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1 ZOSIMUS
THE
HISTORY
OR
COUNT ZOSIMUS,

SOMETIME
ADVOCATE AND CHANCELLOR
OF THE
Roman Empire.

TRANSLATED FROM THE ORIGINAL GREEK,
WITH THE NOTES OF THE OXFORD EDITION.

COMPLETE IN ONE VOLUME.

London:

PRINTED FOR J. DAVIS, ESSEX-STREET, STRAND; AND TO
BE HAD OF ALL THE BOOKSELLERS,
BY W. GREEN AND T. CHAPLIN, CRANE-COURT, FLEET-STREET.

1814.

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G. J. VOSSIUS

CONCERNING THE AUTHOR.

THE language of Zosimus, according to the judgment of Photius, Patriarch of Constantinople, in his *BIBLIOTHECA*, is concise, expressive, pure, and sweet; but, being a Heathen, he often reproaches the Christian Princes, and is upon that account reprehended by the same Photius, by Evagrius, Nicephorus, and others: it is, however, the opinion of Leunclavius, that Zosimus ought to be believed even in those relations, there being no doubt that the Christian Princes were guilty of many enormities, which could not be passed over by the faithful Historian.



THE
HISTORY OF COUNT ZOSIMUS.

BOOK THE FIRST.

WHEN Polybius of Megalopolis proposed to write the history of all the remarkable occurrences of his own times, he thought it proper to demonstrate by facts, that the Romans, who were continually at war with the neighbouring states, for six hundred years after the building of their city, acquired in that space of time no considerable extent of dominion. But after they had subdued a small part of Italy, which upon the invasion of Hannibal they lost at the battle of Cannæ, and viewed their enemies under their own walls; they made so great a progress in good fortune, that in less than fifty-three years, they became masters, not only of all Italy and Africa, but likewise of Spain. And being still desirous to enlarge their empire, they crossed the Ionian sea, conquered Greece, and ruined the Macedonians, whose king they carried to Rome in chains. No person can therefore suppose that all this proceeded from causes merely human, but either from fatal necessity, the influence of the planets, or the will of the Deity, which regards with favour all our actions, while they are just and virtuous. For these provide for future contingencies by such a train of apparent causes, that thinking persons must conclude the administration of human affairs to be in the hands of a divine Providence; so that when the energy of nations by the divine influence is roused and alert, they flourish in prosperity; and on the contrary, when they become displeasing to the gods, their affairs decline to a state resembling that which now exists.

But it being my design to demonstrate by actual circumstances the truth of my observations, I shall begin by stating, that from the Trojan war to the battle of Marathon the Greeks performed no exploits worthy of being mentioned either against each other or any foreign power. But when Darius with his prefects brought against them an army of immense magnitude, eight thousand Athenians, as if inspired from Heaven, and armed by mere chance, advanced to oppose him, and met with such success as to kill ninety thousand, and compel the remainder to fly from their country. And it was this engagement that enabled the Greeks

to improve their condition. But Xerxes, after the death of Darius, invaded Greece with a force so much more considerable, that he appeared to carry all Asia along with him into Greece; for the sea was covered with his ships, and the land with his soldiers. Finding it necessary to cross from Asia into Europe, he constructed a bridge over the Hellespont for the passage of his foot soldiers, and, as if the two elements of earth and water were not capable of receiving his army without depriving them of their natural use, cut a channel through Mount Athos, in which his ships rode as in the sea. In the mean time the Greeks, though terrified at the bare report of the approach of such an enemy, prepared to oppose him with their utmost strength. In a naval engagement at Artemisium, and another at Salamis, they so far exceeded their former victory, that Xerxes was glad to escape with life, having lost the greatest part of his army; and the destruction of the remainder of them at Plateæ gave such a completion to the renown of the Greeks, that, by the force of the reputation they had acquired, they not only liberated the Greeks that were settled in Asia, but possessed themselves of almost all the islands.

And indeed, had they continued amicable with each other, and contented with the condition they then stood in, and had the Athenians and Lacedæmonians not quarrelled for the government of Greece, they would never have had to submit to any foreign power. But the strength of Greece being exhausted by the Peloponnesian war, and its cities impoverished, Philip found opportunity to enlarge the kingdom left him by his father, by arts and stratagems, though in strength inferior to all his neighbours. For by his money he so bound to him his own soldiers, and all others that would fight under his banners, that he became sufficiently powerful to contend with the Athenians at Cheronea, and after that victory by his courtesy and affability insinuated himself so much into the regard of all, that he thought himself able to march against the king of Persia, but died before he could levy a competent force.

Alexander, who succeeded to the throne, having settled the affairs Greece, crossed into Asia with a considerable army. Having there conquered the Satrapes who opposed him, he advanced towards Darius himself, who had fixed himself with an innumerable host in all the places near to Issus. There he gained in an engagement with the Persians an incredible victory, routed Darius, and proceeded through Phœnicia and Syria into Palestine. His actions at Tyre and Gaza may be read in the historians

of his life. From thence he marched into Egypt, and having paid his devotions to Jupiter Ammon, and ordered Alexandria to be erected, he returned to finish the Persian war. On his march, finding that he was esteemed by all people, he proceeded into Mesopotamia; and though he heard that Darius was prepared to receive him with a greater army than before, yet he advanced with the force he then had, and engaged at Arbela; where he gained so important a victory, as to destroy all the troops of Darius, and overturn the Persian monarchy, although the king himself escaped. Darius being murdered by Bessus, Alexander, after performing great achievements in India, returned to Babylon, where he died. After his decease, the dominion of the Macedonians being divided into several principalities, which were enfeebled by continual wars against each other, the remaining part of Europe was subdued by the Romans. Crossing afterwards into Asia, they contended with the king of Pontus and Antiochus, then with the Dynastes or sovereigns of Egypt; thus enlarging their empire every year, so long as their senate retained its authority, because their consuls were ambitious of emulating each other. But the commonwealth being ruined by the civil wars between Sylla and Marius, and between Julius Cæsar and Pompey, the aristocracy, or government of the nobles, was set aside, and Octavianus chosen dictator. The entire administration of affairs was thus committed to him alone, without the consideration, that it was like throwing the hopes and interests of all the people on the hazard of a die, and placing that vast empire at the risk of the inclination and authority of a single ruler. For were it the inclination of such a ruler to govern according to justice and moderation, he could not hope to give satisfaction to all, not being able to protect such as were at a considerable distance in any convenient time, nor to select so many officers, that would fear the disgrace of not performing their duty; nor could he suit his own disposition to the different humours of so many. But if he should wish to break through the bonds of imperial and regal government, and exercise absolute tyranny, by subverting the existing establishments, conniving at great crimes, selling of justice, and regarding his subjects as slaves (as most, and indeed with a few exceptions, almost all the emperors have done), it must of necessity follow, that his unbounded savage authority would prove a common calamity. It is the very nature of such a despotism, that fawning miscreants and parasites are preferred to situations of the greatest trust, whilst modest quiet men, who are averse to so base a manner of living, resent with justice that

they themselves cannot enjoy similar benefits. Hence cities are filled with sedition and tumult; for when all offices, both civil and military, are conferred upon ill disposed magistrates, it both renders the citizens restless in peace, and discourages the soldiers in war.

That this is the case has been plainly shewn by experience, and the train of events that took place soon afterwards, in the reign of Octavianus. For the dance called Pantomimus, which signifies a dance in imitation of every one, was introduced into Rome at that period; it never having before been in use in Italy, being invented by Pylades and Bathyllus; besides many other innovations, that still are productive of great evil. Octavianus however appears to have ruled with great moderation, more particularly after he listened to the counsel of Athenodorus the stoic, and when compared to Tiberius his successor. The tyranny of the latter was so severe as to be intolerable to his subjects, who expelled him to an island, where he secreted himself for some time and then died. To him succeeded Caius Caligula, who far exceeded Tiberius in every species of wickedness, and was slain by Chæreas, who resolved by that bold action to deliver the state from his cruel tyranny. The next emperor was Claudius, who intrusted the management of all his affairs to *Libertini* (the sons of those who had been slaves) that were eunuchs, and his end was disgraceful. Nero and his successors were then raised to the imperial throne. Of whom I shall not state any thing, in order that the world may not be pained by the repetition of the impious and monstrous enormities of which they were guilty. But Vespasian, and Titus his son, acted during their reigns with greater moderation. On the contrary, Domitian exceeded all his predecessors in cruelty, luxury, and avarice; for which reason, after he had for fifteen successive years tormented the commonwealth, he was put to death by Stephanus, one of his freedmen; thus receiving the punishment which his actions merited.

After him several worthy sovereigns succeeded to the empire: Nerva, Trajan, and afterwards Adrian, Antoninus Pius, and the brothers Verus and Lucius, who reformed many abuses in the state, and not only recovered what their predecessors had lost, but made likewise some new additions. But Commodus, the son of Marcus, on becoming emperor, addicted himself not only to tyranny, but to other monstrous vices, until his concubine Marcia assumed the courage of a man and put him to death, and the empire was conferred on Pertinax. But the imperial guards being unable to submit to the strictness of his discipline, which

caused them to mutiny and to murder him, Rome was on the point of becoming a seat of anarchy and disorder, while the pretorian soldiers, who were intended for the protection of the palace, attempted to deprive the senate of the power of appointing a sole ruler. And the empire being now put up as it were to sale, Didius Julianus, at the instigation of his wife, assisted by his own folly, produced a sum of money with which he purchased the empire; and exhibited such a spectacle as the people had never before witnessed. The soldiers who raised him to the dignity, by violence put him in possession of the palace and all that it contained. But he was called to account and deprived of life by the very men who were the means of his exaltation, nor was his life more than a momentary golden dream.

At his removal, the Senate consulted whom to elect Emperor, and fixed on Severus. But Albinus and Niger pretending a right to the throne at the same time, a furious civil war broke out between the competitors; the cities being divided between the different parties. On this great commotions were excited in Egypt and the eastern parts of the empire, and the Eyzantines, who espoused the cause of Niger, and entertained him, were ready for the most dangerous enterprises, until he was vanquished by Severus and killed. After him Albinus likewise took leave of the empire and the world together, and thus the sole power now devolved on Severus. He therefore applied himself to the correction of the enormities that had sprung up, punishing severely the soldiers that had murdered Pertinax, and delivered the empire to Julianus. Having done this, and regulated the army, he marched against the Persians, and in this expedition took Ctesiphon and Babylon, over-ran the Arabians, called *Scenites* from their dwelling in tents, conquered the principal part of Arabia, and performed many other great achievements. He was besides inexorable to delinquents, and made public distribution of the property of those who were guilty of any heinous offence.

Having adorned many cities with sumptuous edifices, he declared his son Antoninus emperor, but at his death left his other son Geta co-heir with him in the government, appointing for their guardian Papinianus, a person eminent for his strict justice, and for his ability in the knowledge and interpretation of the law, in which he excelled every Roman either before or since his time. But this worthy man in a short time became odious to Antoninus, because he used his utmost endeavours to frustrate a design which he had discovered, formed by Antoninus against his brother Geta. He resolved therefore to remove this obstacle, and concerted with

the soldiers the destruction of Papinianus. This being effected, and his hands at liberty, he slew his brother, whom his own mother could not save, though he fled to her for protection.

But not long after Antoninus was remunerated for the murder of his brother, and it was never known who was the person that killed him. The soldiers at Rome then chose for emperor Macrinus, the prefect of the court; while those in the east set up Emisenus, who was related to the mother of Antoninus. Each army was now so tenacious of its choice, that a civil disturbance arose between them, and while the supporters of Emisenus Antoninus were bringing him to Rome, those of Macrinus advanced from Italy. The two armies engaging at Antioch in Syria, Macrinus was so completely routed, that he was compelled to fly from the camp, and was taken and put to death between Byzantium and Chalcedon.

Antoninus, after this victory, punished all that had espoused the cause of Macrinus as enemies, and led so dissolute and shameful a life, and held such frequent communication with magicians and jugglers, that the Romans, unable to endure his excessive luxury, murdered him, tore his body in pieces, and proclaimed Alexander emperor, who likewise was of the family of Severus. He, though very young, gave such signs of a good disposition, as inspired the people with hope that he would prove a mild ruler. He made Flavianus and Chrestus prefects of his court, men not only well acquainted with military affairs, but excelling in the management of civil business. But Mamaea, the emperor's mother, placed over them Ulpianus, as an inspector of their conduct, and indeed as a partner in their office, he being an excellent lawyer, and knowing not only how to regulate present affairs, but to provide prudently for the future. This gave such offence to the two soldiers, that they secretly planned his destruction. When Mamaea understood this, she prevented their design by putting aside the conspirators, and making Ulpianus the sole prefect of the court. But afterwards becoming suspected by the army, for reasons which I am unable to state, there being many various reports concerning his inclination, he lost his life in a tumult, which the emperor himself could not prevent.

The soldiers after this event, forgetting by degrees their former regard for Alexander, appeared unwilling to put his commands in execution, and in order to avoid being punished for their negligence, excited public commotions, in which they promoted a person, named Antoninus, to the empire. But he, being incapable of sustaining so weighty a charge, declined it. They

chose in his stead Uranius, a man of low and servile condition, whom they immediately placed before Alexander, drest in purple, by which they intended to express more strongly their contempt for the emperor. Alexander, finding himself surrounded with so many difficulties, became changed, both in bodily constitution and in disposition; and was infected with an insatiable avarice, amassing riches with the utmost solicitude, which he confided to the care of his mother.

While his affairs were thus unfortunately situated, the armies in Pannonia and Mœsia, which were far from respecting him previously, now became more disposed to revolt, and being therefore determined on an innovation, raised to the empire Maximinus, the captain of a Pannonian troop. Having collected all his forces, he marched into Italy with the utmost speed, thinking it the safest to attack the emperor by surprise. But Alexander, who was then in the vicinity of the Rhine, having received intelligence of their intended revolt, proceeded to Rome without loss of time. He offered pardon to the soldiers and to Maximinus upon the condition that they would desist from their attempt; he could not however appease them, and therefore desperately exposed himself to death. Mamæa his mother, and the prefects, who issued from the palace to allay the tumult, were likewise murdered. Maximinus thus became well established in the throne, but the people universally regretted the change of a moderate emperor for a cruel tyrant. Maximinus was of obscure birth, and therefore on his exaltation to the imperial dignity, his excessive insolence in his new authority eclipsed those good qualities with which nature had endowed him. He thus became intolerable to all men, not only doing injuries to those that were in honourable offices, but being guilty of the greatest cruelties in the exercise of his power, bestowing favours only upon sycophants who laid information against quiet persons, by charging them with being debtors to the imperial treasury. At length he went so far as to murder persons out of avarice, before he heard them plead in their own defence, seized on the towns as his own, and plupered the inhabitants.

The nations subject to the Romans being unable to endure his monstrous cruelty, and greatly distressed by the ravages he committed, the Africans proclaimed Gordianus and his son, of the same name, emperors, and sent ambassadors to Rome, one of whom was Valerianus, a man of consular rank, who afterwards himself became emperor. This was highly gratifying to the senate, which deliberated how to remove the tyrant, inciting the soldiers to revolt, and reminding the people of the injuries they sustained

as well in their individual capacities, as in that of members of so mighty a state. Having thus agreed how to act, they selected out of the whole senate twenty persons who understood military discipline, and out of that number appointed two, Balbinus and Maximus, to hold the chief command, and proceeded towards Rome, being ready for an insurrection. But Maximinus, hearing of their intention, marched with great precipitation towards Rome, with the Moors and Gauls that were under his command, and on the way laid siege to the garrison of Aquileia, because they closed their gates against him. His own party, at length consulting the public benefit, with great reluctance consented to those who wished to put him to death, and he was thereby reduced to such extremity, as to be under the necessity of making his son a petitioner in his behalf, supposing that his tender age would abate their anger and incline them to compassion. But at this they became more enraged, and after they had murdered the boy in a most barbarous manner, they dispatched the father likewise; on which one of them cut off his head, and carried it to Rome, as an evidence and a trophy of their victory. Being thus delivered from all their apprehensions, they waited for the arrival of the two emperors from Africa.

These princes being wrecked in a storm, the senate conferred the supreme direction of affairs on Gordianus, the son of one of them. In his reign, the Romans relaxed a little from their former melancholy, being treated by the emperor with plays and other amusements. But awaking as it were from a profound sleep, they formed a secret conspiracy against the emperor, instigated by the counsel of Balbinus and Maximus, who incited some of the soldiers against him. This being detected, the heads of the conspiracy, and many of the accomplices, were put to death.

Soon after this, the Carthaginians became discontented with the emperor, and attempted to substitute Sabianus in his stead; but Gordianus raised a force in Africa, which quickly caused them to submit. Upon this they delivered up the intended usurper, solicited pardon for their offences, and were freed from the danger that hung over them. Meantime Gordianus married the daughter of Timesicles, a man in high estimation for his learning, and appointed him prefect of the court; by which he seemed to supply the deficiency of his own youth in the administration of public affairs. Having secured the empire, he was in continual expectation that the Persians would make an attack on the eastern provinces, Sapoies having succeeded in that kingdom to Artaxerxes, who had restored the government to the Persians from the

Parthians. For after the death of Alexander the son of Philip, and of his successors in the empire of the Macedonians, at the period when those provinces were under the authority of Antiochus, Arsaces a Parthian, being exasperated at an injury done to his brother Teridates, made war upon the satrap of Antiochus, and caused the Parthians to drive away the Macedonians, and form a government of their own. The emperor therefore made all possible preparations for marching against the Persians. Although he appeared in the first battle to have obtained the victory, yet the confidence of the emperor in the success of this enterprize was considerably diminished by the death of Timesicles, the prefect of the court. Philip being chosen in his place, the emperor's popularity in the army was gradually dissipated and vanished. Philip was a native of Arabia, a nation in bad repute, and had advanced his fortune by no very honourable means. As soon as he was fixed in his office, he aspired at the imperial dignity, and endeavoured to seduce all the soldiers that were disposed to innovation. Observing that abundance of military provisions was supplied, while the emperor was staying about Carræ and Nisibis, he ordered the ships that brought those provisions to go further up the country, in order that the army, being oppressed with famine, might be provoked to mutiny. His design succeeded to his wish; for the soldiers, under pretence of want of necessaries, surrounded Gordianus in a violent manner, and having killed him, as the chief cause of so many perishing, conferred the purple on Philip according to their engagement. He therefore made peace with Sapore, and marched towards Rome; and as he had bound the soldiers to him by large presents, he sent messengers to Rome to report that Gordianus had died of a disease. On his arrival at Rome, having made the senate his friends, he thought it most politic to confer the highest preferments on his near relations. From this motive he made his brother Priscus general of the army in Syria, and intrusted the forces in Mœsia and Macedonia to his son-in-law Severianus.

Thinking that he had by these means established himself in the possession of the empire, he made an expedition against the Carpi, who had plundered all the country about the Ister. When an engagement took place, the Barbarians not being able to withstand the impetuous charge of the Romans, fled into a castle in which they were besieged. But finding that their troops, who were dispersed in various directions, had again rallied in a body, they resumed their courage, and sallying from the castle attacked the Roman army. Being unable to bear the brisk onset of the

Moors, the army solicited for peace, to which Philip readily assented, and marched away. As there were at that time many disturbances in the empire, the eastern provinces, which were uneasy, partly, owing to the exactions of exorbitant tributes, and partly to their dislike of Priscus, their governor, who was a man of an intolerably evil disposition, wished for innovation, and set up Papianus for emperor, while the inhabitants of Mœsia and Pannonia were more inclined to Marinus.

Philip, being disturbed by these events, desired the senate either to assist him against such imminent dangers, or, if they were displeas'd with his government, to suffer him to lay it down and dismiss him quietly. No person making a reply to this, Decius, a person of illustrious birth and rank, and moreover gifted with every virtue, observed, that he was unwise in being so much concerned at those events, for they would vanish of themselves, and could not possibly long subsist. And though the event corresponded with the conjecture of Decius, which long experience in the world had enabled him to make, Papianus and Marinus being taken off, yet Philip was still in fear, knowing how obnoxious the officers in that country were to the army. He therefore desired Decius to assume the command of the legions in Mœsia and Pannonia. As he refused this under the plea that it was inconvenient both for Philip and himself, Philip made use of the rhetoric of necessity, as the Thessalians term it, and compelled him to go to Pannonia to punish the accomplices of Marinus. The army in that country, finding that Decius punished all that had offended, thought it most politic, to avoid the present danger, and to set up a sovereign who would better consult the good of the state, and who, being more expert both in civil and military affairs, might without difficulty conquer Philip.

For this purpose they clothed Decius in purple, and notwithstanding all his apprehensions of future mischances, compelled him to assume the supreme authority. Philip therefore, on hearing that Decius was thus made emperor, collected all his forces to overpower him. The supporters of Decius, though they knew that the enemy had greatly the advantage in numbers, still retained their confidence, trusting to the general skill and prudence of Decius in affairs. And when the two armies engaged, although the one was superior in number, yet the other so excelled it in discipline and conduct, that a great number of Philip's partizans were slain and he himself amongst them, together with his son, on whom he had conferred the title of Cæsar. Decius thus acquired the empire.

The Scythians, taking advantage of the disorder which every where prevailed through the negligence of Philip, crossed the Tanais, and pillaged the countries in the vicinity of Thrace. But Decius, marching against them, was not only victorious in every battle, but recovered the spoils they had taken, and endeavoured to cut off their retreat to their own country, intending to destroy them all, to prevent their ever again making a similar incursion. For this purpose he posted Gallus on the bank of the Tanais with a competent force, and led in person the remainder of his army against the enemy. This expedition exceeded to his utmost wish; but Gallus, who was disposed to innovation, sent agents to the Barbarians, requesting their concurrence in a conspiracy against Decius. To this they gave a willing assent, and Gallus retained his post on the bank of the Tanais, but the Barbarians divided themselves into three battalions, the first of which posted itself behind a marsh. Decius having destroyed a considerable number of the first battalion, the second advanced, which he likewise defeated, and discovered part of the third, which lay near the marsh. Gallus sent intelligence to him, that he might march against them across the fen. Proceeding therefore incautiously in an unknown place, he and his army became entangled in the mire, and under that disadvantage were so assailed by the missiles of the Barbarians, that not one of them escaped with life. Thus ended the life of the excellent emperor Decius.

To him succeeded Gallus; who declared his son Volusianus his associate in the empire, and published an open declaration, that Decius and his army had perished by his contrivance. The Barbarians now became more prosperous than before. For Gallus not only permitted them to return home with the plunder, but promised to pay them annually a sum of money, and allowed them to carry off all the noblest captives; most of whom had been taken at Philippopolis in Thrace.

Gallus, having made these regulations, came to Rome, priding himself on the peace he had made with the Barbarians. And though he at first spoke with approbation of Decius's mode of government, and adopted one of his sons, yet, after some time was elapsed, fearing that some of them who were fond of new projects might recur to a recapitulation of the princely virtues of Decius, and therefore might at some opportunity give the empire to his son, he concerted the young man's destruction, without regard either to his own adoption of him, or to common honour and justice.

Gallus was so supine in the administration of the empire, that the Scythians in the first place terrified all the neighbouring nations, and then laid waste all the countries as far by degrees as the sea coast; not leaving one nation subject to the Romans unpillaged, and taking almost all the unfortified towns, and many that were fortified. Besides the war on every side, which was insupportably burdensome to them, the cities and villages were infested with a pestilence, which swept away the remainder of mankind in those regions; nor was so great a mortality ever known in any former period.

At this crisis, observing that the emperors were unable to defend the state, but neglected all without the walls of Rome, the Goths, the Borani, the Urugundi, and the Carpi once more plundered the cities of Europe of all that had been left in them; while in another quarter, the Persians invaded Asia, in which they acquired possession of Mesopotamia, and proceeded even as far as Antioch in Syria, took that city, which is the metropolis of all the east, destroyed many of the inhabitants, and carried the remainder into captivity, returning home with immense plunder, after they had destroyed all the buildings in the city, both public and private, without meeting with the least resistance. And indeed the Persians had a fair opportunity to have made themselves masters of all Asia, had they not been so overjoyed at their excessive spoils, as to be contented with keeping and carrying home what they had acquired.

Meantime the Scythians of Europe were in perfect security and went over into Asia, spoiling all the country as far as Cappodocia, Pesinus, and Ephesus, until Æmilius, commander of the Pannonian legions, endeavouring as much as possible to encourage his troops, whom the prosperity of the Barbarians had so disheartened that they durst not face them, and reminding them of the renown of Roman courage, surprised the Barbarians that were in that neighbourhood. Having destroyed great numbers of them, and led his forces into their country, removing every obstruction to his progress, and at length freeing the subjects of the Roman empire from their ferocity, he was appointed emperor by his army. On this he collected all the forces of that country, who were become more bold since his successes against the Barbarians, and directed his march towards Italy, with the design of fighting Gallus, who was as yet unprepared to contend with him. For Gallus had never heard of what had occurred in the east, and therefore made only what accidental preparations were in his reach, while Valerianus went to bring the Celtic and German legions. But

Æmilianus advanced with great speed into Italy, and the armies were very near to each other, when the soldiers of Gallus, reflecting that his force was much inferior to the enemy both in number and strength, and likewise that he was a negligent indolent man, put him and his son to death, and going over to the party of Æmilianus, appeared to establish his authority.

But Valerianus brought into Italy from beyond the Alps a vast army, with which he deemed himself secure of conquering Æmilianus. The soldiers of Æmilianus, who saw that his conduct was more like that of a private sentinel than of an emperor, now put him to death as a person unfit for so weighty a charge.

By these means Valerianus became emperor with universal consent, and employed himself in the regulation of affairs. But the excursions of the Scythians, and of the Marcomanni, who made an inroad into all the countries adjacent to the empire, reduced Thessalonica to extreme danger; and though they were with much difficulty compelled to raise the siege by the brave defence of those within, yet all Greece was in alarm. The Athenians repaired their walls, which they had never thought worth their care since Sylla threw them down. The Peloponnesians likewise fortified the Isthmus, and all Greece put itself upon its guard for the general security.

Valerianus, perceiving the empire in danger on every side, associated his son Gallienus with himself in the government! and went himself into the east to oppose the Persians. He entrusted to his son the care of the forces in Europe, thus leaving him to resist the Barbarians who pressed in upon him in every direction. As the Germans were the most troublesome enemies, and harrassed the Gauls in the vicinity of the Rhine, Gallienus marched against them in person, leaving his officers to repel with the forces under their command any others that should enter Italy, Illyricum, and Greece. With these designs, he possessed himself of and defended the passages of the Rhine, at one time preventing their crossing, and at another engaging them as soon as they had crossed it. But having only a small force to resist an immense number, he was at a loss how to act, and thought to secure himself by a league with one of the German princes. He thus not only prevented the other Barbarians from so frequently passing the Rhine, but obstructed the access of auxiliaries.

Meanwhile the Borani, the Gothi, the Carpi, and the Urugundi, nations that dwell on the Ister, left no part of Italy or Illyricum unpillaged, but devastated all without any opposition. The Borani, indeed, attempted to pass over into Asia, which they

easily effected by the aid of those that reside on the Bosphorus, who were induced more through fear than good-will to supply them with vessels, and to guide them in their passage. For though while they were governed by their own kings, who succeeded in an hereditary descent, they had always kept the Scythians out of Asia, either from the regard they had for the Romans, or for the sake of their commerce, or out of gratitude for the annual presents sent them by their kings; yet subsequently, when the royal line was extinct, and the authority had fallen into the hands of mean and worthless individuals, they yielded to fear, and gave the Scythians a free ingress into Asia, even carrying them over in their own ships.

