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

EIGHTH COLLECTION.

TITLE I.

CONCERNING THE TIME AVAILABLE WHEN MONEY FORMING PART OF THE DOWRY HAS NOT BEEN PAID.

ONE HUNDREDTH NEW CONSTITUTION.

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

PREFACE.

Our laws have left without consideration all cases where sums expected to be paid have not been counted out and delivered, but We have abridged the prolixity and length of these, lest men may be enabled to take advantage of their negligence under such circumstances, or even be guilty of fraud; for evidence is not always available by those who wish to make use of it, and time disposes of many things. Wherefore We have, in certain instances, abridged the length of complaints in cases where the money was not paid over, which may be collected under laws already enacted; for, as the entire time of the existence of the marriage was granted to husbands to demand a dowry which had not been paid, and another year was conceded for this purpose after their death, or after repudiation, We have deemed it proper by means of a short and useful law to abridge the time during which the claim for a dowry which was not paid shall be made, and release women from the necessity of proving, after a long period had elapsed, that this had been done.

CHAPTER I.

CONCERNING DOWRIES WHICH HAVE NOT BEEN PAID.

Therefore where a man lives with his wife for the term of two years or less, and does not receive his dowry, his silence shall not prejudice the rights of himself or his heirs; but a demand for the dowry can be made within another year, as the brief duration of the marriage impels Us to enact this legislation. Where the matrimonial union lasts longer than two years, but less than ten, We give the husband permission to present his claim during the existence of the marriage, and to state that the dowry has not been paid to him, either wholly or in part. Where he has once formulated his demand, under such circumstances, and his wife does not prove that she paid the dowry, the husband shall transmit his right of action to his heirs.

(1) When, however, the dowry is not demanded within ten years, We forbid the husband, on account of his silence, to claim it after this period has elapsed, and We do not grant a year to his heirs for this purpose. We do not establish this rule as a penalty against anyone, but on account of the solicitude which We entertain for the liberty of Our subjects. For when the husband can demand the dowry during so long a period (We mean the term of ten years), but prefers to remain silent, it is perfectly clear that, although he has not received it, it was his intention to entirely relinquish it himself, or allow his heirs to do so.

The provisions of this law shall be applicable even in case the marriage should be dissolved by repudiation. We make no distinction where the woman herself has stipulated for the dowry; for whether this be the case, or some other person has constituted it for her; since, as We have previously stated, lapse of time will invariably produce its effect, and will either confer or take away the right to bring the action to collect the dowry.

It is, however, unnecessary for the demand for the dowry merely to be made verbally (for often indignation or some other incentive induces the husband to make it in this way, or it may even happen that he does not demand it at all, and that witnesses who have been purchased make false statements), but the demand must be made in writing. If anyone should

desire to bring suit for this purpose, he shall absolutely be required to notify the woman or whoever is obliged to pay the dowry, as there is nothing which prohibits the husband from personally making the demand. The wife should not disregard the notice, she cannot anticipate it, and he who is about to file the complaint should not leave her in ignorance of the fact.

CHAPTER II.

Therefore, generally speaking, it must be said that where a marriage is dissolved either by death or repudiation within two years, the husband himself, as well as his heir, can, during another year, apply to the court on the ground that the money has not been paid. If, however, the marriage should last more than two years, and less than ten, We do not grant the husband or his heir a longer term than three months in which to make a demand for the dowry. But when ten years have elapsed, then neither the husband nor his heir shall be permitted to claim the dowry, and this time shall be sufficient to insure its retention by the woman. Where the husband is a minor, and has not claimed the dowry, We allow him a term not exceeding twelve years from the date of his marriage to do so; for We are aware that marriages of this kind are not contracted before the age of fifteen years; hence it follows that if the minor has passed his twenty-fifth year, he can, until his twenty-seventh, claim the dowry on the ground that it has not been paid, and if he should die during this time, his heirs shall have a year for that purpose.

(1) But where the heirs of anyone who is either of age or a minor did not demand the dowry themselves and are minors, they will only have five years in which to claim it on the ground of its not having been paid; and this time will be sufficient for them without waiting for the majority of all the minors. The following circumstance induced Us to enact the present law, namely: A certain woman married a boy of fourteen years of age, and twenty years after the death of the latter, she, taking an improper advantage of the age of the minor son, whom she had had by him, demanded the return of her dowry. The son, however, opposed this by alleging that the dowry had not been paid, but he did so twenty-four years after his mother's marriage, a case which, after due consideration, We had already provided for.

Under the present law We allow minors the term of five years in which to avail themselves of the claim that the dowry was not paid; nevertheless, a husband who has given a receipt for the dowry cannot proceed in this manner, and all cases of this kind shall be decided after the time of majority or minority has elapsed. This rule is applicable to all future marriages, for, so far as those at present existing are concerned, if they last less than ten years and more than two, the husband, in order to demand a dowry which has not been paid, will be entitled to the time granted him after the expiration of the said terms. But where the marriage lasts less than two years, or more than ten, afterwards, then We grant the husband two years in which to claim the unpaid dowry and We allow his heirs three months after the dissolution of the marriage for this purpose, in order that justice may be done to them in every respect.

EPILOGUE.

Your Highness will hasten to see that what We have been pleased to enact by this Imperial Law is executed.

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

TITLE II.

CONCERNING DONATIONS MADE BY DECURIONS TO THEIR SUCCESSORS EITHER AB INTESTATO OR BY WILL.

ONE HUNDRED AND FIRST NEW CONSTITUTION.

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

PREFACE.

An application made to Us by certain decurions has afforded Us the opportunity of promulgating a good law. And We enact it, not merely as applicable to certain decurions but to those who are subject to Our authority. We mean to such as are in the East, as well as to all who are included within the limits of the Empire. For, remembering that Our predecessors were solicitous for the welfare of decurions, and to the collation of their property in the *curise,* the result of this has been that some persons have become members of the *curia,* and others have been released from curial obligations. We now grant permission to decurions to appoint heirs, not only among the decurions of the same city (for they are permitted to do this at the present time), but even to appoint as heirs persons who are not subject to curial duties, when they desire to do so; but on the condition that he or they who are designated shall, in every respect, take the place of the deceased, that is to say, shall be invested with the curial status, and perform the functions of decurions; and, under these circumstances, those who are appointed heirs shall be entitled to the estate without opposition.

We are sure that the amendment included in the present law will have such an effect that the *curia* will thereby acquire great wealth; that the decurion and his property will, in the future, derive substantial benefit from this legislation; and that the *curia* will flourish on account of the large number of its members to whose fortunes it will be entitled.

CHAPTER I.

Therefore We order that when decurions make their wills, they shall be permitted to designate as heirs either any persons whom they may select, or other decurions of the same city (We authorize them to do this by Our law), or any members of their families or even strangers, whether they are decurions or not; and We permit them to appoint the said heirs to any share under nine-twelfths of their estates, or to all of them, under the condition, however, that they shall give themselves to the *curia,* join the body of decurions, and discharge their official duties.

This rule shall be applicable to children, grandchildren, and other descendants; but it shall not be observed in the same way prescribed by the constitution having reference to those who offer themselves to the *curia,* which directs that the offspring of persons who have offered themselves in this way shall not belong to the curial condition; but persons who bind themselves to the *curia* shall be deeurions, just as if they had been so from the beginning, and as if they had, through their families, been united with the *curia,* had had their names inscribed upon its register, and had been included in the body of decurions. For there is no difference whatever between appointing as heir one who is a member of the same *curia,* or appointing one who will soon become such.

CHAPTER II.

But where a blood-relative is living who, being exempt from curial obligations, may be called to the succession of a decurion that died intestate, and he wishes to become a member of the *curia,,* he shall be permitted to do so, and he can have his name inscribed upon the register within six months. He will then become a decurion; along with his successors his property will pass to the Order, and will be the heir of the deceased; for as the fortune of anyone who has once succeeded to an inheritance (whether he is already a decurion, or becomes one hereafter) belongs to the *curia,* he can claim nothing of the estate of the deceased, so far as one-fourth or nine-twelfths of it are concerned.

But where anyone has given a large portion, or nine-twelfths of his property, to a decurion of the same city, or to anyone else, and then offers himself together with the remainder of his estate and the offspring which he already has, or which he may have hereafter, to the *cwriu* to which he belongs, We decree that this generous act shall take effect only under the condition that the donee becomes a decurion, for We desire constantly to take precautions to prevent the property of decurions from being in any way diverted from the *curia,* of which they are members.

CHAPTER III.

But in order that these things may take place without the appearance of collusion, and that certain persons, having obtained the estates of decurions either through donations or by will (as We have previously stated), or where they pass in case of intestacy, may not, by virtue of such gifts, attempt to enjoy said property without offering themselves to the *curia,,* We order that if, as has already been stated, the donor has made a gift, the property shall not immediately be transferred to the donee, but shall remain in possession of the donor until the person who has accepted the donation has bound himself to the *curia,* by means of an instrument executed gratuitously, and without expense, before the judge of the province, in the manner already prescribed; and that as soon as his name is inscribed upon the register of decurions his property shall be delivered to him. But where the donor has already transferred the property to the donee, and the latter has not yet announced his intention of becoming a member of the *curia,* three-fourths of the said property shall be reserved, which We desire, by all means, to be acquired by it.

(1) If anyone who is not a decurion should be entitled to the estate of a member of the Order either by will or *ab intestato,* the *curia,* will share the inheritance with him; and immediately after the death of the decurion, an inventory shall be drawn up without any loss resulting therefrom, in the presence of the defender of the city and of the person called to the succession; the property shall be de-' livered to the *curia* under the seal either of the defender or of the bishop; and when the aforesaid statement has been committed to writing before the judge of the province, and the heir has (in conformity with what has frequently been stated) become a member of the *curia,* and his rights and any offspring which has been or may subsequently be born to him have been duly transferred to the *curia,* he shall then receive the property given and become the owner of the same, just as if he had been a decurion in the first place, and he will not appear to differ from one born in that condition. The judge of the province will receive without compensation or expense the document by which the obligations to the *curia* are assumed.

We do not promulgate this law for the purpose of injuring the *curia,,* and subjecting it to loss, but, on the contrary, for its benefit, and We desire that it shall be valid for all time, since through the accession of wealth and numbers it increases the power and the resources of decurions. Where, however, he who is called to the succession of a decurion who died intestate is not himself a member of the Order, and is unwilling to accept the estate, and devote himself to the *curia,* the latter shall be entitled to three-fourths of the property, and the heir shall be the owner of only the one-fourth, which the previous law allots to him, even thougTi he may not be a decurion. Where several heirs in the same degree are called to the succession of a decurion, and some of them become members of the *curia,* and others refuse, he or they who devote themselves to it shall be entitled to three-fourths of the estate, and the heirs at law shall obtain the other fourth; for We are desirous that three-fourths of the same shall pass without diminution to the decurions of the city.

CHAPTER IV.

But if a decurion should die leaving a daughter who is married to another decurion of the same town, there is no doubt that she will receive the entire estate of her father, or at least three-fourths of it, when he desires to leave one-fourth to someone else; but where she had not already become the wife of a decurion, and he who married her consents to become one and assume the curial obligations, the marriage will be valid; the husband will unquestionably be entitled to administer three-fourths of the estate on account of his good- will to the *curia,* for which reason We wish three-fourths of the property to be transferred to his wife; and he shall assist in the conduct of the affairs of the municipality.

But when there are several daughters, some of whom are married to men who are already decurions, or to others who become such by the assumption of curial duties, three-fourths of the estate shall be divided among them, and one-fourth among the other daughters; but the men who have married the daughters of the decurion shall use their property for the benefit of

the *curia,* even though the ownership of said property may be vested in their wives; for We have given the estate of the father to the latter in order to compel their husbands to perform the functions of decurions. When a woman married to a man who has become a decurion dies, and she has had male children by him, the estate will pass to these children, who themselves will become members of the *curia,* and the transmission of the estate will take place without further ceremony.

(1) If, however, the children should be daughters, and some of them have married men who are already decurions, or who have devoted themselves to the *curia* in the same town, they shall also be entitled to the estate without any hindrance, by reason of being subjected to the performance of the curial duties through the medium of their husbands. But if, among the daughters whom the wife of the deceased decurion has left, there should be any who are not married to decurions, and others who are the wives of men that are already decurions, or will become so hereafter, then, in accordance with the division formerly established, the daughters married to decurions will have a right to three-fourths of the estate, and their husbands shall discharge the curial functions in their behalf, and the other daughters will be entitled to one-fourth.

Where, however, a woman married to a decurion leaves either male or female children, her husband will enjoy the usufruct of the property as long as he lives, on condition of his discharging curial duties. If he marries a second time, and becomes the father of male or female children, and his daughters marry decurions, his children shall also hold the property for the benefit of the *curia;* and if he dies, or does not contract a second marriage, or if, having daughters, he does not marry them to men who are already decurions, or who will become such, then the *curia* will acquire the property in regular order. For We never allow this share of an estate and the functions of decurions to be alienated, or where this kind of a succession passes to several persons, We desire that three-fourths of the estate shall be reserved for the *curia* by all the lineal descendants, either through the male children of decurions, or the sons-in-law of the latter who assume curial obligations.

This law shall be observed for all time in cases which are still pending and have not been decided by judicial decision or amicable intervention.

EPILOGUE.

Your Excellency will hasten to cause to be observed what has seemed to Us to be proper to promulgate by this Imperial Law, and you will especially make provision for everything which concerns the public welfare.

TITLE III.

CONCERNING THE GOVERNOR OF ARABIA.

ONE HUNDRED AND SECOND NEW CONSTITUTION.

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

PREFACE.

As We have already given a better form to the greater portion of the magistracies of the provinces which were previously in an inferior and abject condition, and not adapted to the proper transaction of any public business, and as We have afterwards appointed to them officials who were more qualified in every respect, and the latter have begun to conduct the administration of affairs in such a way that everything shows great improvement; and as We have revived a large number of ancient titles, such as those of Proconsul, Prator, and Governor, and have increased the emoluments of these magistrates, as well as added to their authority; and as We have, above all, forbidden them to wrong Our subjects, or to employ a multitude of hands to plunder them; and, with a view to prevent this, We have required them to take the most terrible of oaths, and it is not until they have done so that We have placed

them in office, considering that they are only then worthy of receiving their commissions; for all these reasons We now turn Our attention to the country of the Arabs, where similar changes are necessary because the people are in great want, and in direct correspondence with the unhappy state of this nation, large numbers of its inhabitants apply to Us for relief, all of them giving utterance to lamentations, some, on account of thefts and robbery committed; others, because of injuries sustained, and others again, on account of losses which have been inflicted upon them; and We have ascertained that the cause of all this evil can be traced to the incapacity and impotence of the magistrates entrusted with the government. For those who are invested with civil magistracy have so little power that they are, by a custom in some respects of a servile character, subjected to the authority of a military commander, and rendered dependent upon him, while he himself is not, properly speaking, a magistrate. Hence it necessarily follows that during the long period when there was no civil magistrate in Arabia, the military commander discharged his duties, while he was not competent to perform the functions of either this office or his own; and instead of trying to benefit Our subjects in any way, he confined himself to the collection of the salaries of both employments.

CHAPTER I.

