# THE DIGEST OR PANDECTS.

## BOOK XLVIII.

## TITLE I.

## ON CRIMINAL PROSECUTIONS.

1. *Macer, On Criminal Prosecutions, Book I.*

All cases in which crime is involved are not public, but only those which are derived from the laws relating to the prosecution of crimes, such as the Julian Law on Treason; the Julian Law on Adultery; the Cornelian Law on Assassins and Poisoners; the Pompeian Law on Parricide; the Julian Law on Peculation; the Cornelian Law on Wills; the Julian Law on Private Violence; the Julian Law on Public Violence; the Julian Law on the Bribery of Voters; the Julian Law on Extortion; and the Julian Law on Raising the Price of Food.

2. *Paulus, On the Edict of the Prxtor, Book XV.*

Some criminal offences are capital, and some are not. Those which are capital entail the punishment of exile or banishment; that is to say, the interdiction of water and fire. For, by these penalties the civil rights of the delinquent are lost, for the other penalties are properly termed relegation and not exile, for then the rights of citizenship are retained.

Punishments which are not capital are those where the penalty is either pecuniary or corporeal.

3. *Ulpianus, On Sabinus, Book XXXV.*

A criminal prosecution is annulled by the death of the defendant of either sex.

4. *Paulus, On the Edict, Book XXXVII.*

It sometimes happens that a criminal prosecution is prejudiced, as in the action under the Aquilian Law; in the action of theft, and the one for property taken by violence; in the interdict *Unde vi* and in that to compel the production of a will; for in these cases private matters are concerned.

5. *Ulpianus, Disputations, Book Vill.*

When anyone is accused of crime, he must prove that he is not guilty, and he cannot accuse another before he himself has been acquitted; for it is set forth in the Imperial Constitutions that a defendant must be cleared, not by accusing others of crime, but by his own innocence.

(1) It is uncertain whether anyone can bring an accusation when he has been discharged, or when he has suffered punishment; for it was decided by our Emperor and his Divine Father that he could not begin an accusation after having been condemned. I think, however, that this only refers to those who have either lost their right to citizenship or their freedom.

(2) It is clear that accusations which have been begun before conviction can be completed afterwards.

6. *Marcianus, Institutes, Book XIV.*

Where a person who was accused of crime dies, and the penalty is extinguished, no matter in what condition the accusation of the ex-. tinguished crime may be, the magistrate who has jurisdiction of the pecuniary interest involved can proceed with the investigation.

7. *Macer, Public Prosecutions, Book II.*

A sentence for every crime does not render a man infamous, but only such as have the character of public prosecutions. Hence infamy does not result from condemnation for a crime which is not the subject of public prosecution, unless the offence can be the subject of an action which, even in the case of a private judgment, brands the condemned party with infamy, as for instance, that of theft, that of robbery with violence, and that of injury.

8. *Paulus, Public Prosecutions.*

The order of conducting public prosecutions for capital offence is no longer in use; still the penalty prescribed by the laws exists, and the crimes are proved arbitrarily.

9. *Marcianus, On Public Prosecutions, Book I.*

It must be remembered that if anyone should not defend his own slave, when he is accused of a capital crime, he will not be considered as having abandoned him; and therefore if the slave should be acquitted, he will not become free, but will still remain the property of his master.

10. *Papinianus, Definitions, Book II.*

While the case between the accuser and the defendant is pending in court, the excuse of absence for good reasons is admitted; and although the defendant may have been called three times a day for three days, he should not be condemned; or if the accuser should be absent and the defendant present, the former ought not be convicted of malicious prosecution.

11. *Marcianus, On Public Prosecutions, Book X.* A slave can be defended by an attorney appointed by his master, just as well as by his master himself.

12. *Modestinus, On Punishments, Book III.*

The magistrate who is about to hear the cases of prisoners should invoke the aid of the most illustrious citizens, as well as of the most eminent advocates, if they all reside in the principal city of the province where he exercises jurisdiction.

It is provided by a rescript that prisoners can be examined even on feast days, so that he may dismiss such as are innocent, and continue the cases of those who are guilty, and deserve severe punishment.

13. *Papinianus, Opinions, Book XV.*

If the accuser should die, the case can be prosecuted by another, if the Governor of the province considers this advisable.

(1) An agent will intervene to no purpose in the prosecution of a crime; and this applies still more forcibly to the defence. The excuses of absent persons can be presented to the judges in accordance with the terms of the Decree of the Senate, and if good reasons are given, the decision will be postponed.

14. *The Same, Opinions, Book XVI.*

The slaves of a son-in-law having been accused by his father-in-law of administering poison, the Governor of the province decided that the father had been guilty of malicious prosecution. I gave it as my opinion that the father of the deceased should not be included among persons who are infamous, since although a criminal prosecution might be instituted by the children for the death of the daughter, the father could bring the accusation without any risk.

## TITLE II.

## CONCERNING ACCUSATIONS AND INSCRIPTIONS

1. *Pomponius, On Sabinus, Book I.*

*A* woman is not permitted to accuse anyone in a criminal case unless she does so on account of the death of her parents or children, her patron or patroness, and their son, daughter, grandson, or granddaughter.

2. *Papinianus, On Adultery, Book I.*

Women are permitted to bring a public accusation for certain causes, for instance, if they do so on account of the death of any of those persons of either sex against whom they, if unwilling, can not be compelled to appear as witnesses, under the provisions of the law

relating to public testimony. The Senate arrived at the same conclusion with reference to the Cornelian Law on Evidence.

Women, however, are allowed to testify publicly in a criminal prosecution concerning the will of a freedman of their father or their mother.

(1) By the law relating to testaments, the right was conceded to wards, with the advice of their guardians, to institute a prosecution for the death of their father, just as a female ward is allowed to institute one for the death of her grandfather, since the Divine Vespasian permitted wards to bring suit with reference to the will of their father; but they could proceed by means of the interdict just as if the will had not been produced.

3. *Paulus, On Adultery, Book III.*

The following is the form of an accusation, by inscription: "The Consul, and the date. Before So-and-So, Praetor and Proconsul, Lucius Titius declared that he accused Msevia under the *Lex Julia de Adulter-iis;* and alleged that she committed adultery with Gaius Seius, in such-and-such a house, on such-and-such a month, during such-and-such a consulate."

It is first necessary to designate the place in which the adultery occurred, as well as the person with whom it is alleged to have been committed, and the month; for this is provided by the Julian Law relating to public prosecutions, and generally speaking, it applies to all who bring an accusation against anyone. If the prosecutor is unwilling, he need not include the day or the hour.

(1) Where inscriptions are not drawn up according to law, the name of the defendant is erased, and the prosecutor has power to renew the accusation.

(2) He who presents the inscription must sign what he has stated, or another can do so for him if he does not know how to write.

(3) But if he makes an accusation of another crime, as for instance, that of having lent a house in order that a matron might use it for the purpose of debauchery, or that of having released a man caught with her in adultery, or that of having received money after having surprised the guilty parties in the act, or anything else of this description, it must be included in the document.

(4) If the accuser should die, or, for some other reason, be prevented from making the accusation, or anything of this kind occurs, the name of the defendant will be erased, if he requests this to be done. This is provided by the Julian Law relating to force, as well as by the Decree of the Senate, so that another can again begin the prosecution of the defendant. Let us see within what time this can take place. It can be done within thirty available days.

4. *Ulpianus, On Adultery, Book II.*

A man who has been condemned in a criminal prosecution has no right to accuse anyone himself, unless, under the terms of the decision he is authorized to institute criminal proceedings for the death of his children or his patrons, or the loss of his own property. The right of accusation is also taken away from those who have been rendered infamous on account of malicious prosecution, as well as from those who have entered the arena for the purpose of contending with wild beasts, or who follow the profession of buffoons, or keep women for prostitution, or have been convicted of prevarication or calumny, or of having received money in consideration of their accusing anyone, or injuring his business.

5. *The Same, On Adultery, Book HI.*

There is no doubt that slaves can also be accused of adultery. Those, however, who are forbidden to accuse freemen of adultery are themselves forbidden to accuse slaves. A master, however, can, under a Rescript of the Divine Marcus, bring an accusation against his own slave for this offence. Therefore, since the promulgation of this rescript, the master is obliged

to accuse his slave, but if his wife is legally married she can plead an exception in bar.

6. *The Same, On the Duties of Proconsul, Book VII.*

The Proconsul must hear and discuss clearly all accusations of slight importance, and either release those against whom they are brought, or whip them with rods, or, if they are slaves, scourge them.

7. *The Same, On the Duties of Proconsul, Book VII.*

When anyone accuses another of a crime, he must, first of all, sign the accusation. This rule has been introduced for the purpose of preventing anyone from rashly denouncing another, when he knows that his accusation, if false, will not go unpunished.

(1) Therefore, each accuser must state what crime is the subject of the accusation, and also that he will persevere in the prosecution until judgment has been rendered.

(2) The governor should not permit the same person to be again accused of crime of which he has been acquitted. This the Divine Pius stated in a Rescript addressed to Salvius Valens. But let us see, while under this Rescript a person cannot be accused by the same individual, whether he can not be by another. Where a case has been decided so far as certain persons are concerned, this does not prejudice others, if he who now appears as an accuser prosecutes on account of some injury of his own, and proves that he did not know that the accusation had been brought by another, I think there is good reason that he should be permitted to make the accusation.

(3) If, however, he should be prosecuted for another crime by the same accuser, who in the first proceeding calumniated him, I think he who has once been convicted of malicious prosecution should not readily be permitted to make a different accusation, although the son of the prosecutor must be allowed to do so, when he brings another criminal charge against the person whom his father had accused, as the Divine Pius stated in a Rescript to Julius Candidus.

(4) The same Emperor stated in a Rescript that slaves should be punished in the place where they are alleged to have perpetrated the offence, and if their master desires to defend them, he cannot have them sent back into his province, but must undertake their defence where the illegal act was committed.

(5) The Divine Pius stated in a Rescript addressed to Pontius Proculus that, where a sacrilegious act had been committed in one province, and afterwards a less serious crime was perpetrated in another, after having taken cognizance of the offence committed in his own province, he must send the defendant into the one where he had been guilty of sacrilege.

8. *Macer, On Public Prosecutions, Book II.*

We will more readily understand who can bring an accusation if we know who cannot do so. Hence, certain persons are forbidden to prosecute a crime on account of their sex or their age, as women, or minors. Many are disqualified because of their oath, for instance, those who are serving in the army; others cannot be brought into court on account of their magistracy, or their power, so long as they exercise this without the commission of fraud. Others, again are forbidden as the result of their own criminality, for example, infamous persons. Some are excluded on account of dishonorable gain, such as those who have filed two accusations signed by them against two different individuals; or who have received money in consideration of accusing, or not accusing others. Some are incompetent in consequence of their condition, as, for instance, freedmen cannot proceed against their patrons.

9. *Paulus, Sentences, Book V.*

Others are excluded on account of the suspicion of calumny, for instance those who, having been suborned, have given false testimony.

10. *Hermogenianus, Epitomes of Law, Book VI.*

Some cannot bring an accusation on. account of their poverty, such as those who have less than fifty *aurei.*

11. *Macer, On Public Prosecutions, Book II.*

Still, all these persons, if they are prosecuting injuries sustained by them, or the death of near relatives, are not excluded from bringing accusations.

(1) When children and freedmen desire to protect their interests they should not be prevented from complaining of the acts of their parents and patrons; for instance, where they state that they have been forcibly expelled from possession, and do not do so for the purpose of bringing an accusation of the crime of violence, but in order that they may recover possession of the property. For, indeed, a son is not forbidden to complain of the act of his mother, if he alleges that a child has been falsely substituted by her in order that he might have a co-heir, but he will not be permitted to accuse his mother under the Cornelian Law.

(2) One person cannot accuse another who has been already accused by a third party; but anyone who has been publicly or privately acquitted, or whose accuser has desisted from prosecution, and has been removed from a number of defendants, may be accused by another.

12. *Venuleius Saturninus, On Public Prosecutions, Book II.*

It is not lawful to accuse the following persons, namely: the Deputy of the Emperor, that is to say, the Governor of a province; according to the decision of Lentulus, rendered during the Consulate of Sylla and Trio; nor the deputy of a Governor, for a crime which he committed before he obtained his office; nor a magistrate of the Roman people; nor anyone who is absent on business for the State; provided he did not depart for the purpose of evading the law.

(1) Persons who are classed as offenders can make use of this privilege, if, having been discharged, they contend that they should not again be accused, which is in accordance with the Epistle of the Divine Hadrian addressed to Glabrio, Consul.

(2) It is provided by the Julian Law relating to criminal proceedings that no one can prosecute two persons at the same time, unless on account of an injury which he himself has sustained.

(3) When an accusation is brought against a slave, the same rule should be observed as if he were free, according to a Decree of the Senate promulgated when Cotta and Messala were consuls.

(4) Slaves can be accused under all laws, with the exception of the Julian Law relating to private violence; because those who are condemned under it are punished by the confiscation of the third part of their property, which penalty cannot be imposed upon a slave.

The same must be said with reference to other laws, by which either a pecuniary or a capital penalty is inflicted, which does not apply to slaves, as for instance, relegation. The Pompeian Law relating to parricide is placed in this category, because the First Section includes those who have killed their parents, their blood-relatives, or their patrons; which does not apply to slaves, so far as the provisions of the law are concerned. But as their nature is similar, they are punished in the same way. Again Cornelius Sylla was the author of the decision that a slave is not included in the Cornelian Law which has reference to injuries; but he is punished arbitrarily by a more severe penalty.

13. *Marciamis, On Public Prosecutions, Book I.*

The Divine Severus and Antoninus stated in a Rescript that a woman should be heard by the Prefect of Subsistence on the ground of the public welfare, if she brought an accusation relating to the excessive price of provisions. There is no doubt that persons who have been rendered infamous should be permitted to institute proceedings of this kind. Soldiers, also, who cannot prosecute the cases of others, because they guard the peace, can all the more

readily be permitted to bring this accusation. When slaves bring it, they should also be heard.

14. *Paulus, On the Duties of Proconsul, Book II.*

The Senate decreed that no one can be accused of the same crime under several laws.

15. *Ulpianus, On the Edict, Book LVI.*

Where anyone, having assembled a number of persons, is alleged to have committed damage with malicious intent, the plaintiff should not be compelled to abandon his civil action for the purpose of prosecuting the crime.

16. *The Same, On the Duties of Proconsul, Book II.*

Where several persons appear who desire to accuse the same man of a crime, the judge should select one of them to bring the accusation; that is to say, after proper cause has been shown by investigating the character, rank, interest, age, morals, or any other proper attributes of the accusers.

17. *Modestinus, Differences, Book VI.*

When a master defends his slave for a capital offence, he is ordered to give security for his appearance in court.

18. *The Same, Opinions, Book XVII.*

Titia threatened to prove the will of her brother Gaius to be forged, but did not comply with the formalities required by the accusation within the time prescribed by the Governor of the province. The latter decided a second time that she could not proceed further with the accusation of a forged will. Titia did not appeal from these decisions, but alleged that, after the time had expired, she could maintain that the will was void. As Titia did not appeal from the decision of the Governor, I ask whether she could afterwards renew the accusation that the will was forged. The answer was that it was not clearly stated for what reason she should be heard, if she instituted proceedings disputing the authority of the decision.

19. *Callistratus, On Judicial Inquiries, Book V.*

The Divine Brothers stated in a Rescript that the heirs of an accuser should not be compelled to prosecute the crime.

(1) Likewise, the Divine Hadrian stated in a Rescript that no one could be forced to prosecute several accused persons.

20. *Modestinus, On Penalties, Book II.*

Penalties involving the loss of property as the result of criminal prosecutions do not pass to the heirs, unless issue has been joined and conviction has followed; except in the cases of extortion and treason, which it has been decided can still be prosecuted even after the death of the defendants, against whom no proceedings previously had been taken, in order that their property might be confiscated to the Treasury ; with reference to which the Divine Severus and Antoninus stated in a Rescript that after anyone had committed such a crime, he could neither alienate any of his property, nor manumit any of his slaves. But so far as other offences were concerned, the penalty could begin to be inflicted upon the heir only where the accusation had been made during the lifetime of the guilty party, even though conviction did not follow.

21. *Papinianus, Opinions, Book XV.*

He who is accused of a capital crime is not, before judgment, forbidden to bring before the Treasury any matter in which he may be interested.

22. *The Same, Opinions, Book XVI.*

Anyone belonging to another province, who is accused of crime, should be prosecuted and convicted where the crime is proved to have been committed, which our most excellent Emperor stated in general terms should also be observed with reference to soldiers.

## TITLE III.

## CONCERNING THE CUSTODY AND APPEARANCE OP DEPENDANTS IN CRIMINAL CASES.

1. *Ulpianus, On the Duties of Proconsul, Book II.*

When accused persons are to be placed in custody, the Proconsul should determine whether they should be sent to prison, delivered to a soldier, or committed to the care of their sureties, or to that of themselves. This is usually done after taking into consideration the nature of the crime of which the defendant is accused, or his distinguished rank, or his great wealth, or his presumed innocence, or his reputation.

2. *Papinianus, On Adultery, Book I.*

Where a slave is accused of a capital offence, it is provided by the law of criminal prosecutions that he must furnish security for his appearance in court, even though his surety be a stranger. If he is not defended in this way, he should be thrown into the public prison, so that he may defend himself while under restraint.

(1) Therefore, the question is usually discussed whether the master should afterwards, by giving security, be permitted to release his slave from confinement. The Edict of Domitian, by which it is provided that releases obtained under the Decree of the Senate are not applicable to slaves of this kind, increases the already existing doubt, for the law itself forbids him to be discharged before his case has been disposed of. This interpretation, which is somewhat hard, is too severe when applied to a slave whose master is absent, or who, through poverty, was at that time unable to furnish security. For it cannot be said that a slave is left without defence whose master is present, or is ready to defend him, but is too poor to do so. This can the more readily be admitted, if too long a time to find security has not been taken.

(2) Those who are required to appear in court on account of some other crime previously committed are not included in the number of accused persons, according to a Decree of the Senate. This rule is also observed in private cases, where the parties have given sureties, unless on this account a temporary action is in danger of being extinguished through lapse of time.

3. *Ulpianus, On the Duties of Proconsul, Book VII.*

The Divine Pius stated in a Rescript, in Greek, to the people of Antioch, that anyone who was ready to furnish sureties for his appearance should not be placed in prison, unless it was evident that he had committed so serious a crime that he should not be entrusted to the care of any sureties, or soldiers; but that he must undergo the penalty of imprisonment before suffering that for the crime of which he is guilty.

4. *The Same, On the Duties of Proconsul, Book IX.*

Where anyone does not produce a person who is accused of crime, and for whom he is responsible, he is punished with a pecuniary penalty. I think, however, that if, through fraud, he does not produce him, he also should arbitrarily be condemned. But if no certain amount is mentioned in the bond or in the Decree of the Governor, and custom does not establish it, the Governor must decide what sum of money must be paid.

5. *Venuleius Saturninus, On Public Prosecutions, Book II.*

If the defendant has confessed, he should be thrown into prison until sentence is passed upon

him.

6. *Marcianus, On Public Prosecutions, Book II.*

The Divine Hadrian, in a Rescript addressed to Julius Secundus, made the following statement: "It has elsewhere been set fortK in a Rescript that no credit shall be given to the letters of those who send accused persons to the Governor of a province, as having already been convicted."

The same thing has been provided with reference to Irenarchs,[1] because it has been ascertained that all persons do not bring charges against others in good faith. But a Section of the Imperial Mandate is extant in which the Divine Pius, at the time when he commanded in the province of Asia, published in the form of an Edict, that when Irenarchs apprehended thieves they should question them with reference to their accomplices and associates, and that they should forward the interrogatories, reduced to writing and sealed, for the examination of the magistrate. Therefore, those who are sent under such circumstances should again be heard, even though they had been despatched with letters, or brought in by the Irenarchs. Thus, the Divine Pius and the other Emperors stated in Rescripts that proceedings should be taken as in a preliminary inquiry, even with reference to those who had been accused but not yet condemned, if anyone appeared to accuse them. Hence when an accusation is made, the Irenarch is required to appear and prosecute the charge which he has committed to writing, and if he does so diligently and faithfully, his action should be approved; but if he produces his evidence with little skill, it should be simply noted that the Irenarch had rendered an insufficient report.

If, however, it should be ascertained that he has put the questions maliciously, and has not reported the answers as they were given, an example should be made of him, in order that he may not afterwards attempt anything of the same kind.

7. *Macer, On the Duties of Governor, Book II.*

The Governor of a province in which a crime has been committed is accustomed to write to his colleagues, where it is said that the guilty parties are, and ask them to send them to him under guard. This has also been prescribed by certain rescripts.

8. *Paulus, On the Punishments of Soldiers.*

If a jailor, having been corrupted with money, permits prisoners to remain in custody unchained, or allows weapons or poison to be introduced into the prison, he should be punished by the judge as a part of his official duty; and if this was done without the knowledge of the jailor, he ought to be removed from his office for negligence.

9. *Venuleius Saturninus, On the Duties of Proconsul, Book I.*

It is the rule that if soldiers commit a crime, they must be sent back to the officer under whom they served. The general in chief has a right to punish all soldiers under his command.

10. *The Same, On the Duties of Proconsul, Book II.* To prevent anyone from dismissing prisoners without sufficient reason, it is provided as follows by the Imperial Mandates: "If you ned persons have been released too soon, and without good cause by the magistrates, you will order them to be placed in custody, and you will fine those who released them; for when the magistrates know that they themselves will be punished if they discharge prisoners too readily, they will not do so again without proper investigation."

11, *Celsus, Digest, Book XXXVII.*

There is no doubt that when a man from any province is brought from prison, he who governs the province where proceedings have been instituted should take cognizance of the offence.

(1) It is customary for certain judges, when a case has been heard and a decision rendered, to send the defendant back with the papers to the officer commanding in the province from

which the defendant came. This should only be done when there is good reason,for it. 12. *Callistratus, On Judicial Inquiries, Book V.* If soldiers permit their prisoners to escape, they themselves are responsible, and run the risk of being punished. For the Divine Hadrian stated in a Rescript addressed to Statilius Secundus, his deputy, that whenever anyone escapes from the custody of soldiers, if should be ascertained whether this was due to gross negligence of the soldiers, or to accident, and whether one among several, or several fled at the same time; and the soldiers should be delivered up to punishment when the prisoners escaped from their custody, if this occurred through gross negligence on their part; otherwise, a decision should be rendered in proportion to the blame attaching to them.

The same Emperor stated in a Rescript to Salvius, the Governor of Aquitania, that anyone who permitted a prisoner to escape, or intentionally kept him in such a way that he could escape, should be punished.

If, however, this occurred through indulgence in wine, or the laziness of the guard, he should be chastised, and degraded to the lowest military rank. But where he lost his prisoner through accident, no proceedings should be taken against him.

(1) When a prisoner escapes from the hands of civilians, I think that the same investigation should be made which I have mentioned should be done with reference to soldiers.

13. *The Same, On Judicial Inquiries, Book VI.*

Where persons who are confined in prison conspire to break their chains and escape, it has been decided that they must be punished without reference to the cause for which they were incarcerated. Although they may be found innocent of the crime for which they were kept in custody, still, they must be punished, and those who reveal their conspiracy should be released.

14. *Herennius Modestinus, On Punishments, Book IV.*

A prisoner should not readily be entrusted to a new recruit, for if he escapes, he who committed the prisoner to his care will be to blame.

(1) The custody of a prisoner should not be committed to one, but to two guards.

(2) Those who have lost their prisoners through negligence are either punished in proportion to their fault, or are reduced in rank. If the prisoner was of little importance, after the soldiers have been chastised, they shall be restored to their positions; but if anyone releases a prisoner through compassion, he will lose his rank in the army. If, however, he was guilty of fraud in letting him go, he is either punished with death, or degraded to the lowest place in the service. Sometimes he is pardoned, for when a prisoner flees with one of his guards, pardon is granted to the other.

(3) If the prisoner should kill himself, or precipitate himself from a height, the soldier will be to blame, that is to say, he will be punished.

(4) If the guard himself should kill the prisoner, he will be guilty of homicide.

(5) Therefore, if it is alleged that the prisoner died as the result of an accident, this must be proved by witnesses, and then the guard will be pardoned.

(6) In addition to this, when the prisoner escaped through the fault of his guard, if the latter still has an interest in apprehending him, it is customary, after proper cause is shown, for a certain time to be given him to look for the fugitive, after having taken another soldier with him.

(7) Where a fugitive slave, who should have been restored to his master, is allowed to escape, if the person to blame has the means to do so, Saturninus says he must pay the value of the slave to his master.

## TITLE IV.

## ON THE JULIAN LAW RELATING TO THE CRIME OF LESE MAJESTY.

1. *Ulpianus,.On the Duties of Proconsul, Book VII.*

The crime of *lese majesty* may closely resemble that of sacrilege.

(1) The crime of *lese majesty* is committed against the Roman people, or against their safety, and he is guilty of it by whose agency measures are maliciously taken for the death of hostages, without the order of the Emperor; or when men armed with weapons or stones appear in the city, or are assembled against the State, and occupy public places or temples; or where assemblies have been called together, or men convoked for sedition; or where, by the malicious aid and advice of anyone, plans have been formed by which the magistrates of the Roman people, or other officials invested with command 6r authority may be killed; or where anyone bears arms against the government, or sends a messenger or letter to the enemies of the Roman people, or communicates to them any password; or commits any act with malicious intent by means of which the enemies of the Roman people may be assisted in their designs against the government; or where anyone solicits or inflames soldiers, in order that a sedition or a tumult may be excited against the State.

2. *The Same, Disputations, Book Vill.*

Or when an officer does not depart from a province when his successor arrives; or deserts from the army; or flees to the enemy as a private individual; or who, knowing a statement to be false, inserts it in the public records, or reads it after it has been placed there, for this also is included in the First Section of the Law of *lese majesty.*

3. *Marcianus, Institutes, Book XIV.*

The Law of the Twelve Tables directs that anyone who stirs up an enemy, or who delivers a citizen to him, shall be punished capitally. And the Julian Law on *lese majesty* provides that he who injures the dignity of the State shall be liable, just as one who has submitted to the enemy in war, or occupied a castle, or surrendered a camp.

He is liable under the same law who engages in hostilities, without the order of the Emperor; or levies soldiers, or equips an army; or, when his successor arrives in the province, does not deliver the army to him, or who relinquishes his command, or deserts the military service of the Roman people; or who, being a private individual, knowingly and fraudulently performs some act of authority or magistracy; or causes any of the things above mentioned to be done.

4. *Scsevola, Rules, Book IV.*

He by whose malicious contrivance anyone is compelled to swear to something against the State, or the army of the Roman people has been led into ambush or betrayed to the enemy; or who, with malicious intent, has prevented the enemy from falling into the power of the Roman people; or by whose agency the enemies of the Roman people have been furnished with provisions, arms, darts, horses, money, or anything else; or who has induced friends to become enemies of the Roman people, or with malicious design, has induced the king of a foreign nation to be less obedient to the Roman people; or by his malicious schemes has caused more hostages, money, and beasts of burden to be given to the enemies of the Roman people, to the injury of his country. Likewise, he who, after the culprit has confessed his crime in court, and been placed in prison, enables the latter to escape.

(1) He who melts down statues of the Emperor which have been rejected is released from liability for this crime by the Senate.

5. *Marcianus, Rules, Book V.*

He does not commit the crime of *lese majesty,* who repairs the statues of the Emperor which have become damaged by age.

(1) Nor does he commit the crime of *lese majesty* who, having thrown a stone without aiming at anything, accidentally strikes a statue of the Emperor; and this was stated by Severus and Antoninus in a Rescript addressed to Julius Cassianus. The same Emperor stated in a rescript to Pontius that to sell the statues of the Emperor which had not yet been consecrated was not *lese majesty.*

6. *Venuleius Saturninus, On Public Prosecutions, Book II.*

Those who melt down the statues of the Emperor which have already been consecrated, or commit any other act of this kind, are liable under the Julian Law relating to *lese majesty._*

7. *Modestinus, Pandects, Book XII.*

Persons who are infamous and have no right to bring an accusation are undoubtedly permitted to bring this one.

(1) Soldiers, also, who cannot defend other causes, can act in this proceeding; for as they guard the peace, they, much more than others, should be permitted to bring this accusation.

(2) Slaves, also, should be heard as accusers in cases of this kind, even against their masters, as well as freedmen against their patrons.

(3) This accusation, however, should not be considered by judges as affording an opportunity to show their veneration for the majesty of the Emperor, for this should only be done where the charge is true; for the personal character of the accused should be taken in account, and whether he could have committed the offence, as well as whether he had previously done or planned anything of the same nature, and also if he was of sane mind, for a slip of the tongue ought not inconsiderately be held as deserving of punishment. For, although rash persons ought to be punished, still, they should be excused, just as lunatics are, when the offence is not included in the strict terms of the law; or if it should be punished, as resembling one specified by the law.

(4) The crime of *lese majesty* committed by defacing statues or portraits is much worse when perpetrated by soldiers.

8. *Papinianus, Opinions, Book XIII.*

Women are also heard in cases involving *lese majesty. A* woman named Julia revealed the conspiracy of Lucius Cataline, and furnished the Consul, Marcus Tullius, the evidence upon which to base the prosecution.

9. *Hermogenianus, The Law, Book V.*

The Divine Severus decided that the property of freedmen who have been convicted of the crime of *lese majesty* shall be preserved for their children, and shall be confiscated to the Treasury if no child of the convicted person should appear.

10. *The Same, Epitomes of Law, Book VI.*

He can be accused of *lese majesty* by whose aid, advice, or malicious contrivance a province or a city has been delivered to the enemy.

11. *Ulpianus, Disputations, Book Vill.*

He who dies while an accusation against him is pending retains his civil status unimpaired, for the crime is extinguished by death, unless he was accused of *lese majesty;* for if he is not cleared of this offence by his successors, his estate will be forfeited to the Treasury. It is evident that not everyone accused of *lese majesty* under the Julian Law is in this position, but only he who is guilty of high treason, and is animated by hostile intent against the State or the Emperor. For if anyone is accused under any other section of the Julian Law on *lese majesty,* he will be released from the charge by death.

## TITLE V.

## CONCERNING THE JULIAN LAW FOR THE PUNISHMENT OP ADULTERY.

1. *Ulpinanus, On Adultery, Book I.*

This law was introduced by the Divine Augustus.

2. *The Same, Disputations, Book VIII.*

It is provided by the Julian Law that anyone who is required to formulate an accusation of adultery, because the woman married before she was notified that she would be accused, cannot bring the charge against her until he has disposed of the case of the defendant and his case is not considered to have been disposed of, unless he has been convicted.

(1) The following exception can be pleaded against a husband who brings an accusation in that capacity, namely: "If he is said to have betrayed the law, in that, after having begun a prosecution for adultery, he has abandoned it."

(2) The crime of pandering is included in the Julian Law on Adultery, as a penalty has been prescribed against a husband who profits pecuniarily by the adultery of his wife; as well as against one who retains his wife after she has been taken in adultery.

(3) Moreover, he who permits his wife to commit this offence, holds his marriage in contempt; and where anyone who does not become indignant on account of such pollution, the penalty for adultery is not inflicted.

(4) Anyone who alleges that he has committed adultery with the assistance of the husband, desires, indeed, to lessen his crime, but an excuse of this kind is not admitted. Therefore, if the defendant should wish to denounce the husband for having acted as a pander, he shall not be heard, if he has once been accused.

(5) If a husband should attempt to prosecute his wife in a criminal case, will the allegation of having acted as her pander bar him from bringing the accusation ? I think that it will not. Therefore the act of the husband in a case of this kind renders him liable, but does not excuse his wife.

(6) Hence it may be asked whether he who has cognizance of the prosecution for adultery can decide against the husband because of his having acted as a pander? I think that he can do so. For Claudius Gorgus, a most illustrious man, having accused his wife, and it having been ascertained that although he had caught her in adultery he still kept her, was condemned by the Divine Severus for being guilty of pandering, without any accuser having appeared against him.

(7) But if a stranger, after having been accused, alleges that the husband was guilty of pandering, he does not diminish his own crime, nor does he subject the husband to a penalty.

(8) If the husband and the father of the woman appear at the same time for the purpose of accusing her, the question arises, which of them should be given the preference by the Prsetor ? The better opinion is, that the husband should be entitled to the preference, for it may well be believed that he will prosecute the accusation with greater anger and vexation. This is so far true, that even where the father has already appeared, and filed the papers containing the accusation, if the husband has not been negligent or guilty of delay, but is himself prepared to bring the accusation, and introduce evidence, and fortify it, in order that the case may be the more easily proved before the judges, the same thing must be said.

(9) But whenever others who have the right to bring the charge after the husband and the father hasten to do so; it is stated by the law that he who has jurisdiction of the case must determine who shall be the accuser.

3. *The Same, On Adultery, Book II.*

Therefore, unless the father proves that the husband is infamous, or shows that he was in collusion with his wife rather than that he actually intends to accuse her, he must give place to the husband.

4. *The Same, Disputations, Book Vill.*

If the husband has appeared and brought the accusation, the time does not run against the father to prevent him from prosecuting it; still, until one of them institutes proceedings, the time, will run against both; but, indeed, when the husband begins to prosecute, the remaining time does not run against the person who cannot do so. This may be said with reference to anyone who begins proceedings against the adulterer or the adulteress, for the time ceases to run against the person who is not made the object of the accusation. This applies to husbands and fathers.

(1) The power of bringing the accusation after the husband and the father is granted to strangers who have a right to do so; for, after sixty days have elapsed, four months, and even available ones, are granted to strangers.

(2) If a stranger was the first one to bring the accusation, the question arises whether, if the husband appears, he can be permitted to accuse the woman. I think that the better opinion is that, in this instance, the husband should be heard if he has not been guilty of negligence. Therefore, even if the accusation has been begun by a stranger, and the woman should be acquitted, the husband ought, nevertheless, to be permitted to renew the accusation; provided he can allege good reasons by which he was prevented from bringing it previously.

5. *Julianus, Digest, Book LXXXVI.*

There is no doubt that a woman whom I have married can be prosecuted for adultery committed during her first marriage, as it is clearly provided by the Julian Law for the punishment of adultery that, if proceedings for this offence are brought against a woman who is a widow, the accuser has the choice of accusing either the adulterer or adulteress first, whichever he prefers; but if the woman is married, he must first prosecute the adulterer and then the woman.

6. *Papinianus, On Adultery, Book I.*

The Julian Law only applies to free persons who have been the victims of adultery or debauchery. With reference to female slaves, recourse can easily be had to the action authorized by the Aquilian Law, and that for injury will also lie, and the Praetorian action for the corruption of a slave will not be refused; so that the person guilty of this crime will not escape on account of the multiplicity of actions. (1) The law promiscuously and incorrectly designates the same crime by the terms debauchery and adultery. Properly speaking, adultery is only committed with a married woman; this name having been adopted on account of the child being begotten by another than the husband. Debauchery, which the Greeks call "corruption," is committed with a virgin, or a widow.

(2) A son under paternal control, who is a husband, is not, by this law, distinguished from one who is his own master. The Divine Hadrian stated in a Rescript addressed to Rosianus Geminus, that even without the consent of his father, a son under paternal control could bring an accusation under this law.

(3) The husband, although he may be already prosecuting two persons for another crime, can, by his marital right, accuse a third party, because this case is not included among the others.

7. *Marcianus, Institutes, Book X,*

A man who contracts matrimony with his own female ward in violation of the Decree of the Senate is not legally married; and he who was her guardian or curator can be prosecuted for

adultery if he marries a girl under twenty-six years of age who has not been betrothed to him, or destined for him, or mentioned for this purpose in a will.

(1) Marcianus, in the Second Book On Adultery, by Papinianus, states that a common accusation for incest can be brought at the same time against the two persons concerned.

8. *Papinianus, On Adultery, Book II.*

Anyone who knowingly lends his house to enable debauchery or adultery to be committed there with a matron who is not his wife, or with a male, or who pecuniarily profits by the adultery of his wife, no matter what may be his status, is punished as an adulterer.

(1) It is clear that by the term "house" every kind of habitation is meant.

9. *Ulpianus, On Adultery, Book IV.*

Anyone who lends the house of a friend is also liable.

(1) Where anyone encourages the commission of debauchery in a field, or in a bath, he should be included in the law.

(2) When, however, persons are accustomed to assemble in some house for the purpose of making arrangements to commit adultery, even if it was not committed in that place, still, the owner is considered to have lent his house for the commission of debauchery or adultery, because these offences would not have been perpetrated if these meetings had not taken place.

10. *Papinianus, On Adultery, Book II.*

A matron means not only a married woman, but also a widow.

(1) Women who lend their houses, or have received any compensation for debauchery which they have committed, are also liable under this Section of the law.

(2) A woman who gratuitously acts as a bawd for the purpose of avoiding the penalty for adultery, or hires her services to appear in the theatre, can be accused and convicted of adultery under the Decree of the Senate.

11. *The Same, On Adultery.*

A soldier who has compromised with the seducer of his wife should be released from his oath, and be deported.

(1) It has very properly been decided that a soldier who lives in concubinage with his sister's daughter, although this is not marriage, will be liable to punishment for adultery.

(2) A woman who is classed among those who have committed adultery cannot be defended in court while she is absent.

(3) A father-in-law who, in a written accusation filed with the Governor, stated that he accused his daughter-in-law of adultery, preferred to abandon the accusation and obtain her dowry. The question arises whether you think that a scheme of this kind should be permitted. The answer was, that it is a very dishonorable example for a person, after he has brought an accusation against his daughter-in-law, to desire to abandon it, and remain content with the profit obtained from her dowry, as the marriage was dissolved through the fault of the woman. Wherefore he will not be unjustly barred who was not ashamed to prefer the advantage of the dowry to avenging the honor of his house.

(4) It is clear that anyone guilty of adultery can be prosecuted within five years from the time when the crime was committed, even though the woman should be dead.

(5) A certain person desired to accuse a woman of adultery, and asked that the days which he had passed in prison should not be counted against him. I, having agreed to this, another contradicted me; and, if you approve of his opinion, I ask you to write to me after careful

consideration of the question. The answer was, that both the terms and the intention of the law sustain your conclusion; for it has been decided that only available days should be counted against the accuser, that is to say, those in which he can comply with the formalities required by the accusation. Therefore, undoubtedly, when you hold that the days during which the complainant was in prison are not to be included among those available days, no reason exists for opposing your opinion.

(6) The sixty days that are counted as available and in which the husband can bring the accusation certainly include festivals, provided the accuser has the power of appearing before the Governor, because the information can be given to the latter even when he is not on the bench. If, however, he has lost this privilege, he is not prevented from filing his complaint with the judge during the other four months.

(7) The question arose whether a man could, by the right of a husband, accuse a woman who had been betrothed to him, and had afterwards been given in marriage by her father to another. The answer was, I think, that the accuser, in a case of this kind, institutes a new proceeding when he desires to bring a charge of adultery, for this reason only, that the girl who had been betrothed to him was afterwards given by her father in marriage to another.

(8) A woman can be prosecuted for adultery after the death of her husband.

(9) Should a woman who asks for delay on account of the youth of her son obtain it from the accuser, or ought she to be heard? I answered: This woman does not seem to have a just defence who offers the age of her son as a pretext for evading a legal accusation. For the charge of adultery brought against her does not prejudice the child, since she herself may be an adulteress, and the child still have the deceased for his father.

(10) When I desired to accuse a woman of adultery who, after having committed the offence, continued in the same marital relation, my position was disputed. I ask whether the opinion was correct. The answer was: "You should not have been ignorant that, during the marriage which existed when the adultery was said to have been committed, the woman could not have been prosecuted for adultery, and that during this time the adulterer himself could not have been accused."

(11) Although a woman may be alleged to have married him with whom she is suspected of having committed adultery, she cannot be accused before the adulterer has been convicted. Otherwise, husbands desiring to have marriages, which have subsequently been contracted, annulled, would have recourse to this pretext, and say that their wives had married men with whom they had committed adultery.

(12) A woman, having heard that her absent husband was dead, married another, and her first husband afterwards returned. I ask, what should be decided with reference to this woman ? The answer was that the question is one of law and not of fact; for if a long time had elapsed without any proof of debauchery having been made, and the woman, having been induced by false rumors, and, as it were, released from her former tie, married a second time in accordance with law, as it is probable that she was deceived, and she can be held to have done nothing deserving of punishment. If, however, it is established that the supposed death of her husband furnished an inducement for her marrying a second time, as her chastity is affected by this fact, she should be punished in proportion to the character of the offence.

(13) I married a woman accused of adultery, and, as soon as she was convicted, I repudiated her. I ask whether I should be considered to have furnished the cause of the separation. The answer was that, since by the Julian Law you are prohibited from keeping a wife of this kind, it is clear that you should not be considered to have furnished the cause for the separation. Therefore, the law will be applied just as if a divorce had taken place through the fault of the woman.

12. *Ulpianus, On Adultery, Book II.*

These words of the law, namely, "In order that no one may, knowingly and fraudulently, commit debauchery or adultery," are applicable both to him who advised it, and to him who committed the act of debauchery or adultery.

13. *The Same, On Adultery, Book II.*

Where a wife did not commit adultery, but a concubine did, the husband cannot accuse her as such, because she is not his wife; still, he is not prohibited by law from bringing an accusation as a stranger, provided that she, in giving herself as a concubine, did not forfeit the name of a matron, as, for instance, a woman who had been the concubine of her patron.

(1) It is clear that, whether the woman is a lawful wife or not, her husband can bring the accusation against her; for Sextus Csecilius states that this law is applicable to all marriages; and he quotes the passage from Homer where he says the Atrides are not the only ones who love their wives.

(2) A husband can prosecute his wife for adultery when she has committed it publicly, although if she were a widow, debauchery could be committed by her with impunity.

(3) The Divine Severus and Antoninus stated in a Rescript, that this offence could even be prosecuted in the case of a woman who was betrothed, because she is not permitted to violate any marriage whatever, nor even the hope of matrimony.

(4) Where, however, she is a person with whom incest has been committed, or a woman who is kept as a wife, but still cannot be one in reality, it must be said that the husband cannot, as such, accuse her, but he can do so as a stranger.

(5) The judge who has jurisdiction of adultery must have before his eyes, and investigate whether the husband, living modestly, has afforded his wife the opportunity of having good morals; for it would be considered extremely unjust for the husband to require chastity for his wife, which he himself does not practice. This, indeed, may condemn the husband, but cannot afford a set-off for mutual crime when committed by both parties.

(6) If anyone wishes to accuse his wife, and alleges that she committed adultery before he married her, he cannot bring the accusation by his right as a husband, because she did not commit adultery while she was married to him.

This can also be said with reference to a concubine whom the man who kept her subsequently married; or with reference to a daughter under paternal control, to whose union her father afterwards gave his consent.

(7) If anyone should openly accuse his wife of having committed adultery, while he was a prisoner in the hands of the enemy, it would be more indulgent to hold that he can accuse her by the right of a husband; but her husband cannot prosecute her for adultery, if she suffered violence from the enemy. For anyone who is violated cannot be convicted of adultery or fornication on this account.

(8) Where a girl, less than twelve years old, brought into the house of her husband, commits adultery, and afterwards remains with him until she has passed that age, and begins to be his wife; she cannot be accused of adultery by her husband, for the reason that she

committed it before reaching the marriageable age; but, according to a Rescript of the Divine Severus, which is mentioned above, she can be accused as having been betrothed.

(9) If a woman who has been repudiated should afterwards be taken back by her husband, not in order to continue the first marriage, but under another which has taken place, let us see whether she can be accused of the crime which she committed during her first marriage. I think that she cannot be, for her husband, by taking her back, has done away with all the crimes of the first marriage.

(10) The same rule must be adopted, if he desires to accuse of fornication the woman whom he afterwards married; for he is too late when he bases his accusation on conduct which he approved by marrying her.

14. *Scsevola, Rules, Book IV.*

He who, by aid, advice, or fraud, causes a man or a woman who has been taken in adultery to be released, either in consideration of the payment of money, or on account of any kind of an agreement, shall suffer the same penalty which is imposed upon those convicted of the crime of pandering.

(1) If a husband, for the purpose of defaming his wife, provides her with an adulterer, in order that he may catch them, both the husband and the wife are guilty of the crime of adultery, according to a decree of the Senate enacted with reference to this subject.

(2) The husband, in the first place, or the father, who has his daughter under his control, is permitted to bring an accusation within sixty days of the divorce, and the power to do this is not granted to anyone else within that time, and, after it has elapsed, the desire of either party will not be considered.

(3) Those who prosecute by the right of a husband are not free from the risk of false accusation.

15. *Ulpianus, On Adultery, Book II.*

If the husband is a magistrate, the father can precede him in bringing the accusation, but it is not necessary for him to do so. Pomponius thinks that it should be held that, as long as the husband retains his office, action by the father should be prevented, to avoid depriving the husband of a right to which he also is entitled. Therefore the sixty days do not run against the father, as he cannot bring the accusation.

(1) It is provided by the Seventh Section of the Julian Law with reference to Adultery, that no one can include in the number of accused persons anyone who is absent on business for the State, without invalidating the judgment. For it does not seem just for a person who is absent on public business to be numbered among the accused, when he is in the employ of the government.

(2) It is necessary to add, "without invalidating the judgment." But if anyone should be absent on public business, for the purpose of avoiding prosecution, this pretext will not be of any advantage to him.

(3) If, however, anyone is present who still is considered absent, for instance, a person who belongs to the night-watch, or who is serving as a soldier in the city camps, it must be said that he cannot be accused, for he is not compelled to trouble himself to appear.

(4) Generally speaking, it should be held that only the absence of those is excusable who are in another province of the country than that in which they are accused. Hence, if anyone commits adultery in a province in which he is employed, he can be accused there, unless he is a person over whom the Governor has no jurisdiction.

(5) If the father and the husband fail to accuse the woman within sixty days, will the time immediately begin to run in favor of a stranger ? Pomponius thinks that a stranger can be permitted to bring the accusation as soon as the others have refused to do so. I think that his opinion should be adopted, for it can be said even more decidedly that he who has stated that he will not bring the accusation ought not afterwards to be heard.

(6) The Julian Law relating to Adultery especially prohibits accusation by certain persons, as, for instance, by a minor of twenty-five years of age, for an accuser is not considered capable who is not yet of mature age. This is correct, if he does not prosecute an injury to his own marriage. But if he desires to vindicate the honor of his own marriage, although he may bring

the accusation by the right of a stranger, he should still be heard; for no prescription ought to bar anyone who avenges his own injury. And, indeed, if induced by the alacrity of youth, or inflamed by the fervor of maturity, he hastens to bring the accusation, the penalty for malicious prosecution will not hastily be inflicted upon him.

We understand a minor of twenty-five years of age to be one who is in his twenty-fifth year.

(7) The prescriptions which it is customary to introduce against persons bringing the accusation of adultery are usually discussed before the party implicated has been included in the number of those accused, but when this once has taken place, he cannot plead prescription.

(8) If a woman remains in widowhood, the accuser has the right to begin with either party he wishes, with the adulterer or the adulteress.

(9) If anyone accuses the adulterer and the adulteress at the same time, the accusation is void, and he can begin again with either party whom he may select, just as if he had accused neither, because the first accusation is of no force or effect.

16. *The Same, On Adultery, Book I.*

Anyone who has served notice of repudiation upon his wife can also notify her not to marry Seius, and if he has notified her, he can begin with her.

17. *The Same, On the Julian Law Relating to Adultery, Book II.*

What should we understand the term "notify" to mean? Does it mean an application to the court, or merely an ordinary notice? I think that if application is not made to the court, it will be sufficient for him to state that he is about to bring an accusation for adultery.

(1) What then should be done, if he did not serve notice, but filed a written accusation before the woman married again; and she should marry, whether he was aware of this fact, or did not know it? I think that she should not be considered as notified, and therefore that the accuser cannot begin with her.

(2) But what if he only notified her not to marry, but did not add why; shall she be considered to be legally married? The better opinion is, to hold that the notice seems to reserve the choice for the prosecutor who brings the accusation. Therefore if he mentions the crime of adultery in the notice, even if he did not give the name of the judge, we think that the woman can be accused, just as if the notice had been served.

(3) What, however, would be the result if, in the notice, it was stated specifically with whom she had committed adultery, and the complainant should afterwards wish to accuse her of adultery with someone else? The better opinion is, that he ought not to be heard, for he does not bring the accusation for the crime mentioned in the notice.

(4) If, however, he serves notice by an agent, I think that he can bring the accusation if he desires to do so; and that the notice by the agent will be sufficient.

(5) Therefore, if he serves notice by his steward, that is to say, if a master serves notice by his slave, it will be valid.

(6) The question arises whether one person can prosecute the adulteress, and another the adulterer; so that, although both cannot be prosecuted at the same time by the same person, they can each be accused by a different individual. It is not reasonable to adopt the opinion that different accusers can be permitted to prosecute, for if the woman should marry before having been notified, she cannot be accused first; hence she must wait for the decision to be rendered with reference to the adulterer. If he should be acquitted, the woman will gain her case through him, and cannot afterwards be accused. If he should be convicted, she will not, for this reason, be condemned, but she can defend her case, and perhaps gain it either by favor, justice, or the assistance of the law. For what if the adulterer was oppressed by the efforts of an enemy, or by false testimony, or was overwhelmed by suborned witnesses before

the court, or was either unwilling or unable to take an appeal, and the woman, having obtained an upright judge, defended her chastity?

(7) But if the adulterer, before he was convicted,

18. *Macer, On Public Prosecutions, Book I.*

Or before the accusation was brought against him,

19. *Ulpianus, On the Julian Law Relating to Adultery, Book II.*

Should die, it has been decided that even if he was dead, the woman could be accused without being able to plead an exception.

(1) If, however, not death, but some penalty imposed upon him should remove the defendant, we say that the woman can still be prosecuted.

(2) If at the time when the person to be prosecuted was chosen, the adulteress was not married, but was married when he was acquitted, it must be said that even if the adulterer was acquitted she could still be accused, because she was not married at the time when the adulterer was selected to be prosecuted first.

(3) If the adulterer should be acquitted, a married woman cannot be accused, even by the person who prosecuted the adulterer and was defeated, nor can she be accused by anyone else. Hence, if the accuser should be in collusion with the adulterer, and the latter is acquitted, he renders the married woman secure against prosecution brought by anyone. It is clear that she can be accused if she should cease to be married, for the law only protects a woman as long as she is married.

20. *Papinianus, On Adultery, Book I.*

The right is granted to the father to kill a man who commits adultery with his daughter while she is under his control. Therefore no other relative can legally do this, nor can a son under paternal control, who is a father, do so with impunity.

21. *Ulpianus, On Adultery, Book I,*

Hence it happens that neither the father nor the grandfather can kill the adulterer. This is not unreasonable, for he cannot be considered to have anyone under his control who has not control of himself.

22. *Papinianus, On Adultery, Book I.*

In this law, the natural father is not distinguished from the adoptive father.

(1) In the accusation of his daughter, who is a widow, the father is not entitled to the preference.

(2) The right to kill the adulterer is granted to the father in his own house, even though his daughter does not live there, or in the house of his son-in-law. The house should be understood to mean the residence, as in the Cornelian Law relating to injuries.

(3) He, however, who can kill an adulterer, has a much greater right to treat him with contumely.

(4) Hence the father, and not the husband, has the right to kill the woman and every adulterer; for the reason that, in general, paternal affection is solicitous for the interests of the children, but the heat and impetuosity of the husband, who decides too quickly, should be restrained.

23. *Ulpianus, On Adultery, Book I.*

What the law says, that is, "If he finds a man committing adultery with his daughter," does not seem to be superfluous; for it signifies that the father shall have this power only when he surprises his daughter in the very act of adultery. Labeo also adopts this opinion;

and Pomponius says that the man must be killed while in the very performance of the sexual act. This is what Solon and Dracho mean by the words, "epv«."

(1) It is sufficient for the father for his daughter to be subject to his authority at the time when he kills the adulterer, although she may not have been at the time when he gave her in marriage; for suppose that she had afterwards come under his control.

(2) Therefore the father shall not be permitted to kill the parties wherever he surprises them, but only in his own house, or in that of his son-in-law. The reason for this is, that the legislator thought that the injury was greater where the daughter caused the adulterer to be introduced into the house of her father or her husband.

(3) If, however, her father lives elsewhere, and has another house in which he does not reside, and surprises his daughter there, he cannot kill her.

(4) Where the law says, "He may kill his daughter at once;" this must be understood to mean that having to-day killed the adulterer he can not reserve his daughter to be killed subsequently; for he should kill both of them with one blow and one attack, and be inflamed by the same resentment against both. But if, without any connivance on his part, his daughter should take to flight, while he is killing the adulterer, and she should be caught and put to death some hours afterwards by her father, who pursued her, he will be considered to have killed her immediately.

24. *Macer, Public Prosecutions, Book I.*

A husband is also permitted to kill a man who commits adultery with his wife, but not everyone without distinction, as the father is; for it is provided by this law that the husband can kill the adulterer if he surprises him in his own house, but not if he surprises him in the house of his father-in-law; nor if he was formerly a pander; or had exercised the profession of a mountebank, by dancing or singing on the stage; or had been convicted in a criminal prosecution and not been restored to his civil rights; or is the freedman of the husband or the wife, or of the father or mother, or of the son or the daughter of any of them; nor does it make any difference whether he belonged exclusively to one of the persons above mentioned, or owed services to two patrons in common, or was a slave.

(1) It is also provided that a husband who has killed any one of these must dismiss his wife without delay.

(2) It is held by many authorities to make no difference whether the husband is his own master, or a son under paternal control.

(3) With reference to both parties, the question arises, in accordance with the spirit of the law, whether the father can kill a magistrate; and also where his daughter is of bad reputation, or has been illegally married, whether the father or the husband will still retain his right; and what should be done if the husband is a pander, or is branded with ignominy for some reason or other. It may properly be held that those have a right to kill who can bring an accusation as a father or a husband.

25. *Ulpianus, On the Julian Law Relating to Adultery, Book II.*

It is provided as follows in the Fifth Section of the Julian Law: "That where a husband has surprised an adulterer with his wife, and is either unwilling or unable to kill him, he can hold him for not more than twenty consecutive hours of the day and night, in order to obtain evidence of the crime, and make use of his right without endangering it."

(1) I think that what has been stated with reference to the husband should be observed, so far as the father is concerned.

(2) Even if the husband should not surprise the adulterer in his house, he can hold him.

(3) Where, however, the adulterer is immediately released, he cannot be brought back.

(4) What must be done if he escapes; can he be brought back and kept under guard for twenty hours? I think that it is better to hold that he can be brought back and guarded for the purpose of obtaining evidence.

(5) The following clause, "In order to obtain evidence of the crime," means that he can introduce witnesses who will afterwards testify that the offender was taken in adultery.

26. *The Same, Disputations, Book HI.*

A woman cannot be accused of adultery during marriage by anyone who, in addition to the husband, is permitted to bring the accusation; for a stranger should not annoy a wife who is approved by her husband, and disturb a quiet marriage, unless he has previously accused the husband of being a pander.

(1) When, however, the charge has been abandoned by the husband, it is proper for it to be prosecuted by another.

27. *The Same, On Adultery, Book HI.*

When an accuser demands that a slave charged with adultery shall be put to torture, whether he himself intends to be present or not, the judges shall order the slave to be appraised; and when this has been done, they must direct that he who has denounced the slave as guilty shall pay the amount of the appraisement, and as much more, to the party interested.

(1) Let us, however, consider to whom this penalty should be paid, as the law mentions the party in interest. Thus, a *bona fide* purchaser is such a person; and although he may have bought the slave from one who is not his owner, we can properly say that he is the party in interest.

(2) We will do well to include in the same category one who has received property in pledge; because it is to his interest that the torture should not take place.

(3) When, however, the usufruct of the slave belongs to another, his appraised value should be divided between the owner and the usufructuary.

(4) If the slave is owned in common by several persons, his estimated value should be divided among them.

(5) When a freeman, supposed to be a slave, is tortured for the reason that he himself is ignorant of his condition, Csecilius is of the opinion that he is entitled to a praetorian action against the person who falsely accused him, in order that he may not go unpunished for having subjected a freeman to torture, just as if he had been a slave.

(6) The law directs that torture shall be applied to the male or female slaves of the man or woman complained of, or to those of the parents of either of them; if the said slaves have been given to the accused by his or her parents for their own use.

The Divine Hadrian stated in a Rescript addressed to Cornelius Latianus that the slaves of strangers should be tortured.

(7) The man and woman who are accused, their patrons, and the person who has brought the accusation, are ordered to be present at the torture, and the power of questioning is granted to the patrons.

(8) It is still more advisable that a slave in whom the accused person had the usufruct should be tortured, for although he was not actually his slave, he is still considered to have been in servitude; for in everything relating to torture the question of ownership is not so much involved as the fact of the service.

(9) Therefore, if a slave belonging to another serves the accused in good faith, anyone will admit that he can be interrogated while undergoing torture.

(10) Where, however, the slave is one who is entitled to his freedom under the terms of a trust, or who expects to be free on compliance with a condition, the better opinion is that he can be tortured.

(11) The law directs that slaves who have been put to the torture in this manner shall become public property; hence we confiscate a part of a slave owned in common, and the mere ownership of one in whom another enjoys the usufruct; and where the accused has only the usufruct, the better opinion is that the enjoyment of the usufruct begins to belong to the government; but we do not confiscate a slave who is the property of another.

The reason for the confiscation of slaves is that they may tell the truth without fear; while, if they were apprehensive of again being brought under the power of the accused persons, they might become obdurate under torture.

(12) They are not, however, confiscated before being subjected to torture.

(13) Even if they should deny everything, they will, nevertheless, be confiscated. The reason for this is the same, as well as to prevent them from entertaining the hope of again coming under the control of their masters, if they should make denials with the expectation of being rewarded for perseverence in uttering falsehoods.

(14) Even the slaves of the accuser are confiscated, if they are put to the torture. For slaves of this kind should be taken from their masters to prevent them from lying, but those of strangers have no one to please.

(15) When the accused party of either sex is acquitted, the law provides that, if the slaves should die, the loss shall be estimated by the judges, according to what they were worth before being tortured; and if they live, to an amount in proportion to the damage caused or inflicted upon them.

(16) It must be noted that it is provided by the Ninth Section, when a slave is charged with adultery, and the accuser does not wish him to be put to torture, the law orders double his value to be paid to his master; but this is simple damages.

28. *Marcianus, On Public Prosecutions, Book I.*

Anything which may be due in these different cases can be recovered by a personal action derived from the law.

29. *Ulpianus, On Adultery, Book IV.*

The law punishes the pandering of a husband who retains his wife, after she has been surprised in adultery, and permits the adulterer to depart. For the husband should be angry against his wife who has violated her marriage vow, and he ought also to be punished when he cannot excuse his ignorance, or conceal his indifference under the pretext that his information is incredible. Therefore, the law says he "shall permit the adulterer surprised in his house to depart," because it wishes to punish the husband who caught her in such an infamous act.

(1) When the law says that anyone who marries a woman who has been convicted of adultery shall be legally liable, let us see whether this refers to fornication? The better opinion is that it does, for if the woman was condemned for any other reason under that law she could be married with impunity.

(2) He also is punished who accepts money on account of the fornication which he detected, and it does not make any difference whether the husband himself or someone else receives it, for he who accepts compensation for concealing his knowledge of fornication should be punished. The law, however, does not apply to him who keeps the secret gratuitously.

(3) Anyone who has pecuniarily profited by the adultery of his wife shall be punished; for he who acts as his wife's pander does not commit a trivial offence.

(4) A man who receives anything in consideration of the adultery of his wife is held to have received it in order that she might commit adultery; and whether he has obtained it frequently or only once, he ought not to be exempt from punishment. He is correctly said to have profited by the adultery of his wife, who accepts something in order that she may be permitted to be debauched, as prostitutes are. Where, however, he permits his wife to commit the offence, not on account of gain, but through negligence, his own fault, or a certain degree of indifference, or excessive credulity, he is considered to have been placed outside the law.

(5) The division of the six months is made as follows: in the case of a married woman, the time is computed from the day of the divorce; in the case of a widow, from the day when the offence was committed. This seems to be indicated by a rescript addressed to the Consuls Tertyllus and Maximus. Moreover, if sixty days have elapsed since the divorce, and the term of five years has passed since the day when the crime was perpetrated, it must be said that the woman cannot be accused; so that when six available months are granted, this should be understood to mean that the accusation, having been extinguished by the uninterrupted period of five years, cannot be renewed.

(6) The legislator intended that this term of five years should be observed, when either of the defendants was accused of fornication, adultery, or pandering. Therefore what ought to be done if another crime derived from the Julian Law should be pleaded as a defence, as in the case of those who lend their houses for the purpose of fornication, and of others like them?

The better opinion is, that all of the offences included in the Julian Law are prescribed after the lapse of five years.

(7) Moreover, the five years must be reckoned from the day when the crime was committed to the one on which the party was prosecuted, and not to that on which the judgment for adultery was carried into execution.

(8) It was also added in the Decree of the Senate that if several persons should prosecute the same defendant, reference must be had to the date of the information of the one who persevered in the prosecution; so that he who brings the accusation may rely upon his own information, and not on those of the others.

(9) There is no doubt that anyone who has committed fornication by means of force employed against the man or woman in question can be prosecuted without reference to the above-mentioned term of five years; for there is no doubt that he has committed a criminal act of violence.

30. *Paulus, On Adultery, Book I.*

A father cannot prosecute, without exposing himself to the risk of a false accusation.

(1) The sixty days are computed from the time of the divorce, and in the sixty the sixtieth is itself included.

31. *The Same, On Adultery, Book II.*

The term of five years should be reckoned continuously, and not merely by computing the available days. But what course must be pursued if the woman was accused first, and, as the adulterer could not be prosecuted at the same time, the case having been protracted for an extended period, the term of five years should expire? What if he who began the prosecution within five years did not carry it to a conclusion, or was guilty of prevarication, and another should desire to proceed after the five years have elapsed? It is just to deduct from the five years the time which was consumed by the preceding prosecution.

32. *Macer, On Public Prosecutions, Book I.*

It makes no difference whether the father kills his daughter surprised in adultery first, or not, provided he kills both guilty parties; for if he kills only one of them, he will be liable under

the Cornelian Law. If, however, one of them should be killed, and the other wounded, he is not released under the terms of the law; but the Divine Marcus and Commodus stated in a Rescript that he ought to be granted impunity, for the reason that, although the adulterer was killed, and the woman survived, after having received serious wounds inflicted upon her by her father, she was saved rather by accident, than intentionally; because the law requires the same indignation and the same severity to be displayed toward all those who are taken in adultery.

(1) Where a husband has selected one of two culprits who have been guilty of adultery, he cannot accuse the other before the first case is terminated; because two persons cannot be accused by the same individual at the same time. Still, the prosecutor, while proceeding against the adulterer or the adulteress, is not prevented from also accusing anyone who lent his house for the purpose, or advised that the charge be suppressed by the payment of money.

33. *Marcianus, Public Prosecutions, Book I.*

Where anyone alleges that adultery has been committed by his slave, with a woman whom he had for his wife, the Divine Pius stated in a Rescript that he must accuse the woman before subjecting his slave to torture to her prejudice.

(1) If anyone should not let an adulterer depart, but detains him, as, for instance, his son, accused of adultery with his stepmother, or his freedman, or slave accused with his wife, he is guilty, according to the spirit, but not according to the letter of the law. The woman, however, who is detained, shall be punished. If, however, having driven her away, he should bring her back, he is not guilty according to strict construction of the law, but he must still be considered liable in order to avoid the commission of fraud.

(2) If a woman receives the price of adultery committed by her husband, she will be punishable as an adulteress under the Julian Law.

34. *Modestinus, Rules, Book I.*

He is guilty of fornication who keeps a free woman for the purpose of cohabiting with her, but not with the intention of marrying her, excepting, of course, a concubine.

(1) Adultery is committed with a married woman; fornication with a widow, a virgin, or a boy.

35. *The Same, Rules, Book Vill.*

He who desires to bring an accusation of adultery, and makes a mistake in the information, is not forbidden to correct it; provided that the time has not passed by which the right to proceed is extinguished.

36. *Papinianus, Questions, Book III.*

When a minor is guilty of adultery, he will be liable under the Julian Law, because a crime of this kind can be committed after puberty.

37. *The Same, Questions, Book V.*

It has been decided that a son under paternal control can, without the consent of his father, accuse his wife of adultery in a public action, for he avenges his own suffering.

38. *The Same, Questions, Book XXXII.*

If adultery is committed at the same time as incest, for instance, with a stepdaughter, a daughter-in-law, or a stepmother, the woman shall also be punished, for this will take place even where adultery was not committed.

(1) When fornication is committed with the daughter of a sister, should it not be considered whether the penalty of adultery will be sufficient for the husband ? It happens, in the present

instance, that a double crime has been perpetrated, because there is a great deal of difference where an unlawful marriage is contracted by mistake, and where contempt of the law and insult to blood are combined.

(2) Wherefore, the woman must undergo the same penalty as the man, when she has committed incest prohibited by the Law of Nations; for if only the observation of our law is involved, she will not be liable for the crime of incest.

(3) Sometimes, however, in the case of males, the crime of incest, although more serious in its nature, is ordinarily treated less severely than that of adultery; provided the incest has been committed through an illegal marriage.

(4) Finally, the Imperial Brothers released Claudia from responsibility for the crime of incest, on account of her age, but they directed that the unlawful tie should be severed; although, otherwise, the crime of adultery, when committed after puberty, is not excusable on account of age. For it is stated above that women who are mistaken with reference to the law are not liable for the crime of incest; but when they commit adultery they can have no excuse.

(5) The same Emperors stated in a Rescript that after a divorce which a stepson obtained in good faith from his stepmother, the accusation of incest should not be admitted.

(6) They also stated in a Rescript to Pollio: "Incestuous marriages are not usually confirmed, and therefore if a person withdraws from such a marriage, we will remit the penalty of the past offence, if the guilty party has not yet been prosecuted."

(7) Moreover, incest committed by means of an unlawful marriage is ordinarily excused on account of sex or age, or even after separation, if it takes place in good faith, and a mistake is alleged; and the more readily if no one appears to prosecute.

(8) The Emperor Marcus Antoninus and his Son Commodus stated in a Rescript that if a husband, impelled by the violence of his grief, kills his wife surprised in adultery, he will not be liable to the penalty imposed on assassins by the Cornelian Law; for the Divine Pius made the following statements in a Rescript addressed to Ap-pollonius: "If anyone does not deny that he has killed his wife, taken in adultery, he may be excused from suffering the extreme penalty, as it is very difficult to restrain justifiable grief; but because he has done more than he should to revenge himself, he must be punished. Therefore, if he is of inferior rank, it will be sufficient for him to be sentenced to hard labor for life; and if he is of superior station, he shall be relegated to an island."

(9) A freedman is not readily permitted to attack the reputation of his patron, but he should be permitted to do so if he desires to accuse him of adultery by the right of a husband, just as if he had suffered some other atrocious injury.

Where, however, the patron is of the number of those who, if surprised in the commission of this crime, can be killed by another, and if he is caught committing adultery with his wife, it should be considered whether the freedman can kill him with impunity. This seems to us to be rather hard, for reputation, much more than life, should be respected.

(10) Anyone who occupies a position of honor, or an office in the public service, can be prosecuted, but the accusation will be postponed ; and if he furnishes a surety to appear, the case will be deferred until the expiration of his term of office. This was stated by Tiberius Caesar in a Rescript.

39. *The Same, Opinions, Book XV.*

The decision of the Governor of a province was that a certain woman had been violated. I held that she was not liable under the Julian Law relating to Adultery; although, for the purpose of protecting her modesty, she was prevented from immediately informing her husband of the injury which she had sustained.

(1) Even after the woman has married a second time, although her first husband may not have been prosecuted as her pander, the charge of adultery can be brought against the adulterer by a stranger.

(2) Even if the woman should die during marriage, her husband has a right to prosecute the adulterer.

(3) A woman who was married before the person who committed adultery with her has been convicted cannot be prosecuted for this offence, if notice was not served upon her at the wedding, or at her residence.

(4) I gave it as my opinion that a woman who has been exiled on account of her association with robbers could be retained in mar-

riage without the fear of incurring a penalty, because she was not convicted of adultery.

(5) The crime of incest, joined with adultery, is not prescribed after the lapse of five years.

(6) It is settled that two persons, the man and the woman, cannot lawfully be prosecuted for adultery at the same time, even by the husband; but when both of them have been accused at once by someone who subsequently wished to desist, I hold that an acquittal will be necessary in the case of both parties.

(7) A common accusation for incest can be brought against two persons at the same time.

(8) I gave it as my opinion that where two masters were accused of incest, their slaves could only be put to the torture where the incest was alleged to have been committed by adultery.

40. *Paulus, Opinions, Book XIX.*

The question was asked whether a woman, whose husband had threatened to accuse her of the crime of adultery, but had not done so either in the capacity of husband or under the common law, could marry the man whom he had indicated as being guilty of adultery? Paulus answered that in the case in question there was nothing to prevent her from marrying the man whom her husband had suspected.

(1) It was likewise asked whether the same husband should be considered to have desisted, or to have acted as a pander, if he afterwards took back the same wife? Paulus answered that he who took back the same wife, after having brought an accusation of adultery against her, was considered to have desisted; and hence, under the same law, he had no longer the right to accuse her.

41. *The Same, Sentences, Book I.*

No delay should be granted in an accusation of adultery, unless to compel the appearance of the persons in court; or where the judge, induced by the circumstances of the case, permits it, after proper cause has been shown.

42. *Tryphoninus, Disputations, Book II.*

If he who has obtained the right to wear a gold ring should commit adultery with the wife of his patron; or with his patroness; or with the wife of him, or of the father of him from whom he obtained his freedom; or with the mother, or the son's wife; or with the daughter of any of these persons, shall he be punished as a freedman? And if he is surprised in adultery, can he be killed with impunity? I am inclined to think that he should be subjected to the penalty imposed upon freedmen; because, by the Julian Law for the suppression of Adultery, and with a view to the protection of marriage, it is settled that they should be considered as freedmen; and, as the result of this advantage, the case of patrons should not be rendered any worse.

43. *Gaius, On the Law of the Twelve Tables, Book III.* If the notice of repudiation was not served in accordance with law, and therefore the woman is still considered to be married; yet, if anyone takes her as his wife, he will not be an adulterer. Salvius Julianus was the author of

this opinion; because, as he says, adultery cannot be committed without malicious contrivance. It should, however, be held that he is guilty of malicious contrivance who knew that she had not been legally repudiated.

44. *Papinianus, Opinions, Book IV.*

If his mother-in-law is dead, a son-in-law can be prosecuted for incest with her, just as an adulterer can be prosecuted after the death of the woman.

## TITLE VI.

## CONCERNING THE JULIAN LAW ON PUBLIC VIOLENCE.

1. *Marcianus, Institutes, Book XIV.*

He is liable under the Julian Law relating to Public Violence who collects arms or darts in his house, or on his land, or in a farm house, in larger quantities than is customary for the purpose of hunting, or travel by land or water.

2. *Scsevola, Rules, Book IV.*

Arms which anyone has for the purpose of trade, or which have descended to him by inheritance, are excepted.

3. *Marcianus, Institutes, Book XIV.*

Those, also, are in the same position who form the design of exciting a tumult, or sedition, and have slaves or freemen under arms.

(1) He is liable under the same law who, having arrived at puberty, appears armed in public.

(2) Those are in the same position who, offering an extremely bad example by having assembled in numbers and excited sedition, plunder country-houses, and with darts or arms commit robbery.

