THE ENACTMENTS OF JUSTINIAN.

THE NOVELS.

AUTHENTIC OR NEW CONSTITUTIONS OF OUR LORD THE MOST HOLY EMPEROR JUSTINIAN.

FIRST COLLECTION.

CONCERNING HEIRS AND THE FALCIDIAN PORTION.

TITLE I.

FIRST NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Prsetorian Prefect of the East, twice Consul and Patrician.

PREFACE.

While We were formerly occupied with the cares of the entire government and could think of nothing of inferior importance, now that the Persians are quiet, the Vandals and Moors obedient, the Carthaginians have recovered their former freedom, and the *Tzani* have, for the first time, been subjected to Roman domination (which is something that God has not permitted to take place up to this time and until Our reign), numerous demands have been presented to Us by Our subjects, to each of which We shall pay attention in the most suitable manner. Many of these questions, it is true, must be determined in accordance with existing enactments, and in order that they inure to the common welfare of all (whenever this is necessary), We have deemed it proper to establish these matters by law, and to communicate them to Our subjects, in order that they may take effect of themselves, and not always require the sanction of Imperial authority.

(1) For people are constantly importuning Us, some having recourse to Us on account of legacies which have been bequeathed and not been paid; others because of grants of freedom; and still others on account of different matters; and, where estates have been left, certain persons who have been charged either to give or to do som'e-thing have impiously entered upon the property, and taken it, but have not complied with what was ordered, although it was laid down by the ancient legislators that the testamentary dispositions of deceased persons, when they are not contrary to law, shall, by all means, be carried out. But as We have found that the greater part of the ancient laws have been neglected, We have considered it necessary that they should be revived, and that, by means of them, protection should be afforded to the living, as well as respect shown to the dead in this manner.

(2) Therefore, in the first place, it must be remembered that the law requires testators to distribute a specified share of their estates among certain relatives as being due to them in accordance with natural justice, for instance, sons, grandsons, fathers and mothers, and sometimes even brothers, as well as any other persons of this kind whom the laws have enumerated as being in the same class with those from whom We are descended. No necessity, however, is imposed upon other testators to give any portion of their own property, but authority is granted them to leave it to anyone whom they may select.

CHAPTER I.

WHERE THE HEIR IS UNWILLING TO PAY LEGACIES.

These matters having been already decided by Us, We order that those who have been appointed heirs by testators, or who have been charged with the execution of trusts or the payment of legacies, whether in general terms, or specifically, shall be obliged absolutely to carry out whatever dispositions the testator may have made, provided these are in accordance with law, or when no law prohibits them; and if he who was charged in this manner does not do as he was directed, he must show clearly that he had a right to act as he did.

(1) If the appointed heir should not execute the dispositions of the testator, and the legatee is entitled to receive the bequest, and, after he has been notified by a decree of court, the heir fails to make payment for an entire year, or does not do what he was ordered, and he is one of those who can legally claim a certain share of the estate, but has been left more than he is entitled to by law, he can only receive as much as the law grants him, that is, one-fourth of the estate in case of intestacy; otherwise he will be deprived of all of it. And if any other persons should be appointed heirs, they will each be entitled to his or her proportionate share. But when there is no other heir, or where some have been appointed but do not accept the estate, then what has been refused by those above mentioned shall be added to the remainder of the estate, and the legatees, the beneficiaries of trusts, and the slaves upon whom liberty has been bestowed shall be permitted to enter upon and acquire the property; so that whatever has been ordered by the testator shall in every respect be carried out, and security shall previously be furnished in proportion to their condition and the value of the property, in order that having received the estate they comply with the lawful intentions of the testator.

If, however, none of those mentioned in the will (that is to say the co-heirs, legatees, beneficiaries of trusts, or slaves to whom liberty has been granted), should desire to enter upon the estate, then it shall pass to the others whom the law calls in case of intestacy, after the appointed heir has been excluded from his legitimate share by this law, and they, in like manner, shall give security to carry out what is contained in the will. We do not, however, wish that there should be any confusion with regard to this matter, but he who was called first in order after the one who has been excluded by Our law shall be preferred, and then the one who comes next after him, and the others in succession, until the last one who has relinquished the estate shall be succeeded by any stranger who may be willing to enter upon the estate and carry out the wishes of the testator, and after these We place the Treasury, if it should be willing to accept it. For We establish the following rule with reference to legatees and beneficiaries of trusts, namely: that permission to accept an estate should first be granted to the beneficiary entitled to all of it, or where there are several of these to the one entitled to the largest share, since he resembles the heir, this being especially the case with Us, Who, whenever such beneficiaries of trusts are concerned, have solely adopted the Trebellian rule, and, holding in contempt the Pegasian circumlocutions, reject them. If, however, no one should be entitled to the entire estate, or, being entitled to it, should be unwilling to do what the testator directed, then the trust shall pass to those to whom has been left the greater portion of the legacies or trusts; and time shall be granted to slaves to whom freedom has been bequeathed to enter upon the estate, and, with their children, give security, receive the property, and do what has been ordered, the above-mentioned security, of course, having already been furnished.

But when there is no legatee or beneficiary entitled to the whole or a greater part of the estate, by virtue of either a legacy or a trust, but all of them are to share equally, then all the beneficiaries entitled to the whole of it, according to the rule just laid down, shall be preferred, or any one of them who is willing to carry out what was ordered by the testator; and the remaining legatees or beneficiaries who have no advantage over the others, so far as the remainder of the estate is concerned, shall be called to the succession, if they are willing, or those who consent shall be called. If, however, no legatee or beneficiary should be willing to do this, We grant permission to the slaves upon whom freedom has been conferred, according to the order in which they have been mentioned by their master, to take precedence over one another.

(2) We also adopt the rule where a necessary bequest is made to anyone to whom an inheritance is due from the deceased testator according to the Law of Nature. Where, however, no person of this kind appears among the appointed heirs, but a spontaneous disposition of his estate has been made by the testator, and the appointed heir does not comply with what has been directed within the time hereinbefore established by Us, he shall be deprived of all that was left to him, so that he cannot receive anything by virtue of the Falcidian Law, or on any other ground; and if there should be any co-heirs, We desire that

they shall be called in his stead, and, in default of them, the estate shall pass to the beneficiaries, legatees, slaves, and all those entitled to it *ab intestato,* in the order which We have already prescribed, and wherever a charge has been created, it must (as We have stated above) be executed in compliance with what the testator legally ordered.

(3) Where, however, the appointment of the heir includes a substitution, it is certain that the entire estate must first pass to the substitute, provided he consents to accept it and carry out the provisions of the will in accordance with law; and if he should not be willing, all he is deprived of shall pass to the co-heirs, the legatees, the the slaves, those who are entitled to it *ab intestato,* to strangers, and to the Treasury, in conformity to the rule which We have established, on condition that all lawful dispositions shall be executed; for We have taken into consideration all these different successions in order that the estates of deceased persons may not remain without acceptance.

(4) We do not call to the succession, nor do We consider any children who may have been disinherited (if they have been justly excluded by their father), and who have received nothing under his will, no matter how many of them there may be. For the object of the law is, "that the intentions of deceased persons shall be carried into effect;" and, indeed, how would it be just for anyone who has been excluded by the testator himself from sharing in his own property to be called to succeed to what he himself expressly refused by means of disinheritance? As We have, in the first place, granted to the substitutes the share of which the heir was deprived because he did not comply with the wishes of the deceased, and then granted it to the co-heirs, and after these to the legatees and beneficiaries of trusts, and slaves, and next to those who are called by the succession in case of intestacy, and afterwards to strangers, and to the Treasury, this has not been done absurdly or without reason, or to deprive anyone of his rights, but with foresight and in accordance with law; so that all persons entitled under the will having renounced their claims, We may have recourse to the heirs at law and the others in their designated order.

In every case, however, in which the appointed heirs do not comply with the wishes of the testator, We call to the succession either persons mentioned in the will, the heirs at law, strangers, and the Treasury, and We grant to all such persons the right to act as heirs, become such and enter upon the estate (for such are the words of the law), as well as to transact all business which they may agree upon, just as regular heirs can do. Laws of great antiquity have by their own authority established these rules, and have made persons heirs who have not been appointed, or called to the succession *ab intestato.*

All these things having been observed, even though the testator may not have wished anything to be given or done by the heir, the legatee, the beneficiary of the trust, or the recipient of the estate *mortis causa,* if they should be deprived of the property, the same order should be maintained, beginning with the substituted legatees and ending with the Treasury. In order that no one may consider this law to be harsh in case he should be deprived of what has been left him, he should remember that for all men death is the end of life, and should not selfishly think of only what he receives from others, but he should reflect upon what he himself when dying may command others to do, and bear in mind that if he does not deserve the aid of the present law, none of the dispositions which he himself may carefully plan are liable to be carried into effect. For it is not for those alone who are subject to Our authority, but for all future time that We have established this law.

CHAPTER II.

CONCERNING THE FALCIDIAN LAW AND THE INVENTORY.

Hence We have taken care to consider the Falcidian Law which, even when testators are unwilling (where their estates are exhausted by legacies), authorizes heirs to retain a fourth part of the property; for certain persons sometimes are found to violate the wishes of the deceased, and rely upon the law which permits this to be done. Therefore, as the wills of deceased persons must everywhere be protected by Us, We decree that if the heirs desire to

enjoy this advantage, they must strictly observe the law, and not attempt to introduce the Falcidian Rule with reference to property which they, perhaps, may have appropriated through fraud or ill will, and to which, under other circumstances, it would not be applicable.

(1) Therefore an inventory shall be made by the heir who is apprehensive that he will not receive the Facidian portion after the debts and legacies have been paid, and this shall be done according to the manner which We have already prescribed when We prevented the heir from sustaining a loss of his own property, and decreed that any burdens imposed upon him shall be in proportion to the value of the estate which has been left. It has been added that an heir of this kind, who fears not only the creditors but also the legatees and beneficiaries of trusts, and is apprehensive that he will be the loser, and will also obtain no advantage, can call together all the beneficiaries and legatees who are residents of the same town, or any persons acting in their behalf, if their personal condition, rank, quality, age, or any other circumstance does not entitle them to be present when the inventory is drawn up.

