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

SEVENTH COLLECTION.

TITLE I.

IN WHAT WAY NATURAL CHILDREN BECOME LEGITIMATE, AND CONCERNING THEIR SUCCESSION TO THEIR FATHERS EITHER UNDER THE TERMS OF A WILL OR IN CASE OF INTESTACY.

EIGHTY-NINTH NEW CONSTITUTION.

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

PREFACE.

In former times, the attention of Roman legislation was not directed to natural children, nor was any humanity manifested towards them, but their name was considered to a certain extent foreign to the Republic; but during the reign of Constantine, of pious memory, they were mentioned in the Books of Constitutions. Then the Emperors, proceeding by degrees to a greater exhibition of indulgence and clemency, promulgated laws with reference to them; some permitted them to be given and left property by their fathers; others devised the method by which, being removed from their condition of natural children, they became legitimate, and heirs to the estates of their parents. This legislation was gradually extended until it included grandchildren, and as these laws have been observed in Our time as well as under the reign of the Emperors who have immediately preceded Us, they have been interpreted in many different ways. We have had the double privilege of conducting many persons from slavery to freedom, and of raising natural children to the rank of those who are legitimate; for neither vengeance nor interdiction should render them objects of contempt, but what is necessary should be attended to, what is evil should be avoided, and in every instance what is best should be accomplished. Therefore, for the reason that in the Code of Constitutions which We have compiled from the entire legislation of former Emperors, certain provisions have been made with reference to natural children, and others, since inserted in the Book of Institutes which We have drawn up, have been decided to be complete; and as We Ourselves have adopted many rules with reference to this subject, some of which have been embodied in former laws, and others promulgated subsequently, in order that this legislation may not be dispersed, We have thought it proper to combine it all in one Constitution, which may be sufficient to maintain the rights of all natural children, and to correct and establish whatever relates to them.

CHAPTER I.

CONCERNING NATURAL CHILDREN.

It is clear that there are some men who are at once free and legitimate; others who do not enjoy freedom at first, but afterwards have it conferred upon them, and in this way from being slaves become free, and from being natural children become legitimate; others again, by the very fact that they are natural children, are entitled to certain successions; and still others do not deserve to be called natural, but are considered to be unworthy of this name. Hence it is necessary for Us to promulgate a constitution, in order that no one may be ignorant of the legal position of natural children; and, in beginning this law, ,We shall state in what ways natural children become legitimate (for We have found numerous methods by which this can be done), what their rights of succession are, how harshly ancient legislation has treated them, and how humanely We have acted with reference to this matter. Nor shall We neglect those who, as We have previously remarked, are unworthy of the appellation of natural children. For in the first place, before any laws had yet been enacted, Nature, in sanctioning the procreation of children, treated them just as if they were free and freeborn. The children of Our first parents were originally all free and legitimate from their birth, but wars and legal

controversies, as well as licentiousness and concupiscence, brought about a different condition of affairs. For slavery was a consequence of war, and loss of chastity was the cause of natural children; but the law, again taking cognizance of faults of this kind, bestowed freedom upon slaves, treating the subject at great length, and introducing ten thousand methods of liberating them, while the Imperial Constitutions have opened different ways for legitimation to those who were not legally begotten.

We do not promulgate this decree with the intention that it shall be temporary, nor do We desire the rights of Our subjects to be neglected by its provisions.

(1) Men leave lawful successors through the marriages which they contract, either with or without dotal instruments; even when they are united with their wives in such a way that they have, from the beginning, such an affection as proceeds from lawful wedlock. We, being well aware that this sometimes gives rise to litigation, do decree by this law that proof of legitimate marriage shall take place in compliance with the prescribed forms, when the parties concerned are of high rank; and in another way when they are of an inferior social condition; and We also decree what privileges shall be granted to the people hereafter with reference to this subject. Therefore, where marriage has taken place, successions from this very fact are certain, and when the children are legitimate, the law immediately introduces certain degrees of succession, treating these at great length. This, then, is the right of legitimacy. When this condition does not exist, but the child is free, although it may not be the issue of lawful marriage, or was even born in slavery, if it is worthy of freedom, it, nevertheless, remains natural; and under such circumstances various methods are employed to render it legitimate, which We shall hereafter enumerate, as well as establish others.

CHAPTER II.

CONCERNING THE FIRST METHOD OF LEGITIMATION, THAT IS TO SAY, BY AN OFFER MADE TO THE CURIA.

The first method of obtaining the right of legitimacy, and which is extremely advantageous to municipalities, is the one which Theodosius, of pious and recent memory, introduced. For it was decreed by him that one can offer any or all of his natural children to the *curia,* or marry his daughters to decurions; but as this method was not prescribed by ordinary legislation, but became established in different ways through obligations to the *curia,* and by means of successions, as well as on account of the necessity of ascertaining the right of children to inherit, whose heirs they are, and, again, who are to inherit from them, We think that in drawing up the first chapter of legislation on this subject, it is only just to treat of other methods of legitimating children, which are very easy to explain.

(1) Therefore, where anyone is the father of natural children, whether he himself be a decurion, or free from duties to the *curia,* or whether he has other children who are legitimate, or only natural ones, he shall be permitted to offer all his natural children or only some of them to the *curia,* even though the said children may have been invested with a distinguished office; provided, however, that this office is not one which will release men from curial obligations. But where the father, while still in his lifetime, offers his son to the *curia* (for this method has been employed in the case of Philocalus, a natural son, and a decurion through his father, in the City of the Bos-terni), as is stated in the constitution enacted by Leo, of pious memory; or where anyone has been proclaimed a decurion by his father in this way; or where a father offers his son by having his name inscribed in the Bureau of Public Documents; or where at the time of his death he inserted in his will that his son must become a decurion, and he afterwards attached his signature to the instrument, his son will immediately become legitimate, and will no longer be subject to the disabilities attaching to natural children.

Such children will also become legitimate and decurions if, after the death of their father, who left no lawful issue, they should offer themselves to the *curia.* Hence the father, although he may have legitimate children, can offer his natural children to the *curia,* but *a* natural child cannot do this himself except when there is no legitimate offspring living.

We also include in this law whatever has reference to offers to the *curia,* a subject which has previously been treated by Us in a desultory manner, for We do not merely provide for an offer to the curial status, as it is necessary to introduce methods which are perfectly clear, by means of which children may be offered as aforesaid.

(2) Therefore, anyone born in any town whatsoever, whether he be a decurion, or free from this condition, shall be permitted to offer his natural son to the place of his nativity. But where he is not a citizen, but was born in the country, or in some village, the son can be offered by his father to the city, or he can offer himself to the *curia* of the town to which the said country or village is tributary. It is, however, evident that if the father, grandfather, or any other relative in the ascending line has free children and desires to offer them to the *curia,* he can do so; but where the child wishes to offer himself, We do not permit this, unless he has no other legitimate brothers. If, however, any one of those desiring to offer their natural children to the *curia* was born in this Capital, or in ancient Rome, We permit him to make the offer in whichever metropolis he may select; and he must observe these rules everi with regard to his daughters, and shall be required to marry them to decurions who are either residents of the city where he was born, or of that to which the country or the village which is his birthplace pays tribute; or, where the father is at the same time free and a Roman or Byzantine citizen, he must marry his daughters to decurions of any other city, provided it is a metropolis.

Such is the solicitude which We evince for decurions, and this method of legitimation is pleasing for the reason that We grant exclusively to a father who has only natural children (even though he may have them by a slave) the power of making them free, and of offering them to the *curia,* as has just been stated.

We direct this law to become operative to such an extent that if his father should not make the offer, but the son should become free, he can offer himself to the *curia,* even though he may not be the legitimate offspring of his father.

CHAPTER III.

CONCERNING THE SUCCESSION OF DECURIONS.

And as various provisions have been enacted with reference to the succession of persons of this description, it does not seem absurd to Us to determine their hereditary rights, as We have already stated. Hence if a natural child should become a decurion by means of this method (that is to say, through being offered to the *curia),* he will become the heir of his father both by will and in case of intestacy; he will not differ in any respect from legitimate children; and he will be entitled to property through a donation of his father; still, he will not have a right to more than the smallest share of any of those children who have always been legitimate. When children have once been offered to the *curia,* they are immediately raised to the rank of legitimate offspring, but We do not permit them to reject the estate of their father, or refuse to accept a donation made to them and which they are empowered to receive, nor to renounce their status. Therefore they will continue to be decurions, and, as We have previously stated, will be entitled to the share which has been either left or given to them.

(1) If, however, the children have, from the beginning, rejected the offer to the *curia,* preferring to remain free but natural children rather than to become more powerful and decurions, and if it should afterwards be ascertained that they either possess, or have alienated all or a portion of the property which has been given or bequeathed to them, they shall, even against their will, be strictly required to fulfill their curial obligations; otherwise We must consider them as fraudulently evading Our legislation by attempting to appropriate to their own use the property acquired through the offer to the *curia,* and as refusing to comply with the conditions by means of which they have obtained this advantage.

We decree that these rules shall be applicable not only to males offered to the *curia,* but also to females who marry decurions, for it makes no difference whether a father complies with curial obligations through the instrumentality of his male children, or through that of his sons-in-law, and that he desires, by means of the issue of the latter, to add others to the number of

the former decurions.

CHAPTER IV.

We decree that a son rendered legitimate in this manner shall be such only so far as his father is concerned, and shall not legally be connected with his father's relatives (We mean by this those to whom the father is born, his collateral relatives, and his descendants), for We make the said son a cognate by means of a legal fiction. We direct that where a natural son is offered to the *curia,* he becomes the legitimate heir of his father alone; but We do not intend that this right shall apply to either the ascendants, descendants, agnates, or cognates of his father, or that he shall to any extent share in their estates. We, however, grant him an equitable privilege, for as he does not succeed to his father's relatives, the latter, on the other hand, can lay no claim to his succession, unless he may have appointed them heirs, or has been appointed by them, for those who are offered to the *curia* only become legitimate so far as their father is concerned, and are considered cognates.

CHAPTER V.

Therefore provision should be made for those who, having been rendered legitimate, become successors. If any person of this kind should have children or grandchildren who are the offspring of lawful wives, and they have been regularly created decurions, they will by all means succeed to his estate; for what is more legal than that a son should be called to the succession of his own father? If, however, he should have children who are not decurions, then the legal share of his estate will pass to the Treasury and the *curia,* and the remainder, no matter how much it may be, will go to the children who are not decurions. But where the deceased does not leave any offspring whatever, and dies intestate, the *curia* and the Treasury will be entitled to three-fourths of his estate, as We have long since decreed, and the heirs called by law shall receive the other fourth; or if the deceased made a will, the said fourth shall be acquired by the testamentary heirs. When the law has once accepted a decurion, and his name has been inscribed in the registry of the *curia,* it grants him rights of inheritance and every other succession or advantage. But where anyone who is a relative or a stranger happens to be appointed heir, and desires to apply to the government and to offer himself to the *curia,* he shall be permitted to do so. He will then be entitled to the share of the property allotted to the *curia,* and he will become a successor to the status as well as to the duties of a decurion, provided the municipality consents.

