

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

NINTH COLLECTION.

TITLE I.

CONCERNING HEIRS WHO SUCCEED AN INTESTATO, AND THE ABOLITION OF
THE RIGHT OF AGNATES.

ONE HUNDRED AND EIGHTEENTH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Imperial Praetorian Prefect of the East.

PREFACE.

We, having ascertained that many laws which were promulgated in ancient times have not, so far as intestate succession is concerned, made a just distinction between male and female relatives, deem it necessary to settle all questions relating to the intestate succession of cognates, by making a clear and exact decision in the present law: therefore all previous enactments relating to this subject are hereby repealed, and what We now establish shall be solely observed for the future. Hence, as it is understood that intestate successions of all kinds include three degrees, that is to say, that of ascendants, that of descendants, and that of collaterals (which are divided into agnates and cognates), "We" order that the first degree of succession shall be that of descendants.

CHAPTER I.

CONCERNING THE SUCCESSION OF DESCENDANTS.

Where anyone who dies intestate leaves descendants of either sex, or of any degree whatsoever, derived from males or females, who are either independent or under the control of others, the said descendants shall take precedence over all ascendants and collateral relatives. For although the deceased may have been under the control of others, We order that his children, no matter what their sex or degree, shall be preferred even to the parents to whose authority they were subject; that is to say, solely with respect to such property as was not acquired for the benefit of the parents in conformity with others of Our laws; for We confirm Our laws which relate to the usufruct which should be acquired or preserved for the parents. If, however, one of the descendants whom We have just mentioned should die, and himself leave children of either sex, or other descendants, the latter will succeed to the place of their father, whether they were under the power of him whose succession is in question, or whether they were their own masters; and no matter what their number may be, they shall receive from the estate of the deceased as large a share as their father would have been entitled to if he had lived. Ancient legislation designated this order of succession as *per stirpes*. We do not desire that the degree should be sought for in considering such an order; but We direct that the grandchildren by a predeceased son or daughter shall be called to the succession concurrently with the sons and daughters, and that no distinction shall be made between the children of either sex, whether they are descended from males or females, or whether they are independent, or under the control of others.

These are the provisions which We make with reference to the succession of descendants, and in consequence of this We deem it advisable next to treat of ascendants, and the way in which they are called to the succession of descendants.

CHAPTER II.

CONCERNING THE SUCCESSION OF ASCENDANTS.

Therefore, if the deceased did not leave any descendants, but was survived by his father or mother, or other ascendants, We desire that they shall be preferred to all collateral relatives, with the exception of full brothers, as will be hereinafter stated. But where there are several surviving ascendants, We order that those shall be preferred who are in the nearest degree,

whether they are males or females, or are on the father's or mother's side. Where they are of the same degree, the estate shall be divided equally among them, so that all the ascendants on the father's side, no matter how many there are, shall receive half of the estate, and the ascendants on the mother's side, without reference to their number, shall receive the other half. But where any brothers or sisters of the deceased survive, along with the ascendants, they shall be called to the succession concurrently with the relatives next in degree; and if the father or mother is living, the estate shall be divided among them *per capita*, and each of the descendants and brothers shall be entitled to an equal share of the same; and the father shall not, under these circumstances, be entitled to the usufruct of the share which passes to his sons or daughters, for We grant them by the present law the rights of ownership as well as usufruct, so far as this share is concerned, and no distinction shall be made between persons of either sex who are called to the succession, whether they are related through males or females, and whether the person to whom they succeed was independent, or under someone's control.

We must now consider the third order of succession, which is called collateral, and is divided into agnates and cognates, so that this order having been determined, Our law may be perfect in every respect.

CHAPTER III.

CONCERNING THE SUCCESSION OF COLLATERALS.

Where the deceased left neither descendants or ascendants, We call first to the inheritance the full brothers and sisters, whom We have already called concurrently with the parents. Where there are no full brothers living, We call, in the second order, brothers related to the deceased by a single parent, either the father or the mother; but where the deceased left brothers, and also children of another brother or sister, already dead, the latter shall be called to the succession *per stirpes*, along with the males and females descended from the father or mother of the deceased, and no matter what their number may be, they will be entitled to the same share of the estate that their father would have received had he been living. The result of this is that if the predeceased brother, whose children are living, was related to the deceased on both sides, and at the same time there are other brothers related to him through the father or mother alone, the children of the full brother, although they are in the third degree, will be preferred to his own stock (whether it be derived from males or females through the father or mother of the deceased), just as their father would have been preferred to them if he had lived. On the other hand, if a full brother of the deceased should survive, We exclude the children of the predeceased brother, who would have only been related to the deceased by a single parent, just as this dead brother would also have been excluded if he were living.

We only grant the right of representation in this degree of relationship to the sons and daughters of brothers or sisters, in order that they may succeed their parents. We refuse it to everyone else in the collateral line; but permit the children of brothers to enjoy it when they are called with the male or female descendants *per stirpes* either on the father's or mother's side. When, however (as We have already stated), ascendants are called to the succession along with brothers of the deceased, We do not permit brothers' or sisters' children to be called concurrently with them to the intestate succession of a brother or a sister, even though their father or mother was fully related to the deceased.

Hence, as We have granted the privilege of representation to the children of brothers or sisters, in order that, succeeding to the place of their own parents, and being alone in the third degree, they may be called to the inheritance with others of the second degree, it is clear that they are preferred to those related *per stirpes*, whether they are male or female, and connected with the deceased only on the father's or mother's side, even though the latter are also in the third degree of relationship.

(1) Where the deceased left neither brothers, nor brothers' children (as We have previously stated), We then call to the succession all collateral relatives according to the privilege of each

degree, so that the next of kin shall be preferred to the others; but where there are several in the same degree, the estate shall be divided among them according to their number, which Our laws call *per capita*.

CHAPTER IV.

CONCERNING THE ABOLITION OF THE RIGHT OF AGNATES TO INHERITANCE.

We do not wish any difference to exist between persons who are called to a succession or inheritance, whether they be male or female, if they were related to the deceased; but We direct that all distinctions shall be abolished in the successions of agnates and cognates, whether the relationship is derived through a woman, through emancipation, or in any other way whatsoever as prescribed by former laws; and We order that all persons, without any distinction in this respect, shall be entitled to the intestate succession of their cognates, in accordance with their degree of relationship.

CHAPTER V.

CONCERNING THE LEGAL GUARDIANSHIP OF CHILDREN, AND CONCERNING THE MOTHER AND GRANDMOTHER.

Having disposed of the question of inheritance, We shall now discuss guardianship. We order that everyone, according to his degree of relationship, and in the order in which he is called to the succession, either alone or along with others, shall be liable to guardianship, and that no distinction shall be made in this respect between agnates and cognates; but all persons who are related to the minor, whether they are descended from males or females, shall be equally called to perform its duties, provided they are males, and have attained their majority; that no law forbids them from accepting the guardianship; and they do not avail themselves of a proper excuse for being released. We prohibit all women, except the mother and grandmother, from acting as guardians. We only permit the latter to be the guardians of their children in the order of succession, and where they, by means of written instruments, renounce the right to contract other marriages, and the benefit of the Velleian Decree of the Senate. When they make this renunciation, they shall be preferred to all collaterals except testamentary guardians alone, for We desire the wish and the choice of the deceased by all means to be observed. But where several persons in the same degree of relationship are called to be guardians, We decree that after they have been summoned before a competent judge, one or more of them, or as many as will be required to administer the property of the minor, shall be chosen and notified of their selection, and enter upon the discharge of their duties, and the guardians appointed shall be personally responsible, and their property shall be tacitly liable to the minor for the acts of their administration when he becomes of age.

CHAPTER VI.

CONCERNING THE FORCE AND AUTHORITY OF THIS CONSTITUTION WITH REFERENCE TO PERSONS AND THINGS.

We desire that everything which We have enacted with reference to intestate successions shall be applicable to those who acknowledge the Catholic faith, for We order that the laws already promulgated by Us with reference to heretics shall continue to be valid, and We make no innovation or change in them by the introduction of the present enactment. Therefore, We wish this constitution always to be observed in those cases which have arisen since the beginning of the month of July of the present sixth indiction, or in any which may arise hereafter. For We order that all cases which have arisen previous to that time shall be decided in conformity with the ancient laws.

EPILOGUE.

Therefore Your Glory will see that the provisions which We have included in the present constitution are brought to the knowledge of all Our subjects, and you will have them published in this Royal City by means of edicts, as is customary, and in the provinces through

orders addressed to the illustrious Governors, in order that none of the subjects of Our Empire may be ignorant of Our solicitude for them. The promulgation of this law shall take place in all the provinces without any expense being incurred by either the citizens or provincials.

Given in the New Palace, on the seventh of the *Kalends* of August, during the eighteenth year of the reign of Our Lord the Emperor Justinian, and the third after the Consulate of Basil.

TITLE II.

AN ANTE-NUPTIAL DONATION SHALL BE CONSIDERED A SPECIAL CONTRACT,
AND CONCERNING DIVERS OTHER MATTERS.

ONE HUNDRED AND NINETEENTH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Prefect of the East.

CHAPTER I.

AN ANTE-NUPTIAL DONATION DOES NOT REQUIRE TO BE RECORDED.

We order by the present law that a donation bestowed in consideration of marriage shall be considered as a special contract, and not classed with other donations, for the reason that an equal amount of dowry is given in exchange therefor. Hence an ante-nuptial donation shall be entirely operative, so far as the woman as well as the man is concerned, whether it has been inscribed upon the public records or not; whether it has been committed to writing in favor of the wife, by the husband or by anyone else; or whether a gift has been made in favor of the husband, provided the latter causes it to be included in the number of nuptial donations.

We order that this rule shall be observed, no matter what the amount of the donation is, even though (as has already been stated) it may not have been recorded.

CHAPTER II.

A MINOR CAN MANUMIT SLAVES BY WILL.

We also decree by this law that minors shall, from the time when they can dispose of their property by will, be permitted to liberate their slaves in this manner, without their being prevented from doing so on account of their age; and We hereby repeal the law which formerly forbade them to do this.

CHAPTER III.

NO CREDIT SHALL BE GIVEN TO A WRITTEN INSTRUMENT IN WHICH ANOTHER
INSTRUMENT IS MENTIONED, UNLESS THE LATTER IS PRODUCED.

In addition to this, We order that if anyone should, in one document, make mention of another, this shall have no effect, unless 'the other document referred to is produced; or unless some other legal evidence is offered by which the amount of property stated is shown to be actually due, for this was also provided by the ancient laws.

CHAPTER IV.

CONCERNING APPEALS.

We also decree that when an appeal has been taken upon the last day when this can be done, each party, or only the one who has taken the appeal, must personally appear before the judge, and request him or his councillors or referendaries to examine the case; and if the judge should fail to receive the appeal during the time prescribed for that purpose, the parties to the action, or the one who took the appeal, shall not be prejudiced in any respect on account of this delay; but such appeals shall afterwards be heard and disposed of by a lawful decision.

CHAPTER V.
CONCERNING THE REVIEW OF DECISIONS RENDERED BY PRAETORIAN
PREFECTS.

We have thought that something under this head requires correction, for as Our laws set forth that when the Most Glorious Praetorian Prefects have rendered a decision, no appeal can be taken from it, hence we order that whenever a judgment of the Most Glorious Prefect, no matter to what district he may belong, is pronounced, and one of the parties litigant considers himself to be injured thereby, he shall be permitted, within ten days afterwards, to present a petition to the Most Glorious Prefects who rendered it, or to their councillors or referees; and when this has been done, the judgment cannot be executed by the party who obtained it, if he does not previously furnish good security for as large an amount as that for which the decision was rendered; in order that if, after the Praetorian Prefect has reviewed it, the formalities prescribed by law have been observed, and the decision set aside, the property in controversy, together with all lawful augmentations, may be restored to the person who loses the case. But where, during the ten days after rendition of the judgment, he who thinks that he has been injured by it does not file a petition, We order that execution shall take place without a surety being required; the right of review, however, being still reserved for the party who thinks that he has been injured.

CHAPTER VI.
WHERE A MINOR OF TWENTY-FIVE YEARS OF AGE WISHES TO DEMAND
RESTITUTION AGAINST THE ACCEPTANCE OF AN ESTATE.

We also decree that where minors desire to reject an estate which has descended to them, and which they have accepted, and all the creditors of said estate are present in the place where complete restitution is demanded; these creditors shall be called before the judge, and the minor must reject the estate in their presence. But where all or some of the creditors are absent, those minors who wish to reject it shall apply to the judge of the district where they reside, and he shall summon the creditors by means of ordinary citations; and if they do not appear within the term of three months, the said minors will be permitted to reject the estate without incurring any responsibility, and the judge before whom the application for complete restitution was made shall designate the place where the movable or immovable property constituting the estate shall be kept, and the amount of the same shall be stated in a public inventory entered upon the records.

CHAPTER VII.
CONCERNING PRESCRIPTIONS, OR, IN OTHER WORDS, CONCERNING THE BAD
FAITH OF A POSSESSOR WHO ALIENATES PROPERTY.

Moreover, We decree that where anyone has possession of property in bad faith, and alienates it either by sale, donation, or in any other manner, and the person who thinks that the property belongs to him, having been informed of the alienation, does not, in conformity to law, within ten years if he is present, or within twenty if he is absent, bring suit against the purchaser, the donee, or the person to which said property has been transferred in any other way whatsoever, the possessor of said property shall hold it legally, that is to say, after the lapse of ten years when the parties are present, and after twenty when they are absent.

But where the true owner of any of the property is not aware that it belongs to him, and that it has been alienated, he will only be excluded from asserting his right by the prescription of thirty years; and he who is in possession under such circumstances cannot allege that he holds the property in good faith, when he himself has received it from a fraudulent possessor.

CHAPTER VIII.

CONCERNING PERSONS WHO ARE ABSENT AND PRESENT WHERE A DECENNIAL PRESCRIPTION IS INVOLVED.

We have deemed it proper to decree, with reference to a prescription of ten years, that when anyone against whom such prescription can be pleaded with reference to the acquisition of property is present for some years and absent for others, there shall be added to the years when he was present the number necessary for the completion of those during which he was absent. We order that all the rules which We have prescribed with reference to temporary prescription shall not be applicable to past cases, but to future ones; and shall only be valid so far as those which may arise after the enactment of the present law are concerned.

CHAPTER IX.

A TESTATOR SHALL NOT BE COMPELLED TO WRITE THE NAMES OF HIS HEIRS WITH HIS OWN HAND.

We have stated previous to the enactment of this law that a testator shall be required to write the names of his heirs in his will with his own hand, or by those of witnesses. But We have ascertained that through the severity of this provision many wills have been rendered void, testators either not being able to conform to it, or perhaps being reluctant for the witnesses to know their wishes. We hereby order that testators who desire to do so can observe this rule when making their wills, but if they do not observe it, but follow the former custom, their wills shall be valid wherever anyone writes the name of his heir with his own hand, or through the agency of another; provided he complies in every respect with the other legal formalities required in testamentary execution.

CHAPTER X.

CONCERNING IMMOVABLE PROPERTY WHICH BELONGS TO RELIGIOUS PLACES.

We order the law, by which We directed that property which has come from a holy church to Our House shall not be transferred to private persons, to be repealed, and We declare this to be applicable to such property as has already been lawfully added to Our House, as well as to what may hereafter be transferred to it.

CHAPTER XI.

CONCERNING THE FALCIDIAN LAW, WHICH DOES NOT APPLY TO PROPERTY WHOSE ALIENATION IS PROHIBITED.

Where anyone makes a will, and leaves immovable property to his family or to anyone else, as a legacy, specifically stating that said property shall never be alienated, but that it shall always remain in the hands of the heirs or successors of him to whom it was left, We decree that the Falcidian Law shall have no effect where a bequest of this kind is involved, for the reason that the testator himself prohibited its alienation.

Moreover, We direct that these rules shall be observed in cases which have not yet been disposed of by judicial decree, amicable agreement, or in any other lawful manner.

EPILOGUE.

Therefore Your Eminence will see that what We have decreed by the present law shall remain forever valid, and be brought to the attention of all Our subjects by means of edicts promulgated in this Royal City, and by notices despatched to all the Governors of provinces.

Given at Constantinople, on the thirteenth of the *Kalends* of February, during the Consulate of Our Lord the Emperor Justinian, and the year of the Consulate of Basil.

TITLE III.

CONCERNING ALIENATION, EMPHYTEUSIS, LEASE, HYPOTHECATION, AND DIVERS OTHER CONTRACTS HAVING REFERENCE TO SACRED PROPERTY EVERYWHERE.

ONE HUNDRED AND TWENTIETH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Praetorian Prefect of the East.

PREFACE.

We, having already promulgated many different enactments with regard to alienations, emphyteutical contracts, leases, and other agreements relating to the administration of ecclesiastical property, now deem it proper to combine all these matters in the present law.

CHAPTER I.

CONCERNING THE ALIENATION AND EMPHYTEUSIS OF ECCLESIASTICAL PROPERTY.

Hence We order that those who have charge of the property of the Most Holy Church of this Royal City, or that of any orphan asylum, hospital, place of entertainment for strangers, infirmary for poor and sick people, or any other religious establishments situated in this Royal City, or in the territory subject to its jurisdiction (with, however, the exception of monasteries), shall be permitted to sell, give, exchange, deliver by reciprocal donation, or alienate in any manner whatsoever, any immovable property, right to a supply of grain, or rustic slave, unless the exchange is made with the Imperial House, but We do not permit serfs to be legally alienated.

We decree that the Most Holy Principal Church of this Royal City, and other religious houses, shall only grant an emphyteutical lease to one who receives it in person and to two of his heirs in succession, and We only release him who is entitled to the property by emphyteutical right from the sixth part of his actual rent. So far as suburban property belonging to the Most Holy Principal Church itself, or to the other religious foundations above enumerated, and which are situated in this Royal City, or in its territory, are concerned, We order that when said property yields a fixed rent as income, it shall be leased in emphyteusis by its managers or stewards to the emphy-teuta, and two of his immediate successors, in the manner above prescribed; and that, instead of the rent being diminished, it shall, on the contrary, be increased.

But where such suburban property returns absolutely no income, We permit the administrators of religious houses to transfer them by emphyteusis (as previously stated) for any amount of rent which they may decide upon.

(1) Where any property whatsoever, which has been leased in emphyteusis by a religious house, is transferred to the Imperial Domain, to Our Treasury, to a city or a *curia*, or to any other religious establishment, We permit the administrators of the religious house by which the emphyteusis was granted in the beginning to state within two years after the date when the emphyteusis was made to one of the aforesaid establishments, whether its intention is for the property thus leased to be left in the hands of those who have possession of it, with the understanding that they shall pay the annual rent mentioned in the agreement, or whether they wish to cancel the lease and take back the said property for the reason that they are of the opinion that this will be the more advantageous course to pursue.

(2) Where, however, there are any places belonging to the Most Holy Principal Church, or to any other religious establishment on which are situated ancient buildings which have been abandoned, and which do not yield any income, and the religious establishment owning said buildings cannot repair them, We grant permission to their superintendents to lease them in perpetual emphyteusis, provided, however, that the emphyteutical rent shall amount to a third of the sums formerly collected, when the said buildings were in good repair; or, if the emphyteuta should prefer to do so, he shall receive the ruined houses under an agreement that

he will begin to build, and will pay to the venerable religious house, from which he received the emphyteusis, half the rent which the building would yield after an appraisement of the same has been made. We permit this to be done, and also authorize an emphyteuta of this kind to make use of any materials forming part of the abandoned habitation.

CHAPTER II.

WHERE ANYONE DESIRES TO ACQUIRE THE USUFRUCT OF PROPERTY BELONGING TO A CHURCH.

When anyone desires to obtain the usufruct of immovable property belonging to the principal church of this Royal City, or to one of the religious establishments which We have mentioned in the preceding chapter, he shall not receive it, unless he immediately transfers the ownership of other property, not burdened with heavy fiscal charges which yields an income equal to that which is to be given to him. After his death, or after the time agreed upon for the enjoyment of the usufruct, which must not exceed the life of him who receives it, has elapsed, the title to both pieces of property shall absolutely vest in the same religious house, so far as the usufruct and ownership of the same are concerned.

CHAPTER III.

IT SHALL BE PERMISSIBLE TO LEASE ECCLESIASTICAL PROPERTY FOR NOT MORE THAN THIRTY YEARS.

We grant permission to religious establishments to make contracts for leases for any term the contracting parties may choose, provided, however, it does not exceed thirty years.

CHAPTER IV.

IT SHALL BE PERMITTED TO ENCUMBER IMMOVABLE ECCLESIASTICAL PROPERTY BY GIVING IT IN PLEDGE.

If, however, any one of the aforesaid religious establishments should require money for the payment of taxes to the Treasury, or for any other necessary purpose, its managers shall have the right to hypothecate a piece of immovable property, or give it in special pledge,

the creditor shall hold possession of the same and harvest the crops, and he must credit their value upon the sums due to him, as well as by way of interest, which, however, cannot exceed three per cent. But where those having charge of the affairs of the said religious establishment discharge the debt, or it is paid out of the income of the property given in pledge, the said property shall be returned to the religious establishment which encumbered it.

CHAPTER V.

CONCERNING THE EMPHYTEUSIS AND HYPOTHECATION OF ECCLESIASTICAL PROPERTY.

We desire that emphyteuses and hypothecations made for a term exceeding five years, and which are contracted by the Holy Principal Church of this City, shall be executed with the approval and consent of the Most Blessed Archbishop and Patriarch of this Most Fortunate Capital and in the presence of the venerable stewards and chartularies of the Holy Principal Church, who shall make oath that the contract was not entered into for the purpose of defrauding the church of its rights. Where there are chartularies in any of the other religious establishments, they, also, shall be sworn in the same way before the head of the said religious house. When there are none, the contract shall, in the presence of the Holy Gospels, be committed to writing by those in authority, who shall add to it the oath setting forth that no injury or fraud is committed against the said religious house.

(1) We forbid stewards, superintendents of orphan asylums, and others having charge of religious establishments, as well as all chartularies, their parents, children, and others related to them by the ties of blood or marriage, to accept in person, or through the intervention of another, an emphyteusis, lease, or hypothecation of property belonging to any of the said

religious houses; and they are hereby notified that if anything of this kind should be done it will be void; and We order that all the property, not only of those who accept such a contract, but also that of the stewards, chartularies, or superintendents with whom they were implicated, shall, after their death, pass to the religious house from which they accepted the emphyteusis, the lease, or the hypothecation.

CHAPTER VI.

CONCERNING THE PROPERTY OF OTHER CHURCHES SITUATED OUTSIDE THE CITY OF CONSTANTINOPLE.

We have laid down the preceding rules concerning matters in which the principal church, and the other religious houses of this Royal City or its environs, are interested. We now deem it advisable to prescribe the following regulations for the other holy churches, monasteries, places of entertainment for strangers, hospitals, and other religious establishments situated in all the provinces of Our Empire, as well as for the monasteries in this Royal City and its adjacent territory.

(1) Therefore We permit the religious establishments aforesaid to transfer property belonging to them, not only by temporary emphyteusis, but also, if they so desire, by perpetual lease. When these are holy churches or other religious houses which the most holy bishop of the diocese governs in person, or causes to be administered by a holy choir of the clergy, the emphyteutical contract shall be made with their knowledge and consent; and the stewards, managers, and chartularies of the religious house shall swear in the presence of the bishop, or of the said holy choir of the clergy, that the emphyteusis will not be productive of any loss to the said religious house.

Where asylums for poor and infirm persons, or any places of entertainment for strangers, hospitals, or other religious establishments subject to private administration, or any sacred oratories, lease property by emphyteusis, the contract shall be made with the consent of the majority of the ecclesiastics who have charge of the same, as well as with the approbation of the steward. And where this is a place of entertainment for strangers, as asylum for poor and infirm people, a hospital or some other establishment of this kind, the contract shall be drawn up in the presence of the official in charge; and the managers of the said house shall make oath in the presence of the holy bishop by whom they were appointed or ordained that the said religious house can suffer neither injury nor fraud through the execution of such a contract.

(2) But so far as the holy monasteries are concerned, their heads, together with the majority of the monks attached to them, must draw up the contract. We decree that, in all preceding cases, the instrument shall include the oath that no injury or fraud against the rights of the monastery is contemplated. The formalities hereinbefore mentioned having been complied with, the emphyteuta shall not be released from the payment of more than the sixth part of the income yielded by the property given in emphyteusis.

We order that all that We have above prescribed with reference to buildings belonging to religious houses situated in this Royal City, which have fallen into decay, shall be applicable to such buildings when they belong to religious establishments situated in the provinces. We also think it proper to state with reference to the latter that where any of them are oppressed with debts, either on account of public obligations, or for some other urgent reason, and it is not possible for them to release themselves from liability by the disposal of movable property, land shall at first specially be pledged to the creditor, in order that he may take the crops of the same, and credit the proceeds upon the sums which he has loaned, as well as the interest which cannot exceed three per cent.

But where the creditor is not willing to be paid in this way, We decree that those who are subject to the authority of the most holy patriarchs, that is to say, the most holy metropolitans and other bishops, archimandrites, superintendents of orphan asylums, hospitals, and places for the entertainment of strangers, and the heads of other religious establishments, shall draw up their emphyteutical leases in the presence of the most holy patriarch by whom they have

been ordained or appointed; that the said instruments shall be confirmed by their oaths, and with the consent of the majority of the clergy; that the officials in charge must state the amount of the indebtedness, and testify that it is impossible to discharge it by the sale of movable property; and those of the clergy who are ordained by the most holy patriarchs, that is to say, the metropolitans and other bishops, the archimandrites, the superintendents of orphan asylums and of institutions for the poor and infirm, and the heads of other religious establishments, shall execute instruments of this kind before the said metropolitan bishops, and they shall be drawn up in the same way by bishops who have been ordained by the patriarchs or metropolitans, and are under their personal jurisdiction, and the heads of monasteries, asylums for the poor and infirm, places of entertainment for strangers, hospitals, or other establishments of this kind; provided, however, that when these instruments are executed in the presence of the patriarchs, the metropolitans, or other bishops, the said religious establishment shall not be subjected to expense of any kind. For We decree that, for the future, emphyteutical contracts shall be executed gratuitously by the persons or houses that We have just mentioned, in the presence of the provincial judges, or the defenders of districts. After what has been above stated has taken place before the most holy patriarchs, metropolitans, or other bishops, notices shall be posted for twenty days in a public place of the town by those having supervision of the religious house which has contracted the debt, and then anyone desiring to buy the immovable property must appear, and he who will give the most for it shall be preferred to the others. These formalities having been complied with, the sale shall be concluded, and the purchase-money entirely employed for the payment of the debt, for unless this is done, the purchaser will not legally be released from liability; and, finally, it must be expressly stated in the instrument that there is no intention to defraud the religious house.

If, after the above-mentioned requirements have been observed, and no purchaser can be found for the property, We direct that the creditors of the aforesaid religious houses shall receive, by way of payment, the property offered for sale in accordance with a just and exact appraisement of the same. The tenth part of said appraisement shall be added to the price; the property transferred by way of payment to the creditor shall be of the same value as his claim; the absolute ownership of the same shall vest in him; and the managers of the religious establishment and the majority of the ecclesiastics attached to it must give their consent to sales of this description. The immovable property given in satisfaction of the debt shall not be selected by the creditor, but the choice shall be equitably made; part of it shall be composed of land yielding an income, and part of the land which is barren, and belongs to the same religious house; and the appraisement of both pieces shall be made in accordance with the income they return, the amount of the indebtedness to the Treasury, and other considerations.

(3) If, however, anyone has loaned, or shall hereafter loan money to the bishop, steward, or head of any religious house whatsoever, situated in this Royal City, or in the provinces, We decree that he shall not be held to have loaned it to the said religious house, if he does not, in the first place, show that the authorities have borrowed it for its benefit; that they are not heirs of the creditor of the said religious house; that they have no right of action against it; and that the sums lent have been employed for its benefit; otherwise, the creditor must bring suit against the person who received the loan, or his heirs.

CHAPTER VII.

CONCERNING THE EXCHANGE OF ECCLESIASTICAL PROPERTY.

We order that, with the exception of the Most Holy Principal Church of this Royal City, and the orphan asylums, the houses for the entertainment of strangers, as well as the hospitals for the relief of poor and infirm persons which, situated in this Royal City, are under the jurisdiction of the Principal Church, all most holy churches, religious establishments, and monasteries situated both in this Capital and in the different provinces shall be permitted to exchange property with one another; provided that reciprocal indemnity in favor of each house exists, and that the consent, not only of the heads of these houses, but also of the

majority of the clergy attached to them, shall be either set forth in writing, or publicly stated.

We do not permit any articles which have been transferred from the Imperial Domain to any religious establishment whatsoever, or which may hereafter be transferred, to be sold, pledged, exchanged, or alienated, even when such contracts are made with other religious establishments.

(1) But as We have ascertained that alienations of monasteries have even been made by certain persons, for the purpose of conveying them to private individuals without regard to their sacred destination, We absolutely forbid this to be done. Where, however, an act of this kind is proved, We grant permission to the most holy bishop of the diocese to recover said monastery, and restore it to its former condition.

If, however, any of the aforesaid religious houses situated in this Royal City, or in any of the other provinces (with the exception of the Most Holy Principal Church of this Royal City), should have a tract of land owing a large amount of taxes to the Treasury, from which land it receives no income, We authorize those having the administration of the said religious house to alienate this land in any way that they may desire; but public instruments must be drawn up for the security of the religious house by those who have appointed or ordained its managers, and the latter shall swear on the Holy Scriptures, in the presence of the superior of the religious house, and the majority of the clergy attached thereto, that the alienation is not made through treason, favor, or fraud, but for the benefit of the said religious house.

We forbid the stewards and administrators of the clergy, the chartularies of religious establishments, no matter where they may be located, their parents, children, and those to whom they are related by the ties of consanguinity or marriage, to execute in their own proper person, or by someone acting for them, any contract of lease, emphyteusis, purchase, or hypothecation, relating to immovable property belonging to the said religious houses, just as We forbid this with reference to similar establishments situated in this Royal City.

CHAPTER VIII.

WHERE THE EMPHYTEUTA OF THE CHURCH DOES NOT PAY HIS RENT FOR TWO YEARS.

If the lessee, or emphyteuta of land belonging to the Most Holy Principal Church, or to any other religious establishment situated within Our Empire, permits the property which he has received, or may hereafter receive, according to the terms of this constitution, to become deteriorated, or if he fails to pay the emphyteutical rent, or what he promised, for two years, We grant permission to the religious house, which made the emphyteusis or lease, to collect the rent which is due, as well as to restore the property leased or given in emphyteusis to its former condition, and to eject the emphyteuta or lessee, without his being able to demand anything from the religious house on the ground of improvements.

When the persons having charge of the matter do not wish to eject him, We decree that they shall collect whatever is known to be due under the lease or emphyteusis, and that the said lessees or emphyteuta shall then keep the land which he has rented until the term fixed for the duration of the lease has expired, and that he shall pay everything which has been agreed upon. If, however, the emphyteuta or lessee should take to flight, We grant permission to the heads of the religious house to obtain from his private property sufficient to indemnify the establishment of which they have charge, without the emphyteuta being allowed to claim anything for improvements.

CHAPTER IX.

CHURCHES SHALL BE PERMITTED TO ALIENATE IMMOVABLE PROPERTY FOR THE PURPOSE OF REDEEMING CAPTIVES.

We authorize the most holy churches of the cities and their stewards to alienate their immovable property for the ransom of captives, provided that the said immovable property

has not been given to the said churches under the condition that it should not be alienated. We grant the Most Holy Church of Jerusalem permission to sell any houses belonging to it, which are not situated in that city, for a sum not less than the total amount of rent received from them for fifty years; in order that it may use this money to obtain a better revenue. Where, however, any persons have given, sold, or transferred in any other way, or left unproductive lands to any religious house whatsoever, situated either in this Royal City, or in the provinces, We decree that the religious house which has acquired such lands shall suffer no damage, and shall not be oppressed with taxes levied by the Treasury, or in any other way whatsoever; but that all the obligations attaching to said sterile lands shall revert to those who have given them, or to their heirs, who shall also be obliged to take back the said lands and pay to the said religious house out of their private estates an amount equal to the loss which the latter has sustained. Where, however, this loss is due to the fact that certain sums were paid to the said house in consideration of its acceptance of the said sterile lands, We order that it shall acquire the ownership of these sums, and that the lands in question shall, by all means, be returned to whoever donated them or to his heirs.

(1) With reference to this subject, We order that no necessity shall compel the most holy churches, or other religious establishments situated both in this Royal City and in all the provinces of Our Empire, to purchase barren or fertile lands situated anywhere, in order that they may not run the risk of losing those they have, or of becoming oppressed with debts. Where, however, someone desires to obtain the usufruct of any immovable property belonging to one of the religious houses aforesaid (in accordance with what We have already decreed concerning such establishments situated in this Royal City), he must immediately convey the ownership of other land to the said religious establishment, the revenues of which land shall be equal in amount to those of that transferred to him by the church, and not be subject to heavy fiscal charges. After his death, or after the expiration of the time prescribed for the existence of the usufruct (which, however, cannot exceed the life of the person entitled to it), both pieces of property, including their ownership and usufruct, shall be acquired by the said religious establishment.

This is what We order with reference to immovable property.

CHAPTER X.

CONCERNING THE SACRED UTENSILS OF ANY CHURCH OR ORATORY.

We have decreed in general terms, with reference to the sacred utensils belonging to the Most Holy Principal Church of this City or the other holy houses of prayer, no matter where they are situated in Our Empire, that the said utensils cannot be sold or pledged except for the ransom of captives. But where there are several of these in any one of the religious establishments, which are not absolutely necessary for ordinary use, and the said religious house is in debt, and has no other personal property with which it can meet its obligations, We allow it either to dispose of the superfluous articles to other religious establishments which have none, by means of instruments publicly executed, or to melt them, and then sell the metal, using the price for the discharge of the debt, in order to prevent immovable property from being alienated.

CHAPTER XI.

TO WHAT PENALTY PERSONS WILL BE LIABLE WHO VIOLATE THE PRESENT CONSTITUTION.

If, however, in contravention of the present law, a contract should be made with reference to movable or immovable property belonging to one of the religious establishments aforesaid, the property which is the subject of the contract shall be returned to the said holy church or religious house, together with the income of the same which has been collected in the meantime; and it shall retain the price paid, or the reciprocal gift or whatever was, by way of consideration, donated in exchange. Where an emphyteusis is executed in violation of what We have just ordered, We direct the property transferred by the same to be returned to the

most holy church or religious house whose interests are involved, that the rent shall be paid in accordance with the agreement, and that the lease shall terminate, just as if the time specified by the emphyteutical contract had expired.

When a donation of ecclesiastical property belonging to a church or any other religious house is made, it shall be returned to the Most Holy Principal Church, or other religious house, together with the income received during the existence of the donation; and the donee shall, in addition, pay a sum equal to the value of the property given.

When a contract of hypothecation is entered into in violation of this law, the creditor shall lose everything due to him, the property hypothecated shall be returned to the religious establishment, and the notaries who, in opposition to this law, have been so bold as to use their authority for such a purpose, shall be condemned to perpetual exile.

Where a contract of this kind has been made in compliance with the ancient constitutions, in existence before the enactment of this law, it shall remain in full force. We, however, decree that all instruments which have been drawn up in contravention of the ancient laws shall be annulled, that the articles transferred in violation of their provisions shall be restored to the religious establishments, that everything done hereafter shall be in accordance with the present law, and that all former constitutions enacted on similar subjects are hereby repealed.

EPILOGUE.

Therefore, Your Eminence will hasten to cause the matters included by Us in the present law to be observed for all time, and will, with this end in view, publish an edict for ten consecutive days in public places; but no one shall be despatched into the provinces for this purpose, for We desire the said law to be promulgated without Our subjects sustaining any injury.

Given at Constantinople, on the seventh of the *Ides* of May, during the reign of the Emperor Justinian, and the Consulate of Basil.

TITLE IV.

PARTIAL PAYMENTS OF INTEREST SHALL BE DOUBLED.

ONE HUNDRED AND TWENTY-FIRST NEW CONSTITUTION.

The Emperor Justinian to Basil, Governor of Tarsus.

