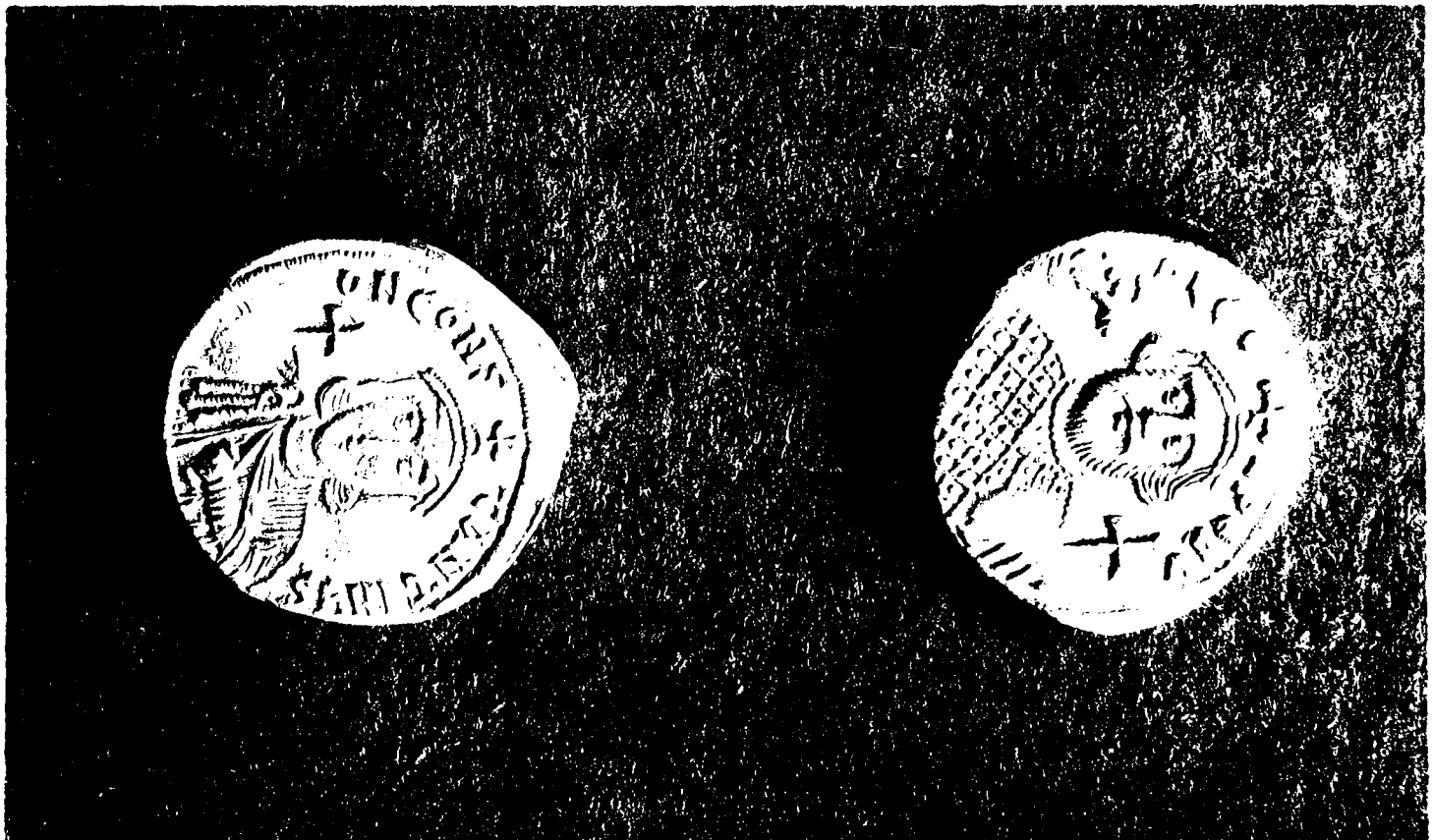
A MANUAL OF ROMAN LAW

THE ECLOGA



LEO III

and

CONSTANTINE V.

Gold Nomismata.

A MANUAL OF ROMAN LAW

THE ECLOGA

PUBLISHED BY THE EMPERORS

LEO III AND CONSTANTINE V

OF ISAURIA

AT CONSTANTINOPLE

A·D· 726

RENDERED INTO ENGLISH

BY

EDWIN HANSON FRESHFIELD

M·A·

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MCMXXVI

TO

MY FRIEND

JOHN B. BURY

REGIUS PROFESSOR
OF HISTORY
AT CAMBRIDGE

THESE PAGES
ARE AFFECTIONATELY
DEDICATED

PREFACE

STUDENTS of Later Roman History are aware that in the beginning of the eighth century the Emperor Leo III of Isauria undertook to revise the laws compiled by Justinian, and at the same time to publish a synopsis or hand-book of law in Greek for the use of his subjects who did not know Latin. By that time knowledge of Latin was confined to the scholars of Constantinople. To this synopsis the name Ecloga was given, and the revised and simplified laws set forth in it remained in force for about one hundred and fifty years, that is till the middle of the ninth century. The Ecloga was then superseded by a new revision of the laws made by the Emperor Basil the Macedonian and his son Leo VI the Philosopher. In anticipation of their new Code, to which the name 'Basilika' was given, these Emperors, like their Isaurian predecessors, published another hand-book or synopsis known to us as the Epanagoge.

I am at present only concerned with the Ecloga which, as the preamble to the Epanagoge shows, the Macedonian Emperors purposely and ostentatiously ignored as a compilation of laws, mainly owing to the unpopularity of their Isaurian predecessors. We know from other sources that no pains were spared to obliterate all traces of the unpopular Isaurian reforms in the Church and in the Law, and the Ecloga is only referred to by Basil to disparage and belittle the memory of its author. It is certain that the religious

treatises compiled by the Isaurians were purposely destroyed, and there is reason to suspect that their legal works were treated in the same way. It seems likely that the manuscript texts which have come down to us, and there are not many of them, were preserved accidentally through a mistake in the identity of their authors.

The circumstances in which the Isaurian law came to be known in Western Europe appear to be these.

In the middle of the sixteenth century, while Sicily and Calabria formed part of the Spanish dominions of Philip II, an attempt was made to reform the Greek Basilian monasteries in those provinces. This reform was undertaken by a certain Cardinal Sileto, the prefect of the Congregation for the Reform of the Greek rite, attached to the Vatican. The Cardinal appears to have been a man of considerable erudition and a bibliophile, and under his auspices the books of the libraries of the lesser monasteries were collected and deposited in one or other of the principal monasteries, notably St Salvatore dei Greci at Messina. At a later date in the sixteenth century they were brought to Rome, and in 1780 eventually found a home in the Vatican and Grotta Ferrata. In 1826 and 1830 a list of these manuscripts in the Vatican was made by Cardinal Mai (Vat. Lat. 9582). Another list of the manuscripts found in these Sicilian and Calabrian monasteries was published in 1891 by Monseigneur Batiffol.

The first printed edition of the Ecloga was made by J. Leunclavius (Johann Loewenklau). He was a friend and companion of Stefan Gerlach the chaplain

of the Embassy of the Emperor Maximilian II to the Courts of Sultans Selim II and Murad III in Constantinople, from 1573 to 1578. To their two names should be added that of Martin Crusius, professor at the University of Tübingen, with whom S. Gerlach corresponded. During his travels, probably at Constantinople and under the auspices of Gerlach, Leunclavius came across a manuscript of the Ecloga and published it, with a Latin translation, at Frankfort in 1596. The volume contains some other legal treatises and a miscellaneous collection of documents.

The next publication was made by Zachariä von Lingenthal in 1852. With the Ecloga he included the Epanagoge and some other manuscripts of the Isaurian and Basiliian laws, including the Ecloga privata aucta, and the Ecloga ad Procheiron mutata, found among the manuscripts from Sicily and Southern Italy. The Greek texts only are given.

The last publication was made in 1889 by A. Monferratus from a manuscript discovered by him in the Athens National Library, found in a monastery in Epirus. This text is only given in Greek. I have adopted it for making this translation, using the versions of Leunclavius and Zachariä von Lingenthal when the Athens manuscript was defective or difficult to interpret.

I have adopted Monferratus' text for two reasons. First because it is the earliest in point of date; and next because the manuscript at Athens, including the Appendix of the Mosaic law, appears to be the counterpart of one of the manuscripts found at St Salvatore dei Greci. I take the title of it from Mon.

Batiffol's list: '*Legales Constitutiones Leonis et Constantini fidelium regum, ubi sunt Quædam aliæ constitutiones Irenis regis; aud, Capita secundum Mosaicæ Scripturæ collectio a Deo per legem Moysi datam Israelitis de judicio et justitia Exodi.*'

It is not without some reluctance that I have omitted the first ten chapters of Leunclavius' text. These chapters relate to the office and duties of the Emperor, the Patriarch, and other high officials, and are interesting. But they do not figure either in the Athens manuscript or in the text published by Zachariä von Lingenthal. Otherwise the title, preamble, and chapters 11 to 19 and 28 in Leunclavius', and the whole of Z. von Lingenthal's text correspond, minor verbal differences apart, with the Athens manuscript.

It is my present intention to translate these chapters and with them the Ecloga ad Prochieron mutata, on a future occasion.

I accept the dates of these three texts of the Ecloga with reserve. We are dependent on the accuracy of the scribe, and Sileto's report shows that the Calabrian and Sicilian monks, of his day at any rate, were not good scholars.

The date of the original edition as given in the Athens manuscript is A.M. 6234, or A.D. 726, of Z. von Lingenthal's text, A.M. 6249, or 741 A.D., and of Leunclavius', A.M. 6347, or A.D. 839. The first two dates fall in the reign of Leo III and the third in that of the Amorian Emperor Theophilus. In any case the existing manuscripts now available were made many centuries after the original version of the Ecloga

first saw the light of day. The Athens manuscript is attributed to the later thirteenth century.

It is perhaps hardly necessary for me to point out the important place which the Ecloga occupies in Later Roman law, more particularly in South Italy where it came in practical contact with the laws of the Lombards and the Normans.

Leo III marked a new chapter in Roman history, and in the Ecloga we perceive a change in Roman ideas and ideals of which Leo was perhaps less the author than the exponent. It is the first book on Roman laws, as distinguished from occasional Edicts, in which a Roman Emperor uses Greek and not Latin as the official language; he speaks of himself as the Basileus and of his Empire and his subjects as Romaic and Romaioi. It is moreover the first Christian law book, the first, as the Emperor explains in his title and preamble, in which an attempt was professedly made to introduce into Roman law some of the principles of Christian equity.

I have acknowledged my indebtedness to the various authors consulted in a note at the conclusion of the list of books, and I have dedicated this book to my friend Professor Bury to whom I owe all I know on Later Roman history, and who has very kindly helped me to render some of the passages in the translation.

E·H·F

1925

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INTRODUCTION

I

The Ecloga begins with the following title:

'A SELECTION OF LAWS ARRANGED IN A BRIEF AND COMPENDIOUS FORM BY LEO AND CONSTANTINE THE WISE AND PIOUS EMPERORS TAKEN FROM THE INSTITUTES, THE DIGESTS, THE CODE AND THE NOVELS OF THE GREAT JUSTINIAN, AND IMPROVED IN THE DIRECTION OF HUMANITY, EDITED IN THE MONTH OF MARCH, 9TH INDICTION, IN THE YEAR OF THE WORLD 6234.'

We learn from this title the authorship, the sources, and the purpose of this new compilation which was intended to be a practical hand-book of the Imperial laws.

Leo and Constantine, the third and the fifth of the Roman Emperors known to us by those names, were father and son. From Theophanes, our principal authority for the events of this obscure period, we learn that they were colonial Romans from the Taurus Mountains in Eastern Asia Minor, and that their family migrated, or was transplanted by the Emperor Justinian II, Rhinotmetos, from their Isaurian home to Mesymbria in Thrace. It is there that we first hear of Leo as a soldier, and, having won favourable notice, Justinian II raised him to the rank of aide-de-camp. We may, I think, infer that he was about forty years old at his accession in 717. The effigy on his coin

reproduced in the frontispiece is no doubt a portrait. Constantine, his son, was born in the following year, and two years later was raised to the rank of Augustus and received the Diadem.

The Emperors are termed *Basileis*. Some interest attaches to the use of this word to describe their title. Upon the coins they are invariably called '*Dominus noster*,' or, as in the case of Leo III, merely '*Dominus*.' But their official title in Latin was *Imperator*. The Greek word used was *Autokrator*. An alternative title in Latin was *Princeps* and the colloquial Greek word was *Basileus*. This title was conceded to the kings of Persia and Abyssinia. But after the conquest of Persia by Heraclius, when the Persian king became a Roman vassal, *Basileus* was substituted for *Autokrator*, and in an Edict Heraclius so describes himself for the first time. *Basileus* does not appear on the coins till the reign of Constantine V, and his son Leo IV, and then only concurrently with the Latin, which continued to be used, as we use it conventionally in England, for the ensuing four centuries.

I see no reason to question the date, A.M. 6234, which is the equivalent of A.D. 726. But we are, of course, dependent on the accuracy of the copyist who transcribed this manuscript from an older text, which, I think, we may be reasonably certain, has long since perished.

The sources used by the authors are, I imagine, described in this title merely in general terms; nothing is said about the intervening legislation, or the Greek paraphrase of the Institutes made by Theophilus in Justinian's reign, nor of the decrees of the Quinisext Council, which were certainly consulted and incorporated in cases where general law was affected by them.

The Emperors' purpose is stated explicitly and at

considerable length in the preamble or Edict, which begins with an invocation to the Holy Trinity.

There is one, and that only a passing, reference to the Emperor's constitutional authority for legislating by an Edict of this description. It will be found at the conclusion of the Ecloga where the provisions in Justinian's Institutes upon the subject of laws in general are quoted almost textually. No one would have dreamt of questioning the Emperor's authority to alter the law, or initiate legislation, without the assent of the Synkletos, or Privy Council, which, to a limited extent, stood in the place of the Sovran Senate of Old Rome.

In point of fact the powers of this Senate or Synkletos at New Rome, except as a consultative body, were limited to sovran action only in case of an interregnum. So long as there was an Emperor he alone, or with his recognized colleague if he had one, was the monarch in the full sense of the term. Whatever doubt may have existed in the minds of the aristocracy or the jurists of the seventh century on this point was disposed of by Justinian's decree, reproduced in the Institutes, and quoted in the Ecloga[1].

'*Sed et quod principi placuit, legis habet vigorem, cum lege Regia, quæ de imperio ejus lata est, populus ei et in eum omne suum imperium et potestatem concessit. Quodcumque igitur imperator per epistulam constituit vel cognoscens decrevit vel Edicto præcepit legem esse constat.*'

This fundamental law proclaims the authority of the prince who was chosen by the populus. Students of Roman history are aware that this choice was made,

[1] For the preceding remarks on the Emperor's title and authority see *Creighton Memorial Lecture*, by J. B. Bury, 12th November, 1909.

sometimes by the senatorial aristocracy, more often by the prætorian guard or the army; but in any case the chosen candidate had, by immemorial custom, to present himself to his intended subjects assembled in the hippodrome, and their acclamation confirmed his election. It was on these occasions that the famous, so-called, factions, the Blues and the Greens, played an official part.

But once chosen and confirmed, the Emperors claimed to have received a mandate to rule from God alone, and it is in that sense that Leo and his son framed their preamble or Edict introducing the Ecloga. Expressing their acknowledgment that their high office and its duties had been entrusted to them by God's will, they proceed to say that nothing could be more pleasing to Him than a due and proper administration of justice for the protection and relief of their subjects; and they compare their mission with that given by our Lord to St Peter, '*Pasce oves meas.*'

They began by appointing what we should call a Royal Commission of experts, and directed that the various books on the laws should be collected and brought to the Palace. We know generally what these books consisted of. They were, no doubt, like the Codices of the New Testament, written in uncial characters on small folio or large quarto sheets of parchment. There were, the Emperors say, many books in which the laws of previous Emperors were written, 'the sense thereof is to some people difficult to understand, and, especially to those who do not live in our Imperial and God-protected city, absolutely unintelligible.' We can quite believe it, for in the Eastern and Greek-speaking parts of the Empire of the seventh century and the eighth, these legal works, compiled by the order of Justinian, were only

known by Greek paraphrases, or abridgments. The most important of these paraphrases, which may have been and probably was composed by Justinian's orders or with his consent, is attributed to Theophilus, the professor of law at New Rome, the colleague of Tribonian. It is known as *Instituta Theophili Antecensoris*[1]. This book became the text for the Institutes of Justinian, and was the only form in which they were known in the Eastern provinces when Latin became unintelligible to all but a few scholars in the capital and the chief provincial centres. It is quoted textually in the Ecloga.

They then proceed to say: 'Having examined all with careful attention, going through both the contents of those books and our own enactments, we considered it right that the decisions in many cases and the laws of contract and the respective penalties of crimes should be repeated more lucidly and minutely to provide a Eusynoptic knowledge of the force of such pious laws and to facilitate the clear decision of disputed cases,' so that the Ecloga was designed to be both a book of instruction and a practical manual for the magistrates who administered justice.

The Emperors then address these magistrates in the words of the fifty-eighth Psalm: 'Do ye indeed speak righteousness, do ye judge rightly ye sons of men?' and then they proceed to criticize the administration of justice in very plain language. Some of the magistrates were corrupted by bribery; others by pride or personal considerations of spite or friendship towards suitors; some knew what was right but perverted justice, others were 'so wanting in good sense that it was difficult, or indeed impossible, for them

[1] Mortreuil, *Histoire du droit Roman*; and translated by Wüsteman in 1823 in two volumes.

to judge equitably.' Judges of the last-named class who had, no doubt, purchased their office without possessing the necessary qualifications, are rebuked by a quotation from the seventh chapter of Ecclesiasticus: 'Seek not to be a judge being unable to remove iniquity. Seek not of the Lord the pre-eminence, neither of the King the seat of honour.' To them and all who aspired to judicial office the Emperors say. 'Let those, and those only, who participate in sense and reason, and know clearly what true justice is, exercise straight vision in their judgments, and without passion, apportion to each his deserts.'

In studying Roman history we frequently meet criticisms of the judiciary. Administration of the law was, like the financial system, one of the weak departments of Roman administration. But it is not often (the Edict of the Emperor Majorian is the only other example which I can call to mind) that the Emperors speak as plainly as Leo and Constantine do in their preamble to the Ecloga. We may be sure that during the twenty years of anarchy which preceded the accession of Leo, the study of law was neglected and the administration of justice became uncertain and corrupt.

To avoid any excuse for bribery or corruption and to ensure judgments free from all favour of reward, 'since gifts and offerings blind the eyes of the wise,' the Emperors dealt with these difficulties in a practical way. 'Being solicitous to put an end to such wicked gain, we have determined to provide from our patrimony salaries for the most illustrious Quæstor, for the comptrollers, and for the officials employed in administering justice, to the intent that they may receive nothing from any person whoever he may be who comes before them.' The preamble then concludes with a quotation and a comment on the

sixth verse of the second chapter of the book of Amos[1].

I have referred to some of the Biblical quotations made by the Emperors in the preamble; more will be found in the text of the Ecloga. For instance, in an appendix at the end, I find the twelve commandments are set out, together with some twenty-six sections entirely composed of verses from the books of Exodus, Leviticus, Numbers and Deuteronomy. And there are also several quotations from the New Testament, including some of our Lord's own words. These will suffice to indicate the religious and wholly Christian character of the Ecloga, and explain what the Emperors meant by improving the Roman law 'in the direction of humanity.'

The contents of the Athens manuscript are reproduced by Monferratus in ninety-one pages of an octavo volume. The Ecloga proper occupies forty-five pages, the Appendix twenty-two pages, and the Mosaic laws twenty pages.

The Ecloga proper is divided into eighteen chapters, each subdivided into short sections or paragraphs. Each chapter has a short explanatory title of a few words. Some idea of the method of dividing the subjects can be obtained from the following brief summary.

The first three chapters relate to marriage incidents, that is to say, betrothal, marriage, and dower.

The fourth chapter relates to simple gifts.

The fifth and sixth to inheritance by will or on an intestacy.

The seventh to guardians and trustees.

[1] I may note in passing that this prophet seems to have been a favourite author with Leo III. The inscription in mosaic over the chancel of St Eirene at Constantinople, rebuilt by Leo III, is from Amos ix, 6.

The eighth to freemen and those who being freed men lapse again to slavery.

The ninth to purchase and sale.

The tenth to loan and security.

The eleventh to deposits (fidei commissa).

The twelfth to emphyteusis.

The thirteenth to contract of hiring.

The fourteenth to witnesses and testimony.

The fifteenth to releases or the dissolution of contracts (dialusis).

The sixteenth to soldiers' personal property.

The seventeenth to punishment.

The eighteenth to the division of the spoils of war.

The Appendix, which may have been annexed to the Ecloga at a later date in the eighth century, consists of eight chapters.

The first relates to principal and surety.

The second relating to land, contains six miscellaneous paragraphs.

The third to punishments applicable to soldiers, is divided into two long subsections with a considerable collection of short paragraphs.

The fourth to punishments of heretics, sorcerers and poisoners.

The fifth to relations with profane women and some paragraphs on marriage.

The sixth to magicians and astrologers.

The seventh to the prohibited degrees of marriage.

The eighth to law and jurisprudence generally.

In dealing with the last part of the Ecloga, which relates to the Mosaic law and is so entitled, I have merely noted the chapters and verses of the books of the Old Testament quoted.

It appears then, from this short recital of the contents, that the Ecloga treats of elementary law, that is to say the kind of law that might affect the everyday

life of the humblest of the Emperors' subjects. The phraseology is simple and concise, so concise indeed that it is sometimes difficult to convey the meaning in English without paraphrasing. It is certain that the Ecloga was intended for the use of the magistrates as a kind of justices' manual; and, as some of the clauses show, they were expected to be learned in particular law which is only referred to incidentally in the text. I may take two examples at random. First the application of the Aquilian law, and next the peculiar position of an unborn child in relation to an inheritance. These subjects are referred to in the penal clauses which prescribe punishments for offences. And besides, there are numerous references and occasionally textual reproductions of the original laws in Latin. These certainly would be unintelligible to the ordinary layman of the eighth century who lived in the Greek-speaking parts of the Empire. These references are no doubt given for the convenience of the magistrates in cases where the elementary law of the Ecloga was not explicit or insufficient.

There is hardly any reference to the judges, the Courts, or legal procedure. Knowledge of these subjects was assumed. The references, such as they are, are interesting enough.

Cases of high treason or *lèse-majesté* were to be referred to the Emperor personally, who for that purpose is treated as chief magistrate of the Empire. We know that in the earlier Empire the Emperors frequently sat on the judicial bench. Justinian probably did so. But as a rule the later Roman Emperors were professional soldiers, who were either not qualified, or too busy, to sit as judges in person. It would be quite beyond my present purpose to consider the difficult question of the composition of the Roman

judiciary or of legal procedure. Nor, fortunately, need I do so here except in so far as they are referred to in the text.

The Akroati, who are referred to by that name, more than once, were assessors, or referees. Their duties, as the context shows, were to investigate the facts, examine the witnesses, and, no doubt, make a report on the case to the judge, who applied the law and pronounced the sentence. These Akroati were, as a rule, either eminent members of the bar, or students to whom these preliminaries were delegated. One would like to know how they were remunerated. The officials designated in the preamble as recipients of the stipends from the Imperial Civil List are merely described as, the Quæstor, the antigraphoi, or comptrollers, and all those who were employed in the administration of justice. And in reference to the administration of justice it is provided in one section relative to land that soldiers and the officials in the public service should try to decide cases arising in their own departments. For certain offences soldiers forfeited their privileges and were handed over to the civil authorities to be dealt with as civilians.

The procedure, excepting where the Akroati are directed to investigate, is hardly referred to except in the sections dealing with testimony. Witnesses were not expected to attend a trial which lasted more than a specified number of days; if they lived at a distance from the place of trial their evidence could be taken on commission. From an incidental reference we learn that suitors had a right of appeal, and in another that *juramentum delatum* or *relatum*, the *serment décisoire* of the French Code Civil, was permitted. It would seem that in certain cases, on a preliminary examination, the testimony was not taken on oath until the nature of the evidence was ascertained.

All these provisions imply a regular and well-known procedure which suitors in general, and magistrates in particular, were assumed to be familiar with.

To the text Monferratus has added a glossary. In considering the words used, especially in regard to military matters, the student must remember that the authors of the Ecloga were adapting the provisions of a text of Roman law composed in Latin. Moreover, in so far as the law of Justinian is translated or paraphrased, the Greek text as we have it, is not so much a Greek composition, as a Greek rendering of a Latin text. The preamble is an original composition expressed in the kind of official Greek used in the Imperial Chancery for edicts or decrees of this description. In spite of pompous phrases and long-drawn sentences, it is not lacking in simple dignity.

II

I follow Professor Bury in calling the Ecloga the first Christian law book. It is also the first *book* of the kind, published by a Roman Emperor on general law, in which Greek only was used as the official language. In these two respects the Ecloga differs from all publications on Imperial law which preceded it, and resembles all those that came after it. The use of a Greek text, and the fact that Leo and Constantine speak of their subjects, their territory, their Army, and the secrets of the War Office, as Romaioi and Romaic, must not mislead us into giving to the law of the Ecloga any name but Roman. There is no break in the continuity of the Roman law of Justinian, either in the Ecloga or in the later Code, known to us as the Basilika, which superseded it in the tenth century. Indeed the title of the Ecloga proclaims the fact, and the Basilika professed to revert to the law of Justinian.

