children, whether they are under their authority or are emancipated; for where any resident of Rome has three children living, or a resident of Italy four, or a person living in the provinces, five, he can be excused from guardianship or curator-ship, just as he can from other employments; for it has been decided that guardianship and curatorship are public employments. Adopted children are not considered, although children given in adoption are reckoned in favor of their own father. Grandchildren, likewise, the issue of a son, are an advantage in this respect, as they take their father's place, but this does not apply to those by a daughter; and it is only living children who are available as an excuse from the charge of guardianship or curatorship; as those who are dead are not reckoned. The question also has arisen as to whether those should not be included who have been lost in war; and it has been determined that those only shall be reckoned who have perished in actual battle, for such as have died for their country are deemed to live forever on account of their glory.

(1) The Divine Marcus published in his semi-annual volumes of rescripts that an official belonging to the Treasury could be excused from guardianship or curatorship as long as he remained in office.

(2) Those who are absent on business for the State may also be excused from guardianship or curatorship. Moreover, if they have served as guardians or curators, and subsequently depart on business for the State, they are excused as long as they are absent for that reason, and, in the meantime, a curator may be appointed in their stead. When they return, however, they again take up the burden of guardianship; and as Papinian stated in the Fifth Book of his Opinions, they are not even released from responsibility for a year, although they are entitled to this term when appointed to new guardianships.

(3) Those also who have any other public office may be excused as the Divine Marcus declared in a rescript, but after they have once assumed a guardianship they cannot abandon it.

(4) Moreover, no guardian or curator can be excused on account of a lawsuit which he may have with his ward or any minor in his charge, unless the litigation has arisen with reference to the entire property or inheritance.

(5) The burden of three guardianships or curatorships, where they have not been sought for, affords an excuse for exemption so long as they are being administered; in case the guardianship or curator-ship of several wards, or of their property, shall be reckoned as only one, just as those of brothers, for example.

(6) Both the Divine Brothers and the Divine Marcus himself declared by Rescripts that a person could be excused on the ground of poverty, if anyone could show that he was unequal to the burden imposed upon him.

(7) An excuse also is valid on account of bad health, by reason of which a man is unable to transact his own business.

(8) The Divine Pius stated in a Rescript that anyone unable to read should be excused, although persons lacking knowledge of letters can transact business.

(9) Again, where a father on account of enmity has appointed anyone a guardian by his will, this also furnishes a ground for exemption; just as, on the other hand, those parties are not excused who have promised their father that they will assume the guardianship of minors.

(10) The Divine Brothers aforesaid published a Rescript stating that the excuse of a man who relies solely upon the fact that he was unknown to the father of the minors is not to be entertained.

(11) Where anyone has cherished enmity against the father of wards or minors, and it was mortal and no reconciliation has taken place, it is customary to excuse the party from guardianship or curator-ship.

(12) Also, if anyone has had his condition disputed by the father of the minors, he may be excused from guardianship.

(13) A person over seventy years of age can likewise be excused from guardianship or curatorship. Also, in former times, those who were less than twenty-five years of age were ordinarily excused; and by one of Our Constitutions they are forbidden to claim either guardianship or curatorship, and for this reason there is no necessity for an excuse. It is also provided by the same Constitution that neither a ward nor minor shall be called upon to assume a legal guardianship; for it is contrary to law for those who are known to require assistance in the transaction of their own business and who are governed by others, to be invested with the guardianship or curatorship of third persons.

(14) This must also be observed in the case of a soldier who, even if he is willing, cannot be permitted to exercise the office of guardian.

(15) Moreover, grammarians, rhetoricians, and physicians of Rome, and others who in their own country practice these professions and who are included in the number of those legally authorized, are also exempt from guardianship or curatorship.

(16) He who desires to be excused, and has several excuses but fails to establish some of them, is not forbidden from profiting by the others within the designated time. When parties desire to be excused they do not take an appeal, but whatever kind of guardians they may be — that is to say, in whatever manner they have been appointed — they must offer their excuses within fifty consecutive days from the time they learn of their appointment, if they are within the hundredth mile-stone from the place where it was made; but if they reside beyond the hundredth mile-stone, they may do this after making a calculation of twenty miles a day and thirty days in addition; but, nevertheless, as Scævola has stated, the reckoning should be made so that there may not be less than fifty days in all.