If, however, any of them should be absent, not less than three credible witnesses who are owners of property in the same town, and bear an excellent reputation, must be present; for We do not rely upon notaries alone who are charged with drawing up the inventory, but it should be made in the presence of the legatees, so that in case any property forming part of the estate may have been removed or is not forthcoming, they can make inquiry with reference to it. They shall be permitted not only to question the slaves (for We permit this to be done in accordance with what We have previously decreed concerning the examination of slaves), but also to take the oath of the heir, as well as that of the witnesses to the effect that "they were present when the inventory was made and saw everything which took place at the time, and know that no fraudulent act was committed by the heir;" and whatever was left by the testator shall not be considered to have been established, unless all the legatees are present, or refuse to come and be present when the inventory is drawn up, as authorized by the aforesaid Constitution. In case the legatees should not be present, then the heir shall be permitted to be satisfied with the presence of the witnesses alone, and he can proceed with the inventory, and the legatees shall be deprived of the right of having the heir sworn, and of examining the slaves, and all heirs who observe these provisions shall be entitled to the benefit of the Falcidian Law. Thus We shall not appear to diminish the force of the law as observed up to this time, or to do injustice to the deceased; for if anyone should wish absolutely to appoint heirs to his estate, and to derive some consolation from his succession, and think that he had a sufficient amount of property, when in fact this is not the case, it is certain that as the deceased was not aware of the mistake, his sincerity will show the honesty of his motives.

(2) If, however, an inventory should not be made by the heir in the manner which We have prescribed, he will not be entitled to retain the Falcidian portion, but he must pay the legatees and beneficiaries of trusts, even though the amount of the bequests prove to be greater than the value of the estate of the deceased. We establish this rule without intending to diminish the effect of the law which We have promulgated, in order that heirs may not cause creditors any loss, but if guilty of fraud, that they may be punished; for why should he violate the laws under which, if he acts properly, he can lose nothing, but, on the other hand, will be benefited by the provisions of the *Lex Falcidia?* We accord this privilege where a testator acts in this manner, through being mistaken as to the value of his estate, or perhaps, where he should have left a larger share to the heir, he leaves him less; for this is the result of an erroneous opinion, and not of a deliberate and intentional design. Where, however, he expressly states that, "he does not desire his heir to retain the Falcidian portion," the wish of the deceased must be complied with, and the heir who is willing to obey the testator who has perhaps done nothing but what is just and proper will be benefited not by receiving any property, but merely through having acted in a dutiful manner; or if he is unwilling to obey, he can refuse to accept the appointment, and give place (as We have already provided) to the substitutes, co-heirs, beneficiaries of trusts, legatees, slaves, heirs at law, and the other successors, in the order which We have previously established.

CHAPTER III.

CONCERNING THE EQUALIZATION OF LEGACIES.

We do not grant permission to an heir who is perfectly acquainted with the value of the estate to pay certain legatees in full in the beginning, carry out the entire wishes of the testator (which also has been stated in certain constitutions of Our predecessors), and afterwards reserve the Falcidian fourth out of the shares of others; nor indeed to partially comply with the wishes of the testator and only diminish the legacies to a certain extent; but the value of the estate must be ascertained, and the will of the testator afterwards be carried out, so that there may be no cause for dissatisfaction; otherwise the heir will not discharge his duty. Nor do We permit those who, in the beginning, have knowingly and carelessly paid legacies, afterwards to bring suit against the persons who received them in order to recover from them what they have been paid. For it is necessary to deliberate before acting, and not bring suit without proper reflection, after having wrongfully transferred the property, unless there should be some good cause, for instance, the discovery of an unexpected debt which may diminish the assets of the estate, and afford a good reason for taking this course.

CHAPTER IV.

LEGACIES MUST BY ALL MEANS BE PAID WITHIN A YEAR.

We have also provided that a long time shall not elapse in disposing of such matters. For We direct that no more than a year shall be allowed for the decision of questions or litigation of this kind, rendering it necessary, within twelve months after the acceptance of the estate, for the legacies to be paid and the wishes of the testator complied with, in accordance with their character, and for everything which We have previously ordered to be done. We direct that the year shall begin, as We have already stated, from the date of the notice of the judicial decree. If, through the negligence of the heir, the period of a year has elapsed, he shall then lose his right to whatever has been bequeathed, and the others whom We have previously called to the succession will be entitled to it.

(1) This law of Ours does not, in any respect, prejudice the rights of wards and minors, for in case they should be injured in any of the ways which are mentioned by Us, they will be entitled to relief from two sources; that is to say, by means of restitution, and by the recourse of which they can avail themselves against negligent guardians or curators. We do not, however, by" the provisions of this law except the successions of patrons, for the lawful share which We have established shall be preserved for them; and where anything beyond this has been bequeathed, and some charge has been imposed upon them by their freedmen and they refuse to execute it, We direct that the order which We stated in this Our Imperial Constitution in the beginning shall be preserved, so that the simple legal share may be acquired by them, and the remainder be divided among the other coheirs, as We have already directed; for in the constitution promulgated by Us with reference to the right of patronage We have conceded to freedmen almost the same privileges as freeborn persons are entitled to.

(2) But for the reason that there are two kinds of wills, one written and the other nuncupative, We desire that all these things shall be observed in the same manner in every instance, and We order that this shall be done in the case of nuncupative wills as in all others, no matter who the person may be, whether he is a private individual, a soldier, a priest, an officer of the Empire, or anyone else whosoever, for We make this law applicable to all men.

EPILOGUE.

We have mentioned these things in order that they may be to the advantage of all persons alike, that the living may obtain what has been left to them, and the dying may pass from life in security, knowing that the law will administer their affairs even after they are buried; and that whatever testamentary dispositions they have made will be carried into effect.

(1) For the reason that this law is generally useful, Your Excellency will cause all persons to become acquainted with it; and it shall be proclaimed through the provinces to all the nations

which are already subject to Roman domination, as well as to those which have, with the aid of God, recently been added by Us to the Empire. As soon as the judges of the principal cities receive this law they shall (as has already been decreed by Us) publish it in every town in their jurisdiction, and no one shall remain in ignorance of the law, "which does not permit a man to live in poverty, or to die in anxiety."

Given at Constantinople, on the *Kalends* of January, during the Consulate of Flavius Belisarius.

TITLE II.

CONCERNING THE RULE PROHIBITING WOMEN, WHO HAVE MARRIED A SECOND TIME, FROM MAKING A SELECTION AMONG THEIR CHILDREN : AND CONCERNING THE ALIENATION AND PROFIT OF ANTE-NUPTIAL DONATIONS; AND CONCERNING THE SUCCESSIONS OF THEMSELVES AND THEIR CHILDREN.

SECOND NEW CONSTITUTION.

The Emperor Justinian to the Glorious Hermogenes, Master of the Imperial Offices, Ex-Consul and Patrician.

PREFACE.

Before Our reign, the great variety of lawsuits gave to the Roman legislators constant occasion for new enactments, but We have regulated every part of the legislation of the Empire, and have almost entirely amended it, in some instances by refusing the demands of applicants, and in others by judicial decisions; and We have drawn up many laws for Our subjects. An emergency has induced us to publish this one.

(1) Gregoria presented a petition to Us setting forth that she had formerly had a husband who died and left her two children, a boy and a girl; and as the boy was particularly attached to her, she thought that it was proper not to leave him without some recompense, but in doing so she did not wish to exceed the bounds of moderation. Therefore as she had not yet been married a second time, she gave him her ante-nuptial donation, but he did not survive her, and died before his mother married again; so that the ancient law, as well as Ours, called both the daughter and the mother to the succession of the deceased minor. No question would have arisen had the mother remained a widow, but she married a second husband who was entitled to the entire usufruct of the ante-nuptial donation, while she had given it in such a way that she could enjoy the use of the same, and that the ownership would vest in her son. The daughter, however, demanded the entire ownership of the donation, not merely as the heir of her brother, but by virtue of what her father had given her mother, alleging that, as the latter had contracted a second marriage, she was not worthy of any confidence, and that on no ground whatever was she entitled to the ownership of the donation. Her mother, on the other hand, declared that the ante-nuptial donation was not at all in dispute, for the property of which it was composed had already been united with that of her son, and, as it were, formed a part of his estate, and not of the donation which no longer existed, and that she was entitled to six-twelfths of the ownership and the usufruct. Nor was this the only question involved in this matter, for the daughter claimed the estate of her brother as against her mother, although the latter demanded half of it, a share to which, where there is only one surviving sister, We have called the daughter along with her mother. The daughter, however, in order to obtain the entire estate of her brother, and strongly relying upon former constitutions asserted: "That if my mother had not married a second time, she could justly claim the estate of her son, but as she had married another husband, she was entirely deprived of the property which her son had obtained from his father's estate, for the reason that if her son had died after the second marriage his estate, no matter from what source it was obtained, would have passed to me, and I would have become the owner of the same by virtue of the two constitutions which have laid down a rule of this kind."

The mother, however, replied: "That these constitutions were cruel, and unworthy of the clemency of Our age." However, availing herself of the Constitution promulgated by Us, she alleged that: "This Constitution could not be subordinated to the former ones, and that mothers who have not yet contracted a second marriage are called to the succession along with their surviving children, and are by no means excluded where they have married again," and also, "that this case was an unusual one, in that she had bestowed a gift upon her son by means of exercising her choice, and should be considered rather to have acquired the donation a second time than by this means merely to have made an unreasonable profit." We, after having examined the matter thoroughly, and having taken into consideration the question of selections and inheritances of this kind, have considered it necessary to enact a special law with reference to these matters, by means of which this controversy may be terminated.

CHAPTER I.

CONCERNING THE ABOLITION OF THE RIGHT OF CHOICE.