These things have induced Us to promulgate the present law, and, availing Ourselves of it, We impart to the magistracy of Arabia a better form, and kindly grant to him who is invested with its administration the name of Governor (which We have also done in Pontus), and We also confer upon him the title of *spectabile* magistrate, in order that he may not be, in any respect, inferior to the military commander. He must supervise with great diligence the collection of taxes, as well as pay particular attention to the welfare of private persons; he must not allow Our subjects to suffer loss at the hands of the military commander, the tribune, the retainers of any powerful person, the officials of Our own Imperial domain, or those having charge of Our private property, or even the members of Our Imperial household. He must not too readily consent to anything, or be influenced by fear; he must govern Our subjects with firmness, and, above all, keep his hands clean towards God, Ourselves, and the law; as We desire him to take the same oaths required by Us or other magistrates. He will receive, along with his commission, the Imperial instructions employed by Our predecessors, and adopted by the ancient Republic, and which We have renewed after they had fallen into desuetude. He will always regulate his official conduct by them, and will obey Our orders. If he observes these regulations in every respect, there will be no reason for his not discharging his duties with propriety and sagacity; and, with the aid of God, to acquire great skill and readiness in the administration of justice.

CHAPTER II.

Therefore (as We have already stated), the Governor of Arabia will principally devote himself to the collection of taxes, and manifest a kind and paternal regard for those who are required to pay them; but he must display great energy and severity towards such as are shown lax in discharging their pecuniary obligations. He shall also administer the affairs of the government in such a way that everything will be conducted in an orderly manner; he shall see that the Bostreni and other peoples do not take part in any tumults or seditions, and that the festivals whose celebration has been sanctioned from ancient times are not turned into scenes of rage and slaughter. He will also, in conformity to Our mandates, have soldiers under his command (whom he shall be at liberty to select here), and he will not fail to do whatever is conducive to the public welfare. We desire him to be installed with the same honors which We have bestowed upon the Governor of Pontus. He shall be of *spectabile* rank, and be invested with various titles and many other distinctions. We grant him emoluments similar in character to those of the Governor of Pontus above mentioned, as We wish him to receive fourteen pounds of gold by way of salary, besides other emoluments, and his assessor to receive five, and the members of his court nine. He will govern in accordance with the Imperial Mandates (as We have just stated) and make use of his soldiers for that purpose.

Your Highness will see that a large number of soldiers stationed in this part of the Empire are subjected to the orders of the Governor of Arabia, and the latter must obey him, and execute his orders. Hence the distinguished general of the army will have absolutely no control over the soldiers whom We place under the command of the Governor, nor over any civilian; he must not interfere with any lawsuit which persons may have with one another, or where anyone is brought into court, nor shall he interest himself in cases, as a great distinction exists between civil and military jurisdiction. The Governor, as well as the general, shall then confine themselves respectively within the limits of their authority, as Our predecessors have prescribed and directed in the organization of the government. The general is hereby notified that if he meddles in civil affairs he will not retain his command, but will be deprived of it, reduced to the condition of an ordinary citizen, and subjected to the authority of the civil magistrate.

CHAPTER III.

This is what has been laid down by Us with reference to the magistracy of Arabia. We are satisfied that the government will, with the assistance of God, be better administered hereafter. We do not spare money to accomplish this purpose; the salary of the office has increased, and We have no doubt that, for this reason, the Governor will exert every effort to see that the public taxes, instead of being a source of loss to the Treasury, will, on the other hand, be extremely profitable to it.

We especially desire that the distinguished general of the army shall receive his emoluments from the official appointed by the Governor of the province for that purpose, and that he shall not be permitted to collect them himself, in order that a base inclination may not induce him to take more than he is entitled to; and if he should disobey these rules, he is hereby notified that he will be fined fifteen pounds of gold.

TITLE IV.

CONCERNING THE PROCONSUL OF PALESTINE.

ONE HUNDRED AND THIRD NEW CONSTITUTION.

Addressed to John, Most Glorious Praetorian Prefect of the East, twice Consul and Patrician.

PREFACE.

We have already granted greater power to the Governors of other provinces who, formerly deprived of much of their authority, were not capable of acting with energy; We have bestowed upon them the rank of *spectabile;* We have increased their salaries, as well as those of their assessors and subordinates; and, among all the distinctions which We have conferred upon them We have included that of hearing appeals; We have honored some of them with the title of Proconsul, others with that of Count, others again with that of Praetor, and still others with that of Governor; and We add, so to speak, new ornaments to Our Empire by the splendid appointments which are constantly being introduced.

We have especially directed Our attention to the metropolis of Caesarea, the capital of First Palestine, which province should, above all others, enjoy great distinction, for the reason that it was formerly governed by a Proconsul with the title of Prefect, although he was subsequently reduced to an inferior rank. Palestine, at first, only constituted a single province, but when it was divided into three parts, it did not retain the Proconsulate, but was placed under the jurisdiction of an ordinary magistrate (as he is called). Without considering that this capital is very ancient, its name was always celebrated, either because Strato first founded it and constituted it a city; or for the reason that the distinguished Emperor Vespasian, the father of Titus, of pious memory, gave it the name of the Caesars instead of that of the Tower of Strato, which it was formerly called because Strato resided there after the Hebrew victories between the emperors; an act which alone would be sufficient to invest him with the greatest glory.

(1) We are aware that Palestine is inhabited by a great and estimable people, and forms no inconsiderable part of Our Empire, both because of the amount of taxes which it pays, and by reason of its exceeding loyalty; that it includes cities of great renown; produces good citizens versed in all kinds of knowledge, as well as eminent among the priesthood; and that, finally (which is more important than everything else), Our Lord Jesus Christ, the Creator of the Universe, the Word of God, and the salvation of all the human race, redeemed us in Palestine, and it was there that He designed to become responsible for our sins.

CHAPTER I.

Therefore, why should We not increase the consideration due to this province, by adding to the dignity of the magistrate who governs it, and why should We not elevate him to the Proconsulate? Why should We not concede to him the title of this office? And this is what We now do, by means of the present Pragmatic Sanction, which We desire to be styled the Privilege of the Csesareans. Hence We hereby create the Governor of Palestine a Proconsul; We confer upon him the rank of *spectabile* magistrate, and all the attributes peculiar to that office; he shall hear appeals brought before him from every part of both Palestines, where the value of the property involved is not over ten pounds of gold; and his rank will enable him to execute Our orders with more distinction and greater authority. He will assume the venerable and antique *veneta* (that is to say, the purple stole), and he will wear it during the sacred monthly festivals; being invested with so much honor, he will render himself agreeable to his subordinates ; he will command a large number of soldiers, and do whatever is most useful to the government and advantageous to Our subjects. We also bestow upon him, by way of salary, twenty pounds of gold, which he shall freely divide between himself, his assessor, and his attendants. He will notify Us of the division to be made of it, in order that We may confirm its distribution by means of an Imperial Pragmatic Sanction, as We are not willing for the Governor of Palestine and his assessor to be paid the moderate emoluments which they formerly received, or that his attendants, who are occupied with such large collections of taxes, and have considerable risk to run on this account, should be deprived of all means of assistance, especially when the Proconsul, his assessor, and the members of his court are well disposed toward Us, diligently collect the public tributes, and abstain from unjust exactions.

CHAPTER II.

In addition to this, the distinguished military commander of Palestine at the time shall not, in any way, interfere with civil cases, or the disbursement of taxes, but the Proconsul himself shall decide all public and private litigation (as has already been stated) ; he must especially see that the public revenues are paid without delay or loss, and keep his hands clear of all corruption.

What We decree will be carefully observed, for Stephen, whom We appoint the first Proconsul of Palestine, is deserving of great praise, and Our experience with him in former times induces Us to believe that he will discharge the duties of this office with wisdom. He must be especially careful to maintain order in the cities, and see that no popular tumult is excited therein. For this was one of his duties when he was invested with the magistracy; and he, having obtained the government of a province prone to sedition due to difference of religion, as well as other causes, pacified it, and entirely delivered it from all kinds of tumults and troubles, which is what We enjoin him to do now. If it should become necessary for him to visit Second Palestine, for the purpose of suppressing disorder, he must not permit anything improper to take place there, and above all, in that part of the province in which We are aware that widespread disturbances exist, the results of which are serious.

CHAPTER III.

If he should be in need of any soldiers stationed in the province, We hereby place those under his command whose energy We know has been tested as much in protecting the citizens of the town as in preserving peace among the inhabitants of the country, and in collecting the public taxes.

We confirm in all its force the Imperial Pragmatic Sanction which was originally promulgated on this subject, and by which the distinguished departmental commander, or the most glorious general of the army is prohibited from depriving the Proconsul of the military authority conferred upon him, for fear that tumults or sedition may arise in the city. For tumults will never take place while the Proconsul administers the civil magistracy, if he maintains strict discipline among the collectors of tribute, and is careful to provide soldiers ready to execute his commands, whenever this becomes necessary, and suppresses crimes committed by these persons or by others.

(1) The eminent general of that department, and he who is invested with Proconsular magistracy, shall be entirely distinct from each other, so far as their respective duties are concerned. For the former will have charge of the troops known as *limitanei,* and *fcederati,* and of the entire body of soldiers in the province, with the exception of those allotted to the service of the Proconsul; while the latter will have jurisdiction over private persons as well as civil matters, and will command the military forces placed at his disposal. No one can evade his jurisdiction in matters relating to public taxes or popular sedition.

(2) Thus (as We have already stated) We grant these powers to the above-mentioned magistrate, and We desire then to be perpetually recognized by means of this Imperial Pragmatic Sanction. In order that the authority of Your Excellency may be undisputed, We order this Decree to be inscribed upon the registers of your office, so that all the future inhabitants of the province may know that the Proconsular office has been restored to them; that the highest rank of Proconsul has again been established in First Palestine; and that this magistrate, who was formerly deprived of the pomp attaching to the office, is now invested with all due honor and distinction.

EPILOGUE.

Your Excellency will see that what it has pleased Us to enact by this Imperial Law is carried into effect.

TITLE V.

CONCERNING THE PRAETOR OP SICILY.

ONE HUNDRED AND FOURTH NEW CONSTITUTION.

The Epitome of the One Hundred and Fourth Novel is partly taken from Haloander, and partly from Julianus.

Sicily shall have a Praetor who will be entrusted with the administration of civil matters, and have charge of the military establishment.

(2) The collection of the public taxes of Sicily shall not be one of the duties of the Praetor, but shall devolve upon the Count of the Patrimony of Italy.

(3) Appeals from Sicily to this Capital shall be heard by the Most Excellent Quaestor; and decrees of the defenders of the city or of the municipal magistrates shall be confirmed by this illustrious dignitary, whenever this is necessary.

TITLE VI.

CONCERNING CONSULS.

ONE HUNDRED AND FIFTH NEW CONSTITUTION.

The Emperor Justinian to Strategius, Count of the Imperial Largesses, Ex-Consul and Patrician.

PREFACE.

The Romans, in ancient times, established the title and office of Consul for the purpose of employing these officials against their enemies, and it was in pursuance of decrees which created them according to the laws of the Republic that the Consuls immediately drew lots for

the provinces, in which the Romans were at war; and it was also by virtue of these decrees that they, in like manner, acquired the *fasces.* When the authority to make peace or war was subsequently transferred to the most pious Emperors, the rights of the Consuls were restricted to the practice of moderate liberality, not exceeding a fixed amount. But, gradually, certain Consuls assumed great ostentation, and displayed undue magnificence, without reflecting that, up to that time, this had riot been done; for great riches which surpass the conceptions of the mind, and which are not derived from the office of the person who possesses them but from private resources, are not the lot of many men. Therefore, as We see that this title which, from the most distant times, and for nearly a thousand years, has been preserved with the Roman government is in a fair way to be lost, We think that some provision should be made with reference to the consuls, in order to diminish their enormous expenses and render them easy to be borne, so that the Consulate may continue to exist among the Romans, and be obtainable by all good citizens whom We consider worthy of being honored in this manner.

Hence, taking all these matters into consideration, We have decided what sum should be given under such circumstances. The distinguished Emperor Marcian promulgated a law forbidding Consuls to distribute money among the people, and this law was the first one of his Constitutions. But We have ascertained that after it was enacted, certain Consuls observed it, and no longer made such popular donations, while others requested permission to bestow gifts in this manner, and, after it was granted, they did as they pleased in this respect, scattering sums that were excessive in amount; others, however, practicing moderation, limited themselves to the distribution of largesses of inferior value. As a just medium was regarded by Our predecessors as preferable, and all extremes are dangerous, We have deemed it proper to. establish a suitable rule with reference to this subject, in order that nothing may be inordinate or irregular, and unworthy of Our reign.

CHAPTER I.

CONCERNING THE SEVEN PROCESSIONS OF THE CONSULS.

Therefore We direct that every annual Consul, whom We appoint, shall bestow upon the people by way of largess, distribution, and expenses as much as he can afford; and We set forth in this Constitution everything relative to such presents made by the Consuls. We give the force of law to the following regulations, and anyone who violates them shall be punished.

We desire, in the first place, that there shall be seven Consular processions. For when anyone intends to give entertainments to the people for their enjoyment, We provide for this by means of circuses, animal combats, and the concerts of musicians, and do not permit them to be deprived of any of these amusements.

The first Consular procession shall take place on the *Kalends* of January, when the person entitled to the Consulate receives the commission of his office. After this procession, a second exhibition, that is, one of horse contests (called *mappze)* shall be given. Then a third, theatrical in character, is to be exhibited, but only once; next, the one known as "For the Entire Day," shall be represented for the delectation of the people; this exhibition, called in Greek *wayxpanov,* and, consisting of combats of men with wild beasts, requires great courage, as the animals must, by all means, be killed. The course of the fifth procession is directed to the theatre called *Adorna,* where comedy, tragedy, concerts by musicians, and all kinds of performances take place. The Consul shall then give another exhibition of contending horses, called *hippomachia.* This is the sixth procession. Finally, when he relinquishes the honor conferred upon him, he does so by means of a solemn ceremony.

In this manner the celebration of seven nights of processions proceeds without any of the observances prescribed by antiquity being omitted. And if, not being content with what was originally the custom, We have provided for a second contest of horses, and have continued the two theatrical exhibitions, it is certain that We have introduced no innovation by doing so. What We have directed shall then be considered to be sufficient; each exhibition shall be given publicly; and the number shall not be increased so as to render them obnoxious to the

people, for what rarely occurs is regarded as wonderful.

These are the rules which We have laid down with reference to Consular expenses.

CHAPTER II.

CONCERNING THE WIFE AND THE MOTHER OF THE CONSUL.

If the Consul has a wife, We regulate her expenses also, for it is proper for her to share the distinction of her husband. But when he is unmarried, what We have already decreed shall be sufficient, unless his mother is living, and she has not already participated in the honors of the Consulate, or her son wishes her to enjoy them with him. We only concede this privilege to his mother, hence no other woman than the wife and the mother of the Consul shall be distinguished in this manner; for the reason that wives, in accordance with law, share the distinction of their husbands, and mothers also enjoy it, if the Consul so desires.

This rule does not apply to the daughters, sisters, or daughters-in-law of Consuls, and still less to anyone who does not belong to his family, for this is absolutely prohibited.