(3) He also is liable who, in case of fire, removes by violence anything except the materials of the building.

(4) Moreover, he who pollutes by force a boy or a woman, or anyone whomsoever, is also liable to punishment under this law.

(5) He also who goes to a fire armed with a sword or other weapon for the purpose of robbery, or to prevent the owner from saving his property, is liable to the same penalty.

(6) He is liable under the same law who, with armed men assembled in a body with a display of force, expels a possessor from his house, his land, or his ship:

4. *Ulpianus, On the Edict, Book LIX.* Or has provided men for this purpose.

5. *Marcianus, Institutes, Book XIV.*

Anyone who, by means of an assembly, a crowd, a tumult, or a sedition, causes a conflagration; or who maltreats a man whom he has

wrongfully confined; or who prevents a body from being buried, to better enable him to disperse and plunder a funeral procession; or forcibly compels someone to become obligated to him, for the law rescinds an obligation of this kind, is liable.

(1) When a question of violence and possession, or ownership is involved, the Divine Pius stated in a Rescript that the violence should be investigated before the right of ownership, which Rescript, written in Greek, was addressed to the community of the Thessalians.

He also decreed that the question of violence should be examined before that of ownership or possession was decided.

(2) Anyone who has ravished a free woman, or one who is married, shall be punished with

death. If her father, moved by prayers, pardons his injury, a stranger can prosecute without being barred by the prescription of five years, because the crime of rape exceeds in scope the Julian Law relating to Adultery.

6. *Ulpianus, On the Duties of Proconsul, Book VII.*

The Divine Pius stated in a Rescript that whoever ravishes a freeborn boy should be punished, as follows: "I have ordered the submission to me of a petition presented by Domitius Silvanus, in the name of Domitius Silvanus, his paternal uncle, who, having been influenced by his complaint, in which it is stated that his son who was freeborn, and still very young, was carried away by force, shut up, and afterwards subjected to blows and tortures, with great danger to his life. My dear brother, I request you to hear him, and, if you ascertain that these offences have been committed, punish them severely."

7. *The Same, On the Duties of Proconsul, Book Vill.* Anyone who is invested with authority or power, and subjects a Roman citizen to death or scourging, or orders this to be done, or attaches anything to his neck for the purpose of torturing him, without permitting him to appeal, is liable under the Julian Law relating to Public Violence. This also applies to deputies and orators, and their attendants, where anyone is proved to have beaten them, or caused them any injury.

8. *Marcianus, Public Prosecutions, Book V.*

By the Julian Law relating to Public Violence, it is provided that no one can bind an accused person, or prevent him from appearing at Rome within a certain time.

9. *Paulus, On the Edict, Book VII.*

By "armed persons" we should understand not merely those who have darts, but also anything else with which they can cause injury.

10. *Ulpianus, On the Edict, Book LXVIII.*

He who fraudulently prevents the free administration of justice, or prevents the judges from deciding as they should do; or he who, being invested with power or authority, acts in any other way than the law decrees and requires that he should; and anyone who unjustly compels a person to promise, either publicly or privately, to furnish slaves, or pay money; and also anyone who, with malicious intent, appears armed in an assembly, or in a place where justice is publicly administered, with the exception of him who collects men in order to hunt wild beasts, and who is permitted to keep people for this purpose, will be liable under this law.

(1) He, also, is liable under this law, who, where men have been assembled, uses force for the purpose of striking or beating someone, even though he may not be killed.

(2) He who is convicted of having employed public violence is interdicted the use of water and fire.

11. *Paulus, Sentences, Book V.*

Those who have plundered the houses of others in the city or in the country, or have broken into them, or seized them, and have done so by means of a mob and with a display of armed force, shall be punished capitally.

(1) By the term "arms," is understood everything a man can make use of to cause injury.

(2) Those who carry arms in order to protect themselves are not considered to carry them for the purpose of killing anyone.

12. *The Same, On the Turpillian Decree of the Senate.*

Those who impose new taxes arbitrarily are liable under the Julian Law relating to Public Violence.

## TITLE VII.

## CONCERNING THE JULIAN LAW RELATING TO PRIVATE VIOLENCE.

1. *Marcianus, Institutes, Book XIV.*

Anyone who is convicted of private violence is punished under the Julian Law by the confiscation of the third part of his property; and it is provided that he shall not be a senator or a decurion; or obtain any mark of distinction, or be permitted to sit with any of the above-named officials; or be a judge; and, according to the Decree of the Senate, he shall be stripped of all his honors as a person who is infamous.

(1) Those who are liable to the penalty of the Julian Law relating to Private Violence are subjected to the same punishment if they have been guilty of fraudulently and forcibly appropriating any goods in a shipwreck.

(2) Anyone who plunders property which has been shipwrecked is punished arbitrarily under the Imperial Constitutions; for the Divine Pius stated in a Rescript that no force should be employed against sailors, and if anyone did so that he should be severely punished.

2. *Scsevola, Rules, Book IV.*

He is liable under this law who, by means of a crowd of men, employs force, in consequence of which some person is beaten or struck, even if no one is killed.

3. *Macer, Public Prosecutions, Book I.*

It makes no difference whether the crowd was convoked for the purpose of employing violence against freemen, or one's own slaves, or slaves belonging to another.

(1) Those who have been assembled are none the less liable under the same law.

(2) If, however, no persons have been assembled, and none has been beaten, but something has been unjustly taken from property belonging to others, he who did so will be liable under this law.

4. *Paulus, On the Edict, Book LV.*

The crime punished by the Julian Law is committed where someone is said to have assembled a crowd or a mob, to prevent a person from being produced in court.

(1) If anyone should put the slave of another to torture, Labeo says that the Edict of the Praetor relating to injuries can be resorted to, and thus greater moderation be displayed.

5. *Ulpianus, On the Edict, Book LXIX.*

If anyone should expel a person from his land by means of a crowd of men who are unarmed, he can be prosecuted for private violence.

6. *Modestinus, Rules, Book Vill.*

Under the Volusian Decree of the Senate, those who improperly assemble in order to manifest opposition to a lawsuit of others, and agree that anything obtained from the parties by condemnation shall be divided among them, are liable under the Julian Law relating to Private Violence.

7. *Callistratus, On Judicial Inquiries, Book V.*

Creditors, who proceed against their debtors, should demand a second time, through the judge, what they think to be due to them. Otherwise, if they enter upon the property of the debtor without permission having been given them to do so, the Divine Marcus decreed that they had no longer any right to their claims. The following are the terms of the Decree: "It is very proper, where you think that you have claims, that you should attempt to collect them by means of actions. In the meantime, the other party should remain in possession, for you are

merely the plaintiff." And when Marcianus said that no force had been employed, the Emperor replied: "You think that force is only employed when men are wounded. Force is employed when anyone thinks that he can take what is due to him without demanding it a second time through the judge. I do not think that it is consistent either with your character for reserve or your dignity, to commit an act which is unauthorized by law. Therefore, whenever it is proved to me that any property of the debtor was not delivered by him to his creditor, but that the latter boldly took possession of it without being authorized by a court, and he has declared that he was entitled to the property, he will forfeit his right to the claim."

8. *Modestinus, On Punishments, Book II.*

Where a creditor, without judicial authority, seizes the property of his debtor, he is liable under this law, will be fined a third part of his property, and will become infamous.

## TITLE VIII.

## CONCERNING THE CORNELIAN LAW RELATING TO ASSASSINS AND POISONERS.

1. *Marcianus, Institutes, Book XIV.*

Under the Cornelian Law relating to Assassins and Poisoners, anyone who kills a man; or through whose malice a fire has originated; or who has gone about armed for the purpose of killing someone or committing theft; or who, being a magistrate, or presiding in a criminal case, enables false testimony to be given by which an innocent person may be prosecuted, or convicted, is liable.

(1) He also is liable who prepares poison, and administers it for the purpose of killing a man; or who, with malicious intent gives false testimony, by means of which anyone may be sentenced to death in a criminal prosecution; or any magistrate or judge who accepts money in consideration of causing someone to be accused of a crime.

(2) Anyone who has committed homicide is punished without taking into account the legal condition of the person who was killed.

(3) The Divine Hadrian stated in a Rescript that anyone who killed a man, without the intention of doing so, could be acquitted; and that anyone who did not kill a man, but wounded him for the purpose of killing him, should be convicted of homicide; and that the decision should be rendered according to the circumstances of the case, for if the aggressor drew a sword and struck him with it, there is no doubt of his having done this with the intention of killing him. Where, however, during a quarrel, he struck him with a spike, or a brass vessel used in a bath, although the article employed was of metal, still the attack was not made with the intention of killing him; and the penalty imposed upon one who in a quarrel committed homicide rather accidentally than intentionally, should be mitigated.

(4) The Divine Hadrian also stated in a Rescript that he who killed anyone who was forcibly attempting to commit an act of debauchery with himself, or with those belonging to him, should be discharged.

(5) But with regard to a husband who kills his wife surprised in the act of adultery, the Divine Pius stated in a Rescript that a lighter penalty should be inflicted upon him; and he ordered that anyone of inferior rank should be sent into perpetual exile, and that a person of distinguished position should be relegated for a certain time.

2. *Ulpianus, On Adultery, Book I.*

A father cannot kill his son without his having been heard; but he should accuse him before the Prefect or the Governor of the province.

3. *Marcianus, Institutes, Book XIV.*

Anyone who has prepared poison, or sells it, or keeps it for the purpose of killing human beings, is punished by the Fifth Section of the same Cornelian Law relating to Assassins and Poisoners.

(1) The penalty of this law is imposed upon any one who publicly sells injurious poisons or keeps them for the purpose of homicide.

(2) The expression "injurious poisons" shows that there are certain poisons which are not injurious. Therefore the term is an ambiguous one, and includes what can be used for curing disease as well as for causing death. There also are preparations called love philtres. These, however, are only forbidden by this law where they are designed to kill people. A woman was ordered by a decree of the Senate to be banished, who, not with malicious intent, but offering a bad example, administered for the purpose of producing conception a drug which, having been taken, caused death.

It is provided by another Decree of the Senate that dealers in ointments who rashly sell hemlock, salamander, aconite, pine-cones, bu-prestis, mandragora, and give cantharides as a purgative, are liable to the penalty of this law.

(4) Likewise, he whose slaves, with his knowledge, have taken up arms for the purpose of obtaining or recovering the possession of property; or one who is the promoter of sedition; or who has appropriated shipwrecked merchandise; or who has represented matters which are false to be true, that an innocent person might be deceived; or who has caused this to be done; or who has castrated a man on account of debauchery, or in order to sell him, is, under the Decree of the Senate, subjected to the penalty of the Cornelian Law.

(5) The penalty of the Cornelian Law relating to Assassins and Poisoners is deportation to an island and the confiscation of all property. It is, however, at present customary to inflict capital punishment, unless the parties in question occupy such a high position that they are not amenable to the law. It is customary for persons of inferior rank to be thrown to wild beasts, and for those higher in the social scale to be deported to an island.

(6) It is permitted to kill deserters, just as if they were enemies, wherever they may be found.

4. *Ulpianus, On the Duties of Proconsul, Book VII.*

He is liable under the Cornelian Law relating to Assassins who, while occupying the position of magistrate, commits some act involving the life of a man which is not authorized by law.

(1) When a man, through mere wantonness, causes the death of another, the decision of Ignatius Taurinus, Proconsul of Bsetica, who relegated the guilty party for a term of five years, was confirmed by the Divine Hadrian.

(2) The Divine Hadrian also stated the following in a Rescript: "It is forbidden by the Imperial Constitutions that eunuchs should be made, and they provide that persons who are convicted of this crime are liable to the penalty of the Cornelian Law, and that their property shall with good reason be confiscated by the Treasury.

"But with reference to slaves who have made eunuchs, they should be punished capitally, and those who are liable to this public crime and do not appear, shall, even when absent, be sentenced under the Cornelian Law. It is clear that if persons who have suffered this injury demand justice, the Governor of the province should hear those who have lost their virility; for no one has a right to castrate a freeman or a slave, either against his consent or with it, and no one can voluntarily offer himself to be castrated. If anyone should violate my Edict, the physician who performed the operation shall be punished with death, as well as anyone who willingly offered himself for emasculation."

5. *Paulus, On the Duties of Proconsul, Book II.*

Those also who render persons impotent are, by a Constitution of the Divine Hadrian addressed to Ninius Hasta, placed in the same class with those who perform castration.

6. *Venuleius Saturninus, On the Duties of Proconsul, Book I.*

He who delivers a slave to be castrated shall be punished by a fine of half his property, under a decree of the Senate enacted during the Consulate of Neratius Priscus and Annius Verus.

7. *Paulus, On Public Prosecutions.*

Under the Cornelian Law, the degree of fraud depends upon the act, but by this law gross negligence is not considered fraud. Wherefore, if anyone precipitates himself from a height and falls upon another and kills him, or if a man trimming trees throwns down a branch and does not give warning, but kills a passer-by, he will not be liable to punishment under this law.

8. *Ulpianus, On the Edict, Book XXXIII.*

If it should be proved that a woman has employed force upon her abdomen for the purpose of producing abortion, the Governor of the province shall send her into exile.

9. *The Same, On the Edict, Book XVIII.*

If anyone kills a thief at night, he can only do so with impunity, when he could not have spared him without placing himself in jeopardy.

10. *The Same, On the Edict, Book XVIII.*

If anyone should maliciously burn my house, he shall suffer capital punishment as an incendiary.

11. *Modestinus, Rules, Book VI.*

By a Rescript of the Divine Pius, Jews are permitted to circumcise only their own children, and anyone who performs this operation upon persons of a different religion will incur the penalty for castration.

(1) If a slave, without having been sentenced, is thrown to wild beasts, not only he who sold him, but also he who purchased him will be liable to punishment.

(2) Since the passage of the Petronian Law and the Decrees of the Senate having reference to it, masters are deprived of the power of giving up their slaves, whenever they please, for the purpose of fighting wild beasts. A master, however, can produce his slave in court, and if his complaint is well founded, the slave can be subjected to the penalty,

12. *The Same, Rules, Book Vill.*

When an infant or an insane person commits homicide, he is not liable under the Cornelian Law; for absence of intention protects the one, and his unhappy fate excuses the other.

13. *The Same, Pandects, Book XII.*

By a decree of the Senate it is ordered that anyone who offers sacrifices for the purpose of causing misfortune shall be subjected to the penalty of this law.

14. *Callistratus, On Judicial Inquiries, Book VI.*

The Divine Hadrian stated the following in a Rescript: "In the perpetration of crime, the intention, and npt the event, is considered."

15. *Ulpianus, On the Lex Julia et Papia, Book VIII.*

It makes no difference whether one actually kills another, or is merely the cause of his death.

(1) He who orders another to be killed is considered a homicide.

16. *Modestinus, On Punishments, Book III.*

Those who voluntarily or maliciously commit murder are usually deported, if they are of high rank; but if they are of inferior station they are punished with death. This, however, is more excusable in decurions, where they have previously consulted the Emperor, and acted by his order; unless the tumult could not otherwise have been suppressed.

17. *Paulus, Sentences, Book V.*

If a man after having been struck in a quarrel dies, the blow given by each of the persons assembled should be investigated.

## TITLE IX.

## CONCERNING THE POMPEIAN LAW ON PARRICIDES.

1. *Marcianus, Institutes, Book XIV.*

It is provided by the Pompeian Law relating to Parricides that if anyone kills his father, his mother, his grandfather, his grandmother, his brother, his sister, his paternal uncle, his paternal aunt, his maternal uncle, his maternal aunt, his cousin of either sex, his wife, her husband, his son-in-law, his father-in-law, his stepfather, his stepson, his stepdaughter, his patron, or his patroness, or causes this to be done with malicious intent, he shall be liable to the penalty prescribed by the Cornelian Law relating to Assassins. A mother, who kills her son or her daughter, is also liable to the penalty of this law, as well as a grandfather who kills his grandson. Again, anyone who purchases poison for the purpose of administering it to his father is liable, even if he does not give it to him.

2. *Scsevola, Rules, Book IV.*

A brother of the guilty party, who was aware of the plan, and did not warn his father, was relegated, and the physician subjected to punishment.

3. *Marcianus, Institutes, Book XIV.*

It must be remembered that cousins are included in the Pompeian Law, but those are not equally implicated who are in the same, or a nearer degree. Also, mothers-in-law and women who have been betrothed are omitted; they are, however, included in accordance with the meaning of the law.

4. *The Same, On Public Prosecutions, Book I.*

Just as the fathers and mothers of married persons are embraced in the designation fathers and mothers-in-law, so the husbands of the children are embraced in the term sons-in-law.

5. *The Same, Institutes, Book XIV,*

It is said that the Divine Hadrian, in a case where a certain man had, while hunting, killed his son who had committed adultery with his stepmother, caused him to be deported to an island, on the ground that he killed him rather as a thief than by asserting his right as a father; for paternal authority should rather be influenced by affection than by cruelty.

6. *Ulpianus, On the Duties of Proconsul, Book Vill.*

The question may be asked whether those who kill their parents, or know of the crime, should be punished for parricide. Msecianus says that not only parricides, but also their accomplices, should undergo this penalty. Hence the accomplices, even if they are strangers, are punished in the same way.

7. *The Same, On the Edict, Book XXIX.*

When money has been furnished for the commission of a crime, with the knowledge of a

creditor, where, for instance, it has been given to purchase poison, or paid to robbers or assassins for the purpose of killing his father, he who obtained the money will be liable to the penalty for parricide, as well as those who lent it, or took measures to have it used in this way.

8. *The Same, Disputations, Book Vill.*

Where anyone accused of parricide dies before being convicted, even if he kills himself, he should have the Treasury as his successor, or if not, anyone whom he appointed by his will. If he should die intestate, he will have as heirs those who are designated by law.

9. *Modestinus, Pandects, Book XII.*

The penalty of parricide, as prescribed by our ancestors, is that the culprit shall be beaten with rods stained with his blood, and then shall be sewed up in a sack with a dog, a cock, a viper, and an ape, and the bag cast into the depth of the sea, that is to say, if the sea is near at hand; otherwise, it shall be thrown to wild beasts, according to the Constitution of the Divine Hadrian.

(1) Those who kill other persons than their father and mother, their grandfather and grandmother, whom we have stated above, are punished according to the custom of our ancestors, either suffer a capital penalty, or are sacrificed to the gods.

(2) When anyone, while insane, kills his parents, he shall go unpunished, as the Divine Brothers stated in a Rescript with reference to a man who, being insane, killed his mother; for it is sufficient for him to be punished by his insanity alone, but he must be guarded with great care, or else be kept in chains.

10. *Paulus, On the Penalties of All Laws.*

The accusation of those who are liable to the penalty of parricide is always permitted.

## TITLE X.

## CONCERNING THE CORNELIAN LAW ON DECEIT AND THE LIBONIAN DECREE OF THE SENATE.

1. *Marcianus, Institutes, Book XIV.*

The penalty of the Cornelian Law is inflicted upon anyone who, with malicious intent, has suborned false witnesses, or caused spurious evidence to be introduced.

(1) Likewise, anyone who receives money, or makes an agreement to receive it, for the purpose of fraudulently obtaining legal assistance or evidence, or forms a conspiracy to render innocent persons liable, is punished by the Decree of the Senate.

(2) Moreover, anyone who receives money for the production or the suppression of witnesses, and the giving or withholding of testimony, is punished by the Cornelian Law; and also anyone who corrupts a judge, or takes any steps for the purpose of corrupting him.

(3) If, however, a judge neglects to enforce the Imperial Constitutions he will be punished.

(4) Those who have been guilty of deceit with reference to accounts, wills, public documents, or anything else which is not sealed, or have fraudulently appropriated property, shall be punished for these crimes, just as if they had committed forgery. It was for just such an offence that the Divine Severus condemned the Prefect of Egypt, under the Cornelian Law relating to Deceit, because during the time when he governed the province he had falsified his own records.

(5) He who opens the will of a person who is living is liable to the penalty of the Cornelian Law.

(6) He who alleges that documents deposited with another have been delivered by him to his adversaries can be prosecuted for deceit.

(7) The Decree of the Senate applies to military wills, and by its terms anyone is liable under the Cornelian Law who has written the bequest of a legacy or a trust for his own benefit.

(8) There is this difference between the drawing up of a will by a son, a slave, or a stranger; for, so far as the stranger is concerned, if the signature of the testator is made, accompanied by the statement: "I dictated this to So-and-So, and I have read it over," the penalty will not be incurred, and the bequest can be claimed.

In the case of a son or a slave, however, a general signature will be sufficient both for the purpose of avoiding the penalty, and of obtaining the bequest.

(9) Guardians, as well as curators, who, after their term of office has expired, do not render their accounts of the guardianship or curatorship, are liable to the penalty of this law—as was decided by the Divine Severus and Antoninus—and they cannot contract with the Treasury; but if anyone, in violation of this law, secretly makes an agreement with the Treasury, he shall be punished just as if he had committed forgery.

(10) This Constitution, however, does not apply (as the Emperors themselves have stated in Rescripts), to those who, before undertaking the guardianship, have transacted business of this kind. For they are held to have given excuses, but not to have been guilty of fraud.

(11) The same Emperors stated in a Rescript that anyone who has not yet rendered an account of his guardianship or curatorship should not contract with the Treasury while he whose guardianship has been administered is living; but if the latter should die, he can legally contract with it, although he may not yet have rendered his account to the heir.

(12) Where, however, the guardian or curator has succeeded by hereditary right to a contract made with the Treasury, even if this occurs before an account has been rendered, I do not think that there will be ground for the infliction of a penalty; although the person whose guardianship or curatorship has been administered may still be living.

(13) The penalty for forgery, or quasi-forgery, is deportation, and confiscation of all property. When a slave commits any of these crimes, he shall be condemned to death.

2. *Paulus, On Sabinus, Book III.*

He who has fraudulently appropriated a will, or concealed it, or taken it by force, or erased or defaced it, or substituted another for it, or unsealed it; or anyone who has forged a will, or sealed it, or fraudulently published it; or anyone through whose fraudulent acts these things have been done, shall suffer the penalty of the Cornelian Law.

3. *Ulpianus, Disputations, Book IV.*

Anyone who, not knowing that a will is forged, either enters upon an estate or accepts a legacy, or acknowledges it in any way whatsoever, is not barred from declaring in court that the will is forged.

4. *The Same, Disputations, Book Vill.*

Where anyone who caused a legacy to be fraudulently inserted into a will for his own benefit dies, his heir can be deprived of it.

(1) Hence where a certain person, who had been appointed heir by his father, had torn up a codicil, and then died, the Divine Marcus held that the Treasury could claim the estate, to the amount to which the heir would have been deprived by the codicil; that is to say three-fourths of the estate.

5. *Julianus, Digest, Book LXXXVI.*

The Senate remitted the penalty in the case of a person charged with the payment of legacies who had taken them away by a codicil written in his own hand. But because this had been done by the order of his father, and he was under twenty-five years of age, he was also

permitted to take the estate.

6. *Africanus, Questions, Book HI.*

When anyone writes a bequest of a legacy to himself, he is liable to the penalty of the Cornelian Law, although the legacy is void; for it is established that he is liable who writes a bequest of a legacy to himself in a will which is afterwards broken, even if it was not legally executed in the beginning. This, however, is only true when the will is perfect, for if it should not be sealed, the better opinion is that the Decree of the Senate will not apply; just as there would be no ground for an interdict to compel the production of the will; for it is necessary, in the first place, that there should be a will of some kind, even if it was not drawn up according to law, in order for the Decree of the Senate not to be applicable. For in order that a will may be properly designated as forged, it is essential that, after the forgery has been removed from it, it still can properly be called a will.

Therefore, in like manner, a will is said to be made contrary to law in which, if all the regular formalities had been observed, it could be said that it was legally executed.

(1) If the appointed heir has written the disinheritance of a son, or of any other persons, mentioning them by name, he will be liable under the Decree of the Senate.

(2) In like manner he who, with his own hand, has deprived the testator's slave of freedom, and, above all, if he is charged with the payment of legacies, or the execution of a trust, he will be liable under the Decree of the Senate.

(3) If a patron should write the bequest of a legacy in his own favor in the will of his freedman, and, after having obtained pardon for doing so, he has been ordered to relinquish the legacy, can he obtain the benefit of praetorian possession contrary to the provisions of the will? The better opinion is that he cannot do so. It does not, however, result from this that if a wife should include the bequest of her dower for her benefit in a will, or a creditor writes a bequest of what is due to him at a certain time, for his own benefit; and, in like manner, having been pardoned, they are ordered to surrender the legacies, an action for her dowry should not be refused to the woman, as well as one for his claim to the creditor, in order that neither of them may be deprived of that to which they are actually entitled.

7. *Marcianus, Institutes, Book II.*

Slaves cannot, under any circumstances, appear against their masters in court, as they are not considered persons by either the Civil, the praetorian law, or in extraordinary proceedings; except where, by way of favor, the Divine Marcus and Commodus stated in a Rescript that when a slave complains that a will in which freedom was granted him has been suppressed, he should be allowed to file an accusation for suppressing it.

8. *Ulpianus, On the Duties of Proconsul, Book VII.*

Anyone who scrapes gold coins, or stains them, or makes them, if he is a freeman, shall be thrown to wild beasts; if he is a slave, he shall undergo the extreme penalty.

9. *The Same, On the Duties of Proconsul, Book Vill.*

It is provided by the Cornelian Law that anyone who adds any alloy to gold, or who makes base silver coins, is liable to punishment for forgery.

(1) He also is liable to the same penalty who, when he was able to prevent these things, did not do so.

(2) It is provided by the same law that no one shall fraudulently purchase or sell coins made of lead, or of any other base metal.

(3) The penalty of the Cornelian Law is inflicted upon him who knowingly and fraudulently seals, or causes to be sealed, any other written instrument than a will; as well as upon anyone

who, with fraudulent intent, has brought together persons for the purpose of giving false testimony, or who produces any false evidence on one side or the other.

(4) Anyone who has suborned an informer in a case in which pecuniary interests are involved is liable to the same penalty as those who have received money for the sake of causing litigation.

10. *Macer, Public Prosecutions, Book I.*

Nothing is provided by the Decrees of the Senate with reference to a person who has written something for the benefit of one who has control of him, or of another who is under the same control. But the law is violated also in this instance, because the profit derived from the act will belong to the father or the master, who would be entitled to it if the son or the slave had written the instrument for his own benefit.

(1) It is established that where anyone writes the bequest of a legacy for the benefit of a stranger, even though he may afterwards, during the lifetime of the testator, begin to have him under his control, there will be no ground for the application of the Decree of the Senate.

11. *Marcianus, On Public Prosecutions, Book I.*

If a father should write anything for the benefit of his son, who is a soldier, and under his control, and with whom he himself is serving, and he knows this to be the case, for the reason that nothing is acquired by the father, he will not be liable to punishment.

(1) Where a son had written a clause for the benefit of his mother, the Divine Brothers stated in a Rescript that as he had done this by order of the testator, he should go unpunished, and that his mother was entitled to the bequest.

12. *Papinianus, Opinions, Book XIII.*

Where anyone accused of fraud dies before the accusation of the crime has been filed, or judgment has been rendered, the Cornelian Law does not apply, because what was acquired by the crime is not left to the heir.

13. *The Same, Opinions, Book XV.*

The solemn assertion of a false name or surname is punished with the penalty of forgery.

(1) An advocate having been degraded for ten years from his rank of decurion, because he read a forged document in the presence of the Governor while hearing a case, I gave it as my opinion that'he would recover his rank after the expiration of the time, as he did not come within the terms of the Cornelian Law, having read, but not drawn up a forged document.

For the same reason, when a plebeian is punished with temporary exile for the same cause, he can legally be created a decurion after his return.

14. *Paulus, Questions, Book XXII.*

An emancipated son, while writing his father's will by the order of the latter, drew up the bequest of a legacy to a slave owned in common by himself and Titius. I ask how this question should be decided. The answer was, you have combined several questions; and under the Decree of the Senate by which we are forbidden to write the bequest of a legacy to ourselves or to those whom we have under our control, the said emancipated son will be liable to the same penalty, even though he wrote the bequest by the order of his father; for he is considered to be excused who is under the control of another, just as is the case with a slave, provided the order of the testator is evident from his signature; for I have ascertained that this was the intention of the Senate.

(1) The next question is, as it has been decided that anything that is unlawfully written is considered not to have been written at all, shall what was inserted for the benefit of a slave owned in common by the writer and another be considered as not written at all; or only that

which has reference to the person who did the writing, so that the entire amount will be due to the other joint-owner? I found that Marcellus had made a note on Julianus, for as Julianus has stated, if someone inserted a clause for the benefit of Titius and himself, or for that of a slave owned in common, and it should be considered as not inserted at all, it would be very easy to ascertain how much was acquired by Titius and his joint-owner. Marcellus added that the other joint-owner would be entitled to the amount, just as if the name of the slave had been omitted on account of its being false. This rule should be observed in deciding the present question.

(2) A husband manumitted a dotal slave, and in his will inserted the bequest of a legacy to him. The question arose, what could the woman recover under the Julian Law? I answered that it must be said that the patron, as well as the emancipated son, was liable to the penalty of the Edict of the Divine Claudius, although if they should die, pra?torian possession of their estates could be demanded. Hence, if the patron did not obtain anything from the estate of the freedman, • he would not be liable to an action by the woman.

But would he be liable for the reason that it was added in the law, "Or committed any fraudulent act to prevent it from coming into his hands"? He, however, did not commit any fraud against the woman, for merely to have formed this design was not doing anything to her disadvantage. Therefore, should we not grant an action to the woman, as the husband will be obliged to make restitution? But if he who wrote the bequest of the legacy by order of the testator had also, at the same time, by the order of the testator, entered into an agreement to deliver it to another, the Senate directed that he must, nevertheless, relinquish his legacy, and that it should remain in the hands of the heir, together with the charge of the trust.

15. *Callistratus, Questions, Book I.*

The Divine Claudius ordered by an Edict that the following should be added to the Cornelian Law: "If anyone, while writing the will or the codicil of another, should insert with his own hand the bequest of a legacy to himself, he shall be liable, just as if he had violated the Cornelian Law; and no pardon shall be granted to those who pretend to have been ignorant of the severity of the Edict."

Not only one who has drawn up the bequest of a legacy for his own benefit, with his own hand, is considered to have done so; but also he who, through the agency of his slave, or his son who is under his control, is honored by a legacy at the dictation of the testator.

(1) It is clearly provided by the Imperial Constitutions that if a testator specifically states, over his signature, that he has dictated to a slave belonging to anyone, that a legacy should be paid the master of the latter by his own heirs, the bequest will be valid; but the general signature of the testator will not avail against the authority of the Decree of the Senate, and therefore the bequest will be considered as not having been written, and the slave who wrote it for his own benefit should be pardoned. I think, however, that it would be safer for pardon to be asked from the Emperor, of course after the parties interested have relinquished their claim to what was left to them.

(2) The Senate likewise decreed that if a slave, by the order of his master, should write the bequest of his own freedom in a will or a codicil, for the very reason that it is written with his own hand he will not become free; but freedom can be granted to him under the terms of a trust, provided that, after the writing had been done, the testator signed the will or the codicil with his own hand.

(3) And as only the kind of freedom acquired by means of a trust was embraced in this Decree of the Senate, the Divine Pius stated in a Rescript that the spirit of the Decree, rather than the letter of the same should be followed; for when slaves obey their masters, they are excused through the necessity of the power to which they are subjected; but when the authority of the master is added, he having stated over his signature that he had dictated and read what had

been written, he says that it is considered to have been written by the hand of the master himself, when this had been done by his desire. This, however, should not be extended so as to include free persons over whom the testator has no right. Still, it must be ascertained whether the same necessity for obedience did not exist, and whether those who did not comply had an honorable excuse when they failed to do what was not permitted.

(4) It was decided that pardon for violating the Cornelian Law should also be granted to a mother, for whose benefit the bequest of a legacy had been written by her slave at the dictation of her son.

(5) The Senate also made the same decision with reference to a daughter who, at the dictation of her mother, through ignorance of the law, wrote a bequest to herself.

(6) If anyone, after having appointed two heirs, should add that if either one of them died without leaving children, the estate should be given to the survivor, if he had children, but if both should die without any, the estate (what follows was written in another hand) should be given to the person who wrote the will: it is held that he who wrote the will should be released from the penalty of the Cornelian Law; but it would be more beneficent to permit him to acquire what has been mentioned above.

16. *Paulus, Opinions, Book III.*

Answered that the offence of having purloined written instruments is not a cause for public prosecution, unless it is proved that the will of someone has been stolen.

(1) Paulus gave it as his opinion that all those who sealed any forged instrument whatsoever, with the exception of wills, were liable to the penalty of the Cornelian Law.

(2) And also others who have made false entries in registers, public documents, or anything else of the kind, without sealing them, or, in order to prevent the truth from being known, have concealed or stolen anything, or made a substitution, or unsealed a paper, there is no doubt that it is customary for them to be punished with the same penalty.

17. *The Same, Trusts, Book III.*

When anyone writes a bequest of a slave for his benefit, with his own hand, and is requested to manumit him, the Senate decided that he should be manumitted by all the heirs.

18. *The Same, Sentences, Book III.*

We are not forbidden to write a bequest for the benefit of a wife in another's will.

(1) He who appoints himself the testamentary guardian of a minor child of the testator, although he is considered liable to suspicion for the reason that he seems to have aimed at the guardianship, still, if he is approved as being suitable, he should be appointed guardian, not under the will but by a decree of the magistrate; nor should any excuse given by him be accepted, because he is held to have consented to the wishes of the testator.

19. *The Same, Sentences, Book V.*

Those who have struck counterfeit money, but have not seemed disposed to entirely finish it, shall be released where evidence of a true repentance has been manifested.

(1) The accusation of having introduced a supposititious child is not barred by any prescription; and it makes no difference whether the woman alleged to have made the substitution is dead, or not.

20. *Hermogenianus, Epitomes of Law, Book VI.*

Those also are punished with the penalty of forgery of wills who have accepted money for the purpose of causing litigation by means of legal assistance, or the production of witnesses; or have caused obligations to be contracted, or agreements to be made; or have formed an

association; or have taken any measures to enable this to be done.

21. *Paulus, On the Turpillian Decree of the Senate.*

Anyone who has sold the same entire property to two different persons under separate contracts is punished with the penalty for forgery of wills; and this was decided by the Divine Hadrian.

He also is placed in the same category who has corrupted a judge; but it is usual to punish such persons less severely, as they are relegated for a certain time, and are not deprived of their property.

22. *The Same, On the Libonian Decree of the Senate.*

A child under the age of puberty should not be said to come within the scope of this Edict, for he can hardly be liable for the crime of forgery, as he is not capable of criminality at that age.

(1) If a father writes a bequest for the benefit of his son, who is in the hands of the enemy, it must be said that on his return his father will be liable to the penalty of the Decree of the Senate; but if he had died in captivity, his father would have been considered innocent.

(2) If, however, he should write a bequest for the benefit of his emancipated son, he can do this legally; and the same rule applies to a son given in adoption.

(3) Likewise, if he has written one for the benefit of his slave, to whom he is in default in granting freedom under the terms of a trust, it must be said that he is not liable under the terms of the Decree of the Senate, as it is established that everything acquired by means of a slave of this kind must be delivered to him after he has been manumitted.

(4) If he has written a bequest for the benefit of a slave who is serving him in good faith, he is guilty so far as his intention is concerned; because he wrote it for the benefit of one who he thought belonged to him. But as neither a legacy nor an estate is acquired by a *bona fide* possessor, we hold that he should be exempt from the penalty.

(5) Where a master writes a bequest for the benefit of his slave, "when he shall become free," we say that the master is not affected by the Decree of the Senate, as he in no way had his own interests in view.

The same rule applies to a son subsequently emancipated.

(6) Anyone who confirms a codicil, made before a will, in which a legacy was bequeathed to him, comes within the terms of the Decree of the Senate; as Julianus, also, has stated.

(7) A person becomes liable to the penalty by taking anything away, just as he does when he gives anything to himself; for instance, where a slave was bequeathed to him, and also was manumitted, he deprives him of his liberty with his own hands. This is the case, even if he deprives him of it in accordance with the wish of the testator, for if he is ignorant of the fact, the grant of freedom will be valid.

The same rule will apply if, having been asked to pay a legacy with which he was charged, he erases the clause creating the trust!

(8) Anyone who, with his own hand, writes the assignment of a freedman, is liable, not according to the letter, but according to the spirit of the Decree of the Senate.

(9) In like manner, a slave who writes a bequest of freedom to himself, under a trust, in the will of another, is not included in the terms of the Decree of the Senate. A doubt may arise on this point, however, for (as we stated above), the Senate only remits the penalty in the case of a slave who has written a bequest of freedom for himself under a trust, in the will of his master, when the latter has stated the fact over his signature. And, indeed, there is still more reason to hold that he violates the Decree of the Senate to a greater extent than he who writes the bequest of a legacy to himself, as, under no circumstances, will he be entitled to his

freedom, but he can acquire the legacy for his master.

(10) If the person who writes the will should grant freedom under a trust to his own slave, let us see whether he is not free from the penalty, as he obtains no advantage, unless he did this in order that the slave might be purchased from him at an exorbitant price, in order to be manumitted.

(11) He, also, who, when a tract of land was devised to Titius, added with his own hand, as a condition, that money should be paid to him, comes within the terms of the Decree of the Senate.

(12) He who, with the consent of his father, disinherits himself, or deprives himself of a legacy, is not liable, either according to the letter or the spirit of the Decree of the Senate.

23. *The Same, On the Penalties of Civilians.*

The question is asked, what is a forgery ? It is held to occur where anyone imitates the handwriting of another, or omits anything from a document, or an account, when he copies it; and not where a false result is given in a calculation, or an account.

24. *Scsevola, Digest, Book XXII.*

Aithales, a slave, to whom freedom and a portion of his estate was left by the will of Vetitus Callinicus, his master, under the terms of a trust, with which the heirs appointed to eleven-twelfths of the estate were charged; stated to Maximilia, the daughter of the testator, who was appointed heir to a twelfth of the estate, that he could produce evidence to show that the will of Vetitus Callinicus was forged; and, having been interrogated by Maximilia before a magistrate, he declared that he would prove in what way the will had been forged. Maximilia signed an accusation of forgery against the writer of the will and Proculus, her co-heir, and the case having been heard, the Prefect of the City decided that the will was not forged, and ordered that the twelfth of the estate belonging to Maximilia should be forfeited to the Treasury.

The question arose whether Aithales was entitled to his freedom, and if the trust should be executed after this decision. The answer was that, in accordance with the facts stated, this was the case.

25. *Ulpianus, On the Edict, Book VII.*

He who is alleged to have given forged letters in the name of the Prsetor, or to have promulgated a forged Edict, is liable to a penal action *in factum,* even though he may have been prosecuted under the Cornelian Law.

26. *Marcellus, Digest, Book XXX.*

Where anyone has destroyed the will of his father, and acts as heir at law, just as if his father had died intestate, and then himself dies, it is perfectly just that the entire estate of his father should be taken from his heir.

27. *Modestinus, Rules, Book Vill.*

He declares that those who have given conflicting evidence between themselves are liable under the terms of the law as having committed forgery.

(1) It was also decided that he who gives false testimony against his own seal, is liable to the penalty for forgery. With reference to the impudence of a person who has testified differently in favor of two persons, and whose faith is so double and vacillating, there is no doubt whatever that he is liable for the crime of forgery.

(2) He who falsely represents himself to be a soldier, or makes use of decorations to which he is not entitled, or travels under a forged permit, should be severely dealt with, according to the nature of the offence committed.

28. *The Same, Opinions, Book IV.*

If an older date than the correct one is stated by a debtor in the obligation of a pledge, there will be ground for an accusation for *crimen falsi.*

29. *The Same, On Select Cases.*

Where anyone deceives the Governor of a province either by means of documents, or filing of petitions, it will be of no advantage to him; and moreover, if he is prosecuted, he must pay the penalty of his rashness, just as if he had committed forgery. There are rescripts extant on this point. It is sufficient for the sake of proof to give a single instance, which is as follows: "Alexander Augustus to Julius Maryllus. If your adversary, in the petition which he filed, did not assert what was true in the request made by him, he cannot avail himself of the instrument which he signed; and, moreover, if he is accused, he must suffer the penalty."

30. *The Same, Pandects, Book XII.*

He who makes or carves a false seal is liable under the Cornelian Law relating to Wills.

(1) In case of the substitution of a child, the parents alone, or those who have an interest in the matter, are entitled to bring the accusation, but none of the people can institute a public prosecution.

31. *Callistratus, On Judicial Inquiries, Book III.*

The Divine Pius stated in a Rescript addressed to Claudius: "Any persons who introduce instruments into court which cannot be proved shall be punished according to the nature of each offence; or, if they seem to have deserved a more serious penalty than can be imposed upon them under this jurisdiction, the facts may be stated to the Emperor, in order that he may determine what punishment shall be inflicted upon them."

The Emperor Marcus, along with his Brother, however, influenced by feelings of humanity, mitigated this punishment; so that if, (as frequently happens), such documents should be produced by mistake, those who did anything of this kind may be pardoned.

32. *Modestinus, On Punishments, Book I.*

At present, those who fraudulently alter any Edicts which have been promulgated are punished with the penalty of forgery.

(1) If a vendor or a purchaser changes any measures used for wine, grain, or anything of this kind which have been publicly approved, or, with malicious intent, commits any other fraudulent act, he shall be condemned to pay double the value of the property; and it was provided by a Decree of the Divine Hadrian that those who used false weights or measures should be relegated to an island.

33. *The Same, On Punishm'ents, Book III.*

If anyone should make use of forged constitutions, without giving any authority for doing so, he will be forbidden the use of water and fire under the Cornelian Law.

## TITLE XI.

## CONCERNING THE JULIAN LAW ON EXTORTION.

1. *Marcianus, Institutes, Book XIV.*

The Julian Law on Extortion has reference to money received by someone who holds the position of magistrate, or who is invested with some degree of power, or administration, or with the office of deputy, or any other public employment or occupation whatsoever; and also applies to the attendants of the above-mentioned dignitaries.

(1) The law excepts those from whom it is permitted to receive money, for instance, from cousins, from near relatives, and from a wife.

2. *Scsevola, Rules, Book IV.*

Under this law, an action is granted against heirs, but only within a year after the death of the person who was accused.

3. *Macer, Public Prosecutions, Book I.*

He is liable under the Julian Law relating to Extortion who, while invested with any authority, accepts money for rendering a judgment or decree;

4. *Venuleius Saturninus, Public Prosecutions, Book HI.* Or for doing more or less than he was obliged to do in the performance of his official duty.

5. *Macer, Public Prosecutions, Book I.*

The attendants of judges can also be prosecuted under this law.

6. *Venuleius Saturninus, Public Prosecutions, Book I.* Those are liable under the same law who receive money either for testifying, or for not testifying.

(1) He who is convicted under this law is forbidden to testify in public, or to be a judge, or to prosecute a crime.

(2) It is provided by the Julian Law relating to Extortion that: "No one shall take money for the purpose of enlisting or discharging a soldier, nor shall anyone accept money for giving his opinion in the Senate or in a public council, or to accuse, or not to accuse anyone; and city magistrates must abstain from all kinds of corruption, and not receive in gifts or presents more than a hundred *aurei* during the entire year."

7. *Macer, Public Prosecutions, Book I.*

The Julian Law on Extortion prescribes that: "No one shall receive anything as an inducement to render a judgment or a decree, or for changing his opinion; or to prevent him from rendering a decision; or to throw a person into prison, or put him in chains; or order him to be chained, or delivered from his chains; or to convict or acquit a man; or to appraise the amount of a judgment; or to sentence anyone to a capital or a pecuniary penalty, or to refrain from doing so."

(1) It is, however, apparent that the law permits all those, excepting such as have been excepted, to receive money without limit; but those enumerated in this Section are not allowed to receive anything from anybody.

(2) It is also provided: "That no public work which is to be constructed shall be accepted as completed, nor any public provisions which are to be distributed held to be transferred or obtained, nor any buildings considered as repaired, before they have been finished, accepted, and delivered according to law."

(3) Persons guilty of extortion are at present arbitrarily dealt with by the law, and they are generally punished with exile, or even more severely, according to the crime which they have committed.

What, however, should be done if they accept money as a reward for killing a man? Or even if they do not accept it, but, impelled by rage, they kill an innocent person, or one whom they should not punish? They should undergo a capital penalty, or be deported to an island, as indeed most of them are.

8. *Paulus, On the Edict, Book LIV.*

When anything is donated to a proconsul or a Praetor, in violation of the law on extortion, he cannot acquire it by usucaption.

(1) The same law provides that: "Sales or leases made for a greater or a less price than is just are for this reason void, and usucaption is prevented before the property comes into the hands of him who had it, or his heir."

9. *Papinianus, Opinions, Book XV.*

Those who, in consideration of money paid to them, relinquish a public employment, are criminally prosecuted for extortion.

## TITLE XII.

## CONCERNING THE JULIAN LAW ON PROVISIONS.

1. *Marcianus, Institutes, Book II.*

A criminal action can be brought by a slave against his master, if the former alleges that his master has committed fraud with reference to provisions belonging to the public.

2. *Ulpianus, On the Duties of Proconsul, Book IX.*

By the Julian Law relating to Provisions a penalty is prescribed against him who commits any act, or forms any association by means of which the price of provisions may be increased.

(1) It is provided by the saine law that no one shall detain a ship or a sailor, or maliciously commit any act by which delay may be caused.

(2) The penalty prescribed is a fine of twenty *aurei.*

3. *Papirius Justus, On the Constitutions, Book I.*

The Emperors Antoninus and Verus stated in a Rescript: "It is anything but just for decurions to sell grain to their fellow citizens at a lower price than the supply of provisions requires."

(1) They likewise asserted that the magistrates of any city had no right to fix the price of grain which was imported.

(2) They also stated the following in a Rescript: "Although it is not customary for women to give this kind of information, still, if you promise that you can furnish information which will be to the benefit of the Department of Subsistence, you can communicate it to the prefect of that branch of the public service."

## TITLE XIII.

## CONCERNING THE JULIAN LAW RELATING TO PECULATION, SACRILEGE, AND BALANCES.

1. *Ulpianus, On Sabinus, Book XLIV.*

It is provided by the Julian Law on Peculation, that: "No one shall intercept, or appropriate for his own use, or do anything, by means of which another can remove, intercept, or employ for his own benefit, any money derived from sacred, religious, or public sources, unless he is authorized to do so by law; and no one shall add to, or mix anything with, gold, silver, or copper belonging to the government; or knowingly and fraudulently commit any act by means of which anything may be added to, or mixed with, the same, through which its value may be diminished."

2. *Paulus, On Sabinus, Book XI.*

He is liable under the Julian Law relating to Balances who retains any public money destined for a certain use, and does not employ it for that purpose.

3. *Ulpianus, On Adultery, Book I.*

The penalty for peculation originally was the interdiction of water and fire, for which, at present, deportation has been substituted. Moreover, anyone who is placed in this position

loses not only all his former rights but also his property.

4. *Marcianus, Institutes, Book XIV.*

He is liable under the Julian Law relating to Peculation who removes or appropriates any money destined for sacred or religious purposes.

(1) He is also liable to the penalty for peculation who abstracts anything which has been donated to Immortal God.

(2) Moreover, it is provided by the Imperial Mandates relating to sacrilege that the Governors of provinces shall search for all sacrilegious persons, robbers, and kidnappers, and punish them according

to the gravity of their offences; and it is provided by the Imperial Constitutions that sacrilege shall be punished arbitrarily, by a penalty proportioned to the crime.

(3) He is liable under the Julian Law relating to Balances who retains in his hands any public money received from leases or purchases, the disposal of provisions or of anything else.

(4) Moreover, he who has received public money destined for any purpose, and retains it, and does not employ it for that purpose, is liable under this law.

(5) Anyone convicted under this law is punishable by a fine of a third more than what he owes.

(6) A place does not become religious in which a treasure is found; for, even though it may be found in a tomb, it is not seized as being religious. For what anyone is forbidden to inter cannot render a place religious, and money cannot be buried, as is provided by the Imperial Mandates,

(7) But when any public property is stolen, it is provided by the Constitutions of the Emperors Trajan and Hadrian that the crime of peculation is committed. This is the present practice.

5. *The Same, Rides, Book IV.*

The Divine Severus and Antoninus stated in a Rescript addressed to Cassius Festus that if the property of private individuals deposited in a temple should be stolen, an action for theft, and not one for sacrilege should be brought.

6. *Ulpianus, On the Duties of Proconsul, Book VII.*

The Proconsul should inflict the penalty for sacrilege either with greater or less severity or clemency, in accordance with the rank and condition of the culprit, taking into consideration the time, as well as his or her age and sex. I know that several magistrates have sentenced persons guilty of sacrilege to be thrown to wild beasts, others to be burned alive, and still others to be hanged on a gallows. The penalty, however, should be regulated by having those thrown to wild beasts who, with an armed band, have broken into a temple, and carried away the gifts of the gods by night; but where a person takes something of trifling value from a temple, he should be punished by being sentenced to the mines, or if he was born in a superior position, he should be deported to an island.

(1) Those who make public money, or stamp it with a public die, and manufacture it for themselves outside of the mint, or steal it after it has been stamped, are not considered to have counterfeited it, but as having committed a theft of the common coin which resembles the crime of peculation.

(2) If anyone should steal any gold or silver belonging to the State, he shall, according to an Edict of the Divine Pius, be punished with exile, or sentenced to the mines according to his rank. Anyone who lends his stamp to a thief is considered to have been convicted- of manifest theft, and becomes infamous. He who has unlawfully extracted gold from a mine, and melted it, is condemned to quadruple damages.

7. *Venuleius Saturninus, Public Prosecutions, Book II.* The crime of peculation cannot be prosecuted after the lapse of five years.

8. *The Same, Public Prosecutions, Book HI.*

Anyone who removes the brazen tablet of the law containing the boundaries of fields or anything else, or changes it in any way, is liable under the Julian Law relating to Peculation.

(1) He who erases anything from the public registers, or inserts anything therein, is liable under this law.

9. *Paulus, On Public Prosecutions.*

Persons convicted of sacrilege shall be punished with death.

(1) Persons guilty of sacrilege are such as purloin sacred articles belonging to the public. Those who appropriate sacred property belonging to persons, or chapels which are unguarded, deserve a more severe penalty than thieves, and a less severe one than sacrilegious persons. Therefore, careful consideration should be given to what is sacred, and to any acts which may be included in the crime of sacrilege.

(2) Labeo, in the Thirty-eighth Book of his Last Works, defines peculation to be the theft of public or sacred money, not made by him at whose risk it was at the time; and therefore the guardian of a temple, to whom property of this kind has been entrusted, does not commit peculation.

(3) In the same chapter, lower down, he says that not only the appropriation of public money, but also that of money belonging to private individuals, constitutes the offence of peculation, when anyone receives funds due to the Treasury pretending that he is the creditor of the latter; even though he may have taken, as his own, money belonging to a private person.

(4) He, also, who receives money for the purpose of transportation, or anyone else who assumes responsibility for money, does not commit peculation.

(5) The Senate ordered that those should be liable under the law against peculation who, without the order of the official in charge, permitted the examination and copying of public registers.

(6) He, also, who retains any public money destined for a certain use and does not employ it for that purpose is liable under this law; so Labeo says in the Thirty-eighth Book of his Last Works. Anyone who, departing from the province where he has held office, renders an account to the Treasury of the money remaining in his hands, and holds it, is not liable to an action to recover the balance, for the reason that he is a private individual indebted to the Treasury, and therefore should be classed among debtors; and he who is invested with authority can collect it from him, either by seizing his property, arresting him, or imposing a fine; but the Julian Law orders that, after the lapse of a year, this money shall be classed as a balance due.

10. *Marcianus, Public Prosecutions, Book I.*

He is liable under this law who enters upon the public registers a smaller amount than the proceeds of a sale or a lease, or who commits any other offence of this kind.

(1) The Divine Severus and Antoninus, having ascertained that a young man of very illustrious lineage had a small chest placed in a temple, and, after the temple was closed, emerged out of the chest and stole many things belonging to the temple, and afterwards again shut himself up in the chest, deported him to an island, after his conviction.

11. *Ulpianus, On the Edict, Book LXVIII.*

Anyone who perforates the wall of a temple, or steals anything by this means, is liable to the action for peculation.

(1) Whoever enters a sanctuary by day or by night, and removes any sacred property therefrom, shall be blinded; and anyone who removes anything outside the sanctuary or any other part of the temple shall be scourged, have his head shaved and be sent into exile.

12. *Marcellus, Digest, Book XXV.*

I am by no means guilty of peculation if I collect money from someone who is indebted to me as well as to the Treasury; for the money which I receive from the debtor of the Treasury is not misappropriated by me, because he still remains indebted to the Treasury.

13. *Modestinus, On Punishments, Book II.*

He who steals booty taken from the enemy is liable under the law relating to peculation, and shall be sentenced to pay quadruple damages.

14. *Papinianus, Questions, Book XXXVI.*

Public prosecutions for peculation, as well as those for appropriating balances, and for extortion, can also be brought against an heir; and this is not unreasonable, as the principle question involved has reference to the stolen money.

## TITLE XIV.

## CONCEENING THE JULIAN LAW.WITH REFERENCE TO THE UNLAWFUL SEEKING OP OFFICE.

1. *Modestinus, On Punishments, Book II.*

This law is not at present in force at Rome, because the creation of magistrates is part of the duty of the Emperor, and does not depend upon the favor of the people.

(1) If anyone in a municipality should violate this law by soliciting either a political or a sacerdotal office, he is by a Decree of the Senate punished by a fine of a hundred *aurei,* and infamy.

(2) If anyone condemned under this law convicts another, he shall be entirely restored to his rights, but his money will not be returned.

(3) Likewise, he who establishes a new tax is liable to this penalty by the Decree of the Senate.

(4) If either an accused person, or an accuser, enters the house of his judge, he commits an unlawful act according to the Julian Law relating to Judges; that is to say, he will be ordered to pay a hundred *aurei* to the Treasury.

## TITLE XV.

## CONCERNING THE FAVIAN LAW WITH REFERENCE TO KIDNAPPERS.

1. *Ulpianus, Rules, Book I.*

Anyone who knowingly purchases a freeman incurs liability for a capital offence under the Favian Law against kidnapping; and the vendor also can be prosecuted under it if he sold the man being aware that he was free.

2. *The Same, On the Duties of Proconsul, Book IX.*

It must be remembered that the Favian Law does not relate to those who, having in their hands absent slaves, sell them; for it is one thing to be absent, and another to be in flight.

(1) Again, it does not apply to a person who has ordered his fugitive slave to be pursued and sold; for he did not sell a fugitive slave.

(2) It can further be said that if anyone orders Titius to arrest a fugitive slave, and, if he should do so, to hold him as purchased, the Decree of the Senate does not apply. Masters who have

sold their slaves when in flight are also liable under this Decree of the Senate.

3. *Marcianus, Public Prosecutions, Book I.*

A *bona fide* possessor is not liable to the penalty imposed by the Favian Law for having wrongfully withheld a slave; that is to say, if he did not know that the slave belonged to another, or if he thought that he acted with the consent of his master. And the law itself is framed in this way with reference to a *bona fide* possessor, for there is added, "If he did this knowingly and fraudulently." It has very frequently been decided by the Emperors Severus and Antoninus that *bona fide* possessors are not liable under this law.

(1) It should not be forgotten that, as under the Aquilian Law, if the person on whose account the Favian Law was violated should die, the accusation and the penalty prescribed by the Favian Law will continue to exist, as the Divine Severus and Antoninus stated in a Rescript.

4. *Gaius, On the Provincial Edict, Book XXII.*

He is liable under the Favian Law who either donates, or gives by way of dowry, a man whom he knows to be free; likewise, anyone who, knowing a man to be free, accepts him under such circumstances, should be included in the same class to which a vendor and a purchaser belong.

The same rule will apply where property is given in exchange for such a man.

5. *Modestinus, Opinions, Book XVII.*

Gave it as his opinion that he who is alleged to have received a fugitive slave belonging to another, and to have concealed him, even if he asserts that he is his property, can, by no means, escape the penalty, if he is proved to be guilty.

6. *Callistratus, On Judicial Inquiries, Book VI.* He does not forthwith become a kidnapper who is guilty of theft, on the ground of withholding slaves belonging to another, for the Divine Hadrian stated in a Rescript: "He who has solicited or appropriated the slaves of another gives rise to the question whether he is, or is not liable for the crime of kidnapping, of which he is accused; and therefore it is not necessary to consult me on this point. The judge, however, in a case of this kind must decide what he knows to be perfectly true, for it is evident that he must be aware that a person can be guilty of the crime of theft with reference to slaves taken from others, and not necessarily for that reason, be considered guilty of kidnapping."

(1) The same Emperor stated in a Rescript with reference to the same matter: "Where one or more fugitive slaves is found in the possession of anyone who has hired their services in consideration of their maintenance, and the said slaves had previously performed labor for others, no one can properly say that the above-mentioned' person has appropriated them."

(2) It is provided by the Favian Law that: "A freeman who conceals one who is freeborn or a freedman, against his will; or has kept him in fetters, and has knowingly and fraudulently purchased him; or has been associated with anyone in a transaction of this kind; or has persuaded the male or female slave of another to run away from his or her master or mistress; or has concealed such a slave without the knowledge or consent of his or her master or mistress; or has kept him or her chained; or knowingly and fraudulently has purchased the slave, or has been implicated in any of these crimes, shall suffer the penalty of the law."

7. *Hermogenianus, Epitomes of Law, Book VI.*

The pecuniary penalty prescribed by the Favian Law has now ceased to be imposed; for those who are convicted of this crime are punished in proportion to its gravity, and are usually sentenced to the mines.

## TITLE XVI.

## CONCERNING THE TURPILLIAN DECREE OF THE SENATE AND THE DISMISSAL OF CHARGES.

1. *Marcianus, On the Turpillian Decree of the Senate.*

The recklessness of accusers is detected in three ways, and is punished by three penalties; for they either calumniate, prevaricate, or withdraw.

(1) To calumniate is to bring false accusations. To prevaricate is to conceal true crimes. To withdraw is to entirely abandon a charge.

(2) Punishment is inflicted upon calumniators by the Remmian Law.

(3) He who does not prove what he alleges is not immediately considered to be a calumniator, for the investigation of the offence is left to the judge, having jurisdiction of the case; who, if the defendant is acquitted, begins to inquire into the intention of the accuser, and why he was induced to bring the accusation; and if he finds this was due to a just mistake, he must discharge him. If, however, he should ascertain that he evidently has been guilty of calumny, he must inflict upon him the penalty of the law.

(4) The decision of either of these points is disclosed by the words of the judgment. For if it is as follows, "You have not proved your allegations," he spares the defendant; but ff he says, "You are guilty of calumny," he condemns him; and even though he may add nothing with reference to the penalty, still the power of the law will be enforced against him. For (as Papinianus held), the question of fact depends upon the discretion of the court, but the infliction of the punishment is not left to his will, but is reserved for the authority of the law.

(5) It may be asked, if the judge should make the following statement, "Lucius Titius appears to have brought a rash accusation," should he be considered to have pronounced him a calumniator? Papinianus says that rashness affords a ground for pardon, and that unrestrained anger lacks the vice of calumny, and on this account no penalty need be incurred.

(6) We have shown him to be a prevaricator who is in collusion with the defendant, and who relinquishes his post as accuser, in order that he may conceal his evidence, and permit the false excuses of the defendant to be advanced.

(7) If, however, anyone desists from prosecuting the accusation without having it dismissed, he is punished.

(8) The dismissal of a case is usually asked for, and granted by the Governors of provinces. The application for it is made to the magistrate while presiding in court, and not elsewhere; and if he is present he cannot leave the investigation to another.

(9) If one person has accused the same individual of several offences, he should apply for the dismissal of each of them, otherwise he will suffer the penalty prescribed by the Decree of the Senate for each offence omitted.

(10) He who brings an accusation which can be barred by prescription, as, for instance, that of adultery, when five continuous years have elapsed since its commission by the man, or after six available months from the day of the divorce, in case of the woman; can there be any doubt whatever that, if he desists, he should be punished under this Decree of the Senate? A difficulty arises here for the reason that this accusation almost becomes of no effect when a period of time, or some defect in the person exists, which will render the defendant secure from fear and danger. On the other hand, when an accusation has once been brought, it cannot be dismissed at the wish of the accuser, but this must be done by the authority of the magistrate having cognizance of the case, and he is considered to be more worthy of odium who rashly brings such a disgraceful charge.

Therefore, the better opinion is that he, also, of whom we spoke, should come within the terms of the Decree of the Senate. Papinianus, however, gives it as his opinion that if a woman who was not competent to bring an accusation of forgery, because she was not prosecuting an injury inflicted upon herself, or her family, should desist, she ought not be punished under the Turpillian Decree of the Senate. Would he have given the same opinion in other cases? For what difference does it make if an accusation is not permitted to be brought on account of the weakness of sex; the baseness of one's condition; or the lapse of time ? There is much more reason that persons should be exempt from punishment under such circumstances, because the accusation of the woman can at least be effective on account of her own injury, while the accusation of the others is nothing but the sound of a voice. However, the same authority has stated elsewhere that no one can accuse both persons, that is the man and the woman, of adultery at the same time; and still, if he did accuse both of them simultaneously, he should ask for the dismissal of the case against both, in order to avoid becoming liable under this Decree of the Senate.

Moreover, what difference will it make if the accusation should prove to be void, for the reasons above mentioned, or if it could not stand on account of the number accused? Or if there is some distinction to be made where anyone has full power to bring an accusation, but is prevented from doing so because of the joinder of the two individuals; or he is not qualified to accuse them according to the strict construction of the law?

Hence it is reasonable to hold that all persons (with the exception of women and minors), when they do not ask for a dismissal of the case, will come within the scope of this Decree of the Senate.

(11) The accusation of a suspected guardian can only be heard in open court, and no one but the Governor of the province can render a decision in such a case; and, nevertheless, anyone who desists from prosecution will not incur the penalty of the Decree of the Senate.

(12) Likewise, where anyone is accused of having incurred the penalty of the Turpillian Decree of the Senate, it is the duty of the Governor of the province to take cognizance of the matter; and the penalty of the Decree of the Senate will not be enforced against the party who abandons the charge, for he who says that someone has incurred the penalty of this Decree of the Senate is not an accuser.

(13) He comes within the terms of this decree who provides an accuser, or instigates, directs, or induces anyone to bring a capital accusation, by furnishing evidence, and by formulating charges. This is reasonable, for by failing to prove the accusation which he was instrumental in having brought, and by attempting to free himself from the danger of calumny by abandoning the case, he should certainly be subjected to punishment for those offences; unless the accuser, who had been suborned, can prove the crime which he undertook to establish. Nor does it make any difference whether he brought the charge himself, or directed it to be brought by another.

Papinianus gave it as his opinion that if it was true that anyone had used means of this kind for the bringing of an accusation, he should be punished, not according to the letter, but according to the spirit of the law; for the accuser who took the place of the person who employed him is liable under the same Decree of the Senate; that is to say, he is punished for that alone which he did as the agent of another, who himself was afraid to act.

(14) A defendant who had been convicted, appealed, and his accuser afterwards desisted; did he come within the terms of the Decree of the Senate? He seems to have very nearly done so, because by the remedy of the appeal the decision of conviction was extinguished.

2. *Paulus, On the Penalties of All Laws.*

Anyone who desists from prosecuting a crime is prevented from subsequently bringing an accusation.

3. *The Same, Sentences, Book I.*

And even in the cases of accusation for private and ordinary breaches of the law, all calumniators are arbitrarily punished in proportion to the gravity of the offences committed.

4. *Papinianus, Opinions, Book XV.*

A woman who institutes a prosecution for forgery, as an injury to herself, and, having desisted, abandons it, is not considered to have incurred the penalty of the Turpillian Decree of the Senate.

(1) After a case has been dismissed, the same charge cannot again be brought by the same accuser against the same defendant.

5. *Paulus, Opinions, Book II.*

Where a man presented a petition to the Emperor and threatened to bring an accusation for forgery, but did not do so, the question arose whether he was liable to the penalty imposed by the Turpillian Decree of the Senate? Paulus answered that the party in question was not included in the terms of the Turpillian Decree of the Senate.

6. *The Same, Sentences, Book I.*

He has desisted from the accusation who has spoken with his adversary with reference to the disposal of the criminal charge which he had attempted to prosecute.

(1) He intentionally abandons an accusation who renounces the desire and intention of bringing it.

(2) He is held to have desisted, who does not prosecute the defendant within the time prescribed by the Governor to prove the charge.

(3) Those who serve notice in writing of their intention to prosecute are ordered to substantiate their allegations by the production of the notices.

(4) Those are punished for false accusations who, for the purpose of injuring another, are alleged to have searched for, written, or produced in court any book or other evidence to his prejudice.

7. *Ulpianus, Disputations, Book Vill.*

If anyone should wish to revive a criminal accusation after it has been publicly dismissed, he can do so with the same right which he had when he first brought it; for prescriptions cannot legally be pleaded against him which were not pleaded before the discharge of the defendants.

This the Divine Hadrian stated in a Rescript.

(1) Where anyone brings an accusation for *stellionatus,* or for the crime of plundering an estate, and then desists, he will not be subjected to the penalty of the Turpillian Decree of the Senate, even if theft or injury is involved, but his fault will be punished by the judge.

8. *Papinianus, On Adultery, Book II.*

The dismissal of a criminal case is either made publicly on account of some memorable occasion, or because of some public rejoicing,

9. *Macer, Public Prosecutions, Book II.*

Or by reason of the fortunate result of some transaction,

10. *Papinianus, On Adultery, Book II.*

Or privately, at the request of the accuser. There is a third kind of dismissal made in accordance with law, that is, when the accuser dies, or is prevented by some good reason from bringing the accusation.

(1) When a dismissal is made in accordance with a public decree, the husband, in bringing the charge a second time, will not forfeit any of his rights.

(2) The Divine Hadrian stated that the thirty days prescribed for reviving an accusation should be understood to be available days, that is to say they should be computed from the date on which the festivals terminated. The Senate decreed that these days began at the time when anyone could resume the prosecution of the defendant. This time to revive the case does not begin to run except where the accuser can institute proceedings.

11. *The Same, On Adultery.*

The question was asked whether those who had been excluded from bringing an accusation by lapse of time come within the scope of the Turpillian Decree of the Senate. The answer was that there is no doubt that persons who are prevented by prescription from bringing a charge of adultery can be punished for calumny.

12. *Ulpianus, On Adultery, Book II.*

Where a public dismissal of a criminal case has occurred under the Decree of the Senate, as ordinarily happens; or on account of some public rejoicing; or to honor the Imperial House; or for some reason for. which the Senate decreed that the defendants should be discharged, and the accuser did not renew the accusation within the prescribed time, it must be said that the Turpillian Decree of the Senate does not apply, for he is not held to desist who does not accuse a person that is exempt from criminal liability. He, however, becomes exempt from prosecution by the discharge of the defendants.

13. *Paulus, On Adultery, Book III.*

We understand a person to have desisted who has entirely abandoned the intention of prosecuting, and not he who has only postponed the accusation. Anyone who, by permission of the Emperor, desists from prosecuting a criminal charge, is not liable to punishment.

14. *Ulpianus, On the Duties of Proconsul, Book VII.*

The Divine Hadrian stated in a Rescript addressed to Salvius Carus, Proconsul of Crete, that where a guardian had filed an accusation in the name of his ward, and the latter, in whose behalf he had filed it, had died, he should not be compelled to proceed with the accusation.

15. *Macer, Public Prosecutions, Book II.*

Those come within the scope of the Turpillian Decree of the Senate who substitute accusers in their places; or who, having done so, bring the accusation without prosecuting the defendants; or desist from the prosecution in some other manner than by the dismissal of the case, as well as such as have filed some written document, or have entered into some agreement for the purpose of accusing another. It must be said that these words, "Bring the accusation without prosecuting the defendants," are applicable to all the persons above mentioned.

(1) The question arises whether the Decree of the Senate applies to those who, at present, have extraordinary jurisdiction of public offences. The present law, based upon the Imperial Constitutions, is that it does apply; hence each penalty will be imposed in each individual case.

(2) If those who are not permitted to bring an accusation for calumny desist, they will not be liable to the penalty of this Decree of the Senate. This has been provided by the Constitutions.

(3) If, on account of the death of the defendant, the accuser should desist, he cannot be held liable under this Decree of the Senate; because the prosecution is extinguished by the death of the accused, unless the crime is such that its prosecution can be continued against the heirs, as, for instance, that of high treason.

The same rule applies where an accusation is brought for extortion, because this also is not extinguished by death.

(4) Moreover, if the defendant should die after the accuser has desisted from the prosecution, the offence of the accuser will not, for this reason, be lessened. For if he who has once desisted should afterwards be ready to renew the accusation, Severus and Antoninus have decreed that he shall not be heard.

(5) Those who, after having filed a written accusation, have permitted one or two years to elapse, for the reason that they could not prosecute on account of their various occupations as Governors, or because they were prevented by the requirements of civil office, do not come within the terms of the Decree of the Senate.

(6) If anyone has accused a person in the first place, and, after the case has been dismissed, but before the defendant is again accused, a second dismissal should occur, the thirty days should be computed, not from the first, but from the second dismissal of the case.

16. *Paulus, On Adultery.*

Domitian stated in a Rescript that what is provided with reference to festivals, and the discharge of defendants, does not apply to slaves who, having been accused, are ordered to be placed in chains until the case is decided.

17. *Modestinus, Opinions, Book XVII.*

Lucius Titius accused Seius of forgery, and before he prosecuted him, the accusations of all defendants were dismissed by the indulgence of the Emperor. I ask, if the prosecution should not afterwards be resumed whether the accuser would be subject to the penalty of the Turpillian Decree of the Senate. Herennius Modestinus answered that the discharge of defendants, granted by public favor, does not apply to this kind of crime.

18. *Papirius Justus, On the Constitutions, Book I.*

The Emperors Antoninus and Verus stated in a Rescript to Julius Verus that, as the case had been continued for a considerable time, the latter could not obtain its dismissal against the consent of his adversaries.

(1) They also stated in a Rescript that, unless it was clearly proved that the adversary had given his consent, dismissal should not be granted.

(2) They also stated in a Rescript that, where the dismissal of an accusation for a capital crime had been applied for, as in a case involving a sum of money, the prosecution might, nevertheless, be renewed; so that if the complainant could not prove what he alleged he should not go unpunished.

## TITLE XVII.

## CONCERNING THE CONVICTION OF PERSONS WHO ARE SOUGHT FOR OR ARE ABSENT.

1. *Marcianus, Public Prosecutions, Book II.*

The Divine Severus and Antoninus stated in a Rescript that no one who is absent should be punished, and it is the present law that absent persons shall not be condemned; for the rule of equity does not suffer anyone to be convicted without being heard.

(1) If anyone is liable to severe punishment, for instance, if he may be condemned to labor in the mines, or to a similar penalty, or to a capital one, in this case the penalty must not be inflicted upon an absent person, but anyone who is absent and is sought for is recorded as being present.

(2) The Governors of provinces should follow this course with reference to defendants who are sought for, and noted as being present; namely, they should order them by Edicts to appear in order that those who have been mentioned as being present should become aware of the fact. They should also write to magistrates where the parties live, in order that, by their agency, those who are being sought for may ascertain that they have been recorded as being present.

(3) A year is computed from this date to enable them to purge themselves of contempt.

(4) And even Papinianus, in the Sixteenth Book of Opinions, says that he who is sought for, and noted as being present, must appear before the Governor of the province within twelve months, and furnish security; and that there is no reason to order that his property shall be confiscated to the Treasury, for if he should die within the year, the accusation of the crime will be extinguished, and come to an end, and the property of the party accused will be transmitted to his successors.