In endeavouring to make the Roman law more humane by the light of Christian doctrine Leo III acted entirely according to the spirit of his times, a spirit which he and his contemporaries inherited from their immediate predecessors. To us the age we are now concerned with, that is to say the last half of the seventh century and the first half of the eighth, is dark and confused because we hardly know anything about the domestic history, and nothing at all about the legislation, of the successors of Heraclius. But our meagre sources of information on the general history suffice to show that it was not wanting in intellectual attainments and that religious sentiments in particular continued to acquire an increasing hold on Roman society. For these attainments, and in promoting these sentiments, the Princes of the House of Heraclius[1] played a leading part; our evidence is distinct and conclusive as witness the Ecthesis of Heraclius, the Type of Constans, the proceedings of the Fifth Œcumenical Council which Constantine IV summoned and presided over in person, and the Trullan or Quinisext Council, which was a sequel to the Fifth, held under the auspices of Justinian II. In tracing a connexion between the eighth century and the seventh we are more directly concerned with the Trullan Council, for some of the Acts passed by it are reflected or quoted in the Ecloga. I may therefore be justified in referring to Justinian II and to the Council which met in 698 at Constantinople; the deliberations were held in the hall (trullus) of Justinian's Palace[2].

[1] Heraclius, from 610; Constans II, his grandson, from 642; Constantine IV, nicknamed 'Pogonatos,' son of Constans II, from 668; Justinian II, nicknamed 'Rhinotmetos,' son of Constantine IV, 685 to 695 and 705 to 711.

[2] From the meeting place this Council is known as the 'Trullan.' By the Greeks it is called 'Quinisext' which correctly explains its

Justinian II succeeded his father Constantine IV in 685 when he was sixteen years old. He appears to have inherited in full measure the self-will and obstinacy of his distinguished grandfather, Constans II, and combined with those qualities an ambition to emulate his great namesake Justinian in despotism and extravagance[1]. But there was another and a religious side to his character, inherited from his father, which is revealed to us by his personal interest in this Council, and by an innovation in his coinage. In his reign and for the first time in Roman history, we find our Lord's effigy in the nomismata, and the conventional legend '*Victoria Augustorum*' is replaced by '*Deus adjuta Romanis*,' or '*Jesus Christus Rex Regnantium*.' It is in close relation with a prince of this character that we first meet Leo III and, in a sense, Justinian II was his immediate predecessor. It appears that the family of Leo was transplanted by Justinian II from Isauria to Thrace; and while at Mesymbria Leo found favour with Justinian II and received the honour of Spatharios, that is the post of an Imperial aide-de-camp, from his friend and patron.

In a work like the Ecloga, which professes to aim

purpose. It was intended to be a sequel to the Fifth Œcumenical Council and dealt with matters of discipline applicable to laity as well as clergy. It contains no less than 102 Acts and, being one of the only extant documents of the times, is of historical interest and importance as indicating manners and customs and the trend of thought in the seventh century.

[1] The reign of Justinian II is one of the stormiest in Roman history. His obstinacy brought him into conflict with the Roman aristocracy; they deposed him, slit his nose, and sent him into an exile which lasted for ten years. In 705 he regained his throne which he held for six years more when he, and his infant son, were murdered. The barbarous punishment inflicted on him is recorded in his nickname, 'Rhinotmetos.' He was the last prince of the house of Heraclius, and after his death, a period of six years' anarchy ensued and lasted till Leo was called to the Imperial throne by the Senate.

at making the laws more humane, we might expect to find quotations from or references to Holy Scripture. But the Appendix to the Ecloga contains much more than mere quotations of Scriptural texts. In it are reproduced textually the Ten Commandments and a number of the austere precepts of the Jewish law taken from the Pentateuch. These are grouped together under the title 'Synopsis of the law given by God through Moses to the Israelites.' If the prominence thus given to the Mosaic law, coupled with the fact that the Isaurian family came from Eastern Asia Minor, are the base of the charge, made against Leo and his successors by their contemporaries and some modern historians, that they inclined to Semitic Monotheism, Jewish or Moslem, and that at heart they were apostates, I can find no other evidence of it in this legal work. There is no trace of anything of the kind in the Ecloga. The Moslems, who at that time were called Hagarenes, are not referred to by name. They are included in the military sections of the Ecloga as barbarians and referred to as enemies. The Jews and Samaritans are not referred to as enemies but treated as such. The synagogues of the latter were to be pulled down and they were punished if they attempted to rebuild them. The Jews were ineligible for any rank, honour, or public office. A Christian who became a Jew had his property confiscated. Jews who perverted Christians from their faith were to have their heads cut off, and so on. Heretics were not treated much more leniently. There is a long list of them; the penalites against them were severe and some, like Manichæans, Montanists and Donatists, were to be put to death. Orthodox Christians who consorted with them were severely punished.

I may add that on their coins Leo and Constantine

are represented as holding a plain cross in their right hands; the same kind of cross which Leo reproduced in mosaic in the apse of the church dedicated to our Lord (under the invocation of the peace (Eirene) of God) at Constantinople.

The religious reforms associated with Leo III and Constantine V are not mentioned in the Ecloga. The monasteries are referred to in a section which commanded them, and other religious houses and churches in Constantinople and the provinces, to undertake a new duty of acting as guardians of orphans and trustees of their property. There is no reference to Leo's Edict against the abuses of symbolism.

These reforms in religion came, like the reform in the law, long before their due time in history; they made a great stir in Christendom and were vigorously opposed by an influential party in the Church. As they are not mentioned in the Ecloga I am relieved of the difficult task of explaining them, their purpose, and their consequences. All that need be said is that when the successors of the opposition party came into their own at the accession of Basil I, a century and a half later, no pains were spared to obliterate all traces of the Isaurian reforms both in the Church and in the law. In the preamble to the Epanogoge, which was the summary of their text-book, the Basilian Sovrans contemptuously refer to the Ecloga as '*tas ektetheisas para tōn Isaurōn phlenaphias*.'

Accordingly Basil I and his son Leo VI, the philosopher, prepared a new code of law known as the Basilika. It professed to be founded on, or rather to revert to, the law of Justinian and ignored the civil law of the Ecloga. But the penal sections of the Ecloga were retained almost textually, including the barbarous punishments by maiming, which Leo III had formally sanctioned for the first time. These

punishments included cutting out the tongue, cutting off the hand, and so on. It may seem difficult to reconcile these with the humane professions of Leo III, but it must be remembered that they replaced capital punishment, and were apparently adopted through a too literal rendering of such passages in the Bible as the twenty-ninth verse of the fifth chapter of the Gospel according to St Matthew. Capital punishment was only retained in the Ecloga for treason, homicide, for the more serious class of offences which we term felonies, and to punish slaves or non-Christians. There is some evidence that capital punishment was abandoned in practice in the twelfth century; and that certainly was the tendency of the Later Roman administration.

It must not be assumed from what has been said that the Ecloga, and the spirit in which it was compiled, had no influence on the later legislation regulating civil rights and obligations[1]. But as a book or exposition of the law it was not acknowledged by the Emperor Basil and his successors, except in disparagement of its Isaurian authors, and it is not referred to as an authoritative exposition of law in the Basilika.

The Basilika was the Code in use in the Later Empire till the fall of Constantinople in the fifteenth century; and it remains the basis of the laws which pertain in all South-Eastern European countries which once formed part of the Ottoman Empire. Indeed until the Capitulations were abolished by the recent treaty of Lausanne, it was the Code applied to all the subjects of the Sultans who belonged to the great Orthodox Church, in matters of personal law and the devolution of personal property. The analogy to this extraordinary system, which in a sense created a kind

[1] This subject is referred to presently in the notes on the text.

of imperium in imperio, and permitted a conquered race to preserve its religion, law, and language, will be found in the province of Quebec, in Canada.

A remarkable result of this Turkish arrangement, whereby the non-Christians were classed into millets or companies according to the religious denomination they belonged to, was, that all members of the Orthodox faith were reckoned as 'Greeks,' and that, regardless of their race or nationality; so among Byzantines and Hellenes, were included Serbians, Bulgarians, Montenegrins, Moldavians and Wallachians; and as they all professed the Orthodox faith and were treated as 'Greeks,' the Græco-Roman law was applied to them. This law was administered through a Court of Justice or Chancery attached to the Patriarchate of New Rome; and the Patriarch himself received the rank and title of a Turkish Minister of State, and so became responsible to the Sublime Porte for properly conducting the legal and religious affairs of his community.

As each nationality in turn obtained its independence from the Turks, so the Basilika was naturally made the basis of the new national code, and it is still treated as such to the present day in Serbia, Bulgaria, Roumania and Greece.

It follows from what has been said that if the Ecloga, in its character of the first Christian law book published by authority in the Roman Empire, is treated as evidence of a new conception in legislation, the student who wishes to trace the influence and effect of this attempt to make laws more humane upon later legislation in the Near East, will find his task a long and difficult one. Unless he wishes to make a profound study of the subject he will find in Zachariä von Lingenthal's *Griechisch-Römischen Rechts* an interesting and sufficient review of it. And the materials

which are quoted and used will enable him to pursue a closer investigation of it if he wishes to do so.

For the present purpose I need do no more than draw attention to some of the changes in the civil law made by Leo and Constantine in the Code of Justinian, and treat the criminal and military sections of the Ecloga as those, and generally speaking, those only, which were reproduced by the Macedonian Emperors in the Basilika.

III

The more important of these changes may be briefly summarized as follows:

MARRIAGE. A man and woman could not be either betrothed or married if they were related to one another in baptism. The prohibited degrees were so far extended that children of second cousins could not marry. Marriage is no longer regarded as merely an agreement between husband and wife to live together but as the estate of Holy Matrimony as laid down by our Lord and all that it implied. There was moreover an equality of interest not merely of contribution to the marriage fund; and the patria potestas applied to the children was now extended to both parents, not merely to the father. As against that privilege the parents could not dispose now of more than a half of their property if they had five or more children, and two-thirds of it if they had four or less. If in a will the children or any of them were omitted they forfeited their interest in their share if the Courts found that they had been guilty of ingratitude or outrageous conduct to their parents; and this forfeit also applied in the case of an intestacy. Posthumous children were now entitled to share with their brothers and sisters whether mentioned in a will or not or on an intestacy.

Cohabitation was not recognized, and, in certain circumstances, when a man and a free woman lived together the law implied a verbal contract to marry and the wife became entitled to a share of her husband's property.

The marriage could only be dissolved for certain specific reasons and was based upon the Scriptural law as the Emperors recite in the section. The law recognized second marriage but was silent as to subsequent marriage. The attitude of the Church and by implication the State towards a third and subsequent marriage is shown to us in the history of the four marriages of the Emperor Leo VI the Wise.

GUARDIANS. The ward of person and trust of property of orphan children was imposed upon the Church, bishoprics, monasteries, and other religious houses if the parents failed to provide guardians in their wills; and incidentally these institutions were put in loco parentis in regard to the children's portions or arrangements for their marriage.

SLAVERY. Slavery still existed but the rules as to emancipation were still further extended and simplified. So a slave who was baptized with his master's sponsorship or was married to a free person, emancipated by a declaration in church, received his or her freedom. The actual ceremony of *servum ad pileum vocare* was maintained. A freedman who fell back into slavery could regain his freedom by an appeal to the Church. Christians could not be held as slaves by any non-orthodox person, and every facility was given for the slave of such persons to obtain enfranchisement.

CONTRACTS. While verbal agreements were still recognized the tendency of the law was, as the Ecloga shows, to require contracts to be made in writing with signature and before witnesses and sometimes

in the presence of a notary. This and the new process of terminating a contract by writing introduce a number of minor changes which certainly simplified the law of Justinian.

USURY. In the Ecloga at any rate mortgages and loans involving the payment of interest were not recognized. The objection was entirely religious and there is some reason to suspect that it was overcome by partnerships. But unfortunately the provisions of the Ecloga are brief and, whatever the practice of the Isaurians may have been, the objection was overruled in the later legislation[1].

LAND. The law in regard to the holding of land by Emphyteusis or by lease was not substantially altered. The penal sections dealing with trespass and offences arising out of disputed ownership of land indicate that the system of communal property introduced by the Slavonic settlers in Illyria came to be recognized all over the Empire. This system must not be confused with Emphyteusis though obviously the two tenures had features in common.

MILITARY. Besides the penalties specially applicable to soldiers, and they occupy a considerable part of the Appendix, there is an important chapter on the soldier's privilege in regard to the peculium castrense and the quasi castrense extended to civil servants and other Court functionaries and clergy who were treated as strateuomenoi. Also a chapter on the division of the spoils of war between the State, the commanders and the rank and file including the Army Service Corps. Also a section forbidding soldiers under penalty of losing their military privileges from engaging in any business, trade or agriculture, or hiring themselves out for employment as servants. These,

[1] See the Ecloga privata aucta (Paris, Cod. Græc. 1384), c. XI.

though incorporated in the general law of the Ecloga, in fact formed a kind of military Code apart from it.

PENALTIES. The penal sections deal with three classes of offenders; soldiers, civilians, and heretics. The latter, or many of them, by reason of their peculiar religious views were regarded as outlaws ipso facto and treated as such. It is also in these penal sections that we see the influence of the Church on the law as it came to be modified in the Ecloga. For instance an adulterer was ineligible to serve as a soldier and so on. Indeed the barbarous punishments by maiming by wounding with a sword seem to have been prompted by a too literal reading of well-known passages in the New Testament. But it must be remembered that the general tendency of the law was to limit capital punishment to homicide and the more serious class of offences, such as treason, arson, and poisoning, which we now term felonies.

HUSBAND AND WIFE

FAMILY LIFE

BETROTHAL AND MARRIAGE

Betrothal was permitted between children provided they obtained both their parents' and guardians' consent[1]. It could be verbal or in writing. The alternative word used for betrothal is earnest money, which explains the original and practical purpose of the custom. Earnest money was not essential; but if it was a term of the betrothal it could be either paid down or a bond given for it. The man who broke

[1] This was a new departure in Roman law. The wife is treated as equal to the husband in the family. It was maintained in later legislation. The phrase used is '*ek goneōn autōn kai suggenōn*.' But in another version, quoted in 'Z,' the last word is *kedemonōn*, that is those who had the charge or care of the children.

the betrothal forfeited the earnest money; if the girl did so capriciously her forfeit was double. The girl had to wait for two years if her young man refused to marry her. She had to call upon him, during that time, to fulfil his promise of marriage. If he failed to do so, at the end of the period, she could marry whom she pleased. If, during her betrothal, she misconducted herself with another man, he and she could be punished by having their noses slit.

The last clause of this first chapter relates to betrothal in which an orphan child was a party and the betrothal had been arranged by intermediaries. If the orphans, upon reaching years of discretion, wished to break the betrothal they could do so. It was no doubt as common then, as it is now, for intermediaries to undertake arrangements of this kind, which are known to those who, like myself, have the fortune (or misfortune) to have interests as landlords in the Near East, as proxenia. Some of my tenants in Smyrna have tried more than once, and I need hardly say, unsuccessfully, to cajole me into playing the part of proxenos.

The second chapter relates to the marriage relation and is divided into fifteen sections.

The first three deal with marriage in general, prescribing the marriage ages, which were raised by one year, the necessity for the consent of both parents[1], and enumerate the disqualifications for marriage including those who were directly or indirectly related through the Sacrament of Baptism. These disqualifications are once again referred to, and at greater length, in the penal clauses and the Appendix.

[1] The age was raised by one year from what it had been under the earlier law. Though still minors they were capable of making a binding agreement to marry. The mutual consent was the only basis of the earlier law on marriage. *Consensus facit nuptias.*

The fourth and ninth prescribe the method of making a marriage contract either in writing or by parol.

The fifth, sixth, seventh, eighth, tenth, eleventh, and twelfth sections deal with the marriage portions in various circumstances; in case there were children, or not, and the consequences of a second marriage by either of the parents on the children's portions.

In section 13 the Emperors declare their policy in regard to divorce, and in 14 and 15 prescribe the grounds upon which it could be obtained.

The parties to be united had to be[1] fifteen and thirteen years old respectively. They must have agreed to live together[2], have obtained the consent of both their parents, and[3] must not be within the degrees of relationship forbidden by law.

Extraordinary pains were taken to prevent the union of persons who were even remotely related by the ties of blood or marriage. I may perhaps remind the student who is not familiar with Roman law that the degrees were reckoned on the following system.

[1] Refer to note, p. 22.

[2] The consent of both parents had to be obtained, not only that of the father as theretofore. This change carries out the idea that the father and the mother of the child, born in lawful wedlock, were one flesh. In a sense this infringed to some extent upon the old and fundamental relation of the patria potestas. But as we shall see when we come to consider the peculium castrense the idea of patria potestas was not entirely abandoned so far as the children were concerned. But the wife now ranked in equality with her husband, is no longer regarded in law as his 'daughter,' when she occupied, in regard to her husband, a position which differed little from that of one of her own children. The parents too had equal interests in the family settlement no matter by whom the settlement was provided.

[3] Prohibited degrees now covered not only relationship by blood or marriage but also those who stood in the relation of godfather and godchild in baptism. And this change, due to the 53rd Act of the Trullan Council (698), was extended to the son of a godfather or the mother and daughter of a goddaughter.

In the direct line every degree represents a generation. The son, for instance, is in the first degree with respect to his father; the grandson in the second degree with respect to his grandfather. In the collateral line the generations are taken first up to and then down from the common ancestor. For instance, first cousins are to one another in the fourth degree; two degrees from one cousin up to the common grandfather and from him two down to the other cousin[1].

The prohibited degrees varied considerably at different times in Roman history The marriage of first cousins, forbidden by the earlier Emperors, was legalized by Arcadius and Honorius. The marriage of an uncle with a niece, legalized by the Senate to enable the Emperor Claudius to marry Agrippina the younger, was prohibited by Constantine.

Marriages between second cousins were now forbidden under penalties. The marriage of an uncle and niece was also forbidden by a special section. This, as I have already said, was obviously directed against a repetition of such a marriage as the Emperor Heraclius contracted with his niece the Empress Martina. That marriage not only caused grave scandal but was the origin of much political trouble, including the revolution which brought Constans II to succeed his grandfather Heraclius. Certain other marriages were forbidden on grounds of public policy as, for instance, between Senators and women of the slave or freed classes.

Section 4 prescribes the method of publishing a marriage and is followed by provisions for making a marriage settlement and the control and ultimate devolution of the trust funds. It is in these provisions that we meet the fundamental changes made in the

[1] See also the note to the text of chapter VII.

older law by the Ecloga—changes which were destined to be permanent, though not acknowledged in the later law.

The new law required the marriage to be published (*a*) either by a written contract of marriage or (*b*) if the parties were poor and could not afford a settlement, in church, or (*c*) before friends. There was one other method by what might be called notoriety and it is laid down in Section 9, Part 2. The section might be more clearly expressed. But the intention was to treat cohabitation in the circumstances specified, as a verbal agreement to marry, and that carried with it the right of the woman to have a share in her husband's property by operation of law.

Section 4 lays down that marriage settlement was to be in duplicate and executed in the presence of three witnesses. If the husband made a voluntary settlement by way of addition to the wife's marriage portion, and, parenthetically, he could not be compelled to make such a settlement, another deed was required; and in it the husband was bound to contract that one-third of his voluntary contribution should remain in settlement and inure to his wife if he predeceased her. It followed that in effect the new law regarded not the equality of contribution but the equality of interest in the marriage fund.

The devolution of the trust fund is then dealt with and depended on whether or not there were children. In case there were no children and the wife died first, the husband took a fourth part of the dower, and the remainder went to the wife's heir, by a will, or to her next of kin if she died intestate. If the husband died first she received a sum from his estate equal to a fourth part of the dower. The rest of the estate of the husband went to his heir or next of kin.

In case there were children, and the wife survived

her husband she became head of the house, and trustee of the whole property. She had to make a public inventory in which all the property, in and out of settlement, was included; and she was accountable for it to her children. If she married a second time she was only entitled to keep for herself the fund which the husband had voluntarily given to her in augmentation of the dower.

If the husband survived his wife, and there were children, he obtained all the property, and the children could not claim their mother's estate from him, but he had a life interest only. If he married again he had to keep the whole dower intact and was accountable to the children for it, as well as the mother's estate; and they were entitled to claim it if and when they came of age.

If a widow who had children by her first husband married again she had to claim the trusteeship (epitropon) of her children's property and so protect the first settlement fund from interference by the second husband or from any claim to it by the children of the second marriage.

A widow or widower could not relieve themselves of the care and maintenance of their minor children. If the children were of age and agreed to part from their parents the parents were entitled to claim their property and had the equivalent of the share of one child out of the settlement fund. This peculiar arrangement is commented on by Zachariä von Lingenthal.

Section 9 is divided into two separate paragraphs. The first provides that a marriage between poor people could either be in church or in the presence of friends. And the second establishes in effect, as I have already said, that concubinage between a man and a freewoman to whom he entrusted his house

was not recognized, but that upon the cohabitation the law implied a verbal agreement to marry which carried with it a right for the woman to have one-fourth part of her husband's property.

Section 10 provides that a poor woman who married a rich husband was entitled on his death to one-fourth of his estate up to but not exceeding ten litra of gold. The litron was worth seventy-two nomismata, which contain about eleven to twelve shillings in our money. The purchasing power of gold was of course much greater than it is now.

In case a widow remarried she was to wait for one year after the death of her first husband. If she did not do so she forfeited her interest in her first settlement.

Besides these general provisions there are two others which affected the settlement and may be conveniently mentioned here.

In the second section of the third chapter, and in the fourth section of the tenth, it is provided that the settlement money of the wife should be protected in case her husband died in debt or had become security for another person. In the former case neither a private creditor nor the State could enter into the man's home and seize his property until the widow had been paid the amount she brought into settlement. In the latter case the husband's creditor could not have recourse against the wife's settlement portion unless when the bond was given by the husband, the wife joined in it and pledged her settlement money.

In Section 13 the Emperors declare the basis upon which Christian marriage was founded, for the laws of the Ecloga apply to Christians only. Marriages between Christians and Jews were forbidden by Justinian and the Trullan Council, and it was assumed that a Christian would not marry a Pagan. They say:

'The wisdom of God the Maker and Creator of all mankind... who created out of the uncreated did not, as he might have done, fashion woman separately from man but made her out of man, thus ordaining the indissolubility of marriage by uniting one flesh in two persons.' The marriage was therefore no longer treated as a mere contract between man and woman who agreed to live together and made their intention known by certain formalities, but as the estate of Holy Matrimony and all that phrase implies.

The grounds for divorce were, for a man, the wife's adultery; or if she conspired against his life; or was a silent accessory to such a conspiracy; or if she was a leper. And for the woman, if the husband failed to consummate the marriage within three years after their wedding; or if he conspired to take his wife's life, or was a silent accessory to such a conspiracy, or if he was a leper. Insanity is expressly excluded as a ground for divorce. But here there is a discrepancy which shows how cautiously these texts must be treated. 'A' and 'Z' do not contain the same provision, as I have pointed out in the notes on the text and at the conclusion of this introduction. In 'Z' the insanity is limited to affliction *after* marriage only. In 'A' it is both before and after marriage.

PARENT AND CHILD

I now pass on to consider the relations between parents and their children, and these may be deduced from the chapters on marriage, wills and intestacies.

The fundamental idea of the patria potestas, upon which so much of the Roman personal law was founded, had, as we have seen, been abandoned as between husband and wife. But it remained as between parents and their children; the children on their side having legal rights in their parents' property

which they could not be deprived of except for misconduct or ingratitude to their parents. This was the *tritēn moiran*, a third, if there were four or fewer children, and a half if there were five or more. It must of course be understood that the patria potestas of the eighth century conferred only limited rights on the parent. In the earlier Empire and under the Republic the father had even the power of life and death over his children. A right of that kind obviously dates back to a very primitive state of society, and, as time proceeded, the tendency was to limit it. It was attended of course with many practical inconveniences. So, for example, a Roman official, however highly placed he might be, even a Consul, whose office not infrequently made him a colleague of the Sovran, was, if his father were still living, under parental control. Exceptions were made at an early date in Roman history for soldiers on active service, and these were gradually extended to include Court and Imperial officials, who, for that purpose, were reckoned as soldiers. It has been supposed that these extensions were due to Constantine, and it is more than probable that they were made when Constantinople was rebuilt and adopted as the administrative capital, and when Constantine's entourage followed their master and professed to be Christians. We know from the early Christian writers that in Roman society our Lord's words were fulfilled[1]. We may conceive the case of a Christian member of the synkletos at New Rome in potestate of a father who was a Pagan Senator at Old Rome and imagine the consequences.

The exceptions made for the peculium castrense and quasi castrense will be considered presently when we come to the chapter which is especially devoted to that subject.

[1] St Matthew x, 35.

The relations between parents and their children, which are incidentally referred to in the chapter on marriage, are more directly indicated in chapters V and VI on wills and intestacies.

WILLS

This chapter lays down the law on the subject of wills. In considering it the student must bear in mind that the tendency of Roman law was to regard a testator as a person who was privileged to act in derogation of the law respecting the transmission of property. The first section of this chapter therefore recites the classes of persons who were not competent to exercise the privilege. They were the mentally incapacitated, those who were deaf and dumb from birth, minors being males under fifteen and females under thirteen, and those who, being under parental subjection, were prevented from disposing of their share in the marriage settlement of their parents.

Then follow the rules for making a will which could be either in writing or by parol. The essentials were, witnesses, and the insertion in the will or the naming of the heir of the testator. He is merely called the *kleronomos*. Seven, five or three witnesses were required according to the locality and the facilities for obtaining witnesses. Special provision is made for a soldier wounded in action or a traveller, at the point of death, who if illiterate and unable to find a scribe, could make a parol will and the Court had a discretion to give effect to the will if there were only two witnesses.

This brings us to consider the children's position under a will or upon an intestacy.