(1) But how much should the Consul distribute among the populace during the seven processions? We shall decide this much better than was done by the Constitution of Marcian, of Divine memory. This Constitution forbids every exhibition of munificence, but We amend it by allowing the incumbent of the consular office to exercise his generosity. For when he does not wish to distribute anything among the people, We do not compel him to do so; just as when he desires to be liberal and honor them with gifts of silver coin, We do not prohibit it. We, however, forbid him to scatter gold coin about in either large or small sums, no matter what may be its weight or denomination; and he shall only distribute silver, as We have just remarked : for We grant the Empire the exclusive right to scatter gold, as the amount of its wealth permits it alone to despise this metal.

The Consuls will, therefore, restrict themselves to the distribution of silver among the people, which, next to gold, is the most precious metal; and We direct them to bestow it in the coins called *missiles, cavese, thymelicse, quadrangul'se,* and others of this kind; for the reason that the smaller the denomination of the coins distributed the greater will be the number of the persons who receive them.

Thus the liberality of the Consuls will be in proportion to the means and inclination of him who makes the donation, and he will be at liberty either to distribute nothing, or to use moderation, or to exhibit an excessive profusion. While enacting these provisions, We do not compel the Consuls to scatter money about against their will, just as We do not prohibit those who desire to do so.

This is a rule that We establish with reference to coins thrown to the populace. Hence if a Consul desires to be generous, he can distribute money during these processions as he may deem to be advisable, and he is only forbidden to distribute gold, which is a privilege solely reserved for the Emperor.

(2) We strictly prohibit any of the provisions which We have enacted in the present law from being violated, or others to be added to them. Hence, in order that We may prescribe no limits to the gift of money under such circumstances, We leave it to the discretion of those who bestow it; so that its distribution may absolutely depend upon the desire and pecuniary resources of the donor. What, however, .has once been prescribed and ordered by Us, Our law forbids to be disobeyed.

If anyone should presume to violate these provisions, he shall pay a fine of a hundred pounds of gold for having disregarded Our precepts, and evaded the intention of this enactment, as far as was in his power. For if it has been adopted solely to prevent the poverty of Consuls through their excessive liberality, and for this reason We have restricted these superfluous donations and reduced the expenses of processions for the entertainment of the people, as well as those of public exhibitions, to a more reasonable figure; and if, taking into consideration

what is proper relating to the distribution of money, and We only authorize silver to be scattered, and allow Consuls to give nothing at all when they are unwilling; this has been done in order that We may have a larger number of these magistrates, and that they may always adorn Our reign with their names, and anyone who does not comply with these rules, and violates Our law, shall be considered worthy of punishment. For in this way We shall always have Consuls who will not hesitate to bestow immense gifts, and will under no circumstances have reason to fear and avoid the Consulate as an office involving certain risk. Hence We order that this law shall be observed in all its force.

(3) Therefore, no one shall presume to violate it, whether he be a man of great wealth, or one of Our judges, or a member of the Great *Curia,* or discharges the functions of any public employment whatsoever. For, taking all these matters into account, We have proposed to Ourselves to maintain equality in donations of this kind, permitting no one to exceed the limit fixed by this law, unless with reference to the amount of silver which Re is authorized to scatter or not to scatter among the populace, during the processions; which (as We have already stated) We leave entirely to the discretion of the Consuls themselves. Great favors are granted by this law of Ours to those who are accustomed to receive such gifts; for if they run the risk of receiving nothing from Consuls who neglect their duties, they will now obtain moderate presents, and will be indebted to this law, which is also indulgent to the Consul who bestows no largess.

We forbid the Most Glorious Consuls to scatter gold or great vases among the people, for We desire them to display their liberality by the distribution of the coins previously mentioned. We establish this rule through motives of humanity, and in order to consult the interests of the people; for if those who display their consular munificence do as We have directed, they will, by this means alone, conciliate the masses. Those who foment seditions through largely sharing in the generosity of the Consuls will no longer engage in contention; they will not come to blows, as they formerly did, by making use of clubs or stones, which conduct is especially odious to Us. For We see them use every effort to afflict one another with innumerable evils where various articles are thrown among and seized by them from which their households derive no benefit, but which they squander during the same day in drunkenness and debauchery. And whenever, in the hope of obtaining considerable profit, one of them incurs expense and afterwards obtains nothing from consular generosity, or less than the amount he has disbursed, he is obliged to suffer loss to pay the debt which he had contracted; and, in addition, be subjected to the blows, wounds, and misfortunes which result. Where, however, the money scattered by the Consuls is distributed with moderation, the populace do not exert great efforts to seize it, and not making calculations for excessive gain they do not give one another blows, or inflict severe wounds, in order to obtain possession of what is bestowed.

Therefore We have, by means of this law, introduced a provision which is of general application and appropriate to the form of government; so that the course of time may always be indicated after the Empire is mentioned by the constant mention of the Consuls themselves. We also provide a suitable consolation for Our most glorious judges; for those who are members of the great *curia;* for Our people, and for all others (in that We release those whom We honor with the Consulate from being compelled to incur enormous expense) even though this may have been unexpected, and We suppress all superfluous outlay, so that We may render the Consulate immortal in the government.

(4) Therefore (as We have already stated) Our explanation of this law, copies of which shall be filed in the Court of Your Highness, to whom We have addressed it, hereinafter follows. We direct that the Most Glorious Consuls now in office shall receive from your tribunal alone a copy of the said explanation appended to this law, so that by means of the same everything which is done may be properly executed. We wish this to be issued by Your office in order that the Consuls may not be allowed to evade its provisions, nor those who are called compilers alter anything which We have decreed. A copy shall be given on the responsibility

of those members of the Court of Your Glory to whom it is entrusted, which shall bear the signature of the magistrate exercising the functions of the office which you now occupy, in order that what We have provided may not, in any way, be changed. None of those persons called to the Consulate will experience any hesitation in accepting the place, if he always confines himself to moderate expenditures. For We, through Our generosity, continue to give to the Consuls everything which they have been, up to the present time, accustomed to receive from the court of Your Highness, or even from other sources, for, while reducing their expenses, We do not diminish Our liberality towards them.

The Emperor, however, is not subject to the rules which We have just formulated, for God has made the laws themselves subject to his control by giving him to men as an incarnate law; the Consulate belongs to him in perpetuity, whether he himself discharges its functions over all cities, peoples, and nations in pursuance of any private design by which he may be actuated, or whether he confers upon others the consular robe and attributes, as the office is always a part of the Imperial dignity.

EPILOGUE.

Your Highness will cause this law to be perpetually observed in accordance with its provisions.

To the law: One copy is addressed to John, Most Glorious Praetorian Prefect, twice Consul and Patrician. Another is addressed to Longinus, Most Learned and Most Glorious Prefect of this Capital City.

Given at Constantinople, on the fifth of the *Kalends* of July, after the Consulate of the most illustrious Belisarius.

TITLE VII.

CONCERNING MARITIME INTEREST.

ONE HUNDRED AND SIXTH NEW CONSTITUTION.

The Emperor Justinian to Peter, Most Glorious Praetorian Prefect.

PREFACE.

We have received a message from Your Highness for which We Ourself have given occasion. Two men, Peter and Eulogius, have applied to Us, stating that they are accustomed and it is their business to lend money to the masters of ships, or to merchants who are generally engaged in maritime trade. Our law ordinarily styles such transactions loans on transport, and it fears them, because they give rise to uncertainty; hence it is necessary that the custom in accordance with which they are practiced should become clear, and that We should make provision for rendering this custom a positive rule. Therefore, We, having designated you to ascertain the nature of the doubt, and report it to Us, to the end that We may be fully informed, Your Glory has, in accordance with the terms of your appointment, called together the shipmasters who are accustomed to make this kind of loans, and interrogated them as to the ancient custom. The said shipmasters, giving their testimony under oath, stated that there are various kinds of maritime loans, and that creditors have been pleased to impose a measure of wheat or barley for every *solidus* that they lend to shipmasters, who pay a certain sum to the receiver of public taxes, as well as to those who navigate ships without paying any taxes; that the creditors obtain this benefit from the money which they lend, and that, in addition, they collect by way of interest one *aureus* for every ten *aurei;* but they assume the risk of the sums which are loaned. When the creditors do not lend their money in this way, they demand as interest the eighth part of each *aureus,* not for a specified time, but until the ships return safely; the creditors take this interest when a vessel remains away an entire year, or almost that long, or when the duration of the voyage exceeds this term; whilst if the ship returns promptly, and without being absent more than one or two months, the creditors do not claim as interest more than three *siliqute* for each *aureus.* The same rule applies where the voyage

was extremely short, or when the sum loaned is in the possession of some other person than the debtor.

Where the merchants undertake another voyage, the rate of interest is fixed accordingly, whether the money remains in the hands of the same merchant, or is transferred to someone else in accordance with the agreement entered into between the parties.

If, however, after the safe return of the vessel, the shipmasters should not be able to sail again on account of bad weather, a delay of only thirty days shall be granted by the creditors to their debtors, and they shall exact nothing by way of interest for the sums loaned until the cargo is sold; the merchants will be required to prevent the sums loaned to them from passing into the hands of other persons without paying interest to the creditors at six per cent; and unless they do this immediately and protect the loan by offering landed security, the creditors will not be liable for maritime losses.

These are the statements which have been made by shipmasters under oath, and which you have transmitted to Us in order that We may make such provision with reference to them as appears to Us to be proper. This is the question which you have referred to Us for Our decision,

CHAPTER I.

Therefore We, having read these statements and become familiar with the case, do hereby decree that the customs whose existence has been established in the presence of Your Highness, shall continue to be observed now and for all time to come, for the reason that they are not opposed to laws already in force, and that they shall have legal effect so far as shipmasters and merchants are concerned; that they shall be complied with in all litigation instituted with reference to maritime interest; that the risk shall be incurred in accordance with the terms of the aforesaid agreements; and that all other customs brought to the knowledge of Your Highness shall be applicable, so far as shipmasters and merchants are concerned; as it is not just that what has been practiced for a long time, and has been established in a permanent manner, as is shown by the testimony given before Your Glory, should not be observed in transactions which subsequently take place. For is it not equitable that the method followed up to this time should be observed in compliance with the terms of a special law, and without requiring any other positive enactment; that this law should be operative hereafter in all cases relating to shipmasters or merchants, and that it should constitute a form of legislation generally applicable to the masters of ships and merchants and their contracts ? It, then, shall constitute part of the laws which We have already enacted, and judges must render their decisions in accordance with its provisions.

EPILOGUE.

Therefore Your Highness will be careful to have what it has pleased Us to order to be perpetually observed.

TITLE VIII.

CONCERNING IMPERFECT WILLS EXECUTED BY PARENTS WITH REFERENCE TO THEIR CHILDREN; AND CONCERNING THE DISTRIBUTION OF THE ESTATE OF A FATHER MADE AND SIGNED BY HIS CHILDREN IN HIS PRESENCE.

ONE HUNDRED AND SEVENTH NEW CONSTITUTION.

The Emperor Justinian to Bassus, Most Magnificent Count of the Domestics, who discharges the duties of John, Most Glorious Praetorian Prefect, twice Consul and Patrician.

PREFACE.

A law was promulgated by Constantine, of Divine memory, with reference to the confidence which should be reposed in conjectures; but as the nature of cases frequently varies, this law has need of amendment. It provides that the wishes of dying persons shall be strictly complied

with by their offspring; but it permits the latter to interpret these wishes by directing that if the assertions made by the deceased are not clear, but can be explained by certain indications, conjectures, or writings, they shall be equally applicable to children who are independent, or emancipated.

Theodosius made the same rule operative not only where fathers, but also where mothers and other ascendants of either sex were concerned; and men took advantage of this to such an extent that they inferred, rather than interpreted, the intentions of moribund persons. Thus, although testators may not have written the names of their heirs, and may not have made any statements as to the disposition of their property, or estimated the amount of it, their heirs, nevertheless, thought that they were authorized to ascertain their wishes by means of inferences and probabilities.

CHAPTER I.

CONCERNING THE WISHES OF PARENTS AS TO THE DISTRIBUTION OF THEIR ESTATES.

Hence, desiring everything to be clear and well defined (for what is so appropriate to the laws as perspicuity, especially where the testamentary dispositions of deceased persons are involved?), We hereby direct that if anyone who knows how to write should wish to divide his estate among his children, he must first put down the date with his signature; next he must inscribe the names of his children with his own hand; and then he must indicate the shares for which he appoints them heirs by completely writing them out, and not by merely expressing them in numerals, in order that said shares may be exactly known and free from all doubt. When he desires to make such distribution of all his property by either a general or special assignment of certain specified articles, he must reduce this to writing, so that everything having been duly enumerated, there may be no ground for the children to institute a contest.

Where he wishes to leave legacies, trusts, or grants of freedom to his wife or to strangers, he shall write his dispositions to that effect with his own hand; and, finally, testators must declare in the presence of witnesses that they desire what they have stated in their wills to take effect, and be executed without any dispute, or the pretext being advanced that this is merely written on the paper, and that the other formalities required in wills have not been complied with. We make this single alteration in order that the hand and the tongue of the testator may have all the virtue attributable to the execution of a formal instrument.

CHAPTER II.

If a testator should continue to have this intention until death, no one shall afterwards be able to introduce witnesses to prove that he wished to alter his will, or do anything of this kind; as he was permitted to revoke it and draw up another containing the perfect expression of his wishes, and which alone would be carried into effect. For We grant him the power to expressly state in the presence of seven witnesses that he does not desire that the former will which he has made should remain valid any longer, but that he intends to make a new one; and he can then do this by executing a faultless testament with all the necessary formalities, or by the mere verbal expression of his wishes, and at his death his former will shall be regarded as void, and the second one as perfect.

CHAPTER III.

As We have ascertained that certain persons distribute their estates among their children, and induce the latter to agree to this by their signatures, We adopt this rule. Therefore, where anyone divides his property, and, calling his children together, causes them to consent to the apportionment which he has made, by attaching their signatures to a written instrument, this shall be considered valid, and will be advantageous to the children. A division of this kind must be confirmed in conformity with the constitution which We have promulgated on this subject, and which We ratify by the present law in all cases to which it is applicable. Where the father, alone, signed the instrument making the distribution, and which he has rendered

clear by his signature, it also shall be valid; for the reason that this method has already been included in Our legislation. Hence it is evident that this law will be applicable to all cases which may hereafter arise.

EPILOGUE.

Your Highness, having been informed of the provisions which it has pleased Us to enact by this Imperial Law, will cause them to be generally published, in order that no one may be ignorant of what We have prescribed for the welfare of Our .subjects.

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

TITLE IX.

CONCERNING TRANSFERS.

ONE HUNDRED AND EIGHTH NEW CONSTITUTION.

The Emperor Justinian to Bassus, Most Magnificent Count of the Domestics, who is Discharging the duties of John, Most Glorious Praetorian Prefect.

PREFACE.

As We have heard of an instance in which an ambiguous testament had been submitted for interpretation, We have thought it proper that the decision of the question should be made the subject of a positive law; for We are accustomed to make such transactions the occasion for the enactment of better legislation.