CHAPTER VI.

Where, however, a decurion has no legitimate children but only natural ones, he shall be permitted to appoint them heirs by bestowing upon them the honor of the *curia.* The appointment shall take the place of every offer, and shall not require compliance with ancient laws, or any offering, as long as the parents are living; and by the very fact of the appointment of natural children, when they are free, they at once become decurions and heirs, and will be entitled to three-fourths of the property of their father, in accordance with the distribution which the latter may have made among them; but if their father wishes to leave them his entire estate, it will be better for him to do so; still, under all circumstances, he must leave them nine-twelfths, being well aware that if he should leave them any less than this, the deficiency will be made up by the law out of his estate, and then if the children are willing they shall become decurions: but if some of them desire to become decurions, and others refuse, the shares of the latter will accrue to the others.

Where, however, all of them refuse, the *curia* shall be entitled to the entire nine-twelfths of the estate, just as if there were no living children. But if the father should die intestate, without leaving lawful issue, then the legal share of the estate shall pass to the heirs at law, and if any or all the natural children desire to do so, they can offer themselves to the *curia,* and nine-twelfths of the estate will pass to him or them who become decurions. Where, however, the children were the issue of a female slave, and their father either manumitted them during his lifetime, or offered them to the *curia* under his will, they shall be accepted,

and become decurions in accordance with the desire of the testator; or if they wish this to be done, they can offer themselves to the *curia,* and shall (as has already been stated) receive nine-twelfths of his estate; for We wish that, under all circumstances, whether the father makes a will or dies without doing so, those who become members of the *curia* shall receive nine-twelfths of his estate. But where the father only manumitted his children, and did not offer them to the *curia,* and either all, or some of them, wish to become members of it, then the nine-twelfths of his estate shall be given to him or them who become decurions. When none of the natural children either desires to become a member of the *curia,* or is offered to it, the *curia* shall be entitled to nine-twelfths of the father's property. For it is perfectly clear that the Treasury enjoys this right as laid down by the constitution enacted by Us.

These are the provisions made by Us with reference to natural children who become legitimate by means of their transfer to the *curia,* so far as they relate the manner in which they should be offered and to their successions.

CHAPTER VII.

Three other constitutions have been promulgated, one of them by Zeno, of pious memory, which did not fully prescribe rules for the future but only had reference to the past, and this We have permitted to be inserted into Our Code, in order not to deprive those persons whom this constitution favored, or their descendants, of the benefit conferred by the same. So far as the Constitution of Anastasius, of pious memory, which provided for the adoption of natural children, is concerned, We do not permit it for the future to cause any annoyance to Our subjects, and We only allow it to become operative where it is advantageous to different persons, as We do not wish to be thought to have deprived anyone of these privileges by means of Our laws. For it is always necessary to begin by introducing what is beneficial, and not to annul useful regulations which have previously been established by legislators. We approve the Constitution of Our Father which recommends moderation, has been drawn up in an orderly manner, and prohibits the adoption of natural children; which adoption, however, is extremely absurd and inconsiderately places certain natural children in a superior class to those who are legitimate.

CHAPTER VIII.

CONCERNING THE SECOND METHOD OF LEGITIMATION BY MEANS OF DOTAL INSTRUMENTS.

There are other methods which have been introduced by Us, and which We shall enumerate, which grant the right of legitimacy to children who are originally illegitimate; but We do not discuss their successions, for in rendering them legitimate We confer upon them the same rights of inheritance as those enjoy who are legitimate from the time of their birth. Where anyone has entered into a dotal contract with a freeborn woman, or with a freedwoman with whom he is allowed to live in concubinage, whether he is already the father of legitimate children, or has only natural ones, We decree that marriages of this kind shall be lawful, and that the children born or conceived before such an union has taken place shall be legitimate, and that even though after that children may be born, or those who are already born may die, the first offspring shall, nevertheless, be legitimate. For the affection entertained for the second children is disclosed by the execution of the dotal contract, and the father who is induced to make it himself confers the right of legitimacy upon children born after the execution of the same, and it would be absurd for any circumstance favorable to the last children not also to be advantageous to those born before the contract was executed, and that they should be prevented not only from enjoying the right of legitimacy but also that of the inheritance of their father's estate, as the children born after the marriage become legitimate by operation of law under the terms of the dotal contract. Hence We make but one disposition of children born before and after the contract was executed, and We have for the future disposed of all controversies to which many constitutions gave rise by stating that although the father may not have had any children after the dotal contract was made, those that he already has are none the less legitimate. For as other offspring may be born to him, and he has

been able to divest those, who came into the world before the dotal contract was drawn up, of the condition of natural children, the proof of his affection for them gives them the right of legitimacy, and there is no stigma which it does not effectually remove.

(1) In addition to this it is, for good reason, added that, if a child conceived before the dotal contract was drawn up should be born afterwards, it will be the lawful issue of him who was qualified to execute such a contract in conformity with Our former Constitutions; and We have been induced to enact this provision because it relates to the order in which children are born. For as a doubt arose whether it was necessary to consider the date of conception, or that of the birth of children, We hereby decree that not the date of their conception but that of their birth must be taken into account, because of the benefit which will accrue to them by doing so. If, however, it should happen under certain circumstances that the date of conception will be more advantageous to them than that of birth, We then direct that the time which is more beneficial shall be considered.

CHAPTER IX.

CONCERNING THE THIRD METHOD OF LEGITIMATION BY MEANS OF IMPERIAL RESCRIPTS.

We also decree that where anyone desires to render his offspring legitimate, and their mother is no longer living, or if he is greatly attached to his children and their mother is not without blemish in his eyes, and he does not deem her worthy of lawful marriage; or because the mother is dead, or he has no respect for her; or he has been treated badly by his children who have designedly concealed their mother to prevent her estate from going to their father who would otherwise be entitled to it, and to prevent him on the death of their mother from enjoying the use and usufruct of her property by law, through having children under his control; under such circumstances where a father who has no legitimate children, but only natural ones, desires to render them legitimate, and if (as We have just stated) their mother is dead, or if she is living but bears an evil reputation; or where she does not appear; or in case it is impossible for the father to draw up a dotal instrument with her (as would be the case where either of the parties entered the priesthood), We grant him authority to legitimate his natural children if (as has already been stated) he has already no legitimate issue; for as there are methods of rendering slaves at the same time free and freeborn and restoring them to the condition of nature, so, if a father has legitimate children, whether they are the offspring of a freeborn woman or of one who has been manumitted, and he desires to restore them to their natural condition of freedom, render them legitimate for the future, and have them under his control, he can do so by virtue of an Imperial Rescript.

For in the beginning when Nature alone had power over men, and before any written laws were enforced, the distinction between natural and legitimate children did not exist, but the first children born to Our first parents, as well as those who subsequently came into the world (as We have stated in the beginning of the present law) were legitimate. So far as offspring are concerned Nature originally created them all free, and only produced legitimate children, and as wars were the cause of servitude, so it was the inclination of mankind to concupiscence which gave rise to the law relating to natural children.

Wherefore, since it is proper to correct similar passions by corresponding remedies, one has been introduced by Our predecessors, and the other by Us.

(1) Hence, in cases like those above mentioned, when a father leaves the mother of his children in her original condition, he shall be permitted to apply to the Emperor, stating that he desires to restore his offspring to nature and their former freedom and legal rights, and that he desires them to be under his control, and to differ in no respect from those who are legitimate. This having taken place, his illegitimate children shall hereafter enjoy the benefit of legitimation, for We desire to correct unnatural prejudices, and at the same time direct the course of those who have no lawful issue, so that by this brief provision such a violation of natural laws may be remedied.

CHAPTER X.

CONCERNING THE FOURTH METHOD OF LEGITIMATION BY MEANS OF THE WILL OF THE FATHER CONFIRMED BY THE EMPEROR.

If, indeed, he who is only the father of natural children has not, on account of certain accidental circumstances, been able to render them legitimate in the ways which We have already mentioned, but at the time of his death desires, under any of the aforesaid conditions, to execute a will by which his children may become his lawful successors, We grant him the authority and permission to do so; but the children, after the death of their father, must petition Us, make a statement of the facts, and produce the will, and then they shall be heirs according to law, and shall obtain the gift of legitimation at the same time from their father and from the Emperor, that is to say, from both Nature and the law.

CHAPTER XI.

Generally speaking, We desire that this Constitution shall be applicable to all children who are rendered legitimate in the ways in which We have just enumerated. But if fathers are not permitted to relinquish the right of paternal authority without the consent of their children, there is much more reason that a child should not be subjected to such authority against his will, and as if he feared to follow the fortunes of his father by being placed under his control, whether through being offered to the *curia* by virtue of the execution of a dotal contract; or any other way; and We do not think that either the legislator or the government should have power to do this.

(1) Where, however, there are several children, and some of them desire to be under the control of their father, and others do not, those who wish to be legitimated shall have that right conferred upon them, and the others shall remain in their natural condition.

We establish this rule without abolishing any of the preceding methods of legitimation, and We only add it to the others in cases where the latter are not available; for where there are only legitimate children and afterwards natural children are born, legitimation is not acquired by the latter, unless by offering them to the *curia,* or in accordance with Our Constitutions which have introduced the method of legitimation by means of dotal contracts.

(2) We do not think that the method of adoption formerly introduced by certain Emperors, Our predecessors, is reprehensible, but We abolish it in accordance with the terms of the Constitution promulgated by Our Father, as it does not pay sufficient regard to chastity; and, besides, it would not be advisable for regulations which have once been duly abrogated to be again introduced into the government.

Therefore these things having been ordered by Us, and We having stated in what way it is proper for the right of legitimation to be transferred to the Roman City, nothing need be provided with reference to the succession of children of this kind, for the same rule applies to these successions which governs those of other children who were legitimate at the time of their birth.

CHAPTER XII.

CONCERNING THE SUCCESSIONS OF ALL NATURAL CHILDREN.

Thus children who are rendered legitimate are to be distinguished from those who continue to remain natural, and We will now proceed to treat of the successions of the latter. It pleased Valentinian and Gratian, of Divine memory, to establish humane rules with reference to this subject; hence where the father of natural children has legitimate offspring, the above-mentioned Emperors rendered them capable of acquiring one-twelfth of his estate along with their mother, and forbade anything else to be given them by a last will. Where there were no natural children, they allotted only half of one-twelfth to the concubine, provided always that the man had no legitimate wife (and they made this provision applicable to men who had but one concubine) .

If, however, the fathers of natural children have no lawful issue, and the said children have neither father nor mother, they are permitted to leave or give their own natural children, conjointly with their mother, a share of their estate, up to one-fourth of the same; and where the natural children have received more than that amount, the surplus shall revert to those who are legally called to the succession. This is what the sons of the elder Theodosius decreed, although they were far from making it perfect.