The legal share in their parents' estate which they could not be derpived of, except in case of misconduct towards their parents is called the *nomimos moira* and

the expression occurs twice in the Ecloga; in chapter V, section 7, and in chapter XVI, section 4[1]. It is defined in both places as one-third share of their parents' estate if there were four or fewer children, and a half if there were five or more. For misconduct to their parents they forfeited their lot in this share according to chapter V, section 5, and in chapter VI, section 13. In the second of these sections the various offences are enumerated. So that in fact the parents could in one case dispose of two-thirds and in the other a half of their property unless it was peculium castrense; and in that case they could dispose of it as they pleased.

The nominated heir is called *kleronomos*, and the same name is applied to the person who on an intestacy had the right to administer the estate. He was in point of fact executor and residuary legatee rather than heir in the sense in which we use the word. The position of kleronomos under the Ecloga is the same as it was by the time Justinian had completed his legislation; the *bénéfice d'inventaire* which had, under Justinian's law, enabled him to distinguish his own from the deceased estate, and relieved him of personal liability from the debts of his testator, is contained in the Ecloga, chapter VI, section 8.

His first duty was to take inventory and account of the property of the deceased. He had a year within which to administer the estate, chapter V, section 7. By the same section it is provided that if he did not duly carry out his executorship he should forfeit an interest in the estate, the forfeit depending on his relationship to the testator. If he were a son or grandson he was entitled to the *nomimos moira* only.

[1] The 'Falcidian' law is not mentioned by name in the Ecloga. But it is referred to in the revised and augmented versions of the Ecloga which were compiled at a later date.

If he were a stranger he forfeited all interest in the deceased estate. The kinsman who was not a son or grandson also suffered the same forfeit.

The kleronomos' further liabilities are detailed in the next chapter VI on intestacies which we will consider presently.

Section 5, chapter V, deserves special attention.

In case the testator omitted any of his children in his will the Court was directed to enquire if they had been guilty of misconduct. If yea the will held good. If nay they obtained equitable relief and shared with the other children. So also did the posthumous child. I need perhaps hardly remind the student of the remarkable effect of the earlier law upon the validity of a will of the testator who omitted one of his children from it or a child born posthumously to the testator. In both cases, even under the older law, the Courts could grant relief in equity to prevent injustice. The intervention of the Court in the case of an omitted child is here expressly provided for, and the posthumous child now received his share by operation of law.

INTESTACY

Chapter VI deals with intestacy, and the first six sections lay down the order of precedence in which the children, parents, or kinsfolk could claim to be kleronomos. These sections are so clearly expressed that I need not do more than draw attention to them.

The responsibilities of the kleronomos in regard to winding up an estate are laid down in sections 7 to 12, and by section 10, inferentially the creditors had an interest to see that their claims were promptly made. These responsibilities take us directly to the *bénéfice d'inventaire* and applied as well to the kleronomos in a will as upon an intestacy.

In considering these sections it must of course be

remembered that the Ecloga is a summary which obviously does not go into minute details of the law of succession but only deals with the general principles. There is sufficient to show that the law if not much simplified was more simply expressed in the Ecloga than it had been in the preceding legislation.

GUARDIAN AND WARD

There is only one section to this chapter and the title is '*Peri Epitropōn kai Kouratorōn.*' Epitropos is the trustee who looked after the property, Kourator is the guardian. Nothing is said about the former, and in the notes on the text I have pointed out that the chapter relates to orphan children only; moreover the title in our 'A' does not explain the contents as correctly as the title in the 'Z' manuscript. The latter reads 'Concerning children who have been left orphans and the guardianship (kouratoria) of them.' By implication the two functions became combined.

If the parents appointed a guardian by their will then their directions were to be carried out. If they did not do so then religious or orphan asylums were to take care of the orphans in Constantinople. In the provinces the duty was to be undertaken by the bishoprics, monasteries or churches. This last provision is interesting from an historical point of view. It has been assumed, I think without reason, that the religious reformation undertaken by Leo was directed not merely against symbolism, but also against the monks and the monasteries. But these two activities of the reformation must not be confused. Leo's activities as a reformer were only directed against the abuse of icons; Constantine's were against both icons and the monks. Our sources of information upon these subjects are scanty and unreliable. The best summary is given by Lombard in his monograph on

Constantine V. At any rate whatever the facts be the monks and the monasteries were, at the date of the Ecloga, put in a new and official position which they had not previously occupied, and the authors of the Ecloga give their reason for requiring the monasteries to undertake the duties of guardianship.

SLAVERY

Chapter VIII treats of slavery[1]. The person born free was called eleutheros, the person on whom freedom had been conferred was called apeleutheros, the person in servitude was called oiketes or doulos; servitude or slavery was called douleia.

Justinian altered and simplified the complicated law on the emancipation of slaves and the position of a freedman as he himself records in the Institutes. The law of the Ecloga deals mainly with matters of detail.

Freedom was now conferred by declaration in Church or in the presence of five or three friends called in as witnesses and recorded by a registered memorial; or by letter from the master similarly witnessed; or by will, or by implication, when the slave with proper authorization attended his master's funeral wearing a turban on his head[2], or by christening when his masters or their children acted as sponsors for their slave; or by the master uniting his slave in marriage with a free person.

And if, by misfortune, the freedman fell into slavery again he could reclaim his freedom by an appeal to the Church and obtain it on proving his emancipation before the proper authorities.

[1] The student who is interested in this subject should consult *The Roman Law of Slavery*, by W. W. Buckland, 1909.

[2] This method of enfranchisement gave rise to the colloquial phrase '*servum ad pileum vocare*.'

Section 6 provides for the case of a freeman who had been taken prisoner of war and ransomed by a friendly patron. He entered the service of the latter and a calculation was to be made annually of the amount he had earned; the intention being that he should repay the ransom money to his patron out of his wages.

Section 7 recites the conditions in which a freedman forfeited his emancipation. By the law a freedman was still 'in relation' with the patron who emancipated him; and if he misbehaved himself towards the patron, or the patron's family, he returned to slavery. The offence had to be proved in a Court of Law.

Section 8 relates to slaves who had been taken prisoners of war by the enemies of the Romans. If the slave escaped and returned to Roman territory he was immediately emancipated upon proof that he had done some act to injure the enemy; if there was no proof then the slave was emancipated after five years' servitude. If a slave went over to the enemies of his own accord and then returned to Roman territory he was condemned to perpetual servitude.

CONTRACTS FOR PURCHASE AND SALE

Chapter IX, in two paragraphs, is mainly derived from the Institutes of Justinian, Bk. 3, c. 25, on Emptione et Venditione[1]. The essentials of a contract were parties, agreement, subject and price. Earnest money might or might not be a condition. Earnest, if provided, was regarded as evidence of a contract and a measure for estimating damages. If the vendor knew the subject of the sale and the purchaser did not, the buyer could rescind the contract. The

[1] Horace, *Epistles*, Bk. II, 2.

example is given of the sale and purchase of a supposed slave who proved to be a freeman, or of a slave who was mad. There was an implied warranty in such a case.

CONCERNING LOANS AND SECURITY[1]

Chapter X. The first words of the first section establish that contracts of these kinds could be made either on a written or verbal agreement. The first part of the section deals with loans made without, and the second part with loans made with, deposit of a security. This and the succeeding clauses primarily relate to money lent, though the phraseology would cover the loan of any object, as the opening sentence of the first section indicates. It has been pointed out that in Roman law the terms creditor and debtor have a wider significance than that which we apply to them in English law or common parlance; and that pledge, mortgage and lien were all treated on the same footing. In rendering the Greek text into English these differences in meaning must be borne in mind.

In the Ecloga *Daneion* is the word used for the object loaned. *Daneistes* meant both the 'lender' and 'borrower' of the loan; the derivatives are *o daneizon*, *daneisas*, for the former, *daneisamenos* for the latter. So *chreos* is the 'debt'; *chreostes* is used for both 'debtor' and 'creditor,' *chreostomenos* is the 'debtor,' *chreostomena* the subject of the debt; *apochreostein* was the technical word for 'paying off a debt,' *enekura* for the 'securities' or 'pledges.' If in the eighth century mortgages were generally based upon the pactum hypothecæ, which covered and extended the scope of pignus, we find in the first section of this chapter evidence of pignus, and the actio pignæaticia.

[1] Upon the title of this chapter in 'Z' see notes on the text.

The distinction was that in pignus the lender had possession of the property, but the property in the subject remained with the borrower, as for instance in the modern method of depositing a registered bond as security for a loan; while in hypotheca both the possession and the property remained with the debtor, as in a modern mortgage of a house. We need not however consider the process by which the older law on loans changed but only the developed and simplified result as it is laid down in the Ecloga; the law was derived from Justinian, as summarized in the Institutes, Bk. 3, c. 14.

1. Briefly then, whatever the nature of the loan might be, the borrower was bound to return it to the lender; and could not put off his obligation by any pretext or excuse such as loss at sea by shipwreck. And if security was given, and the debt in respect to which it had been given was repaid, the lender could not put off returning the security to the borrower by pretending that he had lost it, unless he could satisfy the Courts that the security had been lost or destroyed together with his own property.

2. If the borrower did not repay the loan the lender had right of recourse against the security; and after making two or three demands for repayment, if the debt was not repaid, he could sell the security publicly; and after the sale if there was a surplus, such surplus was to be given to the borrower.

3. A lender who took security for a loan and then took the borrower's children and put them out to hire, forfeited twice the amount of the loan; that is the loan and as much more again was paid to, and, presumably, divided between, the parents and the children's hirer.

4. The protection accorded to a woman's dower from being liable for seizure in satisfaction of the

husband's debts to his creditors or to the State has already been referred to.

Section 5, relating to partnership, is brief and does no more than lay down the relation between two or more persons who unite together for a common object and contribute either property or labour in equal or different proportions. It does not deal with the rights and obligations as between the partners and third parties. The subject is treated more comprehensively in the Institutes, Bk. 3, c. 25, under the title '*de Societate*,' and it will be noticed that Justinian uses the Greek term koinopraxia for a particular partnership. The term used in the Ecloga is koinonia.

The inclusion of this subject in the chapter on loans is noticed by Zachariä von Lingenthal who accounts for the fact by supposing that as a charge or payment of interest on a loan was forbidden, the difficulty of obtaining a return on capital or other property lent was got over by means of a partnership between lender and borrower. Possibly *koinonia*, in distinction to *koinopraxis*, confirms that supposition.

Chapter XI, on the deposit of goods explains itself; the corresponding provisions will be found in the Institutes, Bk. 3, c. 14, sec. 3. I purposely avoid the use of the technical word Bailment.

EMPHYTEUSIS

Chapter XII deals with Emphyteusis or implanting. It is referred to in Bk. 3, c. 24, sec. 3, of Justinian's Institutes. By a constitution of the Emperor Zeno, 'the contract of Emphyteusis was declared to be of a special nature and was not to be confounded either with letting or hire or with sale but rested on its own peculiar agreements.'

The parties to it were the owner of the soil, and a tenant, occupant, lessee, call him what you will,

who by reason of a verbal or written contract with the owner, or by inheritance or under a settlement, acquired a legal title to use the owner's land and its produce; and if his title or right was interfered with he had a remedy at law.

The tenure was continuing or continuous but not perpetual, since in certain cases, as for instance in Emphyteusis, by written agreement for a succession of tenants it came automatically to an end with the death of the third inheritor. It could also be determined by breach of covenant, such as the non-payment of rent for three years, or by the occupant wasting the land. The Ecloga unfortunately tells us nothing about the incidents of the tenure, of the fines on succession or alienation. The Imperial House, by which is meant what we should call the Crown, had a special privilege which, as I read the text, carried a right of alienation and not merely Emphyteusis. Possibly the 'alienation' was only by exchange of land.

The word Emphyteusis is still used as a law term in modern Greece and applied to a tenure of a similar, if not precisely the same, kind. The distinction between this tenure and one by lease was maintained in the Ecloga; and leasing is specially dealt with in the ensuing chapter XIII, in one paragraph, which explains itself.

It originated in lands owned by the State, municipalities, the Church or monasteries who could not cultivate, or by poor owners who were too poor to cultivate their own lands.

TESTIMONY

This subject is dealt with in chapter XIV. Until we are more perfectly acquainted with the legal procedure of this period it is difficult to make profitable

comment on this important and interesting chapter. We learn from it that in the eighth century, as in earlier times, certain persons were held to be exempt from giving testimony. Something like a preliminary examination by magistrates before the witnesses were sworn was recognized. The evidence of witnesses of better class was to be more readily accepted. Witnesses who contradicted their evidence might be subjected to cross-examination to elicit the truth. Incidentally we learn that suitors could appeal against a decision in first instance and were bound by the result of the appeal. Witnesses could not be compelled to attend a trial for more than four days, and the evidence of those who lived far from the venue might be taken on commission.

Those who were exempted or disqualified from giving evidence, or those whose evidence was not admissible were: Senators or Privy Councillors (bouletes). They were, no doubt, competent but not compellable[1]; those degraded from the Privy Council (synkletos) for shameful conduct; parents against children or conversely; no one could be compelled to give evidence against himself; the testimony of servants, slaves, or freedmen was only admissible against their masters in certain specified cases including frauds by the masters on the public revenue. In cases of debt or alleged repayment of debt oral evidence was not admissible if documentary evidence could be but had not been procured, and so on.

The first section lays down the general proposition that people of rank, or in Government service, or a profession, could be assumed to have a sense of giving proper evidence and therefore should be treated as credible witnesses. I have rendered the first para-

[1] This is or was till quite recently the law in Modern Greece and I understand that it is now (1925) to be abolished.

graph in that way. The second paragraph relates to witnesses who were obstinate or perverse; the Court could cross-examine them (dia basanon) to elicit the truth. Torture to obtain evidence was practised at all times in Roman history and, but for Leunclavius' Latin version in which he adopts 'examination,' I should have felt disposed to render the phrase 'torture.'[1]

The greater number of these sections explain themselves. The following merit attention.

The evidence of a slave was admissible as against his master, as provided by section 3. The census, it must be recollected, was made, not for scientific or statistical purposes, but for taxation, and if the master tried to defraud the taxing authorities the slave's evidence against him was admissible.

Section 7 is interesting from the incidental reference to preliminary legal proceedings presumably conducted by the akroati.

Section 10 lays down the rules as to evidence on appeal. Incidentally we learn that suitors had a right of appeal. The concluding sentence implies, that the judge hearing the appeal could naturally re-try the case and give a judgment independent of the decision in the first instance; that is to say he was not limited to merely confirming or annulling it.

Chapter XV relates to the liquidation or dissolution (dialusis) of an obligation. The subject is treated very briefly in three short sections of which the first and really the important one marks, as I have pointed out in the note on the text, the tendency of the law to require contracts, or the discharge of them, to be made in a formal manner, with witnesses, either by word or in writing and sometimes before a notary. The

[1] I think that in cases of this kind the witness was sworn so that he might in case of need be punished as a perjurer and have his tongue cut out.

Ecloga now required a dissolution of an obligation to be in writing made before three witnesses. The credibility of witnesses is, as we have seen, alluded to in the preceding chapter.

THE SOLDIER'S PECULIUM

This subject has already been referred to in considering the relation between parents and their children. The title of this chapter is '*Peri stratiotikōn idioktetōn pragmatōn kai kanstresiōn kai kerdōn kai peri klerikōn kai chartoulariōn.*' In the 'Z' manuscript there are added to this title the words: '*upexousiōn autōn tugchanontōn,*' which explains that the chapter refers to those who were in the patria potestas, or what was left of it in the eighth century.

In the ninth chapter of the second Book of the Institutes, Justinian modified the general law, that if persons in the power of another acquired anything, that which they acquired became, by the mere force of their position, the property of the person in whose power they were. His words are:

> Formerly all that your children under your power of either sex acquired, excepting castrensia peculia, was, without distinction, acquired for the benefit of their ascendants; so much so that the pater familiæ who had thus acquired anything through one of his children could give, sell or transfer it in any way he pleased to another child or to a stranger. This appeared to us very harsh, and by a general constitution we have relieved the children yet reserved for the ascendants all that was due to them. We have declared that all which the filius familiæ obtains by means of the fortune of the father shall, according to the old law, be acquired entirely for the father's benefit; for what hardship is there in that which comes from the father returning to him. But of everything which the filius familiæ acquires in any other way he shall acquire the usufruct for the father, but the son shall retain

the ownership, so that the son may not have the mortification of seeing that becoming the property of another which he himself has gained by his labour or good fortune.

I take the following observations from Sandars' commentary on the Institutes.

The filius familiæ could not, in the strict law of Rome, have any property of his own. Sometimes however the father permitted the son to have what was called a peculium, that is a certain amount of property placed under his exclusive control. This was called the peculium profectitium. In the early days of the Empire a filius familiæ came to have, under the name of castrense peculium, property quite independent of his father. This consisted of all that was given to a son when setting out upon military service, or acquired while that service lasted.

This military peculium the son could dispose of inter vivos, or by will, as he pleased. In the twelfth chapter of the same Book 2, Justinian tells us that this power to dispose by will of the castrensia peculia was at first granted by Augustus, Nerva, and Trajan, to soldiers on service only; and Hadrian afterwards extended it to veterans, that is to soldiers who had received their discharge. Now it was extended to those en sedetois or in garrison.

So that besides peculium profectitium there was also peculium castrense. To these, two more classes were added; the quasi castrense granted to State servants, and the adventitium which consisted of everything received by the filius familiæ in succeeding, whether by testament, or not, to his mother. It follows that in the time of Justinian the peculium profectitium belonged to the father; in all other cases the peculium belonged to the son; but the father had the usufruct of the peculium adventitium and no power over the castrense and quasi castrense.

Section 1 defines the peculium castrense as the emoluments of a soldier which, though being in potestate of his father or grandfather, and even in garrison, he could dispose of by will according to the formalities already prescribed; and the soldier could dispose of them by gift inter vivos or by will, and his heirs could not claim any legal share in them; and on the death of his parents they were not to be included in the patrimonial estate but to be considered as his absolute property.

Section 2 prescribes that if after the death of the parents the soldier and his brothers agreed to live together, they might make an agreement as to the contribution he and they were to make to keep up their home. And if they did not make an agreement then the section proceeds to prescribe what is to happen to the peculium in the first ten years of their lives together, and then if they continue to live together for another three years, and lastly the result of their living together for longer than the combined periods. At the end of ten years and up to thirteen years, if they separated, the soldier was to keep his charger and caparison, his arms, and his cuirass. If they lived together for thirteen years and then separated the soldier was also to keep what he had saved from his emoluments; and the fund which he received on joining the army was, in any case, to be considered as his own.

Section 3 relates to Clerics and Chartularii in parental subjection, who were classed as soldiers and are called *strateuomenoi*, and had the peculium quasi castrense. The life interest inured to the parents who could by will leave the capital to their children strateuomenoi from whom they had derived it. But if they did not do so it was to be deducted from the paternal inheritance at their death and given to such

strateuomenoi children; and the children, who were not strateuomenoi, had no claim to a legal share of it.

Section 4 also relates to the peculium quasi castrense and applied to those who as strateuomenoi did not come in the category of soldiers, Clerics, or Chartularii, but were in receipt of pay or emoluments from the Treasury of the Emperor or of the State. They were allowed to dispose of only a part of their peculium if they had children, and the amount they could dispose of depended upon the number of children they had.

Section 5 relates to the paganica peculia in which the two other kinds of peculium, profectitium and adventitium, are designated. With the first is included a specified paternal property which the father had entrusted to his son to manage, and that, naturally, fell into and formed part of the paternal estate for division among the father's children. The second part is not very clearly expressed, but lays down that anything which the children had contributed to, or inherited from, their mother's property, was theirs absolutely, subject to their parents' life interest, and they were responsible for protecting the capital which the children alone could dispose of.

PUNISHMENTS AND THE SPOILS OF WAR

Chapter XVII contains fifty-three sections which relate to punishments and should be read in conjunction with those specified in the Appendix. I have added an index at the commencement of the text and most of the provisions are self-explanatory.

Cases of high treason against the person of the Sovran were remitted to him for judgment; and this was the practice, as the text explains, to prevent trumped up charges by enemies of the accused.

Capital punishment was inflicted either by the

sword or on the gallows for arson, poisoning, outrage on children, homicide, brigandage and for the offences specified in the last five sections, which included, Manichæans, Montanists, and deserters. The more frequent forms of punishment were, fines, flogging, nose slitting, and tongue or hand cutting, and exile temporary or permanent. Blinding was the punishment for sacrilege.

The offences mentioned in this chapter may be classified by sections as follows:

1 to 6. *Offences against the Church and the State.*
7 to 9. *Offences in which horses or cattle were concerned.*
10 to 17. *Theft.*
18. *Forging coins.*
19 to 39. *Offences of a sexual character.*
40 to 41. *Arson.*
42. *Giving drinks which cause death.*
43 to 44. *Poisoners, charlatans, and quacks.*
45. *Murder.*
46 to 49. *Homicide.*
50. *Brigandage.*
51. *Slander.*
52. *Manichæans and Montanists.*
53. *Deserters.*

In the first group, section 1 relates to breaking sanctuary. Anyone who attempted to seize a fugitive who took sanctuary was liable to be flogged. The priest of the Sanctuary was to protect the fugitive by obtaining guarantees that the fugitive would be properly tried by a Court of Justice. Section 2 refers to perjury committed by a party to a suit who had been put on oath by his adversary. This was known as the *juramentum relatum* or *delatum* and is still used and recognized in the codes in vogue in Continental

Europe. If the party sworn committed perjury he was liable to have his tongue cut out.

By section 3 cases of high treason were, as I have already mentioned, referred to the Sovran in person, who, in theory at any rate, was the Chief Magistrate of the State. By section 4 assault on a priest was punished by flogging and exile. Section 5, penalty for those who instead of appealing to the Courts of Justice took the law in their own hands. Section 6. Renouncing the Christian faith by prisoners of war who escaped and returned to Roman territory was punished by exile.

The next three sections relate to, injury to a hired horse, section 7, impounding another person's cattle, section 8, the liability of owners of rams and bulls which fought and got killed, or injured one another, section 9. All punished by fines.

The next eight sections relate to stealing; section 10, arms or a horse in a military camp or on the march; section 11, or in any other place. Hand amputation, and, for a first offence, in the latter case, a fine. Section 12, a slave who was convicted of theft remained a slave in perpetuity. Sections 13 and 14, cattle lifting and robbing a grave, hand amputation; for a first offence in the former case flogging; for a second offence exile. Section 15, theft from a church or sanctuary, exile for the former, blinding for the latter. Section 16, selling a freeman into slavery, hand amputation; section 17, stealing a slave, fine. Section 18, hand amputation was the punishment for forgery. The next sections 19 to 39 relate to various sexual offences. Adultery, seduction, rape, incest, marriage within prohibited degrees, bigamy, and unnatural offences. Sections 40 and 41 relate to arson; the first to arson or tree cutting in the country, and accidental fire caused by burning stubble, due to care-

lessness or mischance; the penalty for arson in a city was capital punishment. Sections 42, 43, and 44; giving drink and causing death, poisoning or the like; punished capitally. Quackery punished by exile. Sections 45 to 49; murder, homicide with a sword, or any other weapon, in a fight with fists, or by a slave. Capital punishment, flogging, or exile. Section 50, brigandage was punished by hanging. Section 52. Manichæans and Montanists suffered capital punishment. They are referred to with other heretics in detail in chapter v of the Appendix.

SPOILS OF WAR

Chapter XVIII prescribes the principles for dividing spoils and booty captured in war. 'Since Victory is not won by the weight of numbers but by the power of God it is fitting and proper that a sixth part of the spoils should belong to the State; and the survivors should share the remainder, share and share alike.' But as the officers' pay is sufficient recompense, only those who specially distinguished themselves were, at the discretion of the Commander, to receive a recompense out of the sixth share belonging to the State. The concluding paragraph is obscure and I am not sure that I have rendered it correctly. The difficulty arises through the use of a peculiar technical word in the following phrase, '*kai e meris ton en tois touldois aperchomenon.*' The word *touldon* is translated by Professor Bury as 'baggage.' The sense of this paragraph seems to be that those who serve in what we should call the Army Service Corps, should, like the Commanders, have a share of the spoils.

APPENDIX

Then follows the Appendix, divided into eight chapters which deal with a variety of subjects; the

law of sureties, penalties for offences by civilians and soldiers, the degrees of affinity, and, in a final chapter, the law in general.

Some of the chapters are quoted textually from Justinian with the references; others seem to be compositions of the Isaurian legislators. We may suppose that these represent a collection of short Edicts collected together and annexed to the Ecloga either at the time it was published, or later during Leo's reign or the reigns of his immediate Isaurian successors.

SURETIES AND OBLIGATIONS

Chapter 1, on sureties and obligations. The first section, quoted from the Code, Bk. 2, c. 5, lays down in two lines the effect of the general law applicable to a person who becomes surety on behalf of another.

Then follow four more sections: 2, relations even if they were impecunious could be sureties; and once accepted the creditor had to make the best of an impecunious surety unless the latter lost his fortune. Death of the surety extinguished the liability to the creditor. 3 illustrates contracts of suretyship made by parol which would and would not be considered binding. 4 and 5 lay down the rights of the surety and the creditor when the bond fell due or was not met.

In the preamble of the Ecloga the Sovrans explain their desire to provide what they call a Eusynoptic survey of the law. They have really managed, in this chapter, to condense an important and intricate subject into a compass, so small, that it is difficult to comment upon it without going into explanatory detail which the brevity of their text does not justify. The context shows that the chapter refers primarily, if not exclusively, to guarantee for the repayment of money lent; this contract was known in the earlier law as *intercessio*.

TRESPASS AND OTHER OFFENCES RELATING TO LAND

Chapter II contains six sections all relating to land and causes of litigation arising from tenure, adverse claims to possession, or trespass. Four sections are paraphrases from the law of Justinian; the second and the last appear to be original compositions.