Therefore, in order not to leave the question of choice confused and undetermined, We have seen fit to establish the following order, namely: "Whenever a mother is married a second time, the ownership of the ante-nuptial donation shall be vested in all the children, and the mother shall not be permitted to select any of them, and exclude the others, as she injures all of them at once by her second marriage. Wherefore, in the present case, the entire ownership of the antenuptial donation shall pass to the daughter, and the mother shall retain the use of the same for her lifetime; and, in accordance with Our Constitution (if the mother should die first), the entire ante-nuptial donation shall belong to the daughter; but if the daughter should die first, the mother shall be entitled to the benefit of it by virtue of the agreement relating to children who are not living; the remainder of the estate shall pass to the daughter; and when she dies, it will be transmitted to her heirs who are called to the succession by law.

CHAPTER II.

CONCERNING THE ALIENATION OF A DOWRY OR OF A DONATION MADE TO A STRANGER ON ACCOUNT OF MARRIAGE.

There is a question which often arises, and has not yet legally been decided, and we dispose of it by the present law, in order that the greatest advantage may be obtained. Where a mother who has not yet contracted a second marriage gives, or alienates in any other way, a portion of an ante-nuptial donation, or any article included in it, or all of it, not to her son, but to some stranger, and then marries a second husband, it is clear that the alienation remains in abeyance on account of the second marriage; for if there are any surviving children, what has been done will be absolutely void, as the law bestows the ownership of the ante-nuptial donation upon the children, without taking into account anything which their mother may have done to their injury. If, however, all the children of the mother should die, the transaction will stand, not in its entirety, but so far as the share of the ante-nuptial donation is concerned, according to the agreement entered into, where the children did not survive; and this We have been the first to introduce, and have recently inserted it into the laws.

Hence the contract will be valid in some respects and void in others; that is to say, it will be valid so far as the share which belongs to the mother by virtue of the agreement made with reference to the death of the children is concerned, but it will be void with reference to what is transmitted to the heirs of the son, so that if the mother alone should succeed her son, then the entire contract will stand.

(1) For the reason that the disabilities of second marriage are common to both the man and the woman, the man who marries a second time will run the risk of losing the dowry, just as the woman will forfeit the ante-nuptial donation in case she marries a second time. This law which treats of choice, alienation, and pecuniary profit shall be applicable to persons of both sexes.

CHAPTER III.

CONCERNING THE SUCCESSION WHERE A SON DIES INTESTATE, AND IN WHAT WAY PARENTS MARRYING A SECOND TIME CAN BE CALLED TO SUCCEED TO THE ESTATES OF THEIR CHILDREN.

Therefore, as the subject of the estates of children, concerning which doubts have been raised, remains to be discussed, We have thought it necessary to dispose of and decide the present question by means of a general law, and for the future, to put an end to all disputes which may arise. And We order that, where any male or female child has made a will, his or her property, exclusive of that composing the ante-nuptial donation, shall go to the appointed heirs in accordance with law, and that in this instance the mother shall not be disqualified from being appointed an heir by her son; but, on the other hand, she is conceded the right to contest the will, if her son should have passed her over or disinherited her without a cause.

If, however, he should die intestate, and should have children of his own, his estate shall go to them with the exception of the share to which his mother is entitled; but if he should have no children, his mother shall be called to the succession along with his brothers (in accordance with what has already been decreed by Us), and she shall obtain her share of the estate, whether she intends to marry a second time or not.

We do not prescribe severe penalties against women who marry a second time, nor do We reduce them to bitter necessity—which is Unworthy of Our reign—through the fear of lawful nuptials (even though they may be contracted a second time) of abstaining from such a marriage, and descending to forbidden unions, and perhaps even to the corruption of slaves, and, as they are not permitted to live chastely, to illegally indulge in debauchery. Hence We hereby declare invalid the Constitution that We inserted in the Fifth Book of the Code, which treats of the estates of children whom mothers, before contracting second marriages, have seen die; nor the one in the Sixth Book of the same work which appears under the title "Tertullian," and treats of women who have lost their children before contracting a second marriage; but the mother, along with the brothers of the deceased child, shall, by all means, be called to the succession, and shall unquestionably be entitled to her share; nor shall her claims be affected in the slightest degree by reason of her second marriage, and she shall obtain whatever, through consideration of the present case, has caused the enactment of this law, and shall succeed to the estate along with her daughter, and, thus succeeding, shall incontrovertibly be entitled to her share, without any prejudice to her rights due to the expectation of a second marriage, but she shall, with her daughter, be the absolute owner of the estate. Hence the opinion which is best, as well as most praiseworthy and deserving of citation, is that wives should conduct themselves in such an honorable manner that, having once been married, they will preserve inviolate the pledge made to their dying husbands, so that We may consider a woman of this kind worthy of Our respect and not differing greatly from a virgin. But where a woman does not consent to this (when perhaps she is young and cannot restrain herself), or resist the passions of nature, she should not be molested on this account, nor should she be forbidden the benefits of the common laws; but she can honorably contract a second marriage, and abstain from every kind of licentiousness, and she shall enjoy the succession of her children. For just as We do not deprive fathers who marry a second time of the estates of their children—nor is there any law whatever which makes such a provision—so We do not deprive mothers of the estates of their children when they marry a second time, even though their children may die either before or after the second marriage. Otherwise, by the absurdity of the law, even though all the children should die first, without leaving either children or grandchildren of their own, the restriction will continue to exist, and their mother will not succeed them, even if they die without issue; but she will be inhumanly excluded from the succession, and she will have suffered in vain in having brought them forth and reared them, as well as be subjected to punishment because of the contraction of a lawful marriage; and heirs in a distant degree of cognation may succeed to their estates while their mother will be unreasonably excluded. Thus she herself will be entitled to inherit from her

children, and so this indulgent and merciful law joins the mothers with their offspring.

Therefore, combining the different sections of this law We order that it shall be obeyed, as We class the mother (according to what We have previously stated) with the father, so far as the ante-nuptial donation is concerned; and We hereby order that she shall be subjected to the same penalties in this respect as the father is with reference to the dowry, and that both the father and mother shall, without any hesitation, be entitled to the estates of their children in accordance with their respective claims. Hence mothers shall be entitled to whatever the fathers have, whether they contract a second marriage or not; and a mother shall be called to the succession of her son whether she has already contracted a second marriage, or does so afterwards.

(1) A woman who marries a second time shall enjoy an antenuptial donation, not as the heir of her son, but on the ground that the donation is only a profit bestowed by the law, and not a part of the estate of her child; but it shall still retain the nature of an ante-nuptial donation.

This rule shall also apply to women who now, being widows, have succeeded to the estates of their own children, and have not yet contracted a second marriage, although they may afterwards do so. What has been decreed in this instance shall prevail for all time.

CHAPTER IV.

CONCERNING THE ADMINISTRATION OF DONATIONS GIVEN IN CONSIDERATION OF MARRIAGE WHEN THE WOMAN MARRIES A SECOND TIME.

We think that it is proper to make an addition to the former provisions relating to ante-nuptial donations, where the woman marries a second time. For these laws give a woman who contracts a second marriage the choice of accepting the ante-nuptial donation in accordance with the marriage contract, provided she gives security to her children; or if she is unwilling, or refuses to give such security, the property composing the ante-nuptial donation shall remain in the hands of her children, who shall pay interest on the same to their mother at the rate of four per cent.

We, being induced by the number of questions which have arisen on this point, and having found minors subject to risk when the antenuptial donation consists of money, some of them, having no resources, being compelled to sell the entire estates of their fathers in order to discharge the debt of the ante-nuptial donation; and, as this donation should certainly go to them in conformity with law, We have deemed it necessary to provide that, when anyone bestows movable property as an ante-nuptial donation, the mother shall have the use of the same, and shall accept and not reject it; but she cannot collect interest from her children at the above-mentioned rate, and she must take good care of the property, as the law directs, just as the owners themselves would do, and she can retain it in accordance with the ancient laws, during the lifetime of her children, or, if all of them should die, she must observe this present law, and the remainder of the donation shall be preserved for the benefit of her children's heirs.

If, however, the entire ante-nuptial donation should consist of money or other personal property, the mother will be entitled to interest at the rate of four per cent, if she furnishes the security already provided for; but she cannot collect the money itself from her children unless the estate of her husband is ample and includes gold, silver, clothing, or anything else which has been allotted to the mother. For, in this instance, We give the mother the choice of either taking the property and furnishing security, or of receiving what We have declared to be a reasonable rate of interest in accordance with former laws as well as the present one.

Where the estate consists of both real and personal property, and the ante-nuptial donation is composed partly of money and partly of land, the land shall, by all means, remain under the control of the mother, in order that she may obtain support therefrom; but the personal property shall be disposed of, as We have previously prescribed where the entire ante-nuptial donation consists of chattels.

CHAPTER V.

CONCERNING A DOWRY WHICH HAS BEEN PROMISED IN WRITING AND HAS NOT BEEN COUNTED OUT OR DELIVERED.

We think that it is necessary to plainly establish by law a point which has perhaps already been too harshly decided, and which rarely comes into court for determination; so that the rule may commonly be observed in practice and judgments, in accordance with the public welfare. Where persons are married, and written provision is made for dowries and ante-nuptial donations, and the husband bestows the ante-nuptial donation, and the wife agrees in writing to give a dowry, either to be furnished by herself, by her father, or by some stranger, and it afterwards appears that the dowry was not given to the husband at the time of the marriage, but that he paid all the expenses of the same, and that the marriage was dissolved by his death, it is absolutely unjust—where the dowry was not given to the husband for the wife—that she should receive the ante-nuptial donation. If, however, she did not give the entire dowry, she can take a proportionate share of the donation, after having furnished a corresponding amount of the dowry. As We love equity and justice, and desire them to be observed in all things, and especially in those relating to marriage, for which reason, where a woman has given nothing at all as dowry, she shall receive nothing; and she who has given less than she promised, shall only receive a share proportionate to what she gave.