2. *Macer, On Public Prosecutions, Book II.*

The term of a year is fixed for the purpose of seizing the property of anyone who is sought for and noted as being present.

(1) If, however, the Treasury does not seize his property for twenty years, it will be barred from doing so subsequently, if prescription should be pleaded either by the defendant himself, or by his heirs.

3. *Marcianus, On Public Prosecutions, Book II.*

Any claim made by the Treasury is prescribed by a silence of twenty years, when there is no other prescription, as was established by the Divine Emperors.

4. *Macer, On Public Prosecutions, Book II.*

The year is computed from the time when the notification was publicly made, either by means of an Edict or by letters sent to the magistrate.

(1) Therefore, the term of twenty years is reckoned for the Treasury, from the moment when the notice was published.

(2) In a word, it should be remembered that he who is sought for and notified is not barred from undertaking his defence by any prescription of time.

5. *Modestinus, Pandects, Book XII.*

It is provided by the Imperial Mandates that the property of persons who are sought for shall be sealed up during the year, and if they return, and offer proper excuses, they shall have it restored to them. If, however, they do not answer, and no one appears to defend them, after a year has elapsed, their property shall be confiscated to the Treasury.

(1) And, during the intermediate year, any movable property belonging to them may be sold, in order to prevent it being spoiled by delay, or destroyed, and the proceeds thereof shall be deposited; as authorized by the Divine Severus and Antoninus.

(2) The Divine Trajan stated in a Rescript that crops also are considered movable property.

(3) Care, however, should be taken that the fugitive shall, in the meantime, be paid nothing by his debtors, lest by this means his flight may be aided.

## TITLE XVIII.

## CONCERNING TORTURE.

1. *Ulpianus, On the Duties of Proconsul, Book Vill.*

It is customary for torture to be applied for the purpose of detecting crime. Let us see when,

and to what extent, this should be done. A beginning ought not to be made by the actual infliction of the question, and the Divine Augustus decided that confidence should not unreservedly be placed in torture.

(1) This is also contained in a letter of the Divine Hadrian addressed to Sennius Sabinus. The terms of the Rescript are as follows: "Slaves are to be subjected to torture only when the accused is suspected, and proof is so far obtained by other evidence that the confession of the slaves alone seems to be lacking."

(2) The Divine Hadrian also stated the same thing in a Rescript to Claudius Quartinus, and in this Rescript he decided that a beginning should be made with the person who was most suspected, and from whom the judge believed that the truth could most easily be ascertained.

(3) Those whom the accuser produces from his own house should not be tortured, for it is not easy to believe that a substitution has been made for one whom both parents consider their dear daughter; as is stated in a Rescript of the Divine Brothers addressed to Lucius Tiberianus.

(4) They also stated in a Rescript to Cornelius Proculus, that confidence should not be reposed in the torture of a single slave, but that the case should be investigated after the evidence has been given.

(5) The Divine Antoninus and the Divine Hadrian stated in a Rescript to Sennius Sabinus that where it was alleged that slaves, in company with their master, had carried away gold and silver, they should not be interrogated against their master, and not even anything which they may have said when not un'der torture will prejudice him.

(6) The Divine Brothers stated in a Rescript addressed to Lelianus Longinus that torture should not be applied to a slave belonging to the heirs, to obtain information with reference to the estate, even though it was suspected that the heir had obtained the ownership of the property by means of a fictitious sale.

(7) It has frequently been stated in Rescripts that a slave belonging to a municipality can be tortured when citizens are accused, because he is not their slave, but the slave of the community. The same thing should be stated with reference to the slaves of other corporations, for a slave is not considered to belong to several masters, but to the corporate body.

(8) When a slave is serving me in good faith, even though I do not have the ownership of him, it may be said that he can not be tortured to obtain evidence against me.

The same rule applies to a freeman who is serving in good faith as a slave.

(9) It has also been established that a freedman cannot be tortured in a case where his patron is accused of a capital crime.

(10) Our Emperor, together with his Divine Father, stated in a Rescript that one brother could not be put to the question on account of another; and added as the reason that he should not be tortured to obtain evidence to implicate one against whom he could not be compelled to testify, if he was unwilling to do so.

(11) The Divine Trajan stated in a Rescript to Servius Quartus that the slave of a husband could be tortured to obtain evidence to convict his wife.

(12) He also stated in a Rescript to Mummius Lollianus that the slaves of a person who had been convicted could be tortured to obtain evidence against him, because they had ceased to be his.

(13) When a slave has been manumitted to prevent him from being put to torture, the Divine Pius stated in a Rescript that he could be tortured, provided this was not done to obtain evidence against his master.

(14) But where a slave belonged to another at the time when the investigation was begun, but afterwards became the property of the defendant, the Divine Brothers stated in a Rescript that he could, nevertheless, be tortured in the case in which his master was involved.

(15) If anyone should allege that a slave has been purchased at a sale which was void, he cannot be tortured before it has been established that the sale was not valid. This our Emperor, with his Divine Father, stated in a Rescript.

(16) Severus also stated in a Rescript to Spicius Antigonus: "As the torture of slaves should not be inflicted against their masters, and, if this has been done, as it cannot be used to influence the decision of the judge about to render it, still less should the statements of slaves against their masters be admitted."

(17) The Divine Severus stated in a Rescript, that the confessions of accused persons should not be considered as proofs of crime, if no other evidence is offered to influence the sense of duty of the judge who is to decide the case.

(18) When anyone is ready to deposit the price of a slave, in order that he may be tortured to give evidence against his master, our Emperor, with his Divine Father, did not permit this to be done.

(19) Where slaves are tortured as accomplices in a crime, and they confess something in court which involves their master, the Emperor Trajan stated in a Rescript that the judge should render his decision as circumstances demand.

It is shown by this Rescript that masters can be implicated by the confessions of their slaves, but more recent constitutions indicate that it is no longer in force.

(20) When tributes, which no one doubts are the sinews of the republic, are concerned, consideration of the danger which menaces with capital punishment a slave who is the accomplice of a fraud should cause his statements to be rejected.

(21) The magistrate in charge of the torture ought not directly to put the interrogation whether Lucius Titius committed the homicide, but he should ask in general terms who did it; for the other way rather seems to suggest an answer than to ask for one. This the Divine Trajan stated in a Rescript.

(22) The Divine Hadrian stated the following in a Rescript addressed to Calpurnius Celerianus: "Agricola, the slave of Pompeius Valens, may be interrogated concerning himself; but if, while undergoing torture, he should say anything more, it will be considered as proof against the defendant, and not the fault of him who asked the question."

(23) It was declared by the Imperial Constitutions that while confidence should not always be reposed in torture, it ought not to be rejected as absolutely unworthy of it, as the evidence obtained is weak and dangerous, and inimical to the truth; for most persons, either through their power of endurance, or through the severity of the torment, so despise suffering that the truth can in no way be extorted from them. Others are so little able to suffer that they prefer to lie rather than to endure the question, and hence it happens that they make confessions of different kinds, and they not only implicate themselves, but others as well.

(24) Moreover, faith should not be placed in evidence obtained by the torture of enemies, because they lie very readily; still, under the pretext of enmity, its employment should not be rejected.

(25) After the case has been duly investigated, it can be decided whether confidence is to be placed in torture, or not.

(26) When anyone has betrayed robbers, it is stated by certain rescripts that no confidence should be placed in those who betrayed them. In others, however, which are more specific, it is provided that the evidence should not be entirely rejected, as is usual in similar cases; but,

after proper consideration, it should be determined whether it is entitled to credit or not. For the majority of such persons, who fear that those who have been arrested may mention them, are accustomed to betray the latter for the purpose of themselves obtaining immunity, because accused persons who denounce those who have betrayed them are not readily believed; nor should immunity indiscriminately be granted to them as a reward for betrayals of this kind; nor should their allegations be believed, when they say that they have been accused by the others for having given them up, for this weak proof based on mendacity or calumny ought not to be considered against them.

(27) If anyone voluntarily confesses a crime, faith should not always be reposed in him; for sometimes one makes a confession through fear, or for some other reason. An Epistle of the Divine Brothers addressed to Voconius Saxa declares that a man who had made a confession against himself, and whose innocence was established, must be discharged after his conviction.

The terms of the Epistle are as follows: "It is in compliance with the dictates of prudence and humanity, my dear Saxa, that, where a slave was suspected of having falsely confessed himself guilty of homicide, through fear of being restored to his master, you condemned him, still persevering in his false statement, with the intention of subjecting to torture his alleged accomplices, whom he had also accused falsely, in order that you might render his statements with reference to himself more certain.

"Nor was your judicious intention in vain, as it was established by the torture that the persons referred to were not his accomplices, but that he had accused himself falsely. You can then set aside the judgment, and order him to be officially sold, under the condition that he never shall be returned to the power of his master, who, having received the price, will certainly be very willing to be rid of such a slave."

The Rescript indicates that, when a slave is condemned, if he should subsequently be discharged from liability, he will belong to the person whose property he was before his conviction. The Governor of the province, however, cannot restore anyone whom he has condemned to his original condition, as he cannot even revoke a decision in which money is involved. What then should be done? He should have recourse to the Emperor when anyone who at first appeared to be guilty, afterwards has his innocence established.

2. *Ulpianus, On the Edict, Book XXXIX.*

Slaves forming part of an estate cannot be put to the torture to obtain evidence against their masters, as long as it is uncertain to whom the property belongs.

3. *The Same, On the Edict, Book LVI.*

It was established by a Constitution of Our Emperor and the Divine Severus that a slave belonging to several owners cannot be subjected to torture against any of them.

4. *The Same, Disputations, Book III.*

In a case of incest (according to the opinion of Papinianus,' which is also set forth in a Rescript), slaves are not liable to torture, because the Julian Law relating to Adultery does not apply.

5. *Marcianus, Institutes, Book II.*

Where anyone debauches a widow or a woman married to another, with whom he could not legally have contracted matrimony, he should be deported to an island, as the crime is a double one; incest, because, contrary to Divine Law, he has violated a woman related to him, and has added adultery or fornication to this offence. Finally, in a case of this kind, slaves can be tortured for the purpose of obtaining evidence against their masters.

6. *Papinianus, On Adultery, Book II.*

When a father or a husband brings an accusation of adultery, and a demand is made that the slaves of the party accused be put to the question, if an acquittal should result, after the case has been argued, and the witnesses produced, an estimate must be made of the value of the slaves who have died; but if a conviction should be obtained, the surviving slaves shall be confiscated.

(1) When the case is one involving a forged will, the slaves belonging to the estate can be tortured.

7. *Ulpianus, On Adultery, Book III.*

The judges must determine the measure of torture, and therefore it should be inflicted in such a way that the slave may be preserved either for his acquittal, or his punishment.

8. *Paulus, On Adultery, Book II.*

The Edict of the Divine Augustus, which he published during the Consulate of Vivius Avitus and Lucius Apronianus, is as follows: "I do not think that torture should be inflicted in every instance, and upon every person; but when capital and atrocious crimes cannot be detected and proved except by means of the torture of slaves, I hold that it is most effective for ascertaining the truth, and should be employed."

(1) The slave who is to be free under a condition may be subjected to torture, because he is the slave of the heir, but he will still retain his hope of freedom.

9. *Marcianus, On Public Prosecutions, Book II.*

The Divine Pius stated in a Rescript that torture could be inflicted upon slaves in cases where money was involved, if the truth could not otherwise be ascertained, which is also provided by other rescripts. This, however, is true to the extent that this expedient should not be resorted to in a pecuniary case, but only where the truth cannot be ascertained unless by the employment of torture is it lawful to make use of it, as the Divine Severus stated in a Rescript. Hence it is permitted to put the slaves of others to the question if the circumstances justify it.

(1) In cases in which torture should not be inflicted upon slaves to obtain evidence against their masters they cannot even be interrogated, and still less can the statements of slaves against their masters be admitted.

(2) Torture should not be inflicted upon one who is deported to an island, as the Divine Pius stated in a Rescript.

(3) Nor should it be inflicted, in a pecuniary case, upon a slave who is to be free under a condition, unless the condition fails to be fulfilled.

10. *Arcadius, Charisius, On Witnesses.*

Torture should not be inflicted upon a minor under fourteen years of age, as the Divine Pius stated in a Rescript addressed to Csecilius Jubentinus.

(1) All persons, however, without exception, shall be tortured in a case of high treason which has reference to princes, if their testimony is necessary, and circumstances demand it.

(2) It may be asked whether torture cannot be inflicted upon slaves belonging to the *castrense peculium* of a son in order to obtain evidence against his father. For it has been established that a father's slave should not be tortured to obtain evidence against his son. I think that it may be properly held that the slaves of a son should not be tortured to obtain evidence against his father.

(3) Torture should not be applied to the extent that the accuser demands, but as reason and moderation may dictate.

(4) The accuser should not begin proceedings with evidence derived from the house of the defendant, when he calls as witnesses the freedmen or the slaves of the person whom he accuses.

(5) Frequently, also, in searching for the truth, even the tone of the voice itself, and the diligence of a keen examination afford assistance. For matters available for the discovery of truth emerge into the light from the language of the witness, and the composure or trepidation he displays, as well as from the reputation which each one enjoys in his own community.

(6) In questions where freedom is involved, it is not necessary to seek for the truth by the torture of those whose status is in dispute.

11. *Paulus, On the Duties of Proconsul, Book II.* Even if a slave should be returned under a condition of the sale, he shall not be tortured to obtain evidence against his master.

12. *Ulpianus, On the Edict, Book LIV.*

When anyone, to avoid being tortured, alleges that he is free, the Divine Hadrian stated in a Rescript that he should not be put to the question before the case brought to decide his freedom has been tried.

13. *Modestinus, Rules, Book V.*

It is established that a slave can be tortured after he has been appraised, or the required stipulation has been entered into.

14. *The Same, Rules, Book Vill.*

.A slave who is to be free under a condition, and who has been convicted of crime, will be entitled to the privilege of expecting his liberty, so that on account of the uncertainty of his status he will be punished as a freeman, and not as a slave.

15. *Callistratus, Judicial Inquiries, Book V.*

It is not necessary to inflict torture in the case of a freeman, where his testimony is not vacillating.

(1) In the case of a minor under fourteen years of age, the Divine Pius stated in a Rescript to Msecilius that torture should not be inflicted to obtain evidence against another, especially as the accusation was by no means established by other evidence, since it did not result that the minor should be believed, even without the application of torture; for he says that age, which appears to protect persons against the harshness of torture, renders them also more suspected of falsehood.

(2) He who has given security to another claiming a slave should be considered as the master; and therefore such slaves cannot be put to torture to obtain evidence against him. The Divine Pius stated the following in a Rescript: "You must prove your case by other testimony, for torture should not be inflicted upon slaves, when the possessor of an estate has given security to a claimant, and in the meantime, is considered as the master."

16. *Modestinus, On Punishments, Book III.*

The Divine Brothers stated in a Rescript that torture could be repeated.

(1) The Divine Pius stated in a Rescript that one who has made a confession implicating himself, shall not be tortured to obtain evidence against others.

17. *Papinianus, Opinions, Book XVI.*

Again, when a stranger brings an accusation, it has been established that slaves can be tortured to obtain evidence against their masters; a rule which the Divine Marcus, and afterwards the Emperor Maximus, followed in rendering their decisions.

(1) Slaves are not tortured against their master where a charge of fornication is made.

(2) In a case of fraudulent birth, if a person whom the other children assert is not their brother claims the estate, torture shall be applied to slaves belonging to the estate, for the reason that it is not employed against the other children as masters, but in order to determine the succession of the deceased owner. This agrees with what the Divine Hadrian stated in a Rescript, for when a man was accused of having murdered his partner, the Emperor decreed that a slave owned in common could be put to the question, because this appeared to be done in behalf of his master who had been killed.

(3) I gave it as my opinion that where a slave has been sentenced to the mines, he should not be tortured to obtain evidence against the person who had been his master, and that it made no difference if he had confessed that he had been the perpetrator of the crime.

18. *Paulus, Sentences, Book V.*

Where several persons are accused of the same offence, they should be heard in such a way as to begin with the one who is the most timid, or appears to be of tender age.

(1) An accused person who is overwhelmed with conclusive evidence can be tortured a second time; especially if he has hardened his mind and body against the torments.

(2) In a case in which nothing has been proved against the defendant, torture should not be applied without due consideration; but the accuser should be urged to confirm and substantiate what he has alleged.

(3) Witnesses should not be tortured for the purpose of convicting them of falsehood, or to ascertain the truth; unless they are alleged to have been present when the deed was committed.

(4) When a judge cannot otherwise obtain reliable information concerning a family, he can torture the slaves belonging to the estate.

(5) No confidence should be placed in a slave who voluntarily makes charges against his master, for the safety of masters must not be left to the discretion of their slaves.

(6) A slave cannot be interrogated to obtain evidence against his master, by whom he has been sold, and whom for some time he served as a slave, in remembrance of his former ownership.

(7) A slave should not be interrogated, even if his master offers to have him put to the torture.

(8) It is clear that every time an inquiry is made whether slaves should be interrogated to obtain evidence against their masters, it must first be ascertained that the latter are entitled to their ownership.

(9) A governor who is to take cognizance of a criminal accusation must publicly appoint a day when he will hear the prisoners, for those who are to be defended should not be oppressed by the sudden accusation of crime; although, if at any time the defendant requests it, he should not be refused permission to defend himself, and on this account, the day of the hearing, whether it has been designated or not, may be postponed.

(10) Prisoners can not only be heard and convicted in court, but also elsewhere.

19. *Tryphoninus, Disputations, Book'IV.*

He who is entitled to freedom under the terms of a trust cannot be tortured as a slave, unless he is accused by others who already have been subjected to torture.

20. *Paulus, Decisions, Book III.*

A husband, as the heir of his wife, brought suit against Surus for money which he alleged the deceased had deposited with him during his absence, and, in proof of it, he produced a single witness, the son of his freedman. He demanded before the Agent of the Treasury that a certain female slave should be put to torture. Surus denied that he had received the money, and stated

that the testimony of one man should not be admitted; and that it was not customary to begin proceedings with torture, even though the female slave belonged to another. The Agent of the Treasury caused the female slave to be tortured. The Emperor decided, on appeal, that torture had been unlawfully inflicted, and that the testimony of one witness should not be believed, and therefore that the appeal had been properly taken.

21. *The Same, On the Punishments of Civilians.*

The Divine Hadrian stated in a Rescript that no one should be condemned because he was liable to be subjected to torture.

22. *The Same, Sentences, Book I.*

Those who have been arrested without having any accusers, can not be tortured, unless well-grounded suspicion is attached to them.

## TITLE XIX.

## CONCERNING PUNISHMENTS.

1. *Ulpianus, Disputations, Book Vill.*

In every case of crime, it has been decided that the person convicted shall not suffer the penalty which his condition admitted at the time when judgment was rendered against him, but that which he would have undergone if he had been sentenced when he committed the offence.

(1) Hence, when a sla^e commits a crime, and it is alleged that he afterwards obtained his freedom, he must suffer the penalty which he would have suffered if he had been sentenced at the time when he perpetrated the offence.

(2) On the other hand, if his condition would be rendered worse, he must undergo the penalty which he would have undergone if he had remained in his former condition.

Generally speaking, it has been decided that, with reference to the laws relating to public prosecutions or private offences of which Prefects or Governors have extraordinary jurisdiction, poor persons, who escape pecuniary penalties, are liable to arbitrary punishment.

2. *The Same, On the Edict, Book XLVIII.*

We should understand a person who has been convicted of a capital crime to be found guilty of an offence which entails death, the loss of civil rights, or servitude.

(1) It is established that after deportation has been substituted for the interdiction of water and fire, the defendant does not lose his citizenship until the Emperor has decided that he shall be deported to an island. For there is no doubt that the Governor cannot deport him, but the Prefect of the city has a right to do so, and he is considered to have lost his citizenship immediately after the sentence of the Prefect has been pronounced.

(2) We understand him to have been condemned who has not appealed; if, however, he should appeal, he is not yet considered to be convicted. But if he should be found guilty of a capital crime by someone who had not the right to do so, the result will be the same, for a person is only convicted whose condemnation stands.

3. *The Same, On Sabinus, Book XIV.*

The execution of the penalty imposed upon a pregnant woman should be deferred until she brings forth her child. I. indeed, am well aware of the rule that torture must not be inflicted upon her as long as she is pregnant.

4. *Marcianus, Institutes, Book XIII.*

Persons who are relegated or deported to an island should avoid forbidden places; and it is the

law that one who has been relegated shall not depart from the place to which he was assigned, otherwise he who has been relegated for a time will be condemned to perpetual exile. He who is relegated for life is sent to an island; he who is relegated to an island is deported; and he who is deported to an island is subjected to the penalty of death.

This is the case whether the convicted person did not go into exile within the time that he should have done so, or whether he did not obey the other rules of exile, for his obstinacy increases his penalty, and no one can effect the transfer of return of an exile except the Emperor for some good reason.

5. *Ulpianus, On the Duties of Proconsul, Book VII.*

The Divine Trajan stated in a Rescript addressed to Julius Fron-tonus that anyone who is absent should not be convicted of crime. Likewise, no one should be convicted on suspicion; for the Divine Trajan stated in a Rescript to Assiduus Severus: "It is better to permit the crime of a guilty person to go unpunished than to condemn one who is innocent." Persons, however, who are contumacious and do not obey either the notices or the edicts of Governors, can, even though absent, be sentenced, as is customary in private offences. Anyone can safely maintain that these things are not contradictory. What, then, should be done? With reference to parties who are absent it is better to decide that pecuniary penalties, or those which affect the reputation, even to the extent of relegation, can be imposed if they, having been frequently notified, do not appear through obstinacy; but if any more serious punishment should be inflicted, as, for instance, hard labor in the mines, or death, it cannot be imposed upon the parties while they are absent.

(1) It must be said that where an accuser is absent, heavier penalties are sometimes imposed than that prescribed by the Turpillian Decree of the Senate.

(2) A distinction must be made in more serious crimes, that is whether they have been committed intentionally, or accidentally. And, indeed, in all offences, this distinction should either induce a penalty to be inflicted in strict compliance with the law, or admit of moderation in this respect.

6. *The Same, On the Duties of Proconsul, Book IX.*

When anyone, to avoid being subjected to punishment, alleges that he has something to communicate to the Emperor which concerns his safety, let us see whether he should be sent to him. There are many Governors who are so timid that, even after they have passed sentence for a crime, they suspend its execution, and do not dare to do anything else. Others do not permit defendants to say anything of this kind. Others again, sometimes, but not always, send them to the Emperor, but they inquire what it is they wish to communicate to him, and what they have to say with reference to his safety; after which they either defer the infliction of the penalty, or execute it; which course seems to be reasonable. Besides, in my opinion, after the defendants once have been convicted, no attention should be paid to them, no matter what they say. For who can entertain any doubt that they have had recourse to this pretext for the purpose of escaping punishment ? And there is even more reason that they should be punished for having so long failed to mention what they boast they have to disclose concerning the safety of the Emperor, for they should not keep such important information to themselves for so long a time.

(1) If a Proconsul ascertains that any of his attendants, or any of those of his deputy is a criminal, should he punish him, or reserve him for his successor? is a question which may be asked. But there are many examples which show that they have punished not only the slaves of their officers, and of their subordinates, but their own as well. This, indeed, is what should be done, in order that, having been terrified by the example, they may commit fewer offences.

(2) Now we must enumerate the different kinds of penalties which Governors can inflict upon various culprits. These are such as take away life, or impose servitude, or deprive a person of

citizenship, or include exile or corporeal punishment:

7. *Callistratus, On Judicial Inquiries, Book VI.*

Such as castigation with rods, scourging, and blows with chains,

8. *Ulpianus, On the Duties of Proconsul, Book IX.* Or condemnation with infamy, or degradation from rank, or the prohibition of some act.

(1) Life is taken away, for instance, where anyone is sentenced to be put to death by the sword, for the punishment must be inflicted with a sword, and not with an ax, a dart, a club, a noose, or in any other way. Hence Governors have not free power to grant the choice of death, and even less the right to inflict it by means of poison. Still, the Divine Brothers stated in a Rescript that they are permitted to select the mode of death.

(2) Enemies, as well as deserters, are subjected to the penalty of being burned alive.

(3) No one can be condemned to the penalty of being beaten to death, or to die under rods or during torture, although most persons, when they are tortured, lose their lives.

(4) There are penalties which deprive a person of his liberty, as where anyone is sentenced to the mines, or to some work connected with them. There are a great number of mines. Some provinces have them and some have not; and those which have none send culprits who have been sentenced into the provinces which have.

(5) By a Rescript of the Divine Severus, addressed to Fabius Cilo, the right to sentence persons to the mines is exclusively reserved to the Prefect of the City of Rome.

(6) The difference between those who are sentenced to the mines, and those who are sentenced to labor in the mines, is only a matter of chains; for those who are sentenced to the mines are oppressed with heavier chains, and those who are sentenced to work connected with the mines wear lighter ones. The result of this is that those who escape from labor connected with the mines are sentenced to the mines; and those who escape from the mines themselves are punished even more severely.

(7) Moreover, anyone sentenced to labor on the public works and escapes is usually condemned to serve double time; but only that time should be doubled which remained for him to serve when he escaped, and that should not be doubled which he passed in prison after having been arrested. If he was sentenced to serve ten years, his punishment should be made perpetual, or he should be transferred to the labor of the mines. Where he was sentenced to serve ten years, and immediately afterwards escaped, let us see whether his time should be doubled, or be made perpetual, or whether he should be transferred to the labor of the mines. The better opinion is, that he should either be transferred, or sentenced to serve for life. For, generally speaking, it is said that when double the time exceeds the period of ten years, the penalty should not be limited.

(8) Women are usually sentenced to the service of those working in the mines, for life or for a term, just as is the case with reference to the salt-pits. Where they are sentenced for life, they are considered penal slaves; but if they are sentenced for a prescribed term, they retain their civil rights.

(9) Governors usually sentence criminals to be confined in prison, or to be kept in chains; but they should not do this, for penalties of this kind are forbidden, as a prison should be used for the safe-keeping of men, and not for their punishment.

(10) They are also accustomed to sentence them to chalk-pits, and sulphur-pits, but these punishments are rather included in that of the mines.

(11) Let us see whether those who are sentenced to the amusement of hunting, become penal slaves; for the younger ones are ordinarily subjected to this penalty. Therefore it must be considered whether such persons become penal slaves, or whether they retain their freedom.

The better opinion is that they also become slaves, for the only way in which they differ from others is that they are instructed in hunting, or dancing, or in some other art, for the purpose of acting in pantomime, and other theatrical exhibitions for the entertainment of audiences.

(12) There is no doubt that slaves are usually sentenced to the mines, to labor connected with the mines, or to the amusement of hunting. When this is done they become penal slaves, and no longer belong to him whose property they were before they were convicted. Finally, when a certain slave who was sentenced to the mines was released from punishment through the indulgence of the sovereign, the Emperor Antoninus very properly stated in a Rescript that, for the reason that he having become a penal slave, and on that account having ceased to belong to his master, he should not afterwards be restored to him.

(13) Where a slave has been sentenced to perpetual, or temporary confinement in chains, he continues to be the property of him to whom he belonged before he was convicted.

9. *The Same, On the Duties of Proconsul, Book X.*

It is not unusual for Governors to forbid persons to act as advocates, sometimes for life, and sometimes for a certain term of years, or for the time during which they rule the province.

(1) Anyone can also be forbidden to assist certain persons.

(2) Anyone can be forbidden to accuse another before the tribunal of a Governor, and still he cannot be forbidden to do so before his deputy, or the Agent of the Treasury.

(3) If, however, he is forbidden to prosecute before the deputy, 1 think that, in consequence of this, he will not retain the power to do so before the Governor.

(4) Sometimes a person is not forbidden to act as advocate, but to practice law. The latter penalty is more severe than the prohibition of appearing as an advocate, since, by means of it, a person is not permitted to transact any legal business whatever. It is customary to interdict in this manner students of law, advocates, notaries, and other members of the legal profession.

(5) It is also customary to prohibit them from drawing up any instrument, petition, or deposition whatever.

(6) It is also customary to prohibit them from stopping in places where public documents are deposited, for instance, in the archives, or wherever such papers are stored.

(7) It is also customary to prohibit them from formulating wills, or writing, or sealing them.

(8) The penalty of being prohibited from conducting any public business is also imposed; for a person of this kind can transact private business, and still be forbidden to attend to any that is public; as occurs in cases where sentence is pronounced to abstain from all public matters.

(9) There are also other penalties, as where anyone is ordered to abstain from any negotiation; or from having anything to do with the contracts of those who lease property belonging to the public; or with the public taxes.

(10) It is customary for anyone to be forbidden to transact any special matter, or any business in general; but let us see whether he can be sentenced to transact some business. These penalties, indeed, if anyone wishes to discuss them in a general way, are contrary to the Civil Law, for a man cannot be ordered, against his consent, to do something that he is unable to perform; but, in particular instances, good reason exists for compelling him to attend to certain negotiations. When this is the case, the sentence must be executed.

(11) The following are the penalties which are ordinarily inflicted. It must, however, be remembered that distinctions exist between them, and that all persons should not be subjected to the same punishment. For, in the first place, decurions cannot be sentenced to the mines, nor to work connected with the mines, nor to the gallows, nor to be burned alive; and if any of these sentences should be imposed upon them, they must be released. He who pronounced the

sentence, however, cannot do this, but it ought to be referred to the Emperor, who, by his authority, will either commute the penalty or discharge the party in question.

(12) The parents and children of decurions also enjoy the same privilege.

(13) We should understand by the term "children," not only the sons but all the offspring.

(14) But are only those born after the office of decurion has been obtained, exempt from these penalties; or are all the children, even those born in a plebeian family, excepted? is a question which should be considered. I am inclined to believe that all are entitled to the privilege.

(15) It is clear that if the father has ceased to be a decurion, any child born while he holds the office will enjoy the privilege of not being subjected to these penalties; but if, after he became a plebeian again, he should have a son, the latter, having been born a plebeian, should be punished in this manner.

(16) The Divine Pius stated to Salvius Marcianus in a Rescript that a slave, who is to become free under a condition, should be punished just as if he were already free.

10. *Macer, On Public Prosecutions, Book II.*

The rule is observed with reference to slaves, that they shall be punished as persons of the lowest rank, and in cases where a freeman is whipped, a slave should be scourged, and ordered to be restored to his master; and where a freeman, after having been whipped, is sentenced to labor upon the public works, a slave, under the same circumstances, after having been kept in chains for a certain period of time, and scourged, is ordered to .be restored to his master.

Where a slave, after having undergone the punishment of chains, is ordered to be restored to his master, but is not received by him, he shall be sold; and if he does not find a purchaser, he shall be sentenced to labor on the public works for life.

(1) Those who, for some cause, have been sentenced to the mines and afterwards commit some offence, ought to be judged as having been condemned to the mines, although they may not yet have been taken to the place where they will be compelled to work; for they change their condition just as soon as sentence has been passed upon them.

(2) It has been decided with reference to plebeians as well as decurions, that where a more severe penalty than is authorized by law has been inflicted upon anyone, he does not become infamous. Therefore, if a man has been sentenced to labor for a specified term, or only beaten with rods, although this may have been done in an action which implied infamy, as, for instance, one of theft, it must be said that the accused does not become infamous, because blows with a rod constitute a more severe penalty than a pecuniary fine.

11. *Marcianus, On Public Prosecutions, Book II.*

It is the duty of the judge to be careful not to impose a sentence which is either more or less severe than the case demands; for neither a reputation for harshness, or the glory of clemency should be his aim; but, having carefully weighed the circumstances of the case, we should decide whatever the matter requires.

It is clear that in cases of minor importance, judges should be inclined to lenity; and where heavier penalties are involved, while they must comply with the stern requirements of the laws, they should temper them with some degree of indulgence.

(1) Domestic thefts, if of trifling importance, should not be made the subject of public prosecutions; and an accusation of this kind ought not to be permitted when a slave is presented for trial by his master, or a freeman by his patron in whose house he lives, or a laborer by anyone who hires his services; for those are called domestic thefts which slaves commit against their masters, freedmen against their patrons, or hired laborers against those for whom they work.

(2) Moreover, a crime is committed either deliberately, or upon a sudden impulse, or by chance. Robbers commit a crime deliberately when they organize. Persons act by sudden impulse when they resort to violence, or to the use of weapons, through drunkenness. A crime is committed by chance, if one man kills another while hunting, when he aims a dart at a wild beast.

(3) To be thrown to wild beasts, or to suffer or be sentenced to similar punishments, are capital penalties.

12. *Macer, On the Duties of Governor, Book II.*

With reference to the civil condition of persons who have been convicted, it makes no difference whether the prosecution was public or not; for the sentence, and not the kind of crime, is alone considered. Therefore, those who are ordered to be punished in other ways, or who are delivered up to wild beasts, instantly become penal slaves.

13. *Ulpianus, On Appeals, Book I.*

It is lawful, at present, when anyone has extraordinary jurisdiction of a crime, to inflict any sentence which he may desire, either a more severe or a lighter one; provided that, in neither instance, he exceeds the bounds of reason.

14. *Macer, On Military Affairs, Book II.*

Certain offences, if committed by a civilian, either entail no penalty at all, or merely a trifling one, while in the case of a soldier, they are severely punished; for if a soldier follows the calling of a buffoon, or suffers himself to be sold in slavery, Menander says that he should undergo capital punishment.

15. *Venuleius Saturninus, On the Duties of Proconsul, Book I.*

The Divine Hadrian forbade those included in the order of de-curions to be punished capitally, unless they had killed one of their parents. It is, however, very clearly provided by the Imperial Mandates, that they should suffer the penalty of the Cornelian Law.

16. *Claudius Saturninus, On the Penalties of Civilians.*

Acts such as theft or homicide; verbal statements, such as insults, or betrayal by advocates; written ones, such as forgeries and criminal libels; and advice such as is given in conspiracies and the agreements of thieves are punished, for it is the same as a crime to assist others by persuasion.

(1) These four kinds of offences should be considered under seven different heads; namely, the cause, the person, the place, the time, the quality, the quantity, and the result.

(2) The cause, in the case of blows which are unpunished when inflicted by a master or a parent; for the reason that they seem to be given rather for the purpose of correction than injury. They are punishable when anyone is beaten by a stranger in anger.

(3) The person is considered from two points of view: first, that of him who committed the act; and second, that of him who suffered it; for otherwise slaves would be punished differently from freedmen for the same offences. And anyone who dares to attack his master or his father is punished differently from one who raises his hand against a stranger, a teacher, or a private individual. In the discussion of this subject age should also be taken into account.

(4) The place renders the same act one either of theft or sacrilege, and determines whether it should be punished with death or with a penalty of less severity.

(5) The time distinguishes a person temporarily absent from a fugitive, and a housebreaker or a daylight thief from one who commits the crime by night.

(6) The quality, when the act is either more atrocious or less grave, as manifest thefts are usually distinguished from those that are non-manifest; quarrels from highway robberies; pillage from ordinary theft; impudence from violence. On this point Demosthenes, the greatest orator of the Greeks, said: "It is not the wound but the disgrace which causes the insult, for it is not a wicked act to strike a freeman, but it becomes such when this is done by way of insult; for 0 Athenians, he who strikes does many things which he who suffers them cannot properly communicate to others, by his bearing, his aspect, or his voice, when he smites with every evidence of contumely, as if he were an enemy, whether he strikes with a rod, or delivers a blow in the eye. These things are productive of annoyance, and cause men who are not accustomed to be insulted to become beside themselves."

(7) The quantity distinguishes a common theft from one who drives away a herd of cattle, for anyone who steals a sow shall be punished merely as a thief; and he who drives away a number of animals shall be punished as a cattle stealer.

(8) The result should also be considered even when it is brought about by a man of the most amiable character; although the law does not punish with less severity a person who was provided with a weapon for the purpose of killing a man than him who actually killed him. Therefore, among the Greeks, crimes committed by accident were expiated by voluntary exile, as was stated by the most eminent of poets:

"When I was small, Menetius of Opontus conducted me into your house, on account of a sad homicide; when on that day, I unintentionally and unwillingly enraged over a game of dice, killed the son of Am-phidamantus."

(9) It happens that the same crimes are more severely punished in certain provinces; as, for instance, in Africa, those who burn harvests; in Mysia, those who burn vines; and counterfeiters, where mines are situated.

(10) It sometimes happens that the punishments of certain malefactors are rendered more severe whenever an example is necessary, as for the suppression of many persons engaged in highway robbery.

17. *Marcianus, Institutes, Book I.*

Where anything is left by will to certain penal slaves, such as those who have been condemned to the mines, and to work connected with the mines, it is considered as not having been written, and as having been left, not to a slave of the Emperor, but to a penal slave.

(1) Likewise, some persons, such as those who have been sentenced to hard labor on the public works for life, or deported to an island, are deprived of citizenship, so that they no longer enjoy any privileges derived from the Civil Law, but retain whatever rights they are entitled to by the Law of Nations.

18. *Ulpianus, On the Edict, Book III.*

No one suffers a penalty for merely thinking.

19. *The Same, On the Edict, Book LVII.*

If slaves are not defended by their masters, they should not, for this reason, immediately be conducted to punishment, but should be permitted to defend themselves, or be defended by another; and the judge who hears the case shall inquire as to their innocence.

20. *Paulus, On Plautius, Book XVIII.*

When a penalty is inflicted upon anyone, it is provided by a legal fiction that it shall not be transmitted to his heir; the reason for which seems to be that punishment is established for the correction of man, and when he is dead against whom it is held to have been established, it ceases to be applicable.

21. *Celsus, Digest, Book XXXVII.*

We understand the extreme penalty to mean only death.

22. *Modestinus, Differences, Book I.*

Where persons are sentenced to the mines, and, through illness or the infirmities of age, they become incapable of performing labor, according to a Rescript of the Divine Pius, they can be discharged by the Governor, who shall decide whether they shall be released; provided they have relatives or connections, and have served not less than ten years of their sentence.

23. *The Same, Rules, Book Vill.*

When anyone is condemned to the mines without a definite time being stated, because of the ignorance of the judge who imposed the sentence, the term of ten years will be understood to have been intended.

24. *The Same, Pandects, Book XL*

We must remember that the statues of those who have been relegated, or deported for high treason, should be removed.

25. *The Same, Pandects, Book XII.*

If anyone remains for a long time under an accusation, his punishment should, to some extent, be mitigated; for it has been decided that those who have been accused for a considerable time should not be punished as severely as those who have been tried and convicted without delay.

(1) No one can be sentenced to be thrown down from a rock.

26. *Callistratus, On Judicial Inquiries, Book I.*

The crime or the punishment of a father can place no stigma upon his son; for each one is subjected to fate in accordance with his conduct, and no one. is appointed the successor of the crime of another.

This was stated by the Divine Brothers in a Rescript addressed to the people of Hierapolis.

27. *The Same, On Judicial Inquiries, Book V.*

The Divine Brothers stated in a Rescript to Harruntius Silo, that the Governors of provinces were not accustomed to rescind judgments which they themselves had rendered. They also stated in a Rescript addressed to Vetina of Italica, that no judge could change his own decision, and that this was an unusual thing to do. Where, however, anyone was falsely accused, and did not have at first the documents to establish his innocence, which he afterwards found, and was subjected to punishment, there are some Imperial Rescripts extant by which it is provided that the penalty of such persons shall either be lessened, or that they shall be entirely restored to their former condition. This, however, can only be done by the Emperor.

(1) It is provided by the Imperial Mandates with reference to Decurions, and civil officials who have been guilty of capital crimes, that if anyone appears to have committed an offence for which he should be relegated to an island outside of the province, the facts, together with the sentence imposed, should be submitted to the Emperor in writing by the Governor.

(2) In another Section of the Imperial Mandates, it is provided as follows: "When any of the officials of a town have committed robbery, or any other crime which seems to deserve capital punishment, you shall place them in chains, and write to me, and also state what crime each of them has perpetrated."

28. *The Same, On Judicial Inquiries, Book VI.*

The following is the gradation of capital crimes. The extreme penalty is considered to be

sentence to the gallows, or burning alive. Although the latter seems, with good reason, to have been included in the term "extreme penalty," still, because this kind of punishment was invented subsequently, it appears to come after the first, just as decapitation does. The next penalty to death is that of labor in the mines. After that comes deportation to an island.

(1) Other penalties have reference to reputation, without incurring the danger of death; as, for instance, relegation for a certain term of years, or for life, or to an island; or sentence to labor on the public works; or where the culprit is subjected to the punishment of whipping.

(2) It is not customary for all persons to be whipped, but only men who are free and of inferior station; those of higher rank are not subjected to the penalty of castigation.

This is specially provided by the Imperial Rescripts.

(3) Some persons who are ordinarily called young are, in some turbulent cities, accustomed to encourage the clamors of the mob. If they have not done anything more than this, and have not previously been warned by the Governor, they are punished by being whipped, or are even forbidden to be present at exhibitions. If, however, after having been corrected in this way they are again detected committing the same offence, they should be punished with exile, and sometimes with death; that is to say, when they have frequently acted in a seditious or turbulent manner, and, having been arrested several times, and treated with too much clemency, they have persevered in their bold designs.

(4) Slaves who have been whipped are usually restored to their masters.

(5) And, generally speaking, I should say that all those whom it is not permitted to punish by whipping are persons that should have the same respect shown them that decurions have. For it would be inconsistent to hold that anyone whom the Emperors have, by their Constitutions, forbidden to be whipped, should be sentenced to the mines.

(6) The Divine Hadrian stated in a Rescript: "No one should be condemned to the mines for a specified term, but anyone who is sentenced for a term, and performs labor connected with the mines, ought not to be understood to be condemned to the mines; for his liberty continues to exist as long as he is not condemned to labor for life." Hence, women sentenced in this way have children who are free.

(7) It is forbidden to seek sanctuary at the statues or portraits of the Emperor, in order to cause another injury; for as the laws afford equal security to all men, it seems reasonable that he who takes refuge at the statues or the portraits of the Emperor does so rather in order to injure another than to provide for his own safety, unless someone who was confined in chains or in prison by persons more powerful than himself has recourse to this safeguard; for such persons ought to be excused. The Senate decreed that no one shall flee for refuge to the statues or portraits of the Emperor; and the Divine Pius stated in a Rescript that anyone who carried before him an image of the Emperor, for the purpose of incurring the hatred of another, should be punished by being placed in chains.

(8) All offences committed against a patron or the son of a patron, a father, a near relative, a husband, a wife, or other persons to whom anyone is nearly related, should be punished with more severity than if they were committed against strangers.

(9) Poisoners should be punished with death, or if it is necessary to show respect to their rank, they should be deported.

(10) Highwaymen, who pursue this occupation for the sake of booty, are regarded as greatly resembling thieves; and when they make an attack and rob while armed, they are punished with death, if they have committed this crime repeatedly and on the highways; others are sentenced to the mines, or relegated to islands.

(11) Slaves who have plotted against the lives of their masters are generally put to death by fire; sometimes freemen, also, suffer this penalty, if they are plebeians and persons of low rank.

(12) Incendiaries are punished with death when, either induced by enmity or for the sake of plunder, they have caused a fire in the interior of a town; and they are generally burned alive. Those also who have "burned a house or a hut, in the country, are punished a little more leniently. For if accidental fires could have been avoided, and were caused by the negligence of those on whose premises they originated, and resulted in injury to the neighbors; the responsible parties are prosecuted civilly to enable anyone who has suffered loss to recover damages, or they may be subjected to moderate punishment.

(13) A graduated scale of penalties with reference to exiles was established by an Edict of the Divine Hadrian, so that if anyone who was relegated for a term returned before it expired, he should be relegated to an island; and if one who was relegated to an island left it, he should be deported to an island; and if anyone, after having been deported, escaped, he should be punished with death.

(14) The same Emperor stated in a Rescript, that a certain gradation should be observed with reference to prisoners, that is to say, those who were sentenced for a certain term should, under similar circumstances, be sentenced for life; those who had been sentenced for life should be condemned to the mines; and when those have been condemned to the mines committed such an act, they should suffer the extreme penalty.

(15) It has been held by many authorities that notorious robbers should be hanged in those very places which they had subjected to pillage, in order that others might be deterred by their example from perpetrating the same crimes, and that it might be a consolation to the relatives and connections of the persons who had been killed that the penalty should be inflicted in the same place where the robbers committed the homicides. Some also condemned them to be thrown to wild beasts.

(16) Our ancestors, in inflicting every penalty, treated slaves more harshly than persons who are free; and they punished those who are notorious with greater severity than men of good reputation.

29. *Gaius, On the Lex Julia et Papia, Book I.*

Those who have been sentenced to death immediately lose both their citizenship and their freedom. Therefore, this condition attaches to them while living, and sometimes affects them for a long time; which happens to those who are condemned to be thrown to wild beasts, 'for they are frequently kept after having been sentenced, in order that they may be tortured to obtain evidence against others.

30. *Modestinus, On Penalties, Book I.*

If anyone should do something by which weak-minded persons are terrified through superstition, the Divine Marcus stated in a Rescript that men of this kind should be relegated to an island.

31. *The Same, On Punishments, Book III.*

The Governor should not, in order to obtain the favor of the people, discharge persons who have been condemned to be thrown to wild beasts. If, however, the culprits have strength or skill worthy of being used for the benefit of the Roman people, he should consult the Emperor.

The Divine Severus and Antoninus stated in a Rescript, that it was not permitted to transfer persons who have been sentenced, from one province to another, without the consent of the Emperor.

32. *Ulpianus, On the Edict, Book VI.*

If a Governor or a judge should make the statement: "You have committed violence," in proceedings under an interdict, the defendant shall not be branded with infamy, nor shall the penalty of the Julian Law be inflicted. When, however, this is done during the prosecution of a crime, it is another thing.

What would be the rule if the Governor should not make a distinction in the application of the Julian Law relating to Public Offences, and that relating to private ones? It must then be held that proceedings have been instituted for the punishment of a crime. But, if the defendant is accused of offences under both laws, the one which is less severe, that is to say, the one relating to private violence should be followed.

33. *Papinianus, Questions, Book II.*

The Imperial Brothers stated in a Rescript that slaves who have been condemned to chains for a term could, after having served it, receive either their freedom, an estate, or a legacy; because a temporary punishment based from a judgment is equivalent to an annulment of the penalty. If, however, the benefit of freedom comes to them while in chains, the reason of the law and the words of the constitution are opposed to freedom. It is evident that if freedom was granted by a will, and that when the estate was entered upon, the time of the sentence had expired, the slave is understood to have been lawfully manumitted ; not otherwise than if a debtor should manumit a slave given by way of pledge, and the estate should be entered upon after the pledge had been released.

34. *The Same, Opinions, Book XVI.*

*A* slave cannot be sentenced to perpetual labor on the public works; and, with much more reason, he cannot be sentenced to labor dn them for a term. Therefore, in a case where one who was condemned to the public works for a term, through mistake, I gave it as my opinion that, after the time had expired, the slave should be restored to his master.

(1) I also gave it as my opinion that, according to the Decree of the Senate, those persons are liable to the penalty of informers who, by the intervention of a third party, caused an informer to commit the offence.

35. *Callistratus, Questions, Book I.*

It is provided by the Imperial Mandates, which are communicated to Governors, that no one shall be sentenced to chains for life; and this was also stated by the Divine Hadrian in a Rescript.

36. *Hermogenianus, Epitomes, Book I.*

Those who are condemned to the mines, or to the service of the criminals who labor there, become penal slaves.

37. *Paulus, Sentences, Book I.*

It has been held that *dardanarii* who make use of false measures shall, for the purpose of protecting the welfare of the people with reference to food, be punished arbitrarily, according to the nature of the crime.

38. *The Same, Sentences, Book V.*

Where anyone has stolen any metal or money belonging to the Emperor, he shall be punished with the penalty of the mines and with exile.

(1) Deserters who go over to the enemy, or who reveal our plans, shall either be burned alive, or hanged on a gallows.

(2) Instigators of sedition and of tumult, which result in the uprising of the people, shall, in

accordance with their rank, either be hanged upon a gallows, thrown to wild beasts, or deported to an island.

(3) Any persons who corrupt virgins that are not yet marriageable, if of low rank, shall be sentenced to the mines; if of more exalted station, shall be relegated to an island, or sent into exile.

(4) Anyone who cannot prove that he was purchased with his own money cannot demand his freedom; and he will besides be restored to his master under the penalty of being confined in chains; or if the master himself prefers he shall be sentenced to the mines.

(5) Those who administer a beverage for the purpose of producing abortion, or of causing affection, although they may not do so with malicious intent, still, because the act offers a bad example, shall, if of humble rank, be sent to the mines; or, if higher in degree, shall be relegated to an island, with the loss of a portion of their property. If a man or a woman should lose his or her life through such an act, the guilty party shall undergo the extreme penalty.

(6) A will which is void by law can be suppressed with impunity; for there is nothing which can be claimed under it, or can actually exist.

(7) Anyone who opens the will of anyone who is still living, and reads and reseals it, is liable to the penalty of the Cornelian Law; and, as a rule, persons of inferior rank are condemned to the mines, and those of superior station are deported to an island.

(8) If anyone should prove that the documents relating to his suit have been delivered by his attorney to his adversary, the said attorney, if of inferior rank, shall be sentenced to the mines, and if of higher station, shall be relegated for life, and deprived of half his property.

(9) When anyone, who holds documents deposited with him, transfers them to a third party in the absence of him who deposited them, or delivers them to the adversary of the latter, he shall either be sentenced to the mines, or deported to an island, according to his legal condition.

(10) Where judges are alleged to have been corrupted by money, their names are usually erased by the Governor from the records of the court; or they are sent into exile, or relegated for a term.

(11) The soldier who, having been given a sword, escapes from prison, is punished with death. He who deserts with one whom he was appointed to guard is liable to the same penalty.

(12) A soldier who has attempted to kill himself, and did not succeed, shall be punished with death, unless he committed the act through being unable to endure suffering, disease, or grief of some kind, or for some other good reason; otherwise, he should be dishonorably discharged.

39. *Tryphoninus, Disputations, Book X.*

Cicero, in his oration for Cluentius Avitus, said that when he was in Asia, a certain Milesian woman, having received money from certain substituted heirs, produced an abortion on herself, by means of drugs, and was sentenced to death.

If, however, any woman, after a divorce, should commit a violent act upon her viscera, for the reason that she was pregnant and did not wish to bear a son to her husband, whom she hated, she ought to be punished by temporary exile; as was stated by our most excellent Emperors in a Rescript.

40. *Paulus, Decrees, Book HI.*

It was decided that Metrodorus, for having knowingly harbored a fleeing enemy, should be deported to an island; and that Philoctetis, who was aware that he was concealed, and kept the fact secret for a long time, should be relegated to an island.

41. *Papinianus, Definitions, Book II,*

The sanction of the laws, which, in the last section, impose a certain penalty upon those who do not obey their precepts, is not held to apply to those cases in which a penalty is specifically added by the law itself, and there is no doubt that in every law the species is subordinated to the genus. Nor is it probable that one crime should be punished by different penalties under the same law.

42. *Hermogenianus, Epitomes, Book I.*

By the interpretation of the laws, penalties should rather be mitigated than increased in severity.

43. *Paulus, Opinions, Book I.*

The Emperor Antoninus stated in a Rescript addressed to Aurelius Atilianus: "A Governor cannot forbid anyone the use of his trade for a longer time than that included in his administration."

(1) He also said that, "Anyone who, by the commission of some offence, has lost the honor of being a decurion, cannot claim the privileges of the son of a decurion in order to escape the infliction of a penalty."

## TITLE XX.

## CONCERNING THE PROPERTY OF PERSONS WHO HAVE BEEN CONVICTED.

1. *Callistratus, On the Rights of the Treasury and the People, Book I.*

In consequence of conviction, property is confiscated either when life or citizenship is forfeited, or a servile condition is imposed.

(1) Even those who have been conceived before conviction and born afterwards are entitled to portions of the estates of their convicted parents.

(2) This portion, however, is not granted to children unless they are born in lawful marriage.

(3) No share is given to the children of one who has only been deprived of half his property. This was stated by the Divine Brothers in a Rescript.

2. *The Same, On Judicial Inquiries, Book VI.*

It is not necessary to strip a person of his clothing when he is placed in prison, but only after he has been sentenced. This was stated by the Divine Hadrian in a Rescript.

3. *Ulpianus, On the Edict, Book XXXIII.*

Under five laws, the dowry of a convicted woman is confiscated, namely, for high treason, public violence, parricide, poisoning, and assassination.

4. *Papinianus, On Adultery, Book II.*

Every husband is always entitled to actions against the Treasury.

5. *Ulpianus, On the Edict, Book XXXIII.*

If, however, the woman is punished with death under some other law which does not confiscate her dowry, for the reason that she first becomes a penal slave, it is true that her dowry passes to her husband just as if she were dead.

(1) Marcellus says that if a daughter under paternal control is deported, her marriage is not dissolved by the mere fact of her deportation, and this opinion is correct; for, as the woman remains free, nothing prevents the husband from retaining his marital affection, or the woman from retaining her affection as a wife. Therefore, if the woman has the intention of leaving her husband, Marcellus says that the father can then institute proceedings to recover her dowry. If,

however, she is the mother of a family, and is deported during the existence of the marriage, the dowry will remain in the hands of the husband; but if the marriage is subsequently dissolved, she can bring her action, just as if, through considerations of humanity, the right to do so had recently been acquired.

6. *The Same, On the Duties of Proconsul, Book X.*

The Divine Hadrian stated in a Rescript to Aquilius Bradua: "It is evident that, by the name itself, one ought to understand what is meant by 'clothing.' For no one can reasonably say that under this term is included the property of persons who have been condemned, for if anyone is wearing a girdle, no one should claim it on this ground; but any clothing which he wears, or any small sums of money which he may have in his possession for the purpose of living, or any light rings, that is to say, any which are not worth more than five *aurei,* can be demanded.

"Otherwise, if the convicted person should have on his finger a sardonyx, or any other precious stone of great value, or have in his possession any note calling for a large sum of money, this can, by no right, be retained as part of his clothing."

Clothing of which a man can be stripped are those things which he brought with him when he was placed in prison, and with which he is attired when he is conducted to punishment, as the name itself indicates. Hence, neither the executioners nor their assistants can claim these things as spoils at the moment when the culprit is executed.

Governors should not appropriate these articles for their own benefit, or suffer assistants or jailors to profit by this money, but they ought to preserve it for expenditures which Governors have the right to make; as, for instance, for paper for the use of certain officials; or as donations for soldiers who have distinguished themselves by their courage; or to be presented to barbarians belonging to an embassy; or for some other purpose. Frequently, moreover, Governors have paid into the Treasury sums of money which they had collected, which is a manifestation of too great diligence, as it will be sufficient if they do not appropriate it to their own use, but permit it to be employed for the benefit of their office.

7. *Paulus, On the Shares Granted to the Children of Persons Who Have Been Convicted.*

As natural reason, which is a certain kind of tacit law, grants to children the estates of their fathers, calling them to the succession in the same way as to a debt, oh this account the name of direct heirs has been conferred upon them by the Civil Law; so that, as they cannot be removed from the succession by the will of their parents, unless for a good reason, it has been thought to be perfectly just that, in cases in which the conviction of a parent deprives him of his property as a penalty, the children should be taken into consideration, for fear they may suffer a more severe penalty for offences committed by others, whose guilt did not involve them, by subjecting them to the greatest poverty. It was decided that, under such circumstances, a certain degree of moderation should be displayed; so that those who would have been entitled to the entire estate by the right of inheritance might have some portion of the same conceded to them.

(1) When a freedman is punished, any of his property which his patron would have been entitled to if his freedman had died a natural death should not be taken from him; but the remaining part of the estate which had no reference to his manumission shall be forfeited to the Treasury.

(2) It is just that certain portions of the property of persons who have been condemned should be given to adopted, as well as to natural children, if the adoption was not fraudulently made. An adoption is considered to be made for the purpose of fraud where anyone adopts a child, although he has not yet been accused, but, aware of the desperate condition of his affairs, is influenced by the fear of an impending accusation, in order that a part of the property which he thinks he is about to lose may be saved.

(3) Where the condemned person has several children, examples have been adduced in which all of his estate has been granted to several children. The Divine Hadrian stated in a Rescript: "The number of the children of Albinus causes me to look favorably upon their case, as I prefer that my empire should be increased by the addition of men, rather than by that of money; therefore I wish the property of their father to be given to them, which so many possessors will render evident, especially if they should obtain all of his estate."

(4) Again, any property which the convicted person has acquired by crime does not increase the share of the children; for instance, if he has caused a relative of his to be killed, and enters upon his estate, or obtains pratorian possession of the same; for this was established by the Divine Pius in a Rescript. Consequently, where a son under paternal control had been convicted of killing, by means of poison, a person by whom he had been appointed heir; the above-mentioned Emperor rendered the decision that, although he had entered upon the estate by the order of his father, under whose control he was at the time, it should be forfeited to the Treasury.

(5) If the person whose property has been confiscated has been relegated, anything acquired by him after conviction shall belong to his testamentary heirs or to his heirs at law; for anyone who has been relegated to an island enjoys the right to make a will, as well as all other rights.

If, however, he has been deported, he cannot have an heir, because he has lost his citizenship; and any property subsequently acquired will be forfeited to the Treasury.

8. *Marcianus, Book.*

The right of patrons is preserved unimpaired for their children, so far as the property of a freedman of their father, whose property has been confiscated, is concerned. If the son of the patron appears, the Treasury can claim nothing of the share to which he is entitled.

(1) Where, however, there is a son of the patron, and a son of the freedman as well, the former will be excluded; and there will still be more reason for us to hold that there will be no ground for forfeiture to the Treasury, as children of the freedman exclude those of the patron, and those of the patron exclude the Treasury.

(2) But even if the son of the patron does not desire to demand praetorian possession of the estate, it is established that the Treasury will be excluded from that portion of the property of the freedman of his father to which he is entitled.

(3) The property of a person who has been relegated is not confiscated, unless this is expressly done by the terms of the sentence; but the rights of freedmen cannot be taken away by a special sentence, because the Emperor alone can deprive a relegated person of them.

(4) When a father, who has given a dowry for his daughter, is convicted, nothing is forfeited to the Treasury, even if the daughter should die afterwards during marriage, in which case the profecticial dowry will revert to the father. Therefore it will remain in the hands of her husband.

9. *Callistratus, Book.*

Unless it is proved that the father, through apprehension of conviction, and in order to defraud the Treasury, has consulted the interests of the children.

10. *Marcianus, Book.*

Even if the father has promised a dowry for his daughter, and has been convicted, an action to recover the dowry from the estate of the father will be granted to the husband against the Treasury.

(1) Where a father has been convicted, after the dissolution of the marriage of the daughter, and, indeed, after the daughter has given her consent for him to have the dowry, the Treasury can recover it from the husband; but, before she gives her consent, the daughter herself will

have a right to recover her dowry.

11. *The Same, Book.*

When anyone who has been convicted appeals, and dies while the appeal is pending, his property is not confiscated; for even a second will, if he should make one, will be valid. The same must be said even if the appeal is rejected.

(1) A defendant, except when accused of high treason, can administer his own property, pay his debts, and receive what is due to him, if it is paid in good faith; but every alienation which he has made for the purpose of defrauding the Treasury after his conviction can be set aside.

## TITLE XXI.

## CONCERNING THE PROPERTY OF THOSE WHO HAVE EITHER KILLED THEMSELVES OR CORRUPTED THEIR ACCUSERS BEFORE JUDGMENT HAS BEEN RENDERED.

1. *Ulpianus, Disputations, Book Vill.*

It was decreed by.the Emperors that where capital crimes were involved, he who corrupts his adversary is not liable to punishment, except in such cases as incur the penalty of death; for it was their opinion that they who desire to save the life of a blood relative by any means whatever should be excused.

2. *Macer, Public Prosecutions, Book II.*

The Emperors Severus and Antoninus to Julius Julianus: Those who are said by robbers to have corrupted their accuser, and are dead, are considered to have confessed their crime, and hence to have left no defence to their heirs.

(1) Where anyone, concerning whose punishment a communication has been sent to the Emperor, for instance, because he was a de-curion, or should have been deported to an island, and he dies before the Emperor has sent his reply, it may be asked whether he should be considered to have died before judgment. This question may be said to have been settled by a Decree of the Senate, which was enacted with reference to persons who were transferred to Rome, and died before judgment was rendered. The terms of this decree are as follows: "As no one can be considered to have been condemned during this year, before judgment in his case has been rendered and made public at Rome; no property belonging to a deceased person shall be confiscated before judgment in his case has been made public at Rome; and his • heirs can take possession of his estate."

3. *Marcianus, On Informers.*

Persons who have been accused, or have been caught while committing a crime, and, through fear of impending accusation, kill themselves, have no heirs. Papinianus, nevertheless, in the Sixteenth Book of Opinions, says that where persons who have not yet been accused of crime, lay violent hands on themselves, their property shall not be confiscated by the Treasury; for it is not the wickedness of the deed that renders it punishable, but it is held that the consciousness of guilt entertained by the defendant is considered to take the place of a confession. Hence, the property of those who ought to be accused, or have been caught committing a crime, or who have killed themselves, should be confiscated.

(1) Moreover, as the Divine Pius stated in a Rescript, the property of anyone who kills himself after he has been accused should be confiscated by the Treasury only where he was accused of a crime for which, if he were convicted, he could be punished with death or deportation.

(2) He also stated in a Rescript that anyone who is charged with a theft of little importance, although he may have put an end to his life while the accusation was pending, should not be considered to be in a position that would justify his heirs being deprived of his estate; as he himself would not have been deprived of it if he had been found guilty of theft.

(3) Therefore, in conclusion, it should be said that the property of him who has laid violent hands on himself should be forfeited to the Treasury, if he was implicated in the crime to such an extent that he would have lost his property if he had been convicted.

(4) If, however, anyone, through weariness of life, or incapacity to suffer pain, or, for any other reason, should put an end to his life, the Divine Antoninus stated in a Rescript that he could have a successor.

(5) Moreover, where a father laid violent hands on himself because he was said to have killed his son, he was considered to have done so rather on account of grief for the loss of his child, and hence, as the Divine Hadrian stated in a Rescript, his property should not be confiscated.

(6) A distinction should be made in these cases, for it makes a difference for what reason a person commits suicide, just as when the question is asked whether he who did so and did not succeed should be punished as having imposed sentence upon himself; for, by all means, he should be punished, unless he was compelled to take this step through weariness of life, or because he was incapable of enduring pain of some description. This is reasonable, for he should be punished if he laid violent hands on himself without any cause, as he who did not spare himself would still less spare another.

(7) It is, however, provided by the Imperial Mandates that the property of those who die either while in confinement or at liberty under bond shall not be confiscated, as long as the result of their cases is uncertain.

(8) But, where anyone has committed suicide without having a just cause for doing so, and dies after an accusation has been filed, and his heirs are ready to defend his case and show that he was innocent, let us see whether they should be heard, and whether his property should be confiscated to the Treasury before the crime has been proved, or if it should be confiscated under all circumstances. The Divine Pius stated in a Rescript addressed to Modestus Taurinus that when the heirs are prepared to undertake the defence, the property should not be confiscated unless the commission of the crime is proved.

## TITLE XXII.

## CONCERNING PERSONS WHO ARE INTERDICTED, RELEGATED, AND DEPORTED.

1. *Pomponius, On Sabinus, Book IV.*

The beginning of the Rescript of the Divine Trajan to Didius Se-cundus is as follows: "I am aware that the property of persons who

have been relegated has been confiscated to the Treasury by the avarice of former ages, but a different course is agreeable to my clemency, as I wish to give this additional example to show that I have favored innocence during my reign."

2. *Marcianus, Institutes, Book XIII.*

The Divine Pius stated in a Rescript that anyone who has been deported cannot be manumitted.

3. *Alfenus, Epitomes, Book I.*

He who has lost his citizenship does not deprive his children of any rights, except those which would pass to them from him if he should die intestate while in the enjoyment of his citizenship; that is to say, his estate, his freedmen, and anything else of this kind that can be found. Whatever, indeed, is not derived from their father but from their family, from their town, and from the nature of things, will remain theirs entirely. Therefore, brothers who are legitimate will become heirs to one another, and will be entitled to the guardianship and estates of agnates, for not their father, but their ancestors, -gave them these rights.

4. *Marcianus, Institutes, Book II.*

Persons who have been relegated to an island retain their children under their control, for the reason that they retain all their other rights, as they are only forbidden to leave the island; and they also retain all their property, except that which has already been taken from them, for those who are either sent into perpetual exile or relegated can, by the sentence, be deprived of a portion of their property.

5. *The Same, Rules, Book I.*

Exile is of a threefold nature; interdiction of certain places, or of secret flight; or all places are forbidden except one which is designated ; or confinement to one island is prescribed, that is to say, relegation to a single island.

6. *Ulpianus, On the Duties of Proconsul, Book IX.*

Among the penalties is also included deportation to an island, which deprives the person of Roman citizenship.

(1) The right of deportation to an island is not granted to the Governors of provinces, although it is granted to the Prefect of the City, for this is stated in an Epistle of the Divine Severus to Fabius Cilo, Urban Prefect. Therefore, whenever the Governor of a province thinks that anyone ought to be deported to an island, he should notify the person himself, and also send his name to the Emperor, in order that he may be deported; and then write to the Emperor stating his opinion fully, so that the latter may determine whether his sentence should be executed, and the culprit be deported to an island; and, in the meantime, until the answer is given, he must order him to remain in prison.

(2) The decurions of cities (as was stated by the Divine Brothers in a Rescript), should be either deported or relegated on account of capital crimes. And, in fact, they ordere3 Priscus, who, before being tortured, confessed that he had committed homicide and arson, to be deported to an island.

7. *The Same, On the Duties of Proconsul, Book II.*

There are two kinds of relegated persons; first, those who are merely relegated to an island; and second, others who are forbidden to enter the provinces, but to whom no island is assigned.

(1) The Governors of provinces can relegate persons to an island, iprovided they have under their control one that belongs to the province over which they have jurisdfction; and they can specifically designate this island, and relegate the culprit to it. But if they have not such an island under their control, they can sentence the guilty party to be relegated to an island, and then write to the Emperor in order that he can assign one to them. They cannot, however, sentence anyone to an island which does not form part of the province over which they have jurisdiction. In the meantime, until the Emperor assigns an island, the person who is relegated is placed in charge of the military.

(2) The following difference exists between persons who are deported, and those who are relegated, that is to say, anyone can be relegated to an island for a certain term, or for life.

(3) When anyone is relegated for a certain term or for life, he retains the right of Roman citizenship, and does not lose the power to make a will.

(4) It is established by certain rescripts, that neither all, nor even a portion of their property, can be taken from persons who have been relegated for a certain term; and judgment depriving persons relegated of a part or of all of their property have been censured, but not to the extent of invalidating such judgments.

(5) A certain kind of relegation, like that to an island, exists in the Province of Egypt, that is to say, relegation to'an oasis.

(6) However, as no one can relegate a person to an island not under his control, so, he has no right to relegate him to a province which is not in his jurisdiction; as, for example, the Governor of Syria cannot relegate anyone to Macedonia.

(7) He can, however, relegate him outside of his province.

(8) Likewise, he can relegate anyone to remain in a certain specified part of his province; for instance, he may forbid him to leave a certain city, or a certain district.

(9) I am aware that Governors are accustomed to relegate persons to the most desert parts of their provinces.

(10) Anyone can forbid a person to live in the province which he governs, but he cannot do so in another. This was stated by the Divine Brothers in a Rescript. The result of this was, that anyone who was relegated from the province in which he had his domicile could go and live in that in which he was born. Our Emperor and his Divine Brothers, however, provided for this contingency; for they stated in a Rescript addressed to Probus, the Governor of the Province of Spain, that: "Anyone can be forbidden to remain in the province in which he had been born by the official who governs the province where the person had his domicile." Still, it is just that those who are not residents of the province in which they committed the offence should be judged in accordance with the terms of this Rescript.

(11) It has been doubted whether anyone can prohibit another from remaining in the province in which he was born, when he himself governs the province in which the person lives, and he does not forbid him to remain in his own province; as Governors are accustomed to make Italy the object of the interdiction, and do not forbid the culprits to enter their own country; or whether it consequently appears that even the province in which they govern has been interdicted. This latter opinion should be adopted.

(12) On the other hand, he who governs the province where the party in question was born has no right to forbid him to dwell in the province which he now inhabits.

(13) Where anyone confesses a judgment, so that he who has committed an offence in one province can be relegated by the Governor of that province, the result will be that the person relegated must avoid the three provinces, except Italy; that is, the one in which he committed the offence; the one in which he lives; and the one in which he was born. If, either on account of his condition or that of his parents or patrons, he is considered to have had his origin in different provinces, we should say that he has, in consequence, been forbidden several provinces.

(14) Nevertheless, certain Governors have been permitted to interdict several provinces, as for instance, the Governors of Syria and of Dacia.

(15) It has been decided that anyone who has been forbidden to reside in his native province should also remain away from Rome; and, on the other hand, if anyone has been forbidden to reside at Rome he will not be considered to have been forbidden to live in his own country. This has been provided by several constitutions.

(16) If it is clear that not one's native country, but some particular city has been forbidden him, let us see if we cannot say that his native province, as well as the City of Rome, have also been forbidden him, which is the better opinion.

(17) A day should be fixed by the Governor for the departure of persons who have been relegated, and this is usually done; for it is customary to render the decision as follows: "I relegate So-and-So from this province, and from these islands, and he must depart before such-and-such a day."

(18) The Divine Brothers stated in a Rescript that a person who had been relegated is certainly entitled to present a petition to the Emperor.

(19) Moreover, the sentence usually prohibits persons from residing in the territory of their native province or city, or within the walls of the latter, or from leaving it, or from stopping in certain suburbs of the same.

(20) It is customary to forbid decurions to enjoy the privileges of their order, either temporarily or permanently.

(21) Likewise, the penalty can be imposed upon anyone not to accept any honor, and this does not have the effect of causing him to cease to act as decurion; as, indeed, anyone may be a decurion, and still not be permitted to accept any honors, for anyone can be a senator, and still not be able to demand any.

(22) Anyone can also be forbidden to receive a single honor, in such a way, however, that he who is forbidden to do so can not only obtain this particular honor, but also those which are greater; for it would be extremely ridiculous for a person who was prohibited by way of penalty from receiving inferior honors to be able to aspire to greater ones. Nevertheless, one who has been prohibited from receiving certain honors is not prevented from seeking those which are inferior ; but if anyone is forbidden to accept an office by way of penalty, the sentence will be void, for a penalty cannot bestow immunity. Therefore, if someone is deprived of honors, by way of penalty, it can be said that where the said honors include an office involving great expense, the infamy of the convicted person will not benefit him on this account.

8. *Marcianus, Public Prosecutions, Book II.*

But I think that when he is deprived of the honor, he should be compelled to pay the expenses.

9. *Ulpianus, On the Duties of Proconsul, Book X.*

*A* Governor can sentence anyone not to leave his own house.

10. *Marcianus, Book.*

But not avoid incurring necessary expenses.

11. *Ulpianus, Book.*

Sometimes persons who have been relegated are sentenced to pay a fine.

12. *Marcianus, Book.*

A man who has been relegated from his town, and does not depart, shall be relegated from his province for a certain time.

13. *Paulus, Book.*

Anyone who has been manumitted by a person who has been relegated cannot go to Rome, because his patron is not permitted to do so.

14. *Ulpianus, Book.*

A person who is relegated is one who is forbidden temporarily or perpetually to remain in a province, or at Rome, or in the region surrounding it.