1. From the twenty-fifth Book of the Digests; anyone tampering with ancient boundaries or forcibly enclosing another person's land suffered capital punishment. 4. Similar punishment by decapitation if life was lost in consequence of a forcible entry on the property of another person. From the Code, Bk. 9, c. 12.

2. Lays down the general proposition that fixtures on the soil belong to the owner of the soil; and quotes the maxim 'that which is fixed to the soil, pertains to the soil.'

3. From the Code, Bk. 3, c. 36. Anyone who trespassed on another person's land by building, sowing, or letting it, forfeited what he had spent thereon.

5. Anyone who took the law into his own hands, instead of seeking the protection of the Courts of Justice, for the recovery of an interest in land or property in it, even if the interest rightly belonged to him, was treated as an outlaw, and was to be banished. He also forfeited his property. From the Code, Bk. 9, c. 12.

6. This section relates to officials who are directed to judge and punish all those under their command, who were guilty of offences in their jurisdiction.

Sections 4 and 5 are particularly interesting from an historical point of view as I have pointed out in the notes on the text. They relate, as Zachariä von Lingenthal considers, to the individual tenure of com-

munal land and offences in regard to disputed ownership or benefit of their holdings. The introduction of communal tenure of land was the result of Slavonic immigration into the Empire. These immigrants began by settling in what is now Serbia, Bosnia, Herzegovina, Montenegro and the Dalmatian hinterland. But later on they spread out and settled all over the Balkan peninsula; and like the Goths and Lombards, in Italy, introduced their own customs into the Empire. They were not interfered with by the Roman authorities and indeed the Roman legislation in some measure recognized the system of land tenure. The subject of these Slavonic settlements is noticed by Constantine Porphyrogennetos in his *De Administrando Imperio*, and Professor Bury has edited chapters 29 to 36 in a text-book[1].

MILITARY DISCIPLINE

Chapter III, divided into two parts, relates wholly to Military Discipline. The seventeen sections in the first part appear to be original compositions of the Isaurian period, the fifty-one sections in the second part are either quoted textually or paraphrased from Justinian's laws. We might naturally expect to find military law occupying a prominent place in a publication like the Ecloga when we remember that in the eighth century the Empire was administered as a purely military State, the provinces were named by the military title themes, and that the ruler was a soldier Sovran. The interest in this chapter is historical rather than legal, and not a little curious information can be deduced from some of the sections. For example an adulterer, anyone condemned to

[1] *The Early History of the Slavonic Settlements in Dalmatia, Croatia and Serbia.*

Texts for Students, No. 18. Published by the S.P.C.K. in 1920.

death, or exile, or convicted of any other public crime such as being a Manichæan or a Montanist, could not enlist. Honesty was expected of a recruit. For stealing he was degraded to the lowest rank in the service; and was treated as a thief if he found a live horse or any other valuable property and failed to report the discovery to his commanding officer. Impetuous conduct, breaking ranks, and rushing out in pursuit of the enemy, like cowardice, treason, or sale of arms and accoutrements, or desertion to the enemy, were punished capitally. For minor breaches of discipline, fines, degradation or flogging were inflicted. A sentry who failed to keep his watch on duty at the Palace was liable to suffer capital punishment. The Court-martial could exercise clemency and if humane considerations prevailed the offender could be flogged, even if he were an excubitor. I translate this word by 'Yeoman of the Guard.'

Sections 26 and 46 in the second part merit more than a passing notice. I have rendered them into English thus: section 26. 'If the exploratores of the Romaic Army reveal the secret counsels of the Romans to enemies they shall suffer capital punishment.' And section 46. 'If the exploratores of the Romaic Army reveal the secret counsels of the Romans to enemies they shall suffer capital punishment, and in the same manner those who disturb the peace.'

Omitting the last sentence which is also rendered in a single section 28, and refers to a separate offence, these two sections appear in the text thus: 26. '*Ei de kai oi exploratores strateumatos kruphia bouleumata tōn romaiōn anaggeilōsi tois polemois kephalikōs kolazontai.* 46. *Ean oi exploratores tou romaikou strateumatos apaggeilōsi tois polemois ta apokrupha bouleumata tōn romaiōn kephalikōs timōrountai.*'

There is nothing to show whether these two versions of the same regulation are original compositions or derived from two different texts; they obviously refer to the same treasonable offence of revealing official secrets. Who were the exploratores? What were the secrets, and why were the terms Romaic and Romaion used? The explanation of the last is, I think, simple enough; Romaic is the adjective used to express Roman, Romaion the noun. So a little later on in Roman history, in the legends on the coins, the Emperors style themselves '*Basileis Romaiōn*.' The word *Romanōn* is not found, nor *Romaikōn*. Both adjective and noun express the same notion, of the Army that served, or the people who inhabited, what we call Roman territory, that is the Roman Empire.

The obvious renderings of *exploratores* and *kruphia bouleumata* are 'pioneers' or 'scouts' and 'secret plans,' but I am not sure that they are either exact or the best, or that bouleumata refers merely to strategy or tactics. May I hazard the following conjecture? The one secret which the Roman Government was anxious to conceal from its adversaries at this time, was, the manufacture and use of what is now known to us as Greek fire. I infer that that is what kruphia bouleumata refers to; and if so 'secret devices' might be taken as an adequate rendering of the words, and for exploratores the 'machine gunners.' Pioneers they were in a sense for the invention of the material, and the contrivance for projecting it, were almost new. They were used for the first time against the Saracens, during the sieges of Constantinople in the reigns of Constantine IV and Leo III.

The following sections deserve notice. Part 1, sections 6 and 7, refers to leave, and fines and penalties for breaking it. In winter time soldiers had three months' furlough; in time of peace leave was granted

at the discretion of the High Command, the eparchia. The 'furlough' is called *kommeaton*, the 'winter leave' *paracheimadion*.

Part 2, section 4. Anyone who is acquainted with later Roman fortifications in general, and in particular with the structure of the Theodosian walls of Constantinople, which, by the way, were extensively repaired by Leo III and Constantine V, will appreciate the significance of this section. The walls were regarded as hallowed or consecrated buildings.

By section 6 punishment is inflicted on a soldier who deserts to the Barbarians. The same word is used in sections 42, 44, and 45. As a general rule the enemy is referred to as polemioi. I think the distinction is that all non-Romans, that is to say non-inhabitants of the Empire, were Barbarians, and they were called *polemioi* if they were at war with the Empire. I expected to find the name Hagarenes by which the Saracens were known at this time, but it does not occur in the Ecloga. With the Saracens war went on incessantly.

Section 42 prohibits the sale of arms or war materials to Barbarians who came to the Empire on pretence of an embassy. Betrayal of Romaioi to the enemy, section 42, and desertion to the Barbarians, section 43, were capital offences. Migrating from Romaic territory to the enemy was punished in the same way.

The titles of officers in this chapter are referred to in the notes. *Archon* is the term generally used for an officer without specification of rank. *Strateumenos* is also used, generally, to indicate a professional soldier or public servant. *Strateuein* is to serve; and in translating I have adopted the colloquial English phrase 'the service' for *strateuma*.

JEWS, HERETICS AND PAGANS

The fourth chapter of the Appendix relates to Jews and Samaritans, Pagans, who were known as Hellenes, and heretics.

The Jews, it is true, were tolerated, but they were put under many disabilities and treated with much oppression. They were ineligible for any rank or office, obliged to live as cohortalini and follow their paternal vocation. They could not own land directly or by an intermediary or Christian slaves, and Samaritans could neither keep, nor build, synagogues. Interference with Christians by perversion or circumcision was punished capitally. By the eleventh Act of the Quinisext Council they were forbidden to bathe with Christians and Christians were forbidden to eat unleavened bread. Punishments for contravening the law are prescribed by sections 6, 7, 13 and 16 of this chapter and sections 26 and 28 of the sixth chapter. With the Jews were included Samaritans. Jews were not only permitted but encouraged to adopt Christianity.

The Pagans were called Hellenes. We must infer from the Ecloga and the sixty-second and sixty-fifth Acts of the Quinisext Council that besides the seasonal festivals and junketings, connected with the vintage, the Brumalia, and Bacchus, and the Bota, in honour of Pan, it was the practice, even in Constantinople, to consult Pagan priests and offer sacrifices to the heathen gods. Paganism survived the eighth century and died hard, especially in such out of the way places as the slopes of Etna in Sicily, or the shrines of Ancient Greece, or the Ægean Islands, where the Romaioi feigned to locate the homes and doings of the gods of mythology. The punishments for practising heathen rites are laid down in sections 20 and 21.

There is a long list of heretics in sections 8, 15 and 26, and it should be compared with that given in Act 95 of the Quinisext Council. I have referred to some of the heretics in the notes on the text. The following, when detected, suffered capital punishment, and deserve mention. The Paulicians were not punished capitally.

Donatists were schismatics, not heretics. We first meet them in the reign of Constantine the Great, who summoned a Council at Arles to try to reconcile them to the Church. The schism began in North Africa with a section of the community who objected to readmit into Communion those called *lapsi* or *thurificati*. To escape the Decian and Diocletian persecutions this class of Christian had offered sacrifices to the Roman national divinities, that is to say Rome personified and the Cæsar. But at a later date the schism took a new turn and developed into a kind of Home Rule movement by the Numidian clergy. The Donatists are frequently referred to by the Fathers of the African Church and they gave the Roman Government a great deal of trouble. They were accused of inviting Genseric to come over to Africa and of helping the Vandals to conquer the Mauretanian and Numidian provinces. At the time the Ecloga was published the conquest of North Africa was completed by the Saracens taking Carthage (699) and the Christian population was given the option of becoming Mahometan or leaving the country. We must suppose that the sect had survived and some of its members had found their way to the Eastern provinces of the Empire.

Manichæans were not Christians at all. They derive their name from Manes, a Persian who, while rejecting the Holy Scriptures both of the Old and New Testaments, proclaimed himself to be the Para-

clete and composed a Gospel. The sect was prohibited by Valentinian and Theodosius but continued to exist under a variety of weird and outlandish names, such as Enkratitoi, Apotaktikoi, Saccophoroi, Hydroparastatoi, and so on. These names appear in the Ecloga. Anyone found consorting with a Manichæan was severely punished, and officials and persons of rank were enjoined to hand Manichæans over to justice.

Montanists were so called after Montanus, a native of Asia Minor, who appears to have been a forerunner of Manes though he did not claim to be the Paraclete. His followers practised great austerities and received some encouragement from Tertullian. The heresy, a very ancient one, dated from the Antonine era.

The Paulians I take to be the Paulicians concerning whom there is an interesting account in *The Later Roman Empire* and in Mosheim's *Ecclesiastical History*. They are believed by some to be the forerunners of a sect known as Bogomiles which had some vogue in Bosnia and Herzegovina. They rejected the Old Testament, did not celebrate the Lord's Supper, and entertained particular opinions regarding our Lord's Incarnation and Crucifixion.

Section 19. A Bishop who baptized anyone a second time was to be dethroned.

MARRIAGE

Chapter v has five sections relating to marriages of an irregular character. Section 1. I use the word 'profane' to mean 'low class.' *Synkletoi* were the members of the Privy Council or Senate of New Rome.

The second section declares that the basis of the marriage contract is the mutual consent, not physical

union. Our text is not complete. From the 'Z' manuscript we have some words in this section showing that the Egyptians had a local marriage custom which the Ecloga respected.

Section 3 points, of course, directly at the incestuous marriage of the Emperor Heraclius with his niece the Empress Martina. It was no doubt inspired by Acts 51 and 53 of the Quinisext Council.

Sections 4 and 5 lay down the consequences of a marriage between a freewoman and her slave. The children were freeborn and derived no other benefits.

PUNISHMENTS FOR POISONERS, JEWS AND HERETICS

Chapter VI. This chapter contains thirty sections on various offences, chiefly poisoning with intent to murder, to procure abortion, or medicines to induce pregnancy; astrology, soothsaying, practice of magic, and kindred offences. The concluding sections contain provisions regarding the relations between Christians and Jews. The majority of these sections appear to be original compositions. Of the rest some are taken from Justinian's books or other legal commentaries. Athanasius Scholasticus, quoted in section 4, the author of an epitome of the Novellæ, lived in the latter half of the sixth century. John Couvidios, or Coubidos, a professor of law in the same period, quoted in section 5, wrote on criminal law. Besides these authors there are references in this chapter to the lex Aquilia, section 10; and to the law affecting the relations between a testamentary heir, a posthumous child and its mother, section 7. Also a reference to a Senatorial 'Sale of Drugs Act,' section 2. The ancient nomos ubreos or punishment by death for outrage to the person is referred to in section 19.

Section 25 which forbids a charioteer, that is a jockey in the races of the Hippodrome, to consult a soothsayer will be noticed presently. The practice of magic in Constantinople was punished capitally.

POISONING

Section 1. Poisoning is to be treated on the same footing as murder, and those who make or sell poisons to take human life as murderers. The word used for 'poison' is *pharmakon*, distinguished from 'medicine,' which is called *kalon pharmakon*, by the adjective *anairetikon* or the verb from the same derivation. Medicines are also described as *pharmaka pros hygeian kataskeuazomena*. Love philtres were treated as poisons. As the context of the first four or five sections shows poisoning was clearly associated in the minds of the authors of the Ecloga with sexual crime. Love philtres, adultery, procuring, attempts on the life of a husband by a wife (section 4), and so on, all point in that direction. Section 5, invocation of devils, and section 6, adultery with a prostitute, are only indirectly connected with the subject of this chapter; the former offence was punished by death.

Section 7 reads: '*Ean gune labousa chremata para ton institouton kleronomon kai dia tinos pharmakou ektiose, kephalikōs timoresthai.*' The meaning of this section is plain enough. A woman who received property from a testamentary executor and then procured abortion of a child who, if born posthumously, might be entitled to the property, or part of it, suffered capital punishment. This particular section must be read in the light of a passage in the Institutes, Bk. 2, c. 13. '*Ideoque si mulier ex qua postumus aut postuma sperabatur abortum fecerit nihil impedimento est scriptis heredibus ad hereditatem adeundam.*' The next section,

8, prescribes the punishment for procuring abortion by poison or love philtre. Then follow two sections, 9 and 10, which relate to giving poison or drugs to a slave, and when administered by a female doctor. In the latter reference is made to the lex Aquilia which entitled a person injured to redress by action in the Civil Courts. The punishments for the offences referred to in these sections ranged from fines, exile, penal servitude in the mines, to death. Books on magic and poisons could not pass by inheritance, section 11. The sale or having possession of poisons is forbidden by sections 12, 13; 14 and 15 enumerate various drugs which were given to induce pregnancy. *Boubraston* was a broth or decoction made with some beetle of the scarab family. The apothecary was called *pigmentarios*, and among his drugs were, beetles, lizards, aconite and hemlock. The offence was obviously not considered to be a serious one deserving capital punishment; if the patient died the offender was banished.

Section 19 introduces the term *ubris* which I have no doubt refers to the nomos ubreos, the law which punished with death an outrage, such as giving poison to induce madness.

Sections 20 to 24 and sections 16 and 17 relate to kindred offences such as sorcery, magic, heathen sacrifices, and divination or astrology. Offences of this kind were severely punished by fines, exile, decapitation, delivery to wild beasts, the gallows or burning. The last-named punishment was inflicted on sorcerers who practised in Constantinople, no matter what their social rank might be.

Section 25 is of antiquarian interest. I remember finding in the Lavigerie museum at Carthage, and in the Bardo in Tunis, some small sheets of lead about six inches square, inscribed in Greek with impreca-

tions[1] addressed to various Pagan divinities. I paraphrase two of them thus:

Dread god of victory whosoever thou art, I adjure thee by the mighty names of [Saebal and other local divinities]. Strike down the horses whose names I here inscribe on this tablet....Strike down their power, courage, energy, and swiftness. Rob them of victory. Fetter them, cut their hoofs off. Enervate them, so that they cannot compete in the hippodrome to-morrow, or come out of the ponies' stables, or run the course, or turn the corners[2], but make them fall with their jockeys Gratus, Felix, and Narcissus.

The custom of offering tablets of this kind to the Pagan shrines, no doubt, survived with the racing fraternity of the Byzantine Hippodrome.

Section 26 prohibits Jews, Samaritans, Pagans, in fact anyone who was not an orthodox Christian, from possessing a Christian slave or circumcising him. Anyone who transgressed was liable to pay thirty litra to the Treasury and the slave was made free. This is the second time that litra are mentioned in the Ecloga (see chapter II, section 10). The litron usually represented a quantity of silver which might be worth about three pounds sterling in gold. It must be understood that this is an estimate for it is next to impossible to determine the value of any coins of this period, except the nomismata of gold, in relation to English money; and more difficult still to determine the purchasing power of either gold or silver in the eighth century. Moreover the value of silver in relation to gold continually fluctuated. The nomismata in my collection of Later Roman coins do not vary much in

[1] Some of these inscriptions will be found in *Corp. Ins. Lat.* Vol. VIII, Supt. 1, Nos. 12508–12512.

[2] At the extremities of the hippodrome. The curves were sharp as the still existing substructure on the Marmara End shows.

weight and seem to contain about eleven to twelve shillings worth of gold.

If any of the non-orthodox folk had a slave who wished to become a Christian his wish was given effect to and he was made free. And if his master became a Christian too the slave remained free and could not re-enter his former master's service. Perverting a Christian slave from his faith was punished by death; circumcision of a Christian by confiscation of property and perpetual exile.

KINSHIP

Chapter VII relates entirely to degrees of relationship by ascendants, descendants and collaterals. The relationship is carried back to the great-grandfather's grandfather and forward to the great-grandson's grandson and collaterals in corresponding sequence to make up six degrees. The authors say that as sight is better than sound they have written the degrees out at full length so that those who are concerned may visualize them for themselves. I can only express a hope that I have done justice to the authors. The principle upon which the degrees were calculated has already been explained above in connexion with the law on betrothal and marriage.

JURISPRUDENCE

Chapter VIII, divided into six sections, treats of jurisprudence and law in general. Section 1, on private law as applied to persons, things or actions. 2, on freedom and bondage. 3, on justice, jurisprudence and legal precepts. 4, on things. 5, on rights in running water, rivers, harbours, and the sea shore. 6, on natural law, the laws of nations, and municipal law. The whole chapter is founded on the Digest

and its sources, on the Institutes, and on the paraphrase of Theophilus. Sections 1, 4, and 5 profess to be taken from the Digest; the others are composed of sentences taken from the Institutes. The editor of this Appendix, whoever he was, has imitated Justinian and, taking these sentences sometimes paraphrased, or abbreviated, has worked them into paragraphs of his own composition. These abbreviations and transpositions were no doubt considered sufficient for a synopsis of this kind, but the result is hardly satisfactory, and parts of section 6 are scarcely intelligible without reference to the original source where the context can be seen. Probably the whole chapter was intended to be read merely as an Index of subjects which were treated at length in the Digests.

The first part of section 1, for instance, is taken from Gaius, and the latter part of it from Hermogenianus. Section 3 is taken from Ulpian. Parts of section 6 are taken from Pomponius, others from Florentianus, and so on. In the notes on the text I have reproduced some of the Latin versions of the original and in one case at any rate I have translated the Latin original and not the Greek. It follows from what I have said that, excepting in the arrangement of the sentences and the phraseology used, the substance of this chapter of the Appendix is not an original composition but, in effect, a paraphrase of the older law.

Upon the Mosaic law it is unnecessary to make any comment nor have I done more than to give the references, chapter and verse, in the Authorized Version, where the passages, collected together in this Appendix, will be found.

In conclusion, and before passing to the text, I would warn the reader against assuming that the Athens

manuscript, from which this English rendering is made, is a perfect transcript of the original version of the Ecloga as it was published by the Imperial Chancery of Leo III. There are obviously many omissions and mistakes in it.

To illustrate what I mean I may take the law stating the grounds of divorce. Adultery of the wife, incompetence on the part of the man, conspiracy to take the spouse's life either as principal or silent accessory, or leprosy were the grounds for divorce. It is expressly stated that insanity is not a ground for divorce; but while the insanity was defined to be either before or after marriage, in 'Z' insanity after marriage only is mentioned. But the wonder is that anyone gave himself the trouble to transcribe a manuscript of legal enactments which had been obsolete for several centuries. It is possible that the transcript was made by someone who did not identify the date, and, seeing the name of the Emperors Leo and Constantine on the title-page, did so in the mistaken belief that they were, not the founder of the House of Isauria and his son, but Leo VI and Constantine Porphyrogennetos, and that the Ecloga was a synopsis of the Basilika, in force when the manuscript was transcribed and represented the current law.

THE ECLOGA

THE ECLOGA

A SELECTION OF LAWS ARRANGED IN A BRIEF AND COMPENDIOUS FORM

BY

LEO AND CONSTANTINE

the wise and pious Emperors, taken from the Institutes the Digests the Code and the Novels of the Great Justinian and improved in the direction of humanity; edited in the month of March, 9th Indiction in the year of the world 6234[1].

In the name of the Father and of the Son and of the Holy Ghost, Leo and Constantine the Faithful Emperors of the Romans.

Our God the master and maker of all things who created man and granted him the privilege of free will and gave a law in the words of prophecy to help him and thereby made known all things which he should and should not do so that he might choose the former as sponsors of salvation and eschew the latter as the cause of punishment; and not one of those who keep His commandments or who, save the mark, disregard them, fails to receive the appropriate reward of his deeds. For it was God who declared both these things aforetime and the power of His unalterable words, judging every man according to his deeds, will not, as the Gospel tells us, pass away.

Since therefore having delivered to us the Sovranty of the Empire, as it was His good pleasure, He added this thereto, to make manifest our love with fear toward Him, in that He bade us, as He bade Peter the

[1] A.D. 726.

supreme Head of the Apostles, to feed His most faithful flock: We can conceive nothing more acceptable by way of thanksgiving to Him than the righteous and just government of those entrusted to us by Him, so that henceforward the bonds of wickedness may be broken, the unjust breaches of covenants may be stopped, and the attempts of transgressors may be crushed, and thus by victories over our enemies, through His almighty hand, we may be crowned with the encircling diadem and the throne may be confirmed, more precious and honourable, and in peace to ourselves, and the republic established on a firm foundation.

Whence, busied with such cares and watching with sleepless mind the discovery of those things which please God, and are conducive to the public interests, preferring Justice to all things terrestrial as the promise of things celestial, and as being, by the power of Him who is worshipped in her, sharper than any sword against foes; knowing moreover that the laws enacted by previous Emperors have been written in many books and being aware that the sense thereof is to some difficult to understand, to others absolutely unintelligible, and especially to those who do not reside in this our imperial God-protected city, we have called the most illustrious Patrician, our Quæstor, and our most illustrious patricians[1], and our most illustrious consulars and comptrollers, and others who have the fear of God, and we have ordered that all these books should be collected in our Palace; and having examined all with careful attention, going through both the contents of those books, and our own enactments, we considered it right that the decisions in many cases and the laws of contract and

[1] According to 'L' the names of these officials were Nicetas, Marinus and Nicetas.

several penalties of crimes should be repeated more lucidly and minutely to ensure a eusynoptic knowledge of the force of such pious laws, and to facilitate the decision of such causes clearly, and to ensure a just prosecution of the guilty and to restrain and correct those who have a natural propensity to evil doing.

And we do exhort all those who have been appointed to administer the law and command them to abstain from all human passions and by a sound understanding to pronounce the sentences of true justice neither despising the poor nor permitting a transgressor to go unpunished. Nor to make a pretence of doing justice and equity by word, but in reality choosing injustice and cupidity as profitable. But when two persons have a suit before them, one who has greedily obtained riches at the expense of another who has been reduced to penury, to make equity between them, taking from the former the amount which the latter has been unjustly deprived of. For there are some who do not treasure truth and justice in their hearts, but, corrupted by riches, willing to favour for friendship's sake, revengeful through personal enmity, importunate in office, are incapable of doing justice and illustrate in their lives the words of the psalmist. 'Do ye indeed speak righteousness, do ye indeed judge rightly, ye sons of men? And if indeed here ye work wickedness in your hearts, ye weigh the violence of your hands in the earth.'[1]

Just as the wise Solomon, speaking by way of parable concerning the dispute about the unfair measures and weights, says a weight great or small is an abomination to the Lord[2].

These matters are publicly decreed by us for the

[1] Psalm lviii, 1–2. [2] Proverbs xi, 1 and xx, 10.

admonition of those who on the one hand know what is right but pervert the truth, and on the other for those who are wanting in good sense and those for whom it is difficult, or altogether impossible, to hit the mark and give an equitable judgment between man and man. Folk such as are referred to by Jesus the son of Sirach, 'Seek not of the Lord pre-eminence neither of the King the seat of honour, and seek not to be a judge being unable to remove iniquity.'[1]

Let those and those only who participate in sense and reason and know clearly what true justice is, exercise straight vision in their judgments, and without passion apportion to each his deserts. For so also our Lord Jesus Christ, the power and wisdom of God, giveth unto them far more abundantly the knowledge of justice and revealeth those things that are hard to discover; who also made Solomon truly wise when he sought out justice and granted him the privilege of successfully hitting the mark, in the dispute over the child.

For what the women said was unsupported by testimony. And he commanded that the matter should be decided by nature and thus determine the doubtful case. And while the strange woman received the command to lay hands on the child without emotion, the mother, through the natural affection which she bore, could not endure to hear the sentence.

Let those who are appointed by our Pious Majesty to try cases and decide disputes and who are entrusted to find the true measure of our august Laws reflect upon these matters and take them to heart.