The advantage of the present law is that it decides many cases which are frequently in doubt, and which are now determined in a way appropriate to legislation. We desire it to be observed in the case to which it has given rise, as well as in all pending litigation and any which may hereafter take place.

EPILOGUE.

Hence Your Highness must hasten to carry into effect what We have decreed, and publish everywhere by proclamation, in every city, the contents of this Our ordinance, so that all persons may be informed of what We have prescribed.

TITLE III.

CONCERNING THE NUMBER OF ECCLESIASTICS ATTACHED TO THE PRINCIPAL CHURCH AND THE OTHER CHURCHES OF CONSTANTINOPLE.

THIRD NEW CONSTITUTION.

The Emperor Justinian to Epiphanius, Most Reverend and Blessed Archbishop of this Imperial City, and Universal Patriarch.

PREFACE.

Some time ago We addressed to Your Reverence and the other Most Holy Patriarchs a general law with reference to the ordination of the venerable bishops and most reverend clergy, as well as deaconesses, by means of which We reduced the number of those formerly ordained, a step which seems to Us to be just and proper, and worthy of ecclesiastical discipline. We address the present law, which establishes the number of ecclesiastics in this city, to Your Holiness. For the reason that what is very large is rarely very good, it is proper that the ordinations of the reverend clergy and deaconesses should not be so numerous that the Church will be subjected to too much expense, and by degrees be reduced to poverty. We have ascertained that on this account the principal church of this Imperial City, the Mother of Our Empire, is oppressed with indebtedness, and cannot pay the clergy without borrowing large sums of money, to obtain which the best of its real property both in the country and in the suburbs must be hypothecated and pledged. We have taken measures to ascertain the cause of this condition of affairs, as well as the unfortunate results which its long duration have brought about.

Therefore, having thoroughly investigated the matter, We have learned that persons who have founded churches in this Most Fortunate City have not only made provision for the

construction of the buildings, but have also set apart sufficient sums to pay the expenses of a certain number of priests, deacons, deaconesses, sub-deacons, choristers, readers and porters to be attached to each church, and, in addition to this, have made arrangements for the expenses of the service; and finally, that they have provided sufficient income to meet the expenses of their foundation, and have directed that any subsequent increase in the number of ecclesiastics should by no means be considered valid.

These regulations remained in force for a long time, and, while this was the case, sufficient provision remained for the support of the churches. But when the bishops, beloved of God, and always attentive to the requests of certain persons, increased the number of ordinations, the expenses likewise increased immensely, as well as the creditors and the interest; and recently no creditors are to be found on account of their lack of confidence, but alienations of property caused by necessity, contrary to law and for improper causes, as well as inconsistent with the dignity of the Church, have taken place; and the real property either in the country or the city, not being sufficient for hypothecation and pledge, for this reason creditors could not be found, and the said property became worthless and insufficient even to pay the salaries of the ministers, which was productive of such great misfortune that all the property had to be transferred to the creditors, which is a matter which We dislike to mention, and must provide means to correct; for where anyone cannot easily support a person who lives beyond his means, how can We fail to deliberate concerning this matter? It is not necessary to attempt to make further acquisitions with a view to defraying the expenses (as this would lead at once to both avarice and impiety), but the expenditures must be regulated in proportion to the revenues of the remaining property. Wherefore We must take measures to reduce the number of ecclesiastics, and thereby provide a remedy for the evil.

CHAPTER I.

THE NUMBER OF ECCLESIASTICS SHALL REMAIN AS IT is AT PRESENT, AND THE NUMBER OF THE CLERGY ATTACHED TO THE PRINCIPAL CHURCH OF CONSTANTINOPLE SHALL BE DETERMINED FOR THE FUTURE.

Therefore We order that the most reverend ecclesiastics who are now attached to the principal church, and all other religious houses, as well as the deaconesses and porters shall remain as they are at present (for We do not diminish the existing number, but order this by way of providing for the future), and We direct that hereafter no ordination shall be made until the number of reverend ecclesiastics shall be reduced to that established by those who founded the holy churches. And as the number of the most reverend clergy of the Principal Church of Our Imperial City was fixed, and at first was very small because there was only one holy church at the time, but afterwards that of the Holy and Glorious Virgin Mary, Mother of God, was founded, and erected adjacent to the Most Holy Principal Church by Verina of pious memory, and the Church of the Holy Martyr Theodore was dedicated to him by Speratus of glorious memory, and the Church of St: Helen was also joined to the Principal Church of the City, it would be for this reason impossible to limit the number of ecclesiastics to that originally established. For if there was not a sufficient number of them to conduct the service of so many houses of worship—for each of these three churches does not possess its own priest, but they are common to all—that is, not only to the Principal Church but to the others, and all of them going from one to another conduct the services of each in turn, and as a great number of persons, through the favor of God and Our Saviour Jesus Christ, have, by Our labors and exertions, been induced to abandon their ancient heresies, and been brought into the Most Holy Principal Church, it is necessary to set apart for the present service a greater number of ecclesiastics than was provided for in the first place.

(1) Wherefore We order that not more than sixty priests, a hundred deacons, forty deaconesses, ninety sub-deacons, a hundred and ten readers, or twenty-five choristers, shall be attached to the Most Holy Principal Church, so that the entire number of most reverend ecclesiastics belonging thereto shall not exceed four hundred and twenty in all, without including the hundred other members of the clergy who are called porters. Although there is

such a large number of ecclesiastics attached to the Most Holy Principal Church of this Most Fortunate City, and the three other churches united with the same, none of those who are now there shall be excluded, although their number is much greater than that which has been established by Us, but no others shall be added to any order of the priesthood whatsoever until the number has been reduced, in compliance with the present law.

CHAPTER II.

ECCLESIASTICS SHALL NOT BE PERMITTED TO PASS FROM AN INFERIOR CHURCH TO THE PRINCIPAL ONE THROUGH PATRONAGE, AND CONCERNING THE INCREASE OF THE NUMBER OF ECCLESIASTICS OF INFERIOR CHURCHES.

It should also be added that whatever has, up to this time, been improperly done, shall not in the future be repeated, that is to say, as many of the most reverend ecclesiastics, both here and in the provinces, have disdained to serve zealously the churches in which they were ordained, but have resorted to the Most Holy Principal Church, and have become attached thereto by means of patronage, We by all means forbid this to take place hereafter. For if, so far as monasteries are concerned, We forbid their inmates to go from one to another, We should be still more unwilling to permit the reverend ecclesiastics to do this, for We are of the opinion that this is attributable to the desire for gain, and that such persons are actuated by pecuniary and commercial motives. If, however, Your Holiness should hereafter think that such a transfer would be advantageous, it can take place; but not until the number of ecclesiastics has been reduced to that established by Us, so that the change may be made to fill a vacant position without exceeding the prescribed number. We permit this to be done without any intrigue, and for no other motive than that above mentioned. At present We are only concerned with the Most Holy Principal Church.

(1) With reference to all the other churches whose expenses are paid by the Most Holy Principal Church, We order that the ecclesiastics shall remain as they are at present, and likewise that others shall not be ordained until their number corresponds with the one originally established' by the founders of said churches. This applies to priests, deacons, deaconesses, sub-deacons, readers, choristers, and porters, nor shall the number of these in the meantime be increased. We shall take measures to see that this rule is enforced, and shall send priests for ordination, and none of Our judges who fear Our law shall do anything to violate it. The Most Blessed Archbishop and Patriarch of this Imperial City is hereby authorized to refuse ordination under such circumstances, even though the order may proceed from Our palace; for he who issues it and he who receives it shall both be liable to a fine under ecclesiastical law if it is executed.

So far as other churches whose expenses are not borne by the principal church are concerned, care must be taken that the number of ordained ecclesiastics does not hereafter exceed that established in the first place; lest, where an immense number are created and divided, and the revenues provided by pious donors, these may not be sufficient for their support, and they may be reduced to the greatest penury.

If, however, ordinations in excess of the prescribed number should be "made, either in the Most Holy Principal Church or in the other churches, the bishop in charge of the Most Holy Church and the venerable stewards of the same, who have paid out sums from the revenues, shall themselves, along with the Most Blessed Patriarch who allowed these expenditures to be made, be compelled to make them good out of their own property. For they are hereby notified that, when anyone acts in this manner, We give permission to the Most Holy Patriarch who may subsequently be in authority, as well as the stewards and other reverend ecclesiastics who may succeed, to make a thorough investigation of these matters, to prohibit them, and give information thereof to the government, so that the latter, being informed of the facts, may order the Holy Church to be reimbursed the sums permitted to be expended by the archbishop, out of the property of the latter and that of the stewards.

In order that no confusion may afterwards result on account of the reduction of the number of ecclesiastics to the figure originally established, as soon as this reduction has taken place, it shall not be lawful to exceed that number, or for any deception to be practiced with reference to this matter. For We by no means permit anything to take place by means of which someone may have the right to confer ordinations without providing funds for the support of the incumbents. For this will again be productive of confusion, as a great increase of ecclesiastics and the foundation of new associations will result, and numerous fraudulent schemes will open other ways for the indulgence of avarice, in order to provide for the expenses of maintenance. We also, under ecclesiastical penalties, forbid ordinations to be made beyond the prescribed number, being of the opinion that it is highly desirable that the Most Holy Principal Church should neither be involved in debt, reduced to poverty, nor remain constantly without resources, but should always enjoy abundance.

Who are suffering for the necessaries of life. Stewards, beloved by God, are notified, both now and for the future, that if they do not comply with what We have ordered, they will be subjected to Divine punishment, as well as be compelled to indemnify the Holy Church out of their own property.

EPILOGUE.

We direct Your Holiness who, in the beginning and at a very early age, has been admitted to all the clerical orders, who is in charge of the Most Holy Church, and who is descended from a pious race, to continue to observe this law, as you are aware that Our solicitude is not less concerned with those things which are profitable to the most holy churches than for the welfare of Our own soul.

Given on the seventeenth of the *Kalends* of April, during the Consulate of Belisarius.

TITLE IV.