PREFACE.

As decurions are constantly presenting petitions to Us, and We desire to be indulgent to them, We do not permit, under any circumstances, artifices opposed to law, and statements inspired by fraud, to have any validity.

CHAPTER I.

Eusebius and Aphthonius, sons of Palladius, and grandsons of Demetrius, informed Us that Demetrius owed Artemidorus five hundred *aurei* on account of a loan on which also interest was agreed to be paid, and that they wished to profit by an Imperial Pragmatic Sanction recently promulgated, which prescribed that where double the amount of the debt had been paid, nothing more could be collected from the debtor under Our laws. They also alleged that Epimachus and Artemon, successors of the creditor Artemidorus, declared that Eusebius and Aphthonius had made false statements in their petition, and that they were unworthy of any indulgence from Us, on account of double payment of the debt, and that only nine hundred and forty-nine *aurei* had been received.

The petitioners answered that Palladius, their father, as well as Demetrius, their grandfather, and Paulus, had paid eight hundred and sixty-seven *aurei*. Artemon and Priscianus, the sons of Artemidorus, who was the grandfather of Epimachus, and the other Artemon, said in reply that partial payments should not be added to the principal; that they could only be considered as interest; that the Governor of the province had decided that this was the case; and that, for

this reason, they had required of Palladius, for the first note bearing interest and calling for five hundred *aurei*, another note of six hundred.

The reply of the petitioners to this was that the indebtedness had been paid at different times; that Palladius had paid seventy-two *aurei*, and Aphonius ten, which, together with the eight hundred and sixty-seven *aurei* already paid, made a total of nine hundred and forty-nine: As the judge who heard the case was not convinced that these partial payments should be credited on the entire amount of the debt, he had not admitted their claim, and had ordered them to pay six hundred *aurei* as principal. The petitioners asked Us to be released from this requirement, and to be discharged from liability for the entire indebtedness by paying fifty-one *aurei* more, and that the note of six hundred *aurei* bearing interest should be returned to them.

CHAPTER II.

Therefore, as Our laws do not require more than double the principal to be paid, the only difference existing between those previously enacted and this one is, that while they direct that the payment of interest, when it amounts to double the principal, shall extinguish the debt, where the said payments are not partial; We permit payments, even if they are partial, to extinguish the indebtedness, when they are equal to double the amount of the principal; and We order that the calculation of interest shall be made in this way, and that if the petitioners should pay enough to make up the thousand *aurei*, they will be entitled to recover the note of six hundred *aurei* bearing interest, in order that the debt may not be collected more than once.

EPILOGUE.

Your Magnificence will see that what it has pleased Us to enact in this Imperial Pragmatic Sanction is carried into effect, and that the interpretation given by the decisions which the petitioners have referred to Us, as well as every fraudulent act which has been, or may subsequently be committed by only one of the parties, is considered void. Most beloved brother, may God preserve you for many years.

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

TITLE V.

EDICT OF OUR MOST PIOUS LORD JUSTINIAN, WITH REFERENCE TO THE REGULATION OF ARTISANS.

ONE HUNDRED AND TWENTY-SECOND NEW CONSTITUTION.

PREFACE.

We have ascertained that, in spite of the punishment inflicted by Our Lord God, persons engaged in trade and literary pursuits, as well as artisans and agriculturists of different kinds, and sailors, when they should lead better lives, have devoted themselves to the acquisition of gain, and demand double and triple wages and salaries, in violation of ancient customs.

CHAPTER I.

Hence it has seemed advisable to Us, by means of this Imperial Edict, to forbid all persons to yield to the detestable passion of avarice; in order that no one who is the master of any art or trade, or any merchant of any description, or anyone engaged in agricultural pursuits, may, hereafter, demand as salary or wages more than ancient custom prescribes. We also decree that the measurers of buildings, tillable land, and other property, shall not charge more for their services than is just and that they shall observe the established practice in this respect.

We order that these rules shall be observed by those who have control of the work, as well as by those who purchase the materials. We do not permit them to pay more than is authorized by common usage. They are hereby notified that anyone who demands more than this, and who is convicted of having accepted or given more than was agreed upon in the beginning, will be compelled to pay three times the amount to the Treasury.

EPILOGUE.

We order that all violations of this law shall be ascertained and punished, and that the pecuniary penalty imposed by it shall be collected by Your Excellency and the Most Glorious Prefect of this Most Fortunate City, for We desire to exact from violators of this Our Edict the fine for which they are liable, and have them subjected to punishment. All officials belonging to Your Court shall incur a penalty of five pounds of gold if they fail to enforce any one of these regulations.

Given at Constantinople, on the second of the *Kalends* of April, during the reign of Our Lord the Emperor Justinian, and the Consulate of Belisarius.

TITLE VI.

CONCERNING THE MOST HOLY BISHOPS AND THE MOST REVEREND CLERGY AND MONKS.

ONE HUNDRED AND TWENTY-THIRD NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Master of Our Imperial Offices.

PREFACE.

We, having already made some certain provisions with reference to the government and privileges of the holy churches, and other religious houses, as well as to other subjects connected therewith, have deemed it advisable to include in this law, after suitable correction, the provisions long since enacted in different constitutions concerning the holy bishops, the clergy, and the monks.

CHAPTER I.

CONCERNING THE CONSECRATION OF BISHOPS.

Therefore We decree that every time it becomes necessary to consecrate a bishop, the clergy and the primates of the city shall, in the presence of the Holy Gospels, issue a decree in favor of three persons, in which they must state, at the peril of their souls, that they have not been induced to make the choice of the said three persons, either by gifts, promises, friendship, or any other motive; that they know that those whom they appoint profess the Catholic faith; that they are of honorable life; that they are acquainted with letters; that they neither have, nor have had, a wife or concubine; and have had no legitimate or natural children; or that, if in the beginning, anyone of the said three candidates did have a wife, he had only one, and that she was neither a widow, nor had been married to another man, and that the laws or Imperial Constitutions did not prohibit his marriage to her; and that, finally, none of the three candidates is a decurion or other official, or if one of them is liable to obligations of this kind, he has assumed the monastic habit and been the inmate of a monastery for not less than fifteen years.

(1) The following must also be inserted in ecclesiastical decrees; namely, that the person chosen is not less than thirty-five years of age, and is well known to the clergy; and among the three persons in whose behalf such a decree is issued, the best qualified shall be consecrated on the responsibility of the prelate who performs the ceremony.

A decurion or other official who, as has just been stated, is called to the episcopate after having resided for fifteen years in a monastery, shall be released from his civil obligation; still, although this is done, he shall only be entitled to the fourth of his property, and the remainder, in accordance with Our law, shall belong to the *curia* and the Treasury.

(2) We, however, give permission to those who issue the decree, that if any one of the laity, except a decurion or other official, is considered to be worthy of the above-mentioned choice, he shall be elected along with two other members of the priesthood, or monastic order, and where a layman is raised to the episcopate in this way, he shall not immediately be consecrated a bishop; but, in the first place, he shall be enrolled among the clergy for not less

than three months, and instructed in its sacred canons, and the daily service of the Church, and then he may be consecrated bishop, for he whose duty it is to instruct others should not be taught by them after his consecration. When (as happens in certain places) three eligible persons are not to be found, those who issue the decrees shall be permitted to designate two or even one alone, but they must possess all the qualifications already prescribed by Us.

If, however, those whose duty it is to elect a bishop do not issue their decrees within six months, then the prelate whose duty it is to perform the consecration can do so at the peril of his soul, and all the other formalities which We have enumerated must be observed. Where anyone is consecrated bishop in violation of these provisions, We order that he shall be expelled from the episcopate; that he who is presumed to consecrate him shall be deprived of office for the space of a year; and that all the property which he has accumulated at any time, or under any circumstances, shall, as a penalty for the fault which he has committed, be transferred to the ownership of the church of which he is the bishop.

CHAPTER II.

CONCERNING THE ACCUSERS OF BISHOPS.

Where a candidate for the episcopate is accused of anything by which, in accordance with the laws or canons, his consecration may be prevented, it shall be postponed, and whether the accuser is present and makes the charge in person, or whether he delays proving it for three months, it must be carefully examined by him whose duty it is to consecrate him, and if he should be found guilty, his consecration shall be refused; but if, on the other hand, he is shown to be innocent, he shall be consecrated, and the accuser, whether he has not succeeded in establishing the accusation, or whether he has abandoned it, shall be driven from the province in which he resides. If, however, the accused person should be consecrated before the accusation has been heard, he shall be expelled from the priesthood, the prelate who hastened to consecrate such a person shall undergo the penalty which We have above prescribed; that is to say, he shall be deprived of the performance of his sacred duties for a year and all his property shall be confiscated for the benefit of the Church.

(1) We, by all means, forbid a bishop to be consecrated in consideration of payment for his election in gold or other property. If anyone should violate this rule, those who pay the money, and those who receive it, as well as any intermediaries, shall suffer condemnation in accordance with the Holy Scriptures and the sacred canons. Hence, both of them shall be deprived of the honor of the priesthood, or of the clergy, and whatever has been given shall be recovered for the benefit of the church whose ministry they attempted to purchase. But when a layman receives the money, or acts as an intermediary for the purpose of obtaining the episcopate for anyone, We decree that there shall be collected from him, for the benefit of the church, double the value of the property given, and We not only wish that whatever has been paid shall be recovered in this way, but also the amount for which any bond may have been executed to secure the acquisition of the episcopate. And We finally order that all pledges and securities given, offers of every kind made, and bonds executed for this purpose shall be void. He who has received a bond shall not only be liable for its amount, but double that sum shall be collected from him for the benefit of the church.

CHAPTER III.

WHERE A BISHOP OFFERS HIS PROPERTY TO THE CHURCH EITHER BEFORE OR AFTER HIS CONSECRATION, AND WHAT SHALL BE PAID FOR THE RIGHT OF THE SEE.

Where a bishop, either before or after his consecration, desires to offer to the church whose ministry he has received either all or a part of his property, We do not forbid him to do so; and We direct that he shall be released from every sentence and penalty prescribed by the present law, and We also deem him worthy of all praise as his act is not a purchase, but an offering. We permit bishops who have been consecrated, when they assume office, to pay only the sums which are customary, and which are hereinafter set forth. Therefore We order the most

blessed archbishops and patriarchs, that is to say, those of ancient Rome, of Constantinople, Alexandria, Antioch and Jerusalem, who have been accustomed to pay twenty pounds of gold at the time of their consecration by bishops and clerks, to continue to pay the said sum, but We forbid them to pay anything more. We decree that the metropolitans, who are consecrated by their own synod, or by the most blessed patriarchs, as well as all other prelates who are consecrated by patriarchs and metropolitans, shall pay a hundred *solidi* for the right of the see, and that they shall formally pay three hundred to the notaries of the prelate who confers the consecration, and his other officials.

When the annual revenues of the church are less than thirty pounds of gold, but are not less than ten, one hundred *solidi* shall be paid for the right of the see, and two hundred to all the officials who are accustomed to receive them. When the revenues of the church are under ten pounds of gold, but not under five; fifty *solidi* shall be paid for the right of the see, and two hundred to the officials. When the church has an income of less than five pounds of gold, but not less than two, eighteen *solidi* shall be paid for the right of the see, and twenty-four to the officials above mentioned. In conclusion, if the amount of the revenues of the church is known to be less than three pounds of gold, but not less than two, twelve *solidi* shall be paid for the right of the see, and six for every other purpose. For We forbid the bishop of a church which has an income of less than two pounds of gold to pay anything either for the see, or in conformity with any custom whatsoever. The first priest of the bishop who performs the consecration, and the archdeacon, shall receive the sums which We have just enumerated, and shall divide among those who are accustomed to receive them.

We order that these rules shall, by all means, be observed, in order that the churches may not be oppressed with debts, and priests become venal. If, however, anyone should, under any circumstances, presume to receive anything in excess of what We have prescribed under the pretext of a right of the see, or of custom, We order that three times the amount which he has been paid shall be taken out of his property for the benefit of the church of him who gave it.

These are the regulations which We have promulgated with reference to the consecration of bishops.

CHAPTER IV.

THE EPISCOPATE RELEASES A MAN FROM THE CONDITION OF SLAVE OR SERF.

We order that bishops shall be liberated from their condition of slaves or serfs, after their consecration, unless some decurion or other official has been consecrated without having complied with the prescribed formalities, and We direct that a bishop of this kind shall be expelled from the episcopate, and returned to his *curia*, or other office, in order that the priesthood may not be injured by his civil condition. We order, however, that those who are subject to curial obligations, and are known to have been consecrated bishops before the enactment of this law, shall be freed from their status; but they can transfer a lawful share of their own property to the *curia*, and the Treasury, without any interference with ecclesiastical rights so far as the property which, having been acquired during the episcopate, will belong to the Church by virtue of Our provision, is concerned. Where anyone who has been raised to the episcopate is under the control of a parent, he will become independent by the mere fact of his consecration.

CHAPTER V.

CONCERNING PRIESTS, DEACONS, AND SUBDEACONS, CALLED BY THE RIGHT OF COGNATION TO DISCHARGE THE DUTIES OF GUARDIANS OR CURATORS.

Holy bishops and monks cannot, legally, be appointed guardians or curators of any persons whomsoever; but We permit priests, deacons, and subdeacons to accept the guardianship and the curatorship of an estate under the law, and by the right of cognation; and We authorize those who are called to do so by the degree of relationship, to undertake the administration of these trusts. When, within four months from the time when a priest, deacon, or subdeacon is

called to assume the duties of guardianship or curatorship, he states that he voluntarily accepts it, he will not be prejudiced by this statement, so far as any other guardianship or curatorship is concerned.

CHAPTER VI.

MEMBERS OF THE CLERGY SHALL NOT PERFORM THE DUTIES OF PUBLIC OFFICE, OR TRANSACT ANY SECULAR BUSINESS.

We do not permit a deacon, a steward, or any other member of the clergy, no matter what his rank may be, or any monk attached to a church or monastery, to be appointed a receiver or collector of taxes, a recorder of public or private property, a superintendent of a household, or an attorney to conduct litigation; nor do We allow him to act as surety for any of the above-mentioned purposes; and formulate this rule in order that religious establishments may sustain no injury, or the holy services of the Church be interfered with. When, however, those in charge of churches or monasteries desire to obtain control of adjacent real property either under lease or emphyteusis, We permit them to do so; provided all the members of the priesthood and the monks give their consent in the instrument evidencing the contract, which must be publicly recorded; and they declare that the said religious houses will be benefited thereby.

We also authorize churches and other religious houses to contract with one another by lease or emphyteusis, just as We grant members of the clergy the right to lease and control the lands of their own churches, with the consent of the bishop and the steward, with the exception of persons whom We have forbidden to do this by the terms of a former law. If a bishop should violate these rules, We order that all the property which has come into his hands in any way or by means of any person whomsoever, before and after his consecration, shall be demanded and seized by his church.

Where stewards, or other members of the clergy do this, a fine fixed by the bishop shall be collected from them, for the benefit of the church; and those to whom they have entrusted the harvest of the crops or any land whatsoever, or the supervision of a house, or who have accepted them as sureties under such circumstances, shall have no right of action against the church or monastery; nor any claim upon the property of either, or upon that of those in charge of the same; nor against the persons to whom they have confided their administrations, or the property or sureties of the latter. If, however, the public should suffer any loss on this account, those who have charged the persons above mentioned with the exaction of public revenues or tributes; or who have farmed out to them collections of any kind; or have accepted them as sureties; shall be compelled to make good the loss out of their own estates.

CHAPTER VII.

A BISHOP SHALL NOT BE BROUGHT INTO COURT FOR THE PURPOSE OF TESTIFYING.

No person shall be permitted to compel a reverend bishop to appear in court for the purpose of giving testimony, but the judge shall send one of his subordinate officers to him, in order that he may state what he knows upon the Holy Gospels in a manner becoming to the priesthood.

CHAPTER VIII.

A BISHOP SHALL NOT BE BROUGHT BEFORE A SECULAR JUDGE FOR ANY REASON WHATSOEVER.

We do not permit a bishop to be forced to appear against his will before a civil or military judge in any pecuniary or criminal proceeding whatsoever, without an Imperial order; and any magistrate who presumes to issue an order of this kind, either in writing or orally, after having been deprived of his office, shall pay a fine of twenty pounds of gold for the benefit of the church whose bishop was summoned and ordered to appear; and the bailiff who executed the order, after having also been deprived of his office, shall be scourged and sent into exile.

CHAPTER IX.

BISHOPS SHALL NOT LEAVE THEIR OWN CHURCHES.

We forbid the bishops beloved of God to leave their own churches and go elsewhere; and when they are obliged to do so, they must not depart without having obtained letters for that purpose from the Most Blessed Patriarch or Metropolitan, or an Imperial order; hence bishops who are under the jurisdiction of the Most Blessed Archbishop and Patriarch of Constantinople shall not be permitted to visit this Royal City without his permission, or Our order. When a bishop, no matter where he is stationed, leaves his diocese after having complied with this formality, he cannot remain absent from his church longer than a year. Bishops who, as has just been stated, come from any diocese whatsoever to this Royal City, shall, before doing anything else, apply to the Most Blessed Archbishop and Patriarch of Constantinople to be presented by him to Our Tranquillity.

Where those who leave their dioceses do not observe these rules, or if they remain absent from their churches longer than a year, in the first place, their expenses shall not be paid by the stewards of their churches, and their superiors must notify them by letters to return, and those who delay doing so shall be recalled in accordance with the sacred canons; and if they do not return within the time prescribed they shall be removed from the episcopate, and better bishops shall be consecrated in their stead, by virtue of the present law.

This rule shall be observed with reference to the members of the clergy, no matter to what order they may belong, or what duties they perform.

CHAPTER X.

ARCHBISHOPS AND PATRIARCHS SHALL FREQUENTLY HOLD COUNCILS AND SYNODS DURING THE COURSE OF A YEAR.

In order that ecclesiastical discipline may be strictly maintained, and the sacred canons be complied with, We order that every blessed archbishop, patriarch, and metropolitan shall call together the very reverend bishops subject to his authority in the same province once or twice every year, in order, with their assistance, carefully to investigate all controversies which have arisen between bishops, clerks, or monks, decide these controversies, and remedy everything which has been done contrary to the canons by anyone whomsoever.

We forbid the most reverend bishops, priests, deacons, subdeacons, readers, and all other ecclesiastics, no matter of what holy association or order they may be members, to gamble with dice; to take part as spectators in games of chance, where other persons are playing; or to be present at a public exhibition of any kind. If any one of them should violate this provision, We order that he shall be prohibited from performing his sacred duties for three years, and shall be confined in a monastery. Nevertheless, if during the said term of three years, he should evince repentance in proportion to his sin, his superior is hereby authorized to shorten the time, and restore him to the ministry.

The most reverend bishops are notified that they must punish every violation of this law; and if, after having learned of an offence committed against its provisions, they fail to exact the penalty, they themselves will be accountable to God for not doing so. No bishop, however, shall be compelled against his will to remove from his clergy any priest who is under his jurisdiction.

CHAPTER XI.

NO ONE SHALL BE EXCOMMUNICATED BEFORE HIS CASE HAS BEEN DISPOSED OF.

We forbid all bishops and priests to deprive anyone of the holy communion before the offence for which the sacred canons prescribe excommunication has been proved. If anyone, in violation of this provision, should deprive another of the sacrament, he who has been unjustly excommunicated shall be released from the sentence by a prelate of higher authority, and will

be entitled to receive the holy communion. But the ecclesiastic who has presumed to exclude him from this sacred rite shall himself be excommunicated by the prelate to whose authority he is subject, for as long a time as the latter may deem advisable, in order that he may undergo a just penalty for what he unjustly did.

No bishop shall be permitted to strike anyone with his own hands; for an act of this kind is unbecoming to a member of the priesthood. If any bishop who has been expelled from the priesthood, in conformity with the ecclesiastical canons, should have the audacity to leave the place in which he was ordered to pass his life, and return to the city from which he has been driven, We order that he shall be placed in a monastery situated in some other region, in order that he may, by the practice of a monastic life, atone for the crimes which he committed while in the priesthood.

CHAPTER XII.

WHO THOSE ARE THAT SHOULD BE ORDAINED PRIESTS.

We do not permit members of the clergy to be ordained unless they are acquainted with letters; or where they do not profess the true faith; or where their life is not without blemish, and they shall not be ordained if they have had (or have at the time) a concubine or any natural children. They must live chastely, and must have only one lawful wife, who was neither a widow nor separated from her husband, and with whom marriage was not forbidden either by the laws or the sacred canons.

CHAPTER XIII.

CONCERNING THE AGE OF PRIESTS AND OTHER MEMBERS OF THE CLERGY.

We do not permit anyone to be ordained a priest who is under thirty-five years of age, or to become a deacon or subdeacon under twenty-five, or a reader under eighteen years. A woman who is less than forty years of age, or who has married a second time, shall not be made a deaconess in the Holy Church.

CHAPTER XIV.

CONCERNING THE WIVES OF MEMBERS OF THE CLERGY.

If at the time of the ordination of a member of the priesthood, no matter to what body or order he may belong, an accuser appears, who states that the candidate is unworthy of receiving ordination, the ceremony must be postponed, and the hearing of the accusation, as well as what We have prescribed with reference to the consecration of bishops, shall be proceeded with. Where anyone who is to be made a deacon has not (as has previously been stated) been married, he shall not be ordained until after an examination conducted by the ecclesiastic who is to confer ordination upon him has taken place, and he has promised to live chastely without lawful marriage; and the prelate who ordains the deacon or subdeacon shall not, when he performs the ceremony, authorize him subsequently to take a wife. Any bishop who permits this to be done shall be deprived of his episcopate.

If, however, after his ordination, any priest, deacon or subdeacon should marry, he shall be expelled from the clergy, and shall be delivered, along with his own property, to the *curia* of the city in which he is an ecclesiastic. But where a reader marries a second time, or his first wife was a widow, or separated from her husband, or her marriage was prohibited by the laws or sacred canons, he shall, by no means, be promoted to any other ecclesiastical dignity; and if this should take place under any circumstances whatsoever, he shall be deprived of his office and restored to his former position.

CHAPTER XV.

UNDER WHAT CIRCUMSTANCES DECURIONS CAN BE ORDAINED MEMBERS OF THE CLERGY.

We do not permit a decurion, or the incumbent of any office, to be ordained a member of the

clergy, in order that no injury may be done to this holy order. If, however, persons of this kind should become members of the clergy, the result will be the same as if they had not entered the priesthood, and they shall be restored to their former civil condition, unless, perhaps, one of them has embraced a monastic life for not less than fifteen years, as We direct that persons of this kind may be ordained; but, under such circumstances, a portion of their property shall be given to the *curia*, and the Treasury.

If a decurion, or other official, after having obtained the honor of the priesthood, should marry a wife or entertain a concubine, he shall be returned to the *curia*, or other civil employment to the status of which he was subject, although he may have been admitted to a clerical organization whose members are not forbidden by the laws or the sacred canons to marry. We decree that this provision shall apply to all other monks who leave monasteries by reason of their promotion to some ecclesiastical dignity, even if they may not have been liable to the performance of civil obligations.

Generally speaking, We forbid everyone of any ecclesiastical rank whatsoever to withdraw from it, and become a layman; for he is hereby warned that if he commits an act of this kind, he will be deprived of the magistracy, office, or charge with which he is invested, and transferred to the curial condition of his city. Those who, while subject to curial obligations, have been ordained members of the priesthood before the enactment of this Our present law, shall comply with the pecuniary requirements of their condition, by means of substitutes, and shall personally be released from the performance of municipal duties.

CHAPTER XVI.

ORDINATIONS SHALL BE MADE GRATUITOUSLY.

We do not permit a member of the clergy, no matter what his rank may be, to give anything to the prelate by whom he is ordained, or to anyone else; as We only desire him to pay to the officers of the ecclesiastic who ordains him the fees which they are accustomed to receive, and which cannot exceed their salaries for one year. He must discharge the duties of his ministry in the holy church to which he is appointed, and pay absolutely nothing to the clergy in consideration of his admission; nor shall he, on this account, be deprived of his own emoluments or other perquisites.

The superintendent of a place of entertainment for strangers, of a hospital, of an asylum for the poor and infirm, or of any other religious establishment, or who has charge of any other ecclesiastical administration, shall not give anything for the place entrusted to him either to the person by whom he was appointed, or to anyone else whomsoever. Anyone who, in violation of what We have decreed, acts as donor, recipient, or intermediary in such a transaction, shall be dismissed from the priesthood, be deprived of membership in the clergy, as well as of the administration which has been entrusted to him, and whatever he accepted shall be claimed by the religious establishment of which the individual referred to received the direction, management, or supervision. When he who accepts a gift, or acts as an intermediary in a case of this kind is a layman, double the amount given him shall be demanded by, and delivered to the religious establishment whose direction, management, or supervision was conferred upon him. Where, however, a member of the clergy of any rank whatever, or the superintendent of a religious establishment, before or after he has been ordained, or any administration or charge has been entrusted to him, desires to offer some of his property to the church in which he is ordained, or to the establishment whose direction or management has been conferred upon him, We not only do not forbid him to do so, but We exhort him strongly to perform this act for the salvation of his soul; for while We prohibit donations from being made to certain private persons, this rule does not apply to churches or other religious establishments.

CHAPTER XVII.

IN WHAT WAY A SLAVE OR A SERF MAY BE ORDAINED A MEMBER OF THE CLERGY.

When a slave is ordained a member of the clergy, and his master is aware of the fact, and manifests no opposition, the slave will become free and freeborn by the mere fact of his ordination. Where, however, the ordination took place without the knowledge of his master, the latter will be granted a year in which to establish the condition of his slave, and recover him. Where a slave who (as We have just stated) has become free by the fact of his ordination, whether this was known or unknown to his master, abandons the ecclesiastical ministry, and adopts a secular life, he shall be restored to his master and to servitude. We, however, permit serfs attached to the glebe to become members of the clergy, even without the consent of their masters, provided that, after having become ecclesiastics, they continue to cultivate the soil as their duty requires.

CHAPTER XVIII.

CONCERNING THE FOUNDERS OF CHURCHES.

Where anyone has built an oratory, and reserved to himself and his heirs the privilege of appointing members of the clergy to conduct its service, and he provides means for paying the expenses of the said clergy, and those whom he appoints are worthy to discharge sacerdotal functions, they shall be ordained. When the sacred canons prohibit the persons nominated by the founder from being accepted because they are unworthy, the most holy bishop must ordain others whom he thinks to be better qualified. We order the most reverend members of the clergy to comply with the rules of their churches, and discharge, in every respect, the ecclesiastical duties required of them. The most holy bishop of each city will be careful to ascertain any violations of this law, and the heads of all ecclesiastical organizations will subject those who do not observe it to the prescribed penalty.

CHAPTER XIX.

ALL MEMBERS OF THE CLERGY SHALL HAVE CONTROL OF THEIR OWN PROPERTY.

We decree that priests, deacons, subdeacons, choristers, and readers, to whom We give the name of "clerks," can hold property, whose ownership comes to them from any source whatever; that they shall be permitted, even though under the control of their parents, to give said property away in accordance with law, just as is the case with *peculium castrense*, and to dispose of it by will; provided, however, that they leave to their children, or if there are none, to their parents, the lawful share to which they are entitled.

CHAPTER XX.

TO WHAT PENALTY ECCLESIASTICS ARE SUBJECTED WHO GIVE FALSE TESTIMONY.

Where most reverend priests or deacons are found to have given false testimony in pecuniary cases, it will be sufficient for them to be whipped, suspended from the discharge of their sacred duties for three years, and confined in monasteries. Where, however, they have given false testimony in criminal cases, We order that after having been expelled from the priesthood, they shall undergo the penalties prescribed by law. When clerks belonging to other ecclesiastical orders have been convicted of having given false testimony in any case whatever, either civil or criminal, they shall not only be deprived of their ecclesiastical offices, but shall also be scourged.

CHAPTER XXI.

ECCLESIASTICS SHALL BE SUED BEFORE THEIR OWN BISHOPS.

When anyone has a right of action against a clerk, a monk, a deaconess, a nun, or a hermit, he

must bring suit in the first place before the most holy bishop, to whose jurisdiction both parties are subject; the bishop will hear the case; and if both parties acquiesce in his decision, We order that it shall be executed by the magistrate of the district. Where, however, one of the litigants files an objection within ten days, then the judge of the district must examine the case, and if he finds the decision rendered by the bishop to be just, he shall ratify and execute it, and he who has been defeated a second time will not be permitted to appeal. But where the decision of the judge is opposed to that of the bishop, an appeal will be admissible, and it shall be taken and prosecuted as prescribed by law. If the bishop should decide a case between any persons whomsoever, by virtue of an Imperial command or a judicial order, the appeal shall be brought before the Imperial Council, or the magistrate who has been authorized by the latter to hear it.

(1) Where any one of the most reverend persons whom We have mentioned is accused of a crime before the bishop, and the latter ascertains that the accusation is true, he shall, in accordance with the ecclesiastical canons, deprive the guilty party of the honor and rank with which he is invested, a competent judge shall arrest him, and, after having examined the case in conformity with law, shall decide it. Where, however, the accuser first appears before a civil magistrate, and can prove the charge by a legal investigation, he must do so by means of public documents and evidence, before the bishop of the diocese ; and if the defendant should be found guilty of the crime of which he is accused, the bishop shall then, in accordance with the ecclesiastical canons, deprive him of the honors and rank with which he is invested, and the judge shall punish him as prescribed by law.

But if the bishop should not think that the evidence is sufficient, he shall be permitted to postpone the deprivation of the accused of his honors and rank, the latter shall be kept in confinement, and the case shall be referred to Us, or to the appointing magistrate, in order that, after having examined it, such a disposition of it may be made as We deem proper.

(2) When anyone has a right of action in a pecuniary case against any of the persons previously mentioned, and the bishop postpones its examination, the plaintiff will have a right to apply to a civil magistrate, but the accused person shall, under no circumstances, be compelled to give a surety, and shall only furnish security by the hypothecation of his property, without being sworn. When a criminal charge is brought against any of the persons aforesaid, he who is accused must be placed under lawful restraint. Where, however, the suit relates to ecclesiastical matters, civil judges will have no jurisdiction whatever; but the most holy bishop shall hear and determine it in conformity with the sacred canons.

CHAPTER XXII.

BISHOPS SHALL BE SUED BEFORE THEIR OWN METROPOLITAN AND SHALL NOT BE REQUIRED TO FURNISH SECURITY WITH REFERENCE TO LITIGATION.

Where any most holy bishop has a controversy with another bishop of the same synod, whether with reference to an ecclesiastical right, or concerning other matters; the metropolitan, along with the other prelates of his synod, shall hear and determine the case; and if both parties do not acquiesce in the decision, then the Most Blessed Patriarch shall take cognizance of the case, and decide it in accordance with the ecclesiastical canons and the laws, without either party being allowed to call his decision in question.

But where suit is brought by a clerk, or anyone else, against a bishop, with reference to any matter whatsoever, the case shall be decided by the Most Holy Metropolitan, in conformity with the sacred canons and Our own laws, and if any of the parties should question the decision, an appeal may be taken to the Most Blessed Archbishop of the diocese, and he shall dispose of it in conformity with the canons and the laws. Where, however, an action of this kind is brought against a metropolitan by a bishop, a clerk, or any other person whomsoever, the most blessed patriarch of the diocese shall hear and decide it in the same way. But in all other cases in which bishops are sued before their own metropolitan, patriarch, or any other magistrate whomsoever, no bond or security shall be required of them; provided, however,

they take care to free themselves from responsibility in the actions brought against them.

CHAPTER XXIII.

STEWARDS AND OTHER ADMINISTRATORS SHALL BE SUED BEFORE THEIR OWN BISHOP.

We order that stewards, superintendents of places for the entertainment of strangers, of hospitals, of asylums for the poor and infirm, and of other ecclesiastical establishments, as well as all other clerks, shall, so far as the management of the affairs entrusted to them is concerned, be sued before the bishop to whose authority they are subject, to compel them to render an account of their administration, and to recover what they are ascertained to owe to the said ecclesiastical establishments. Where, however, any of these officials think that they have been injured, the metropolitan shall hear the case, after the amount to be collected for them has been determined; or the Most Blessed Patriarchs shall decide it, if the account was rendered before a metropolitan, or if he has ordered restitution to be made. For We do not allow the above-mentioned administrators, when their official conduct is in question, to leave the jurisdiction of their own bishops, and have recourse to other tribunals, before the examination has taken place, and the balance which they owe, has been paid. Where an ecclesiastic, or any official of this kind dies before having rendered his accounts, and turned over the remainder due, We order that his heirs shall be required to render them and make payment in the same way.

CHAPTER XXIV.

BISHOPS SHALL BE SUED IN THE PLACE WHERE THE CAUSE OF ACTION AROSE.

Where a bishop or clerk belonging to any province whatsoever is in Constantinople, and someone wishes to bring an action against him, this must be done where the transaction took place, and the case shall be heard there. But where proceedings have not yet been instituted, the defendant shall answer those who sue him, before the Most Glorious Praetorian Prefect of the East, or such judges as We may appoint.

CHAPTER XXV.

CONCERNING APOCRISARII.

The most reverend *apocrisarii* of every church, who either reside here, or, having been ordained by their bishops, are sent to the Most Blessed Patriarchs or Metropolitans of this city, shall accept no summons, and shall sue no one in the name of their bishops, in any matter in which the Church is interested, or for a public or private debt, unless they have obtained a mandate for this purpose from their bishops or stewards; for it is only under such circumstances that We permit those who are sued by *apocrisarii* to set up defences against their church or their bishop, when they have any to make. But when *apocrisarii* individually contract obligations having reference to certain cases or actions, they must answer in person when suit is brought against them.

CHAPTER XXVI.

BISHOPS SHALL NOT BE SUED DURING THE TIME THEY ARE ACTING AS DELEGATES.

When bishops or clerks come to this Royal City, or go elsewhere, in the capacity of delegates representing either their town or their church, or for the purpose of conducting the ordination of a bishop, We decree that they shall not be annoyed or molested by anyone whomsoever, and that those who allege that they are their creditors can only sue them after they have returned to their province; the said creditors, however, shall not, so far as any rights of action to which they think that they are entitled are concerned, be prejudiced by reason of temporary prescription during the time that they allowed to elapse under such circumstances.

CHAPTER XXVII.

MONKS SHALL DEFEND THEMSELVES BY AN ATTORNEY; AND CONCERNING THE AMOUNT OF FEES TO BE PAID.

Whenever a suit is brought, and a legal summons is served, or an execution is issued in any civil proceeding whatsoever, either public or private, against a clerk, a monk, a nun, or a monastery, and especially against a monastery of women, We order that notice of it shall be given without the commission of any injury, and with all due respect under the circumstances, and that the nun or the hermit who is sued shall not be taken from his or her monastery, but an attorney shall be appointed to answer in the case.

Monks shall, either in their own proper persons, or by an attorney, be permitted to conduct cases in which the monastery is interested, and the judge or judicial officer who violates this law is hereby warned that he will be deprived of his place; that a fine of five pounds of gold will be imposed by the Most Magnificent Count of Private Affairs; and that the official who executed orders of the tribunal will, in addition to this, be scourged and sent into exile.

The most holy bishops of the dioceses will see that these provisions are not violated in any respect, and that if they should be, that the punishment above mentioned is inflicted, and they must notify Us whenever it becomes necessary for the judge to impose a different penalty.

CHAPTER XXVIII.

CONCERNING THE AMOUNT OF COSTS TO BE PAID WHERE MEMBERS OF THE CLERGY ARE CONCERNED.

We do not permit persons who discharge any ecclesiastical duties whatsoever (such for instance as deaconesses, nuns, and male and female ascetics), when they receive a legal notice in this Royal City, or in the provinces in which they reside, to pay more than four *siliquise* by way of fees, in any kind of a criminal or civil case, no matter what may be the value of the property involved. If a judicial officer sent by Our command to a magistrate, or a most blessed patriarch, serves a summons on any one of the persons above mentioned in another province, he will not be entitled to receive more than one *siliqua*. Where a large number of such persons are made defendants in one and the same case, We order that one of them shall pay the fees for all.