(1) Therefore We, although We have already enacted a humane law, and have granted to natural children, through the generosity of their father, one-half instead of a quarter of his estate, when he has no legitimate children living, still, for subsequent reasons, after more careful consideration, and desiring to show greater indulgence, We enact the present law. As fraud was frequently committed, which is indeed the case at the present time, We desire to free men from impiety, for certain parents who are not at liberty to leave their natural children as much as they wish select third parties whom they appoint their heirs, and direct to transfer their property to their children. The latter, however, often act in a wicked manner, and refuse to comply with the will of the testator, and (what is considered even more reprehensible) they perjure themselves. We have nothing to say with reference to what has been stated concerning individuals of high rank who, in former times, were guilty of similar offences.

(2) Hence, in order that We may not permit things of this kind to be done in the future, and that We may prevent natural children from performing acts that strangers and unknown persons are not allowed to perform, We order, by the present law, that where a father has legitimate issue, he cannot either leave or give his natural children more than one-twelfth of his estate (for We hold that this is the purport of Our former Constitution), and if he should, under any pretext whatsoever, attempt to give them anything more, it shall accrue to the legitimate children, or where there are no natural children but only a concubine, We permit one-twenty-fourth of the estate to be left or given to her.

(3) Where the father has no legitimate children, nor any ascendants to whom the law compels him to leave a specified share of his own estate, he will be permitted to appoint his natural children his heirs to all his property, to divide it among them at his pleasure, and to transfer it to them by ordinary or ante-nuptial donations, or by means of a dowry, or in any other lawful way whatsoever. Thus fathers will have no need to avail themselves of the services of a third party who may be inclined to dishonesty or perjury, but they can apportion their estates absolutely under the terms of the will.

Where, however, those whom We have previously mentioned have any ascendants, they must leave them the share that We and the law have prescribed, and they will be at liberty to bequeath all the remainder of their property to their natural children. We have made these rules applicable to persons who dispose of their estates by written and legal wills.

(4) If, however, anyone should die without leaving legitimate issue (We mean by this children, grandchildren, and their descendants), or a lawful wife, without making any disposition of his estate, and any cognates, or even his emancipator should appear and demand possession of the property, or even Our Treasury should do so (for We do not make any exception of it under these circumstances), and if, during his lifetime, the deceased had lived with a free woman in concubinage and had had children by her (We only make this rule applicable where the concubine resided in his house, or his children did so, and there was no question as to his affection for her), We grant them maintenance and the right to take one-sixth of the estate of their deceased father, in case he should die intestate; which said one-sixth shall be divided by their mother in such a way that the latter shall receive a share equal to that of each child.

We establish this regulation where the father lived with a single concubine, or had children either by her or some other concubine, who was either dead or had been separated from him, and whose children resided in his house; for then We grant them the right to claim one-sixth of his estate in case he should die without leaving a will.

(5) But in case a man was so given to concupiscence that he had several other concubines in addition to the first, and was in the habit of committing fornication with a multitude of women, who were harlots (for this is the proper expression to use), and when he died had children by them as well as several concubines, a man of this kind is utterly contemptible, and shall, together with his children and his concubines, be entirely excluded from the benefits of this law. For as, when anyone is married to a lawful wife, he cannot, during the existence of the marriage, contract any others, and by reason of them have legitimate children, so, neither after he has acknowledged the concubine in the manner in which We have mentioned, and has issue by her, and is guilty of any other act of licentiousness, We do not allow his children to be admitted to his succession, if he should die intestate. For if We did not provide for this, no difference- would exist between women for whom the deceased had entertained more or less affection, nor would any distinction be made between the children, and We do not enact this law for the benefit of debauched men, but for such as are reputable. Nor do We discriminate between male and female children, because, since Nature made no distinction between them, We do not enact one law for women and another for men.

(6) If anyone (for it is necessary to make use of every proper and pious resource) who has legitimate children leaves any natural ones, We desire that the latter shall be entitled to nothing whatever in case their father should die intestate; but We direct that they shall receive from the legitimate children a certain sum for their maintenance, in proportion to the value of the estate of the deceased, which shall be determined in accordance with the judgment of a good citizen.

This rule shall be observed even if the decedent had a wife, and his natural children, although they were born of a concubine who subsequently died, shall be supported by his successors.

What We have already decreed with reference to natural grandchildren shall remain in full force.

CHAPTER XIII.

In cases in which We have called natural children to the succession of their father, and also in those in which they show proper respect to their parents, the natural children shall be under the same obligations to their parents that the latter should entertain for them, so far as their succession or their maintenance is concerned, as We have previously provided.

CHAPTER XIV.

But as it has already been set forth in certain constitutions that curators must be appointed for children in order to administer property given or left to them by their father, and as this rule should be preserved, We hereby confirm it; granting to the mother (in accordance with what has already been ordered) the right of administering the guardianship of the natural children, and of doing in this respect everything which has been enacted with reference to legitimate issue.

CHAPTER XV.

THE OFFSPRING OF INTERCOURSE PROHIBITED BY LAW SHALL NOT BE ENTITLED TO SUPPORT BY THEIR PARENTS.

This last part of Our law demands proper arrangement, and an enumeration of those who are unworthy of even the name of natural children. And, in the first place, all children who are born of the intercourse (for We do not call this marriage), which is either infamous, incestuous, or prohibited, are not designated natural, and should not be supported by their parents, nor shall they be entitled to share in any of the benefits of the present law. Wherefore, although certain provisions with reference to children of this kind were included in a Constitution addressed by Constantine, of pious memory, to Gregory, We do not adopt them, as they have been abolished by non-usage. For this Constitution refers to Phceniarchs, Syriarchs, magistrates, and illustrious persons, and does not provide that the issue of these should be natural, but even deprives them of the benefit of Imperial munificence. We

absolutely repeal this Constitution.

(1) These things have been decreed by Us, in order that ignorance of Our laws may not exist, and that all persons may know what children are legitimate and what are natural, and how the latter are rendered legitimate; and that those who continue to be natural should be treated with humanity, and also how they become eligible to certain honors, and in what way they may be distinguished from those who are unworthy of being called natural.

EPILOGUE.

Your Highness will, by means of suitable proclamations, communicate to all persons the provisions which it has pleased Us to incorporate in this law, in order to correct the abuses prevalent among mankind, and supply the deficiencies of nature, so that in this way Our subjects may become familiar with these matters, and be informed of Our solicitude for their interests, and that We prefer their welfare to every other consideration.

Given at Constantinople, on the *Kalends* of September, during the thirteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Appio.

TITLE II.

CONCERNING WITNESSES.

NINETIETH NEW CONSTITUTION.

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

PREFACE.

The practice of introducing witnesses for establishing proof has long been prevalent in order to prevent plaintiffs from easily concealing facts, and to prevent actions from running the risk of being lost through the fraudulent inclinations constantly existing in the minds of men. For it is not merely for the purpose of rendering matters more clear that witnesses are introduced, but to increase the certainty of the testimony. For when persons, being well aware of what has taken place, make statements which are either contradictory or false, they show, by such a course, that they are unwilling that the truth should become known and judgment be rendered in accordance with it; for they state occurrences which never existed, and ask that their allegations shall solely be taken into consideration in the determination of the case. For when the parties, being aware of certain facts give conflicting evidence, or make statements that are absolutely false, they, by means of this very fact, show that they do not wish the truth to become known, or a decision to be promulgated in accordance with it; but they give evidence concerning matters that never existed, and seek to have judgment rendered upon such testimony. It would therefore be extremely inadvisable to exclude the testimony of experienced witnesses, since there are many facts which cannot become known except by the introduction of evidence. Former legislators, indeed, forbade persons of abject condition to testify, but they introduced many exceptions to this rule, and even deprived many of the privilege of giving testimony. But as, in spite of these prohibitions, the statements of witnesses are not always correct, We have deemed it proper to add something to this subject, and to diminish as far as possible the amount of false testimony.

We have just learned of a case which occurred before the illustrious judge of the Province of Bithynia with reference to a will, in which witnesses were convicted and found guilty of the worst kind of forgery; for at the time the will was executed the testatrix was actually dead, but some of the witnesses held her hand for the purpose of making a cross, so that she would be believed to have herself traced this venerable symbol, which they themselves had made upon the paper. Therefore We, having carefully considered this matter, thought that it was necessary to enact certain rules with reference to the production of witnesses, as well as others concerning their civil status. Hence We confirm, without exception, the regulations enacted by legislators with reference to certain persons being forbidden to testify.

CHAPTER I.

WITNESSES SHALL NOT BE ADMITTED TO TESTIFY UNLESS THEY ARE OF UNBLEMISHED REPUTATION, OR JUDICIAL WITNESSES.

We especially decree with regard to this Great and Most Fortunate City where (through the favor of God) there is a very large number of estimable men, that witnesses must be persons of good reputation, or not liable to suspicion because of their rank, office, wealth, or dignity; and when they do not belong to these classes, that they shall be considered as worthy of confidence by both parties; and if this be the case they can testify. Artisans, however, whose employment is ignoble, or who belong to the lowest order of society and whose civil status is obscure, shall not be allowed to give evidence; and where any doubt as to their competency exists, it can easily be removed by showing that their lives are regular and blameless.

(1) If, however, any witnesses, who are absolutely unknown, appear to attempt to pervert the truth, they may be subjected to corporeal punishment; and if the judges are magistrates, they themselves can inflict it. But where they are not of such rank, they must, in this City, apply to an official of the Most Magnificent Praetor of the People, and, in the provinces, to the public defender; and by means of them scourge the witnesses until they no longer conceal the truth, or until they acknowledge that they have been induced to give their testimony in consideration of the payment of money, or that they have been actuated by malice.

CHAPTER II.

WITNESSES TO THE PAYMENT OF A PECUNIARY DEBT EVIDENCED BY A WRITTEN INSTRUMENT SHALL NOT BE SELECTED BY CHANCE; AND CONCERNING WITNESSES TO DOCUMENTS IN GENERAL.

Although We have, for a long time, forbidden oral evidence to be given of the discharge of an obligation contracted by a written instrument, unless in accordance with the rule which We have prescribed, We, nevertheless, now revoke this provision. For where a debt is based upon a written contract, and oral testimony given by witnesses of the payment of the same is produced by the parties interested, We desire it to be admitted by the judges, provided the witnesses are men worthy df confidence, and are called for the purpose of testifying as to the payment of the debt, arid to prove it was made to someone, or to testify concerning the admissions of the person who has received the property; for it is in this way that witnesses establish the facts by their evidence. But We do not desire that frivolous testimony, based upon what has been heard while people are passing, should, under any circumstances, be valid; or that the evidence of those who state that they met certain persons accidentally, and heard them say that they had received money from someone, or that they were indebted to another.

Statements of this kind seem to Us to be absolutely suspicious, and deserving of no attention whatever; and We have sometimes encountered similar ones while dispensing justice, when, for instance, the claim is made that a large sum of money has been paid, and two notaries have alleged that they were present at the payment of the same (but there was no witness to this), and that the debt was contracted in writing, while it was well known that the creditor knew how to write, and could in his own hand have rendered the release of the debtor clear beyond all doubt. Hatred for occurrences of this kind has induced Us to enact the present law.