And thus we shall strive to uphold the sceptre of the Empire placed in our hands by God. With such weapons and by God's almighty power, we desire firmly to resist our foes, and endeavour to increase

[1] Ecclesiasticus vii.

and advance the highest happiness of those, sealed with the emblem of Christ, committed to our benevolence. And by such means we hope that the ancient jurisdiction of the Empire will be established in us for ever. Our Lord Jesus Christ tells us: 'Judge not according to the appearance, but judge righteous judgment,'[1] judgment free from all favour of reward. For it is written, 'woe to those judging unrighteously for the sake of reward who turn aside the way of the meek[2] and take away the just due of the righteous from him; their root shall be as rottenness and their blossom shall go up as dust because they have cast away the law of the Lord.'[3]

For gifts and offerings blind the eyes of the wise. Therefore being solicitous to put an end to such wicked gain we have determined to provide from our patrimony salaries for the most illustrious Quæstor, for the comptrollers, and for the officials employed in administering justice, to the intent that they may receive nothing whatever from any person, whomsoever he be, who may be tried by them, in order that what is said by the prophet may not be fulfilled in us, 'he sold justice for money,'[4] and that we may not incur the wrath of God as transgressors of His commandments.

[1] Gospel according to St John vii, 24.
[2] Amos ii, 7.
[3] Isaiah v, 23 and 24.
[4] Amos ii, 6.

Chapter I

CONCERNING THE CONTRACT OF BETROTHAL AND THE DISSOLUTION THEREOF

1. The betrothal of Christians[1] is effected by the payment of earnest money or a bond for it, or in writing. And the contract can be made by children from seven years of age and upwards, by mutual consent of the betrothed and with the assent of their parents and guardians[2]; provided that the parties to the agreement bind themselves according to law and are not to be reckoned among those persons who are prohibited from marrying[3].

And if the man who provides the earnest money revokes his intention to marry and does not perform his contract he shall forfeit the earnest money. And if, on her part, the girl revokes her intention she shall forfeit double the earnest money that is the earnest money and as much more.

2. And if a man makes a contract of betrothal in writing and decides to break it he shall compensate the girl according to the provision of his written contract. And if, on her part, the girl being of age and without good reason decides to break the contract, the betrothed man shall be entitled to have the equivalent that he agreed to provide in the written contract besides the provision made by him in the contract[4].

[1] See note at the conclusion of chapter II.

[2] *Suggenōn*. But the alternative reading in 'Z' is *Kedemonōn*, and I adopt it.

[3] See the next chapter where the prohibited degrees are recited.

[4] In other words, as in the preceding section, the girl forfeited double.

3. If a man is betrothed to a girl and, whether for dislike or some caprice, delays the marriage, the girl shall be obliged to wait for him for two years; and then on her part she shall call upon him to perform the marriage. And if he complies, well and good, otherwise she shall be entitled to marry whomsoever she pleases, and she shall take whatever was due to her from her betrothed.

4. If orphan children, whether boy or girl, for whom a contract of betrothal has been made by other persons, later on change their minds, they can be released from the betrothal until they are fifteen years old, upon the ground that being orphans, they did not know what was to their advantage. But when they come of age they cannot break their engagement, upon the ground that having attained to years of discretion they knew what they were about.

Chapter II

CONCERNING THE CONTRACT OF CHRISTIAN MARRIAGE[1]

1. The marriage of Christians[2], man and woman, who have reached years of discretion, that is for a man at fifteen and for a woman at thirteen years of age, both being desirous, and having obtained the consent of their parents, shall be contracted either by deed or by parol.

2. Marriage is forbidden between those who are bound together by the tie of holy and salvation bringing baptism, that is to say the sponsor and his

[1] The title in 'Z' is, 'Concerning the marriage of persons related by baptism, or within the prohibited degrees, and concerning a first and second marriage; of a marriage contract by parol, or in writing, and the dissolution of a marriage.'

[2] See note at the conclusion of this chapter.

goddaughter and her mother, and also the son of the sponsor with the goddaughter or her mother. And those who are recognized as blood relations, that is to say, parents and children, brothers and sisters, and the children of the same, who are called cousins, and their children. And also those who are recognized as relations by marriage, stepfather and stepdaughter, father-in-law and daughter-in-law, son-in-law and mother-in-law, brother and bride, that is to say, a brother's wife, likewise father and son to mother and daughter, two brothers with two sisters.

3. And between the aforesaid persons no betrothal shall be allowed. Moreover any man who has baptized a woman cannot afterwards marry her, since she has thereby become his daughter; nor can he marry her mother or her daughter, nor can his son do so; for the marital relations cannot be combined with the paternal. For nothing is so able to induce a paternal relation and (so cause) a just impediment to marriage as such a bond whereby the souls are united, through God's mediation.

4. A written marriage contract shall be based upon a written agreement providing the wife's marriage portion; and it shall be made before three credible witnesses according to the new decrees auspiciously prescribed by us. The man on his part agreeing by it continually to protect and preserve undiminished the wife's marriage portion, and also such additions as he may naturally make thereto in augmentation thereof; and it shall be recorded in the agreement made on that behalf by him, that in case there are no children one-fourth part thereof shall be secured in settlement[1]. And there shall be two agreements of equal force regulating the wife's marriage portion and another regulating the gift made by the man to the

[1] That is of the augmentation.

wife. And a prenuptial gift of equal amount to the wife's marriage portion shall not be demanded of or debited to the man.

5. If the wife happens to predecease the husband, and there are no children of the marriage, the husband shall receive only one-fourth part of the wife's portion for himself, and the remainder thereof shall be given to the beneficiaries named in the wife's will or, if she be intestate, to the next of kin. If the husband predeceases the wife, and there are no children of the marriage, then all the wife's portion shall revert to her, and so much of all her husband's estate as shall be equal to a fourth part of his portion shall also inure to her as her own, and the remainder of his estate shall revert either to his beneficiaries or, if he be intestate, to his next of kin.

6. If the husband predecease the wife and there are children of the marriage, the wife being their mother, she shall control her marriage portion and all her husband's property as becomes the head of the family and household, and she shall carefully make a public record in the form of an inventory of all the goods and possessions of the husband, including property not included in her marriage portion[1], if any remain, and she shall be responsible to show by satisfactory proof how the same came into her husband's household and what it appeared to consist of at his death. And the children shall not take her place or claim from her the patrimony, but treat her with all obedience and honour according to God's command and, as it were embracing her, she on her part as befits a parent being bound to educate and provide for their marriage and dower portion as she may determine. But if it happens that she marries again her children shall be entitled to obtain completely and

[1] Her parapherna.

entirely all their patrimony and all the marriage portion which she brought in to their father, and she shall only retain the sum which the father may have given her in augmentation of her marriage portion.

7. And if the wife predecease the husband and there are children of the marriage, the husband being their father, all the wife's estate as well in as out of settlement shall fall under his control, and he shall be the guardian of the household and the house, and the children shall not set themselves against him, or seek to obtain their mother's estate from him, behaving themselves towards him with all the respect and obedience due to a parent, according to the Scriptures[1]: 'Honour thy father and mother both in word and deed, that a blessing may come upon thee from them. For the blessing of the father establisheth the houses of the children, but the curse of the mother rooteth out the foundations.' As the Apostle Paul also declares[2]: 'Children obey your parents in the Lord, for this is right,' and, 'Ye parents provoke not your children to wrath, but bring them up in the nurture and admonition of the Lord.' And if it should happen that the father marries again while the children are minors he shall preserve their mother's estate without diminishing it. But if they are of full age and press for it their inheritance shall be handed over to them.

8. If either survivor of a marriage, be it husband or wife who has not made a second marriage, desires to be freed of the charge of their own children who are minors, they shall not be entitled to do so, but shall protect and make a home for them; as the Apostle says, a widow who has children or grandchildren shall first mind her house, and that is right

[1] Ecclesiasticus iii, 8.

[2] Epistle to the Ephesians vi, 1, 4.

in the sight of God. But if the children are of full age, capable of making their own living and keeping house, and either of the surviving parents wishes to be freed of the charge of them, such person shall be entitled to take besides his own property, the share of one child according to the number of children[1].

9. If by reason of poverty or misfortune anyone is prevented from making a prenuptial marriage contract in writing, and a verbal contract is honestly made between parties, who are agreed and have obtained their parents' consent, the marriage shall be published[2] by the blessing of the Church or before friends as witnesses. And if anyone takes a free woman into his house and entrusts her with the management of his household and cohabits with her, that shall be a verbal contract of marriage with her. And if upon the pretext that she is childless he attempts to banish her from his house without lawful reason she shall naturally keep her own property and receive a fourth part of her husband's estate[3].

10. If a man lawfully marries a woman who has no means and dies childless or without heirs, then the wife shall have, over and above the fourth share due to her as being childless, up to a sum of ten pounds of gold from her husband; and if the husband is worth more than ten pounds the wife shall not be entitled to have more, and anything above that sum

[1] The explanation of this inadequately expressed passage is given in Z. von Lingenthal's *Gesch. des Gr.-Röm. Rechts*, p. 92. The surviving parent had the option of either continuing or winding up the settlement. In the latter case the surviving parent took his own property and shared the remainder with the children. But all the children had to be of age.

[2] That is to say made known and recognized.

[3] Concubinage was not recognized, and in the circumstances the law implied a verbal marriage.

shall go to the husband's next of kin, and if he is intestate and there are no next of kin, then to the State.

11. Persons who are not prohibited from marrying may be married a second time either with or without a written contract, and if there are no children then they shall agree according to the terms above set out. If the man makes a second marriage he shall under no pretext with a show of generosity give more than the equivalent of one child's share in his part of the wife's portion of the first marriage; and moreover he shall take care to protect it and also protect his intended second wife for a twelvemonth after the death of her former husband. And it shall be considered infamous for the second marriage to take place before the twelve months have elapsed since the death of the first husband. And if the marriage does take place before the twelve months have elapsed the wife shall obtain nothing at all from her former husband's estate. But if she is continent for the said time she shall receive for herself her marriage portion and, naturally, whatever her husband gave her in augmentation of it. In the same manner a husband making a second marriage shall obtain nothing belonging to his former wife. And if there are children surviving who are under age the man shall protect their property till they come of age, and when the children are of age then they shall receive their mother's property forthwith; or if there are children of the second wife and it happens that the husband dies, the first and second children shall inherit equally the father's property; and likewise in the case of the mother.

12. A woman who marries a second time, having children by her first marriage, shall before the contract for the second marriage claim a trusteeship

(epitropon)[1] of her children and then make the contract (for the second marriage) binding. For if that is not done, her property with that of her second husband shall be answerable to satisfy the legal claims of their children to their parental patrimony.

13. The wisdom of God the Maker and Creator of all mankind teaches that the marriage tie binding those who live together in (the fear of) the Lord cannot be dissolved. The Maker of All who created out of the uncreated did not, as He might have done, fashion woman in the same way as man, but made her out of man, thus ordaining by ineffable wisdom the indissolubility of marriage, uniting in one flesh two persons. Nor did He banish the wife from the husband when she was tempted by the serpent and persuaded her husband to taste the bitter fruit, nor did He separate the husband from the wife when he participated with his wife in breaking the Divine command. He punished the sin but did not break the marriage tie. And this ordinance was confirmed anew by the Lord when the Pharisees asked Him, 'Is it lawful for a man to put away his wife for any cause?' And He replied, 'Those joined together by God shall not be put asunder except it be for adultery.' And we who follow in His footsteps and obey, will not ordain anything else or more than that. But we have determined to include in the present legislation the grounds upon which those bound in marriage can be parted since many persons habitually live in a way so vicious that they cannot cohabit happily and divorce themselves on many pretexts.

14. A husband shall be freed from his wife upon the following grounds. If the wife commits adultery, if she in any way plots against his life, or is an

[1] The *epitropos* was the trustee of property as opposed to *kourator* the guardian, see chapter VII.

accessory and does not inform him, and if she is a leper.

15. Likewise a woman shall be freed from her husband if after three years from the marriage contract the man is incapable of consummating the marriage with his wife, if he plots in any way against her life or is an accessory and does not inform her, and if he is a leper. And if it should happen that either of the spouses after (or before the marriage) become insane[1] they shall not be divorced on that account. Except upon these well-known grounds the marriage cannot be dissolved, since, as the Scripture says: 'Whom God hath joined no man shall put asunder.'

NOTE. The discrepancy between these two texts of the Ecloga illustrates, as I have pointed out at the conclusion of the Introduction, the difficulty in determining, whether, and to what extent, these versions of the law which have come down to us represent the original text published by Leo and his son. We are entirely dependent on the accuracy of the copyist.

The word 'Christians' appears in the introductory sentences to chapters I and II, and to Christians the provisions were intended to apply; what 'Christian' meant to the Roman Government of the period is defined in Part III, chapter IV, section 2, of the Appendix.

There is no prohibition in the Ecloga against a marriage between a Christian and a heretic, a pagan or a Jew. Marriage between Christians and Jews had already been forbidden by Justinian and by the Trullan Council. It was presumably thought superfluous to repeat the prohibition. The penalties against the Jews are set out at considerable length in the Appendix. We may suppose that a mixed marriage of that sort was as unusual then as it is in the Levant to-day. I draw attention to section 7 of Part III, chapter IV, of the Appendix. It is there laid down that in case the children of Jews become Christians, and such conversions were encouraged, provision by way of dower must on that occasion be made by the parents for a daughter. That sentence suggests that the marriage laws of the Jews were not interfered with, and, in that single respect

[1] *A malogenio*. The words 'or before marriage' do not occur in 'Z.' 'Insane,' lit. possessed of the devil.

at least, differed from the general law. Such an arrangement would be quite in accord with the system of allowing particular communities to regulate personal law according to their own customs. That indeed was the basis of the Roman Capitulations but recently abolished by the Treaty of Lausanne. I have referred to this subject in the Introduction.

There is only one reference to Pagans which seems to be relevant to family life, that is in sections 21 and 22 of the part of the Appendix already referred to.

Chapter III

CONCERNING DOWER CONTRACTED FOR BUT NOT PAID AND CONCERNING THE LAW OF DOWER

1. A man who has agreed either in writing or by parol to receive[1] dower and it is not paid to him, shall, if he was twenty-five years old or more when he was married, have five years more in which to recover the same entirely, the parents of the girl being capable of fulfilling their contract. If he does not do this and fails to obtain payment, he is responsible to pay to the girl that which he agreed to receive for dower under the contract. If he was not twenty-five years old when he was married, then he shall have five years after he has attained that age within which to recover the amount due. After the period indicated above he cannot bring an action for recovery of the dower which he consented to receive, but he is responsible to provide for the girl, as aforesaid, that which he had agreed to receive.

2. If the wife provides dower for her husband and the latter either suffers loss or falls into debt either to the State or to a private person and then dies, neither the State nor such person can come into the

[1] The word *upodexasthai* implies not only 'receiving' but 'recovering'; or as we should say 'obtaining seisin' of funds to be brought into settlement.

house and seize anything until the wife's dower has been paid to her, and after payment the creditors can divide the remainder among themselves rateably.

Chapter IV

CONCERNING SIMPLE GIFTS

(That is to say gifts to take immediate effect or to take effect after the donor's death and the grounds upon which such gifts are revoked.)

1. A simple parol gift shall take effect when a donor, who is of age, gives his own property to a donee in the presence of five or three witnesses, five in inhabited places where witnesses can be found, and three in uninhabited places where five cannot be found.

2. A simple gift by deed shall take effect when a donor, of full age, declares and signs his intention by deed drawn up and witnessed in the presence of either five or three witnesses as aforesaid.

3. If a donor makes a gift to a donee with the intention that the gift shall only take effect after the donor's death, the gift shall be made by deed in the presence of five or three witnesses in the aforesaid conditions.

4. Gifts made in anticipation of death to take effect after the death of the donor shall also be made by the donor by deed in the presence of five or three witnesses as aforesaid.

5. The intention of a donor of a gift by deed not to revoke or forfeit the gift shall not be effective unless the intention is plainly expressed in the text and the deed is signed by the donor.

6. All gifts shall be revoked for the following reasons. If the donee is found to be ungrateful, or

treats the donor rudely or insolently, or beats him, or conceives a violent hatred for him, or seeks to take his life, or such like; in those circumstances the gift whether made by writing or by parol shall not pass. Upon proof of any one of these grounds to the Court the gift shall as aforesaid be forfeited.

Chapter V

CONCERNING THOSE WHO CANNOT MAKE A WILL[1]

1. The following persons are incapable of disposing of property by will. Those who are mentally deranged; minors, males under fifteen and females under thirteen, lunatics, prisoners of war, those who are in subjection except in regard to their own property, those who being under parental subjection cannot dispose of property due to them by way of dower, persons deaf and dumb from birth. Those who, though feeble from infirmity, can read and write, may make a will provided it is in holograph.

2. A written will must be made in the presence of seven witnesses called in by the testator for the purpose, and at one and the same time they must sign it and affix their seals; and the testator is bound to see that the name of the testamentary heir is clearly indicated, either in his own handwriting, or by a competent scribe. And he is not bound to disclose the contents of the will to the witnesses even if they desire him to do so.

3. A parol will is valid when the testator makes it in the presence of seven witnesses assembled together.

[1] In 'Z' the title is 'Concerning persons who cannot make a will and concerning wills made in writing or by parol.'

4. If the testator makes his will either in writing or by parol in a place where seven witnesses cannot be found, the will shall be valid even though there be only five or three witnesses. But if three witnesses cannot be found the will is invalid.

5. When the will is made validly in the manner aforesaid and the parents omit to mention their children, or any one of them, the judge associates[1] shall enquire, and if they find that the children have oftentimes mocked or otherwise injuriously treated their parents, the will of the parents shall hold good; and if after the will is made a conceived child is born, the children who have been acquitted shall receive their legacies, and the new-born child shall rank with its brothers and share with them.

6. If parents have a son who treats them injuriously and in their old age neglects them, and some stranger comes along and takes care of them, if they wish to requite the kindness shown to them by making the stranger their testamentary heir, their will shall be given effect to.

7. Every testamentary heir under a will, in writing or by parol, who hinders or delays the payment of what is due under a will for more than a year shall, if he is a son or grandson of the testator, be paid the legal share due to him and no more. And the legal share in case there are up to four children is a third share of the estate, and if there are five children or more, then a half. And if he is of other kinship he shall forfeit all benefit in the testator's property and his interest shall inure to his fellow beneficiaries. And if the testamentary heir is a stranger, and he fails to pay what is due under the will, the whole right to administer the estate shall pass to another person.

[1] *Akroati*; who are frequently referred to in the Ecloga. They were 'juges d'instruction' or 'assessors.'

8. Anyone wounded in war or travelling on a journey who is at the point of death and, wishing to make a will, is unable in either of these cases to find a lawyer, or some other literate person, can make his will by parol before seven, five or three witnesses, and if but two only can be found their proof shall be accepted by the Court.

Chapter VI

CONCERNING HEIRS UNDER AN INTESTACY AND LEGATEES AND THOSE WHO BY DISGRACEFUL CONDUCT FALL OUT OF THE INHERITANCE

1. The children and issue of a person dying intestate shall inherit his estate; and if father and mother and also grandfather and grandmother survive the deceased they shall not inherit the estate if children or issue survive.

2. And if there are father and mother and grandfather and grandmother but no children or issue of the deceased, the nearest of kin shall inherit.

3. If a son or daughter dies childless and intestate in the lifetime of their parents, but having brothers or sisters of the same parents, the inheritance shall inure to the parents, and the brothers shall have no voice or claim to it[1]. And if there are no parents but only grandparents, they shall share the inheritance with the said brothers and sisters of the same parents.

4. And if neither grandfather nor grandmother nor brothers or sisters of the same parents survive the deceased, then the brothers of one of the parents shall enter into the inheritance.

[1] This is one of the important changes introduced in the Ecloga. This illustrates the tendency, already noticed in the conferring of equal status on husband and wife, to maintain the family possessions and to keep the family united. Section 6 illustrates another change.

5. But if, as aforesaid, there are no brothers but only relatives, the nearest of kin shall be the heirs.

6. And if there are no relatives but a wife of the deceased, she shall inherit the half of the estate, and the other half shall belong to the State; and if there is no wife of the deceased then all his estate shall belong to the State on the footing of an intestacy.

7. If a testator bequeathes a legacy with the clear intention that the benefit shall be given to the legatee, the testamentary heir shall not dispose of the legacy for any other purpose but shall give it to the legatee.

8. When the heir has ascertained the amount of the estate which has devolved upon him and has notice that debts are due from it, he must make an inventory[1] before credible witnesses and declare the totality of it; and the creditors shall first be paid their debts and then the heir shall take the remainder.

9. But if contumaciously and rashly, he proceeds to administer the estate and it happens that he has only paid some debts, he[2] shall be obliged to pay those that remain because he has not ascertained by the regular inventory the liabilities of the estate.

10. But if considerable debts accrue continuously and the heir was unaware of them, he shall before witnesses and on oath prove the amount of the estate which he has collected, and he shall then divide it up with the creditors, and nothing more shall be claimed of him.

11. If it should appear that either an heir or legatee has concealed the estate, and afterwards it is found in their possession, the heir shall lose his inheritance and the legatee his legacy.

12. If a person dies and without writing or witnesses leaves his estate and the disposal of it to an

[1] See note at the end of this chapter.

[2] That is personally.

heir, and some other person claims that a legacy was given him by the deceased, but is unable to prove his claim by witnesses or otherwise, the decision of the Court shall be in favour of the heir.

13. Children shall forfeit their legal inheritance upon the ground of ingratitude, if they beat their own parents, if they sorely molest them, or slander them, or if any of them frequent sorcerers, or is a sorcerer; if in any manner they plot to take their parents' lives, if anyone of them has carnal knowledge of the step-mother, or the father's mistress; if the parents are in prison and the male children do not promptly respond to their call for help; if a daughter refuses to marry according to her parents' wishes but prefers to lead a wicked life; and if children do not take charge of their parents when they become insane.

NOTE. I have rendered sections 8, 9 and 10 in the sense interpreted by Z. von Lingenthal (in *G.-R.R.*). The notes in Monferratus' version show that here 'Z' manuscript is more correct than 'A.' For example in section 10 the last word but one is obviously *touton*, and not *toutou*.

Section 7. *Nomimos moira*. That is the legal share which the heirs could not be deprived of by a testator. Upon this Z. von Lingenthal observes, *G.-R.R.* p. 202: 'Dagegen ist hier hervorzugeben, dass die Quarta, welche dem belasteten Erben nach die Lex Falcidia frei bleiben musste, im neueren Byzantinischen Rechte auf ein Drittheil erhoht worden ist....In der Ecloga ist von dieser Quarta überhaupt nicht die Rede.' Nor is the Falcidian law mentioned by name in the Ecloga; and the nomimos moira is only referred to in this section we are now considering and in section 4, of chapter XVI, where the power of certain officials to dispose of their property is referred to.

These words, and the rules for the distribution of the estate of a deceased person, and the duties and obligations of the kleronomos or heir by will or intestacy, referred to in this and the next chapter, introduce some of the most complicated and interesting provisions of Roman law. The immediate relations of the deceased upon whom (to use the modern English phrases) the executorship or administration of an estate devolved either in general practice or by law, were either Ekgonoi, that is lineal descendants, suggeneis, collateral relations, or strangers. We see the distinction drawn between these

three classes in the quasi-penal provisions in this section which impose a forfeit upon the executor or administrator who failed to administer the estate in the course of a year from the death of the deceased. It is in the eighth and following sections of chapter VI that we meet the beneficium inventarii, an innovation made by Justinian and obviously recognized in the Ecloga. By making a proper inventory of the estate of the deceased the executor or administrator was relieved of the personal liability for the debts of the deceased imposed upon him by the older law. It was an advantage which ensured that an honest administrator would undertake the executorship or the administration. It is to be noticed that the creditors of the estate had apparently an obligation on their part, not to be dilatory in rendering their claims. I infer that they had to make their claims within a year of the death. But the Ecloga is silent as to the practice.

The provision that the nomimos moira should be a third in case there were four or less, or a half in case there were five or more children, merely extended the application of the principle that the heirs could not be deprived of more than a fixed amount of their inheritance.

Chapter VII

CONCERNING TRUSTEES AND GUARDIANS

Parents who leave minor children as orphans with an inheritance, and by written or parol will appoint guardians for them, the will shall be effective. But if they do not then the religious houses shall have the guardianship, and in this our God-loving city, orphanages and other houses of charity and churches engaged in such work, and in the provinces bishoprics, monasteries and churches, shall take charge of the heirs until they have reached years of discretion and can marry. And if they refuse to marry, the houses of charity, the monasteries, and churches shall take charge and care of the inheritance until the heirs are twenty years old. And then without fail they shall deliver the inheritance to the heirs. And above all it is not pleasing to God for guardians to try to throw their responsibility on others, or to consume the in-

heritance of orphans and so give cause for complaint. And surely houses of charity, churches of God, and trustees of other people's property, who, according to God's word, are given to hospitality and accord welcome to strangers, should be the more ready to protect the property of orphans and deliver it to them at the proper time.

NOTE. The title in 'Z' is 'Concerning orphans and their guardianship.'

The Greek words I have rendered as 'trustees' and 'guardians' are *epitropos* and *kourator*, and they correspond to the Latin *tutor* and *curator*. These technical terms were applied respectively to the guardianship of children who were not under any parental control and trusteeship of their property. *Epitropos* was sometimes used to express the 'executor of a will,' but was always used of property in distinction to persons. (See section 12 of chapter 11.)

It will be noticed that the single paragraph in this chapter refers to the kourator only. Nothing is said about the epitropos except by implication. It will also be noticed that in section 12, chapter 11, a widow who had children and intended to contract a second marriage had to claim the trusteeship of her children's patrimony, of the first marriage, and, as property was concerned, the word *epitropon* is used.

The tendency, I think, was to unite the two offices, originally distinct, into one. But to some extent, in practice, it was preserved, as it is to-day.