While the Scythians plundered all before them, the people who inhabited on the sea-coast of Pontus, removed into the fortified towns in the interior; the barbarians at the same time making an attack on Pityus, which is surrounded by a strong wall, and possesses a convenient harbour. But Successianus, who commanded the army there, made so vigorous a defence, that the Barbarians were routed, and in such dread lest the other garrisons hearing what was done might join with that of Pityus and totally destroy them, that they hastened with the utmost speed to their ships, and returned home under great hazard, having lost many of their companions at the battle of Pityus. Thus the inhabitants of the vicinity of the Euxine sea, who owed their preservation to the conduct of Successianus, were relieved from all present apprehension lest the Scythians after this repulse should pay them another visit. But while Valerianus sent for Successianus, made him prefect of the court, and consulted with him about the repairing of Antioch, the Scythians procured ships from the Bosphorans, and again crossed the streight. The inhabitants of the other side retained the vessels, and would not permit the Bosphorans to take them home again, as they had before done, on which they advanced into the country near to Phasis, where is the temple of Diana, called from the place Phasiana, and the palace of king Æeta; and having made a fruitless attempt to take that temple, proceeded direct to Pityus. Having there seized on the castle, and turned out the garrison, they advanced forward; and as they had a large navy into which they put all the captives who were able to manage an oar, they sailed with favourable weather; which continued almost the whole summer, towards Trapezus. This is a large and populous city, and was then guarded by ten thousand men above the usual complement. When they commenced the siege of it, they did not therefore even imagine that they should

succeed, as it was surrounded by two walls; but when they observed that the soldiers were addicted to sloth and inebriety; and that instead of continuing on guard, they were always in search of pleasures and debauchery, they piled against the wall trees which they had prepared for the purpose of scaling it, on which their troops mounted in the night and took the city. The soldiers within were struck with consternation at the sudden and unexpected assault; some of them succeeded in escaping through the gates; the rest were slaughtered by the enemy. Having thus got possession of the place, the Barbarians acquired an incredible quantity of money, besides a very great number of slaves; for almost all the inhabitants of the country had fled for refuge into that city, as it was strongly fortified. Having demolished all the temples and houses, and every thing that contributed to the grandeur or ornament of the city, and devastated the adjacent country, they returned home with a great number of ships.

When the neighbouring Scythians perceived the booty they had acquired, they determined on making a similar attempt, and for that purpose prepared a fleet, which their captives, and others who through necessity had taken up their abode among them, assisted them in building. They resolved however not to set out as the Borani had, because it was tedious and hazardous to sail that way, and they would have to pass through places that were already plundered. They staid therefore until winter, and then leaving to their left the Euxine sea, and to the right the Ister, Tomes, and Anchialus, while their land forces marched as quickly as they could along the shore, they arrived at the lake of Phileatina, which lies to the west of Byzantium near the Pontus. Finding that the fishermen of that lake had concealed themselves and their vessels in the neighbouring fens, they made an agreement with them, to put their land forces on board the fishermen's boats, and sailed forward in order to pass the streight between Byzantium and Chalcedon. And though there was a guard from Chalcedon as far as the temple which stands at the entrance of the Pontus, which was strong enough to overpower the Barbarians, yet some of the troops marched away under the pretext of meeting a general whom the emperor had sent there, and others were so terrified that when they first heard of it they fled with all possible precipitation. The Barbarians then crossed over, took Chalcedon without opposition, and got possession of abundance of money, arms, and provisions.

From thence they marched to Nicomedia, a great city, celebrated for its affluence; where, though the citizens on hearing of their

approach had escaped with all the riches they could take with them, the Barbarians still were astonished at the vast quantity of valuables they found, and rendered great honour to Chryso-gonus, who had formerly advised them to go to Nicomedia. And when they had over-run Nicæa, Cius, Apamæa, and Prusa, and treated those places in the same manner, they proceeded towards Cyzicus; but the river Rhyudacus had so overflowed its banks in consequence of the violent rains that had fallen, that they were unable to cross it and were compelled to retire. They then set fire to Nicomedia and Nicæa, and loading with their spoil waggons and ships, began to think of returning home; which terminated their second incursion.

Valerianus had by this time heard of the disturbances in Bithynia, but his district would not allow him to confide the defence of it to any of his generals. He therefore sent Felix to Byzantium, and went in person from Antioch into Cappadocia, and after he had done some injury to every city by which he passed, he returned homeward. But the plague then attacked his troops, and destroyed most of them, at the time when Sapor made an attempt upon the east, and reduced most of it into subjection. In the mean time, Valerianus became so effeminate and indolent, that he despaired of ever recovering from the present ill state of affairs, and would have concluded the war by a present of money; had not Sapor sent back the ambassadors who were sent to him with that proposal, without their errand, desiring the emperor to come and speak with him in person concerning the affairs he wished to adjust. To which he most imprudently consented, and going without consideration to Sapor with a small retinue, to treat for a peace, was presently laid hold of by the enemy, and so ended his days in the capacity of a slave among the Persians, to the disgrace of the Roman name in all future times.

Such being the state of the east, an universal confusion and feebleness prevailed at that period. The Scythians unanimously collected into one body out of every nation and country within their territory, one part of their forces plundering Illyricum, and laying waste its towns, while the remainder penetrated into Italy as far as Rome.

Gallienus in the mean time still continued beyond the Alps, intent on the German war, while the Senate, seeing Rome in such imminent danger, armed all the soldiers that were in the city, and the strongest of the common people, and formed an army, which exceeded the Barbarians in number. This so alarmed

the Barbarians, that they left Rome, but ravaged all the rest of Italy. At this period, when Illyricum groaned under the oppression of the Barbarians, and the whole Roman empire was in such a helpless state as to be on the very verge of ruin, a plague happened to break out in several of the towns, more dreadful than any that had preceded it. The miseries inflicted on them by the Barbarians were thus alleviated, even the sick esteeming themselves fortunate. The cities that had been taken by the Scythians were thus deserted.

Gallienus, being disturbed by these occurrences, was returning to Rome to relieve Italy from the war which the Scythians were thus carrying on. It was at this time, that Cecrops, a Moor, Aureolus and Antoninus, with many others, conspired against him, of whom the greater part were punished and submitted. Aureolus alone retained his animosity against the emperor.

After this, Posthumus, who commanded the Celtic army, was also inclined towards innovation, and accompanied some soldiers that revolted at the same time to Agrippina, which is the principal city on the Rhine, in which he besieged Salo-nius, the son of Gallienus, threatening to remain before the walls until he was given up to him. On this account the soldiers found it necessary to surrender both him and Silvanus, whom his father had appointed his guardian, both of whom Posthumus put to death, and made himself sovereign of the Celtæ.

The Scythians, who had dreadfully afflicted the whole of Greece, had now taken Athens, when Gallienus advanced against those who were already in possession of Thrace, and ordered Odonathus of Palmyra, a person whose ancestors had always been highly respected by the emperors, to assist the eastern nations which were then in a very distressed condition. Accordingly, having joined to the remainder of an army that still remained in the country many of his own troops, he attacked Sapor with great boldness; and having taken several cities belonging to the Persians, he retook Nisibis also, which Sapor had formerly taken, and ravaged it at the same time. Then advancing, not once merely, but a second time, as far as Ctesiphon, he blocked up the Persians in their fortifications, and rendered them content to save their wives, their children and themselves, while he disposed of the pillaged country at his pleasure. Shortly afterwards, whilst residing at Emisa, he lost his life by a conspiracy as he was celebrating the birth-day of a friend. Zenobia then took upon her the administration of affairs. She was the wife of Odon-

thus, but had the courage of a man, and with the assistance of her husband's friends, acted in every respect as well as he had done.

While affairs were thus situated in the east, intelligence was brought to Gallienus, who was then occupied in the Scythian war, that Aurelianus, or Aureolus, who was commander of the cavalry posted in the neighbourhood of Milan to watch the motions of Posthumus, had formed some new design, and was ambitious to be emperor. Being alarmed at this he went immediately to Italy, leaving the command against the Scythians with Marcianus, a person of great experience in military affairs. While he carried on the war with great ability, Gallienus, in his journey towards Italy, had a plot formed against him by Heraclianus, prefect of the court, who communicated his design to Claudius, in whom the chief management of affairs was vested. The design was to murder Gallienus. Having found a man very ready for such an undertaking, who commanded a troop of Dalmatians, he entrusted the action to him. To effect it, the party stood by Gallienus at supper and informed him that some of the spies had brought intelligence, that Aureolus and his army were close at hand. By this they considerably alarmed him. Calling immediately for his horse and arms, he mounted, ordering his men to follow him in their armour, and rode away without any attendance. Thus the captain finding him alone killed him.

When the troops were calmed by their commanders, Claudius was chosen emperor, having previously been designed for that dignity by general consent. Aureolus, who had for a long time kept himself out of the hands of Gallienus, presently sent agents to Claudius, to effect a peace. Surrendering himself, he was killed by the guards of the emperor, who still remembered the hatred they bore against him for his treachery.

The Scythians were by this time so elated by their former success, that they appointed a place of meeting with the Heruli, Peucæ, and Gothi, near the river Tyra, which empties itself into the Pontus; where having built six thousand vessels, and put on board them three hundred and twenty thousand men, they sailed across the Pontus, and made an attempt on Tomes, a fortified town, but were repulsed from it. From thence they proceed to Marcianopolis, a city of Mysia, but failing there likewise in their attack on it, they took the opportunity of a favourable wind and sailed forward. On their arrival at the streights of Propontis, they could not manage their vessels in so violent a current, and while they were carried down by it without any

order, they fell foul on each other, by which some of them were sunk, and others driven on shore, to the great destruction both of men and ships. On this account the Barbarians departed from the Propontis, and sailed towards Cyzicus. Being obliged to return from thence without success, they passed through the Hellespont, and arrived at Mount Athos. Having there refitted and careened their vessels, they laid siege to Cassandria and Thessalonica, which they were near taking by means of machines which they raised against the walls. But hearing that the emperor was advancing with an army, they went into the interior, plundering all the neighbourhood of Doberus and Pelagonia. There they sustained a loss of three thousand men, who were met with by the Dalmatian cavalry, and with the rest of their force engaged the army of the emperor. Great numbers were slain in this battle on both sides; but the Romans, by a pretended flight, drew the Barbarians into an ambuscade and killed more than fifty thousand of them. The remainder of the Scythians sailed round Thessaly and Greece to pillage all the country, and as they were not strong enough to attack the towns which had fortified themselves, and provided for their own security, they carried off all the men that they found in the open country.

The Scythians being thus dispersed, with the loss of great part of their troops, Zenobia began to think of extending her dominion, and therefore sent Zabdas into Egypt, because Timagenes an Egyptian attempted to place Egypt under the government of the Palmyrenians. He had for this purpose raised an army of Palmyrenians, Syrians, and Barbarians, to the number of seventy thousand, which was opposed by fifty thousand Egyptians. A sharp engagement ensued between them, in which the Palmyrenians had greatly the advantage. He then departed, leaving them a garrison of five thousand men.

During these transactions, Probus, who had been appointed by the emperor to clear the sea of pirates, having heard of the subjugation of Egypt by the Palmyrenians, marched against them with his own forces, and with as many of the Egyptians as were averse to the Palmyrenians, and drove out their garrison. The Palmyrenians rallying with fresh forces, Probus, having levied a body of Egyptians and Africans, gained another victory, and drove the Palmyrenians out of Egypt. But as Probus was encamped on a mountain near Babylon, thereby cutting off the passage of the enemy into Syria, Timagenes, who was well acquainted with the country, seized on the summit of the mountain with two thousand men, and attacked the Egyptians by surprize. Probus being taken with the rest killed himself.

Egypt being thus reduced by the Palmyrenians, the Barbarians, who survived the battle of Naissus between Claudius and the Scythians, defending themselves with their carriages which went before them, marched towards Macedon, but were so distressed by the want of necessaries, that many of them and of their beasts perished with hunger. They were met likewise by the Roman cavalry, who having killed many of them, drove the rest towards Mount Hæmus; where being surrounded by the Roman army, they lost a vast number of men. But a quarrel ensuing between the Roman horse and foot soldiers, the emperor wishing the foot to engage the Barbarians, the Romans, after a smart engagement, were defeated with considerable loss, but the cavalry, coming up immediately, redeemed in some degree the miscarriage of the infantry. After this battle, the Barbarians proceeded on their march, and were pursued by the Romans. The pirates who cruized about Crete and Rhodes retired without doing any thing worthy of mention; and being attacked by the plague on their way home, some of them died in Thrace and some in Macedon. All that survived were either admitted into the Roman legions, or had lands assigned for them to cultivate and so become husbandmen. Nor was the plague confined to the Barbarians alone, but began to infest the Romans, many of whom died, and amongst the rest Claudius, a person adorned with every virtue. His death was a severe loss to his subjects, and was consequently much regretted by them.

Quintillus, the brother of Claudius, was then declared emperor. He had reigned but a few months, and had performed nothing worthy of notice, before Aurelianus was raised to the imperial throne. Some writers inform us, that Quintillus was advised by his friends, as soon as they heard of Aurelianus being made emperor, to die by his own hand, and give place voluntarily to a man of so much greater merit. They report, that he complied by opening a vein and bleeding to death. Aurelianus, having regulated the empire, went from Rome to Aquileia, and from thence into Pannonia, which he was informed the Scythians were preparing to invade. For this reason he sent orders to the inhabitants of that country to carry into the towns all their corn and cattle, and every thing that could be of use to the enemy, in order to distress them with famine, with which they were already afflicted. The Barbarians having crossed the river into Pannonia had an engagement, the result of which was nearly equal. But the same night, the Barbarians recrossed the river, and as soon as day appeared, sent ambassadors to treat for peace.

The Emperor, hearing that the Alemanni and the neighbouring nations intended to over-run Italy, was with just reason more concerned for Rome and the adjacent places, than for the more remote. Having therefore ordered a sufficient force to remain for the defence of Pannonia, he marched towards Italy, and on his route, on the borders of that country, near the Ister, slew many thousands of the Barbarians in one battle. Several members of the senate being at this time accused of conspiring against the emperor were put to death; and Rome, which before had no walls, was now surrounded with them. This work was begun in the reign of Aurelianus, and was finished by Probus. At the same time Epitimius, Urbanus, and Domitianus, were likewise suspected as innovators, and were immediately apprehended and punished. During these occurrences in Italy and Pannonia, the emperor prepared to march against the Palmyrenians, who had subdued all Egypt, and the east, as far as Ancyra in Galatia, and would have acquired Bithynia even as far as Chalcedon, if the inhabitants of that country had not learned that Aurelianus was made emperor, and so shook off the Palmyrenian yoke. As soon as the emperor was on his march thither, Ancyra submitted to the Romans, and afterwards Tuana, and all the cities between that and Antioch. There finding Zenobia with a large army ready to engage, as he himself also was, he met and engaged her as honour obliged him. But observing that the Palmyrene cavalry placed great confidence in their armour, which was very strong and secure, and that they were much better horsemen than his soldiers, he planted his infantry by themselves on the other side the Orontes. He charged his cavalry not to engage immediately with the vigorous cavalry of the Palmyrenians, but to wait for their attack, and then, pretending to fly, to continue so doing until they had wearied both the men and their horses through excess of heat and the weight of their armour; so that they could pursue them no longer. This project succeeded, and as soon as the cavalry of the emperor saw their enemy tired, and that their horses were scarcely able to stand under them, or themselves to move, they drew up the reins of their horses, and, wheeling round, charged them, and trod them under foot as they fell from their horses. By which means the slaughter was promiscuous, some falling by the sword, and others by their own and the enemies' horses.

After this defeat, the remains of the enemy fled into Antioch, Labdas, the general of Zenobia, fearing that the Antiochians on hearing of it should mutiny, chose a man resembling the emperor,

and clothing him in a dress such as Aurelianus was accustomed to wear, led him through the city as if he had taken the emperor prisoner. By this contrivance he imposed on the Antiochians, stole out of the city by night, and took with him Zenobia with the remainder of the army to Emisa. In the mean time, the emperor was intent on his affairs, and as soon as it was day called the foot soldiers around him, intending to attack the defeated enemy on both sides; but, hearing of the escape of Zenobia, he entered Antioch, where he was joyfully received by the citizens. Finding that many had left the city, under apprehensions that they should suffer for having espoused the party of Zenobia; he published edicts in every place to recal them, and told them, that such events had happened more through necessity than of his own inclination. When this was known to the fugitives, they returned in crowds, and were kindly received by the emperor; who having arranged affairs in that city proceeded to Emisa. Finding that a party of the Palmyrenians had got possession of a hill above the suburbs of Daphne, thinking that its steepness would enable them to obstruct the enemy's passage, he commanded his soldiers to march with their bucklers so near to each other, and in so compact a form, as too keep off any darts and stones that might be thrown at them. This being observed, as soon as they ascended the hill, being in all points equal to their adversaries, they put them to flight in such disorder, that some of them were dashed in pieces from the precipices, and others slaughtered in the pursuit by those that were on the hill, and those that were mounting it. Having gained the victory, they marched on with great satisfaction at the success of the emperor, who was liberally entertained at Apamea, Larissa, and Arethusa. Finding the Palmyrene army drawn up before Emisa, amounting to seventy thousand men, consisting of Palmyrenes and their allies, he opposed to them the Dalmatian cavalry, the Mœsians and Pannonians, and the Celtic legions of Noricum and Rhætia, and besides these the choicest of the imperial regiment selected man by man, the Mauritanian horse, the Tyaneans, the Mesopotamians, the Syrians, the Phœnicians, and the Palestinians, all men of acknowledged valour; the Palestinians besides other arms wielding clubs and staves. At the commencement of the engagement, the Roman cavalry receded, lest the Palmyrenes, who exceeded them in number, and were better horsemen, should by some stratagem surround the Roman army. But the Palmyrene cavalry pursued them so fiercely, though their ranks were broken, that the event was quite contrary to the expectation of the Roman cavalry. For they were

pursued by an enemy much their superior in strength, and therefore most of them fell. The foot had to bear the brunt of the action. Observing that the Palmyrenes had broken their ranks when the horse commenced their pursuit, they wheeled about, and attacked them while they were scattered and out of order. Upon which many were killed, because the one side fought with the usual weapons, while those of Palestine brought clubs and staves against coats of mail made of iron and brass. The Palmyrenes, therefore ran away with the utmost precipitation, and in their flight trod each other to pieces, as if the enemy did not make sufficient slaughter; the field was filled with dead men and horses, whilst the few that could escape took refuge in the city.

Zenobia was not a little disturbed by this defeat, and therefore consulted on what measures to adopt. It was the opinion of all her friends that it would be prudent to relinquish all pretensions to Emisa, because the Emisenes were disaffected towards her and friendly to the Romans. They advised her to remain within Palmyra, and when they were in security in that strong city, they would deliberate at leisure on their important affairs. This was no sooner proposed than done, with the concurrence of the whole assembly. Aurelianus, upon hearing of the flight of Zenobia, entered Emisa, where he was cordially welcomed by the citizens, and found a treasure which Zenobia could not carry along with her. He then marched immediately to Palmyra, which he invested on every side, while his troops were supplied with provisions of every kind by the neighbouring country. Meantime the Palmyrenes only derided the Romans, as if they thought it impossible for them to take the city; and one man in particular spoke in very indecent terms of the emperor's own person. Upon this, a Persian who stood by the emperor said, "If you will allow me, sir, you shall see me kill that insolent soldier:" to which the emperor consented, and the Persian, placing himself behind some other men that he might not be seen, shot at the man while in the act of looking over the battlements, and hit him whilst still uttering his insulting language, so that he fell down from the wall before the soldiers and the emperor. The besieged however still held out, in hopes that the enemy would withdraw for want of provisions, and persisted in their resolution, until they were themselves without necessaries. They then called a council, in which it was determined to fly to the Euphrates, and request aid of the Persians against the Romans. Having thus determined, they set Zenobia on a female camel, which is the swiftest of that kind of

animals, and much more swift than horses, and conveyed her out of the city.

Aurelianus was much displeas'd at the escape of Zenobia ; and therefore exerted all his industry to send out horsemen in pursuit of her. They succeeded in taking her, as she was crossing the Euphrates in a boat, and brought her to Aurelianus. Though much pleas'd at this sight, yet being of an ambitious disposition, he became uneasy at the reflection that in future ages it would not rebound to his honour to have conquer'd a woman. Meantime some of the Palmyrenes, that were shut up in the town, resolv'd to expose themselves courageously, and to hazard their being made captives in defence of their city. While others on the contrary employ'd humble and submissive gestures from the walls, and intreated pardon for what was past. The emperor accepting these tokens, and commanding them to fear nothing, they pour'd out of the town with presents and sacrifices in their hands. Aurelianus paid due respect to the holy things, received their gifts, and sent them away without injury.

But having made himself master of this city, with all the treasure 'it contained, he return'd to Emisa, where he brought Zenobia and her accomplices to a judiciary trial. Zenobia coming into court pleaded strongly in excuse of herself, and produced many persons, who had seduced her as a simple woman, and among the rest Longinus, whose writings are highly beneficial to all lovers of learning. Being found guilty of the crimes laid to his charge, he received from the emperor sentence of death, which he bore with so much courage, as to console his friends who were much concern'd at his misfortunes. Several besides Longinus suffer'd upon the accusation of Zenobia.

I cannot here omit to mention what happen'd before the ruin of Palmyra, though I profess only to write a transient history. For as Polybius informs us by what means the Romans in a short space of time attain'd a vast empire, it is my purpose to show on the other hand, that by their ill management in as short a time they lost it. But I am now speaking of the Palmyrenes, who, having as I related, acquired a large portion of the Roman empire, were warn'd by several declarations from the gods of the overthrow which they afterwards sustained. For example ; at Seleucia in Cilicia there was a temple of Apollo (call'd there Sarpedonius) and in that temple an oracle. It is report'd of this deity, that he us'd to give to those that were infested with locusts a species of birds, call'd Seleuciades, which us'd to hover about his temple, and would send them along with any

that desired it; that these birds would fly amongst the locusts, catch them in their mouths, and in a moment destroy a vast number of them, thus delivering the people from the mischief they produced. This I ascribe to the felicity of that age; our own generation has not merited such kindness from heaven. The Palmyrenes, having consulted this oracle, to learn if they should ever gain the empire of the east, received this answer,

Accursed race! avoid my sacred fane,
Whose treach'rous deeds the angry gods disdain.

And some persons enquiring there concerning the success of the expedition of Aurelianus against the Palmyrenes, the gods told them,

One falcon many doves commands, whose end
On his destructive pounces must depend.

Another story was likewise much circulated of the Palmyrenes. Between Heliopolis and Bilbis is a place called Aphaca, where is a temple dedicated to Venus Aphacitis, and near it a pond resembling an artificial cistern. Here is frequently seen, near the temple and in the adjacent places, a fire in the air, resembling a lamp, of a round figure, which has appeared even in our time, as often as people have assembled there on particular days. Whoever resorted hither, brought to the pond some offering for the goddess, either in gold, silver, linen, silk, or any thing of like value. If she accepted it, the cloth sunk to the bottom, like substances of greater weight; but if rejected, they would float on the water; and not only cloth and such substances, but even gold, silver, or any other of those materials which usually sink. For an experiment of this miracle, the Palmyrenes, in the year before their overthrow, assembled on a festival, and threw into the pond several presents of gold, silver and cloth, in honour of the goddess, all of which sunk to the bottom. In the following year, at the same festival, they were all seen floating on the surface; by which the goddess foretold what would happen.

In this manner was the regard of heaven shewn to the Romans, as long as they kept up their sacred rites. But it is my lot to speak of these times, wherein the Roman empire degenerated to a species of barbarity, and fell to decay. I shall display the causes of such misfortunes; and point out those oracles, by which such events were predicted. I ought now to return to the place whence I digressed; lest I should appear to leave the order of history imperfect. Aurelianus marched towards Europe, carrying with him Zenobia, her son, and the rest of the confederates in this rebellion. Zenobia is said to have died, either of

disease, or want of food, but the rest were all drowned in the straight between Chalcedon and Byzantium. Aurelianus continued his journey into Europe. On his route he was informed by a messenger, that a party he had left at Palmyra, having won over Apsæus, the principal author of all that was past, was tampering with Marcellinus, whom the emperor had appointed prefect of Mesopotamia and of the east, to assume to himself the imperial robe. Under pretence of taking time for deliberation, he delayed them so long, that they again importuned him repeatedly. He was forced therefore to frame ambiguous answers to their demands, until he had given notice to Aurelianus of their design. In the meantime the Palmyrenes, having clothed Antiochus in purple, continued at Palmyra. Aurelianus, being informed of this, hastened into the east, without any preparation, and arriving at Antioch, surprized all the people, who were then attending a horse-race, and were astonished at seeing him. From thence he proceeded to Palmyra, which he took and razed without a contest, but not thinking Antiochus worthy of being punished, on account of the meanness of his condition, he dismissed him. After this action, he speedily reduced the Alexandrians, who were disposed to a rebellion, being already in commotion. He then entered Rome in triumph, where he was most magnificently received by the senate and people. At this period also he erected that sumptuous temple of the sun, which he ornamented with all the sacred spoils that he brought from Palmyra; placing in it the statues of the sun and Belus. After this he easily reduced Tetricus with his rebellious accomplices, whom he brought to signal punishment. He likewise called in all the counterfeit money, and issued new, to avoid confusion in trade. Besides which he bestowed on the people a gift of bread, as a mark of his favour; and having arranged all affairs set out on a journey from Rome.

During his stay at Perinthus, now called Heraclea, a conspiracy was thus formed against him. There was in the court a man named Eros, whose office was to carry out the answers of the emperor. This man had been for some fault threatened by the emperor, and put in great fear. Dreading therefore lest the emperor should realize his menaces by actions, he went to some of the guard, whom he knew to be the boldest men in the court; he told them a plausible story, and shewed them a letter of his own writing, in the character of the emperor (which he had long before learned to counterfeit), and persuading them first that they themselves were to be put to death, which was the meaning

expressed by the letter, he endeavoured to prevail on them to murder the emperor. The deception answered. Observing Aurelianus to go out of the city with a small retinue, they ran out upon him and murdered him. He was buried on the spot with great magnificence by the army in consideration of the great services he had performed, and the dangers he had undergone for the good of the public.

Upon his death the empire fell into the hands of Tacitus, in whose time the Scythians crossed the Palus Mæotis, and made incursions through Pontus even into Cilicia, until he opposed them. Partly in person, and partly by Florianus, prefect of the court, whom he left in commission for that purpose, this emperor completely routed and destroyed them. He himself was going into Europe, but was thus circumvented and killed. He had committed the government of Syria to his cousin Maximinus, who treated the nobility of that country with such austerity, that he caused them both to hate and fear him. Their hatred became so excessive, that at length conspiring with the murderers of Aurelianus, they assaulted Maximinus, and having killed him, fell on and slew Tacitus also as he was upon his departure.