(1) A great difference exists between deportation and relegation, for deportation deprives a person of his rights as a citizen, as well as of his property. Relegation does not deprive him of either, unless his property is, for some special reason, confiscated.

(2) Anyone can be relegated by the Emperor, the Senate, the prefects, and the Governors of provinces, but not by the Consul.

(3) Anyone who has lost his rights of citizenship, but retains his property, is liable to pratorian actions.

15. *Marcianus, Book.*

A person who is deported loses his rights as a citizen, but not his freedom; and, indeed, he cannot enjoy any special right derived from citizenship, but he can enjoy a right of nations; for he can purchase and sell, hire and lease, exchange property, lend money at interest, and do everything of this kind; and he can also give and pledge any property which he may subsequently acquire, unless he encumbers it in order to defraud the Treasury, which will succeed to him after his death; for he cannot alienate any property which has been confiscated.

(1) Anyone who has been deported by a Governor, without the sanction of the Emperor, can become an heir and receive legacies left to him by will.

16. *The Same, Book.*

Ulpianus Damascenus petitioned the Emperor to allow him to leave to his mother what was necessary for her support, and his mother, through her freedman, to permit him to leave something to her deported son; whereupon the Emperor Antoninus addressed to them a Rescript as follows: "Neither an estate, nor a legacy, nor a trust can be left to persons of this kind, in violation of custom and public law, nor should the condition of such persons be changed. But as you have made the request on account of affection, I will permit you to leave by your last will sufficient for their support and their other necessities, and they can take whatever is bequeathed to them on this account."

17. *Pomponius, Book.*

Anyone who has been relegated is not excluded from being honored by means of statues and paintings.

18. *The Same.*

A person who has been relegated retains his condition, as well as the ownership of his own property, and his paternal authority, unimpaired; whether he has been relegated for a specified time, or for life.

(1) Deportation, however, is not for time.

19. *Callistratus.*

Anyone who has been relegated cannot remain at Rome, although this may not have been included in the sentence, because it is the coun-

try of all persons. Nor can he remain in the city in which the Emperor lives, nor in one through which he passes, because those only are permitted to look upon the Emperor who can enter Rome, as the Emperor is the father of his country.

(1) When sentence is passed upon men who are free, by which their property is confiscated, such, for instance, as deportation to an island, as soon as it has been imposed, they change their former condition, and are delivered up to their punishment; unless something of the nature of high treason is involved, which requires the penalty to be increased.

## TITLE XXIII.

## CONCERNING PERSONS UPON WHOM SENTENCE HAS BEEN PASSED AND WHO HAVE BEEN RESTORED TO THEIR RIGHTS.

1. *Ulpianus, On the Edict, Book XXXV111.*

A patron who has been deported, and afterwards restored to his civil rights, is admitted to the succession of a freedman.

(1) If, however, a person has been condemned to the mines, does his penal servitude extinguish his right as a patron, even after his restoration? The better opinion is that penal servitude does not extinguish his rights as a patron.

2. *The Same, Opinions, Book V.*

When a person who has been deported and restored regains his rank by the indulgence of the Emperor, but does not recover all his property, he can neither be sued by his creditors nor by the Treasury. When, however, the power of recovering his property also is offered him by the Emperor, and he prefers to relinquish it, he cannot avoid any actions brought against him before he was sentenced.

3. *Papinianus, Opinions, Book XVI.*

The Treasury retained the property of a man who was deported to an island, after his punishment had been remitted. It is established that creditors before his conviction have no rights of action against him who was their former debtor. If, however, he recovers his property with the restitution of his rank, praetorian actions will not be necessary, for direct actions will lie.

4. *Paulus, Questions, Book XVII.*

A woman sentenced to the mines brought forth a child which she had previously conceived, and was afterwards restored to her rights by the Emperor. It is more humane to hold that the rights of relationship were also restored to her.

## TITLE XXIV.

## CONCERNING THE CORPSES OF PERSONS WHO ARE PUNISHED.

1. *Ulpianus, On the Duties of Proconsul, Book IX.*

The bodies of those who are condemned to death should not be refused their relatives; and the Divine Augustus, in the Tenth Book on his life, said that this rule had been observed. At present, the bodies of those who have been punished are only buried when this has been requested and permission granted; and sometimes it is not permitted, especially where persons have been convicted of high treason. Even the bodies of those who have been sentenced to be burned can be claimed, in order that their bones and ashes, after having been collected, may be buried.

2. *Marcianus, Public Prosecutions, Book II.*

If anyone has been deported to an island or relegated, his punishment continues to exist even after his death, for it is not permitted for him to be taken elsewhere and buried, without the consent of the Emperor; as Severus and Antoninus repeatedly stated in Rescripts, and they frequently granted this as a favor to many persons who requested it.

3. *Paulus, Sentences, Book I.*

The bodies of persons who have been punished should be given to whoever requests them for the purpose of burial.

# THE DIGEST OR PANDECTS.

## BOOK XLIX.

## TITLE I.

## ON APPEALS AND REPORTS.

1. *Ulpianus, On Appeals, Book I.*

There is no one who is not aware how frequently appeals are employed, and how necessary they are to correct the injustice or the ignorance of judges; although sometimes sentences which have been properly imposed are changed for the worse, as he who renders the last judgment does not, for this reason, render a better one.

(1) The question arose whether an appeal could be taken from a Rescript of the Emperor, when the Governor of a province, or anyone else, asked his advice, and the Rescript was issued by way of answer.

It was also asked whether the right of appeal remained. What should be done if the Governor, when asking advice, had made a false statement? There is a Rescript of the Divine Pius on this point, addressed to the Community of the Thracians, by which it is shown that the right to appeal continues to exist.

The words of the Rescript are as follows: "If anyone should write to us and we should state anything to him in a Rescript by way of reply, he will be permitted to appeal from our decision. For if it should be shown that what had been written to us was either untrue, or was misrepresented, no decision will be considered to have been rendered by us; and any statement made to us will be considered as not having been made before the answer deciding against it was written." .

(2) In consequence of this, it is held to have been decided that an appeal should not be taken after the consultation of the judge, if he happens to have rendered an interlocutory decree setting forth that he will consult the Emperor, since the party can take an appeal after the Rescript has been issued.

(3) When anyone makes a mistake in an appeal, for instance, when he should appeal to one judge, and he appeals to another, let us see whether his mistake will prejudice him. And, indeed, if he ought to appeal to a superior judge, and errs by appealing to one of inferior jurisdiction, the mistake will prejudice him.

If, however, he appeals to a superior judge, his mistake will not be to his disadvantage, and this rule is contained in several constitutions. Hence when anyone has accepted a judge appointed by the Consuls under a Rescript of the Emperor, and afterwards appeals to the Prefect of the City, relief is given him for his mistake, under a Rescript of the Divine Brothers, the words of which are as follows: "As you say that, through mistake, you have appealed from the judge, whom you accepted under the terms of our Rescript from the eminent Consuls, to our friend, Julius Rusticus, the Prefect of the City, the said eminent Consuls shall take cognizance of the case, just as if the appeal had been made to them."

If, then, anyone should appeal to a judge of equal or superior jurisdiction, or to one instead of another, his mistake will not prejudice him; but if he appeals to a judge of inferior jurisdiction, it will prejudice him.

(4) The document presented by the appellants ought to be drawn up in such a way as to contain the names of the parties by whom it has been filed; that is to say, the names of those who appeal, and state against whom they appeal, and from what decision.

2. *Macer, On Appeals, Book I.*

When anyone appeals at the time when the judgment is rendered, it will be sufficient for him

to say, "I appeal."

3. *Ulpianus, On Appeals, Book I.*

When anyone does not mention in his petition against what adversary he appealed, I am aware that it has been asked whether he can be barred by an exception. I do not think that he can be barred in this manner.

(1) Where the appellant had several adversaries, and the names of some of them were included in his appeal, and those of others were not, the question arose whether he could be barred by an exception on the ground that, as their names were not included, he had, as it were, acquiesced in the decision, so far as they were concerned. As the cause of all is the same, I think that he should not be barred by an exception.

(2) It is clear that if there are several persons who have been convicted, and the names of some of them are included in the appeal, and those of the others are not, they only will be considered to have appealed whose names are mentioned in the petition.

(3) But what if a certain ground of appeal is mentioned? Can the appellant abandon it, and state another V Or, indeed, will he be bound, as by a certain formula? I think that when a party has once appealed, he should be permitted to give even another cause for doing so, and to prosecute it in every way that he can.

4. *Macer, On Appeals, Book I.*

It is not permitted to appeal from the execution of a judgment.

(1) It is, however, permitted to appeal from the decision of one who is alleged to have placed a wrong interpretation upon a judgment, if he had the authority to interpret it, as, for instance, the Governor of a province, or the Imperial Procurator; provided that, in discussing the causes for granting the appeal the question alone is raised whether the interpretation was according to law.

This was also stated by the Divine Antoninus in a Rescript.

(2) Where another person has been convicted, he who has an interest in the case can appeal; for instance, one who, having appointed an attorney, has been defeated, and the attorney did not appeal in his name.

(3) Likewise, if the purchaser is evicted of the property sold, and neglects to appeal, the vendor can appeal. Or, if he brings suit and is defeated, the vendor should not be denied the right to appeal. But what if the vendor who refused to appeal is not solvent? And even if he should appeal, and appears to be liable to suspicion when conducting the case, the defence for this reason can be entrusted to the purchaser, just as if he himself had appealed.

(4) This has been decided with reference to the creditor, when the debtor is defeated and appeals, for he did not faithfully defend his case.

This constitution should be understood to mean that the creditor having intervened, the debtor lost his case involving a pledge and took an appeal. For it has been decided that the debtor, in case of the absence of his creditor, does not prejudice him in any way.

(5) Where an attorney who is conducting a case loses it, let us see whether he himself can appeal through another attorney, because it is established that one attorney cannot appoint another. It must, however, be remembered that an attorney, by the joinder of issue, becomes the master of the case, and therefore can appeal by the agency of another attorney.

5. *Marcianus, On Appeals, Book I.*

An appeal cannot be taken from a decision affecting other parties, unless for some good reason; for instance, where a man has permitted himself to be convicted to the prejudice of his co-heir, or for some similar cause, although the co-heir may be secure even without an appeal.

Likewise, where sureties appeal in behalf of him for whom they have become responsible. Therefore the surety of a vendor can appeal if the purchaser is defeated, even though both the purchaser and the vendor may acquiesce in the decision.

(1) When a testamentary heir is defeated by someone who brings an action on the ground that a will is inofficious, the legatees and those who have received their freedom are permitted to appeal, if they complain that the judgment has been obtained by collusion; as the Divine Pius stated in a Rescript.

(2) He also stated in a Rescript that legatees could appeal.

(3) The same must be said if they allege that the appellant has been concerned in a fraudulent transaction, to their prejudice.

(4) The same rule has been laid down in a Rescript as applicable, where a compromise has been effected without an appeal. When anyone, upon the same day, appeals verbally during the proceedings, this will be sufficient. If, however, he should not do so, two or three days should be computed to enable him to file his appeal.

6. *Ulpianus, On Appeals, Book II.'*

Not only is he who is brought to punishment permitted to appeal, but also others in his name; and not only when he himself directs this to be done, but where anyone else desires to appeal he can do so, nor does it make any difference whether he is nearly related to the defendant or not; for I think that on the ground of humanity every persons who appeals should be heard. Therefore, if the defendant himself acquiesces in the decision, we do not ask whether anyone else has an interest in the matter. But what should be done if the convicted person, hastening to lose his life, opposes the appeal, and does not wish it to be entertained ? I still think that his punishment should be postponed.

7. *Marcianus, On Appeals, Book I.*

When a certain man, being apprehensive of the violence of the judge, gave notice of appeal, not only to the court from which he appealed, but published it, the Divine Severus excused him, and permitted him to prosecute the appeal.

8. *Ulpianus, On Appeals, Book IV.*

It must be remembered that the party who appeals should not abuse him from whom he appeals, for if he does, he shall be punished. This was stated by the Divine Brothers in a Rescript.

9. *Macer, On Appeals, Book II.*

It must be remembered that neither a ward, nor the State, can obtain complete restitution in a case where freedom is involved, but an appeal is necessary. This has been stated in various rescripts.

10. *Ulpianus, Disputations, Book Vill.*

When several persons have been convicted separately, although in the same case, they will be required to file several appeals.

(1) If anyone should bring an action which includes several claims, and the defendant is condemned to pay several sums of money, no one of which is sufficient to be submitted to the decision of the Emperor, but all of them united are sufficient, he can appeal to the Emperor.

(2) Where evidence was produced against several parties which caused them to be defeated, a single appeal will be sufficient, because all of them were sued together, and defeated by the same testimony.

(3) Whenever several persons are condemned to pay a single sum of money, is there not a single decision, and are they, as joint defendants, liable for the same amount, so that each one of them is liable in full; or should the judgment be divided into as many parts as there are persons ? is a question which has been asked. Papinianus answered that the judgment should be divided among the persons, and therefore that those condemned were liable for equal portions.

(4) The statement contained in rescripts that, in a common cause, whenever one party appeals and another does not, the success of the first will benefit the second who did not appeal, is a rule which must be adopted, if there was but one ground of defence. Where, however, there were several, it is another thing; as happens in the case of two guardians, where one of them administers a guardianship, and the other has nothing to do with it, and the latter takes an appeal; for it is unjust that he who acquiesces in the judgment, as he knows that he transacted the business, should gain his case by the appeal of him who took no part in the administration of the guardianship.

11. *The Same, On All Tribunals, Book HI.*

When money was paid on the execution of a judgment, and on appeal a more favorable decision was rendered, the party can recover the money which he paid.

12. *The Same, Opinions, Book II.*

If it is established that a duumvir has been created without observing the formalities prescribed by law, but only because he was demanded by the voice of the people, to which the proconsul consented without having any right to do so, an appeal in so plain a case is superfluous.

13. *The Same, Opinions, Book II.*

It is no disadvantage to an appellant if, in his petition, he did not indicate from what part of the decision he appealed.

(1) It is not customary to reject the appeal of those who have at least one good ground for appeal.

14. *The Same, On the Edict, Book XIV.*

When a judgment is rendered against a will, by collusion, let us see whether the decision of the court will stand. The Divine Pius permitted the parties to appeal when it was alleged that certain persons had joined together, through collusion, to annul the rights of legatees, and slaves who had obtained their freedom; and, at present, this is the law, that is to say, they can appeal, and even appear in court before the same judge who tried the case relating to the will, if they have reason to suspect that the heir will not faithfully conduct the defence.

(1) Whenever the heir does not answer, a decision is rendered in favor of his adversary, and it has been stated in a Rescript that this does not prejudice either legacies or grants of freedom. This Rescript of the Divine Brothers, addressed to Domitius, is as follows: ."Whenever the possessor is absent, and no one answers in his name, it has been decided that the judgment will not have the authority of *res judicata,* unless it is rendered only against him alone who failed to appear. Therefore rights of action are preserved for those who have received freedom, legacies, or trusts by the will, if they are entitled to any, just as if no judgment had been rendered; and therefore we permit them to proceed against the party who gained the case."

15. *Marcellus, Digest, Book I.*

Slaves cannot appeal, but their masters, in order to assist them, can resort to an appeal, and anyone else can do this in the name of the master. When, however, neither the master appeals, nor anyone else does so for him, we do not refuse the slave the privilege of imploring relief

for himself, after having received so severe a sentence.

16. *Modestinus, Differences, Book VI.*

The constitutions which discuss the question whether appeals should be received or not, so that nothing new may be introduced against them, do not apply to those whom it is for the interest of the public to be punished without delay; as, for instance, notorious robbers, or persons who instigate sedition, or the leaders of factions.

17. *The Same, Rules, Book Vill.*

Where two separate decisions have been rendered in a single case, for example, one with reference to the principal and the other with reference to the interest, two appeals will be necessary, lest it may be understood that the party accepted one, and appealed from the other.

(1) When a guardian, appointed for a ward, appeals, a curator will be appointed for the ward in the meantime. If, however, the authority of the guardian should be necessary, as, for instance, for the acceptance of an estate, a guardian will necessarily be appointed, as the authority of a curator is not sufficient for this purpose.

18. *The Same, Opinions, Book XVII.*

Lucius Titius filed an appeal for his slave, who had been condemned to be thrown to wild beasts. I ask whether he can state the grounds for an appeal of this kind by an attorney. Modestinus answered that he could do so.

19. *The Same, Cases Explained.*

If a decision has been rendered directly against the strict interpretation of the law, it should not be valid, and therefore the case can be heard again without an appeal. A decision is not legally pronounced, if it is rendered specially against the laws, a Decree of the Senate, or an Imperial Constitution. Therefore, when anyone appeals from such a decision, and is barred by an exception, the decision is by no means confirmed by this procedure, hence the action can be brought again.

20. *The Same, On Prescriptions.*

Anyone who accuses a guardian of being liable to suspicion, and calls in question his excuse for not accepting the guardianship, is understood to act in the name of another.

(1) He who is appointed an attorney in his own behalf should appeal within two days, because he is conducting his own case.

(2) No further time for appeal is granted to soldiers, and if, after having been defeated, they do not appeal and comply with the usual formalities, they shall not afterwards be heard.

21. *Papirius Justus, On the Constitutions, Book I.*

The Emperors Antoninus and Verus stated in a Rescript that appeals which have been made directly to the Emperor, without having been first presented to those magistrates of inferior rank, before whom this ought to be done, are returned to the Governors.

(1) They also stated in a Rescript that an appeal is not properly taken to the Emperor from a judge appointed by the Governor of the province, and therefore that it should be sent back to the latter.

(2) When anyone who has been appointed a magistrate appeals, his colleague, in the meantime, shall discharge the duties of both. If both should appeal, another magistrate shall temporarily be appointed in their stead, and he who did not appeal justly must pay the damage sustained by the government. Where, however, the appeal was well founded, and it was so decided, it shall be determined who shall pay the damages sustained. Another should, in the meantime, be appointed a curator, to take charge of the distribution of provisions while the

appeal is pending.

(3) They also stated in a Rescript that although it is not customary, after an appeal has been taken, for the crops of land in litigation to be deposited, still, as they might be destroyed by the adverse party, it seemed to them to be just that they should be placed in the hands of a sequestrator.

22. *Papinianus, Opinions, Book II.*

When a case is submitted to the Emperor for examination, it can be recalled by the person who sent it.

23. *The Same, Opinions, Book XIX.*

When a judge has been appointed by the Governor of a province for the purpose of compromising a case with the consent of the litigants, the defeated party can appeal.

(1) When a representative of the Emperor who did not discharge the duties of Governor, or have the right to appoint a judge in private causes, gave a decision, it was held that it was useless to appeal from a judgment which did not render anyone liable.

(2) When a decision was rendered against the father of a son under paternal control, involving property which he could acquire through his son, I gave it as my opinion that the son could not appeal except in the name of his father.

(3) It was decided that he who knew that a peremptory Edict was granted him on account of his rank had no right to appeal, since it was in his power to answer in court before the day appointed, and thereby protect himself by avoiding the denunciation of the Edict.

24. *Scsevola, Opinions, Book V.*

Where anyone who transacts the business of another in good faith or as a guardian, or a curator, has been condemned, and has appealed; and, after the case had been protracted for a long time, the appeal finally was decided not to have been made on good grounds; the question arose whether, because judgment was rendered subsequently, the interest on the principal for the intermediate time is due. The answer is that, according to the facts stated, a praetorian action should be granted.

(1) The curator of a minor in a suit brought against the heirs of his guardian filed an appeal. As the young man had then passed the age of twenty-five years, and was in the army, he neglected to prosecute his appeal. Having returned from the army, I ask whether he himself should prosecute his appeal, or should apply to his curator to do so. The answer was that, in accordance with the facts stated, the soldier himself should proceed with the case in which he was interested.

25. *Paulus, Opinions, Book XX.*

"The Emperor Alexander to the Community of the Greeks, who are in Bithynia. I do not see how anyone can be prevented from appealing from a judgment, when there is another way open to do the same thing, and to reach me more promptly. We forbid curators and the heads of nations to make use of abuse and violence against parties who appeal, and (to speak more plainly) to prevent them from having access to us; and they must obey this my decision, being well aware that the liberty of those who govern is as much the object of my solicitude as their good will and obedience."

26. *Hermogenianus, Epitomes of Law, Book II.* When a case is sent to the Emperor, the Governor can hear it with the consent of the parties, if it is in his jurisdiction.

27. *The Same, Epitomes of Laiv, Book V.*

Where a guardian takes an appeal in a matter concerning his ward, or a curator does so in the case of an adult, he can prosecute the appeal

before the heir of either renders his accounts; for after the accounts have been rendered, neither the guardian nor the curator will be compelled to sustain the merits of the appeal.

28. *Scasvola, Digest, Book XXV.*

A creditor who had brought suit against the sureties was not present at the trial of the case, after issue had been joined, and when the sureties were discharged his slave appealed. The question was asked whether the appeal which the slave interposed in behalf of his master was of any force or effect. The answer was that such an appeal should not receive any attention.

(1) A man having been ordered by a judge to appear in court, in accordance with the command of the Governor of the province, and produce certain accounts which he alleged were in his possession, did not do so, even after delay had been granted him for this purpose; and therefore, after the constitution had been read to him, for the reason that through obstinacy he had failed to produce the documents demanded, and the plaintiff proved the amount of his interest in having them produced, by taking an oath, the defendant was convicted. The question arose whether he could file an appeal after the oath had been taken. The answer was that nothing had been stated to show why the benefit of an appeal should be denied him.

(2) Guardians who had been substituted in the place of a legal guardian, having brought an action on guardianship against him, the arbitrator appointed condemned him unjustly, and because the equity of the case required it, they appealed from his decision. While the appeal was pending, the young men grew up. As the entire procedure had reference to persons who were grown, and they were in a condition to protect their own interests, the question arose whether the demand of those against whom the appeal had been taken, who alleged that the ground of the appeal must be stated by those who first brought the suit, should be admitted. The answer was, that if those whose guardianship had been administered desired to proceed with the case, they ought to be prevented from doing so.

The same rule.should be observed with reference to curators, if, in the meantime, the youth should arrive at lawful age.

## TITLE II.

## FROM WHAT PERSONS IT IS NOT PERMITTED TO APPEAL.

1. *Ulpianus, On the Edict, Book 1.*

Inquiry should be made from whom it is not lawful to appeal.

(1) And, indeed, it would be foolish to warn anyone that it is not lawful to appeal from the Emperor, since he himself is the one to whom the appeal is made.

(2) It should be remembered that an appeal cannot be taken from the Senate to the Emperor; and this was established by an address of the Divine Hadrian.

(3) If anyone, before judgment has been rendered, should assert that he will not appeal from the decision of the judge, he unquestionably loses the benefit of the appeal.

(4) Sometimes the Emperor appoints a judge with the understanding that an appeal cannot be taken from his decision; for I know that judges have very frequently been appointed in this manner by the Divine Marcus. Let us see whether anyone else can appoint a judge in this way. I do not think that he can do so.

2. *Paulus, On Appeals, Book I.*

The question was asked whether an appeal can be taken against arbitrators, who are appointed for the purpose of accepting sureties. Although several authorities hold that, in this case, even without an appeal, the decision can be amended by the person who rendered it.

## TITLE III.

## TO WHOM AND FROM WHOM AN APPEAL CAN BE TAKEN.

1. *Ulpianus, On Appeals, Book I.*

When it is said that an appeal is taken from the judge who rendered the decision, this must be understood to mean that one can also be taken from his successor. Hence, where the Prefect of the City, or the Praetorian Prefect, renders a decision, an appeal should be taken from him who rendered it.

(1) An appeal is not taken to a person who has delegated his authority; for, generally speaking, it ought to be taken from him to whom the authority was delegated to him to whom the appeals would be taken from the official who delegated the authority.

2. *Venuleius Saturninus, On the Duties of Proconsul, Book II.*

One can appeal from the Governor to the Proconsul, and if he has imposed a fine, the Proconsul can take cognizance of his injustice, and decide whatever he thinks best.

3. *Modestinus, Rules, Book Vill.*

Whenever a judge is appointed by the magistrates of the Roman people, no matter of what rank they may be, even though this was done by order of the Emperor, and he may have designated the judge by name, an appeal can be taken to the magistrates themselves.

## TITLE IV.

## WHEN AN APPEAL SHOULD BE TAKEN, AND WITHIN WHAT TIME.

1. *Ulpianus, On Appeals, Book I.*

When the Governor of a province notifies someone that he shall be deported to an island, and writes to the Emperor in order that he may be deported, let us see when an appeal should be taken, whether at the time the Governor wrote to the Emperor, or when the latter wrote to him. I think that the appeal should be taken when the Governor orders the defendant to be taken into custody, and after he has rendered his decision that the Emperor shall be written to, in order that the defendant may be deported. It is, however, to be feared that it will be too late to appeal after the Emperor has assigned him an island, for the decision of the Governor having been confirmed, it is then customary to assign an island as the place of deportation.

Again, it should be apprehended that if the Governor made false statements to the Emperor concerning the person whom he was attempting to have deported, the way of appeal will be closed to him. What then should be done? It can properly be decided in compliance with the suggestions of humanity that, in either case, an appeal will not be taken in vain, because the defendant does not appeal from the Emperor, but against the duplicity of the judge.

This rule should also be adopted in the case of a decurion, whom the Governor ought not to permit himself to punish, but should confine in prison, and write to the Emperor with reference to his punishment.

(1) When anyone is appointed a guardian, either by will or by someone who has the right of appointment, it will not be necessary for him to appeal (as this rule was established by the Divine Marcus), but he should offer his excuse within the prescribed time; and if it is rejected, he then should appeal, otherwise he will do so in vain.

(2) The case is different with those who are called to some office of honor when they allege that they have an excuse; for they cannot allege their reasons for immunity unless they interpose an appeal.

(3) Governors usually are accustomed to send the name of a man to the order to which he belongs, asking it to elect Gaius Seius magistrate, or to confer upon him some other honor or

office. Therefore, should an appeal be taken after the order has rendered its decision, or must it be taken on the submission of the name by the Governor?

The better opinion is, that the appeal should be taken at the time when the order renders its decision; for the Governor appears rather. to have given advice that someone should be appointed than to have, himself, made the nomination. Finally, the appeal should be taken to him, and not from him.

(4) But when the Governor himself is a member of the order (as sometimes happens), at the time when the person was appointed by it, an appeal can be taken to the Governor, as from the order, and not from the Governor himself.

(5) The term of two or three days should be computed from the time when the decision was rendered, for the purpose of taking an appeal. What, however, must be done if the decision was rendered under a condition ? Should we compute the time for taking the appeal from the day of the decision, or from the day on which the condition of the decision was complied with? It is clear that the decision ought not to be rendered under a condition, but if this is done, what course must be pursued? It is proper that the time for appeal should immediately begin to be computed.

(6) What has been ordered with reference to decisions, namely, that an appeal should be taken upon the second or third day, should also be observed in other cases in which a decision has, indeed, not been rendered, but where, as was stated above, a party can appeal.

(7) An Address of the Divine Marcus prescribes that the days upon which a party can appeal should, to a certain extent, be available ones, if the person from whom the appeal is taken should not be present, so that the petition can be presented to him; for the Rescript says: "That day shall be observed upon which he shall first be able to appear." Therefore, if after the appeal, the judge who rendered the decision should not be present, as he is accustomed to be, it must be said that the appellant is in nowise prejudiced; for he can appeal the first time that he has access to the judge. Hence, if the judge should conceal himself, the litigant should be entitled to the same relief.

(8) But what if the lateness of the hour caused him to retire, the judgment having been pronounced during the latter part of the day? In this instance, the judge will not appear to have withdrawn.

(9) We understand the opportunity of access to be when the judge appears in public. If, however, he has not done so, will the party be to blame for not having gone to his house; or not to have approached him in his garden; or even at any house in the country ? The better opinion is that he should not be liable to censure. Therefore, if he did not have access to him in public, it will be better to hold that he did not have access to him at all.

(10) When, indeed, anyone has no opportunity to obtain access to the magistrate from whom he appeals, but has access to the appellee, let us see whether an exception can be pleaded against him, because he did not apply to the latter. The rule at present is, that if he had the opportunity to apply to either of them, there will be ground for an exception.

(11) The term of two days is understood to have reference to one's own case. But how shall we distinguish one's own case from that of another? It is clear that one's own case is that whose profit or loss affects a litigant personally.

(12) Therefore an attorney, unless he is acting in his own behalf, will be entitled to the term of three days. When he is appointed to conduct his own case, the better opinion is that he will only be entitled to two days. But if he is acting partly in his own name, and partly in that of another, it may be doubted whether he will be entitled to two or three days. The better opinion is that he will be entitled to two days, when he acts in his own name, and to three, when he acts in the name of another.

(13) Guardians, as well as the defenders of public matters, and the curators of minors or insane persons, should have three days, for the reason that they appeal in the name of others. From this it appears that a defender can appeal upon a third day, provided he is conducting the case as a defender, and not in his own name; for as he is conducting it in behalf of another, he can appeal on the third day.

(14) Where anyone who has accused a guardian of being suspicious loses his case, Julianus, in the Fortieth Book of the Digest, states that he can appeal within three days, just as the defender of a minor.

(15) Where judgment has been rendered against an absent person, the term of two or three days must be computed from the date when he learned of the judgment, and not from the day on which it was rendered. When, however, it is said that an absent party can appeal from the day on which he learns of the judgment, this must be understood to mean if he was not defended in the case by an attorney; for if the latter did not appeal, it will be difficult for the former to obtain a hearing.

2. *Macer, Appeals, Book I.*

If you have conducted a case as an attorney, and, having been defeated, appeal, and your appeal has been decided to be ill founded, it may be doubted whether you should appeal on the second day, for as judgment has been rendered against your appeal, you appear to be the party in interest.

It is, however, better to hold that you can appeal on the third day, because you have, nevertheless, defended the case of another.

(1) If, however, another than a party litigant should appeal, for example, one who has an interest, let us see whether he can appeal on the third day. It must, however, be said that he ought to appeal on the second day, because it is true that he is defending his own case. It would be opposing himself if he should allege that he has a right to appeal within three days, because it is held that if he takes an appeal in the name of another, when if he wishes his own case to appear to be that of another, he excludes himself, for the reason that he who was not a party in the beginning has no right to appeal in another's case.

(2) If, however, one who is alleged to be a freedman should defend himself on the ground that he is freeborn, and, having been beaten, neglects to appeal, the question arises whether his father can do so, especially if he states that he is under his control. But if he can appeal, it is better to hold that he should do so on the second day, as conducting his own case.

(3) Where a near relative appeals in behalf of a person who has been sentenced to death, Paulus doubts whether he should be heard on the third day. It must, however, be said that a person of this kind should appeal upon the second day, as representing himself; because he who alleges that he is interested is defending his own case.

3. *The Same, Appeals, Book II.*

When a letter is written to the Emperor, and a copy of the same is shown to one of the litigants, who did not appeal, and afterwards the Emperor decides against him in a Rescript, let us see whether he can appeal from the letter which was previously shown to him, since as he did not do so at the time, he seems to have admitted its contents were true. He should not be heard, if he should state that he was waiting for the issue of the Imperial Rescript.

## TITLE V.

## CONCERNING THE ACCEPTANCE OR REJECTION OP APPEALS.

1. *Ulpianus, On the Edict, Book XXIX.*

Appellants are not usually heard unless they have an interest in the suit, or have been commissioned to act, or are conducting the business of others, and their acts are ratified

immediately.

(1) When, however, a mother sees the case of her son overthrown by a decision, and, induced by maternal affection, appeals, it must be said that she should be heard; and if she prefers to prepare the case, she should not be considered to have interfered, although in the beginning she could not have undertaken the defence.

2. *Scsevola, Rules, Book IV.*

An appeal can be taken before final judgment, if a judge has rendered an interlocutory decree for the purpose of applying torture in a civil case, or in a criminal case, if he does this contrary to law.

3. *Paulus, Rules.*

He who institutes proceedings against a suspected guardian can appeal within three days if he should be defeated.

4. *Macer, Appeals, Book I.*

He should not be heard who attempts to cause delay in a suit in which he alleges in reply that he has presented a petition to the Emperor, and is waiting for the issue of the Rescript, and, if he takes an appeal on this ground, the Imperial Constitutions forbid it to be received.

5. *Ulpianus, On Appeals, Book IV.*

It is sufficient for him whose appeal is not received merely to state this fact, and in whatever way he does so, his appeal will be admitted.

(1) When an appeal is not received, and it becomes necessary to appeal to the Emperor, a petition should be presented to him. If, howr ever, an appeal should be taken to anyone but the Emperor, the former must be applied to.

(2) Where, after the appeal has been received, any impediment is interposed, he must be applied to before whom the litigant wishes to bring the appeal.

(3) It is clear that if the appeal should not be received, and the appellant did not apply to the proper official, but to the Emperor, it will be the same as if he had gone before the magistrate whom he should have applied to; and this is stated in different Rescripts of our Emperor Antoninus.

(4) It is also evident that if a party litigant has appealed to one magistrate instead of another, and not to the Emperor, this mistake will be of no advantage to him, although he will not be considered to have failed to appeal.

(5) During the time prescribed for taking an appeal, the party whose appeal was not accepted can either apply to a competent judge, or to the Emperor.

6. *Macer, On Appeals, Book II.*

It must be remembered that, when an appeal is rejected, it has been decided by the Imperial Constitutions that everything must remain in the same condition, and nothing new be done, even if the appeal is taken against the Treasury; and he who refuses to receive the appeal must immediately make a report giving his opinion, and the reason for its rejection; and it is provided by the Imperial Mandates that he shall furnish the litigant with a copy of his report.

7. *Paulus, On Appeals.*

If the matter does not admit of delay, it is not permitted to appeal to prevent the opening of a will, as the Divine Hadrian decided that grain collected for the use of soldiers should not be used for the sustenance of the public, and that an appointed heir should not be placed in possession.

(1) Again, if anything has been decided in accordance with the Perpetual Edict, an appeal cannot be taken to prevent its being carried into effect.

(2) In like manner, an appeal cannot be taken to prevent the sale of a pledge.

## TITLE VI.

## CONCERNING NOTICES OF APPEAL CALLED DISPATCHES.

1. *Marcianus, On Appeals, Book II.*

After an appeal has been filed, letters should be sent by the official from whom the appeal is taken, to him who is to hear it, whether this be the Emperor, or someone else; which letters are called notices, or dispatches.

(1) The form of these letters is as follows, for instance: "Lucius Titius has appealed from the decision of So-and-So, rendered between him and So-and-So."

(2) It is sufficient to have demanded these notices earnestly and frequently within the prescribed time, and if the judge does not accede to the demand, this can be proved by witnesses; for the Imperial Constitutions require that the party who applies for such a notice should do so with vehemence. Therefore, it is but just that, if he who should grant the notice is to blame for not doing so, this shall not prejudice the person who made the demand.

## TITLE VII.

## NO CHANGE SHALL BE MADE AFTER THE APPEAL HAS BEEN INTERPOSED.

1. *Ulpianus, On Appeals, Book IV.*

After an appeal has been interposed, whether it is received or not, nothing must be altered in the meantime, if the appeal is received, for this reason; but if it is not received, in order that nothing may be prejudiced while it is being decided, whether the appeal should be received or not.

(1) If the appeal is received, no change shall be made until a decision has been rendered with reference to the appeal.

(2) If anyone should happen to be relegated, and takes an appeal, he will not be restricted to Italy, nor to any single province to which he may have been relegated.

(3) For the same reason, if anyone has been deported, or notified by a magistrate who has a right to deport him, he shall not be put in chains, nor shall he be subjected to any of the severe treatment which those are liable who do not acquiesce in a decision; for his condition is considered to remain unimpaired after the appeal has been interposed.

(4) Therefore, if he has been ordered to withdraw from his order, and he appeals, for the same reason he can attend its meetings; as it has been decided, and is a rule of law, that no further steps can be taken while an appeal is pending.

(5) When anyone is convicted of several crimes, and has appealed on account of some of them, but not on account of others, the question arises whether his punishment should be postponed, or not. If the appeal was taken on account of the more serious crimes, but he did not appeal for those which were less serious, the appeal should by all means be received, and the punishment deferred. Where, however, he deserves a heavier sentence for offences on account of which he did not appeal, the penalty must certainly be imposed.

## TITLE VIII.

## WHAT DECISIONS CAN BE RESCINDED WITHOUT AN APPEAL.

1. *Macer, On Appeals, Book II.*

We must remember that when an inquiry is made whether a case has been decided or not, and

the judge of this question declares that it has not been decided, even though it may have been, it is rescinded, even if no appeal has been taken.

(1) Likewise, if an error in the calculation is alleged to exist in the decision, it is not necessary to appeal, for instance, if the judge decides as follows: "As it is proved that Titius owes Seius fifty *sesterces* for such-and-such an article, and also twenty-five for another; therefore I hold that Lucius Titius shall pay Seius a hundred *sesterces;"* because, as the mistake is one of computation, it is not necessary to appeal, and it can be corrected without doing so.

If, however, the judge of this question should render a decision for a hundred *sesterces,* for the reason that he thought that fifty and twenty-five made a hundred, still, the same mistake is one of computation, and it is not necessary to appeal. But when the judge decides that there is another sum of twenty-five *sesterces* due, there will be ground for appeal.

(2) Likewise, when the decision is contrary to the Imperial Constitutions, the necessity for appeal does not exist. A decision is rendered against the constitutions when it is pronounced in compliance with the law as laid down by them, and not with reference to the rights of the litigant; for if the judge, in the case of a person desiring to be excused from the charge of a public office, or of a guardianship, on account of having children, or through age, or by reason of some .privilege, should hold that neither children, nor age, nor any privilege will avail to excuse anyone from office, or from guardianship, he is understood to have decided with reference to the law as set forth in the constitutions.

If, however, he should permit a person to establish his right, and then renders a decision against him because he did not prove his age, or the number of his children; he is understood to have decided with reference to the rights of the litigant, in which case an appeal will be necessary.

(3) Likewise when, under a peremptory Edict which has not been published, and of which the party has not been notified, he is convicted while absent, the constitutions declare that a decision of this kind is of no effect.

(4) If you and I both apply to the same judge, and neither of our petitions asks for interest, and the judge renders a decision against me before doing so against you, in order that you may be the first to have a judgment in your favor; it is not necessary for me to appeal on this ground, as, according to the Sacred Constitutions, you cannot ask for an execution against me before judgment has been rendered with reference to my claim; but the better opinion is that an appeal should be taken.

2. *Paulus, Opinions, Book III.*

Paulus held that he who was not alive at the time when judgment was rendered against him is understood to have been condemned to no purpose.

(1) He also held with reference to a person who was not alive at the time when the judge was appointed to decide his case that the appointment of the judge was void, and any decision rendered against him would be of no force or effect.

3. *The Same, Opinions, Book XVI.*

Paulus gave it as his opinion that a judicial order which is impossible was void.

(1) He also gave it as his opinion, that there was no ground for appeal where a decision had been rendered, which, in the nature of .things, could not be complied with.

## TITLE IX.

## WHETHER THE REASONS FOR AN APPEAL CAN BE PRESENTED BY ANOTHER.

1. *Ulpianus, Appeals, Book IV.*

It is frequently asked whether the reasons for an appeal can be stated by another person, and

this point is usually discussed in pecuniary and criminal cases. It is established by Rescripts that this can be done in pecuniary cases. The terms of one Rescript are as follows: "The Divine Brothers, to Longinus. If he who appealed directed you to defend him against the appeal which Pollia took against him, and the case is a pecuniary one, there is nothing to prevent you from answering in his name. If, however, the case is not a pecuniary one, but one involving the punishment of death, it is not permitted to proceed by an attorney. But if it is one in which a penalty as serious as relegation can be enforced, it is not necessary to act by another, but it should be noted that the party himself must appear in court."

It is clear that if the case is a pecuniary one, from which infamy may result, it can be conducted by means of an attorney. This opinion should be adopted, not only if the accuser should appeal, but also with reference to him against whom the appeal was taken; and, generally speaking, an appeal cannot be taken by another in any case where one person cannot appear by another.

2. *Macer, Appeals, Book II.*

When the attorney of an absent party appeals, and afterwards gives his reasons for doing so, he will, nevertheless, be obliged to answer. If, however, he fails to do so, can the party to the suit answer, as in the case of a minor? is a question which we should consider. We rather incline to the opinion that he ought to be heard in giving the reasons for the appeal, who, as the attorney of the absent party, applied for it.

## TITLE X.

## WHERE A GUARDIAN, A CURATOR, OR A MAGISTRATE HAVING BEEN APPOINTED, APPEALS.

1. *Ulpianus, On the Duties of Proconsul, Book HI.*

When persons who have been appointed to public offices appeal, and do not establish a justification for doing so, they are hereby notified that it is at their risk if the State should suffer any loss by reason of the appeal being delayed. When it is apparent that the appeal was necessary, the Governor of the province, or the Emperor, shall decide who was responsible for the damage sustained.

2. *Hermogenianus, Epitomes of Law, Book V.*

When a guardian or a curator is retained in office, and appeals, and dies before a decision has been rendered, his successors will be required to state the grounds of appeal, on account of the responsibility attaching to the intermediate time.

## TITLE XL.

## HE WHO APPEALS SHOULD BE DEFENDED IN HIS OWN PROVINCE.

1. *Ulpianus, On Appeals, Book IV.*

He who appeals must be defended in his own province, in all other cases of his own, even though he may be absent for the purpose of conducting his appeal.

This the Divine Brothers stated in a Rescript addressed to Decimus Philo.

2. *Marcianus, On Appeals, Book II.*

This privilege is granted to those who are absent on business for the State, in order that they may not be required to defend themselves.

## TITLE XII.

## WHERE A PARTY LITIGANT Is COMPELLED TO BRING ANOTHER ACTION BEFORE THE JUDGE FROM WHOSE DECISION HE HAS ALREADY APPEALED.

1. *Ulpianus, On Appeals, Book IV.*

When anyone has appealed from a judge in one case, and is compelled to have the same judge preside in another, let us see what course must be pursued. It is the law, at present, that even though an appeal has been taken, the party will still be required to appear before the same judge from whom he has appealed, and conduct other cases if he has any; nor can he avail himself of the pretext that he should not try them before a judge who may be hostile to him, as he can appeal again.

## TITLE XIII.

## IF DEATH SHOULD OCCUR WHILE AN APPEAL Is PENDING.

1. *Macer, On Appeals, Book H.*

Where the appellant dies without leaving an heir, an appeal of this kind is extinguished. If, however, an heir of the appellant should appear, and no one else has any interest in stating the ground for the appeal, the heir cannot be forced to prosecute it. But when the Treasury, or any other party against whom the appeal was taken, is interested in the case, the heir will be required to state the grounds for the appeal. No one has any interest, where, for example, the party has been relegated without having been deprived of his property. In case he should be relegated after having been deprived of his property, or be deported to an island, or sentenced to the mines, or should die after the appeal was taken, our Emperor Alexander made the following statement in a Rescript addressed to Pletorius, a soldier, as being applicable: "Although, while the appeal is pending, the accusation of the defendant is annulled by death, still, as it is alleged that a part of his property has been confiscated under the judgment, be who is entitled to the benefit of the succession can only obtain it if he gives good reasons for the appeal, and establishes the injustice of the decision."

(1) If a guardian, after having taken an appeal pertaining to the business of his ward, should die, his heir will be compelled to state the grounds for the appeal, even if he has already rendered his account of the guardianship, for the reason that it is sufficient that he would have been obliged to state the grounds for it at the time of his death.

The Divine Severus and Antoninus, however, stated in a Rescript that a guardian, after having rendered his accounts, should not be compelled to set forth the grounds of the appeal.

(2) The Divine Pius stated in a Rescript to Coelius Amarantus that notice to the Treasury of an estate without an owner was prescribed after four years, and that this time should be computed from the day when it began to be certain that there was no heir, and no possessor under praetorian law.

(3) The prescription of twenty years, however, which is observed with reference to the property of persons who have been notified, and do not institute proceedings to recover it is, according to a Constitution of the Divine Titus, usually reckoned from the day on which anything could begin to belong to the Treasury.

(4) Cases which have already been begun and continued beyond the twentieth year can also be prosecuted after the twentieth year has elapsed.

(5) Cases which are alleged to have been abandoned by the first person who gave notice of them can still be reported to the Treasury after the term of years by which, as we have stated, they are prescribed, has elapsed.

2. *The Same, On the Rights of the Treasury, Book II.*

There are certain reasons for which the reputation of those who give information is not injured; for instance, when this is not done in order to obtain a reward, and where persons denounce an adversary for the purpose of avenging a wrong; or where anyone prosecuted the case in the name of a municipality; and it is to be observed that this has many times been set forth in the Imperial Constitutions.

## TITLE XIV.

## CONCERNING THE RIGHTS OF THE TREASURY.

1. *Cattistratus, On the Rights of the Treasury, Book I.*

There are various reasons for which notice ordinarily is given to the Treasury; for anyone himself can state that he has no right to take property which is tacitly bequeathed by a trust, or where one has been denounced as a criminal by another; or this can be done in the case where the death of a relative is not avenged by the heirs; or because an heir has been denounced as unworthy; or because the Emperor was appointed heir, notice can be given that the will or the codicil has been suppressed; or because anyone may be alleged to have found a treasure; or to have purchased an article of great value which belonged to the Treasury, at a very low price; or on the ground that the Treasury had been defeated in the case by prevarication; or for the reason that a person accused of a capital crime has died; or because someone was accused after his death; or a house had been rebuilt; or an accusation abandoned; or property in litigation sold; or because a penalty was due to the Treasury under some private contract ; or because an act had been committed contrary to law.

(1) Where property is not sufficient for payment, the question arises whether it belongs to the Treasury by operation of law. Labeo says that, even if it is not sufficient to discharge the liabilities, it will still belong to the Treasury by operation of law. The Perpetual Edict, however, contradicts his opinion, because the property is sold when none of it can be acquired by the Treasury.

(1) The Divine Hadrian stated in a Rescript addressed to Favius Arrianus: "There is no doubt that he injures his own case who, being able to introduce documents having reference to the case of the Treasury does not do so, when the truth cannot otherwise be ascertained, and the documents are suppressed because it is thought that they will injure his case.

"But there is no question that the said documents will not injure any other case than the one in which their production is demanded."

(2) In like manner, the Divine Brothers stated in a Rescript, in answer to the petition of Cornelius Rufus, that documents should be produced whenever an inquiry is made with reference to the right to receive property, or the right of ownership, or anything of this kind, in a pecuniary case, but not in one in which the death penalty is involved.

(3) The Senate.decreed that, if neither the informer nor the possessor summoned by the three edicts should appear, the sureties of the informer will be liable; and he will be deprived of the right to bring an accusation afterwards in a public case, and the right of the possessor will remain the same as if he had not been denounced.

(4) Whenever an informer who has been ordered to appear fails to do so, and this is not proved to have been effected by the fraudulent conduct of the possessor, the Divine Hadrian stated in a Rescript that judgment should be rendered in favor of the latter, in such a way that it shall be mentioned therein that the informers are also included in the edict.

(5) The Divine Pius stated in a Rescript addressed to Csecilius Maximus that the Constitution of his Father, by which an informer is required to give the name of his principal, and if he does not do so, he shall be placed in chains, does not cause the informer to be released from

punishment, if he has a principal, but that the principal shall be punished, just as if he alone had made the denunciation.

(6) Our Emperor, Severus Augustus, decided that slaves who denounced their masters should not be heard, but should be punished; and also that freedmen who instigated other persons against their patrons should be punished by the Governors of provinces.

(7) Many Imperial Rescripts exist by which it is provided that no one is injured by a mistake, when, being ignorant of the law, he denounced himself. But there is also a Rescript of the same Emperor extant, by which it appears that it can be maintained that anyone who informs against himself will only not be injured in case he is such a person as can be ignorant of the law merely because of his rusticity, or where the person is a woman.

3. *The Same, On the Rights of the Treasury, Book III.*

*A* person is not understood to have defrauded the law if he has .publicly been asked to make restitution. When, however, anyone inserts the following into his will: "I charge you to faithfully execute what I have requested you to do, and I beseech you in the name of God to do so," the question was asked whether this request was made publicly. Julianus answered that, indeed, it did not appear that anything was asked of the heirs by words of this kind, but that it was usual to inquire when anyone was understood to have pledged his honor for the purpose of defrauding the law; and it had been almost definitely settled that the law was considered to have been defrauded whenever anyone was not requested by will or by codicil, but by a private promise, or by a note to bind himself to give something to a person who was not entitled to receive it; and therefore it could be said that no fraud was committed against the law by the words above mentioned.

(1) If anyone should, both publicly and privately, be charged to execute a trust, the question arises which would prevail, and whether what he was asked to do secretly, or what he was requested to do openly, would prejudice him. The Divine Hadrian stated in a Rescript that, where anything had been publicly confided to the honor of anyone, it should not be believed that he had made use of it in order to defraud the law.

(2) When fraud has been committed, let us see whether the result or the design should be considered; for instance, if, when the trust was tacitly created, he who was ordered to receive it was not capable of doing so, but at the time of his death was qualified to take it, or *vice versa.* It has been decided that the result should be considered.

(3) Implied trusts are frequently disclosed as follows: namely, where a document is produced by which the person in whom confidence is reposed binds himself to deliver whatever may come into his hands from the estate of the deceased.

This also takes place when other evident proofs exist.

(4) When, on account of an implied trust, property is confiscated to the Treasury, everything which is properly left by the will is valid. This the Divine Pius stated in a Rescript.

(5) The Divine Brothers stated in a Rescript that, in sales in which the Treasury is interested, good faith and diligence are exacted from the Agent of the Treasury, and that the just price should be determined, not from past sales, but from the present estimation of the value of the property. For the value of land is increased by diligent cultivation, just as it is necessarily diminished, if it is carelessly tilled.

(6) When the term of five years, for which a person binds himself under a public lease, has elapsed, he will not afterwards be liable; and this has been decided by the Imperial Rescripts. For the Divine Hadrian stated in a Rescript: "That is an extremely inhumane custom by which the lessees of public lands and farmers of the revenue are retained, when the taxes cannot be farmed, or the lands leased for the same price; for lessees could be more readily secured if they knew that, should they desire to depart after their terms had expired, they would not be

retained."

(7) If the Treasury should succeed to a last creditor, it will enjoy the same rights which he to whom it succeeded would have enjoyed.

(8) Many Imperial Rescripts exist, by which it is provided that the Treasury can not sue those indebted to its debtors, unless the principals fail to pay; or where it is clearly proved that the notes had been executed for the benefit of the Treasury; or that the debtors are sued under a contract made with the latter.

(9) When a slave who forms part of the property of the Treasury demands his freedom, the Divine Hadrian stated in a Rescript addressed to Flavius Proculus that the case ought to be argued before those who are accustomed to be present and act in matters in which the Treasury is interested; and that if questions of this kind relating to freedom have been determined in the absence of the Advocate of the Treasury, they shall be restored to their former condition.

(10) If a treasure should be found on land belonging to the Treasury, or in public or religious places, or in monuments, the Divine Brothers decide that half of it can be claimed by the Treasury. Likewise, if treasure should be found on property belonging to the Emperor, half of it also can be claimed by the Treasury.

(11) No one is obliged to give notice that he has found a treasure, unless the Treasury is entitled to a part of it. He, however, who finds a treasure in a place belonging to the Treasury, and appropriates that portion to which the latter is entitled, is compelled to surrender it all, and as much more.

4. *Ulpianus, On the Edict, Book VI.*

In cases in which the Treasury is interested, those who make agreements with the informers are considered as having confessed, provided they have given them any money, no matter how small an amount.

5. *The Same, On the Edict, Book XVI.*

If the curator of the Emperor should sell anything, even though he may promise double or triple the amount in case of eviction, the Treasury shall only be liable for the original sum.

(1) When anything belonging to the Treasury is sold by one who has the right to dispose of such property, it will immediately belong to the purchaser, as soon as the price has been paid.

6. *The Same, On the Edict, Book LXIII.*

When the Treasury succeeds to the private rights of an individual, it makes use of this right for the time which preceded, its succession, but after it has succeeded, it will be entitled to its own privilege.

But will a claim immediately begin to belong to it; or will it only do so after an action has been brought against the debtor; or will this be the case after the claim has been entered upon its register? are questions which may be asked. And, indeed, it demands the interest due to the Treasury from that time, although lower interest may have been due after it has sued the debtor, and he has acknowledged the debt. The Rescripts, however, do not agree with reference to the privilege. Still, I think that there will be ground for the privilege, when the claim has been recorded with those of other debtors.

(1) Any privileges to which the Treasury is entitled are also ordinarily enjoyed by the Emperor and the Empress.

7. *The Same, On the Edict, Book LIV.*

If the Treasury raises a controversy with reference to the condition of anyone, the Advocate of the Treasury should be present. Therefore, if a decision is rendered without the presence of the

Advocate of the Treasury, the Divine Marcus stated in a Rescript that the proceedings were void, and therefore it was necessary to begin them over again.

8. *Modestinus, Rules, Book V.*

The stewards of property sold by the Treasury cannot themselves be sold by the agents of the same, and if they should be, it is stated in rescripts that the sale will be void.

9. *The Same, Opinions, Book XVII.*

Lucius Titius appointed his sister his heir to three-fourths of his estate, and his wife, Msevia, and his father-in-law, his heirs to the remainder. His will was invalidated by the death of a posthumous child, who himself died soon afterwards; and hence the entire estate was acquired by the mother of the said posthumous child. The sister of the testator accused Msevia of having poisoned Lucius Titius. Having failed to prove this, she appealed, and in the meantime, the defendant died, but nevertheless, notices were issued.

I ask whether you think that the defendant having died, the appeal could be heard on account of the estate which was acquired. Modestinus answered that, although the accusation was annulled by the death of the defendant, still the Treasury had a right to recover the property, if it could be proved that it had been acquired by crime.

10. *The Same, Prescriptions.*

I do not think that he violates his duty who, in questions which are doubtful, readily answers against the Treasury.

11. *Javolenus, Epistles, Book IX.*

No property can be claimed by the Treasury, except that which remains after the creditors have been satisfied; for that only is considered to belong to anyone which remains after the indebtedness has been paid.

12. *Callistratus, On Judicial Inquiries, Book VI.*

Persons condemned to the mines are deprived of their freedom, as they are punished with the blows of a slave. The Divine Pius stated in a Rescript that nothing is acquired by the Treasury through persons of this kind; and therefore he decided that anything which was bequeathed to a man who was afterwards condemned to the mines would not belong to the Treasury, for he says that such persons are rather penal slaves than slaves of the Treasury.

13. *Paulus, On the Lex Julia et Papia, Book VII.*

By the Edict of the Divine Trajan, which I have cited, it is decided that if anyone, before information of his case was given to the Treasury, should declare that he had no right to retain the property in his possession, he could surrender half of it to the Treasury, and retain the other half for himself.

(1) The same Emperor afterwards determined by an Edict that where any woman stated, either publicly or privately, that a legacy had been bequeathed to her which she had no right to receive, and proved that it belonged to the Treasury, even if she did not have possession of the property, she would be entitled to half of what could be recovered by the Prefect of the Treasury.

(2) It makes no difference what the reason was which interfered with the right of receiving the legacy.

(3) Property which is concealed should be denounced, and not that which is in possession of the Treasury.

(4) The reward of a person who has denounced himself is not considered to pass to his heirs; but the Divine Hadrian stated in a Rescript that even if he who denounced himself should die

before the property of which he gave notice was seized by the Treasury, the reward should be given to his heir.

(5) A letter of the same Hadrian is extant which says that if he who could have denounced himself was prevented from doing so by death, and his heir gives the information, he will obtain the reward; provided that it is clear that the deceased had the intention of denouncing himself, but if he dissimulated because he expected to conceal the property, his heir will be entitled to nothing but the ordinary reward.

(6) The Divine Brothers also stated in a Rescript that the heirs of those to whom an implied trust had been left could denounce themselves by the privilege of Trajan, if he to whom it had been granted was surprised by death, and was not able to denounce himself for want of time.

(7) When an implied trust was denounced before a will was opened by those who had undertaken to execute it, and then, after the will had been opened, it was again denounced by the beneficiary of the trust, the Divine Antoninus ordered the statement of the latter to be received, on the ground that the exceeding haste of the first informers was unworthy of reward; and as the beneficiary declared that he could not receive it, he appeared rather to make a disclosure with reference to his own right than to denounce another.

(8) The privilege of Trajan has reference to those who cannot take what is left to them by the will of the deceased. Therefore I cannot denounce what has been left to me by my slave.

(9) Those who are rejected as unworthy should be barred from claiming a reward of this kind; for instance, those who have proceeded against a will on the ground of its being inofficious, or have alleged that a will is forged, and have attacked its validity until the case was terminated.

(10) The Divine Hadrian and the Divine Pius stated in Rescripts that anyone who denounced himself by mistake, when he was entitled to receive the entire amount bequeathed to him, was not prejudiced by doing so.

14. *Gaius, On the Lex Julia et Papia, Book XI.*

It is said that when, under the terms of the Silanian Decree of the Senate, the Treasury claims the entire estate, neither grants of freedom nor legacies are protected; which is plainly contrary to reason, when, in all other cases where estates are claimed by the Treasury, the rights to grants of freedom and legacies continue to exist unimpaired.

15. *Junius Mauricianus, On the Lex Julia et Papia, Book HI.*

The Senate decreed that when an informer asks that his denunciation be withdrawn, because he alleges that he was mistaken, the judge must investigate, and ascertain whether there is any good reason for the withdrawal of the notice, and if the informer appears to have been mistaken, he should pardon his imprudence; but if he has been guilty of malice, he must so decide, and the condition of the accuser will be the same as if he had made the denunciation, and then been guilty of treachery.

(1) Where anyone suborns an informer, he must pay as much into the Treasury as the informer would have obtained, by way of reward, if he had proved his allegations.

(2) The Divine Hadrian stated in a Rescript that the informer should suffer the same penalty, if, after having been cited, he does not answer the Edict, as he would have been liable to if he had not proved his case.

(3) The Senate, in the time of Hadrian, decreed that when anyone denounced himself to the Treasury, for the reason that he could not receive a bequest, the entire property should be surrendered to the Treasury, and half of it should be given to the informer, in accordance with the privilege of the Divine Trajan.

(4) When an informer is ordered by three Edicts, issued by the Prefect of the Treasury, to be present, and is unwilling to appear, judgment shall be rendered in favor of the possessor, but

there shall be collected from him who was ordered to be present and did not do so (the possessor having appeared to answer), as much as would have been paid into the Treasury in the matter in which he gave information, if he had proved his allegations.

(5) The Senate decreed that he who is evicted of an entire estate, or of all legacies, by the Treasury, must deliver to it all his accounts, just as he is obliged to do who has been evicted of a part of an estate, or a legacy.

(6) Where anyone is proved to have rendered false accounts, the Prefect of the Treasury shall make an investigation, and shall order to be paid into the Treasury a sum of money equal to that which he finds to have been acquired by fraud.

16. *Ulpianus, On the Lex Julia et Papia, Book XVIII.*

The Divine Trajan says, "Whoever shall have stated." We must understand "whoever" to mean either a man or a woman, for although women are forbidden to act as informers, still they are permitted to denounce themselves by the privilege of Trajan. Likewise, it does not make any difference what the age of the informer may be, whether he is of lawful age, or a minor, for minors are permitted to denounce themselves in cases where they are not entitled to receive property.

17. *Modestinus, On Punishments, Book II.*

Women are not permitted to act as informers on account of the weakness of their sex, and this has been provided in the Sacred Constitutions.

(1) In like manner, illustrious men cannot act as informers.

(2) Also, persons who have been convicted cannot act as informers, as was stated by the Divine Brothers in a Rescript with reference to a person who had been beaten with rods, and then sentenced to the , public works.

(3) Again, those who have been condemned to the mines are forbidden to act as informers by the Imperial Constitutions, for the reason that, being desperate, they may readily have recourse to denunciation without cause.

(4) It has, however, been stated in Rescripts that where good reasons existed for giving information before their conviction, they could give it after this had taken place.

(5) Veterans are also prohibited by the Sacred Constitutions from acting as informers, on account of the honor and the merits of the military profession.

(6) In like manner, soldiers are forbidden to act as informers on account of the honor of the military service.

(7) Anyone, however, can give information with reference to a case in which he is interested with, the Treasury; that is to say, he can make a claim, nor will he become infamous on this account even though he may not succeed.

(8) Again, it was stated by the Divine Severus and Antoninus in Rescripts that those who have been guardians or curators could not act as informers in favor of their wards or their minors. The same rule should be observed with reference to one who transacts business as an agent; and this was also stated by the same Emperors in Rescripts.

They also decreed that the interrogation of an agent was not prohibited by any constitution, but that he could not accuse the person whose business he transacted; and they published in a Rescript that a guardian, who either acted as informer, or caused this to be done, should be severely punished.

(9) But not only he who sold property should not, either himself, or through another who has been substituted, furnish information concerning it, lest otherwise he may be liable to a personal penalty, as it is stated has been decided.

(10) Papinianus, in the Sixth and Eleventh Books of his Opin ions, says finally that public money shall be taken from anyone who is a creditor, and who as such, received it in payment of a debt, if he either knew at the time when he received it that his debtor also owed the Treasury, or if he learned this afterwards, before he had used the money.

It is, however, settled that, by all means, he should be deprived of the money, even if he was ignorant of the facts at the time that he used it. And the Emperors afterwards stated in a Rescript that he would be entitled to a direct action after the money had been taken from him, as Marcellus also says in the Seventh Book of the Digest.

19. *Papinianus, Opinions, Book X.*

Finally, when the money is recovered, it is established that interest should not be paid, as the property and not the person is involved.

20. *The Same, Opinions, Book XI.*

The money having been recovered, an equitable action will be granted against the surety who was released.

21. *Paulus, Questions, Book III.*

Titius, who owed me money, the payment of which was secured by pledges, and who was, at the same time, a debtor of the Treasury, paid

me what he owed me, and the Treasury afterwards, taking advantage of its right, deprived me of the money. The question arose whether the pledges should be released. Marcellus very properly thinks that if the Treasury deprived me of what I had been paid, the release of the pledges would not take place. I do not think that the distinction of those who hold that it makes a difference whether the identical money Jpaid, or a sum equal to it was recovered, should be admitted.

22. *Marcianus, On Informers.*

Property which is in dispute should not be sold by the Manager of the Imperial Revenues, but its sale should be postponed; as the Divine Severus and Antoninus stated in a Rescript. And if a person accused of high treason should die, and his heir is ready to prove the innocence of the deceased, they ordered the sale of the property to be suspended; and, in general they forbade property which is in litigation to be sold by the Manager of the Imperial Revenues.

(1) Managers of the Imperial Revenues can, however, sell property which has been pledged. If, however, it has been encumbered to another by the right of pledge, the Manager of the Imperial Revenues should not injure the rights of creditors; but if any of the property remains, the Manager of the Imperial Revenues is permitted to dispose of it under the condition of first satisfying the preferred creditors, and if there is any excess remaining, it will be paid into the Treasury; or if the Treasury receives the entire price, he himself must make payment; or if the Manager of the Imperial Revenues has merely sold the property, he shall order the money proved to be due to any private creditor to be paid to him.

This the Divine Severus and Antoninus stated in a Rescript.

(2) The Divine Pius stated in a Rescript that he was not willing to accept the gift of a lawsuit, even though the party offering to give it should say that he intended to leave his entire estate to the Emperor; and also that he would not accept a part of the property as a donation. He added that a person of this kind should be punished for entertaining such a base and malicious design, and that the penalty should be inflicted at the very moment of his appearance, unless it appeared to be too severe.

(3) As no one is compelled to give information, he who has once done so is not permitted to desist, as the Divine Severus and Antoninus stated in a Rescript; and the same rule applies even though the informer may have given the notice by the direction of another.

It was clearly stated in the Rescript that the informer should be heard if he desires to withdraw the denunciation, provided he complains that the person who employed him has desisted.

23. *Callistratus, On the Rights of the Treasury, Book II.*

When an informer, who began proceedings alone without mentioning anyone as having directed him to do so, afterwards desists, giving as an excuse that the person who employed him has withdrawn, the Divine Brothers stated in a Rescript that he should be punished.

24. *Marcianus, On Informers.*

Not only is the informer punished if he does not prove his allegations, but also the person who directed him to make them, and whom the informer should compel to appear.

25. *Ulpianus, On Sabinus, Book XIX.*

It was decreed and established by the Emperor Severus that, under no circumstances, should anyone be required to show when he obtained the property denounced to the Treasury, but that the informer should prove what he alleges.

26. *The Same, On Sabinus, Book XXXI.*

When anyone accused of a capital crime emancipates his son, in order that he may accept an estate, it is provided in a Rescript that he is not considered to have done this for the purpose of defrauding creditors, for the reason that the property was not acquired by him.

27. *The Same, On the Edict, Book XXXIV.*

When a husband does not prosecute the murderer of his wife, the Divine Severus stated in a Rescript that the dowry should be confiscated to the Treasury, to the extent of the husband's interest.

28. *The Same, Disputations, Book III.*

When anyone binds himself to me, by encumbering any property "which he has, or may have," and afterwards makes a contract with the Treasury; it should be remembered that the Treasury will have the preference so far as anything subsequently acquired is concerned.

This was the opinion of Papinianus, and was also established by the constitutions, for the Treasury anticipates the lien of the pledge.

29. *The Same, Disputations, Book Vill.*

The condition of anyone who corrupts his informer is that he is considered as having been defeated, for this rule has been established in fiscal cases. The better opinion is that this penalty renders the person who corrupts his informer individually liable, but it is not transmitted against his heir. For the case in which the money was paid is not at an end; nor is the right of action extinguished, nor is conviction held to have taken place; but it is necessary for evidence to first be offered, and judgment be rendered with reference to the crime; as it is clear that the case which was once decided by means of the corruption of the informer must be reviewed. If the corrupter should be dead, this does not prevent it from being heard again, for, in this instance, not the restitution of the penalty but that of the case itself is involved.

(1) It is established that he who has asserted that a will is forged can enter upon the estate; but if actions are refused him, there will be ground for the Treasury to interfere; and the obligations which were merged by the acceptance of the estate are not restored.

(2) For, where a man did not avenge the death of the deceased, after having entered upon his estate, Our Emperor, together with his Father, stated in a Rescript that obligations which had been merged should not be re-established.

30. *Marcianus, Institutes, Book III.*

The Managers of the Imperial Revenues should not sell the stewards having charge of property acquired by the Treasury, which was stated by the Emperors Severus and Antoninus in a Rescript, and if they have been manumitted, they shall be returned to slavery.

31. *The Same, Institutes, Book IV.*

The Divine Commodus stated in a Rescript that the property of hostages, just like that of captives, should be turned over to the Treasury.

32. *The Same, Institutes, Book XIV.*

If, however, they had assumed the use of the Roman toga, and had always acted as Roman citizens, the Divine Brothers stated in a Rescript addressed to the Managers of the Imperial Revenues having charge of estates that their rights were undoubtedly, by the indulgence of the Emperor, distinct from those attaching to the condition of hostages, and therefore that the same rights would be preserved to them if they were appointed heirs by competent Roman citizens.

33. *Ulpianus, Opinions, Book I.*

He who has entered upon the estate of a fiscal debtor begins to be subject to the privileges of the Treasury.

34. *Macer, Public Prosecutions, Book II.*

The Emperors Severus and Antoninus stated in a Rescript to As-clepiades: "You who, having failed to make a defence, preferred to purchase the judgment when you were accused of crime, are with reason ordered to pay fifty *solidi* to the Treasury, since, leaving out of consideration the examination of your case, you have rendered yourself liable to this penalty; for it must be maintained that those who are involved in matters in which the Treasury is interested, should undertake the defence of their cases in good faith, and not attempt to[1] buy their adversaries, or their judges."

35. *Pomponius, Epistles, Book XL*

It is stated in Julianus that if a private individual should allege that the estate of Lucius Titius belongs to him, when the same estate is claimed by the Treasury, the question arises whether the right of the Treasury should be first inquired into, and the actions of the other parties be allowed; or whether collection of the claims of the individual creditors should be stopped, in order to prevent the case of the government from being prejudiced. This was set forth in the Decrees of the Senate.

36. *Papinianus, Opinions, Book HI.*

Where lands have been sold by the Treasury, it was decided that the purchaser is liable for any taxes already due thereon.

37. *The Same, Opinions, Book X.*

When it was established that a penalty should not be demanded by the Treasury, unless the creditors recover what is owing to them, this means that the privilege relating to the penalty should not be exercised against the creditors, and not that the Treasury should lose the ordinary right enjoyed by private individuals.

38. *The Same, Opinions, Book XIII.*

The Treasury was defeated in a case where it was alleged that a will was forged, but, before this question was decided, it was established by the information of another that the estate was without an owner. I held that the crops which had been gathered after the first action should not be separated from it, for, after issue has been joined, the appointed heir is not entitled to

the benefit of the Decree of the Senate.

(1) I gave it as my opinion that he has not performed the part of an informer who contended that the money which another person had in his possession belonged to the administration of his time, although he was not able to prove it, for the reason that he had acted in his own behalf.

39. *The Same, Opinions, Book XVI.*

A sentence cannot adjudge property to the Treasury without including the penalty for perpetual exile.

(1) I gave it as my opinion that he who asked that the risk of a common conviction be divided, because the parties convicted would be solvent if the alienations which they had fraudulently made should be revoked, did not appear to have given information to the Treasury of a case in which money was involved.

40. *Paulus, Questions, Book XXI.*

An heir was charged as follows: "I ask you to give Titius the tract of land which I have already requested you to give him." If Titius is not capable of receiving the land, the heir cannot escape the penalty of an implied trust; for it is not publicly left, as it cannot be learned what it is from reading the will.

In like manner, he does not openly make a bequest who does so as follows, "I ask you, my heirs, to faithfully execute what I have requested of you." And, indeed, in the first instance, the testator ap-ipears to have meditated a greater fraud, as he not only intended to evade the law, but also its interpretation with reference to implied trusts; for although he mentioned a tract of land, it cannot be known with the transfer of which one the heir was charged, as the want of identity of the property renders the devise obscure.

(1) Where a patron charges himself with a secret trust, in order that he may pay it out of his own share, he is not said to have committed a fraud, because it was taken out of his own property.

41. *The Same, Opinions, Book XXI.*

He who purchased from the Treasury property which had no owner is liable to an action which could have been brought against the deceased.

42. *Valens, Trusts, Book V.*

Arrianus Severus, Prefect of the Treasury, in a case where the estate of one who had been secretly charged with a trust for the benefit of a person who could not receive it, and the property of the trustee was confiscated, decided that he to whom the trust had been left had still the right to give information, according to the Constitution of the Divine Trajan.

(1) Moreover, for the reason that some persons display ingratitude towards the privilege granted by the Divine Trajan, and, after they have revealed the existence of a secret trust, compromise with the possessors, and, after having been summoned by the Edict, fail to answer, it was decreed by the Senate that as much should be collected from him who had acted in this manner as the Senate would have obtained through the informer, if he had proved his allegations; and if the fraud of the possessor should be established before the Prefect, as much should be collected from him as he would have been compelled to pay if he had been convicted.

43. *Ulpianus, Trusts, Book VI.*

Our Emperor stated in a Rescript that the Treasury would be entitled to a real action where the existence of a secret trust is established.

44. *Paulus, Sentences, Book I.*

He is not an informer who, for the purpose of protecting his own case, furnishes information to the Treasury.

45. *The Same, Sentences, Book V.*

Alienation of property, either by donation or in any other way, for the purpose of defrauding the Treasury, is revoked. The same rule of law applies, even if it is not claimed, for fraud is equally punished in all cases.