A bishop shall not be subject to the payment of any fees on account of matters in which his church is interested; and if any are demanded under such circumstances, they must be paid by the stewards, whose duty it is to defend suits brought against the church, or by other persons who may be designated for this purpose.

Anyone who presumes to collect fees in violation of the provisions above mentioned shall be compelled to pay to the person from whom he exacted them double as much as he received; if he is the incumbent of an office he shall be deprived of it, and if he is a clerk, he shall be expelled from the priesthood.

CHAPTER XXIX.

NEITHER CLERKS NOR BISHOPS SHALL HAVE SUPERINDUCED WOMEN IN THEIR HOUSES.

We forbid priests, deacons, subdeacons, and all members of the clergy who do not have wives in accordance with the sacred canons, to keep any superinduced woman in their houses, unless she is their mother, their sister, their daughter, or some other female who will not give rise to suspicion. If any clerk, in violation of this rule, should keep a woman in his house who can render him suspected, and, after having been notified once or twice by his bishop or his clergy to cease to live with her, is not willing to send her away, or an accuser appears who proves that he is living unchastely with a woman, the bishop shall expel him from the priesthood, in accordance with the ecclesiastical canons, and he shall be delivered up to the *curia* of the city of which he was a clerk. We also forbid prelates to keep women, or to live

with them. If a bishop should be convicted of not having conformed to this rule, he shall be expelled from the episcopate, for he has shown himself to be unworthy of the priesthood.

CHAPTER XXX.

CONCERNING DEACONESSES.

We, by no means, permit a deaconess to live with a man where there may be good reason to suspect that she is leading an immoral life. If a deaconess should disregard this warning, the prelate to whose authority she is subject shall notify her to send the man away from her house, and if she manifests any hesitation in complying with this notice, she shall be deprived of the exercise of her ecclesiastical functions, and her own emoluments, and shall be placed in a monastery to remain there all her life. When she has any children, her property shall be divided among them *per capita*, in such a way that the monastery shall receive the share to which the woman herself is entitled, in order to provide for her nourishment and support. Where, however, she has no children, her entire estate shall be divided between the monastery to which she is sent, and the church to which she was originally attached.

CHAPTER XXXI.

CONCERNING THOSE WHO ARE GUILTY OF ABUSE OF A BISHOP OR OTHER MEMBERS OF THE CLERGY IN A CHURCH.

When, during the celebration of the sacred rites in a church, anyone, having entered it reviles the bishop, clerks, or other ministers of the same, We order him to be scourged, and sent into exile. If, however, he should interrupt the service, or forbid it to be conducted, he shall be punished capitally.

This rule shall also be observed with reference to the processions in which bishops or clerks take part, for where anyone is only guilty of abuse, he shall be exiled and scourged, but where he interferes with a procession, he shall be put to death. We order both civil and military magistrates to punish offences of this kind.

CHAPTER XXXII.

THE LAITY SHALL NOT TAKE PART IN RELIGIOUS PROCESSIONS WITHOUT THE PRESENCE OF THE BISHOP, THE CLERGY, AND THE CROSSES.

We forbid all laymen to form religious processions without the presence of the holy bishops and reverend clerks to whose jurisdiction they are subject. For what kind of a religious procession is that in which ecclesiastics do not participate and offer up solemn prayers? We forbid the honored crosses (which priests carry at the head of processions) to be kept anywhere else than in religious houses; and it is only when processions are necessary that those who ordinarily carry the holy crosses receive them. Hence processions shall be composed of bishops and the clergy; and the most holy prelates of the different dioceses, together with the clerks, and the magistrates of the district will see that this rule is enforced.

If any one of the persons mentioned in this Chapter should transgress this Our law, or fail to punish its violation, he will be liable to the aforesaid penalties at the hands of the most reverend monks and monasteries.

CHAPTER XXXIII.

It remains for us to establish regulations for the sacred monasteries and most reverend monks, therefore, first of all, We decree as follows:

Here the entire first chapter of Novel V is translated into Greek.

CHAPTER XXXIV.

AN ABBOT SHALL BE CHOSEN NOT SO MUCH ON ACCOUNT OF HIS TERM OF MONASTIC SERVICE AS BECAUSE OF HIS GOOD REPUTATION.

Hence We order that an abbot or an archimandrite, who is ordained in any monastery

whatsoever, shall not be selected on account of his monastic rank, but that all the monks who enjoy the best reputation shall choose their head in the presence of the Holy Gospels, stating at the time that their choice is not influenced by friendship, or by any other motive, but that they make the appointment for the reason that they know that the candidate professes the true faith, that his life is chaste, that he is worthy of governing, and that he can maintain discipline among the monks, and observe all the rules of the monastery, and then the most holy bishop within whose jurisdiction the monastery is situated shall ordain as abbot the person who has been elected in this way.

What We have stated with reference to the ordination of abbots shall also apply to monasteries of women, and to hermitages.

CHAPTER XXXV.

CONCERNING THE NOVITIATE OF MONKS.

When anyone wishes to enter the monastic life, and is known to be exempt from civil obligations, We authorize the abbot of the monastery to admit him, if he thinks it advisable. But where the candidate is not known, or is subject to certain civil disabilities, he shall not be admitted before the expiration of three years, in order that, during this time, the head of the monastery may ascertain his status. Where anyone appears within three years, and says that the novice is a slave, a tenant, or a serf, and that he entered the monastery to avoid cultivating the soil, or because he has committed a theft or some other offence, he shall be returned to his master, together with the articles which he is proved to have brought with him into the monastery, and the master shall, before taking him back, swear that he will not inflict any punishment upon him.

But where no one of this kind appears within three years, and the novice is not molested, and no demand is made for him, the abbot of the monastery must admit him to the order after the lapse of the said term of three years, if he deems him worthy, and no one shall afterwards be permitted to annoy him with reference to his condition as long as he professes a monastic life. Nevertheless, any property which he is ascertained to have brought into the monastery shall be entirely returned to its owner. But where anyone, who has once assumed the monastic habit, afterwards leaves the monastery, adopts a secular life, and wanders about through towns and country, he shall be restored to his original status.

CHAPTER XXXVI.

MONKS SHALL OCCUPY THE SAME ROOM.

In all monasteries which are called *caenobia* We order that, in accordance with the monachal canons, all the inmates shall sleep separately in one room in order that they may be able to testify as to the chaste conduct of one another; unless, however, where some of them, on account of their monastic experience, or their old age and bodily infirmities, desire to live quietly in retired cells within the monastery, they can do so with the knowledge and consent of the abbot. This rule shall be applicable to nunneries, as well as hermitages, but We do not permit them to apply to any other monasteries of Our Empire.

Where a monastery is inhabited by persons of both sexes, We order that the men shall be absolutely separated from the women, that the women shall continue to live in the monastery in which they are at the time, and that the men should build another. Where there are several monasteries, and it is not necessary to build new ones, the most holy bishop of the diocese shall place the monks with other monks, and the nuns with other nuns, being careful to establish them in different monasteries; and any property they hold in common shall be divided among them, in accordance with the rights of all. The women shall, themselves, select either a priest or a deacon to represent them, or to administer the holy communion to them, and the reverend bishop must appoint someone for this purpose whom he knows to profess the true faith, and to lead a blameless life. If, however, the person whom they select is neither a priest nor a deacon, and, notwithstanding this, the bishop thinks him worthy to have charge

of the monastery (as has already been stated), he shall ordain him *apocrisarius*, in accordance with the wishes of the nuns, but he will not be permitted to live in the monastery.

CHAPTER XXXVII.

WHERE ANYONE ENTERS A MONASTERY, THE FACT THAT HE IS MARRIED AND HAS CHILDREN WILL MAKE NO DIFFERENCE.

Where anyone gives anything to his children or to a stranger as a dowry or an ante-nuptial donation, or where he bequeaths them an inheritance or a legacy under the condition that they marry, or where he leaves them an estate absolutely, or where he provides for restitution, and the conditions are not complied with, We order that these acts shall be invalid and considered as not having been performed, if those upon whom the said conditions were imposed enter monasteries, or become clerks, deaconesses, or hermits; but that the clerks and deaconesses of churches may, by way of consolation, if they remain until the end of their lives in their ecclesiastical status, employ the property given or left under such circumstances in pious works; for We desire that bequests left in this way to persons of both sexes who enter a monastery or a hermitage, and lead chaste lives, shall, as well as their other possessions, belong to the monastery or hermitage which they entered in the beginning.

But when it is prescribed that if the aforesaid conditions should not be fulfilled, the substitution or restitution shall take place for the ransom of captives, or the support of the poor, We do not permit a provision of this kind to be disregarded.

CHAPTER XXXVIII.

PERSONS WHO ENTER A MONASTERY DEDICATE THEMSELVES AND THEIR PROPERTY TO THE SAME.

Where either a woman or a man embraces the monastic life and enters a monastery, and they have no children, We order that the monastery shall be entitled to their estates. But if any such person should have children, and did not dispose of his property before entering the monastery, and should set apart their lawful share for his children, he shall be permitted, even after entering the monastery, to divide his estate among them; provided, however, he does not diminish the portion that anyone of them is entitled to, but what he does not give to his children shall belong to the monastery. Where, however, he wishes to divide his entire estate among his children, he must, by all means, in doing so, reserve one share for the monastery. But if he who resides in the monastery should die before having distributed his property among his children, the latter will be entitled to their lawful share of the same, and the remainder will belong to the monastery.

CHAPTER XXXIX.

WHENEVER A BETROTHAL BECOMES OF NO EFFECT ON ACCOUNT OF THE ENTRANCE OF ONE OF THE PARTIES INTO A MONASTERY, THE BETROTHAL GIFT SHALL BE RETURNED.

Where a betrothal takes place between persons in accordance with law, and the man enters a monastery, he will be entitled to the gift which he made; just as where the woman embraces a monastic life she shall only be required to return the betrothal gift which she received, the penalty being remitted, so far as both parties are concerned.

CHAPTER XL.

WHENEVER A HUSBAND OR A WIFE ENTERS A MONASTERY.

But when, during the existence of the marriage, the man or the woman alone enters the monastery, the marriage shall be dissolved without repudiation, after the one who entered the monastery has assumed the monastic habit. If the man should embrace a monastic life he must restore the dowry to his wife, along with anything else that he may have received from her; and he must give her, in addition, the same share of the ante-nuptial donation to which she

would have been entitled in case of his death, in accordance with the terms of the contract as set forth in the dotal instrument. Where the wife enters the monastery, the husband, on the other hand, can retain the ante-nuptial donation, and that part of the dowry stipulated in the case of the death of the woman; and We order that the remainder of the dowry, as well as any other property of the wife which is in the hands of the husband, shall be returned to her.

Where both parties adopt a monastic life, We direct that any dotal agreements made by them shall be void; that the husband shall retain the ante-nuptial donation, and the wife recover her dowry, as well as anything else that is proved to have been given to the husband, in order that each of them may enjoy his or her property without sustaining any loss; unless the man did not wish to bestow anything on his betrothed, or the latter on the former, or the husband on his wife, or the wife on her husband, as otherwise We do not permit the husband or the wife to profit in any respect by the nuptial agreements.

CHAPTER XLI.

PARENTS SHALL NOT BE PERMITTED TO DISINHERIT THEIR CHILDREN ON THE GROUND OF INGRATITUDE WHEN THE LATTER ENTER MONASTERIES.

We do not allow parents to disinherit their children, or children to disinherit their parents, and exclude them from their estates as being ungrateful, when either of them abandons a secular life for a monastic one. We also forbid parents to remove their children from the holy monasteries, when they have adopted a monastic life.

CHAPTER XLII.

CONCERNING A MONK WHO ABANDONS HIS MONASTERY.

If a monk should leave his monastery and enter another, We order that any property of which he was possessed at the time when he departed shall belong to the one of which he first became an inmate. We order the most holy bishops of the diocese to see that neither monks nor nuns wander about through the cities, and where they have any necessary answers to make in court, that they do so by means of their *apocrisarii*, without leaving their monasteries. Where a monk who is invested with any dignity or office abandons his monastery to embrace a secular life, he shall first be deprived of his employment, and shall then be returned to the monastery, to which any property of which he is proved to have been possessed when he departed shall belong. If he should leave the monastery a second time, the judge of the province in which he is found shall retain him, and place him among the court officials subject to his authority.

CHAPTER XLIII.

CONCERNING THE RAVISHERS OF NUNS.

If anyone should ravish, seduce, or corrupt a nun, a deaconess, or any other holy woman wearing a religious habit, We order that his property shall be seized by the most holy bishop of the diocese, as well as by the Governor of any province whatsoever and their subordinates, for the benefit of the religious establishment to which the woman who permitted herself to be seduced was an inmate; that the ravisher, together with his accomplices in the crime, shall be capitally punished; and that the woman shall, with her property, be placed in a monastery where she can be securely guarded, and not have an opportunity to commit the same offence again. But where the deaconess above mentioned has any legitimate children, the share of her estate to which they are entitled shall be given to them. If, within a year after the time when a crime of this kind has become public, the property of those implicated should not be claimed for the benefit of religious establishments, We order the Count of Private Affairs to transfer it entirely to Our Treasury; and We decree that the judge of the district, who neglected to claim said property, shall be deprived of his office, and that the Count of Private Affairs shall collect from him a fine of five pounds of gold.

CHAPTER XLIV.

LAYMEN AND ACTORS SHALL NOT BE PERMITTED TO MAKE USE OF A MONASTIC HABIT.

Generally speaking, We forbid all members of the laity, and especially actors and actresses, as well as prostitutes, to make use of the habit of a monk, a nun, or an ascetic of either sex, or to imitate the costume of any such persons; for those who have the audacity either to wear such garments or imitate them or ridicule the practice of ecclesiastical discipline are warned that they will be liable to corporeal punishment, as well as to be sent into exile. Not only bishops of dioceses, and the clergy subject to their jurisdiction, but also civil and military magistrates and their subordinates, together with public defenders, will see that this rule is observed.

We order that the penalties inserted in the present constitution, which also were prescribed by preceding laws, shall be fully applicable to, and be inflicted for future crimes, as well as for those which have already been perpetrated. But so far as the penalties exclusively prescribed by the present law are concerned, We direct that they shall solely be applicable to offences committed hereafter.

EPILOGUE.

Therefore Your Glory will take measures to see that what We have inserted in the present law is hereafter observed in every respect.

Given at Constantinople, on the *Kalends* of May, during the reign of the Emperor Justinian, and the Consulate of Basil, Addressed to Peter, Praetorian Prefect.

TITLE VII.

LITIGANTS SHALL SWEAR AT THE BEGINNING OF AN ACTION THAT THEY HAVE NOT PROMISED TO GIVE ANYTHING TO THE JUDGES AND THAT THEY WILL GIVE NOTHING HEREAFTER. CONCERNING FEES. REFERENDARIES WILL DO WHAT THEY ARE ORDERED WITHOUT INTERFERING WITH THE JUDGMENTS RENDERED, WHICH THEY THEMSELVES MUST SEE ARE EXECUTED.

ONE HUNDRED AND TWENTY-FOURTH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Praetorian Prefect.

PREFACE.

We promulgate the present law in order that the integrity of judges may be made apparent, and that nothing contributed by litigants may effect evasion of the laws.

CHAPTER I.

Therefore We order that whenever actions or appeals are brought before any judges or other magistrates, the principal parties, or those to whom the prosecution of the suit has passed in the meantime, shall swear in the presence of the Holy Gospels and the judges that they have neither given nor promised anything to the latter or to anyone else, and that they will not do so, either in person or by the agency of anyone whomsoever, in order to obtain the favor of said judges; with the exception of the ordinary fees advanced by litigants to advocates to represent them, and to such other persons as Our laws authorize payment to be made.

We decree that these rules shall be observed in Our Imperial Consistory, whenever consultations are applied for there, and that the above-mentioned oath shall be administered in the presence of the Senate. When (as sometimes happens) some of the litigants cannot appear in court, We order that those who do appear shall be sworn, and that some of the court officers shall then be dispatched to the absent litigants along with the adverse parties, in order that they may take the oath in their presence. But where one of them is a woman, and she, on account of her natural timidity, is not accustomed to appear before strange men, the officers sent by the magistrate shall take her oath without the adverse party being present. Where both

parties, or either of them, happen to be in different places, We order that the one who is absent shall be publicly sworn, in the manner in which We have just mentioned, either before the judge of the province where he resides, or in the presence of the public defender.

We desire that this present constitution shall be so strictly observed that, if one of the litigants, when either absent or present, should refuse to take the prescribed oath, and the judge is notified of the refusal, he shall be deprived of his right of action, if he is the plaintiff; and that judgment shall be rendered against him if he is the defendant.

CHAPTER II.

WHERE A LITIGANT, REPENTING OF HIS ACT, MENTIONS THE NAME OF PERSONS TO WHOM HE GAVE SOMETHING.

Where one of the litigants states that he has given or promised something to any person, and mentions his name, and proves what he alleges, he will deserve to be pardoned after the case has been decided; and when it is a pecuniary one, he who received the gift or accepted the promise shall be compelled by the Count of Private Affairs to pay three times the amount of what was given or agreed upon; and, in every instance, the official shall lose the dignity or public employment with which he is invested.

Where the accusation is a criminal one, he who, by accepting a bribe, hastened to take upon himself the crime of another, shall be subjected to the confiscation of his own property, and be sent into exile. When, however, the litigant is unable to prove that anything was either given or promised, he who is said to have received the gift or accepted the promise must swear that he did not do so, either in person or by someone else, and this oath having been taken, he shall be discharged; and the litigant who was unable to establish his allegations shall, where the case involves the payment of money, be required by the Count of Private Affairs to pay the value of the property in litigation, after it has been appraised, and he must then abide the result of the trial. In criminal cases, he who is not able to prove his statements shall have his property confiscated, and the case shall be • decided by competent judges in accordance with law.

When a litigant swears that he neither gave nor promised anything, and within ten months after the decision has been rendered it is ascertained that he did give something, the aforesaid penalty shall be imposed both upon the giver, and the receiver of the gift. In cases prosecuted by guardians or curators, they must be sworn; and where there is ground for the infliction of any of the penalties above mentioned, growing out of the oath aforesaid, the guardians or curators shall alone be liable to them, without the rights of those subject to their guardianship or curatorship being prejudiced in the slightest degree.

CHAPTER III.

CONCERNING THE PROHIBITION OF ILLEGAL FEES.

We also order that throughout the entire extent of Our Empire, both military and civil magistrates shall take measures to prevent the executive officers of judges, prefects, and other magistrates from collecting, under the pretext of fees, anything whatsoever in excess of what is provided by Our laws; even though the said officers may rely upon an Imperial mandate issued by Us; and wherever they detect any officer in exacting more than he is entitled to, they are authorized to arrest and imprison him, and exact from him fourfold the amount of the excess which he received; so that when the simple loss is returned to the person who suffered it, three times that shall be paid into Our Treasury. Where a civil or military magistrate after having, in any instance, been applied to neglects (as We have already stated) to redress the wrong of the injured party, quadruple damages shall be collected from him in the manner aforesaid; and We order that this penalty shall be exacted by the Count of Our Private Affairs. And when competent judges fail to punish their executive officers, who extort anything by way of fees, in contravention of Our laws, after they have become aware of the fact, We permit those on whom the demand is made to give no more than what is prescribed by Our

Constitution, and if the officers should attempt to collect anything in excess of this, the former are hereby authorized to resist them.

CHAPTER IV.

A JUDGE SHALL NOT COMPEL PERSONS TO EFFECT A COMPROMISE.

As a law enacted by Our Father, of pious memory, as well as by Ourselves, forbade ordinary judges to insert in their decisions anything whatsoever based on an Imperial order not committed to writing, and as this law also provided that the eminent referendaries must publish Our mandates in the proper manner, We hereby confirm it, and prohibit the said referendaries and their associates, whenever they take cognizance of cases within their jurisdiction, or when they submit any questions to Our Majesty, from detaining a litigant, either in his own person, or when he is represented by someone else, in order to make him agree to a contract to collect nothing under a bond, and compel him to compromise, or come to terms with his adversary; and, in conclusion, We forbid them to interfere in lawsuits of any description; for We, in every proceeding whatsoever, only authorize these officials to notify regular judges, or those who have been specially appointed by Our commands issued either in writing or verbally.

If one of them should presume to violate the present law, the litigant who has sustained any loss, or who has been treated unjustly with reference to his property, shall suffer no infringement of his rights. The guilty official, however, shall be compelled by a competent judge to make good, out of his own estate, the loss sustained by the injured person, and he shall also be deprived of his office and his rank.

We order that these rules shall be applicable not only to future cases, but also to such as have already been begun but have not yet been terminated.

EPILOGUE.

Therefore Your Eminence will see that this law, which shall always be observed, is brought to the knowledge of Our subjects by means of formal edicts published in the Royal City, in order that all persons may be informed of what We have decreed for their common benefit.

Given under the Consulate of Basil.

TITLE VIII.

JUDGES SHALL NOT WAIT FOR IMPERIAL ORDERS, BUT SHALL DECIDE IN WHATEVER MANNER THEY THINK BEST.

ONE HUNDRED AND TWENTY-FIFTH NEW CONSTITUTION.

The Emperor Justinian to Gabriel, Most Glorious Pratorian Prefect of the East.

PREFACE.

As many magistrates, after long arguments have been made and great expense incurred by persons in cases tried before them, refer them to Us, We have deemed it necessary to suppress this abuse by means of a general law, in order that litigation may not be protracted, and that new trials may not result.

CHAPTER I.

Therefore We order all judges not to refer to Us, in any way or at any time, suits which have been brought before them, but to examine them carefully, and make such disposition of them as may appear to be just and lawful; and where all the parties interested acquiesce in their decisions, they shall be executed in conformity with law. But where one of the litigants thinks that he has been injured by a decree, he can avail himself of the right of appeal, and the case shall then be heard and determined in the order prescribed by law. Where, however, two or more judges hear a case, and are of different opinions, We order each of them to render his decision in accordance with what seems to him to be proper.

Your Highness, together with all superior and inferior magistrates, will exert yourself to see that the provisions which We have inserted in the present law are observed in perpetuity; so that no one may be ignorant of what We enact for the benefit of Our subjects, and that notices are issued in such a way as to occasion them no unnecessary expense.

Given at Constantinople, on the *Ides* of October, during the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE IX.

A COPY OF THE IMPERIAL FORM HAVING REFERENCE TO APPEALS.

ONE HUNDRED AND TWENTY-SIXTH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Praetorian Prefect of the East.

PREFACE.

The most Holy Princes Theodosius and Valentinian expressly set forth in a law that the Quaestor of the Imperial Palace, along with the Prefect of the Praetors of the East, who temporarily occupies the throne of Your Excellency, shall examine cases which have been appealed according to the form of the Imperial Consultations. We have, however, ascertained that in examinations of this kind, things take place which are unworthy of Our Empire and of Our Government. For litigants, agents, and their advocates, as well as all those who perform legal duties in cases taken up on appeal, when they appear before Our magistrates, use the garments, the coverings of the feet, as well as the language which should only be employed by those who appear in the presence of Our Imperial Majesty. In addition to this, the said magistrates render their decisions, not in their own names, but as if We Ourselves were present, and were deciding and issuing decrees in Our own person.

CHAPTER I.

We forbid this to be done in the future, in any judicial proceeding whatsoever, and order that the Quaestor of Our Palace at the time in office, along with Your Excellency, to hear suits of this kind with the Imperial Praetorian Prefect, and not render interlocutory decrees in Our name, but in theirs, and to pronounce judgment in accordance with law. The secretaries alone shall discharge their duties in these proceedings and the magistrates are also notified that if anything should be committed in violation of these provisions, while they are determining such cases, they will be considered guilty of treason.

CHAPTER II.

Again, We order with reference to all appeals, that whenever an appeal is taken, and all the parties are present on the last day of the prescribed term, the judges shall without delay hear all the facts of the case, as well as the decision from which the appeal was taken, and render judgment in conformity with law and justice. But when the appellant appears alone on the last day, We direct that if the defendant who has been notified to be present, does not appear on the same day, the judges, after having examined the documents, shall legally decide the case; but if, on the other hand, the defendant should appear, and the plaintiff, after having been notified, does not do so, the judges shall wait not only until the end of the term allowed for appearance, but also the entire time granted for satisfaction, that is to say, three months. If the appellant should not then present himself, the decision shall not be confirmed by lapse of time; but, as only one of the parties is present in court, the judges shall examine the decision appealed from, and if they find that it has been regularly rendered, they shall affirm it. Where anything has been admitted through negligence, they must correct it, and render judgment in conformity to law. But where the hearing of the appeal had been begun within the prescribed time by both parties, or by one alone, the decision shall not be confirmed by the lapse of two years, but justice and the truth must diligently be taken into consideration; the judges shall render a final decision in the presence of one or both the parties; and We order that the examination of cases of this kind shall not be continued for a longer period, as has been done

up to this time in former appeals, but that it shall take place upon the appointed day.

CHAPTER III.

Hence We decree that all judges shall, without fail, receive appeals not forbidden by the law which are brought before them during the prescribed time. But they must give their written acknowledgment of the appeal to the parties litigant within thirty days after it has been taken, and this document shall bear their signature, in order that the parties may, for their own security, give notice of the same to a competent magistrate.

If any judge should neglect to do this, the decision shall be confirmed by lapse of time, and the judge who did not observe what We order shall be compelled to make good out of his own property any loss which the litigant may have sustained because the document granting the appeal was not issued, and he shall, in addition, pay a fine of ten pounds of gold for the benefit of the Treasury of Our Private Affairs.

EPILOGUE.

Therefore Your Glorious Authority, born for the administration of important matters, will take pains to publish the present law in this Royal City, and to promulgate it elsewhere, in order that all Our subjects may learn what they are obliged to do.

TITLE X.

BROTHERS' CHILDREN SUCCEED JUST AS BROTHERS DO, EVEN WHEN THERE ARE ASCENDANTS LIVING. THE RIGHTS OF WOMEN ARE NOT PREJUDICED FROM THE FACT THAT THE ANTE-NUPTIAL DONATION WAS NOT RECORDED, BUT WHERE THE HUSBAND DOES NOT OBSERVE THIS FORMALITY HE WILL GAIN NO PROFIT FROM THE MARRIAGE IF HE DEMANDS IT. WOMEN WHO DO NOT MARRY A SECOND TIME ARE ENTITLED TO THE OWNERSHIP OF A SHARE OF THE ANTE-NUPTIAL DONATION EQUAL TO THAT OF ONE OF THEIR CHILDREN. THE PENALTIES TO WHICH BOTH HUSBAND AND WIFE ARE LIABLE SHALL BE THE SAME WHEN NOTICE OF REPUDIATION IS SERVED WITHOUT REASONABLE CAUSE.

ONE HUNDRED AND TWENTY-SEVENTH NEW CONSTITUTION.

The Same Emperor to Bassus, Praetorian Prefect.

PREFACE.

We do not hesitate to amend Our laws whenever We find this to be advantageous to Our subjects. We remember to have enacted one by which We ordered that where a person, when dying, left brothers, and children of another predeceased brother, the children of the latter, as representing their father and entitled to his share, were called to the inheritance on the same terms with the brothers. Where, however, the deceased left an ascendant, as well as full brothers, and the children of a brother who was dead, the brothers were called to the succession along with the ascendants, and the children of the deceased brother were excluded.

CHAPTER I.

THE CHILDREN OF BROTHERS SHALL BE CALLED TO THE SUCCESSION EVEN WHERE THERE ARE SURVIVING ASCENDANTS OF THE FIRST DEGREE.

Therefore We justly amend this provision, and order that where anyone at the time of his death leaves an ascendant, as well as brothers who can be called to the succession along with -their parents, and children of another predeceased brother, the latter shall be called along with the ascendants and the brothers, and shall be entitled to the same share of the estate as their father would have obtained if he had been living. We make this provision with reference to the children of a brother whose father was related to the deceased by both father and mother. We decree this absolutely, and direct that the same order shall be observed when the children of brothers are called to the succession with brothers alone, or when ascendants are

called along with these same brothers.

This provision shall be observed from the *Kalends* of January of the eleventh indiction.

CHAPTER II.

WHEN A DONATION IN CONSIDERATION OF MARRIAGE SHOULD BE RECORDED.

Being of the opinion that the subject of this chapter also should be amended, We constitute it a part of the present law. Experience has taught Us that it is advantageous for women that ante-nuptial donations should be recorded in the Bureau of Public Documents, in order that if the original instruments should be destroyed (which may very easily occur) the evidence will always remain upon the marriage register; and We order that the husbands themselves, or those who have drawn up the ante-nuptial donations shall, when these donations amount to more than five hundred *solidi*, have them recorded, that is to say, in this Royal City, in the Bureau of Public Documents in the office of the Superintendent of the Census, and in the provinces, in the office of the Defender of each town, or in that of those through whose hands documents of this kind should pass.

Where, however, the husband did not cause the ante-nuptial donation to be recorded, We order that it shall become operative so far as the woman is concerned, and that when the time for payment of the donation arrives, that is to say, of a portion of the same, she cannot be opposed on the ground of the failure to record it. When, however, the dotal agreement and the execution of a portion of it gives the husband a right of action for the recovery of the dowry, or even of a part thereof, We order that he shall be deprived of the same when he has not caused it to be recorded in the Bureau of Public Documents, as has just been stated; for when men can have their donations recorded, it seems to Us absurd that the risk resulting from the failure to do so should be incurred by their wives.

CHAPTER III.

A WOMAN WHO DOES NOT CONTRACT A SECOND MARRIAGE SHALL BE ENTITLED TO AS MUCH OF THE ANTENUPTIAL DONATION AS ONE OF HER CHILDREN.

As We think that women who do not contract second marriages are worthy of a larger share than those who do, We order that where a woman who has lost her husband refrains from marrying again, she shall, as formerly, have the usufruct of the ante-nuptial donation, as well as the ownership of a share of the same, equal to that of one of her children; so that, under these circumstances, she shall be held to occupy the place of a child.

We decree that this rule shall apply not only to mothers, but also to fathers and other ascendants who do not contract second marriages.

CHAPTER IV.

MARRIAGE SHALL NOT BE DISSOLVED WITHOUT CAUSE.

As We long since introduced a law forbidding men and women to serve notice of repudiation upon each other, and to dissolve their marriages (unless for some cause that the law referred to permits), and as We punished persons who violate this provision, We are now about to make a change with reference to the penalties incurred, and We hereby decree, by way of amendment, that no distinction shall exist between those to which the man and the woman are liable, who presume to give notice of repudiation without good cause; but We desire that men who do this shall be subject to the same penalty which women incur when they dissolve their marriages without the causes authorized by Our law; and that the penalty shall be equal for both parties, for We think that it is only just for them to undergo the same punishment when they commit the same offence.

EPILOGUE.

Therefore Your Glory will publish this general law to the inhabitants of this city and the provinces, by means of formal edicts, in order that no one may be ignorant of what We order for the common welfare.

Given at Constantinople, on the *Kalends* of September, during the twenty-second year of the reign of Our Lord the Emperor Justinian, and the seventh after the Consulate of Basil.

TITLE XI.

CONCERNING TAXPAYERS AND OTHER MATTERS.

ONE HUNDRED AND TWENTY-EIGHTH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Praetorian Prefect of the East.

CHAPTER I.

We, being desirous of accomplishing everything which may be of advantage to Our tributaries, do enact the present law, by which We decree that in the month of July or August, of each indiction, there shall be inscribed on the public records in the court of each diocese of Our Most Glorious Prefect, the special lists of assessments for the future indiction. These lists shall state the amount of taxes imposed upon each province or town, for every acre, farm, century, or other property, either in kind or money; and there shall also be stated the amount of taxes payable in kind, in accordance with the rule adopted in each locality, and how much must be paid into the Treasury, and what must be given or expended for various purposes.

Therefore We order that when the lists have been drawn up they shall be sent to the magistrates of the provinces at the beginning of each indiction, that they may be published by the said magistrates during the months of September or October, in the towns over which they exercise jurisdiction.

We desire that copies of the same shall be despatched without delay, by the Court of the Most Glorious Prefect, in order that people may be informed of the way in which they must pay their taxes. If they should pay any, in addition to those included in the special list of the current year, before the lists for the following year have been recorded, or where they pay them in a province, We order that said payment shall be placed to their credit, among the contributions of the indiction, so that they may not suffer any loss.

If the said lists should not be dispatched to the provinces as aforesaid during the time which We prescribe, the officials in charge of Our Prsetorium shall pay a fine of thirty pounds of gold, and one of twenty-five shall be exacted from them in every province. And if any judge to whom the special lists are sent does not publish them in the provinces, he shall be condemned to pay a fine of ten pounds of gold, and be deprived of his office, and a fine of the same amount shall be collected from his court.

CHAPTER II.

We order that all taxes payable in kind shall be delivered at the commencement of each indiction; but that those which are payable in money shall only be due at certain specified times.

CHAPTER III.

We have decreed with reference to fiscal payments, that partial or full receipts shall be given to all taxpayers by the receivers of taxes, in which it shall be stated in what way the payment has been made, as well as the number of acres, the names of the farms, centuries, and other possessions on which the taxes are levied. If the said officials do not give receipts in the manner above stated, We order that a fine of ten pounds of gold shall be exacted of them, and that they shall be subjected to corporeal punishment; and We also order that a fine of ten pounds of gold shall be imposed upon the judge of the province, if, having been notified, he does not take action, and compel the receivers to give receipts in accordance with the rule

which We have established.

CHAPTER IV.

We order that where a taxpayer has any doubts with reference to the property on which fiscal tributes are assessed, or as to the amount of the different kinds of contribution which he owes, those who have charge of the fiscal records shall be compelled by the judge of the province (and in case he should neglect to do so, by the most holy bishop of the diocese) to inform him of the amount of the several tributes due and payable to the Treasury; and We desire that those enumerated in the public lists shall be collected from the possessor of the property.

CHAPTER V.

With a view to the assistance of Our taxpayers and in order that owners of property may not be compelled to give hypothecations for the payment in money of the tenth part of their tax, and may not suffer any injury, We decree that those who are held responsible for fiscal collections in every province, whether they be defenders, collectors, decurions, or other officials, shall collect the sums due at their own risk, and disburse them for the purposes for which they are intended.

CHAPTER VI.

We order that a *canonicarius* shall continue to be sent into the provinces who can, at the risk of those who appointed him, himself collect the fiscal tributes; and under no pretext whatever shall an inspector be sent after him, nor any loss be inflicted upon Our subjects by reason of any inspection, for We abolish for the future the name of this official; but where the *canonicarius* does not discharge his duties properly, he shall be removed, and another appointed instead of sending an inspector. We order that *canonicarii* shall be content with the ordinary salaries to which they are entitled, and that they commit no wrong against Our subjects.

CHAPTER VII.

If a superindiction of any possession, whether reserved or tributary should, at any time, take place, We order that its collection shall be made from him who receives the fiscal tribute for the payment of which the said superindictional possession was transferred to him. A superindiction, however, shall only be made by virtue of a rescript, and after having been examined by the judge of the province, who must render a decree in which he shall designate the person entitled to receive the superindiction. When, however, anyone thinks that he is wronged, he shall be permitted to appeal; the appeal shall be heard in the Court of the Most Glorious Prefect, and be decided in accordance with the laws.

CHAPTER VIII.

If the owner of land does not appear, or is unable to pay the tax, so that it may be necessary to impose an additional one, We order that said land shall, together with all the serfs attached to it, and their *peculia*, implements, crops, animals, and everything else used for cultivation, immediately be given to those who are in possession of the lands dependent upon, or tributary to the same; but where no one can be found who is, according to the law, entitled to receive the superindiction, or where the latter is postponed for any reason whatsoever, We order that documents fully describing the nature and condition of the said land and its appurtenances, shall be drawn up before the judge of the province, in order that the decurions, collectors, or other officials may receive it; and if, afterwards, anyone should be found who is legally entitled to receive the superindiction, it shall be transferred to him, subject to any deterioration caused by the acts of collectors, decurions, judges, or their subordinates.

CHAPTER IX.

We also order that articles designated *transmissoria* cannot be exacted from taxpayers, instead of the payment of sums of money and taxes in kind which are expended in the provinces; and with regard to taxes which are transferred, no larger amount of them shall be paid than was

levied in each province in the beginning.

CHAPTER X.