Chapter VIII

CONCERNING FREEDOM AND RELAPSE INTO SLAVERY

1. Freedom is conferred on a slave either when he is publicly enfranchised by his master in church, or before five friends called in for the purpose, and if five cannot be found then before three, who shall sign their names to a public record of the fact which is in their own knowledge. Or by a letter from the master countersigned by five or three witnesses, as aforesaid. And freedom may also be conferred by a written will.

2. And also when a slave, by the will of deceased

or the assent of the heir, wears the pannus on his head[1] and follows the funeral of the deceased.

3. Or if the master unites his slave in marriage with a free person.

4. And further if the master or the mistress, or their children with their parents' consent, become sponsors of the slave in Holy and Salvation-bringing Baptism. Or with the knowledge or consent of the master the slave becomes a cleric or a monk, the aforesaid persons shall forthwith have freedom given to them by their masters.

5. Should a slave who has been, in any of these circumstances, made free fall again into slavery he shall appeal to the holy Church and, having proved the facts of his emancipation to the proper officials, shall have the benefit of his emancipation.

6. Where a freeman is taken prisoner of war and is ransomed from the foes by anyone and the ransomer takes the ransomed into his household, the ransomed shall be free if he is able to pay the amount of his ransom. Otherwise the ransomer can retain the ransomed in his household as a hired servant until he pays the ransom. And the sum which is to be credited to the ransomer shall be definitely calculated and agreed before witnesses annually.

7. Freed men, even if they be servants of the State, shall be condemned to return to slavery by the magistrates for committing any one of the following offences against those who gave them their freedom, or against their children. If with malice they beat, insult them or are refractory or for any reason, trivial though it be, offend injure, or conspire against them.

[1] Section 2. The phrase '*servus ad pileum vocare*' was a colloquial way of saying that a slave was enfranchised. The pileus was a felt cap. The pannus was, I think, a small turban or scarf tied round the brows.

8. A slave who has been taken prisoner of war by foes and is shown to have performed some deed of valour[1] for the State against them shall forthwith be made free. But a slave who has been taken prisoner of war by his foes and has not done any such deed for the State against them shall for five years serve again in the same slavery and shall not be free till then.

9. A slave who of his own accord deserts to the foes and then repents and returns shall be a slave for the rest of his life because he deserted of his own accord.

Chapter IX

CONCERNING CONTRACTS EITHER IN WRITING OR BY PAROL

1. A contract for sale and purchase of whatsoever kind and matter it be, and for fixing the price, shall be constituted upon an honest agreement between the parties. When therefore the price of the sale and purchase is determined, the sale shall not be revoked by one of the parties changing his mind. It behoves the parties to come to an understanding by investigation regarding the thing sold and bought before an agreement is come to; and thereupon the parties can be agreed. But naturally, if, after the sale, it should be found that the person bought is a freeman, or mad, the buyer shall return him to the seller.

2. If earnest money is a term of a contract and the contract is not performed by the carelessness of the purchaser who provides the earnest money, the money shall be forfeited to the seller; but if by the perverseness of the seller then the money shall be repaid to the purchaser with as much more added thereto.

[1] 'Deed of valour'; the word used is *klasma*. Leunclavius renders the sentence '*Si pro republica damnum et cladem eis inferat.*'

Chapter X

CONCERNING A LOAN MADE IN WRITING OR BY PAROL AND THE SECURITY FOR THE SAME[1]

1. If any person either by writing or by parol borrows money, silver or anything else of that kind, on land or at sea, the lender shall receive back his own according to the terms of the agreement made between the parties; and the borrower shall not be permitted to set up any perverse defence for the purpose of altering or reducing the loan, such as wreck at sea, or any other similar excuse[2].

And if the borrower gives security for the loan he shall, so soon as the loan is repaid, have his own returned to him; and the holder of the security shall not set up a frivolous defence against the borrower, saying that he has lost the security, or put forward any other excuse; unless, naturally, he can prove that by misfortune the security has been lost along with his own property, and the tribunal shall decide the facts.

2. If anyone lends money to another person and the borrower fails to pay his debt on the appointed day, after the time has expired the creditor shall make a demand, and if after two or three demands and protests[3] the debtor fails to make restitution, and pay

[1] The title in Leunclavius' text is: '*De mutuo et pigneribus et societate.*' But the text varies from 'A.' For instance the words 'on land or at sea' are omitted.

[2] In the manuscript there is here an interpolation by another scribe, which may be rendered as follows: 'If I give security to my creditor I do not give it to him in satisfaction of the debt, until he demands repayment; or unless he can show that the security was given in satisfaction of the debt.' (See the Institutes, Bk. 2, c. 8, sec. 1.) There was in fact an equity of redemption.

[3] *Diamarturia*, i.e. by affidavit. But I prefer to render it by 'protest.' The proceeding seems to have been analogous to protesting a foreign Bill of Exchange. The words are *protropas te kai diamarturias*.

his debt, the creditor who holds the pledge shall be entitled to have a public valuation made of it and recorded on the public register in writing, and then sell it and reimburse himself from the proceeds the amount due to him, and, naturally, hand over any surplus to the debtor. And if when the sale is made, he does not recover all that is due to him he can sue the debtor for the balance.

3. If a moneylender receives security and then takes his debtor's children and hires them out to do labour, the debt shall be cancelled and discharged and the moneylender shall compensate the child seized and the children's parents by paying the amount of the debt and as much more added to it.

4. And if a debtor is married and he cannot repay the loan, his wife shall not be liable to pay the debt out of her dower, unless she made herself responsible for the debt by agreement with the husband.

5. A partnership either in writing or by parol shall be constituted between two or more persons who severally contribute, either in equal or lesser shares, to a capital fund; or between those who unite to provide their own work and labour. And so soon as a profit is made, over and above what is due for personal expenses to each partner individually, they shall divide it rateably among them according to the measure of their contribution. And if there is a loss on the undertaking each partner shall meet the loss according to the share he contributed to the undertaking[1].

[1] The subject of partnership and the reasons for including it here are referred to in the Introduction. It is to be noticed that the contracts of mortgage and bailment are not contemplated in the Ecloga.

Chapter XI

CONCERNING ANY KIND OF DEPOSIT

If anyone for a reason or through fear deposits property with another person and it happens that the latter denies that he has received it, and is proved to be a liar, he shall restore to the depositor twofold. But if through misfortune, either by fire or theft, the depositor's property happens to be lost together with that of the depositary, the judges shall entirely exonerate the depositary for the loss of the property upon the ground that the loss was involuntary[1].

Chapter XII

CONCERNING THE TENURE OF REAL ESTATE BY EMPHYTEUSIS AND THE WRITTEN CONTRACT THEREFOR

1. The tenure of continuing emphyteusis of real estate is based upon agreed terms for one year and the diligent care of the subject of the contract and the performance of the covenants relating thereto. If any agent, civil servant, or other military[2] person is found in any manner to have done anything to the detriment of the master of the property he shall be dismissed from his service and the contract shall be void.

2. A tenant by yearly emphyteusis who pays his rent punctually, and tries to carry out his obligations

[1] Cf. Justinian's Institutes, Bk. iii, c. 14, sec. 3.

[2] The agent was, I conjecture, employed by the State or the Crown. *Strateuomenos* is added in 'L.' This clause appears to be directed against public servants who, presuming upon their official position, injured the proprietor. Perhaps these are the persons referred to in the Appendix, II, section 6, who were to be judged by those in authority over them.

for the care and upkeep of the premises, shall not be deprived of his tenure; and he may bequeath his tenure of the premises to his heirs; and he may settle it by way of dower or otherwise alienate or sell it. In the event of a sale outright the owner shall have a preferential right of pre-emption. And if he is not willing to exercise it the tenant may, after giving two months' notice, sell the tenancy to any persons who are not under any disability, and also that which is appurtenant to the soil; and if the in-coming tenants are suitable persons the owner shall grant the emphyteusis to them in writing. If the tenant fails to comply with these conditions he shall forfeit his tenancy.

3. If the emphyteutor is a religious house and the yearly rent is not paid for three years, and the premises are badly treated, the owner shall be entitled to eject the tenant from the premises, surrendering, naturally, what is owing; and in the case of any other emphyteutor whose tenant does not pay the rent for three years and neglects the property he also shall be ejected.

4. The most holy Church in the Imperial city and the religious houses belonging to it and orphan asylums, poor houses and hospices are forbidden to dispose of real estate except ruined houses[1], and to alienate only to the Imperial House[2]; and in the provinces holy churches and monastic houses and also monastic houses in the Imperial city are authorized to enter into contracts of emphyteusis.

5. Written contracts of emphyteusis made by religious houses or by the Imperial House or any other person shall be based upon stated yearly terms ac-

[1] Harmen, iii, 4. 4.

[2] '*Basiliko de oiko antallatein kai mono.*' Cf. Ecloga ad Prochiron Mutata, c. XIV, § 3. The alienation to the Sovran could only be made in case of pressing necessity.

cording to the aforesaid conditions for as many as three persons in successive generations, only, who may acquire it in succession either by will or by intestacy; it being stated in the beginning of the contract that a sixth part of the profits shall be paid[1]; and the last of the three persons in succession cannot compel the renewal in writing of the emphyteusis because the tenure cannot in that manner be extended in perpetuity.

6. The continuing tenure or by registration cannot be acquired by the agents of the Emperor or of the sacred Imperial House or the lawyers or officials of the same or their relations, nor even by the interposition of another person; nor can civil governors or soldiers be parties to a contract of emphyteusis or hiring; and soldiers shall not be parties to agreements for that purpose, or be embarrassed by undertaking private obligations of their own, or be made parties thereto or assist in or serve in the houses or affairs of others, upon the ground that they are engaged solely in protecting the State from the enemies.

NOTE. This subject is referred to in the Introduction.

Chapter XIII

CONCERNING CONTRACTS FOR LEASING

Contracts for leasing whether made in writing or by parol are constituted upon a specified yearly term and shall not extend beyond twenty-nine years. And they may be either by way of accepting or by way of granting the obligations of a lease of property, estates, lands and appurtenances, on the part of the State, or the Imperial House, or a religious house. And according to the terms of the agreement on the part of

[1] I deduce this by comparing this section with one in the Ecloga ad Prochiron Mutata, c. XIV, § 3. It was a 'fine' on succession.

the lessor, and acceptance on the part of the lessee, the yearly rent for the lease shall be paid. And for one year neither the lessor nor the lessee shall revoke the terms of the lease unless there is a special agreement for that purpose.

Chapter XIV

CONCERNING CREDIBLE WITNESSES AND THOSE WHO ARE INCOMPETENT

1. Persons who occupy honourable rank or military command or profession shall be deemed competent witnesses. And if witnesses are ignorant or contentious[1] the judges shall examine them and test their evidence by cross-examination[2] to ascertain the truth.

2. Anyone who has been degraded from the Senate for shameful conduct, and has not been reinstated, shall neither judge nor give evidence.

3. The rule shall universally be observed that a slave positively cannot summon his master before the Courts. Nevertheless for reasons which are obvious, and have been laid down by law, it is conceded to slaves to have a right to be heard against their masters in the Courts. For instance if the masters have hidden a will by which freedom has been conferred upon slaves, or if they try to injure the Roman Commonwealth, or if they cancel or falsify the census, or if, when the slaves have bought their freedom with their own money, the masters do not emancipate them; or if they fail to set their slaves free when ordered to do so.

4. Parents and children cannot be admissible witnesses against one another.

[1] These words may mean 'if witnesses are unknown persons and their testimony is disputed.'

[2] *Dia basanon.* Leunclavius renders these words '*per quæstiones.*' I hesitate to translate *dia basanon*, 'by applying torture' or 'by corporal punishment,' except where slaves are concerned.

5. A slave or freed man shall not be a witness for or against his master.

6. No one can be compelled to produce witnesses against himself.

7. Witnesses who are called before the Courts to give evidence shall first be examined unsworn two or three times upon the evidence which they can adduce of their own knowledge. And if it is found that they have anything relevant to say concerning the matter to be enquired into, they shall be put on oath.

8. Witnesses who live far from the place of trial shall not be compelled to appear there but shall give their evidence before a commission sent to them.

9. If a suitor calls a witness in support of his case, and another person calls the witness against the suitor in another suit, the witness shall not be disqualified, if it appears that a miscarriage of justice would ensue, or that a gift or promise has been made to the witness to pervert the issue.

10. Suitors who have recourse to the public Courts in consequence of a dispute, and, after stating their case, do not abide by the decision, but wish to appeal to another tribunal, can call the witnesses heard before the first tribunal, and they shall be heard. If it happens that a witness called in that way dies, the evidence given on the first occasion shall be admissible upon a sworn declaration. For the appellant who wins his case on appeal the decision shall be final. But if the judgment is given against him by the Court, and it appears that his opponent was wrongly condemned then, naturally, the suitor who abode by the judgment of the first judges shall have the benefit of it. And if a judgment is not determined between the parties the plaintiff shall be condemned or acquitted as the judges may decide.

11. The evidence of witnesses who give hearsay testimony that anyone either owes or is released from a debt due to another person shall not be accepted even though the notary be found to attest the evidence.

12. In a deposition of evidence[1] the proof of the notary shall not be accepted if the debtor being literate and capable of signing the bond of the debt did not sign it in his own hand.

13. In criminal cases five witnesses shall attend before the Court hearing the case.

14. Whatever the number of witnesses may be they shall not be summoned for more than four hearings, each summons being for one day. If before the fourth summons a witness should go away the person who called him shall state the evidence and shall not call another witness, but shall abide by the evidence of the remainder.

15. Any person repudiating his own signature to a bond of debt, or, having drawn the bond up in his own handwriting, disputes the amount of the debt so that the continuing debtors are obliged to go to law, shall, after the truth of the facts has been ascertained,

[1] *Ekmarturion*, 'an affidavit, or evidence on declaration made out of Court.' 'L' renders this, '*In testimonii dictione fides tabulario non habetor.*'

I have purposely refrained from quoting the subsequent legislation so as to treat it separately on a future occasion. But this passage will illustrate the difficulties in explaining some sections in this abbreviated synopsis. In chapter XV, sections 16 and 17 of the Ecloga privata aucta this subject is dealt with in more detail and again in a corresponding section, chapter XXX, sections 9 and 16 of the Ecloga ad Procheiron Mutata, where the subject is referred to.

It seems to result from comparing them that hearsay evidence, either as to a debt or the discharge of it, was not accepted even though the declaration was attested by a notary; and that a declaration, even though attested by a notary, was not to be accepted if the declarants were capable of signing their names to the bond and had not done so.

be condemned by law to pay twice the amount of the debt[1].

16. (From the old law concerning witnesses from the Code, c. 20, sec. 9.) Witnesses must be sworn before they give evidence, and especially those of higher rank shall be preferred. And if a witness happens to be a Councillor he alone shall be relieved from giving evidence[2].

Chapter XV

CONCERNING A RELEASE[3] (OR DISSOLUTION OF A CONTRACT)

1. A release shall be given in writing attested by three witnesses.

2. If a minor gives a release and by reason of his youth is taken advantage of, or injured in some other way, when he reaches the age of twenty-five, and discovers the injury done to him, he may bring his case before the Courts, and state the injury he has suffered. And if the injury is proved the Courts will protect him. But if it cannot be proved the release will hold good.

3. If anyone who is more than twenty-five years old should be found to have been constrained either by word or deed to give a release through fear, and the fact is proved before the judges, the release shall

[1] Cf. Ecloga ad Prochiron Mutata, chapter XII, §§ 12 and 15. In the first of these two sections it is provided that, if the repudiator confesses his guilt, he is excused the double fine but has to pay his opponent's law costs.

[2] They were competent witnesses, no doubt, but could not be compelled to give evidence, and as I have pointed out in the Introduction this privilege continued in Modern Greece.

[3] The title in 'Z' is '*Peri dialuseos kuroumenōn e anatrepomenōn*,' and in the Ecloga privata aucta, '*Peri dialuseon anelikōn paidōn genomenōn*.'

be cancelled, and the sum of the matter shall be investigated from its inception.

NOTE. This short chapter in three sections deserves more than a passing notice. In the second and third sections it is provided that the Courts of Justice will protect and give relief to a minor o. whom advantage has been taken, or of a person of any age from whom by duress, a discharge or release of an obligation due has been obtained or extorted.

In spite of the limitations in the other versions, it seems to me that this first section deals with dialusis (literally the dissolution of an obligation) generally, which, having regard to the context, might be rendered as a release or acquittance.

In this as in many other passages the Ecloga does not attempt to define legal terms. So with dialusis, which the Ecloga privata aucta reverting to the Digest, 2, c. 5, sec. 1, renders in Greek, '*Dialusis estin amphiballomenou kephalaiou tome kai peratosis. Ginetai de e exidiochoieou memartemenos, e di omologesios agraphon epi tinon prosopon bebaiomenes.*'

That is to say the tie of an obligation could be severed and limited by a manual act, such as the return of an object loaned, or by mutual consent by word of mouth, or by a written quittance. This section states the law for general application and was, no doubt, intended to be a simplification of the preceding laws upon the subject which were summarized in the Institutes, Bk. III, c. 29, '*Quibus modis obligatio tollitur.*' The practical effect of this new law was that a release could not be sued upon or given in evidence unless it was in writing executed in the presence of three witnesses. As I am not at present concerned with the subsequent legislation of the Isaurian Emperors and prior to the Epanagoge I need not discuss how the law of obligations was altered beyond this, that as time proceeded the tendency was to require all contracts to be entered into and dissolved with solemn formalities, if verbal with witnesses, or else in writing and signature, with witnesses, or even a notary. The first section of this chapter is one of the earliest indications of that tendency. A verbal contract or dissolution of it by word of mouth, however regarded by the law in theory, was not, in practice, taken too seriously by the people at large. As Z. von Lingenthal puts it, 'Das einfache Festhalten am gegebenen Wort galt nicht als sebstverständlich, sondern wer sich von einer übernommenen Verbindlichkeit loszumachen verstand, der wurde vielmehr für besonders klug gehalten.' (*G.-R.R.*, Obligationenrecht.)

Chapter XVI

CONCERNING SOLDIERS' PROPERTY, EQUIPMENT, AND EMOLUMENTS, AND CONCERNING THE CLERGY AND CHARTULARII[1]

1. The property of a soldier, who is still under the power of his parents or grandparents, derived by him from his military service, can be disposed of by him by will, even though he be in garrison[2], but clearly in conformity with what has been already stated in regard to making a will. And if his savings are disposed of by will, the heirs cannot claim a legal share of it, and the soldier can give away his property or entirely dispose of it by will. And upon his parents' deaths it shall not be collected and dealt with as part of the patrimonial estate but shall be excepted therefrom and recognized as belonging to the soldier.

2. If brothers survive their parents, and one of them serves as a soldier and the other stays at home and they make a bargain together they shall share their property between them according to the terms of the bargain. But if no bargain is made and after one of them has served as a soldier, they live together for a period of ten years they shall divide that which they have acquired together share and share alike, whether it is derived from the soldier's pay or from the joint earnings of the household or from the labour of the brother or brothers who stayed at home. If they live together for three years more than the ten years have elapsed and it should happen that they separate,

[1] This interesting chapter is referred to in the Introduction. In 'Z' words are added to explain that the persons referred to were under parental control, and in the public service (strateuomenoi).

[2] *En sedetois*, as opposed to *en expedito*, or *foussato*. The privilege was extended by Hadrian. See Institutes of Justinian, Bk. 2, c. 11, sec. 3.

the soldier shall keep for himself his horse[1], saddle and bridle[2] and armour and his cuirass[3], if he has but that. And the rest of the property shared between the brothers share and share alike. But after thirteen years have elapsed, and they still live together, and it appears that the soldier has saved anything from his pay, he shall keep it, and it shall belong to him; and that which by Divine providence the soldier put by when he first joined the Army[4] shall also belong to him exclusively and be protected from the grasping and covetous.

3. With regard to the Clergy or Chartularii[5] and other persons of the same kind who serve the State and are under parental control, if their parents die and wish to give the peculia to them they can do so by will. But if they say nothing upon the subject and die, and the co-heirs of the State servant make a claim against him for the amount of the peculia, a calculation shall be made of the amount thereof, which has been included in the father's estate, and shall be paid over to the State servant, and the remainder shall be divided among the heirs; but, naturally, if the amount contributed by the State servant to the paternal estate has been deducted and paid to him, the heirs have no right to claim anything from him in respect of the peculia deducted and paid as aforesaid.

4. Regarding other State servants such as those who are paid by Imperial salaries and gratuities, that is to say all those who hold honourable rank who are paid by salary from the Imperial Treasury or are pensioned by the State, all these, except soldiers (who

[1] *hippos.* [2] *sellochalinon.* [3] *lorikon.*

[4] '*Ta de pronoia theou epiktethenta auto ek protes hemeras tou auton strateuthenai.*'

[5] The Chartularii were civil servants in Army pay, or Treasury Departments. See Const. Porph. *de Cerim.* Bonn edition, 1829, p. 694.

can dispose of their peculia), who have four children shall bequeath to them the legal share, that is to say a third part of their peculia; and those who have five or more children one-half of the same. And if they have no children but have parents living then they shall bequeath the aforementioned one-third share to them, and they can dispose of the rest as they please.

5. Civil[1] peculia belonging to persons who are under parental control consist of that property which has been given or has accrued to them from their parents in consequence of dutifulness and respect. Such property is recognized as paternal property, and after the death of the parents is to be reckoned with the rest of the paternal estate and divided up as part of it. As also those properties and things belonging to the father which he has entrusted to his son are recognized as paternal property and to be reckoned with it. But with regard to the maternal estate, that which has been contributed by the children's labour to it or acquired by inheritance, cannot be disposed of by will, but the parents shall have the usufruct of it only and shall preserve for their children the right to dispose of it.

[1] *Paganika*. The first part of this section relates to the peculia profectitia; the second part to the peculia adventitia. The first two sections of this chapter treat of the peculium castrense, the third and fourth to peculium quasi castrense; and it will be noticed that a distinction is drawn between the latter. The law regarding the disposal of the peculium had varied from time to time as Justinian states in the Institutes.

Chapter XVII

CONTENTS[1]

Offences and Punishments

[1] This short table of Contents does not appear in the original. I have compiled it and inserted it here for convenient reference.

SECTION

30 Rape and corruption of a girl; fine and flogging.
31 Corruption of a girl under puberty; nose slitting and forfeiting of half property.
32 Corruption of a betrothed girl; nose slitting.
33 Incest by parents and by those otherwise related; capital punishment by the sword.
34 Incest with a mother and daughter; nose slitting.
35 Bigamy; flogging.
36 Procuring miscarriage; flogging and exile.
37 Marriage of cousins and between others in prohibited degrees; flogging.
38 Unnatural offences; capital punishment by the sword.
39 Abominable crime; emasculation.
40 Arson and tree cutting; fine.
41 Arson in a city; and firing stubble etc., capital punishment; fine.
42 Giving drink and causing death; capital punishment by the sword.
43 Charlatans and poisoners; capital punishment by the sword.
44 Quacks; exile.
45 Wilful murder; capital punishment by the sword.
46 Homicide with a sword; hand amputation or, in case of death, capital punishment.
47 Homicide with any other weapon; flogging and exile.
48 Homicide in a fight with fists; flogging and exile.
49 Homicide of a slave; as homicide.
50 Brigandage and murder; hanging.
51 Slanderers; hanging.
52 Manichæans and Montanists; capital punishment by the sword.
53 Deserters; capital punishment by the sword.

OFFENCES AND PUNISHMENTS

1. No one shall forcibly seize a person who has taken sanctuary in a church. But the charge against the fugitive shall be made manifest to the priest, and the priest shall require guarantees that the fugitive shall be tried of the charge against him and judged according to law. And anyone who attempts to take a fugitive away by force from a church, whatever

his rank may be, shall be flogged with twelve lashes, and then the offence of the fugitive shall be tried in the proper manner.

2. Any suitor who in the course of a judicial enquiry is compelled by his adversary[1] to give testimony by swearing on the Holy Gospel of God, and afterwards is found to be a perjurer, shall have his tongue cut out.

3. Anyone who secretly plots or conspires against the Sovran or conspires with others against him, or the State of the Christian people, shall from that very hour be suitably put to death upon the ground that he is aiming at the destruction of the entire community. But to prevent judges who have a grudge against anyone, putting the accused to death, and then excusing themselves by alleging that the accused defamed the Sovran, it is expedient that the accused be brought into safe custody, and that the charge against him be brought before the Sovran to be tried; and the Sovran shall decide what is to be done with him.

4. Anyone who presumes to beat a priest in a church, in the country[2], or during the celebration of Divine Service[3], shall be flogged and exiled.

5. Anyone who has a dispute with another person regarding any matter and does not appeal to the magistrate, but of his own accord wilfully, contumaciously, and violently, lays hands upon and seizes the subject in dispute, although he was claiming that which was his own by right, shall be deprived of it; and it shall be given to the other party. But if he seized that which belonged to someone else he shall be flogged by the magistrate as one who has become a transgressor and an outlaw; and then that which he seized and took away shall be restored.

[1] This is the serment decisoire of the 'Code Civil.'

[2] *In agro*; these words are omitted in 'Z.'

[3] *Lité.*

6. Those who fall into enemies' hands and renounce the blameless faith of Christians shall, when they return home, be exiled from the community and the Church.

7. Anyone who hires a horse to go to a specified destination and takes or sends the horse beyond it shall, naturally, indemnify the owner of the horse for the injury done or for the death of the horse.

8. Anyone who impounds cattle belonging to another person and starves, or otherwise destroys them, shall be condemned to make twofold restitution[1].

9. If rams and bulls fight one another and the ram is the first to attack and is killed, the owner of the bull that killed the ram shall not be summoned before the Court. But if the ram did not attack and was killed, the owner of the beast that killed shall be summoned, and, either the owner of the beast that was killed shall have a live beast to replace it, or damages shall be paid to him as loser for the loss he has suffered.