(1) The estates of those who expire in prison, in chains, or in shackles, whether they die testate or intestate, are not taken away from their heirs.

(2) The estate of a person who kills himself is not acquired by the Treasury, before it has been proved that he laid violent hands on himself because of some crime which he had committed. The estate of one who killed himself on account of some serious crime which he has perpetrated is confiscated to the Treasury. If, however, he committed the act through weariness of life, or from mortification arising from indebtedness, or because of his inability to suffer illness, his heirs will not be disturbed, but will be allowed to take the succession.

(3) It has been decided that any grants of freedom made by a debtor for the purpose of defrauding the Treasury will be revoked. When, however, he purchases a slave from another in order to manumit him, this is not forbidden, as then he can grant him his freedom.

(4) Among the property which can be denounced to the Treasury are written instruments, or notes; but it is settled that such documents as have reference to the rights of private individuals should be returned to those who ask for them.

(5) No one can be compelled to furnish instruments or public documents against the Treasury.

(6) The Treasury itself furnishes copies of its documents, under the condition that he who has the right to obtain copies shall not make use of them either against the Treasury, or the State. The recipient is obliged to furnish security not to do this, and if he makes use of them contrary to the prohibition, he will lose his case.

(7) Whenever any business is transacted with the Treasury, permission must be obtained to introduce its documents, in order for this legally to be done; and they should be certified by the clerk. If they are introduced in any other way, he who produces them will lose his case.

(8) Whenever the same case is heard a second time before the Treasury, the reading of documents, the production of which had not heretofore been requested, can legally be demanded.

(9) He who, after having been sued by the Treasury on account of another, pays the debt, can very justly bring suit to recover the property of him for whom he made payment, under which circumstances it is customary for him to be offered special relief.

(10) When debtors of the Treasury request a delay for the purpose of obtaining money, it has been established that they should not be refused. The allotment of the time is left to the discretion of the court; provided that in the case of large sums, not more than three months, and in the case of small ones, not less than two, shall be granted. A longer period should be requested of the Emperor.

(11) When the property of the principal debtor is acquired by the Treasury, the sureties will be released, unless his solvency is qufts-tionable, and they have become responsible for the remainder of the unpaid indebtedness.

(12) When more than what is due has been obtained from the sale of the property of a debtor by the Treasury, the restitution of the surplus can be demanded according to justice and reason.

(13) A lessor can transfer nothing from the land of the Treasury, and he cannot sell cypress or olive trees if he does not substitute others for them; nor can he cut down any other fruit trees; and, after an estimate of the value of the property has been made, he can be sued for fourfold damages.

(14) Neither land can be rented, nor taxes farmed by minors under twenty-five years of age, to prevent them from availing themselves of the privilege of age as against the Treasury.

46. *Hermogenicmus, Epitomes of Law, Book VI.*

He will be deprived of the succession as being unworthy, who, having been appointed an heir, as a son, is declared to be supposititious, after the death of the person who is said to have been his father.

(1) He who knowingly attempts to defraud the Treasury is obliged to return not only the property which he acquired by fraud,, but as much more.

(2) When anything is purchased by a Governor, a Manager of the Imperial Revenue, or anyone else in a province in which he holds office, even though this has been accomplished by the agency of some other person, he shall be punished by the annulment of the contracts, and the appraised value of the property shall be paid into the Treasury. For anyone who has charge of the affairs of a province is even forbidden to build a ship therein.

(3) The Treasury has always the right of pledge.

(4) Anyone who pleads a set off against the Treasury must show within two months what is due to him.

(5) It has frequently been decided that what the Treasury owes can be set off against what is due from debtors to it, except in the case of tribute and taxes and payments for property purchased from the Treasury, as well as what is due on account of subsistence.

(6) He who has been accused of an offence can administer his property, and his debtor can pay him in good faith.

(7) Agents holding any official employment and Managers of the Imperial Revenues are forbidden to sell property without first consulting the Emperor, and if they do so, the sale will be invalid.

(8) A slave of the Emperor, who enters upon an estate by the order of a Manager of the Imperial Revenues, acquires the estate for the benefit of the Emperor, if the latter consents.

(9) Where several persons have defrauded the treasury, it does not follow that each of them is liable in full, as in the action of theft; but all will owe a penalty of fourfold the amount, each in proportion to his individual share. It is clear that those who are solvent will be liable for those who are not.

47. *Paulus, Decrees, Book I.*

*A* woman named Moschis, who was indebted to the Treasury on account of a lease for the farming of taxes, left several heirs, from whom, after the estate had been accepted, Faria Senilla and others, purchased certain lands. When suit was brought against them for a balance due from Moschis, they having alleged that the heirs of the latter were solvent, and that many other persons had bought property from them, the Emperor considered it just that recourse should first be had to the heirs, and that all the possessors should be sued for the balance. And this was his decision.

(1) JEmilius Ptolemy leased land from the Treasury, and gradually sublet it to several persons for a higher rent than he himself had agreed to pay. Suit was brought against him by the Managers of the Imperial Revenues for all that he had collected. This seemed to the Treasury to be both unjust and useless, as he had leased the land to the others at his own risk, and

therefore it was decided that he could be sued only for the amount for which he, as lessor, had rendered himself liable.

48. *The Same, Decrees, Book II.*

Statius Florus, in his written will, had secretly charged his heir Pompey to give a tract of land and a certain sum of money to someone who had no right to receive it, and took the precaution of exacting a bond from Pompey obligating him to surrender what he had left to him as a preferred legacy. Afterwards the said Florus, having appointed the same Pompey and one Faustinus his heirs by a second will, did not bequeath any preferred legacies to Pompey. The person who had no right to receive the bequest informed against himself.

The Emperors, having been consulted by the Managers of the Imperial Revenues, stated in a Rescript that if it could not be proved that the testator had changed his mind, the trust must be executed. And Pompey, having had judgment rendered against him in consequence, requested that the burden be borne by the entire estate, for the reason that he did not receive the preferred legacies, and it could not be held that the testator had only persevered in a part of his original intention. It was decided, in general, that the first will no longer existed, and if a preferred legacy had been left by the testator in his first will, it could not be demanded under the second, unless the second directed that this should be done. It was also decided that, because the heir could not prove that preferred legacies had been left to him, that he was obliged only to carry out the trust under the bond which he had executed.

(1) A mother, who had been appointed an heir, was requested to transfer the estate to Cornelius Felix, after her death. The appointed heir, having been condemned by the Treasury, and all her property seized, Felix alleged that he was not liable to the penalty, for this had been already decided. But as the day of the trust had not yet arrived, for the reason that he himself might die first, or that the mother might acquire other property, his application was in the meantime rejected.

49. *The Same, On Implied Trusts.*

He to whom a secret trust has been left, having given information that he had no right to receive it, the question arose whether, according to the privilege of the Divine Trajan, he was entitled to three-fourths of the amount of the trust, or only half of it. A Rescript of the Emperor Antoninus on this point is extant as follows: "The Emperor Antoninus to Julius Rufus. If he who has secretly pledged his faith to deliver an estate to someone not legally qualified to receive it should deliver it after having deducted the fourth part of the same, he cannot retain anything; for the fourth belonging to the heir himself will be taken from him and transferred to the Treasury. Wherefore, the person who gave the information can only receive the half of three-fourths."

50. *The Same, Decrees, Book III.*

Valerius Patronus, Imperial Procurator, adjudged to Flavius Stal-ticius certain lands at a fixed price. The property was afterwards offered at an auction, and the same Stalticius purchased it, and was placed in full possession of the property. A question arose with reference to the crops gathered in the meantime. Patronus asserted that they belonged to the Treasury. And if they were gathered in the interim between the first sale at auction and the following adjudication, it is evident that they would belong to the vendor; for it is ordinarily said that when the adjudication is made within a certain time, then a better condition is secured.

We should not experience any difficulty, for the reason that the person to whom the land had first been adjudged was the same. But as the two adjudications had been made before the vintage, this opinion was not adhered to, and it was decided that the crops belonged to the purchaser. Papinianus and Messius introduced a new decision on the ground that as the lands were leased to a tenant, it was unjust that he should be deprived of all the crops; but they held that he had a right to gather them, and that the purchaser should receive the rent for that year,

for fear that the Treasury could be held liable by the tenant, as he had not been permitted the enjoyment of his lease, just as if this had been agreed upon at the time of the sale.

It was also decided, in accordance with their opinion, that if the land had been cultivated by the owner, the purchaser would be en-

titled to all the crops, but as it was leased by the tenant, the purchaser should receive the rent. Having been asked by Tryphoninus what opinion they would hold with reference to certain dried fruits which had been formerly gathered on the land, they answered that if, after the decision had been rendered, the day for the payment of the rent had not yet arrived, the purchaser would also be entitled to them.

## TITLE XV.

## CONCERNING CAPTIVES, THE RIGHT OP POSTLIMINIUM, AND PERSONS RANSOMED FROM THE ENEMY.

1. *Marcellus, Digest, Book XXII.*

If a slave of anyone who has been taken prisoner by the enemy should afterwards enter into a stipulation, or if a legacy should be bequeathed to his slave after he has fallen into the hands of the enemy, his heirs will be entitled to it, for the reason that if he should die during his captivity it would be acquired by his heir.

2. *The Same, Digest, Book XXXIX.*

The right of *postliminium* attaches to large ships and those used for the transport of merchandise on account of the custom of war; but it does not apply to those of fishermen, or to fast sailing vessels built for pleasure.

(1) Likewise, a horse or a mare broken to the bridle is acquired by the right of *postliminium,* for they have been able to escape without the fault of the rider.

(2) The same rule of law does not apply to arms, for they are not lost without disgrace. Hence arms cannot be recovered by the right of *postliminium,* since it is dishonorable to lose them.

3. *Pomponius, On Quintus Mucius, Book XXXVII.* The same rule applies to clothing.

4. *Modestinus, Rules, Book HI.*

It was formerly held that those who are taken by the enemy, or who surrender to him, were entitled to the right of *postliminium,* after their return. But is he who surrendered to the enemy, and after his return is not received by us, a Roman citizen? This was decided differently by Brutus and Scsevola. The result is that he cannot recover his citizenship.

5. *Pomponius, On Quintus Mucius, Book XXVII.*

The right of *postliminium* exists both in war and in peace.

(1) In war, when those who are our enemies seize one of us, and take him within their fortifications, for if he returns during the same war, he will have the right of *postliminium;* that is to say, all his rights will be restored to him, just as if he had not been captured. Before he is taken into the fortifications of the enemy, he remains a citizen, and he is understood to have returned if he comes to our friends, or within our defences.

(2) The right of *postliminium* is also granted in time of peace; for if there is a nation between which and us there exists neither friendship, hospitality, nor any bond of attachment, it indeed is not our enemy. Anything, however, which belongs to us, and passes under its control becomes its property, and any freeman of our people taken in captivity by such a nation becomes its slave.

The same rule applies if anything belonging to the said nation comes into our hands, and therefore the right of *postliminium* is conceded in this instance.

(3) If a captive has been manumitted by us, and returns to his friends, he is only understood to have returned under the right of *postliminium,* if he prefers to go to them, rather than to remain in our country. And, therefore, in the case of Attilius Regulus, whom the Carthaginians sent to Rome, it was decided that he did not return under the right of *postliminium,* because he had sworn that he would return to Carthage, and did not have the intention of remaining at Rome. Hence, when a law was enacted with reference to a certain interpreter, named Menander, who, after having been manumitted while in our hands and sent back to his people, providing that he should remain a Roman citizen, this was not considered necessary, for if he had the intention of remaining with his own relatives, he would cease to be a citizen; but if he expected to return he would still remain a citizen, and therefore the law was superfluous.

6. *The Same, Various Passages, Book I.*

Where a woman who, on account of some offence, had been sentenced to labor in the salt-pits, was afterwards captured by thieves belonging to a foreign nation, sold by the right of commerce, and then ransomed, was restored to her former condition, the price of her ransom should be paid by the Treasury to the Centurion Coccius Firmus.

7. *Proculus, Epistles, Book Vill.*

I have no doubt that there are free and united nations which are strangers to us, and that between us and them the right of *postliminium* does not exist. For what need would there be for any right of *postliminium* between us and them, as they, when with us, retain their liberty, and the ownership of their property, just as they do at home; and the same happens to us when we are with them.

(1) A free people is one which, when united, is not subjected to the dominion of any other. Likewise, it may be united in friendship by an alliance on equal terms, or the provision that this people will zealously defend the majesty of another may be included in a treaty; for this is added in order that it may be understood that the latter is entitled to supremacy, and not that the former is not free. And just as we regard our clients as free, although, while being good men, they are not superior to us in authority or dignity; so those who should zealously defend our majesty should also be understood to be free.

(2) Where persons from allied states are accused of crime while with us, we punish them after they have been convicted.

8. *Paulus, On the Lex Julia et Papia, Book III.*

A wife cannot be recovered by her husband under the right of *'postliminium* as a son can be recovered by his father, but only when the woman desires it, and provided that she has not married another after the prescribed time. If she should be willing, and there is no legal reason to prevent it, she will be liable to the penalties of separation.

9. *Ulpianus, On the Lex Julia et Papia, Book IV.*

When a child born in the hands of the enemy returns under the law of *postliminium,* he will be entitled to the privileges of a son; for, according to a Rescript of the Emperor Antoninus and his Divine Father, addressed to Ovinius Tertullus, Governor of the Province of lower Mysia, there is no doubt that he has the right of *postliminium.*

10. *Papinianus, Questions, Book XXIX.*

A father, having appointed his son, who had not yet arrived at puberty, his heir, and made a substitution for him, was captured by the enemy, and died in their hands; and the minor, having afterwards died, it was held by some authorities that the heir at law should be admitted to the succession, and that the pupillary substitution did not apply to one who had become his own master during the lifetime of his father.

The reason of law, however, is opposed to this opinion; for the reason that as the father, who did not return, is understood to have been dead at the very time that he was taken prisoner, the pupillary substitution would necessarily be valid.

(1) If, after the death of the father, a minor who had been appointed or disinherited should be taken prisoner, it might be said that the Cornelian Law, not having mentioned pupillary substitutions, only had reference to a person who had testamentary capacity. It is clear, however, that the right to the lawful estate of a minor who is a captive does not immediately vest by the terms of the Cornelian Law, because it is true that a minor is not qualified to make a will, and therefore it would not be improper to hold that the Praetor should follow the intention of the father no less than that of the law, and grant the substitute equitable actions against the estate.

11. *The Same, Questions, Book XXXI.*

If the son should die first at home, there is no reason for discussing the pupillary substitution, either because the son under paternal control is understood to have died during the lifetime of his father; or because his father not having returned, the son, on this account, is considered to have become his own master from the very moment when his father was taken by the enemy.

(1) If, however, both of them should be in captivity, and the father dies first, the Cornelian Law will suffice to establish the pupillary substitution, just as if the son should die at home after the father had expired in the hands of the enemy.

12. *Tryphoninus, Disputations, Book IV.*

The right of *postliminium* exists in war, as well as in peace, with reference to such as have been taken captive during hostilities, and concerning whom no agreement was made. Servius says that this decision was made because the Romans wished that their citizens should have more hope of returning with military prestige than during peace. But, if war should suddenly break out, will those who during peace have come under the control of others, become the slaves of those who are now our enemies, and through their own act have been seized by them? They will be entitled to the right of *postliminium* both in war and peace, unless it was provided by a treaty that they should not enjoy that right.

(1) When anyone is taken prisoner by the enemy, those under his control remain uncertain whether they are their own masters, or whether they should still be considered sons under paternal authority; for if the father should die while in the hands of the enemy, they become independent from the very moment when he was captured; and if he returns, they are considered never to have been free from his control. Therefore, with reference to any property that they may acquire in the meantime, whether by stipulation, delivery, or legacy, (for they cannot become lawful heirs), it should be considered—for example, when he does not return, and, some of them have been appointed heirs to the entire estate, or to a portion of the same, or where certain ones have been disinherited—whether this property, according to the terms of the Cornelian Law, should be held to belong to the estate of the captive, or whether it should be considered to be their own. The latter opinion is the better one.

The rule is otherwise with reference to anything acquired by the slaves of the captive; and this is reasonable, because the slaves formed and continue to be a portion of his estate, and those who become their own masters are in consequence understood to have acquired the property for themselves.

(2) It can be established by no constitution that what has been done has not been done. Therefore, the usucaption of property which was obtained by the party who possessed it himself, and who afterwards recovered it, is interrupted, because it is certain that he has ceased to possess it. Hence Julianus says it should be held with reference to property of which he obtained possession through persons subject to his authority, and acquired by usucaption, or which was afterwards included under the term *peculium,* that the usucaption was completed

in the time prescribed by law, if the same persons always remained in possession.

Marcellus says that it makes no difference whether the party himself had possession, or obtained it through someone under his authority, but the opinion of Julianus should be adopted.

(3) The son whom the captive had under his control can in the meantime marry, although his father cannot consent to the marriage, nor can he withhold his consent. Therefore, his grandson will be under his control from the moment that he returns from captivity, and will be his proper heir, to a certain extent, in spite of him, as he did not consent to the marriage. There is nothing surprising about this, because the circumstances and necessities of the occasion, as well as the public welfare, required a marriage.

(4) The wife of the captive is not in the married state, although she may extremely desire it, and remain in the house of her husband.

(5) Any codicil which the prisoner may have written during his captivity cannot, by the strict construction of the law, be confirmed by a will which was made by the prisoner while at home, and a trust cannot be claimed under it, because it was not executed by a person having testamentary capacity. But, for the reason that the true principle of these matters, that is to say, the confirmation of them as dependent upon the will, originated while the captive was in his own country, and as he afterwards returned, and recovered his rights by the law of *postliminium,* it is agreeable to the dictates of humanity that such a codicil should take effect, as if no captivity had in the meantime intervened.

(6) After the captive returns under the right of *postliminium,* all legal questions, so far as he is concerned, are to be considered just as if he had never been in the hands of the enemy.

(7) When anyone ransoms a slave from the enemy, he becomes his property at the moment of his ransom, although he knows that he belonged to someone else; but by tendering him the price which he paid, he will be held to have returned with the right of *postliminium* to be received as a slave.

(8) Where anyone purchases a captive, being ignorant that he is such, and believing that he belongs to the vendor, will he appear to have, as it were, acquired him by usucaption, so that his first master will not have the power to tender the second the price, after the prescribed time has elapsed ? is a point which we should consider. It was stated in opposition to this that the constitution which was enacted with reference to ransomed captives renders such a captive the slave of the person who ransomed him, and what is mine already, I cannot be understood to acquire by usucaption.

On the other hand, as the constitution has not rendered the condition of him who paid the ransom any worse, but, on the contrary, has made it better, it is unjust as well as contrary to the intention of the constitution that the more ancient right of the *bona fide* purchaser should be extinguished; and therefore, after the prescribed time has elapsed, during which, if the constitution should not render the captive the property of him who ransomed him, he might acquire him by usucaption, it may properly be said that, by the terms of this constitution, his first master has no further right over the slave.

(9) However, by manumitting the slave, will he merely cease to be his master, and will the slave abandoned by him return to the control of his former master; or does he render him free in such a way that the gift of liberty merely operates to bring about a change of ownership? It is certain that anyone who is manumitted while in the hands of the enemy becomes free; and still, if his former master finds him within our defences, although he may not have embraced our cause, and has returned with a design of going back to the enemy, the master can retain the slave by the right of *postliminium;* which rule is not the same with reference to persons who are free. For the latter do not return by the right of *postliminium,* unless they have gone back to their own people with the intention of espousing their cause, and have left those from

whom they came; because, as Sabinus says, each one has free power to determine his citizenship, but not his right of ownership.

This, however, does not render the point very difficult of solution, because the manumission made while the slave was in the hands of the enemy presents no impediment to our fellow citizen, the master of the slave; but the party in question, under our law established by a constitution, has had for his master a Roman citizen, and we are considering whether he can obtain his freedom from him. For what if the slave did not tender the price of his freedom to his master, and the latter should not have the power to sue him? Will the slave be free who, through no merit of his own, could have obtained freedom from his master? This is unjust, and contrary to the favor granted by our ancestors to liberty. It is certain that, by the ancient law, any man having knowingly purchased a slave belonging to another from one who had ransomed him, could acquire him by usucaption, and could liberate him; and in this way the former master to whom the slave had belonged before his captivity, lost all his title to him. Therefore, why should he not have the right to manumit him?

(10) If a slave to be free under a certain condition should be captured by the enemy, and be ransomed while the condition is pending, he will remain in his former state.

(11) But what would be the rule if he had received his freedom on condition of paying ten thousand *sesterces?* The question was asked, out of what should he pay it? For if the slave was permitted to pay it out of his *peculium,* could it not also be said that what he possesses in the hands of the person who ransomed him takes the place of what he might have obtained while in the hands of the enemy? This is certainly the case, where the *peculium* was derived from the property of him who ransomed him, or from his own services; but if it came from any other source, he can pay the sum out of it, as we indulgently hold that he has, in this way, complied with the condition.

(12) Where a slave was given by way of pledge, before his captivity, after the person who ransomed him has been paid, he again becomes subject to his former obligation; and if the creditor should tender the price of his ransom to him who paid it, he will then have a double obligation, one arising from the debt itself, and the other from the payment of the sum for which the slave was released; just as if this obligation was established by a certain constitution resembling that by which a subsequent creditor satisfies a former one, for the purpose of strengthening his own pledge, unless, in this instance, the case is reversed, and the last creditor, who now is the first because he has caused the slave to return to us should be satisfied by him who is prior in time, but has a weaker claim.

(13) When a slave belongs to several persons, and the amount of his ransom was paid to the man who ransomed him, in the name of all of them, he will revert to their common ownership. Where, however, the amount of his ransom was paid in the name of only one, or of some of his owners, he will belong to him, or to them, who made the payment; so that they will regain their former rights, according to the portion paid by each, and will succeed him who purchased the slave to the extent of the share of the others.

(14) When a captive is entitled to freedtfm under the terms of a trust, he cannot claim it, after having been ransomed, unless he reimburses the person who ransomed him.

(15) Where enemies capture a person, who has been deported, in the island to which he has been sent, and he is ransomed, if he should then return to his country, he will be restored to the condition in which he would have been if he had not been taken captive, therefore he shall be deported.

(16) Where, however, in the case of a captured slave some reason existed which prevented the acquisition of his freedom either temporarily or perpetually, his condition will not be changed by his ransom from the enemy; for instance, if it should be proved that he had violated the Favian Law, or that he had been sold under the condition that he should not be manumitted.

The person who ransomed him can, in the meantime, hold him without incurring any penalty.

(17) Hence, anyone who was captured while laboring in the mines, and has been ransomed, will be returned to his punishment; but he should not be punished as a fugitive from the mines, but he who ransomed him shall receive the amount of the ransom from the Treasury; as was decided by our Emperor and the Divine Severus.

(18) Where a child born of Pamphila is bequeathed to you, and you ransom its mother, and she brings forth a child while in your possession, you will not be considered to have acquired the child by a lucrative title, but an estimate shall be made according to the judgment of the court, who will fix the value of the child, just as if it had been sold at the same time as its mother, and purchased for the same price.

If the child was born in the hands of the enemy (the mother being pregnant at the time when she was captured) and it is ransomed with its mother for one and the same price, and an offer is made equal to the sum paid for both, this will be the estimate of the value of the child, and it will be held to have returned under the right of *postliminium.* There is much more reason for this when there are different purchasers of both, or of one of them. Where, however, anyone has ransomed each for a separate price, the different amounts must be tendered to the person who ransomed them by payment to the enemy, so that they can return separately under the right of *postliminium.*

13. *Paulus, On Sabinus, Book II.*

If I should give myself to be arrogated by you, and I should afterwards be emancipated, it is established that when my son returns from captivity, he will be considered as your grandson.

14. *Pomponius, On Sabinus, Book HI.*

As there are two kinds of the right of *postliminium,* one under which we return to our friends from the enemy, and the other by which we recover something; when a son under paternal control returns the double right of *postliminium* is united in him, for his father regains his authority over him, and he himself recovers all his rights.

(1) A husband does not recover his wife under the law of *postliminium* in the same way that a father does his son, but the marriage can be renewed by consent.

15. *Ulpianus, On Sabinus, Book XII.*

Where the father, after he has been ransomed, dies before reimbursing the person who ransomed him, and his son tenders the amount of his ransom after his death, it must be said that he can be the proper heir of his father; unless someone may say with more subtlety that the father, when he died, recovered the right of *postliminium,* as it were by the release of a pledge, and died without any liability for his debt, so that he is entitled to have a proper heir.

This opinion is not destitute of reason.

16. *The Same, On Sabinus, Book XIII.*

He who returns from the enemy is considered always to have been in his own country previous to his return.

17. *Paulus, On Sabinus, Book II.*

Those who, having been conquered by force of arms, surrender to the enemy, are not entitled to the right of *postliminium.*

18. *Ulpianus, On Sabinus, Book XXXV.*

Under all the rules of law, anyone who does not return from the enemy is considered to have died at the time when he was captured.

19. *Paulus, On Sabinus, Book XVI.*

The right of *postliminium* is that of recovering from a stranger property which has been lost, and of restoring it to its former condition; and this right has been established among us and other free peoples and kings, by custom and by law. For when we recover anything that we have lost by war or even outside of war, we are said to recover it by the right of *postliminium.*

This rule has been introduced by natural equity, so that anyone who has been detained unjustly by strangers will recover his former rights whenever he returns to his own country.

(1) A truce is established where it is agreed for a short time and for the present that adversaries shall not attack one another; and during this time the right of *postliminium* does not exist.

(2) Persons who have been captured by pirates or robbers remain free.

(3) Anyone is considered to have returned with the right of *postliminium* when he passes our frontiers, just as he loses the right as soon as he goes beyond them. When, however, he visits an allied or friendly state, or an allied or friendly king, he is understood to immediately return with the right of *postliminium,* because, while there, he began to be secure through reliance on the public honor.

(4) The right of *postliminium* is not enjoyed by a deserter, for he who abandons his country with evil intent, and with the designs of a traitor, is considered an enemy.

This rule only applies to a deserter who is free, whether it be a man or a woman.

(5) If, however, a slave should desert to the enemy, as his master has the right of *postliminium* over him, when he is taken by accident, it can very properly be held that he also has the right of *postliminium,* that is to say, his master will recover all his former rights over him; in order that a contrary rule may not be as injurious to the slave who remains permanently in servitude, as it would be prejudicial to his master.

(6) If a slave who is to be free under a condition returns after having deserted, and the condition is fulfilled after his return, he will become free. The rule is different, however, when the condition was fulfilled while he was in the hands of the enemy; for in that case he cannot return for himself, so as to become free, nor will the heir have the right of *postliminium* over him, because he cannot complain, as he has sustained no damage; provided that the slave would have obtained his freedom, if he had not forfeited it by becoming a deserter.

(7) Again, a son under paternal control, who is a deserter, cannot return with the right of *postliminium,* even during the lifetime of his father; because his father as well as his country have lost him, as well as for the reason that the discipline of the camp has always been more valued by Roman parents, than attachment to their children.

(8) Moreover, not only is he understood to be a deserter who joins the enemy, or abandons the service during war, but also he who deserts during a truce, or goes over to a nation between which and us no friendship exists, and enters into an agreement with its representatives.

(9) If anyone who has purchased a captive from the enemy assigns to another, for a larger sum, the right of pledge which he himself is entitled to for having ransomed him, the person who has been ransomed should not pay this amount, but the former one; and the purchaser will be entitled to an action on purchase against the party who made the sale.

(10) The right of *postliminium* applies to persons of both sexes, and all conditions. Nor does it make any difference whether they are freemen or slaves; for not only those are recovered by this privilege who are able to fight, but all human beings, because they are of such a character that they can be of use, either by giving advice, or in other ways.

20. *Pomponius, On Sabinus, Book XXXVI.*

If a captive, for whom security has been given that he will return voluntarily, remains with the enemy, he will • not afterwards be entitled to the right of *postliminium.*

(1) It is true that when the enemy have been driven from the territory which they have taken, this territory will revert to its former owners, and it will neither become the property of the State, nor be considered as booty; for land becomes the property of the State which is captured from the enemy.

(2) Ransom confers the power of returning to one's country, and does not change the right of *postliminium.*

21. *Ulpianus, Opinions, Book V.*

If anyone, after having ransomed a freeborn woman from the enemy, should keep her with him with the intention of having children by her, and afterwards manumits a child born from her, together with its mother, giving it the title of his natural son, the ignorance of the husband and father ought not to affect the condition of those whom he has appeared to manumit; and it should be understood that from the time that he made up his mind to have children by the mother, that the obligation of pledge to which she was liable is extinguished; and therefore it is established that she who returned under the right of *postliminium* was free and freeborn, and brought forth a freeborn child.

Where, however, she was publicly taken as booty by the bravery of a soldier, and the father did not pay anyone money as her ransom, she is said, at the time of her return under the right of *postliminium,* not to have been with her master, but with her husband.

(1) Although the State is frequently injured by civil dissensions, still its destruction is not the object of the contest. Those who divide into different factions do not occupy the position of enemies between whom the rights of captivity and *postliminium* exist, and therefore persons who have been captured and sold, and afterwards manumitted, have been held to have fruitlessly demanded from the Emperor the right of free birth which they do not lose by captivity.

22. *Julianus, Digest, Book LXII.*

The property of those who have fallen into the hands of the enemy, or have died there, whether they had testamentary capacity or not, belongs to those to whom it would have belonged, if they had not been captured.

The same rule is laid down by the Cornelian Law with reference to everything which may take place in cases where those interested in inheritances and guardianships would have been concerned, if they had not fallen into the hands of the enemy.

(1) Hence it is evident that everything will belong to the heir of him who has been taken by the enemy, which the latter would have been entitled to if he had returned under the right of *postliminium.* Moreover, whatever the slaves of captives stipulate for, or obtain, is understood to be acquired by their masters, when they return under the right of *postliminium;* wherefore it will also necessarily belong to those who enter upon an estate under the Cornelian Law.

If, however, no heir should appear under the Cornelian Law, the property will belong to the State. Any legacies bequeathed to their slaves, either absolutely or conditionally, will belong to their heirs. Likewise, if a slave is appointed an heir by a stranger, he can accept an estate by order of the heir of the captive.

(2) Where, however, the son of him who is in the power of the enemy, accepts or stipulates for anything, it is understood to be acquired for him, if his father should die before returning under the law of *postliminium;* and it will belong to the heir of his father, if the son should die during the lifetime of the latter, for the condition of men whose fathers are in the power of the

enemy is uncertain.

When, however, the father returns, the son is never considered to have been his own master; but where the father dies a prisoner of war, then his son becomes independent for the entire time that his father remained in captivity.

(3) The ownership of any property which the slaves of captives possess as *peculium* remains in abeyance; for if their masters return with the right of *postliminium* it will be understood to belong to them; and if they die in captivity, it will belong to their heirs under the Cornelian Law.

(4) If anyone, having a wife who is pregnant, falls into the hands of the enemy, and dies there, and a son is afterwards born to him, and it dies, his will is void; for the reason that the wills of those who remain in their own country are invalidated under such circumstances.

23. *The Same, Digest, Book LXIX.*

Where anyone, having left his wife pregnant, falls into the power of the enemy, and a son is born to him soon afterwards, who ultimately marries and has a son or a daughter, and then the grandfather returns under the law of *postliminium,* he will be entitled to all the rights over his grandchildren which he would have had if his son had been born in his own country.

24. *Ulpianus, Institutes, Book I.*

Enemies are those against whom the Roman people have publicly declared war, or who themselves have declared war against the Roman people; others are called robbers, or brigands. Therefore, anyone who is captured by robbers, does not become their slave, nor has he any need of the right of *postliminium.* He, however, who has been taken by the enemy, for instance, by the Germans or Parthians, becomes their slave, and recovers his former condition by the right of *postliminium.*

25. *Marcianus, Institutes, Book XIV.*

The Divine Severus and Antoninus stated in a Rescript that if a wife was captured with her husband, and had a child by him while in the hands of the enemy, and both of them should return, the parents and child are legitimate, and the son will be under the control of his father, just as if he had returned under the right of *postliminium.*

If, however, he should return with his mother alone, he will be considered illegitimate, as having been born without a husband.

26. *Florentinus, Institutes, Book VI.*

It makes no difference in what way a captive returns, whether he has been sent back, or has escaped from the power of the enemy by force, or strategy; provided that he conies with the intention of not returning thither; for it is not sufficient for anyone merely to return bodily, when his intention is otherwise. Those, however, who are recovered from defeated enemies, are considered to have returned with the right of *postliminium.*

27. *Javolenus, On the Last Works of Labeo, Book IX.*

Robbers stole your slave from you, and afterwards the said slave fell into the hands of the Germans, and then, the Germans having been defeated in battle, the slave was sold. Labeo, Ofilius, and Trebatius deny that the slave can be acquired through usucaption by the purchaser, because it was true that he had been stolen, and although he belonged to the enemy, and returned with the right of *postliminium,* this would be an obstacle.

28. *Labeo, Epitomes of Probabilities by Paulus, Book IV.*

If anything captured in war forms part of the booty, it does not return by the right of *'postliminium,.*

Paulus: But if a prisoner taken in war flees to his home, after peace has been declared, and then the war having been renewed he again is captured, he returns by the right of *postliminium,* to which he was entitled when taken during the first war; provided that it was not agreed in the treaty of peace that captives should be returned.

29. *The Same, Epitomes of Probabilities by Paulus, Book VI.*

If you should return under the right of *postliminium,* you have not been able to acquire any property by usucaption while you were in the power of the enemy.

Paulus: But if your slave should have obtained anything as *peculium,* while you were in that condition, you can acquire it by usucaption during that time, as we are accustomed to acquire by usucaption property of this kind, even without our knowledge; and in this manner an estate can be increased by a slave forming part of the same, although a posthumous child may not yet have been born, or the estate have been entered upon.

30. *The Same, Epitomes of Probabilities by Paulus, Book Vill.*

If anything which our enemies have taken from us is of such a nature that it can return by the law of *postliminium,* as soon as it escapes from the enemy for the purpose of returning to us and comes within the boundaries of our empire, it should be considered to have returned under the law of *postliminium.*

Paulus: But when a slave of one of our citizens, after having been captured by the enemy, escapes from them, and remains at Rome without either being under the control of his master, or in the service of anyone else, it should be held that he has not yet returned under the law of *postliminium.*

## TITLE XVI.

## CONCERNING MILITARY AFFAIRS.

1. *Ulpianus, On the-Edict, Book VI.*

A soldier who is on furlough is not considered to be absent on business for the State.

2. *Arrius Menander, On Military Affairs, Book I.*

Offences committed by soldiers are either special or common to other persons, therefore their prosecution is either special or general. A purely military offence is one which a man commits as a soldier.

(1) It is considered a serious crime for anyone to enlist as a soldier who is not permitted to do so, and its gravity is increased, as in the case of others, by the dignity, the rank, and the branch of the service.

3. *Modestinus, Concerning Punishments, Book IV.*

The Governor of a province shall send back a deserter to his own commander, after he has been heard, with a report, unless the deserter has committed some serious offence in the province in which he was found; for the Divine Severus and Antoninus stated in a Rescript that the penalty should be inflicted upon him in the place where he perpetrated the crime.

(1) Military punishments are of the following kinds: namely, castigation, fines, the imposition of additional duties, transfer to another branch of the service, degradation from rank, and dishonorable discharge; for soldiers are neither condemned to labor in the mines nor subjected to torture.

(2) A vagabond is one who having wandered for a long time, voluntarily returns to the camp.

(3) A deserter is one who, after having been absent for some time, is brought back.

(4) He who leaves the army for the purpose of scouting in the presence of the enemy, or who

goes beyond the ditch surrounding the camp, shall be punished with death.

(5) He who abandons the post to which he has been assigned commits a greater offence than a vagabond; and he is therefore either punished in proportion to the gravity of his crime, or is deprived of his rank.

(6) He who leaves while performing the duty of sentinel for the Governor of a province, or any commander whomsoever, is guilty of the crime of desertion.

(7) When a soldier does not return on the day when his furlough expires, he must be treated as if he had wandered away, or deserted, according to the time he has been absent. He should, however, be given the opportunity of showing that he has been detained by accident, on acount of which he may appear to be excusable.

(8) Anyone who remains a deserter for the entire time of his service is deprived of the privileges of a veteran.

(9) If several soldiers desert simultaneously, and return within a certain time; after having been reduced in rank, they shall be distributed in different places, but indulgence should be shown to new recruits. If, however, they repeat the offence, they shall undergo the prescribed punishment.

(10) He who escapes to the enemy and returns shall be tortured, and sentenced to be thrown to wild beasts, or to the gallows, although soldiers are not liable to either of these penalties.

(11) He who, intending to escape, is caught, is punished with death.

(12) But where a soldier is captured by the enemy unexpectedly, while he is on a journey, he shall be granted pardon after the conduct of his former life has been investigated; and if he returns to the army after his term of service has expired, he shall be restored as a veteran, and shall be entitled to the privileges which veterans enjoy.

(13) A soldier who has lost his arms in time of war, or has sold them, is punished with death, and it is only through indulgence that he may be transferred to another branch of the service.

(14) Anyone who steals the arms of another should be degraded from his rank in the army.

(15) He who, in time of war, does something which has been forbidden by his commander, or does not obey his orders, is punished with death; even if the transaction was brought to a successful conclusion.

(16) He, however, who leaves the ranks, shall, according to circumstances, be beaten with rods, or compelled to change his branch of the service.

(17) When anyone crosses the intrenchments of the camp, or returns to it by the wall, he is punished with death.

(18) Anyone who leaps over the ditch shall be dismissed from the army.

(19) He who excites a violent sedition among the soldiers is punished with death.

(20) Where a tumult attended with clamor or moderate complaints arises, the soldier will then be degraded from his rank.

(21) When several soldiers conspire to commit some crime, or where a legion revolts, it is customary for them to be disbanded.

(22) Those who refuse to protect their commander, or abandon him, are punished with death if he should be killed.

4. *Arrius Menander, On Military Affairs, Book I.*

He who is born with only one testicle, or has lost one by accident, can legally serve in the army, in accordance with the Rescript of the Divine Trajan; for both the Generals Sylla and

Cotta are said to have been in this condition.

(1) Where anyone who has been condemned to be thrown to wild beasts enlists in the army, he shall be punished with death, whenever he is found.

The same rule applies to one who permits himself to be enrolled.

(2) When anyone who has been deported to an island escapes, and enlists in the army; or, having been enrolled, conceals his condition, he must be punished with death.

(3) Temporary exile incurs the penalty of relegation to an island in the case of a soldier who voluntarily enlists, and concealment of his condition renders him liable to perpetual exile.

(4) Where a soldier has been relegated for a certain time, and then, after his term has expired, enlists, the cause of his conviction must be ascertained, and if it involves perpetual infamy, the same rule shall be observed. Where, however, a compromise has been made with reference to the future, he can re-enter the ranks, and is not forbidden to claim any military honors to which he may be entitled.

(5) When a volunteer is guilty of a capital crime, he must be punished with death, according to a Rescript of the Divine Trajan, and should not be sent back to the place where he was accused, but he ought to be tried as if he had committed a military offence, even though his case already may have been begun, or a warrant may have been issued for his arrest.

(6) If he is dishonorably discharged, he should be sent back to his judge; nor should he be accepted if he afterwards desires to serve in the army, even though he may have been acquitted.

(7) Persons who have been convicted of adultery, or any other public crime, should not be admitted into the army.

(8) Everyone who is involved in litigation, and enters the military service on this account, should not be ordered to be discharged from the army, but only he who enlisted with the intention of rendering himself, as a soldier, more formidable to his adversary. Those who have had a lawsuit previous to their enlistment should not readily be exculpated without an inquiry into the facts; and they should be excused if they have compromised it. A soldier who is dismissed from the service on this account does not, by any means, become infamous, nor, after his lawsuit has terminated, should he be prohibited from entering the same branch of the service; otherwise if he either abandons the suit, or compromises it, he should be retained.

(9) Those who, after desertion, voluntarily enlist, or permit themselves to be enrolled in another part of the army, should be punished by military law; as was stated by Our Emperor in a Rescript.

(10) It is a more serious offence to decline military service than to intrigue to obtain it. For formerly, those who did not answer the call to arms were reduced to servitude as traitors to liberty. But as the condition of the army has been changed, capital punishment in this instance has been abandoned, because, for the most part, the army is composed of volunteers.

(11) He who, in time of war, withdraws his son from the army, should be punished with exile and a loss of a part of his property; if he does this in time of peace, he is ordered to be whipped with rods; and if the young man who was conscripted is afterwards produced by his father he should be placed in an inferior corps, for he does not deserve pardon who allowed himself to be solicited by another.

(12) A Decree of the Divine Trajan sentenced to deportation a man who, in order that his son might be rendered incapable of military service, mutilated him after he had been conscripted for war.

(13) The Edicts of Germanicus Caesar classed as a deserter one who had been absent long enough to be considered a vagabond, but whether he voluntarily returns and presents himself,

or whether, hav-^ ing been caught, he is produced, he escapes the penalty of desertion;, and it does not make any difference to whom he presents himself, or by whom he was seized.

(14) The offence of vagabondage is considered of less gravity than the same offence is in the case of slaves; and that of desertion is more serious, as it corresponds to the case of fugitive slaves.

(15) The reasons for vagabondage, however, are examined, and also why the soldier departed, and where he was, and what he did; and pardon is granted in case of absence caused by illness, or affection for relatives and connections, and also where the accused was pursuing a fugitive slave, or where some reason of this kind is given; and a new recruit, who was still unfamiliar with discipline, is also excused.

5. *The Same, On Military Affairs, Book II.*

All deserters should not be punished in the same way, but their rank, the amount of their pay, the place where they deserted, and their conduct previous to that time, should all be taken into account. The number of the offenders should also be considered, whether there was but one, or whether one deserted with another, or with several; or if he added some crime to desertion. The time during which the soldier was a deserter, and whatever occurred afterwards, should also be ascertained. If, however, he returned of his own accord, and without being compelled to do so, his fate will be different.

(1) If a cavalry soldier deserts in time of peace, he shall be degraded from his rank, and a foot soldier must change the corps in which he serves. An offence of this kind committed in time of war should be punished with death.

(2) He who adds another crime to desertion must be punished more severely; and if he has committed theft, or kidnapping, or has attacked anyone, or has driven away cattle, or done anything else of this kind, it will be just as if he had been guilty of a second desertion.

(3) When a deserter is found in a city, it is usual for him to be punished with death; if he is caught elsewhere, he can be reinstated after a first desertion, but if he deserts a second time, he must be punished capitally.

(4) Anyone who has deserted, and presents himself, will be deported to an island by the indulgence of Our Emperor.

(5) He who has been captured and does not return when he is able to do so is considered a deserter. Likewise, it is certain that one who has been captured in one of our fortresses is in the same condition. Still, if anyone is captured unexpectedly while on a journey, or while carrying a letter, he deserves pardon.

(6) Hadrian stated in a Rescript that soldiers who had been returned by barbarians should be reinstated, where it was proved that after having been captured they had escaped, and had not fled to the enemy as deserters. But although this cannot positively be established, still it can be ascertained by sufficient evidence, and if the person in question had previously been considered a good soldier, his statements should almost absolutely be credited; but if he was a vagabond, or negligent in the performance of his duties, or lazy, or often left his tent, he should not be believed.

(7) When a soldier who had been captured by the enemy returns after a long time, and it is established that he was not a deserter, he should be reinstated as a veteran, and will be entitled to the rewards and privileges of one.

(8) The Divine Hadrian stated in a Rescript that a soldier who deserted and afterwards had seized several robbers, and detected other deserters, might be spared, but nothing should be promised to one who agreed to do anything of this kind.

6. *The Same, On Military Affairs, Book V.*

A military crime is every offence committed against what is demanded by ordinary discipline, as, for instance, those of laziness, insubordination, and cowardice.

(1) Anyone who raises his hand against his commander shall be punished with death; and the crime of his audacity is increased in gravity by the rank of his superior officer.

(2) All disobedience of a general or the Governor of a province should be punished with death.

(3) He who was the first to take to flight in battle must be put to death in the presence of the soldiers, by way of example.

(4) Spies who have betrayed any secrets to the enemy are traitors, and should suffer the penalty of death.

(5) A private soldier is in the same condition, who pretends to be ill, through fear of the enemy.

(6) If anyone should wound a fellow-soldier, and this is done by means of a stone, he shall be expelled from the army; if it was done with a sword, he commits a capital crime.

(7) The Emperor Hadrian stated in a Rescript that when a soldier has wounded himself in an attempt at suicide, an investigation should be made of the case, and he should not be punished, but dishonorably discharged, if he had preferred to die because he was unable to bear pain, or was influenced by weariness of life, or by disease, insanity, or the fear of dishonor; and if he did not allege any of these things as an excuse, that he should be punished with death.

Those who commit such an act as the result of indulgence in wine or debauchery should not be put to death, but should be sentenced to change their corps.

(8) Anyone who did not defend his superior in rank when he could have done so is in the same condition as if he had attacked him; but if he was unable to resist, he should be pardoned.

(9) It has been decided that those should be punished who abandoned their centurion when he was attacked by robbers.

7. *Tarruntenus Paternus, On Military Affairs, Book II.*

Traitors and deserters are generally tortured and punished with death, after having been discharged; for they are considered as enemies, and not as soldiers.

8. *Ulpianus, Disputations, Book Vill.*

Those whose condition is in dispute, although, in fact, they may be free, should not enlist during the time that their status is undetermined, and especially during the trial of the case; whether an attempt is being made to reduce them to slavery from freedom, or *vice versa,*. Nor can those who are freeborn and who are serving in good faith as slaves, nor persons who have been ransomed from the enemy, before they have paid the amount of their ransom, enlist in the army.

9. *Marcianus, Institutes, Book HI.*

Soldiers are forbidden to purchase land in the provinces in which they serve, except where property of their parents is sold by the Treasury; for Severus and Antoninus made an exception under such circumstances. They are, however, permitted to make such purchases when their terms of service have expired.

Where land is unlawfully purchased, it is confiscated to the Treasury, if information of the fact is given, but there will be no ground for such information if it is not given until the term of service has expired, or the soldier has been discharged.

(1) When soldiers are heirs, they are not forbidden to have possession of land where they are serving.

10. *Paulus, Rules.*

Anyone who deserts the palace-guard is punished with death.

(1) When a soldier, after desertion, has been restored to his place in the army, he shall receive no pay or gifts for the intermediate time, unless the liberality of the Emperor permits this to be done as a special favor.

11. *Marcianus, Rules, Book II.*

Slaves are forbidden every kind of military service, under penalty of death.

12. *Macer, On Military Affairs, Book I.*

The duty of the commander of an army consists not only in enforcing discipline, but also in observing it.

(1) Paternus says that he who commands an army should remember to grant furloughs very sparingly, and not to permit a horse belonging to the military service to be taken out of the province where the soldiers are; and not to send a soldier to perform any private labor, or to fish or hunt; for this is laid down in the rules of discipline prescribed by Augustus.

Although I know that it is not unlawful for soldiers to perform mechanical labor, still, I fear if I should allow any act to be performed for my benefit, or for yours, this would not be done in a way which would be tolerated by me.

(2) It is the duty of the tribunes, or of those who command the army, to confine the soldiers in camps; to compel them to go through their exercises; to keep the keys of the gates; sometimes to make the rounds of the watch; to oversee the distribution of grain; to test it to prevent fraud from being committed by those who measure it; to punish offences according to their authority; to be frequently present at headquarters to hear the complaints of their fellow-soldiers; and to inspect those who are ill.

13. *The Same, On Military Affairs, Book II.*

Soldiers are forbidden to purchase land in the province in which they are carrying on warlike operations, for fear that, through the

desire of cultivating the soil, they may be withdrawn from military service, and therefore they are not forbidden to purchase houses. They can, however, buy land in another province, but they are not allowed to do so, even in the name of another or in the one to which they have come for the purpose of battle; otherwise, the land will be confiscated by the Treasury.

(1) He who purchases land contrary to the rule of military discipline cannot be molested if he has received his discharge before any action has been taken with reference to his purchase.

(2) It is established that soldiers who have been dishonorably discharged have no right to the benefit of this provision, as it is understood to have been granted to veterans as a reward; and therefore it may be said to apply to those who have been discharged for some good reason, because they also are entitled to rewards.

(3) There are three general kinds of discharges, namely, those which are honorable, those which are for some cause, and those which are ignominious. An honorable discharge is one which is granted after the term of military service has expired. A discharge for cause is where anyone is dismissed because he has become incapable of military duty, through some defect of mind or body. An ignominious discharge is where a soldier is released from his military oath, on account of the commission of a crime. Anyone who has been ignominiously discharged can neither remain at Rome, nor in the Imperial household. When soldiers are discharged without any mention of disgrace, they can still be understood to have been dishonorably discharged.

(4) A soldier who is guilty of disrespect should be punished, not only by the tribune or the centurion, but also by the Emperor, for the ancients branded with infamy anyone who resisted a centurion who desired to chastise him. If he seizes the staff of the centurion, he must change his corps; if he breaks it on purpose, or raises his hand against the centurion, he is punished with death.

(5) Menander says that he who takes to flight while under guard or in prison should not be considered a deserter, because he has escaped from custody, and is not a deserter from the army.

Paulus says that he who breaks out of prison, even if he has not previously deserted, should be punished with death.

(6) The Divine Pius ordered a deserter, who had been produced by his father, to be placed in an inferior corps, in order to prevent his father from appearing to have surrendered him to undergo the extreme penalty. Likewise, the Divine Severus and Antoninus ordered a soldier to be deported who gave himself up after five years of desertion. Menander says that we should follow this example in the case of other deserters.

14. *Paulus, On Military Punishments.*

He who exceeds the time of his furlough is considered a vagabond, or a deserter. The number of days by which he has exceeded his leave of absence, when he returns, should be taken into consideration; as well as the time consumed by a sea voyage, or by his journey. If he proves that he was prevented by illness, or detained by robbers, or delayed by some reason of this kind, and shows that he had not departed from the place, where he was, too late to return within the time granted by his furlough, he should be restored to his rank.

(1) It is a serious crime for a soldier to sell his arms, and it is considered equal to that of desertion where he disposes of all of them, but if he only sells a portion, his punishment will depend upon what he sold. For if he sells the armor for his legs or shoulders, he shall be punished by scourging; if, however, he sells his breastplate, his shield, his helmet, and his sword, he resembles a deserter. A new recruit is more readily pardoned for this crime, and generally the custodian of the arms is to blame if he gave them to the soldier at an improper time.

15. *Papinianus, Opinions, Book XIX.*

A soldier who has been branded with infamy because of desertion, and reinstated, is deprived of his pay during the time of his desertion; because if he has a good excuse, and it appears that he was not a deserter, all his pay will be given him without deducting the time of his absence.

16. *Paulus, Sentences, Book V.*

He who enlists in the army through fear of a crime of which he has already been accused must immediately be released from his oath.

(1) A soldier who is a disturber of the peace is punished with death.

## TITLE XVII.

## CONCERNING CASTRENSE PECULIUM.

1. *Ulpianus, On the Edict, Book XLII.*

Where the *peculium* of a son under paternal control, who is a soldier, remains in the hands of his father, and the son dies intestate, his father will not become his heir; but he will, nevertheless, become the heir of those from whom the son has a right to inherit.

2. *The Same, On the Edict, Book LXVII.*

When a son under paternal control, who is a soldier, dies intestate, his property will pass to his

father, not as his estate, but as his *peculium.* If, however, he made'a will, his *castrense peculium* will be considered as his estate.

3. *The Same, On the Lex Julia et Papia, Book Vill.*

If a woman should leave money for the purchase of articles suitable for military service to the son of her husband, who is in the army, anything purchased with it by him will be included in his *castrense peculium.*

4. *Tertyllianus, On Castrense Peculium.*

A soldier should be especially entitled to any articles which he took with him into camp with the consent of his father.

(1) The son has always, even against the will of his father, the right of action and recovery of the property constituting his *castrense peculium.*

(2) If the head of a household, during the term of his military service, and after his discharge, should offer himself to be arrogated, let us see if he should not be understood to have the free administration of any property which he acquired in camp before his arrogation, although the Imperial Constitutions only mention those who, as sons under paternal control, served from the time when they entered the army. This rule should be adopted.

5. *Ulpianus, On Sabinus, Book VI.*

A son under paternal control, serving as a soldier, who is appointed an heir either by a fellow-soldier, or by one whom he has known through being in the service, can of his own accord become his heir, without the order of his father.

6. *The Same, On Sabinus, Book LH.*

If the wife of a son under paternal control should give him a slave to be manumitted, let us see whether this makes him his freedman, for he can hold both slaves and freedmen as part of his *peculium.* The better opinion is that the slave in question should not be included in the *castrense peculium,* because he did not become acquainted with his wife through being in the army. It is clear, however, that if you suppose the wife gave the slave to her husband while he was on his way to camp, in order that he might manumit him, and he renders the freedman fit for military service, it may be said that if he manumits the slave by his own will, and without the consent of his father, he will grant him his freedom.

7. *The Same, On the Edict, Book XXXIII.*

If the husband has a *castrense peculium,* judgment will be rendered against him to the extent of his means; for he will be compelled to make payment out of his *peculium,* even to those who are not cas-trensian creditors.

8. *The Same, On the Edict, Book XLV.*

If his wife, or a relative, or anyone else who did not become known to him through his service in the army, donates, or bequeaths anything to a son under paternal control, and expressly states that he shall hold it as his *castrense peculium,* can this be added to it? I do not think that it can, for we consider the truth and whether the acquaintance or the affection was derived from military service, and not something which anyone may have imagined.

9. *The Same, Disputations, Book IV.*

The following case was stated. A son under paternal control, who was a soldier, and who was appointed a foreign heir by will, afterwards died during the lifetime of his father; and, while the appointed heir was deliberating whether to accept the estate or not, the father himself died; and then the appointed heir rejected the estate. The question arose to whom the *castrense peculium* would belong. I held that if the son died testate, it would belong to the appointed heir, as the estate of the son, whether he had appointed a foreign heir, or his father. If,

however, the son made no disposition of his *peculium,* it would not appear to pass to his father, but would seem to always have been a part of the property of the latter. Finally, if the father should grant freedom to a slave forming part of the *castrense 'peculium* of his son, and his son should afterwards die during the lifetime of his father, the grant of freedom would not be interfered with, but if the son survived his father, this would not be the case. Wherefore, Marcellus thinks that a slave who formed part of the -*peculium* of the son would become the necessary heir of the latter, if his father should survive him. I gave the same opinion where the father bequeathed the *peculium* of his son; for, in the same case, in which we stated that the grant of freedom would stand, we also stated that the legacy would either be due, or be annulled.

These matters having been disposed of, I said with reference to the case stated, that, as the heir did not enter upon the estate, the *peculium* was retroactively added to the property of the father; hence it might be held that the estate of the father was even increased by this refusal.

It is not a new principle that anyone may appear to have a successor on account of the occurrence of some subsequent event. For if the son of a man who had been captured by the enemy should die while the father was living and in captivity, and his father should return, he would be entitled to the estate of his son as his *peculium. If,* however, his father should die in captivity, his son, as the head of a household, would have a lawful heir, and his successor would, by retroactive effect, be considered to be entitled to whatever the said son had acquired in the intermediate time; and this would appear to have been obtained not for the heir of the father, but for the son himself.

10. *Pomponius, Rules,*

According to a note of Marcellus, it is settled that nothing is due to a father from the castrensian property of his son.

11. *Macer, On Military Affairs, Book II.*

*Castrense peculium* is what has been given by parents or relatives to one who is serving in the army, or what a son under paternal control has himself obtained while in the service, and which he would not have acquired if he had not been a soldier; for whatever he might have acquired without being in the army does not constitute any part of his *peculium, castrense.*

12. *Papinianus, Questions, Book XIV.*

A father who gives his son, who is a soldier, in adoption, does not take from him the *peculium* which he has already acquired by the right of military service. For which reason, he does not deprive his son of his *peculium* by emancipating him, since he cannot take it from him even if he remains in his family.

13. *The Same, Questions, Book XVI.*

The Divine Hadrian stated in a Rescript that where a wife appointed a son under paternal control her heir, he would become her heir; and that any slaves belonging to the estate who were manumitted by him would become his own freedmen.

14. *The Same, Questions, Book XXVII.*

When a son under paternal control, who is a soldier, is captured and dies in the hands of the enemy, the Cornelian Law will come to the relief of the appointed heirs, and if they do not accept the estate, the father will be entitled to the *peculium* by virtue of his prior right.

(1) The following case seems to resemble the one previously stated; so that while the testamentary heirs are deliberating, whatever a slave in the meantime stipulates for, or receives from another person by delivery to himself, is of no legal effect, so far as the father is concerned, if the *peculium* remained in his hands, as the slave did not belong to the father at that time. But with reference to the appointed heirs, both the delivery and the stipulation are

understood to remain in suspense; for the slave will be considered to have belonged to the estate after it has been accepted. The respect due to the father, however, induces us to say that in the case where the *peculium* remains in his hands by virtue of his former right, any acquisition obtained by the stipulation, or any property delivered to the slave, will be to his advantage.

(2) A legacy left to such a slave is not acquired by any of the heirs, because it is still uncertain whether it will be accepted or not. But if the will should not be executed, the legacy will be at once acquired by the father through the slave; for if it had been acquired by the *peculium,* as in the case of an estate, the right of the father would not at present be considered.

15. *The Same, Questions, Book XXXV.*

What a father gives to his son after he has returned from the army does not form part of his *castrense peculium,* but belongs to another *peculium,* just as if his son had never been in military service.

(1) If a father should promise his son by a stipulation that whatever he acquires will be for the benefit of his *peculium castrense,* the stipulation will stand; but it will be void under any other circumstances.

(2) When a father stipulates with his son for his own benefit, the same distinction shall be observed.

(3) If a slave, forming part of the *peculium* of the son, should stipulate for or receive by delivery anything from a stranger, the property will belong to the son, without making any distinction between the considerations for the stipulation or the delivery. For, as the son sustains the double part of the head of a household and a son under paternal control, so the slave, who forms part of the *peculium castrense,* and who, under no circumstances, is subject to the authority of the father as long as the son lives, cannot acquire for the benefit of the father what he has merely stipulated for, or has received.

Hence, if a slave, who belongs to the son, stipulates for anything, or receives anything from the father, the property delivered or stipulated for is acquired for the son, just as if the contract had been made with a stranger, since the person who stipulates or receives is such that the transaction is carried on for the benefit of the son, no matter what the consideration may be.

(4) If a father has lost the usufruct of a slave, the ownership of whom formed part of the *castrense peculium* of the son, the latter will have the entire ownership of the slave.

16. *The Same, Opinions, Book XIX.*

I held that a dowry given or promised to a son under paternal control will not form part of his *peculium castrense.* This does not appear to be opposed to the opinion published in the time of the Divine Hadrian, by which it was decided that a son under paternal control, who is in the army, could be the heir of his wife, and that her estate would form part of his *castrense peculium,* for an inheritance is acquired by adventitious right, while a dowry is inseparable from marriage, and is bestowed with its charges for the benefit of the common children belonging to the family of their grandfather.

(1) I also gave it as my opinion that anything which one paternal uncle left to another paternal uncle, with whom he had never served in the army, and which he had acquired in another province, should not be considered as a part of the *peculium castrense* of him to whom it was bequeathed; as the consideration of blood relationship, and not that of military service, was the cause of his receiving the estate.

17. *The Same, Definitions, Book II.*

A father having the right to retain the *castrense peculium* of his son who died intestate is compelled by the Praetorian Law to pay his debts during the available year, as far as the

*peculium* will allow. Likewise, if he should become the testamentary heir of his son, he will always be liable for these debts as his heir, under the Civil Law.

(1) A father who was appointed heir by his son, who either was or had been in the army, did not accept the estate under the will, and kept possession of his *castrense peculium.* He can, just as an heir at law, be compelled without limit of time to pay any legacies bequeathed by his son, to the extent that the *peculium* will permit.

If, however, the son, having made his will according to the Common Law, should die within a year after leaving the army, a fourth of his estate can be retained by his father under the Falcidian Law. But if his father should fail to accept the estate under the will, because the *peculium* was not sufficient to satisfy the creditors, he will not be considered to have acted fraudulently; although he may be obliged to discharge the indebtedness during the prescribed time.

18. *Msecianus, Trusts, Book I.*

A slave forming part of the *castrense peculium* of a son may be appointed heir by his father, and in this way make the son the necessary heir of his father.

(1) And, in a word, all matters or acts of the father which, for the time, may cause any alienation of a right belonging to the *castrense peculium* are prohibited, but any of these things which do not become operative immediately, but do so afterwards, are considered with reference to the time when they ordinarily take effect; so that if a son is deprived of any of his rights by his father, his act will be void, but this will not be the case if the son is already dead.

(2) Therefore, we deny that a father who brings an action in partition, while his son is living, cannot alienate the property; as is the case with land forming a part of the dowry. And if a partner of the son should make any agreement with the father, it will be void, just as if he had contracted with someone who had been forbidden to manage his own estate.

(3) A father can release from usufruct slaves who form part of the *peculium castrense* of his son, and he can also release land from usufruct, as well as from other servitudes imposed upon it; and he can also acquire servitudes for the land. It is true that he who is forbidden to manage his own property has this privilege. A father, however, cannot impose an usufruct or a servitude on the slaves or land constituting part of the *peculium.*

(4) If a son in good faith holds as part of his *peculium* property which belongs to another, the question arises whether a real action or one to compel the production of the property can be brought against his father, as in the case of other sons. The better opinion is that as this *peculium* is separate from the property of the father, the necessity of making a defence should not be imposed upon him.

(5) Nor can a father be compelled to defend an action *De peculia,* based on indebtedness which his son is said to have incurred on account of the *peculium* which he acquired in the service; and if he voluntarily submits to be sued, he should, like any other defender, give security for the entire amount involved, and not merely to the extent of the *peculium.* He cannot, however, bring an action in the name of his son without giving security that the latter will ratify his act.

19. *Tryphoninus, Disputations, Book XVIII.*

Our Scsevola is in doubt with reference to an estate left to a soldier by one of his relatives and comrades in arms, for the reason that if he had been known to him, and had been connected with him before he entered the army, he could have appointed him his heir, and he also might not have done so, if his military service with him had not increased his affection.

It seems to us that if the will had been made before the parties served together in the army, the estate would not form part of the *peculium castrense,* but if it was made afterwards, the

opposite opinion should prevail.

(1) If a slave, forming part of the *castrense peculium,* is appointed heir by anyone whomsoever, he should enter upon the estate by the order of his master, and it will become part of the property composing the *castrense peculium.*

(2) A son under paternal control, who was at the time in civil life, made a will disposing of his *castrense pecidium,* and while he was not aware that he was the proper heir of his father, died. It can not be held that he died testate, so far as the property of his *castrense peculium* was concerned, and intestate with reference to the estate of his father; although this is now stated in rescripts with reference to a soldier, because he can die partly testate in the beginning, and afterwards partly intestate; but this man did not enjoy this right, as he could not have made a will without observing all the legal formalities. Therefore, the appointed heir would be entitled to all the property of the *castrense peculium,* just as if a person who believed himself to be extremely poor should die after making a will, without being aware that he had been enriched by the acts of his slaves elsewhere.

(3) A father ordered a slave, who formed part of the *castrense peculium* of his son, to be free by his will. The son under paternal control having died, and his father, also, soon afterwards, the question arose whether the slave was entitled to his freedom, for the objection was made that the absolute ownership could not belong to two persons; and, on the other hand, Hadrian decided that a son could not manumit a slave forming part of such a *peculium.*

If the slave had received his freedom by the wills of both the son and the father, and both of them had died, there could be no doubt that he would become free by the will of the son. But, in the first instance, it can be said in favor of the freedom granted by the father that the right of the latter did not cease until the son used that which had been granted him with reference to his *castrense peculium;* because if the son should die intestate, the father would be entitled to his *peculium* by his prior right, resembling that of *postliminium,* and the ownership of the property would appear to have had a retroactive effect.

(4) Still, it should not be said that, if the father, during the lifetime of his son and as his heir, should publicly manumit the slave, the latter would become free by such a manumission after the son had died intestate.

(5) But what if the son should make a will, and his estate should not be entered upon? It is not so easy to decide that the ownership of the property constituting the *peculium* would continue to belong to the father, after the death of the son, as the intermediate time, during which the testamentary heirs deliberate, offers the appearance of a succession. Otherwise, even if the estate of the son were entered upon by the testamentary heir, it might be said that the ownership passed to him from the father, which is absurd, if we hold that the property is in suspense in this case as well as in others; and we believe that by retroactive effect it either belonged or did not belong to the father. In accordance with this, if, while the heirs were deliberating, the time should arrive for the delivery of the legacy to the slave forming part of the *peculium,* under the will of someone, from which the father could obtain nothing, it is difficult to determine whether the legacy should belong to the father himself or not, as, otherwise, it would pass to the son's heir.

The decision of the question relating to the freedom of the slave is more easy to arrive at in the case in which the son is presumed to have died intestate. There is, therefore, no reason to state that he was entitled to freedom granted at the time when he did not belong to the father; still, we do not refuse a contrary opinion in either instance.

20. *Paulus, On the Rule of Cato.*

If you suppose that a son has made a will, and appointed his father his heir, after the father by his will has granted freedom to his son's slave, who began to belong to him by the will of his son, let us see whether this slave should be compared to one who belonged to another at the

time he was manumitted, and the ownership of whom was afterwards acquired. It is favorable to freedom to admit that it was granted by the father, and to hold that the slave belonged to the latter from the beginning; which is shown from what afterwards occurred.

## TITLE XVIII.

## CONCERNING VETERANS.

1. *Arrius Menander, On Military Affairs, Book III.*

Veterans, among other privileges, have one relating to their offences, namely, that they are distinguished from other persons with reference to the penalties imposed upon them; therefore a veteran is neither thrown to wild beasts, nor beaten with rods.

2. *Ulpianus, Opinions, Book HI.*

The immunity granted to soldiers who have been honorably discharged, they also enjoy in the towns in which they reside; nor is it lost if one of them should voluntarily accept an honor or a public employment.

(1) They must all pay taxes, and sustain any other ordinary burdens attaching to patrimonial estates.

3. *Marcianus, Rules, Book II.*

The same distinction is conferred upon veterans and their children as upon decurions. Therefore they shall neither be condemned to the mines, nor to labor on the public works, nor be thrown to wild beasts, nor be beaten with rods.

4. *Ulpianus, On the Duties of Proconsul, Book IV*. It was stated in a Rescript addresed to Julius Sossianus, a veteran, that veterans are not exempt from contributing to the repair of highways, for it is clear that they are not excused from paying taxes on their property.

(1) It is stated in a Rescript addressed to .Sillius Firmus and Antoninus Clarus that requisitions can be made for their ships.

5. *Paulus, On Judicial Inquiries.*

The Great Divine Antoninus, with his Father, stated in a Rescript that veterans were excused from building ships.

(1) They also enjoy immunity from the collection of taxes, that is to say, they cannot be appointed tax collectors.

(2) Veterans, however, who permit themselves to be elected members of an order, will be compelled to perform its duties.

# THE DIGEST OR PANDECTS.

## BOOK L.

## TITLE I.

## CONCERNING MUNICIPAL TOWNS AND THEIR INHABITANTS.

1. *Ulpianus, On the Edict, Book II.*

Either birth, manumission, or adoption, creates a citizen of a municipality.

(1) Properly speaking, indeed, those only are designated citizens of a municipal town who have the right of citizenship, and share the municipal duties with us. Now, however, we improperly call those citizens of a municipal town who are the residents of any town, as, for instance, those who live in Campania, or in Puteola.

(2) Therefore, anyone born of parents dwelling in Campania is styled a citizen of Campania. If, however, his father came from Campania, and his mother from Puteola, he is likewise considered a citizen of Campania, unless his mother enjoys some special privilege of birth; for then he will be a citizen of the town where his mother was born. Thus, for instance, it is conceded as a privilege to the people of Troy that when the mother was born at Troy, her son will become a citizen of that city. This same privilege is also granted to the people of Delphi. Celsus states that the inheritants of Pontus also enjoy this advantage, through the favor of the Great Pompey, that is to say, that anyone whose mother was born in Pontus will be a citizen of that country.

Certain authorities, however, hold that this privilege was only granted to children born in lawful marriage, but Celsus does not adopt this opinion. For it would not have been provided that a child born out of wedlock should follow the condition of its mother (as it has the same origin that she has), but the rule could only apply to children born of parents whose birthplaces were in different cities.

2. *The Same, Disputations, Book I.*

Whenever a son under paternal control is created a decurion, with the consent of his father, the latter is required, as surety for his son, to be responsible for the performance of all the duties pertaining to the office of decurion.

The father is considered to have given his consent for his son to become a decurion if, having been present at his nomination, he did not oppose it. Hence, anything that his son does while in office, his father will be responsible for as his surety.

(1) We should understand the transaction of the business of an office to be the handling of the public funds, or decisions with reference to their expenditure.

(2) The incumbent will also be liable for any supervisors of work, or of anything else in which the State is interested.

(3) The father will be liable if the son is appointed his successor.

(4) He will also be liable if he has farmed out the public taxes.

(5) If the son has not taken care to appoint guardians, when requested to do so, or if he selects such as are not suitable, or if he does not require security, or accepts a guardian who is not solvent, there is no doubt that he himself will be responsible. The father, however, will still be liable, when sureties are accustomed to be bound under these circumstances. This, however, is not customary, as has been stated in a Rescript; because the sureties only promise that the estate shall be secure, but, so far as pecuniary matters are concerned, the estate is not interested in the appointment of wards.

(6) He who remains absent a longer time than is authorized by his furlough, or contrary to the terms of the same, can still hold office.

3. *The Same, On Sabinus, Book XXV.*

It has been established that a son under paternal control can have a domicile.

4. *The Same, On the Edict, Book XXXIX.*

He can not only establish his domicile where his father has his, but anywhere else.

5. *Paulus, On the Edict, Book XLV.*

Labeo says that he who carries on business to the same extent in several places has no domicile in any of them. It is, however, stated that certain authorities hold that he can be a resident of, and have a domicile in several places. This is true.

6. *Ulpianus, Opinions, Book II.*

The statement of one's birthplace, which is not correct, does not alter the fact of a person's origin; for a man's actual birthplace is not lost by mistake, nor by his falsely, giving a different place from the true one. Nor can anyone, by rejecting the country where he was born, nor by misrepresentation on this point, change the truth.

(1) A son derived his origin from the town in which his father was born, but he does not follow the domicile of the latter.

(2) It was decided by men learned in the law that anyone can have his domicile in two different places, that is where he builds in two different places, and is not considered to reside in one more than in the other.

(3) Freedmen follow the place of birth or domicile of their patrons, which is also the case with their children.

7. *The Same, On the Duties of Proconsul, Book V.*

When anyone is manumitted by several masters, he follows the birthplaces of all his patrons.

8. *Marcianus, On Public Prosecutions, Book I.*

The Divine Brothers stated in a Rescript that decurions should not be forced to furnish grain to the people at a lower price than the supply of provisions demands; and this is also provided by other Imperial Constitutions.

9. *Neratius, Parchments, Book III.*

He who has not a legitimate father derives his origin from his mother, which should be reckoned from the day on which he was born.

10. *Marcianus, On Informers.*

No city has the same privilege as the Treasury with reference to the property of a debtor, unless it has been expressly conceded by the Emperor.