Officials who are despatched into the provinces for the purpose of making any public collection whatsoever shall not proceed to accomplish the object of their errand before having notified the judge of the province of the orders with which they have been entrusted. We issue this decree to prevent persons who pay fiscal tributes from being subjected to risk or loss on this account, and this provision shall be observed with reference to private affairs.

CHAPTER XI.

We order those who are charged with the duties of collecting fiscal tributes not to attempt to excuse themselves by alleging that they are occupied with private business, and if such a duty should be imposed upon them, they must, under no circumstances, presume to act, for We do not desire Our subjects to be injured on account of public claims.

CHAPTER XII.

But where anyone who actually owes public taxes informs the collector that another person is his debtor, the collector shall not be allowed to annoy the latter, unless he who actually owes the tax has previously shown that he is unable to pay it himself. It must, however, be ascertained before the judge of the province whether he who has been declared by the taxpayer to be indebted to him is so in fact; and if this should be proved, the latter is the one from whom the tax must be collected. But in either event, if a collector should presume to demand or exact an amount more than We have prescribed, he shall be deprived of his office; his property shall be confiscated; he shall be sent into exile; and the judge who gave him the order or instructions shall be subjected to a fine of ten pounds of gold, and his court shall pay one of five.

CHAPTER XIII.

We absolutely forbid any person charged with the collection of public tribute, as well as the officers of the census, those who keep the accounts, and any other public officials, no matter who they may be, to avail themselves of the excuse that they reside in a sacred place, in order to evade the claims of those who allege that they have been injured by them in the collection of taxes.

CHAPTER XIV.

No one, whosoever, shall be molested because of taxes on land which he does not possess; but where farmers or serfs belonging to someone have any real property in their own possession they themselves must pay the taxes on the same, unless the owner thereof voluntarily agrees to do so.

CHAPTER XV.

We order that those who collect public taxes shall use proper weights and measures, in order not to injure Our taxpayers in this respect. Where, however, taxpayers believe that they have sustained loss through the weights and measures employed by collectors, they shall be permitted to receive from the Most Glorious Prefects others intended to weigh or measure articles in kind delivered as taxes, and from the Most Glorious Count of the Imperial Largesses, those used to weigh gold, silver, and other metals; and the said weights and measures shall be kept in the church of each town, and shall be exclusively employed in the determination of the quantities of articles to be delivered by taxpayers, as well as in the apportionment of tributes, the payment of soldiers, and other matters of this description.

CHAPTER XVI.

We, turning Our attention to what may be advantageous to the cities of Our Empire and their inhabitants, do hereby forbid tax collectors otherwise to employ the sums destined for public works for the supply of the granaries of cities, or for any other objects or salaries whatsoever,

or to retain any of said sums, or to profit by them in any way; but We order them to be paid over without delay or diminution, so that they may immediately be used for the purposes for which they were intended. The owners of land and the inhabitants of towns will not, under any pretext whatsoever, be permitted to diminish these sums in the slightest degree, neither on the ground of tributes, fees, or any other expenses. If anyone should presume to give or receive any portion of the said sums, We order him to pay to the town double the amount out of his own property. Neither the judges of provinces, their attendants, nor anyone else shall take part in the expenditure of these sums of money, or interfere with their payment; but the most holy bishop of the diocese, the principal citizens, and the owners of property shall appoint the curator of the city, the officials charged with the replenishment of the public granaries, and other administrators of this kind. At the end of the year, the most holy bishop of the city, with five of the principal citizens, shall require an account of the administrators whom they have appointed; and if it should appear that they are indebted to them, the balance due shall be collected at the risk of those who appointed them, and be employed for the purpose for which it was 'destined. Where an official is found to be incompetent to discharge his duties, We order that he shall be promptly removed by the most holy bishop of the city, and the other owners of property (as has already been stated), and We warn the latter that, if the city should sustain any loss by reason of their appointments, they must make it good out of their own estates.

CHAPTER XVII.

None of those who are employed in the office of the Most Glorious Prefects, or in any other, or who are members of the Association of the *Constituti*, shall be permitted to audit the accounts just mentioned; for the said officials are only charged with receiving said accounts, whether they do this by virtue of the order of any administrator, or in compliance with the written order of a magistrate, or under the authority of a pragmatic or other sanction, or of an Imperial mandate. If, however, anything of this kind should be done, the most holy bishop, and the principal citizens of every city, shall be allowed to disregard their claims, and the matter shall be referred to Us; so that, having been informed of it, We may order that the loss incurred by their cities may be made good by the said officials, and that We may impose a suitable penalty upon them.

CHAPTER XVIII.

We also order the secretaries of public works, who are subject to the Prefect of the Imperial Praetors, to take no part in the auditing of accounts; and We hereby annul all the orders by which, either generally or specially, this right has been accorded, as well as those whereby others may hereafter be obtained, and We do not desire examination of the accounts having reference to these subjects to be committed to any of them, unless We may consider it advantageous for the cities to select for this purpose some person of good repute, who is of eminent rank; and then he whom We appoint shall receive from Us a written order bearing Our signature, and stating the name of the appointee, as well as his dignity, the causes, and the time for which the examination of the accounts is entrusted to him. We decree that those who require the rendition of accounts by such officials shall enjoy perfect security, and shall not, themselves, afterwards be subjected to investigation.

CHAPTER XIX.

In addition to this, We decree that, in no part of Our Empire, shall a bishop aft at the same time as judge and represent the Most Glorious Prefects, or magistrates invested with military office, or have any collection of fiscal tribute entrusted to him; and in order to make this more simple, We forbid any deputy-prefect to be sent into the provinces, unless by virtue of Our order, in cases where haste or convenience require one to be despatched from the prefecture to provide for military expenditures.

When a violation of these rules takes place, a fine of thirty pounds of gold shall be exacted of him who was appointed deputy, and he shall also be obliged to make good all losses

occasioned by the person who appointed him; and he who had the audacity to accept such an appointment shall be deprived of his magistracy, his rank, and his employment, and shall be fined ten pounds of gold.

CHAPTER XX.

In addition to this, We forbid civil and military judges in the provinces to appoint deputies in the cities, camps, or provinces within their jurisdiction to act in their stead and govern in their name; and when this is done a fine of five pounds of gold will be incurred not only by the official who nominated the deputy, but by him who was bold enough to accept the place. We, however, permit Governors, before arriving in the provinces, to send agents there to act for them, with authority to do everything that they themselves could do, while they are absent; but the said agents cannot inflict capital punishment, or sentence anyone to the amputation of a limb. Where, by virtue of Our order, a Governor is despatched to some other region, he will also be allowed to have himself represented by an agent in a similar manner.

CHAPTER XXI.

We order all magistrates, military as well as civil, to personally seek out those who commit theft, violence, and robbery, who ravish women, or are guilty of other illegal acts in the provinces, and inflict legal punishment upon them; and We forbid them, under the pretext of custom, to accept anything for their decisions, in cases of this kind, so that all Our subjects may remain uninjured; for We do not permit any military, superior, or inferior judge to despatch officers into the provinces to pursue thieves; to suppress violence; to appoint tribunes to discharge similar duties, or officers commissioned to examine certain individuals; and We establish this rule lest the appointment of officials of this kind may serve as a pretext for the exercise of even greater acts of violence against provincials.

If any judge should not observe what We have decreed, he is hereby warned that he will not only be deprived of his office, but that he will also be compelled to pay a fine of ten pounds of gold as a penalty for his audacity, and that, after having been subjected to corporeal punishment, and the confiscation of his property, he will be relegated and sent into exile.

CHAPTER XXII.

Moreover, We order that provincial judges and their subordinates, whenever they go from one city to another, shall not exact anything for post-horses, or other expenses; but We desire them to pay for these things out of the salaries allowed them by the Treasury.

CHAPTER XXIII.

In addition to this, We order that the provincial judges shall, by all means, remain there for fifty days after they have relinquished their office, and answer in any suits which may be brought against them. If any Governor should happen to leave his province before the term of fifty days has expired, We decree that all those who have suffered any wrong at his hands shall appear together before the most holy metropolitan bishop of the same province; that each one of them shall, with his hands on the Holy Gospels, state publicly the loss which he has sustained; and that this loss shall be made up to him out of the property of the magistrate against whom such allegations are made through the diligence and on the responsibility of the Prefects of the said province, who are hereby notified that if they neglect to execute what We have enacted, they, themselves, will be compelled to make complete restitution to the persons who have been injured.

CHAPTER XXIV.

If any provincial magistrate should be called to some other government, or assigned to duty in another province, We order that he shall cause himself to be represented by means of a lawfully appointed agent, in any actions brought by those who allege that they have been injured by him; and if he does not take the trouble to appoint such a representative, We order (as has been previously stated) that documents shall be drawn up before the most holy bishop,

and that all the losses mentioned therein shall be made good in accordance with the character of the acts, in favor of those who have sworn to have sustained the damage; for the prefects in office at the time, as well as the Governors, are equally responsible for the administration of the provinces.

CHAPTER XXV.

We order that all pecuniary penalties prescribed by the present law shall be collected from those who violate its provisions, and shall redound to the profit of Our Treasury, through the efforts of the Count of Private Affairs, and if this official does not exact them, he, together with his court, shall be compelled to pay them.

EPILOGUE.

Therefore, Your Inviolable and Immutable Glory will hasten to bring to the knowledge of all persons, and enforce the regulations which We have established for their benefit by this salutary present law, which shall be observed for all time; and this you will do by means of edicts published in this Royal City, and by notices sent to the illustrious Governors of provinces, so that Our subjects may be informed of them through the agency of these officials.

Given on the *Ides* of June, during the reign of the Emperor Justinian, and the Consulate of Basil.

TITLE XII.

CONCERNING THE SAMARITES.

ONE HUNDRED AND TWENTY-NINTH NEW CONSTITUTION.

The Same Emperor to Ariobindus, Praetorian Prefect.

PREFACE.

Among the offences committed by Our subjects there is not one, no matter how serious it may be, which We do not succeed in suppressing. For although the hatred entertained by Us for malefactors naturally inclines Us to retribution, still We only apply a remedy by admonishing, in the most suitable manner, those who are guilty. We transform Our just anger into clemency, and We yield to kindness, as is the case in the present law.

We have previously imposed a great number of penalties upon the Samarites, who were formerly of ferocious character, and enemies of the Christians, and whose pride was excessive; and We, above all, deprived them of the power of making wills, and when they died intestate We did not permit their property to pass to their relatives called to the succession *ab intestato*, unless their heirs at law or testamentary heirs professed the true Christian faith. We also forbid them to bequeath legacies, and make donations or any other disposition of their property, when the legatee or donee was not an adherent of the orthodox religion. And, although We prescribed these penalties in a general enactment, We did not exercise the same severity in their application, for We never permitted the Treasury, or any other public person, to derive any advantage from these penalties, although this was expressly provided by the law.

CHAPTER I.

Therefore We, observing that the Samarites are now inclined to act with moderation, think that it is unworthy of Us to subject to the same punishment men who are no longer liable to the same errors, and We, above all, relying upon the just statements which Sergius, the Most Holy Bishop of the Metropolis of Csesarea, has made to Us in their behalf, and the evidence which he has given Us of their improved behavior, and their promise to be peaceful for the future, do enact the present law, by which We authorize the Samarites, from this day, to make wills and dispose of their property, in accordance with the provisions of other laws; and We decree by this one that whenever they die intestate, they, like other men, shall have for their heirs those who are called to the succession of their estates on the ground of intestacy, subject

to the exception set forth in the present law. We also grant them authority to make donations, to give and receive legacies, and to enter into other contracts of this kind with absolute freedom. For after We have permitted them to make wills, and dispose of their entire property, how could We refuse them the right to bequeath a portion of it?

CHAPTER II.

We do not, however, include Christian heirs and Samarites in the same class, but We again grant (and with good reason) a privilege to those who acknowledge the better religion. Wherefore, if a Samarite should die intestate, and leave children believing in God, those alone shall be called to his inheritance who profess the Christian faith, and all others shall be excluded, who are adherents of the heresy which the deceased acknowledged while living.

We render this rule applicable not only to children, but also to other relatives, no matter on which side they may be related to the deceased, so that those who acknowledge the true faith may be preferred to those who do not; but We only establish this distinction when the heirs who are called to the succession are in the same degree of relationship, and in the same way. For the heirs most nearly related to the deceased are not excluded by others who are more distant, and, even though the latter may be better Christians, We grant the preference or the privilege to the next of kin.

CHAPTER III.

We do not, however, deprive the heirs, who are excluded, of the benefit of repentance. For if those who are deprived of the estate should afterwards adopt the faith of Christians, they shall be called to the succession, and be entitled to their share of the property, just as if they had always been adherents of the true religion; and shall only forfeit the income from their share which has been collected after the death of the deceased. When any Samarite makes a will, We order that it shall be just as valid as if it was written by an orthodox person. But where the father, or any one of the descendants (or even one of the ascendants) wrote it, and all those called in the same degree of inheritance profess the same heresy as their father, he cannot leave them more than one-sixth of his estate, and the remainder shall pass to those who acknowledge the true religion, unless the testator, being a Christian, left some legacies, in which instance they shall be reserved for any that may be willing to embrace the orthodox faith, they being placed on the same footing with the legatees who were Christians from the beginning, as We have provided with reference to intestate successions. Therefore, in cases of this kind, We grant ascendants, descendants, those who profess the true doctrine, and, above all, persons injured by the distribution of the property made by the testator, to bring a complaint of inofficiousness.

CHAPTER IV.

We also permit Samarites to make donations, receive and bequeath legacies, grant freedom to slaves, and enter into contracts with one another, and this law does not repeal any of Our former enactments. We strictly exclude Our Treasury, and every other public person from participating, under the present constitution, in the estates or other property of Samarites. For how can We, with reference to the past, call so strictly to account those to whom We shall be lenient in the future? Let all them who are deserving of Our clemency give thanks to God and Ourselves, as well as to the Most Holy Sergius, who has been most instrumental in inducing Us to exercise it.

EPILOGUE.

Therefore Your Glory, being aware of Our humanity as disclosed by the present law in favor of the Samarites, will publish in the provinces, by means of formal edicts, the provisions which it has pleased Us to establish, in order that the Samarites may always enjoy their advantages.

Given at Constantinople, on the *Kalends* of July, during the twenty-fifth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XIII.

IN WHAT WAY SOLDIERS MUST ENTER AND PASS THROUGH CITIES.

ONE HUNDRED AND THIRTIETH NEW CONSTITUTION.

The Same Emperor to Peter, Prastorian Prefect.

PREFACE.

We think that the good discipline of Our army, while on its march, is the first and most important requisite to be observed in Our Empire, and that Our taxpayers should not, in any way, suffer from it, and if they do, that they should be indemnified.

CHAPTER I.

Therefore, We order that every time arrangements are made for the passage of Our magistrates and Our armies, commissaries shall be charged with the duty of procuring provisions for them; and the Governors of the provinces which they traverse shall make suitable preparations, so that when Our armies arrive, they may conduct themselves with the greatest propriety. The commander of each corps shall receive supplies without raising any controversy, and these shall be delivered to both the officers and soldiers, in order that they may retain the fifteenth part of what is delivered, for the purpose of subsistence. But they must, as is customary, give receipts to the taxpayers for whatever they have obtained, and these receipts shall be made out on the responsibility of their magistrates, tribunes, counts, *diasostse*, commissaries, and officers in command of each corps; the soldiers shall take nothing from taxpayers under any pretext, not even on the ground that their provisions are not ready, nor because their "entrance," of which We absolutely abolish the name, being desirous that Our subjects may remain uninjured, and always be secure.

CHAPTER II.

Soldiers must accept the supplies which are found in each locality, and cannot demand others which are not in the same region, nor shall they, on this account, cause any loss or annoyance to Our taxpayers.

CHAPTER III.

We order that the supplies furnished by Our possessors, and whose delivery is evidenced by receipts, shall be credited by Your Highness, without any dispute, loss, or imposition upon the amounts which the taxpayers owe to the Treasury, for the indiction during which the said supplies have been furnished. If, however, these should be found to exceed the amounts which are payable in kind, We order that the taxpayers shall be indemnified for them out of the entire tribute of the same province. If the tribute of the province should not prove to be sufficient for this purpose, those who furnished the supplies shall be reimbursed by the general office of Your Glory; or, indeed, We will cause whatever may be necessary to be reserved out of the taxes paid during the following indiction, and the receivers of fiscal tributes shall credit the taxpayers with a sum equal to the entire expense incurred. All the regulations hereinbefore mentioned shall be observed on the responsibility of Your Glory, as well as by the Governors of provinces and those subject to their authority, the receivers, and all the officials charged with the administration of tributes.

CHAPTER IV.

We also order that no judge or soldier shall receive anything whatever from any town or land, on account of his passage. If anyone should be detected in violating this rule, We order that he shall be compelled to pay double the amount which he had the audacity to accept.

CHAPTER V.

When anyone of Our judges, soldiers, or those in control of their affairs do not give receipts for the supplies which they receive, We direct that the taxpayers who furnished them shall draw up public instruments in the presence of the Governor, if there is one in the

neighborhood, and before the most holy bishop of the city; or where there is no Governor, before the most holy bishop alone, or before the defenders of the district in which the land from which the supplies were taken is situated; and that they shall state in said instruments that Our magistrates, who passed through with the army, did not give them any receipts, and they must also set forth the amount of the supplies which they received. We desire that these instruments shall be sent to Your Glory, and that you then reimburse the taxpayers or credit them for what they have furnished, as We have previously stated, but you must deduct the amount of the supplies stated in said instruments from the emoluments granted by the Treasury to the commanders of the army, and the soldiers who incurred the expense.

CHAPTER VI.

We also order Our military commanders to despatch before them, when they are on the march, *diasostse* and commissaries, to the places which Our army is to traverse, in order to prepare subsistence for it, and that it may not be necessary to send to other cities, lands, or possessions, for that purpose, or to receive money from them on this account. If they should presume to accept anything as the price of the subsistence which they furnish, We order that instruments should be drawn up, and that it shall be stated in what place and to whom the gifts were made, and whatever is specified in these instruments shall either be credited or reimbursed by Your Glory, in the manner above stated, in favor of those who have sustained any loss; and the commanders of the army and the *diasostse* and commissaries shall return double the amount which they had the audacity to accept, and the others implicated shall be punished and sent into exile.

CHAPTER VII.

But where the Governors of provinces act in collusion with the *diasostse* of Our army, by not providing supplies, and under this pretext compel Our soldiers to traverse different cities when they march through the country, We order that, after having been deprived of their offices, they shall, with their subordinates, be condemned to the confiscation of their property, and to exile; for it is in this way by means of receipts, and instruments executed as above stated, that Our subjects are rendered secure from loss.

CHAPTER VIII.

We direct that these regulations shall be observed, not only with reference to the passage of Our magistrates and soldiers, but also with respect to other persons whom We may send into any country whatsoever for the maintenance of Our government.

CHAPTER IX.

In order that the liberty of Our subjects may not be infringed on account of the lodgings which they are compelled to furnish the military, We forbid all Our soldiers to accept quarters in the principal rooms which are used by the owners of houses, and We direct them to leave them free for the occupancy of the latter, and to lodge in vacant apartments.

EPILOGUE.

Therefore Your Glory will communicate the provisions of the present law to the most holy bishops of the neighborhood, the illustrious Governors, and all Our subjects residing in each town and province. Our subjects, having ascertained what We have enacted to protect them from wrong, are notified that if, having been injured, they remain silent as to any violation of Our Constitution, they themselves will be to blame for any losses which they may sustain.

Given at Constantinople, on the *Kalends* of March, during the nineteenth year of the reign of Our Lord the Emperor Justinian, and the fourth after the Consulate of Basil, eighth indiction.

Published in the City of Constantinople.

TITLE XIV.
CONCERNING ECCLESIASTICAL TITLES AND PRIVILEGES, AND VARIOUS
OTHER MATTERS.

ONE HUNDRED AND THIRTY-FIRST NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Imperial Praetorian Prefect.

PREFACE.

We enact the present law with reference to ecclesiastical rules and privileges and other subjects in which holy churches and religious establishments are intrusted.

CHAPTER I.

CONCERNING FOUR HOLY COUNCILS.

Therefore We order that the sacred, ecclesiastical rules which were adopted and confirmed by the four Holy Councils, that is to say, that of the three hundred and eighteen bishops held at Nicea, that of the one hundred and fifty bishops held at Constantinople, the first one of Ephesus, where Nestorius was condemned, and the one assembled at Chalcedon, where Eutyches and Nestorius were anathematized, shall be considered as laws. We accept the dogmas of these four Councils as sacred writings, and observe their rules as legally effective.

CHAPTER II.

CONCERNING THE PRECEDENCE OF PATRIARCHS.

Hence, in accordance with the provisions of these Councils, We order that the Most Holy Pope of ancient Rome shall hold the first rank of all the Pontiffs, but the Most Blessed Archbishop of Constantinople, or New Rome, shall occupy the second place after the Holy Apostolic See of ancient Rome, which shall take precedence over all other sees.

CHAPTER III.

CONCERNING THE ARCHBISHOP OF THE FIRST JUSTINIANIAN.

The Most Blessed Archbishop of the First Justinianian shall continue to retain under his jurisdiction and authority the bishops of the provinces of Mediterranean Dacia, of Dacia Ripense, of Privalis, of Dardania, of Upper Mysia, and of Pannonia. He shall himself be consecrated by his Council, and shall replace the Apostolic See of Rome in the provinces subject to his authority, in accordance with the regulations of the most holy Pope Vigilius.

CHAPTER IV.

CONCERNING THE JUSTINIANIAN BISHOP OF CARTHAGE.

In like manner, We preserve the pontifical right which We have granted to the Justinianian bishop of Carthage, a city of Africa, for the reason that God has restored it to Us. Bishops of other cities situated in different localities upon which the metropolitan privilege has been conferred shall enjoy the same in perpetuity. All the rights or benefits which have been conceded to churches, religious establishments or houses, by Imperial munificence, or in any other way, shall be absolutely maintained.

CHAPTER V.

CONCERNING THE PRIVILEGES OF ECCLESIASTICAL POSSESSIONS.

We forbid lands belonging to holy churches and religious establishments in general to be subjected to degrading charges and extraordinary tributes. Where, however, it becomes necessary to repair roads, bridges, or anything else, the churches shall, along with other real property, contribute to this whenever they have land dependent upon the city where work of this kind is necessary. Where any possessions of decurions have been, or may hereafter be acquired by a church or any other religious establishment, We desire that the latter shall be

released from liability for such contributions as are designated "lucrative."

CHAPTER VI.

CONCERNING THE PRESCRIPTION OF FORTY YEARS CONCEDED TO RELIGIOUS ESTABLISHMENTS.

We order that instead of temporary prescriptions of ten, twenty, and thirty years, that of forty years can only be pleaded against the most holy churches, and all other religious houses, and this rule shall apply to the collection of legacies and estates bequeathed for pious uses.

CHAPTER VII.

CONCERNING THE CONSTRUCTION OF CHURCHES.

Where anyone wishes to build a private chapel or monastery, We order that nothing shall be done before the most holy bishop of the diocese has offered a prayer upon the site where it is to be constructed, and has planted there a holy cross. But where anyone has once begun the construction of a church, or the repair of an old one, he shall be compelled by the bishop of the diocese, by his stewards, and by the civil magistrates of the district, to complete it; and if he should delay doing so and die, his heirs must finish the work which he has commenced.

CHAPTER VIII.

THE SACRED RIGHTS OF THE CHURCH SHALL NOT BE CELEBRATED IN THE SUBURBS OF TOWNS, OR IN HOUSES, FIELDS, OR PRIVATE PLACES.

If anyone should presume to conduct religious services in his own house, or in a suburb, or should permit others to do so without the presence of any members of the clergy who are subject to the authority of the most holy bishop of the diocese, We order that the said house, suburban place, or land, on which an offence of this kind was committed, shall be claimed by the most holy bishop, or his steward, or the civil magistrate, for the benefit of the church of that locality.

Where, however, the owner of the building in which the religious services were conducted was ignorant of the fact, and his curators, lessees, or emphyteutas were responsible, he shall suffer neither loss nor prejudice; but those who conducted the services, or permitted this to be done, shall be expelled from the province where the offence was perpetrated, and their property shall be seized for the benefit of the most holy church of the neighborhood.

CHAPTER IX.

LEGACIES BEQUEATHED TO GOD SHALL PASS TO THE CHURCH OF THE DIOCESE IN WHICH THE TESTATOR HAD HIS DOMICILE.

If anyone should bequeath an estate or a legacy in the name of Almighty God and Our Saviour Jesus Christ, We order that the church of the place in which the testator had his domicile shall be entitled to the bequest. But if anyone should appoint a saint his heir, or leave him a legacy, and does not specially designate the place where the religious house dedicated to him is situated, and there are several oratories dedicated to this saint in the same place or city, then the legacy bequeathed by the testator shall go to the poorest one. When there is no church dedicated to the saint, who was appointed heir, in the same city, but there is one in the territory embraced by its jurisdiction, the legacy shall be given to the latter. But where there is no church at all, even in the said territory, then the legacy shall go to the church of the town in which the testator had his domicile.

CHAPTER X.

WHERE ANYONE ORDERS AN ORATORY TO BE BUILT.

Where anyone, in his will, provides for the construction of an oratory, a house for the entertainment of strangers, a place of refuge for the poor and infirm, an orphan asylum, a hospital, or any other religious establishment, We order that it shall be completed under the

supervision of the bishop of the diocese and the civil magistrate, within five years if it is an oratory, and within a year if it is a house for the entertainment of strangers, an asylum for the poor and infirm, or any other religious establishment whatsoever. If the heirs of the deceased should not, within a year, erect the said house for the entertainment of strangers, or other religious establishment whose construction was ordered by him, We decree that they shall buy or lease a building in which they can carry out the directions of the testator, until the religious establishment aforesaid is completed.

Where the testator named the persons to be appointed superintendents of houses for the entertainment of strangers, asylums for the poor and infirm, and other religious establishments, or where he left their selection to his heirs, We order the latter absolutely to comply with his wishes, but the holy bishops of the diocese shall see that the superintendents faithfully discharge their duties, and if they should ascertain that they do not make themselves useful, they shall be authorized to appoint others who are better qualified.

CHAPTER XI.

LEGACIES BEQUEATHED FOR THE RANSOM OF CAPTIVES SHALL BE EMPLOYED BY BISHOPS, ETC.

When anyone leaves an estate or a legacy consisting of either movable or immovable property, to be employed either for the redemption of captives, or for the support of the poor, whether it is all to be delivered at once, or in annual installments, his wishes must be faithfully complied with by those whom he charged with this duty. Where the testator specially stated that he left the property to the poor, We order that the most holy bishop of the city in which the testator had his domicile shall receive the articles bequeathed, and distribute them among indigent persons of the same city. But where he left something to be used for the ransom of captives, without expressly stating by whom the ransom should be paid, We also order that the bishop of the diocese, and his stewards, shall receive the property bequeathed, and perform this act of piety; for We desire that the most holy bishops shall see that all such testamentary dispositions are observed in accordance with the intention of the deceased, even though the testator or donor may have specifically forbidden them to do so.

When those whom a testator directed to carry out the provisions of his will defer doing so, after having once or twice been notified by the bishop of the diocese, by his stewards, or by other persons in authority, We decree that they shall be deprived of what was left to them by the testator, and that the bishops of the diocese (as previously stated) shall be entitled to claim not only everything intended for the relief of the poor, and any income of the property which may have been collected and its increase in value, but also whatever the testator left to his heirs to enable them to do what he directed; and the said prelates are hereby notified that if they, themselves, should neglect to comply with the wishes of the testator, they will be accountable to God.

If the most holy bishop of the diocese should fail to obey any of the rules which We have formulated, his most holy metropolitan shall be permitted to claim the legacies, and execute the testamentary dispositions of the deceased, and all other persons are authorized to give information of the failure to perform the pious duties prescribed, and to see that they are accomplished.

CHAPTER XII.

THE FALCIDIAN LAW DOES NOT APPLY TO LEGACIES LEFT FOR PIOUS USES.

If an heir, to whom property has been left for pious uses, should not use it for that purpose, under the pretext that the amount is insufficient, We order it to be entirely employed for the purpose for which it was left, the Falcidian Law not being applicable under such circumstances, and that this be done under the superintendence of the most holy bishop of the diocese. We desire legacies left for pious uses to be entirely delivered to those to whom they were bequeathed, within six months after the record of the will. If the persons charged with

paying the legacies should delay to do so, the crops, the interest, and all lawful increase in the value of the property from the date of the death of the testator shall be collected from them.

Where an annual legacy is left to a religious house, and those who are ordered to pay it, or he who is directed to give possession is in the same province, or in an adjacent one, We absolutely forbid the legacy to be alienated. But when the possessors, or other persons whose duty it is to pay it, are at a distance, then the religious houses, that are the legatees, are hereby authorized to exchange the property bequeathed, with the consent of the trustee, and receive in return suitable revenues from land not burdened with excessive taxes, and which is greater in value by at least a fourth than that devised; or the said religious houses can, if they so desire, sell the legacy, and accept a price which must not be less than the entire amount of the income collected in twenty-five years; provided, however, that the purchase-money is employed for the benefit of the religious house to which the legacy was bequeathed.

CHAPTER XIII.

BISHOPS SHALL NOT, BY WILL, DISPOSE OF ANY PROPERTY WHICH THEY MAY HAVE ACQUIRED DURING THEIR EPISCOPATE.

Again, We forbid the most holy bishops to transfer to their own relatives, or otherwise alienate property either movable, immovable, or which is capable of moving itself, which came into their hands in any way, after they obtained the episcopate. They shall, however, be permitted to use it for the ransom of captives, the support of the poor, and other pious works, or for the benefit of their own church; and We order that the ownership of all property, no matter what it may be, which they acquire by the death of their parents, shall belong to the church in which they perform their sacerdotal duties. We only grant them permission to alienate or bequeath to whomever they please what is proved to have belonged to them before they were raised to the episcopate, and that which, during the episcopate, came into their hands from their ascendants, or from other relatives to whom they could succeed *ab intestato*, as far as the fourth degree.

We order that all that We have prescribed relative to property acquired by the most holy bishop during his episcopate shall also apply to the most reverend superintendents of orphan asylums, institutions for the poor and infirm, hospitals, houses for the entertainment of strangers, and asylums for old men, as well as to the managers of other religious establishments, so far as any property which may come into their hands in the manner above mentioned, during the time of their administration, is concerned. But if a bishop, a clerk, an ecclesiastic of any rank whatsoever, or a deaconess, should die without making a will, and without leaving any legal successor, his or her estate shall belong to the church to which he or she was attached.

CHAPTER XIV.

HERETICS SHALL NOT ACQUIRE IMMOVABLE PROPERTY, UNDER ANY CIRCUMSTANCES, FROM CHURCHES OR PRIVATE INDIVIDUALS, NOR ERECT BUILDINGS FOR THE CELEBRATION OF THE RITES OF THEIR FAITH.

We order that no heretic shall acquire any immovable property from a church or any other religious establishment whatsoever, either by lease, emphyteusis, purchase, or in any other way; and when a heretic is paid anything in a contract of this kind, he shall lose it, and the immovable property that he received shall be recovered by the religious establishment which transferred it; and the superintendent of said establishment shall be deprived of his office, confined in a monastery, and excluded from the holy communion for an entire year, by way of punishing him for having betrayed Christians to heretics. Where an orthodox person is in possession of property on which a church is situated, and alienates, bequeaths, leases it under emphyteusis or in any other way, or entrusts the management of the same to a Jew, a Samaritan, an Arian, or any other heretic, the said property shall be claimed by the church of the neighborhood, and where a heretic (and among heretics We include Nestorians, Acephali, and Eutychians) builds a house for the celebration of his worship, or a new Jewish synagogue,

the most holy church of the diocese shall seize the building.

If anyone should transfer land to a heretic under emphyteusis or any other form of lease, or entrust the management of the same to him in any other way, he being well aware that the person to whom he delivers it is a heretic, all the income collected therefrom under the contract shall be claimed for the benefit of the church of the city within whose territory the land in question is situated; but when the owner of the same is ignorant that he to whom he gave possession is a heretic, he shall not be deprived of it on account of his ignorance; but in either event the heretic must be driven from the land, and his property confiscated for the Treasury.

CHAPTER XV.

SUPERINTENDENTS OF ORPHAN ASYLUMS RESEMBLE GUARDIANS, AND MUST DRAW UP INVENTORIES JUST AS THEY DO.

The superintendents of orphan asylums discharge the duties of guardians and curators to the extent that they can sue and be sued with reference to the property belonging to their establishments, or to the orphans as individuals, without being obliged to furnish security. They shall receive property belonging to said orphans, or the establishments to which they are attached, in the presence of the public registrars, or by means of documents drawn up in this Royal City before the Master of the Census, and in the provinces before their Governors, or the defenders of the districts; and if the superintendents should deem it necessary to alienate such property, they must keep the purchase-money for the orphans, or employ it for their benefit in the purchase of other things; and they shall not be obliged to render any accounts of guardianship or curatorship.

We order that all the general privileges enjoyed by the Most Holy Principal Church of Constantinople shall be preserved for the orphan asylum of this Royal City, as well as for the house of public entertainment called Samson of Holy Mary, and for all the oratories, hospitals, or religious establishments which are under its jurisdiction.

EPILOGUE.

Therefore Your Highness will see that the provisions which we have enacted in the present law are brought to the knowledge of all Our subjects, by means of edicts formally promulgated in this Royal City; for We shall provide for this publication in the provinces without any expense to Our taxpayers.

Given at Constantinople, on the fifteenth of the *Kalends* of April, during the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XV.

CONCERNING THE PROHIBITION OF HERETICAL ASSEMBLIES.

ONE HUNDRED AND THIRTY-SECOND NEW CONSTITUTION.

The Emperor Flavius Justinian, Fortunate, Glorious, Victor and Triumpher, Ever Augustus, to the Bishop of Constantinople.

PREFACE.

We believe that the true and immaculate Christian faith is the first and greatest benefit that men enjoy, that it should be strengthened in every respect, and that all the holy priests throughout the earth should unite to preach it, and should extirpate every kind of false doctrine, as is prescribed by Our laws and Our edicts. But as heretics are not influenced by the fear of God, and pay no attention to the penalties with which they are menaced by the severity of the law, as they accomplish the work of the devil, and by seduction debauch certain weak men, causing them to renounce the Holy Catholic Faith and the Apostolic Church; and as they hold wicked assemblies in secret, and clandestinely confer spurious baptisms, We have concluded that it is the part of piety to warn such persons by this, Our present edict, to

abandon their insane delusions, to cease to destroy the souls of weak-minded men, to return to the Holy Church of God, where true dogmas are preached, and where all heresies with their heads are anathematized.

Heretics are hereby notified that if, in the future, any of them should be detected in attending prohibited assemblies, or of holding them in their houses, so far from tolerating this, We shall transfer to the Holy Church the buildings in which such offences are committed, and shall inflict upon the delinquents the penalties imposed by Our Constitutions.

Given at Constantinople, on the day before the *Nones* of April, during the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XVI.

IN WHAT MANNER MONKS SHOULD LIVE.

ONE HUNDRED AND THIRTY-THIRD NEW CONSTITUTION.

The Emperor Augustus to Menna, Most Blessed Archbishop.

PREFACE.

Solitary life and the meditation it encourages are sacred things, which elevate the mind to God, and are of the greatest benefit, not only to those who profess such a life, but also to all other persons, on account of its purity, and the supplications which they address to the Deity. Monastic life was therefore an object of especial solicitude to Our Imperial Predecessors, and We have enacted not a few laws for the preservation of its honor and adornment, for We follow the sacred rules, and the ancient fathers who formulated them, as there is nothing to which a government should not pay attention, since it has received from God the general supervision of all men.

We have also recently enacted a constitution forbidding monks assembled in large numbers and residing together as hermits to have separate rooms, to use private dwellings or separate property, or to live alone; but requiring them to eat and sleep in common, and to lead becoming lives, in order that they may be mutual witnesses of their own chastity; that those who are younger may respect the age of the others who observe their actions, and constantly watch over them, lest they may be detected in the commission of sin, or of some shameful act during their sleep; for each monk must, above all things, preserve his virtue even while in repose.

CHAPTER I.