(1) A certain man, when appointing his children heirs, desiring that the survivors should be substituted for those who might die before them, ordered that if any one of his children who would be his future heir should die without issue, everything which he left him, except that to which he was entitled by law, and all other property and rights of which he was possessed at the time of his death, should be transferred to the survivor of the other children, or to the offspring of the said survivor if the latter himself should die, releasing them from giving any bond or security, by reason of the substitution of the aforesaid property. The testator, having died, left as his heirs one son who had children, and another who had none. He who had children forbade the other to take the substituted property, on the ground that he would diminish its value. The latter, however, relying upon the words of the will, namely: "That he should deliver whatever was in his possession at the time of his death," claimed to have the right to use the property in any way he pleased, without being prevented from so doing in any way whatsoever.

(2) Therefore We, taking advantage of this opportunity, have deemed it necessary to dispose of the ancient legislation, and settle this matter for the future, to treat the subject with clearness, and to include this case in a law, in order that judges may learn how to hear and determine others of a similar character. We are aware that the most wise Papinianus, in the Nineteenth Book of his "Questions," allows ambiguous alienations to be made in instances of this kind; he discusses the point of ascertaining when it is necessary to prohibit, and he thinks that this should only be done where a trust is to be executed by the person who is charged with it. And the philosophical Emperor Marcus also disposed of a similar case in which the judgment of a good citizen seemed to be required to determine the meaning of words under such circumstances.

CHAPTER I.

Therefore We consider it advisable to establish the rule that where a testator, in general terms, directs the property to be delivered by the terms of a trust, what We have already decreed in cases of this description shall be observed. When, however, the trust resembles the one which has been referred to Us, and the testator only subjected to delivery such property as might be found at the time of the death of the person charged with the execution of the trust, then what

has been prescribed by former laws shall be complied with. When the bequest of the testator is of this nature, or in some respects resembles the one above mentioned, We order that he who is charged with the execution of the trust shall only be required to preserve for the substitute the amount of the Falcidian portion, the contribution of which is compulsory, and that he cannot absolutely deduct anything from the said Falcidian portion, but the three-fourths of the estate to which he was appointed heir shall remain in the hands of the trustee, and only a fourth of the same shall be reserved for the benefit of the substitute.

We do not permit the trustee to make donations, for the purpose (as Papinianus said) of defeating the object of the trust, in order to diminish the fourth of the estate referred to, but We decree that he shall preserve this portion of the trust for the substitute; that all of the remainder shall belong to him, and that he shall be at liberty to make use of it as the true owner, in whatever way he wishes.

If the heir charged with the trust should acquire the fourth that he ought to reserve, the reason for his doing so should be ascertained; and if having no other property he should desire to constitute a dowry or to make an ante-nuptial donation, he shall be permitted to do so, as is stated in the preceding law, by which We have not absolutely prohibit a trustee from making a diminution of this kind in a trust. He shall also have authority to diminish the fourth reserved by the substitute for the redemption of captives (for We make an exception in this instance and dedicate it to God), as We are actuated by motives of piety which seem to Us to be the most precious of all things.

CHAPTER II.

If, however, the trustee should not have enough to defray his expenses, he can, for that purpose, make use of the property to be delivered under the trust, and We grant him permission to do so (for this was the intention of the testator) desiring the remainder to be transferred, just as if the testator had expressly stated that delivery of the remaining property should be made after the expenses were paid. But where the trustee has no ground for encroaching upon the fourth of the estate which he is obliged to transfer, he will be compelled to preserve it all and deliver it to the substitute. If he has paid out anything on account of the substituted property, he must take enough from some other source to make up the said fourth, which, as has just been stated, shall, on no account, be diminished. When, however, the trustee has obtained the fourth of the substitution, and has nothing himself out of which to make up the deficiency, We, by the terms of this law, grant the substitute the right to bring an action *in rem* against the purchasers, or other persons who have received the property, in order that the terms of the trust may be complied with through the recovery of said property, a privilege which we have already conceded with reference to legacies, by authorizing the legatee under Our Constitution to bring an action *in rem* in order to be able to execute the trust. Wherefore the heir charged with the trust must give security to preserve at least the fourth of the substituted property, unless the testator excuses him from doing so, as he did in the case referred to Us; for when the testator releases the heir not only from the necessity of furnishing security, but also from that of executing a bond, We will not act in conformity with his wishes if We prescribe otherwise.

EPILOGUE.

This decision is rendered with reference to the proceedings which gave rise to it, as well as to all others concerning wills, where the testators are dead; and it also applies to trusts which have not yet been carried out for the reason that the heirs charged with their execution are still living.

We decree that these provisions shall be observed not only so far as children are concerned, but also with reference to other relatives and strangers, who are charged with the execution of a trust of this kind.

Your Glory will communicate this law to all Our subjects, so that they may learn how they should live, die, make wills, create trusts, and comply with the other provisions ordered under

similar circumstances.

Given at Constantinople, on the *Kalends* of February, during the fourteenth year of the reign of Our Lord the Emperor Justinian, under the Consulate of Basil.

TITLE X.

CONCERNING THE DOTAL PRIVILEGES WHICH ARE NOT GRANTED TO WOMEN WHO ARE HERETICS.

ONE HUNDRED AND NINTH NEW CONSTITUTION.

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

PREFACE.

We are convinced that Our sole hope of the permanency of the Empire during Our reign depends upon the favor of God, for We . know that that hope is the source of the safety of the soul, and the preservation of the government. Wherefore Our laws should be based upon it, and constantly take it into consideration, for it is their beginning, middle, and end. Everyone is aware that those who have ruled before Us, and especially Leo, of pious memory, and Justin, Our Father, of pious memory, in their constitutions, forbade all heretics to have any share in public employments or offices, in order that they might not have an opportunity to make use of them against the Holy and Apostolic Church of God. We, also, have forbidden this, strengthening it in every way by the authority of Our Constitution. Our predecessors denned as heretics, and We also designate as such those who are the members of different heterodox sects, and among the latter We include persons who adopt the insane Hebrew doctrines of Nestorius the Eutychian, the Acephali, who endorse the evil dogmas of Dioscorus and Severus; those who renew the impiety of Manichseus and Apollinaris; as well as all such as are not affiliated with the Catholic and Apostolic Church of God, in which the most holy bishops, the patriarchs of the entire earth, of Italy, of Rome and of this Royal City, of Alexandria, Antioch, and Jerusalem, along with all the holy bishops subject to their authority, preach the true faith and ecclesiastical tradition.

Hence We very properly call persons heretics who do not receive the holy sacraments from the reverend bishops in the Catholic Church; for although they may give themselves the name of Christians, still they are separated from the belief and communion of Christians, even when they acknowledge that they are subject to the judgment of God.

CHAPTER I.

Therefore the provisions enacted with reference to heretics are well known to all. But as We desire that persons who embrace and defend the orthodox faith shall have greater privileges than those who hold themselves aloof from the flock of God (as it is not just for heretics to enjoy the same advantages as the orthodox), We now address Ourselves to the present law. For as We have granted the privilege of the dowry to women, in order that they may be preferred to prior creditors, and that their claim shall be first in order and not liable to be barred by prescription, nor be pleaded with reference to ante-nuptial donations, according to the times for which they were made, We now, by this Imperial Law, decree that this privilege, tacit hypothecation, and all other rights which were granted by Our laws to women to enjoy and make use of, shall be conceded to those alone who profess Our adorable faith (We mean that of the Catholic and Apostolic Church), and who participate in its salutary communion.

We also absolutely forbid women who are separated from the Holy Catholic Church, and are unwilling to receive the Holy Communion from the hands of priests, beloved of God, to enjoy such privileges. For if they renounce the favors of God, and absent themselves from the Holy Communion, there is all the more reason why they should not enjoy them, and that We should not permit them to participate in the benefits of Our laws; hence they are declared incapable of doing so, and shall be deprived of all the advantages of Our Constitution.

CHAPTER II.

Women, however, who embrace a better doctrine and acknowledge the true faith, shall be permitted to share in the above-mentioned benefits.

These provisions must be observed throughout the entire Roman Empire, and their execution shall generally be promoted by the bishops and ecclesiastics beloved of God, by Our magistrates and superior and inferior judges, as well as by Your Highness, to whom they are addressed. Hence judges, before whom cases are brought against women, or by women who desire to avail themselves of any privileges, shall conform to the spirit of this law; and if it should be ascertained that the said women do not profess the orthodox faith, or receive the adorable communion in the Holy Catholic and Apostolic Church, at the hands of the reverend clergy, they shall not be permitted to enjoy the privileges conferred by Our Constitution.

EPILOGUE.

Therefore Your Highness, as soon as you have been advised of what it has pleased Us to promulgate by means of this law, will take measures to have it applied to all cases brought before you, and render it operative and effective; publishing it by means of solemn edicts and precepts, so that it may be brought to the knowledge of all, and that Our subjects in this Most Fortunate City, as well as in the provinces, may become aware of how great Our solicitude is for the preservation of the faith of Our Lord Jesus Christ, and the welfare of the people of the Empire.

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

TITLE XI.

CONCERNING MARITIME INTEREST.

ONE HUNDRED AND TENTH NEW CONSTITUTION.

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

PREFACE.

We are well aware that We have already enacted a law with reference to money loaned on property transported by sea, which law has been communicated to Your Highness.

CHAPTER I.

But several applications having subsequently been made to Us, We have learned that this law is not advantageous, and that it is the desire of Your tribunal that it should be rescinded; and We have also been informed that it has been recorded in all the provinces. We now wish to repeal it entirely, and We decree that if it has already been despatched to the different provinces, it shall not be executed there, but shall be considered void. We also decree that, hereafter, cases shall proceed just as if the said law had never been written, and that everything shall be conducted in accordance with the legislation previously enacted by Us on the subject.

EPILOGUE.

Therefore Your Highness will hasten to carry into effect the provisions contained in this Imperial Law.

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

TITLE XII.

THIS CONSTITUTION REPEALS THE ONE WHICH GRANTED TO RELIGIOUS PLACES FREEDOM FROM PRESCRIPTION, UNLESS A HUNDRED YEARS HAD ELAPSED.

ONE HUNDRED AND ELEVENTH NEW CONSTITUTION.

The Emperor Justinian to Theodotus, Prsetorian Prefect of the East.

PREFACE.

The laws bear the same relation to business transactions as medicines do to diseases. Hence it sometimes happens that the effect is not what was anticipated, and that what was considered to be beneficial proves, through experience, to be worthless. This fact is established by the necessity which compels Us to enact the present law, in which We reconsider the privilege that a pious intention recently induced Us to grant, by the terms of a Constitution, to the Holy Churches of God, to monasteries, and other religious foundations. We ordered that these places should have the right to bring suit during the term of a hundred years, but the result of this has been that many actions were brought, just as new scars form on old wounds already healed, and the proceedings instituted failed of success on account of the insuperable difficulty of obtaining evidence; for, after the lapse of a century, one can no longer rely upon human testimony any more than force can then be imparted to contracts, confidence be reposed in documents, or life be restored to witnesses.

CHAPTER I.

And as a great number of matters demand Our attention, We decide with equity, and above all religiously, with reference to the aforesaid privilege; and as experience has taught Us to limit this privilege as much as possible, We hereby decree that in the case of suits against which formerly the prescription of twenty years could be pleaded, this term shall now be extended to forty in favor of venerable churches, monasteries, hospitals, orphan asylums, foundling hospitals and infirmaries for the poor; but the benefit of the prescription of thirty years shall always be reserved for them against other persons and any actions which may be brought against them. We grant (as already stated) this extension of ten years solely to religious places, their rights, and their contracts, so that, after the expiration of this term, the right to institute personal as well as hypothecary actions shall be extinguished forever.

We do not in any way derogate from other exceptions; and the prescription for thirty years, as well as others, shall remain in full force. But, as previously stated, religious actions shall enjoy the privilege of not being prescribed except by the lapse of forty years, as aforesaid, in instances where Our Constitution granted them the right of not being barred until after the lapse of a hundred years. Where a judicial decision or a compromise has ended cases brought by Churches and other Holy places before the enactment of the present constitution, We do not desire that they shall be revived; but for the future this provision shall be pleaded in actions concerning which silence has been kept for eight lusters, or, where proceedings have been instituted but have not yet been disposed of.

EPILOGUE.

Therefore Your Illustrious and Magnificent Authority will communicate to all Our subjects the regulations which Our Eternal Majesty has prescribed by this general law.

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

TITLE XIII.

CONCERNING PROPERTY IN LITIGATION, AND THE BOND FOR THE TENTH PART OF THE VALUE OF THE OBJECT IN CONTROVERSY WHICH MUST BE FURNISHED BY THE PLAINTIFF.

ONE HUNDRED AND TWELFTH NEW CONSTITUTION.

The Emperor Justinian to Theodotus, Prsetorian Prefect of the East.

PREFACE.

The wisdom of ancient legislators, as well as Imperial Majesty, has promulgated many laws with reference to property in litigation. Judges have frequently petitioned Us to resolve doubts which have arisen among them on subjects of this kind, and to explain in a lucid manner the laws and constitutions applicable to the same, in order that it may hereafter be perfectly clear what things can properly be styled litigious.

CHAPTER I.

WHAT PROPERTY IS SUBJECT TO LITIGATION.

Therefore We decree that where a lawsuit is pending between a plaintiff and a possessor with reference to the ownership of any movable property which is capable of moving itself, either by judicial assignment or by petitions addressed to the Emperor which have been recorded in court, and communicated to the defendant by the petitioner ; or whether an appeal has been taken and the property decided to be litigious; under such circumstances, the preceding Constitution promulgated by Ourselves shall remain in full force; which said Constitution establishes a distinction between purchasers who are aware that the property which they purchased is litigious, and those who are not. We think that it should be added that when, during the course of the trial for the possession of a litigious article, the defendant dies, and his heirs wish to divide his estate, they shall be permitted to do so without any hindrance; for when property subject to litigation passes by succession to heirs, the division of it made between them should not be considered as an alienation.

But when it happens that when one of the parties to an action to recover such property dies, after bequeathing the ownership of the same, which is still uncertain, to anyone by his last will as a legacy, We order by Our present law that the legatee shall have a right to profit by the bequest, where the heir has been decided to be the owner of it, under the terms of a judicial decision; but when the heir loses his case in court, the legatee cannot demand of him other property in the place of the legacy, because, as the testator was aware that the object bequeathed was litigious, he, by that very fact, subjected the legatee to the result of the suit. For this reason We grant the legatee (provided he thinks that this will be advantageous to him) the privilege of being represented in the case, in order that he may not afterwards be able to charge the heir with negligence or fraud. We decree that hypothecated articles shall not be called litigious, and that this distinction shall be made whether the property specified is movable, immovable, or capable of moving itself. Where it is expressly subjected to hypothecation, the debtor is hereby authorized to sell it to anyone whenever he thinks it advisable to do so, provided, however, that he pays the creditor the amount of the debt out of the purchase-money; but if he should not pay him, the creditor who has preserved his lien upon the property sold can recover it for the purpose of satisfying his claim.