CONCERNING SURETIES, MANDATORS, BONDSMEN AND PAYMENTS.

FOURTH NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Prefect of the Imperial Praetors.

PREFACE.

We deem it advisable to revive an ancient law long since established, and, for some reason with which We are not acquainted, fallen into disuse; which has reference to matters that are always delicate and necessary, and render it applicable to the present age. We do not, however, restore it as it was originally (for a portion of this law was not sufficiently clear), but We, with the assistance of God, have added to it what is suitable under the circumstances.

CHAPTER III.

OTHER ECCLESIASTICAL REVENUES SHOULD BE EXPENDED BY THE PATRIARCHS AND STEWARDS FOR PIOUS USES AND FOR THE RELIEF OF PERSONS IN WANT.

Having in this manner provided for the expenses of churches, it is now proper to direct that the Most Holy Patriarch and reverend stewards shall see that other expenses for pious uses, agreeable to God, are paid out of the ecclesiastical revenues, and bestowed upon persons who are really in need, and have no other means of subsistence. For it is pleasing to Our Lord God that the expenditures of the Church should not be made for the protection of, and in accordance with the desires of men, and lavished upon the rich to the exclusion of the poor

CHAPTER I.

CREDITORS SHOULD, IN THE FIRST PLACE, SUE THE PRINCIPAL DEBTOR.

When anyone loans money and accepts a surety, a mandator, or a bondsman, he should not first proceed against the said mandator, surety, or bondsman, nor should he negligently annoy

those who are responsible for the debtor, but he should in the first place have recourse to him who received the money and contracted the debt; and if he collects what is due to him, he must refrain from suing the others, for what can he obtain from them after the indebtedness has been discharged by the debtor? If, however, he should not succeed in collecting part or the whole of the claim from the debtor, he can then have recourse to the surety, the bondsman, or the mandator, for the amount that he has not been able to collect, and can obtain from him the balance due; and this rule will apply when both the principal and surety, mandator, or bondsman are present. But where the surety, the mandator, or the person who rendered himself liable by a promise is present, but the principal debtor is absent, in this instance, it would be hard to send the creditor to collect his money elsewhere when he can at once recover it from the surety, mandator, or bondsman. It is necessary for Us to provide for this matter, as no remedy was afforded by the ancient law, although the eminent Papinianus was the first to suggest one. Therefore, the creditor can have recourse to either the surety, the bondsman, or the mandator, but the judge having jurisdiction of the case shall grant time to the surety, the bondsman, or the mandator if he wishes to make the principal debtor a party to the suit so as to force him to comply with his agreement and recourse be had to himself in the end, and the judge must assist the surety, the bondsman, or the mandator under these circumstances; for it has been decided that other persons of this kind can be released from liability in the meantime, and the principal debtor can be produced in court, when they have been subjected to annoyance on his account. If, however, the time granted the surety (the duration of which should be fixed by the judge) should have elapsed, then the surety, mandator, or bondsman shall be discharged; and the debt shall be collected from him in whose behalf he became responsible either as surety, mandator, or bondsman, and he will be subrogated to the creditors whose claims have been settled.

CHAPTER II.

CONTINUATION OP THE PRECEDING CHAPTER. PROPERTY WHICH HAS BEEN TRANSFERRED TO A THIRD PARTY CANNOT BE RECOVERED BEFORE A PERSONAL ACTION HAS BEEN BROUGHT AGAINST THOSE WHO ARE LIABLE.

A creditor cannot bring suit to recover the property of debtors which is in the hands of other persons, before bringing a personal action against the mandators, sureties, or bondsmen, having first brought suit against the principal debtor, or those in possession of the property; and if his claim should not be satisfied by this means, then he can have recourse to the property of the sureties, mandators, or bondsmen, or, where they themselves have anyone indebted to them, or who are liable to hypothecary actions, these may be held liable.

We grant the creditor permission to proceed against the principals and their property (whether he prefers to make use of personal or hypothecary actions or both), which permission has already been given by Us, and We direct that he can avail himself of this right against the other persons who are liable under all circumstances. And We not only establish this rule with reference to creditors, but also if anyone should purchase property from another and take a surety (who is called a confirmator), and suit is afterwards brought against the vendor for the purpose of contesting the sale, the purchaser cannot proceed at once against the confirmator, nor, on the other hand, against whoever holds any property of the vendor; but he must first sue the vendor, and then have recourse to the bondsmen, and, in the third place, proceed against the party in possession. We order that, under the same circumstances, the rule which We have previously established in the case of sureties, mandators, and bondsmen shall, in case of either the presence or absence of debtors, also be observed by creditors in the collection of their claims. In like manner, this same rule shall apply to other contracts in which sureties, mandators, or bondsmen have been accepted, as well as to the principals on both sides and their heirs and successors, and shall benefit Our subjects because of the justice and order for which it provides.

CHAPTER III.

CONCERNING PAYMENTS. WHEN THE DEBTOR HAS NOT THE MONEY WITH WHICH TO MAKE PAYMENT His PROPERTY SHALL BE ADJUDGED TO THE CREDITOR.

Even though what follows may, perhaps, not be agreeable to some creditors, still, for the sake of clemency, We decree that relief shall be granted to persons in financial distress. If anyone should lend money, believing that the borrower is solvent, and the latter has not the means to pay the debt in money, but has real estate, and his creditor insists upon payment in cash, it will not be easy for the debtor to discharge the obligation where he has no personal property, for We grant the creditor permission to accept land instead of money if he is willing to do so; but if no purchaser of the land can be found and the creditor prevents the purchase of the property and keeps buyers from being present by spreading it abroad that the property of the debtor is encumbered to him, then the judges in this Most Fortunate City of Our Glorious Empire, according to the extent of the jurisdiction which has been granted to them by the law and by Us, and in the provinces, the Governors, shall see that a correct appraisement of the property of the debtor is made, and afterwards possession of the land shall be given to the creditors in accordance with the amount of their claims, with such security as the debtor can furnish. When a transfer of the property is made in this way, the best part of it, whatever that may be, shall be given to the creditor, and what is of inferior value shall remain in the hands of the debtor, after the indebtedness has been discharged; for it would not be just for anyone to lend money and afterwards receive property that is not worth the amount of the loan; and where a creditor who is compelled to take possession of real property does not obtain the best of what belongs to the debtor, he is still indemnified, because, while he does not receive money or other personal property, he acquires possession of something which is not useless to him, for this is an example of the indulgence of the law.

Creditors will recognize the fact that if We did not promulgate this law, necessity would compel the same thing to be done, for if the debtor does not have the money with which to pay the debt, and no purchaser of his real estate can be found, he can do nothing else than surrender it, and it will be transferred to the creditor, who would not otherwise receive what he was entitled to. Thus, having settled a question which might be productive of recrimination and bitter feeling to both creditor and debtor, and having decided at the same time mercifully and legally, thereby affording relief to unfortunate debtors, We shall not appear harsh to exacting creditors by permitting them to have recourse to a measure which, even if they did not consent, they would, nevertheless, finally be compelled to adopt. Hence, if a creditor is ready to provide a purchaser, the debtor will be obliged to sell the property, after furnishing such security as the judge may determine, and which it is possible for him to give; as provision must by all means be made for the indemnification of the creditors in such a way that debtors may not be oppressed.

(1) In compliance with the ancient laws, We consider as a creditor everyone who has a right of action against another, even though their right may not be founded on a loan, but on some other contract, thus in the usual course of business sustaining the obligations of bankers for the benefit of contractors.

EPILOGUE.

Your Highness having been informed of what has been decreed by Us, with reference to the protection of Our subjects, will cause this law to be published by formal proclamation here as well as in all places subject to Our authority, so that Our subjects everywhere may ascertain how great has been Our solicitude for their welfare.

Given on the seventeenth of the *Kalends* of April, during the Consulate of Flavius Belisarius.

TITLE V.

CONCERNING MONKS.

FIFTH NEW CONSTITUTION.

The Emperor Justinian to Epiphanius, Most Holy and Blessed Archbishop of this Royal City, and Universal Patriarch.

PREFACE.

Monastic life is so honorable and can render the man who embraces it so acceptable to God that it can remove from him all human blemishes, declare him to be pure and submissive to natural reason, enriched in knowledge, and superior to others by reason of his thoughts. Hence, where anyone who intends to become a monk is lacking in theological erudition and soundness of discourse, he becomes worthy of obtaining both by his change of condition. Therefore, We think

that We should explain what should be done by such persons, and lay down rules which they must follow in order to pursue a holy life; and it is Our intention after having treated of the most holy bishops and reverend ecclesiastics in this law to omit nothing which concerns monks.

CHAPTER I.

CONCERNING MONASTERIES AND THEIR CONSTRUCTION.

It must be stated before anything else that, where someone wishes to build a sacred monastery at any time or anywhere, he shall not have permission to do so before having applied to the bishop of the diocese, who shall extend his hands to Heaven and consecrate the place to God by prayer, placing upon it the sign of Our salvation (We mean the adorable and venerated sign of the cross), and then the building shall be erected, for this constitutes, as it were, a good and suitable foundation for the same. The construction of venerable monasteries should begin in this way.

CHAPTER II.

CONCERNING NOVICES.

The condition of individual monks must now be considered by Us, and what must be done to enable slaves as well as freemen to be admitted to the order. Divine grace considers all men equal, declaring openly that, so far as the worship of God is concerned, no difference exists between male and female, freeman or slave, for all of them receive the same reward in Christ. Hence We decree that those who, following the sacred rules, desire to embrace a religious life, shall not immediately receive the monastic habit at the hands of the most reverend superior of the monastery; but, whether freemen or slaves, they must wait for the term of three years before assuming the monastic habit, but they shall, while studying theology, wear the tonsure and dress of those who are called the laity, and the most reverend abbots shall require them to state whether they are freemen or slaves, and for what reason they desire to embrace the monastic life, and, after having learned from them that no unworthy motive has induced them to take this step, they shall be received among those who are still taught and admonished of their duties; and their patience and sincerity shall be ascertained by experiment, for such a change of life is not easy, but is undergone at the expense of great mental exertion. (1) After the novices have been subjected to probation for the term of three years, and have convinced the superiors and other monks of their excellent dispositions and patience, they can assume the monastic habit and tonsure; and if they are free, can remain without molestation, and if they are slaves, they can by no means be subjected to annoyance, as they are consecrated to the common Master of all men (that is to say the One in Heaven), and become free. For, as in many instances, this takes place by operation of law and liberty is granted them, why should not Divine grace also avail to release them from their bonds?