An universal civil disturbance now arose, those of the east choosing Probus emperor, and those at Rome Florianus. The former of these governed all Syria, Phœnicia, Palestine, and Egypt; but the latter was in possession of all the countries from Cilicia to Italy; besides which the homage of all the nations beyond the Alps, the Gauls, Spaniards, Britons, and Africans was paid to him. When both therefore were ready for war, Florianus came to Tarsus, resolving to encamp there, leaving his victory over the Scythians at the Bosphorus unfinished, by which he gave them an opportunity of recovering themselves and returning home, though he had cut off their retreat. Probus protracted the time, because he came with less preparation for a battle. By these means it came to pass, that the weather, being exceedingly hot, a pestilential disorder broke out amongst the troops of Florianus, most of whom were Europeans, and consequently unaccustomed to such excessive heat, by which many were taken off. When Probus understood this, he thought it a proper time to attack the enemy. The soldiers of Florianus, attempting what exceeded their strength, fought some slight skirmishes before the city, but nothing being done worthy of notice, some of the troops of Probus deposed Florianus. Having performed this, he was kept in custody for some time, until his own soldiers said, that it was the will of Probus that he should share the empire. Florianus therefore assumed

the purple robe again, until the return of those who were sent to know the true resolution of Probus. On their arrival they caused Florianus to be killed by his own soldiers.

Probus, having thus gained the empire, marched forward, and performed a very commendable action for the public good, as a prelude to what he should afterwards do. For he resolved to punish those who had murdered Aurelianus, and conspired against Tacitus; though for fear of an insurrection he did not openly execute his design, but planted a company of men, in whom he had confidence, at a convenient post, near to which he invited the murderers to a feast. Coming there in expectation of being entertained at the emperor's table, Probus ascended into a balcony from whence he could view the action, which he gave a signal to his men to perform. As soon as they had received it, they fell on the murderers in their defenceless state, and left only one of them alive, whom he caused afterwards to be burnt alive, as a very dangerous criminal.

While Probus was thus employed, Saturninus, a Moor, the most familiar friend of the emperor, and for that reason entrusted with the government of Syria, threw off his allegiance, and rebelled against the emperor. When Probus learned this, he resolved to frustrate his designs, but was anticipated by the soldiers in the east, who destroyed Saturninus and all his associates. He likewise suppressed an insurrection in Britain, by means of Victorinus, a Moor, who had persuaded him to confer the government of Britain upon the leader of the insurgents. Having sent for Victorinus, and chosen him for his consul, he sent him to appease the disturbance; who going presently to Britain, took off the traitor by a stratagem. Having performed these affairs as I have related, Probus obtained several victories over the Barbarians in two different wars; in one of which he himself commanded, but left the other to the conduct of his lieutenant. Perceiving that it was necessary to assist the cities of Germany which lay upon the Rhine, and were harrassed by the Barbarians, he marched with his army towards that river. When the war began there, a grievous famine prevailed throughout the surrounding country; but a heavy shower of rain and corn fell together, so that in some places were great heaps of it made by its own descent. At this prodigy, all were so astonished that at first they dared not touch the corn to satisfy their hunger; but being at length forced to it by necessity, which expels all fear, they made bread of it, which not only allayed their hunger, but enabled them to gain the victory with great ease. The emperor terminated

several other wars, with scarcely any trouble ; and fought some fierce battles, first against the Logiones, a German nation, whom he conquered, taking Semno their general, and his son, prisoners. These he pardoned upon submission, but took from them all the captives and plunder they had acquired, and dismissed, on certain terms, not only the common soldiers, but even Semno and his son. Another of his battles was against the Franks, whom he subdued through the good conduct of his commanders. He made war on the Burgundi and the Vandili. But seeing that his forces were too weak, he endeavoured to separate those of his enemies, and engage only with a part. His design was favoured by fortune ; for the armies lying on both sides of the river, the Romans challenged the Barbarians that were on the further side to fight. This so incensed them, that many of them crossed over, and fought until the Barbarians were all either slain or taken by the Romans ; except a few that remained behind, who sued for peace, on condition of giving up their captives and plunder ; which was acceded to. But as they did not restore all that they had taken, the emperor was so enraged, that he fell on them as they were retiring, killed many of them, and took prisoner their general Igillus. All of them that were taken alive were sent to Britain, where they settled, and were subsequently very serviceable to the emperor when any insurrection broke out. The wars upon the Rhine being thus terminated, a circumstance happened in Isauria which should not be omitted. There was an Isaurian named Lydius, who had been a robber from his youth, and with a gang like himself had committed depredations throughout Pamphylia and Lycia. This gang being attacked by the soldiers, Lydius, not being able to oppose the whole Roman army, retreated to a place in Lycia called Crymna, which stands on a precipice, and is secured on one side by large and deep ditches. Finding many who had fled there for refuge, and observing that the Romans were very intent on the siege, and that they bore the fatigue of it with great resolution, he pulled down the houses, and making the ground fit for tillage, sowed corn for the maintenance of those that were in the town. But the number being so great that they were in need of much more provisions, he turned out of the place all that were of no service, both male and female. The enemy perceiving his design forced them back again ; on which Lydius threw them headlong into the trenches that surrounded the walls, where they died. Having done this, he constructed a mine, from the town beyond the enemies' camp ; through

which he sent persons to steal cattle and other provisions. By these means he provided for the besieged a considerable time, until the affair was discovered to the enemy by a woman. Lydius, however, still did not despond; but gradually retrenched his men in their wine, and gave them a smaller allowance of corn. But this not answering the end, he was at length driven to such streights, that he killed all that were in the town, except a few of his adherents, sufficient as he thought to defend it, and some women, whom he ordered to be in common among them all. But when he had resolved to persevere against all dangers, there happened at length this accident. There was with him in the town a man who was expert in making engines, and in using them with such dexterity, that when Lydius ordered him to shoot a dart at any of the enemy, he never missed his aim. It happened that Lydius had ordered him to hit a particular person, whom either accidentally or on purpose he missed, for which he stripped and scourged him severely, and, moreover, threatened him with death. The man was so exasperated on account of the blows he had received, and so affrighted at the menaces, that he took an opportunity to steal out of the town; and falling in with some soldiers to whom he gave an account of his actions and sufferings, he shewed them an aperture in the wall, through which Lydius used to inspect all that was done in their camp, and promised them to shoot him as he was looking through it in his usual manner. The commander of the expedition on this took the man into favour; who, having planted his engine, and placed some men before him that he might not be discovered by the enemy, took aim at Lydius as he looked through the aperture, and with a dart shot him and gave him a mortal wound. He had no sooner received this wound, than he became still more strict with some of his own men. Having enjoined them upon oath never to surrender the place, he expired with much struggling.

Ptolemais in Thebais having revolted from the emperor, and commenced a war. Probus, by the good conduct of his officers, compelled both that place and its allies to surrender. He likewise left in Thrace the Bastarnæ, a Scythian people, who submitted to him, giving them land to inhabit there; on which account they observed the Roman laws and customs. But the Franks having applied to the emperor, and having a country given to them, a part of them afterwards revolted, and having collected a great number of ships, disturbed all Greece; from whence they proceeded into Sicily, to Syracuse, which they attacked, and killed many people there. At length they arrived in Africa, whence though they were

repulsed by a body of men from Carthage, yet they returned home without any great loss. This circumstance likewise happened during the reign of Probus. Eighty gladiators conspiring together, and having killed their keepers, ran out into the city, and plundered all in their way, many other persons, as is usual in such cases, without doubt mixing with them. But the emperor sent a party and suppressed them. When Probus, who was a brave and just prince, had done this * * * * *

(The remainder of this book and the beginning of the next are lost, to supply that deficiency in the narrative we have collected from other authors this short account;) "Probus was succeeded by Carus, who marched against the Persians as far as Ctesiphon, where he received the appellation of the Persian emperor, but soon afterwards died, according to some, of a disease, though others state, that he was killed by lightning. He had two sons, Numerianus a very promising youth, from whom the state might have expected all possible happiness and good, had he not been murdered by Aper; and Carinus, a person abandoned to all kinds of vice, who was killed by Diocletian."

SECOND BOOK.

* * * * * THE longest period of the life of man is only equal to the intermediate space between these games. For an age, or the space of one hundred years, which we call *αιών*, is by the Romans called *seculum*. This is an excellent remedy for the plague, consumption and other diseases; of its origin receive this account. Valesus Valseius, from whom descended the Valerian family, was a great man among the Sabines, before whose house was a grove of very lofty trees, which were burnt with lightning. He was thus induced to enquire the meaning of such a portent. His children, moreover, falling sick, he consulted both the physicians and the soothsayers. He was told by them, that by the manner of the fire falling the gods were angry; which caused Valesius wisely to attempt by sacrifices to appease them. He and his wife being terrified, and expecting every moment the death of their children, he prostrated himself before Vesta, and promised to offer up two entire souls instead of their children, which were his own and that of their mother. But turning to the grove that had been burnt, he seemed to hear a voice that commanded him to carry the children to Tarentum, and there to warm some

Tiber water over the fire of Pluto and Proserpine, and to give it to the children to drink. On hearing this he despaired the more of the recovery of the children. For Tarentum was at a great distance, and besides there was no Tiber water to be had there: and it caused him to entertain more desponding thoughts of it, that the voice had told him the water must be warmed on the altar of the infernal deities, at which the soothsayers themselves were also startled. However, having heard it the second time, he obeyed the command of the gods. Putting his children on board a small river-vessel, he carried the fire along with him. The children were ready to faint through heat, while he sailed to that part of the river where the stream is most gentle; and taking up his lodging at a shepherd's cottage, he heard a voice say, that he must stay at Tarentum, for that was the name of the place, which had the same name with Tarentum near the Iapygian promontory. On which Valesius, having paid due adoration to the gods for his good fortune, ordered the pilot to put to shore, and, landing, told the whole story to the shepherds. Presently taking some water out of the Tiber, and heating it on an altar erected by himself, he gave it to his children to drink; as soon as they had drunk it they fell asleep and were perfectly cured. But in that sleep they fancied that they saw a vision, which told them to offer black victims to Pluto and Proserpine, and to spend three nights in singing and dancing; which dream they communicated to their father, and that it was a huge man of a godlike presence, who ordered them to do it in the Campus Martius, where the horse-races are held. Valesius, therefore, intending to build an altar in that place, set the masons to dig, who found an altar ready made, on which was inscribed. "To Pluto and Proserpine". By which being more plainly instructed how to act, he sacrificed the black victims on the altar, and kept the vigils in that place.

This same altar, and the manner of sacrificing on it, thus originated. The Romans and the Albans being at war, and both prepared for battle, a monstrous figure appeared, clothed in a black skin, and crying out, that Pluto and Proserpine commanded sacrifices to be made to them before they fought, it disappeared. On which, the Romans, who were terrified at the sight, made an altar under ground, and when they had sacrificed on it buried it at the depth of twenty feet, in order that it might not be found by any but themselves. Valesius having found it, according to command, sacrificed upon it, and kept the vigils; for which he was called Manius Valerius Tarentinus. For the Romans call the infernal gods Manes, and Valere signifies to be in good health;

and the surname of Tarentinus he derived from Tarentum where he sacrificed. Some time afterwards, when a plague happened in the city, which was the year after the expulsion of the kings, Publius Valerius Publicola sacrificed a black bull and a black heifer to Pluto and Proserpine, by which he freed the city from the disease. He wrote on the altar this inscription; "Publius Valerius Publicola dedicated fire to Pluto and Proserpine in the Campus Martius, and exhibited spectacles in honour of them, for the preservation of the Roman people."

But afterwards, when they were oppressed with diseases and wars, which was in the year 352 after the building of the city, the senate endeavoured to deliver themselves from those calamities by means of the oracles of the Sibyls, and therefore commanded those whose office it was to consult those oracles. Having so done they told the senate, that by sacrificing to Pluto and Proserpine an end would be put to all their miseries. They therefore chose a convenient place, which they consecrated to Pluto and Proserpine as they were commanded, when Marcus Potitus was in his fourth consulate. And when the ceremony was completed, being delivered from their grievances, they again laid aside the altar in some extremity of the Campus Martius. These rites were afterwards neglected for many years, until some misfortunes befel them, and then Octavianus Augustus renewed the games which had before been celebrated, when Lucius Censorinus and Marcus Manlius Puelius were consuls. They were again used under the consulate of Lucius Censorinus and Caius Sabinus, when Ateius Capito had explained the laws concerning them, and the fifteen men who had the care of the books of the Sibyls had found out the time when the sacrifice ought to be performed and the games held. After Augustus was dead, these games were celebrated by Claudius, without any regard to the due time. After him Domitian, who paid no regard to what Claudius had done, computed the years from the time when Augustus kept that festival, and seemed to observe their original institution. And after them Severus in the hundred and tenth year restored the same game, with his two sons Antoninus and Geta, when Chilo and Libo were consuls. This is said to be the manner in which these games were observed. The beadles went round at the time, and invited all the people to a spectacle, such as they had never witnessed and never would again. The Quindecimviri, in the summer season, a little before the games began, sat in the Capitol, and in the Palatine temple, upon a tribunal, from which they distributed to the people a kind of purifying pre-

parations, called *lustralia*, which consisted of torches, brimstone and pitch, of which none but freemen are allowed to participate. And when the people assembled in the above mentioned places and in the temple of Diana, which is on mount Aventine, each person brought wheat, barley, and beans, and kept vigils to the fatal sisters. The time of the festival being arrived, which was celebrated three successive days and nights in the Campus Martius, the victims were consecrated near the bank of the Tiber at Tarentum. There they sacrificed to several deities; to Jupiter, Juno, Apollo, Latona, and to the Parcæ, Lucinæ, Ceres, Pluto, and Proserpine, which was performed in this order. The first night that the spectacles were exhibited, the emperor with the Quindecimviri sacrificed three lambs on as many altars purposely placed on the side of the river, where having sprinkled the altars with blood he offered up the victims whole. Then, having prepared a scene without a theatre, they placed a great number of lights, and made a large fire, by which they sang a new hymn, to render the games more solemn. They who performed these ceremonies were rewarded for their labour with the first fruits of their wheat, barley, and beans. For these were as I stated distributed among the people. The following day they went up to the Capitol, where the usual sacrifices were offered, and going from thence to the appointed place, celebrated games in honour of Apollo and Diana. On the next day, the principal ladies entered the Capitol at the hour appointed by the oracle, where they conducted themselves with due reverence: and at the third hour, in the temple of Apollo near the palace, twenty-seven children of each sex, whose parents were all living, sang hymns, and spoke in Greek and Latin; by which the Roman empire was preserved. Besides these, however, there were other rites observed by the divine command, which as long as they were kept up preserved the Roman empire. And in confirmation of what I have stated, I will add the oracle of the Sibyl, which has been mentioned by others before my time;

But when an hundred years and ten are past
 Which is the longest time man's age doth last,
 Romans! be sure ('t is fatal to mistake
 In any point) due offerings to make
 To heaven, and see you bring the sacrifice
 Into that field which on the Tiber lies:
 And do it, in that season, when the night
 Deprives men least of the diurnal light,
 After sun set; Then to the Parcæ pay
 Your homage; and upon their altars lay

Young sheep and goats : next the Lucinæ please,
 With decent rites, who childing women ease,
 Those finished offer a black hog and sow
 To Tellus, for the product of the plow,
 But to Jove's altar bring the bulls milk-white
 For victims, in the day-time, not by night :
 (For heavenly deities accept of none
 But what are offer'd in the day alone.)
 And next to Juno sacrifice a cow
 Spotless all o'er, and pure as falling snow,
 Then let Apollo, whom they call the sun,
 And Phœbus, have his equal honours done.
 Whilst in the temple Latin girls and boys
 In sacred hymns make a triumphant noise.
 But let them be apart, the girls to stand
 And sing on this, the boys on t'other hand :
 Besides this caution I must farther give
 That all the parents of them be alive.
 As for the married women, let them pray
 To Juno on their knees, that each one may
 Have their desire, both men and women too,
 But chiefly women. Then, let all of you
 Bring from your houses what is fit to bring, }
 (As the first-fruits of every useful thing)
 To the immortal gods an offering. }
 And let all that upon your altars lie,
 Whence you may men and women both supply.
 But to attend the gods be sure there be
 Both night and day a numerous company
 Of votaries both serious and free.
 These laws observ'd not Latium alone
 But Italy's extent your sway shall own.

Experience assures us, that while these ceremonies were duly performed, according to the direction of the oracles, the empire was secure, and likely to retain its sovereignty over almost all the known world ; and on the other hand, when they were neglected, about the time when Dioclesian laid down the imperial dignity, it fell to decay, and degenerated insensibly into barbarism. That I state nothing but truth I will prove from chronology. From the consulate of Chilo and Libo, in which Severus celebrated the secular games, or rites, to the ninth consulate of Dioclesian, and eighth of Maximianus, was a hundred and one years. Then Dioclesian from an emperor became a private individual, and Maximianus followed his example. But when Constantine and Licinius were in their third consulship, the 110 years were completed, and the festival ought to have been kept ac-

ording to custom; but it was neglected, and affairs consequently declined to their present unfortunate condition.

Three years after Dioclesian died, and the reigning emperors, Constantius and Maximianus Gallerius declared Severus and Maximinus (who was nephew to Gallerius), the Cæsars, giving all Italy to Severus, and the eastern provinces to Maximinus. Affairs being all regulated and the barbarians quiet, since the Romans had been so successful against them, Constantine, who was the son of Constantius by a concubine, and had previously an ambition of being emperor (but was more inflamed with that desire, since Severus and Maximinus had acquired the name and honour of Cæsars), was now resolved to leave the place where he had resided, and to go to his father Constantine, who was beyond the Alps, and generally in Britain. But being apprehensive of seizure by the way, many persons being well acquainted of his anxiety for dominion, he maimed all the horses that were kept for public service, whenever he came to any stable where they were kept, except what he took for his own use. He continued to do this throughout his journey, by which means he prevented those that pursued him from going further, while he himself proceeded toward the country where his father was.

It happened that Constantius died at that time; the guards, therefore, who thought none of his legitimate children to be fit for the imperial dignity, considered that Constantine was a person capable of sustaining it, and conferred the honour upon him, in hopes of being renumerated with handsome presents. When his effigy according to custom was exhibited at Rome, Maxentius, the son of Maximianus Herculius, could not endure the sight of Constantine's good fortune, who was the son of a harlot, while himself, who was the son of so great an emperor, remained at home in indolence, and his father's empire was enjoyed by others. He therefore associated with himself in the enterprise Marcellianus and Marcellus, two military tribunes, and Lucianus, who distributed the swine's flesh, with which the people of Rome were provided by the treasury, and the court-guards called Prætoriani. By them he was promoted to the imperial throne, having promised liberally to reward all that assisted him in it. For this purpose they first murdered Abellius, because he, being prefect of the city, opposed their enterprize.

Maximianus Gallerius, when he had learned this, sent Severus Cæsar against Maxentius with an army. But while he advanced from Milan with several legions of Moors, Maxentius corrupted his troops with money, and even the prefect of the court, Anullinus,

and thereby conquered him with great ease. On which Severus fled to Ravenna, which is a strong and populous city, provided with necessaries sufficient for himself and soldiers. When Maximianus Herculus knew this, he was doubtless greatly concerned for his son Maxentius, and therefore, leaving Lucania where he then was, he went to Ravenna. Finding that Severus could not by any means be forced out of this city, it being well fortified, and stored with provisions, he deluded him with false oaths, and persuaded him to go to Rome. But on his way thither, coming to a place called the Three Tabernæ, he was taken by a stratagem of Maxentius and immediately executed. Maximianus Gallerius could not patiently endure these injuries done to Severus, and therefore resolved to go from the east to Rome, and to punish Maxentius as he deserved. On his arrival in Italy, he found the soldiers about him so treacherous, that he returned into the east, without fighting a battle.

At this period Maximianus Herculus, who lamented the tumults which disturbed the public peace, came to Dioclesian, who then lived at Carnutum, a town of Gallia Celtica, and endeavoured to persuade him to resume the empire, and not to suffer the government which they had preserved so long and with so much difficulty to be exposed to the madness and folly of those who had possessed themselves of it, and who had already brought it near to ruin. But Dioclesian refused to listen to him; for he wisely preferred his own quiet, and perhaps foresaw the troubles that would ensue, being a man well versed in matters of religion. Herculus therefore, perceiving that he could not prevail with him, came to Ravenna, and so returned to the Alps to meet Constantine, who lay there. And being naturally a busy faithless man, he promised his daughter Fausta to Constantine, which he performed, but persuaded him to pursue Maximianus Gallerius, who was then leaving Italy, and to lay wait for Maxentius. To all which Constantine agreed. He then left him, designing if possible to recover the empire, as he hoped to create a quarrel between Constantine and his son Maxentius. But while he attempted these things, Maximianus Gallerius assumed Licinius, as his colleague in the empire, with whose assistance he hoped to cope with Maxentius. But while Gallerius deliberated on these affairs, he died of an incurable wound, and Licinius then also claimed the sole dominion. Maximianus Herculus endeavoured, as I have said, to recover the empire by alienating the soldiers from Maxentius. For which purpose, by gifts and insinuating addresses, having brought them over to him,

he endeavoured to form a conspiracy against Constantine, in which his soldiers were to join. But Fausta revealed it to Constantine, and Herculius, who was now overborne by so many disappointments, died of a distemper at Tarsus.

Maxentius, having escaped this danger, and being of opinion that he was now well enough established in the empire, sent persons into Africa, and in particular to Carthage, to carry his image about that country. But the soldiers in that country forbade it, out of regard to Maximianus Gallerius, and the respect they had for his memory, until they heard that Maxentius was coming to make war on them on the plea of an insurrection. They then went to Alexandria, but meeting with a great army with which they were not able to contend, they returned to Carthage. Maxentius, being disturbed at this, resolved to sail for Africa, and to punish the authors of the commotion. But the soothsayers having sacrificed and given him ill omens, he was afraid to go, not only because the entrails had that appearance, but also lest Alexander, who was prefect of the court in Africa, should be his enemy. To secure his passage thither from all doubt, he sent to Alexander, desiring him to send his son as an hostage. But he, suspecting that Maxentius did not desire his son for the mere purpose of an hostage, but to deceive him, denied the request. After this, Maxentius sending other agents to him to take him off by treachery and stratagem, the plot was discovered; and the soldiers, having then got a favourable opportunity to rebel, conferred the purple robe on Alexander, though he was by birth not only a Phrygian, but a timid cowardly man, and unfit for any difficult undertaking, and was, moreover, of an advanced age.

At that time a fire happened at Rome; whether it came out of the air or earth is uncertain. It broke out in the temple of Fortune; and while the people ran to extinguish it, a soldier, speaking blasphemy against the goddess, was killed by the mob out of zeal, by which a mutiny was occasioned among the soldiers. They would have destroyed the whole city, had not Maxentius soon appeased their rage. Maxentius after this sought every occasion to make war on Constantine, and pretending grief for his father's death, of which Constantine was the cause, he designed to go towards Rhætia, which is contiguous both to Gaul and Illyricum. For he imagined that he should subdue Dalmatia and Illyricum, by the assistance of the generals in those parts, and of the army of Licinius. But thinking it better first to arrange affairs in Africa, he raised an army, bestowing the command of it on Rufius Volusianus, prefect of the court, and sent

them into Africa. He sent Zeno also along with Rufius, who was a person not only expert in military affairs, but esteemed for his courtesy and affability. On the first charge, Alexander's troops retired on a body of men in the rear, nor was the other party left unconquered by the enemy. Alexander himself was taken and strangled.

The war being thus at an end, a good opportunity was afforded to sycophants and informers of impeaching all the persons in Africa, who had good estates, as friends to Alexander: nor were any of the accused spared, but some of them put to death, and others deprived of all their possessions. After this he triumphed at Rome for the mischief done at Carthage. Such was the state of the affairs of Maxentius, who conducted himself with cruelty and licentiousness towards all the inhabitants of Italy, and even to Rome itself. Meantime Constantine, who had long been jealous of him, was then much more disposed to contention. Having therefore raised an army amongst the Barbarians, Germans, and Celts, whom he had conquered, and likewise drawn a force out of Britain, amounting in the whole to ninety thousand foot and eight thousand horse, he marched from the Alps into Italy, passing those towns that surrendered without doing them any damage, but taking by storm those which resisted. While he was making this progress, Maxentius had collected a much stronger army; consisting of eighty thousand Romans and Italians, all the Tuscans on the sea coast, forty thousand men from Carthage, besides what the Sicilians sent him; his whole force amounting to a hundred and seventy thousand foot and eighteen thousand horse.

Both being thus prepared, Maxentius threw a bridge over the Tiber, which was not of one entire piece, but divided into two parts, the centre of the bridge being made to fasten with irons, which might be drawn out upon occasion. He gave orders to the workmen, that as soon as they saw the army of Constantine upon the juncture of the bridge, they should draw out the iron fastenings, that the enemy who stood upon it might fall into the river.

Constantine, advancing with his army to Rome, encamped in a field before the city, which was broad and therefore convenient for cavalry. Maxentius in the mean time shut himself up within the walls, and sacrificed to the gods, and, moreover, consulted the Sibylline oracles concerning the event of the war. Finding a prediction, that whoever designed any harm to the Romans should die a miserable death, he applied it to himself, because he withstood those that came against Rome, and wished to take it. His application indeed proved just. For when Maxentius drew out

his army before the city, and was marching over the bridge that he himself had constructed, an infinite number of owls flew down and covered the wall. When Constantine saw this, he ordered his men to stand to their arms. And the two armies being drawn up opposite to each other, Constantine sent his cavalry against that of the enemy, whom they charged with such impetuosity that they threw them into disorder. The signal being given to the infantry, they likewise marched in good order towards the enemy. A furious battle having commenced, the Romans themselves, and their foreign allies, were unwilling to risk their lives, as they wished for deliverance from the bitter tyranny with which they were burdened; though the other troops were slain in great numbers, being either trod to death by the horse, or killed by the foot.

As long as the cavalry kept their ground, Maxentius retained some hopes, but when they gave way, he fled with the rest over the bridge into the city. The beams not being strong enough to bear so great a weight, they broke; and Maxentius, with the others, was carried with the stream down the river.

When the news of this victory was reported in the city, none dared to shew any joy for what had happened, because many thought it was an unfounded report. But when the head of Maxentius was brought upon a spear, their fear and dejection were changed to joy and pleasure. On this occasion Constantine punished very few, and they were only some few of the nearest friends of Maxentius; but he abolished the prætorian troops, and destroyed the fortresses in which they used to reside. At length, having arranged all things in the city, he went towards Gallia Celtica; and on his way sent for Licinius to Milan, and gave him in marriage his sister Constantia, whom he had formerly promised him, when he wished him to unite with himself against Maxentius. That solemnity over, Constantine proceeded towards the Cæltæ. It was not long before a civil war broke out between Licinius and Maximianus, who had a severe engagement, in which Licinius at first appeared to have the disadvantage, but he presently rallied and put Maximianus to flight. This emperor, travelling through the east into Egypt, in hopes of raising a force to renew the war, died at Tarsus.