11. *Papinianus, Questions, Book II.*

The Emperor, Titus Antoninus, stated in a Rescript addressed to Lentulus Verus that the duties of magistrates were individual, but that their responsibility was common. This should be understood to mean that the responsibility only attaches to the entire body, if the property could not have been preserved by the one who transacted the business, nor by those who were his sureties, if he, at the time that he relinquished his office, was not solvent; but, on the other hand, if the person or the security was suitable or solvent when suit could have been brought, each one will be liable for whatever he administered.

(1) Where, however, he who appointed the magistrate on his own responsibility is solvent, should the action first be brought against him as a surety; or, indeed, will it be the same as if the business was improperly transacted by his colleague ? It was decided that he should first be sued who appointed the magistrate, as in the case of a surety, since his colleague is proceeded against on account of his negligence, and to collect the penalty; but he who nominated the magistrate is sued because of his guarantee.

12. *Tine Same, Opinions, Book I.*

It is not necessary to grant a praetorian action against the colleague of the appointed magistrate.

13. *The Same, Questions, Book II.*

What, then, would be the rule, if one of the magistrates was absent for the entire year; or if, while present, he did not transact the public business through either obstinacy, ignorance, or ill health, and his colleague alone attended to it all, and it was not properly done? The following order shall be followed: first, he who conducted the public business, and those who were sureties for him, shall be sued for the entire amount, and after all these have been exhausted, he who appointed an insolvent person will be liable; and finally, the other magistrate, who did not attend to any public affairs, should be called to account. Nor can he who appointed the magistrate properly decline general liability, as he should have known that he whom he appointed took the office as an individual, and assumed common responsibility. For when two magistrates transact business, and money which is due can not be collected from one of them, he who nominated him can be sued for the entire amount when this is necessary.

14. *The Same, Questions, Book XV.*

Municipal magistrates are understood to know what those to whom the highest interests of the State are entrusted are cognizant of.

15. *The Same, Opinions, Book I.*

He who has been removed from the Order of Decurions for a certain time, and afterwards restored, cannot be admitted to new honors as a person who has been relegated for the time that he was deprived of his rank. It has been decided in both these instances that it must be ascertained whether the parties who have been convicted of an offence deserved a sentence of this kind; for if they received a more severe one than they should have done, or have been branded with infamy, they ought afterwards to be liberated, and the matter be considered as disposed of.

When, however, they have been subjected to a less severe penalty than that legally prescribed, they will, nevertheless, be included among persons who are infamous; as a question of fact depends upon the decision of the judge, but the authority of the law does not.

(1) When anyone appoints a successor to himself, and the latter is solvent when his term of office expires, it is not necessary for an action to be granted.

(2) Where lands are transferred by means of a secret trust, for the purpose of defrauding public claims, they can be demanded by the Treasury; and the purchaser of the property fraudulently sold will be forced to pay as much again out of his own pocket.

(3) The right of birth is not altered by adoption, so far as the discharge of official duties and the acceptance of public employment are concerned, for a son can be compelled by his adoptive father to accept a new employment.

16. *Hermogenianus, Epitomes of Law, Book I.*

Where, however, he has been emancipated by his adoptive father, he not only ceases to be his son, but also is no longer a citizen of the town of him whose son he becomes by adoption.

17. *Papinianus, Opinions, Book I.*

A freedman is not excused from civil employment on account of services due to his patron, for it makes no difference whether he renders his services or performs his duties to his patron, or not.

(1) The freedmen of senators, however, who transact the business of their patrons, are excused from guardianship by a Decree of the Senate.

(2) A father consented for his son to be appointed decurion. The government should sue the son personally rather than that the father should have an action brought against him as security for his son; for it does not make any difference whether the son had a *castrense peculium* before he served in the army or afterwards.

(3) The prescription of time required in order again to seek office, or to obtain other public employment, applies to some municipalities, but not to others.

(4) Public employments cannot be administered by the same person at the same time in'two different cities. Therefore, where two offices are tendered at the same time, the place of one's birth should be preferred.

(5) The sole ground of possession is not sufficient to impose civil duties upon the possessor, unless this privilege was especially granted to the city.

(6) Persons who have returned to their country under the right of *postliminium* are obliged to accept public employment, even though they reside in another town.

(7) The collection of taxes is not included among base employments, and it is therefore committed to decurions.

(8) He who has been manumitted under the terms of a trust, in the matter of civil employments, follows the origin of the person who manumitted him, and not that of him who left him his freedom.

(9) It was decided by the Divine Pius that a child born in an adopted family followed the origin of his natural grandfather in the discharge of civil employments; just as where a son was given in adoption, unless there was some suspicion of fraud attaching to the proceeding.

(10) The mistake of him who, thinking that he is a citizen of a town, or the inhabitant of a colony, agrees to accept civil employment, does not exclude him from making a legal defence.

(11) The removal of the domicile of a father to another town does not compel his son to accept public employment in that town, when the cause for the change of the father's domicile is temporary.

(12) Where accusations of a capital crime are brought against persons nominated for office, they cannot be admitted to any new employments before their cases have been disposed of, but, in the meantime, they will retain their former rank.

(13) The mere possession of a house in another town does not create a domicile.

(14) The responsibility entailed by the nomination of a successor does not bind the surety of the person who makes it.

(15) Sureties who have become responsible for public property, and who nominate magistrates at their own risk, are not liable to any penal actions which may be brought against those for whom they have become bound; for it is enough that they should have promised to make good any damage sustained by the government.

18. *Paulus, Questions, Book I.*

The Divine Severus stated in a Rescript that the intervals of time prescribed with reference to continuance in office, are granted to such as are unwilling, but not to those who desire to

remain, for no one should remain constantly in office.

19. *ScsBVola, Questions, Book I,*

What is done by the majority of an assembly is considered to be the same as if it had been done by all.

20. *Paulus, Questions, Book XXIV.*

*A* domicile is transferred when this is actually done, and not when a mere statement to that effect is made, as is required in the case of those who deny that they, as inhabitants, can be summoned to discharge public duties.

21. *The Same, Opinions, Book I.*

Lucius Titius, while under the control of his father, was appointed by the magistrates, along with certain others, a curator for the purchase of grain, against the consent of his father. Lucius Titius did not agree to accept the office, and did not receive any money on this acount, nor did he, in any way, take part with the other officials in making the purchase; and, after the death of his father, he was called to account for a balance due from his colleagues.

The question arose, could he be held liable on this account? Paulus answered that, although he refused to accept the office to which he had been appointed by the magistrates, he could be sued on account of the damage sustained by the State, even if at the time when he was appointed he was subject to the authority of another.

(1) Paulus gave it as his opinion that those against whom an action is brought, not by reason of a contract but on account of some public employment which they have discharged for others, are usually

liable for loss of any of the principal, but are not liable for interest.

(2) He also held that the heirs of a father cannot legally be sued on account of an office which his son accepted after the death of his father. This opinion has reference to one who was appointed decurion by his father, and after the death of the latter continued to perform the duties of the office.

(3) He also gave it as his opinion that one who had adopted a decurion was considered to have assumed all the responsibilities of the decurionate, as in the case of a father whose son was appointed decurion with his consent.

(4) He also gave it as his opinion that a dowry was included in the property of the husband during the marriage. If, however, he should be called to undertake municipal duties, in proportion to his means, the dowry should not be considered part of his property.

(5) He also gave it as his opinion that if the accuser of a capital offence was not to blame because the charge was not prosecuted within the time prescribed by law, the defendant should not, in the meantime, solicit any public employment.

(6) "The Emperors Severus and Antoninus, to Septimius Zeno. While you have consented for your son, who is still under legal age, to become a decurion, and although you have afterwards pledged your faith for him, still, in the meantime, you cannot be compelled to assume any responsibility, as you do not appear to have given your consent to an appointment which can legally be made."

(7) He also gave it as his opinion that if a State did not enjoy any special privilege with reference to receiving additions to its territory, it could not withdraw from a lease or a sale of public lands which already had been perfected; for the time regulating such additions is prescribed by the Treasury.

22. *The Same, Sentences, Book I.*

The children of freedmen and freedwomen follow either the domicile or the origin of their paternal ancestors, and of their patrons who manumitted them.

(1) A widow retains the domicile of her deceased husband, as in the case of a woman rendered illustrious by her husband, but it will be changed if she should contract a second marriage.

(2) Freedmen become citizens of the place where they have voluntarily fixed their domicile; but, by doing so, they do not prejudice the birthright of their patron, and are required to discharge public employments in both places.

(3) He who was relegated to a certain locality, in the meantime, necessarily has his domicile in the place to which he was relegated.

(4) A senator deprived of his rank is not restored to his original country, unless he obtains this as a special favor.

(5) Senators, with their sons and daughters born while their father held the office, as well as their grandsons, great-grandsons, and great-granddaughters by their sons, are deprived of the benefit of their birthright, although they still retain the municipal dignity.

(6) Senators who have obtained free leave of absence, that is, the power of residing where they please, retain their domicile in the City of Rome.

(7) Those who lend money at interest should discharge all liabilities attaching to their patrimony, even though they may not have possession.

23. *Hermogenianus, Epitomes of Law, Book I.*

Anyone who has attained to the senatorial dignity ceases to be a citizen, so far as holding other public employment is concerned; but he is understood to retain his birthright with reference to municipal honors. Hence slaves who have been manumitted by him become citizens of the town in which he was born.

(1) A soldier has his domicile in the place where he serves if he has no property in his own country.

24. *Scsevola, Digest, Book II.*

It is set forth in the Imperial Constitutions that money which is paid to the detriment of anyone, does not bear interest. This was stated by the Emperors Antoninus and Verus in a Rescript as follows: "It is no more than equitable that interest should not be required on a balance due at the end of the term of an office, which the incumbent did not himself administer, nor should it be exacted from his surety, and "still less ought it to be collected from magistrates who have received security."

The result of which is that this rule should not be departed from in the future.

25. *Ulpianus, On the Edict of the Prtetor, Book I.*

When two municipal magistrates discharge the duties of a single office, they are regarded as only a single individual, and this privilege is generally granted them by municipal law; but even if it is not, it is customary for this rule to be observed, provided there is no enactment to the contrary.

26. *Pauhis, On the Edict, Book I.*

A municipal magistrate cannot perform acts which rather belong to the Imperial jurisdiction than to his own.

(1) Municipal magistrates are not permitted to grant complete restitution, or to order the possession of property to be taken for the purpose of preserving it, or for the maintenance of a

dowry intact, or to insure the safety of legacies.

27. *Ulpianus, On the Edict, Book II.*

Anyone who is manumitted becomes a citizen of the town to which the person who manumitted him belongs; still, he does not follow his domicile, but his country; and if his patron is a citizen of two different towns, by his manumission he will become the citizen of the same towns.

(1) Where anyone always conducts his business, not in a colony, but in a town, and sells, purchases, and makes contracts there, or uses the markets, or the baths, or attends exhibitions, and celebrates festivals there, and, in short, enjoys all the advantages of the town, and none of those of the colony, he is understood to have his domicile in the said town rather than where he sojourns for the purpose of cultivating land.

(2) Celsus, in the First Book of the Digest, discusses the point that, if anyone should furnish two houses alike, which are situated in two different places, and does not live in one any less than in the other, he must be considered to have his domicile where he himself thinks that it is.

I doubt whether by changing his mind from one place to another anyone can be considerd to have his domicile in two places. Still, this may be true, although it is a difficult thing to decide, just as it is difficult to decide that anyone can be without a domicile. I think, however (and this can be maintained as correct), that if a man having left his domicile, takes a sea voyage, or travels by land, seeking some place to sojourn for a time, he will be without any domicile.

(3) He who has been relegated can have his domicile, as Marcellus says, in the place to which he has been restricted.

28. *Paulus, On the Edict, Book I.*

*A* matter of the greatest importance can be brought before municipal magistrates by consent of the parties interested.

29. *Gaius, On the Provincial Edict, Book I.*

A man must obey the magistrates of the town in which he lives, as well as those of the one of which he is a citizen; for not only is he subject to the municipal jurisdiction of both places, but he should also discharge the duties. of any public office in either of them.

30. *Ulpianus, On the Edict, Book LXI.*

Anyone born in a village which is a dependency of a city is understood to have his residence there, just as if it was in the city itself.

31. *Marcellus, Digest, Book I.*

There is nothing to prevent anyone from having his domicile wherever he wishes, for the reason that he is not forbidden to do so.

32. *Modestinus, Differences, Book IV.*

*A* woman who has been betrothed does not change her domicile before her marriage has been contracted.

33. *The Same, On Manumissions*. Rome is our common country.

34. *The Same, Rules, Book III.*

*A* citizen who has already been appointed to a public employment cannot abandon his residence until he has discharged the duties of his office.

35. *The Same, Excuses, Book I.*

It must be remembered that when anyone continues to dwell upon a tract of land he is not considered to be the resident of a municipality; for he who does not enjoy the privileges of a town is not held to be a citizen of it.

36. *The Same, Opinions, Book II.*

While Titius was at Rome for the purpose of pursuing his studies, a letter was despatched to him by the magistrates of his native village, in order that he might deliver to the Emperor an ordinance of the said village which was transmitted along with the letter. But the person who had undertaken to deliver the letter, through collusion, delivered it to Lucius Titius, who himself was residing at Rome, for the same reason as Titius. After having erased the name of Titius, to whom the ordinance was directed, he inserted his own name, and then delivered it to the Emperor, according to the order of the municipality.

I ask whether the messenger could demand his travelling expenses, and what offence he should be considered to have committed in not delivering the letter to the person to whom he had undertaken to give it, as well as what he was guilty of, who, having erased the name of another, and written in his own, delivered the ordinance to the Emperor, just as if he had been ordered to do so by his native town?

Herennius Modestinus answered that Titius could not demand the travelling expenses, but that he could have recourse to the person who made the substitution in his own name.

(1) Titius accepted a pledge for public money which he himself had lent, and made an agreement with the debtor that, if the debt should not be paid, the pledge should be sold without any guarantee. The magistrates who succeeded to the place of Titius approved the claim as well as the pledge, as far as Msevius. Enough money was not realized by the sale of the pledge to pay the debt, on account of the guarantee made by the magistrate to the purchasers with reference to the amount of the land. The question arose, who was responsible to the municipality? Herrenius Modestinus answered that Titius was not liable on this account, as his successors had assumed responsibility for the debt, nor would the magistrates who made the sale, as they sold it as containing more than was shown by actual measurement of the land; and for the reason that they sold it for more, they should be ordered to make up the deficiency. Therefore, he who was the last to approve the claim should indemnify the municipality for the loss, if the claim should not be proved to have been transferred to a solvent successor.

37. *Callistratus, On Judicial Inquiries, Book I.*

The Governors of provinces have jurisdiction over all the inhabitants which any towns claim as their own; but still, where anyone denies that he is a resident, he must bring suit before the Governor of the province in whose jurisdiction the town, by which he is called to discharge a public employment, is situated, and not before the Governor of the one where he himself alleges that he was born.

This the Divine Hadrian stated in a Rescript with reference to a woman who married in another place than the one in which she was born.

(1) It has been decided that freedmen can hold public office where their patron is, or where they themselves have their domicile.

(2) It should be remembered that women who form an illegal connection with men can only discharge public duties where they themselves have been born, and not where their husbands are. This the Divine Brothers stated in a Rescript.

38. *Papirius Justus, On The Constitutions, Book II.*

The Emperors Antoninus and Verus stated in a Rescript that a man should be released from

his oath who swore that he would not again be present at the meetings of his order, in case he should afterwards be created a duumvir.

(1) They also stated in a Rescript that the tenants of land belonging to the Treasury must discharge municipal duties without any loss to the Treasury. The Governor, with the assistance of the Procurator of the Treasury, should see to this.

(2) The Emperors Antoninus and Verus stated in a Rescript that it was the duty of magistrates to collect legacies belonging to their towns, and if they failed to do so, that they, or their heirs, could be sued; and if they were not solvent, their sureties would become responsible for them.

(3) They also stated in a Rescript that a woman, while married, is a resident of the same town as her husband, and that she could not be compelled to perform any public duties in the place where she was born.

(4) They also stated in a Rescript that the property of a father who had deliberately emancipated his son in order to avoid being responsible for him as a magistrate would be liable, just as if he had become surety for him.

(5) They also stated in a Rescript, that when inquiry was made whether someone was a citizen of a certain town, evidence should first be obtained as to any property which he might have there; for the mere resemblance of a name is not sufficient to establish anyone's birthplace.

(6) The Emperors Antoninus and Verus stated in a Rescript that those who perform the duties of magistrates under compulsion should give adequate security, just as one who voluntarily accepted the office.

## TITLE II.

## CONCERNING DECURIONS AND THEIR SONS.

1. *Ulpianus, Opinions, Book II.*

It is established that decurions who have left the towns to which they belonged, and gone to other places, can be recalled to their country by the Governor of the province; and he must take care that they are given suitable employments.

2. *The Same, Disputations, Book I.*

A decurion who is relegated for a certain time ceases to be one. When he returns, he will not obtain his former position, but he will not always be prohibited from becoming a decurion. He will not be restored to his former position, but another can be chosen in his place; and if the number of his order is complete, he must wait until a vacancy occurs.

The case is different with one who is temporarily removed from his order, for he becomes a decurion as soon as the time has expired; still, another can be elected in his place. If he finds that it is occupied, he must wait until there is a vacancy.

(1) But when he has been restored to his order, the question may arise whether he will have the place which he first had, or the one which he has now obtained, if the duty of rendering decisions as a presiding officer is involved. I think he will have the same position which he formerly occupied.

The same rule does not apply to one who was relegated for a certain time, for he enters as the last one in order.

(2) The question arises as to the children of decurions, whether he only is considered to be the son of a decurion who was conceived and born while his father held the.office, or whether he also is to be considered a son who was born before his father became a decurion. And, indeed, so far as the latter is concerned, he cannot be whipped with rods, or sentenced to the mines; nor will he be prejudiced because he was born of a plebeian father, if the honor of the decurionate should afterwards be obtained by the latter. Papinianus rendered the same opinion

with reference to a grandfather, and held that a son was not affected if his father was branded with infamy.

(3) Where, however, a father is expelled from the Order of Decurions, and this was done before the conception of the child, I think that the latter should be considered as the son of a plebeian, so far as any honors are concerned. But if the father should lose his rank after the conception of the child, it would be more indulgent to hold that he should be regarded as the son of the decurion.

(4) Hence, he who was born after the relegation of his father, provided he was conceived before this took place, is considered to resemble the son of a senator; however, if it occurred afterwards, the relegation will prejudice him.

(5) Where the child was born while his father was temporarily excluded from his order, and it had been both conceived and brought forth in the meantime; would he be born the son of a decurion, even though his father should die before being restored to his rank?

The benevolent construction is that this would be the case.

(6) Moreover, if a child was conceived by a plebeian, and afterwards, before its birth, the father obtained the office of decurion, but lost it before the child came into the world, it would be more generous to hold that the intermediate time will be an advantage to him, and that he will be considered as having already been born.

(7) No crime committed by a father can bring punishment upon an innocent child, and therefore a son will not, for this reason, be excluded from the Order of Decurions, or from any other honor.

(8) Persons over twenty-five years of age are forbidden by the Imperial Constitutions to be called to the decurionate, without their consent; but if they do consent, they should perform the duties of the office, even if they are more than seventy; although in this instance they cannot be compelled to discharge public employments.

3. *The Same, On the Duties of Proconsul, Book 111.*

Generally speaking, it should be maintained that where a decurion, having received a lighter sentence than he deserved, has been relegated for a certain time, he should, in accordance with the dictates of humanity, be permitted to retain his property, but he cannot afterwards obtain the office of decurion.

(1) If, however, a decurion, either on account of some crime involving deceit, or one which is even more serious, has not been relegated for a certain time, but has temporarily been excluded from his order, he is in such a position that he can be reinstated. For the Emperor Antoninus decided by an Edict that when anyone had, for any cause whatsoever, been excluded from his order, or forbidden to be present at its meetings, or to comply with any other of its requirements, for a certain time, after the time had expired, he could still resume the discharge of his official functions or duties. And this is no more than just, for the sentence which merely imposed a certain prohibition should not be increased.

(2) There is no doubt that illegitimate children can be chosen decurions, but the Divine Brothers stated in a Rescript to Lollianus Avitus, Governor of Bithynia, that if such a son had a competitor who was legitimate, the latter must have the preference. Still, if the legitimate children should neglect to perform their duties, those who are illegitimate ought to be admitted to the office of decurion, after it has been ascertained that their conduct and life are honorable; because, as it is for the public welfare that the Order of Decurions should always be full, ignoble persons should not be admitted to it.

(3) The Divine Sever us and Antoninus permitted those who adhered to the Jewish superstition to obtain civil honors, but they imposed upon them the requirement not to violate

the precepts of their religion.

4. *Marcianus, On Public Prosecutions, Book I.*

A decurion is forbidden to lease any property; if, however, he should succeed to a lease by inheritance, he can retain possession of it; and this rule should be observed in all similar cases.

5. *Papinianus, Questions, Book II.*

It has been decided that those who temporarily have been removed from the Order of Decurions, for a crime which implies ignominy, are perpetually excluded. Those, however, who have been temporarily exiled for some trifling offence, as, for instance, one which grew out of some business transaction, should not be considered infamous.

6. *The Same, Opinions, Book I.*

Illegitimate children, as well as those sprung from incestuous marriages, can become decurions; for he should not be excluded from office who has committed no crime.

(1) Minors under the age of twenty-five years, who have been created decurions, receive the salary attached to the office, but they cannot vote with the others.

(2) A decurion is forbidden to hold the office of farmer of the revenue, even in his ownS:ity.

(3) Those who abandon a public prosecution, without obtaining permission to do so, cannot be decorated with the honor of decurion; for, in accordance with the Turpillian Decree of the Senate, they are branded with infamy as persons who have been convicted of malicious prosecution in a criminal case.

(4) A son, having been created decurion, his father appealed, and although his appeal was dismissed because it had not been filed within the prescribed time, if the son assumed the office, and the father did not ratify his acts, he would not be liable for his son.

(5) When other questions relating to privilege are to be decided, those who have obtained the most votes at the same time for the office of decurion shall be entitled to the preference; but he who has the largest number of children shall be first asked for his opinion in the assembly, and precede the others in point of honor.

7. *Paulus, Opinions, Book I.*

Honors and offices have no reference to the order of election, but should be conferred upon those who are more worthy.

(1) A deaf person, who cannot hear at all, and one who is dumb and cannot speak, are excused from municipal offices but not from other public duties.

(2) He who is not a decurion cannot discharge the functions of a duumvir, or those pertaining to other offices, for the reason that plebeians are forbidden to perform the duties of decurions.

(3) A father is not considered to have consented to his son being made decurion, if he manifests opposition in the presence of the Governor, or before the Order itself, or in any other way.

8. *Hermogenianus, Epitomes, Book I.*

It is permitted to furnish provisions to decurions who have lost their property; especially if they have exhausted their patrimony through generosity to their country.

9. *Paulus, Decrees, Book I.*

The Emperor Severus said: "Even if Titius should be proved to have been born to a father who was in slavery, but of a mother who was free, he is not thereby prevented from becoming a decurion in the city of his birth."

(1) There is no doubt that sailors cannot become decurions.

10. *Modestinus, Opinions, Book I.*

Herennius Modestinus gave it as his opinion that a man did not become a decurion merely by an order for the payment of his salary, when he not been legally created.

11. *Callistratus, Judicial Inquiries, Book I.*

Not only those who are of tender years but also aged persons are forbidden to become decurions. The former are, as it were, unable to protect the interests of the State, and are temporarily excused, but the latter are perpetually excluded; still, persons of advanced age should not be excused except for good reasons, lest those who are younger, through their elders not having been chosen, will be left alone to sustain all the public responsibilities of government; for minors under twenty-five years of age cannot be created decurions unless for some good cause, nor are those eligible who have passed their fifty-fifth year. Sometimes, long-established custom should be considered in this matter; for our Emperors, having been consulted by the people of Nicomedia as to whether persons of that age could be elected to the order, stated in a Rescript that this could be done.

12. *The Same, Judicial Inquiries, Book VI.*

Those who trade in and sell the necessaries of life should not be despised as degraded persons, although they are subject to chastisement by the JSdiles. For men of this kind are not prohibited from seeking the office of decurion, or any other honor in their own country, as they are not infamous; and they are not excluded from public employments, even after they have been scourged by the ^Ediles, who are only discharging their lawful duty in doing so. I do not, however, think that it is honorable to receive persons of this kind, who have been subjected to blows with a scourge, into the order; and especially in towns which contain a number of honest men, but the scarcity of those who should discharge the duties of a public office necessarily calls such persons to municipal honors, if they possess the requisite qualifications.

13. *Papirius Justus, On the Constitutions, Book II.*

The Emperors Antoninus and Verus stated in a Rescript that persons who have been relegated for a time, and have returned, can not be reinstated in the Order of Decurions without the consent of the Emperor.

(1) They also stated in a Rescript that those who had been relegated after their time had expired could not be restored to their rank as decurions, unless they were of such an age that they could be created decurions, and their position afforded them the hope of obtaining the honor, or gave them the assurance that the Emperor would show them special indulgence.

(2) They also stated in a Rescript that a son who was born during relegation is not prohibited from discharging the duties of a decurion.

(3) They also stated in a Rescript that anyone who had consented to the appointment of another as decurion should not afterwards oppose the appointment on the ground that the party was not legally created a decurion, as he ought to have objected in the beginning.

14. *Paulus, Questions, Book I.*

The Divine Pius stated in a Rescript that a decurion who had been convicted should not be subjected to torture. Wherefore, when anyone ceases to be a decurion, and afterwards is convicted, it is decided that he must not be tortured, on account of the memory of his former dignity.

## TITLE III.

## CONCERNING THE REGISTER OF DECURIONS.

1. *Ulpianus, On the Duties of Proconsul, Book III.*

The names of decurions should be entered upon a register, as is prescribed by the municipal law. Where, however, there is no law on this point, the rank of each should be considered, so that they may be registered in the order in which each one of them enjoys the highest distinction in the city; as, for instance, those who have held the office of duumvir, if this is the highest, and among the duumvirs, the one who first held office, shall take precedence; and after him those who have performed the duties of duumvirs in the municipal government; and, after them, those who come third, and the others in succession, and then those who previously have held no office shall be registered, so that each one shall appear in his proper place.

(1) In casting their votes, the same order shall be considered which we have stated should be observed in registering their names.

2. *The Same, Opinions, Book II.*

The names of the recipients of honors at the hands of the Emperor should first be entered upon the register of the decurions in a city; and afterwards the names of those who only have discharged the duties of municipal offices.

## TITLE IV.

## CONCERNING PUBLIC EMPLOYMENTS AND HONORS.

1. *Hermogenianus, Epitomes, Book I.*

Some municipal employments are derived from estates, and others from persons.

(1) Employments derived from estates refer to transportation of goods by sea or land, and engage the attention of the first in rank among the decurions, for he is responsible for any collections made by him in the performance of his official duties.

(2) Personal employments are such as relate to the defence of a city, that is to say, such as may be made by the civil magistrate, for example, the collection of taxes, or as has been stated with reference to patrimonial employments, supervision of beasts of burden with a view to the supply of provisions and other things of this kind; as well as care of the public lands, aqueducts, horses, and chariot-races; repairs of highways and warehouses; the heating of baths, the distribution of food, and all duties of this description. For from what we have stated, any other matters which, by long-continued custom, have been established in the different cities, can be readily understood.

(3) A personal employment is generally understood to be one which is accompanied with manual labor, care, and diligence. A patrimonial employment, however, is one in which expense is especially requisite.

(4) Among personal employments are included the guardianship and curatorship of a minor or an insane person, as well as that of a spendthrift, one who is dumb, and an unborn child, to whom it is also necessary to furnish food, drink, lodging, and other things of this kind. With reference, however, to the property of the minor or the insane person, care must be taken by the person charged with the duty that it shall not be acquired by usucaption, or any debtors be released from liability.

Likewise, where possession of property is demanded under the terms of the Carbonian Edict, if security is not furnished, the curator who has been appointed discharges a personal employment in taking care of the property. The same rule applies to curators who have been appointed to take charge of the property of persons who have been captured by the enemy, and expect to return. Again, curators are appointed for an estate left to one who cannot yet succeed

to it by either Civil or Praetorian Law.

2. *Ulpianus, On Sabinus, Book XXI.*

If a son who is under the control of his father should himself have a son, he will be considered to be under his control, so far as municipal honors are concerned.

3. *The Same, Opinions, Book II.*

Persons who were born in the City of Rome, and who have established their domicile elsewhere, must accept public employment at Rome.

(1) No municipal employment can be imposed upon soldiers who are serving in camp. Other private persons, however, even though they are the relatives of soldiers, must obey the laws of their country and their province.

(2) When anyone is sentenced to the mines, and afterwards obtains complete restitution, he may be called to public employments and honors just as if he had never been convicted; and his misfortune and sad experience cannot be advanced to show that he is not a good citizen of his country.

(3) Their sex denies to women corporeal employments, and prevents them from obtaining municipal honors or offices.

(4) A father has no right to prevent a son, who is under his control, from obtaining municipal honors, if he has no good excuse for doing so.

(5) A father is not required to undertake the defence of his son, if he does not consent for him to obtain municipal honors, or employments, for fear his estate may be subjected to a burden; but he can not prevent him from being liable to his country to the extent of his means.

(6) Although anyone who is over seventy years of age, or has five children living, is, for either of these reasons, excused from holding civil employments; still, his sons ought to accept offices for which they are qualified, for the immunity granted to fathers on account of their children they themselves do not enjoy.

(7) A stepfather can, by no rule of law, be compelled to undertake the burdens of civil employment, in the name of his stepson.

(8) Freedmen should discharge the duties of public employment at the birthplace of their patron, if their pecuniary resources are sufficient to enable them to do so; as the property of their patrons is not liable on account of offices administered by their freedmen.

(9) When a father has been guilty of some crime, this should be no impediment to the acquisition of municipal honors by his sons.

(10) It has long since been settled that minors under twenty-five years of age can become decurions; not, however, when they are in military service, because this burden is considered as rather attaching to a patrimonial employment.

(11) The collection of taxes is considered to be a patrimonial employment.

(12) The duty of collecting provisions is a personal employment, and the age of seventy years, or the number of five living children, exempts a person from it.

(13) Persons who are obliged to furnish lodgings to soldiers coming to a city should discharge this duty by turns.

(14) The duty of furnishing lodgings to soldiers is not a personal, but a patrimonial one.

(15) The governor of a province should see that employments and honors are equally distributed among the citizens in turn, according to their age and rank; so that the order of the various degrees of said employments and honors, which have been established of old, shall be

followed, to prevent the same person from being indiscriminately and frequently oppressed by their imposition, and the State from being deprived at the same time of men and of power.

(16) Where there are two sons under the control of their father, he cannot be compelled to be responsible for the employment of both of them at the same time.

(17) If a man, who left two sons, did not, by his last will, provide out of their common patrimony, for the discharge of the duties of public office by one of them, the latter should not, at his own expense, assume responsibility for any duties or honors which may be enjoined upon him, although the father, while living, might have assumed liability of this kind for one of his sons.

4. *The Same, Opinions, Book III.*

The care of the construction or repair of public buildings in a city is a public employment from which a father who has five living children is exempt; but if he should be compelled by force to discharge such an employment, this will not deprive him of any excuse which he may have for not accepting others.

(1) The excuse of a want of means for not accepting municipal employments or duties which persons are required to undertake is not perpetual but temporary; for, where anyone's patrimony has been increased by honorable means this will be taken into consideration, when inquiry as to his solvency at the time when he was appointed to the office is made.

(2) Persons who are poor cannot, through destitution, be compelled to accept patrimonial employments, but they are forced to discharge the duties of corporeal ones to which they have been appointed.

(3) Anyone who is obliged to discharge a public employment in his city, and represents himself as a soldier for the purpose of avoiding a municipal burden, cannot render the condition of the municipality any worse.

5. *Scsevola, Rules, Book I.*

Masters of vessels and oil merchants, who have invested the greater part of their patrimony in occupations of this kind, are entitled to exemption from public office for the term of five years.

6. *Ulpianus, On the Duties of Proconsul, Book IV.*

The following was stated in a Rescript of the Divine Brothers addressed to Rutilius Luppus: "The Constitution by which it is provided that anyone who has been created a decurion can obtain the office of magistrate should be observed, whenever the parties concerned are solvent and properly qualified. Where, however, they are of such inferior rank and slender resources that they are not only unsuited to the enjoyment of public honors, but are also scarcely able to support themselves, it is both useless and dishonorable for such persons to be charged with the office of magistrate, especially when there are others who can be appointed, and who, by their fortunes and their rank, are suited to the position. Therefore, let all who are wealthy know that they should not avail themselves of this provision of the law, and that when anyone is to be chosen in an assembly, inquiry should be made among those who are present for persons who, by reason of their means, are capable of assuming the dignity of the office."

(1) It is certain that public debtors cannot be raised to municipal honors, unless they first pay what they owe to the city. We should understand such debtors to be those in whose hands a balance remains from the administration of public business. When, however, they are not debtors of this description, but have borrowed money from the city they are not in a position to be excluded from municipal honors. It is evident that it will be sufficient if, instead of payment, they make provision for it by means of pledges or solvent sureties. This was stated by the Divine Brothers in a Rescript addressed to Aufidius Herennianus. Where they are

indebted merely under a promise which cannot be refused, they are in such a position that they must be excluded from municipal honors.

(2) Where anyone, though guilty of an offence, has not been accused, he should not be excluded from public office any more than if he had an accuser who withdrew from the prosecution; for Our Emperor with his Divine Father stated this in a Rescript.

(3) It must be noted that certain employments are either personal or patrimonial, just as certain honors are.

(4) Employments which have reference to patrimonies, or the payment of taxes, are of such a nature that neither age nor the number of children, nor any other privilege which usually exempts persons from personal employments, will be a valid excuse for declining them.

(5) These employments which have reference to patrimonies are of a double nature, for some of them are enjoined upon possessors, whether they are citizens or not; and others are enjoined upon the residents or citizens of a town.

Taxes imposed upon lands or buildings have reference to the possessors of the same, but patrimonial employments only concern municipalities or their inhabitants.

7. *Marcianus, Public Prosecutions, Book II.*

A person who has been accused of crime is forbidden by the Imperial Constitutions to aspire to municipal honors before his case has been decided. It makes no difference whether he is a plebeian or a decurion. He cannot, however, be prevented from accepting such an office after a year has elapsed from the time when he was accused, unless he is to blame for the case not having been heard during the year.

The Divine Severus stated in a Rescript that when a man is elected a magistrate, and his opponent appeals, and while the appeal is pending he takes possession of the office, he should be punished. Therefore, if anyone who is prevented by a decision from obtaining municipal honors takes an appeal, he should, in the meantime, refrain from demanding the office.

8. *Ulpianus, On the Edict, Book XI.*

Minors should not be admitted to the administration of public affairs, either in such employments as are not patrimonial, or in such as are magisterial, before reaching their twenty-fifth year; nor should they be made decurions, for, if they are, they cannot cast their votes in the assembly. After the beginning of their twenty-fifth year, however, it is held as having elapsed, for it has been decided as a matter of favor in cases of this kind, that we must consider what has been begun as completed; but the administration of no public office shall be entrusted to them, lest some damage may be committed against the government, or some injury caused to the minor himself.

9. *The Same, On the Duties of Consul, Book III.*

When anyone who has been created a municipal magistrate refuses to perform the duties of his office, he can be compelled to do so by the Governor in the same manner as guardians can be forced to discharge the duties of the trust imposed upon them.

10. *Modestinus, Differences, Book V.*

An additional employment cannot be imposed upon a magistrate; but the office of magistrate can be conferred upon one who already has another public employment.

11. *The Same, Pandects, Book XI.*

Under the Przetorian Edict, offices should be conferred by degrees, and, as is stated by a letter of the Divine Pius to Titianus, this should be done from the less important to the more important ones.

(1) Although it is provided by the municipal law, that men of a certain condition should be preferred in making appointments to the magistracy, still it must be remembered that this rule ought only to be observed when the candidates are solvent. This is set forth in a Rescript of the Divine Marcus.

(2) The Divine Brothers stated in a Rescript that whenever there is a scarcity of citizens eligible to the magistracy, immunity can be, to some extent, infringed.

(3) The Divine Antoninus and his Father stated in a Rescript that although a physician may already have been approved, he can be rejected by the municipality.

(4) The Divine Antoninus stated in a Rescript that those who instructed children in the rudiments of learning were not exempt from the duties of public office.

12. *Javolenus, On Cassius, Book VI.*

Anyone who has been granted exemption from the performance of municipal duties is not excused from becoming a magistrate, because the functions of the latter are more honorable than those attaching to other public employments; but all other extraordinary duties required from anyone temporarily, as, for instance, the repair of highways, should not be demanded of a person of this kind.

13. *The Same, On Cassius, Book XV.*

Exemption and immunity from public employments conceded to the children and descendants of anyone only have reference to persons belonging to his family.

14. *Callistratus, Judicial Inquiries, Book I.*

Municipal honor is the administration of public affairs, with the title of the office, whether the payment of expenses is required or not.

(1) An employment is either public or private. A public employment is one in which we undertake to administer public affairs, with the payment of expenses, and without the title of dignity.

(2) The collection of expenses for repairing the highways and of taxes on land are not personal, but local employments.

(3) When a question arises with reference to municipal honors and the administration of public employments, the person upon whom the honor or the employment is conferred must be taken into consideration, together with the origin of his birth, and whether his means are sufficient to enable him to administer the employment entrusted to him; and also the law, in accordance with which every one should discharge his official duties.

(4) A plebeian son under paternal control holds his office at the risk of the person who nominated him. Our Emperor, Severus, stated the following on this point in a Rescript: "If your son is a plebeian, you should not be compelled, against your will, to be responsible for his administration of the magistracy, because you cannot exercise your right of paternal authority to resist his appointment, but his administration will be at the risk of him who nominated him."

(5) The power of administering a public office is not a promiscuous one, but a certain order should be observed; for no one can discharge the higher functions of the magistracy before having discharged those of a lower degree, nor can anyone continue to perform the duties of a public office at any age.

(6) It is provided by many Imperial Constitutions that, where there are no others to hold the office, those who had it previously can be compelled to continue to administer it. The Divine Hadrian stated in a Rescript with reference to continuance in office: "If there are no others who are competent to perform the duties of the office, I consent that they shall be chosen from

those who already have performed them."

15. *Papinianus, Opinions, Book V.*

If a father consents for his son to become a decurion, and after his death his son obtains the office, his co-heirs cannot be held responsible for his maladministration, if the father left his son, the decurion, sufficient means to discharge his liabilities.

16. *Paulus, Sentences, Book I.*

Those who offer a sum of money in order to obtain exemption from the administration of a municipal office or employment should not be heard.

(1) Anyone who promises a sum of money for a municipal honor, and has begun to pay it shall be compelled to pay the entire amount, just as in the case of an unfinished public work.

(2) A son cannot, against his will, be compelled to become responsible for any public employment administered by his father.

(3) No one can be forced to undertake the defence of a municipality more than once, unless necessity requires this to be done.

17. *Hermogenianus, Epitomes, Book I.*

No one is prohibited from voluntarily repeating the performance of the sacerdotal ceremonies of a province.

(1) When a father who is exempt from the civil employments and duties of the magistracy consents to have his son, who is under his control, created decurion, he will be compelled to assume responsibility for the proper discharge of all the functions and obligations undertaken by his son.

18. *Arcadius Charisius, On Civil Employments.* There are three kinds of civil employments, for some are called personal, others are styled patrimonial, and others are mixed.

(1) Personal employments are those which are carried on by the application of the mind, and the exertion of corporeal labor, without resulting in any detriment to the person who administers them; as, for instance, guardianship or curatorship.

(2) The keeping of accounts and the collection of money in any town is not considered an honorable employment but a personal one.

(3) The conducting of recruits, or horses, or any other animals necessary for the transportation or pursuit of public property, or of money belonging to the Treasury, or of provisions or clothing, is a personal employment.

(4) The supervision of posts and couriers is a personal employment.

(5) The care of purchasing grain and oil (as it is customary to appoint persons for duties of this kind, who are called purveyors of grain and oil), is, in some towns, included among personal employments, as well as the duty of heating the public baths, when the money provided by the official in charge is obtained from the revenues of any municipality.

(6) The preservation of aqueducts is included in personal employments.

(7) Irenarchs are officials who are appointed to maintain public discipline and the preservation of morals. Those who are selected for the construction of highways, when they can contribute nothing out of their own property for this purpose, along with those who are appointed to supervise the sale of bread and other provisions necessary to the daily sustenance of the people of towns, administer personal employments.

(8) Persons who have charge of either the collection or distribution of public provisions, and collectors of individual taxes administer personal employments.

(9) Officials who are usually chosen for the collection of the public revenues of towns exercise a personal employment.

(10) Those also who are the guardians of temples, or who have charge of the archives; writers of orations and book-keepers; those who furnish entertainment to strangers, as in certain cities; those who have superintendence of harbors; officials charged with the construction or repair of public buildings, whether palaces, or naval arsenals, or such as are destined for military quarters, who expend the public money in the erection of buildings, or for the construction or repair of ships, when this is necessary, administer personal employments.

(11) The driving of camels is also a personal employment, for a certain amount should be given to the camel-drivers for the support of themselves and their camels, and an account kept of the same, so that they will only be compelled to furnish manual labor. These should be called according to the order in which they are registered, and should not be released by any excuse, unless it is expressly shown that they are suffering from some corporeal injury, or weakness.

(12) Messengers who are despatched to the Emperor sometimes receive their necessary travelling expenses, but the officers of the night-watch and the superintendents of mills administer personal employments.

(13) The defenders also, whom the Greeks call syndics, and who are selected for the prosecution or defence of some case, exercise personal employment.

(14) The duty of rendering decisions is also classed among personal employments.

(15) When anyone is chosen to compel persons to construct pavements in front of the public highways, this employment is personal.

(16) In like manner, those who are appointed for the collection of taxes perform the functions relating to a personal employment.

(17) The officials who accompany the contestants in games, and the clerks of magistrates, also discharge the functions of personal employments.

(18) Patrimonial employments are those which are administered at the expense of the estate, and to the loss of the person who exercises them.

(19) Among the people of Alexandria, officials who purchase oil and vegetables are considered to exercise a patrimonial employment.

(20) Those who collect wine throughout the province of Africa administer a patrimonial employment.

(21) Again, patrimonial employments are of a twofold, nature, for some of them have reference to either possession or to patrimonies, for instance, those who furnish horses, or mules for the transporation of military supplies, or for the post.

(22) Therefore, persons who are neither citizens nor inhabitants of municipal towns are required to perform services of this description.

(23) It has been stated in a Rescript that those who lend money at interest, even if they are veterans, must pay taxes for the privilege of doing so.

(24) Neither veterans, nor soldiers, nor any other persons, no matter what privileges they may enjoy, and not even the pontiff himself, is exempt from employments of this kind.

(25) Moreover, some towns have the privilege of permitting those who own land within their territory to furnish each year a certain amount of corn, in proportion to the real property which they possess; which contribution is an employment attaching to possession.

(26) Mixed employments are those in which'personal and patrimonial ones are combined, as Herennius Modestinus, with the best of reasons, stated in his notes and arguments; for collectors of taxes and grain, who also perform manual labor, exercise personal employments, and make good Treasury losses from the property of deceased persons ; so that there is good reason for considering this employment as being mixed in its character.

(27) We have, however, stated above that those who exercise personal employments, according to the laws or customs of their city, are also obliged to pay the expenses out of their own property; or if those who collect provisions should sustain any loss on account of land which remains uncultivated, these employments will also be included under the denomination of mixed.

(28) All these employments, which we have divided into three classes, are included under a single signification; for personal, patrimonial, and mixed employments are designated as civil or public.

(29) Where, however, exemption from merely personal or civil employments is granted to anyone, they cannot be excused from those relating to provisions, posts, couriers, the furnishing of lodgings, the construction of ships, or the collection of personal taxes, with the exception of soldiers and veterans.

(30) The Divine Vespasian and the Divine Hadrian stated in a Rescript that exemption from furnishing lodgings was granted by the Emperor to teachers who were not liable to civil employment, as well as to grammarians, instructors in rhetoric, and philosophers.

## TITLE V.

## CONCERNING EXEMPTION AND EXCUSES FROM EMPLOYMENTS.

1. *Ulpianus, Opinions, Book II.*

Every excuse should be based upon justice. But if confidence should be placed in persons claiming exemption, without a hearing in court, or indiscriminately, without any limitation of time, as each one may choose, and if each one should be permitted to excuse himself, there would not be enough persons to discharge the duties of public office.

Therefore, when any persons claim exemption from a public office on account of the number of their children, they should take an appeal, and those who do not observe the time prescribed for the prosecution of an appeal of this kind are with good reason excluded from the benefit of an exception.

(1) Those who avail themselves of an excuse, and are discharged in consequence, must appeal every time that they are appointed afterwards. When, however, this adversary is proved to have acted through malice, and for the purpose of subjecting them to frequent annoyance, although he is aware that they are entitled to perpetual exemption, the Governor shall order him who is responsible for this annoyance to pay the expenses of litigation, as in the case of the Imperial Decrees.

(2) Persons eligible to the highest honors, and included among the citizens of a town who, with the design of defrauding their order, betake themselves to the country for the purpose of avoiding the responsibilities of the higher offices, and still remain liable to those attaching to inferior ones, cannot avail themselves of this excuse.

(3) Although a man may be sixty-five years of age, and have three living children, he cannot, for these reasons, be released from performing the duties of civil employment.

2. *The Same, Opinions, Book HI.*

*A* minor of sixteen years of age cannot be charged with the duty of the purchase of grain, if this is not customary in the place of his birth.

The same rule applies to minors under twenty-five years of age, if they are appointed to municipal employments or honors.

(1) Neither the number of children, nor the age of seventy years, is a good excuse where honors or offices are united, but only exempts a person from civil employments.

(2) Adopted children are not included in the number of those who ordinarily excuse fathers from public duties.

(3) Those who are called to perform the functions of public officials must prove that they have the prescribed number of children at the time when they wish to be excused on this account; for if the number of children should afterwards be completed, it will not release them, if they have previously undertaken the employment.

(4) Where patrimonial employments exist, the number of children is no excuse.

(5) Children, even if they have ceased to be under the control of their father, afford a valid excuse for exemption from civil employments.

(6) A person who hears with difficulty is not entitled to exemption from civil employments.

(7) When the Governor of a province perceives that anyone is oppressed with age and bodily infirmity, or has not sufficient money to administer the office, he can discharge him and appoint another. Infirmity of body is a valid excuse from public employment, where only corporeal labor is concerned. Those, however, who can assist with their advice as well-informed men, or who are competent to discharge the duties of the office, should not be excused, except for good and sufficient reasons.

(8) Those who teach children the first rudiments of learning are not entitled to exemption from civil employments. It is, however, a part of the duty of a Governor to see that an office is not assigned to anyone which is beyond his capacity, whether such a person is teaching the primary branches of knowledge in a city or in a village.

3. *Scasvola, Rules, Book HI.*

Exemption from public employments is granted to those who have constructed ships destined for the transport of provisions for the Roman people, which have a capacity of not less than fifty thousand measures of grain, or several, each of which has a capacity of not less than ten thousand measures, as long as the said ships are suitable for navigation, or where they provide others in their stead.

Senators, however, are not entitled to this exemption. According to the Julian Law on Extortions, they have no right to have ships.

4. *Neratius, Parchments, Book I.*

The term of exemption which is conceded to those who are absent on business for the State should not be calculated from the day on which the person ceased to be absent, but some time should be allowed him to rest after his journey; and he is still understood to be absent in the public service if he transacts any business either while going or returning. But if anyone delays longer than is proper while on his way, or in any place, in this instance, the time of exemption should be understood to begin from the date when he could have conveniently concluded his journey.

5. *Macer, On the Duties of Governor, Book II.*

Ulpianus gave it as his opinion that no exemption should be granted to any other office while anyone was called to it from the decurionate.

6. *Papinianus, Questions, Book II.*

He who is entitled to exemption from public employments cannot be compelled to assume the

duties of one which is extraordinary, and which he has been commanded to exercise.

7. *The Same, Questions, Book XXXVI.*

According to the Decrees of our most Excellent Emperor Severus, veterans are excused for life from the exercise of public employments which are not imposed as patrimonial.

8. *The Same, Opinions, Book I.*

When a person is appointed to municipal honors, neither the age of seventy years, nor the fact that he is the father of five children, can be advanced as an excuse. Our Great Emperor Severus decreed that in Asia, men who had five children could not be compelled to assume the sacerdotal duties of the province, and he afterwards decided that this rule should be observed in the other provinces.

(1) It is settled that no other farmers of the revenue except those who are engaged in that occupation at the time can be excused from civil employments and guardianships.

(2) The privileges of exemption do not apply to the children of veterans.

(3) Those who have obtained exemption from public employments are not compelled to pay contributions unexpectedly imposed upon them by magistrates, but they cannot avoid paying those which are imposed by law.

(4) It has been decided that philosophers, who frequently and usefully employ their time for the benefit of those who are pursuing the studies of their school, are excused from guardianships and other employments requiring corporeal exertion, but they are not excused from those which involve the payment of expenses; for true philosophers despise money, and expose the false statements of the philosophical impostors who are desirous of having it.

(5) Anyone who has appealed to the Emperor, and goes to Rome with the intention of conducting his own lawsuit, is excused from municipal honors and employments until his case has been decided.

9. *Paulus, Opinions, Book I.*

Those who teach at Rome must be excused from public employments in their own country, just as if they taught there.

(1) Paulus gave it as his opinion that where a privilege was granted to persons dealing in grain, it would also avail to excuse them from public office.

10. *The Same, Sentences, Book I.*

No privilege is available as an excuse to exempt persons from those employments which arise from possession, or which are patrimonial.

(1) Those who are charged with the measurement of grain, with a view to supplying the City of Rome, are entitled to exemption; but the same rule does not apply to the provinces.

(2) The furnishing of horses for posts, and the necessity of receiving strangers as guests, are requirements not imposed upon soldiers and professors of the liberal arts.

(3) The excuse of poverty cannot be alleged by anyone after an appeal, if, in the meantime, his property has increased in value.

(4) Public defenders are entitled to exemption from offices and employments for the same length of time.

11. *Hermogenianus, Epitomes of Law, Book I.*

There are public duties which attach to property, and with reference to which neither children, slaves, the merits of military service, nor any other privilege affords a legal excuse. As, for instance, those relating to the contribution of land, the paving of highways, the provision of

horses and vehicles for posts, and the requirement to contribute to the lodging of strangers; for no one has a right to an excuse of this kind except those to whom it has been especially conceded by the favor of the Emperor; and this applies to any other exemptions of this kind.

12. *Paulus, Sentences, Book I.*

The defence in the same case cannot, a second time, be committed to the representative of the government who previously appeared, before the prescribed time of exemption has elapsed.

(1) The attendants of Governors, Proconsuls, and agents of the Emperor are excused from offices or honors, and guardianships.

13. *Ulpianus, On the Edict, Book XXII.*

When the Praetor ascertains that anyone is unable to act as judge, he promises to excuse him; for instance, where he cannot serve on account of bad health, and it is certain that he is incapable of discharging the duties appertaining to a civil office; or when he is suffering under some disease which prevents him from transacting his own business; or if he is performing sacerdotal duties, and cannot conscientiously relinquish them; for such persons are excused for life.

(1) There are two ways of granting exemption from public employment: one, which is permanent, such as is granted to a soldier; another, which is for a short time, as when anyone obtains the mere exemption from an employment.

(2) Moreover, anyone who has no excuse can even be compelled to act as judge against his will.

(3) If a judge desires to excuse himself on account of the privilege to which he was entitled before he accepted the office, and this is done after he has begun to take cognizance of a case, he should not be heard; for by once accepting the office he renounces all right to an excuse. If, however, some just cause should afterwards arise so that he can temporarily be excused, the case should not be submitted to another magistrate, if there is any danger of either of the parties suffering injustice; for it is sometimes better to wait until the judge who has once taken cognizance of the case can return than to commit it to another to be decided.

14. *Modestinus, Rules, Book VII.*

The death of a son is no advantage to his father as an excuse from public employment, unless he was killed in battle.

(1) The same person shall not supervise the construction of two public works at the same time.

## TITLE VI.

## ON THE RIGHT OF IMMUNITY.

1. *Ulpianus, Opinions, Book HI.*

Those who are only on board ships for the purpose of navigating them are not entitled to immunity from civil employments, by the terms of any Imperial Constitution.

(1) Immunity granted to anyone does not descend to his heirs.

(2) Where it is given to and acquired by a family and its descendants, it does not pass to those born of the women of this family.

2. *The Same, On the Duties of Proconsul, Book IV*. Where persons are obliged to discharge the duties of public employment or office, under a certain condition, when they could not otherwise be compelled to do so against their consent, good faith must be observed by them, and the condition under which they agreed to devote themselves to the exercise of the said employments or office must be complied with.

It was stated in a Rescript addressed to Benidius Rufus, Governor of Cilicia, that minors under the age of puberty should not be admitted to hold office, even if the scarcity of eligible persons appeared to render this necessary.

3. *The Same, Book V.*

Men over seventy years of age are exempt from guardianships and personal employments. Anyone, however, who has entered his seventieth year, but not yet completed it, cannot avail himself of this excuse, because he who is in his seventieth year is not considered to be over seventy years of age.

4. *Modestinus, Rules, Book VI.*

Immunities, generally speaking, are granted to a person in such a way that they can be transmitted to his descendants, and are perpetual, so far as his male successors are concerned.

5. *Callistratus, On Judicial Inquiries, Book I.*

Old age has always been greatly venerated in our City. For our ancestors treated old men with almost the same reverence as magistrates, and the same honor was granted to old age with reference to municipal obligations which were required to be performed. Anyone, however, who became rich in his old age, and had not previously exercised the functions of any public employment, cannot be said to be exempt from such a charge by the privilege of his years, and especially if the administration of the office imposed upon him does not require corporeal exertion as much as the payment of money, because it is not easy to find men enough properly qualified in the City to discharge public duties.

(1) It is also necessary to take into consideration the custom of every place, and see whether any immunities are expressly granted, and also whether anything is mentioned with reference to the number of years required to obtain them.

This can also be ascertained from the Rescripts of the Divine Pius, which he sent to Ennius, Proconsul of the Province of Africa.

(2) It is clearly and plainly stated, according to Rescripts of the Divine ^Elius Pertinax, that the number of children affords a valid excuse from municipal employments; for he stated the following in a Rescript addressed to Julius Candidus: "Although the number of children does not exempt a father from all public employments, still because you have notified me in your petition that you have sixteen, it is not unreasonable for us to grant you exemption from public office, to enable you to bring up your children."

(3) Traders, who assist in furnishing provisions to a city, as well as sailors who also provide for its necessities, will obtain exemption from public office, as long as they continue to do this; for it very properly has been decided that the risks which they incur should be suitably recompensed, so that those who perform such public duties outside of their own country with risk and labor should be exempt from annoyances and expenses at home; as it may not incorrectly be said that even they are absent on business for the government when they are employed in collecting provisions for a city.

(4) A certain specific character is given to the immunity bestowed upon the owners of vessels, which immunity they alone are entitled to; for it is not conferred either upon their children or their freedmen.

This is set forth in the Imperial Constitutions.

(5) The Divine Hadrian stated in a Rescript that only those ship owners should be entitled to immunity who provided subsistence for the City.

(6) Although anyone may belong to the association of ship owners, if he has neither a ship nor vessels, nor anything else which is provided for by the Imperial Constitutions, he cannot avail himself of the privilege granted to ship owners; and the Divine Brothers stated the following

in a Rescript: "Where there are any persons who claim that they are immune from public employments, under the pretext of transporting grain and oil by sea, for the benefit of the Roman people, and they are not engaged in maritime traffic, and have not the greater portion of their property invested in maritime business and commodities, they shall be deprived of the immunity which they enjoy."

(7) It must be said with reference to the. following exemptions that where anyone was called to municipal employments before he engaged in commerce, and before he was admitted to an association formed by those engaged in the same pursuit (for the reason that he obtained immunity), whether before he became seventy years of age and publicly stated the fact, or had the requisite number of children, he should be compelled to assume the duties of the office to which he was appointed.

(8) Maritime commerce is prosecuted for the purpose of increasing one's property, otherwise, if anyone should carry it on with the greater part of his money, and he, having become still more wealthy, should continue to transact the same volume of business, he will be liable to public service, just as wealthy persons who having purchased ships for a small sum attempt to evade the duties of municipal office.

It is stated in a Rescript of the Divine Hadrian that this rule should be observed.

(9) The Divine Pius stated in a Rescript that, whenever a question arose as to whether anyone belonged to the association of ship owners, it should be ascertained whether he had assumed the character of one for the purpose of avoiding public employment.

(10) Farmers of the revenue, also, are not reduced to the necessity of exercising municipal employments. The Divine Brothers stated in a Rescript that this rule should be observed. From this Imperial Rescript it can be understood that it is not granted as a privilege to

farmers of the revenue, that they should not be compelled to exercise municipal employments; but to prevent their property, which is already bound to the Treasury, from being subjected to further liability. Wherefore, it may be doubted if they should voluntarily offer to accept public office, whether they should be prevented from doing so by the Governor of the province, or by the Manager of the Imperial Revenues. The latter opinion is the more easy to maintain, unless they are said to be ready to settle their accounts with the Treasury.

(11) Farmers of the Imperial demesnes are exempt from municipal employments in order that they may be better adapted to the cultivation of the land belonging to the Treasury.

(12) Immunity is conceded to certain associations or corporate bodies, to which the right of assembly has been granted by law; that is to say, to associations or corporate bodies to which each person is admitted on account of his occupation, as, for instance, the Society of Artisans, provided they have the same origin; for instance, if they have been organized in order to perform labor necessary for the public welfare.

Immunity is not indiscriminately granted to all those who are admitted to these associations, but only to artisans, for it was decided by the Divine Pius that persons of every age could not be chosen; and he disapproved of the admission of those of an advanced or decrepit age. And, in order that individuals who had become wealthy might not avoid the responsibility attaching to civil office, it was decided in many places that persons could avail themselves of the privileges which had been granted by such associations to anyone in reduced circumstances.

(13) I have been informed that when persons who have been elected to membership in corporate bodies, which afford immunity to their members, as, for instance, that of ship owners, obtain the honor of the decurionate, they should be compelled to exercise public employments.

This seems to be confirmed by a Rescript of the Divine Pertinax.

6. *Taruntenus Paternus, Military Affairs, Book I.*

The condition of certain persons affords them exemption from more onerous employments, as, for instance, measurers of grain and their assistants, chronic invalids, physicians, slaves who carry the books of scholars, artisans, laborers who dig ditches, veterinaries, architects, pilots, ship carpenters, makers of ballistas, makers of glass, mechanics, manufacturers of arrows, workers in bronze, chariot-builders, tile-makers, gladiators, makers of pipes, trumpet makers, makers of musical instruments, makers of bows, workers in lead and iron, lapidaries, burners of lime, wood cutters and charcoal burners. Under the same category are also included butchers, hunters, those who deal in animals for sacrifice, the assistants of factory superintendents, those who attend the sick, weighers, not only those in warehouses and depositories, but also such as are charged with the distribution of supplies to the army, aids of military tribunes, couriers, the guards of arms, common criers, and trumpeters. All these persons are considered to be exempt from public office.

## TITLE VII.

## CONCERNING EMBASSIES.

1. *Ulpianus, On Massurius Sabinus, Book Vill.*

When a municipal envoy abandons his office, he is generally subjected to an ordinary penalty, and dismissed from his order.

2. *The Same, Opinions, Book II.*

An envoy appointed to proceed against a municipality can present his claim to the Emperor through another.

(1) When an envoy abandons his charge, or delays results for some good reason, he must prove this fact before the Order of the town where he resides.

(2) The neglect of an envoy to perform his duty does not prejudice his colleague.

(3) Salaries, in proportion to their rank, are paid to envoys who do not undertake their mission gratuitously.

3. *Africanus, Questions, Book III.*

When the question is asked whether an action should be granted against a person who is the member of a embassy, it is not so important to ascertain where the claimant either lent him money, or stipulated that something should be given, as to know where suit can be brought, so that payment may be made during the time of his mission.

4. *Marcianus, Institutes, Book XII.*

It should be noted that a debtor to the government cannot perform the duties devolving on an embassy. This the Divine Pius stated in a Rescript addressed to Claudius Saturninus and Faustinus.

(1) Persons who have not the right to prosecute cannot exercise the function of an envoy; and the Divine Severus and Antoninus stated in a Rescript that anyone who had been appointed to contend in the arena could not legally be one.

(2) Debtors of the Treasury, however, are not forbidden to perform the duties of an envoy.

(3) Where a charge has been publicly brought against anyone the accuser should not be compelled to undertake the duties of an envoy to one who alleges that he is a friend, or belongs to the family of the accused party.

This was stated by the Divine Brothers in a Rescript to ^milius Rufus.

(4) Envoys cannot appoint others their substitutes, with the exception of their sons.

(5) Everyone is compelled to perform the functions of an envoy in his turn, but is not obliged to do so until those who have been chosen before him in an assembly have performed theirs. If, however, the embassy requires men of the first rank, and those who are called in their order are of inferior degree, the regular order should not be observed, as the Divine Hadrian stated in a Rescript addressed to the Clazomenians.

(6) It is provided by an Edict of the Divine Vespasian addressed to all cities that one municipality shall not send more than three envoys.

5. *Scsevola, Rules, Book I.*

The time which may profit an envoy dates from his appointment, and not from the day when he arrives at Rome.

(1) But if it is not satisfactorily established whether he is an envoy or not, the Praetor of Rome shall investigate the matter.

6. *Ulpianus, On the Duties of Proconsul, Book IV.*

Exemption from serving as an envoy is not granted to a son on account of the service of his father as one, as our Emperor, with his Father, stated to Claudius Callistus, as follows: "You petition to be exempted from acting as an envoy on account of the service of your father, but this can properly take place only so far as an office which requires the payment of expense is concerned; the rule, however, is different with reference to the expenses of an embassy which demands the service of a single person."

7. *Papinianus, Opinions, Book I.*

A son, who was a decurion, assumed the duties of a envoy in behalf of his father. This will not excuse him from another embassy, unless he has already departed; the father, however, can claim exemption for two years, for the reason that he is considered to have discharged the duties of his mission by his son.

8. *Paulus, Rules, Book I.*

Paulus gave it as his opinion that when anyone has once performed the duties of an envoy he cannot, during the time prescribed for exemption, be compelled to again undertake the defence of any public case, even if the same question was in controversy.

(1) "The Emperors Antoninus and Severus to Germanus Sil-vanus: An exemption for the term of two years is granted to persons who have discharged the duties of envoy, and it makes no difference whether the embassy was despatched to us at Rome or in a province."

(2) Paulus held that anyone who performed the functions of an envoy should not attend to his own affairs nor to those of others; but anyone who gratuitously gives his advice to a Praetor, who is his friend, is not considered in this instance to violate this rule.

9. *The Same, Opinions, Book III.*

Paulus gave it as his opinion that where an envoy sustained any damage during the term of his service he could, even during that time, bring an action.

10. *The Same, Sentences, Book I.*

An envoy cannot bring an action relating to his own property before he has performed his official duties, except in those cases which relate to the reparation of injury or the payment of damages.

(1) When anyone dies during his service as envoy, and before he returns to his home, the expenses which have been advanced to him at the time of his departure shall not be returned.

11. *The Same, On the Right of Petition.*

Where anyone is appointed an envoy during his absence, and voluntarily accepts the office, he can send another to discharge its duties in his place.

(1) Although anyone who performs the duties of an envoy cannot transact his own business, still, the Great Antoninus permitted him to prosecute and defend cases in the name of a female ward; although he had not yet attended to the affairs of the embassy which he had undertaken, and especially when he alleged that the guardian for whom he acted was absent.

12. *Scsevola, Digest, Book I.*

An envoy who was appointed by his native town, having accepted the office, came to Rome; and, before he had discharged his duties, purchased a house in Nicopolis, his own city. The question arose whether he was liable to the Decree of the Senate by which an envoy is prohibited from attending to his private business or affairs before the duties of his office have been performed. The answer was that he did not appear to be liable.

13. *Papinianus, Opinions, Book I.*

A substitute, appointed with his own consent to discharge the duties of another, is not entitled to the privilege of exemption for two years, and is compelled to accept the office of envoy.

14. *Ulpianus, On the Edict of the Prsetor, Book LXXIV.*

Anyone who is still absent, after having exercised the functions of an envoy, and been discharged, is not considered to be away on business for the State, for he is not absent for the public benefit, but for his own.

15. *Modestinus, Rules, Book VII.*

Anyone who performs the duties of an envoy cannot present a petition relating to his own affairs, or those of others, without permission of the Emperor.

16. *The Same, Rules, Book Vill.*

The same person is not forbidden to undertake several embassies; above all, where he pays his travelling expenses himself.

(1) Where suit has been brought against anyone before he assumed the duties of an envoy, he ought to defend it, even if he is absent, but where he has once undertaken such duties, he is not required to do so, unless in the performance of his official functions.

17. *Pomponius, On Quintus,Mucius, Book XXXVII.* When anyone strikes the envoy of our enemy, he is considered to be guilty of an act against the Law of Nations, because envoys are considered sacred. Therefore, if any ambassadors of a nation with whom we are at war are with us, it has been established that they are free to remain; for this is in conformity with the Law of Nations. Hence, Quintus Mucius held that anyone who struck an ambassador is usually surrendered to the enemy of whom he was the representative.

The question arose, if the enemy did not receive the offender when he was sent to them, whether he would remain a Roman citizen. Some authorities think that he would remain such, and others are of the contrary opinion, because where a people have once ordered anyone to be surrendered he is considered to have been deprived of citizenship, just as is the case where anyone is forbidden fire and water. It seems that Publius Mucius was also of this opinion.

This question was thoroughly discussed in the case of Hostilius Mancinus, whom the Numantians would not receive when he was surrendered to them; and, on this account, a law was subsequently enacted to enable him to remain a Roman citizen, and he is said to have even held the office of Praetor.

## TITLE VIII.

## CONCERNING THE ADMINISTRATION OF PROPERTY BELONGING TO CITIES.

1. *Ulpianus, Disputations, Book X.*

Anything which has been left to a city for a special purpose cannot be converted to other uses.

2. *The Same, Opinions, Book HI.*

Conditions imposed in former leases cannot be considered to apply to subsequent ones.

(1) What anyone is forbidden to do in his own name he should not do through the agency of anyone else. Therefore, if a decurion rents public land (which decurions are not permitted.to do), by substituting the names of others, his act shall be revoked, as being in violation of law.

(2) Where anyone converts money intended for the purchase of grain to some other use, he will be required to refund the amount with interest; and a judgment rendered against him will be valid, even if he is absent; but in this case it is presumed that he has given security to render an account of his administration.

(3) Anyone who owes a sum of money intended for the purchase of grain must pay it at once. For, in all matters relating to the public purchase of grain, which is necessary, the payment of the money does not admit of delay; and all persons who are indebted under such circumstances can be compelled to pay by the Governor of the province.

(4) Funds given for the purchase of grain must be returned to the city, and cannot be expended for other purposes. If, however, money destined for the purchase of grain is converted to some other use, as, for instance, to work upon the public baths, even though it may be proved that it has been expended in good faith, still, as it can only be disbursed for the purchase of grain, he who has charge of it shall be ordered to refund it to the city.

(5) If money intended for the purchase of grain should be refunded to the city with interest, an unreasonable and an unlawful rate of interest ought not to be exacted, that is to say, compound interest should not be paid.

(6) Where, after the purchase of grain, for which the price has been paid and entered upon the public registers, it is unjustly taken from the purchaser; the Governor of the province can order the amount to be refunded to him who purchased it.

(7) When a man who was solvent at the time when he was appointed to office afterwards becomes insolvent, any loss sustained must be borne by the State; for no human prudence can provide against accidents, and the person who appointed him should not be liable for anything on this account.

(8) The rights of a city cannot be changed by an agreement entered into by magistrates and their colleagues to prevent themselves from being sued by one another, with reference to matters in which this is permitted to be done by law.

(9) The action, however, which can be brought against one of them for maladministration will, in accordance with equity, lie in favor of another who has become responsible for him.

(10) What is proved to have been expended in behalf of a colleague holding the office of magistrate, the Governor of a province shall order to be paid by the party in question, or his heirs.

(11) The Same in the Same Book. Where anyone has been punished for fraud in the construction of some work, and the surety who was responsible for him contracted with another for the construction of the same work, and it still was not done, the heir of the surety cannot refuse the payment of interest; as, in the first place, the contract bound the surety in good faith for the entire amount, and under the subsequent contract, because he acknowledged his responsibility, he will be liable for the payment of any loss which may be sustained by the

city.

(12) Persons who have become sureties for the entire amount for which a farmer of the revenue may become liable can legally be sued for the interest as well as the principal, unless something to the contrary with reference to them is set forth in the terms of the obligation.

(13) But where, in the leasing of lands, it was agreed that if on account of an unfavorable season, the rent need not be paid for any year during which, according to the judgment of a reliable citizen, this might be considered a proper excuse, good faith must be observed in complying with the condition of the lease.

3. *Papinianus, Opinions, Book I.*

Where certain officials, who held office together, divided money among themselves which had been paid to them all in a single sum, it was decided that they could not be released from responsibility by paying the amount which each had respectively received.

Ulpianus, however, who transacted the business, should be first sued, as in the case of guardians.

(1) In the Same Book. The magistrate of a city leased public land for five years without requiring good security. The tenant, having remained a longer time than the .five years, left a balance due to the Treasury, and as the proceeds of the crops of the land could not be obtained, the successor of the person who leased the land was held responsible.

The same rule was long since decided not to apply to taxes, as those who farm them are only liable during their term of office.

(2) An action should not be refused against anyone after his retirement from office who, during his term, became responsible through novation to the creditors of the State. The case of one who agreed to pay is, however, different, for he is considered to resemble a person who either publicly sold or leased property.

(3) A son cannot be required to be responsible for his father, who has been created a magistrate, even if his father emancipated him before he was appointed to office, or where he has transferred to him a portion of his property as a donation.

(4) When a surety who appeared for a magistrate has also given pledges, the pledges are considered to have been furnished in order that suit may properly be brought; that is to say, after nothing can be recovered from him for whom he became liable.

4. *Valens, Trusts, Book II.*

Where a bequest has been left to a town, it cannot be converted to any other use than that intended by the deceased, without the authority of the Emperor; and therefore, if the deceased directed a work to be constructed with it, which cannot be done after the reservation of the fourth authorized by the Falcidian Law, it is permitted for the sum of money to be employed for whatever may appear most necessary for the benefit of the town.

The rule is the same where several sums of money are bequeathed for the construction of several works, and, after the deduction under the Falcidian Law, the remainder is not sufficient for the construction of them all, for the money is allowed to be expended for any single work which the State may wish to have constructed. Where, however, money was bequeathed in order that its income may be used for hunting, or for exhibitions, the Senate forbade it to be used for such purposes, and permitted the legacy to be expended upon what was most needed by the city, and to recognize the munificence of the person who made the bequest, authorized that the fact should be commemorated by an inscription.

5. *Paulus, Sentences, Book I.*

Decurions are not compelled to furnish grain to their city at a lower price than that which it is sold at the time,

(1) Unless the money was expressly bequeathed for the construction of a new work, or the repair of an old one.

6. *Ulpianus, On the Edict of the Prsetor, Book I.*

The magistrates of a city are not only liable for fraud, but also for gross negligence; and this is especially the case where diligence is required.

7. *Paulus, On the Edict of the Prsetor, Book I.*

When a son under paternal control administers the office of magistrate, with the consent of his father, Julianus held that the latter would be liable in full for whatever was lost by the city under his son's administration.