(17) When a guardian is appointed, it is understood that he is appointed for the entire estate.

(18) Any person who has administered the guardianship of another cannot be compelled to be the curator of the same person if he is not willing; and this rule applies to such an extent that although a father who appointed a testamentary guardian added that he appointed the same party curator, the Divine Severus and Antoninus stated in a Rescript that he could not be forced to assume the curatorship if unwilling to do so.

(19) They also stated in another Rescript that a husband who has been appointed the curator of his wife may be excused, even though he may have interfered in her affairs.

(20) Where anyone has been excused from assuming guardianship by means of false statements, he is not released from the burden of the said guardianship.

TITLE XXVI.

CONCERNING SUSPECTED GUARDIANS OR CURATORS.

It should be noted that the offence of suspicion is derived from a Law of the Twelve Tables.

(1) The power of removing suspected guardians is at Rome conferred upon the Prætor, and in the provinces upon the Governors of the same and upon the deputy of the Proconsul.

(2) We have shown who has jurisdiction over a suspected person; let us now see who can be suspected. And, indeed, all guardians can be, whether they are testamentary guardians or those of another description; and therefore a guardian may be accused even though he be appointed under the law. But what if he be a patron? The same rule will still apply, so long as we remember that the reputation of the patron must be spared, even though he be removed as a suspected person.

(3) We must next examine who can accuse suspected guardians, and it is to be noted that an action of this kind is, to a certain extent, a public one, that is to say open to all: and, indeed, by a Rescript of the Divine Severus and Antoninus even women are permitted to bring such an action, but only such as are actuated by the bond of affection can do so; as, for example, a mother. A nurse and a grandmother can also institute it, and a sister as well; and, moreover, if there is any woman whose affectionate inclination is perceived by the Prætor, and who does not exceed the modesty of her sex but is induced by her affections not to countenance injury to the minors, he can authorize her to make the accusation.

(4) Those who are under the age of puberty cannot accuse their guardians as being suspected persons, but those who have reached puberty can, with the advice of their relatives, accuse their curators as being suspected; and this rule the Divine Severus and Antoninus promulgated in a Rescript.

(5) He who does not administer the guardianship with fidelity even though he be solvent, is a suspected person, as Julianus also stated. Julian likewise held that a guardian can be removed as being suspected, before he has begun to administer the guardianship, and a Constitution has been enacted in agreement with this regulation.

(6) A person who has been removed on account of being suspected becomes infamous where this is done by reason of fraud, but this is not the case if he is removed on account of negligence.

(7) If anyone is accused on account of being suspected, the administration of his trust is forbidden him until the investigation has been terminated, in accordance with the doctrine of Papinian.

(8) Where the investigation of a suspected person has been begun and he afterwards dies, whether he be either guardian or curator, the investigation is concluded.

(9) Where a guardian does not appear in order that necessaries may be adjudged to his ward, it is provided by a Rescript of the Divine Severus and Antoninus that the ward shall be placed in possession of his property, and that any article which might be damaged by delay shall be ordered to be sold by the curator appointed under such circumstances. Therefore, a curator who does not furnish necessaries may be removed as being suspected.

(10) But where the guardian appears, and denies that necessaries can be furnished on account of the poverty of the estate, and this allegation is false; it has been decreed that he shall be delivered to the Prefect of the City to be punished, just as a party is delivered up who has obtained the administration of a guardianship by the payment of money.

(11) Again, when it is established that a freedman has fraudulently administered the guardianship of the children or grandchildren of his patron, he shall be delivered up to the Prefect of the City to be punished.

(12) In conclusion, it must be noted that those who fraudulently administer a guardianship or curatorship shall be removed from office even though they offer security; because the tender of security does not change the malevolent intention of the guardian, but affords him the opportunity to damage the estate for a longer period.

(13) We, in fact, consider a man suspected whose morals are such that he is liable to suspicion, and in fact a guardian or a curator, even if he is poor, should not be removed as

suspected if he is also faithful and diligent.