The empire being thus devolved on Constantine and Licinius, they soon quarrelled. Not because Licinius gave any cause for it, but that Constantine, in his usual manner, was unfaithful to his agreement, by endeavouring to alienate from Licinius some nations that belonged to his dominions. By this means an open rupture ensued, and both prepared for war. Licinius

took up his head-quarters at Cibalis, a city of Pannonia, which stands on a hill; the road to which is rugged and narrow. The greatest part of this road is through a deep morass, and the remainder up a mountain, on which stands the city. Below it extends a spacious plain, which entertains the view with a boundless prospect. On this Licinius fixed his camp, and extended the body of his army under the hill, that his flanks might be protected from the enemy. Constantine in the meantime drew up his men near the mountain, placing the horse in front, thinking that to be the best disposition lest the enemy should fall upon the foot, who moved but slowly, and hinder their advance. Having done this, he immediately gave the charge, and attacked the enemy. This engagement was one of the most furious that was ever fought; for when each side had expended their darts, they fought a long time with spears and javelins; and after the action had continued from morning to night, the right wing, where Constantine himself commanded, began to prevail. The enemy being routed, Licinius's troops, seeing him mounted and ready to fly, dared not stay to eat their portions, but left behind them all their cattle and provisions, taking only as much food as would suffice for one night, and marched with great precipitation along with Licinius to Sirmium, a city of Pannonia, by which runs a river which discharges itself into the Ister. In passing this town he broke down the bridge over the river, and marched on with an intention to levy troops in Thrace.

Constantine, having taken Cibalis, and Sirmium, and all the towns that Licinius had abandoned, sent five thousand men in pursuit of him. But as these were ignorant of the course he had taken, they could not overtake him. Constantine however, having rebuilt the bridge over the Saus, which Licinius had broken down, was with his army almost at his heels. Having entered Thrace, he arrived at the plain where Licinius lay encamped. On the night of his arrival there he marshalled his army, and gave orders for his soldiers to be ready for battle by day-break. As soon as it was light, Licinius, perceiving Constantine with his army, drew up his forces also, having been joined by Valens, whom he styled Cæsar, after the battle of Cibalis. When the armies engaged, they first fought with bows at a distance; but when their arrows were spent, they began to use their javelins and poignards. Thus the battle continued very obstinately for a considerable time, until those whom Constantine had sent in pursuit of Licinius descended from an eminence upon the armies while they were engaged. These wheeled round the hill

before they arrived at them, deeming it best to join their own party from the higher ground, and to encompass the enemy. The troops of Licinius, being aware of them, courageously withstood against them all, so that many thousands were slain on both sides, and the advantage was equal, till the signal was given for both to retire. Next day they agreed on a truce, and entered into an alliance with each other, on condition that Constantine should possess Illyricum and all the nations westward, and that Licinius should have Thrace and the east; but that Valens, whom Licinius had made Cæsar, should be put to death, because he was said to be the author of all the mischief which had happened. Having done this, and sworn on both sides to observe the conditions, Constantine conferred the rank and title of Cæsar on Crispus, his son by a concubine called Minervina, who was as yet but a youth, and on Constantine, who was born but a few days before at Arelatum. At the same time Licinianus, the son of Licinius, who was twenty years of age, was declared Cæsar. Thus ended the second war.

Constantine hearing that the Sauromatæ, who dwelt near the Palus Mæotis, had passed the Ister in boats, and pillaged his territories, led his army against them, and was met by the barbarians, under their king Rausimodus. The Sauromatæ attacked a town which was sufficiently garrisoned, but its wall was built in the lower part of stone, and in the upper part of wood. They therefore thought that they might easily take the town by burning all the wooden part of the wall; and with that view set it on fire, and in the mean time shot at those who stood on the walls. The defenders threw down darts and stones upon the barbarians, and killed many of them; and Constantine then coming up and falling on them from a higher ground, slew a great number, took more alive, and put the rest to flight. Rausimodus, having lost the greater part of his army, took shipping and crossed the Ister, with an intention of once more plundering the Roman dominions. Constantine, hearing of his design, followed them over the Ister, and attacked them in a thick wood upon a hill, to which they had fled, where he killed many of them, amongst whom was Rausimodus. He also took many of them prisoners, giving quarter to those that would submit; and returned to his head-quarters with an immense number of captives. These he distributed into the different cities, and then came to Thessalonica, where having constructed a harbour (this city not possessing one before), he made new preparations for war against Licinius. For this purpose, he fitted out two hundred galleys of war; each with thirty oars,

besides two thousand transport vessels, and raised a force of a hundred and twenty thousand foot, and ten thousand horsemen and sailors. Licinius, hearing of the great preparations of Constantine, sent messengers to every nation, commanding them to prepare a sufficient number of men for the navy, besides horse and foot soldiers. The Egyptians therefore sent out eighty galleys, the Phœnicians an equal number, the Ionians and Dorians of Asia sixty, the Cyprians thirty, the Carians twenty, the Bithynians thirty, and the Africans fifty. His foot-soldiers amounted to nearly a hundred and fifty thousand, but his horse only to fifteen thousand, which were sent to him from Phrygia and Cappadocia. Constantine's navy lay at Piræus, that of Licinius in the Hellespont. When they had thus established their naval and military forces, Licinius encamped at Adrianople in Thrace, whilst Constantine sent for his navy from Piræus, which was built and manned chiefly in Greece. Advancing with his infantry from Thessalonica, he encamped on the bank of the river Hebrus, which runs to the left of Adrianople. At the same time, Licinius drew up his army in order of battle, extending from a mountain which is above the town two hundred stadia, as far as the junction of another river with the Hebrus; thus the armies continued opposite to each other for several days. Constantine, observing where the river was least broad, concerted this plan. He ordered his men to bring trees from the mountain, and to tie ropes around them, as if he intended to throw a bridge over the river for the passage of his army. By this stratagem he deluded the enemy, and, ascending a hill on which were thick woods sufficient to conceal any that were in them, he planted there five thousand archers and eight hundred horse. Having done this, he crossed the Hebrus at the narrowest place, and so surprised the enemy that many fled with all their speed, while others, who were amazed at his unexpected approach, were struck with wonder at his coming over so suddenly. In the meantime, the rest of his army crossed the river in security, and a great slaughter commenced. Nearly thirty thousand fell; and about sunset Constantine took their camp, while Licinius, with all the forces he could muster, hastened through Thrace to his ships.

As soon as day appeared, the whole army of Licinius, or as many of them as had fled to the neighbouring mountains and valleys, together with those that Licinius through haste had left behind him, surrendered themselves to Constantine. Licinius being arrived at Byzantium, Constantine followed and besieged him in that city. His navy, as before related, had now left Piræus and

lay at Macedon. He therefore sent orders to his admirals to bring the ships into the Hellespont. This being effected according to the command of Constantine, the officers of his navy thought it not prudent to engage with more than eighty of their best sailing vessels, which were galleys of thirty oars each, because the place was too narrow for the reception of a greater number. Upon which Abantus, the admiral of Licinius, making use of two hundred ships, despised the smallness of the enemy's fleet, which he thought he could easily surround. But the signals on both sides being given, and the vessels meeting stern to stern, the seamen of Constantine managed their ships so as to engage in good order; but the ships of Abantus, sailing against the enemy without any order, and being confined by the narrowness of the place, became exposed to the enemy, who sunk and otherwise destroyed them. Many were thrown overboard; till at length night put an end to the engagement. The fleets then separated and put in at different places, the one at Eleus in Thrace, and the other at the Æantian harbour. The following day, the wind blowing hard from the north, Abantus put out from the Æantian port and prepared for action. But the galleys of fifty oars being come to Eleus by order of the admirals, Abantus was alarmed at the number of vessels, and hesitated whether to sail against the enemy. About noon the north wind subsided; the south wind then blew with such violence, that the ships of Licinius, which lay on the Asiatic coast, were some driven on shore, others broken against the rocks, and others foundered with all on board. In this affair five thousand men perished, together with a hundred and thirty ships filled with men, whom Licinius had sent out of Thrace to Asia accompanied by a part of his army; Byzantium being too small to contain all that were besieged with Licinius. The sea-fight being thus concluded, Abantus effected his escape with only four ships into Asia. The navy of Constantine, having arrived in the Hellespont laden with abundance of provisions and stores for his troops, weighed anchor in order to join in the siege of Byzantium, and to blockade the city by sea. The foot-soldiers of Licinius, being alarmed at the sight of such a navy, procured ships in which they sailed to Eleus.

Meantime Constantine continued intent upon the siege, and raised a mound of equal height with the wall, on which he placed wooden towers that overlooked the wall, from which his soldiers shot those who defended it, in order that he might with greater security bring battering rams and other engines of war near it. By these means he thought himself sure to take the city. At

which Licinius, being terrified, and not knowing how to act, resolved to leave Byzantium, and the weaker part of his army therein, and to take with him only such men as were fit for active service, and had given proofs of their attachment to himself, and to hasten without delay to Chalcedon in Bithynia. He flattered himself that another army might be raised in Asia, which would enable him again to contend with his adversary. Arriving therefore at Chalcedon, and, having appointed Martinianus to the command of the court guards, whom the Romans call *Magister officiorum*, his associate in this dangerous enterprize, he declared him Cæsar, and sent him with an army to Lampsacus, to hinder the passage of the enemy from Thrace into the Hellespont. He posted his own men on the hills and passes about Chalcedon.

While Licinius was thus occupied, Constantine, who had a great number of transports as well as warlike vessels, and was desirous to make use of them in crossing over and possessing himself of the opposite shore, fearing that the Bithynian coast might be inaccessible to ships of burden, immediately constructed some small vessels, with which he sailed to the sacred promontory, which lies at the entrance of the Pontus, two hundred stadia from Chalcedon. He there landed his army, which, having done, he drew them up upon some adjacent hills. Licinius, though he then saw that Bithynia was already in the hands of his enemy, was rendered so desperate by danger, that he sent for Martinianus from Lampsacus, and in order to encourage his men to fight, told them that he himself would lead them. Having said what he thought necessary to encourage them, he drew them up in order of battle, and marching out of the city, met the enemy, who were prepared for him. A sharp engagement taking place between Chalcedon and the sacred promontory, Constantine had the superiority; for he fell on the enemy with such resolution, that of a hundred and thirty thousand men, scarcely thirty thousand escaped. When the Byzantines heard of this, they immediately threw open their gates to Constantine, as did the Chalcedonians also. Licinius after this defeat went to Nicomedia with what horse were left him, and a few thousands of foot.

At this time a Persian named Hormisdas, of the royal family, came over to Constantine for refuge, under these circumstances. His father had been king of Persia. He was once celebrating his own birth-day after the Persian manner, when Hormisdas entered the palace, bringing with him a large quantity of venison. But as the guests at the table did not rise, and pay him the respect and honour due to him, he became enraged, and told them he would

punish them with the death of Marsyas. This saying most of them did not understand, because it related to a foreign story; but one of them, who had lived in Phrygia, and had heard the story of Marsyas, explained to them the meaning of Hormisdas's menace, while they sat at table. It was therefore so treasured up in their recollection, that when his father died, they remembered his threat, and chose his younger brother king, though according to law the elder should be preferred above the other children. Not contented with that, they put Hormisdas in chains, and confined him on a hill which lies before their city. But after some time had elapsed, his wife effected his escape in this manner. She procured a large fish, and put a file in its belly, and, sewing it up again, delivered it to the most trusty of her eunuchs, charging him to tell Hormisdas, that he must eat the fish when no one was present, and use what he should find in its belly for his escape. When she had formed this contrivance, she sent several camels loaded with wine, and abundance of meat, to entertain her husband's keepers. While they were enjoying the feast she gave them, Hormisdas cut open the fish, and found the file; having with that filed off the shackles from his legs, he put on the robe of the eunuch, and passed through the midst of his keepers, who were by that time perfectly intoxicated. Taking one of the eunuchs along with him, he fled to the king of Armenia, who was his particular friend. By these means he got safe to Constantine, who shewed him all possible kindness and respect.

But Licinius being besieged by Constantine at Nicomedia also, knew not what to do, being sensible that he had not an army equal to engage. Going, therefore, out of the city, he submitted himself to Constantine, and brought him the purple robe, proclaiming him his emperor and lord, and intreating pardon for what was past. He presumed that he certainly should escape with life, because Constantine had sworn to his wife that he would spare him. But Constantine delivered Martinianus to the guards that they might put him to death, and sent Licinius to Thessalonica, as if he were to live there in security. However, he afterwards broke his oath,* which was usual with Constantine, and caused him to be executed.

* If what others say of Constantine be true, Zosimus has no reason to impute to him the crime of perjury; for he did not seem so much to break an oath or promise, as to punish the violation of it in Licinius, who, after Constantine had gained so many victories, when he was reduced to a very low condition, omitted no opportunity of recovering the empire, of which he had been deprived by the just sentence of victory, but contrived all methods of making ill returns for the kindness of Euergetes; Euseb, *Life of Constantine*, l. i. c. 43. and Theodor, l. i. c. 7. To which this may likewise be added,

Now that the whole empire had fallen into the hands of Constantine, he no longer concealed his evil disposition and vicious inclinations, but acted as he pleased, without controul. He indeed used the ancient worship of his country* ; though not so much out of honour or veneration as of necessity. Therefore he believed the soothsayers, who were expert in their art, as men who predicted the truth concerning all the great actions which he ever performed. But when he came to Rome, he was filled with pride and arrogance. He resolved to begin his impious actions at home. For he put to death his son Crispus, stiled (as I mentioned) Cæsar, on suspicion of debauching his mother-in-law Fausta, without any regard to the ties of nature. And when his own mother Helena expressed much sorrow for this atrocity, lamenting the young man's death with great bitterness, Constantine under pretence of comforting her, applied a remedy worse than the disease. For causing a bath to be heated to an extraordinary degree, he shut up Fausta in it, and a short time after took her out dead. Of which his conscience accusing him, as also of violating his oath, he went to the priests to be purified from his crimes. But they told him, that there was no kind of lustration that was sufficient to clear him of such enormities. A Spaniard, named Ægyptius, very familiar with the court-ladies, being at Rome, happened to fall into converse with Constantine, and assured him, that the Christian doctrine would teach him how to cleanse himself from all his offences, and that they who received it were immediately absolved from all their sins. Constantine had no sooner heard this than he easily believed what was told him, and forsaking the rites of his country, received those which Ægyptius offered him ; and for the first instance of his impiety, suspected the truth of divination. For since many fortunate occurrences had been thereby predicted to him, and really had happened according to such prediction, he was afraid that others might be told something which should fall out to his misfortune ; and for that that Licinius hated the christians as much as Constantine esteemed them, who consequently could not endure to see those exposed to injury whom he favoured. Nor should any one object, that these authors are not to be credited, because they were partial ; since Zosimus himself cannot be excused in that particular, being an inveterate enemy to christianity, and a violent bigot to the heathenish superstition.

* Among the Imperial laws or edicts, is one which Eusebius mentions, l. x. c. 5. " That every one may apply himself to that mode of worship he thinks suitable to his own reason." And therefore, though he did not abolish the old heathen institutions of his country at that time, ye he favoured the Christians most, and gave them liberty, of which almost all the former emperors used to deprive them.

reason applied himself to the abolishing of the practice. And on a particular festival, when the army was to go up to the Capitol, he very indecently reproached the solemnity, and treading the holy ceremonies, as it were, under his feet, incurred the hatred of the senate and people*.

Being unable to endure the curses of almost the whole city, he sought for another city as large as Rome, where he might build himself a palace. Having, therefore, discovered a convenient scite between Troas and old Ilium, he there accordingly laid a foundation, and built part of a wall to a considerable height, which may still be seen by any that sail towards the Hellespont. Afterwards changing his purpose, he left his work unfinished, and went to Byzantium, where he admired the situation of the place, and therefore resolved, when he had considerably enlarged it, to make it a residence worthy of an emperor. The city stands on a rising ground, which is part of the isthmus inclosed on each side by the Ceras and Propontis, two arms of the sea. It had formerly a gate, at the end of the porticos, which the emperor Severus built after he was reconciled to the Byzantines, who had provoked his resentment by admitting his enemy Niger into their city. At that time the wall reached down from the west side of the hill at the temple of Venus to the sea side, opposite to Chrysopolis. On the north side of the hill it reached to the dock, and beyond that to the shore, which lies opposite the passage into the Euxine sea. This narrow neck of land, between there and the Pontus, is nearly three hundred stadia in length. This was the extent of the old city. Constantine built a circular market-place where the old gate had stood, and surrounded it with double roofed porticos, erecting two great arches of Præconnesian marble against each other, through which was a passage into the porticos of Severus, and out of the old city. Intending to increase the magnitude of the city, he surrounded it with a wall which was fifteen stadia beyond the former, and inclosed all the isthmus from sea to sea. Having thus enlarged the city, he built a palace little inferior to that of Rome, and very much embellished the hippodrome, or horse-course, taking into it the temple of Castor and Pollux, whose statues are still standing in the porticos of the hippodrome. He placed on one side of it the tripod that belonged to the Delphian Apollo, on which stood an image of the deity.

* It is almost needless to say, that all that is here related of Constantine is the slander of Julian the Apostate, and is totally without any foundation in truth. Crispus was justly executed for an atrocious crime, and Fausta perished by an accidental suffocation by the fault of the bath keepers.

As there was at Byzantium a very large market-place, consisting of four porticos, at the end of one of them, to which a numerous flight of steps ascends, he erected two temples; in one of which was placed the statue of Rhea, the mother of the gods, which Jason's companions had formerly fixed on Mount Dindymus, which is near the city of Cyzicus. It is said, that through his contempt of religion he impaired this statue by taking away the lions that were on each side, and changing the position of the hands. For it formerly rested each hand on a lion, but was now altered into a supplicating posture, looking towards the city, and seeming to observe what the people were doing. In the other temple he placed the statue of the Fortune of Rome. He afterwards built convenient dwellings for the senators who followed him from Rome. He engaged in no more wars; and even when the Thafalians, a Scythian tribe, made an incursion into his dominions, he not only neglected to lead his army against them, but after he had lost most of his troops, and saw the enemy plundering all before them, even to his very intrenchments, was contented to save himself by flight.

When he was delivered from the distractions of war, he yielded himself to voluptuousness, and distributed to the people of Byzantium a present of corn, which is continued to this day. As he expended the public treasure in unnecessary and unprofitable buildings, he likewise built some which in a short time were taken down again, because being erected hastily they could not stand long. He likewise made a great change in the ancient magistracy. Till that time there had been only two prefects of the court, whose authority was equal; not only were the court soldiers under their controul, but those also which guarded the city, and who were stationed in its neighbourhood. The person who had the office of prefect of the court, which was esteemed the next post of honour to that of emperor, distributed the gifts of corn, and punished all offences against military discipline, as he thought convenient. Constantine altered this good institution, and of one office or magistracy formed four. To one of those prefects he committed all Egypt and Pentapolis in Libya, and all the east as far as Mesopotamia, with Cilicia, Cappadocia, Armenia, and all the coast from Pamphylia to Trapezus and the castles near Phasis; to the same person was given all Thrace and Mœsia, as far as the mountains Hæmus and Rhodope, and the town of Doberus. He likewise added Cyprus and all the Cyclades, except Lemnos, Imbrus, and Samothracia. To another he assigned Macedon, Thessaly, Crete, and Greece, with the adjacent islands,

both the Epiruses, the Illyrians, the Dacians, the Triballi, and the Pannonians as far as Valeria, besides the upper Mœsia. To the third prefect he entrusted Italy and Sicily, with the neighbouring islands, and Sardinia and Corsica, together with all Africa westward of the Syrtes. To the fourth he committed all beyond the Alps, Gaul, Spain, and Britain. Having thus divided the power of these prefects, he invented other methods likewise of diminishing their influence. For as there used to be in all places, centurions, tribunes, and generals, he appointed officers called *Magistri militum*, some over the horse and others over the foot, to whom he gave authority to discipline the soldiers, and punish those that had offended, by which the power of the prefects was diminished. That this innovation was productive of great injury to public affairs both in peace and war I will immediately prove*. The prefects had hitherto collected the tribute in all places by their officers, and disposed of it in war expences, the soldiers at the same time being subject to their authority, whose offences they punished at discretion. Under these circumstances, the soldiers, considering that the same person who gave them their pay had the infliction of punishments whenever they offended, did not dare to act contrary to their duty, for fear of their stipend being withheld, and of being duly punished. But now since one person is paymaster and another inspector of discipline, they act according to their own inclination.

Constantine likewise adopted another measure, which gave the Barbarians free access into the Roman dominions. For the Roman empire, as I have related, was, by the care of Dioclesian, protected on its remote frontiers by towns and fortresses, in which soldiers were placed; it was consequently impossible for the Barbarians to pass them, there being always a sufficient force to oppose their inroads. But Constantine destroyed that security by removing the greater part of the soldiers from those barriers of

* Zosimus throws the odium of the insensible decay by which the Roman empire fell to ruin upon Constantine; but he ought to have more cautiously weighed his arguments, and have reflected how ready those persons, who have gained the highest office under their sovereign, are to use all their endeavours to acquire the attachment of the soldiers, and from the hope of becoming emperors themselves, to throw every thing into confusion. Indeed when both the care of military discipline, and the distribution of the public money are committed to the same individual, it is probable that he will take some opportunity of acquiring the empire to himself, having every thing in his power which can influence the soldiers with the hope of reward and dread of punishment. Constantine therefore wisely adopted that political maxim, *Divide and Rule*.

the frontiers, and placing them in towns that had no need of defenders; thus depriving those who were exposed to the Barbarians of all defence, and oppressing the towns that were quiet with so great a multitude of soldiers, that many of them were totally forsaken by the inhabitants. He likewise rendered his soldiers effeminate by accustoming them to public spectacles and pleasures. To speak in plain terms, he was the first cause of the affairs of the empire declining to their present miserable state.

However, I must not omit to relate, that having given to his three sons, Constantine, Constantius, and Constans, the title of Cæsars, he so greatly enlarged the city of Constantinople, that many of the succeeding emperors, who made it their residence, drew to it too great a number of inhabitants, who flocked there from all parts, as soldiers, merchants, and in other occupations. On this account, its walls were rendered more capacious than those which Constantine built, and the buildings were permitted to be placed so near to each other, that the inhabitants are exposed to much inconvenience and danger both in their houses and in the streets. Besides this a considerable portion of the sea was added to the land by driving down piles, thus forming dry ground, on which was built a sufficient number of houses to form of themselves a considerable city.

I have, indeed, often wondered, since the city of Byzantium is become so great that no other is equal to it either in felicity or magnitude, that our ancestors had not any prophecy concerning its good fortune. Having directed my thoughts some time to this enquiry, I consulted many historians and collections of oracles, and at length, after much difficulty and taking great pains to interpret them, discovered an oracle, which is attributed to Sibylla Erythræa, or Phaello of Epirus. Nicomedes the son of Prusias relying upon this, and interpreting it to his own advantage, by the counsel of Attalus made war upon his father. The oracle I speak of is this :

Thou among sheep, O King of Thrace, shalt dwell,
 But breed a savage lion, fierce and fell,
 Who all the product of thy land shall spoil,
 And reap thy fruitful harvest without toil.
 But thou shalt not enjoy thy honour long,
 Torn by wild dogs, which shall about thee throng.
 Then a fierce, hungry, sleeping wolf shalt thou
 Awake, to whom thy conquer'd neck shall bow.
 Next a whole herd of wolves Bithynia's land,
 By Jove's decree shall ravage, and the hand
 To which obedience the Byzantines yield
 Shall in short time her royal sceptre weild.

Bless'd Hellespont! whose buildings by the hand
 Of heaven were rais'd, and by its order stand.
 Yet shall that cruel wolf my forces fear,
 For all shall know me, who inhabit here.
 My sire's designs no longer I'll conceal
 But heaven's intent in oracles reveal.
 Thrace shall e're long a monstrous birth produce,
 Baneful to all by course of time and use:
 A swelling ulcer by the sea shall grow,
 Which when it breaks, with putrid gore shall flow.

This oracle, in an obscure manner, points out all the particular evils that were to befall Bythynia through the heavy impositions laid upon it; and that the government was to devolve on those to whom the Byzantines were then subject, in this distich:

————— and the hand
 To which obedience the Byzantines yield
 Shall in short time her royal sceptre wield.

And though the events foretold did not occur until many ages afterwards, no one can suppose that the prophecy related to any other place; for all time is short in respect of the deity, who exists through all ages. This conjecture I have formed both from the words of the prophecy and from the event. Should any believe that this prophecy has a different import, they have liberty to enjoy their own opinion.

Constantine, having done this, not only continued to waste the revenue of the empire in useless expences, and in presents to mean and worthless persons, but oppressed those who paid the tributes, and enriched those that were useless to the state. For he mistook prodigality for magnificence*. He also laid a tax of gold and silver on all merchants and tradesmen, even to the lowest classes, nor did he even spare the poorest prostitute†. Thus, on the return of every fourth year, when the tax was to be paid, nothing could be heard through the whole city but lamentations and complaints. When the time arrived

* We must admit that Constantine was extravagant in his expences, whence Julian took occasion to ridicule him in his book called *Cæsares*, where he introduces Mercury asking Constantine, "What do you think a commendable action?" Constantine replies, "For a man who possesses much to give much away."

† See Evagrius Hist. Eccl. l. iii. c. 39. where he commends Anastasius, in whose reign this tax was taken off. But he inveighs against Zosimus for saying that Constantine was the author of it in these words, "Who would wonder that this should be done in the very infancy of christianity, since his holiness the Pope suffers the same things now it has attained riper years."

nothing but whips and tortures, provided for those who on account of their extreme poverty could not pay the money. Mothers were even forced to part with their children, and fathers to prostitute their daughters, for money to satisfy the collectors of this exaction. Wishing likewise to invent some trouble for the rich, he summoned them all and made them prætors, for which dignity he demanded a sum of money. Upon this account when they who had the management of this affair arrived in any city the people fled into other countries, in the fear of gaining this honour with the loss of all they possessed. He had the schedules of all the best estates, and imposed a tribute on each of them, which he called a purse. With these exactions he exhausted all the towns; for they continued in force so long even after the time of Constantine, that the cities were completely drained of money, and many of them forsaken by their inhabitants.

After Constantine had oppressed and tormented the people in these various modes, he died of a disease, and was succeeded by his three sons, who were not born of Fausta the daughter of Maximianus Herculus, but of another woman, whom he had put to death for adultery. They devoted themselves more to the pleasures of youth than to the service of the state. They began by dividing the nations between them. Constantine the eldest, and Constans the youngest, having for their share all beyond the Alps, together with Italy and Illyricum, the countries bordering on the Euxine sea and all that belonged to Carthage in Africa; Constantius obtained all Asia, the east, and Egypt. There were likewise others who shared in the government; Dalmatius, whom Constantine made Cæsar, Constantius his brother, and Anabllianus, who had all worn robes of purple embroidered with gold, and were promoted to the order of Nobilissimates by Constantine, from respect to their being of his own family.

The empire being thus divided, Constantius, who appeared to take pains not to fall short of his father in impiety, began by shedding the blood of his nearest relations. He first caused Constantius, his father's brother, to be murdered by the soldiers; next to whom he treated Dalmatius in the same manner, as also Optatus whom Constantine had raised to the rank of a Nobilissimate. Constantine indeed first introduced that order, and made a law, that every Nobilissimate should have precedence even of the prefects of the court. At that time Ablabius prefect of the court was also put to death; and fate was just in his punishment, because he had concerted the murder of Sopatrus the philosopher, from envy of his familiarity with Constantine. Being unnatural

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towards all his relations, he included Anaballianus with the rest, suborning the soldiers to cry out, that they would have no governors but the children of Constantine. Such were the exploits of Constantius.