Another similar case has recently been brought to Our attention, in which a certain individual, in the presence of witnesses summoned expressly for that purpose, and before a notary, acknowledged that he owed a debt. He did this for money, having taken the place of the true debtor, and having afterwards died, the amount was collected from the first debtor, while it was actually due from the one who had acknowledged that he owed it. God does not allow a transaction of this kind to remain concealed.

CHAPTER III.

TESTIMONY SHALL BE REDUCED TO WRITING, AND WHY THIS IS DONE.

Therefore We place no confidence in such testimony, nor (as We have already stated) in the statements of notaries, for the reason that when persons are educated and wish to acknowledge anything, they should do this in writing, or in court, and thereby render it indubitable. We do not permit evidence liable to suspicion to be accepted as true, and where any of this kind is given We do not admit it; but We require witnesses to testify as to the very transaction when they were called to acknowledge the execution of an instrument by the person who produces them; and it is necessary (which is the case where wills are concerned) that the witnesses should be summoned expressly for that purpose, and should be persons of good repute, for under such circumstances testimony obtained from them will be positive; but We forbid any statement to be admitted as to the execution of an instrument, when the witnesses were not present and did not sign it.

Where witnesses are not of high rank (as We have previously stated) they shall be subjected to torture; and where they openly contradict one another, the judges must be careful to notice this, and if they should ascertain that their statements are not true, they shall reject them, and accept such as they may decide to be more worthy of confidence, and which are established by the larger number of witnesses. If it should appear that the witnesses fraudulently and maliciously contradict one another, they shall not go unpunished, unless it can be proved that this was due to an accidental error, and not through design.

CHAPTER IV.

WITNESSES SHALL NOT BE PRODUCED A FOURTH TIME WHEN WHAT THEY TESTIFY TO IS ALREADY KNOWN; OR, IN OTHER WORDS, HOW MANY WITNESSES SHALL BE PRODUCED, AND IN WHAT WAY THIS SHOULD BE DONE.

For the reason that many persons repeatedly produce witnesses even up to three times, and then annoy Us by their applications, desiring to be permitted to take their testimony a fourth time, We direct Our judges to give special attention to this, and where witnesses have been produced three times, not to allow this to be done again by the party who has already offered them, and has accepted their testimony; since there is reason to fear that it may be set aside, and that he who demands a new hearing may be less desirous for the production of the witnesses than that some explanation or correction of the preceding evidence may be made.

But where anyone, after having produced witnesses, has not yet accepted their testimony, or they have not completed it whether he himself, or one of his advocates, is responsible for this, and his adversary alone has accepted the testimony, or has disputed it without, however, having communicated the fact to him who has already presented the witnesses three different times, and if the party who produced them suspects that they have not told everything, and demands that they add to their testimony, under such circumstances a fourth production of the witnesses shall be granted him; but he must first be sworn that neither he himself, nor his advocates, nor any other persons acting in his behalf, have suppressed any evidence or requested this to be done; and that it is not through fraud, design, or artifice that he asks that a fourth production of the witnesses may take place, but for the reason that he has not been able to avail himself of the testimony previously given. If he should do this, he will not have need of an Imperial order which was formerly necessary, but the provisions of this law will be sufficient, and he can cause the witnesses to testify a fourth time. He is, however, forbidden to produce them again, in order that an excuse may not be made to protract the litigation, for We desire the judge to dispose of it with all speed, in accordance with his good judgment.

(1) There is, however, no doubt that although he may have produced the witnesses only once or twice, if their statements have been contradicted, or if his adversary having done this, he should accept it as true, and in this way should have ascertained what the evidence was, he shall not be permitted thereafter to again produce the witnesses, even if an Imperial order should direct him to do so.

CHAPTER V.

WITNESSES SHALL ONLY BE EXAMINED IN THEIR OWN PROVINCE AND IN THE LOCALITY WHERE THEY ARE CALLED.

We are aware that a law has long existed which provides that if anyone should bring suit in this City, the evidence must be given in the provinces where the witnesses reside; and that the plaintiff shall have the right (with the permission of the judge who shall grant a sufficient time) to take the testimony of the witnesses in the province; and that, after this has been done, the party in question shall bring the suit back to this City, in order that it may be decided by the judge having jurisdiction of the same. But many applications are made to Us asking that persons who are involved in litigation in the provinces and have witnesses here may have them heard under the law which We have just mentioned, and that the provincial judge may be empowered to direct that the witnesses residing in this City be produced and heard there, and that after this has been done, the case may again be submitted to him; and as it is also requested that this rule be made applicable in the provinces, in order that evidence may be obtained, We authorize provincial magistrates to have witnesses heard here, and that any evidence given by virtue of their decrees shall be taken by one of the most eloquent judges appointed by Us for £hat purpose; that the evidence can be given in a different province from the one where suit was brought, either before the defender or the Governor, by virtue of an order of the court having jurisdiction of the case; and that a final decision shall be rendered where proceedings were originally instituted.

We desire that what has been enacted with reference to witnesses whose production here has been ordered in the provinces shall also be applicable where such production is ordered from one province to another, or from a province to this city, and that authority to furnish evidence shall be granted to all persons. The testimony of witnesses shall not be given in a province without a written order being issued to those who have produced them, or to their adversaries. This order shall bear the seal of the Registry, and shall be despatched by the judges here or in the provinces, in order that if the nature of the litigation requires other witnesses, they may not be excluded on account of their statements.

We understand that all that has been previously said only relates to pecuniary cases, for where criminal proceedings in which there is great risk to run are instituted, We desire that witnesses shall invariably be produced before the judges having jurisdiction, as under such circumstances it may be necessary to employ torture and other measures.

CHAPTER VI.

THE TESTIMONY OF A WITNESS WHO IS ALLEGED TO BE A SLAVE SHALL BE RECEIVED, AND CONCERNING THE STATUS OF WITNESSES.

If, however, the person who wishes to testify js said to be of servile condition, but he himself states that he is free, evidence as to his birth shall be furnished, and the trial of the case shall remain in abeyance until this has been done; so that if the status of the witness is provide to be servile, his testimony shall be just as if it had not been given at all. When, however, the witness alleges that he is free, he shall be compelled to produce the document by which freedom was conferred upon him, and after that he can testify. If he alleges that he received his freedom in another province, or that it is not easy for him to furnish proof of it, and he makes oath to this effect, his evidence shall be committed to writing; but where the instrument evidencing his manumission is not produced, the party who has called the witness cannot avail himself of his testimony.

CHAPTER VII.

WITNESSES SHALL BE EXCLUDED FROM TESTIFYING ON ACCOUNT OF THEIR ENMITY; AND CONCERNING HOSTILE WITNESSES.

If, however, anyone should say that a witness who was about to testify is hostile to him, and he proves that, at the very time, he is involved in criminal proceedings with him, the hostile

witness shall not be admitted to testify until the criminal case has been disposed of. When he is said to be hostile for some other reason, for instance, because he has been sued for a sum of money, his testimony shall be taken, but it will not be available until the litigation between the witness and the party to the action shall have been disposed of.

CHAPTER VIII.

MEDIATORS SHALL NOT TESTIFY UNLESS WITH THE CONSENT OF THE PARTIES, AND CONCERNING THE EVIDENCE OF BROKERS.

As We have enacted a law having reference to civil cases by which We forbade persons who have been mediators between parties litigant to testify, and certain magistrates carry the application of this rule too far, and do not permit the evidence of mediators to be accepted under any circumstances, We order that, if both parties consent, he who has acted as mediator between them shall be permitted to testify (for this kind of evidence is admissible), and that he may even be compelled to do so if he refuses, for the prohibition imposed by Our law upon mediators giving testimony is removed by the common consent of the parties.

CHAPTER IX.

THE PRODUCTION OF WITNESSES SHALL NOT TAKE PLACE EXCEPT IN THE PRESENCE OF THE ADVERSARY, AND AT WHAT TIME WITNESSES SHALL BE ADMITTED TO TESTIFY.

As We are aware that certain persons frequently appear before defenders or the illustrious Governors of provinces, or, indeed (as is usually the case) in this City before the Illustrious Master of the Census, and complain to these officials of having suffered injustice from someone, and of having been injured or subjected to loss, stating that they desire to produce witnesses to establish their allegations, We decree that hereafter witnesses shall only be opposed to those who have testified in the presence of one party, and that the defendant who resides in the city in which the evidence was taken shall be notified by the judge, or the defender, to be present when the testimony is taken.

If, however, the defendant should refuse to appear, with a view to rendering the evidence given in the presence of one party alone of no effect, We order that testimony of this kind shall be just as valid as if the defendant had been present when it was offered. For if he refuses to appear when the witnesses are heard (as their evidence is given in public), he will be considered to have been present, unless he may have been excused for some good reason; his bad faith will be of no advantage to him, but the proofs will be deemed to be sufficient, no matter what benefit may result from the insolence of him who produced them, and he will be allowed to make use of them though they may have been given only in the presence of one of the litigants; for he who did not appear cannot, by his presumption and audacity, prevent the evidence from having its effect.

All other provisions with reference to witnesses, which Our predecessors or Ourselves have prescribed, shall continue to remain in full force, and be observed by Our superior or inferior judges in this City, as well as in the provinces; in'order that by remedying, as far as possible, what relates to witnesses, We may cause litigation to be conducted with more regularity and purity than formerly.

We order all magistrates to take cognizance of cases in the presence of the Holy Gospels, and We also direct that plaintiffs, defendants, and advocates shall be sworn; for God always keeps in view the souls of judges, litigants, and witnesses, and His constant presence in lawsuits should remove all fraud, and place the parties to actions beyond suspicion.

We desire this law to remain in force for all time.

EPILOGUE OR PROMULGATION.

Your Eminence will hasten to carry into effect the matters which it has pleased Us to include in this Imperial Law.

Given on the fifth of the *Kalends of* October, during the thirteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Appio.

TITLE III.

WHEN THE PAYMENTS OF THE DOWRIES OF THE FIRST AND SECOND WIVES ARE BOTH DUE, THE FIRST WIFE, OR THE CHILDREN WHO ARE THE ISSUE OF THE PRIOR MARRIAGE, SHALL BE PREFERRED; AND IF THE WIFE, OR SOMEONE WHO HAS PROMISED A DOWRY FOR HER, WAS WILLING TO PAY IT TO THE HUSBAND, AND THE LATTER NEGLECTED TO RECEIVE IT, THE WIFE CANNOT, AT THE DISSOLUTION OF THE MARRIAGE, EXACT THE PAYMENT OF THE ANTE-NUPTIAL DONATION.

NINETY-FIRST NEW CONSTITUTION.

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

The dowry of the first wife shall have preference over that of the second, whether she or her children demand it or not.

PREFACE.

When, a short time ago, We were hearing a case, a doubtful matter arose which requires amendment, and is not unworthy of more definite legislation. After a man had buried his wife, he obtained the dowry of another, and then died, leaving children by both marriages. The second wife, taking advantage of the privilege which We have granted, desired to collect the dowry which she had brought to her husband; the children by the first marriage, however, objected to this, at the same time claiming the dowry of their mother, and it was doubtful whether, as the first wife was no longer living, her children could be permitted to contest the payment of the dowry of the second; for We did not formerly, nor do We now grant this privilege to anyone else, even to heirs or creditors, for We confer it upon the children exclusively.