8. *Modestinus, Rules, Book Vill.*

The correction of an error in calculation can be made even after ten or twenty years.

(1) When, however, accounts are proved to have been examined and accepted, mistakes in them cannot be corrected.

9. *Papirius Justus, On the Constitutions, Book II.*

The Emperors Antoninus and Verus stated in a Rescript that interest should be collected on money remaining in the hands of public officials; but that it could not be collected from contractors of public works, and that when the latter were not solvent, officials would only be liable for the principal.

(1) They also stated in a Rescript that even the heirs of public officials were responsible for any loss sustained with reference to public works.

(2) They also stated in a Rescript that it was the duty of the magistrate of a city to recover lands belonging to it, even though they were in the possession of *bona fide* purchasers; above all, when the latter could have recourse to the persons from whom they had obtained them.

(3) The Same in the Same Book. The Emperors Antoninus and Verus stated in a Rescript that contracts for the construction of public works should not be made without security being furnished.

(4) They also stated in a Rescript that if public officials were negligent in the sale of property, they would be liable for simple damages, but if they had been guilty of fraud, they would be liable for double damages; and that no penalty would pass to their heirs.

(5) They also stated in a Rescript that a magistrate, after property had been sold, should collect money intended for the purchase of provisions for the people.

(6) They also stated in a Rescript that officers charged with the purchase of grain would, according to an Epistle of Hadrian, be exempt from liability where they had properly discharged the duties of their office.

(7) They also stated in a Rescript that security should not be required of the official having charge of the accounts of a municipality, as he had been selected by the Governor after investigation.

(8) They also stated in. a Rescript that a magistrate will be liable on account of his colleague, if he could have prevented him from acts of maladministration and did not do so.

(9) They also stated in a Rescript that a magistrate would be liable when the indebtedness of his city was increased during the time of his administration. But if, before he obtained his

office, the city was not able to pay its debts, it seems to be just that no responsibility should attach to him.

(10) The Same in the Same Book. The Emperors Antoninus and Verus stated in a Rescript that a magistrate who, during his term of office, and for a long time afterwards, had retained any of the public money in his possession, would be obliged to refund it with the interest, unless he could allege some good reason for not doing so.

## TITLE IX.

## CONCERNING DECREES WHICH SHOULD BE RENDERED BY THE ORDER OF DECURIONS.

1. *Ulpianus, Opinions, Book HI.*

It is not in the discretion of the Governor of a province to determine the number of physicians to be appointed for each town, but this is the duty'of the Order of Decurions and those who possess property therein, in order that, in cases of bodily illness, they may commit themselves and their children to the care of persons selected by themselves, and of whose probity and skill in their profession they are assured.

2. *Marcianus, Public Prosecutions, Book I.*

Decrees that are enacted without the lawful number of decurions being present are not valid.

3. *Ulpianus, On Appeals, Book III.*

It is provided by municipal law that the Order of Decurions shall not be considered to have assembled, unless two-thirds of the members are present.

4. *The Same, On the Duties of the Principal Magistrate of the City.*

The decrees of decurions granted for the sake of popularity should be set aside, whether they have discharged debtors, or have authorized donations.

(1) Hence if, as is customary, they have disposed of any lands, houses, or sums of money belonging to the public in this way, such a decree will be void. But if the decurions have ordered money to be paid to anyone by way of compensation, the decree will not always be of no force or effect; as, for example, where a grant has been made on account of some of the liberal arts, or for medicine, as appropriations can legally be made for this purpose.

5. *Callistratus, On Judicial Inquiries, Book II.*

The Divine Hadrian stated in a Rescript addressed to the people of Nicomedia that where the Order of Decurions had once issued a decree it should not be rescinded, except for some good reason; that is to say, where the annulment of the decree had reference to the public welfare.

6. *ScsBVola, Digest, Book I.*

The following was provided by municipal law: "When anyone renders judgment outside of the council, he shall be expelled from the council, or order, and shall pay a thousand drachmas."

The question arose whether he should be subjected to the penalty if he was ignorant that he had violated the law. The answer was that penalties of this kind were only intended for those who knew that they were acting illegally.

## TITLE X.

## CONCERNING PUBLIC WORKS.

1. *Ulpianus, Opinions, Book II.*

A certain man, having been appointed supervisor of public works, and desiring to be excused, did not succeed, but remained in office until he died. He left his heirs liable, but imposed no

responsibility upon them from the time when his death occurred.

(1) A person who was already exercising the functions of a public office afterwards undertook the construction of an aqueduct. It seemed to be absurd for him to ask to be released from his former employment, when he was already charged with both; because if he had only intended to assume responsibility for one, it is more probable that he would have obtained exemption from the other, on account of that in which he was already engaged.

2. *The Same, Opinions, Book HI.*

Anyone who, through liberality and not because of indebtedness, has devoted his income for a time to the purpose of completing public works, is not forbidden to obtain the reward of his generosity by having his name inscribed upon them.

(1) The supervisors of public works transact business with the contractors, but the State is only concerned with those appointed for that purpose. Therefore, the Governor of the province will repose confidence in the person who has charge of the work, as well as in the contractor who is liable to him.

(2) The Governor of a province should interpose his authority to prevent the name of him through whose generosity a public work has been constructed from being erased, and the names of others inscribed in its place; and also see that the evidence of similar liberalities bestowed by citizens upon their country shall not be removed.

3. *Macer, On the Duties of Governor, Book II.*

A private individual can construct a new work even without the authority of the Emperor, unless this is done through rivalry with another city, or may furnish material for sedition, or is a circus, a theatre, or an amphitheatre.

(1) It is stated by the Imperial Constitutions that it is not lawful for a new work to be constructed at the public expense without the authority of the Emperor.

(2) It is not lawful for any other name than that of the Emperor, or of him by whose money it was constructed, to be inscribed upon any public work.

4. *Modestinus, Pandects, Book XI.*

It is not lawful to inscribe even the name of the Governor upon a public work.

5. *Ulpianus, On the Duties of the Principal Magistrate of a City.*

When anyone bequeaths a legacy or property in trust for the construction of a public work, the interest on the same and the time when it begins to run are established by a Rescript of the Divine Pius in the following terms: "If the person leaving the legacy does not state the time when the statues or images shall be placed in position, it should be fixed by the Governor of the province; and if the heirs of the deceased do not do this within the prescribed time, they will, in six months, be liable to the payment of moderate interest, but if the said statues and images are not placed in position by that date they must pay interest at the rate of six per cent to the State.

"When, however, a time was appointed, they must pay the money within that time; or, if they should allege that they have not found the statues, or cause any dispute to arise with reference to the place, they must immediately begin to pay interest at the rate of six per cent."

(1) The boundaries of public lands must not be retained by private individuals. Therefore, the Governor of the province shall see that public lands are separated from those belonging to private persons, and endeavor to increase the public revenues. If he finds that any public places or buildings are occupied by private persons, he must estimate whether they should be demanded for the benefit of the public, or whether it would be better to lease them for a sufficient rent; and he must always pursue the course which he thinks will be of the greatest

advantage to the State.

6. *Modestinus, Pandects, Book XL*

The Divine Marcus stated in a Rescript that the Governor of a province should consult the Emperor with reference to works which have been constructed on the walls or gates of cities, or other public property, and also where walls have been built.

7. *Callistratus, On Judicial Inquiries, Book II.*

The Divine Pius stated in a Rescript that where money had been bequeathed for the construction of a new work, it was better for it to be employed for the preservation of works already existing than to be expended in the construction of new ones; that is to say, if the city had enough public works, and money was not easily obtained for their repair.

(1) When anyone wishes to adorn with marble, or in any other manner a work constructed by another, and he promises to do so according to the will of the people, the Senate decreed that this could be done if he inscribed his own name upon the work, but that he should allow the name of the person who built it in the first place to remain.

Where, however, private individuals expend a sum of money of their own to the embellishment of a work already constructed with the public funds, it is provided by the same Imperial Mandates that they can have their names inscribed upon the work and state the amount of money which they had contributed to it.

## TITLE XI.

## CONCERNING MARKETS.

1. *Modestinus, Rules, Book III.*

Where permission to hold a market has been obtained from the Emperor, and the person accorded the privilege does not make use of it for ten years, he will lose it.

2. *Callistratus, Judicial Inquiries, Book HI.*

When anyone orders the cultivators of land and fishermen to bring provisions into a city, in order that they themselves may dispose of them, for the reason that the supply of provisions will be diminished when the farmers are called away from their work, those who bring in the merchandise must deliver it immediately after doing so, and return to their labors. Hence, Plato displayed the highest wisdom and authority who while he was teaching among the Greeks, stated that in order for a city to be prosperous, and its people to be happy, it must, in the first place, attract all such merchants as were necessary; for, in the First Book on Civil Intercourse, he said: "A city is in need of many farmers, and other laborers and artisans, as well as of those who bring in and carry away articles of commerce, for these are traders.

"Where, however, a farmer brings to market anything which he produced, or any other laborer does so, and he does not immediately encounter someone who desires to exchange wares with him, will it be necessary for him to remain sitting in his place in the market until he disposes of his commodities? By no means, for there are those who, seeing this, may offer their services for the disposal of the merchandise."

## TITLE XII.

## CONCERNING PROMISES.

1. *Ulpianus, On the Duties of the Chief Magistrate of a City.*

If anyone should promise to construct a public work, or donate money for that purpose, he cannot be sued for interest. If, however, he delays, interest will accrue, as our Emperor with his Divine Father stated in a Rescript.

(1) It must be noted that anyone who makes a promise is not always obliged to carry it into effect. Where, however, he promises in consideration of an honor already granted to him by a decree, or which is to be granted hereafter, or for some other good reason, he will be bound by his promise. But if he made the promise without any cause, he will not be liable, as is stated in many Constitutions both old and new.

(2) Likewise, when anyone makes a promise without any consideration, and begins to carry it out, he will be liable.

(3) We understand a person to begin to carry out his promise in the case of the construction of a building, where he lays the foundation, or clears the ground. Where, however, the land has been transferred to him for this purpose at his request, the better opinion is that he should be held to have begun the work.

The same rule will apply if he has made preparations, or spent money in a public place.

(4) If, however, he himself did not begin the work, but promised a certain sum of money for its construction, he commences the undertaking by the payment of the money, and he will be liable just as if the work had been begun.

(5) Finally, when anyone promises columns for a public work, our Emperor, with his Divine Father, made the following statement in a Rescript: "Anyone who promises a sum of money to the State without any reason is not compelled to perfect his liberality. Where, however, you promised some columns to the people of Citium, and on this account, the work was begun at the expense of the city, or of private persons, what has been done cannot be abandoned."

(6) Our Emperor stated in a Rescript that when anyone entrusts another to complete a work, and any damage then results to it through accident, the person who constructed it will be responsible.

2. *The Same, Disputations, Book I.*

Where a person vows anything, he is bound by his vow, but the obligation attaches to him who makes the vow, and not to the prop-

erty; for where anything is vowed and delivered, it releases the person, but the property does not become sacred.

(1) Sons who have arrived at puberty, and are their own masters, are bound by the vows of their father, for a son under paternal control or a slave cannot bind himself by a vow, without the authority of his father or his master.

(2) If anyone should vow the tenth of his property, the tenth will not cease to belong to his estate until it has been separated from it; and if the person who vowed the tenth should die before the separation takes place, his heir will be liable for the tenth in the name of the estate. For it is established that an obligation of this kind passes to the heir.

3. *The Same, Disputations, Book IV.*

An agreement arises from the consent of two persons, in the same manner as a contract. A promise, however, only requires the consent of the individual making the offer; and therefore it has been established that if a promise is made in consideration of some honor to be conferred, it can be collected as a debt. When, however, the work has been begun, it has been decided that the promisor will be compelled to complete it, even if he did not promise it in consideration of some honor to be conferred.

(1) If anyone who has delivered property to a city in compliance with his promise desires to reclaim it, his request should be barred; for it is perfectly just that voluntary gifts of this kind bestowed upon cities should not be revoked by merely changing one's mind. Where, however, a municipality has ceased to possess property obtained under such circumstances, an action should be granted to it.

4. *Marcianus, Institutes, Book III.*

If anyone should make a promise on account of loss by fire, or an earthquake, or any other damage sustained by a city, he will be liable.

5. *Ulpianus, Opinions, Book I.*

Answered Charidemus as follows: "Anyone who, while absent, promises by letter that something shall be done for a city, will be compelled to comply with his promise."

6. *The Same, On the Duties of Proconsul, Book V.*

Whenever the value of a promise is diminished on account of an heir, this can only occur where it was not made in consideration of an honor to be bestowed.' Where, however, it is made in consideration of some honor, it is deemed to be a debt, and is not diminished, so far as the heir, personally, is concerned.

(1) If anyone promises a sum of money in consideration of the bestowal of an honor, and begins to pay it, Our Emperor Antoninus stated in a Rescript that he owed the entire amount just as if the work had been begun.

(2) It must be remembered that not only males, but also females, must fulfill their promises when they agree to give or do anything in consideration of honors to be conferred.

This is included in the Rescript of Our Emperor and his Divine Father.

(3) If the City should require anyone who has not promised to do so to erect statues of the Emperor in some public place, he will not be compelled to obey, as is stated in a Rescript of Our Emperor and his Divine Father.

7. *Paulus, On the Duties of Proconsul, Book I.*

Where anyone has promised to do something for a city on account of some accident which has happened to it, the Divine Severus stated in a Rescript to Dio that even if he did not begin it, he would still be liable.

8. *The Same, On the Duties of Proconsul, Book III.*

The Divine Brothers made the following statement in a Rescript with reference to promises made to cities of which judges should take cognizance: "Statius Rufinus promised that he would finish a theatre in the City of Gabinia, which he already had begun. For although he had suffered misfortune, and had been relegated by the Urban Prefect for the term of three years; still he should not diminish the favor of the gift which he had voluntarily offered, as, even though he was absent, the work could be completed by a friend. If, however, he should fail to do so, the regular authorities who had the legal right to act in behalf of the city could bring suit against him in its name. The judges must examine the case as soon as possible, before Statius Rufinus went into exile, and if they should determine that the work ought to be completed by him, they shall order him to fulfil the promise made to the city, or forbid the land which he has in the territory of the City of Gabinia to be sold."

9. *Modestinus, Differences, Book IV.*

When anyone has made a promise to a city, in consideration of some honor to be conferred upon him, he will be liable under all circumstances for the entire amount, and his heir as well, on account of the promise which was made. This, indeed, applies to a work begun on account of a promise, and where the property of the party in question was not sufficient to comply with it, the Divine Severus and Antoninus stated in a Rescript that, in this instance, a foreign heir would be liable to a fifth part of the estate of the deceased, or his children to one-tenth.

The Divine Pius, however, decided that where the donor was impoverished by the promise which he had made, and the work had been begun, a fifth part of his property would be liable.

10. *The Same, Opinions, Book I.*

Septicia promised a certain sum of money to her native city for the celebration of public games, under the condition that the principal

should remain in her hands, and that she herself should give half of the interest as reward to the contestants, in the following terms: "I give and set apart thirty thousand *aurei* as principal to be devoted to the games every four years, I myself retaining the said amount in my hands, and furnishing security to the decurions to pay the interest, at the ordinary rate, on said principal of thirty thousand *aurei;* under the condition that the games shall be presided over by my future husband and the children who may be born to me. The said interest shall be expended in prizes to be awarded to the competitors whom the judges may decide to have excelled in each contest."

I ask whether the children of Septicia would suffer any injustice if they should not preside at these contests, in accordance with the terms and the condition of the promise. Herennius Modestinus answered that in case the institution of the public games was permitted, the condition imposed by the promise must be complied with.

11. *The Same, Pandects, Book IX.*

When anyone promises a sum of money in consideration of obtaining a magisterial honor or a sacerdotal office, and, before he obtains the honor or enters upon the duties of the office, he dies, his heirs should not be sued for the money which he promised in consideration of the said honor or magistracy. This was provided by the Imperial Constitutions, unless, during his lifetime, the work had been begun either by the person himself, or by the city.

12. *The $ame, Pandects, Book XI.*

It is stated in a Rescript of the Divine Severus that we cannot erect statues to others upon public works constructed by private individuals, against the consent of the latter.

(1) The Divine Antoninus stated in a Rescript that where anyone has promised a work in order to avoid performing the duties of an office, he can be compelled to perform its duties instead of constructing the work.

13. *Papirius Justus, On the Constitutions, Book II.*

The Emperors Antoninus and Verus stated in a Rescript that those who had promised to construct public works in consideration of honors to be conferred could be compelled to construct them, but not to furnish the money for that purpose.

(1) They also stated in a Rescript that conditions imposed upon donations to be made to a city, should only be complied with when the public welfare demanded it, and that they should not be observed if they were injurious. Therefore, where a deceased person bequeathed a certain sum of money, and, in doing so, forbade the levy of a certain tax, this condition should not be observed, for what ancient custom has established is preferable.

14. *Pomponius, Epistles and Various Passages, Book VI.*

When anyone, in consideration of an honor to be conferred upon him, or upon someone else, promises that he will construct a public work in a certain city, he, as well as his heir, will be bound by a Constitution of the Divine Trajan to complete it. If anyone, in consideration of an honor to be conferred, should promise that he will construct some work, and begins it and dies before completing it, and leaves a foreign heir, the latter will either be compelled to complete the work, or, if he prefers to do so, he can set aside the fifth part of the estate which was left to him, for the purpose of furnishing it, and transfer it to the city in which the work has been begun.

Where, however, the heir is one of the children, he will be required to contribute, not the fifth, but the tenth part of the estate.

This was decided by the Divine Antoninus.

15. *Ulpianus, On the Duties of the Chief Magistrate of a City.*

The Divine Pius stated in a Rescript that a grandson by a daughter of the testator was also included among his children.

## TITLE XIII.

## CONCERNING EXTRAORDINARY JUDICIAL INQUIRIES, AND WHERE A JUDGE Is ALLEGED TO HAVE RENDERED A CASE HIS OWN.

1. *Ulpianus, On All Tribunals, Book Vill.*

The Governor of a province usually decided with reference to salaries, but only concerning those to which instructors in liberal studies are entitled. We understand liberal studies to be those which the Greeks designate *iXfvGepia,* and they include such as are taught by professors of rhetoric, grammar, and geometry.

(1) For the same reason, nothing is more just than also to include professors of medicine, for the latter give their attention to the health of men, and the former to their studies; and therefore with reference to them also, the Governor of the province should expound the law arbitrarily.

(2) Governors hear midwives, who are also considered to practice medicine.

(3) Anyone understands a physician to be one who promises a cure for any part of the body, or relief from pain, as, for example, an affection of the ear, a fistula, or a toothache; provided he does not employ incantations, imprecations, or exorcisms (to make use of the ordinary term applied to charlatans), for such things as this do not properly belong to the practice of medicine, although there are persons who commend such expedients, and affirm that they have been benefited by them.

(4) Are philosophers to be included in the number of professors? 1 do not think that they are, not because philosophy is irreligious, but because those who practice it should, first of all, scorn any mercenary labor.

(5) Hence, the Governor of a province does not decide with reference to the remuneration of professors of the Civil Law, for their wisdom is considered to be something extremely sacred; but it should not be estimated by its value in money, or be dishonored where compensation is claimed by a person who ought to promise under oath to dispense instruction gratuitously. Still, contributions when tendered may honorably be accepted, which, however, would be dishonorable if demanded.

(6) Governors of provinces have also assumed the right to decide with reference to school teachers, although they are not classed as professors, as well as in the case of copyists, makers of notes, accountants, and notaries.

(7) The Governor should, by no means, arbitrarily decide with reference to the master-workmen of other arts, or artisans who are not included in the literary professions, or are not mentioned above.

(8) When assistants demand their salaries, it has been decided that the same rule applies as in the case of professors.

(9) The Governor should take cognizance of all claims against these persons, for the Divine Brothers stated in a Rescript that this could even be done against advocates.

(10) With reference to the fees of advocates, the judge should decide according to the importance of the case, the skill of the advocate, and the custom of the bar, and should make an estimate of the fees to which the advocate was entitled, provided the amount does not exceed the compensation fixed by law; for this was set forth in a Rescript of Our Emperor and

his Father in the following terms: "If Julius Maternus, who has wished you to appear in his case, is ready to pay you what he agreed to do, you can only claim an amount which does not exceed that prescribed by law."

(11) We should understand advocates to be all those who devote their energies to the purpose of conducting litigation. Those, however, are not included in the number of advocates who ordinarily appear in court to conduct cases in behalf of parties who are absent.

(12) If a fee has been agreed upon with an advocate, or if anyone has made a contract with him, having reference to the conduct of a case, let us see whether he can demand it. And, indeed, the following was stated by our Emperor and his Divine Father with reference to agreements of this kind, namely: "It is the observance of a bad custom where you exact from your client a promise for the payment of money for conducting his case. It is the law that if, while the case is pending, an agreement is made for future remuneration it will be void; but if it is made after the case has been tried, the sum promised as a fee can be collected up to a reasonable amount, even though the agreement was made with reference to what might be recovered, provided what has been paid shall be reckoned with what is due, and the entire amount does not exceed the legal fee."

The proper fee is understood to be no more than a hundred *aurei* in any one case.

(13) The Divine Severus prohibited a fee from being recovered from the heirs of an advocate after his death, because it was not his fault that he did not conduct the suit.

(14) It is also the duty of a Governor or a Praetor to take cognizance of the claims of nurses for the support of children to which they are entitled, when brought before their magistrates.

Such claims, however, should only be considered where infants are nourished by the breast, but when this is not the case, neither the Praetor nor the Governor will have jurisdiction.

(15) If all these things should be demanded before the Governors of provinces, let us see whether they can have jurisdiction of reciprocal claims. I think that they should be permitted to do so.

2. *The Same, Opinions, Book I.*

It has been decided that the Governor of a province has jurisdiction of disputes arising with reference to the use of water distributed by new conduits, constructed contrary to law; as well as of those relating to horses possessed by persons who know that they belong to others, as well as to their increase; and to injuries caused by parties, placed in possession of the land of others, when the said land should be divided among several individuals; provided this has been done by the authority of someone who had no right to order it; so that the Governor may render his decision in these cases according to justice and his right of jurisdiction, and place matters in a suitable condition.

3. *The Same, Opinions, Book V.*

When a physician, who has been entrusted with the treatment of anyone's eyes, administers drugs which may cause him to lose his eyesight, in order by doing so to force him to sell him his property, while he is ill, contrary to good faith, the Governor of the province must punish the unlawful act, and order the property to be restored.

4. *Paulus, On.Plautius, Book IV.*

The Divine Antoninus Pius stated in a Rescript that persons learned in the law, who demanded their fees, could collect them.

5. *Callistratus, On Judicial Inquiries, Book I.*

The number of judicial inquiries is derived from various sources, and cannot easily be divided into different kinds, unless this is done cursorily. Hence the number of judicial inquiries is

generally divided into four kinds; for they usually have reference to the administration of offices or employments; or to disputes concerning pecuniary matters; or inquiry is made concerning someone's reputation; or a capital crime is investigated.

(1) Reputation is the condition of unimpaired dignity approved by law and custom, which is either diminished or destroyed by legal authority on account of some offence which we have committed.

(2) Reputation is impaired whenever we, while retaining our liberty, are punished by a penalty affecting our status; as, for instance, when anyone is relegated or dismissed from his order; or when he is forbidden to discharge the duties of a public office; or when a plebeian is whipped, or sentenced to the public works; or when anyone is in such a condition as to be considered infamous under the terms of the Perpetual Edict.

(3) Reputation is entirely lost when a great change of civil condition takes place, that is to say, when liberty is forfeited; for example, where anyone is prohibited the use of water and fire, which results when a person is deported, or when a plebeian is condemned to labor connected with the mines, or to the mines; for there is no difference between these two sentences, nor are the penalty of labor connected with the mines and sentence to the mines dissimilar, except that in the former the penalty of civil death is not inflicted, but in the second, the offender is liable to it.

6. *Gaius, On Diurnal Occurrences or Golden Matters, Book III.*

When a judge makes case his own, he is not, properly speaking, guilty of a criminal offence; but, for the reason that he is not bound by a contract, and certainly can be understood to be, to some extent, to blame, although this may have occurred through ignorance, he is considered to be liable to an action *in faetum,* as having committed an unlawful act, and he must submit to any penalty which may appear just to the court having jurisdiction of the case.

## TITLE XIV.

## CONCERNING BROKERS.

1. *Ulpianus, On Sabinus, Book XLH.*

Brokers have a right to demand their commissions.

2. *The Same, On the Edict, Book XXXI.*

If the services of a broker are employed for the purpose of making a note, as many persons are accustomed to do, let us see whether he will be liable as a mandator. I do not think that he will be liable, for although he may have praised the person for whom he acts, still, by doing so, he has reference rather to the debt to be contracted than to an act in the capacity of mandator.

I hold that the same rule will be applicable, even if he has received something by way of compensation, and that an action on hiring and leasing will not lie. It is clear that if he deceives the creditor by means of fraud and cunning, he will be liable to an action on the ground of fraud.

3. *The Same, On All Tribunals, Book Vill.*

Governors are accustomed to take cognizance of the cases of brokers, and although it is considered a degrading occupation, still, in order to regulate the amount of their commissions and the business in which they are engaged, they, to some extent, supervise their calling. The Greeks designate their compensation by the term the "fee of an intermediary," and it can easily be collected by them where, for instance, anyone acts as an agent for the purpose of contracting a bond of friendship, or to obtain an assistant for a judge, or anything else of this kind. For such occupations are pursued by certain men in large cities. The term "broker" applies to those who give their services and make themselves useful by negotiating purchases, sales, commercial matters, and lawful contracts in a way which is not objectionable.

## TITLE XV.

## CONCERNING TAXES.

1. *Ulpianus, On Taxes, Book I.*

It should be remembered that there are certain colonies subject to the Italian Law, as, for example, the magnificent colony of Tyre, in Phoenician Syria (where I was born), the most noble of all, most ancient in point of time, warlike, and most constant in observance of the treaties which it made with the Romans. The Divine Severus and Our Emperor conferred upon it the privileges of an Italian city, on account of the extraordinary and distinguished fidelity which it always manifested in its intercourse with the Roman government.

(1) The colony of Berytus, in the same Province, through the favor of Augustus, bears the title of an Imperial colony (as the Divine Hadrian stated in a certain Address), and it also is subject to the Italian Law.

(2) The City of Heliopolis also received the title of an Italian colony from the Divine Severus, on account of services rendered during the Civil War.

(3) There is also the colony of Laodicea, in Ccele Syria, to which also the Divine Severus granted the Italian Law on account of its services in the Civil War. The colony of Ptolomais, which is situated between Phoenicia and Palestine, has nothing but the name of a colony.

(4) Our Emperor bestowed upon Emesa,.a city of Phoenicia, the title and the rights of an Italian colony.

(5) The city of Palmyra, situated in the Province of Phoenicia, and adjoining barbarous peoples and nations, enjoys the same right.

(6) In Palestine there are two colonies, those of Csesarea and .3Clia Capitolina; but neither of these enjoy Italian privileges.

(7) The Divine Severus also conferred the title of Italian colony upon the city of Sebastena.

(8) The privileges of an Italian city were also conferred by the Divine Trajan upon the colony of Gyrene.

(9) The city of Zarmizegethusa, together with the towns of Napo, Apulia, and Padua also enjoy the same privileges bestowed by the Divine Severus.

(10) In Bithynia is the colony of Apameaa, and in Pontus, that of Sinope.

(11) The colonies of Seleucia and Trajanopolis are situated in Cilicia.

2. *The Same, On Sabinus, Book XXVIII.*

When there is any irregularity in the collection of taxes, this can be remedied by a new statement of the party interested.

3. *The Same, On Taxes, Book II.*

In making the assessment the ages of persons must be given, because in certain localities age prevents it; as, for instance, in Syria, males over fourteen, and females over twelve are liable to personal taxation until they are sixty-five years old. Age also must be taken into consideration at the time that the tax is imposed.

(1) It was very properly stated in a Rescript of Our Emperor, addressed to Pelignianus, that property to which exemption had been granted was not liable to taxation; because when such exemption is granted to persons it is extinguished at their death, but where it is granted to property, it is never extinguished.

4. *The Same, On Taxes, Book III.*

It is provided by the law of taxation that real property must be declared in such a way that the name of each tract shall be mentioned, and in what town or district it is situated; the names of the two nearest neighbors must be given, and how much land has been tilled or sowed in the last three years; how many each tract contains; the number of vines in a vineyard; the number of *jugera* in an olive orchard, as well as the number of trees; where there are meadows, the quantity of hay cut from them within the last ten years, and the number of *jugera* they contain, as well as the number devoted to pasturage; and the same rule is applicable to timber which has been cut. He who makes such a return must give an estimate of everything.

(1) The tax assessor must be as just as is consistent with his duty in relieving anyone who, for some reason or other, has not been able to enjoy a certain part of his property which is recorded in the Public Registers. Therefore, where a part of his land has been swallowed up by an earthquake, he should be relieved from taxation upon it by the assessor. If his vines have died, or his trees have dried up, it is unjust that, so far as they are concerned, he should be included among persons liable to taxation. If, however, he has cut down his trees and vines, this cannot benefit him in any respect when the tax had been assessed at the time; unless he gives a satisfactory reason to the assessor for having cut them down.

(2) He who has land in another country must declare it in the country in which it is situated, for he should pay the tax in the territory where he holds possession.

(3) Although the benefit of immunity from taxation granted to certain persons is extinguished with them; still, generally speaking, where immunity is granted in this way to places, or to cities, it is transmitted to their successors.

(4) If I, being in possession of a tract of land which belongs to another, declare it for taxation, and the owner of it does not, it is decided that he will still be entitled to an action to recover it.

(5) In making returns of slaves for taxation, it must be observed that their nationality, ages, services, and trades must be specifically stated.

(6) The owner of any lakes, fishponds, or reservoirs must return the same to the assessor.

(7) Where there are any salt-pits on the land, they also must be returned for taxation.

(8) If anyone does not make a return for a tenant or a farmer on his land, he will be liable for his taxes.

(9) Any slaves or animals which have been born, or any property which has been obtained immediately after the return was made for taxation, or which subsequently has been acquired, must also be declared.

(10) When anyone requests permission to correct his return, and, after he has obtained consent, ascertains that he should not have made the request, because the matter does not require correction, it has frequently been stated in Rescripts that he who has asked permission to correct his return shall not be at all prejudiced by having done so.

5. *Papinianus, Opinions, Book XIX.*

Where one of several possessors of a tract of land is sued for taxes, and, for the purpose of expediting matters, pays what is due, rights of action are assigned by the Treasury in favor of him who was sued against the others who also had possession, in order that all of them may pay the amount of the tax in proportion to their respective interests in the land. These rights of action are not uselessly granted, even though the Treasury may have recovered its money, because it is understood to have received the amount in the names of those who owned the property.

(1) Persons who have transferred land under the terms of a trust, where no account was rendered of the taxes, have, according to an Epistle of the Divine Pius Antoninus, a right of

action against the beneficiary to compel reimbursement of the taxes paid.

(2) Where a tax imposed upon the land is not paid when it is due, the land can be sold by the right of pledge, in order to collect the tax; and if security is offered to obtain delay, it shall not be accepted; nor shall the legatee be heard if he objects on the ground that taxes for the past time remain unpaid, because the heir, as well as the person.

6. *Celsus, Digest, Book XXV.*

The Colony of Philippi enjoys the privileges of an Italian province.

7. *Gaius, On the Lex Julia, et Papia, Book VI.* The following cities enjoy the privileges of those of Italy, namely Troy, Berytus, and Dyrrachium.

8. *Paulus, On Taxation, Book II.*

In Lusitania, the cities of Pax-Julia and Merida possess the privileges of those of Italy, Valencia, and Burgos also enjoy the same exemption.

(1) Lyons, and Vienna in Narbonnese Gaul, also have the privileges of Italian cities.

(2) In lower Germany, the people of Cologne enjoy the same rights.

(3) Laodicea in Syria, and Berytus in Phoenicia, together with the territory under their jurisdiction, also have the privileges of Italian cities.

(4) The same privileges were conferred by the Divine Severus and Antoninus upon the city of Tyre.

(5) The Divine Antoninus exempted the people of Antioch from the payment of taxes.

(6) Our Emperor Antoninus constituted the city of Emesa a colony entitled to the privileges of Italy.

(7) The Divine Vespasian constituted the people of Csesarea colonists, without conferring upon them the privileges of Italy, but released them from personal taxation. The Divine Titus, however, decided that their soil should also be exempt from taxation, for it was considered that they resembled the inhabitants of .^Elia Capitolina.

(8) In the Province of Macedonia, the inhabitants of Dyrrachium, Cassandra, Philippi, Dien, and Stone are entitled to the privileges of Italy.

(9) In the Province of Asia, the two cities of Troy and Paros enjoy Italian privileges.

(10) In Pisidia, the colony of Antioch enjoys the same rights.

(11) In Africa, Carthage, Utica, and Leptis-Magna were granted the privileges of the cities of Italy by the Divine Severus and Antoninus.

## TITLE XVI.

## CONCERNING THE SIGNIFICATION OF TERMS.

1. *Ulpianus, On the Edict, Book I.*

The following words, "If anyone," include males as well as females.

2. *Paulus, On the Edict, Book I.*

The term "city" includes all that is surrounded by its walls; but the city of Rome is terminated by its buildings, which extend still farther.

(1) The greater part of the day includes the first, not the last, seven hours.

3. *Ulpianus, On the Edict, Book II.*

When twenty thousand paces are traversed each day in making a journey, this must be

understood to mean that, if, after this enumeration, less than twenty thousand remain, they are considered an entire day of travel; as, for example, where a person travels twenty-one thousand paces, this is counted as two days' journey.

This enumeration, however, should only be made where nothing has been agreed upon as to what constitutes a day's journey.

(1) Anyone who dies in the hands of the enemy is not held to have left an estate, because he dies a slave.

4. *Paulus, On the Edict, Book I.*

Proculus says that by the term "obligation" property is meant.

5. *The Same, On the Edict, Book II.*

The word "property" has a broader signification than that of "money," because it also includes things which are not embraced in our patrimony; and the term "money" only has reference to what is included in a patrimonial estate.

(1) Labeo says that by the terms "hiring and leasing of services" only those services are meant which are called by the Greeks dTroTeAetr/m, and not *Zpyov,* that is to say, something which has been perfected by labor performed.

6. *Ulpianus, On the Edict, Book III.*

The terms "claim" and "property" refer to all contracts and obligations.

(1) The expression, "According to the laws," must be understood to mean the spirit as well as the letter of the law.

7. *Paulus, On the Edict, Book II.*

By the word "engagement" is meant not only what a person agrees to after interrogation, but every stipulation and promise.

8. *The Same, On the Edict, Book III.*

The clause, "It will be necessary," applies to the present, as well as to the future time.

(1) Exception is not included in the term action.

9. *Ulpianus, On the Edict, Book V.*

Marcellus, in a note on Julianus, says that anything which has been torn, broken, or taken by force is included in the term "destroyed."

10. *The Same, On the Edict, Book VI.*

It is established that creditors should be understood to be those to whom something is due and collectible by any action or prosecution, or under the Civil Law, without the power of preventing its recovery either by pleading a perpetual exception, or by taking advantage of praetorian law, or of any extraordinary proceeding; whether the indebtedness is absolute, or is to be discharged within a certain time, or under some condition. When the debt is due under natural law, they do not, properly speaking, occupy the place of creditors. If, however, the claim should not be based upon money lent, but upon a contract, they are still understood to be creditors.

11. *Gaius, On the Provincial Edict, Book I.*

By the appellation of "creditors," not only those are understood who have loaned money, but all to whom anything is due for any reason whatsoever.

12. *Ulpianus, On the Edict, Book VI.*

For instance, where anything is due to a person on account of a purchase, a lease, or any other

transaction, or even because of a crime, it seems to me that he can be held to be a creditor. When, however, the indebtedness arises from some public proceeding, he cannot be said to occupy the place of a creditor before issue has been joined, but he can afterwards.

(1) He who is in default pays less than he owes, for less is paid when the time of settlement is deferred.

13. *The Same, On the Edict, Book VII.*

*A* marriageable virgin is also included in the term "woman."

(1) Property is considered to have been lost (according to the opinion of Sabinus, which Pedius adopts), even if the substance of it remains, though the form is changed. Therefore, if property is returned spoiled or altered, it is considered to have been lost; as the workmanship is generally of more value than the article itself.

(2) Property which has been lost is considered to cease to be in that condition when it comes under our control in such a way that we cannot again lose possession of it.

(3) An example of this is where anything has long since been taken from us by theft. Property is also considered lost when it is no longer in existence.

14. *Paulus, On the Edict, Book VII.*

Labeo and Sabinus think that if clothing is returned torn, or any article is returned spoiled, as, for instance, a cup with the edge crushed, or a tablet with a painting erased, the property is said to be lost; because the value of such articles does not consist of the materials of which they are composed, but in the skill expended upon them.

Likewise, if an owner ignorantly purchases property which has been stolen from him, it is very properly said to have been lost, even if he should afterwards ascertain the fact; because where the value of anything is lost, the thing itself is considered to be lost.

(1) A person is considered to have lost something when he cannot bring an action against anyone to recover it.

15. *Ulpianus, On the Edict, Book X.*

Property belonging to a city is improperly styled public, for only those things are public which belong to the Roman people.

16. *Gaius, On the Provincial Edict, Book III.*

We style him publican who leases the collection of the taxes of the Roman people. The term "public" has in many instances reference to the Roman people, for cities are in this respect considered as private individuals.

17. *Ulpiamis, On the Edict, Book X.*

We include among public property not only such as is sacred and religious, and intended for the use of the people, but also that of towns, and the *peculia* of slaves belonging to the latter are undoubtedly considered public property.

(1) We must understand public taxes to mean those which the Treasury levies on certain articles, among which are the tax on merchandise in a harbor, or goods which are sold, as well as those on salt-pits, mines, and places where pitch is produced.

18. *Paulus, On the Edict, Book IX.*

The word *munus* is defined in three different ways: first, as a donation, and hence are derived the terms to bestow, or send gifts; second, a position which, when anyone is released from it, affords exemption from military service and civil employment, whence is derived the term "immunity;" third, an office, whence are derived military occupations, and certain soldiers are

designated *munifices.* For this reason persons who assume civil employments are called municipal officials.

19. *Ulpianus, On the Edict, Book XI.*

Labeo, in the First Book On the Urban Praetor, defines the terms "to act," "to transact," and "to contract," as follows. He says that the word act has a general application, and refers to anything which is done verbally, or with reference to the thing itself; for example, in stipulation or enumeration. A contract, however, has a broader meaning than that of an obligation, which the Greeks style an agreement, as, for instance, purchase, sale, hiring, leasing, partnership. The term "to transact" signifies to do something without words.

20. *The Same, On the Edict, Book XII.*

The expressions, "they contracted," and "they transacted," do not refer to the right of making a will.

21. *Paulus, On the Edict, Book XI.*

When the Emperor grants the possession of property, he is also considered to grant any obligations attaching to it.

22. *Gaius, On the Provincial Edict, Book IV.*

There is more included in the term "restitution" than in that of production; for to produce means to bring forward corporeal property, and to restore is to place someone in possession, and surrender the profits. Many other things are also included in the term "restitution."

23. *Ulpianus, On the Edict, Book XIV.*

Under the term "property" are also included legal action and various rights.

24. *Gaius, On the Provincial Edict, Book VI.*

The term "inheritance" means nothing else than the right to succeed to everything which the deceased possessed.

25. *Paulus, On the Edict, Book XXI.*

We very properly say that a tract of land entirely belongs to us, even when another is entitled to the usufruct of the same; for the reason that the usufruct does not constitute a part of the ownership, but of a servitude, as, for instance, a right of way, or a right of passage. Nor is it incorrect to say that something is entirely mine, when no part of it can be said to belong to another. This was the opinion of Julianus, and it is correct.

(1) Quintus Mucius states that by the term "part" an undivided share in something is meant; for after property has been divided not a part, but all of it is ours. Servius very properly holds that the term "part" is applicable to both the above-mentioned cases.

26. *Ulpianus, On the Edict, Book XVI.*

Scasvola, in the Eleventh Book of Questions, says that the child of a slave who has been stolen is not a part of the stolen property.

27. *The Same, On the Edict, Book XVII.*

*A* field is land on which there is no building.

(1) The term "stipend" is derived from *stips,* that is to say, a copper coin of little value. Pomponius says that the word "tribute" is also derived from the same source; and, in fact, tribute comes from *intributio;* or because it is paid to soldiers.

28. *Paulus, On the Edict, Book XXI.*

The term "alienation" also includes usucaption, for it is difficult to understand that he who

permits property to be acquired by usucaption should not be considered to have alienated it. He, also, is said to alienate who loses servitudes by failing to make use of them. Anyone who does not avail himself of the opportunity of acquiring property is not understood to alienate it; as, for instance, one who abandons an estate, or fails to make a choice within a certain prescribed time.

(1) A proposition which does not include either a conjunctive or a disjunctive particle should be determined according to the intention of the party making it.

29. *The Same, On the Edict, Book VI.*

Labeo says that a conjunction should sometimes be understood as a disjunctive particle; as, for instance, in the following stipulation, "For me and my heir," "You and your heir."

30. *Gaius, On the Provincial Edict, Book VII.*

Some authorities hold that timber fit for cutting is such as is set apart for that purpose. Servius says that this also applies to trees which have once been cut, but have grown again from sprouts or roots.

(1) Ungathered stalks are heads of grain thrown down during the reaping, and not afterwards gathered, which peasants collect after the harvest has been removed.

(2) New ground is that which, after having been cultivated, is left for a year, and which the Greeks style *viaxlv.*

(3) "Virgin soil" is that on which the owner has not yet placed cattle for the purpose of pasturage.

(4) "Fallen acorns" are such as have themselves dropped from the tree.

(5) "Forest pasture" is that destined for the grazing of cattle.

31. *Ulpianus, On the Edict, Book XVIII.*

A "meadow" is land for whose harvest nothing is required but a sickle; and it is so called because it is already prepared for the crop to be gathered.

32. *Paulus, On the Edict, Book XXIV.*

Less is understood to have been paid than is due, even when nothing at all has been paid.

33. *Ulpianus, On the Edict, Book XXI.*

The term "publicly" means in the presence of several persons.

34. *Paulus, On the Edict, Book XXIV.*

The recovery of property is also included in the term "action."

35. *The Same, On the Edict, Book XVII.*

He is understood to make restitution who surrenders the property in dispute to the plaintiff which the latter would have obtained if it had been delivered to him at the time judgment was rendered; that is to say, both the right of usucaption, and the profits.

36. *Ulpianus, On the Edict, Book XXIII.*

The term "litigation" signifies every kind of action, whether real or personal.

37. *Paulus, On the Edict, Book XXVI.*

The expression, "is necessary," has no reference to the authority of the judge, who can render a decision for a larger or a smaller amount, but relates to the truth.

38. *Ulpianus, On the Edict, Book XXV.*

Labeo defines the term "prodigy" to mean everything which is born or produced contrary to nature. There are, however, two kinds of prodigies; one where something is born contrary to nature, for instance with three hands or feet, or with some other part of the body deformed; another, where something is considered to be unusual, and which the Greeks designate *<f>avTd<r/j.aTa,* that is to say, apparitions.

39. *Paulus, On the Edict, Book L1II.*

The word "signed" signifies what is subscribed by anyone, for the ancients were accustomed to use this word instead of signature.

(1) The property of anyone is understood to be what remains after his debts are paid.

(2) To call someone to witness is to notify a person who is absent.

(3) An uncertain possessor is one of whom we have no knowledge.

40. *Ulpianus, Book LVI.*

An adjuration is the serving of notice in the presence of witnesses.

(1) The term "slave" likewise applies to females.

(2) Children are also included in the expression, "body of slaves."

(3) A single slave is not included under the term *"familia";* nor indeed do two slaves constitute a *familia.*

41. *Gaius, On the Provincial Edict, Book XXI.* The word "arms" not only means shields, swords, and helmets, but also clubs and stones.

42. *Ulpianus, On the Edict, Book LVH.*

The terms "disgrace" and "infamy" have the same signification. Some things are disgraceful from their very nature, others are made so by the Civil Law, and, as it were, by national custom; for example, theft and adultery are by their nature dishonorable. To be condemned to administer a guardianship is not disgraceful by nature, but is so by the custom of the State, for that is not of itself disgraceful which may happen to a man of good repute.

43. *The Same, On the Edict, Book LVIII.*

Food, drink, the care of the body, and everything necessary to human life is embraced in the term "maintenance." Labeo says that maintenance also includes clothing.

44. *Gaius, On the Provincial Edict, Book XXII.* Everything else which we make use of for the protection and care of our bodies is included in this term.

45. *Ulpianus, On the Edict, Book LVIII.*

Labeo says that under the term "covering," all clothing which anyone puts on is included; for there is no doubt that the term applies to cloaks and every kind of garments. Therefore, when we include clothing under the term "maintenance," we do not mean bedclothes used at night, but all articles intended for dress.

46. *The Same, On the Edict, Book LIX.*

The words "decreed" and "decided" have the same meaning, for we are accustomed to make use of them indiscriminately, when we allude to judges who have the right of jurisdiction.

(1) We should understand the expression, "mother of a family," to signify one who does not live unchastely, for the morals of the mother of a family distinguish and separate her from other women. Hence, it makes no difference whether she is married or a widow, freeborn or emancipated, as neither marriage nor birth, but good morals constitute the mother of a family.

47. *Paulus, On the Edict, Book LVI.*

The term "release" has the same force as payment.

48. *Gaius, On the Edict of the Urban Prsetor, Title, "Those who can neither be Summoned nor Brought into Court."*

We do not understand a person to be released who, although his chains have been removed, is still held by the hands; just as we do not understand anyone to be released who is retained in custody without chains.

49. *Ulpianus, On the Edict, Book LIX.*

The term "property" has reference either to the natural or the Civil Law. Property naturally acquired is understood to be that which renders persons happy; for to make happy is to benefit. It must, however, be remembered that among our property should be reckoned not only that which is our own, but also any possessed by us in good faith, or which has reference to the surface and the soil. Whatever is acquired by legal actions, claims, and pursuit, is also included under the term "property," for all these things are considered as part of our possessions.

50. *The Same, On the Edict, Book LXI.*

The term "daughter-in-law" applies also to the wife of a grandson, and extends even farther.

51. *Gaius, On the Provincial Edict, Book XXIII.*

Under the term "parent" is not only included the father, but also the grandfather, the great-grandfather, and others in the male ascending line, as well as the mother, the grandmother, and the great-grandmother.

52. *Ulpianus, On the Edict, Book LXI.*

Patroness is also included under the term "patron."

53. *Paulus, On the Edict, Book LIX.*

It has often been stated that a conjunctive particle can be understood as a disjunctive one, and *vice versa,* and occasionally something which is separate from them both; for when the ancients said "agnates and cognates" this was understood to be disjunctive. When, however, it is stated, "His money or guardianship," it is evident that a guardian cannot be appointed without control of the property; and when we say, "Which I have given or donated," we include both.

When, however, we say, "What he must either give or do," it is sufficient to prove one of these two things. When the Prsetor says: "If he redeems the gift, the present, and the services due from him," and all these things have been prescribed, it is certain that all of them should be redeemed. Therefore, these particles are considered as conjunctive. Where some of these things are imposed, others cannot be exacted.

(1) Likewise, it may be doubted in what way the following words, "By aid and advice," should be understood; that is, whether they ought to be taken conjunctively or separately. The better opinion is, as Labeo says, that they should be understood separately, for the reason that it is one thing where anyone furnishes his aid in a theft, and another where he only gives his advice; and, indeed, according to the authority of the ancient jurists, the conclusion is arrived at that no one is considered to have aided in doing anything unless he gave bad advice; nor to have given bad advice, unless the illegal act was the result of it.

54. *Ulpianus, On the Edict, Book LXH.*

Conditional creditors are those who are not yet entitled to an action, but who will be entitled to it; or such as expect that an action will lie in their favor.

55. *Paulus, On the Abridgment of the Edict, Book XVI.*

A creditor is one who cannot be barred by a perpetual exception. He, however, who has reason to apprehend the pleading of a temporary exception, resembles a conditional creditor.

56. *Ulpianus, On the Edict, Book LXH.*

To scrutinize documents is to re-read and review them; to balance accounts is to compare the receipts and disbursements.

(1) Under the term "children" are included not only those who are under paternal control, but also all those who are their own masters, whether they are of the male or female sex, or descendants from females.

57. *Paulus, On the Edict, Book LIX.*

Those are called managers who have particular supervision of affairs, and are, more than others, required to manifest diligence and solicitude with reference to the business of which they have charge. And, indeed, the term "magistrate" is derived from master, and also instructors in any kind of learning are so called from the fact that they admonish or explain.

(1) Anyone who has received security is still considered to retain the right of recovery.

58. *Gaius, On the Provincial Edict, Book XXIV.*

Although there seems to be some subtle distinction between the transaction and the conduct of business, this, however, is incorrect, as no such distinction exists.

(1) We consider paternal freedmen to be properly called our freedmen; but we do not correctly designate the children of such freedmen our own freedmen.

59. *Ulpianus, On the Edict, Book LXVIII.*

An enclosed place into which merchandise is taken, and afterwards exported, is called a harbor. A place of this kind is not only enclosed, but also fortified: and therefore it is styled a by-way *(angi-portus).*

60. *The Same, On the Edict, Book LXIX.*

*A* site is not a tract of land, but a certain part of one. A tract of land includes everything which belongs to it, and we generally understand a site to mean land on which there is no building. It is, however, only our opinion and intention which distinguishes a site from a tract, for a small site can be called a tract, if we have the intention of considering it as such. It is not the size which makes the distinction between a site and a tract, but our intention, and any portion of a tract of land can be styled a tract, if we wish to call it such, and a tract can be considered a site, for if we add it to another body of land it will become a part of the latter.

(1) Labeo says that the term "site" not only applies to land in the country, but also to that in a city.

(2} A tract of land, however, has its limits, but those of a site cannot be ascertained until they have been determined and defined.

61. *Paulus, On the Edict, Book LXV.*

By the term "security" sometimes a mere promise is meant, by which the person who is entitled to protection remains satisfied.

62. *Gaius, On the Provincial Edict, Book XXVI.*

By the term "beam," according to the Law of the Twelve Tables, every kind of material of which buildings are constructed is meant.

63. *Ulpianus, On the Edict, Book LXXI.*

"In your possession" has a broader meaning than "In your hands," for what you have in your hands is whatever is held by you under any title whatsoever, but what is in your possession is, to a certain extent, retained by you as your own.

64. *Paulus, On the Edict, Book LXVII.*

A person who is intestate is not only one who did not make any will, but also one whose estate was not entered upon under the will.

65. *Ulpianus, On the Edict, Book LXXVI.*

The term "heir" not only has reference to the next heir, but to all others; for the heir of an heir, and so on in succession, is included in this appellation.

66. *The Same, On the Edict, Book LXXIV.*

The word "merchandise" only applies to movable property.

67. *The Same, On the Edict, Book LXXVI.*

Anything which still remains under the control of the vendor is not correctly held to have been alienated, but it still may properly be said to have been sold.

(1) The term "donation," generally speaking, is understood to include every kind of a gift, whether it was made *mortis causa* or not.

68. *The Same, On the Edict, Book LXXVII.*

The following clause, "To be done according to the judgment of Lucius Titius," refers to a person who has a right to act, and does not apply to a slave.

69. *The Same, On the Edict, Book LXXVIII.*

The following words, "There is not, and shall not be any fraud in this transaction," generally include every species of fraud which can be committed in the matter with reference to which the stipulation was entered into.

70. *Paulus, On the Edict, Book LXXIII.*

It must be remembered that, by the term "heir," several successors are understood. For the term "heir" only refers to the next heir in very few instances, for example, in a pupillary substitution made as follows, "Whoever shall be my heir, let him also be my son's heir," for in this case, the heir of the heir is not included, because he is uncertain. Likewise, according to the *Lex jElia Sentia,* the son who is the next heir can accuse a paternal freedman of being ungrateful, but he could not do so if he was the heir of the heir.

The same rule applies to the right to exact services from a freedman, as a son who is the heir can demand them, but not if he has been removed from the succession.

(1) The following words, "The person to whom the property belongs," are understood to refer to an heir who has succeeded to the entire ownership of the estate, either under the Civil or the Praetorian law.

71. *Ulpianus, On the Edict, Book LXX.*

It is one thing to take property, and another to receive it. Anything is taken when it is acquired as the result of some act which has been performed. To receive something is for a person to obtain it, but not in order to hold it; and, therefore, no one is considered to take an article which he must surrender; as the expression "comes into his hands" is correctly said of property which will remain in his possession.

(1) The following words, "To legally indemnify me with reference to these matters," mean

that the stipulator shall not be liable for any risk or damage resulting from the transaction.

72. *Paulus, On the Edict, Book LXXVI.*

A part is also included in the term "property."

73. *Ulpianus, On the Edict, Book LXXX.*

The following clause, "Do you promise to restore the property in good condition?" when inserted in a stipulation, includes the crops. The words, "in good condition," mean according to the judgment of reliable citizens.

74. *Paulus, On the Edict of the Curule JEdiles, Book II. A* signet ring is not embraced in the term "ornament."

75. *The Same, On the Edict, Book L,*

He is held to make restitution who restores that which the plaintiff would have had if no controversy had arisen with reference to it.

76. *The Same, On the Edict, Book LI.*

He is understood to have paid who has made an exchange or a set-off instead of giving the purchase money.

77. *The Same, On the Edict, Book XLIX.*

By the term "income" is understood not only the crop of grain and vegetables, but also whatever is obtained from vines, timber, chalk-pits, and quarries. Julianus says it is not true that by the term "income" is meant whatever a man uses for food; as the flesh of animals, birds or wild beasts, and the fruits of trees cannot be so-called income.

Grain includes everything which is contained in ears, as Gallus has properly defined it. Beans, and other pulse, can more properly be called income, for the reason that they are not contained in ears, but in pods, which Servius, in his Treatise on Alfenus, thinks should be classed under the head of grain.

78. *Paulus, On Plautius, Book III.*

The term "possession" sometimes means property, as has been held in the case of one who bequeathed his possession.

79. *The Same, On Plautius, Book VI.*

Necessary expenses are those which must be incurred to prevent the destruction or deterioration of property.

(1) Fulcinius says that useful expenses are any that improve the condition of a dowry, and do not permit the deterioration of anything from which an income is obtained by the wife; as, for instance, by making a larger plantation of trees than was necessary.

Likewise, a husband cannot provide for the instruction of slaves if, by so doing, the woman, being ignorant of the fact, or unwilling, may be put to expense, and be forced to lose either her land or her slaves. We generally include in expenses of this kind those incurred by a husband for the construction of a mill or a warehouse, to be added to the dotal property.

(2) Expenses incurred for pleasure are such as only adorn property, and do not increase its income; for example shrubbery, fountains, ornamented stucco-work, hangings, and paintings.

80. *The Same, On Plautius, Book IX.*

Generally speaking, according to the spirit of the Law of the Twelve Tables, in the repetition of legacies by a testator in a substitution, the grants of freedom are also included.

81. *The Same, On Plautius, Book X.*

When the Prastor says, "The work must be restored to its former condition," this means that the plaintiff can also recover any damages which he may have sustained; for under the term "restitution" all the interest of the plaintiff is included.

82. *The Same, On Plautius, Book XIV.*

The expression, "In addition," has even reference to one to whom nothing is due; as, on the other hand, is the case where anyone is considered to have paid less than he owed, when he has not paid anything, even if nothing could be collected from him.

83. *Javolenus, On Plautius, Book V.*

That can not correctly be called "property" which is productive of more inconvenience than benefit.

84. *Paulus, On Vitellius, Book II.*

By the term "sons" we understand all children to be meant.

85. *Marcellus, Digest, Book I.*

Neratius Priscus held that three constituted a corporate body; and this rule should be followed.

86. *Celsus, Digest, Book V.*

What else is meant by the rights attaching to land and its nature than the enjoyment of its fertility, its salubrity, and its extent?

87. *Marcellus, Digest, Book XII.*

Alfenus says the City of Rome includes all that is encircled by its walls; but Rome also consists of all the buildings which adjoin it, for it should not be considered to be merely bounded by its walls, for when we say that we are going to Rome, we do so according to the ordinary acceptation of these words, even if we live outside of the city itself.

88. *Celsus, Digest, Book XVIII.*

A man leaves only as much money as his estate is worth. Hence we say that the estate of anyone is worth a hundred *aurei* if he had that amount in land, or other property.

The same rule does not apply to the devise of land belonging to another, although it may be bought with the money of the estate; for anyone who has only money is not considered to have what can be purchased with it.

89. *Pomponius, On Sabinus, Book VI.*

Oxen are rather classed as cattle than as beasts of burden.

(1) By the expression, "When she shall be married," the first nuptials are meant.

(2) There is a great deal of difference between paying a balance and rendering an account; as he who has been ordered to render an account is not obliged to pay the balance in his hands. A banker is considered to render his account, even if he does not pay any balance remaining in his hands.

90. *Ulpianus, On Sabinus, Book XXVII.*

He who delivers a house in the best condition possible does not mention that a servitude is due to it; but only that the house is free, and that no servitude is imposed upon it.

91. *Paulus, Trusts, Book II.*

In the terms, "My property," and "Your property," it must be said that rights of action are also included.

92. *The Same, Questions, Book VII.*

The "next of kin" is one whom no one precedes, and the most remote relative is one whom no one follows.

93. *Celsus, Digest, Book XIX.*

By the words "movable property" and "personal property" are meant the same thing, unless it appears that the deceased, by using the expression "movable" property, only intended to refer to animals because they moved themselves. This is correct.

94. *The Same, Digest, Book XX.*

The verb "to restore," although it means to return, has, nevertheless, itself the signification of "to give."

95. *Marcellus, Digest, Book XIV.*

The term "balance" means everything that remains due.

96. *Celsus, Digest, Book XXV.*

The shore of the sea is reckoned from the point reached by the greatest flow. It is said that Marcus Tullius was the first to establish this rule, when he served as arbiter in a certain case.

(1) When we say that land belongs to several persons, this does not merely mean that they hold it in common, but that part of it may be separately held by each one of them.

97. *The Same, Digest, Book XXXII.*

When we stipulate for "As much money as may come into your hands from the estate of Titius," we mean that the property itself which comes into your hands, and not its value, should be taken into consideration.

98. *The Same, Digest, Book XXXIX.*

When anyone is born on the *kalends* of a bissextile year, it makes no difference whether his birth takes place on the preceding or succeeding day, and his birthday is said to be the sixth of the *kalends;* for these two days are only considered as one, and it is the last day, and not the first, which is intercalated. Therefore, if he should be born on the sixth of the *kalends,* in a year which is not intercalated, and when the intercalary day falls on the *kalends,* the preceding day will be that of his birth.

(1) Cato held that an intercalary, month was an addition to the others; and Quintus Mucius added all its days from the time when it was computed to the last day of the month of February.

(2) It is, however, established that there are twenty-eight days in the intercalary month.

99. *Ulpianus, On the Duties of Consul, Book I.* We understand the word "investigation" to signify the right of judicial inquiry and jurisdiction.

(1) We should understand the neighboring, contiguous provinces to mean those which are joined to Italy, as for instance, Gaul. We should, however, include the Province of Sicily among them, as it is only separated from Italy by a narrow arm of the sea.

(2) It would be extremely difficult to define everything included under the term "instrument." Instruments, properly speaking, are documents for whose production a delay should be granted; just as when time is asked for the production of someone who can conduct a case, for instance, a steward, although he may be in slavery, or of someone who has been appointed an agent, I think it may be held that a delay can be requested on account of the papers, in order to enable him to appear for the above-mentioned purpose.

100. *The Same, On the Duties of Consul, Book II.*

We should understand distinguished persons to mean those of both sexes who are illustrious, as well as those who are entitled to senatorial honors.

101. *Modestinus, Differences, Book VI.*

Some authorities think that a distinction exists between fornication and adultery, because adultery is committed with a married woman, and fornication with a widow. The Julian Law on Adultery, however, uses this term indiscriminately.

(1) A divorce is said to take place between husband and wife, but repudiation is considered to apply only to the wife, because it not improperly has reference to her personally.

(2) It is true that a disease means a temporary weakness of the body, but a defect is a perpetual corporeal hindrance; as, for instance, where one is purblind, and therefore a one-eyed man is defective.

(3) Some legal authorities hold that when slaves are bequeathed, female slaves are also included, as the term is common to both sexes.

102. *The Same, Rules, Book VII.*

A law is either derogated or abrogated. It is derogated when a part of it is stricken out; it is abrogated when it is entirely repealed.

103. *The Same, Rules, Book Vill.*

Although the word "capital" may appear to all those who speak Latin to have reference to reputation; still, this term should be understood to apply only to death, or loss of citizenship.

104. *The Same, Excuses, Book II.*

The term "children" also extends to grandchildren.

105. *The Same, Opinions, Book XL*

Modestinus is of the opinion that the freedmen of a freedwoman of the testator are not included in the words, "My freedmen and freedwomen."

106. *The Same, On Prescriptions.*

Letters of dismissal are those which are ordinarily styled letters of appeal. They are so called because by their means a case is sent to the court to which an appeal is made.

107. *The Same, Pandects, Book HI.*

To "assign" a freedman is for a patron to declare to which of his children he desires his freedman to belong.

108. *The Same, Pandects, Book IV.*

A debtor is understood to be one from whom money can be collected against his will.

109. *The Same, Pandects, Book V.*

A purchaser in good faith is one who was not aware that the property which he bought belonged to another; or thought that he who sold it had the right to do so; as, for instance, that he was an agent, or a guardian.

110. *The Same, Pandects, Book VI.*

He is called an arbiter in whose hands several persons have deposited property which is in dispute, whether he has been appointed by a judge, to whom application had been made; or whether the property has been submitted to him for arbitration by those who claim it.

111. *Javolenus, On Cassius, Book VI.*

The expression, "To be of the opinion," means to determine and direct; hence, we are accustomed to say, "I am of the opinion that you should do this," and "The Senate directed that such-and-such a thing should be done." It is from this verb that the word *"censor"* is derived.

112. *The Same, On Cassius, Book XI.*

The shore of the sea is public as far as high-water mark. The same rule of law applies to a lake, unless it is all private property.

113. *The Same, On Cassius, Book XIV.*

*A* serious illness is one which interferes with every kind of business.

114. *The Same, On Cassius, Book XV.*

No one is understood to be solvent unless he can pay everything that he owes.

115. *The Same, Epistles, Book IV.*

There is a question as to what difference exists between the possession of a tract of land or of a field. A tract of land includes everything belonging to the soil; a field is a kind of a tract which is adapted to the use of man. Possession, in law, is distinct from the ownership of land; for we call possession everything which we hold, without the ownership of the property belonging to us, or where there is no possibility of its becoming ours. Therefore possession indicates use, and a field means the ownership of the property. A tract of land is the common name for both the things above mentioned; for a tract of land and possession are different forms of the same expression.

116. *The Same, Epistles, Book VII.*

Labeo says that the clause, "Let any son born to my son, be my heir," does not seem to include a daughter. Proculus is of the opposite opinion. Labeo appears to me to have followed the form of the words; Proculus the intention of the testator. I have no doubt that the opinion of Labeo is not correct.

117. *The Same, Epistles, Book IX.*

He is not considered to have paid less than he owed against whom an action for a larger sum will not lie.

118. *Pomponius, On Quintus Mucius, Book II.* Those are enemies who declare war against us, or against whom we publicly declare war; others are robbers or brigands.

119. *The Same, On Quintus Mucius, Book III.*

The term "estate" undoubtedly includes one which may be onerous; for the name is the same in law as praetorian possession of property.

120. *The Same, On Quintus Mucius, Book V.*

By the following words of the Law of the Twelve Tables, "Let a man have a right to dispose of his property by will," the most extensive power is considered to have been granted to appoint heirs, to bequeath legacies and grants of freedom, as well as to establish guardianships.

This privilege, however, has been limited either by the interpretation of the laws, or by the authority of jurists.

121. *The Same, On Quintus Mucius, Book VI.*

The interest on money which we collect is not included in the term "profits," because it is not derived from the property itself, but from another source, that is to say, from a new obligation.

122. *The Same, On Quintus Mucius, Book Vill.*

Servius says that if it was written in a will, "I appoint So-and-So guardians for my son, and for my sons," guardians are only appointed for the male children, as by alluding to his son in the singular number, and then using the plural, the testator is considered to have had reference to persons of the same sex which he had previously mentioned. This, however, is a question of fact, and not of law; for it might happen that he only thought of his own at first, and afterwards, when appointing a guardian, had in mind all his children.

This seems to be the more reasonable opinion.

123. *The Same, On Quintus Mucius, Book XXVI.*

The words "shall be" sometimes indicate past as well as future time; which is necessary for us to know. When a codicil is confirmed by a will in the following terms, "Whatever shall be included in my codicil," do they refer to future, or to past time, if the testator had already drawn up a codicil? This must be determined by his intention; for as the word "is" relates not only to present, but to past time; so the words "shall be" not only indicate future, but sometimes, also, past time, for when we say "Lucius Titius is released from his obligation," we refer to both past and present time; just as when we say, "Lucius Titius is bound."

The same rule applies when we say, "Troy is taken," for this expression has no reference to the present time, but to something that has already occurred.

124. *Proculus, Epistles, Book II.*

The following words, "So-and-So or So-and-So," are not only disjunctive, but subdisjunctive in their signification. They are disjunctive; for example, when we say, "It is either day or night," for having suggested one of two things, the other is necessarily impossible, since to suppose one disposes of the other. Therefore, by a similar form of words, an expression can be subdisjunctive. There are, however, two kinds of subdisjunctives; one where in a proposition both things cannot be true, and neither of them may be; as, for instance, when we say, "He is either sitting or walking," for as no one can do both these things at the same time, neither of them may be true, for example, if the person should be lying down.

The other kind of disjunctive occurs in a statement where of two things neither may be true, but both of them can happen to be; for instance, when we say "Every animal either acts or suffers," for there is no animal which neither acts nor suffers, but an animal may act and suffer at the same time.

125. *The Same, Epistles, Book V.*

His grandson to his Uncle Proculus, Greeting. In the case of a person who promised a dowry as follows, "When it is convenient, I will give you a hundred *aurei* as my daughter's dowry," do you think that the dowry can be demanded immediately after the marriage takes place ? Where he made the promise in the following words, "I will give you the dowry when I am able to do so," if the last obligation is of any force, in what way do you interpret the words, "am able"? Do they mean after the debts have been paid, or before?

Proculus: When anyone promises a dowry in the following terms, "I will pay you a hundred *aurei,* by way of dowry, when I am able to do so," I think that a suitable interpretation can be given to them. For when anyone makes use of ambiguous language, he says what he believes is meant by the words which he employs.

I think, however, that it is better to hold that he intended to say that he would give the dowry if he could do so after his debts were paid. The meaning may also be, "If I can do so consistently with the maintenance of my honor," which interpretation is preferable. But if he had promised to do this, "When it will be convenient," this means when I can bestow the dowry without incommoding myself.

126. *The Same, Epistles, Book VI.*

If I transfer to you a tract of land and say, "It is in the very best possible condition," and then add, "It has not become any worse since I have acquired its ownership," I will not be liable for anything else; for although it is stated in the first clause, "in the best possible condition," this means that the land is free, and if the second part had not been added, I would be compelled to render it free; still, I think that I am sufficiently released by the second clause, because, so far as the rights attaching to the land are concerned, I am not obliged to guarantee anything more than that the title has not become any worse during my ownership.

127. *Callistratus, Judicial Inquiries, Book IV.*

By the term "clothing" is meant that ordinarily worn by both men and women, as well as theatrical costumes, whether used in a tragedy or comedy.

128. *Ulpianus, On the Lex Julia et Papia, Book I.*

The term "eunuch" is one of general application, and under it are included not only persons who are eunuchs by nature, but also those made such by crushing or pressure, as well as every other kind of eunuch whatsoever.

129. *Paulus, On the Lex Julia et Papia, Book I.*

Still-born infants are not considered either to have been born or begotten, because they have never been able to be called children.

130. *Ulpianus, On the Lex Julia et Papia, Book II.*

Anyone can very properly say that an estate which falls to a person as heir at law, or by will, legally belongs to him, because by the Law of the Twelve Tables testamentary estates are confirmed.

131. *The Same, On the Lex Julia et Papia, Book III.*

Fraud is one thing, and the penalty for it another; for fraud can exist without a penalty, but there cannot be a penalty for it without a fraud. A penalty is the punishment of an offence, a fraud is the offence itself and is, as it were, a kind of preparation for the penalty.

(1) A great difference exists between a fine and a penalty, for the term "penalty" is a general one, and means the punishment of all crimes; but a fine is imposed for some particular offence, whose punishment is, at present, a pecuniary one. A penalty, however, is not only pecuniary, but usually implies the loss of life and reputation. A fine is left to the discretion of the magistrate who passes sentence; a penalty is not inflicted unless it is expressly imposed by law, or by some other authority. And, indeed, a fine is inflicted where a special penalty has not been prescribed. Moreover, he can impose a penalty upon whom jurisdiction has been conferred. Magistrates and Governors of provinces alone are permitted by the Imperial Mandates to impose fines; anyone, however, who has a right to take judicial cognizance of a crime or a misdemeanor can inflict the penalty.

132. *Paulus, On the Lex Julia et Papia, Book III.*

*A* child dies at the age of a year who expires on the last day of the year; and the ordinary use of language shows this to be the case when it is stated "That it died before the tenth day of the *kalends,"* or "after the tenth day of the *kalends";* for in both instances eleven days are understood.

(1) It is improper to say that a woman has brought forth a child, from whom, while dead, a child was removed by the Cassarean operation.

133. *Ulpianus, On the Lex Julia et Papia, Book IV.*

Where anyone provides that something shall be done before his death, the very day on which he died is counted.

134. *Paulus, On the Lex Julia et Papia, Book II.*

A child is not considered a year old as soon as it is born, but is said to be of that age after three hundred and sixty-five days have elapsed, if the last day has begun, but is not completed; because, according to the Civil Law, we reckon the year, not by moments, but by days.

135. *Ulpianus, On the Lex Julia et Papia, Book IV.*

Where a woman brings forth a child that is deformed, or a monster, or defective, or which has something unusual in its appearance or its voice, and which has no resemblance to a human being, but seems to be rather an animal than a man, someone may ask, will it be any benefit to her to have brought such a creature into the world ? The better opinion is, that consideration must be had for its parents, for they ought not to be censured, as they have done their duty as far as they could, nor should the mother be prejudiced, because an unfortunate occurrence has taken place.

136. *The Same, On the Lex Julia et Papia, Book V.*

It is evident that, under the term "son-in-law" are included the husbands of granddaughters, and great-granddaughters, and their descendants; whether they are the offspring of a son or a daughter.

137. *Paulus, On the Lex Julia et Papia, Book II.*

A woman who has brought forth three children at a birth is considered to have had three parturitions.

138. *The Same, On the Lex Julia et Papia, Book IV.*

Praetorian possession of an estate is included in the term "inheritance."

139. *Ulpianus, On the Lex Julia et Papia, Book VII.*

Houses are considered to be built at Rome when they are erected contiguous to the city.

(1) He is considered to have finished a house who has completed it so that it can be occupied.

140. *Paulus, On the Lex Julia et Papia, Book VI.*

A man is understood to have acquired something, even though he may have acquired it for another.