We order that this rule shall be observed, unless the said property has previously been encumbered to other creditors by a general or special hypothecation; for then, in accordance with the terms of Our Imperial Law, We direct that the privileges resulting from priority of obligations shall be observed for the benefit of each of the creditors. The necessary consequence of this is that We do not understand general hypothecation to be included in the term litigious, but desire that hypothecary actions shall be decided in conformity to the provisions of former laws, whose force We order shall continue to be maintained.

We promulgate the present provisions with reference to property subject to litigation, as well as to special and general hypothecations, in order that hereafter no doubt may arise in court on these subjects, and that suits may be determined in accordance with the distinction which We have established.

CHAPTER II.

CONCERNING THE BOND WHICH SHOULD BE FURNISHED BY THE PLAINTIFF BEFORE SERVING NOTICE ON THE DEFENDANT.

Our foresight has devised another method of excluding the claims of those who institute malicious prosecutions, and of suppressing the frauds of those who make a business of doing so. For We order all judges, whenever any persons appear or are summoned before them, to add to their decrees that notice of the filing of complaints shall not be given to defendants, or fees be collected by bailiffs, unless the plaintiff signs the complaint himself or by notaries, and if he does not furnish a surety for whose solvency the court shall be responsible, and state that he will prosecute the case to the end, using every effort to do so either in person or by a lawful attorney, and he is afterwards proved to have brought suit unjustly, he shall pay the defendant, by way of costs and expenses, the tenth part of the value of the property mentioned in the complaint. When the plaintiff says that he cannot furnish a surety, We order him to swear to this on the Holy Gospels, in the presence of the judge who is to hear the case, and he must also give a juratory bond by which he promises what is above set forth.

(1) But when what We have previously stated is not observed in the manner prescribed, We do not require the defendant to answer him who has instituted the proceedings. If a magistrate, his court, or any of his executive officers should presume to sue anyone without complying with the aforesaid formalities, the magistrate and his court shall be fined ten pounds of gold, and the party responsible for the affair shall be sentenced to the confiscation of his property and to exile for five years.

The Magnificent Count of Private Affairs in office at the time shall be responsible for the collection and payment into the Treasury of the fine prescribed by this law. All the expenses incurred by the defendant on account of a citation made in violation to the terms of Our law shall be reimbursed him by the plaintiff at the risk of the judge before whom the plaintiff brought suit, as well as of the officials who execute his commands, in order that those who have absolute confidence in Our government and the majesty of the Most High may profit by this indemnity.

We, however, order that where any cases are brought in court by common consent, the penalty prescribed by this constitution shall not be incurred, and they shall be disposed of as directed by Our other laws.

CHAPTER III.

AFTER THE LAPSE OF A YEAR AND THE PUBLICATION OF THREE EDICTS, A DECISION SHOULD BE RENDERED WITH REFERENCE TO THE CLAIM OF THE PLAINTIFF WHO IS GUILTY OF CONTUMACY.

We desire all litigation to be promptly disposed of, and resist the malice of those who institute proceedings without intending to conduct them to final judgment, relying upon the law which provides that no one can, against his will, be compelled to exercise rights of action to which he is entitled. Therefore We, hastening to abolish this dishonorable practice, do hereby order that where persons bring suit against anyone, either by means of judicial notice, or through petitions addressed to the Emperor, presented to the judge, and communicated to the adversary, and a competent magistrate has begun to hear the case, they shall not take advantage of the aforesaid law; for it is unjust for him who has prepared for the action which he intends to bring, and summoned his adversary to court, to refuse to proceed, since this refusal is rather the privilege of the defendant than of the plaintiff. Hence, We direct that the plaintiff shall conduct the action which he has begun to the end.

If, however, he should delay, We grant the defendant authority to compel the judge before whom proceedings were instituted to notify the plaintiff to appear before his tribunal, either in his own proper person, or by a lawful attorney. If he does not appear in response to this notice, he shall be summoned by three publications of the Edict, which shall be made at intervals of at least thirty days from one another. We desire that ordinary judges shall, not only by the voice of criers, but also by the publication of edicts, call into court any of the litigants who may be absent, for there are comparatively few persons present who can hear the voices of criers, while every one can learn of edicts published in this way at intervals of several days. We also permit all other magistrates who have cognizance of cases by Imperial order to summon, by means of edicts, parties who do not appear in court, in order that litigation may not become interminable.

(1) But where the action has not yet actually been begun before a judge, but someone has only been sued by the filing of a complaint, or by means of a petition addressed to Our Clemency, and Our order has been communicated to the judge either in writing or by mandate, and notice has been served by the plaintiff upon his adversary, the defendant will also be permitted to appear before a competent magistrate, and through him summon the plaintiff in the manner already stated, in order that, after the latter has appeared, the suit may be tried in accordance with law and be terminated in a suitable manner.

(2) Where the plaintiff, after having been summoned to court by the publication of three separate edicts, is unwilling to proceed either in person or by an attorney (as already stated), then We grant him the term of a year within which, if he does not go on with the case, We permit the judge to examine the allegations of the party who is present, in accordance with Our laws, even in the absence of the adversary, and, having ascertained the truth after careful investigation, to render a legal decision. If, however, he should appear within the aforesaid term of a year, and desire to try the case, We order that the judge shall, by all means, compel the plaintiff to pay to the defendant all expenses and costs which the latter has incurred on account of the litigation, until the suit was terminated in conformity with law. If he should appear, and desire, by paying the costs, to interrupt the course of the year, and withdraw from the suit, and not remain until it has been decided, We order that, after the publication of the edicts and the expiration of the year, he shall be entirely deprived of the right of action which he thought he had against the defendant; for the fraudulent conduct of one who abandons a case, the course of which has already been interrupted, is worse than that of him who only abandoned it once. Still, We permit those who have not instituted proceedings of this kind against others to enjoy the benefit of the law which does not require anyone to exercise rights of action to which he is entitled, if he is unwilling to do so.

EPILOGUE.

Our most dear and beloved relative, Theodotus, We decree that all these provisions shall become operative in suits which have not yet been disposed of by judicial decision, amicable compromise, or in any other way known to the law. Therefore Your Illustrious and Magnificent Authority will communicate this law, which We have enacted for all time, to all persons by means of edicts published in this Royal City, and by notices despatched to the provinces under Your jurisdiction, in order that Our subjects may be informed of and observe the regulations which We have established for their benefit.

Given at Constantinople, on the fourth of the *Ides* of September, during the fifteenth year of the reign of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XIV.

IMPERIAL PRAGMATIC SANCTIONS OR ORDERS SHALL NOT BE GIVEN CONSIDERATION IF INTRODUCED DURING THE HEARING OF A CASE, BUT SUITS SHALL BE DECIDED IN CONFORMITY WITH GENERAL ANCIENT LAWS.

ONE HUNDRED AND THIRTEENTH NEW CONSTITUTION.

The Emperor Justinian to Theodotus, Imperial Praetorian Prefect.

PREFACE.

We, desiring that Our laws may be thoroughly executed, and taking proper care to maintain their force, have deemed it proper to publish the present decree, to insure compliance with these constitutions. For We have learned that certain judges desiring to delay those who have cases before them, and with a view to concealing the reasons for such delay, frequently excuse themselves on the ground that they have received pragmatic sanctions, Imperial orders, or notices from Our illustrious referendaries, in accordance with which they are required to hear or determine the case.

CHAPTER I.

Therefore, We decree that when a case is tried, whether it relates to pecuniary, criminal, or any other matters here or in the provinces, no pragmatic sanction, Imperial order or notice, either written or verbal, issued in this Capital by Our illustrious referendaries, or by any other magistrate whomsoever, prescribing how judges must hear or decide an action which has already been begun, shall be communicated to the magistrate; and if this should be done, it shall be of no force or effect, as We desire cases to be tried and decided in conformity with Our general laws, for what is generally established has no need of regulation from other sources.

Where, however, any point already brought to the attention of a judge, or which, even before this was done, has been submitted to Us, and We Ourselves have decided it, it will not require consideration by another tribunal. For (as has already been stated) matters which have been disposed of by an Imperial decision do not need the investigation of other magistrates, nor any revocation whatsoever; and if We (to whom God has given authority to issue orders) have rendered judgment in any case, We do not permit a judge, either by virtue of a pragmatic sanction, or in pursuance of instructions given by Our illustrious referendaries, or by any other magistrate, to hear and determine it again, since what We have once decided cannot be corrected by anyone, Our decisions being unalterable when they are embodied in a written decree. But where a judge entertains any doubt with reference to the law, he must notify Us of the fact, and wait until We send him a written opinion or interpretation, and then decide the question in accordance with it.

(1) But if, when the case was heard, an Imperial Pragmatic Sanction or a notice emanating from Our illustrious referendaries or from any other magistrate whomsoever, or based upon any of the aforesaid ordinances, directing that a specified form of inquiry shall be conducted, or a certain decision rendered, is served upon a judge, We order him to pay no attention whatever to it. Such communications are void, and have absolutely no force whatever, but the judge shall examine the case in accordance with Our general laws, and terminate it in a proper manner. If, however, he should not do this, he shall be subjected to a fine of ten pounds of gold, and, in addition, will experience the effects of Our extreme indignation. Any magistrate who presumed to dictate any pragmatic sanction of this kind, together with his subordinates, and Our illustrious referendaries who may issue such documents, shall be liable to the same penalty.

What We have provided shall be applicable whether the judge has been appointed by Our order, or under a judicial precept, or whether he hears the case as arbiter by virtue of a submission to arbitration, whether the proceedings are committed to writing or not. But when a judge, without having proper regard for his own safety, presumes to render a decision in accordance with orders which have been given him, We declare the said decision to be void, without there being any need to appeal from it, and without the penalty prescribed by the agreement for arbitration being incurred, for We wish all judges to hear cases, and render their decisions in conformity with Our general statutes. Nor can any doubt exist that no judicial order whatsoever will be effective against what is prescribed by Our present law.

CHAPTER II.

It is necessary, however, for magistrates to know that they must determine, in accordance with the general laws, questions which may now arise where one of the parties litigant has obtained an order prescribing the manner in which the case should be heard and decided, as We are not willing for anyone who has already obtained such an order to enjoy the benefit of it, where a final judgment has not yet been rendered. But when this has been done, We decree that it shall be absolutely exempt from the effect of the provisions of Our present law, even though an appeal may have been taken from it, or some kind of reconsideration of it may have occurred. We do not, however, prohibit such an order, whether written or unwritten, from becoming operative where, instead of prescribing how the judge shall decide or render judgment, it directs that the case shall be disposed of; or the appearance of the defendants take place; or the judge render a final decision; or some other magistrate be appointed in conformity with law.

CHAPTER III.

In order that all Our subjects, and especially those who have been ruined by lawsuits, may be informed of Our solicitude for their welfare, and that no one may violate Our present Imperial Law, or pretend ignorance of the same, We decree that whenever an action is begun in court this law shall be copied and made a part of the proceedings before a bond has been furnished. For in this way, being conspicuous, any attempt made against its observance will be prevented, or the solvency of the sureties furnished by litigants being questioned, it will restrain the efforts of those who are desirous of violating it by the severe penalties which it denounces against them, and it will not permit the enforcement of these penalties to be deferred.

We enact the present constitution for the purpose of excluding all 'inquiry and injustice from matters of this kind, and by means of it We maintain the other laws of the Empire in all their force, and free from the exercise of every kind of fraud, for it is by virtue of these laws that We have received from God the right of empire, and it is by means of them that We have always desired to fortify and preserve Our government.

EPILOGUE.

Your Highness will be careful to observe the provisions which it has pleased Us to insert in this constitution; and you will communicate them by means of notices published in this Most Fortunate City, and addressed to the Governors of provinces, in order that all persons may be informed of Our desire for their prosperity and happiness.

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

TITLE XV.

IMPERIAL ORDERS SHALL BEAR THE SIGNATURE OF THE MOST GLORIOUS QUAESTOR.

ONE HUNDRED AND FOURTEENTH NEW CONSTITUTION.

The Emperor Justinian to Theodotus, Imperial Praetorian Prefect.

PREFACE.

The solicitude of Our Serenity provides remedies for Our subjects, and We do not cease to inquire what needs correction in Our administration. Therefore We voluntarily exert Ourselves to obtain repose for others, as We think that it is a matter of universal advantage for Imperial orders to be given with proper security, so that no one may be able to produce them at will.

CHAPTER I.

Hence We decree by the present law that no Imperial order directed to a judge through the instrumentality of the Magnificent Quaestor, or any other incumbent of any charge, employment, or office, shall be accepted by the magistrate having jurisdiction of the case, when the said order does not bear the annotation of the Magnificent Quaestor setting forth for what person, to what judge, and by what official it is issued; and all uncertainty having been removed, no one will be able to allege any excuse. All judges and other magistrates are notified that if they should accept an Imperial order (which does not bear the annotation of the Most Magnificent Quaestor) having reference to any matter whatsoever, they will be subjected to a fine of twenty pounds of gold, and the members of their court will be liable to the same amount. If any order of this kind should come into their hands We command them immediately to refer it to the Magnificent Quaestor, or send it to him by the person who delivered it, so that, Our illustrious and beloved relative Theodotus, the punishment prescribed by the laws against forgers may be inflicted upon them.

EPILOGUE.

Your Highness will cause notice of the present law, which shall perpetually be valid, to be given to all persons.

A Short Epitome of the Same Novel.

Every Imperial order shall bear the signature of the Quaestor and shall show for what purpose it was published, and what judge was appointed. This, however, will not prevent every Imperial Rescript from being signed by the Emperor, for this constitution does not repeal or abrogate what is stated in the Code, but merely adds what is here prescribed, namely, what relates to orders which need not be signed by the Emperor.

TITLE XVI.

WHEN A JUDGE HEARS AN APPEAL, HE SHOULD DECIDE IN CONFORMITY WITH THOSE LAWS WHICH WERE IN FORCE AT THE TIME WHEN THE DECISION WAS RENDERED, AND NOT IN ACCORDANCE WITH THOSE WHICH WERE SUBSEQUENTLY PROMULGATED; AND CONCERNING OTHER MATTERS.

ONE HUNDRED AND FIFTEENTH NEW CONSTITUTION.

The Emperor Justinian to Theodotus, Praetorian Prefect of the East.

PREFACE.

(1) When appeals, reviews of cases, and reports of magistrates are heard, they shall be decided in conformity with the laws which were in force at the time when judgment was rendered, and not in accordance with those subsequently promulgated.

(2) If one of the parties litigant should state that he will abide by his allegations, but the other hesitates, as if he was not satisfied, the judge shall grant both of them a delay of three months, and when this term has elapsed, he must wait no longer before rendering his decision.

(3) What cases of ingratitude can reasonably be stated by parents against their children.

(4) And, on the other hand, what cases of ingratitude children can reasonably allege against their parents.

(5) The next of kin to a deceased person, as well as those who mourn his loss, shall not be arrested or brought into court during the nine months immediately following his death.

(6) Concerning the obligation contracted, and promises made with reference to pre-existing debts. Where anyone has previously borrowed money, or made any promises with reference to it such as, "I will pay the debt," or "So-and-So will pay it for me," or, "Either I or So-and-So will pay it."