We, however, having been informed of certain matters which require legal intervention, and in order to provide for the perfection and completion of former constitutions, have been induced to issue the present law, by which We absolutely prohibit monks from living separately and having private cells, unless they are entirely alone in them; and We decree that each monastery shall have two ministers; that the monks shall dwell in continence and quiet, and that though there may be a great number of them together, they shall live in common, whether engaged in prayer or in the satisfaction of their natural requirements, in order that they may not commit any sin; that they shall eat and sleep together, as has just been stated, unless they are so numerous that one building cannot contain them all, and it is necessary to distribute them among two or three others.

We order that monks shall possess absolutely nothing of their own, and that they shall remain constantly together in order to be able to have an eye upon one another both day and night. For all are not sleeping at the same time, and there is no doubt that while some are given to slumber, others are awake, who scrutinize their actions. Where there are several buildings belonging to one of the monasteries subject to the order of Your Holiness in this great city, or in its environs, whether the said buildings have been erected by Us, or whether they are separately inhabited by other monks, Your Holiness will demolish them, and indicate to the monks the one in which they shall reside; for what have they to fear in being united, and

consecrating themselves to God by renouncing a worldly life?

We desire that this rule shall be observed now and hereafter, for all time; that no monks shall live separately, but that all shall be assembled together and watch one another's conduct. It is certain that if these regulations are complied with, they will be free from all blame. Where, however, any one of them becomes impudent and ventures to disobey what We have decreed, the head of the monastery must subject him to punishment. For We desire that monastic discipline be more strict in the future than it is at present; and in the first place, We forbid that there shall be several entrances to the monastery, and We wish that there shall be only one, or two at the most; and that men of advanced age, who are chaste and of good reputation, shall be stationed at the door to prevent the most reverend monks from going out without the consent of the abbot (for they must use every effort to arouse their zeal towards God, and prevent them from lacerating themselves), and they shall also forbid strangers from entering the monastery, either by day or by night, when the latter do not encourage the reverend monks to continue in the exercise of their sacred duties. Every monastery shall be surrounded by strong walls, so that no one can leave it except by the gates.

CHAPTER II.

When there is no chapel in the monastery, as it is not proper for the monks to avail themselves of this excuse to go out, for the purpose of taking walks and conversing with other persons, We order them to repair to the church at the very moment of the religious service, in the company of their abbots, their deans, and their seniors, and when the service is at an end, they must all return to their convent, and remain there honoring the Omnipotent God and devoting themselves to the study of the Bible. Hence a large number of these books must be kept in the monastery, so that each one can purify his soul, and water it with the Holy Scriptures; for by their frequent perusal they will have no longer any temptation to deceive, and will be relieved of all human cares. Four or five of the oldest monks, who have practiced continence and have deserved to be ordained priests, deacons, and other ecclesiastics, shall be attached to the chapel of the monastery. These monks shall be charged with giving lectures upon the Holy Scriptures, and imparting instruction in them; they shall have the care of the sacred house; and shall restrain petulant youth always desirous to pass the bounds of decorum.

CHAPTER III.

Women shall not enter a monastery of men, nor shall men enter one of women, under the pretext of the death or funeral of anyone, or for any other reason; even if it is alleged that he or she has in the monastery a brother, a sister, or other member of his or her family, for no earthly relationship exists for monks, who have embraced the celestial life; and, besides, what could be the object of those who desire to enter in such holy places, if it was not to commit some forbidden act? Above all, as men are permitted to perform all the duties relative to their monasteries, and the same privilege is accorded to women in their convents, no person of a different sex from that of the inmates of the monastic institutions can be introduced there, even if the person alleges that he or she is the brother, sister, or other relative of a monk or a nun; and if We remove the occasion for sin in the beginning, and afterwards prevent souls from giving themselves up to the indulgence natural to them, monks can lead a more regular life, and restrain their passions with greater facility.

Therefore, all persons shall obey this law, men shall not have sepulchres in the convents of women, and women shall not bury their dead in monasteries inhabited by men; for just as the occupations of women are not suitable for men, so also the labors of males are not proper for females. We do not wish that, on account of the funerals of deceased persons, such a disgraceful mingling of the sexes which arises from a wicked motive should take place; and We forbid this, for fear that by this means a road may be opened for dishonorable conduct, and that no one may shamelessly enter the residence of monks and bring trouble upon it by alleging piety as a pretext, and claiming a relationship which those who have embraced a solitary life should no longer acknowledge. Therefore it is perfectly clear that persons employed in burials, principally pallbearers and sextons, cannot enter monastic institutions;

for while the rule is easy to observe in the case of monasteries of men, this is not the case so far as convents inhabited by women are concerned.

(1) Hence We order that when a woman is buried in a monastery of women (for We do not allow a man to be buried there), the most reverend women shall remain in their apartments, and the one having charge of the door, and the abbess, if she so desires, shall be present at the funeral; that those who are charged with this duty shall perform it quickly; and that they shall dig the grave, cover the body, and retire promptly, without seeing any of the most reverend women, or being seen by them.

Men shall not invent any excuse to enter the monasteries of women, nor women to enter those of men; nor shall they allege as a pretext the prayers (called memorial exercises) offered up on the third or ninth day after death, or when forty days have elapsed, or even after a year; for as women while in a convent are permitted to transact business, and the same privilege is accorded to men who occupy monasteries, We do not, for any such reasons, permit dishonorable acts to be committed in these sacred institutions.

CHAPTER IV.

But as no rule is strictly observed unless someone is authorized to enforce it, We order that every abbot shall have constant supervision of the conduct and discipline of his monastery, that he shall promptly correct the slightest fault which may be committed, and not permit the evil to become greater, and souls fleeing from salvation to be lost. When there is (as in this Most Fortunate City) a prior of monasteries, he must carefully maintain discipline; he must send his *apocrisarii* there; he must obtain information with reference to neighboring convents, and ascertain whether any offences are committed therein, and, if this should be the case, he must punish them in the exercise of a just and proper discretion.

The bishop of every town, and the patriarch or metropolitan, shall also maintain monastic discipline; the bishops must send the most reverend defenders to the monasteries to suppress abuses; see that the rules are observed; forbid anything contrary to decorum to be committed, and when this takes place, quickly correct it. The Most Holy Patriarch of this Most Fortunate City shall examine all the monasteries situated therein, and shall appoint for their supervision such of the defenders of the Most Holy Principal Church as he considers most perfect and honest, and this supervision being exercised by several persons, the rules will be better observed, and breaches of discipline more severely punished.

CHAPTER V.

Every monastery placed under the government of an abbot shall have (as We have already stated) *apocrisarii*, who, being old men, will preserve monastic discipline, and not suffer monks to undergo corporeal injury; and they must also be charged with the affairs and interests of the monasteries. Convents of women shall also be provided with *apocrisarii* to the number of two or three, who, whenever it is possible, shall be eunuchs, or advanced in years, and enjoy a great reputation for chastity. These *apocrisarii* shall be authorized to conduct the litigation of the monastery, and minister the ineffable communion to the nuns at the proper time. If, however, they should desire to obtain advice concerning the business of the monastery, or confer with any most reverend hermit, they must only speak to the abbess through the agency of the most reverend doorkeepers, for the women appointed to have charge of the doors must guard the entrance and exit of the monastery; they must prevent anyone from departing, and render the entrance inaccessible to all men except the *apocrisarii*. The latter must apply to the doorkeepers, and announce their arrival; the abbess, having been notified, shall come down and discuss their administration and the object of their visit with them, and, in this way, the business of the monastery will be conducted, and chastity will remain inviolate.

If any monk should commit an offence (for all men are human, and no one has such control over himself as to be absolutely free from sin, as this is the attribute of God alone), they shall warn him, suspend him, and give him time for repentance, in order that he may improve his

behavior, come to his senses, and not lose the fruit of his labors. But when a monk is guilty of a serious offence, the *apocrisarii* shall inflict a penalty in proportion to its nature, they must severely reprimand him, and impose upon him a rigorous penance. If they can in this way restore to virtue one who has fallen, and has begun to be corrupted (and what We say is applicable to both monks and nuns), they will render thanks to Omnipotent God, while the angels in Heaven rejoice as they do when anyone is delivered from his sins.

Where, however, a cenobite commits a crime which is beyond all remedy, he must then be expelled from the monastery, as having abandoned virtue for vice, and he alone will enjoy his perversity, so that he cannot infect the other monks as with a pestilence emanating from diseased animals. The government does not intend that the punishment of monks should be neglected, and as it is necessary for it to see that it is inflicted, the indignation of the authorities even against the abbot, the bishop of the diocese, or the defenders of the church will not be restrained if they do not comply with these provisions. Where, however, these holy persons pray to God for the prosperity of the government with pure hands, and souls free from every blemish, there is no doubt that Our armies will be victorious, and Our cities well governed; for where God is appeased and favorably disposed towards Us, why should not We enjoy universal peace and the devotion of Our subjects? The earth offers Us its fruits, the sea gives Us up its wealth, and the prayers of Our people will invoke the blessing of God upon the entire Empire.

On the other hand, the monks will be entitled to more reverence; their lives will be still more exemplary; and they will shine in the brilliancy of their virtues. They will all have but one wish; all of them will strive to accomplish the same object; all wickedness will be banished as much as possible, more holy and better desires will be entertained; and recognizing these facts, We enact the present law, which We consider to be useful.

CHAPTER VI.

We also desire that when any most reverend monk has been proved to have frequented a tavern, he shall immediately be delivered up to the defenders of the district, or to the Most Glorious Praetorian Prefect of this City, and after having been convicted, he must be punished; and notice shall be given to the abbot in order that the latter may expel him from the monastery, as being one who has exchanged an angelic life for one that is discreditable. Monks must occupy themselves not only in studying the Holy Scriptures, but also in strengthening their bodies (that is to say by manual labor), and thus both meditate and work, for an idle mind produces nothing good.

We enact the present law for the benefit of members of the monastic order; it shall be observed in this Royal City, and in all the provinces; We shall address it to the patriarchs to insure its execution; the latter will communicate it to the metropolitans under their jurisdiction; the metropolitans will bring it to the knowledge of all the bishops, and the bishops will notify the most reverend monks and their abbot of its promulgation. We entrust its execution not only to the abbots of the various monasteries, to the bishop beloved of God, to the reverend metropolitans, and most holy patriarchs, but also, in this city, to Your Excellency; and when any violation of it merits a more severe punishment, it shall be inflicted by these Divine personages.

We order Governors to cause Our law to be observed in their respective provinces, and these magistrates shall be informed by the bishop beloved of God of any violation of it that may take place. Thus both these holy persons and magistrates will preserve unimpaired these provisions which have reference to God and the Empire, for there is nothing more sacred than for the government to enjoy the clemency of Omnipotent God, and Our Saviour Jesus Christ, through the purity of most reverend personages. All clerks, monks, and bishops of both superior and inferior rank must keep themselves pure, and observe the sacred canons, and the Imperial statutes and Constitutions enacted with reference to religious matters, whose entire force and effect We confirm by the present law.

EPILOGUE.

Therefore Your Holiness will hasten to carry into effect what We have been pleased to enact by the present law, as soon as it is brought to your knowledge.

Given at Constantinople, on the seventh of the *Kalends* of April, during the Consulate of the Most Illustrious Ario.

TITLE XVII.

NO JUDGE SHALL BE PERMITTED TO HAVE A DEPUTY IN HIS STEAD, UNLESS FOR CERTAIN REASONS AN IMPERIAL ORDER IS ISSUED FOR THAT PURPOSE.

ONE HUNDRED AND THIRTY-FOURTH NEW CONSTITUTION.

CONCERNING DEPUTIES.

In the Name of Our Lord Jesus Christ Our God, the Emperor Caesar, Flavius, Justinian, Alemanicus, Gothicus, Francicus, German-icus, Fortunate, Pious, Glorious, Victor and Triumpher, Ever Augustus, to Musonius, Urban Prefect.

PREFACE.

We, having constantly in mind the welfare of Our subjects, and having ascertained that they are subjected to annoyances at the hands of deputies sent into the provinces by civil and military magistrates, have recently enacted a law for the purpose of correcting such abuses.

CHAPTER I.

NO MAGISTRATE SHALL BE PERMITTED TO APPOINT A DEPUTY.

As We are desirous of benefiting Our subjects to the greatest extent possible, We hereby prohibit the Praetorian Prefects, both of the East and of Illyria, the Count of the Imperial Largesses, and the Count of Private Affairs, from sending deputies into the provinces; and We also forbid Governors as well as judges stationed in the provinces, or in any city whatsoever to do this. Only where necessity requires it do We permit deputies to be sent from the prefecture into the provinces of Osdroena and Mesopotamia, as well as other places, during expeditions, to secure supplies for the army, and they shall not be appointed except by virtue of an Imperial order, expressly issued for this purpose.

We also forbid military commanders and generals-in-chief, in the provinces where they exert their authority, to employ any deputies, substitutes, or officers charged with the pursuit of thieves. If, however, it should become necessary for the military commanders or generals-in-chief to be despatched to other places by an Imperial order, then We shall appoint deputies to take their places while they are absent. But no military or civil magistrate shall be allowed to run over a province when there is no necessity for it; and where any reason exists for their doing so, We order them to travel with their courts, and at their own expense. We forbid them to oppress Our subjects by requisitions for posts, for those services called *epi-demitices*, or for any other expenses whatsoever. And We also forbid them to exact the services of any of the magistrates above mentioned, where they have unjustly established a custom for their own benefit, for practices wrongfully instituted, and dishonorable customs cannot be confirmed either by lapse of time or long-continued usage.

Civil and military magistrates are hereby notified that if any of them should violate this law by the appointment of a deputy, he shall pay a fine of twenty pounds of gold, and the person who accepts such an employment shall lose his property, and be sent into exile.

CHAPTER II.

In order the better to insure obedience to Our law, We order that the bishops of the diocese, the Governors of provinces, and the inhabitants of towns shall not, in contravention of its provisions, receive either a deputy, or officers charged with the pursuit of thieves; for We absolutely prohibit every civil or military magistrate from employing officials of this kind.

We order especially the Governors of provinces to conduct themselves and their administrations with so much wisdom that their acts will not require investigation, and someone else be sent to replace them in the provinces. Where, however, it becomes necessary to send any officers there to collect taxes, or to suppress disturbances, they shall have neither the rank nor the title of deputies. Anyone who is assigned to a province for such a purpose shall not subject Our subjects to any expense, he shall discharge the duties entrusted to him, and the Governor, together with his subordinates, shall give him all requisite assistance. Where an official is despatched to a magistrate against whom a serious accusation has been made, We order the provincial court to obey him. But, while We forbid the appointment of deputies, We desire Governors of provinces and their courts to be responsible for their administrations, to supervise public collections, to maintain tranquillity in their jurisdictions, and to provide against all injustice and annoyance.

If any judges or collectors of taxes in the provinces should happen to need aid, We order the Governors and their courts to give it to them, in order that the levy of taxes may be made without hindrance. Competent provincial judges shall hear and determine any civil or criminal cases which may be brought before them, and they must decide them on their own responsibility, and dispose of them according to law.

We also order that as soon as the Governors of provinces receive their appointments, whether they are present or absent, they must give bond to the Praetorian Prefect, as well as to the Count of the Imperial Largesses, and the Count of Private Affairs, to insure the payment of the sums to which each of said magistrates is entitled, and they should remain responsible in accordance with the tenor of the bond, if they should divert the money to improper purposes. In those cities and provinces where there are no secretaries or magistrates charged with the collection of taxes at their own risk, the Governors shall collect them on their own responsibility.

CHAPTER III.

It has been brought to Our attention that certain provincial magistrates act so unjustly for the purpose of obtaining dishonorable gains that they do not permit wills to be made, or those which have been made to be recorded; or marriages to be contracted; or nuptial agreements to be executed, or the dead to be buried, or inventories to be drawn up; or any similar acts to be performed, either by means of written instruments, or in the presence of witnesses; hence We forbid all magistrates, both civil and military, as well as their courts and every other official, to presume to do anything of this kind. If, however, any of them should venture to commit such a detestable act, or to protect anyone who has had the audacity to do so, We decree that, after having been deprived of their offices, they shall be sent into exile, and shall pay double the expense which they have caused the injured person to incur; for neither they themselves, nor anyone else, can diminish the benefit of the laws. We grant full authority to the most holy bishops and the principal citizens of the towns to prevent insolent acts of this description, and see that the transactions which We have just mentioned are completed in accordance with Our laws without hindrance or expense, and to inform Us if any of these illegal acts are committed.

We desire judges, whether of superior or inferior rank, to receive appeals legally taken; they shall hear them specially in conformity with Our orders (for it is permissible to appeal even from ecclesiastical judges), and to give, without delay, a written acceptance of their appeal to the litigants so that the decision of the case may legally be pronounced. But We decree that when an appeal has once been taken in accordance with law, the execution of the judgment shall be suspended, and the possession of the property in controversy shall not be transferred until final judgment has been rendered.

CHAPTER IV.

But as adultery, rape, homicide, and other offences are perpetrated in the provinces, We order the magistrates to punish them in conformity to law, and place those who are guilty under

restraint, but We forbid them to arrest some on account of others, for instance, in the place of true offenders persons who were born in the same place; or to make their towns bear the losses which they have caused. We also forbid them to take pledges from criminals, or to punish a crime with a view to the profits which may be derived from doing so, or to appropriate the property of delinquents to their own use. For We desire that the latter shall suffer the punishment prescribed by the laws, but We strictly forbid that the imposition of a penalty shall prejudice the rights of Our subjects, to enable judges and their families, or officers, to be pecuniarily benefited, lest the desire to obtain such advantages may induce them to inflict unjust penalties or to sell pardons to those who are guilty. If any provincial judge should, himself, violate this rule, he shall make good the entire loss which he has caused, shall be subjected to punishment, and sent into exile, and his councillor shall undergo a similar penalty, if he gives his consent in writing to any illegal act committed by the magistrate. The members of his court, and all other persons who assist him in obtaining gains of this kind, shall not only be compelled to make restitution, but the most guilty among them shall suffer the penalties prescribed by the laws, and be sentenced to exile.

CHAPTER V.

PERSONS GUILTY OF CRIME SHALL BE SUMMONED BY MEANS OF LAWFUL EDICTS.

When any one of the criminals whom We have just mentioned conceals himself, or leaves the province in which he has committed the offence, We order the judge to call him into court by the publication of lawful edicts, and if he does not obey, the judge shall proceed in the manner prescribed by the laws. If it should be ascertained that the guilty party is living in some other province, We order the judge of the district in which the offence was committed to notify the judge of the province in which the delinquent resides, by means of a letter, to arrest him on his own responsibility and that of his court, and to send the accused to him. When the judge who has received a public letter of this kind fails to do what We have stated, and his court does not surrender the criminal, or if it does not execute the orders given it, We decree that the said magistrate shall pay a fine of three pounds of gold, and his court an equal amount. If, induced by a desire for gain, a judge, or any officer of his court, does not arrest a person of this description, or if, after having arrested him, he does not deliver him up, he shall, after conviction, be deprived of his office, and sent into exile.

CHAPTER VI.

A JUDGE SHALL CARRY INTO EFFECT WHAT HAS BEEN ORDERED BY HIS PREDECESSOR.

When We give a written order to any magistrate, and, in the meantime, the said magistrate relinquishes his office, his successor shall receive the order, shall record it if it relates to a private matter, and shall execute it, just as if it had been addressed to himself. If the said written order has reference to the interests of the public, he shall examine it, and if the Treasury is not in any way prejudiced thereby, shall cause it to be executed. When, however, it affects the rights of the Treasury injuriously, it shall remain inoperative, and the magistrate shall notify Us of the fact, in order that We may issue a second order for the same purpose.

When instructions are given by any magistrate whatsoever, and the latter, or the person to whom the instructions are addressed, is deprived of his office before they have been recorded, his successor shall receive them, and cause them to be executed, if they are legal; but if they are contrary to law or to the public welfare, We order that they shall be considered as not having been written.

CHAPTER VII.

NO CREDITOR SHALL PRESUME TO RETAIN THE CHILD OF HIS DEBTOR AS SECURITY FOR THE DEBT.

For the reason that We have ascertained that in many places in Our Empire a great injustice is

frequently committed, namely, that creditors presume to detain the children of their debtors by way of pledge, and employ them in servile occupations, or hold them under a lease, We forbid this practice, and order that when a creditor commits such an act, he shall not only lose his claim, but shall also pay an amount equal to it to him whom he detains, or to the parents of the latter; and he shall afterwards be subjected to corporeal punishment by the magistrates of the district, for the reason that he had the audacity to retain possession of a free person as security for a debt, or to lease him, or to take him in pledge.

CHAPTER VIII.

CONCERNING WOMEN WHO ACT AS SURETIES.

We make the following provision for the welfare of Our subjects. Where a woman consents to bind herself as surety for a loan, and stipulates in favor of her husband, thereby encumbering either her person or her property, We order that such an obligation shall be void, and of no effect, even though she may have done this repeatedly; and it will make no difference whether the obligation was private or public, for it shall, in every instance, be regarded as not having been incurred, unless it is clearly established that the sums lent have been used for the benefit of the woman.

CHAPTER IX.

WOMEN SHALL NOT BE CONFINED IN PRISON.

We think that it is necessary to forbid a woman to be deprived of her liberty or imprisoned for any reason whatsoever; but We order that where a woman is sued for fiscal or private debts, she shall answer, and attend to the matter either herself or through the agency of someone whom she may select. When the woman in question is a widow, or she was not married in the first place, she shall also, in her proper person, be permitted to protect her rights in conformity to law, or to do so by means of an attorney.

If a magistrate of superior rank should presume to violate what We have prescribed, he shall be compelled to pay a fine of twenty pounds of gold; if a superior judge should do this, he shall be liable to a fine of ten pounds of gold, and the officers subject to his authority shall be deprived of their places, subjected to punishment, and sent into exile. But where a woman, after having been legally notified, is unwilling to appoint anyone to represent her, or where she is brought into court to answer, We forbid her to be placed under restraint, or confined in prison; and We desire that she shall be permitted to assert her legal rights.

When a woman is accused of a crime which renders it necessary for her to be kept under guard, and she can furnish a surety who will be responsible for her appearance, We order that this shall be done; but when a woman swears that she cannot furnish a surety, she shall furnish juratory security for the satisfaction of the judgment. Where, however, the crime of which the woman is accused is of an exceedingly serious nature, she shall be placed in a convent or a hermitage, the reverend inmates thereof shall guard her publicly and carefully until her case has been heard, and then the sentence pronounced shall be executed in accordance with law. We do not permit a woman to be placed in prison, or guarded by men on account of a fiscal obligation, in any private proceeding, or for any criminal offence, lest her chastity may suffer violation. Nor do We permit a nun or a female ascetic to be taken from her convent or hermitage on account of any litigation in which she may be involved.

CHAPTER X.

WHAT PENALTY IS INCURRED BY AN ADULTERESS.

When the crime of adultery has been established, We order that the penalties prescribed by Constantine, of Divine memory, shall be inflicted upon those who are guilty; and all who have acted as agents or intermediaries in the commission of this impious crime shall be subjected to the same punishment. But so far as the property of the adulterer is concerned, if he has a wife, We order that the dowry and ante-nuptial donation shall be given to her, and that he shall

receive the portion granted by Our law; and if no dotal contract was drawn up, and there are any ascendants or descendants as far as the third degree, they shall in their regular order obtain the residue of his estate; and when there are no heirs of this kind, We direct that it shall go to the Treasury. The adulteress shall suffer corporeal punishment, and be confined in a monastery, and if her husband desires to take her back within two years, We permit him to do so; he can cohabit with her without subjecting himself to any risk on this account; and the marriage shall not be prejudiced on account of what occurred in the meantime. If, however, the aforesaid term should elapse, or the husband, before he takes his wife back, should die, We order that she shall receive the tonsure, assume the monastic habit, and reside in the monastery for her entire life; and if she has any descendants, they shall receive two-thirds of her estate, to be legally divided, and the remaining third shall be given to the monastery in which she is placed. But when there are no descendants, and she has ascendants who did not consent to such wickedness, they will be entitled to one-third of her property, to be distributed according to law, and two-thirds of it shall be given to the monastery in which the said woman is confined. But where she has neither descendants or ascendants, or her ascendants have not disapproved of her wicked conduct, the monastery will be entitled to her entire estate, and, in every instance, the benefits conferred by the dotal agreements shall be enjoyed by her husband.

CHAPTER XI.

PENALTIES FOR UNJUST REPUDIATION.

As some persons deliberately violate Our law, in which We plainly enumerated the only causes for which a husband or a wife can serve notice of repudiation, We order that no repudiation shall take place unless for the causes aforesaid, and We prohibit them from dissolving their marriage by common consent, and mutually committing such offences. But where both parties presume to dissolve the marriage without alleging the reasons which We have set forth, We order that, if they have any descendants who are the issue of this marriage or of a former one, their estates shall be given to the latter as legally prescribed; that both the husband and the wife shall be confined in a monastery for the remainder of their lives; and that one-third of their property shall be set aside to be delivered to the monasteries in which they are placed; but the husband shall not be entitled to the usufruct of the share transferred to his children, because, even though he may have them under his control, he cannot enjoy the income of their property.

When, however, the parties have no descendants but have ascendants, they shall be entitled to a third of their estates, in case they did not consent to the impious dissolution of the marriage; and the other two-thirds of the same shall be given to the monasteries in which the husband and wife are confined. Where they have neither descendants nor ascendants, or the latter have acquiesced in the dissolution of the marriage, We decree that all their property shall be transferred to the monasteries in which they are placed, in order that Our law may not be violated, and the judgment of God treated with contempt by reason of such conduct. We order that any officials who have assisted in such a dissolution of marriage, or who have drawn up any abominable instruments for this purpose, shall be subjected to corporeal punishment, and sent into exile. If those who have been so bold as to dissolve their marriage should desire to be reunited before being placed in a monastery, We grant them permission to do so; and the penalty shall then be imposed upon them, and they shall be entitled to their property, and shall live together just as if no offence had been committed. But where only one of the parties is willing to do this, and the other does not consent, the penalty shall be inflicted upon the one who refuses to return.

We order that all these provisions shall be observed in this Royal City, as well as in the provinces, and that they shall be enforced, not only by the Count of Private Affairs but also by the Association of Palatines, as well as by provincial judges and their subordinates; all of whom are hereby warned that if they neglect to punish any crime of this kind, or do not observe all these rules, they shall be condemned to exile and the confiscation of their

property. We order the most holy bishops of the several dioceses to enforce this law; and decree that the said persons shall be placed in the monasteries under their supervision; and that the portion of their property which has been mentioned by Us shall be claimed by the monastery.

CHAPTER XII.

Where, however, anyone is accused of adultery, and through the baseness of the magistrates, or for any other reason, escapes the penalty provided by law, and is afterwards found to be living shamefully with the same woman, and he marries her during the lifetime of her husband, or after his death, We decree that the marriage shall be void, and if he who was audacious enough to commit this offence should have taken to flight, We grant permission to every judge to arrest him, and, after having tortured him, put him to death without allowing him to give any excuse, or offer any evidence. We also order that the woman shall be punished and placed in a monastery to remain there as long as she lives; that the property of both parties shall be divided in accordance with the rules already stated; and that this shall be done (as We have prescribed) under the direction of the Count of Private Affairs and the judge of the district.

CHAPTER XIII.

CONCERNING THE MITIGATION OF ALL PENALTIES.

As it is necessary for Us to make allowance for human weakness, We abolish the amputation of both hands, as well as that of both feet, and the imposition of the punishment by which the joints are separated, which is a much more serious penalty than the amputation of the hands. Hence We order that, if anyone commits a crime for which the laws inflict the death penalty, those who are guilty shall undergo it, and if the crime is one for which the culprit does not deserve to be put to death, he shall be scourged, or sent into exile. Where the offence is such as demands the amputation of a limb, one hand only shall be cut off. We forbid the amputation of a limb because of an ordinary theft, or the culprit to be put to death for this reason, but we desire him to be punished in some other way. We call those persons thieves who, without being armed, secretly remove property; but when anyone openly makes an attack by force, either with or without weapons, in houses, on the highways, or on the sea, We decree that he shall be subjected to the punishment established by law.

In order that not only corporeal penalties, but also slight pecuniary ones may be imposed, We order that those who are accused of crimes for which the laws prescribe either death or proscription, where the delinquents are convicted or condemned, their property shall not be acquired by the judges and their officers, nor shall it be transferred to the Treasury, in accordance with ancient legislation; but their descendants and ascendants, up to the third degree, when there are any, shall be entitled to it. Where, however, those who are condemned have wives, We order that the latter shall, by all means, receive the dowry and ante-nuptial donation. But in case the women were married to such persons, without any dowry, they shall be entitled to the share of the estates of those who have been condemned which is authorized by law, whether they have any children or not. If the criminal should leave none of the heirs above mentioned, then his estate shall go to the Treasury.

We order that the ancient laws which have reference to persons convicted of the crime of treason shall be observed.

EPILOGUE.

Therefore Your Glory will see that Our present law is published in this city and sent to the provinces, and notice thereof given to their Governors, in order that all Our subjects may learn how great is Our solicitude for their welfare.

Given at Constantinople on the *Kalends* of May, during the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XVIII.

NO ONE SHALL BE COMPELLED TO MAKE AN ASSIGNMENT OF HIS PROPERTY.

ONE HUNDRED AND THIRTY-FIFTH NEW CONSTITUTION.

PREFACE.

We do everything in Our power in order that the provisions by means of which We endeavor to propitiate Divine Omnipotence may be constantly improved, and shine with a brighter light. One Zozarius, a native of Mysia, has informed Us, amidst tears and earnest protestations, that he was insolently ordered by the Illustrious Governor of that Province to be sued for the discharge of certain pecuniary obligations, both public and private; that he did not think that his own property could be rendered liable for the payment of said indebtedness; that he had been treated with great injustice, and that the act bore the appearance of having been devised for the purpose of causing annoyance. For as he said, in what country can anyone who has lost his property through accident, and not on account of culpable negligence, be forced to lead an ignominious life, and be compelled (as may readily be imagined) to solicit his daily food and go without clothing?

CHAPTER I.

We, having been informed of this ill-treatment, sincerely desire to provide a remedy, for the reason that the best way for Us to conciliate God is to allow nothing disastrous to happen during Our reign; hence We forbid the most glorious or most magnificent magistrates to compel those who are brought into court to surrender their possessions for the payment of public or private pecuniary obligations, or to insult them, and allege the pretext that it is customary to remit corporeal penalties, when persons prefer to lose their property and suffer the privations of indigence to being branded with opprobrium and ignominy until death. The debtor must, however, make oath that he has no means of obtaining either property or money with which to pay his debts.

Where, however, the law, either by hereditary right, or through some donation by his parents, transfers to him any chattels of which he has not yet acquired possession, but which may be considered as belonging to him, and his creditors can obtain a portion, or even all of them (with the exception of what belongs to his wife, as this is actually her own), they will be permitted to claim them, to bring suit against him who at some future time will be the owner of said property, whether he is present or absent, and (to speak more plainly) they are authorized to bring all actions and formulate all demands for property which a debtor would be entitled to do.

EPILOGUE.

Therefore Your Magnificence, as you love and cherish virtue, will cause to be carried into effect the regulations which We have so piously been pleased to prescribe. You will inflict the penalty of ten pounds of gold upon anyone who presumes to violate them, and even those who have only had the intention of disobeying what is justly enjoined by this Imperial Law will run the risk of losing their lives.

Given at Constantinople, on the *Kalends* of June, after the Consulate of Belisarius.

TITLE XIX.

CONCERNING THE CONTRACTS OF BANKERS.

ONE HUNDRED AND THIRTY-SIXTH NEW CONSTITUTION.

PREFACE.

The members of the Body and Association of Bankers of this charming city have presented petitions to Us, and have made requests under many heads, asking relief, for the reason that they contribute to the public welfare in many ways, by means of the securities which they furnish, and the obligations which they contract for money loaned at great risk. For as We

have promulgated an Imperial Constitution which prescribes the manner of making collections, and direct that the principal debtors and their property shall first be liable, and that, only after they have been exhausted, shall recourse be had to the sureties or mandators, or even to such debtors as have guaranteed the payment of sums already loaned, the said bankers have asked to be relieved of the legislation authorizing their creditors to disregard the general law that, so far as they are concerned, permits them to be exhausted before having recourse to the principal debtors, which is a source of considerable loss to them. They add that whenever they receive from others obligations guaranteeing the payment of sums already loaned, it is not those who obtained the money who reimburse the creditors, but the mandators or sureties who do so, and that it is only proper for them to enjoy the privileges common to persons in general, and that they should not be excepted by the terms of Our Constitution.

CHAPTER I.

Therefore We order that whenever bankers lend a sum of money to anyone, or take guarantees of debtors for sums already loaned, or sureties or mandators, they must comply with the terms of the law which We have just mentioned, and the order of liability which it prescribes, unless it is specially agreed that the creditor shall be allowed to sue the principal debtor, as well as the mandator, surety, or guarantor of money previously loaned without observing the order prescribed by Our Constitution.

We permit the execution of agreements of this kind on account of the great share which bankers take in public contracts; and such agreements are not to be considered contrary to law, because every person has a right to renounce any privileges which the law grants him. Therefore, no matter in what capacity they may act, bankers can sue the principal debtor as well as the mandator, surety, and other guarantors; but where there was no written agreement, the former constitution shall be entirely applicable to bankers, just as if an agreement had been drawn up; they shall give the form and the rule to the contract, as well as the order of liability of principal debtors, and collections shall be made in accordance therewith.

CHAPTER II.

This chapter treats of another exception, which We have long since granted to creditors; for where anyone pursues the calling of a banker, or permits this to be done by his children, the latter shall conduct their business, not as if they had acquired their capital from their father, or from some other source, but as if they had acquired it from their creditors. Bankers have requested Us to concede this same privilege to them against their own debtors, and that where anyone, either in person or by his children, conducts a business which he has purchased with their money, and he cannot pay his debts in any other way, he shall be compelled to release himself from liability to them by the sale of the same. Hence, as We have enacted the preceding law in order that it may be scrupulously observed, and not that it may be disregarded, We order that it shall remain operative', and that bankers shall not be deprived of its benefit (since the large number of their debtors who make contracts are not considered to have used their own money), and We desire bankers to enjoy the privilege that where any one of their debtors, or their children, are engaged in any business, it may be subjected to hypothecation in their favor, if it is included among those which are usually sold.

This rule relating to the hypothecation of a commercial establishment belonging to the children of their debtors is applicable, unless the latter clearly prove that they have obtained it by means of their mother's property, or through the generosity of the Emperor.

When debtors cannot release themselves from liability in any other way, then the business owned by the children shall serve to pay the bankers, as We enact this law for their benefit, and are opposed to the privilege granted their creditors to their disadvantage by this constitution. Therefore We grant to bankers alone the contrary privilege, and the reason for Our liberality to them is that they are generally useful in the execution of contracts, and expose themselves to many risks in order to provide for the necessities of others.

CHAPTER III.

Therefore it is not without reason that bankers, when they lend money to anyone, or when they have already lent it for the purchase of movable or immovable property of considerable value, and the said property has been purchased with the identical money, ask that they should have a prior lien, and should not be excluded from it by any artifice; but, at the same time, We desire that they shall prove that the said property was bought with their money, and that their debtors are unable to repay it, and the property acquired in this way shall be adjudged to them, just as if they themselves had bought it, and only the name of the purchaser had been added. For it would be unjust for those who are given to such profuse expenditure, only to be able to secure with difficulty the first lien upon property bought with their money, or that they should not acquire it under the conditions set forth in the agreement.

When bankers observe what We decree, they shall obtain every request that they make of Us, since We grant them the preference with respect to articles which they can show have been acquired by means of the money which they loaned.

Where, however, a verbal contract was made at the time or afterwards, under the terms of which bankers pay out money, or (as is customary among them) provide jewels for the adornment of women, or silver plate, and do not receive the price of the articles they give or sell, in this way, they shall be permitted to dispose of them as their own; even though they may not have any right to them through hypothecation. For those who acquire such articles cannot own what belongs to others, and they will vainly attempt to retain possession of them, if they have not paid the price; when they have transferred them to their heirs, the latter must restore them; and when they have not been so transferred, the banker will be permitted to claim them, without any other creditors being able to hold them as being hypothecated to themselves.