41 In the mean time Constantine and Constans were disputing for that part of Africa which belonged to Carthage, and for Italy. Constans, who wished to surprise his brother, concealed his enmity for three years. He took occasion, when he was in a province that was attached to himself, to send soldiers to him, on pretence of assisting him in the war against the Persians, but in reality to assassinate him by surprise. This they accordingly performed. Such was the end of Constantine.

42 Constans, having thus removed his brother, exercised every species of cruelty toward his subjects, exceeding the most intolerable tyranny. He purchased some well favoured Barbarians, and had others with him as hostages, to whom he gave liberty to harrass his subjects as they pleased, in order to gratify his vicious disposition. In this manner he reduced all the nations that were subject to him to extreme misery. This gave uneasiness to the court guards, who perceiving that he was much addicted to hunting placed themselves under the conduct of Marcellinus prefect of the treasury, and Magnentius who commanded the Joviani and Herculiani (two legions so termed), and formed a plot against him in the following manner. Marcellinus reported that he meant to keep the birth-day of his sons, and invited many of the superior officers to a feast. Amongst the rest Magnentius rose from table and left the room ; he presently returned, and as it were in a drama stood before them clothed in an imperial robe. Upon this all the guests saluted him with the title of king, and the inhabitants of Augustodunum, where it was done, concurred in the same sentiment. This transaction being rumoured abroad, the country people flocked into the city ; while at the same time a party of Illyrian cavalry who came to supply the Celtic legions, joined themselves with those that were concerned in the enterprize. When the officers of the army were met together, and heard the leaders of the conspiracy proclaim their new emperor, they scarcely knew the meaning of it ; they all, however, joined in the acclamation, and saluted Magnentius with the appellation of Augustus. When this became known to Constans, he endeavoured to escape to a small town called Helena, which lies near the Pyrenean mountains. He was taken by Gaison, who was sent with some other select persons for that purpose, and being destitute of all aid, was killed.

Magnentius thus gained the empire, and possessed himself all

the nations beyond the Alps, and the whole of Italy. Vetrico, general of the Pannonian army, upon hearing of the good fortune of Magnentius, was himself inflamed with the same desire, and was declared emperor by the legions that were with him, at Mursa, a city of Pannonia. While affairs were thus situated, the Persians plundered the eastern countries, particularly Mesopotamia. But Constantine, though he was defeated by the Persians, yet resolved to subdue the factions of Magnentius and Vetrico. While he was forming these resolutions, and was very intent on warlike preparations, Magnentius still remaining in Gallia Celta, Nepotianus, nephew to Constantius, by his sister Eutropia, collected a band of persons addicted to robbery and all kinds of debauchery, with whom he came to Rome, and appeared in an imperial dress. Anicetus, whom Magnentius had made prefect of the court, armed some of the common people, and led them out of the city to engage with Nepotianus. A sharp conflict ensued between them. The Romans being undisciplined, and observing no order, were easily routed; and when the prefect saw them fly, he shut the gates, for fear the enemy should follow them into the city. The troops of Nepotianus pursued them, and as they had no way of escape, killed every man. In a few days after, Magnentius sent an army under the command of Marcellinus, and Nepotianus was put to death.

Meantime Constantius advanced from the east against Magnentius, but deemed it best first to win over Vetrico to his interest, as it was difficult to oppose two rebels at once. On the other hand, Magnentius used great endeavours to make Vetrico his friend, and thus to put an end to the war against Constantius. Both therefore sent agents to Vetrico, who chose to adopt the friendship of Constantius rather than that of Magnentius. The ambassadors of Magnentius returned without effecting their purpose. Constantius desired that both armies might join, to undertake the war against Magnentius. To which proposal Vetrico readily assented; and they seated themselves on a throne provided for the occasion. Constantius, speaking first according to his dignity, endeavoured to remind the soldiers of his father's munificence, and of the oaths they had taken to be true to his children. He then told them, that they ought not to suffer Magnentius to go unpunished, who had murdered the son of Constantine, with whom they had fought many battles, and had been generously remunerated. When the soldiers heard this, having been previously corrupted by valuable presents, they cried out, that they would have no mock emperors, and immediately began to strip the purple from Vetrico, and pulled him from the throne.

with the determination to reduce him to a private station. Constantius would not suffer them to injure him, and therefore sent him into Bithynia, where he allowed him a competency for life. He had not remained there long without employment before he died.

Constantius, having so well succeeded in his design against Vetranio, marched against Magnentius, having first conferred the title of Cæsar on Gallus, the son of his uncle, and brother to Julian who was afterwards emperor, and given him in marriage his sister Constantia; either in order that he might oppose the Persians, or as seems more probable, that he might have an opportunity of taking him off. He and his brothers were the only remaining persons of the family whom Constantius had not put to death, as I have related. When he had clothed Gallus with the Cæsarean robe, and appointed Lucilianus general in the Persian war, he marched towards Magnentius with his own troops and those of Vetranio in one body. Magnentius, on the other hand, resolved to meet him with a larger force. He declared his kinsman Cæsar, and appointed him to govern the nations beyond the Alps. The armies meeting in Pannonia, and coming near to each other at a town called Mursa, Magnentius placed an ambuscade in the defiles near to Adrana, and sent a messenger to the officers of the army of Constantine to retard their march, saying, that they might proceed to Siscia, where he intended to give them battle, the fields in that neighbourhood being spacious and open. When Constantius heard this, he was much pleased that he was to fight in a place where there was room for the cavalry to manœuvre, being superior to the enemy in that kind of force. He accordingly led his army to Siscia. As they were marching unarmed and without order, not suspecting any thing, the troops that lay in ambush attacked them, and blocked up their passage with stones, which they threw upon them in such quantities that great part of them were killed.

Magnentius, perceiving that many of his enemies were thus slain, was so elated, that being now unwilling to defer the war, he mustered his forces, and immediately marched towards Pannonia. Arriving in the plain before Cius, through the midst of which runs the river Draus, which, passing by Noricum and Pannonia, discharges itself into the Ister, he led his troops into Pannonia, intending to engage near Sirmium. His mother is said to have enjoined him not to go that way, or over into Illyricum, but he disregarded her injunctions, though on many former occasions he had found her a true prophetess. Meantime he deliberated whether to construct a bridge over the Saus, or to pass over on

boats joined together for that purpose. At the same time, Constantius sent one of the principal persons in his service, named Philip, a man of extraordinary prudence, under pretence of treating for peace and an alliance, but in reality to observe the state and disposition of the army of Magnentius, and to discover their intended movements. Approaching the camp, he met Marcellinus, the principal confidant of Magnentius, and by him was conducted to Magnentius. The army being drawn up, Philip was desired to explain the cause of his coming. Upon which he directed himself to the soldiers, telling them, that it did not become them, who were Roman subjects, to make war on Romans, especially as the emperor was the son of Constantine, with whom they had erected many trophies over the Barbarians. That Magnentius, moreover, ought to remember Constantine, and the kindness he had shewn to him and to his parents. That it was Constantine who had protected him when in imminent danger, and exalted him to the highest dignities. Having made these observations, he requested Magnentius to depart from Italy, and to be content with the government of the nations beyond the Alps.

This speech of Philip nearly occasioned a mutiny of the whole army. Magnentius, therefore, being alarmed, with much difficulty prevailed on the soldiers to attend to him. He said, that he likewise was desirous of concluding a peace, but would then dismiss the assembly, until he had deliberated how to act. Upon which, the assembly being dissolved, Marcellianus entertained Philip as one whom he was desirous of obliging by the laws of hospitality. Meanwhile, Magnentius debated with himself, whether to dismiss Philip without the purpose of his embassy being effected, or, in violation of the law of nations, detain him. He determined, after much hesitation, to invite all the officers of his army to sup with him, and at table inform them of his opinion. The following day he again convened the army; he reminded them of the injuries they received from Constans when furious and intoxicated. That the soldiers could not sustain the enormities with which he oppressed the state contrary to all law and justice, but had inclined to what was most for the public advantage; and that after they had freed the cities from so savage a monster, they had compelled him to become their emperor.

He had scarcely concluded this address, when they all rose, and displayed their willingness to continue the war by arming themselves immediately, in order to cross the Saus. The centinels who were on the watch in Siscia, a town that lies on the Saus, perceived their approach, and gave notice of it to the garrison, who shot some of them as they were landing on the bank of

the river, and stopped others who were coming over; so that many of them were slain, but more pushed into the river, either by each other or by the enemy. By which means a great slaughter was made amongst them, and while one party fell from the bridge in their haste to escape, the other pursued with the greatest speed: so that Magnentius, who was reduced to his last device, had only one method of avoiding the present danger. He struck a spear into the ground, and beckoned with his right hand to the enemy as if he wished to treat for peace. When he saw that they attended to this, he said he would not pass the Saus without the emperor's permission. As soon as he had said this, Philip told him, that if he would treat for peace, he must leave Italy and Noricum, and go into Illyricum. Constantius, having heard what was said, commanded his soldiers to continue their pursuit no longer, and permitted Magnentius to bring his troops into the plains between Noricum, Pannonia, Mœsia, and Dacia; having a wish to leave those rugged places, and to contend where his horse would have room to manœuvre, for in that species of force he had the advantage of the enemy. His design succeeded; and he appointed Cibalis which he thought a convenient place for his purpose; it being the place where Constantine conquered Licinius. In that town, which is situated as I have described in my narrative of those times, he kept part of his army. And having erected a bulwark between the hill on which the town stands, and the plain through which the river Saus flows, he inclosed all that part of it which is not encompassed by the river, with a deep ditch and a strong rampart. He then made a bridge of boats over that part of the river which surrounds the place, which bridge he could disjoin when he pleased, and put together again with the same ease. Here he placed tents for his army, and in the midst of them a royal tent of exceeding magnificence. The emperor then invited his officers to a banquet, at which all except Latinus and Thalassius were present. These were absent, though they were the greatest favourites of the emperor, because they were officiating for Philip, who was detained by Magnentius, notwithstanding his being an ambassador.

While they were consulting about this affair, Titianus, a man of the senatorian order at Rome, came with an insolent message from Magnentius. He employed many absurd expressions against Constantine and his children, charging the destruction of the cities on the emperor's negligence, and commanded Constantius to make way for Magnentius by abdicating the empire, and to be contented with his life being granted him. But

the emperor only desired the gods and fate to be the avengers of Constans, saying that he would fight with their assistance. He suffered Titianus to return to Magnentius, though Philip still remained in his custody. Magnentius now drew out his army, and taking Siscia on the first assault, razed it to the ground. Having overrun all the country near the Saus, and acquired great plunder, he marched towards Sirnium, which he hoped likewise to take without bloodshed. But failing in his attempt, being repulsed by the inhabitants and the troops that defended the town, he marched with his whole army to Mursa. Finding that those in the town had shut the gates against him and mounted the walls, he was at a loss how to act on the occasion, having no engines nor any other method of getting near the wall. He was assailed with stones and darts by those that stood on the battlements. When Constantius heard that the place was besieged, he marched with all his forces to its relief, having passed by Cibalis and all the country through which the river Draus passes.

Meanwhile Magnentius approached nearer to Mursa, and set fire to the gates, thinking if he could destroy the iron that covered the wood, which would soon yield to the flames, he might make a passage wide enough for the entrance of his army into the city. But this did not succeed to his wishes, the people on the wall extinguishing the flames with water which they poured down in large quantities. When he therefore heard that Constantius was near Mursa, he invented another stratagem to this effect. There was before the city a stadium or place of exercise, formerly used by those that fought for prizes, which was covered over with wood. In this he concealed four companies of Celtæ, with orders when Constantius should come up, and they were ready to engage before the city, to attack the enemy by surprise, and to surround them and kill every man. This being discovered by those that were on the walls, Constantius immediately sent thither Scolidoas and Manadus, two of his officers. They first selected the choicest of their men, both heavy armed and archers, and taking them along with themselves, fastened up all the doors of the stadium. Having then possessed themselves of the upper steps leading into the Stadium, and inclosed the soldiers that were within on all sides, they threw darts at them. And observing some of them with their shields placed over their heads attempting to force open the doors, they fell upon them and did not cease throwing darts or cutting at them with their swords until they had killed them all. This project of Magnentius being thus frustrated, the armies met and engaged in the plain before Mursa;

where such a battle was fought as had not occurred before in the course of this war, and great numbers fell on both sides.

Constantius, considering that as this was a civil war victory itself would be scarcely an advantage to him, now the Romans being so much weakened, as to be totally unable to resist the Barbarians who attacked them on every side, began to think that it would be better to end the war by offering proposals for peace. While he was thus deliberating, the armies were still engaged; and that of Magnentius became more furious, nor would they cease fighting though night came on, but even their officers continued performing what belonged to common soldiers, and encouraging their men to oppose the enemy with vigour. On the other side likewise, the officers of Constantius called to mind the ancient bravery and renown of the Romans. Thus the battle continued until it was completely dark; nor did even darkness cause them to relax; but they wounded each other with spears, swords or whatever was in their reach; so that neither night nor any other obstacle which usually causes some respite in war, could put an end to the slaughter, as if they thought it the greatest felicity that could happen to them to perish beside each other. Amongst the officers that shewed great bravery in this battle and fell in it were Arcadius, commander of the legion called Abulci, and Menelaus, who commanded the Armenian horse archers. What is said of Menelaus is worthy of being related. He could take three darts at once, and with one shot hit three men, by which manner of shooting he killed a great number of the enemy, and was himself almost the cause of their flight. He was killed by Romulus, who was the first in command in the army of Magnentius, and Romulus himself fell at the same time. He was wounded by a dart which Menelaus had thrown at him, yet continued fighting after he had received the wound, until he had killed the person who had given it to him.

Constantius now gaining the victory, by the army of Magnentius taking to flight, a terrible slaughter ensued. Magnentius, therefore being deprived of all hope, and apprehensive lest the remnant of his army should deliver him to Constantius, deemed it best to retire from Pannonia, and to enter Italy, in order to raise an army there for another attempt. But when he heard that the people of Rome were in favour of Constantius, either from hatred to himself, or because they had heard of the event of the battle, he resolved to cross the Alps, and seek for himself a refuge among the nations on that side. Hearing however that Constantius had likewise engaged the Barbarians near the Rhine against him, and that

he could not enter Gaul, as some officers had obstructed his passage thither in order to make their court to Constantius, nor through Spain into Mauritania, on account of the Roman allies there who studied to please Constantius. In these circumstances he preferred a voluntary death to a dishonourable life, and chose rather to die by his own hand than by that of his enemy.

Thus died Magnentius, having been emperor three years and six months. He was of Barbarian extraction, but lived among the Leti, a people of Gaul. He understood Latin, was bold when favoured by fortune, but cowardly in adversity, ingenious in concealing his natural evil disposition, and deemed by those who did not know him to be a man of candour and goodness. I have thought it just to make these observations concerning Magnentius, that the world may be acquainted with his true character, since it has been the opinion of some that he performed much good, who never in his life did any thing with a good intention.

Decentius, whom Magnentius had called to his assistance, being now on the road to Italy, soon heard of the misfortune of Magnentius; meeting with some legions and troops from which he saw no hope of escaping, slew himself. After these occurrences, the whole empire being now in the hands of Constantius, he began to be more arrogant than before, and could not conduct himself with any moderation in his prosperity. The state-informers, with which such men are usually surrounded, and which are designed for the ruin of those that are in prosperity, were augmented. These sycophants, when they attempted to effect the downfall of a noble in hopes of sharing his wealth or honours, contrived some false accusation against him. This was the practice in the time of Constantius. Spies of this description, who made the eunuchs of the court their accomplices, flocked about Constantius, and persuaded him that his cousin german Gallus, who was a Cæsar, was not satisfied with that honour, but wished to be emperor. They so far convinced him of the truth of this charge, that they made him resolve upon the destruction of Gallus. The contrivers of this design were Dynamius and Picentius, men of obscure condition, who endeavoured to raise themselves by such evil practises. Lampadius also, the Prefect of the court, was in the conspiracy, being a person who wished to engross more of the emperor's favour than any other. Constantius listened to those false insinuations, and Gallus was sent for, knowing nothing of what was intended against him. As soon as he arrived, Constantius first degraded him from the dignity of Cæsar, and having reduced him to private station, delivered him to the public execu-

tioners to be put to death. This was not the first time that Constantius imbrued his hands in the blood of his relations, but only one other in addition to many former.

THIRD BOOK.

CONSTANTIUS, after having acted towards Gallus Cæsar in the manner I have related, left Pannonia to proceed into Italy. But perceiving all the Roman territories to be infested by the incursions of the Barbarians, and that the Franks, the Alemanni, and the Saxons had not only possessed themselves of forty cities near the Rhine, but had likewise ruined and destroyed them, by carrying off an immense number of the inhabitants, and a proportionate quantity of spoils; and that the Sarmatians and the Quadi ravaged without opposition Pannonia and the upper Mœsia; besides which that the Persians were perpetually harassing the eastern provinces, though they had previously been tranquil in the fear of an attack from Gallus Cæsar; considering these circumstances, and being in doubt what to attempt, he scarcely thought himself capable of managing affairs at this critical period. He was unwilling, however, to associate any one with himself in the government, because he so much desired to rule alone, and could esteem no man his friend. Under these circumstances he was at a loss how to act. It happened, however, that when the empire was in the greatest danger, Eusebia, the wife of Constantius, who was a woman of extraordinary learning, and of greater wisdom than her sex is usually endowed with, advised him to confer the government of the nations beyond the Alps on Julianus Cæsar, who was brother to Gallus, and grandson to Constantius. As she knew that the emperor was suspicious of all his kindred, she thus circumvented him. She observed to him, that Julian was a young man unacquainted with the intrigues of state, having devoted himself totally to his studies; and that he was wholly inexperienced in worldly business. That on this account he would be more fit for his purpose than any other person. That either he would be fortunate, and his success would be attributed to the emperor's conduct, or that he would fail and perish; and that thus Constantius would have none of the imperial family to succeed to him.

Constantius, having approved her advice, sent for Julian from Athens, where he lived among the philosophers, and excelled all his masters in every kind of learning. Accordingly, Julian return-

ing from Greece into Italy, Constantius declared him Cæsar, gave him in marriage his sister Helena, and sent him beyond the Alps. But being naturally distrustful, he could not believe that Julian would be faithful to him, and therefore sent along with him Marcellus and Sallustius, to whom, and not to Cæsar, he committed the entire administration of that government.

Constantius, having thus disposed of Julian, marched himself into Pannonia and Mœsia, and having there suppressed the Quadi and the Sarmatians, proceeded to the east, and was provoked to war by the inroads of the Persians. Julian by this time had arrived beyond the Alps into the Gallic nations which he was to rule. Perceiving that the Barbarians continued committing the same violence, Eusebia, for the same reasons as before, persuaded Constantius to place the entire management of those countries into the hands of Julian. Of Julian's actions from that period through the short course of his future life, may be read at large in the historians and poets; though none that have ever written of him have fully reached to the justice of his character. Whoever desires it may see his own orations and epistles, and in them survey what he performed for the public service. Indeed I would give a fuller account of him, but that I ought not to interrupt the order of my history. However I shall notice his most signal actions in their proper place; and particularly such circumstances as others have omitted. Constantius having therefore given to Cæsar full authority over the nations under his government, marched into the east, to make war on the Persians. Julian finding the military affairs of Gallia Celtica in a very ruinous state, and that the Barbarians passed the Rhine without any resistance, even almost as far as the sea-port towns, he took a survey of the remaining parts of the enemy. And understanding that the people of those parts were terrified at the very name of the Barbarians, while those whom Constantius had sent along with him, who were not more than three hundred and sixty, knew nothing more, as he used to say, than how to say their prayers, he enlisted as many more as he could and took in a great number of volunteers. He also provided arms, and finding a quantity of old weapons in some town he fitted them up, and distributed them among the soldiers. The scouts bringing him intelligence, that an immense number of Barbarians had crossed the river near the city of Argentoratum (Strasburgh) which stands on the Rhine, he no sooner heard of it, than he led forth his army with the greatest speed, and engaging with the enemy gained such a victory as exceeds all description. It is said that sixty thousand men were killed on the spot, besides as many

more that were driven into the river and drowned. In a word, if this victory be compared to that of Alexander over Darius, it will be found in no respects inferior to it.

We ought not however to pass over in silence an action of Cæsar after the victory. He possessed a regiment of six hundred horse, which were well disciplined, and in whose valour and experience he so confided, that he ventured great part of his hopes upon their performances. Indeed when the battle commenced, the whole army attacked the enemy with all the resolution they could show; but some time afterwards, though the Roman army had considerably the advantage, these were the only troops that fled, and left their station so dishonourably, that when Cæsar rode up to them with a small party, and called them back to a share of the victory, he could not by any means prevail on them to turn. On which account he was justly indignant with them, for having as much as related to them betrayed their countrymen to the Barbarians. Yet he did not inflict on them the usual and legal punishment. But he dressed them in women's clothes, and led them through the camp towards another province, thinking that such a punishment would be worse than death to soldiers that were men. Indeed this happened very fortunately both for him and them; for in the second war against the Germans they recollected the ignominy which had previously been imposed upon them, and were almost the only troops who conducted themselves bravely in that engagement.

After these events he raised a great army to make war on the whole German nation; He was opposed however by the Barbarians in vast numbers. Cæsar therefore would not wait while they came up to him, but crossed the Rhine; preferring that their country should be the seat of war, and not that of the Romans: as by that means the cities would escape being again pillaged by the Barbarians. A most furious battle therefore took place; a great number of the Barbarians being slain on the field of battle, while the rest fled, and were pursued by Cæsar into the Hercynian forest, and many of them killed. Vadamarius the son of their general was made prisoner. The army returned home, singing songs of triumph, and praises to Cæsar for the exploits he had performed. Julian sent Vadamarius to Constantius, ascribing the victories he had gained to the good fortune of the emperor.

Meantime the Barbarians, who were in a very dangerous situation, fearing for their wives and children, lest Cæsar should advance to places where they resided, and totally destroy their whole race, sent ambassadors to sue for an accomodation, by which they would bind themselves never to make war on the Romans again.

Cæsar told them, that he would listen to no proposals for peace, until they restored the captives whom they had formerly taken in the various towns they had conquered. As they consented to this, and promised to deliver all that remained alive; Cæsar used the following method of ascertaining that no single captive was detained by the Barbarians. He sent for all that had fled out of each city and village, and required them to give him the names of the persons who had been carried off by the enemy from each of such city or village. Each of them having named the persons whom they knew, either from relationship, friendship, neighbourhood, or some other ground, he ordered the imperial notaries to take a list of them; which they did so privately, that the ambassadors knew nothing of it. Upon this, he crossed the Rhine, and commanded them to bring back the captives, which they in a short time obeyed. As they declared that those were all they had taken, Cæsar, who was seated upon a high throne, behind which the notaries were placed, ordered the Barbarians to produce their captives, according to their agreement. When the captives came singly before him and told their names, the notaries, who stood close behind Cæsar, examined their papers to find if they were all correct. Afterwards comparing those which they had taken down with what had appeared before Cæsar, and perceiving that the inhabitants of the different places had named many more than were present, they communicated it to Cæsar. On which he threatened the ambassadors with a war against their countrymen, for not delivering all the captives, and by the information of the notaries named some individuals of particular places that were yet missing. The Barbarians, on hearing this, presently imagined that Cæsar had the most abstruse secrets of nature revealed to him by some divine intelligence, and therefore promised to give up all that they found alive, and bound their promise with the customary oath of their country.

Having done this, and restored as many captives as it was probable had been taken out of the forty cities which they had sacked, Cæsar was at a loss what course to adopt, perceiving the cities to be completely ruined, and that the land had remained long without cultivation, which occasioned great scarcity of provisions among those who were delivered up by the Barbarians. For the neighbouring cities could not supply them, having themselves felt the violence of the Barbarians, and consequently having no great abundance for their own use. Having therefore deliberated on what course to pursue he formed this plan. As the Rhine discharges itself at the extremity of Germany into the Atlantic ocean, and the

island of Britain is about nine hundred stadia from its mouths, he cut timber from the woods on the banks of the river, and built eight hundred small vessels, which he sent into Britain for a supply of corn, and brought it up the Rhine. This was so often repeated, the voyage being short, that he abundantly supplied those who were restored to their cities with sufficiency for their sustenance, so likewise for the sowing season, and what they needed until harvest. These actions he performed when he had scarcely attained the twenty-fifth year of his age.

Constantius, perceiving that Julian was beloved by the army for his frugality in peace and courage in war, and for the self-command he possessed in regard to riches, and the other virtues in which he excelled all persons of the age in which he lived, became envious of his great merit, and concluded that Sallustius, one of the counsellors that had been allotted to him, was the author of the policy that had acquired Julian so much honour both in military and in civil affairs. He, therefore, sent for Sallustius, as if he intended to confer the government of the eastern provinces upon him. Julian readily dismissed him, resolving to obey the emperor in all respects. Though Sallustius was removed, Julian still advanced in whatever was committed to his care; the soldiers improved in discipline as well as augmented in number, and the towns enjoyed the blessings of peace.

The Barbarians in that quarter now began almost all to despair, and expected little short of the complete destruction of all that remained alive. The Saxons, who exceed all the barbarians in those regions, in courage, strength and hardiness, sent out the Quadi, a part of their own body, against the Roman dominions. Being obstructed by the Franks who resided near them, and who were afraid of giving Cæsar a just occasion of making another attack on them, they shortly built themselves a number of boats, in which they sailed along the Rhine beyond the territory of the Franks, and entered the Roman empire. On their arrival at Batavia, which is an island, so formed by the branches of the Rhine, much larger than any other river island, they drove out the Salii, a people descended from the Franks, who had been expelled from their own country by the Saxons. This island, though formerly subject to the Romans alone, was now in the possession of the Salii. Cæsar, upon learning this, endeavoured to counteract the designs of the Quadi; and first commanded his army to attack them briskly; but not to kill any of the Salii, or prevent them from entering the Roman territories, because they came not as enemies, but, were forced there by the Quadi.

As soon as the Salii heard of the kindness of Cæsar, some of them went with their king into the Roman territory, and others fled to the extremity of their country, but all humbly committed their lives and fortunes to Cæsar's gracious protection. Cæsar by this time perceiving that the Barbarians dared not again engage him, but were intent on secret excursions, and rapine, by which they did great damage to the country, scarcely knew how to act, until at length he invented a stratagem to confound the Barbarians. There was a man of extraordinary stature, and of courage proportioned to his size. Being by nation a Barbarian, and accustomed to plunder with the others, he had thought proper to leave his own country and go into Gallia-Celtica, which was subject to the Romans. While he was residing at Treves, which is the largest city in all the nations beyond the Alps, and saw the barbarians from beyond the Rhine ravaging the cities on this side of the river, and committing depredations every where without opposition, (which was before Julian was made Cæsar), he resolved in himself to defend those towns. As he dared not attempt this without being supported by the law, he at first went alone into the thickest part of the woods, and waited there till the Barbarians made their incursions. In the night, when they lay intoxicated and asleep, he fell on them and slew them in great numbers, bringing their heads and shewing them to the people of the town. This he practised continually to such an extent, that he abated the keenness of the Barbarians, who though unable to guess at the cause, yet were sensible of the losses they sustained, the army diminishing daily. Some other robbers having joined this man, and their number having increased to a considerable body, Charietto, (which was the name of the man who first used this kind of ambuscade against the Barbarians) came to Cæsar, and told him the whole circumstances, which few persons knew before that time. Cæsar, was at this time unable to restrain their nocturnal and clandestine incursions of the Barbarians, as they robbed in small parties, straggling from each other, and when day appeared, not one of them was visible, all hiding themselves in the woods, and subsisting on what they gained by robbery. Considering therefore the difficulty of subduing such an enemy, he determined to oppose these robbers, not with an army of soldiers, but with men of similar description.