141. *Ulpianus, On the Lex Julia et Papia, Book Vill.*

As a woman, when moribund, is considered to have had a child if it is taken from her by means of the Cassarean operation; so, under other circumstances, she can be held to have had a child whom she did not bring forth at the time of her death; for instance, one who returns from the hands of the enemy.

142. *Paulus, On the Lex Julia et Papia, Book VI.*

*A* joinder of heirs can take place in three different ways, for it can either be made by means of the property itself; or by means of the property and words contained in the will; or by the words alone. There is no doubt that those are joined who are connected by both their names and by the property; for example, "Let Titius and Msevius be heirs to half my estate;" or "Let Titius and Msevius be my heirs;" or "Let Titius, with Msevius, be heirs to half of my estate."

Let us see, however, if we omit the particles "and" "and with," whether the parties can be considered to be joined, for instance: "Let Lucius Titius, Publius Msevius be heirs to half of

my estate," or, "Let Publius Msevius, Lucius Titius, be my heirs; let Sempronius be the heir to half my estate." As Titius and Msevius are entitled to half of the estate, they are understood to be joined with reference to the property, and the terms of the will.

"Let Lucius Titius be heir to half of my estate; let Seius be the heir to the same share to which I have appointed Lucius Titius; let Sempronius be the heir to half of my estate." Julianus says that a doubt may arise as to whether the estate was divided into three parts, or whether Titius was appointed heir to the same share as Gaius Seius. But, for the reason that Sempronius was also appointed an heir to half the estate, it is more probable that the two others were to share the same half and were made heirs conjointly.

143. *Ulpianus, On the Lex Julia et Papia, Book IX.* Anyone is considered to have property if he is entitled to an action to recover it, for he has anything which he has a right to demand.

144. *Paulus, On the Lex Julia et Papia, Book X.*

Massurius stated in his Book on Memorials that a mistress was considered by the ancients to be a woman who lived with a man without being his wife, and who is now known by the name of friend, or by the slightly more honorable appellation, concubine. Granius Flac-cus, in his Book on the Papirian Law, says that the word "mistress" means a woman who cohabits with a man who has a wife; and others hold one is meant who lives in his house, as his wife, without being married to him, and whom the Greeks call TraAActKjyv.

145. *Ulpianus, On the Lex Julia et Papia, Book X.*

It must be said that by the term "individual share" the entire estate sometimes is meant.

146. *Terentius Clemens, On the Lex Julia et Papia, Book III.*

It is established that the grandfather and the grandmother of either a wife or a husband are included under the terms "father-in-law" and "mother-in-law."

147. *The Same, On the Lex Julia et Papia, Book III.*

Persons who are born in the suburbs of the City are understood to be born at Rome.

148. *Gaius, On the Lex Julia et Papia, Book Vill.*

A man who has only one son or one daughter is not without children ; for the expression, "He has children," or "he has not children," is always used in the plural number, just as writing tablets and codicils are.

149. *The Same, On the Lex Julia et Papia, Book X.* For we cannot say of such a person that he is childless, and we must necessarily say that he has children.

150. *The Same, On the Lex Julia et Papia, Book IX.* If I stipulate with you as follows: "Do you promise to pay me whatever I may fail to collect from Titius?" there is no doubt that if

I should not collect anything from Titius you will be indebted to me for all that he owed me.

151. *Terentius Clemens, On the Lex Julia et Papia, Book V.*

An estate is understood to have been granted to anyone when he can acquire it by entering upon the same.

152. *Gaius, On the Lex Julia et Papia, Book X.*

There is no doubt that both males and females are included under the term "man."

153. *Terentius Clemens, On the Lex Julia et Papia, Book XI.*

When a child is in its mother's womb at the time of its father's death, it is understood to be legally in existence.

154. *Macer, On the Law Relating to the Twentieth.*

The thousand paces constituting a mile are not reckoned from the milestone of the City of Rome, but from the houses contiguous thereto.

155. *Licinius Rufus, Rules, Book VII.*

Where there is only one relative, he is included in the term "next of kin."

156. *The Same, Rules, Book X.*

Anyone is understood to have had possession of property for the greater part of the year, even if he has held it only two months, provided his adversary has had possession of it for a shorter time, or not at all.

157. *JElius Gallus, On the Meaning of Words Relating to the Law, Book I.*

A wall is one which is built either with or without mortar. (1) A road is either a path, or a highway.

158. *Celsus, Digest, Book XXV.*

Cascellius states that, in legal phraseology, we frequently make use of the singular number when we wish to indicate several things of the same kind; for we say many a man has arrived at Rome, and also that there are bad fish. Likewise, in making a stipulation, it is sufficient to refer to the heirs in the singular number, ."If the case is decided in favor of me, or my heir," and again, "Whatever concerns you or your heir," as it is clear that if there are several heirs, they are included in a stipulation of this kind.

159. *Ulpianus, On Sabinus, Book I.*

We also use the term "money" to denote gold coins.

160. *The Same, On Sabinus, Book II.*

Everything is included in the terms, "the others," and, "the balance," as Marcellus says with reference to a man to whom the choice

of a slave was bequeathed, the others being left to Sempronius; for he holds that if he should not make a choice, all the slaves will belong to Sempronius.

161. *The Same, On Sabinus, Book VII.* An unborn child is not a minor.

162. *Pomponius, On Sabinus, Book II.*

An ordinary substitution, by which an heir is substituted "for him who may die last," is understood to have been made legally if there should be only one heir, in accordance with the Law of the Twelve Tables, by which, when there is only one heir, he is referred to as the next of kin.

(1) Where a testator makes the following provision in his will, "If anything should happen to my son, let my slave Damas be free," and the son should die, Damas will become free; for although an accident may also happen to the living, death is understood by this expression, according to the ordinary signification of the language.

163. *Paulus, On Sabinus, Book II.*

The following words, "The very best and greatest possible," may have reference to a single person. Likewise, the last will mentioned in the Edict of the Praetor has reference to the only will.

(1) Under the term "child" a girl also is included, for women who have recently brought forth children are called *puerperse,* and are generally styled by the Greeks. •

164. *Ulpianus, On Sabinus, Book XV.*

There is no question that the word "daughters" includes posthumous children, while it is certain that the term "posthumous" is not applicable to a daughter who is already born.

(1) The word "share" does not always mean the half, but the part which is indicated by it; for anyone can be directed to have the largest share, or the twentieth, or the third, or as much as the testator pleases. If nothing is mentioned but the share, half of the estate will be due.

(2) The expressions "To have," and "To come into one's hands," should be understood to mean legal possession.

165. *Pomponius, On Sabinus, Book V.*

Nothing is understood to "come into the hands of the heir" unless all the debts of the estate have been paid.

166. *The Same, On Sabinus, Book VI.*

Urban and rustic slaves are not distinguished from one another by the place, but by the nature of their respective occupations. For a steward may not be included in the number of urban slaves, as, for instance, one who keeps the accounts of transactions in the country, where he lives, for he does not differ greatly from a farmer. A slave attached to a household in a city is included among urban slaves. It should, however, be considered whether the master himself employs anyone in their stead, which can be ascertained from the number of the slaves and their sub-slaves.

(1) He is understood to have spent the night outside of a city who passed no part of it therein; for the expression means the entire night.

167. *Ulpianus, On Sabinus, Book XXV.*

The material of which it is composed is not included in the term "charcoal," but is it included in that of "firewood"? Perhaps someone may say that it is not, for all wood is not firewood; but shall we include under the terms "firewood" or "charcoal" firebrands which have been extinguished, and other burnt wood which does not make any smoke, or shall we place it in a class of its own ? The better opinion is that it has a class of its own. Wood which has been treated with sulphur is included in the term "firewood." Wood which is prepared for torches does not come under the head of "firewood," unless it was specially intended that this should be done.

The same rule applies to olive seeds, acorns, and any other seeds. When pine cones are entire, they are included in the term "firewood."

168. *Paulus, On Sabinus, Book IV.*

Poles and stakes are classed as building material, and therefore are not included under the term "firewood."

169. *The Same, On Sabinus, Book V.*

The following clause is not only inserted in contracts for the delivery of property, but also in' purchases, stipulations, and wills, namely, "In the best condition possible," and means that land is guaranteed to be free from all encumbrances, but not that servitudes are due to it.

170. *Ulpianus, On Sabinus, Book XXXIII.*

It is held that all successors are meant by the word "heir," although this may not be expressly stated.

171. *Pomponius, On Sabinus, Book XVI.*

Anything is properly said to have come into your hands where it has passed to another through

you, as was determined in the case of an estate acquired by a freedman through his patron, who was a son under paternal control, for the benefit of his adoptive father.

172. *Ulpianus, On SoMnus, Book XXXVIII.*

It is established that a freedwoman is also included under the term "freedman."

173. *The Same, On Sabinus, Book XXXVIII.*

Those are included under the term "colleagues" who possess the same authority.

(1) Anyone who is outside of the suburbs of a city is considered to be absent; but he is not considered to be absent while still within the suburbs.

174. *The Same, On Sabinus, Book XLII.*

It is one thing to allege that a slave is not a thief, and another to say that he will not be liable for theft or damage committed by him. For when a man says that a slave is not a thief, he has reference to his disposition; but when he says that he will not be liable for theft or damage committed by him, he states that he will not be responsible to anyone for his depredations.

175. *Pomponius, On Sabinus, Book XXII.*

In the term "To do" is also included that "To give."

176. *Ulpianus, On Sabinus, Book XLV.*

It has been established that every kind of satisfaction should be understood to be included in the term "payment." We say that he has paid who has done what he promised to do.

177. *The Same, On Sabinus, Book XLVII.*

The nature of the sophistry which the Greeks call a concise syllogism is disclosed where, by making slight changes in something which is absolutely true, a conclusion is arrived at which is evidently false.

178. *The Same, On Sabinus, Book XLIX.*

The term "money" not only includes coin, but all kinds of property, that is to say, everything which is corporeal; for there is no one who has any doubt that corporeal property is also included in the word "money."

(1) Inheritance is a legal term which has reference to both the increase and the diminution of an estate, as an inheritance is greatly increased by the profits.

(2) The term "action" is both special and general; for the same word is used whether a claim is made against the person or against the property. We are, however, for the most part, accustomed to call the former personal and the latter real. I think that extraordinary proceedings are included under the term "pursuit," as for instance, those arising from trusts, and any others which do not come within the scope of ordinary law.

(3) The expression, "He owes," is understood to include every action whatsoever which can be brought against anyone; whether it is civil or praetorian, or involves the execution of a trust.

179. *The Same, On Sabinus, Book LI.*

There is no difference between the expressions, "As much as a thing is worth," and "As much as a thing appears to be worth," for it has been established that in both instances a true valuation of the property must be made.

180. *Pomponius, On Sabinus, Book XXX.*

By the term "hut," every building erected for the purpose of protecting the crops on a farm, and not a house in town, is meant.

(1) Ofilius says that the word *tugurium* is derived from a roof, as a place is said to be covered with tiles; just as *toga* is so called because we use it as a covering.

181. *The Same, On Sabinus, Book XXXV.*

The verb, "To belong," has an extremely broad signification, for it not only applies to such things as are included in our ownership, but also to those which we possess under any title, even if they are not ours; and we say that articles belong to us to which we have no title at present, but to which we may subsequently acquire one.

182. *Ulpianus, On the Edict, Book XXVII.*

The head of a household who is free cannot have a *peculium,* just as a slave cannot have an estate.

183. *The Same, On the Edict, Book XXVIII.*

The term "shop" means every kind of building which is fit for a habitation; evidently for the reason that these are generally closed with boards *(tabulse).*

184. *Paulus, On the Edict, Book XXX.*

From it the words "tabernacle" and *"contubernales"* are derived.

185. *Ulpianus, On the Edict, Book XXVIII.*

We understand a furnished shop to be one in which the goods and the clerks are ready for business.

186. *The Same, On the Edict, Book XXX.*

To entrust something to anyone's care means nothing more than to deposit it with him.

187. *The Same, On the Edict, Book XXXII.*

The expression, "Money collected," relates not only to payment, but also to the delegation of the claim.

188. *Paulus, On the Edict, Book XXXIII.*

The verb, "To have," is understood in two different ways: in one, where the right of ownership exists; in the other, where property purchased by anyone cannot be obtained without a contest.

(1) Security means responsibility assumed either with reference to persons or things.

189. *The Same, On the Edict, Book XXXIV.*

The expression, "To be obliged to do," has the following signification ; namely, that a person will abstain from doing something which is contrary to an agreement, or will take care that it is not done.

190. *Ulpianus, On the Edict, Book XXXIV.*

We must understand provincials to be persons who have their domicile in a province, and not those who are born there.

191. *Paulus, On the Edict, Book XXXV.*

The following difference exists between divorce and repudiation: repudiation may take place even before marriage; but a woman who is betrothed cannot properly be said to be divorced, since divorce is so called because the parties who separate are free to go their different ways.

192. *Ulpianus, On the Edict, Book XXXVII.*

The expression, "Or more," does not include an unlimited sum of money, but a moderate one; just as the limiting clause, "Ten or more *solidi,"* has reference to the smaller sum.

193. *The Same, On the Edict, Book XXXVIII.*

These words, "As much as the property appears to be worth," do not refer to the measure of damage, but to the estimated value of the property.

194. *Ulpianus, On the Edict, Book XXXIII.*

The same difference exists between a gift and a present as exists between genus and species; for Labeo says that a gift is a genus, and is derived from the verb "to give," and that a present is a species, for it is a gift bestowed for some reason, for instance, on account of a birth, or a marriage.

195. *The Same, On the Edict, Book XLVI.*

The term "masculine" frequently extends to both sexes.

(1) Let us see how the word "family" should be understood. And indeed, it is understood in various ways, for it has reference to both property and persons; to property, as in the Law of the Twelve Tables where it is said, "Let the next of kin on the father's side have the estate" *(familia)*. The term "family" also has reference to persons, as where the same law referring to a patron and his freedman says, "From this family to that." In this instance, it is established that the law has reference to individuals.

(2) The term "family" has reference to every collection of persons which are connected by their own rights as individuals, or by the common bond of general relationship. We say that a family is connected by its own rights where several are either by nature or by law subjected to the authority of one; for example, the father of a family, the mother of a family, and a son and a daughter under paternal control, as well as their descendants; for instance, grandsons, granddaughters, and their successors. He is designated the father of a family who has authority over the household, and he is properly so called even if he has no son, for we do not merely consider his person, but also his right. Then we also style a minor the father of a family, when his father dies, and each of the persons who were under his control begins to have a separate household, and all obtain the title of father of a family.

The same thing happens in the case of a son who is emancipated, for he also has his own family when he becomes independent.

We say that the family of all the agnates is a common one, because even though the head of the household may be dead, and each of them has a separate family, still, all who were under the control of him alone are properly said to belong to the same family, as they have sprung from the same house and race.

(3) We are also accustomed to apply the term "family" to bodies of slaves, as we explained, according to the Edict of the Praetor, under the Title of Theft, where the Prsetor mentions the family of farmers of the revenue. In this instance, all slaves are not meant, but only those are designated who were appointed for this purpose, that is to say, for the collection of taxes.

In another part of the Edict all slaves are included; as in the case of unlawful assemblies, and property taken by force, and also where suit for the annulment of a contract can be brought, and the property is returned in a worse condition through the act of the purchaser or his family; and finally, in the case of the interdict *Unde vi,* the term family embraces not only all the slaves, but also the children.

(4) The word "family" also applies to all those persons, who are descended from the last father, as we say the Julian Family, referring, as it were, to persons derived from a certain origin within our memory.

(5) The wife is the beginning and the end of her family.

196. *Gaius, On the Provincial Edict, Book XVI.* The head of the family himself is included in the term "family." (1) It is clear that children do not belong to the family of the wife, because

anyone who is born to a father does not follow the family of his mother.

197. *Ulpianus, On the Edict, Book L.* ( "To inform" is to denounce, to impeach, to accuse, and to convict.

198. *The Same, On All Tribunals, Book II.*

We understand by the term "urban estates" not only all buildings which are situated in towns, but also inns, and such houses as are used for trade in the suburbs, and in villages, as well as palaces intended only for pleasure; but the materials, and not the location, are what constitute an urban estate. Hence, if there are any gardens attached to these buildings, it must be said that they are included under the term "urban estates." It is clear that if these gardens afford more revenue than they do pleasure, that is to say, if they contain vines or olive-trees, they should not be designated "urban estates."

199. *The Same, On All Tribunals, Book Vill.*

We should consider a person to be absent who is not in the place where his presence is demanded; for we do not require that he be beyond seas, since he is absent if he happens to be outside the suburbs of the city; but if he is within the suburbs, he is not held to be absent if he does not conceal himself.

(1) Anyone who has been captured by the enemy is not considered to be absent, but he who is detained by robbers is.

200. *Julianus, Digest, Book II.*

The following stipulation, "To furnish a slave free from liability for damage committed," is not held to apply to such offences as call for public prosecution and punishment.

201. *The Same, Digest, Book LXXXI.*

According to a just interpretation it should be understood, as we have often said, that as a daughter under paternal control is included under the term "son," a grandson should likewise be included; and a grandfather also be understood to be designated by the term "father."

202. *Alfenus Varus, Digest, Book II.*

When it is stated in a will that the heir shall only expend a hundred *aurei* for funeral expenses, or for the erection of a monument, he cannot spend any less than that amount; but, if he desires to spend more, he can do so, and he will not be considered to have done anything contrary to the terms of the will.

203. *The Same, Digest, Book VII.*

It was stated in the law relating to the collection of duties in the harbors of Sicily: "That no one should pay any duty on slaves which he was taking to his own house for private use." The question arose if anyone should send slaves from Sicily to Rome, for the purpose of cultivating land, whether or not he would be compelled to pay duty on them. The answer was that in this law two points were involved: first, what did the words, "Take to his own house," mean; and second, what was the meaning of the expression, "For his private use"? Therefore, if the word "house" meant where someone lived, inquiry should be made whether this was in a province, or in Italy; or whether his house could only properly be said to be in his own country. On this point it was decided that anyone's house should be considered to be where he had his home, kept his accounts, and transacted his business. There is, however, great doubt as to the signification of the expression, "For his private use," and it was decided that this only had reference to what was prepared for his subsistence. For the same reason it might also be asked with reference to slaves who are alleged to be for the use of their master whether stewards, porters, farmers, overseers, weavers, and farm laborers, who are employed in the cultivation of the soil, from which the owner obtains his living and supports himself, are

meant; or whether all the slaves which any person

purchased and kept for his own use, as well as those whom he employed for other purposes, and were not bought to sell again, are included. It seems to me that only those destined for the use of the head of the family, who are appointed for his personal service and support, which class includes valets, domestic, servants, cooks, attendants, and all others devoted to employments of this kind are meant.

204. *Paulus, Epitomes of Alfenus, Book II.*

The term "boy" has three significations: first, we call all slaves "boys"; second, we speak of a boy in contradistinction to a girl; and third, we make use of the word to denote the age of childhood.

205. *The Same, Epitomes of Alfenus, Book IV.*

When anyone sells a tract of land, reserving the fruit, he is understood to reserve the nuts, figs, and grapes whose skins are hard and purple, and are of the kind which we do not use in making wine, and which the Greeks call suitable for eating purposes.

206. *Julianus, On Minicius, Book VI.*

It is held that the expression "wine-jars" is properly applied to jars used at the wine press; for casks and other vessels are only classed as such while they contain wine; for, when they cease to do so, they have not this appellation, as they can be put to other uses; for instance, where grain is placed in them.

The same rule applies to other earthen jars, when they are used for wine, just as it does to the former, for when they are empty, they are not included in the number of receptacles for wine, because other things can be kept in them.

207. *Africanus, Questions, Book HI.*

Mela says that slaves are not included in the term "merchandise," and for this reason those who sell them are not designated merchants, but dealers in slaves; and this is correct.

208. *The Same, Questions, Book IV.*

The terms "property" and "estate" apply to everything taken together, including the right of succession, but not to individual articles.

209. *Florentinus, Institutes, Book X.*

Where anyone is ordered to do something in the presence of Titius, he is not understood to have done it in his presence, unless Titius understands that this is the case; therefore, if he should be insane, or a child, or asleep, he is not considered to have performed the act in his presence. He must know that it is done, but it is not necessary that he should be willing, for what is ordered will be legally done, even against his consent.

210. *Marcianus, Institutes, Book VII.*

It has been decided that he who is born of urban slaves and is sent to the country to be brought up shall be classed as an urban slave.

211. *Florentinus, Institutes, Book Vill.*

By the term "real property" all buildings and all land are understood; in speaking of buildings in a city, however, we usually call them *sedes,* and in the country *villas. A* site without a building in a city is called *area,* and in the country *ager,* and the latter, when a house is erected upon it, is styled *fundus.*

212. *Ulpianus, On Adultery, Book I.*

We call those persons prevaricators who assist the cause of their adversaries, and while on the

side of the plaintiff favor that of the defendant; for the term "prevaricator" is derived from the verb *"varico,"* to straddle.

213. *The Same, Rules, Book I.*

The expression *"cedere diem"* means to begin to owe a sum of money: *"venire diem"* means the day has come when the money can be collected. When anyone makes an absolute stipulation, the money begins to be due, and the day of payment arrives immediately. When he agrees to pay it at a certain time, the indebtedness begins at once, but the time of payment does not; when he agrees to pay it under a condition, the indebtedness is not incurred, nor is the sum payable, while the condition is pending.

(1) *"Ms alienum"* means what we owe to others: *"IBS suum"* is what others owe us.

(2) Gross negligence is extreme negligence, that is to say, not to know what everybody else knows.

214. *Marcianus, Public Prosecutions, Book I.*

An "obligation," properly speaking, is something which we are obliged to do according to law, custom, or the command of someone who has the right to order it to be done. Gifts, however, are, correctly speaking, things which we voluntarily give without being compelled to do so by either law or our duty; and if they are not given, no one can be blamed, and if they are given, the donor is generally entitled to praise. In a word, it has been decided that the two terms are not interchangeable, but that a gift may properly give rise to an obligation.

215. *Paulus, On the Lex Fusia Caninia.*

The word "power" has several meanings: with reference to magistrates, it signifies jurisdiction; with reference to children, it signifies paternal control; with reference to slaves, it signifies the authority of a master. But when we bring suit for the surrender of a slave by way of reparation for damage committed by him, against his master who does not defend him, we mean the body of the slave and the authority over him. Sabinus and Cassius say that, under the Atinian Law, stolen property is considered to have come under the control of the master, if he should have the power to recover it.

216. *Ulpianus, On the Lex JElia, Sentia,' Book I.*

It is true that when anyone is imprisoned, he is not held to be either chained or placed in chains unless they are attached to his body.

217. *Javolenus, On the Last Works of Labeo, Book I.*

There is a great difference between the conditions, "When he will be able to speak," and "After he shall have been able to speak," for it is established that the latter has a broader signification than the former, which only has reference to the time when the person can speak for the first time.

(1) Likewise, when a condition is stated as follows, "Do this in so many days," if nothing more should be added, the condition must be complied with within two days.

218. *Papinianus, Questions, Book XXVI.*

The words "to do," include everything which can be done; just as "to give," "to pay," "to count," "to judge," "to walk."

219. *The Same, Opinions, Book II.*

It has been established, that, in agreements, the intention of the contracting parties should rather be considered than the terms of the stipulation. Therefore, when municipal magistrates lease land belonging to their city, under the condition, "that the heir of the person who leases it shall enjoy it," the right of the heir can also be transferred to his legatee.

220. *Callistrat^ls, Questions, Book II.*

By the term "children," grandchildren and great-grandchildren, and all their descendants are understood, for the Law of the Twelve Tables includes all these under the term "proper heirs." When the laws consider it necessary to use separate names for different relatives, for instance, sons, grandsons, great-grandsons, and their descendants, they do not mean that this shall extend to all who come after them. But when certain persons or degrees are not specified, but only those are mentioned who are descended from the same stock, they are included under the term "children."

(1) Papirius Fronto, however, in the Third Book of Opinions, says that where land, with a farmer and his wife and children, is devised, the grandchildren descended from the sons are also included, unless the intention of the testator was otherwise; for it has been frequently decided that in the term "children," grandchildren are also included.

(2) The Divine Marcus stated in a Rescript that anyone who left a grandson his heir was not considered to have died without issue.

(3) In addition to all this, Nature teaches us that affectionate fathers, who marry with the intention and desire to have children, inelude under the term all who are descended from them. For we cannot designate our grandchildren by a more loving name than that of children, since we have, and rear sons and daughters for the purpose of perpetuating our memory, for all time, by means of their offspring.

221. *.Paulus, Opinions, Book X.*

Paulus says that he can properly be styled a false guardian who is not a guardian at all; or who is appointed for a minor who already has a guardian, or has none; just as is the case of a forged will, which is not a will at all, or a false measure, which in reality is not a measure.

222. *Hermogenianus, Epitomes of Law, Book II.*

By the term "money" not only coin is understood, but all kinds of property, whether it is attached to the soil, or is movable, and which is corporeal as well as incorporeal.

223. *Paulus, Opinions, Book II.*

The definition of gross negligence is not to know what all persons know.

(1) We should not call those persons friends with whom we have only a slight acquaintance; but those with whom our fathers have entertained honorable and familiar relations.

224. *Venuleius, Stipulations, Book VII.*

The term "chains" applies to both private or public restraint of liberty; "custody," however, only has reference to public imprisonment.

225. *Tryphoninus, Disputations, Book I.*

A fugitive slave is not one who has merely formed the design of escaping from his master, even though he may have boasted that he intends to do so, but one who actually has begun his flight; for, as anyone may call a person a thief, an adulterer, or a gambler, from certain indications solely arising from his intentions, although he has never stolen anything from the owner, or corrupted any woman, but has merely resolved to do so, when an opportunity offered, still, he cannot be understood to have committed the offence until his design has been executed, and therefore it is established that a slave shall not be considered a fugitive or a vagabond, merely because he has had the intention of becoming one, but only after he has committed the act.

226. *The Same, Manuals, Book I.*

Gross negligence is a fault: a great fault is a fraud.

227. *The Same, Manuals, Book II.*

Praetorian possession of an estate is not conceded to the heirs of the heir, by the following clause of the Edict: "I will grant possession to him who is the heir of the deceased." Again, in the following substitution, "Whosoever shall be my heir," only the next heir is meant, or the appointed heir, even if he is not the one next in succession.

228. *The Same, On Judicial Inquiries.*

By the term "fellow citizens" is meant those who are born in the same town.

229. *The Same, On Implied Trusts.*

We should understand by the expression "matters transacted or completed," not only such as are in dispute, but also those with reference to which no controversy exists.

230. *The Same, On the Orphitian Decree of the Senate.*

Among these are questions which have been judicially decided; are those with reference to which a compromise has been made; and those prescribed by lapse of time.

231. *The Same, On the Tertullian Decree of the Senate.*

When we say that a child, who is expected to be born, is considered as already in existence, this is only true where his rights are in question, but no advantage accrues to others unless they are actually born.

232. *Gaius, On Verbal Obligations, Book I.*

The statement, "Which are worth more than thirty *aurei,"* has reference both to a sum of money, and the valuation of property.

233. *The Same, On the Law of the Twelve Tables, Book I.*

The following expressions, "If he deceives," "If he is in default," "If he frustrates," are the sources from which the term "calumniators" is derived because they annoy others with lawsuits through fraud and deceit.

(1) On the third day after the *Kalends* of January, prayers are offered for the preservation of the Emperor.

(2) Ordinarily speaking, whatever is discharged from a bow is called a dart; now, however, it means anything which is cast by the hand; and it follows that even a stone, or a piece of wood, or iron, are included in this term. It is so called because it is sent to a distance, and is what the Greeks designate something which is thrown to a distance. We can detect this meaning in the Greek word, for what we call a dart, they style which usually means something dispatched from a bow, but it also signifies anything projected by the hand. Xenophon informs us of this fact, for he says, "They carried darts, spears, arrows, slings, and also stones." What is sent from a bow is what the Greeks call *To^v^a,* that is to say, an arrow, but by us it is designated by the common name of "dart."

234. *The Same, On the Law of the Twelve Tables, Book II.*

Those whom we style enemies the ancients called *perduelles,* indicating by this term that they were persons with whom they were at war.

(1) He is considered solvent who has sufficient property to satisfy any claim which may be brought against him by a creditor.

(2) Some authorities hold that the term "subsistence" has reference only to food; but Ofilius and Atticus say that under this term clothing and covering of every description are included, for without them no one can subsist.

235. *The Same, On the Law of the Twelve Tables, Book HI.*

We properly apply the term "to carry," to what anyone conveys by means of his body; "to transport," to whatever one conveys by means of a beast of burden; and "to drive" has reference to animals.

(1) We call workers in wood not only those who polish lumber, but also all those who build houses.

236. *The Same, On the Law of the Twelve Tables, Book IV.*

Those who speak of poison, should add whether it is good or bad, for medicines are poisons, and they are so called because they change the natural disposition of those to whom they are administered. What we call poison the Greeks style ^ap/uaxov; and among them noxious drugs as well as medicinal remedies are included under this term, for which reason they distinguish them by another name. Homer, the most distinguished of their poets, informs us of this, for he says: "There are many kinds of poisons, some of which are good, and some of which are bad."

(1) Javolenus says that fruit is whatever has a seed, as in the case of the Greeks who call all kinds of trees dxpospw.

237. *The Same, On the Law of the Twelve Tables, Book V.*

A law which contains two negative statements rather permits than forbids. This is also noted by Servius.

238. *The Same, On the Law of the Twelve Tables, Book VI.*

The term "plebeian" applies to all citizens except senators.

(1) To "call to witness," is to give evidence.

(2) The word "pledge" is derived from the fist, because everything which is given by way of pledge is transferred by the hand. Wherefore some authorities hold, and it may be true, that a pledge, properly speaking, can only consist of movable property.

(3) All offences are embraced in the term *"noxia."*

239. *Pomponius, Enchiridion.*

*A* minor is one who has not yet reached the age of puberty, and has ceased to be under the control of his father, either by the death of the latter or his own mancipation.

(1) The term "slaves" is derived from the fact that the commanders of our armies formerly were accustomed to sell their captives, and preserved them for this purpose, in preference to putting them to death.

(2) An inhabitant is one who has his domicile in some country, and whom the Greeks call *-n-dpixov,* that is, "adjoining." Those who dwell in cities are not called inhabitants, any more than those who

have land near some town, and betake themselves to it, as to a resort.

(3) A public employment is an office conferred upon some private individual, by means of which extraordinary benefit results to the citizens individually and collectively, as well as to their property through his magisterial authority.

(4) A stranger is one whom the Greeks style *amixov,* that is to say, one who has left his home to become a colonist.

(5) Certain authorities hold that decurions are so called for the reason that, in the beginning, when colonies were established, the tenth part of those who founded them, were usually formed into a body for the purpose of giving public counsel.

(6) The word "city" is derived from the verb *urbo,* which means to mark a boundary with a plow. Varus says that the curve of a plowshare, which is ordinarily used for tracing the boundaries of a city about to be built, is called *urbum.*

(7) The term "fortified town" *(oppidum),* is derived from *ops,* for the reason that its walls are constructed to provide for the safety of property.

(8) The word "territory" means all the land included within the limits of any city. Some authorities hold that it is so called, because the magistrates have a right to inspire fear within its boundaries, that is to say, the right to remove the people.

(9) It is doubtful whether the term "his" means the whole or a part; and therefore anyone who swears that something is not his should add that he has no joint-ownership in it with another.

240. *Paulus, On the Six Books of Imperial Decrees having Reference to Judicial Inquiries, Book I.*

The question arose whether the expression, "The dowry shall be returned in case the marriage is dissolved," refers not only to divorce, but also to death; that is to say, whether this was the intention of the contracting parties in the present instance; and several authorities think that it was the intention, while the contrary opinion is held by others.

On this account, the Emperor decided that "the agreement was that, under no circumstances, the dowry should remain in the hands of the husband.

241. *Quintus Mucius Scsevola, Definitions.*

Movable property is such as is not attached to the soil, that is to say, everything which does not form part of a building or other structure.

242. *Javolenus, On the Last Works of Labeo, Book II.*

Labeo says that a mast forms part of a ship, but that small sails do not, because many ships would be useless without masts, and therefore they are considered as belonging to ships; sails, however, are held to be rather an addition to than parts of a vessel.

(1) Labeo says that a difference exists between what projects over, and what is inserted into anything as a projection, is put forward in such a way that it does not have a support, as for instance, balconies and roofs; and whatever is inserted into a building rests upon something, for example, joists and beams.

(2) Labeo says that where lead is used instead of tile to cover a house, it forms part of it; but that where it is used for the purpose of covering an open gallery it does not.

(3) Labeo says that a widow is not only a woman who has been married at some time, but also one who has not had a husband; for the term is also applied to a person who is idiotic or insane, and the word also means without the union of two persons.

(4) Labeo also says, that a building composed of boards erected for the purpose of protecting any place during the winter, and which is removed in the summer, is a house; as it is designed for perpetual use, although it is not attached to the soil, for the reason that it is removed for a part of the time.

243. *Scsevola, Digest, Book XVIII.*

Scsevola gave it as his opinion that it was generally accepted that those persons should be understood to be included in the term "freedmen" who have been manumitted under a first or a succeeding will, unless he by whom they were claimed could clearly show that this is contrary to the intention of the deceased.

244. *Labeo, Epitomes of Probabilities by Paulus, Book IV.*

A penalty is a fine, and a fine is a penalty.

Paulus: Both of these statements are false; for the difference between these things is apparent from the fact that an appeal cannot be taken from a penalty, for where anyone is convicted of an offence, the penalty for it is fixed, and must be paid at once; but an appeal can be taken from a fine, for it is not due unless an appeal is not taken, or the appellant loses his case; and it is the same as if the judge had passed upon it who was authorized to do so.

Hence, the difference between these things becomes apparent, because certain penalties are prescribed for certain illegal acts; but this is not the case with fines, as the judge has power to impose any fine he pleases, unless the amount which he may impose is fixed by law.

245. *Pomponius, Epistles, Book X.*

Statues attached to their pedestals, pictures hung by chains or fastened to the walls, and lamps similarly affixed, do not form part of a house; for they are rather placed there as ornaments than as constituting parts of buildings.

(1) Labeo also says that the wall usually placed in front of a house constitutes a part of it.

246. *The Same, Letters, Book XVI.*

It is stated in the "Probabilities" of Labeo that the expression "To produce" has reference to the exhibition in court of the property in dispute. For anyone who appears in person does not, for that reason,

produce the property in dispute; and he who produces a person who is either dumb, insane, or an infant, is not considered to produce him at all; for no one of this kind can, under any circumstances, properly be said to be present.

(1) The term "restitution" has reference not only to the body of the thing itself, but also to every right and condition attaching to it; hence complete restitution is meant by the law.

## TITLE XVII.

## CONCERNING DIFFERENT RULES OF ANCIENT LAW.

1. *Paulus, On Plautius, Book XVI.*

A rule is a statement, in a few words, of the course to be followed in the matter under discussion. The law, however, is not derived from the rule, but the rule is established by the law. Hence, a short decision of the point in question is made by the rule; or, as Sabinus says, a concise explanation of the case is given, which, however, in other instances to which it is not applicable loses its force.

2. *Ulpianus, On Sabinus, Book I.*

Women are excluded from all civil or public employments; therefore they cannot be judges, or perform the duties of magistrates, or bring suits in court, or become sureties for others, or act as attorneys.

(1) A minor, also, must abstain from all civil employments.

3. *The Same, On Sabinus, Book HI.*

He who can consent openly can likewise do so by not refusing.

4. *The Same, On Sabinus, Book VI.*

He is not considered to give his full consent who obeys the command of his father or his master.

5. *Paulus, On Sabinus, Book II.*

In business transactions, the condition of an insane person is one thing, and that of a minor beyond the age of infancy is another, although neither may perfectly understand what is

required of him, for an insane person cannot transact any business whatever, but a minor can attend to anything of this kind with the authority of his guardian.

6. *Ulpianus, On Sabinus, Book VII.*

A person does not wish to be an heir who is willing that an estate should be transferred to another.

7. *Pomponius, On Sabinus, Book III.*

Our law does not suffer anyone who is in civil life to die both testate and intestate, for there is a natural antagonism between the two terms.

8. *The Same, On Sabinus, Book IV.*

The rights of blood cannot be annulled by any Civil Law.

9. *Ulpianus, On Sabinus, Book XV.*

In matters which are obscure, we always follow the one which is the least ambiguous.

10. *Paulus, On Sabinus, Book HI.*

It is in accordance with nature that he should enjoy the benefit of anything who pays the expenses attaching to it.

11. *Pomponius, On Sabinus, Book V.*

That which is ours cannot be transferred to another without our consent.

12. *Paulus, On Sabinus, Book III.*

In the interpretation of wills, the intention of the testator should be liberally construed.

13. *Ulpianus, On Sabinus, Book XIX.*

He is not considered to have acquired anything whose claim is barred by an exception.

14. *Pomponius, On Sabinus, Book V.*

In all obligations in which the time of payment is not inserted, the debt is due immediately.

15. *Paulus, On Sabinus, Book IV.*

Anyone who has a right of action to recover property is considered to have possession of the same.

16. *Ulpianus, On Sabinus, Book XXI.*

A sale is not fictitious when the price is agreed upon.

17. *The Same, On Sabinus, Book XXIII.*

When a time is prescribed by a will, it is considered to have been inserted for the benefit of the heir, unless the intention of the testator was otherwise; as in the case of stipulations, where time is granted in favor of the promisor.

18. *Pomponius, On Sabinus, Book VI.*

When legacies pass to our heirs after our death, they will benefit those under whose control we were at the time that we acquired them. The case is different where we make stipulations; for if we stipulate under a condition, we will acquire the property, for the same parties under all circumstances, even if the condition should be fulfilled after we have been released from the authority of a master.

Paulus: When a son under paternal control stipulates under a condition, and is then emancipated, and the condition is afterwards fulfilled, an action will lie in favor of his father, because, in the case of stipulations, the time when we contract is taken into account.

19. *Ulpianus, On Sabinus, Book XXIV.*

Anyone who makes an agreement with another either is not ignorant or should not be ignorant of his condition; the heir, however, cannot be blamed under such circumstances, as he did not voluntarily contract with the legatees.

(1) An exception on the ground of fraud does not usually operate as a bar to those who are not excluded by the will of the testator.

20. *Pomponius, On Sabinus, Book VII.*

Whenever the meaning of a grant of freedom is doubtful, a decision must be rendered in favor of liberty.

21. *Ulpianus, On Sabinus, Book XXVII.*

He who is permitted to do more shall be allowed to do less.

22. *The Same, On Sabinus, Book XXVIII.*

No obligation will bind anyone of a servile condition.

(1) The rule is generally approved that, wherever, in *bona fide* agreements, a condition is left to the decision of the owner of the property, or his agent, this is understood to be done in accordance with the judgment of a good citizen.

23. *The Same, On Sabinus, Book XXIX.*

Certain contracts only involve fraud, others involve both fraud and negligence. Those which involve fraud are deposits and transfers under a precarious title; those which involve both fraud and negligence are mandate, loan for use, sale, pledge, hiring, and also the bestowal of dowry, guardianship, and the transaction of business. (The 'two last, however, demand extraordinary diligence.)

Partnership and joint-ownership of property involve both fraud and negligence. This, however, is the case only where nothing has been expressly agreed upon for either more or less in the different contracts ; for what was agreed upon in the beginning must be observed, since the contract imposes a law; except where, as Celsus says, the contract would not be valid if it was agreed that no fraud should be committed, for this is contrary to the good faith attaching to contracts; and this is our present practice.

No responsibility, however, is assumed in the case of accidents to animals, or their death, or to anything else that happens which is not due to negligence; or with reference to the flight of slaves whom it was not customary to guard, robbers, tumults, fires, inundations, and the attacks of thieves.

24. *Paulus, On Sabinus, Book V.*

Whenever the interest of anyone is concerned, it is a question of fact, and not one of law.

25. *Pomponius, On Sabinus, Book XI.* Real is better than personal security.

26. *Ulpianus, On Sabinus, Book XXX.*

Anyone who has the right to alienate property against the consent of a person who is present has a much better right to do so when he is ignorant of the fact, and absent.

27. *Pomponius, On Sabinus, Book XVI.*

Nothing prescribed either by the praetorian or the Civil Law can be changed by the agreement of private individuals; although the basis of the obligation may be altered by mutual consent, by operation of the law itself, and by the pleading of an exception on the ground of an informal agreement; for the reason that the cause of an action conferred either by the law or by the Praetor is not annulled by the agreement of private individuals, unless it was made

between them at the time when the suit was brought.

28. *Ulpianus, On Sabinus, Book XXXVI.*

The Divine Pius stated in a Rescript that those who were sued on account of a display of liberality could only have judgment rendered against them for an amount which they were able to pay.

29. *Paulus, On Sabinus, Book Vill.*

Anything which is void in the beginning cannot be remedied by lapse of time.

30. *Ulpianus, On Sabinus, Book XXXVI.* Consent and not cohabitation constitutes marriage.

31. *The Same, On Sabinus, Book XLII.*

It is true that neither agreements nor stipulations can abrogate an act which has already been performed; for whatever is impossible cannot be included in an agreement or a stipulation in such a way as to render a praetorian action or agreement effective.

32. *The Same, On Sabinus, Book XLIII.*

So far as the Civil Law is concerned, slaves are not considered persons, but this is riot the case according to natural law, because natural law regards all men as equal.

33. *Pomponius, On Sabinus, Book XXII.*

Where either the plaintiff or the defendant attempts to prove a lucrative title, the case of the plaintiff is the more difficult to establish.

34. *Ulpianus, On Sabinus, Book XLII.*

In all stipulations and other contracts, we follow the intention of the parties; and if it is not apparent what their intention was, we observe the custom of the place where the transaction was concluded. But what rule should be adopted if the custom of the place did not settle anything, because it varied? In this instance, the smallest amount should be exacted.

35. *The Same, On Sabinus, Book XLVHI.*

Nothing is so natural as that an obligation should be abrogated in the same way in which it was contracted; therefore a verbal obligation is abrogated by words, and one based upon the mere consent of the parties is annulled by the dissent of both.

36. *Pomponius, On Sabinus, Book XXVII.*

It is culpable to interfere in something with which one has no concern. '

37. *Ulpianus, On Sabinus, Book LI.*

Anyone who has the power to condemn has also the power to acquit.

38. *Pomponius, On Sabinus, Book XXIX.*

Just as an heir should not be liable to a penalty incurred by the deceased for a crime, so also he should not profit by anything which may come into his hands on account of the crime.

39. *The Same, On Sabinus, Book XXXII.*

In every instance, an act is considered as having been performed, where anyone is prevented from performing it by another.

40. *The Same, On Sabinus, Book XXXIV.*

An insane person, and one who is forbidden to manage his property, has no will.

41. *Ulpianus, On the Edict, Book XXVI.*

Anything which a plaintiff is not allowed to do is not permitted the defendant.

(1) Where the right to property is obscure, it is better to favor the party who attempts to recover it than he who is striving to obtain it for the first time.

42. *Gaius, On the Provincial Edict, Book IX.*

Those who succeed to another have good reason to plead ignorance as to whether what is demanded is due or not. Sureties, also, as well as heirs, can allege ignorance as an excuse. This, however, only applies to an heir when he is sued, and not when he brings the action; for it is clear that anyone who brings suit must be informed, for it is in his power to do so when he wishes, and he should, in the first place, carefully examine the claim, and then proceed to collect it.

43. *Ulpianus, On the Edict, Book XXVIII.*

No one who denies that he owes anything is prevented from making any other defence unless the law prohibits it.

(1) Whenever several actions can be brought for the same thing, one alone should be employed.

44. *The Same, On the Edict, Book XXIX.*

We grant an action against an heir for the amount by which he has profited through the fraud of the deceased, but this does not apply to any fraud of his own.

45. *The Same, On the Edict, Book XXX.*

Neither the pledge, nor the deposit, nor possession by a precarious title, nor the purchase, nor the hiring of one's own property, can stand.

(1) The agreement of private individuals does not affect public law.

46. *Gaius, On the Provincial Edict, Book X.*

No one is compelled to make restitution of anything which has been exacted by way of penalty.

47. *Ulpianus, On the Edict, Book XXX.*

No obligation is incurred by giving advice which is not fraudulent; if, however, it should be given with fraudulent and deceitful intent, an action for fraud will lie.

(1) The partner of my partner is not mine.

48. *Paulus, On the Edict, Book XXXV.*

Anything which is done or said in the heat of anger is not considered of any effect, unless the perseverance of the party in question discloses the condition of his or her mind. Therefore, when a wife returns after a short time, she is not considered to have been divorced.

49. *Ulpianus, On the Edict, Book XXXV.*

The cheating of one person does not afford ground to another for an action when he was not affected by it.

50. *Paulus, On the Edict, Book XXXIX.*

He is free from blame who is aware of a breach of the law being committed, but is unable to prevent it.

51. *Gaius, On the Provincial Edict, Book XV.*

No one is considered to acquire something which he is obliged to deliver to another.

52. *Ulpianus, On the Edict, Book XLIV.*

Not only he who conceals himself is considered not to defend a case, but also he who, being

present, refuses to defend himself or is unwilling to proceed.

53. *Paulus, On the Edict, Book XLII.*

A person has a right to recover money which he has paid by mistake, but where he pays it designedly it is considered a donation.

54. *Ulpianus, On the Edict, Book XLVI.*

No one can transfer to another a right which he himself does not possess.

55. *Gaius, On Wills Relating to the Urban Edict, Book II.* No one is considered to commit a fraud who does what he has a right to do.

56. *The Same, On Legacies Relating to the Urban Edict, Book III.*

In questions which are doubtful, the more benevolent opinion should always obtain the preference.

57. *The Same, On the Principal Edict, Book XVIII.*

Good faith does not permit the same debt to be collected twice.

58. *Ulpianus, Disputations, Book II.*

An action *De peculia* is not usually granted against a father in criminal cases.

59. *The Same, Disputations, Book HI.*

′, It is decided that an heir has the same authority and rights that were enjoyed by the deceased.

60. *The Same, Disputations, Book X.*

He is always understood to direct something to be done who does not prevent another from intervening in his behalf. If, however, anyone who did not consent should ratify a transaction, he will be liable to an action on mandate.

61. *The Same, Opinions, Book HI.*

Anyone has the right to repair his own house, provided he does not do so against the consent of another, on land to which he has no right.

62. *Julianus, Digest, Book VI.*

Inheritance is nothing more than succession to every right enjoyed by the deceased.

63. T/Te *Same, Digest, Book XVII.*

Anyone who, without fraudulent intent, proceeds to trial, is not held to be in default of payment.

64. *The Same, Digest, Book XXIX.*

Anything which rarely occurs should not rashly be considered in the transaction of business.

65. *The Same, Digest, Book LIV.*

The species of sophistry which the Greeks designate a "concise syllogism" is where from premises which are evidently true, by means of trifling changes, conclusions are deduced which are clearly false.

66. *The Same, Digest, Book LX.*

Marcellus says that he ceases to be a debtor who obtains a legal exception, and one which is not contrary to natural equity.

67. *The Same, Digest, Book LXXXVII.*

Whenever a sentence has two meanings, that should be accepted which is the better adapted to the case.

68. *Paulus, On the Recovery of a Dowry.*

In every instance it should be observed that when the condition of a person affords ground for an advantage, and it is lacking, the advantage also disappears; but where the action requires it, anyone can prosecute it, and the ground for the advantage remains.

69. *The Same, Concerning the Assignment of Freedmen.*

A benefit is not conferred upon a person who is unwilling to accept it.

70. *The Same, On the -Duties of Proconsul, Book II.*

No one upon whom has been conferred the right to sentence an offender to death, or to any other punishment, can transfer his authority to another.

71. *The Same, On the Duties of Proconsul, Book II.*

Everything which requires an investigation cannot be settled by means of a petition.

72. *Javolenus, On the Last Works of Labeo, Book III.* The profits of any kind of property can be given in pledge.

73. *Quintus Mucius Scsevola, Rules.*

Guardianship is derived from the right of inheritance, except where there are female heirs.

(1) No one can appoint a guardian for anyone except for his proper heirs, or unless he had such heirs at the time of his death, or would have had them if he had lived.

(2) That is considered to be done with violence which anyone does after having been prohibited; and he acts clandestinely who proceeds without the knowledge of the other party, if he has a controversy with him, or thinks that he will have one.

(3) Anything which is stated in a will in such a way that it cannot be understood is just the same as if it had not been mentioned at all.

(4) No one can benefit another to the detriment of a third party, either by an agreement, by prescribing a condition, or by entering into a stipulation.

74. *Papinianus, Questions, Book 7.*

An unjust condition should not be imposed by one person upon another.

75. *Papinianus, Questions, Book V.*

No one can change his mind to the injury of another.

76. *The Same, Questions, Book XXIV.*

No transactions which require the consent of the parties interested can be carried out, unless actual and positive proof of this exists.

77. *The Same, Questions, Book XXVIII.*

Lawful acts which are not dependent upon time or a condition, as, for instance, emancipation, release, the acceptance of an estate, the choice of a slave, the appointment of a guardian, are absolutely annulled by the addition of time, or a condition. Occasionally, however, the above-mentioned acts become tacitly operative under circumstances which, if openly stated, would render them void. For when anyone absolutely acknowledges the receipt of something which was promised him under a condition, his release will be considered valid if the condition of the obligation should be fulfilled; where, however, the condition of the release was expressly

stated, the transaction will be of no force or effect.

78. *The Same, Questions, Book XXXI.*

Generally speaking, when any question arises with reference to a fraud, not what the plaintiff has in his hands, but what he might have had, if it had not been for his adversary, should be taken into consideration.

79. *The Same, Questions, Book XXXII.*

The establishment of the existence of fraud, according to the Civil Law, does not always depend upon the event, but whether there was an intention to commit it.

80. *The Same, Questions, Book XXXIII.*

In all legal matters, the species takes precedence of the genus, and whatever has reference to it is considered of the most importance.

81. *The Same, Opinions, Book III.*

Whatever is inserted in contracts for the purpose of removing ambiguity does not prejudice the Common Law.

82. *The Same, Opinions, Book IX.*

Anything is considered to be donated which is given without the compulsion of law.

83. *The Same, Definitions, Book II.*

No one is considered to have lost something if it did not belong to him.

84. *The Same, Questions, Book V.*

When more is paid than is due, and it is not possible to deduct the surplus, the entire debt is understood to be unpaid, and the former obligation will continue to exist.

(1) He in whose honesty we have confided owes by natural law what he owes by the Law of Nations.

85. *The Same, Questions, Book VI.*

When any doubt arises, it is better to decide in favor of the dowry.

(1) It is no new principle that whatever has once been decided to be valid, will stand; although a case may arise in which a beginning could not have been made.

(2) Whenever either natural reason, or doubt of the law is opposed by equity, moderation must be observed in rendering a decision.

86. *The Same, Questions, Book VII.*

The condition of those who engage in litigation is not usually made worse than if they had not undertaken it, but for the most part it is improved.

87. *The Same, Questions, Book XIII.*

No one, by attempting to recover his property, makes his case worse, but he improves it. Finally, after issue has been joined, the right passes to the heir, and the heir is also liable under all circumstances.

88. *Scsevola, Questions, Book V.*

No one is understood to be in default where the claim is void.

89. *Paulus, Questions, Book X.*

As long as a will is valid, the heir at law is not admitted to the succession.

90. *The Same, Questions, Book XV.*

In all matters, and especially in those relating to the law, equity must be considered.

91. *The Same, Questions, Book XVII.*

Whenever a succession belongs to anyone by a double right, if the more recent one should be rejected, the older one will remain.

92. *Scsevola, Opinions, Book V.*

If a copyist makes a mistake in transcribing a stipulation, this will not prevent the debtor and the surety from being liable.

93. *Msscianus, Trusts, Book I.*

A son under paternal control is considered neither to retain, to recover, nor to acquire possession of his *peculium.*

94. *Ulpianus, Trusts, Book II.*

It is not usual for superfluous matter to vitiate a document.

95. *The Same, Trusts, Book VI.*

No one doubts that he should be considered solvent who is defended.

96. *Msecianus, Trusts, Book XII.*

When an instrument is ambiguous, the intention of the party who produced it should be considered.

97. *Hermogenianus, Epitomes of Law, Book HI.* The sentence of deportation, alone, deprives a person of his property, which is confiscated by the Treasury.

98. *The Same, Epitomes of Law, Book IV.*

Whenever property is claimed by two persons under a lucrative title, he whose title to the same is the more ancient should have the preference.

99. *Venuleius, Stipulations, Book XII.*

No one can be considered dishonest who does not know how much he ought to pay.

100. *Gaius, Rules, Book I.*

Any obligation contracted under one law is annulled by a contrary law.

101. *Paulus, On Judicial Inquiries.*

When the law mentions the term of two months, and the party appears on the sixty-first day, he should be heard; for this the Emperor Antoninus and his Divine Father stated in a Rescript.

102. *Ulpianus, On the Edict, Book I.*

Anyone who commits an act against the order of the Prsetor is properly said to have violated the Edict.

(1) He has the right to refuse an action, who can also grant it.

103. *Paulus, On the Edict, Book I.*

No one can be taken by force from his own house.

104. *Ulpianus, On the Edict, Book II.*

Where two actions are brought, in one of which a large sum is claimed as damages, and in the other an infamous charge is made, the one which affects the party's reputation is entitled to the preference. But where both actions are such that the sentences will brand the defendant with

infamy, they should both be considered to be of the same importance, even though the amounts involved are unequal.

105. *Paulus, On the Edict, Book I.*

Whenever a judicial inquiry is demanded, recourse must be had to the Prsetor.

106. *The Same, On the Edict, Book II.* Liberty is a possession of inestimable value.

107. *Gaius, On the Provincial Edict, Book I.* No action at law can be brought against a slave.

108. *Paulus, On the Edict, Book IV.*

In inflicting penalties, the age and inexperience of the guilty party must always be taken into account.

109. *The Same, On the Edict, Book V.*

He is not an accomplice in a crime who does not prevent it from being committed when he is unable to do so.

110. *The Same, On the Edict, Book VI.* The less is always included in the greater.

(1) No one is considered to be legally responsible for another, unless he gives security.

(2) A minor is not considered to have consented to something to his injury.

(3) Where two sentences in a contract referring to the same thing are not connected, it is sufficient for one of them to be complied with.

(4) Relief should be granted to women for their protection, but not to enable them the more readily to impose upon others.

111. *Gaius, On the Provincial Edict, Book II.*

A minor who is near the age of puberty is capable of theft and the commission of injury.

(1) Penal actions growing out of breaches of the law do not pass against the heir, as, for instance, those of theft, wrongful damage, robbery with violence, and injury.

112. *Paulus, On the Edict, Book Vill.*

It makes no difference, so far as the result is concerned, whether anyone is not entitled to an action under the law, or whether he may be barred by an exception.

113. *Gaius, On the Provincial Edict, Book HI.* A part is included in the whole.

114. *Paulus, On the Edict, Book IX.*

When words are ambiguous, their most probable or ordinary signification should be adopted.

115. *The Same, On the Edict, Book X.*

Where anyone is released from an obligation, his creditor is presumed to have received his money.

(1) He cannot be considered to have obtained anything who, having made a stipulation, can be barred by an exception.

116. *Ulpianus, On the Edict, Book XI.*

Nothing is so opposed to consent, which is the basis of *bona fide* contracts, as force and fear; and to approve anything of this kind is contrary to good morals.

(1) He is not taken advantage of who conforms to the public law.

(2) Those who make mistakes are not considered to consent.

117. *Paulus, On the Edict, Book XI.*

The Prsetor considers the possessor of an estate under the Edict as taking the place of the heir in every respect.

118. *Ulpianus, On the Edict, Book XII.*

Anyone who is in servitude cannot acquire property by usucaption; for even when he has possession, he is not considered to hold it legally.

119. *The Same, On the Edict, Book XIII.*

He does not alienate who merely fails to obtain possession.

120. *Paulus, On the Edict, Book XII.*

No one can leave to his heir any rights which he himself does not possess.

121. *The Same, On the Edict, Book XIII.*

He who does not do what he should is considered to have violated his duty; and he who does what he ought not to do is understood not to do what was enjoined upon him.

122. *Gaius, On the Provincial Edict, Book V.* Liberty is favored above all things.

123. *Ulpianus, On the Edict, Book XIV.*

No one can legally bring suit in the name of another.

(1) A temporary change does not injuriously affect the rights of a province.

124. *Paulus, On the Edict, Book XVI.*

In transactions where not speech, but the presence of the party is required, a dumb person who has intelligence can be considered to answer.

The same rule applies to one who is deaf, for he also can answer.

(1) Pomponius, in the First Book says: "An insane person occupies the same position as one who is absent."

125. *Gaius, On the Provincial Edict, Book V.*

Defendants are regarded with greater favor than plaintiffs.

126. *Ulpianus, On the Edict, Book XV.*

No one is a depredator who pays the price of what he obtains. (1) He who acquires a freedman does not become any more wealthy on this account.

(2) When a question arises with reference to the claims of two persons, the position of the possessor is preferable.

127. *Paulus, On the Edict, Book XX.*

When the Prsetor grants an action against an heir for the amount by which he has profited, it is sufficient if the computation be made from the time when the property obtained by the fraud of the deceased came into his hands.

128. *The Same, On the Edict, Book XIX.*

When two persons hold property by the same title, the possessor has the advantage.

(1) Those who succeed to the entire rights of anyone are considered to occupy the place of his heirs.

129. *The Same, On the Edict, Book XXI.*

A creditor is not guilty of fraud who receives that to which he is entitled.

(1) When the principal thing ceases to exist, its accessories also disappear.

130. *Ulpianus, On the Edict, Book XVIII.*

Actions, and especially penal ones, which have reference to the same subject, never abrogate one another.

131. *Paulus, On the Edict, Book XXII.*

Anyone who fraudulently relinquishes possession has judgment rendered against him as the possessor, because his fraud renders him liable as possessor.

132. *Gaius, On the Provincial Edict, Book VII.* Ignorance is classed as negligence.

133. *The Same, On the Provincial Edict, Book Vill.*

Our condition can be improved by our slaves, but it cannot be rendered worse.

134. *Ulpianus, On the Edict, Book XXL*

Creditors are not defrauded when nothing is acquired by their debtor, but only when his property is diminished.

(1) No one can improve his condition by means of a crime.

135. *The Same, On the Edict, Book XXIII.*

Property cannot be delivered which either does not exist or which is not considered as included in the contract.

136. *Paulus, On the Edict, Book XVIII.*

Good faith concedes as much to a possessor as he is really entitled to, whenever the law does not prevent this from being done.

137. *Ulpianus, On the Edict, Book XXV.*

He who obtains anything by the authority of a court is a *bona fide* possessor.

138. *Paulus, On the Edict, Book XXVII.*

Every estate, even though subsequently entered upon, is considered to have been accepted at the time of the death of the deceased.

(1) The gravity of an offence never increases on account of the time which has elapsed since it was committed.

139. *Gaius, On the Edict of the Urban Prsetor.*

All rights of action which are extinguished by death or by lapse of time continue to exist when they have once been brought into court.

(1) Nothing is considered to absolutely belong to anyone of which he can be deprived by some event.

140. *Ulpianus, On the Edict, Book LVI.*

The absence of him who is away on business for the State should not prejudice him, or anyone else.

141. *Paulus, On the Edict, Book LIV.*

Anything which is established against a rule of law should not become a precedent.

(1) Two heirs of the same person cannot each become the heir to his entire estate.

142. *The Same, On the Edict, Book LVI.*

He who is silent does not always confess, still, it is true that he does not deny.

143. *Ulpianus, On the Edict, Book LXII.*

Anything which will bar persons who have entered into a contract will also bar their successors.

144. *Paulus, On the Edict, Book LXII.*

Everything which is permissible is not always honorable. (1) In stipulations, the time when we contracted should be considered.

145. *Ulpianus, On the Edict, Book LXVI.*

No one is considered to defraud those who are aware of the facts, and give their consent.

146. *Paulus, On the Edict, Book LXII.*

Whatever anyone did while a slave cannot benefit him after he becomes free.

147. *Gaius, On the Provincial Edict, Book XXIV*. Special matters are always included in general ones.

148. *Paulus, On the Short Edict, Book XVI.*

When the effect of anything benefits all the parties in interest, each of them should also bear his share of the expense.

149. *Ulpianus, On the Edict, Book LXVII.*

Anyone who profits by the acts of another should guarantee them.

150. *The Same, On the Edict, Book LXVIII.*

The legal position of him who has committed fraud in order to obtain possession of, or to hold property, and that of him who has committed it to avoid having possession of or holding property, is necessarily the same.

151. *Paulus, On the Edict, Book LXIV*.

No one commits a wrong against another unless he does something which he has no right to do.

152. *Ulpianus, On the Edict, Book LXIX.*

It is our practice to prosecute as a crime everything which is accomplished by either public or private violence.

(1) He who directs a person to be deprived of possession deprives him of it.

(2) The ratification of the commission of an offence resembles an order to commit it.

(3) In contracts involving fraud or good faith, the heir is liable in full.

153. *Paulus, On the Edict, Book LXV*.

We become liable in the same way as, on the other hand, we are released from contracts; for as we acquire property by certain methods, we also lose it by the same means. Therefore, as possession cannot be obtained except by intention and corporeal exertion, so,none can be lost, unless both these things exist.

154. *Ulpianus, On the Edict, Book LXX.*

When the parties to a suit are guilty of the same crime, the plaintiff labors under a disadvantage, and the position of the possessor is preferable; as is the case when an exception is filed on account of the fraud of the plaintiff, and a reply is not granted to the latter, even if the defendant committed fraud in the same transaction.

(1) He who himself is not guilty should be permitted to collect a penalty from the other party.

155. *Paulus, On the Edict, Book LXV.*

A person is responsible for his own act, and it should not prejudice his adversary.

(1) He is not considered to employ violence who avails himself of his own right, and brings an ordinary action at law.

(2) In penal cases, the most benevolent construction should be adopted.

156. *Ulpianus, On the Edict, Book LXX.*

No one can be compelled to defend another against his will.

(1) Anyone can say that the party to whom we grant actions has much more reason to plead an exception.

(2) When one person succeeds another, it is not just that whatever might have prejudiced the individual whom he succeeded should not also prejudice him.

(3) Generally speaking, a purchaser should have the same right to bring an action, or defend it, that the vendor has.

(4) What is granted to anyone for his own benefit is not bestowed upon him if he refuses to accept it.

157. *The Same, On the Edict, Book LXXI.*

Where a crime or an offence is not classed as atrocious, it will be pardoned in those who commit it, if, as slaves, they have obeyed their masters; or where the offenders have obeyed those who take the place of masters, as, for instance, guardians and curators.

(1) Anyone who commits a fraud for the purpose of relinquishing possession is considered to still retain possession.

(2) In contracts, the successors of those who have been guilty of fraud are not only liable for any profits which they may obtain, but also for the entire amount; that is to say, each one will be liable for his share as heir.

158. *Gaius, On the Provincial Edict, Book XXVI.* A creditor who permits property which has been pledged to be sold loses his lien.

159. *Paulus, On the Edict, Book VII.*

We may be entitled to property by virtue of different obligations, but it cannot belong to us by different titles.

160. *Ulpianus, On the Edict, Book LXXVI.*

It is one thing to sell, and another to consent for the vendor to sell.

(1) Anything which is done publicly by a majority is considered to have been done by all the parties interested.

(2) It is absurd that a person to whom a tract of land has been devised should have a better title to the same than the heir, or the testator himself if he were living.

161. *The Same, On the Edict, Book LXXVII.*

It was a rule adopted by the Civil Law that whenever a party in interest prevents a condition from being complied with, it is considered the same as if it had been fulfilled. This applies to grants of freedom, legacies, and the appointment of heirs; and, under this rule, stipulations also become operative, when, through the act of the promisor, the stipulator is prevented from complying with the condition.

162. *Paulus, On the Edict, Book LXX.*

Any act performed through necessity should not be cited as a precedent.

163. *Ulpianus, On the Edict, Book LV.*

When a person has a right to give anything, he also has the right to sell and alienate it.

164. *Paulus, On the Edict, Book LI.*

Suits which involve a penalty, and have once been brought, can be transmitted against heirs.

165. *Ulpianus, On the Edict, Book LIII.*

He who can alienate property can also consent to its alienation. But where the right to donate it is not granted to a person, the rule should be adopted that his wishes must not be considered, even if he consents to its donation by another.

166. *Paulus, On the Edict, Book XLVIII.*

He who defends the case of another is never considered solvent.

167. *The Same, On the Edict, Book XLIX.*

Anything which, at the time it was given, does not become the property of him who receives it is not considered to have been given at all.

(1) A party who does something by order of a judge is not considered to have committed fraud, because he was obliged to obey.

168. *The Same, On Plautius, Book I.*

That course should be pursued which affords the prospect of the most equitable settlement.

(1) Any question which is doubtful ought to be interpreted according to the intention of the parties in interest.

169. *The Same, On Plautius, Book II.*

He commits a wrong who orders it to be committed. He, however, is not to blame who is compelled to obey.

(1) Anything which is in suspense is not considered to exist.

170. *The Same, On Plautius, Book III.*

Any act of a magistrate which has no reference to his judicial duties is void.

171. *The Same, On Plautius, Book IV.*

No one is liable for a debt on the ground that he can collect from another what he has paid for him.

172. *The Same, On Plautius, Book V.*

In a contract of sale, any sentence of doubtful signification is interpreted against the vendor.

(1) A claim which is ambiguous should be construed in such a way as to be favorable to the plaintiff.

173. *The Same, On Plautius, Book VI.*

When judgment is rendered against anyone to the extent of his means, everything which he had should not be extorted from him; but the rule of law should be observed which does not permit him to be reduced to poverty.

(1) When the expression, "You shall make restitution," is found in a law, the profits must also be restored, even if this is not specially

provided for.

(2) Everyone is prejudiced by his own delay in making payment, which rule is observed where two debtors are jointly liable.

(3) He is guilty of fraud who demands something which he is obliged to return.

174. *The Same, On Plautius, Book Vill.*

He can act who already appears able to comply with the condition.

(1) Anything which a person cannot have, even if he wishes it, he cannot reject.

175. *The Same, On Plautius, Book XI.*

A slave cannot perform any duty which the laws require to be performed by persons who are free.

(1) I should not be in any better condition than the person from whom I derive my rights.

176. *The Same, On Plautius, Book XIII.*

No one is granted the privilege of doing for himself what can be publicly done through a magistrate; and this is prescribed in order to avoid opportunities for promoting disorder.

(1) The value of freedom and relationship is boundless.

177. *The Same, On Plautius, Book XIV.*

He who succeeds to the privileges or ownership of another should avail himself of his legal rights of his predecessor.

(1) No one should be accused of fraud who is ignorant of the reason why he should not bring an action.

178. *The Same, On Plautius, Book XV.*

When the principal thing is no longer in existence, its accessories, generally speaking, also cease to exist.

179. *The Same, On Plautius, Book XVI.*

When the intention of a person granting manumission is obscure, a decision should be rendered in favor of freedom.

180. *The Same, On Plautius, Book XVII.*

Anything which is paid by the order of a creditor is the same as if it had been paid to the latter himself.

181. *The Same, On Vitellius, Book I.*

If no one accepts an estate, the force of the will is entirely destroyed.

182. *The Same, On Vitellius, Book HI.*

When the title to property cannot vest in anyone, no obligation can cause it to do so.

183. *Marcellus, Digest, Book XIII.*

Although the formalities required by law are not easily changed, still relief should be granted where equity clearly demands it.

184. *Celsus, Digest, Book VII.*

The excuse of an empty fear is not a legal one.

185. *The Same, Digest, Book Vill.*

No obligation is binding which is impossible.

186. *The Same, Digest, Book XII.*

Nothing can be demanded before the time when it can be delivered, according to the natural course of things; and when the date of payment is inserted into an obligation, it cannot be collected unless the time has elapsed.

187. *The Same, Digest, Book XVI.*

Where anyone leaves his wife pregnant, he is not considered to have died without children.

188. *The Same, Digest, Book XVII.*

Where two contradictory things are ordered in a will, neither of them will be valid.

(1) Whatever is prohibited by the nature of things cannot be confirmed by any law.

189. *The Same, Digest, Book XIII.*

A minor is not presumed to give his consent, or to refuse it, on account of his age; for the authority of his guardian is necessary in any matter requiring knowledge or judgment.

190. *The Same, Digest, Book XXIV.*

Anything which is evicted is not included in property.

191. *The Same, Digest, Book XXXIII.*

Neratius, having been consulted as to whether a privilege granted by the Emperor to a person whom he believed to be living, but who in fact was already dead, should be considered to take effect, answered that it did not seem to him that the Emperor would have bestowed it if he had known that the grantee was dead, but still that it should be ascertained from him himself, to what extent he intended the privilege to be applicable.

192. *Marcellus, Digest, Book XXIX.*

Property which cannot be divided will be due in its entirety from the heirs, as individuals.

(1) In matters which are ambiguous, it is not less just than safe to adopt the more benevolent interpretation.

193. *Celsus, Digest, Book XXXVIII.*

Almost all the rights of heirs are considered to be the same as if they had become such immediately after the death of the testator.

194. *Modestinus, Differences, Book VI.*

Those who become heirs through a distant degree of relationship to the deceased are considered to be none the less heirs than if they had been of the first degree.

195. *The Same, Differences, Book VII.*

Things clearly stated are prejudicial; others are not.

196. *The Same, Rules, Book Vill.*

Some privileges are real, and some are personal. The former are transmitted to the heir: those which are personal do not pass to him.

197. *The Same, On the Rite of Marriage.*

In matrimonial unions, not only what is lawful but also what is honorable should be considered.

198. *Javolenus, On Cassius, Book XIII.*

Fraud committed by a guardian, whether he is solvent or not, should not prejudice the rights of his ward in an interdict, or in any other legal proceeding.

199. *The Same, Epistles, Book VI.*

He cannot be considered to be free from fraud who refuses to obey the order of a magistrate.

200. *The Same, Epistles, Book VII.*

Whenever a decision cannot be rendered without causing injury, that course should be adopted which is productive of the least injustice.

201. *The Same, Epistles, Book X.*

Every provision contained in a will is not considered to have any effect, unless it was valid at the time it was made.

202. *The Same, Epistles, Book XL*

Every definition in the Civil Law is subject to modification, for a slight discrepancy may render it inapplicable.

203. *Pomponius, On Quintus Mucius, Book Vill.* He who sustains any damage through his own fault is not considered to have been injured.

204. *The Same, On Quintus Mucius, Book XXVIII.* It is less advantageous to have a right of action than to have the property which is the subject of it.

205. *The Same, On Quintus Mucius, Book XXXIX.*

It frequently happens that property of which we can, under certain circumstances, be deprived, is in such a condition as to be incapable of being taken from us. Hence, if we have become liable to the Treasury by encumbering a tract of land, we can sometimes bring an action to recover it, alienate it, and impose a servitude upon it.

206. *The Same, On Various Passages, Book IX.*

It is but just, and in accordance with the Law of Nations that no one, by the commission of an injury, can be enriched at the expense of another.

207. *Ulpianus, On the Lex Julia et Papia, Book I.*

Where a matter has been decided, it is considered as true.

208. *Paulus, On the Lex Julia et Papia, Book XIII.*

No one can be considered to have lost something which he never had.

209. *Ulpianus, On the Lex Julia et Papia, Book IV.* We, to a certain extent, compare slavery with death.

210. *Licinius Rufinus, Rules, Book II.*

When the appointment of an heir is void from the beginning it cannot be rendered valid by lapse of time.

211. *Paulus, On the Edict, Book LXIX.*

A slave cannot be absent on business for the State.

END OF THE FIFTIETH BOOK.