We have learned that a suit was brought between Eustatius, Most Reverend Bishop of the City of Thelona, and Pistus, deacon of the church of Thelmisense, and that a final decision was rendered by the Governor of the province, from which decision an appeal was taken. The judges before whom the appeal was brought, being in doubt, asked Us whether they should determine the case in conformity with the laws which were in force when the decision from which the appeal was taken was rendered, or in conformity with the tenor of those which We have enacted since that time. We have thought it just for a case on appeal to be heard and determined in accordance with the laws which were in force at the time when judgment was rendered. And with all due foresight, We direct that every time a doubt of this kind arises after the enactment of the present law, the case shall be decided in the same way.

CHAPTER I.

CASES TAKEN UP ON APPEAL SHALL BE DECIDED IN ACCORDANCE WITH THE LAWS IN FORCE AT THE TIME WHEN THE DECISION APPEALED FROM WAS RENDERED.

Therefore, We decree that where a final decision has been rendered in any case, and an appeal has been taken from it, the judges having cognizance of the appeal must decide the case in conformity with the laws in force at the time when the final decision was rendered, which rule also shall apply to cases reviewed by Prastorian Prefects, as well as to those heard by referees appointed by judges, when both parties have agreed to abide by their present allegations, and the judges shall inquire of their referees what decision should be rendered. For in all these instances, We decree that judges who have jurisdiction of cases taken up on appeal shall observe the laws which were in force at the time of the decision or report, even though a law making a different provision may have been promulgated and applied to former cases.

CHAPTER II.

CONCERNING THOSE WHO STATE THAT THEY HAVE OTHER ALLEGATIONS TO MAKE, AFTER THEIR ADVERSARIES HAVE FORMALLY DECLARED THAT THEY HAD NOTHING MORE TO ADVANCE.

We add the following provisions to this law, for the reason that it sometimes happens among litigants that one of the parties sets forth his allegations, and the other, being aware that he has a bad case, after the arguments and the delays granted by the laws to produce evidence (through fear that the weakness of his case may be manifested too soon) states that he is unwilling to rely upon the allegations which he has made; We hereby decree that when one party has produced all his testimony and the other says that he has more, the judge having jurisdiction shall compel the latter, without delay, to . produce the' remainder of his evidence within twenty days after his adversary has produced his; and if, after this time has elapsed, he does not do so, the judge shall grant him another month, in order that his malice may be exposed; and if, in spite of this, he still delays, he should give him a third month; and if, during the three months which We grant him, he does not produce all his evidence, the judge, without waiting any longer, shall render a decision in conformity with the laws; or, when it is necessary, he must refer the case to Us in order that litigants who conduct their suits without justification may not be allowed to protract the proceedings beyond reasonable limits.

CHAPTER III.

WHAT ARE JUST CAUSES FOR THE DISINHERITANCE OF CHILDREN.

We have decided that it is proper to add this chapter to the present law. Therefore We order that no father or mother, grandfather or grandmother, great-grandfather or great-grandmother shall, under any circumstances, forget to mention their son, daughter, or other descendants in their wills, or disinherit them unless they have left them, by donation, legacy, or trust, or in some other way, the shares to which they are entitled by law; or it has been proved that their children are ungrateful, and have expressly stated the instances of their ingratitude in their wills.

But as We are well aware that the reasons for which children should be considered ungrateful are scattered through different statutes, and have not been clearly determined; and as, besides, some of these reasons have not appeared to Us to deserve the reproach of ingratitude, and others, which do deserve it, have been omitted, We have considered it necessary to mention them explicitly in this law, in order that no one, relying upon some other enactment, may be permitted to state instances of ingratitude which are not included in this Constitution. Hence We decree that the following shall be just reason for alleging ingratitude.

(1) Where a child has laid violent hands upon his parents.

(2) Where he has heaped gross and opprobrious insults upon them.

(3) Where he has brought criminal accusations against them, for offences which do not involve either the Emperor or the government.

(4) Where he is a malefactor, and habitually associates with criminals.

(5) Where he has attempted the life of his parents, either by poison or in some other way.

(6) Where a son has had criminal intercourse with his stepmother, or his father's concubine.

(7) Where a son has acted as informer against his parents, and, by so doing, has subjected them to great expense.

(8) Where one of the parents being ill, his or her children, or one of them who is entitled to. the succession, refused to furnish security for the person or debts of his parents (after having been asked to do so), when it is proved that he was solvent to the extent of the sum demanded. What We state with reference to security applies, however, only to male children.

(9) Where a son prevented his parents from making a will, and they were able to make it afterwards, they shall be permitted to disinherit their son for this reason. But where a parent dies intestate because he or she was prevented from making a will, and this is proved either by those who are called to the succession of the deceased 0,6 *intestato,* along with the aforesaid son, who prevented the will from being executed after his death, or by those whom the deceased desired to be his heirs or legatees, or by persons who have suffered some loss because of interference with the right of testation, this ground of ingratitude shall be decided in conformity with the other laws enacted on this subject.

(10) Where, in opposition to the will of his parents, the son associates with actors or buffoons, and continues to do so, unless his parents belong to the same profession.

(11) Where one of the aforesaid parents, desiring to give his or her daughter or granddaughter a husband, and bestow upon her a dowry in proportion to his or her means, and the daughter refused to be married, and preferred to lead a life of debauchery. When, however, the daughter has arrived at the age of twenty-five years, and her parents have prevented her from marrying, and, in consequence, she had led a licentious life, or she had married a freeman without the consent of her parents, We are unwilling to characterize this as ingratitude, because not she, but her parents are to blame.

(12) If, however, either of the said parents should be insane, and his or her children, or any of them, or where there are no children, the blood-relatives of the unfortunate person who are called to the succession *ab intestato* should not treat him with proper respect and care, and the latter should subsequently be cured of his or her affliction, he or she will have the power to accuse the negligent son or sons, or cognates, of being ungrateful, in his or her will. When a stranger, seeing that the insane person is neglected by his or her children, cognates, or other appointed heirs, provides for him or her through motives of charity, We permit him to make a formal demand in writing upon the heirs at law, or those appointed by will to the estate of the insane person, to take charge of the latter. If, after a notice of this kind has been served, the heir should still be guilty of neglect, and the said stranger can prove that he has taken the insane person into his house, and cared for him at his own expense, until the end of his life, We decree that he who exhibited such solicitude and compassion for the insane person, even

though he may have been in no way related to him, shall be entitled to his estate, and the appointment of his heirs shall be void, they being unworthy on account of their having failed to take care of the insane person (as We have previously stated), but the other provisions of the will shall remain in full force and effect.

(13) Where one of the aforesaid parents is retained in captivity, and one or all of the children do not hasten to ransom him, he shall have the power, if he can escape from captivity, to insert this as a cause of ingratitude into his will. But where, through the negligence or contempt of his children, he is not liberated, and dies a prisoner, We do not permit them to obtain his estate, for the reason that they did not make any effort to release him, and We order that all the property left by the captive to his negligent children shall pass to the church of the town in which he was born, that a public inventory of said property shall be drawn up, in order that nothing of which it consists may be lost, and that whatever is acquired by the church in this way shall be employed for the ransom of captives. We prescribe these regulations only against persons whom it is not permitted to disinherit, and where the acts of ingratitude have been thoroughly established. It is obvious that it is ingratitude which has induced Us to give this law universal effect. And We order, in general, that where a captive has no children, and dies in captivity, and those persons who are called to his succession have not exerted themselves to liberate him, none of them shall succeed to his estate, even though the deceased may, before he was taken prisoner, have drawn up a will by which he appointed them his heirs.

This appointment of heirs having been declared void, the other clauses of the will shall, however, be observed in all their force; the property of persons who have died in captivity will pass to the churches in the towns in which they were born, and must not be used in any other way than for the ransom of captives, in order that the estates of those who are not ransomed by their relatives may be employed for the deliverance of other captives, and their souls be comforted by this exceedingly pious act.

What We have just decreed shall also be observed, if before having been taken prisoner, the captive appointed a stranger his heir, and the latter, being aware of this fact, neglected to ransom him. This penalty shall only be inflicted upon those who have reached the eighteenth year of their age. If, under such circumstances, a minor should not have the money necessary to redeem the captive, he shall be permitted, if he has reached the aforesaid age, to borrow it; and to hypothecate for this purpose any movable or immovable property belonging either to himself or to the person who is detained in captivity; for We direct that contracts made under such conditions, with reference to property which is proved to have been given or expended for the redemption of captives, shall be just as valid as if they had been entered into by individuals who were independent and of lawful age; and no prejudice shall result to those who, for reasons of this kind, may have contracted in the manner aforesaid with persons who are not their own masters; and he who returns from captivity will be compelled to ratify contracts of this description, and will be obliged to comply with them just as in the case of his own private obligations.

(14) Where either of the aforesaid parents, being orthodox, is convinced that his son, or his children, do not acknowledge the Catholic faith, and do not commune in the Church where all the patriarchs together teach the true religion, and spread the doctrine of the four holy Councils of Nicea, Constantinople, the first Council of Ephesus, and that of Chalcedon; he or she will be especially permitted to denounce them as ungrateful on this ground and to disinherit them by will, for We place heresy among acts of ingratitude. But with a view to the general welfare of Catholic children, We direct that, while preserving the force of laws already enacted with reference to other heretics, for instance, the Nestorians, and the Acephali, when their parents are known to have embraced the insane Hebrew tenets of Nestorius, or the mad doctrines of the Acephali, and have, for this reason, withdrawn from the communion of the Catholic Church, they shall not be allowed to appoint any other heirs than their orthodox children, who are members of the Catholic communion, or where there are no

children, their agnates and cognates who also are Catholics.

If there should be some orthodox children who are members of the Catholic Church, and there are others who, at the same time, are separated from it, We decree that the entire estates of the parents shall pass to those of their children who are Catholics, even though the said parents may, contrary to the tenor of this Constitution, have made testamentary dispositions in favor of heretical persons. But where the children separated from the Church subsequently enter its bosom, that portion of their father's estate to which they were entitled shall be transferred to them in the condition in which it was found to exist at the time of its delivery, in order that the Catholics who formerly had possession of it may experience no anxiety nor deprivation with reference to any profits which they may have acquired, or concerning their administration of said property during the intermediate time, for as We prohibit the alienation of anything which the Catholic heirs held as representatives of their brothers who were not Catholics, so We do not permit the restitution of any income from the said property, under any circumstances, to be exacted from those who have had possession of it, or that their management of the same shall be investigated.

If the heretical children persist in the same error to the end of their lives, without becoming members of the Church, We order that the Catholic brothers, or the heirs of the latter, shall acquire complete ownership of this property. But where all the children are perverse, and are separated from the communion of the Catholic Church, and it is proved that there are agnates or cognates who are members of the said Church, they shall be preferred to the heretical children, and shall be entitled to the estate of the deceased; and where the children and the 'nearest agnates and cognates are strangers to the orthodox religion, and the deceased parents have, during their lifetime, belonged to the order of the priesthood, We desire that their estates should be transferred to the town in which they had their domicile; and if the ecclesiastics should neglect to claim them for a year, the ownership of the same shall pass to the Treasury. Where, on the other hand, the parents are members of the laity, We order that their property, without any distinction, shall also be united to Our private domain.

These rules shall be observed even where the parents have died intestate, and all the regulations included in other constitutions against heretics, Nestorians, Acephali, and other persons who are not communicants of the Catholic Church (in which the patriarchs proclaim the doctrine of the four Councils hereinbefore mentioned), and which relate to their successions, shall also be observed; for as We are considering corporeal matters, how much more reason is there for Us to pay attention to the salvation of souls?

Therefore, whether parents have mentioned in their wills all the acts of ingratitude above stated, or whether they have only mentioned some of them, or even one alone, no matter which it may be, and the appointed heirs prove that the said act or acts are true, We direct that the will shall remain in full force. But where the acts of ingratitude are not established, the rights of the disinherited children cannot be prejudiced, the will shall be declared void, so far as it relates to the appointment of heirs, and the children shall obtain the estate in equal shares on the ground of intestacy. We establish this rule in order that children may not be condemned through false accusations, or may not, through fraud, be deprived of the estates of their parents. If, however, any legacies or trusts, grants of freedom, or appointments of guardians should be left in wills declared void under such circumstances, or where any other testamentary dispositions authorized by the laws are inserted in a will, We order that all shall take effect, that the legacies shall be acquired by those to whom they have been bequeathed, and that the will shall be just as valid, so far as these matters are concerned, as if it had never been annulled.

Such are the rules which We prescribe with reference to the wills of parents.

CHAPTER IV.

WHAT ARE GOOD REASONS FOR THE DISINHERITANCE OF PARENTS.

We have considered it proper to lay down the same rules as to the wills of children with some distinctions. Hence We order that children shall not be permitted to pass over their parents, or exclude them in any way from the acquisition of their property (to the extent that they are permitted to dispose of it), except in the cases which We shall enumerate, and which must be specifically set forth in their wills. These We declare to be the following:

(1) Where parents have delivered up their children to death; except in cases where treason is known to have been committed by them.

(2) Where it is proved that parents have attempted to deprive their children of life by poison or other criminal acts.

(3) Where a father has had sexual intercourse with his daughter-in-law, or his son's concubine.

(4) Where parents have prevented their children from disposing, by will, of property which they had a right to bequeath, and whatever We have ordered with reference to the interference with testation by children shall be applicable to parents. But if a husband should administer poison to his wife with the intention of either killing her or depriving her of reason, or a wife should administer it to her husband, or one of them should attempt the life of the other in any way whatsoever, We decree that an offence of this kind (provided it demands criminal prosecution) shall be tried and punished in conformity with the laws. Children shall not be permitted to leave any portion of their estates to one who has been convicted of a crime of this kind.

(5) Where all of the children, or only one of them, become insane, and the parents neglect to care for them, We order that, under these circumstances, everything shall be observed which We have previously decreed with reference to insane parents.

(6) We also add to these cases the misfortune of captivity; and where children suffer it, and are not ransomed because of the contempt or negligence of their parents, and they die while in the hands of the enemy, their parents shall, by no means, be entitled to the property of their children which the latter are entitled to dispose of; but all the rules shall be observed which We have above prescribed with reference to parents, cognates, and agnates, who are called to the succession of persons of this kind, or to strangers, where any of them have been appointed heirs.

(7) If any one of the aforesaid children, who belongs to the orthodox faith, should ascertain that his parent or parents do not acknowledge its doctrines, what We have ordered above with reference to parents shall be applicable to him under such circumstances. Therefore, where children have mentioned in their wills all or any of the acts of ingratitude which We have enumerated, or even only one of them, and the heirs whom they appointed should prove all, some, or only one of the said acts, We direct that the will shall remain in full force. But in case the acts of ingratitude should not be established, the rights of the children shall not be prejudiced; the will shall be void, so far as the appointment of heirs is concerned, and the natural heirs of the deceased will be entitled to his estate, on the ground of intestacy; but all legacies, trusts, grants of freedom, appointments of guardians, and other testamentary dispositions shall become operative, as previously stated.

We absolutely repeal everything that preceding laws have provided in opposition to this Constitution, so far as it relates to legacies, trusts, grants of freedom, appointments of guardians, or any other similar subjects whatsoever. These are the penalties for disinheritance or the grounds prescribed for acts of ingratitude committed against the persons aforesaid. Where, however, any of these acts are included in the number of criminal offences, those who are guilty of them shall be subjected to the other penalties enumerated in the laws.