CHAPTER IV.

As We have enacted a law forbidding bankers to loan money at more than eight per cent, they have informed Us that as it was the custom to make loans without committing the obligation to writing, they were afterwards paid a low rate of interest, under the pretext that none had been agreed upon, and that it is not proper for any interest to be paid without a stipulation. They, however, state that there are many instances in which the obligation to pay interest arises from a simple agreement, without any formal stipulation, and that it is sometimes paid, not by virtue of any contract, but at the instance of the creditors themselves. Therefore, We decree that interest at the rate established by law, that is to say eight per cent, shall be paid to bankers not only when a stipulation was entered into, but also when none exists; as it is not just for those who are always ready to come to the relief of almost all poor persons to be subjected to injustice on account of the omission of such details.

CHAPTER V.

In addition to this, they have also informed Us that those who contract, or have any accounts with them, make their agreements by means of public documents in the Forum, as well as by instruments written with their own hands and others drawn up by third parties, which they sign; and they now ask Us that those who enter into such agreements with them shall remain obligated, and be required to pay, without being permitted to allege that, even though the instruments were written with their own hands, and the statements or accounts which they signed, and which were drawn up by others, the sums mentioned in the said instruments were not received by them. The said bankers have also requested that such instruments shall be considered as evidences of hypothecation, and that they may be allowed to collect interest at eight per cent, even though this may not have actually been agreed upon.

Therefore, as these demands concern the public welfare, and deserve great consideration, We shall attend to them in a proper way. And, indeed, where anyone executes a public or a private document written entirely with his own hand, or signs any written accounts drawn up by someone else, We order that he, as well as his heirs, shall be personally liable. For We do not

rashly grant bankers an hypothecation which has not been agreed upon, and only when a lien has been given to them in writing upon the property of their debtors; or the latter have pledged it to them; or have merely stated that they encumber the said property; or finally, when they have used any expression which suggests hypothecation, do We concede this privilege to bankers, in order not to deprive them of reasonable relief, or change the general character of Our laws. Where interest has been stipulated for, the agreement evidencing it shall be observed.

If it was merely stated in writing that the claim shall bear interest, the contracting parties shall not be permitted to say that there was no agreement to that effect, in order to allege that the loan should bear none at all, but it can be collected just as if interest at eight per cent had been expressly agreed upon; and this provision shall be applicable for the future.

When no interest is mentioned in accounts which have already been settled, as it is clear that the contract in the beginning was drawn up with a view to the payment of interest, for the reason that a banker who himself borrows money at interest cannot spend it without an account of the same being given, he shall be permitted to demand eight per cent; but bankers will, hereafter, be required to observe what has been set forth in the present law.

CHAPTER VI.

We come with no less resolution to the relief of bankers under the following circumstances. Where accounts which expressly state the reason for which the loan was made are settled, and the debtor himself signs them, without stating in his own hand the reason why he borrowed the money, and no mention of the nature of the loan is made in the receipt which was given him by way of discharge from the debt, or other liability, he cannot require the banker, who is his creditor, to prove the different reasons for the loan, unless in the exercise of greater precaution he should tender him the oath, or ask his heirs to be sworn; for We grant him this same privilege, provided he avails himself of it within the prescribed time, for the purpose of opposing an exception on the ground that the money was not received. But if the debtor should allow this time to elapse, We release the banker from his oath (a provision which We have already, inserted in Our general laws, although it may not have been observed), for how can one justly conceive that a person who has, in his own handwriting, acknowledged himself to be a debtor, or has rendered accounts, should be released, when he has not received what he stated in writing was paid to him?

EPILOGUE.

Therefore, Your Glory and all the magistrates of Our Empire will always be careful, hereafter, to see that the rules which it has pleased Us to decree by this Imperial Law are observed. Those who disobey them, and any magistrate who permits this to be done, shall be liable to a fine of ten pounds of gold.

Given at Constantinople, on the *Kalends* of April, during the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XX.

CONCERNING THE ORDINATION OF BISHOPS AND OTHER MEMBERS OF THE CLERGY.

ONE HUNDRED AND THIRTY-SEVENTH NEW CONSTITUTION.

Antonius Contius, Translator.

The Emperor Justinian to Peter, Master of the Offices.

PREFACE.

If, for the general welfare, We have taken measures to render the civil laws more effective, with whose execution, God, through His good will towards men, has entrusted Us, how much more reason is there not for Us to compel the observance of the sacred canons, and Divine

Laws, which have been promulgated for the safety of Our souls? For those who observe the sacred canons become worthy of the assistance of Our Lord God, while those who disobey them render themselves liable to be punished by Him. Therefore, the most holy bishops who are charged with the enforcement of these laws are liable to severe penalties when they allow any breaches of them to remain unpunished. And, indeed, as the sacred canons have not been, up to this time, strictly observed, various complaints have been made to Us of clerks, monks, and certain bishops, on the ground that they do not live in accordance with the divine canons; and indeed there are even some among them who are either ignorant of, or do not perform the holy service of the mass, or of the ceremony of baptism.

CHAPTER I.

Therefore We, understanding and being deeply impressed with the spirit of God, do hereby order that proceedings shall be instituted at the same time to inquire into and correct the matters which have been submitted to Us. For if the general laws do not suffer crimes committed by laymen to go unpunished, even when investigated, how can We permit the rules canonically established by the Holy Apostles and the Holy Fathers with reference to the salvation of all men to be treated with contempt?

We are perfectly aware that the principal reason why so many persons are guilty of sin is because the episcopal synods are not held in accordance with the regulations established by the Holy Apostles and Fathers of the Church. If this was done, as every ecclesiastic would then apprehend being subjected to a serious accusation, all would exert themselves to master the sacred liturgies, and live temperately through fear of being rendered liable to condemnation under the divine canons.

One reason why certain persons sin is that bishops, priests, deacons, and other members of the clergy, are ordained without examination, and without having produced any evidence of sincere faith and a virtuous life. For if those who are destined to pray for the people are found to be unworthy of exercising the divine ministry, how can they propitiate God, and obtain his indulgence for the faults and offences of the people? Gregory, the Theologian, following the Holy Apostles and the divine canons, declares that the ordination of priests must be made with exceeding care and thoroughness. For he says in his great Apology: "Who can err in conducting himself in conformity with the sacred canons and precepts laid down by St. Paul, in which he exhorts bishops and priests to be temperate, sober, modest; not to be given to wine, or to contentions with one another; to be assiduous in the acquirement of knowledge, blameless in every respect, and to have no intercourse with wicked people?" and he adds: "It is necessary, above all things, to be pure, in order to purify others; wise, in order to teach wisdom; to obtain light in order to give it; to approach God, before leading others to Him; to be sanctified before rendering others so; to have hands to lead, and judgment to impart advice."

Gregory also says in the same discourse on the same subject: "Who is he that, like a potter occupied in molding his clay, can at once create one competent to preside over the altar and priesthood of God, a head of the true worship, and worthy to stand with the angels, and to sing the praises of God with the archangels, and offer up sacrifices with Christ?" He shows Us by these words who are deserving of sacerdotal promotion; and, in the same place, referring to unworthy persons who have been ordained, he remarks: "Those who, being destitute of morality, are conducted to the holy altar of God and elevated to the priesthood, although not attempting to practice virtue, will still be considered at the same time as the disciples and teachers of religion and will purify others, before having themselves been subjected to purification. Yesterday sacrilegious persons, they are to-day priests; but recently, strangers to the sacred canons, now they have become the celebrants of mysteries; old in crime and new in piety, instead of being inspired with the Holy Spirit they have need of the indulgence of mankind."

Finally, St. Basil, referring to the prohibition made by the divine canons with reference to the ordination as clerks of those who have married a second time, expresses himself as follows:

"The canon excludes from the ministry of the Church not only those who have had two wives, but also their children." Such is the language of St. Basil.

The Holy Fathers were so solicitous for the observance of this rule that those assembled at Nicea promulgated a canon which included the same provision; they absolutely prohibited bishops, priests, deacons, and other members of the clergy, from living with women, unless these women were their mothers, their aunts, or other females not liable to suspicion.

CHAPTER II.

Therefore We, conceding the authority of the sacred canons, do promulgate the present law, by which We decree that every time it may be necessary to consecrate a bishop in any city, the clergy and principal citizens of the said city shall assemble, and issue proclamations by which they nominate three persons, and then make oath on the Holy Gospels, in conformity with the Scriptures. This oath, inserted in the proclamations, shall be worded as follows: "That they did not select the three persons whom they have nominated in consideration of any gifts or promises made to them; nor through friendship, nor induced by any affection whatsoever, but for the reason that they knew that the candidates whom they have chosen are steadfast in the Catholic Faith, and of honorable life; that they have passed the age of thirty years, and have neither wives nor children; and that they have had neither concubines nor natural children, nor have any at present; and if any of them formerly had a wife, he had but one, and she was neither a widow, nor separated from her husband, and that his marriage with her was not prohibited, either by the sacred canons, or by secular laws; that neither of the three candidates is charged with the duties of any public office, that none of them is a decurion, a *taxeota*, or a *cohortal*, or, if he is, he has, in the capacity of a monk, passed fifteen years in a monastery."

The rules, whose observance We have already ordered, shall be applicable to candidates, in order that, from among the three who are nominated, the one who is the best qualified may be selected by the prelate conferring the ordination. Before this is done, however, the person to be ordained must sign a document containing the declaration of faith as set forth in the sacred formula employed in the celebration of the eucharist, the invocation repeated in baptism, and the other prayers.

We also desire that he who receives ordination shall swear upon the Holy Scriptures: "That he has not given, nor promised to give anything whatsoever, either personally, or through the agency of anyone else; and that, after his ordination, he will not give anything to the prelate whose duty it is to bestow it upon him, or to those who have asked that he be ordained, or to anyone whomsoever on account of the ceremony." If a bishop should be consecrated in violation of what is above laid down, We decree that he, along with the prelate who dared to consecrate him in contravention of Our orders, shall be deprived of the episcopate.

CHAPTER III.

Where anyone brings an accusation, no matter on what ground, against a candidate for the ordination of bishop, priest, deacon, or abbot, the ceremony shall be postponed, and the charge shall be examined in the presence of the accuser, who must prosecute it to the end. If, however, the latter should desist, and delay to conduct the case to judgment, the prelate, whose duty it is to confer the ordination, shall not, for that reason, fail to investigate the accusation and the reasons therefor with the greatest care within the term of three months, and if he finds the accused has violated the divine canons or Our laws, his ordination shall be forbidden; but if the accuser, being present, does not prove the charge; or if he absents himself, and is a member of the clergy, he shall be deprived of his rank; and if he is a layman, he shall undergo suitable punishment. When a prelate ordains anyone who is accused, before the charge has been investigated, both of them shall be expelled from the priesthood.

CHAPTER IV.

As what is laid down in the canons relating to the episcopal synods, which should be held in every province, is not observed, this is the first thing that should be remedied. For the Holy Apostles and the Fathers have decreed that meetings of three holy prelates should be held every year in each province, and that ecclesiastical controversies should be brought before them, and decided in a proper manner. They fix the meeting of the first synod during the fourth week after Pentecost, and that of the second in the month of October; but as the neglect to comply with these provisions of the Holy Fathers has afforded an opportunity to many persons to commit sin, We order that one synod shall assemble in each province in the month of June or September. All those who, without having the right of consecrating other bishops, receive ordination from the most holy patriarchs, shall meet in the houses of the latter; just as the three holy metropolitans of each province shall summon to their houses the bishops upon whom they confer consecration. We desire that ecclesiastical questions having reference to the Faith, to canonical points, and such as relate to the administration of church property; to demands made upon bishops, priests, deacons, other members of the clergy, abbots and monks, and to accusations relating to their conduct; and, finally, to all matters which have need of correction, shall be debated and examined in each synod, and We desire that abuses shall be disposed of in accordance with Our laws and the sacred canons.

CHAPTER V.

We not only order that cases of this kind shall be heard in the annual synods, but We direct that priests, clerks, abbots, and monks, against whom charges are brought with reference to the Faith, scandalous conduct on their part, or any violation of the sacred canons of which they may be guilty, shall be tried there. Whenever a bishop is accused, the case shall be decided by the metropolitan; and where a metropolitan is accused, the charge shall be heard by the most blessed archbishop to whose jurisdiction he is subject. But when the accused is a priest, a deacon, a clerk, an abbot or a monk, the most holy bishop who has authority over him must examine the accusation, and when it is proved, the guilty party shall suffer the canonical penalties, in accordance with the nature of the offence.

We decree that all the regulations above mentioned shall become operative, not only with reference to bishops, clerks, and abbots who may hereafter be ordained, but shall also be applicable to such as have already been ordained, and are accused of having committed acts prohibited by the canons and Our laws. If these provisions are observed, they will impart the laity a better knowledge of the true faith, and will conduce to their improvement in the practice of virtue.

CHAPTER VI.

In addition to this, We order all bishops and priests to repeat the divine service and the prayer, when baptism is performed, not in an undertone, but in a loud voice which can be heard by the faithful people, in such a way that the minds of the listeners may be induced to manifest greater devotion, and a higher appreciation of the praises and blessings of God. For as the Divine Apostle states in his First Epistle to the Corinthians: "But if you solely bless in spirit, how, after your act of grace, can the layman, who does not hear what you say, pronounce the holy word Amen; for if, while you are offering thanks to God, he does not understand, he will not be edified." Again, in his Epistle to the Romans, he says: "Even though one may sincerely trust in the justice of God, confessions should be made with the mouth in order that salvation may be obtained."

Therefore, it is proper that the prayers made during divine service, and the other supplications addressed to Our Lord Jesus Christ, God Our Father, and the Holy Spirit, should be uttered in a loud tone, by the most holy priests and bishops; and We notify all ecclesiastics that if they should violate any of these provisions, they must render an account of their conduct on the terrible Judgment Day of Our Lord and Saviour Jesus Christ; and that We, when informed of these matters, shall not disregard them, and leave them unpunished.

(1) We also order that if the Governors of provinces should ascertain that any of the rules which We have promulgated are not observed, they shall first compel the metropolitans and other bishops to call the synods together, and do what We have just prescribed; and when the bishops do not immediately obey, the Governors must notify Us of the fact, in order to enable Us to promptly punish those who refuse to convoke the synods; and We hereby warn the Governors, as well as their courts, that if they do not see that what We have decreed is executed, they shall be put to death.

We, however, by this constitution, confirm the various provisions included in Our laws, which have reference to bishops, priests, and other ecclesiastics, as well as to the superintendents of houses for the entertainment of strangers, of orphan asylums, and of all other religious establishments whatsoever.

EPILOGUE.

Therefore Your Highness will, by means of notices posted in the usual places of this city, hasten to communicate to all Our subjects the matters which it has pleased Us to insert in the present law, as well as inform the Governors of provinces of them.

Given at Constantinople, on the tenth of the *Kalends* of March, during the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XXI.

INTEREST SHALL NOT BE CALCULATED FOR AN AMOUNT MORE THAN
DOUBLE THE PRINCIPAL.

ONE HUNDRED AND THIRTY-EIGHTH NEW CONSTITUTION.

The Emperor Justinian to Hermogenes, Master of the Offices.

We have promulgated a law which annuls the right of action to collect a claim when the interest paid by the debtor amounts to more than twice the principal. Hence, where any of your creditors have received from you interest equal to twice the amount of your indebtedness, and others have received less, those who have paid double the sums which were loaned at different times cannot molest you any further, and their claims having been satisfied they can, for this reason, be compelled to remain silent. We decree if the others should bring suit for what is due to them, they can recover the amount of interest stated in their bonds; and when their claims are just, We decree that they shall enjoy the benefit of the present law.

TITLE XXII.

CONCERNING THE INDULGENCE GRANTED WHEN MARRIAGES ARE
ILLEGALLY CONTRACTED.

ONE HUNDRED AND THIRTY-NINTH NEW CONSTITUTION.

In the Name of Our Lord Jesus Christ, the Emperor Caesar, Flavius, Justinian, Augustus, to
Florus.

PREFACE.

Your Glory has informed Us that the inhabitants of the town of Syndics, and the Jews of the Island of Tyre, are violating Our Constitution by contracting unlawful marriages, without giving up the fourth of their property, in accordance with the laws enacted on this subject; and that many of them, who have already passed the greater part of their lifetime, and have children, are begging, in tears, not to be compelled to separate from their wives, and that the latter, as well as their children already born, and those who may hereafter come into the world, shall be their lawful successors, without their having any reason to apprehend punishment for their breach of the laws.

CHAPTER I.

Therefore, We order by way of indulgence and remission of the penalties which they have incurred that each of them shall pay ten pounds of gold (but this favor is granted to them alone), and they shall have as their legal successors their wives, their children both born and unborn, without, however, what We now decree being considered a precedent for others, as everyone else who may ask similar indulgence from Us is hereby notified that he will not obtain it; he will lose his property; and, though no corporeal punishment will be inflicted upon him, he shall be exiled for life. But none of those persons to whom We grant this privilege, their wives, or their children who are now living or who may hereafter be born, shall have their property interfered with either by virtue of a judicial decree, or for any other reason whatsoever.

EPILOGUE.

Therefore Your Glory will see that the provisions which We have been pleased to insert in this present law, which contains an act of Our special indulgence, is carried into effect.

TITLE XXIII.

MARRIAGE CAN BE DISSOLVED BY COMMON CONSENT.

ONE HUNDRED AND FORTIETH NEW CONSTITUTION.

PREFACE.

None of the affairs of mortals should be venerated as much as marriage, as, by means of it children are born, and from it entire generations are derived, which furnishes populations to countries and cities, and promotes the foundation and continuance of good government. Hence We are so desirous that married persons should be fortunate that We never allow matrimony to be committed by violence, or husbands and wives to be separated without a just cause for divorce. But as it is extremely difficult for all marriages to be happy (for being so numerous, there must necessarily be found some where atrocious and irreconcilable enmity prevents the parties from living together), We have thought it proper to provide a remedy for this, and especially Where matters come to such a pass that the hatred of the husband and wife towards each other cannot be appeased. In accordance with the ancient law, they were allowed to separate by common consent, but there were many enactments which treated of this subject, and several of them permitted a dissolution of marriage, where the separation took place with the agreement of all the parties interested. Some of these laws were written in the Latin language. But a short time afterwards, the Most Holy Emperor, Our Father (who surpassed all other sovereigns in piety and wisdom), taking into consideration the blessings of matrimony, and also directing his attention to the wretchedness of others, enacted a law which forbade marriages to be dissolved merely by common consent, and it was Our original intention that this law should be strictly observed and remain in full force and effect.

Many married persons, however, who entertained for each other intense hatred and aversion, and (what is greatly to be deplored, and is the fruitful source of trouble and sorrow) by their mutual reproaches and recriminations maintained incessant strife in their homes, requested Us to be permitted to dissolve their marriages, although they were not able to advance any of the reasons for which such a dissolution was authorized by law.

We have postponed for some time the gratification of the wishes of such people for a separation, either in order to give them advice, or to threaten them, with a view to appeasing the unreasonable hate with which they regard each other, as well as to conciliate them, and quiet their minds, but We have not succeeded in doing so. For it is very difficult to reconcile those who are influenced by violent hostility, as it often happens that married persons will plot against each other, and make use of poison or other means of producing death, to such an extent that even the children who have been born to them cannot again unite them.

CHAPTER I.

Therefore, as We think these matters to be unworthy of Our reign, We have framed the present Imperial Law, by which We decree that, in conformity to the ancient rule, it shall be lawful to dissolve marriages by common consent, and that the penalties denounced, with the sanction of Our Father, against those who terminate their marriages in this way, shall be abolished. For if matrimony is brought about by mutual affection, it is certainly reasonable that a contrary desire should annul it, where both parties agree to do so, provided that this is sufficiently shown by the service of notice of repudiation.

But it is perfectly clear that, so far as the other matters contained in Our laws, and especially those set forth in the Imperial Constitutions of Our Father which have reference to marriages, and the causes which authorize their dissolution, or relate to separations where no cause exists, and to the penalties to which the persons who effect them are liable are concerned, they shall remain in full force. This rule, however, does not apply to husbands and wives who are separated by common consent as prescribed by the present law.

EPILOGUE.

Hence Your Glory is hereby ordered to communicate the matters included in the present law to all the residents of this Royal City, as is customary.

Given at Constantinople, on the seventeenth of the *Kalends* of October, during the first year of the reign of Our Lord the Emperor Justinian.

TITLE XXIV.

EDICT CONCERNING THOSE WHO COMMIT THE CRIME AGAINST NATURE.

ONE HUNDRED AND FORTY-FIRST NEW CONSTITUTION.

The Emperor Justinian to the People of Constantinople.

PREFACE.

As we are always in need of the benevolence and kindness of God, and above all, at this time, when we have provoked Him to anger in many ways, on account of the multitude of our sins, and although He threatens us with the penalties we deserve, He, nevertheless, manifests his clemency to us, and has deferred the exercise of his wrath to some future time, expecting that we will manifest repentance, for He is more desirous for Our conversion and salvation than for Our death.

Wherefore it would not be just for us to treat with contempt His abounding kindness, His tolerance, and His infinite patience, lest, avoiding repentance, our hearts may become hardened, and We may accumulate His anger upon our heads, on the day of His vengeance. But while we attempt to avoid committing wicked actions, and cherishing improper desires, there are persons who are guilty of abominable offences, which are deservedly detested by God. We have reference to the corruption of males, a crime which some persons have the sacrilegious audacity to perpetrate.

CHAPTER I.

We know, from the study of the Holy Scriptures, that God, in order to punish such persons, visited His wrath upon those who formerly inhabited the City of Sodom, and caused its territory to be consumed, even to this day, by an inextinguishable fire; and in this manner He informs Us that We should abhor conduct of this description, which is contrary to the laws of nature. We also know what the Divine Apostle said concerning it, and also what provisions Our laws have promulgated with reference thereto. Wherefore it is proper that all those who are influenced by the fear of God should abstain from such impious and criminal acts which even are not committed by beasts, and that those who have not yet perpetrated them may hereafter be deterred from doing so. Hence those who are given to this species of vice must hereafter not only refrain from sinning, but also show that they are penitent; prostrate

themselves before God; confess their faults in the presence of the Most Blessed Patriarch, and (as has already been stated) they will reap the fruits of their repentance; so that the Almighty in his indulgence, and on account of the wealth of His compassion, may render Us worthy of His kindness; that We may all give thanks for the salvation of those who are penitent; and that the magistrates, by prosecuting the guilty, may conciliate God who is deservedly incensed against Us. And, indeed, We consciously and wisely beseech to bring to repentance those who defile themselves with filthy practices of this kind, so that there will no longer be occasion for Us to prosecute such offences. We notify all persons who may hereafter be guilty of this crime that if they do not cease to sin, and do not confess their guilt to the Most Holy Patriarch or provide for their own salvation, and propitiate God on the holy festival days, they will render themselves liable to terrible chastisement, and will not, in the future, be deserving of pardon. We shall not neglect to adopt severe measures against such as do not manifest their repentance on the most holy festival days, and who persist in their wickedness, for if We should show any negligence in this respect, We will bring down the wrath of God upon Us, and by closing Our eyes will become accomplices in a crime sufficiently atrocious to arouse the anger of Heaven against all persons.

This Edict shall be communicated to the citizens of Constantinople.

Given at Constantinople, on the *Ides* of March, during the thirty-second year of the reign of Our Lord the Emperor Justinian, and the eighteenth year after the Consulate of Basil.

TITLE XXV.

CONCERNING THOSE WHO MAKE EUNUCHS.

ONE HUNDRED AND FORTY-SECOND NEW CONSTITUTION.

The Emperor Justinian to Marthana.

PREFACE.

The punishment prescribed by Our predecessors against those who dare to make eunuchs are sufficiently clear to everyone. Nevertheless, certain persons, not having their own salvation in view, have recently ventured to commit this infamous offence, on account of which certain of them have undergone the penalties which they deserve, and others, after having been punished, have been sent into exile. Still, however, because these impious acts have not ceased, but, on the other hand, have multiplied, and out of the great number of those upon whom this operation is performed only a very few survive, so that certain of them have stated in Our presence that of ninety who have been castrated, hardly three have escaped with their lives; what person in authority could have so little regard for his salvation as to treat

a matter of this kind with contempt and permit it to go unpunished? For if Our laws punish those who strike others with a sword, how can We close Our eyes, and let murders of this kind, which are both offences against God and the law, be committed with impunity? Hence We have considered it very necessary, by means of this law, to relentlessly prosecute persons who are guilty of such a crime.

CHAPTER I.

Therefore We decree that any persons who, in any part of Our Empire whatsoever, have presumed, or may hereafter presume to castrate anyone, or themselves submit to the operation which they have performed upon others, and they survive, shall have their property confiscated to the Treasury on the responsibility of him who, at the time, discharges the duties of the magistracy of Your Glory, and that they themselves shall be banished to the Island of Gypsum, there to pass the remainder of their lives.

Where, however, women are guilty of this offence, We order that they shall be punished, and their property be confiscated to the Treasury, on the responsibility of the magistrate whom We have just mentioned, and be sent into exile, and those who expected or do now expect to profit by the commission of such an atrocious act shall both be subjected to punishment, and lose

their property.

We decree that persons of either sex who confine themselves to giving orders to make eunuchs, or who furnish individuals to be operated upon in this way, or who even provide houses, or any other place whatsoever for this purpose shall, as participants in the same crime, suffer the same punishment.

CHAPTER II.

As persons became free in ancient times when they were castrated, We order that those who have undergone such an operation (no matter by whom it may have been performed) in Our Empire, from the date of the tenth indiction of the present month, shall be free, and cannot be reduced to slavery under any circumstances, nor by virtue of any agreement; and any public or private instrument which already has been, or may hereafter be executed with reference to a matter of this kind, whether it was fraudulent or not, shall be void. No investigation shall be made of the status of castrated persons, and We order that all those who hereafter take any part in the execution of contracts relating to castration shall undergo the penalty which We have mentioned.

If a slave should happen to be castrated on account of some illness, We order that he shall obtain his freedom, for the law presumes that those are free in the beginning, when attacked by the disease for which this remedy is employed. Therefore We direct that castrated persons who have been made such in Our Empire (no matter in whose house this may have been done) shall be considered as emancipated from the date We have just fixed, shall become free, and shall never again be reduced to servitude.

If, after the publication of the present law, anyone should dare to retain castrated persons in his house, We permit the latter who, under this Constitution, are already entitled to their liberty, if they are in this city, to apply to the Emperor, to the Most Holy Archbishop, and to the other high officials of Our Most Glorious Empire; and if they are in the provinces, to the most glorious bishops of their dioceses, and to the Governor; and they will, through the efforts of all Our magistrates, and at the risk of the officers subject to their authority be entitled to retain their freedom (both at Constantinople and in any other portion of Our dominions) for We do not intend to allow so many murders to be perpetrated under Our Government by means of castration. And if the barbarians have heard and obeyed Our orders on this subject, how, after so many enactments by Our predecessors, can We allow the crime which We prohibit again to be committed and go unpunished in Our Empire?

EPILOGUE.

Therefore Your Glory will cause the matters which it has pleased Us to incorporate in this general Imperial Law to be published and observed, not only here but also in the provinces.

Given on the twenty-fifth of the *Kalends* of December, during the reign of Our Lord Justinian, ever Augustus, and the Consulate of Basil.

TITLE XXVI.

CONCERNING A WOMAN WHO SUFFERS HERSELF TO BE CARRIED AWAY.

ONE HUNDRED AND FORTY-THIRD NEW CONSTITUTION.

The Emperor Justinian, Augustus, to Areobindus, Most Glorious Praetorian Prefect, Ex-Prefect of Constantinople and Ex-General of the Army.

PREFACE.

No one doubts that the interpretation of the law belongs solely to the sovereign, since he has the right to promulgate it. We remember to have formerly enacted a constitution having reference to the rape of betrothed and married women, unmarried females, and widows; and of having subjected to capital punishment not only their ravishers, but also the accomplices of the latter, and all other persons who were known to have assisted them at the time when the

act was committed. We have also, by the same law, permitted the ascendants of the women in question, as well as their other blood-relatives and their guardians and curators, to prosecute a rape; and We have especially punished the violation of women already married or betrothed, because, under these circumstances, both rape and adultery have been perpetrated. One of the penalties which We prescribed was the right to claim the property of the ravisher, as well as that of his accomplices, for the benefit of the woman concerned; and the payment to the husband, out of the estate of the ravisher, of an amount equal to the dowry brought him by his wife. We have especially added that no woman nor virgin should be permitted to marry her ravisher, but if her parents should desire to marry her to anyone (her ravisher excepted), We have already forbidden him to marry her at any time; and in conclusion We have decreed that if her parents should consent to a marriage of this kind, they shall be deported.

We are, however, surprised that certain authorities have attempted to hold that if the woman who was violated, either with her consent or without it, should marry her ravisher against the tenor of Our Constitution, she would be entitled to his estate, either under the terms of the law, or by will, if one had been made. Those who presume to entertain such opinions have not been able to understand the meaning of the aforesaid law; for if We have prohibited matrimony of this kind, even when the woman consented to it, and, on this account, have subjected her parents to the penalty of deportation where they had consented to the union, why should We honor women who have suffered violation, and choose to marry their ravishers, by giving them rewards? Therefore, rejecting this unfounded doubt, We have deemed it proper to interpret the former law by the present one, and, with this end in view, We decree that if the ravished woman, no matter what her status or age may be, should desire to contract a marriage with her ravisher, and especially without the consent of her parents, she shall not be entitled to the estate of her ravisher, under any circumstances, either through the indulgence of the law, or by testamentary provision; but his property, as well as that of his accomplices, which Our law places at the disposal of the ravished woman, shall, from the date of the perpetration of the crime, be transferred to his father and mother, whether both, or only one of them be living, provided they are not proved to have given their express consent to the marriage; and the woman who did not hesitate to defile herself by marrying her ravisher shall have no claim to his estate, which shall, as aforesaid, go to her father and mother; but where the parents of the woman are already dead, or gave their consent to an act of this kind, the property of the ravisher, as well as that of his accomplices, shall be confiscated.

We order that the present interpretation shall apply, not only to all future cases, but also to those which have passed; just as if this Our law had, in the beginning, with its construction, been communicated to you, Most Glorious, Illustrious, and Beloved Prefect.

(1) Therefore Your Highness will order what We have decreed by this Our law to be observed and carried into effect.

TITLE XXVII.

CONCERNING THE SAMARITANS.

ONE HUNDRED AND FORTY-FOURTH NEW CONSTITUTION.

The Emperor Justinian to Diomedes, Praetorian Prefect.

PREFACE.

We are constantly occupied, as the Most Pious Emperor, Our Father was, in attempts to turn the Samaritans from their heresy and their unreasonable errors to lead them in a better path, and to cure their souls of the diseases with which they are afflicted; but, in most instances, We have not succeeded in accomplishing what We have long attempted. For several of them are so devoted to their insane beliefs that, after having become worthy of being baptized, they have again accepted the evil doctrines which they once renounced; and have induced others to embrace the same heresy with equal ardor. Therefore, it appears to Us to be advisable to amend the ancient law enacted against the Samaritans by Our Father.

CHAPTER I.

Hence, We prohibit them from becoming heirs, either by will or in case of intestacy, from receiving legacies, or from acquiring anything by way of donation. Neither the Samaritans, nor heretics in general, nor those who pretend to profess the true faith of Christians, without actually believing in it, and observing its rules, shall be entitled to any succession to which they may be called *ab intestato*; nor can they execute a will, make a donation, or bequeath a legacy; unless those who are entitled to receive them have embraced the true religion, and have manifested their faith by their works; for where none of them are persons of this kind, We order that, after their death, their property shall belong to the Imperial Treasury. Wherefore the rule which Our Father established through indulgence for the Samaritans, and which, having the force of law, gave them the privilege of accepting and transmitting estates, as well as the right to receive and bequeath legacies, shall hereafter be void and have no force whatsoever.

If those who adopt the insane belief of the Samaritans should show themselves to be unworthy of the benefit of this constitution, they can blame no one but themselves, since they have rejected the benevolence of God and Our Lord and Saviour Jesus Christ; and they shall forfeit the privileges formerly granted to them by Imperial Majesty, for the purpose of inducing them to entertain a better frame of mind, and to prevent their perpetual adherence to this perverse doctrine.

CHAPTER II.

We except from the operation of the present law those who acquiesce in the dogmas of the Samaritans, not through any favor to them, but from the fact that they cultivate certain tracts of land whose revenues and tributes are paid into the Public Treasury, and for the reason that, on account of their rusticity, they have been led astray in this respect. For We permit them, even though they have embraced the Samaritan heresy, to appoint as heirs or legatees both their ascendants, descendants, and collateral relatives; if they should continue to cultivate said lands in such a way that the owners thereof can obtain a better income, and may the more readily be able to pay the taxes due to the Treasury. And for the same reason, We enable them to succeed to the inheritance of one another, in case of intestacy; and We also desire that when a tenant expires without leaving any heirs, the owner of the land on which he died shall be entitled to his property, and take the place of the Treasury in this respect, provided he pays the public taxes instead of the deceased.

Moreover, We do not permit a Samaritan to hold office, or discharge the duties of civil administration, to bring suit in court, to be admitted to the Association of the Rhetoricians, or to impart instruction to young persons. And if any Samaritan, after having proved himself worthy to receive baptism, should return to his former error and be detected in observing the Sabbath, or in doing anything else which proves that he was only baptized through simulated conversion, We order that he shall be proscribed, and sentenced to exile for life. We subject to the same penalty those persons who, in opposition to the Christian faith, have impiously given him protection. It seems to Us, however, very proper that those who solicit the sacred rite of baptism should not hastily be permitted to receive it, and We desire them to be examined and the advice usually given at the time of initiation to be communicated to them.

We also order that those who can, in any way, be influenced by good doctrine shall, in the first place, be instructed in the faith for two years, and become familiar with the Holy Scriptures; and that they then be presented with the sacred baptism, the symbol of redemption, and obtain the fruit of this sacrament, after a sufficiently long repentance.

This provision, however, shall not be applicable to the children of Samaritans who, on account of their age, are unable to understand the doctrine of the Church, for We allow them to be honored with baptism without this requirement. No Samaritan shall hold a Christian as a slave, and if he should buy one, he must be restored to freedom. When the slave of a Samaritan adopts the false doctrine of his master, he shall be permitted to obtain Roman

liberty immediately, if he embraces the Christian faith.

EPILOGUE.

Therefore Your Glory will cause what We have been pleased to enact by the present law to be published in the usual manner, and carried into effect.

TITLE XXVIII.

NEITHER THE DUKE NOR THE BIOCOLYTE OF LYDIA AND LYCAONIA SHALL
HEREAFTER BE PERMITTED TO INTERFERE IN THE AFFAIRS OF EITHER THE
PROVINCES OF BOTH PHRYGIAS AND PISIDIA.

ONE HUNDRED AND FORTY-FIFTH NEW CONSTITUTION.

The Same Emperor to Ariobindus, Most Glorious Praetorian Prefect.

PREFACE.

We, having provided a suitable remedy for such abuses as are of frequent occurrence, now direct Our attention to others which We intend to correct by the present law. We have been informed that in Phrygia and Pisidia, many popular tumults, as well as attacks of robbers, take place; and that the reason for these disorders is that the civil administration has been abolished there, and that We have placed over these two provinces, as well as those of Lycaonia and Lydia, a military commander styled a duke, or biocolyte. The inhabitants of the two Phrygias and Pisidia now ask Us that the crimes which have, for a long time, been committed in their country, shall be suppressed; stating that robberies are perpetrated there with impunity; that their provinces are no longer sufficient to support the officials; that those appointed by Us are not competent, and their subordinates are constantly running over the provinces arresting persons, and committing damage; that the country is so afflicted with military disturbances that it is becoming uninhabitable; that the higher civil judges, who are appointed by the commander-in-chief to dispense justice to the people, instead of maintaining peace among them, make use of the guards attached to their office to arrest innocent persons and oppress them.

CHAPTER I.