10. Anyone who, while in camp[2], or on the march[3], steals arms shall be flogged, and if it be a horse, shall have his hand cut off.

11. Anyone who steals in any other place in the State shall, if he is a freeman and wealthy, for a first offence, and by way of making restitution to the person he has stolen from, pay the value of the thing stolen. If he is poor he shall be flogged and exiled. And for a second offence he shall have his hand cut off.

12. The master of a slave who is a thief shall, if he wishes to keep his slave, indemnify the person whom the slave has robbed. But if he does not wish

[1] Cf. Bk. 4, c. 3, sec. 16 of the Institutes, on the lex Aquilia.

[2] *Fossato.* [3] *Expedito.*

to keep his slave, then the slave shall be handed over to perpetual slavery to the person who suffered the theft.

13. Anyone 'lifting' a herd of cattle belonging to another person, for the first offence, shall be flogged, for the second shall be exiled, and for the third have his hand cut off; it being understood that the herds which were 'lifted' belonged to one and the same owner.

14. Those who strip the dead in their graves shall have their hand cut off.

15. Anyone who comes into a sanctuary of a church by day or by night and steals anything belonging to the priests shall be blinded. Anyone stealing anything out of the church, but not from the sanctuary, shall be flogged as a sacrilegious person and, after being tonsured, shall be exiled.

16. Anyone who seizes a freeman and sells him into slavery shall have his hand cut off.

17. Anyone who seduces, steals, or hides, another person's slave, shall, by way of retribution, restore the slave, and provide another slave, or the price of one, to the master.

18. Forgers of currency shall have their hand cut off.

19. A married man who commits adultery shall by way of correction be flogged with twelve lashes; and whether rich or poor he shall pay a fine[1].

20. An unmarried man who commits fornication shall be flogged with six lashes.

21. If a married man consorts with his wife's maid-servant and has carnal knowledge of her, the maid

[1] This and other provisions relating to sexual offences including defiling of women, or rape, should be compared with those in the Institutes, Bk. 4, c. 18, sec. 4 and following sections. See in particular the punishment for homicide, sec. 6.

shall be taken before the local magistrates and shall be sold into slavery on behalf of the State and the price of her shall inure to the State.

22. Anyone who has carnal knowledge of another person's servant shall, if he is a person of means[1], pay for the offence thirty nomismata to the master of the servant. If he is poor[1] he shall be whipped and shall pay as much as he can in proportion to the thirty nomismata.

23. A person who has carnal knowledge of a nun shall, upon the footing that he is debauching the Church of God, have his nose slit, because he committed wicked adultery with her who belonged to the Church; and she on her side must take heed lest similar punishment be reserved to her[2].

24. Anyone who carries away forcibly a nun or any virgin woman in any place, shall, if he corrupts her, have his nose slit. Abettors of the rape shall be exiled[3].

25. Anyone who, intending to take in marriage a woman who is his goddaughter in Salvation-bringing baptism, has carnal knowledge of her without marrying her, and being found guilty of the offence, shall, after being exiled, be condemned to the same punishment meted out for other adultery, that is to say both the man and the woman shall have their noses slit.

26. If anyone should be found doing the same thing to his stepdaughter both shall have their noses slit and be severely flogged.

27. A man who commits adultery with a woman

[1] *Entimos* and *enteles* are the words. These are sometimes used in early mediæval Greek to distinguish an official from a civilian.

[2] I am not sure that I have rendered the quaint phraseology correctly. The nun's punishment would depend on her connivance.

[3] Institutes, Bk. 4, c. 18, sec. 8.

under coverture shall have his nose slit. And also the adulteress; since thenceforward she becomes a whore and is parted from her husband and lost to her children, disregarding the word of the Lord who teaches us that He has made one flesh of man and wife. And after their noses have been slit the adulteress shall take the things which she brought in to her husband and nothing more. But the adulterer shall not be separated from his own wife though his nose be slit. And the beginning of the adultery shall be enquired into with much care, and the Court shall interrogate the accusers of the intrigue; and if the accuser is the father, husband, mother, brother or the like, the ground for the charge shall be the more credible. And if the accusers are strangers, they must satisfy the Court concerning their legal citizenship; and they shall be examined for proof of the facts. And if they prove the adultery the adulterer and the adulteress shall have their noses slit. And if they do not prove the adultery but have made the accusation maliciously they shall, as slanderers, suffer the like punishment.

28. The husband who is cognizant of, and condones, his wife's adultery shall be flogged and exiled, and the adulterer and the adulteress shall have their noses slit.

29. Anyone who seduces a virgin, with her consent, but without the knowledge of her parents, and afterwards they know it, if the seducer wishes to take the girl in marriage, and the parents consent, the union shall be effected. But if in the circumstances the seducer does not wish to marry the girl, and he is a man of means, he shall give the seduced girl a pound weight of gold; and if he is poor he shall give the half of his property. But if he has no property at all and cannot pay a penalty he shall be flogged, tonsured and exiled.

30. Anyone who forcibly seizes a girl and corrupts her shall have his nose slit.

31. Anyone who corrupts a girl before puberty, that is before she is thirteen years old, shall have his nose slit and the half of his property shall inure to the seduced girl.

32. Anyone who corrupts a girl who is betrothed, even though it be with her consent, shall have his nose slit.

33. Persons committing incest, parents and children, children and parents, brothers and sisters, shall be punished capitally with the sword. Those in other relationship who corrupt one another carnally, that is father and daughter-in-law, son and stepmother, father-in-law and daughter-in-law, brother and brother's wife, uncle and niece, nephew and aunt, shall have their noses slit. And likewise he who has carnal knowledge with two sisters and even cousins.

34. A man who knowingly has carnal knowledge of women who are a mother and her daughter shall have his nose slit; and the same punishment shall be meted out to her who knowingly commits the same offence with a man.

35. The man who has two wives shall be flogged, the woman last introduced being banished with the children born to her.

36. If a woman is carnally known and, becoming pregnant, tries to produce miscarriage, she shall be whipped and exiled.

37. Cousins and their children who from the present time contract marriage, father and son with mother and daughter, and two brothers with two sisters, besides being separated shall be flogged.

38. Those who are guilty whether actively or passively of committing unnatural offences shall be capitally punished with the sword. If he who commits

the offence passively, is found to be under twelve years old, he shall be pardoned on the ground of youthful ignorance of the offence committed.

39. Those guilty of 'abominable crime' shall be emasculated.

40. Anyone setting fire to another person's forest or cutting down trees out of it shall be condemned to make twofold restitution.

41. Those who with malice, or for plunder, commit arson in town, shall be burned; and if out of town they wilfully commit arson, either of the country, fields, or country houses, they shall be punished capitally with the sword. And if anyone wishes to burn stubble or thistles in his own field, and sets them alight, and the fire spreads beyond bounds and burns the fields or vines of another person, the matter shall be referred to the magistrates; and if the fire spread by ignorance or carelessness, compensation shall be made to the person who has suffered; and if by day a high wind blows on the kindled fire, and no precaution has been taken to prevent the fire from spreading, the offender shall be condemned by law for indifference and negligence. But if every precaution is taken and a violent wind happens to blow and in consequence of it the fire spreads about, the person lighting it shall not be condemned by law. And if it should happen that a man's house and his own property are burned, and the fire blazes up and burns his neighbour's house, he shall not be penalized, upon the ground that the fire was not occasioned wilfully.

42. If anyone, be he free or a slave, is convicted of giving a potion on any pretext whatever, a wife to a husband, or a husband to a wife, or servants to their masters, and in consequence of such act the person taking the drink falls ill with dysentery, and dies, the offender shall suffer death by the sword.

43. Charlatans and poisoners who try to deceive men by invoking devils shall suffer death by the sword.

44. Sellers of charms to make men believe that they can acquire wealth by sordid greed of gain shall have their property confiscated and be exiled.

45. Anyone who commits wilful murder, of whatever age he may be, shall suffer death by the sword.

46. Anyone who strikes another with a sword and kills him shall suffer capital punishment by the sword. But if the person struck does not die the striker shall have his hands cut off because he was audacious enough to strike with a sword.

47. If a fight takes place between persons and death ensues the magistrates shall enquire and decide by what weapon death was occasioned; and if they decide that the homicide was committed by means of a stick, or a big stone, or by kicking, the perpetrator shall have his hand cut off. But if they decide that the death was occasioned by a lighter missile the perpetrator shall be flogged and exiled.

48. In a fight with fists the man who strikes and kills shall be flogged and exiled as guilty of involuntary homicide.

49. A master who beats his slave to death with thongs or rods shall not be condemned as a murderer. But if he tortures him unmeasuredly, or poisons him, or burns him to death, he shall be punished as guilty of homicide.

50. A brigand or anyone who waits in ambush and commits murder shall be hanged on the spot.

51. Slanderers of another person, whatever the occasion may be, shall be liable to suffer the like punishment.

52. Manichæans and Montanists shall suffer death by the sword.

53. Deserters, that is to say those who run away to the enemy, shall suffer death by the sword.

Chapter XVIII

CONCERNING THE DIVISION OF THE SPOILS OF WAR

It behoves those who go to war against foes to keep themselves from every evil word or deed and continually to remember God and pray to Him, and also to plan the war with wise counsel[1]. For the help of God is given by wise understanding. Victory is not won by might of numbers but by the power of God. It is right therefore that the sixth part of the war spoils should belong to the State, and that the survivors should take the remainder, share and share alike, both great and small. The officers' pay is sufficient for them. But if any of them should have specially distinguished themselves, the successful general may recompense them out of the sixth share by giving them a part of it. And he shall decide according to circumstances what is fitting. And according to the stated share of the successful general so shall be the share of those who serve in the Army Service Corps[2].

[1] A paraphrase of Proverbs vi, 24.

[2] *En tois touldois*. I have referred to this phrase in the Introduction. The word meant 'baggage.'

APPENDIX

CONTENTS OF THE APPENDIX[1]

CONCERNING SURETIES AND OBLIGATIONS

PUNISHMENTS APPLICABLE TO SOLDIERS

[1] This index of contents to the Appendix does not occur in the original and is only introduced here for convenient reference.

PENALTIES FOR HERETICS, MANICHÆANS, AND OTHER KINDS OF HERESIES AND AGAINST SORCERERS AND POISONERS

APPENDIX

I

1. (Concerning sureties and obligations, Cod. c. 5, 2.) Anyone who stands as surety for or contracts an obligation on behalf of another person shall himself be bound thereby and the other person shall not be released from it.

2. All relations and kinsfolk are competent and acceptable even though they be impecunious; and if anyone accepts impecunious sureties he shall not demand others unless a surety dies or by misfortune loses his fortune.

3. The surety who says, 'I will make satisfaction,' shall be liable, and if he says 'I,' or 'so and so' he shall be wholly liable. And if he says 'satisfaction shall be made,' that shall not be effective.

4. A surety who undertakes to meet his obligation at a stated time, and binds himself clearly for the amount he is to pay, shall not be called upon to pay after the time has expired; and if the term is for six months or more he shall have another six months; and when the second term has run out the holder of the bond shall not be put off any longer but the obligation shall be met.

5. A creditor of whatever kind he be shall first claim against the principal debtor; and if he is insolvent, or on a journey, or absent, he shall then claim against the surety; and if the debt is not paid he shall have recourse against those who administer the property of the principal, and then against those who administer the property of the surety, or his debtors.

II

1. (Concerning boundaries and delimitations of land, from the Digests, Bk. 25.) Anyone who removes ancient landmarks or forcibly encloses another person's land shall suffer capital punishment.

2. If anyone with his own timber builds a house on another person's land the owner of the land shall also be the owner of the house, according to the maxim 'That which is fixed to the soil goes with the soil.' So that from beginning to end the landlord has the ownership of the timber and he (the trespasser) cannot claim anything for the value of it.

3. (From the Code, vol. 3, c. 36.) Anyone building or sowing on another person's land or letting or otherwise using it shall lose his ownership and not recover what he has spent.

4. (From the same, vol. 9, c. 12.) If anyone forcibly enters on to another person's land and one of his partisans, or his opponent's partisans, is killed, the trespasser shall be decapitated as a homicide.

5. Anyone who thinks that land or anything else originating from his neighbour affects his interests should go to the magistrate. And if after complaining of violence he cannot prove his case, let him bear the penalty. And if, treating the judgment of the Court with contempt, he uses violence himself, let him be cast out of the pasture, be condemned for the violence, and exiled, losing even his own possessions.

6. All Governors, Court officials, and military officers shall try those under their command who are guilty of offences of violence, theft, or other irregularities in their jurisdiction, and shall punish offenders according to law[1].

[1] See the chapter on Emphyteusis, section 1, note 1.

At the conclusion of the Ecloga there is a note by Monferratus to the effect that the following sections should be added to the above:

If a servant, male or female, without the knowledge of the master, disturbs another person's boundary he shall suffer capital punishment.

Persons of note who for their own advantage remove boundaries of land shall be flogged and banished into perpetual exile.

From the same book, c. 5, of the Code: Those who obliterate boundaries of lands shall be punished capitally.

No one shall destroy ancient landmarks under penalty of fine and exile.

III

PUNISHMENTS APPLICABLE TO SOLDIERS

1.

1. Those who contumaciously dare to hatch plots, conspiracies, or revolts against their commanders, on any pretext whatsoever, shall suffer capital punishment, especially the ringleaders who caused the conspiracy or revolt.

2. If a soldier disobeys the quinturion of his own company or contradicts him he shall be reprimanded. And in the same way the quinturion who disobeys his decurion, and likewise the decurion who disobeys the centurion.

3. If anyone in a regiment dares to disobey the commanding officer, that is to say the Count or the Tribune, he shall suffer capital punishment.

4. A soldier who hears the command of his decurion and does not obey shall be punished. But if he fails to obey the order in ignorance of his duty the decurion shall be punished for not instructing him.

5. If a soldier is unjustly treated by anyone let him appeal to the regimental commander; and if the commander treats the soldier unjustly let him appeal to the Commander-in-Chief.

6. If a soldier dares to outstay his leave beyond the appointed time he shall be dismissed the service, and shall be dealt with by the civil magistrate as a civilian.

7. If anyone ventures in war time to allow a soldier to absent himself on the pretext of military leave he shall pay a fine of thirty nomismata. For winter time the soldier shall have two or three months' leave. In peace time leave shall be given according to the discretion of the High Command.

8. If through cowardice a soldier surrenders to the enemy he shall suffer capital punishment, not only he but all those who silently abetted him.

9. Anyone who causes loss to a soldier or a civilian shall make twofold restitution to the sufferer of the loss.

10. If an officer or a soldier, in winter quarters, or on the march into camp, does any injury to a soldier or a civilian and does not suitably give full satisfaction, he shall be condemned to make twofold restitution according to the value of the thing belonging to the injured person.

11. If a soldier who is entrusted with the defence of a fort or town betrays it, or being able to defend it takes to flight contrary to the will of his officer and without being obliged to do so to prevent loss of life, he shall be condemned to capital punishment.

12. If a soldier finds a live horse or anything else of value, be it great or small, and fails to report to his officer, he shall be punished as a thief and also those who silently abetted him.

13. If a soldier in time of parade[1] or in action deserts his regiment or the standard and takes to flight, or breaks ranks[2], and strips the slain, or impetuously rushes forward in pursuit of the enemy, we command that he shall suffer capital punishment; and all his property shall naturally be confiscated and given to the common use of the regiment, because he broke the discipline of the regiment and acted treacherously towards his comrades.

14. If on public parade or in action a rout occurs without some justifiable or obvious reason we command that the soldiers of the regiment who first deserted and ran away from their position in the battle shall be decimated and shot down with arrows by other regiments, because they broke the line of action and were entirely responsible for the rout. And if it happens that some of them are wounded in the affray they, naturally, shall be freed from the penalty[3].

15. If a standard is captured by the enemy without some justifiable or obvious reason, we command that those who were entrusted to guard it shall be reprimanded and the

[1] *Parataxis* means 'parade before going into action'; see also next section. *Polemos* is the 'action.'

[2] The place where he is appointed to be.

[3] See the notes at the end of the chapter.

officers shall be degraded even if they are on the Staff[1]. But if any of them happen to be wounded in the fight they shall be acquitted of that penalty.

16. If a rout occurs in camp on parade (for action) and the guards on duty do not hasten to defend it[2] and rush down into the camp, but run away to some other place, we command that those who are responsible for this shall suffer capital punishment, because they behaved treacherously to their comrades and were the cause of the panic.

17. If in action a soldier throws away his arms we command that he shall receive capital punishment because he stripped himself and so provided weapons for the enemy.

NOTES on technical terms. Section 3, *Meizon archon* is the 'Commander,' who might be Comes or Tribune. We shall meet in the next chapter, section 1, the *Doux* who should be the 'Commander-in-Chief' or 'General.' But in 'Z' he is called *Archon*; so that I have rendered the word 'leader.' Section 6. *Eparchia* is the 'High Command.' *Paracheimadion* is 'winter furlough'; *kommeaton* is 'furlough.' Section 9. *Suntelestes* is a 'civilian' as opposed to a soldier. In section 10, *Sedeta* means 'garrison.' Sections 13 and 15. *Bandon*. This word may mean 'company' or 'standard,' according to the context. We meet the same root word in Italian, where 'bandiera d' Italia' is the colloquial phrase for the 'national ensign.' The word seems to be used here as we use it colloquially 'deserting the colours.' Sections 14 and 15. *Parataxis* is 'parade' or 'preparation for an action,' as opposed to *polemos* the 'action' itself. *Tagma* is a 'regiment.' The words for shooting down with arrows and decimating are *katatoxeuthenai* and *apodekatousthai*. Section 16. *Prodifensor* is the 'guard' or 'watch.' Sections 13–16. These paragraphs, as they stand, are difficult to render into English. And there is some evidence that the text in 15 and 16 is corrupt. For instance *parontes* in section 16 I have rendered as 'on duty.' But another reading is *trapentes*. I think it is impossible to do more than give what seems to be the general sense of these paragraphs. They all deal with breaches of military discipline in camp, on parade, or in action, and were punished capitally unless those concerned were wounded in the fighting when the action took place, or the Court-martial was in a humane frame of mind. See section 41 of the next part of the Appendix.

[1] That is even if they belonged to the scholarian guard.

[2] The words *pros soterian* seem to be omitted. Monferratus, p. 58.

2.

1. (From the 12th Book of Digests, c. 16.) If a soldier in action does anything which his leader[1] tells him not to do, or does not carry out the orders he has received from him, he shall suffer capital punishment, even though he did his duty well.

2. A soldier, called up for active service, who absents himself, or deserts his camp, or is the first on parade to run away in sight of the troops, or loses or sells his arms, shall suffer capital punishment. But if humanity prevails he may be flogged and dismissed the service.

3. Whoever, through fear of the enemy, shams illness on himself, shall suffer capital punishment.

4. A soldier who deserts the rampart he is told off to defend, and enters the fort through the walls, shall suffer capital punishment. But if he goes forward beyond his trench he shall be dismissed the service.

5. Whoever is guilty of treason against the Emperor shall be put to death and his property shall be confiscated, and after death his memory shall be held in execration[2].

6. A soldier who intends to desert to the barbarians, even if he is restrained, shall suffer capital punishment.

7. A soldier who neglects his duty shall either be flogged or dismissed the service.

8. Ringleaders of mutiny and those who disturb the people shall be deprived of their own property and banished.

9. Anyone who has deserted to the enemy and comes back again shall receive corporal punishment and be condemned to the wild beasts, or be hanged on the gallows.

10. Those who are dismissed the service through their own fault shall neither have, nor exercise, any office of honour.

11. A soldier who steals weapons belonging to another soldier shall be degraded to the lowest rank in the service.

[1] The *Doux*. In 'Z' the officer is described as the *archon*.

[2] Institutes, Bk. 4, c. 18, sec. 3.

12. Anyone who kindles and inflames a grave mutiny among soldiers shall suffer capital punishment.

13. If however the mutiny is contrived by only one person, and results in no more than a feeble murmur by others, that person shall be degraded to the bottom rank of the army.

14. When a number of soldiers unite together in making absurd demands, and demoralize their regiments, they shall be cashiered.

15. Anyone who has been sentenced to deportation, but having escaped punishment, and, concealing the fact that he has been sentenced, persistently tries to rejoin the army, or allows himself to be re-enlisted, shall suffer capital punishment.

16. Anyone who has been exiled for a term and then is enlisted shall be deported to an island. But if he dissembles and imposes upon those who enlist him he shall be exiled in perpetuity.

17. Anyone who has been exiled for a term and after having suffered his punishment, when the term has expired, presents himself for enlistment, the cause of his exile shall be enquired into and if infamous conduct was added to his crime he shall be imprisoned for life.

18. Those who have been condemned for adultery or some other public crime shall not be eligible for military service if they wish to enlist.

19. Whoever deserts the public service shall be punished in military fashion. For it is a grave sin to evade the duties of public service. And those who are called upon to serve and desert their service shall be enslaved, because they are traitors to their own freedom.

20. If in time of war anyone takes his son out of the public service in an underhand manner he shall be exiled and, according to the measure of his means, shall be fined. But if anyone in war time disables his son so that he be rendered unfit to serve, he shall be exiled.

21. If a soldier lays hands on his officer he shall suffer capital punishment.

22. If an officer wounds one of this men with a stone he shall be cashiered; if with a sword he shall suffer capital punishment.

23. A soldier who wounds himself, or otherwise attempts to commit suicide by reason of bodily affliction, or suffering, or else through insanity attempts to take his life, or for shame wishes to die, shall not be capitally punished but shall be dismissed the service with ignominy.

24. But if none of these circumstances induced him to try to commit suicide he shall suffer capital punishment.

25. The first soldier who deserts in line of battle shall suffer capital punishment.

26. If the pioneers of the Roman Army reveal the secret counsels of the Romans they shall suffer capital punishment[1].

27. A Staff officer[2] who wounds a soldier with a sword shall have his head cut off.

28. A soldier who disturbs the peace shall suffer capital punishment.

29. Whoever challenges a sentry on guard and runs away shall suffer capital punishment.

30. Anyone who by means of intoxicant, wine, or other debauchery makes a soldier fall and commit crime, shall be forgiven capital punishment, but shall be degraded from his own rank.

31. Whoever breaks out of the ranks in war shall be flogged with a stick or be degraded from his rank.

32. Those who are appointed to guard prisoners and carelessly let them escape shall either be flogged or degraded in the service.

33. And if through pity the guard lets the prisoners escape, the guard shall be dismissed the service.

34. But if the guard does so maliciously he shall either suffer capital punishment or be degraded to the lowest rank in the service.

35. A soldier who makes an agreement with a man who

[1] See section 46. [2] *Kollegatos.*

commits adultery with his wife shall be dismissed the service and his property confiscated.

36. Officers and others, whatever rank they may hold in the service, who levy money on the land, shall be condemned to make twofold restitution.

37. If a mutiny of soldiers is kindled by one person and others join in it they shall be severely flogged and dismissed the service.

38. And he who kindles and inflames a serious mutiny among soldiers shall suffer capital punishment.

39. If a soldier disobeys his officer, and intending only to beat him takes up a stick he shall be dismissed the service. But if he strikes him with premeditation he shall suffer capital punishment.

40. If soldiers desert their own officer or run away and allow him to be taken prisoner by the enemy though they are able to shield and protect him, and it should happen that he dies, they shall suffer capital punishment.

41. Anyone appointed to guard the Palace who abandons his watch shall suffer capital punishment; and if he is deemed worthy of humaner punishment he shall be beaten and dismissed the watch and post of vigil.

42. Anyone who goes over to the barbarians, or, if they come on pretence of an embassy, sells arms to them whether finished or unfinished, or any sort of iron, shall suffer capital punishment.

43. Anyone who helps the enemy or betrays Romans to the enemy in any way shall suffer capital punishment.

44. Anyone who intends to desert to the barbarians, even if he is prevented from doing so, shall suffer capital punishment.

45. Those who inhabit Romaic territory and go over to the enemy may be killed with impunity.

46. If the pioneers[1] of the Romaic Army divulge the

[1] This is a repetition of sections 26 and 28. The meaning of the second sentence is obscure. I have referred to these clauses in the Introduction. The name of the officers, *Exploratores*, may mean here 'pioneers' or 'scouts' or 'sappers.'

secret counsels of the Romans to enemies they shall suffer capital punishment; and in the same manner those who commit a breach of the peace.

47. If in war time a soldier does what his officer has forbidden him to do and does not guard the things entrusted to him he shall be severely punished even though he did his duty well.

48. Whoever wounds a soldier with a stone, or wounds himself intentionally, unless he did so to avoid suffering, sickness, or death, shall, after being flogged, be dismissed the service.

49. A soldier who steals anything whatsoever and wheresoever shall make twofold restitution in kind and be dismissed the service.

50. Whoever is condemned to death or exile, or is guilty of any other public crime, if he escapes punishment, shall in no circumstances be eligible for public service.

51. (Concerning the status of a soldier, taken from the 64th chapter of the 4th Book.) Soldiers shall neither be employed as managers (agents), or hired servants, nor be responsible as sureties for the goods of others. Nor shall a soldier engage in agriculture, or trade or undertake civil duties; and if they do so they will be dismissed the service and forfeit the privileges of a soldier.

NOTES on technical terms. 1. *Doux* or *Dux*, meant the 'General'; but here probably only means 'leader.' 2. *Phousaton* is the 'camp.' 4. *Phossa*, the 'trench.' *Characoma*, the 'vallum.' 9. *Phourka* is the 'gallows.' 46. *Explorator* is spy. E.P.A. c. 17, § 12.