This case presented many difficulties, for the second wife stated that before her husband married her, he had already squandered the dowry of the first wife, and that it was not just that, as he had only left enough to pay her own dowry, she should be compelled to lose it, and that the children by the first marriage should receive a dowry which had already been wasted. The latter, however, on the other hand, pleaded the privilege of hypothecation, and stated that as long as any property of the deceased existed, prior hypothecation of the same should take precedence of subsequent ones.

CHAPTER I.

Therefore this question being involved in doubt, in order to arrive at certainty, it was decreed by Us that where any article included in a first or second dowry was still in existence, the children of the first or second marriage should respectively be entitled to it; or when the second wife was dead, her children should be entitled to whatever they could prove belonged to them; for where dowries are still in existence, it is proper that each one should take what belongs to him without having need of any privilege. But where no article composing the dowry of either of the two women was still in existence, or if some of the articles were, and some were not, and both wives were living, for instance, where the first marriage had been dissolved by repudiation, in which case the wife would have a right to the dowry; or where both wives were dead, and had left children; or where only one of them was dead; We give preference to the older dowry, and, by way of compensation for property which is not to be found, We recognize the superior claim of the first wife, her children, grandchildren, great-grandchildren, and other successors, no matter who they may be; for in the case of public debts the older is preferred to the more recent, and it is actually necessary that in the case stated priority should be conceded to the first dowry over the second. We do not, however, give preference to one dowry over another, or to one hypothecation over another; but

whatever is prior in point of time shall have greater force, and be entitled to privilege. We, by no means, permit hypothecations to be changed, annulled, or diminished.

We establish this rule, being well aware of having already enacted it in another part of Our jurisprudence, but as this case was brought before Us, and has given rise to different questions, We promulgate the present law rather with a view to elucidating Our legislation than for the purpose of prescribing something more advantageous.

CHAPTER II.

WHERE A HUSBAND IS TO BLAME FOR NOT HAVING THE DOWRY PAID TO HIM.

It is also advisable to add to the law the following provision, as a question arose which has rendered it necessary for Us to do this. Where a woman owed her dowry, and she herself wished to pay it; or where someone, either a relative or a stranger, promised it for her, whether it be profectitious or adventitious (for these are the legal terms), but her husband or his father refused to accept it, and it is proved that the woman was ready to pay it, or even to do something in addition; as, for example, where she tendered the dowry, or, it consisting of movable property, she sealed it up, or deposited it in conformity with Our laws; or having herself appeared alone in court, she demanded that the dowry should be deposited, and the court officials subsequently notified her husband of the fact, and the latter was guilty of negligence; he cannot, after the marriage has been dissolved, refuse payment of the ante-nuptial donation under the pretext that he has not received the dowry.

Whenever a creditor, to whom a debt is tendered, refuses to accept it, he who has been willing to discharge the obligation in some respects resembles one who has paid, and so far as a dowry is concerned, a tender is equivalent to payment. For, where anyone who has promised a dowry refuses to give it, We permit the ante-nuptial donation also to be refused; and, for the same reason, when anyone who has promised a dowry is willing to give it, and he who is entitled to receive it fraudulently declines to do so, We grant the petition for the recovery of the ante-nuptial donation, since the husband is to blame for nonpayment of the dowry.

EPILOGUE.

Your Highness will hasten to carry into effect the matters which We have been pleased to include in this Imperial Law.

Given at Constantinople, during the thirteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Appio.

TITLE IV.

CONCERNING IMMENSE DONATIONS MADE TO CHILDREN.

NINETY-SECOND NEW CONSTITUTION.

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

PREFACE.

We have recently enacted certain legislation having reference to the Falcidian Law and its portion, and have made no unimportant addition to it, for the reason that its provisions were inequitable, and it did not please Us; still, it is necessary to give preference to children whom the father may wish to favor, not, however, to such an extent as to render the diminution suffered by others intolerable.

CHAPTER I.

Therefore, as the law enacted by Us remains in full force. We desire that if anyone should make an immense donation to one or more of his children it will, in the distribution of the estate, be necessary to reserve for each one of them the share to which he or she was entitled by law before the father made the donation to the child or children whom he honored in this

way. Hence, those who obtain their lawful share of the whole of their father's estate cannot claim any of the donation, but the shares of the children will be increased in proportion to the value of said estate, as it was before it was exhausted by the donations; the children to whom they were given cannot allege that they are content with these immense gifts, and that they will not claim their father's estate; and while it is true that, if satisfied with the donations, they cannot be compelled to accept the estate, still they will be forced to make up to their brothers the share which We have decreed by Our law, in order that the excessive amounts of the gifts may not deprive the lawful heirs of that to which they are legally entitled, especially where a father who acts wisely and judiciously towards all his offspring is allowed to give more to the children for whom he entertains greater affection, but not to injure others by the immensity of his donations, as well as to disobey Us. And, indeed, this was Our idea from the beginning. But as We have allo'wed this parental injustice to continue for a considerable time, now that We have become more familiar with the human mind, and have seen parents give way to their passions, We make this addition to Our preceding laws.

(1) We decree that this rule shall apply to children who have shown proper respect to their parents, but not to those whom their father reproaches for veritable ingratitude. For if he should appear to suffer from it, and the existence of ingratitude should be established, what has been proved by the law with reference to ungrateful children shall remain in full force, and shall not be changed in any respect.

EPILOGUE.

Your Highness will hasten to provide for the execution of what We have been pleased to set forth in this Imperial Law.

TITLE V.

CONCERNING APPEALS.

NINETY-THIRD NEW CONSTITUTION.

WHEN, AFTER A CASE HAS BEEN BROUGHT BEFORE AN APPELLATE JUDGE, THE LITIGANTS RESORT TO ARBITRATION, AND THE TERM OF TWO YEARS HAS EXPIRED, THE APPEAL CAN BE RENEWED BEFORE THE SAID APPELLATE JUDGE, AND THE EXPIRATION OF THE SAID TERM OF TWO YEARS CANNOT BE PLEADED.

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

PREFACE.

The demands of Our subjects afford Us an opportunity to enact laws for their benefit. A certain patron stated the following case, namely: A law is in existence which provides that where an appellant keeps silent, or a plaintiff does not prosecute his case for two years, he shall be deprived of the resource of appeal, and cannot proceed further with it, and the decision which has been appealed from shall be affirmed, and shall become obligatory upon both parties.

A certain Hesychius and his adversary had a lawsuit before an ordinary judge, and Hesychius, having had a decision rendered against him, took an appeal, which was brought before your tribunal. While the case was pending before you, the parties abandoned it, and appointed arbiters for its settlement; but this proceeding was also abandoned, and the parties did not conduct the case to a conclusion before them, and the two years having elapsed, the adversary of Hesychius now alleges that the suit can no longer be prosecuted in your court by the party who lost it, but the decision must be ratified, as the said term of two years has expired; and he also states that Hesychius cannot proceed further in your tribunal for the reason that he had taken the case before arbiters.

CHAPTER I.

Therefore We order that the matter which We have just mentioned shall, in no way, be prejudiced by lapse of time, and that the decision of the first judge shall not be affirmed after an appeal has once been taken from it; but that the case shall continue to be conducted to judgment before Your Glory, even though two years, or ten thousand more, may have elapsed. Hereafter, in every instance in which anything of this kind happens, and, after a case has been brought before the appellate judge (or where this has not yet been done), arbiters are appointed, and a delay of two years subsequently takes place, within which term the appellate judges are required to dispose of litigation; and the suit should, for some reason or other, be returned to the court of appeal, all the parties to the same shall be allowed to conduct it to judgment, just as if they had not abandoned the appellate court to have recourse to arbiters, and without anyone being able to plead the expiration of the two years in bar of further proceedings. For it is not just for him who has once chosen other judges to be allowed to take advantage of the silence of the injured party, on the ground that he entrusted his case to arbiters, and did not prosecute the case before the appellate judge because it had been submitted to arbitration.

EPILOGUE.

We desire that these rules shall be observed in every transaction in your tribunal, as well as in every other in which appeals are determined, so that Our subjects may be subjected to no injustice. If, however, the term of two years should elapse after the parties have abandoned arbitration, then We wish the original decision to be affirmed in accordance with the provisions which We have laid down, and which shall hereafter be observed in every instance. All other laws which have heretofore been enacted with reference to proceedings on appeal and have been included by Us in Our Code of Laws shall remain in full force.

TITLE VI.

MOTHERS WHO ARE EITHER THE DEBTORS OR CREDITORS OF MINORS MAY ADMINISTER THE GUARDIANSHIP OF THE LATTER, AND SHALL NOT BE REQUIRED TO SWEAR THAT THEY WILL NOT CONTRACT SECOND MARRIAGES.

NINETY-FOURTH NEW CONSTITUTION.

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

PREFACE.

We have recently promulgated a law with reference to the curator-ship of minors (for in the investigation of cases brought before Us We have frequently become aware of frauds which have been committed against them), which law prohibits a debtor or creditor of minors to administer their curatorship, lest, having their property in his power, he may be guilty of some act to their disadvantage. This law is now confirmed by the present one.

CHAPTER I.

For the reason that mothers are desirous of having the curatorship of their children, and since they demand it in accordance with ancient law as well as in conformity with those which We Ourselves have enacted, and objection is made to this by certain persons under the pretext that a constitution of this kind is not just, We desire to state in this law that mothers are excepted under such circumstances. We were of the opinion, in the first place, that it was extremely absurd for this prohibition to be made on the ground of protecting the interests of minors, and it is not reasonable to make the same rule applicable to both the mother and to strangers, for natural love, more than anything else, relieves the former of suspicion so far as her children are concerned, while strangers have no reason to favor them, and it is not proper to deprive mothers of their right. For this reason they shall, after having hypothecated their property in accordance with the forms previously prescribed, be permitted to administer the estates of

their children, and to have no fears of the former restriction; for everything will be just as if the law referred to had never been passed.

Hence, whether dowries or ante-nuptial donations have been exacted, or whether the mothers have other claims to the property of the minors, or the latter have any against their mothers, either acquired through their father on their own account (for anyone by making proper investigation can readily ascertain this), these claims shall in no wise be prejudiced, and can be collected in conformity with prior constitutions, whether the mother administers the guardianship of either her legitimate or natural children.

CHAPTER II.

For the reason that We fear that all women may not be willing to swear by the Omnipotent God not to marry again, and in order to prevent them from perjuring themselves, We think that the law providing that when mothers administer the guardianship of their children they shall make oath that they will not contract a second marriage should be amended; for We are aware that this law is disobeyed, and that perjury is committed almost as often as the oath is taken, for this is a fact known to everyone. It is not, however, because certain persons keep their oaths, that those who perjure themselves may embrace the opportunity of being guilty of impiety towards God. Legislators do not confine themselves to instances which rarely occur (as is shown by ancient jurisprudence), but they take into account and provide for those which most frequently take place.