We, being moved with sympathy for these unfortunate people, do hereby enact the following law, by which We decree that the jurisdiction of the said provinces (We refer to Salutory Phrygia and Pacatian Phrygia, and Pisidia) shall be withdrawn from the magistracy to which they were formerly subject, together with the Lyca-onians and Lydians; and, from this day, We forbid the judges having jurisdiction of Lycaonia and Pisidia to interfere with the government of the two Phrygias and Pisidia, or to send there any of their officers or any other persons under their orders, for the purpose of making arrests. And We also forbid the inhabitants of said provinces, under the penalty of a fine of thirty pounds of gold, to have recourse to the Biocolyte of Lycaonia and Pisidia, or bring either civil or criminal actions in which they themselves are interested before him, and We also forbid this magistrate to enter the two Phrygias and Pisidia, to issue any orders to those who reside there, or to claim jurisdiction over the affairs of the said provinces; for We order him to be content with Lycaonia and Pisidia, and to govern them alone, just as if, from the beginning, We had restricted his jurisdiction to these two provinces, and as if We had never given him any authority over the two Phrygias or Pisidia.

In this manner We shall deliver the said provinces from all the evils with which they have been oppressed up to this time; civil magistrates will dispose of both civil and criminal matters, and they are hereby notified that if any theft, robbery, or unlawful removal of property of any kind should occur there, and they do not punish it, or do not recover what was stolen, they themselves shall be required to make good the loss, not only while they remained in office but after they have been removed.

If anyone invested with the military command of Lycaonia and Lydia should himself, hereafter, attempt to go into the provinces of Pisidia and Phrygia, or to send any of his subordinates there, We hereby authorize the bishops of the towns to forbid their entrance, and to drive away the officers which the biocolyte despatched, as the present law prohibits this magistrate and the officers subject to his authority, from entering the said provinces under the penalty of thirty pounds of gold, and it also renders them liable to lose their places and their estates.

EPILOGUE.

Therefore Your Glory, having been informed of the matters contained in this Imperial Law, will, in consequence, issue decrees, and address edicts and orders to the Governors of provinces and the bishops of cities, in order that they may publish them therein, and communicate them to all Our subjects.

Given at Constantinople, on the sixth of the *Ides* of February, during the fifteenth year of the reign of Our Lord the Emperor Justinian, and the twelfth after the Consulate of Basil.

TITLE XXIX.

HEBREWS SHALL BE PERMITTED TO READ THE SACRED SCRIPTURES
ACCORDING TO THEIR LAW IN LATIN, GREEK, OR ANY OTHER LANGUAGE.
PERSONS WHO DO NOT BELIEVE IN THE LAST JUDGMENT OR THE
RESURRECTION, AND WHO SAY THAT THE ANGELS ARE CREATURES OF GOD,
SHALL BE EXPELLED FROM THEIR COUNTRY.

ONE HUNDRED AND FORTY-SIXTH NEW CONSTITUTION.

The Same Emperor to Ariobindus, Praetorian Prefect.

PREFACE.

It is necessary for the Hebrews who understand the Sacred Books not to adhere strictly to their literal meaning, but to take into consideration the prophesies contained therein, which announce the coming of Jesus Christ, the Saviour of the human race. As, however, they, by adopting incorrect interpretations of the Scriptures, have, up to this time, wandered from the true faith, and adduce arguments in their favor, We shall not permit this controversy to continue any longer without being settled. For the reason that they have frequently stated that, being only acquainted with the Hebrew language, they wish to make use of it in the Sacred Books but have not deemed it advisable to translate them into Greek, and, on this account, they have, for a long time, been greatly embarrassed, We have decided that it will be better to permit them to read them, not only in Greek, but in any other language which will make them better understood by the hearers, because of its being more familiar to them.

CHAPTER I.

Therefore We order that the Hebrews (no matter in what Hebrew district they may be) shall be permitted to read the Sacred Books in Greek, or in the language of the country, before the persons assembled in their synagogues (that is to say, Latin), or in any other language — provided that it is not a different one from that spoken in the place—in order that the reading of the said Books may be understood by all who are present, and that the latter may continue to live in accordance with their precepts.

We do not, however, allow the Hebrew translators to corrupt the text, and conceal their fraud because of the ignorance of many persons. Those who read the Sacred Writings in Greek shall make use of the Septuagint, which is considered the most correct, and the best; as the authors, although separated from one another and residing in different localities, nevertheless, all agreed in the version which they made. And, indeed, who would not be surprised to learn that these men, having lived a long time before the beneficent appearance of Our Lord Jesus Christ, predicted the events mentioned in the Sacred Books, just as if they had been witnesses of them, and had been enlightened by the grace of prophesy?

Without intending to exclude the other versions, We also permit the Hebrews to make use of that of Aquilea, even though it is foreign, and does not in some points agree with the Septuagint. We, however, absolutely forbid the use of the one which the Hebrews call the second edition, for it does not form a part of the Sacred Books, it was not handed down to Us by the prophets, and is an invention devised by men who only speak of earthly things, and who had in them nothing that was divine.

The Hebrews, then, shall read the sacred words; they must reject the versions that have not been approved, and not discard those which are genuine to make use of foreign translations, transmitted orally, and devised for the perdition of weak persons. But, in order that those who translate Greek or other languages may not, in any way, be inconvenienced on account of the power which We grant them, and which no one whosoever shall prevent them from exercising, We forbid those whom the Hebrews call great *archipheretitas*, or priests or masters, to prevent *perinoei* or *anathematismi* from translating the Sacred Writings, unless the former should desire to undergo corporeal penalties, and, in addition, lose their property, for We order and desire what is best and most pleasing to God.

CHAPTER II.

If, indeed, any persons should presume to have atheistic writings in their possession, or should deny the Resurrection, the Last Judgment, or the birth of God, or should say that angels are creatures, We order that they shall be expelled from every part of the Empire, that they shall be deprived of the power of blasphemy, and that the punishment of death shall remove such false doctrines from the Jewish Nation which does not acknowledge the true God.

CHAPTER III.

We, however, beseech all who hear the Sacred Books in either Greek or Hebrew to make allowance for the evil disposition of the translators, and not only consider the literal sense of the terms, but also adopt the Divine meaning; so that those who sometimes accept errors, and sin in matters which are most important (We mean with reference to hope in God) may be instructed in the true Faith, and live in peace. For this reason, We permit the Hebrews to make use of all languages for the reading of the Sacred Books, so that in the future they may become familiar with the precepts contained therein, and make more rapid progress in better things.

EPILOGUE.

Therefore Your Glory, as well as the persons attached to Your court, will see that the matters which it has pleased Us to decree by the present law are observed. The magistrate appointed by you will cause the said law to be executed, and will not permit the Hebrews to violate any of its provisions; he will inflict corporeal penalties upon those who attempt to violate it, and will send them into exile, and deprive them of their property, in order to prevent them from audaciously rising up against God and the Empire; and he must also despatch orders to the Governors of provinces, directing them to execute Our law, and the said Governors, after having had it communicated to them, shall themselves publish it in every city; and they are hereby notified that it must be observed by those who do not desire to suffer the effects of Our indignation.

Given at Constantinople, on the sixth of the *Ides* of February, during the twenty-fifth year of the reign of Our Lord the Emperor Justinian, and the twelfth after the Consulate of Basil.

TITLE XXX.

CONCERNING THE REMISSION OF BALANCES DUE ON PUBLIC TAXES, AND THE ABOLITION OF CERTAIN ACTIONS.

ONE HUNDRED AND FORTY-SEVENTH NEW CONSTITUTION.

The Same Emperor to Ariobindus, Praetorian Prefect.

PREFACE.

Although We are at present obliged to incur expenses which are in excess of the resources of the Empire, still, through the goodness of God, We are enabled to obtain what is necessary by means of tributes imposed upon barbarians, as We provide for everything, and do not fail to display indulgence to Our subjects on all occasions. How often do We release from unpaid tribute those persons who, being in arrears, have presented petitions to Us, and have made Us acquainted with their wretchedness? Not one of Our subjects shall withdraw from Our presence without having obtained his wish, and We can even refrain from saying this, as the Rescripts granted to those who have received such benefits are sufficient proof of the fact. But it would be contemptible and unworthy of Our government to grant favors only to those persons who solicit them, and not to extend Our indulgence to the country as well as to the towns, or to the provinces alone, without including all Our subjects.

CHAPTER I.

Therefore We now come to the bestowal of Our present favors, and decree that all Our subjects shall be released from taxes for the entire cycle of the past indiction, and for seven years of the cycle of the present one, so that the indulgence which We extend to them shall continue for twenty-two years, during which time no unpaid taxes can be collected. We adopt this rule whether the said taxes are payable in gold, silver, wheat, or any other articles in kind, and whether they should be contributed to the Imperial Treasury by Our subjects, or the Prefecture of Illyria, either by way of revenue, or for any other purpose. We extend Our liberality to all Our subjects, and forbid anyone charged with the levy of tribute, or sent by magistrates to collect taxes in arrears, as well as all public officials or bearers of orders or commands, to subject them to any payment for time which has elapsed.

We also wish that any of Our subjects who, during the time which We have just mentioned, may have failed to obtain the supplies of grain which are gratuitously furnished by the government, shall not be entitled to claim them. On the other hand, We exclude from Our liberality, as one stricken with a pestilence, any person who may venture to make such a demand, and We abolish for the future all right of recovery of the same, not only against Our subjects, but also against the government. As the property which forms part of Our private domain, or Imperial patrimony, is entitled to the benefit of the present indulgence, it is clear that tribute due for time which has expired shall not be demanded of tenants, lessees, or emphyteutas, either by the collectors of public taxes or by the Palatines themselves.

What We decree, however, is only applicable to tributes which are already due, and have not been paid by Our subjects; for if they have been paid, and are already in the hands of decurions, receivers, substitutes, or the officials in the provinces charged with keeping accounts, they shall be held and preserved for the public; for it would be absurd for what has been given by Our subjects instead of being collected by the Treasury to enure to the benefit of others.

CHAPTER II.

We except from the provisions of this law all that which has been acknowledged as due, or for the payment of which security has been furnished the government by accountants, cashiers, or secretaries; for We do not include such sums among those whose collection is released by Our indulgence, because the Treasury considers them as part of its assets, and has, to a certain extent, already collected them. We also except the supplies which are owing to soldiers and allies, because they have no relation to Our subjects, and it is permitted to recover them from the receivers, to prevent their appropriation by them; and, for a much better reason, We also except civil sums, and such as are set apart for public works and are now due, not only in this Most Fortunate City, but in all the other provinces; because it is inequitable that, when We disburse so much money for the maintenance of the government, officials alone should profit unjustly, prevent the provinces from enjoying Our liberality, and deprive them of what they are entitled to for fortifications, or that the cities should not obtain the sums destined for their

adornment.

Although We detest persons who are guilty of injustice, We cannot avoid being humane, so far as they are concerned. Therefore We order that the exception which We made in certain chapters shall become operative for all time before the first indiction, that is to say, for sixteen years. We also release all Our subjects in general, and without distinction, from the payment of any taxes which remain due, and We grant them in this respect perfect security. In bestowing this indulgence upon them, We have considered that We are only showing reverence to Almighty God, who has inspired Us to do so; and all Our subjects should, in the name of the Empire, manifest their gratitude by their conduct.

EPILOGUE.

Your Excellency will be careful to see that what it has pleased Us to promulgate by this Imperial Law is observed and carried into effect.

Given at Constantinople, on the day before the *Kalends*, during the twenty-eighth year of the reign of Our Lord the Emperor Justinian, and the third after the Consulate of Basil.

TITLE XXXI.

CONCERNING THE RELEASE FROM THE PAYMENT OF PUBLIC TAXES IN ARREARS.

ONE HUNDRED AND FORTY-EIGHTH NEW CONSTITUTION.

Antonius Contius, Translator.

PREFACE.

The foresight which We have displayed in the affairs of the Empire from the beginning of Our reign, and the solicitude which We entertain for the government which God has entrusted to Us, is manifest to all Our subjects. For, having found the public oppressed with many debts, and reduced to the direst penury, We Ourselves have assumed much indebtedness; have released the State from all kinds of charges; and have quieted the army, which was on the verge of revolt because of lack of subsistence. We have repelled, as far as possible, the insults and incursions of the barbarians, which threatened the existence of the Empire, and, in short, what have We not done up to this time for the relief of Our subjects? Now We desire, by means of this law, to make them participate in still greater benefits, by releasing them from all the taxes which they owe.

CHAPTER I.

Therefore, extending this act of Our benevolence to all Our subjects, We release them from everything which they owe to the government for the time that has elapsed since the eighth indiction to that of the present cycle; and We desire that, up to this date, no taxes shall be demanded of them, whether the said taxes are payable to the general or private office of Your Glory, to the magistracies of the Imperial Praetors of Illyria, to that of the Most Glorious Justinianian Prefect of the soldiers stationed in Mysia and Scythia, to the Imperial Treasury, to Our private Treasury, or to Our Imperial Patrimony, or, finally, to the Most Magnificent Superintendent of the Households. We release all our subjects from the taxes which they owe either in gold, silver, or any other commodities, which have been incurred since the aforesaid indiction, and such taxes shall not be collected from tenants, lessees, emphyteutas, or even the possessors of property.

CHAPTER II.

We except from the exercise of Our liberality all sums of money due to soldiers and allies, for the reason that Our subjects will not profit by this, but the officials alone, who are charged with the distribution of the public money, will do so. Such property also will be exacted which, publicly subject to the order of soldiers or allies, and consisting of gold, silver, or other articles, has already been delivered by Our subjects to receivers, collectors, or their

representatives, for these things shall be transferred to the magistracies entitled to them.

Nor do We accord the benefits of the present law to other persons who, having obtained from Our subjects any sums in gold, or other property, since the eighth indiction, and have not paid them into the Public Treasury (when this should have been done); and We desire that the payment of the same shall be made, for if, induced by humanity, We deem it advisable to release Our subjects from liability for the taxes which they owe, We do not grant this favor to persons who, having received the public money, desire to defraud the Treasury, or those who are entitled to it out of the same.

But if, with a view to anticipating Our munificence displayed in the remission of taxes, any receivers have wrongfully exacted of Our subjects either bonds or sureties, or have changed their public obligations into private ones, or have planned or executed some other fraudulent act of this description, they shall not derive any advantage from it, and must return the bonds to those from whom they received them. All persons should give thanks to God and to Us, some of them because, owing taxes, they have deserved Our indulgence; and others for the reason that while they owe nothing more of this kind, they have been relieved of all care, and will no longer (as frequently happens) be harassed by receivers, on account of taxes previously due; and will no longer be compelled to pay on property which has been lost through their bad faith; but Our subjects shall enjoy perfect security up to the beginning of the eighth indiction, and Our present liberality shall be extended to them all.

EPILOGUE.

Your Glory will, by means of edicts published in this Royal City, communicate to all persons the provisions which it has pleased Us to include in this pragmatic law.

Given at Constantfnople, during the nineteenth year of the reign of Our Lord the Emperor Justinian, and the fourth after the Consulate of Basil.

TITLE XXXII.

BISHOPS, ALONG WITH THE NATIVES AND RESIDENTS OF PROVINCES, SHALL NOTIFY THE EMPEROR WHOM THEY DESIRE TO HAVE AS GOVERNORS. THE SAID GOVERNORS SHALL BE GRATUITOUSLY APPOINTED, BUT WILL BE REQUIRED TO FURNISH A BOND TO THE TREASURY; AND WHERE THE BISHOPS AND INHABITANTS OF PROVINCES NEGLECT TO ASK FOR A GOVERNOR, THEY CANNOT COMPLAIN OF HIM WHO IS SENT TO THEM IN THIS CAPACITY, NO MATTER WHAT HE MAY DO WITH REFERENCE TO THE COLLECTION OF PUBLIC TAXES.

ONE HUNDRED AND FORTY-NINTH NEW CONSTITUTION.

PREFACE.

While We are conducting the affairs of the government entrusted to Us by God, We are exerting Ourselves to the end that Our subjects may, under all circumstances, enjoy the benefit of justice; and hence We have proposed to Ourselves, from the beginning, that whatever may have previously been incomplete or diffuse, shall be amended and perfected by Us. Therefore, being extremely desirous to take measures by which both the Treasury and Our subjects may remain uninjured, and free from loss, We have decided that We could readily accomplish this if We caused the Governors of provinces, who have received their offices without compensation, to furnish proper security to the Treasury that they will perform their public duties properly and in accordance with law, and that they will abstain from all injustice, gain, and every base and illegal act.

CHAPTER I.

Therefore, to prevent foreigners from participating in the administration of provinces and thereby committing injustice, and to prevent Ourselves from being constantly annoyed by complaints of them, We direct the most holy bishops and principal inhabitants of each

province to unite in sending a petition to Us, mentioning persons who they think are qualified to govern their provinces. We shall confer upon the latter the insignia of their office gratuitously; they shall be charged with the preparation of the public and fiscal lists; and must promise to exact nothing contrary to law, or commit any violence against Our subjects, and furnish sureties for this purpose; and they must also agree to be content with their employments; to diligently supervise the levies of taxes; to treat with gentleness and kindness those taxpayers who are prompt in paying what they owe, but to display severity towards such as are wicked and refractory, and not use their offices for the purpose of pecuniary profit. For, having their eyes constantly fixed upon the laws, they must dispense equity and justice to all those who demand it, and, instead of impoverishing litigants by expenses and protracted delays, they must dispose of their cases quickly; they must prosecute those who commit crime, and inflict upon them the penalties prescribed by the laws, and, finally, they must, by all means, be upright.

CHAPTER II.

These provisions not only relate to Governors; they also apply to the assessors and officials of every magistrate, no matter who he may be. For if any of them should act negligently in the collection of public taxes, or should cause Our subjects loss, at the same time treating them with insolence, such an official shall be deprived of his property and capitally punished. For, God willing, Our only aim is that the provinces may be governed by good laws, and that persons may reside there in safety, and enjoy the blessings of justice as dispensed by the Governors, and that the public taxes may be collected without any controversy; for when this is not done, it will be impossible for the government to be preserved. It is because of the pay received by them that soldiers are enabled to resist the enemy, and defend citizens from the invasions and cruelty of the barbarians, and protect fields and towns from the attacks of robbers and others living a disorderly life. It is also by means of taxation that the other cohorts receive what is allotted to them, that walls are repaired, cities fortified, public baths warmed, and, finally, the theatres intended for the diversion of Our subjects supported. Thus the taxes paid by Our subjects are used and expended, partly for themselves, and partly indirectly on their account, for We do not derive any benefit from them, and are only charged with their administration; still, We are fully rewarded for Our trouble by the infinite blessings which Our Lord and Saviour Jesus Christ has bestowed upon Us through the greatness of his clemency.

CHAPTER III.

Therefore, through communicating these provisions, as it were by means of a public crier, to all the people of the provinces, and thus affording them a proof of Our benevolence and generosity, using every precaution to prevent injury being sustained by Our subjects, We render God propitious and favorable to Our designs. For if Our subjects, taking advantage of the privilege which We grant them with reference to the selection of their Governors, should entertain erroneous opinions, and their expectations not be realized, they can blame no one but themselves. For when they postpone choosing their Governors and presenting their names to Us, they cannot make any complaint against those who are sent into the provinces, if they should not act justly in the collection of public taxes; and We forbid them to file any charges against them on this ground. Those who have obtained from Us the privilege of selecting their Governors—who, having obtained their offices gratuitously are charged with the collection of public taxes—shall not be treated by them with injustice, and whenever they do not exercise proper discrimination in making their choice, they shall, under no circumstances, be given an opportunity for reconsideration, or inform Us of their annoyances, or prove them.

Moreover, none of Our subjects whosoever, whether he be illustrious or obscure, and no religious establishment, church, infirmary for the poor, or monastery, shall be permitted, under any pretext, to postpone the payment of taxes which are due. Nor do We release from responsibility those who administer the affairs of the government, or receivers of taxes, or the officials charged with the collection of public tribute; for We prefer the common welfare to

the private advantage of those who basely desire to defraud the Treasury.

EPILOGUE.

In order that the excellent regulations which We have prescribed may become known to all persons, Your Excellency will publish them in this Fortunate City and in the provinces, as well as in the most frequented place in each town, in order that no one may remain in ignorance of the benefits which the law enacted by Us confers upon the Treasury and Our subjects.

Given at Constantinople, on the fifteenth of the *Kalends* of February, during the eighteenth year of the reign of Our Lord the Emperor Justinian, and the third year after his Consulate.

TITLE XXXIII.

CONCERNING A WOMAN WHO MARRIES HER RAVISHER.

ONE HUNDRED AND FIFTIETH NEW CONSTITUTION.

The present constitution confirms the penalties prescribed by the former one, which sets forth that a woman who allowed herself to be carried away cannot marry her ravisher. If, however, she should marry him, she shall not succeed to his estate, no matter what may be her religion or her age. If, on the other hand, she should not marry him, she will be entitled to all his property. If the father of the girl who permitted herself to be carried off consents for her to marry her ravisher, he shall be sent into exile. If he should die without having given his consent, the property of the ravisher shall be confiscated, if the girl who was ravished should contract a prohibited marriage with him.

TITLE XXXIV.

NO DECURION OR COHORTAL SHALL BE BROUGHT INTO COURT OR COMPELLED TO OBEY A JUDICIAL DECISION WITHOUT AN ORDER OF THE EMPEROR COMMUNICATED TO THE PREFECTS.

ONE HUNDRED AND FIFTY-FIRST NEW CONSTITUTION.

The Emperor Justinian to Ariobindus, Praetorian Prefect.

PREFACE.

Your Glory has stated to Us in a letter that it is customary to bring decurions or the attendants of officials before different tribunals of this city, or in the other provinces, when they are engaged in litigation, either with the public or with private individuals, and you have added that this is frequently sanctioned by Our Imperial orders, and have requested it to be prohibited by a pragmatic sanction that any decurion or attendant officer should be taken from one province to another, or brought into this Royal City, to defend himself in court; or, where this is authorized by an Imperial order, that it should first be presented to the tribunal of Your Excellency, and then carried into effect by means of suitable decrees.

CHAPTER I.

Therefore, as We detest every production in court and appearance for judgment, unless necessity requires recourse to be had to this

proceeding, We forbid all Our magistrates, with the exception of Your Highness, to notify a cohortal or a decurion to appear and de-lend himself in this city, unless an Imperial order expressly authorizing him to do so is presented; and then Your Highness shall do what is proper under the circumstances, and not permit a decurion or an executive officer to be brought into court, except by virtue of a decree issued by yourself; for in justice to the public this must be done, to prevent such officials, when they are removed from the place where they have charge of public money, from taking advantage of the opportunity to commit some injury against the government.

EPILOGUE.

Your Excellency will be careful to see that the provisions which it has pleased Us to promulgate by the present pragmatic law are executed.

TITLE XXXV.

IMPERIAL ORDERS RELATING TO PUBLIC MATTERS WILL BE OF NO FORCE OR EFFECT, UNLESS THEY HAVE PREVIOUSLY BEEN COMMUNICATED TO THE MOST GLORIOUS PRAETORIAN PREFECT, FOR THEN ONLY CAN THEY BE EXECUTED.

ONE HUNDRED AND FIFTY-SECOND NEW CONSTITUTION.

The Emperor Justinian to John, Most Glorious Praetorian Prefect.

PREFACE.

We, relying upon Divine assistance and devoting Our attention to the proper administration of the government confided to Us by Our Lord God, do hereby decree that no order, issued with reference to public matters, to a duke, the Augustal Prefect, or to the Governors of provinces, shall be valid, if it has not previously been communicated to the tribunal of Your Excellency; and all such orders as are not recorded shall have no force whatever. For it would be absurd for any Imperial decree to be despatched to the provinces and executed, without having previously been presented to Your Excellency.

CHAPTER I.

Therefore, if an order has been issued to the detriment of the Empire, We order that it shall be void, and any pragmatic sanctions having reference to public matters (as We have just stated) addressed to the Augustal Prefect, to the duke, or to the Governors of provinces, shall, by all means, be communicated to Your Tribunal and despatched into the provinces, along with the orders issued by yourself. Thus, Imperial decrees which are not detrimental to the public interest shall be received and, accompanied by instructions sent by Your Excellency into the different provinces, be executed there. But where any orders prejudicial to the government have been obtained by artifice, and presented to Your Excellency, they shall not be executed without notice previously given to Us, in order that We may correct them. Hence, We desire that any pragmatic sanctions whatsoever, having reference to public affairs, and which have not been communicated to Your Excellency, shall, at no time, be considered valid.

TITLE XXXVI.

CONCERNING CHILDREN WHO ARE EXPOSED.

ONE HUNDRED AND FIFTY-THIRD NEW CONSTITUTION.

The Emperor Justinian to Menna, Most Glorious Praetorian Prefect of Illyria.

PREFACE.

A crime so revolting to human nature as to be incredible, and which is not even committed by barbarians, has been brought to Our attention by Andrew, *Apocrisiarius* of the Church of Thessalonica. Certain persons throw away their children the instant they issue from their mothers' wombs, and leave them in the holy churches, and after the said children have been brought up by persons who perform works of benevolence, those who exposed them claim them under the pretext that they are their slaves, and, not being content with having, in the first place exposed them to death, they deprive them of their freedom after they are grown up. Therefore, as a crime of this kind itself includes many offences, including murder, calumny, and others easy to enumerate, it is only just that those who perpetrate it should not only be unable to avoid the punishments which Our laws provide, but that they should also undergo the penalty of death, in order that guilty parties may hereafter be made accountable.

CHAPTER I.

Hence, We direct that children who are proved to have been exposed in the public streets, or anywhere else, shall, by all means, be free, even though the persons who have exposed them may be able to show clearly that they constitute part of their property. For if it is set forth in Our laws that slaves who are ill, and have been abandoned by their masters, who have refused to take care of them because their diseases are supposed to be incurable, how much more reason is there that We should not permit those who, at the very beginning of their lives have been abandoned to the commiseration of others and supported by their charity, should be delivered up to unjust servitude?

The Most Reverend Bishop of Thessalonica, as well as the Holy Church of God, and Your Glory, must afford relief to exposed children, and see that the persons who are responsible do not escape the penalties prescribed by Our laws, especially those who, with every indication of cruelty and inhumanity, pollute themselves with homicide, which is all the more horrible because it is committed against unfortunate and helpless victims.

EPILOGUE.

Therefore, Your Glory, and all those subject to your authority, including the members of Your Court, will take measures to observe and execute the provisions which We have been pleased to enact by the present Imperial Law. Those who violate them, as well as the magistrates who permit this to be done, shall be liable to a fine of five pounds of gold.

TITLE XXXVII.

CONCERNING THOSE WHO CONTRACT UNLAWFUL MARRIAGES IN OSDROENA.

ONE HUNDRED AND FIFTY-FOURTH NEW CONSTITUTION.

The Emperor Justinian to Florus, Count of Private Affairs.

PREFACE.

An uncertain rumdr has come to Our ears that the inhabitants of the provinces of Mesopotamia and Osdrcena have dared to contract illegal marriages, thereby violating the Roman laws and incurring both ancient and recent penalties, as well as affording a bad example to neighboring and adjacent peoples. We do not believe such rumors, for We do not think that there are any men in Our Empire who would be bold enough to do anything of this kind, by which they would dishonor their progeny and confound their names.

CHAPTER I.

Therefore, We desire to investigate this matter and, if such acts have been committed, to inflict the extreme penalty upon those who are guilty. But, for the reason that crimes of this description have been perpetrated for a long time, We think it best to consider them as never having taken place, and We grant the inhabitants of the provinces of Mesopotamia and Osdroena remission of the penalties which they have incurred by their conduct, and the reason why We favor them in this way is because they are constantly exposed to the invasion of enemies, and the said unlawful marriages are generally contracted by peasants. In allowing these marriages to continue to exist, We do not allude to those which have been wickedly contracted up to the time of the promulgation of Our New Constitution, and We forbid the inhabitants of the said provinces to be molested either in person or property on this account. But when, after the publication of the law recently enacted by Us, anyone has presumed, or hereafter may presume to commit an offence of this kind, We desire that he shall be liable to the extreme penalty, and he is notified that We shall not limit Ourselves to the imposition of fines, but that We shall prosecute his wife and his children, also, and compel him to undergo capital punishment and the confiscation of his property, as the effect of Our righteous indignation.

Nor shall We spare anyone, whether of exalted or inferior rank, and no matter what his status may be, even if (which is much more severe) he belongs to the priesthood, for all shall be punished, and We must maintain the Roman laws in their integrity. Those who are guilty shall not only be deprived of their property as well as their lives, if We should ascertain that they have contracted unlawful marriages, for no one who is guilty shall escape with life, and the penalty shall immediately follow conviction. Men ought to vie with one another in doing what is just and proper, and We forbid them to act contrary to law and to attempt to excuse themselves on the ground that others are given to the same vices.

These rules shall be observed in the provinces of Mesopotamia and Osdroana; the military magistrates will see that they are executed, and that punishment is inflicted upon those who violate them. We desire this constitution to be published in the provinces hereinbefore mentioned, by virtue of an order issued by you, and through proclamations made by their respective magistrates, and the latter will be liable to capital punishment, as well as to the loss of their offices and their property, if they fail to cause what We have decreed to be carried into effect.

EPILOGUE.

Therefore, Your Glory will take pains to have this Imperial Pragmatic Sanction executed.

TITLE XXXVIII.

MOTHERS SHALL BE REQUIRED TO RENDER ACCOUNTS OF THEIR GUARDIANSHIP.

ONE HUNDRED AND FIFTY-FIFTH NEW CONSTITUTION.

The Emperor Justinian to Belisarius.

Martha, a woman of illustrious birth, has presented a petition to Us which sets forth that Sergius, her father of magnificent memory, died while she was of extremely tender age. Auxentia, her mother, who was also of high rank, after having, in the Bureau of Public Records, taken the oath not to marry again, was accorded the guardianship of her daughter, and administered her property. But afterwards, just as if she had not taken the oath, Auxentia abandoned the administration of her child's patrimony, and left it in a deplorable condition, included very little in the inventory which she made, and married a second time, appointing Peter guardian of her daughter. Having had issue by her second marriage, she manifested very little affection for Martha, and the guardian that she had given her having relinquished his administration when she had hardly reached her thirteenth year, she demanded a curator. Her mother also induced her to surrender her receipts, and to renounce all rights of action based on the rendition of accounts, which could be exercised against her in accordance with law, and she exacted this renunciation although her daughter was entirely ignorant of what had occurred during her infancy. Being dependent upon her mother, who was bringing her up, it was impossible for her to oppose anything which was done to her prejudice, or to act in such a way as to prevent any injury to herself which might cause the loss of her property. But when she had arrived at an age when she could understand the advice which had been given her contrary to her interests, she implored her mother not to make use of any documents which she had fraudulently obtained, and to return to her the property to which she was entitled. Her mother, however, being disposed to favor the children of the second marriage, instead of rendering her accounts, had recourse to Our Imperial Law which provides that one cannot claim restitution in opposition to his own act, although this law did not apply to mothers who contracted second marriages after having obtained the guardianship of their children.

This is the substance of the petition which Martha presented to Us, and she wishes to have the spirit of Our Imperial Constitution explained, and that We remove the doubts to which it gives rise, in order that Auxentia, her mother, may not wrongfully have authority to appropriate to her own use the property left to her by her father.

CHAPTER I.

Therefore, in consideration of the petition of Martha, We issue the present Pragmatic Sanction, by which We direct that as Our preceding law does not mention women who, after having obtained the guardianship of their children, contract second marriages, Auxentia shall not be allowed to take advantage of it. But, for the aforesaid reasons, and because of the documents under which she obtained the guardianship of her daughter, Martha, she, in conformity to law, swore that she would not contract a second marriage, and as she treated her oath with contempt and married another husband, and, after having had children by him, exacted receipts from her daughter, in order to escape liability, We permit Martha to bring suit for complete restitution against her mother, above all, as she alleges that she has not yet passed the twenty-fifth year of her age, and We forbid the constitution by which We have prohibited children from demanding restitution against their parents, or freedmen from demanding it against their patrons, to be invoked in this instance, because the said constitution is not applicable to women who have obtained the guardianship of their children.

And as, on the other hand, We afterwards promulgated another law, which prohibits parents from accepting the guardianship of their children, unless, at the time of their appointment, they stated in the Bureau of Public Records that they would not leave their wards without proper defence, which law also requires the mother, who is a guardian, to state that she will render her tutelary accounts—a proceeding which renders her responsible for her administration when she desires to appoint another guardian in her stead—it is proper, under all circumstances, that if Martha can prove that the time during which she is allowed to bring a restitutory action has not yet elapsed, she shall enjoy not only the benefit of entire restitution, but also be entitled to any other relief granted by Our laws to minors.

For if We desire that children should manifest for their parents the respect, honor, and obedience to which the latter are entitled, We also desire that parents should do nothing to the detriment of their children. Moreover, We do not think that it is consonant with religious duty to entertain contempt for the children of a first marriage, nor that it is proper for mothers, their second husbands, or the issue of a second marriage, to profit by the acquisition of an estate left to children of the first marriage by their father.

EPILOGUE.

Therefore, Your Glory, along with the Most Blessed Archbishop of the Church of Antioch, will see that the provisions which it has pleased Us to enact by this Imperial Pragmatic Law are executed.

Given at Constantinople, on the *Kalends* of February, during the reign of Our Lord the Emperor Justinian, and the Consulate of

TITLE XXXIX.

CONCERNING THE DIVISION OF CHILDREN AMONG PARENTS WHO ARE SERFS.

ONE HUNDRED AND FIFTY-SIXTH NEW CONSTITUTION.

PREFACE.

Those who have charge of the affairs of the Holy Church of Apamea have informed Us that certain serfs belonging to others have formed a connection with female serfs of the neighborhood, and have had children by them, and they ask that the said children be adjudged to them as following the condition of their mother, but those who make such a demand do not seem to comprehend the meaning of the constitution which has recently been enacted.

CHAPTER I.

For when freemen marry women who are serfs, their children will follow the condition of the mother, in accordance with the reasons stated in this constitution; hence, the said children will not obtain their freedom. When, however, the men are serfs, this constitution does not apply

and, as We have already decreed, the children shall be distributed among the owners; thus, when their number is equal, they are equally divided, and when it is not equal, or where there is only one child, the one in excess follows the condition of its mother, as having had the greater share in its creation. Therefore, We order that when only a single child is born of such a union, it shall belong to the master of the woman, and when there are three, two of them will belong to him, and one will be acquired by the master of its father, so that (as We have previously stated) the odd child will always follow its mother.

The ecclesiastics of the Church of Apamea are hereby notified that the offspring of serfs shall be divided in this way, and that this question, which has been in controversy for a long time, is now disposed of by this Our law.

TITLE XL.

CONCERNING SERFS WHO CONTRACT MARRIAGES ON THE PREMISES OF OTHERS.

ONE HUNDRED AND FIFTY-SEVENTH NEW CONSTITUTION.

The Emperor Justinian to Lazerus, Count of the East.

PREFACE.

We have ascertained from different sources that in Mesopotamia and Osdroena, offences are committed which are clearly unworthy of Our time, for serfs attached to different land are in the habit of contracting marriage with one another. For this reason, the owners of the said lands compel them to dissolve the marriages which they have contracted, and deprive them of their children, and in consequence, the condition of the entire country is rendered wretched, when, on the one hand, serfs are separated from their wives, and, on the other, their children are taken from them. Wherefore, Our efforts must be directed to the correction of this abuse.

CHAPTER I.

Hence, We order that, for the future, the owners of estates shall keep their serfs in any way they may wish, but that no one shall separate them from the women whom they have married in accordance with ancient customs, compel them to live on his own land, and deprive them of their children, under the pretext that they are of servile condition. Where, however, any acts of this kind have already been committed, Your Highness will take measures to remedy them, whether the children have been taken from their parents, or female serfs have been separated from their husbands, and anyone who hereafter presumes to do anything of this kind will run the risk of being deprived of his land. Therefore serfs need no longer apprehend the dissolution of their marriages, and they shall retain their children through the benefit of the present law, and, on the other hand, the owners of lands shall no longer seek technical reasons for breaking the union which their serfs have contracted, and depriving them of their offspring, for whoever ventures to act in this manner will run the risk of losing his property, which will be transferred to him who endeavored to claim the serfs.

EPILOGUE.