IV

PENALTIES FOR HERETICS, MANICHÆANS, AND OTHER KINDS OF HERESIES AND AGAINST SORCERERS AND POISONERS

1. Heretics shall neither teach nor preach their unbelief; nor shall they be ordained.

2. A heretic is a person who deviates, however little, from the Orthodox Faith and is subject to the laws against heretics.

3. The Orthodox Church punishes meetings of heretics even if they are held in private. They shall not hold services either by day or night. If anything of the kind takes place in public or in private the officials who connive shall be mulcted in a fine of one hundred pounds and the inhabitants of the place shall be fined fifty pounds.

4. It is a notorious crime to be Manichæans or Donatists which conduces to the outrage of God. And persons of that kind have no lot in common with a community or the law, and their property shall be confiscated, and they shall be deprived of all rank, and the right of inheritance, and they shall not trade by sale or purchase, and those knowingly harbouring them shall be punished.

5. Heretics shall not enjoy the goodly privileges bestowed by religion; and moreover they are subject to the State obligations.

6. (Further concerning the Jews.) Jews cannot hold posts of honour nor exercise the duties of magistrates, nor be engaged in public service, and they shall be subject to the lot of the Cohortalini and the disabilities thereof. And if any such persons should by political influence attain to such rank they shall be expelled, and shall pay a fine of thirty pounds of gold.

7. If Jewish parents wish their children to become Christians, the desire of either spouse shall be given effect to. But the children must be educated, and the necessary means towards dower must be provided and given to a daughter.

8. Heretics cannot hold councils, or assemblies, or synods, or confirm, or baptize, or have Exarchs, or give or receive patrimony or inheritance, or hold lands themselves or by the intermediary of another person, or do any forbidden act; and whoever transgresses is liable to suffer capital punishment.

9. (Further.) If a Manichæan who has become Orthodox is found to be indulging in heretical practices, or merely living or consorting with Manichæans, and does not forth-

with hand them over to be judged according to law, he shall suffer capital punishment.

10. And persons in office or in the Army shall diligently enquire for persons of that kind and shall hand them over to justice.

11. If a Manichæan is arrested and says he is acquainted with other persons, they shall be suitably punished as being in like error, even if they are not. For those who know the transgressor and do not openly denounce him shall, themselves, be assumed to be transgressors.

12. Anyone who possesses Manichæan books and does not give them up to be burned shall be punished.

13. The Synagogues of the Samaritans[1] shall be destroyed; and if they take in hand to build others they shall be punished.

14. Heretics who consort together, or hold councils, or baptize shall be punished as breakers of the law.

15. Arians and Macedonians who war against the Holy Spirit, Apollinarists, Novatians, that is to say Sabbateans, Eunomians, Quartodecumanians, that is to say Four and Tennians, Valentinians, Papianistai, Montanists, Borborians, Mesalinians, Eutychians, that is to say unsanctified ones, Donatists, Andians, Hydroparastatai, Askodrogoi, Bathrakitai, Hermogenians, Photinians, Paulians, Marchoulians, Ophites, Enkratidai, Apotaktikai, Sakkoforoi, and every kind of Manichæan shall be expelled from the cities and put to death.

16. (Further from the same.) A Christian who becomes a Jew shall have his property confiscated.

17. An Orthodox priest or monk who sacrifices according to the rites of Eutyches or Apollinaris, shall be punished according to the laws applicable to heretics, and shall be expelled from the Romaic community in accordance with the laws concerning Manichæans.

18. Anyone rebaptizing an Orthodox person shall suffer capital punishment, and also the person baptized if he is old enough to be punished.

[1] See note at the end of this chapter.

19. A Bishop who rebaptizes shall be dethroned.

20. (The 1st Book of the Digests.) Apostates who sacrifice or erect churches shall be informed against by all men; and if they are Pagans who became Christians and were baptized, they shall suffer capital punishment.

21. Those who after being baptized persist in the error of the Pagans shall suffer capital punishment. And those not yet baptized, their children, their wives, and all those who belong to them shall be brought to the Holy Churches; and their young children shall forthwith be baptized, and those who are of age shall first be taught letters and the Creed.

22. But if by reason of military rank or service or wealth they pretend to be baptized but leave their children, their wives, their dependants, and those of their household, in the error of heathendom, they shall have their property confiscated and be duly punished and shall forfeit their right of citizenship.

23. Those who openly sacrifice to or worship idols shall, like the Manichæans, suffer capital punishment.

24. Samaritans or Jews who tempt anyone to renounce the faith of Christians shall have their property confiscated and be decapitated.

25. Astrologers shall be condemned according to the laws against heretics, and the Church shall confiscate their conventicles. For that which is repugnant to the Christian faith is opposed to it.

26. (From the Council of Nicea.) Manichæans shall be baptized, Paulians shall be baptized, Photinians shall be baptized, Novatians shall be anointed, and Apollinarists shall profess the declaration of faith proclaimed at Nicea.

NOTE. The distinction between the Samaritans and the Jews had already been recognized by the Code of Theodosius and Valentinian. They gave the Roman Government a great deal of trouble under Vespasian and Zeno. The restriction against keeping synagogues did not apply to the Jews.

Some of the heretical sects are too well known to require any explanation. As for example those of early date, like the Papian-

istans; or others of later date, Hermogenians, Sabellians, Eutychians, Eunomians, Apollinarists, and Novatians.

Among those who figure in this list, and are less well known, were the Macedonians and Pneumatikoi, against whom, first Theodosius I and then Theodosius II and Valentinian III, directed decrees. The former are referred to in the Theodosian Code.

Quartodecumans kept Easter at the Jewish Passover and were allied to the Manichæans. They, the Hydroparastatai, Enkratidai, Apotaktikai, and Sakkoforoi, were Manichæans under disguised names. They refused to use wine in the Eucharist.

Ophitai or serpentes feigned to see in snakes the personification of the wisdom of God, and worshipped them.

Photinians denied our Lord's divinity and Andrians discarded the name Christian.

Marchoulians and Valentinians were identified with Egyptian Gnostics. Borborians, Messalinians and Askodrogoi we hear of from Theodoret and Nicetas. The Bathrakitai were heretics who apparently were connected with the Green faction of the Circus. That at least is what I infer after consulting Ducange's *Glossary of Mediæval Greek*. Was this, by chance, the heresy referred to in the famous dialogue in the hippodrome between the Blues and the Greens in the presence of Justinian and his herald? (Bury, *Later Roman Empire*, vol. II, p. 57, ed. 1889.)

The Manichæans, who called themselves by various outlandish names, were not Christians at all. They were singled out by the Roman Government of the periods we are concerned with for especially severe punishments; as also were Montanists and Donatists. References to these three sects have already been made in the Introduction.

Those who are interested in these sects should compare this list with that given in the Acts of the Trullan Council, and also consult Mosheim's *Ecclesiastical History* edited by Bishop Stubbs.

V

1. (From the Book of the Code, c. 6. Concerning persons of eminence who are not to consort with low class women.) Senators shall not consort with low class women such as a slave or her daughter, or a freedwoman or her children, or an actress or shopkeeper or the daughter of such, or the daughter of a brothel keeper or circus rider.

2. No one shall marry the wife of a brother even though

she be a virgin. For the married state is based upon mutual consent, not upon the consummation. Nor shall the children begotten of such persons marry, except the Egyptians (who already do so)[1].

3. No one shall by royal privilege contract an illegal marriage as for instance with the daughter of a sister or the wife of a brother, and such unions already contracted shall be cancelled.

4. (Book 9 of the Code, c. 11.) If a woman, through lust, has carnal intercourse with her slave she shall be separated from him and the slave shall be burned. And the status of such person shall be registered as of a slave honoured by emancipation. But the children born to them shall not enjoy any rank or honour. It is sufficient for them to be free[2].

5. And they shall not inherit anything from their mother either on intestacy or by will. But if lawfully begotten children survive her or other issue, they shall be her heirs, taking the residuary property left by her to her paramour or to the children born to him and her.

NOTE. Section 2. The Athens text is not complete. In 'Z' text the concluding sentence ends with the words 'who already do so.' It would seem that a custom of the Egyptians was admitted. Section 3. This section points, of course, directly at the incestuous marriage of the Emperor Heraclius with his niece the Empress Martina. (See the 51st and 53rd Acts of the Trullan Council.)

VI

1. (Ordinance concerning murderers and sorcerers, 20.) Among murderers and sorcerers are included those who make poisons to destroy humanity, and trade in them, or publicly sell or possess poisons to destroy humanity.

[1] These words appear in 'Z.' See note at the end of this chapter. This law was derived from earlier legislation which had been suspended by the Emperor Justin, at the instance of his nephew Justinian, to enable the latter, while he was still Crown Prince, to marry the famous Theodora. (Diehl, *Figures Byzantines.*)

[2] That is to say they must be content with that privilege and expect nothing more.

2. There are harmless poisons. The term is comprehensive and includes both poisons made for healing and for destruction. And moreover there are poisons called love philtres, and such poisons are by law included with those made to destroy humanity. According to Senatorial decree it is ordained that the preparation of harmless poison shall be distinguished from the preparation of poison made for a harmful purpose.

3. Adulterers, procurers, and abettors of those abominations shall suffer capital punishment.

4. (By Athanasius Scholasticus from the Digests and the 9th Book of the Code.) If in any way a woman conspires against the life of her husband, or being cognizant of such a plot does not inform her husband, or without the knowledge of her husband has intercourse with strange men, or if against the will of her husband she sleeps outside his house anywhere except in the house of her own parents she shall be separated from him.

5. (From the penal code of John Couvidios.) Those who invoke devils to harm men shall be delivered to wild beasts.

6. Anyone who commits adultery with a woman who, for gain, has been debauched by many, shall not suffer the punishment inflicted for adultery, since the adulterer did not suborn the woman into the evil business.

7. (Further out of the same volume of the 48th Code of the Digests.) If a pregnant woman receives property from a testamentary heir and by taking a potion procures abortion she shall suffer capital punishment.

8. Those who provide potions to procure abortion, whether love philtres or not, commit a sin. And as the example is of the worst kind, the offender shall, if he is a poor person, be sent to the mines; those who are affluent shall be exiled to the islands and they shall suffer a partial confiscation of their means. If in consequence of the offence the woman should happen to die, the offender, whether man or woman, shall suffer capital punishment.

9. Anyone who gives poison to his slave[1] instead of medicine will be held responsible for the consequences, and suffer and be punished as the cause of death. And the person who rashly gives the poison shall be punished as a person giving a sword to a madman.

10. If a female doctor gives poison to her slave, and the latter dies after taking it, she shall bear the consequences. And if the female doctor prepares the poison with her own hands, the Aquilian law shall apply in the same way as if she anointed her with poison or injected it either by force or with consent.

11. Books on magic, poisons and the like, when included in an inheritance, shall not be divided up between the heirs, but shall be destroyed by order of the Court.

12. Harmful poisons shall not be sold, but any medicine recognized as a useful antidote may be sold.

13. (Further, from Bk. 28, c. 20.) Anyone who makes, or sells, or has in his possession, poison for murdering men shall be taken and decapitated.

14. There are, however, poisons which restore health and others called philtres.

15. Anyone who without evil intent gives to a woman a prescription to induce pregnancy, and having taken it she dies, such person shall be exiled. And the druggist who rashly gives hemlock, lizards, aconite, pinecones, scarabei[2], mandrake or cantharides, shall be punished (as is laid down in the third decree; and consult also the first decree of the same book).

16. (Decree concerning the same.) Anyone who makes or possesses forbidden sacrificial offerings shall be punished by decapitation.

17. Whoever tries to impose upon the simple minded by purification with brimstone shall be exiled.

18. Anyone who gives a potion as a philtre, or to cause miscarriage without evil intent, shall, if he is of mean estate, be sent to the mines. If he is a person of substance he shall

[1] In 'Z' the word is *doulo*, in 'A' *dolo*. Cf. Institutes, Bk. 4, c. 3, secs. 6 and 7.

[2] *Boubraston.*

be banished and suitably fined. And if the person treated should die in consequence the offender shall suffer capital punishment.

19. Anyone who makes another person mad by giving him poison shall be guilty of infamy and treated as guilty of outrage[1].

20. If an astrologer, who practises the forbidden art of divination, is consulted and declares an innocent person to be a thief, he shall not be guilty of infamy but shall be punished according to the laws.

21. Any Pagan priest who divines by sacrifice and goes into another person's house, shall be burned; and the person who called him in shall have his property confiscated and be exiled.

22. (Further, decree 4.) A magician, even though not practising his cunning art, shall be put to death.

23. Magicians shall be delivered to the wild beasts.

24. Those who practise divination in Constantinople, even though they be persons of rank, shall be gibbeted and burned.

25. A jockey[2] or anyone of that kind who consults a sorcerer shall suffer capital punishment.

26. (Concerning the ordinance prohibiting heretics, Jews or Pagans from acquiring or possessing Christian slaves and circumcizing them.) A Jew shall not, on any pretext, possess a Christian slave or a slave of any other heretical nationality. If he does and circumcizes him the State shall emancipate the slave and the owner shall suffer capital punishment. A Pagan, Jew or Samaritan, and anyone who is not an Orthodox Christian, cannot possess a Christian slave. Moreover such a slave shall be set free and the master shall forfeit thirty gold pounds to the Res Privata.

27. No Jew, Pagan, or heretic, shall possess a Christian slave; and if any such should be found the slave shall forthwith be taken and set free.

[1] The penalty for the crime of outrage to the person was capital. *Nomos ubreos*. See Institutes, Bk. 4, c. 4, preamble.

[2] Jockey or charioteer. See the Introduction.

28. A slave who serves a Pagan, Jew, Samaritan, or heretic, if he is not a Christian, and wishes to become one, shall, besides receiving the token of baptism, be set free; and his master cannot take him back into slavery even though the master should afterwards become a Christian.

29. Anyone who forces or persuades a slave to renounce the Christian faith for a criminal heresy shall have his goods confiscated and be decapitated.

30. We impose confiscation of property and perpetual banishment on Jews who are found to have circumcized a Christian or command any other person to do so.

VII

1. (Concerning degrees of kinship from the Book of the Institutes.) Kinship is a generic name. It is divided into three degrees. Into ascendants that is those who begat us, into descendants that is those begotten of us, and collaterals that is to say brothers of our father and mother, uncles and aunts, and their offspring in succession.

2. In the first degree are, ascending, a father or a mother; descending, a son or a daughter.

3. In the second degree are, ascending, a grandfather or a grandmother; descending, a grandson or a granddaughter; in the collateral line, a brother or a sister.

4. In the third degree are, ascending, a great-grandfather or a great-grandmother; descending, a great-grandson or a great-granddaughter; in the collateral line, the son or daughter of a brother or a sister; and so accordingly is an uncle or an aunt, whether paternal or maternal.

5. In the fourth degree are, ascending, a great-great-grandfather, or a great-great-grandmother; descending, a great-great-grandson, or a great-great-granddaughter; in the collateral line, the grandson or granddaughter of a brother or a sister; as also a great-uncle or a great-aunt, paternal, that is, the brother or sister of a grandfather; or maternal,

that is, the brother or sister of a grandmother; and first cousins, that is, the children of brothers or sisters.

6. In the fifth degree are, ascending, a great-grandfather's grandfather, or a great-grandfather's grandmother; descending, a great-grandson or a great-granddaughter of a grandson or granddaughter; in the collateral line, a great-grandson or great-granddaughter of a brother or sister, as also a great-grandfather's brother or sister, or a great-grandmother's brother or sister; also the son or daughter of a first cousin.

7. In the sixth degree are, ascending, a great-grandfather's great-grandfather, or a great-grandfather's great-grandmother; descending, the great-grandson or the great-granddaughter of a great-grandson or a great-granddaughter in the collateral line, a great-great-grandson or a great-great-granddaughter of a brother or a sister; as also a great-great-grandfather's brother or sister, and a great-great-grandmother's brother or sister; also, second cousins, that is, the sons and daughters of first cousins in general, whether the first cousins are sprung from two brothers or two sisters, or a brother and sister.

8. But as truth is fixed in the mind much better by the eye than by the ear, we have thought it necessary to subjoin, to the account given of the degrees, a table of them, that the young student, both by hearing and by seeing, may gain a perfect knowledge of them.

9. In ascendancy is the kinship of the parents, in descendancy of the children, and of the collaterals brothers and sisters, and of these man and woman, and successively, uncles and aunts on the father's and mother's sides, and those born of them according to the table in the present decree.

NOTE. The system adopted for reckoning these degrees is explained in the notes in the Introduction on 'Betrothal.' I have taken these degrees from the Latin text of the Institutes, which, as the note introducing this chapter explains, the Greek text purports to reproduce. In fact it is an imperfect paraphrase.

VIII

1. (Law from the Book of the Digests, c. 5.) Every law ordained by us has reference either to persons, things or actions. And forasmuch as the law is made for the guidance of man we will begin by speaking of man.

2. Men are either freemen or bondmen. Freedom is the natural power to do that which neither law nor force forbid. Bondage is a law of nations whereby the bondsman is made subject to a servitude. There is no distinction in servitude. Some men are born free, others are made free. The man born free is of parents who were free either when he was conceived, or born, or at an intermediate period; and that, whether he was conceived in lawful wedlock or in illicit intercourse. Freedmen are those who have been redeemed from bondage.

3. Justice is the constant and perpetual disposition of mind to render everyone his due. Jurisprudence is the knowledge of things divinely and humanly ordained and those which are just and unjust. The precepts of the law are to live honestly and to hurt nobody.

4. (Concerning divine and human law, c. 8 of the first Book of the Digests.) Some things are divinely ordained, others are humanly ordained. Things divinely ordained belong to nobody. Things humanly ordained belong to somebody, and corporeal things are such as fall under the sense of touch; and incorporeal things are such as inheritances, employment, responsibility, bondage. And some things by the law of nature belong to all mankind, some belong to nobody, others belong to an individual. The air, naturally, is the common property of all mankind; also running water, the sea, and the sea shore. Rivers and harbours are public property. To the public belong the theatres, stadia and the like. The walls are sanctified, that is to say holy, and everybody is forbidden to damage them. Buildings devoted to public use, whether in town or country, are sacred.

5. Rivers and harbours are not the common property of all mankind but by law belong to the State. The use of rivers

and river banks naturally belongs to everybody. Therefore anyone may 'bring his vessel to,' and moor her by ropes to trees growing on the banks, and may dry fishing nets or discharge cargo thereon. But the river banks belong to the owners of the contiguous land, and the trees growing on the banks are likewise the property of such persons. Those who dry their nets on the sea beach can build huts on it.

6. (Concerning natural law, the law of nations, and municipal law, c. 3 of the Book of the Digests.) Law is divided into public and private law. Public law concerns the maintenance of the State, and in sacred matters priests regulate religious worship and magistrates the civil administration. Private law is divided into natural law, the law of nations, and municipal law. Natural law is common to all mankind, such as marriage, child birth, death, and the like. The law of nations is common to all mankind, such as natural reason, fear of God, obedience to parents and fatherland, bondage, contracts, and the renunciation of force and injustice. And by this law it is laid down that whatever anyone does for the preservation of his own personality he does so lawfully. And of the same law is also freedom. He who introduced bondage made three kinds of status, freemen, bondsmen, and freedmen. And under this law arose wars and thence strife of nations, sovranty, proprietorship in land, boundaries, purchase, sale and obligations of all kinds excepting those which pertain to municipal law. Municipal law is the specific law of each community. It is divided into written and unwritten law, such as law and ordinances enacted by the people, and such edicts as the Sovran ordains, either passed by vote or proclaimed of his own motion. And the law may be altered by disuse or by a new law. And all men are subject to the law, be it the law of nations, or municipal law; and every law is directed to persons, things or actions.

NOTE. The first part of section 1 is taken from the Institutes of Gaius, the second part from Hermogenianus. Section 3 is taken from Ulpian. Section 6 is taken from various authors. The following sentence is taken from Florentinus: '*To bian e adikian apothesthai. Ekasto gar epheitai poiein ta pros asphaleian tou idiou somatos.*'

SYNOPSIS OF THE MOSAIC LAW

SYNOPSIS OF THE LAW GIVEN BY GOD THROUGH MOSES TO THE ISRAELITES

(i) *Concerning judgment and righteousness.*
Exodus xxiii, 1, 2, 3, 6, 7, 8.
Leviticus xix, 15, 16.
Deuteronomy xvi, 19.

(ii) *Concerning the Ten Commandments engraved on tables of stone.*
Exodus xx, 2–17.
Deuteronomy v, 6–21.

(iii) *Concerning blasphemy.*
Leviticus xxiv, 13, 15, 16.

(iv) *Concerning honour to old men and presbyters.*
Leviticus xix, 32.

(v) *Fathers shall not be put to death for the children or children for the fathers.*
Deuteronomy xxiv, 16.

(vi) *Concerning cursing and smiting parents.*
Exodus xxi, 15.
Leviticus xx, 19.
Deuteronomy xxi, 18, 19, 20, 21.

(vii) *Concerning not oppressing an hired servant or him that is needy.*
Leviticus xix, 13.
Deuteronomy xxiv, 14, 15.

(viii) *Concerning not afflicting a widow or orphan.*
Exodus xxii, 22, 23, 24.

(ix) *Concerning weights and measures.*
Leviticus xix, 35, 36.

(x) *Concerning inheritance.*
Numbers xxvii, 8, 9, 10, 11.

(xi) *Concerning loan and usury and pledge.*
Exodus xxii, 25, 26, 27.
Leviticus xxv, 35, 36, 37.
Deuteronomy xv, 7, 8, 9, 10; xxiii, 19, 20; xxiv, 10–13.

(xii) Exodus xxii, 7–9.

(xiii) Exodus xxii, 10–13.

(xiv) Exodus xxii, 14, 15.

(xv) Exodus xxii, 1, 2, 3, 4.

(xvi) *Concerning stealing a freeman and selling him.*
Exodus xxi, 17.
Deuteronomy xxiv, 7.

(xvii) *Concerning buying a freeman.*
Leviticus xxv, 39, 40, 41, 42, 43.

(xviii) *Concerning trespass.*
Exodus xxii, 5.

(xix) *Concerning the man who digs a pit and leaves it open.*
Exodus xxi, 33, 34.

(xx) *Concerning damage by fire.*
Exodus xxii, 6.

(xxi) *Concerning an ox that goreth a man.*
Exodus xxi, 28–36.

(xxii) *Concerning the usage of a captive taken to wife.*
Deuteronomy xxi, 10–14.

(xxiii) *Concerning the punishment of him that slandereth his wife.*
Deuteronomy xxii, 13–21.

(xxiv) *Concerning the immodest woman.*
Deuteronomy xxv, 11, 12.

(xxv) *Concerning rape.*
Exodus xxii, 16, 17.
Deuteronomy xxii, 28, 29; *ib.* 23, 24; *ib.* 25, 26.

(xxvi) *Concerning adultery.*
Leviticus xxii, 10.
Deuteronomy xxii, 11–22.

(xxvii) *Concerning injury to a pregnant woman.*
Exodus xxi, 22, 23.

(xxviii) *Concerning the daughter of a priest.*
Leviticus xxi, 9.

(xxix) *Concerning uncleanness.*
Leviticus xx, 16.

(xxx) *Concerning incest.*
Leviticus xviii, 6, 7.

(xxxi) *Concerning a stepmother.*
Leviticus xx, 11.

(xxxii) *The following relate to incest.*
Leviticus xx, 17.

(xxxiii) Leviticus xviii, 10.

(xxxiv) Leviticus xx, 19.

(xxxv) Leviticus xx, 12.

(xxxvi) Leviticus xx, 21.

(xxxvii) Leviticus xx, 14.

(xxxviii) Leviticus xviii, 11.

(xxxix) Leviticus xviii, 18.

(xl) Leviticus xx, 14.

(xli) Leviticus xx, 20.

(xlii) Exodus xx, 19.
Leviticus xx, 15.

(xliii) Leviticus xx, 12.

(xliv) *Concerning injuries to servants.*
Exodus xxi, 20–21, 26–27.

(xlv) *Concerning homicide.*
Exodus xxi, 12, 13, 14; *ib.* 18, 19.
Leviticus xxiv, 17, 18, 19.
Numbers xxxv, 16, 17, 18, 20, 21–25, 30, 31, 32.
Deuteronomy xix, 3–7.

(xlvi) *Concerning witnesses and false witnesses.*
Deuteronomy xviii, 6, 7; *ib.* xix, 15–19 and 29.

(xlvii) *Concerning witches and wizards.*
Exodus xxii, 18.
Leviticus xix, 31.
Leviticus xx, 6–27.

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In this list I have included three well-known books on Elementary Roman Law suitable for students. No study of this kind could be taken up without consulting the works of Zachariä von Lingenthal, and in his latest book he draws attention to the importance of Later Roman Law on the jurisprudence of South-Eastern Europe. *Turkey*, by Sir Charles Eliot, gives an admirable and concise account of the nations, once subject to the Ottoman Turks but now free and independent, whose codes of law are founded on the Isaurian and Basilikan legislation.

Gay and Chalandon draw attention to the concurrent use of Græco-Roman, Lombard and Norman law in Southern Italy and Sicily during the eleventh and twelfth centuries. The introduction of the Greek liturgy, the jurisdiction of the Patriarch of New Rome, and the Isaurian laws, into Southern Italy and Sicily were due to Leo III; and when these provinces came under the dominion of Guiscard, the two Rogers and their successors, both the liturgy and the law were respected, preserved, and indeed to a considerable extent encouraged by the Norman conquerors. The

condition of the Greek population under Norman rule reminds us of that of the Christians under the Capitulations with Turkey. They built their churches and recited their liturgy 'ad usum' or 'more græcorum' and were governed 'secundum consuetudinem et legem Romanorum.' Mons. Batiffol's book on Rossano gives a clear idea of the extent of this Græco-Roman civilization in Italy, and, so far at any rate as the Uniate Church is concerned, it continues even to the present day.

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