Therefore, We order that a different rule from the one applicable to mothers up to this time shall be observed, for We desire them to renounce the Velleian Decree of the Senate, and every other advantage; to comply with the regulations which have been prescribed in the first place; and not to take the oath, as the renunciation of the Velleian Decree of the Senate and other privileges will be amply sufficient. We wish, nevertheless, that as soon as the woman has contracted a second marriage she shall be deprived of the guardianship, and be treated just as if she had sworn to not marry again, had lied openly in court, and had preferred her second marriage to her own oath.

EPILOGUE.

Hence this law is based upon maternal affection, and has been enacted by Us in order that the honor of God may not in any respect sustain injury; it shall be valid from the present time, and Your Highness will publish it in all the provinces. We have transmitted the said law to the Most Glorious Prefect of this Most Fortunate City, who is charged with these matters; and We desire that it be executed from this very day by him and by the Most Illustrious Praetor of the People, to whom the care of this city is entrusted. In order that minors may be fully assured of the preservation of their property, inventories of the same shall be drawn up in the presence of the illustrious clerk and other persons who are usually summoned for this purpose under such circumstances; bonds shall be executed, and everything done exactly as provided by Our laws, through the instrumentality of the Most Illustrious Praetor having jurisdiction in this city. He shall publish the present law in Constantinople, so that all may become familiar with it, and no one be ignorant of what We have enacted, for We have had it proclaimed throughout the provinces by the Most Glorious Praetorian Prefects.

Given on the fifth of the *Ides* of October, during the thirteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Appio.

TITLE VII.

CONCERNING MAGISTRATES.

NINETY-FIFTH NEW CONSTITUTION.

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

PREFACE.

We are aware that a law previously enacted provides that magistrates invested with civil or military jurisdiction shall not, after they have been deprived of their offices, abandon the province before having remained fifty days in the capital of the same, constantly appearing there in public and giving satisfaction to anyone who may bring suit against them; and that they shall not leave the province under the pretext that they are summoned here, and, in case they do leave it, they can be sent back. We have ascertained that certain magistrates are so bold that, in defiance of the law which We have just mentioned, they dare to leave their provinces and repair to this Most Fortunate City, before having even relinquished the insignia of their offices; and that they do this through apprehension of being prosecuted for the acts of their administration, and of incurring just punishment for their crimes.

CHAPTER I.

Hence We decree that no magistrate, no matter to what province he may belong, whether of the East, West, North, or South of the Empire, shall abandon it before having given up the insignia of his office; and after having done so (for We confirm the ancient custom), We wish him to show himself publicly for fifty days in the province which he has governed, and finish all matters begun during his administration, in order that it may be proved whether or not he is entitled to confidence.

(1) Where, however, anyone who is administering a civil or military magistracy, and having been removed from it, leaves the province without having been authorized to do so by Our order, he will be considered guilty of the crime of treason, and shall be sent back to the province; and, after he has satisfied all claims brought against him, he shall be subjected to the extreme penalty of treason. If, then, after having relinquished his office, he does not remain in the province for the prescribed time, and show himself in public every day, or flees from the province, what We have heretofore provided with reference to this shall be observed.

(2) We notify all magistrates that when they have once accepted an office they must discharge its duties; and We do not desire their successors to acquire the habit of sending what are called interdicts outside the boundaries of the province, or of removing Governors, delaying to take journeys, remaining here too long, visiting other provinces before having repaired to the one which they are called upon to govern, or of conducting themselves as indolent magistrates are accustomed to do. We wish them promptly to assume the administration of the government to which they were appointed, in order that during the interval between the departure of the retiring magistrates and the arrival of those who take their places, the province shall not remain without a judge.

We desire that, only two days before the magistrates arrive in the province where he whom they succeed is to be found, they send him a friendly letter notifying him to despatch an officer to meet them; that, up to that time, he who occupies the position shall be entitled to his salary; that the entry of a magistrate upon the duties of his office shall not date from the moment when he receives his commission, or from that when your order has been dispatched; but that magistrates shall receive their salaries from the very moment when (as has already been stated) they enter the province itself; and that up to this time he alone who is administering the government shall be entitled to his own. For it is not practicable nor to be endured that the province should be left without a judge; that the magistrate appointed by Us should substitute for himself a man who perhaps has no experience; that he who surrenders his office should quit the province before the proper time, and be deprived of the emoluments to which he is entitled before he has relinquished his administration. Nor shall he do this before the arrival of his successor in the province, and only two days before the latter enters it.

EPILOGUE.

We desire Your Highness to cause these provisions to be forever observed, and that as soon as you ascertain that a magistrate has arrived in his province, you will transfer to him the emoluments of him whom he succeeds; otherwise, in accordance with what We have already

prescribed, you will give said emoluments to the magistrate who relinquishes his office, until his successor coming into the province shows himself to those subject to his jurisdiction. Your Highness will hasten to have what it has pleased Us to include in this Imperial Law executed without delay.

Given at Constantinople, on the *Kalends* of November, during the fourteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Appio.

TITLE VIII.

CONCERNING PERSONS WHO MAKE A BUSINESS OF BRINGING LAWSUITS, AND CONCERNING THOSE WHO ARE SUED ONE OR MORE TIMES.

NINETY-SIXTH NEW CONSTITUTION.

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

PREFACE.

As We detest everything relating to malicious prosecution and subterfuge, We have thought that there are some matters having reference to these subjects which are in need of legal correction. For We have ascertained that some persons, entitled to no cause of action, having established an understanding with certain individuals who make a business of instituting legal proceedings, sue others; and that they file complaints subjecting defendants to loss, and then desist, after having exposed their adversaries to great expense; an abuse which has especially prevailed in the provinces where such plaintiffs and those who defend others have formed an association for profit.

CHAPTER I.

CONCERNING THE SUMMONS TO COURT, AFTER WHICH THE PLAINTIFF MUST BE CAREFUL TO HAVE JOINDER OF ISSUE TAKE PLACE WITHIN TWO MONTHS.

In order to prevent these things from occurring in the future, We order that the plaintiff shall not file a complaint and give the defendant occasion for incurring expense without having previously furnished security to the latter or his representative that he will, within two months, join issue in court without fail; and if he should neglect to do so, that he will be liable to the defendant for double the costs; but the bond shall not be given for more than thirty-six *aurei.*

CHAPTER II.

CONCERNING THOSE WHO ARE SUED ONE OR MORE TIMES.

The following matter is also worthy of amendment. Someone applies to Us, and states that he has brought an action against a debtor before one of Our judges; and that then the latter has, in his turn, summoned him who is indebted to him before another judge, the result of which is something astonishing, for each party to the suit appears as plaintiff; a state of affairs which is at once pitiable and ridiculous, for where one of the litigants desired to prosecute his own case, his adversary immediately sued him, and brought him before another court to whose jurisdiction the former was subject, so that the parties having sued each other were eternally involved in litigation.

(1) Therefore We decree that if anyone should think that another who has sued him is indebted to him, he shall not, in his turn, bring an action against him before another judge, but must bring it before the same one who already has cognizance of the case, who shall dispose of both transactions. If the judge before whom the action is brought is displeasing to him, he can reject him, and We grant him a delay of twenty days dating from the service of the complaint for this purpose, after which, and during the said twenty days, he will be permitted to reject the judge, and obtain another before whom both cases shall again be brought. In this way no more fraud will be committed, and each litigant can avail himself of his own right.

If, however, the defendant should keep silent, and should afterwards himself attempt to bring suit before another judge, he will be obliged to wait until the first action against himself has been decided, and then he can institute proceedings before a different magistrate.

We establish this rule to prevent litigants from being made the victims of the schemes and malicious prosecutions which they are accustomed to employ against one another.

EPILOGUE.

Your Highness will hasten to cause the provisions which We have been pleased to insert in this Imperial Law to be carried into effect.

Given at Constantinople, on the *Kalends* of November, during the thirteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Appio.

TITLE IX.

CONCERNING THE EQUALITY OF THE DOWRY AND THE ANTE-NUPTIAL DONATION, AS WELL AS THE INCREASE OF THE DOWRY AND ANTE-NUPTIAL DONATION, AND THE PRIVILEGE OF THE DOWRY WHICH TAKES PRECEDENCE OF OTHER PRIVILEGES; AND HOW CREDITORS ARE EXCEPTED FROM THIS PRIVILEGE WHEN THEY HAVE FURNISHED MONEY FOR THE PURCHASE OF AN OFFICE; AND CONCERNING THE RETURN OF THE DOWRY TO THE FATHER, AND ITS GIFT A SECOND TIME IN BEHALF OF THE SAME DAUGHTER ON HER MARRIAGE TO ANOTHER HUSBAND; AND CONCERNING THE COLLATION OF THE DOWRY WHEN THE HUSBAND DIES INSOLVENT.

NINETY-SEVENTH NEW CONSTITUTION.

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

PREFACE.

As We see that many questions with reference to our original birth (that is to say, concerning marriage and the procreation of children), as well as respecting the end of life and what relates to the last wills and testaments of dying persons are discussed in the laws, We have resolved closely to examine what an ancient law prescribes with reference to dotal instruments, which provides that the nuptial contracts between both parties to a marriage shall transfer property of equal value; that, for example, one of them shall not stipulate for half, and the other for a third or a fourth of a certain sum, but an equitable course must be pursued, as prescribed by the law which provides-that the agreement made by each shall be equal, that is to say, that the profit obtained. by the parties severally shall be the half, the third, the quarter, or any other share whatsoever; but it does not require that the articles given should be the same in number, for it permits one of the spouses to stipulate for one or two thousand *aurei,* or more, and the other to stipulate for less, in such a way that the equality consists rather in the words or letters alone than in the articles themselves.

CHAPTER I.

CONCERNING THE EQUALITY OF THE DOWRY AND THE ANTE-NUPTIAL DONATION.

Therefore, when correcting all these matters, We desire above all things that whatever is given by these contracts shall be equal, so far as both the dowries and ante-nuptial donations are concerned; that the husband shall stipulate for an advantage as great as the wife; that this advantage shall be of as great a value as the parties desire, but the amounts must be equal. For the principles of justice and equity cannot be observed if the parties to the marriage deceive one another in a business transaction, where they seem to make equal stipulations, but the effect of the latter is unequal, and articles are not furnished by both of them in the same quantity. Thus, for instance, the law would be held to have been entirely evaded if the

husband should agree to give two thousand *aurei,* and his wife agreed to bring him six thousand; or if the parties to the contract should stipulate to receive the fourth of what they consented to give, for in this instance the wife would only obtain five hundred *aurei,* that is to say, the fourth of what her husband had promised, while the latter would obtain fifteen hundred, which also is the fourth of the sum promised by his wife. In consequence of this, the fourth of one of the parties would be much larger than that of the other, and from this fictitious uniformity a great inequality would result.