CHAPTER V.

A CREDITOR SHALL NOT BE PERMITTED TO ANNOY THE HEIRS OF A DECEASED PERSON ON ACCOUNT OF THE DEBT BEFORE TEN DAYS HAVE ELAPSED AFTER HIS DEATH.

We have laid down the preceding rules in order to prevent parents and children from sustaining any injury from testamentary dispositions. Where, however, those appointed heirs under these circumstances have been directed to remain content with certain property, We order that in an instance of this kind the will shall by no means ' be declared void, even though the testator may have left said heirs less than the lawful share to which they were entitled, but the deficiency must be made up by the other heirs in conformity with Our laws, for the sole intention of Our Serenity is to keep parents and children from being injured by being passed over, or suffering disinheritance. Parents should consider that there was a time when they were children, and that then they expected to receive the estates of those to whom they owed their existence; just as children should, on the other hand, use every effort to retain the good will of their parents, because they themselves desire to become fathers, and be honored by their offspring. The consequence of this is, that the present law which We have thought should be promulgated with reference to this subject, has been enacted for the benefit and security of both parents and children.

While recently deciding a case, We have ascertained that Pulcheria, a daughter who had treated her parents with respect, was disinherited by her mother in her will, and deprived of both the maternal and paternal estates; but, as We have ascertained that this will resulted from the deceit and fraud of certain individuals, We have not permitted it to take effect, and have ordered, by a written decree, that the daughter should become the heir of both her father and her mother.

(1) We also remember that a law was promulgated by Us in which We ordered that no one should detain the body of a deceased person, or oppose his burial on account of a debt. We have recently been informed that a father was arrested for a debt while returning from the funeral of his son, and We have concluded that it is as religious as humane to suppress such acts of cruelty by means of this most pious law. Therefore We decree that no one shall, under any circumstances, be permitted to sue, or annoy in any way the heirs, parents, children, wife, cognates, agnates, or other relatives, or the sureties of a deceased person, within the nine days following his death, during which they are presumed to have been mourning; and We forbid any notice to be served upon them, or that they be brought into court either for a debt due from the deceased, or for any other matter in which they may be specially interested.

If, during the said nine days, a creditor should be so bold as to exact a bond, a promise, a security, or anything else of this kind from the persons aforesaid, We decree that this claim shall be void. But where, after the expiration of nine days, anyone thinks that he has a right of action against these persons, he can exercise it in accordance with the laws, and his right will not be prejudiced in any way by prescription, or by any lawful allegation which he may make during the intermediate time.

CHAPTER VI.

CONCERNING THE ACKNOWLEDGMENT OF A DEBT ALREADY DUE.

We deem it proper to include in this law another chapter having reference to sums of money acknowledged or promised. Therefore We decree that where anyone admits a claim, or promises a sum of money, either in his own name or in that of someone else, for instance, making use of the clause: "I. will pay you," he will absolutely be required to fulfill his promise, or discharge his obligation for the amount mentioned, and will be compelled to pay the debt. When he says, "You will be paid by me, or by So-and-So," those whom he mentioned and who did not give their consent to the obligation will suffer no prejudice from these words; and he who employed them will not be liable for anything, or will only pay in proportion to the share of the debt which he is known to owe in accordance with law. If he

should say, "You will be paid either by me or by So-and-So," a pledge of this kind does not injure those who do not agree to it; but he who made it will be bound to discharge the entire indebtedness, and if, finally, anyone should say, "You will be paid," as this verb is used impersonally, he is considered to have promised nothing and to be free from all liability. But when a creditor believes that he has a right of action against the persons mentioned, he can exercise it against them in conformity with the laws, and avail himself of their aid.

EPILOGUE.

We order, most dear and devoted relative, that these provisions shall be observed in all cases which have not yet been disposed of by judicial decree or amicable compromise.

Your Highness will communicate to all Our subjects this general law which We have enacted, and will publish it by means of edicts in this Royal City, as is customary, and in the provinces by special notices addressed to the Governors thereof.

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

TITLE XVII.

No SOLDIER OR ALLY SHALL BE KEPT IN THE PRIVATE HOUSE OR POSSESSION OF ANYONE.

ONE HUNDRED AND SIXTEENTH NEW CONSTITUTION.

The Emperor Justinian to Theodotus, Praetorian Prefect of the East.

PREFACE.

As the benevolence of God has been evinced for the care of Our subjects, military discipline has begun to be established, and this result has been so thoroughly accomplished by Divine Providence that the impetuosity of the barbarians has been restrained, and the affairs of the government improved. But as certain persons have not paid sufficient regard to their own safety, and have presumed to remove and employ for their own private benefit soldiers and allies, who should be fighting against the enemy for the defence of the Empire, We, by the present law, forbid all Our subjects in the future to remove soldiers, no matter to what corps of the army they may belong, or allies (in whose behalf We have greatly exerted Ourself), with the intention of employing them in their private houses or on their lands, for they have been trained in the use of arms in order that they might promote the common welfare of all.

CHAPTER I.

Hence all persons who have soldiers or allies either in their houses, or on their estates, and employ them in any way whatsoever in private occupations, are warned that if, within thirty days from the date of the promulgation of this law in their province, they do not dismiss them, their own property will be confiscated for the Treasury, they themselves will be deprived of their offices and honors, and any soldiers or allies who remain with them after the expiration of this term shall not only be stripped of their military rank, but also be put to death.

The magistrates of each province also are notified that if they do not immediately arrest soldiers or allies who have been found living in places subject to the jurisdiction of collectors, or their friends, or any other persons, or owners of property, or those who are employed on the lands or in the private service of anyone whomsoever, and seize and subject them to punishment and send the soldiers to the corps to which they belong, and the allies to their own posts, they will be liable to a penalty of ten pounds of gold, and will, in addition, be sentenced to exile, as having presumed to disobey orders.

Therefore no one can, for the purpose of evading this law, avail himself of any Imperial Pragmatic Sanction, or order of any of Our judges, or any other pretext of this kind, but the soldiers must return to their commands with all haste, and the allies repair to their posts, and both of them exert themselves for the public welfare, as We absolutely forbid Our soldiers or

allies, in the future, to be occupied for the benefit of private persons.

EPILOGUE.

As soon as Your Eminence becomes acquainted with the provisions which We have been pleased to include in the present law, you will hasten to have them published in this Most Fortunate City by means of edicts, and in the provinces by proclamations issued for that purpose.

Given at Constantinople, during the fifteenth year of Our Lord the Emperor Justinian, and the Consulate of Basil.

TITLE XVIII.

A MOTHER, GRANDMOTHER, AND OTHER RELATIVES SHALL BE PERMITTED TO DISPOSE OF THE REMAINDER OP THEIR ESTATES IN ANY WAY THEY MAY DESIRE, AFTER HAVING LEFT TO THEIR CHILDREN THE SHARE PRESCRIBED BY LAW; AND CONCERNING SEVERAL OTHER MATTERS.

ONE HUNDRED AND SEVENTEENTH NEW CONSTITUTION.

The Emperor Justinian to Theodotus, Praetorian Prefect of the East.

PREFACE.

Various questions having been submitted to Us, We have deemed it necessary to dispose of them by means of this general law.

CHAPTER I.

WHERE ANYONE APPOINTS A SON UNDER PATERNAL CONTROL HIS HEIR, SUBJECT TO THE CONDITION THAT THE FATHER OF THE LATTER SHALL NOT HAVE THE USUFRUCT OF THE ESTATE.

Hence We order that after a mother and a grandmother, or any other relatives, have left their children the share prescribed by law, they shall be permitted to dispose of the remainder of their estates, either wholly or in part, and give it either to a son, a daughter, a grandson, a granddaughter, and the descendants of the latter, or bequeath it by a last will under the following restriction and condition, namely: that the father, or anyone who has them under his control, shall not enjoy the usufruct of the property, nor share in the same to any extent whatever; for the persons whom We have just mentioned can leave this property to strangers without the parents of the children obtaining any benefit from the same. We make this provision in order that the privilege may be granted not only to relatives but also to everyone else.

(1) When property is left or donated in this way to persons who are under someone's control, they can, if they are of age, dispose of it in any way that they may desire; but if they are minors, it must be administered by whomever the testator or donor indicated for that purpose, until the children to whom the said property was donated or left attain their majority; and the testator or donor will be at liberty to entrust the management of the said property to the mother or grandmother of those to whom it is given even though she may have married again, provided she is willing to assume it.

But where he who left or gave a share of his estate did not designate anyone to administer it for the children, or where he who was appointed is unwilling or unable to do so, or should die before the children attain their majority, We order that under these circumstances a competent judge shall appoint some trustworthy person curator of the inheritance, who must furnish the requisite bond, and the said curator shall manage and take care of the estate left to the minors until they become of age, as has been stated. We desire that the law which permits parents to enjoy the usufruct of their children's property shall be observed in all cases, except where the express condition that they shall not do so has been prescribed.

CHAPTER II.

CONCERNING ONE WHO WAS REFERRED TO AS A CHILD IN SOME INSTRUMENT.

We have considered it proper to order that when anyone has a son or a daughter by a free woman, with whom legal marriage can be contracted, and states either in a public or private instrument, bearing the signatures of three reliable witnesses, or in a will, or in the public records, that So-and-So is his son or his daughter, without adding the word "natural," such children shall be legitimate; no other proof of legitimacy shall be required of them; and they shall enjoy all the rights which Our laws bestow upon lawful issue; since the father (as has already been stated) has called them his own children, and has shown by this that he and their mother are legally married, and proof of this shall not be required of her. But where a father, having several children by the same woman, gives one of them some mark of legitimacy, in conformity with what has previously been stated, this acknowledgment will enable the others by a common mother to acquire the right of legitimate birth.

CHAPTER III.

CONCERNING A WOMAN WHO MARRIES WITHOUT ANY DOTAL CONTRACT.

We have thought it advisable to add to the present constitution that where anyone has married a woman through mere affection, without any written contract, and has had children by her, and the marriage is subsequently dissolved, and the husband marries another wife with whom he makes a dotal contract, and also has children by her, the offspring of the wife with whom he did not enter into a dotal contract shall not be prejudiced, so far as the paternal estate is concerned; but they shall be called to the succession of their father along with those born of the second wife, whose union was accompanied by a dotal agreement, since marriage can exist when induced solely by affection.

We desire that this rule shall also be applicable where a man has married a woman under a dotal agreement, and afterwards marries another through affection alone.

CHAPTER IV.

CONCERNING THE MARRIAGES OF ILLUSTRIOUS PERSONS, AND WHEN THEY ARE CONTRACTED BY MEANS OF DOTAL INSTRUMENTS.

But as We have previously enacted a law which directs that dotal agreements should be drawn up, or other proofs of marriage be established, before the defenders of the Church, by whom it is proper that marriages should be confirmed, or before whom the parties should be sworn, We consider it proper by means of the present law to provide a more exact regulation with reference to what has for a long time been determined relative to this subject. Hence We decree that those who are invested with the highest dignities, up to that of "illustrious," shall only be permitted to contract marriage when dotal instruments are executed.

We except from this rule anyone who, before having obtained his rank, has married a woman solely through affection, for We order that marriages contracted in this way before promotion to official honors shall remain lawful, and that the issue of the same shall be legitimate. Persons, however, who have already attained to great distinction, cannot marry without entering into dotal agreements with their wives.

We, however, release the barbarian subjects of Our Empire from this obligation, even though they may be persons of high rank, and We allow them to contract marriage through mere affection. We do not prohibit all Our other subjects, no matter what official rank they may have obtained, or what public duties they may discharge, with the exception of those who (as has already been stated) have attained to high rank, to marry women by entering into dotal agreements with them, when they desire, or have the power to do so. Where, however, this has not been done in writing, We decree that marriages which have been contracted through mere affection shall not be less valid, and that the issue of such matrimonial unions shall be

legitimate.

CHAPTER V.

WHEN A MARRIAGE IS CONTRACTED WITHOUT A DOWRY AND THE SURVIVING HUSBAND IS POOR, HE SHALL BE ENTITLED TO THE FOURTH PART OF THE ESTATE OF HIS DECEASED WIFE.

We some time since enacted a law providing that where a man married a woman solely through nuptial affection, without any dowry, and he afterwards divorces her without any cause recognized by the law, she shall be entitled to the fourth part of the property of her husband ; and after this law We promulgated another, by which it is provided that if anyone should marry a wife without a dowry, having been induced to do so by mere affection, and lives all his life with her, and dies before she does, she, also, shall be entitled to the fourth part of his estate, provided that the said fourth does not exceed the value of a hundred pounds of gold. We, however, at present displaying more sagacity, do hereby decree that children born of marriages due to mere affection shall, under these circumstances, be deemed legitimate, and be called to the succession of their father's estates; and that in each of these instances the wife shall receive the fourth of her husband's property where he only had three children by her, or by a preceding marriage; but if he had more than that, the wife shall then be entitled to as much as each of the children. But she shall only have a right to the usufruct of the share of the property she receives, and the ownership of the same shall be reserved for the children whom she has had by this same marriage; but where such a woman has not had any children by her husband, We decree that she shall acquire the ownership of the said property.

We desire that a woman who was put away without good cause shall receive the portion established by this law at the very moment of repudiation; but, under similar circumstances, We absolutely forbid the husband to obtain the fourth part of the estate of "his wife in accordance with Our former law.

CHAPTER VI.

CONCERNING THE CONSTITUTIONS ENACTED BY THE EMPEROR LEO AND THE EMPEROR CONSTANTINE.

The Constitution of the Emperor Leo, of pious memory, shall preserve all the force in every case not provided for by the present law. We, however, entirely repeal the one enacted by the Emperor Constantine, of pious memory, and addressed to Gregory, as well as the interpretation placed upon it by the Emperor Martian, of pious memory, which forbids persons of high rank to marry women whom the said law styles "abject." We grant permission to persons even though they are dignitaries of high rank, if they wish to do so, to marry women of this kind, provided they enter into dotal contracts with them, but so far as other persons who are not distinguished in this manner are concerned, they shall be at liberty to marry them in any way they may desire, either by a written contract, or through nuptial affection, provided that the said women are free, and marriage can legally be contracted with them.

CHAPTER VII.

HOW AND BY WHOM CHILDREN ARE SUPPORTED AFTER A MARRIAGE HAS BEEN DISSOLVED BY REPUDIATION.

We have thought that when marriage is dissolved between husband and wife, some provision should be made to prevent the children born of the marriage from suffering any injury through its dissolution, and to enable them to be called to the succession of their parents, and be maintained at their father's expense. Where the latter furnished the cause for divorce, and the mother does not marry again, the children shall remain with her, and the father shall pay for their support; but where it is proved that the woman was to blame for the dissolution of the marriage, under these circumstances, the children shall remain with, and be supported by their father. If the father is poor and the mother is rich, We direct that the poor children shall live

with their mother, and be brought up by her; for as wealthy children are obliged to support their mother when she is poor, it is only just that poor children should be maintained by their wealthy mother, and this We order to be done.