For this reason, he sent Charietto and his band, adding to them many of the Salii, against the plundering Quadi, who though they lived on what they stole, yet were probably less expert in the art of robbing, than these men who had studied it. In the day he

guarded the open fields, and killed all that escaped his robbers. He did this for a long time, until the Quadi were reduced to such extremities, and to so small a number, that they and their general surrendered themselves to Cæsar, who had taken a great number of prisoners in the former excursions and engagements, and among the rest the son of their king, who was taken by Charietto. From this cause, when they so lamentably petitioned for peace, and Cæsar demanded some of their chiefs as hostages, and required the king's son to be one of them; the general, or king, broke out into a most pathetic complaint, and declared with tears in his eyes that his son was one that had been lost. Cæsar perceiving this compassionated his sorrow, and shewed him his son who had been nobly entertained; but told him that he would retain the youth as a hostage as well as other of the chiefs whom he had in possession. He condescended, however, to make peace with them on condition that they would never again take arms against the Romans.

Cæsar, after he had thus settled affairs, added the Salii, the Quadi, and many of the inhabitants of Batavia to his legions, of whose discipline we still make use. Meanwhile the emperor Constantius was in the east, disposing of the Persian affairs, and intent only on the wars in those countries. All the nations beyond the Alps were in a state of tranquillity, from the prudent management of Cæsar; nor were either Italy or Illyricum in any danger, the Barbarians who dwelt beyond the Ister being fearful that Cæsar would come through Gaul, and pass the Ister to attack them; they therefore contained themselves within the bounds of moderation. Constantius being thus occupied, the Persians, under their king Saphor, at that time ravaged Mesopotamia; and having pillaged all the places about Nisibis, they besieged the city itself with their whole forces. Lucilianus, the commander, was so well provided for a siege, that partly by the happy occasions of which he availed himself, and partly by his own contrivances, the city escaped the dangers that threatened it. The manner in which this was effected, I have thought it superfluous to explain, since Julian himself has given a relation of all the transactions of those times in a particular treatise, in which the reader may easily discern the eloquence and ability of its author.

At this juncture, the affairs of the east appearing tranquil, and the splendid actions of Julian occupying the discourse of the public, the mind of Constantius became the seat of the most bitter envy. Being mortified at the prosperity that attended all that had been done in Celtica and Spain, he invented pretexts, by which

he might gradually, and without any dishonour, diminish the authority of Julian, and then deprive him of his dignity. For this purpose he sent a messenger to Cæsar, requiring him to send two of the Celtic legions, as if he wanted their assistance. Julian, in obedience to his order, immediately sent them away, partly through ignorance of his design, and partly because he wished to avoid giving him the least cause of anger. After this he took every possible care of the affairs of Gaul, while the army daily increased, and the Barbarians, even in the most remote part of their country, were in such dread of him, that they did not even dream of making war. Constantius afterwards required more legions to be sent to him from Cæsar, and having obtained the demand, sent for four other companies: according to which order Julian gave notice to the soldiers to prepare for marching. But while Julian was at Parisium, a small town in Germany, the soldiers, being ready to march, continued at supper till midnight in a place near the palace, which they so called there. They were as yet ignorant of any design against Cæsar, when some tribunes, who began to suspect the contrivance against him, privately distributed a number of anonymous billets among the soldiers, in which they represented to them, that Cæsar, by his judicious conduct had so managed affairs, that almost all of them had erected trophies over the Barbarians; that he had always fought like a private soldier, and was now in extreme danger from the emperor, who would shortly deprive him of his whole army, unless they prevented it. Some of the soldiers having read these billets, and published the intrigue to the whole army, all were highly enraged. They suddenly rose from their seats in great commotion, and with the cups yet in their hands went to the palace. Breaking open the doors without ceremony, they brought out Cæsar, and lifting him on a shield declared him emperor and Augustus. They then, without attending to his reluctance, placed a diadem upon his head.

Julian was uneasy at what they had done, yet did not think it safe to reverse it, because Constantius would not observe any oath or covenant, or any obligation by which men are bound to their word: however, he determined to try him. He therefore sent ambassadors to inform Constantius that he had been declared emperor, without his own concurrence, and, if he pleased, was ready to lay aside his diadem, and be contented with the sole dignity of being Cæsar. Constantius was so enraged and arrogant, that he told the ambassadors, that if Julian loved his life, he must lay aside not only his Imperial dignity, but that of a Cæsar, and in

a private capacity submit himself to the emperor's pleasure. He should, in that case, receive no injury, nor suffer what his audacity merited. Julian, when he was informed of this by the ambassadors, openly shewed his opinion of the deity, and declared that he would rather trust his life and fortune with the gods than with Constantius. From this time the enmity of Constantius to Julian was openly displayed; for Constantius prepared for a civil war; while Julian at the same time was grieved that such occurrences should happen; because if he fought against him from whom he had received the honour of a Cæsar, he would by many be esteemed an ungrateful person.

While he was making these reflections, and revolving in his own mind how he might avoid a civil war, the gods told him what should occur in a dream. Being at Vienna, the Sun appeared to shew him the constellations, and to speak these verses:

When Jupiter th' extremity commands
Of moist Aquarius, and Saturn stands
In Virgo twenty five, th' Imperial state
Of high Constantius shall be closed by fate.

Relying, therefore, on this vision, he conducted public business with his usual diligence. It being yet winter, he took all possible precautions in what related to the Barbarians, that if he should be forced to undertake any new enterprize, Celtica might be secure. At the same time, while Constantius continued in the east, Julian prepared to frustrate his design. The summer being advanced, he had no sooner settled affairs among the Barbarians beyond the Rhine, having in part forced them to moderation by the sword, and partly persuaded them by experience of the past to prefer peace to war, than he put his army in a posture to take a long journey; and having appointed officers both civil and military to govern the towns and the borders, he marched his army towards the Alps. Upon his arrival in Rhætia, where the river Ister rises, which runs through Noricum, Pannonia, Dacia, Mœsia, and Scythia, until it empties itself in the Euxine sea, he constructed a number of boats, and with three thousand of his troops sailed down the Ister, commanding twenty thousand of them to march by land to Sirmium. As they rowed with the stream, and had the advantage of the annual winds called Etesian he arrived on the eleventh day at Sirmium. When it was reported there that the emperor was arrived, the people thought that Constantius was the person meant; but on finding that it was

Julian, they were amazed, as if they had taken him for an apparition.

The army from Celtica having joined him, he wrote to the Roman senate, and to the forces in Italy, desiring them to keep their cities safe, he being the emperor. As Taurus and Florentius, the consuls for that year, left Rome as soon as they heard that Julian had crossed the Alps into Pannonia, he ordered them to be stiled the fugitive consuls in all public instruments. He behaved with great kindness to all the towns he passed through, and though in great haste, gave them all good expectations of him. He likewise wrote to the Athenians, the Lacedæmonians, and the Corinthians, to inform them of the reason of his approach. When he was at Sirmium, there came to him ambassadors from all Greece, to whom he gave such answers as were worthy of him, and granted all their reasonable demands. He then marched forward with his Celtic forces, and others which he had raised at Sirmium, and the legions that were stationed in Pannonia and Mœsia.

Arriving at Naisus, he consulted the soothsayers what measures to pursue. As the entrails signified that he must stay there for some time, he obeyed, observing likewise the time that was mentioned in his dream. When this, according to the motion of the planets, was arrived, a party of horsemen arrived from Constantinople at Naisus, with intelligence that Constantius was dead, and that the armies desired Julian to be emperor.

Upon this he accepted what the gods had bestowed upon him, and proceeded on his journey. On his arrival at Byzantium, he was received with joyful acclamations by all ranks of the people, who called him their beloved fellow-citizen, he being born and brought up in that city, and shewed him every kind of respect, as a person who was likely to be the author of much good to mankind. He here provided for the advantage both of the city and the army: he conferred on the city the privilege of electing a senate like that of Rome; he also constructed there a harbour to secure ships from the south wind, and a portico leading to the port. He built a library to the Imperial portico, in which he placed all the books he possessed; and having done this, he prepared for the Persian war. After having remained ten months in Byzantium, he appointed Hormisdas and Victor to the command of his armies, and proceeded to Antioch. It is unnecessary to relate with what pleasure and enthusiasm the soldiers performed this journey: for it is not probable that they would be guilty of any improprieties under such an emperor as Julian. Upon his

arrival at Antioch, he was joyfully received by the people. But being naturally great lovers of spectacles and public amusements, and more accustomed to pleasure than to serious affairs, they were not pleased with the emperor's general prudence and modesty. He indeed avoided entering the public theatres, and would seldom see plays, and when he did, would not sit at them the whole day: on which account they spoke disrespectfully of him, and offended him. He revenged himself on them, not by any real punishment, but by composing a very spirited oration; which contains so much satire and keenness, that it will serve as a perpetual lampoon on the Antiochians. Being penitent for their offence, the emperor, after doing for the city all the favours which equity would allow him, granted to it a senate, the members of which succeeded by hereditary descent from father to son, admitting likewise those that were born of the daughters of senators into the same body; a privilege which few cities possess. After these, and many other just and noble actions, he prepared to make war on Persia.

When the winter was past, having collected his forces; and sent them before him in the usual manner of marching, he departed from Antioch, though without encouragement from the oracle. The reason of this failure it is in my power to explain, yet I pass it over in silence. He arrived on the fifth day at Hierapolis, where he had ordered all the ships to assemble, which used to navigate the Euphrates from Samosata and other places. Having given the command of them to Hierius, one of his officers, he sent him forward, but stayed himself in Hierapolis three days. He then proceeded to Batnæ a small town in Osdroene, where the Edesenes met him in crowds presenting him with a crown, and welcoming him to their city with joyful acclamations. He accepted of their kindness, and entering the city, he made whatever regulations he thought useful, and went on to Carræ. As there were two roads from thence, one across the Tigris and through the city of Nisibis into the provinces of Adiabene, the other over the Euphrates and by Circesium, which is a fortress surrounded by that river on the borders of Syria, the emperor was doubtful which way to chuse. In the mean time intelligence was brought that the Persians had made an incursion into the Roman territory. This produced some alarm in the camp. The emperor, however, understood that they were not a regular army but marauders, who took and carried off whatever fell in their way. He therefore resolved to leave a sufficient guard in the places near the Tigris, to prevent the Persians from taking advantage of the army accompanying him by the other route into their dominions, and thus pillaging

Nisibis and all that quarter without opposition. He therefore thought it prudent to leave in that country eighteen thousand men under the command of Sebastianus and Procopius, while he himself crossed the Euphrates with the main body of his forces in two divisions. He thus rendered them fully prepared to oppose the enemy wherever they should meet with them, and prevent the devastations which they committed wherever they came.

Having made these arrangements at Carræ, a town that separates the Roman from the Assyrian dominions, he had an inclination to view the army from some eminence, the infantry and cavalry of which in the whole amounted to sixty-five thousand men. Departing therefore from Carræ, he presently passed the castles between that place and Callinicum, and arriving at Circesium, of which I spoke above, crossed the river Aboras and sailed over the Euphrates. He was followed by his troops carrying provisions along with them, who likewise embarked according to the orders they received. The navy was by this time come up; it consisted of a great number of vessels; six hundred were made of wood, and five hundred of skins, besides which were fifty ships of war, and others that followed them for the construction of bridges, if requisite, that the army should pass the rivers on foot. A great number of other vessels likewise followed, some of them carrying provisions for the army, others timber for the construction of engines, and some battering engines for a siege which were ready made. Lucilianus and Constantius were admirals of this navy. The army being thus disposed, the emperor seated himself on a throne, and made an address to the army; after which he gave each of them a hundred and thirty pieces of silver. He then proceeded towards Persia, giving the command of the infantry to Victor, and that of the cavalry to Hormisdas and Arintheus jointly. I have before related of this Hormisdas, that he was the son of a Persian monarch, but was persecuted by his brother, and had escaped to the emperor Constantine, from whom he had received the highest honours and preferments in reward for his approved friendship and fidelity.

The emperor, on entering Persia, placed the cavalry on the right, and proceeded along the bank of the river, the rear guard marching at the distance of seventy stadia. Between these and the main body were placed the beasts of burden, which carried the heavy armour and provisions, the attendants, that they might be secure, being inclosed on every side by the army. Having thus arranged the order of his march, he thought proper to send before him fifteen hundred men, in order to reconnoitre and

observe whether any enemy approached either openly or in ambuscade. Of these he made Lucilianus captain. Then advancing sixty stadia he arrived at a place called Lautha, and from thence to Dura, where were perceived the ruins of a city, which was then deserted, and the sepulchre of the emperor Gordianus. In this place the soldiers found abundance of deer, which they shot and feasted on with great satisfaction. From thence he proceeded in seven day's to a place called Phathusæ, opposite to which was an island in the river, wherein was a castle containing a great number of men. He therefore ordered Lucilianus with a thousand of his advanced guard to attack it. While it continued dark, the assailants proceeded without discovery, but as soon as it was day, being perceived by one that came from out of the castle to fetch water, the garrison was dreadfully alarmed. They all immediately mounted the ramparts, until the emperor came into the island with his engines and part of the army, and promised the besieged, that if they would surrender themselves and the castle, they would escape certain death. They accordingly surrendered, and were sent by the emperor into the Roman dominions conducted by a guard of soldiers. Their captain Puseus was not only made a tribune in the army, but on account of his fidelity was taken by the emperor into a familiarity which always subsisted.

Some distance from this he found another island in the same river, in which was another strong fortress, which he attacked, but found it unassailable on every side, and therefore demanded the garrison to surrender, and avoid the risk of being sacked. To which they replied that they would regulate their conduct by that of others. He therefore proceeded on to other fortresses which he passed by, being satisfied with such promises. For he did not think it profitable to waste too much time in small affairs, but considered it the best course to hasten and prepare for the main business of the war. After a few days march he arrived at Dacira, a town on the right hand, sailing down the Euphrates. The soldiers, finding this place forsaken by its inhabitants, took away a large quantity of corn that was laid there, and many other things. Having put to death all the women that remained in it, they so completely razed the buildings, that no one on seeing the place could imagine a town ever to have stood there. To conclude my account of this place and its vicinity, I must mention, that on the opposite shore was a foundation of bitumen. He from thence advanced to Sitha, Megia, and the city of Zargardia, in which was a lofty throne made of stone, which the in-

habitants used to call the throne of Trajan. The soldiers, having with ease plundered and burnt this city, spent that and the following day in recreation.

The emperor in the mean time was surprized, that his army had advanced so far without meeting with any Persians either in ambuscade or in the open field; and therefore sent Hormisdas with a party to reconnoitre, because he was best acquainted with the country. In this expedition Hormisdas and his soldiers were all near perishing, had they not been unexpectedly preserved by a fortunate accident. A person called Surenas, which is a title of distinction among the Persians, had planted an ambuscade in a particular place, expecting Hormisdas and his troop to pass that way, and intending to surprize them as they passed. This hope would have been successful, had not the Euphrates burst its banks, and running between the enemy and Hormisdas, obstructed the march of his men. Being compelled by this cause to defer the journey, the following day they discovered the ambuscade of Surenas and his troops, with whom they engaged. Having killed many, and put to flight others, they admitted the remainder of them into their own army. They proceeded from thence to a branch of the Euphrates, which reaches as far as Assyria, and joins the Tigris. Here the army found a stiff clay and marshy ground, in which the horses could not move without difficulty. As they could not swim across the river in their armour, nor ford through it being deep and full of mud, they did not know how to extricate themselves. Their difficulties were increased by the appearance of the enemy on the opposite bank, who were prepared to obstruct their passage with darts and stones, which they threw with slings. When no other person could imagine an expedient to free them from those imminent dangers, the emperor himself, who had great sagacity in all things, and was well versed in military affairs, determined on ordering Lucilianus and his reconnoitring party to make an attack on the enemy's rear, and thereby create a diversion, until the army had crossed the river. For this purpose he sent Victor, with a competent number of men. He began his journey in the night, that the enemy might not discover him, and when he had proceeded so far that the enemy could not perceive him even in the day, he crossed the channel to seek Lucilianus and his party. Continuing to advance without meeting an enemy, he called out loudly to his countrymen, and sounded the trumpets for them to hear him. He succeeded in meeting Lucilianus, who judging the intent of his coming, joined his force to that of Victor, and at-

tacked the enemy by surprize in the rear. Being so unexpectedly assaulted they were either slain, or made their escape in whatever manner they could. The emperor, perceiving the success of this manœuvre, passed the river without opposition, and continued his march, until he arrived at a city called Bersabora, the size and situation of which he examined. It was enclosed by two circular walls. In the midst of it was a citadel with another wall, shaped like the segment of a circle, to which there was a communication from the inner wall of the city, very difficult of ascent. On the south-west side of the city was a winding road; and on the north side a broad channel from the river, by which the inhabitants were supplied with water. On the east side it was encompassed by a deep ditch and a mound supported by strong pieces of timber; along this ditch stood large towers, which were built half way from the ground of bricks cemented with a kind of bituminous loam; the upper half of the same kind of brick with plaister.

The emperor resolving to take this city, he encouraged his soldiers to the attempt. They obeyed his orders with great alacrity. On this the citizens solicited the emperor to receive them into his favour and protection; requesting at one time that he would send Hormisdas to treat with them of peace, and presently reviling the same person as a fugitive renegado and a traitor to his country. The emperor, with good reason, being incensed at this, commanded his troops to attend to their duty, and to carry on the siege with full vigour. None of them failed in the execution of their duty, until the besieged, finding themselves unable to defend their walls, fled into the citadel. The emperor, on seeing this, sent his troops into the city, which was now deserted of inhabitants. They destroyed the walls, burnt the houses, and planted engines at the most convenient places, with which they threw darts and stones on those in the fort. The besieged kept the assailants at a distance with darts and stones, which they threw back against them, so that great slaughter was occasioned on both sides. The emperor, either by his own ingenuity, on consideration of the situation of the place, or by means of his extensive experience, constructed an engine of the following description: He fastened together great pieces of timber with iron, in form of a square tower. This he placed against the wall of the citadel, till it gradually became of equal height. In this tower he placed archers and engineers, accustomed to fling darts and stones. The Persians being thus harrassed on all sides, both by the besiegers and by those in the tower, were compelled, after a short resistance,

to promise that, if the emperor would offer them any reasonable terms, they would surrender the citadel. It was therefore agreed that, upon surrendering the citadel to the emperor, all the Persians in the place should pass without molestation through the midst of the Roman army, and should each receive a sum of money and a garment. About five thousand men were suffered to depart, besides those who had escaped in boats over the river. The soldiers, upon searching the citadel, discovered a vast quantity of corn, arms and military engines of all kinds, and household furniture and provisions in abundance. Of all these they disposed as they chose, except that the greater part of the corn was put on board ships for the maintenance of the soldiers, the remainder being divided between them in addition to their usual allowance. The weapons that were calculated for the use of Romans were distributed to the soldiers. Those that were adapted only to the Persian manner of fighting were either burnt or thrown into the river.

By this action the renown of the Romans was considerably augmented; so great a city, being next to Ctesiphon the most important in Assyria, and so strongly fortified, being taken by assault in two days. For this reason the emperor highly commended the soldiers, and treated them with great kindness, distributing to each man a hundred pieces of silver. Meanwhile Surenas, advancing with a large army from a town in Assyria, surprised the reconnoitring party in advance of the army, killed one of the three tribunes and some of his men, and put the remainder to flight, carrying off a military ensign which was in the form of a dragon, such as the Romans usually carry in war. The emperor on learning this was much displeased, and in his anger attacked the forces of Surenas, compelled all to fly that could escape, retook the ensign which the enemy had carried off, and coming immediately to the city where Surenas had surprised the party, stormed, took, and burnt it. As the commander of the party, preferring his own safety to the valour and honour of a Roman, had left his standard in the enemy's hands, he deprived him of his girdle, regarding him as a mean and worthless person, together with all who had accompanied him in his flight.

On his advance beyond the river, he arrived at a place near a city called Tissenia. This was surrounded by a ditch, which, though very deep, the Persians filled with a large quantity of water, which they procured from the neighbouring river, called the King's River. This city he passed without halting, because it shewed no appearance of hostility, and went through a place,

where was a morass formed by art, the Persians having imagined that by cutting a sluice to admit the water of the river, they could form an insuperable obstacle to the passage of the army by that route. The emperor leading the way, the army followed him though up to their knees in water, being restrained by shame from hesitating to follow the example of the emperor. After sun-set, the army halted in the neighbourhood; while the emperor commanding some of the soldiers and artificers to follow him, cut down trees, with which he constructed a bridge over the sluice, and throwing earth into the fens filled up the deep places, and widened the narrow passages. He afterwards led his army through with great ease, until he arrived at a town called Bithra, in which was a palace, and room enough for the accommodation both of the emperor and his army.

Departing from thence, with the same pains as before, he went before his men, thus rendering the way more tolerable to them. By this means he led them along, until he came to a grove of palm-trees, amongst which vines were growing. These climbed to the tops of the palms, thus exhibiting to their view the fruit of the palm mixed with clusters of grapes. Having passed the night in this place, the next morning he continued his route. Approaching too near to a castle, he was in danger of receiving a mortal wound from a Persian, who issuing from the castle with his sword in his hand, aimed a stroke at the emperor's head. Observing this, he placed his shield on his head and warded off the blow. The soldiers immediately fell on the Persian, and killed him with all his companions, except a few who escaped through the enemy's ranks into the castle. The emperor being enraged at this audacious attempt, walked round the castle to examine whether it were in any part assailable. While he was thus employed, Surenas attacked the soldiers, who remained in the palm-grove, before they knew of his approach, hoping by that means not only to get possession of all their beasts of burden and carriages, but to divert the emperor from the siege of the castle. He was disappointed in both parts of his project. For the emperor thought the capture of the castle an important object, because there was near it a populous city called Besuchis; besides many other castles, the inhabitants of which had fled into that which the emperor was besieging, their own not being strong enough to protect them; except some who fled to Ctesiphon, or hid themselves in the thickest part of the grove.

For this reason the emperor besieged it, while in the mean time that part of the army, which was sent out to reconnoitre and

scour the country, defeated all who opposed them, and rendered the emperor secure during the continuance of the siege. Some of the fugitives having taken refuge among the fens in the grove, did not escape the reconnoitring parties, who killed some and made the rest prisoners. They who were besieged in the castle kept off the enemy with darts of all kinds, and because they had no stones within, they made balls of pitch which they set on fire and flung at the besiegers; nor was it difficult to hit those they aimed at, as they threw from above, at a great multitude collected together. The Roman soldiers, however, omitted no kind of warlike policy, but retained their usual courage. They threw and shot at the enemy great stones and darts, out of engines as well as bows; and those were contrived to strike several persons at one throw. The castle being situated on a hill, and fortified with two walls, sixteen large towers, and surrounded by a deep ditch, which in one part was introduced into the castle to furnish its inhabitants with water, the emperor ordered his soldiers to collect earth enough to fill up the ditch, and raise on it a mount to the height of one of the towers. He likewise resolved to make a mine under the wall, beyond the inner precinct, for the purpose of surprising the enemy. The enemy obstructed those who were raising the mount by continually casting darts upon them; the emperor, therefore, himself invented means of defence against the darts and fire-balls. He left the care of the mine and raising the mount to Nevita and Dagalaiphus. Then giving to Victor the command of a detachment of horse and foot, he ordered him to reconnoitre the whole country between that place and Ctesiphon; and if any enemy should appear with the design of attempting to divert the emperor from the siege, to frustrate any such attempt; and likewise by bridges and other improvements to render the road from thence to Ctesiphon more easy for the march of the army.

Having thus assigned to his officers their respective charges, he planted his battering-rams against one of the gates, which he broke to pieces. Perceiving that those to whom the care of the mine was committed were slothful, and negligent of their charge, he removed them, as a disgrace for their remissness, and substituted others in their place. He afterwards brought the rams against another gate, which was too weak to bear the shock; when there came a messenger with information, that they who were ordered to construct a mine from the ditch into the town had completed their task, and were just ready to issue through it. The men employed in the mine were of three regiments, the

Mattiarrii, the Laccinarii, and the Victores. The emperor, however, suspended the attack a short time, while he commanded an engine to be brought against another gate, where he planted all his army, to induce the enemy to believe that on the following day he intended with that engine to storm the castle; his real design being to divert the attention of the Persians from the mine. All that were in the castle were therefore wholly occupied in destroying that engine, while the party in the mine, having dug quite through to the surface, issued from it at midnight in the middle of a house, in which was a woman grinding corn. She was immediately killed by the man who first sprang out, because she attempted to cry out. The name of the soldier who did this was Superantius, an excellent soldier in the regiment of Victores, the next to him was Magnus, then Jovianus, a tribune in the regiment of the Notarii. These were followed by many others. The passage being widened, they all presently entered into the midst of the place, from whence they ran to the wall, and surprised the Persians, who in the manner of the country were singing in praise of the valour of their king, and speaking contemptuously of the vain attempt of the Roman emperor; and boasting that he might sooner take the palace of Jupiter than their castle. The Romans now attacked them, and killing all they met with by throwing them over the wall, they pursued the rest, and put them to death in various manners; sparing neither women nor children, except a few whom they preserved for slaves. Anabdates, the governor of the castle, being taken while endeavouring to escape, together with his guards, eighty in number, was brought to the emperor with his hands bound. The castle being thus taken, and all the people put to death, except a few who were unexpectedly saved, the soldiers began to plunder; and having taken all they could find, levelled the wall to the ground, with the engines they had placed against it. Nor even then were they satisfied, but pulled down and burnt all the buildings in such a manner, that no one could imagine that there had ever been any in that place.

Marching from thence, he passed other castles of little importance, and came to an inclosed place called the King's Chace. This was a large space of ground surrounded by a wall, and planted with all kind of trees, in which were wild beasts of every description, which were supplied with provender; they being kept solely for the king's hunting whenever he was disposed for that diversion. Julian ordered the wall to be broken down in several places; which gave the soldiers an opportunity of shoot-

ing the deer as they ran by them. He likewise found near this place a palace magnificently built in the Roman manner. He would not suffer the tribunes to deface any part of it, through respect to its founders.

The army from hence passed by several castles, and arrived at a city of Armenia called Sabatha, which is thirty stadia from that which was formerly called Zochasa, but now Seleucia. While the emperor remained with the greatest part of his army in a neighbouring place, the advanced-guard had stormed the town. Next day, the emperor walking about its walls, saw several bodies suspended on gibbets before the gates, which the natives said were the relations of one who had been accused of betraying a town to the Persians, which had been taken by the emperor Carus. This reminded the emperor to summon Anabdates, the governor of the castle, to trial; he having grossly deceived the Roman army by promising to assist them in the war against Persia. He was then accused of a fresh offence, having spoken maliciously of Hormisdas, called him a traitor before a number of persons, and said that he was the author of that expedition against the Persians. He was therefore put to death.