Therefore, Your Magnificence will take measures to see that the provisions which it has pleased Us to decree by this Imperial Pragmatic Sanction are carried into effect, and he who, at any time, attempts to violate them, shall be liable to a fine of three pounds of gold.

Given at Constantinople, on the *Kalends* of May, during the reign of Our Lord the Emperor Justinian, and the Consulate of Belisarius.

TITLE XLI.

THE RIGHT OF DELIBERATION SHALL BE TRANSMITTED TO CHILDREN UNDER
THE AGE OF PUBERTY.

ONE HUNDRED AND FIFTY-EIGHTH NEW CONSTITUTION.

PREFACE.

A certain Thecla, surnamed Mannus, has presented a petition to Us stating that another Thecla died leaving a girl under the age of puberty, named Sergia, who only survived her mother sixteen days, and who succumbed to the contagious disease which has recently destroyed so many people. The petitioner informed Us that she was a sister of the father of Sergia, and that Cosma, the brother of Thecla's mother, claimed the estate, and has assumed the title of heir in court.

She also alleged that, after having been engaged in many controversies, she had applied to John, an advocate of the provincial bar, well versed in the laws relating to this subject, who had given her a written opinion that the estate of Sergia should be transferred to her; and that, in consequence of this, she had selected the said John as arbiter in the case, and that Cosma had, on his side, chosen [^]scula-pius, secretary of the Military Commander of the East. John, however, rendered a decision which was contrary to his written opinion, basing it on the law of the Emperor Theodosius, which provides that a child who is not yet seven years of age cannot claim the estate of its mother, if it did not have a guardian, and that the said estate ought to go to the relatives to whom it would have belonged if the girl who died under the age of puberty had not been called to the succession by law. John not only cited the said law, but he also ordered the petitioner to comply with his decision, and directed her to notify JSscula-pius, the arbiter of Cosma.

The petitioner asked Us to take into consideration the injustice of which she was the victim, and, especially, as there was a law in the Code bearing Our name, which declares that a child who can speak is qualified to claim the inheritance of its mother, and as We Ourselves have enacted another law which states that where anyone entitled to an estate dies before having claimed it, or of having manifested any intention to reject it, the right to deliberation as to its acceptance is transmitted to the heirs of the deceased. The petitioner also stated that the law We have recently enacted, conferring upon agnates and cognates the same right to succession, is not applicable to this case, for the reason that it precedes its promulgation.

CHAPTER I.

Therefore, We order that if Your Glory should ascertain that these allegations are true, you must afford relief to the petitioner, and give her the benefit of Our law conferring the right to deliberation, above all, as Sergia died before the expiration of a year following the death of her mother, and you will give her the opportunity of claiming her mother's estate. For no one can say that the law of the Most Pious Theodosius, and the one which We have enacted, are conflicting, for both of them are included in the same volume, and We have expressly stated that they do not contradict each other. Our law, however, shall prevail in the present controversy, and in all others similar to it, and the one promulgated by the Most Holy Emperor Theodosius shall apply to cases where the year appointed for deliberation has been suffered to elapse.

It is also clear that the measures taken by Cosma after the decision was rendered, have not availed to acquire for him any advantage or right of action.

Given at Constantinople, on the day before the *Ides* of July, during the reign of the Emperor Justinian, ever Augustus.

TITLE XLII.

FIDUCIARY RESTITUTIONS SHALL BE LIMITED TO AN ESTABLISHED DEGREE.

ONE HUNDRED AND FIFTY-NINTH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Praetorian Prefect, twice Consul and Patrician.

PREFACE.

Our good will is so great that We do not disdain, by means of Our laws, to dispose of certain cases which appear to Us to be beyond the comprehension of magistrates. The reason which induces Us to act in this way is, the fear that delay in deciding cases may ruin litigants.

Alexander, a man of distinguished rank, some time since submitted to Us the following case. Hierius, his father, of glorious memory, made a will as follows, namely: "I appoint as my heirs the illustrious Constantine, who shall have the residence allotted to him, with all its appurtenances, as has already been stated, together with the suburban estate called Coparia, and all the rights attaching thereto, as well as the house situated at Antioch which was purchased from Ammianus.

I also appoint the most excellent Anthemius my heir to the suburban estate called Blacherna, which was purchased from Eugenius and Julianus, of glorious memory, and the suburban estate situated on the promontory of Sosthenia, which formerly belonged to Ardiburius, of glorious memory. I also appoint that most illustrious personage, Calli-pius, heir to the suburban estate called Bytharium, or Philothea; and I appoint the most illustrious Alexander heir to my suburban estate situated in Venetia.

"I forbid my heirs to transfer to strangers by sale, donation, exchange, or in any other way whatsoever, or to alienate from my name or that of my family the residence and the five estates which I have just mentioned, and if any offspring should be born to them (which God grant) and at the time of their death they leave any legitimate or even natural children, I desire each one to bequeath to them the suburban estate and the buildings belonging thereto, which are situated in this Royal City and in Antioch. I am satisfied that my heirs will not fail to carry out my present wishes with reference to their natural children or grandchildren. If, however, all, or some of them, or even only one, should die without issue (which is something that I detest), I wish, and I direct that he who dies childless shall transfer to his surviving brother or brothers the houses situated in this city, or in Antioch, as well as the five suburban estates hereinbefore mentioned, together with all the rights attaching thereto, all their appurtenances, and all the persons belonging to them, without any exception whatsoever. I forbid my heirs to furnish any security to insure the delivery of any trusts or legacies. No one shall make a demand to have this done, and any of my heirs who, in violation of my intention and paternal love, dares to require it of their brothers, for the preservation of property whose alienation I prohibit, shall forfeit the entire benefit of the trust."

After having inserted these provisions in his will, Hierius executed a codicil, in which he made use of almost the same language. "I declare most positively that I have recently drawn up a will which embodies my complete wishes, and I desire, and I order that its provisions shall remain in full force, subject, however, to the changes which I shall make by this codicil, and to the diminution of the legacies which I have bequeathed to each one of my heirs. Therefore, I wish, and I order that my suburban estate called Coparia, which was left by my preceding will to my most magnificent son Constantine, be given in full possession and ownership to my most illustrious and most glorious grandson Hierius, born to my most magnificent son Constantine; and I desire that the said estate shall belong to him absolutely, together with all the squares and stairways forming part of the same, and everything appertaining thereto which is leased, both within and without the city, that is the houses, the shops, the baths, the gardens situated within and without the walls, the hippodrome with the garden belonging to it, the cistern, and, in short, all the rights of every description to which I am entitled with reference to said estate.

"I desire the present legacy to be transferred to my said most illustrious grandson after my death, as soon as he is released from paternal control, and becomes his own master by emancipation; and my most generous grandson, and whoever either by my own will or by his may succeed to the same rights, shall not be permitted to disobey my wishes, or to divide, exchange, give, or alienate in any manner whatsoever the said suburban estate, or any part thereof; it being my wish that said estate, as well as the houses situated near the gate of the wall of Ficulneum on the road leading to the sacred place of martyrdom of St. Thecla, should remain absolutely and permanently in my family, and never be separated from my name. Moreover, I wish, and I order that if my most glorious grandson Hierius should die before or after he arrives at puberty, without leaving any lawful issue, the possession and ownership of the said suburban estate and houses bequeathed shall belong to his most magnificent father, Constantine, under the same condition, namely, that the said immovable property shall never be alienated from my family and from my name."

The testator died after having executed this codicil, but Hierius, of glorious memory, afterwards sold to strangers the house at Antioch which had come to him from the estate of his father, and he transferred to his son Constans, of glorious memory, the residence situated in this city, as well as the suburban estate which he received by virtue of the codicil, and which he was also forbidden to alienate. Constans afterwards died, leaving his wife pregnant, and provided by his will that if the child was not born, or if it should be born, and died before reaching the age of puberty, its most glorious mother, Mary, and his illustrious wife, who was also named Mary, should be called to the succession.

Mary subsequently gave birth to a daughter, who died at a tender age, and then the estate of Constans, that is to say, the residence situated in this city, and the suburban estate which, under the codicil, had been expressly left to Hierius, of glorious memory, passed to the illustrious mother and wife of Constans.

It is certain that the latter had the right, by virtue of the will as well as the codicil, to claim the house and the estate given to him, since he was the only one of the children of Hierius, of glorious memory, who was living, and that he held the first rank in the family. Those who represented the most glorious mother and wife of Constans maintained that as Constans did not die childless, it was not necessary to rely upon the provisions of the will of Hierius, in order to afford a ground for the restitution of the houses; that the most glorious Alexander could not, in accordance with law, raise any question with reference to the suburban estate, since he himself had already disposed of the one which had been left him, and of which their common father had forbidden the alienation, as was the case with all the other landed property, and as the other brothers had also sold the property devised to them. The result of these different allegations is, that all the heirs had failed to comply with the wishes of the deceased, and had violated Our laws on this subject; that they were reciprocally released from the obligation of making restitution; and that they had mutually freed themselves from all demands to do so in order not to expose themselves to a number of judgments in the same case; and, in consequence of this, they brought to Our attention the laws enacted with reference to this matter.

The most glorious Alexander, however, alleged that, for his part, he had properly brought suit to recover the houses, because in his codicil Hierius had clearly shown that he desired that they should not be alienated from his family; and he asserted that his right was much better founded, so far as the suburban estate was concerned. In conclusion, he maintained that no legal objection should be advanced to the alienation which he himself had made, since he was authorized to make it by an Imperial order. The parties on both sides made use of a great number of arguments in an attempt to interpret the will of the testator, and cited such of Our laws as they thought to be favorable to their claims.

CHAPTER I.

Therefore, as We have in view both the interpretation of the laws and the construction of the will, We are going to dispose of these matters not by a mere decision, but by a law; in order,

at the same time, to put an end to the present controversy, and provide for others which may hereafter arise. Confining Ourselves strictly to the words of the will, We perceive that alienation is forbidden to the children who might acquire the estate when they died without issue, but that this right is not refused to their successors; that the testator only forbade the children to alienate the property, and paid 'the greatest attention to the persons to whom it might pass if the former should die without offspring and to the manner in which this should be done; without, however, extending the prohibition to alienate said property beyond the lives of the children. For the codicil subsequently executed with reference to the suburban estate forbade alienation to even those who, by virtue of the will of Hierius (We refer to the younger one of that name), of glorious memory, might obtain the property by succession; hence it results that the grandfather Hierius intended that the property should always remain in his family. These are the points involved in the controversy.

CHAPTER II.

But when We consider the case with the attention which it deserves, We perceive that no question should be raised with reference to the other property of which Constantine, the son of the elder Hierius, of glorious memory, has certainly become the owner, in accordance with the provisions of his father's will; and that not only the most glorious Alexander should lose his suit to recover the said property, but also all his family should do so, since the will only prohibits the children from alienation, and the children of Hierius, of glorious memory, through whom the grandchildren forming part of the family claim the rights of Hierius, have, themselves, alienated many things which were bequeathed to them, just as if all had mutually agreed to release themselves from the obligation to transfer the property.

But so far as the suburban estate of which it appears, according to the terms of the codicil, that Hierius, of glorious memory, is the owner, is concerned, it seems to Us to be very hard, after four generations, to raise the question whether it can be alienated; especially when the most glorious mother and wife of Constans, whom Our laws consider as forming part of the family, and judge to be worthy of bearing its name, are living. Hence, the most illustrious Alexander has, neither regularly nor legally, brought the action to which We refer; and We cannot permit a case as old as this is to be tried, above all after four generations have passed, and when the daughter of Constans died while still a minor. For if Constans had not made a will, the suburban estate would also have gone to his mother, not through his minor daughter but by the provisions of the law itself, even though none of the successors of Hierius, of glorious memory, had failed to comply with his wishes. For even though Constans, when he drew up his will, made certain substitutions, and his daughter died before reaching puberty, this will be productive of nothing advantageous; for the reason that the law itself grants the estate of the minor daughter to her mother, just as if the said minor had died without her father having executed any will.

CHAPTER III.

Therefore We order that neither the most glorious Alexander, nor his children, nor the other children of the elder Hierius, of glorious memory, nor the remaining members of his family, shall bring suit against the most glorious mother and wife of Constans, to recover the property in their hands, of which Hierius had forbidden the alienation. We prohibit them from suing the other persons in whose possession the said property is at present, or who may hereafter acquire it; and We also forbid them in the future to avail themselves of the prohibition to alienate said property, as stated by Hierius, and, in this way, to acquire any right to the same; for since some of the children of Hierius, of glorious memory, have alienated what belonged to them, they have, by doing so, to a certain extent, consented to the alienations made by the others; and for this reason, as well as for those which We have already given, and which are sufficient for Us to determine the case and amend the legislation, We think that they, as well as their successors, should be forbidden to bring such suits as may lie in their favor.

This decision shall not only apply to the case under discussion, but also to all others in which a similar prohibition may be found, where as many generations have passed; and the last of

the heirs, even though called to the succession by the intervention of a child under the age of puberty, shall be entitled to the estate. For then, by the operation of the present law, property may be transmitted even to persons who do not belong to the family of him who forbade it to be alienated.

This law shall therefore apply to the present case and to all others where similar prohibitions made hereafter by testators are involved. By its means We dispose of the present controversy, and it is probable that We shall make provision for all others in the future.

EPILOGUE.

Therefore Your Glory will be careful to publish in this capital city, and cause to be observed and carried into effect the regulations which We have been pleased to promulgate by means of this Imperial law.

TITLE XLIII.

COPY OF THE IMPERIAL PRAGMATIC SANCTION CONCERNING INTEREST.

ONE HUNDRED AND SIXTIETH NEW CONSTITUTION.

The Emperor Justinian to Papius.

PREFACE.

The most learned Aristocrates, municipal magistrate of the Republic of Aphrodisia, together with the owners of immovable property in that country, have presented a petition to Us stating that the aforesaid city, etc. Thus, in the first place, We have ascertained that a majority of the people understand Our laws in a way which is by no means correct, and thereby obtain a pretext for unjust actions. We have been informed by the municipal magistrate aforesaid that large sums of money have been bequeathed to the Republic of Aphrodisia by different persons, to prevent the destruction of the city; and that the magistrates have invested it in such a way that the debtors pay a certain amount to the city every year (which may either be called the consideration of a contract, income, or interest), as is perfectly just and proper. But, after We had promulgated Our last Constitution, those who borrowed the money asserted that their creditor could not collect the principal, because they had already paid as interest more than double the amount of the indebtedness; the result of which is that the city has lost the legacy bequeathed to it; the heating of the public baths, whose expense was defrayed from this source, has ceased; and the public works have been abandoned to decay on account of this construction of Our law; and the State has been greatly injured in consequence.

CHAPTER I.

Therefore, in order that such an abuse may no longer exist in Our government, We hereby decree that persons who receive a sum of money, on condition of paying annually a certain amount to the government, shall be compelled to pay whatever they have agreed to, without being able to avail themselves of Our Constitution enacted with reference to this matter; for We have only drawn it up to be applicable to the creditors mentioned therein, and for such cases as it includes. It is not relevant in the present instance, as the payment to which it refers rather resembles an annual income than a loan at interest; and, besides, We should have supervision over the revenues of cities, as well as over those of the Imperial Treasury.

If, after the promulgation of the present pragmatic sanction, anyone should attempt to place a different construction upon the provisions contained in the preceding law, and defraud the city of the money which it lost, he shall pay for all time to said city an amount equal to that which he owes, and shall, in addition, pay double the amount of the principal, and, in this way, be justly rewarded for his malicious interpretation, and be punished; because, when it was easy for him to show that he was a good citizen, he was dishonorable enough to prefer to be guilty of injustice toward the place in which he was born.

TITLE XLIV.
CONCERNING THE GOVERNORS OF PROVINCES.
ONE HUNDRED AND SIXTY-FIRST NEW CONSTITUTION.

PREFACE.

Laws should not only be equitably enacted for the greatest good of the public, but those which have already been promulgated should be carefully observed and carried into effect, and the proper penalties inflicted upon persons who violate them. For what advantage would be derived from the laws if they merely consisted of words, and no benefit was conferred upon Our subjects by their execution and effect?

We are well aware how diligently Imperial Majesty has manifested its solicitude for taxpayers, when it repeatedly declared that the Governors of provinces should obtain their offices gratuitously; for which reason, when they use their power honestly, dispense justice, and promote the welfare of Our subjects, through the security of the latter an abundance of everything will be found in the Empire. These blessings, however, have, to some extent, been forgotten, on account of the immoderate avarice of the magistrates who have bought, rather than received, their offices.

CHAPTER I.

Therefore We, renewing the aforesaid laws, do hereby decree that those only shall administer the government who are known to have a good reputation, and who devote themselves especially to the dispensation of justice. We wish them to receive their offices without the bestowal of any gift or donation; to prevent tributaries from suffering any loss; and punctually to pay into the Public Treasury all the taxes which they collect. We also decree that they shall not, either in person or by their assessors, their chancellors, their servants, or any other persons in their service, accept anything from Our subjects, unless they desire (as stated in the laws) to pay fourfold the amount of what they have received, but they must remain content with what they are allowed by the law and the public. As soon as they have relinquished their office, they shall remain in the provinces for fifty days, and appear in public, in order to answer any one who may desire to bring suit against them.

Where, however, an action brought against a magistrate is not terminated within the said fifty days, and it is a civil suit, the magistrate may appoint an attorney to represent him; but where the proceeding is a criminal one, the magistrate must remain until final judgment has been rendered by the judges (whether these are regular magistrates, or persons appointed by the prefects for this purpose), and the said judges shall be fined ten pounds of gold, if, within twenty days, they do not dispose of the case pending before them, which, however, shall be determined in the way already provided.

But when magistrates, influenced by a guilty conscience, either secretly take to flight, or seek refuge in religious houses, they shall be deprived of their property, which shall, in accordance with law, be divided among those who have suffered injustice from them. Each party shall appear in court, as is prescribed by Our preceding law which, having been enacted for the benefit of payers of tribute, shall remain in full force, and the other regulations having reference to Governors, and have very properly been set forth by Imperial Majesty, shall also be observed. While We punish violators of the law, We also sentence to quadruple restitution those magistrates who, contrary to Our prohibition, accept anything from defendants under such circumstances.

CHAPTER II.

We wish to correct these matters by means of this law, for the peace and opulence of Our subjects are more precious to Us than the revenues yielded by the Empire. For when We abolished the gifts made by Governors, We also abolished the amounts which they expended, which were paid into the Imperial Treasury, and amounted to a very large sum of money; the

result of which will be that the government will become more prosperous and wealthy, through being freed from the contributions devised by certain persons in former times. For Our sole desire is that the provinces shall be governed by good laws; that they can be inhabited in security; that they may obtain the benefit of the justice of Governors; and that they pay the public tributes without complaint. It would be impossible for the government to be maintained if these pious contributions were not paid into the Public Treasury, since it is by means of them that the military forces, whose duty it is to resist the enemy and guard the fields and cities, are supported, and other orders of the State compensated; walls and cities repaired; and, in short, everything provided which relates to the common welfare of Our subjects.

EPILOGUE.

Therefore Your Glory will publish throughout this city in the usual places, and despatch to the provinces, the provisions which it has pleased Us to enact by means of this Imperial Law, in order that all persons may be aware of the sollicitude which We display for the benefit of Our Empire and the security of Our subjects.

TITLE XLV.

PRAGMATIC SANCTION CONCERNING DIVERS MATTERS ADDRESSED TO DOMINICK, MOST GLORIOUS PREFECT.

ONE HUNDRED AND SIXTY-SECOND NEW CONSTITUTION.

Antonius Contius, Translator.

Your Glory has submitted to Us certain mooted questions which have arisen among the most able advocates of the tribunal of Illyria, requesting Us to decide them, in order that they may not hereafter be the subject of controversy.

CHAPTER I.

CONCERNING DONATIONS.

The first point to be considered is the following. A certain woman, after the death of her husband, demanded property that he had given to her during his lifetime, but which had not been delivered; and she claimed the ownership of it not only on account of the donation, but because her husband had not revoked it while he lived. Those in possession of the said property specially excepted, on the ground that although donated, it had not been delivered to the woman, and that she could be allowed to claim it only when she had possession of the same. This is the question in controversy.

In this connection We call to mind Our former Constitution, which provides that the donor is obliged to deliver the gift to the donee, even if he did not agree to do so, because it is not proper to commit a fraudulent act, and write words which have no force; as well as the ancient *Lex Cintia* (which the government very properly, some time ago, removed from its legislation), in which the point which is the subject of the present dispute was included and discussed.

(1) We order (where everything relating to the donation in question corresponds with what We have just stated) that the said donation shall be perfectly valid not only so far as the value of the article given is concerned, but also with reference to the record; and We desire (in accordance with Our Constitution) that it shall take effect from the very moment when it was made; so that, if the husband has hypothecated or pledged the property after the donation, he shall not be considered as having alienated it, when he did not revoke the gift during his lifetime. And whether or not delivery was made to the woman, she can always recover the property by means of the action based on the stipulation, if one took place, or by virtue of the law, through making a demand in court for what was donated.

(2) We also considered it just to decree that where donations have been recorded in the beginning, they shall, by all means, be confirmed when the donor remained silent concerning their revocation; but where they have not been recorded, and their value is in excess of the amount required by law, they shall be valid up to that amount.

We desire that this provision shall be strictly observed, hence a donation will become operative for the share authorized by law, and will be annulled if its entire amount exceeds what can legally be given. Our preceding law prescribed this rule with reference to donations in general.

These provisions shall be applicable not only to husbands and wives, but also to all other persons who are prohibited from receiving donations during marriage.

CHAPTER II.

We have been interrogated by Your Excellency with regard to another point. After the enactment of Our Constitution, which, because of the status of their mother, renders the children born of a free woman and a serf also free; should it be held, in accordance with the ancient law, that if the said children are not serfs, they are, nevertheless, born such and therefore attached to the glebe, for the reason that another of Our laws does not permit the children of serfs to abandon the soil, but declares that they remain there in a servile condition, and is there not all the more reason for this when such children are born of parents who are serfs? This is the second point of your interrogatory.

We, however, never intended to admit that a woman who is free could bring forth a serf; but, on the other hand, have desired that, in conformity with Our law, the sign and symbol of freedom should be impressed upon the offspring of a free woman. If, then, a child should be born to a free woman and a man who is a serf, it shall be entitled to its freedom, and shall not, under any consideration, be deprived of the right of free birth enjoyed by its mother. But as the law which We have enacted provides that those who inhabit the country and cultivate its fields shall continue to reside there, as if they were natives of the same, and as the very name of *colonus* implies this obligation, We do not allow children born of a serf and a free woman to abandon their country with the intention of residing elsewhere. Hence, it is clear that the children born of a woman who is a serf on an estate shall themselves be serfs, and be free if born of a free woman, and, having obtained their liberty, any property which they may acquire will be their own, and will not become the *peculium* of their masters; but having gained their freedom, they cannot abandon the estate to which they are attached, and will be required to till the soil without being able to go elsewhere, unless, when they become the owners of lands, the latter are not sufficient to keep them occupied and support them, and they are not permitted to cultivate those of their masters, or pass to the estates of others. For if this is not the case, although enjoying their freedom, they will remain attached to the estates of their masters; and this is hereby decreed.

CHAPTER III.

The point which you have submitted to Us seems to be worthy of adjudication. When a female serf marries a male serf belonging to another master, the question arose whether their children ought to belong to the owner of the man or the woman. Under such circumstances, and in order that serfs belonging to different masters may be able to marry one another—the status of their offspring not being disputed, as they were not begotten by a father who was free, and are born of parents who are both serfs—We do not give them all to their mother, or to the owner of the latter; but when there is only one, the mother will be preferred, and the child will belong to her master; where there are two children, they shall be distributed by lot; where the number is unequal, the mother will be entitled to the most of them; for instance, where there are three, she shall have two, and the father one; and where there are five, three of them shall belong to the master of the mother, and two to the master of the father; and where there are more than this, the apportionment shall be in the same ratio; so that when they can be divided equally this shall be done, and when this is not possible, the larger number shall be

allotted to the mother by way of privilege; for she who has brought forth and nourished a child is undoubtedly entitled to greater consideration than he who begot it through an excess of pleasure.

EPILOGUE.

Therefore Your Glory will hasten to apply this Imperial Pragmatic Sanction to the cases to which it is adapted, for We have enacted it as a general law, believing that the matters to which it refers require amendment.

Given at Constantinople, on the fifth of the *Ides* of September, during the reign of Our Lord the Emperor Justinian, and the Consulate of Ario.

TITLE XLVI.

CONCERNING THE RELEASE FROM PUBLIC TRIBUTE.

ONE HUNDRED AND SIXTY-THIRD NEW CONSTITUTION.

PREFACE.

Justice and benevolence are the most excellent attributes of mankind : the first grants to each one that to which he is entitled, and does not desire the property of others; the second encourages compassion, and delivers distressed debtors from the burden of their obligations.

These two things have a tendency to adorn and strengthen the Empire; to sustain the government; and to render human life more admirable. Wherefore, when We received the sceptre of empire from God, We were impressed with a desire always to be conspicuous for Our good actions, and were convinced that We should have Our reward in virtue and glory, in proportion to the extent that We were useful to Our subjects. We are aware that loans, and other obligations of this kind, have reduced men to great poverty, and their possessions have depreciated to such an extent that they can no longer yield an income to their owners, or afford them means to punctually pay their taxes; nevertheless, extensive military operations, with their attendant expenses, have rendered it necessary for Us to make frequent assessments.

We entertain such solicitude for the welfare of Our subjects that We desire to afford a remedy for their poverty, but as this duty is always before Us, We think that it is preferable to display indulgence, to provide for the necessities of taxpayers in a manner which may be agreeable to God, and to pay out of the Public Treasury such expenses as may generally be required.

CHAPTER I.

Therefore, while communicating Our desire to Our Lord Jesus Christ, and discharging Our duty towards Him by making suitable efforts on this day of the salutary Passion and Holy Resurrection, We offer to Him, for the benefit of the country, the favor which We now bestow, by granting all cultivators of the soil in general, as well as taxpayers (including the owners of estates), an entire exemption from public tributes, to be divided into four terms, that is to say, one-fourth of it in the new indiction, which will soon begin; one-fourth in the tenth following indiction; one in the eleventh, and one in the twelfth; thus diminishing, during each one of these indictions, one-fourth of the ordinary taxes, labors, and contributions which, under the head of tributes, are furnished in any way whatsoever.

CHAPTER II.

We also remit to Our subjects the payment of any taxes which may be in arrears from the end of the last fifth indiction; and We order that none of the contributions which We now remit shall be levied, whether they are payable at the Grand Imperial Prefecture of the East, or at that of Illyria, or at the capital of the Islands, or at the military Prefectures of Scythia and Nicea, at the Treasury of Our Imperial Largesses, or at *the* seat of government of any other magistracy; and We forbid all decurions, receivers, secretaries, cohortals, palatines, collectors, and contractors of public works, who are charged with the levy of taxes, or the construction of

public buildings, to make use of any fraudulent artifice toward farmers, tributaries, or even the owners of estates, in order to extort from them any taxes the payment of which We hereby remit; or, having this in view, to renew any obligations for sums already due, to require sureties to be furnished or to accept acknowledgments. For We hereby annul every fraudulent act already committed, or which may hereafter be committed, for the purpose of thwarting Our munificence; and if anyone, in violation of Our wishes, should collect anything which has become due since the fifth indiction, without paying it into the Public Treasury, he shall be held strictly responsible for the same. For if We are indulgent toward tributaries, and release them from a portion of their indebtedness, this is in order that they may benefit by Our liberality, and it is not intended that those who receive the public taxes shall derive any advantage from it, or profit thereby; the expenditure of the taxes (that is to say its annual disbursement by the collectors for the purpose of meeting military expenses) shall, however, under no circumstances, be diminished. For it is necessary that the entire amount of grain and other supplies should be provided for and imported, as is customary; but the value of the fourth of the taxes, from which We release tributaries for four years, shall be estimated and disbursed by the Public Treasury, together with other tributes in money.

What We hereby decree shall be equally applicable to the provinces of Osdrcona and Mesopotamia, so far as tribute payable in kind to meet secret and military expenses is concerned. The same rule shall be applicable to contributions in kind which are designated *ploim.se*, that is to say, transported by ships, and are levied in Lazica, the Bos-phorus, and the Cheromesus; for the said provinces shall receive the price of them from the Public Treasury, as fixed in the Bureaus of the Prefects of the district from which the said tributes are brought, in order that the inhabitants of the said three provinces may profit by Our indulgence. It will by no means be safe to neglect the delivery of such tribute, for there are inevitable expenses (as We have already mentioned) which must be incurred for the maintenance of government. We are satisfied that great benefit will result to the State from this manifestation of Our generosity, and that God will render Us fortunate on account of actions of this kind. Any persons who presume to disobey the rules which We have prescribed for the welfare of Our subjects will run great risk with regard to both person and property.

EPILOGUE.

Therefore Your Glory will, by means of proclamations published in this City, and sent into the provinces, communicate to all Our subjects the matters which We have been pleased to decree, in order that no one may remain uninformed of Our munificence.

TITLE XLVII.

CONCERNING HEIRS.

ONE HUNDRED AND SIXTY-FOURTH NEW CONSTITUTION.

PREFACE.

There is nothing superior to God and justice, for without their aid nothing can properly be accomplished, and especially is this the case in Our Empire. Hence it is only by loving God and dispensing justice that We can hope to reign with equity, to secure the affection of Our subjects, and obtain from them the greatest devotion. However, although We are occupied with many things of importance, and as the Romans are constantly becoming greater through their virtues, and conquered barbarians daily submit to their authority; and as We have received from God and justice the sceptre of Empire, We do not consider it unworthy of Us to direct Our attention to the private interests of Our subjects. And, as We have placed matters which were previously confused in a much better condition, We have deemed it proper to decide, in a manner agreeable to God, some questions relating to successions which have long been neglected. For We have ascertained that certain vagabonds have been in the habit of interfering with the estates of deceased persons; that they have opposed the execution of their wills; and have even prevented the acquisition of intestate successions by placing seals upon personal property, and attaching notices to that which is immovable, hoping in this way to

obtain it; conducting themselves, however, in a legal and orderly manner. Therefore as it was impossible for Us to become perfectly familiar with such a great number of cases, it seems to Us to be advisable to make a general provision for them by the promulgation of a positive law.

CHAPTER I.

Hence We decree that all Our subjects shall remain in the free enjoyment of their property, and their rights, and transmit them to their heirs. No one, without exception, shall interfere with the patrimony of others; injure the heirs of a deceased person; or, in violation of Our laws, place seals or notices upon any property which does not belong to him. For We confirm the order of intestate succession to which everyone is called according to his degree, and We do not render the last wills of dying persons void whenever they have been lawfully executed. We exert every effort for the government of Our tributaries by means of salutary enactments, and as We take the greatest interest in their welfare, why should We not provide for them in this manner also, and confer Our benefits upon them? For We are fully persuaded that this course is pleasing to God, and We know that it is consonant with virtue, and that by such actions Our Empire will be strengthened everywhere, and rendered tranquil in the future.

This law of Ours will be included among Our most praiseworthy deeds; Our subjects will be freed from their former annoyances; and, having been rendered worthy of Our indulgence, they will return thanks to God and to Us; they will propitiate the Divinity with prayers; so that, after the enemy has been conquered, We can obtain for them greater security.

EPILOGUE.

Therefore the Stewards of the Imperial Households will see that the provisions which We have been pleased to enact by the present law are observed; and officials invested with superior or inferior magisterial jurisdiction, either in this city or in the provinces, will be liable to capital punishment, if they violate them.

Your Glory will cause this constitution to be posted in the most public places of this Capital, and will, by means of orders issued for that purpose, transmit it to the provinces.

TITLE XLVIII.

GENERAL LAW HAVING REFERENCE TO THE VIEW OF THE SEA, ADDRESSED TO DOMINICK, MOST GLORIOUS PRAETORIAN PREFECT.

ONE HUNDRED AND SIXTY-FIFTH NEW CONSTITUTION.

Our mother has taught Us, etc. The view of the sea, ordinarily limited to a hundred feet, shall not be intercepted by any new work, either in the direct line or transversely; and this the present law, while confirming the Constitution of the Emperor Zeno, adds, by way of interpretation, to a Novel previously promulgated.

First Ordinance of the Prefects.

TITLE XLIX.

CONCERNING ADDITIONS, THAT IS TO SAY, CONCERNING THE TRANSFER OF TAXES FROM STERILE LANDS TO THOSE THAT ARE FERTILE.

ONE HUNDRED AND SIXTY-SIXTH NEW CONSTITUTION.

Tenor of This Constitution.

Where a deceased person, during his lifetime, and for good cause, alienated a tract of land, an estate, or a farm, and, at his death, left the remainder of his property to his children, or to foreign heirs, and the latter sold a part of said property, and the purchaser who acquired it subsequently abandoned a portion of the same, so that there would be no ground for the transfer of the taxes to other lands, belonging to the same estate, and which have the same origin (see Books X and XII of the Code, On Abandoned Lands), the taxes on the deserted

estate shall not be borne by all the lands of similar character at the same time, but must first be imposed upon any other real estate which the possessor of the same purchased from the children or foreign heirs of the deceased; and if the said purchaser should not be solvent, the taxes shall be paid by the heirs of the decedent, that is to say, by the lands (derived from the same estate) of which the said heirs are in possession; and where said lands are not sufficient to pay them, they shall be transferred to the other property of the deceased, which has passed into the hands of other persons than his heirs. Thus the taxes will be transferred to him who has bought a tract of land, or a farm of the deceased, as We stated in the beginning.

The same rule will also apply where these lands have been conveyed to several successors. For when the last, or most recent possessors of property are solvent, the tax is not borne by the oldest of them in point of time, or, in other words, the first possessors will not then be liable for the taxes on lands abandoned by the last ones; and when there are several heirs of the same degree and order to whom the tax should be transferred, it shall not be distributed equally among them, but in proportion to the property in their possession which was derived from the same estate.

Twenty-fourth Ordinance of the Praetorian Prefect.

TITLE L.

GENERAL LAW OF BISSUS RELATING TO POSSESSION, AND IN WHAT WAY IT
MUST BE ACQUIRED.

ONE HUNDRED AND SIXTY-SEVENTH NEW CONSTITUTION.

Tenor of This Constitution.

Possession cannot lawfully be taken by virtue of the decision of a judge, where the premises are not unoccupied, or the fact that they are vacant has not been established in a city, by the evidence of executive officers; and in the provinces, by that of those defenders of the people who are the nearest to the locality.

Again, every time that anyone in the provinces desires to take possession of property under the terms of a contract, documents evidencing the delivery of possession shall be drawn up before the defenders of cities, as soon as he who makes the delivery, and the master of the serfs, or the person entitled to the said documents, have agreed. When there are no defenders, the said documents shall be executed in the presence of the Governor, or even before the bishop, if the Governor should be absent from the place where delivery is made.

Second Ordinance of the Praetorian Prefect.

TITLE LI.

CONCERNING PERSONS WHO ARE IN POSSESSION OF DIFFERENT LANDS
FORMERLY BELONGING TO THE SAME OWNER.

ONE HUNDRED AND SIXTY-EIGHTH NEW CONSTITUTION.

This constitution treats of lands, or of men who have belonged to the same owner by reason of having been attached to the glebe. Tracts which have been abandoned or deserted ordinarily accrue to the owners in possession of property derived from the same estate, as We have previously mentioned in Novels CXXVIII and CLXVI. For taxes on real property are solely imposed upon rustic estates, for only impositions of this kind and not those levied upon civil emoluments or buildings are referred to in the census. For this reason lands subject to the obligations of the census are exclusively mentioned in the Digest under the Title, *De Censibus*. By the term slaves (Book IV, Section, *In Servis*), I only mean rustic slaves, who are attached to the glebe, as I stated in Novel VII. What is set forth in Book III, relative to the capitation tax, only applies to lands, and not to cities or villages (Book I, Code, *De Cap. Civ.*, Book VIII, Code *De Exact. Trib.*). Therefore the taxes on lands are not imposed on urban estates, or on those yielding civil revenues, for the reason that such lands are not of the same

nature, or derived from the same source.

END OF THE NOVELS OF OUR LORD THE MOST HOLY EMPEROR JUSTINIAN.