If, however, within the aforesaid term of three years, anyone should appear and attempt to remove any one of the said novices, on the ground that he is a slave, the same decision should be rendered as in a case which Zosimus of Lycia—a man most renowned in his order and who had almost reached his one hundred and twentieth year, but still enjoyed the use of all his mental and physical faculties (to such an extent was he honored by the favor of God) referred to Us. If then, as We have stated, anyone should, during the said term of three years, attempt to reduce a novice to servitude, who still desires to become a monk, and should declare that the latter took refuge in a monastery because he had stolen certain property, We order that he shall not be immediately surrendered, but let it first be established that he is a slave, and afterwards that he has committed theft, or has led a wicked life, or is given to the practice of the worst vices, and that, on this account, he has been induced to conceal himself in a monastery. If it should be established that the accuser told the truth, and it appears that the novice has embraced the monastic life for any reason of this kind, or that he has done so because of the baseness of his former life, and that he intended to assume the monastic habit without sincerity, he shall be restored to his master along with anything which he may have stolen, provided the property is in the monastery, and he who has been proved to be his master swears that he will receive him and take him home, and do him no harm.

(2) Where, however, he who alleges that he is his master does not prove this, and he who is accused under such circumstances shows by his conduct that he is honest and kind, and can establish by the testimony of others that while he was with his master he was obedient and a lover of virtue, even if the term of three years has not elapsed, he shall, nevertheless, remain in the monastery and be released from the control of those who wish to remove him. But when the term of three years has once expired, as he is then judged to be worthy of monastic life, he shall remain in the monastery. Nor do We, under any circumstances, permit his former life to be investigated, but whether he is a freeman or a slave We desire that he shall continue to be a member of the order; for even though formerly his life may have been stained with vices (for human nature is, to a certain extent, inclined to the practice of evil), still three years probation is sufficient for the increase of his virtues and the expiation of his sins. Any property which he may have stolen, no matter in whose hands it may be found, shall, by all means, be returned to its former owner.

(3) Where, however, having escaped the danger of servitude, the novice attempts to leave the monastery in order to adopt another mode of life, We permit his master to remove him and include him among his slaves, if he can prove that this was his original condition; for, having again been reduced to slavery, he will not suffer as great an injury as he would have inflicted by abandoning the worship of God.

These are the rules which We establish with reference to those who wish to embrace a monastic life.

CHAPTER III.

MONKS SHALL LIVE AND SLEEP TOGETHER.

We must now consider and show in what way these exponents of monastic philosophy should live and employ their time. In no monastery established under Our rule, whether it be composed of many or few members, do We wish the monks who reside therein to be separated from one another and have their own private rooms; but We direct that they shall all eat together, and that they shall all sleep together in the same place, each one, however, occupying his own pallet, in the same house; or if a single building should not be sufficient to accommodate the number of monks, they shall be apportioned among two or more, not separately and by themselves, but in common, in order that they may be witnesses of one another's honor and chastity, and that they may not sleep too long, and may only reflect upon what is good; for fear of incurring the blame of those who see them, unless indeed some individuals desiring to live in contemplation and perfection may lead solitary lives apart (these are called anchorites, that is to say, persons who seclude themselves, and Hesychastes, or those who live in peace, holding themselves aloof from society in order to improve their

morals); otherwise, We wish all other monks who are assembled together to reside in convents, that is to say, places devoted to life in common; for in this way their zeal will increase their virtue, and especially will this be the case with those who are young when they are associated with their elders; for intercourse with the latter will materially contribute to the perfection of the education of youth. Monks living together in this way shall be obedient to their own abbot, and must strictly observe the rules of their order.

CHAPTER IV.

CONCERNING MONKS WHO ABANDON THEIR MONASTERY.

Where anyone has once professed himself a monk and has assumed the monastic habit, and afterwards wishes to leave the monastery and lead a private life, he is-notified that he must satisfy God for so doing, and that any property which he may have had when he entered the monastery will belong to the latter, and that he can claim none of the same.

CHAPTER V.

CONCERNING A MAN OR WOMAN WHO DESIRES TO EMBRACE A SOLITARY LIFE.

We also decree that any person who desires to enter a monastery shall, before he does so, have permission to dispose of his property in any way that he may desire; but the property of one who enters the Monastery shall by all means accompany him, even though he who brought it there may not expressly state that this was his intention; and he shall not afterwards be considered the owner of said property.

When, however, he has any children, and he has already given them anything either as an ante-nuptial donation, or by way of dowry, and what was given would amount to the fourth of his estate if he had died without making a will, his children shall have no right to the remainder; but where he has either given them nothing or less than a fourth, and, after having renounced the world, he should be admitted among the monks, the fourth of his property shall be due to his children, or enough to make up that amount if they should already have received something from him. When he has a wife and leaves her to enter the monastery, she shall be entitled to the dowry and whatever has been agreed upon in case of her husband's death (which We have prescribed in another of Our constitutions).

All these rules which We have laid down regarding monks shall be applicable to women who enter monasteries.

CHAPTER VI.

CONCERNING MONKS WHO ABANDON THE MONASTERY.

If a monk should leave a monastery for the purpose of entering the army, or to adopt some other mode of life, his property shall remain in the monastery (in accordance with what We have previously stated), and he himself shall be attached to the service of the illustrious Governor of the province; and the result of the change will be that he shall serve an earthly tribunal, as being one who has evinced contempt for the sacred ministry of the Church.

CHAPTER VII.

CONCERNING MONKS WHO PASS FROM ONE MONASTERY TO ANOTHER.

When a monk, having left the monastery where he lived in common with his companions, betakes himself to another, his property shall remain in the hands of and be claimed by the first monastery to which he took it after having renounced the world. Anyone who commits an act of this kind should not be received by the most reverend abbot, for a monastic life of this kind is improper, and should not be tolerated, as it does not indicate a constant and determined state of mind, but shows an irresolute disposition, which constantly seeks change. Bishops, and those ecclesiastics called archimandrites, shall prevent this, in order to preserve monastic honor in accordance with the sacred canons.

CHAPTER VIII.

MONKS SHALL NOT MARRY OR KEEP CONCUBINES.

Where anyone leading a monastic life proves worthy of being ordained a priest, he shall continue to observe the rule of his order absolutely. If, however, having become a priest, he should abuse the confidence reposed in him, and presume to marry, although there are certain ranks of the clergy who are allowed to do this and to enter the matrimonial state (We refer to the orders of choristers and readers, but have forbidden the marriage of all others in accordance with the rules of the Church, as well as the entertainment of concubines, or the passage of their lives in debauchery), he shall, by all means, be dismissed from the priesthood by reason of his having mingled his former solitary life with that of the world, and shall hereafter become a private person; nor shall he be eligible to service in the army, or to any other employment, unless he wishes to render himself liable to the penalties already prescribed by Us. He himself, then being abandoned to his own resources, will become aware of the satisfaction that he owes to God for what he has done.

CHAPTER IX.

CONCERNING THE ELECTION AND CREATION OF ABBOTS. THIS CONSTITUTION IS APPLICABLE TO MONKS AS WELL AS NUNS.

We do not wish the ordination of abbots (where at any time a monastery happens to be without an abbot) to be made in accordance with the seniority of the most reverend monks, and that the one who comes directly after the abbot in rank should be selected; or that the second or the third should be chosen (which is also provided by another of Our laws), but the bishop of the diocese shall go over the names of all of them in succession; and he must not limit himself to their priority of ordination by which their rank is determined, but must choose the one among all the monks who appears to be the best fitted for the place, and worthy of becoming the head of the monastery. The reason for this is that human nature is such that abbots cannot all be taken from among the oldest or most recent monks, but the examination must be conducted by the bishop according to rank, and he who appears to be best qualified of those successively examined shall be created abbot, as possessing the dignity and virtues requisite for the position. For it is necessary to choose those who can distinguish what is best from what is worst, since it is one thing to be unfitted for administration, and another to have the inclination to become competent, and, through proper instruction, to acquire, little by little, the faculty of presiding over a monastery.

(1) The rules formulated by Us in the preceding laws, as well as in the present one, with reference to priests, monks, and monasteries, We hereby declare to be applicable to both males and females, as well as to convents and hermitages; for We do not distinguish between men and women for the reason that, as We have already stated, they compose but one in Christ.

The Most Holy Patriarchs will communicate these matters to the metropolitans under their jurisdiction, and the latter will bring them to the attention of the bishops, and the bishops will communicate them to the different monasteries under their control, to the end that the worship of God may everywhere remain pure. The most severe punishment shall be inflicted upon those who disobey the present law (We refer to celestial penalties which it is necessary to impose upon those who show contempt for the rules of their spiritual guides). When the judges of Our Empire are informed of any breach of this law, they should use every effort enjoined by the rules of the Church to cause it to be observed and carried into effect; for if they should be guilty of negligence, they shall not escape punishment. Wherefore it is proper for Your Holiness to conform to the preceding regulations, and communicate them to the Holy Metropolitans under your jurisdiction.

Given at Constantinople, on the fourteenth of the *Kalends* of April, during the Consulate of the Illustrious Belisarius.

TITLE VI.

HOW BISHOPS AND OTHER ECCLESIASTICS SHALL BE ORDAINED, AND CONCERNING THE EXPENSES OF CHURCHES.

SIXTH NEW CONSTITUTION.

The Emperor Justinian to Epiphanius, Archbishop and Patriarch of Constantinople.

PREFACE.