Soon after his execution, the army marched to Arintheus, and searching all the marshes found in them many people whom they made prisoners. Here it was that the Persians first collected their forces, and attacked the advanced party of the Roman army. They were however routed, and preserved their lives by flying to a neighbouring city. The Persians on the other side of the river attacked the slaves who had the care of the beasts of burden, and those who guarded them; they killed part of them and made the rest prisoners. This being the first loss which the Romans had sustained occasioned some consternation in the army. They advanced to a very broad sluice or channel, said by the country people to have been cut by Trajan, when he made an expedition into Persia. In this channel runs the river Narmalaches, and discharges itself into the Tigris. The emperor caused it to be cleansed, in order to enable his vessels to pass through it into the Tigris, and constructed bridges over it for the passage of his army. While this was in agitation, a great force of Persians, both horse and foot, was collected on the opposite bank, to prevent their passage should it be attempted. The emperor, discerning these preparations of the enemy, was anxious to cross over to them, and hastily commanded his troops to go on board the vessels. Perceiving, however, the opposite bank to be unusually lofty, and a kind of fence at the top of it, which formerly served

as an inclosure to the king's garden, but at this time was a rampart, they exclaimed that they were afraid of the fire-balls and darts that were thrown down. The emperor, however, being very resolute, two barges crossed over full of foot soldiers; which the Persians immediately set on fire by throwing down on them a great number of flaming darts. This so increased the terror of the army, that the emperor was obliged to conceal his error by a feint, saying, "They are landed and have rendered themselves masters of the bank; I know it by the fire in their ships, which I ordered them to make as a signal of victory." He had no sooner said this, than without further preparations they embarked in the ships and crossed over, until they arrived where they could ford the river, and then leaping into the water, they engaged the Persians so fiercely, that they not only gained possession of the bank, but recovered the two ships which came over first, and were now half burnt, and saved all the men who were left in them. The armies then attacked each other with such fury, that the battle continued from midnight to noon of the next day. The Persians at length gave way, and fled with all the speed they could use, their commanders being the first who began to fly. These were Pigraxes, a person of the highest birth and rank next to the king, Anareus, and Surenas. The Romans and Goths pursued them, and killed a great number, from whom they took a vast quantity of gold and silver, besides ornaments of all kinds for men and horses, with silver beds and tables, and whatever was left by the officers on the ramparts. It is computed, that in this battle there fell of the Persians two thousand five hundred, and of the Romans not more than seventy-five. The joy of the army for this victory was lessened by Victor having received a wound from an engine.

Upon the following day the emperor sent his army over the Tigris without difficulty, and the third day after the action he himself with his guards followed them. Arriving at a place by the Persians termed Abuzatha, he halted there five days. Meanwhile he consulted about his journey forward, and found that it was better to march further into the country than to lead his army by the side of the river; there being now no necessity to proceed by water. Having considered this, he imparted it to his army, whom he commanded to burn the ships, which accordingly were all consumed, except eighteen Roman and four Persian vessels, which were carried along in waggons, to be used upon occasion. Their route now lying a little above the river, when they arrived at a place called Noorda they halted, and there killed and took

a great number of Persians. Advancing thence to the river Durus, they constructed a bridge over it for their passage. The Persians had burnt up all the forage of the country, so that the cattle of the Romans were ready to perish with hunger. They were collected into several parties awaiting the Romans, whom they imagined to be but a small number, and presently afterward uniting into one body they proceeded towards the river. Here, while the advanced guard engaged with a party of Persians, an enterprising man, named Macanæus, entered among them and killed four of them. For that bold action they all fell upon him and struck him down. His brother, Maurus, upon seeing this, attempted to rescue at least his dead body from the Persians, and killed the man who had given him the first wound; nor did he desist, though frequently shot at, until he had brought off his brother and delivered him to the army still alive.

Afterwards, arriving at the city of Barroptha, they found the forage as before burnt up by the Barbarians. Perceiving a party of Persians and Saracens, who dared not even look at the Roman army, but immediately fled, the Romans were unable to judge their design, until the Persians, by collecting together into a considerable body, shewed that they had a design upon the beasts of burden. Upon which the emperor, who immediately armed himself, proceeded with greater expedition against them than the rest of the army. The Persians, unable to sustain the force of his charge, fled to places with which they were well acquainted. The emperor then continued his march to Symbra, which lies between two towns named Nisbara and Nischanaba, which are separated from each other by the Tigris. The inhabitants have frequent and easy intercourse by a bridge over that river. The Persians burned the bridge to prevent the Romans from availing themselves of it to injure both places. Here the advanced party, who preceded the rest to collect forage, attacked and immediately defeated a body of Persians, while the army finding abundance of provisions in the town, took what they had occasion for and destroyed the remainder.

From thence they proceeded to a place between the cities of Danabe and Synca, where the Persians attacked the rear of the army and killed a great number. Their own loss, however, greatly exceeding that of the Romans, and having the disadvantage from many causes, they fled. In this engagement, Daces, a great Satrap, was killed. He had formerly been sent on an embassy to the emperor Constantius with proposals of peace. The enemy, upon seeing that the Romans approached a town called Acceta,

burnt all the produce of the country; but the Romans hastened, and extinguishing the fire, took what they could save for their own use.

In their march from this place they came to a town called Maronsa, where the Persians again attacked the rear-guard, and killed amongst others Britannio, the captain of a troop, and a brave soldier. They also took several ships, which fell into their power by being considerably behind the army. The Romans from thence passed hastily along by some villages, and arrived at a place called Tummara. Here they repented the burning of their ships; for the cattle were so exhausted with the fatigue of travelling in an enemy's country, that they were not able to carry all the necessaries; and the Persians collected all the provender they could, and stored it in their strongest fortresses that it might not fall into the hands of the Romans. When they were thus situated they perceived the Persian army, with which they engaged, and having considerably the advantage, they killed a great number of Persians. Upon the following day, about noon, the Persians drew up in a large body, and once more attacked the rear of the Roman army. The Romans, being at that time out of their ranks, were surprised and alarmed at the suddenness of the attack, yet made a stout and spirited defence. The emperor, according to his custom, went round the army, encouraging them to fight with ardour. When by this means all were engaged, the emperor, who sometimes rode to the commanders and tribunes, and was at other times among the private soldiers, received a wound in the heat of the engagement, and was borne on a shield to his tent. He survived only till midnight. He then expired, after having nearly subverted the Persian empire.

While the death of the emperor remained secret, the Roman army had so decidedly the advantage, that fifty Satraps and an immense number of private persons were slain. When the death of the emperor was discovered, and the soldiers returned to the tent where his body lay, a few of the Romans, indeed, continued to fight, and overcame their enemies: while some troops sallying from a Persian garrison engaged with those under the command of Hormisdas. After a smart action Antonius fell, who was captain of the court-guards. At the same time, Sallustius, prefect of the court, fell from his horse, and was in danger of being killed by the enemy, when one of his servants dismounted and enabled him to escape. With him the two legions that were with the emperor, called Scutarii, likewise gave way. Only sixty men, regarding their own and their country's honour, had the courage

to expose themselves to death, until they took the castle, from which the Persians had sallied who had thus defeated the Romans. Although these were besieged by the enemy for three days, yet they were preserved by a party that attacked the besiegers. A meeting of the officers and soldiers was afterwards convened; in order to appoint a successor to the empire: since it would be impossible for them without a ruler to avoid the dangers to which they were exposed in the midst of an enemy's country. The general voice was in favour of Jovianus, the son of Varronianus, tribune of the domestic forces.

When Jovian had assumed the purple and the diadem, he directed his course homewards with all possible speed. Arriving at the castle of Suma, he was attacked by the Persian cavalry, accompanied by a great number of elephants, which committed great devastation in the right wing of the army, in which were placed the Joviani and Herculiani. These were the appellations of two legions, so named from Dioclesian and Maximian, the former of whom assumed the surname of Jove, and the latter that of Hercules. Although at first they were unable to sustain the shock of the elephants, yet when the Persians with their horses and elephants in one body approached them, and happened to arrive at a rising ground, on which were the carriages of the Romans and those who had the care of them, they availed themselves of the advantage to throw darts from above upon the Persians, with which they wounded the elephants. Upon feeling the smart of their wounds, the elephants, in their usual manner, immediately fled, breaking the line of the cavalry. The soldiers were thus enabled to kill the elephants in their flight, and numbers of the enemy. There fell also on the Roman side, three tribunes, Julianus, Maximianus, and Macrobius.

They then marched forward four days, continually harassed by the enemy, who followed them when they were proceeding, but fled when the Romans offered any resistance. At length, having gained some distance of the enemy, they resolved to cross the Tigris. For this purpose they fastened skins together, and floated over. When the greater part had gained the opposite bank, the commanders crossed over in safety with the remainder. The Persians, however, still accompanied them, and followed them with a large army so assiduously, that the Romans were in perpetual danger, both from the unfavourable circumstances in which they were placed, and from the want of provisions. Although the Roman army was in this condition, the Persians were willing to treat for peace, and for that purpose sent Surenas with other offi-

cers to the Roman camp. Jovian, upon hearing this, sent to them Sallustius, prefect of the court, together with Aristæus, who, after some discussion, agreed on a truce for thirty years. The conditions were, that the Romans should give up to the Persians the country of the Rabbiceni, and that of the Candueni, Rhemeni, and Zaleni, besides fifteen castles in those provinces, with the inhabitants, lands, cattle, and all their property; that Nisibis should be surrendered without its inhabitants, who were to be transplanted into whatever colony the Romans pleased. The Persians also deprived the Romans of great part of Armenia, leaving them but a very small part of it. The truce having been concluded on these conditions, and ratified on both sides, the Romans had an opportunity of returning home unmolested, neither party offering or sustaining any injury, either by open force or secret machination.

Having arrived at this part of my history, I shall recur to former ages, and enquire whether the Romans ever before gave up any of their dominions to other nations, or ever suffered any other to possess what they had once conquered. Lucullus having defeated Tigranes and Mithridates, and added to the Roman empire the whole country as far as the centre of Armenia, and Nisibis with the adjacent fortresses; Pompey the Great, to crown all his great exploits, by a peace which he effected, established and confirmed the possession of them to the Romans. Upon a former war in Persia, the senate appointed Crassus their general and plenipotentiary, whose ill conduct brought a lasting disgrace on the Roman name, he being made prisoner and dying among the Parthians. The command was then vested in Antony. Being enamoured of Cleopatra he became indolent and regardless of military affairs, and perished, charged with actions unworthy of a Roman. Notwithstanding the Romans suffered all these disasters, they did not lose even one of those provinces. When the republic was changed into a monarchy, and Augustus constituted the Tigris and Euphrates the boundary of the Roman empire, even that circumstance did not deprive them of this country. On the contrary, a considerable time afterwards, when the emperor Gordianus fought against the Persians, and lost his life in the midst of the enemy's country, the Persians, even after that disaster, were not able to acquire any part of the Roman dominion. Nor did they succeed more even when Philip was emperor, though he entered into a most dishonourable peace with them. A short time afterwards, when the Persian fire had set all the east in flames, and the great city of Antioch was taken by the Persian

army which advanced as far as Cilicia, the emperor Valerianus made an expedition against them, and though he was taken by them, yet still they did not dare to claim the sovereignty of those countries. The death of the emperor Julian alone was a sufficient cause to deprive us of them all, and that in so irrevocable a manner, that the Roman emperors have never since been able to recover any part of them, but have gradually lost still more; some having made themselves perfectly independent, others having surrendered themselves to the Barbarians, and others becoming deserted: all which I shall in the course of this history relate as it occurred.

To return from my digression. When peace was made with the Persians in the manner I have related, the emperor Jovian and his army were returning home securely, but met with many difficulties, through the badness of the roads, and the want of water, besides the loss of many men in the enemy's country through which he passed. He therefore sent Mauricius, a tribune, to fetch from Nisibis provisions for his army. He also sent others to Italy, with intelligence of the death of Julian, and of himself being created emperor. Having arrived after many difficulties near Nisibis, he would not enter the city, because it was surrendered to the enemy, but remained all night before the gate, and the next morning received the crowns and compliments that were presented to him. The inhabitants intreated him not to forsake them, and compel them to degenerate into barbarism, after having lived so many ages under the Roman laws. They likewise suggested to him that it was dishonourable to him, that while Constantius, who had been engaged in three Persian wars, and was defeated in all, had notwithstanding always protected Nisibis, and even when it was besieged and in extreme danger, had exerted all his power to preserve it, yet that he, when no such necessity existed, should yield that city to the enemy, and exhibit to the Romans an occurrence which they had never before witnessed, being compelled to suffer such a city, and such a province, to fall into the hands of an enemy. The emperor on hearing this excused himself from complying with their desires by stating to them the articles of the treaty. Then Sabinus, who was the chief of their council, repeated what the people had before said in their petition, adding, that to carry on a war against Persia they were not in need of money or of any foreign aid, but were able with their own bodies and their own purses to defend themselves; assuring him at the same time, that whenever they should prove victorious and recover their liberty, they

would again become subject to the Romans, and obey their commands as before. To which the emperor replied, that he could not infringe his covenant. The citizens then urged him a thousand times not to deprive the empire of such a bulwark. But their entreaties were in vain, and the emperor departed in anger; while the Persians demanded possession of the provinces, the castles, and the city, according to the conditions of the treaty. Upon this the inhabitants of some provinces and castles, who had no opportunity of escaping, suffered the Persians to treat them as they pleased; but the Nisibines, having gained some time to prepare for their removal, the greater part of them retired to Amida, and a few fixed their abode in other towns. All places were filled with lamentation and discontent, finding themselves exposed to the incursions of the Persians, now that Nisibis was in their power. The Carreni, among others, were so grieved at hearing the death of Julian, that they stoned to death the person who brought the news, and threw a heap of stones on his body. So great a change in affairs was the death of one man then capable of producing.

Jovian marched through all the towns in great speed, because they were so filled with grief, that the inhabitants could not look patiently on him; such being the custom and disposition of those countries. Taking with him the imperial guard, he proceeded to Antioch; whilst the main army attended on Julian's body, which was carried into Cilicia, and interred in a royal sepulchre in the suburbs of Tarsus. Upon his tomb are inscribed these verses:

“Here rests in peace, retir'd from Tigris wave,
“Julian the wise, the virtuous, and the brave.”

Jovian now turning his attention to the affairs of government, made various arrangements, and sent Lucilianus his father-in-law, Procopius, and Valentinian, who was afterwards emperor, to the armies in Pannonia, to inform them of the death of Julian, and of his being chosen emperor. The Bavarians who were at Sirmium, and were left there for its protection, as soon as they received the news, put to death Lucilianus who brought such unwelcome intelligence, without regard to his relationship to the emperor. Such was the respect they had to Jovian's relations, that Valentinian himself only escaped from the death they intended to inflict on him. Jovianus proceeding from Antioch towards Constantinople, suddenly fell sick at Dadostana in Bithynia, and died after a reign of eight months, in which short time he had not been able to render the public any essential service. After his decease a con-

sultation was proposed for the appointment of a successor. Several discussions were held among the soldiers and their officers, and various persons were nominated. At length Sallustius, the prefect of the court, was unanimously elected. He excused himself on the pretext of his advanced age, which disabled him from being of service in the present critical circumstances. They then desired that his son might be emperor in lieu of himself. But his son he told them was too young, and from that as well as other causes unable to sustain the weight of an imperial diadem. They thus failed in their wish to appoint so distinguished a person, who was the most worthy of the age. They therefore elected Valentinian, a native of Cibalis in Pannonia. He was an excellent soldier, but extremely illiterate. They sent for him, he being then at some distance: and the state was not long without a ruler. Upon his arrival at the army, at Nicæa in Bithynia, he assumed the imperial authority, and proceeded forward.

FOURTH BOOK.

IN the preceding book I have related how affairs were conducted until the death of Jovian, after whom Valentinian was appointed emperor. I have now to state, that while Valentinian was on his journey towards Constantinople, he was seized with a distemper, which increased his natural choleric temper to a degree of cruelty, and even to madness, so that he falsely suspected his sickness to proceed from some charm or poison which Julian's friends had prepared for him through malice. Accusations to that effect were drawn up against some distinguished persons, which were set aside by the discretion of Sallustius, who still was prefect of the court. After his distemper abated, he proceeded from Nicæa to Constantinople. The army and his friends in that city advised him to chuse an associate in the empire, that if occasion should require, he might have some one to assist him, and prevent their again suffering as at the death of Julian. He complied with their advice, and after consideration, selected his brother Valens, whom he thought most likely to prove faithful to him. He declared him associate in the empire. While they resided at Constantinople, all who were enemies to the friends of Julian continually suggested at court, that certain persons had a design against the emperors, and incited the populace likewise to spread the rumour. Upon this the emperors, who had other reasons for animosity against the friends of Julian, were excited to a

greater degree of hatred, and therefore encouraged such charges against them as contained no appearance of reason. Valentinian was particularly severe against the philosopher Maximinus, who in Julian's time had caused him to be punished for the neglect of sacred things, on the ground of Christianity. But other affairs both civil and military drew off their attention from these suspicions.

They then applied themselves to the appointment of governors over the different provinces, and consulted who should have the charge of the palace. By which means, all who had been governors of the provinces, or had held any other office under Julian, were discharged, and amongst them Sallustius, prefect of the court. Arintheus and Victor alone retained their military commands, while others who sought for preferments, acquired them at hazard. The only reasonable action they performed was this; if any of the officers were found guilty of the crimes laid to their charge, they suffered without hope of pardon.

Affairs being thus disposed, Valentinian deemed it most prudent to place the east as far as Egypt, Bithynia, and Thrace, under the care of his brother, and to take charge of Illyricum himself. From thence he designed to proceed to Italy, and to retain in his own possession all the cities in that country, and the countries beyond the Alps, with Spain, Britain, and Africa. The empire being thus divided, Valentinian began to govern more rigorously, correcting the faults of the magistrates. He was very severe in the collection of the imposts, and particularly in observing that the soldiers were duly paid. Resolving likewise to institute some new laws, he began by prohibiting the nocturnal sacrifices, intending by that measure to restrain and prevent vicious actions. However when Prætextatus, the proconsul of Greece, a person endowed with great virtues, represented to him that the Greeks could not subsist under such a law, by which they were withheld from the performance of those sacred mysteries, which were to them the great bond of society, he allowed them to be celebrated in the usual manner, without regard to his own edict, and took care that every thing should be performed according to the ancient custom of the country.

Meantime the Barbarians beyond the Rhine, who while Julian lived held the Roman name in terror, and were contented to remain quiet in their own territories, as soon as they heard of his death, immediately marched out of their own country, and prepared for a war with the Romans. Valentinian, on being informed of this, made a proper disposition of his forces, and placed suitable

garrisons in all the towns along the Rhine. Valentinian was enabled to make these arrangements by his experience in military affairs; while Valens was surrounded with inquietude on every side, having always lived inactively, and having been raised to the empire suddenly. He could not indeed sustain the weight of business. He was disturbed, not by the Persians only, who were elated with their prosperity, which had increased since their truce with Jovian. They made incursions on the provinces without controul, since Nisibis was in their possession, and by distressing the eastern towns, constrained the emperor to march against them.

On his departure from Constantinople, the rebellion of Procopius commenced. This person had been intrusted by Julian, being one of his relations, with a part of his forces, and had been charged to march with Sebastianus through Adiabene, and to meet Julian who took another route. Permission, moreover, was given him to wear a purple robe, for a reason which no other person was acquainted with. But the deity being pleased to ordain it otherwise, and Jovian having succeeded to the imperial dignity, Procopius immediately delivered up the imperial robe which he had received from Jovian, confessing why it had been given to him, and intreating the emperor to absolve him from his military oath, and to allow him to live in retirement, and to attend to agriculture and his own private affairs. Having obtained this, he went with his wife and children to Cæsarea in Cappadocia, intending to reside in that place, where he possessed a valuable estate. During his abode there, Valentinian and Valens being made emperors, and being suspicious of him, sent persons to take him into custody. In that they found no difficulty, for he surrendered himself voluntarily; and desired them to carry him wherever they pleased, if they would suffer him first to see his children. To this they consented, and he prepared an entertainment for them. When he perceived them to be intoxicated, he and his family fled towards the Taurica Chersonesus. Having remained there for some time, he found the inhabitants to be a faithless race, and was apprehensive lest they should deliver him to his persecutors. He, therefore, put himself and his family on board a trading vessel, and arrived in the night at Constantinople. He there resided in the house of an old acquaintance, and making observations on the state of the city after the departure of the emperor, he attempted to raise himself to the empire, and formed his design on the following incident.

An eunuch, named Eugenius, had not long before been discharged from the court, who entertained but little friendship for

the emperors. Procopius therefore won this man to his interest, because he found him to be very rich. He informed him who he was, the cause of his arriving there, and the measures which he wished to pursue. On this, the eunuch promised to assist him in any enterprize, and to furnish him with money. Their first attempt was to bribe the court guards, which consisted of two legions. Then arming the slaves, and collecting with ease a considerable multitude, chiefly volunteers; they sent them in the night into the city, and occasioned a general commotion; the people issuing from their houses, and gazing on Procopius as on a king made in a theatre. But the city being in general confusion, and no person being sufficiently collected in mind by reason of the surprise to know how to act, Procopius imagined his design to be still undiscovered, and that he might secure the empire if the enterprize were no further revealed. Having then seized on Cesarius, whom the emperors had made prefect of the city, and on Nebridius, who was appointed to succeed Sallustius in the prefecture of the court, he compelled them to write to the subjects of the empire whatever he wished. He also kept them separate, that they might not consult with each other. Having formed these projects, he proceeded in a splendid manner towards the palace. Ascending a tribunal before the gate, he gave the people great hopes and promises. He then entered the palace to provide for the remainder of his affairs.

The new emperors having divided the army between them, Procopius determined to send persons to the soldiers, who were as yet in confusion, and went by the command of the emperors from place to place without any order. He thus hoped to seduce some of them to his party. Nor did he fail of accomplishing his purpose with ease by distributing money amongst the soldiers and their officers; by which means he collected a considerable force, and prepared to make an open attack on the enemy. Procopius then sent Marcellus into Bithynia with an army against Serenianus and the imperial cavalry that was under his command, in hope of cutting them to pieces. This force having fled to Cyzicus, Marcellus, whose army was superior to theirs both by sea and land, took possession of that town; and having taken Serenianus, who fled into Lydia, put him to death. Procopius was so elevated by this fortunate commencement, that his forces considerably augmented, many being of opinion that he was able to contend with the emperors. Both the Roman legions and the Barbarian troops now flocked to his standard. Besides the reputation of being related to Julian, and of having accompanied

him in all the wars he had ever been engaged in, attracted many partizans. He likewise sent ambassadors to the chief of Scythia beyond the Ister, who sent to his assistance ten thousand men. The other Barbarian nations likewise sent auxiliaries to share in the expedition. Procopius however considered that it would be imprudent in him to engage with both emperors together, and therefore thought it best to advance against him who was nearest, and afterwards deliberate on what course to pursue.

Thus was Procopius employed; while the emperor Valens, who heard of this insurrection at Galatia in Phrygia, was filled with consternation at the news. Arbitrio having encouraged him not to despair, he prepared the troops that were with him for war, and sent to his brother to inform him of the designs of Procopius. Valentinian however was little disposed for sending auxiliaries to one who was incapable of defending the empire committed to his charge. Valens was therefore under the necessity of preparing for war, and appointed Arbitrio to the command of his army. When the armies were ready to engage, Arbitrio circumvented Procopius by a stratagem, and thereby seduced from him a great number of his men, from whom he received previous information of the designs of Procopius. On the advance of the emperor and Procopius towards each other, the two armies met near Thyatira. Procopius at first appeared to have the advantage, by which he would have gained the supreme authority, Hormisdas in the engagement having overpowered the enemy. But Gomarius, another of the commanders of Procopius, imparting his intention to all the soldiers of Procopius who were attached to the emperor, in the midst of the battle cried out Augustus, and gave a signal for them to imitate his example. Thus the most of the troops of Procopius went over to Valens.

After having obtained this victory, Valens marched to Sardes, and from thence into Phrygia, where he found Procopius in a town called Nacolia. Affairs having been ordered for the advantage of the emperor by Naplo, an officer of Procopius, Valens again prevailed, and took him prisoner, and soon afterwards Marcellus, both of whom he put to death. Finding in the possession of Marcellus an imperial robe which had been given to him by Procopius, he was so enraged, that he commenced an inquiry not only after the actors in the revolt, but after those who had given any counsel in it, or had even heard any circumstance which they had not revealed. He thus acted with great severity towards all persons, without regard to justice. Not only all who had conspired, but who were merely friends or relations to any

of the conspirators, though themselves perfectly innocent, were sacrificed to the fury of the emperor.

While such was the posture of affairs in that part of the empire which was attached to Valens, the emperor Valentinian, who resided beyond the Alps, was attacked by a great and unexpected danger. The Germans, recollecting their sufferings under the administration of Julian, as soon as they heard of his death, shook off all fear, and resuming their natural audacity, invaded the nations subject to the Roman empire. Being met by the emperor, a severe battle ensued, in which the Barbarians were victorious. The Roman army dishonourably fled. Valentinian, however, resolved not to save himself by flight; he therefore bore the event of the battle with apparent composure, until he had discovered those, who by their first beginning to fly had caused the disaster. Having at length by strict inquiry ascertained that the Batavian legion was guilty, he ordered the whole army to assemble in complete martial habiliments, as if to hear an oration for their information in some important affair. He then addressed them, reflecting the strongest ignominy on those who commenced the flight, and commanded the Batavians to be stripped of their arms, and to be sold to a colony as fugitive slaves. Upon this they all prostrated themselves on the ground, and intreated him not to inflict so disgraceful a punishment on his soldiers, promising in future to behave like men and worthy of the Roman name. He complied with their intreaties, requiring them to prove by their actions the sincerity of their intention. They then rose from the ground, armed themselves, and renewed the combat with such alacrity and resolution, that of an immense number of Barbarians very few returned to their own country. Thus terminated the war with the Germans.

After the death of Procopius, the emperor Valens sacrificed to his resentment the lives of many persons, and confiscated the property of many others. His intended expedition into Persia was obstructed by the incursions into the Roman territories of a Scythian tribe residing beyond the Ister. Against these he directed a competent force, arresting their progress, and compelling them to surrender their arms. He sent them to several of his towns on the Ister, with orders for them to be kept in prison without chains. These were the auxiliaries that were sent by a Scythian chief to Procopius. Their chief therefore demanding their dismissal from the emperor, on the ground that they had been sent at the request of ambassadors from the person who then held the sovereign authority, Valens refused to listen to this demand. He replied, that

they had neither been sent for nor taken by him as friends, but as enemies. This produced a war with the Scythians. The emperor, perceiving that they designed to invade the Roman dominion, and were for that purpose collecting together with the utmost speed, drew up his army on the bank of the Ister. He himself was stationed at Marcianopolis, the largest city of Thrace, where he paid great attention to the discipline of the army, and to the supplies of provisions. He then appointed Auxonius prefect of the court, Sallustius having, by reason of his age, obtained permission to resign that office, which he had twice held. Auxonius, though on the eve of so dangerous a war, acted with the strictest justice in the collection of the tributes, being careful that no person was oppressed with exactions more than it was his right to pay. He likewise procured many transport-vessels, in which he conveyed provisions for the army through the Euxine Sea to the mouth of the Ister, and thence, that the army might be the more easily supplied, by boats to the several towns on the side of the river.