Dotal contracts which have already been drawn up shall retain the form which has already been given them, as it is impossible for what has already taken place to be considered as not having been accomplished; but We desire that hereafter, in every donation, the stipulation for advantages shall be uniform on both sides, and that the husband and wife shall agree upon equal profits, which We decree in order that We may, in every respect, honor justice and equity. Where one of the parties is more wealthy than the other, he or she will be allowed to favor his or her consort by employing a different method, which is lawful and acknowledged by Our laws, but whoever does this is forbidden to grant his or her spouse a greater advantage by means of a stipulation, which, though appearing to be equitable, will in fact result in inequality.

These are the provisions prescribed by the present law with reference to this subject for the purpose of treating all persons with justice.

CHAPTER II.

CONCERNING THE INCREASE OF THE DOWRY AND THE ANTE-NUPTIAL DONATION.

We have examined and carefully considered matters relating to ante-nuptial donations, and We shall now treat of their increase. For, as preceding legislators as well as Ourselves have already discussed this subject, We have made use of many philosophical precepts which it would be difficult to enumerate, by means of which We repress and correct frauds perpetrated by some persons under such circumstances, the justice of which precepts We now confirm. For We have granted to dowries the privilege of being preferred to hypothecations of older date, for the reason that when creditors have made contracts with their debtors, they only took into account the property of the latter, and not that of their wives, which perhaps did not yet belong to them.

We have likewise permitted persons to stipulate for increases (which was also done in ancient times), and We have granted this power to the husband and the wife; to both of them together if they so desire, or to one of them alone. And, at first, for fear some fraud might be perpetrated, We direct that where the increase of a dowry or a donation on account of marriage is desired to be made, one of the parties interested shall not be permitted to make it and the other confine himself or herself to the original stipulation, but both of them must agree to the increase at the same time; and compliance with this provision is not only enjoined upon each one but is required of both; and they must always keep the amount of the two increases the same, in accordance with the Constitution of Our Father. The reason which has induced Us to establish this rule is to prevent the augmentation from being simulated instead of genuine; especially on the part of the woman, who otherwise would be enabled to avail herself of her privilege, and thereby defraud her husband's creditors. When each of the parties owns land, it is preferable for the stipulation providing for the increase to be made for the same kind of property for which the stipulation was entered into at the time of the marriage, and that the increase subsequently made should be certain.

Where only one of the married persons has immovable property, the addition of the wife shall be made in land, in order that the dowry and its increase may be equally privileged, so far as other creditors are concerned, and that the existence of the augmentation may not be doubtful. The increase of the husband shall consist of personal property, for no injury to anyone can result under such circumstances. But where the estate of the woman consists of land, and she

stipulates that the increase shall be furnished in movables, she is hereby notified that she will not be entitled to any other privilege than that attaching to her dowry in the first place, and that the increase in this instance is only fictitious. For stipulations made in the beginning are not absolutely liable to suspicion like those which are entered into afterwards to the prejudice of creditors, and for this very reason give rise to doubt; and We do not desire creditors to be injured by the privilege which We grant to dowries. Where, however, the husband is not indebted to anyone, and hence no suspicion of fraud toward his creditors can arise, the increase may be stipulated between the parties to consist of money or anything else that they wish; provided always that this is done equally so far as each of them is concerned, and in such a way that justice may be preserved. For how can there be a suspicion of fraud when the husband is not indebted to anyone, and the increases are agreed upon without deception?

CHAPTER III.

CONCERNING THE PRIVILEGE OF THE DOWRY, AND THAT OF CREDITORS WHO HAVE ADVANCED MONEY FOR THE PURCHASE OF AN OFFICE.

The determination of matters in doubt in cases of this kind is a legitimate consequence. For We are aware that certain hypothecations, although of more recent date, are preferred to those of older creditors on account of privileges granted by the laws, and this occurs when the creditor has, by advancing money, furnished them means to either purchase, build, or repair a ship, to erect a house, to buy a field, or to do something else of this kind; and he has also a prior lien over other creditors whose claims are much older than his. The question, however, arises, if when a woman, claiming to enjoy the privilege based upon a dowry and its increase, to which this privilege also applies (as has already been stated) wishes to be preferred to prior creditors, and, on the other hand, a creditor whose claim is actually of later date, but who, because a ship, a house, or a field has been bought or repaired with the money which he loaned, demands the same privilege with respect to the property which has been purchased or repaired, whether the dowry shall be preferred to the claim of a creditor of this kind, and will be privileged so far as he is concerned ; or whether, on the contrary, his claim shall be considered preferable for the reason that the property has been increased in value by the expenditure of his money. Therefore We, having devoted much attention to this point, decree that it is not just for the woman under such circumstances to yield to a privilege of this description. For We have seen (which is a legal absurdity) some females make a profit of their own bodies, and earn a livelihood by fornication, while others, who are opposed to such practices, and deliver themselves and their property to their husbands, so far from profiting by this, have their fortunes impaired, and when their husbands are unsuccessful in business, lose all hope of recovering their dowries.

Hence We decree that where a creditor has loaned money to repair a house, or to purchase a field, he cannot plead his privilege to the prejudice of a woman, for We are aware of the natural weakness of the sex, and how easily they are defrauded. Nor do We permit their dowries to be diminished, for it is sufficient for them to be deprived of their advantages (if they have obtained any) by a prior antenuptial donation, as this loss is considerable for them, and We do not wish them to run any risk of losing their dowries.

CHAPTER IV.

CREDITORS WHO HAVE LOANED MONEY FOR THE PURCHASE OF AN OFFICE SHALL BE EXCEPTED FROM THIS PRIVILEGE.

As inquiries have also been made of Us whether creditors who have loaned money for the purchase of offices shall be preferred, We direct that if anyone has loaned money for the purchase of an office or for the establishment of an institution, or for any other purpose of this kind, and the reason for the loan is expressly stated in the instrument, and it was agreed that if the object was accomplished, the person who lent the money for the purchase should have a preferred claim to all others, it will take precedence of the privilege of the woman in this instance alone; the creditor, however, will not readily be believed, even if he can produce

testimony, for a written instrument bearing the signatures of witnesses and drawn up solely with this end in view will be required. If the claim is derived from an obligation contracted in this way, no suspicion will arise, and the contracting parties will not be deprived of the benefit of their own agreement, but, under all other circumstances, wives will be preferred by virtue of the privilege which We have already conceded to them.

CHAPTER V.

CONCERNING THE DOWRY WHICH RETURNS TO THE FATHER, AND IS AGAIN GIVEN IN BEHALF OF THE SAME DAUGHTER TO HER SECOND HUSBAND.

As We have already enacted a law providing that fathers who give dowries for their daughters who are under their control or independent, which return to them in case of the death of their sons-in-law; some persons have made the inquiry whether, when a son-in-law dies and the dowry returns to the father by whom it was given, he can diminish it, if he offers it again when his daughter marries a second time; or whether he has no right to do this because he has once taken it from his own property; and also, whether he should give the same amount to his daughter when she contracts another marriage, just as if she had not become a widow? A case was stated to Us where a certain father when living had given thirty pounds of gold as a dowry for his daughter, and the latter, having become a widow, and marrying again, her father did not give her thirty pounds of gold but only twenty-five, for the reason that his daughter had obtained half of the ante-nuptial donation which consisted of fifteen pounds of gold; and hence he, instead of giving her thirty pounds of gold the second time out of his own estate, had only given her fifteen, as she had also obtained fifteen from the ante-nuptial donation. We do not think that this is just, but We desire that the daughter shall, in the division of the property of her father, obtain the profit of her ante-nuptial donation, and that she shall also receive the remaining fifteen pounds of gold from her father's estate,, which the latter deprived her of just as if he had intended to injure her. For what would the father have done if his son-in-law had lived, and his daughter had not contracted a second marriage; or how could he diminish the dowry which he had already given; and what right had he to appropriate the profit which belonged to his daughter; for as she had a right to include in her own possessions what she had acquired from her husband before his death, and which might obtain for her another more wealthy husband, she would not only be entitled to thirty pounds of gold—that is to say, to the fifteen forming part of the ante-nuptial donation, and those given by her father —but to forty-five pounds, namely, the profit obtained through her deceased husband, the accession to her private property, and what had been received from the estate of her father, provided she kept all that the latter had given her.

We order that these rules shall be applicable where the estate of the father remains in the same condition in which it was originally, and if any accidental loss should have diminished it to the extent that, in spite of his good intentions, it would be impossible for him to give a dowry of the same value as he had done at first; and if he can prove this diminution, he shall not be compelled to bestow upon his daughter, when she marries a second time, more than his fortune will justify.

The daughter, however, shall be entitled to the entire profit obtained by the first ante-nuptial donation, and when contracting a second marriage, she shall receive from her father a dowry proportionate to his means.

It is clear that the father, at the time of his death, will be absolutely compelled to return to his daughter any profit which he may have obtained from the ante-nuptial donation of her first husband (of which We only grant the father the usufruct), and of which his daughter shall have the absolute ownership.

CHAPTER VI.

CONCERNING THE COLLATION OF THE DOWRY WHEN THE HUSBAND DIES INSOLVENT.

We have considered it necessary to decide the following question which has been raised in innumerable instances. A father or a mother constituted a dowry for his or her daughter, and she brought it to her husband; the latter died insolvent, and, after the death of the parents, a demand was made upon the daughter to surrender her dowry, or permit it to be deducted from her share of her father's estate. Where the husband dies solvent, this point is easily disposed of. But when the daughter has nothing left but the right of action against her husband, who is insolvent, and it is stated that a dowry has already been given for the daughter, and that she can only collate the right of action for its recovery, which cannot have any effect in law, this case appears to Us to be worthy of investigation. We are aware that the question has been decided with harshness in many cases, and the wife been compelled to place her dowry in the mass of the estate, or to receive that much less; the result of which was that she did not obtain anything of what was given her as dowry. We, however, come to her relief by amending Our other laws; for as We have already, where her husband had failed in business, granted her the power to recover her dowry during the existence of the marriage, and to administer it in a suitable manner in accordance with the terms of Our Constitution, she herself will be to blame if, when her husband began to squander his fortune, she did not demand her dowry, and help herself (for she would have been able to recover her own property without any diminution, and collate it with her father's estate by taking that much less).

(1) Where, however, the daughter was under the control of her father, and could not do this without his approval; and if, after having applied to him and having informed him of the condition of affairs, it should be proved that he gave his consent for her to claim her dowry during her marriage, and retain it for the future, in this instance she will preserve all her rights as well as all her property, as We allow her to recover it, even including the ante-nuptial donation during the existence of the marriage, and to free herself from any subsequent risk.

But if it should be established that the father did not either give his consent, demand the dowry, or permit his daughter to do so, We are not willing that she should be subjected to any risk on this account, and she must collate the bare right of action which she has against the property of her insolvent husband, and the result of this action will be shared by herself and her brothers, nor shall she suffer any prejudice on account of the collation; a lawful share of her father's estate shall be given her, and she shall only place in the bulk of said estate the right of action which she has for the recovery of the dowry.