The priesthood and the Empire are the two greatest gifts which God, in His infinite clemency, has bestowed upon mortals; the former has reference to Divine matters, the latter presides over and directs human affairs, and both, proceeding from the same principle, adorn the life of mankind; hence nothing should be such a source of care to the emperors as the honor of the priests who constantly pray to God for their salvation. For if the priesthood is, everywhere free from blame, and the Empire full of confidence in God is administered equitably and judiciously, general good will result, and whatever is beneficial will be bestowed upon the human race. Therefore We have the greatest solicitude for the observance of the divine rules and the preservation of the honor of the priesthood, which, if they are maintained, will result in the greatest advantages that can be conferred upon us by God, as well as in the confirmation of those which We already enjoy, and whatever We have not yet obtained We shall hereafter acquire. For all things terminate happily where the beginning is proper and agreeable to God. We think that this will take place if the sacred rules of the Church which the just, praiseworthy, and adorable Apostles, the inspectors and ministers of the Word of God, and the Holy Fathers have explained and preserved for Us, are obeyed.

CHAPTER I.

CONCERNING THE MORALS, THE LIFE, THE HONOR, AND THE STATUS OF ONE WHO IS TO BE CONSECRATED A BISHOP.

Therefore, We order that the sacred canons shall be observed hereafter when anyone is presented to be consecrated *a* bishop, and that his life shall first be investigated as prescribed by the Holy Apostle, to ascertain if it is honorable, without blame, and irreproachable in every respect, and what his standing is among good citizens, and whether he performs his sacerdotal functions with propriety.

(1) No one shall (in accordance with the rule already established) be ordained who has left an office or other civil employment, unless he is still young; or, where he has changed his condition by withdrawing from the monastery, he shall first be required to give the fourth of his property to his *curia.*

(2) An uneducated person belonging to the laity cannot immediately be promoted to a bishopric, nor can he receive a fictitious ordination, where, for example, being illiterate, he is at first created a priest, and then, after a short time has elapsed, becomes a bishop.

(3) Nor can. one who has married a wife, who in the beginning was not a virgin, be a candidate for a bishopric; but he should have as his consort a woman who was a virgin when he married her, and not a widow, or separated from her husband, or who had been the concubine of someone else.

(4) Nor should he have either children or grandchildren, whether they were legitimate or odious in the sight of the law; for if anyone should act otherwise, he shall be expelled from the priesthood, and he who ordained him and violated this law shall lose his episcopate.

(5) We do not permit the purchase of an office in the priesthood to be made with money, for We wish the right to conduct divine service to be obtained from the Lord, and not to be acquired by human agency.

(6) He shall not attain to a bishopric who is unfamiliar with the dogmas of the Church.

(7) He who aspires to be a bishop, and has previously embraced a monastic life, or has been a

member of the priesthood for not less than six months, shall have neither wife, children, nor grandchildren. We absolutely require this of bishops, as We have already prescribed in the two preceding constitutions, without investigating whether they still have wives or have renounced them; but We, for the future, do not permit anyone who has a legal wife to be ordained; and this law We now renew, and if it should be violated, the person guilty of doing so shall be expelled from the priesthood, and at the same time the bishop who ordained him shall be dismissed.

Therefore he who is to be consecrated a bishop, whether he belongs to the order of monks or is a member of the other clergy, must be able to produce proof of a good and honorable life, and enjoy an unblemished reputation; for this is the very foundation of the pontificate.

(8) When the candidate has been selected and prepared for the episcopate, he must, before his consecration, be familiar with the ancient and accepted canons which Our faith acknowledges as just and inviolate, and the Catholic and Apostolic Church has established and transmitted to Us. When, after having frequently read them previous to his ordination, the official in charge of the same must interrogate him, and ascertain if he is capable of complying with the said rules and of doing what they prescribe. If he' should state that he cannot observe these sacred precepts he shall, by no means, be consecrated, but if he promises that he will obey them as thoroughly as a man can do, then he shall be admonished and told that, if he does not do so he will be alienated from God, and will lose the honor conferred upon him, and that the civil laws do not leave any offence unpunished, for the reason that Our predecessors and Ourselves have, very properly, rendered the sacred canons valid as laws; and if he still adheres to his declaration, he shall then, in compliance with his professions, be consecrated a bishop.

(9) We decree that a candidate shall not purchase his consecration with money, or by the donation of any other property, but shall obtain it gratuitously and without remuneration, and, as it were, bestowed by God. For if he should employ the means previously mentioned by Us, he shall be considered to have purchased the episcopate either with money or with other property; and he is hereby notified that he will not be permitted to receive it, and he who consecrated him shall be deprived of his office, forfeit his episcopate, and be expelled from the priesthood, and thus both parties will be punished, for one will not obtain what he expected, and the other will lose what he already has. The money or other property which has been paid in for the consecration shall be given to the church, whether the bishop received it, and for this reason was removed from office, or whether someone else belonging to the clergy did so; for We impose the same penalty upon each, namely, We dismiss him from the priesthood, and transfer the money or other property given to obtain the consecration to the church which sustained the injury.

Where anyone who is a stranger, and not an ecclesiastic, receives money or any other property, to procure consecration, and especially if he holds any civil employment, he shall be punished by God Himself, for divine penalties will be imposed upon him; and he shall also be compelled to give to the church double the amount of all that he received, and, in addition, he shall lose his office, and be condemned to perpetual exile. He, also, who purchased the bishopric with money or other property, is hereby notified that if having previously been a deacon or a priest, he has been elevated to the priesthood by favor, he shall not only forfeit the episcopate, but shall be deprived of the office of priest or deacon. He shall also be excluded from every other ecclesiastical order for the re*ason that his desires exceeded the bounds of decency. He who officiates at the consecration must, at the time of the ceremony, and in the presence of the faithful people, acquaint the candidate with what has already been stated, and, after having done so, shall consecrate him, so that he, having heard these things in public, may not only experience the fear of God, but also anticipate a criminal accusation if he should prove unworthy.

(10) Where anyone who is considered eligible to the episcopate is about to be consecrated, and it is alleged that he knows that he has committed some unlawful act, he shall not receive consecration before the charge is investigated and it is apparent that it is entirely unfounded.

If, after an accusation of this kind, he who is to perform the ceremony does not institute a judicial inquiry but proceeds without it, he is hereby notified that whatever he does will be void, and that he who thus acts unlawfully will forfeit his priestly office; and anyone who confers consecration without proof shall be deposed from the office of bishop, for he is an offender against God, who seeks by all means to preserve the purity of his ministering priests. If, however, he who opposes the consecration is ascertained to be a slanderer, either before or after the examination, or if he does not proceed with it, he shall be forever excluded from holy communion by the bishop, in order that his deceit may not go unpunished. For as We require him who is to be consecrated to have a good reputation, so We punish a false accusation when someone brings it without reason. Where, however, no one makes an accusation, or having done so, does not produce satisfactory evidence, and after the examination has taken place the accusation is shown not to be true (as We have previously stated), then he who appears to be in every respect irreproachable shall be admitted to consecration.

He who is consecrated in this manner and is familiar with all the principal sacred precepts, as well as exemplary in thought, in speech, in bodily conduct, and in wisdom, cannot fail to lead a proper life.

CHAPTER II.

A BISHOP CANNOT BE ABSENT FROM His CHURCH FOR A LONGER PERIOD THAN A YEAR.

We also decree that no bishop shall presume to be absent from his church for a longer time than a year, unless by order of the Emperor, for in this case he would be blameless. We direct the Most Holy Patriarch to compel the bishops in their jurisdiction to remain attached to their churches and not separate themselves from them by making long journeys, nor dwell in foreign countries, nor neglect their congregation by being away for a longer term than a year, which We grant them by way of favor.

When any of them remains absent from his own bishopric for more than a year, without the authority of an Imperial order (as We have previously stated), then if he who has left his church is a metropolitan, the patriarch shall notify him to return by means of a proper summons, always observing the rules of the Canon Law.

If, however, he should continue to be disobedient, he shall be expelled from the holy order of bishops, and another shall be introduced in his place who is worthy of the reverence, veneration, and honor of the office. Where the offender is not a metropolitan, but some other bishop who has violated the law, this duty shall be performed by the metropolitan; and none of such persons shall advance the pretext that he has been absent on account of some litigation or any other private matter; or that he has wandered about here and there on business connected with the church, or has remained in one place, or has visited several on this account.

In the eyes of the multitude, to whom the presence of a bishop is necessary, no valid reason exists to authorize ministers to travel; nor does any benefit result to their churches; nor is any assistance afforded to them; nor, under the circumstances, do they reflect any credit upon their sacred calling by being absent. For when it becomes necessary, and any litigation gives causes for any step of this kind to be taken, this can be done by the ecclesiastics of inferior rank or the stewards, and petitions can be presented to the government for the purpose of obtaining what is desired.

Hence We order that if any necessity should arise in a matter in which the interests of the Church are involved, those persons charged with the conduct of ecclesiastical affairs (who are called *apocrisiarii)* or others of the clergy appointed for that purpose, or the stewards themselves, can notify Us or Our ministers, and receive proper attention ; and hence there will be no occasion for bishops to absent themselves, for they will injure their churches by their absence, and through the great expense incurred by them as well as by their sojourn in foreign countries, thus not only good will not result, but the holy churches will sustain great loss.

CHAPTER III.

BISHOPS SHALL NOT VISIT THE IMPERIAL COURT WITHOUT FIRST OBTAINING LETTERS AUTHORIZING THEM TO DO SO.

A bishop cannot visit this Most Fortunate City without first receiving letters addressed by the archbishop to the government, and which, according to the canons of the Church, disclose a good reason for his presence. If an archbishop wishes to travel, he must obtain letters from the patriarch, stating that his absence is necessary, and the Emperor should order him to be presented, for an ecclesiastic must not rashly, and without the knowledge of the archbishops or patriarchs go upon journeys, as this is prohibited by the divine rule; and having arrived, he shall not, at his own instance, presume to present himself to the government, but must first apply to the patriarch, or to those charged with the administration of the diocese, and explain to them the reasons which have induced him to come, and, after having done this, he can enjoy the sight of the Emperor.