What We have stated with reference to poor children, and the duty of their mother to support them, We direct shall also apply to all ascendants and descendants of both sexes.

CHAPTER VIII.

CONCERNING THE JUST CAUSES FOR WHICH A HUSBAND IS PERMITTED TO OBTAIN A DIVORCE.

As We have found many cases in the ancient laws as well as in Our own where the dissolution of marriage was easily effected, We have thought it advisable to rescind some of the provisions which have appeared to Us to be improper causes of divorce, and to specifically insert into the present law only those for which either the husband or wife can reasonably give notice of repudiation. We shall now enumerate the causes for which a husband can safely give notice of repudiation to his wife and obtain her dowry, the ownership of which shall vest in the children by this marriage, and where there are none of these living, it shall vest in the husband. The following are good causes for repudiation.

(1) Where a woman is aware that certain persons are plotting against the government, and does not inform her husband. But if the husband, having learned of this from his wife, should remain silent, the latter will be permitted to notify the government by means of any persons whomsoever, in order that her husband may not take advantage of this as a pretext for repudiation.

(2) Where the husband thinks that he can convict his wife of adultery; but he must previously file a complaint against her, as well as against the adulterer, and if the accusation is shown to be true, the husband, after having served notice of repudiation, will be entitled to the ante-nuptial donation, as well as the dowry; and when there are no children, he will also be entitled to an amount equal to the third of the dowry, out of the other property of his wife, the ownership of which, as well as that of the dowry, will absolutely vest in him. But where the husband has children by the same marriage, We, in conformity with the spirit of the laws on this subject, do hereby decree that the ownership of the property, as well as that of the other possessions of the wife, shall be preserved for their benefit.

A husband, legally convicted of being the accomplice of the adulterer, shall be punished along with his wife; and if the adulterer is married, his wife will obtain her own dowry as well as the antenuptial donation; and if they have children, she will only be entitled to the usufruct of the donation, being obliged to preserve the ownership of the same for her children, as prescribed by law. As a mark of Our liberality We grant the children all the other property of the husband. But where there are no children, We decree that the ownership of the ante-nuptial donation shall vest in the wife of the man who was guilty of adultery, and that the remainder of his property shall be confiscated to the Treasury, in conformity to the ancient laws.

(3) Where a wife has plotted against the life of her husband in any way whatsoever, or where she has consented for others to do so, without informing her husband.

(4) Where she attends banquets, or bathes with strangers, against the wishes of her husband.

(5) Where she remains away from her husband's house without his consent, unless she is visiting her own parents.

(6) Where, without the knowledge, or against the prohibition of her husband, she attends circuses, theatres, or other public exhibitions.

(7) If, however, a husband, without one of the aforesaid reasons, should drive his wife away from his own house, and she, not having any relatives with whom she can live, is obliged to pass a night outside, We order that the husband shall not, under these circumstances, have permission to send a notice of repudiation to his wife, since he himself is responsible for what

she has done.

CHAPTER IX.

CONCERNING THE JUST CAUSES FOR DIVORCE WHICH ARE GRANTED TO THE WIFE.

We decree that the following are the only causes for which a wife can reasonably serve notice of repudiation upon her husband, obtain her dowry, and exact the ante-nuptial donation, in case there are no children, or retain it for their benefit if there are any.

(1) Where the husband was implicated in some plot against the Empire; or where, being informed that others were, he did not denounce them to the government either in person, or by someone else.

(2) Where the husband has, in any way whatsoever, attempted to kill his wife, or if, being informed that others desired to do so, did not warn her, or take measures to avenge her in conformity with the laws.

(3) Where the husband has attempted to violate the chastity of his wife, by seeking to deliver her to other men for the purpose of committing adultery.

(4) Where the husband filed an accusation of adultery against his wife, and was not able to prove it, his wife will be permitted to serve notice of repudiation on him for this reason, and to recover her own dowry, and acquire the ante-nuptial donation, and, in addition, to punish the husband for a false accusation of this kind. Where there is no issue of the marriage, she shall receive the ownership of an amount of the other property of her husband equal in value to the third of the ante-nuptial donation; but where there are children, We order that the entire estate of her husband shall be set aside for their benefit.

All other provisions relating to ante-nuptial donations, which are included in other laws, are hereby confirmed, and the husband, on account of the accusation of adultery which he was unable to establish, shall be punished in the same way that the wife would have been if the offence had been proved.

(5) Where a man, having contempt for his wife, is known to have entertained another woman in the house where he lives with her; or if, while dwelling in the same city, he is convicted of having frequently been in the company of another woman, residing in another house, and having been reprimanded once or twice, either by his parents or by those of his wife, or by any other persons worthy of confidence, he does not abstain from such debauchery, his wife will for this reason be permitted to dissolve the marriage, to obtain her dowry in addition to the ante-nuptial donation; and in order to punish her husband for such an injury, she can also exact from his other property up to one-third of the appraised value of the ante-nuptial donation; and if she has any children, she will only be entitled to the usufruct of the said donation, and that of the penalty of the third of the amount which she is entitled to out of the other property of her husband, she being compelled to reserve the ownership of the same for their common children. When, however, she has no children, We direct that she shall receive the ownership of the said property.

CHAPTER X.

IT SHALL NOT BE LAWFUL TO DISSOLVE A MARRIAGE BY COMMON CONSENT, UNLESS FOR SOME PLAUSIBLE REASON.

For the reason that certain persons up to the present time have been accustomed to dissolve their marriages by common consent, We absolutely forbid this for the future, unless where the parties interested are impelled by the desire of living in chastity. When they have any children, We decree that the dowry and ante-nuptial donation shall be preserved for their benefit. But if, after the marriage has been dissolved by common consent through motives of chastity, either of the parties should contract another, or is found to be living in debauchery, We order that if (as has already been stated) any children by this marriage should be living,

the ownership of the dowry, of the antenuptial donation, and of the other property of the person who is guilty of the offence shall vest in the children, and when they are minors, the said property shall be administered by either the husband or the wife, who has not, in any respect, violated the present law.

But where both husband and wife are given to the same vice, We order that their property shall belong to the children, and that someone shall be appointed to manage the shares of those who are minors, either by a competent judge or by other magistrates charged with this duty by Our laws. When there are no children, the property of both husband and wife shall be confiscated for the benefit of the Treasury, and they shall be subjected to legal punishment. Otherwise, however, We do not permit dissolution of marriage to take place by common consent under any circumstances.

CHAPTER XI.

FOR HOW LONG A TIME A WIFE SHOULD WAIT BEFORE MARRYING AGAIN WHILE HER HUSBAND IS ABSENT ON AN EXPEDITION.

We have deemed it proper to amend what We have enacted up to this time with reference to soldiers, allies, members of favored corps, or any other persons forming part of the army, who are employed in military expeditions and operations. Hence We order that wives shall be compelled to await their husbands' return, no matter how many years they may be absent, even though they may not have received any information, or answers to letters which they may have written. Where, however, the wife of a soldier has heard that her husband is dead, We do not permit her to contract another marriage before having appeared, either by her parents or by someone else, before the first chartularies of the division in which her husband served, and inquired of them or of the tribune (if there is any) whether her husband is actually dead; and the said officers shall bear witness to this fact by swearing to it on the Holy Gospels, as well as by the execution and record of a public document. After the wife has received this formal proof of the death of her husband, We decree that she shall wait one more year, and after it has elapsed, she will be allowed to contract another marriage.

If, however, a woman should presume to violate this provision, and marry again, both she herself and the man who married her shall be punished as guilty of adultery. Where the persons who have given testimony by public documents and under oath are convicted of having perjured themselves, they shall be deprived of their military rank, and be compelled to pay ten pounds of gold to him whom they falsely stated that the man was dead; and the latter shall be permitted to take his wife back, if he should desire to do so. But where the death of a member of one of the favored divisions of the army is in doubt, the evidence of the chief of the same and the officer in charge of the registers shall be obtained; and where the question is with reference to the death of an ally, his wife shall take the testimony of the commander of the post to which he is attached. We order that these rules shall be applicable to all other persons in the military service.

CHAPTER XII.

FOR WHAT REASONS A MARRIAGE IS DISSOLVED WITHOUT A PENALTY.

We have concluded that some special additions should be made to the above-mentioned causes by means of which marriages can be dissolved without a penalty; that is to say, in cases where husbands have not, from the beginning, been able to copulate with their wives, and to do what Nature has conceded to men; and, above all, when husbands and wives have, during marriage, chosen to adopt a holy life and reside in monasteries; and, finally, when they have been detained in captivity for a considerable time; for, in these three instances, We direct that the provisions contained in Our former laws which relate to this subject shall remain in force. Hence We decree that only the causes enumerated in the present law can bring about the dissolution of legitimate marriage. We order that all others, without exception, shall be abolished, and none of them (this, however, does not refer to such as are specifically mentioned in this Constitution), even though it may be included in the Constitutions formerly

enacted, as well in the ancient laws, shall be able to dissolve the marriage.

CHAPTER XIII.

WHERE A WIFE HAS GIVEN NOTICE OF REPUDIATION TO HER HUSBAND WITHOUT JUST CAUSE.

But for the reason that certain women who desire to live debauched lives hasten to dissolve their marriages, We order that when a wife wishes to dissolve her marriage for some other cause than those above stated by Us, she shall not be permitted to do so; and if she should still entertain this wicked design, and serve notice of repudiation upon her husband, We order that her dowry shall be given to him to be kept for their common children, in accordance with law, and that, if she should have no children, it shall belong to the husband.

The woman shall, upon the responsibility of the judge who hears the case, be delivered to the bishop of the city in which both of them reside, in order that she may at once be confined in a monastery, to remain there as long as she lives; and when such a woman has children, two-thirds of her property shall be given to them, and the other third to the monastery to which she is sent, and in which the absolute ownership of the same shall vest. When, however, she is childless, but has parents, two-thirds of her property shall be transferred to the monastery to which she is sent, and the other third to her parents, unless they, while having her under their control, had given their consent to the illegal notice of repudiation; in which case We do not permit them to have any of her estate whatever, but We wish all of it to be transferred to the venerable monastery. Where, however, she has neither living children nor parents, the monastery will be entitled to all her property.

If the judge who hears the case should not do this, that is to say, should not, after she has been arrested, deliver her to the bishop of the city, to the end that she may be placed in the monastery, and the said judge has jurisdiction in this Most Fortunate City, he shall pay a penalty of twenty pounds of gold, and his officials shall pay ten. Where a judge of this kind is stationed in a province, and does not obey what has been ordered by Us under such circumstances, he will be liable to a fine of ten pounds of gold, and his subordinates to one of five. When the judge has not been regularly appointed, he must pay a fine of ten pounds of gold, and his subordinates one of five, which fines shall be collected from the persons aforesaid by the Count of Private Affairs, and the Body of the Palatines, and be paid into Our Treasury.

But where the husband has attempted to dissolve the marriage with his wife, and has illegally given her notice of repudiation, We order that he shall return what he received as dowry, and surrender the ante-nuptial donation, and that there shall be taken from the remainder of his property and given to his wife a sum equal to the third part of the amount bestowed in consideration of marriage. When there are children, the wife shall only be entitled to the usufruct of the ante-nuptial donation, in addition to that of the third of the estate of the husband granted by Us, and the ownership of the same shall be reserved for the children. When there are no children, the woman shall have both the usufruct and ownership of the property, and We order that these provisions shall be applicable not only to marriages dissolved for lawful reasons, but also to such as are dissolved for others that are illegal; and We decree that all questions having reference to the cases above mentioned shall be heard and determined in conformity with this Our Constitution.

CHAPTER XIV.

WHERE ANYONE PUNISHES HIS WIFE BY BEATING HER.

If a man should beat his wife with a whip or a rod, without having been induced to do so for one of the reasons which We have stated to be sufficient, where the woman is at fault, to cause dissolution of the marriage, We do not wish it to be dissolved on this account; but the husband who has been convicted of having, without such a reason, struck his wife with a whip or a rod, shall give her by way of compensation for an injury of this kind (even during the

existence of the marriage) a sum equal in value to the amount of the antenuptial donation to be taken out of his other property.

CHAPTER XV.

WHERE A HUSBAND SUSPECTS ANYONE OF WISHING TO ATTACK THE MODESTY OF HIS WIFE.

We also add to what has been already enacted that where anyone suspects some man of desiring to violate the chastity of his wife, and after having notified him three times in writing to desist and obtained the evidence of three men worthy of confidence, and after this he finds him associating with his wife, either in his own home, in that of his wife, or in that of the adulterer, or in a public house, or in the suburbs, he shall be permitted to kill him with his own hands without being apprehensive of any responsibility. If, however, he should find him talking with his wife in some other place, and he can prove this by three reliable witnesses called together for that purpose, he can bring him before a judge having criminal jurisdiction. If the judge should ascertain that it is true that the man was found with a woman after three written notices not to do so had been served upon him, the husband shall be allowed to punish him as being guilty of adultery from this fact alone, and can prosecute him for the crime.

(1) But as there are certain impious individuals who have even the audacity to commit adultery in religious houses, and are guilty of sin where men who fear God are accustomed to ask pardon for their offences, We order that if any such person against whom suspicions have arisen, after he has been warned three times (as has been stated) should be found in a religious house with the wife of another, the husband will be permitted to bring the two guilty parties before the defender of the Church, or other members of the clergy, in order for them to be kept separate at their risk, in accordance with the laws which forbid the most holy churches from protecting persons guilty of adultery, until the judge, having been notified of the crime, sends them to the bishop of the city to be punished. The judge shall not look for any other proof of the offence than (as We have already stated) that of the three notices aforesaid; for they, having been served, the guilty parties must, by all means, be prosecuted for adultery, and shall derive no protection from the sacred place for which they have shown contempt by their own illegal acts. For if Our laws do not permit persons who perpetrate rapes of virgins or adultery elsewhere to betake themselves to houses of prayer in order to be protected by the said houses, how can We allow ecclesiastical property to render assistance to those who have committed crime in the very church itself? Persons who presume to outrage the sanctity of sacred places shall be brought before the courts and suffer the penalty which they deserve; for who can be guilty of crime where salvation is solicited? And, generally speaking, We decree that if anyone should find his wife, his daughter, his granddaughter, or his betrothed, in conversation with a man in any religious house, and suspect that they are holding an interview for the purpose of indulging their base desires, by taking advantage of the sacred character of the place, he can bring them before the defender, or other ecclesiastics attached to the most holy church, in order that they may keep them separate at their own risk, until they can be brought before the judge and their case be decided in accordance with law.

EPILOGUE.

Therefore, We desire that the provisions prescribed by Our Tranquillity in the present law, which shall be perpetually valid, must be observed in all the cases to which it refers, with the exception of those which have already been disposed of by judicial decision, or amicable compromise; for We desire these to remain unaltered.

Your Most Glorious and Eminent Authority will communicate this law to all persons by means of public edicts in this Illustrious City, and through instructions addressed to the Governors of provinces, in order that no one may be ignorant of what We have effected for the public welfare. Your Highness will also promulgate this law by means of private notices, without their publication resulting in any undue expense to Our subjects.

Given on the fifteenth of the *Kalends* of January, during the fifteenth year of the reign of Our

Lord the Emperor Justinian, and the Consulate of Basil.