This action shall be brought by all the brothers, and any benefit derived therefrom shall be shared by all of them. But where the father gives the dowry under such circumstances, and the collation of it with his estate is demanded, the same rule shall apply. When the amount of the dowry is large, and the father is not willing either to demand it, or to permit his daughter to recover the same, then We desire that she herself shall proceed to do so; and if she should fail, she will not expose herself to the risk of losing anything through the insolvency of her husband.

We are aware that the most learned Ulpianus has rendered a decision of this kind, thereby coming to the relief of the wife when the husband is insolvent, and that he holds that she shall not be compelled to make collation except to the extent to which her husband is able to meet his obligations.

(2) As, however, many things have been omitted in the multitude of laws which existed before We compiled and arranged them in their proper order, and as magistrates render decrees at variance with these laws, in order to prevent abuses in this respect We have deemed it necessary to promulgate the present enactment which interprets that Constitution of Ours which comes to the relief of a wife even during the existence of the marriage; and in order that its effect may not be confined to certain private individuals, We decree that it shall be of

general application. Hence collation shall be made by all those to whose succession it refers, whether they be fathers, grandfathers, mothers, grandmothers, or any other ascendants.

EPILOGUE.

Wherefore Your Highness will hasten to communicate to all persons, and cause to be perpetually observed the provisions which it has pleased Us to promulgate by means of this Imperial Law.

Given at Constantinople, on the fifteenth of the *Kalends* of December, during the thirteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Ario.

TITLE X.

THE HUSBAND DOES NOT ACQUIRE THE OWNERSHIP OF THE DOWRY, OR THE WOMAN THAT OF THE ANTE-NUPTIAL DONATION, BUT THEY ARE RESERVED FOR THEIR CHILDREN; AND, PROVIDED THE PARENTS DO NOT CONTRACT A SECOND MARRIAGE, THEY WILL ONLY BE ENTITLED TO THE USUFRUCT OF THE PROPERTY; AND WHERE THEY MARRY A SECOND TIME AFTER REPUDIATION HAS TAKEN PLACE, AND OBTAIN EITHER THE DOWRY OR THE ANTE-NUPTIAL DONATION, THE OWNERSHIP WILL STILL BE PRESERVED FOR THEIR CHILDREN, AND THEY WILL BE COMPELLED TO EMPLOY THE USUFRUCT FOR THE SUPPORT OF THE LATTER. WHERE, HOWEVER, THE MARRIAGE IS DISSOLVED BY COMMON CONSENT, AND THE PARENTS RETAIN SOMETHING FRAUDULENTLY, WHICH MAY CAUSE LOSS TO THEIR CHILDREN, THEY SHALL BE DEPRIVED OF SUCH PROPERTY, AND IT SHALL BE KEPT FOR THE BENEFIT OF THEIR OFFSPRING.

NINETY-EIGHTH NEW CONSTITUTION.

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

PREFACE.

Such matters as are invariable do not require new legislation, for as they are simple, and not susceptible of change, they always remain the same, and being governed by eternal laws, are in need of no amendment. But whatever is subject to constant variation requires the exercise of controlling wisdom, which is obtained by means of laws; wherefore, as We are not loth to administer justice, We settle many que'stiohs brought before Us by different persons, and in disposing of such as We find ambiguous, We generally determine them by Our legislation as may be necessary. Hence as it appears that former legislators made certain divisions of the subject which will be hereinafter treated, We deem it advisable to render this more simple by means of a moderate law, which shall be operative from this day, but shall not be applicable to anything which has already been decided; for We do not hesitate to enact other laws when they are better than those already existing, whose purpose is the same.

When a husband or a wife does not marry again, he or she retains the property acquired by marriage, and it is united to his or her estate; while if either one of them should marry a second time the said property belongs to the issue of the first nuptials. We now intend to annul this inconsistency by means of a simple and a better law. For as the husband or the wife who marries a second time preserves for the issue of the first marriage the ownership of the property which he or she has obtained by either the death or the repudiation of her consort (for the person who marries again may happen to have children by his or her second marriage), is it not unjust that married persons who, at their death, leave legitimate offspring, instead of preserving for them the property which they have acquired from their deceased parents, should have the right to transfer this property to strangers? For, indeed, what is more precious to parents than children who are not ungrateful?

CHAPTER I.

THE OWNERSHIP OF THE DOWRY AND DONATION GIVEN IN CONSIDERATION OF MARRIAGE SHALL BE PRESERVED FOR THE CHILDREN.

Therefore We order that if the wife should die, and the husband acquire the dowry, he must preserve it intact for her children, whether he contracts a second marriage or not; and, on the other hand, if the husband should predecease his wife, We desire that the latter should preserve for their children the property obtained by the ante-nuptial donation. Consorts, however, shall be entitled to the usufruct of nuptial property, and it is only the ownership of the same which shall be preserved intact for their offspring. The legislative provisions formerly enacted with reference to parents who marry a second time are hereby confirmed. Those included in the present law shall become operative from this day and for all future time, no matter in what way the marriage may be dissolved; and they shall also be applicable to marriages already dissolved either by death or otherwise, when either the husband or wife is still living. For where both of them are dead, We do not grant the benefit of this rule to their heirs, as what relates to them is at an end, and We leave them subject to the control of the ancient enactments.

It is certain that whenever there are children, and the law gives them a right to the ownership, they can acquire this ownership as well as other accessories and benefits by succession, as has been provided with reference to issue of the first marriage, who, where their parents marry again, have certain advantages conferred upon them by the laws.

CHAPTER II.

WHEN A MARRIAGE IS DISSOLVED BY REPUDIATION OR BY COMMON CONSENT, ANY PROPERTY OBTAINED BY EITHER THE HUSBAND OR WIFE SHALL BE PRESERVED FOR TH.EIR CHILDREN; AND CONCERNING THE OBLIGATION OF PARENTS TO SUPPORT THEIR OFFSPRING.

We have also considered it necessary to dispose of a point which has been brought to Our attention, for as husbands and wives sometimes enter into agreements among themselves by means of which they fraudulently deprive their children of what they have obtained by their marriage, thereby reducing them to want, We have decided that it is absolutely necessary to enact a more stringent law on this subject, in order that the fear of punishment may deter persons from dissolving their marriages with a view to profiting by unjust gains, and neglecting their own children.

(1) For when a marriage is dissolved by consent or in any other manner, and there are no children, the preceding regulations shall remain in force; but if there are any children, what We are now about to enact shall be observed. For where parents, without feeling any compunctions in reducing their children to poverty, either voluntarily or by force enter into an agreement; as, for instance, the husband is to blame and he places himself in a position to forfeit the ante-nuptial donation, or when the wife runs the risk of losing her dowry, the husband shall not be entitled to the dowry, nor the wife to the antenuptial donation; but as soon as the loss of either of these takes place, the ownership of the property shall vest in the common children, and the usufruct of the same shall alone remain with the parents who are separated, and whichever one obtains it shall be obliged to support the children born of the marriage, and to provide them with all the necessaries of life, in proportion to the value of the property in question.

(2) We, however, are aware that whenever a marriage is dissolved by common consent, although the ante-nuptial donation reverts to the husband who stipulated to bestow it, and the dowry to the wife for whose benefit it was constituted, and they give one another a large amount of gold to which they are entitled, for example, by way of indemnity, or on some other ground, in such a way that this donation cannot be regarded as a gain resulting from marriage; under such circumstances it is not preserved for the benefit of the children in accordance with the laws on this subject, but the money is given by the husband as if derived

from a foreign source, in order that the benefit of the same may be solely enjoyed by the person who receives it.

Therefore, with the intention of correcting the abuse and injury resulting from a fraud of this description, We decree that whenever it takes place and any profit is obtained .by either of the parties, the money shall also be preserved for the children, the ownership of the same shall be immediately acquired by them; and the husband or wife who receives it shall only be entitled to the usufruct. Thus married persons will be induced to abstain from all fraud and every unreasonable desire of prejudicing the rights of their children, so that they can neither voluntarily, nor against their will, be able to injure them, but they will remain chaste, and preserve that marital affection which it is proper for those who are once united in matrimony to entertain for each other.

This law abounds in chastity, it is consistent with good morals, and has for its object the promotion of the love which fathers and mothers should bear to their children, and provides that the property which their parents do not voluntarily leave them shall be preserved for them by this means, with the sanction of God who is the common Father of all men, that is to say, is invested with universal dominion. Under these circumstances, the provisions which have long been established with reference to profits and successions are confirmed, as We do not make any changes in them except such as are expressly set forth in this Constitution.

EPILOGUE.

Your Highness will hasten to carry into effect what We have been pleased to enact by this Imperial Law.

Given at Constantinople, on the fifteenth of the *Kalends* of January, during the twelfth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Justin.

TITLE XL.

CONCERNING PERSONS JOINTLY LIABLE.

NINETY-NINTH NEW CONSTITUTION.

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

PREFACE.

We remember to have long since introduced a law having reference to the selection of mandators, sureties, and bondsmen, that includes numerous provisions which are generally advantageous to Our subjects. Nevertheless, a portion of it seems to Us to require some explanations and additions, as it is, to a certain extent, imperfect and inconsistent.

CHAPTER I.

If anyone should give certain persons as his sureties to be jointly liable, but should not add that they shall be severally liable for the entire amount, they will all of them be obliged at the same time to comply with the agreement. If any provision like that above mentioned should be inserted in the instrument, it must be observed, but this need not immediately be done in such a way as to render each debtor individually liable, but only the share for which he is respori-sible shall be collected from each, and suit should be brought against all of them, if they are solvent and present, and the creditor thinks this to be advisable. Where the debtors are solvent and at hand they must (every one of them, for himself) discharge the obligation which he assumed as a surety, and by reason of which they are all bound in full, and in this way the debt ov/ed by all will not become the individual debt of each.

But if all, or some of those who are jointly liable and were not sued, are partly or wholly insolvent, or if they are absent, each one who is jointly liable will be required to make up what the creditor cannot collect from the others. In this way the creditor will be able to obtain the entire debt, and will sustain no loss, even though the joint debtors may have, without his

knowledge, made some agreement among themselves to his prejudice, and each joint debtor will be liable for what he became security for, at the time the document was drawn up, without being allowed to evade it by artifice, fraud, or agreement, all of which is prevented by this law.

(1) Where all the joint debtors reside in the same place, We order that the judge having jurisdiction shall immediately summon them before him, hear the case, and render judgment against them all. Thus the joint debtors will be compelled to discharge their obligations, their solvency will be established, and the debt be discharged in accordance with law and justice.

(2) If, however, the judge is not a Governor but some other magistrate, We authorize a competent judge to hear the case in this city, or in the provinces; and the illustrious Governor before whom the action is brought, or any other competent judge may, by means of an executive officer, compel the joint debtors to become parties to the suit, in order that the execution of this law may not be interfered with. It shall begin to be operative with reference to contracts from this very day, but We leave whatever is already partly to be disposed of by the laws already enacted on this subject.

EPILOGUE.

Your Highness will hasten to carry into effect whatever We have been pleased to insert in this Imperial Law.

Given at Constantinople, on the fifteenth of the *Kalends* of January, during the year of the reign of Our Lord the Emperor Justinian, and the Consulate of Ario.