After he has been presented, the said bishop can either by means of those who were styled *referendarii* of the Most Holy Principal Church, or by the agency of the *apocrisiarii* in charge of the holy patriarchate, make application to the government and be insured a speedy reply; so that if his demands are just, they will be complied with, or if they are not, he may return quickly to the place from whence he came.

SECOND PART OF THE LAW.

CHAPTER IV.

CONCERNING THE SELECTION OF ECCLESIASTICS.

After having, in conformity with the sacred canons, disposed of the preceding matters relating to bishops, We now decree, in compliance with the same canons, that no one can be ordained an ecclesiastic until after a careful examination, and that the candidate must be of good character, and by all means conversant with letters, and proficient in the doctrines of the Church. For We are unwilling for persons who are ignorant of letters to be ordained under any circumstances, that is to say, as clerks, priests, deacons, readers of the service, or of ecclesiastical or canonical books. Anyone, however, who is meritorious and blameless, and against whom no complaint or opposition has arisen, and who has given neither money nor other property, shall be eligible.

We are unwilling that any officials charged with the administration of the affairs of a *curia* should be ordained, unless in accordance with the laws which We have already promulgated with reference to this matter, and which We now confirm. Persons who are ordained shall be instructed in the sacred precepts in the presence of the entire people, for the same reasons for which We have directed this to be done in the case of bishops.

CHAPTER V.

We do not permit anyone to be ordained who is either a deacon or a priest who has either had a second wife or has one now, or is married to a woman who has left her husband, or is living with a concubine, but only where he married a wife who was chaste and a virgin. For, when ordinations take place, We delight in nothing so much as to know that the candidates are living a chaste life; and that they are not living with their wives, and have not been married more than once to a woman who is chaste, which, according to the sacred canons, is considered as the principal and true foundation of durable virtue. But if any priest, deacon, or sub-deacon should afterwards marry, or keep a concubine either openly or secretly, he shall immediately be expelled from his order and become a layman. If a reader should, for any reason, marry a second time, and this was caused by inexorable necessity, he can never attain to a higher rank in the clergy, nor enjoy a position of greater dignity, but he shall always remain in the same rank, and shall not contract a third marriage, for two are sufficient. If, however, anyone should do this, and after having contracted a second marriage, be promoted, he shall thereafter become a private person and a layman, and be absolutely deprived of his

sacred office. For it is proper, above all things, for Us to live chastely, and if those who become members of the priesthood are such when they are ordained, it will be easy for them to attain to the episcopate, and many of their number will be found eligible to the highest rank of the priesthood.

CHAPTER VI.

CANDIDATES FOR DEACONESSES WHO ARE UNDER FIFTY YEARS OF AGE SHALL NOT BE ORDAINED.

We desire that everything which We have decreed concerning ecclesiastics shall be observed with reference to deaconesses, and they shall not violate these provisions. In order for them to be ordained, they must be neither too old nor too young, and not liable to temptation, but they should be of middle age, and, in accordance with the sacred canons, about fifty years old, and, having arrived at that age, they shall be eligible to ordination, whether they are virgins, or have previously been married to one man; for We do not permit women who have contracted a second marriage, or who (as We have already stated), have led a vicious life, to be ordained, but they must be free from all suspicion in order to be admitted into the holy service of the Church, to be present in baptism, and assist in the celebration of the mysterious and sacred rites which form part of their duties.

When, however, it is necessary for a woman under the age of fifty to be ordained a deaconess, ordination can be conferred upon her in some convent where she must reside; for she can by no means be permitted to mingle with men, or to live where she chooses, but by her withdrawal from society she must give evidence of her retirement and the simplicity of her life. Moreover, We are not willing that deaconesses who have once been ordained—whether they be either widows or virgins—to live with any of their relatives, or with such persons as they may select, for, under such circumstances, they will be liable to criticism, but they can either reside alone or with their fathers and mothers, children, or brothers, who are persons that if anyone should suspect them of criminality, he will be regarded as either foolish or impious.

If any disparaging statement should be made with reference to any woman who desires to be admitted to the order of deaconesses, to the effect that she has lived with someone under an assumed name, and this should give rise to evil suspicions, the woman shall, by no means, be ordained a deaconess. And if she should be ordained, and then commit an act of this kind and cohabit with anyone under another name, she shall be expelled from the diaconate, and both the parties shall suffer the penalties prescribed by this law and others for persons of corrupt morals.

All women who are ordained deaconesses must, at the time of their ordination, be instructed in the duties of their office, and have the precepts of the sacred canons communicated to them in the presence of the other deaconesses, in order that they may fear God and have confidence in their holy order; and they are hereby notified that if they should regret having received ordination, or, having abandoned their sacred office, they should marry, or choose any other kind of life, they will render themselves liable to capital punishment and the confiscation of their property by the holy churches or monastaries to which they are attached. Any persons who may be so bold as to marry or corrupt them shall, themselves, be liable to the penalty of death, and their property shall be confiscated by the Treasury. For if, by the ancient laws, capital punishment was inflicted upon virgins who permitted themselves to be corrupted, how much more reason is there for Us to impose the same penalty upon those who are dedicated to God; and why should We not wish that modesty, which is the greatest ornament of the sex, should be preserved, and be diligently practiced by deaconesses, in accordance with what is becoming to Nature and due to the priesthood?

CHAPTER VII.

CONCERNING ECCLESIASTICS WHO ADOPT ANOTHER MODE OF LIFE.

Those who have once become deacons or priests can, under no circumstances, relinquish their sacred duties. We decree that this rule shall not only be applicable to priests and deacons, but also, where any sub-deacon or reader renounces his former condition and embraces another life, he is notified that if he does anything of this kind (as has already been stated by Us), he shall either be assigned to his *curia* along with his property, or, if he is without resources, shall be devoted to this service.

THIRD PART OF THE LAW.

CHAPTER VIII.

CONCERNING THE EXPENSES OF CHURCHES AND THE PROHIBITION OF INCREASING THE NUMBER OF THE CLERGY.

It is proper that the ordinations of ecclesiastics should not be multiplied, and what has been done up to this time must be corrected. We, however, permit it to exist temporarily, but for the future it must not be repeated in such a way as to cause injury to the holy churches. Therefore, as it is necessary to establish certain regulations with regard to the Principal Church of this Our Royal City, and others subject to it, We have included these provisions in this special law. With reference to all churches situated outside the city We decree that, if anyone should found or build a church, and specify the number of ecclesiastics to be attached thereto, as well as the sum to be expended for its maintenance, no one can be ordained in that church in excess of the number originally established. When, however, this has not been done, the Principal Church shall provide for it, as well as for other churches under its control; and, in this instance, the number of the clergy shall not be increased, nor shall the Principal Church be burdened with the expense of bestowing any privileges or benefits upon it (for this is neither pious nor becoming to priests), but those charged with the financial situation shall give what it is possible out of what God has bestowed, or observe the ancient custom without making any innovations whatever.

The patriarchs and archbishops should see that the ecclesiastics estimate the resources of each church, and only confer ordinations in proportion to the revenues of the same; and the archbishops, warned by the Holy Patriarchs, shall pursue the same course, and compel the bishops of their dioceses to preserve the fixed number of clergy, and to avoid not granting ordinations beyond what the revenues will justify, for We know how many holy churches have become impoverished by reason of ordinations of this kind, and the payment of other expenses.

And as We have with difficulty relieved some of these churches of their burdens, and others are still oppressed by theirs without being able to discharge their obligations, the Holy Patriarchs, archbishops, and bishops must in the future take measures against the recurrence of such an evil; so that We, having learned of what they have done, may approve of those who have used every effort to cause this Our law to be obeyed.

EPILOGUE.

The holy patriarchs of every diocese, the metropolitans and the remaining reverend bishops and clergy, shall observe inviolate and in conformity with the sacred canons the rules which We have above established, and shall, for the future, observe the worship of God and the discipline of the church unimpaired, under the penalty of being rejected by God, and excluded from the sacred order of the priesthood as being unworthy of it. We, however, grant permission to everyone, no matter what may be his office or to what order he may belong, when he becomes aware of any of these breaches of discipline, to notify Us, or the government; so that We, who have established the said rules, in accordance with the sacred apostolic canons of the Church, may inflict the proper penalty upon those who are guilty.

Whatever has heretofore been decreed by Us with reference to the property of bishops shall be observed.

(1) The patriarch of each diocese shall publish this law to all the churches under his control, and communicate it to the archbishops. The latter, in their turn, shall publish it throughout their jurisdiction, and communicate it to the bishops, each one of whom shall publish it in his own church; so that no person in Our Empire may be ignorant of what has been done by Us for the honor and glory of God and Our Savior Jesus Christ. In addition to this, Your Holiness will see that this law shall be always known to, and obeyed by the holy archbishops subject to your jurisdiction.

(2) Written copies of this law have been despatched to Ephrenius, Archbishop of Alexandria; to the Archbishop of Theopolis; to Peter, Bishop of Jerusalem; to John, Most Glorious Praetorian Prefect, twice Consul and Patrician; to Dominick, Most Glorious Praetorian Prefect of Illyria, to whom what follows is addressed. "Your Highness being notified of this law will hasten to observe it, along with your successors, and if any accusation should be filed for a breach of the same, and especially for a violation of what has been forbidden with reference to the ordination of decurions^ or other officials, you must prevent its continuance, and notify Us, in order that a proper penalty may be imposed upon the guilty parties. Your Highness will communicate this, Our Constitution, to the illustrious Governors of provinces, in order that they may be on their guard, and not permit any violation of the same to be committed; for if they, being aware of the offence, do not at once inform your government, or that of the Empire of the fact, they will be liable to a penalty of five pounds of gold, in order that ordinations may everywhere be observed with propriety.

"A copy of this law, with the addition, has also been sent to Dominick, Praetorian Prefect of Myricia."