These transactions having taken place in the winter season, the emperor marched from Marcianopolis into the territory of the enemy, with the troops that were stationed near the Ister, and attacked the Barbarians. Not having sufficient resolution to come to a regular engagement, they took refuge in the marshes, from whence they occasionally sallied. The emperor therefore ordered his troops to continue at their stations, and collected all the slaves in the camp, and those who had the care of the baggage, promising a sum of money to every man who brought him the head of a Barbarian. This filled them with hopes of gaining the money, inducing them to go into the woods and fens, killing all they met, whose heads they brought to the emperor, and received the promised reward. By these means so many were destroyed that the rest petitioned for a truce. The emperor acceded to their entreaty; and a peace was concluded with them which reflected no dishonour on the Roman name. It was agreed, that the Romans should enjoy in security all their former possessions, and that the Barbarians should not cross the river, nor enter into any part of the Roman dominions. Having concluded this treaty, the emperor returned to Constantinople, and the prefect of the court being dead, conferred that office on Modestus. He then prepared for the war with Persia.

While Valens was engaged in these preparations, the emperor Valentinian, having favourably disposed the affairs of Germany, made provisions for the future security of the Celtic nations. With

this view he levied among the Barbarians near the Rhine and the husbandmen in the countries under the Roman dominion a considerable number of young men. These he incorporated with the legionary soldiers, and brought to so good a state of discipline, that from the sole dread of their military skill, during the period of nine years, the nations beyond the Rhine did not dare to make any attempt upon any of the cities belonging to the Romans. About this time, a person named Valentinian for some offence was banished to the island of Britain, and endeavouring there to render himself absolute, was at once deprived of his life and his hopes. The emperor Valentinian was now attacked by a disease which nearly cost him his life. Upon his recovery the countries requested him to appoint a successor, lest at his decease the commonwealth should be in danger. To this the emperor consented, and declared his son Gratian emperor and his associate in the government, although he was then very young, and not yet capable of the management of affairs.

The affairs of the west being thus situated, the emperor Valens, as he had previously intended, prepared to march into the east against the Persians. Proceeding slowly forward, he granted every reasonable favour to the cities that sent ambassadors to him, and performed various other good actions. Arriving at Antioch, he made every provision relative to the war with great caution. After residing in the palace there during the winter, he proceeded in the spring to Hierapolis. He led his forces from thence against the Persians, and when winter again approached he returned to Antioch. Thus was the war with the Persians protracted. While the emperor remained at Antioch, an extraordinary circumstance happened. Among the imperial notaries was one named Theodorus, a person of reputation, birth, and education. Being very young he was easily seduced to vice by the delusions of designing profligates. A society of persons of that description persuaded him that they were men of great learning, particularly in the science of divination, by which they were able to foretel future events. In order to ascertain who should succeed Valens in the empire, they fixed up a tripod, which revealed to them in a secret manner what should happen hereafter. Now in this tripod had appeared the letters $\theta, \epsilon, \sigma, \delta$, (i. e. Theod.) by which was predicted in plain terms that Theodorus should succeed Valens in the empire. He was so involved in these follies, that he was continually anxious for the conversation of jugglers and sorcerers, consulting them of the future. He was therefore accused to the emperor, who punished him as he merited.

After this happened another singular occurrence. Fortuati-
nus, the treasurer of the emperor, had ordered stripes to be in-
flicted on a soldier for sorcery. The man being put to the tor-
ture, and compelled to accuse others who were his accomplices,
the cause was removed before Modestus, the prefect of the court,
because some persons were implicated who were not subject to
the jurisdiction of the former officer. The emperor was ex-
tremely incensed, and suspected all the most celebrated philoso-
phers, and other persons who had acquired learning, as likewise
some of the most distinguished courtiers, who were charged with
a conspiracy against their sovereign. This filled every place with
lamentation ; the prisons being full of persons who did not merit
such treatment, and the roads being more crowded than the cities.
The guards, who were appointed to the care of the prisons, in
which these innocent persons were confined, declared themselves
incapable of securing those who were under their charge, and
were apprehensive that they would on some occasion escape by
force, the number being so great. The informers in this affair
were subject to no danger, being only compelled to accuse other
persons. All that they accused were either put to death with-
out legal proof, or fined by being deprived of their estates ; their
wives, children, and other dependants being reduced to extreme
necessity. The design of these nefarious accusations was to raise
a great sum of money for the treasury. The first philosopher of
note who suffered was Maximus, the next was Hilarius of Phrygia,
who had clearly interpreted some obscure oracles ; after these,
Simonides, Patricius the Lydian, and Andronicus of Caria, who
all were men of extensive learning, and condemned more through
envy than with any shadow of justice. An universal confusion
was occasioned, by these proceedings, which prevailed to such a
degree, that the informers, together with the rabble, would enter
without controul into the house of any person, pillage it of all
they could find, and deliver the wretched proprietor to those
who were appointed as executioners without suffering them to
plead in their own justification. The leader of these wretches
was a man named Festus, whom the emperor, knowing his ex-
pertness in every species of cruelty, sent into Asia as proconsul,
that no person of learning might remain alive, and that his design
might be accomplished. Festus therefore, leaving no place un-
searched, killed all whom he found without form of trial, and
compelled the remainder to fly from their country.

Valentinian, thinking he had sufficiently secured himself from
a German war, acted towards his subjects with great severity,

exacting from them exorbitant tributes, such as they had never before paid; under pretence that the military expenditure compelled him to have recourse to the public. Having thus acquired universal hatred, he became still more severe; nor would he enquire into the conduct of the magistrates, but was envious of all who had the reputation of leading a blameless life. In plain terms, he was now a person completely different from what he had appeared at the commencement of his reign. For this cause, the Africans, who could not endure the excessive avarice of the person who held the military command in Mauritania, gave the purple robe to Firmus, and proclaimed him emperor. This doubtless gave much uneasiness to Valentinian, who immediately commanded some legions from the stations in Pannonia and Mœsia to embark for Africa. On this the Sarmatians and the Quadi, who had long entertained a hatred for Celestius, the governor of those countries, availing themselves of the opportunity afforded by the departure of the legions for Africa, invaded the Pannonians and Mœsians. Celestius had infringed an oath, and had not only treacherously deceived, but had murdered their chief at a banquet. The barbarians therefore revenged themselves by plundering all the country along the Ister, carrying off all that they found in the towns. The Pannonians were by these means exposed to the cruelty of the barbarians, while the soldiers were extremely negligent in the defence of their towns, and committed as much mischief as the Barbarians themselves in all places on this side of the river. But Mœsia was free from harm, because Theodosius, who commanded the forces there, courageously resisted the Barbarians, and routed them when they attacked him. By that victory he not only acquired great renown, but subsequently attained the imperial dignity.

Valentinian, roused by the intelligence of these events, marched from Celtica into Illyricum, for the purpose of opposing the Quadi and the Sarmatians, and consigned the command of his forces to Merobaudes, who was a person of the greatest military experience. The winter continuing unusually late, the Quadi sent ambassadors to him with insolent and unbecoming messages. These so exasperated the emperor, that through the violence of his rage, the blood flowed from his head into his mouth, and suffocated him. He thus died after having resided in Illyricum nearly nine months, and after a reign of twelve years.

After his decease, Sirmium was struck with lightning, which consumed the palace and the market-place. This was thought by persons versed in such occurrences to be an omen of evil to

public affairs. Earthquakes likewise happened in many places. Crete was very much shaken, as was likewise the Peloponnese, and all Greece, many places being destroyed; indeed almost all were overturned, except Athens and the country of Attica. These were said to be preserved by these means. Nestorius, who was then chief sacrist at Athens, saw a vision, by which he was commanded to pay public honours to the hero Achilles, which would be a protection to the city. Having communicated this to the magistrates, they imputed it to the doting of age, and paid no attention to his communications. Considering therefore within himself, and receiving instructions from the divine influence, he erected the image of the hero in an apartment under the statue of Minerva. As often as he offered sacrifices to the goddess, he at the same time performed the rites due to the hero. Having thus complied with the desire of the vision, the Athenians were free from the earthquake by which every other place suffered, except the country of Attica, which shared in the favour of the hero. The truth of this is attested by the philosopher Syrianus, who has composed a hymn in honour of this hero. These occurrences I have introduced under the idea that they were not foreign from the design of my history.

Valentinian being dead, the tribunes Merobaudes and Equitius, reflecting on the distance at which Valens and Gratian resided, the former being in the east, and the latter left by his father in the western part of Gaul, were apprehensive lest the Barbarians beyond the Ister should make an effort while the country was without a ruler. They therefore sent for the younger son of Valentinian, who was born of his wife the widow of Magnentius, who was not far from thence with the child. Having clothed him in purple, they brought him into the court, though scarcely five years old. The empire was afterwards divided between Gratian and the younger Valentinian, at the discretion of their guardians, they not being of age to manage their own affairs. The Celtic nations, Spain, and Britain were given to Gratian; and Italy, Illyricum, and Africa to Valentinian. Meantime the emperor Valens was inundated with wars on every side. The first of these was with the Isaurians, who are by some called Pisidæ, by others Solymi, and by others Cilices Montani, or Mountain Cilicians. They pillaged the towns of Lycia and Pamphylia, and though they could not obtain possession of the walls and houses, yet carried off all that was in the roads and fields. The emperor, who still remained at Antioch, sent a force sufficient to oppose them. The Isaurians then fled with their plunder to the clefts of

the mountains, to which the soldiers were either prevented by indolence from pursuing them, or from some cause unable to redress the evils which the towns had suffered.

While these affairs were so conducted, a barbarous nation, which till then had remained unknown, suddenly made its appearance, attacking the Scythians beyond the Ister. These were the Huns. It is doubtful whether they were Scythians, who lived under regal government, or the people whom Herodotus states to reside near the Ister, and describes as a weak people with flat noses, or whether they came into Europe from Asia. For I have met with a tradition, which relates that the Cimmerian Bosphorus was rendered firm land by mud brought down the Tanais, by which they were originally afforded a land-passage from Asia into Europe. However this might be, they, with their wives, children, horses, and carriages, invaded the Scythians who resided on the Ister; and though they were not capable of fighting on foot, nor understood in what manner even to walk, since they could not fix their feet firmly on the ground, but live perpetually, and even sleep, on horseback, yet by the rapidity with which they wheeled about their horses, by the suddenness of their excursions and retreat, shooting as they rode, they occasioned great slaughter among the Scythians. In this they were so incessant, that the surviving Scythians were compelled to leave their habitations to these Huns, and crossing the Ister, to supplicate the emperor to receive them, on their promise to adhere to him as faithful soldiers. The officers of the fortified towns near the Ister deferred complying with this petition, until they should learn the pleasure of the emperor, who permitted them to be received without their arms. The tribunes and other officers therefore went over to bring the Barbarians unarmed into the Roman territory; but occupied themselves solely in the gratification of their brutal appetites, or in procuring slaves, neglecting every thing that related to public affairs. A considerable number therefore crossed over with their arms, through this negligence. These, on arriving into the Roman dominion, forgot both their petition and their oaths. Thus all Thrace, Pannonia; and the whole country as far as Macedon and Thessaly were filled with Barbarians, who pillaged all in their way.

Of these extreme dangers the emperor was informed by messengers, who were purposely sent to him. Having then arranged his affairs in Persia in the best possible manner, he hastened from Antioch to Constantinople; and from thence marched into Thrace against the fugitive Scythians. On his route a remarkable spectacle presented itself. The body of a man was lying in the road,

perfectly motionless, which appeared as if it had been whipped from head to foot; the eyes were open, and gazed on all who approached it. Having enquired of him, who he was, and from whence he came, and who had so severely beat him, and receiving no reply, they concluded it to be a prodigy, and shewed him to the emperor as he passed by. Although he made the same enquiries, it still remained speechless, and though void of motion and apparently dead, yet the eyes appeared as if alive. At length it suddenly disappeared. The spectators were unable to account for the prodigy; but persons who were skilled in such events, said that it portended the future state of the empire; that the commonwealth should appear as if it had been beaten and whipped, until, by the misconduct of its magistrates and ministers, it would expire. If we take all circumstances into consideration, this interpretation will indeed appear just.

The emperor Valens, perceiving that the Scythians were pillaging Thrace, resolved to send the troops who had accompanied him from the east, and who were expert horsemen, to make the first charge on the Scythian horse. These having therefore received orders from the emperor, left Constantinople in small detachments, and killing the stragglers with their spears, brought many of their heads into the city every day. As the fleetness of their horses, and the force of their spears, caused the Scythians to suppose it difficult to overcome these Saracens, they attempted to circumvent them by stratagem. They planted in several places ambuscades of three Scythians to one Saracen; but their design was rendered abortive, as the Saracens by means of the swiftness of their horses could easily escape whenever they perceived any considerable number approaching. The Saracens with their spears committed such ravage among the Scythians, that at length despairing of success, they preferred passing the Ister and surrendering themselves to the Huns, than being destroyed by the Saracens. When they had retired from all the places near Constantinople, the emperor had room to draw out his army. He was now hesitating how to manage the war, so great a multitude of Barbarians being at hand, and was tormented by the ill conduct of his own officers. He was notwithstanding afraid of discharging them under such turbulent circumstances, and was likewise doubtful whom to appoint in their place, since no one appeared who was capable of such employments. At this juncture, Sebastianus arrived at Constantinople from the west, although the emperors there, by reason of their youth, were unacquainted with affairs, and attended to little beside the calumnies

of the eunuchs who waited on them. Upon hearing of his arrival, Valens, knowing his ability both in civil and military affairs, appointed him to the command of his army, and entrusted him with the whole management of the war. Sebastianus, observing the indolence and effeminacy both of the tribunes and soldiers, and that all they had been taught was only how to fly, and to have desires more suitable to women than to men, requested no more than two thousand men of his own choice. He well knew the difficulty of commanding a multitude of ill-disciplined dissolute men, and that a small number might more easily be reclaimed from their effeminacy; and, moreover, that it was better to risk a few than all. By these arguments having prevailed upon the emperor, he obtained his desire. He selected, not such as had been trained to cowardice and accustomed to flight, but strong and active men who had lately been taken into the army, and who appeared to him, who was able to judge of men, to be capable of any service. He immediately made trial of each of them, and obviated their defects by continual exercise; bestowing commendations and rewards on all who were obedient, but appearing severe and inexorable to those who neglected their duty. Having by these means infused into them the principles of the military art, he took possession of several fortified towns, for the security of his army. From these he frequently surprised the Barbarians as they came out for forage. Sometimes, when they were loaded with spoils, he killed them and took what they carried; at other times he destroyed them when they were intoxicated or washing themselves in the river.

When he had by these methods cut off great part of the Barbarians, and the remainder felt such dread of him that they dared not attempt to forage, an extraordinary degree of envy was excited against him. From this envy proceeded hatred; until at length the court eunuchs, at the instigation of those who had lost their command, accused him to the emperor, who by these means was induced to entertain unjust suspicions of him. Sebastianus sent a request to the emperor, desiring him to remain where he then was, and not to advance; since it was not easy to bring such a multitude to a regular engagement. He, moreover, observed that it would be better to protract the war in harassing them by ambuscades, until they should be reduced to despair from the want of necessaries, and rather than expose themselves to the misery and destruction of famine, either surrender themselves, or depart from the Roman territory and submit to the Huns. While he gave the emperor this counsel, his adversaries persuaded him to

march forward with his whole army; that the Barbarians were almost destroyed, and the emperor might gain a victory without trouble. Their counsel, though the least prudent, so far prevailed, that the emperor led forth his whole army without order. The Barbarians resolutely opposed them, and gained so signal a victory, that they slew all, except a few with whom the emperor fled into an unfortified village. The Barbarians, therefore, surrounded the place with a quantity of wood, which they set on fire. All who had fled thither, together with the inhabitants, were consumed in the flames, and in such a manner, that the body of the emperor could never be found.

When the affairs of the empire were reduced to this low condition, Victor, who commanded the Roman cavalry, escaping the danger with some of his troops, entered Macedon and Thessaly. From thence he proceeded into Mœsia and Pannonia, and informed Gratian, who was then in that quarter, of what had occurred, and of the loss of the emperor and his army. Gratian received the intelligence without uneasiness, and was little grieved at the death of his uncle, a disagreement having existed between them. Finding himself unable to manage affairs, Thrace being ravaged by the Barbarians, as were likewise Pannonia and Mœsia, and the towns upon the Rhine being infested by the neighbouring Barbarians without controul, he chose for his associate in the empire, Theodosius, who was a native of a town called Cauca, in the part of Spain called Hispania Callæcia, and who possessed great knowledge and experience of military affairs. Having given him the government of Thrace and the eastern provinces, Gratian himself proceeded to the west of Gaul, in order, if possible, to compose affairs in that quarter.

During the stay of the new emperor, Theodosius, at Thessalonica, a great concourse arrived there from all parts of persons soliciting him on business, both public and private; who having obtained of him whatever he could conveniently grant, returned to their homes. As a great multitude of the Scythians beyond the Ister, the Gotthi, and the Taiphali, and other tribes that formerly dwelt among them, had crossed the river, and were driven to infest the Roman dominions, because the Huns had expelled them from their own country, the emperor Theodosius prepared for war with all his forces. All Thrace being now in the possession of the above mentioned tribes, and the garrisons of the towns and castles not daring to move out of their walls, much less to engage in the open field, Modares, who was of the royal family of the Scythians, and had not long before come over to the Romans,

and for his fidelity had been made a general, placed his soldiers on the summit of a hill, which formed a spacious plain, and lay there unknown to the Barbarians. Learning from his scouts, that the enemy were in the fields below, luxuriously consuming the provisions they had plundered, by which they had intoxicated themselves, he commanded his soldiers to take with them only their swords and bucklers, and not their heavy armour as usual, and to attack the Barbarians while they were immersed in voluptuousness. This they performed, and destroyed in a very short space of time all the Barbarians, many of them dying insensibly, and others immediately on feeling their wounds. Having slain all they began to rifle the bodies, and from thence proceeded to the women and children. They took four thousand carriages, and as many captives as could be contained in them, besides many who usually walked, and only rode alternately when fatigued.

The army having made this good use of the occasion afforded by fortune, the affairs of Thrace, which had been on the brink of ruin, were now, the Barbarians being crushed beyond all hope, re-established in peace.

The eastern provinces were now in the most imminent danger, from the following causes. When the Huns, as I have related; had invaded the countries beyond the Ister, the Scythians, being unable to withstand their incursions, intreated the emperor Valens, who was then living, to admit them into Thrace, promising, in perfect submission to his commands, to perform the duty of faithful soldiers and subjects. By this promise Valens was induced to receive them; and imagining that it would be a surety of their fidelity to cause all their young children to be brought up in a different country, he sent a great number of infants into the east, and appointed Julius to superintend their maintenance and education, conceiving him to be a person of competent understanding for the fulfilment of both those offices. He, therefore, distributed them into various towns, to prevent them, when grown to manhood, from having an opportunity, by being collected in great numbers, of forming an insurrection. However, when they had attained maturity, the intelligence of what their countrymen had suffered in Thrace reached them in the different towns. This gave them much uneasiness; those of one city assembling together and sending private information to those in other places, that they intended to assault the Roman towns in revenge for the sufferings of their countrymen. Meantime Julius, discovering the design of the Barbarians, was in doubt how to act. At length he resolved not to give Theodosius information

of the conspiracy, not only because he was then in Macedon, but that he had been appointed to that charge by Valens, and not by Theodosius, who scarcely knew him. He, therefore, privately sent letters to the senate of Constantinople. Being authorised by them to proceed as he deemed most conducive to the public good, he averted the danger with which the towns were menaced by the following measures. He sent for all the officers, and, before he disclosed to them his design, required them to take an oath of secrecy. Being informed of it, and instructed how to act, they reported among the Barbarians of each town, that the emperor intended to bestow on them considerable presents, both in money and land, in order to bind them in gratitude to himself and the Roman people. For this purpose they were ordered to assemble on a particular day in the principal cities. This intelligence was so gratifying to the Barbarians, that their fury considerably abated. Upon the appointed day they all attended at the places at which they were desired to meet. When they were arrived, the soldiers, on the signal being made, mounted upon the roofs of the houses in the respective market-places in which they were stationed, and cast at the Barbarians such numbers of darts and stones, that they killed every man. Thus were the eastern cities delivered from their apprehensions, and, by the prudence of the officers, the disasters of the east and of Thrace were terminated.

Meanwhile, the emperor Theodosius, residing in Thessalonica, was easy of access to all who wished to see him. Having commenced his reign in luxury and indolence, he threw the magistracy into disorder, and increased the number of his military officers. There had previously been but one general or master of the horse, and one of the foot, but he now distributed those offices to more than five persons. Each of these was allowed the same stipend which either of the two had before enjoyed. It was likewise oppressive to the soldiers to be exposed to the avarice of so many commanders; for each of them endeavoured to extort from the allowance of the soldiers as much as one of the former two. He likewise increased the number of subaltern officers to more than double the original number, nor could the soldiers obtain the smallest part of their allowance. All this was occasioned by the negligence and excessive avarice of the emperor. He it was who introduced so vast an expence at the imperial table, that to serve it with such an extensive variety of dishes, whole legions of cooks, butlers, and other attendants, were employed. The number of eunuchs in the service of the emperor was immense,

most of whom, and particularly those of handsome persons, disgraced at their pleasure any magistrate or officer. The whole government was, in effect, at their disposal; the emperor being guided by their pleasure, and changing his sentiments at their desire. As he squandered the public money without consideration, bestowing it on unworthy persons, he consequently impoverished himself. He therefore sold the government of provinces to any who would purchase them, without regard to the reputation or ability of the persons, esteeming him the best qualified who brought him the most gold or silver. Goldsmiths, bankers, and even the meanest professions, were therefore seen wearing the ensigns of magistracy, and selling the provinces to the best bidders.

A change so great and unfortunate having occurred in the state, the army became weak, and was soon annihilated. All the cities were likewise drained of money, partly by the excessive imposts and partly by the rapacity of the magistrates. For if any failed to appease their insatiable demands, they suborned villains to accuse them; thus acting as with the purpose of recovering what they had paid for their offices. The inhabitants of the towns lived in misery through their own poverty and the iniquity of the magistrates; their only resource being to intreat the gods to deliver them from such afflictions; for hitherto they were permitted to enter the temples, and to worship the gods in the manner of their country.

Theodosius, observing that the army was considerably diminished, permitted as many of the Barbarians beyond the Ister as were willing to enter his own army. Many of them were induced by his promises, and were embodied with the legions; conceiving that when more of them should be collected, they might attack the government, and without difficulty acquire possession of the sovereignty. The emperor, however, having reviewed these fugitives, who were very numerous, and already exceeded in number the other soldiers, reflected on the difficulty of restraining them, should they be inclined to infringe their promise of obedience. He therefore judged it most prudent to place some of them among the legions that were in Egypt, and to supply their place in his army with a detachment from thence. This being effected, the one party coming and the other going according to the command of the emperor, the Egyptians marched through the different towns with great order, and paid for what they received; but the conduct of the Barbarians was very turbulent, and they disposed of all in the various markets at their pleasure. When both met in Philadelphia, a city of Lydia, the Egyptians were attentive

to the orders of their officers, while the Barbarians, who exceeded them in number, were regardless of all commands. A tradesman in the market-place demanding money for goods that he had sold to a Barbarian, the Barbarian drew his sword and wounded him. Upon this the man cried out, and another was then wounded who ran to assist him. The Egyptians, who were grieved at the sight of so evil an action, mildly admonished the Barbarians to desist from actions so base and unjust, which were disgraceful to men who lived under the Roman laws. Their advice however had no weight with the Barbarians, who drew against them also, until at length the Egyptians yielded to resentment, and attacking them, killed more than two hundred, wounded some, and compelled many of them to take refuge in the sewers, where they died. When the Egyptians had thus rendered the Barbarians at Philadelphia more orderly, they continued their journey, and the Barbarians proceeded towards Egypt. They were commanded by Hormisdas, the son of the Hormisdas, who had attended the emperor Julian in the Persian war. When the Egyptians arrived in Macedon, and were united with the legions there, no order was observed in the camp, nor was any distinction made between a Roman and a Barbarian, but all were promiscuously mingled together, nor was even a muster-roll kept with the names of the soldiers. It was likewise permitted to the Barbarians to return to their own country, and to send others in lieu of themselves to serve in the legions, and when they pleased, again to serve under the Romans.

The Barbarians on learning the disordered state of the army, of which the fugitives informed them, and of the free access they had to it, thought this a convenient opportunity to make an attempt against the Romans, who conducted their affairs so negligently. Having therefore passed the river without difficulty, they penetrated as far as Macedon without opposition, since the fugitives suffered them to proceed unmolested. Perceiving that the emperor was advancing to meet them with all his forces, and being guided at midnight by a large fire which they conjectured to be near his person, and likewise understood to be so from the countrymen who deserted to them, they assaulted the emperor's tent. Being now joined by their countrymen, they were opposed by the Romans alone. These being comparatively a small number could only enable the emperor to escape, but were themselves nearly all slain, after having fought courageously and killed a great number of the Barbarians. Had the Barbarians followed up their advantage, and pursued those who fled with

the emperor, they would certainly have had them all immediately in their power. But being satisfied with what they had gained, and having made themselves masters of Macedon and Thessaly, which were without protection, they left the towns uninjured, in hopes of receiving a tribute from them.

The emperor, on learning that they had for that reason marched home, secured the castles, strengthened the towns with garrisons, and proceeded to Constantinople, having sent letters to the emperor Gratian to inform him of what had occurred, and that the danger was so extreme that it was necessary to send assistance without delay. After having dispatched couriers with this message, he did not attend to the sufferings of Macedon and Thessaly, but appointed persons to collect the tribute, whom he knew to be extremely severe in exacting it. Thus whatever had been spared by the humanity of the Barbarians was seized as tribute, not only their money being taken, but even the ornaments of the women, and their clothes, reducing them almost to nakedness to satisfy the demands for taxes. Every town was therefore filled with tears and complaints, all calling out for the Barbarians, and desiring their assistance.

Such was the state of Macedon and Thessaly, while at the same time the emperor Theodosius made his entrance into Constantinople with great pomp, as if in triumph for some important victory, without regarding the public calamities, but proportioning the magnitude of his luxury to that of the city.* Gratian, who was much disturbed by the intelligence, sent a sufficient force under the command of Baudo, accompanied by Arbogastes. Both of these were Franks, but strongly attached to the Romans, free from corruption or avarice, and prudent as well as brave soldiers. When they arrived with the army in Macedon and Thessaly, the Scythians who were there pillaging all before them, on perceiving the resolution of these commanders, immediately retired into Thrace, which they had previously plundered. Being in doubt how to act, they made use of the same stratagem as before, and endeavoured to delude Theodosius with the same device. They sent to him fugitives of the lowest rank to promise him the ut-

* Paul Diaconus, in his 12th Book, speaks of him totally otherwise, He observes, "Those vices with which he is aspersed, namely, that he was a drunkard, and very ambitious for triumph, he held in such abhorrence, that he made no wars, though he found some. He prohibited by law all lasciviousness, and forbade minstrels to be used at feasts." We must however excuse this in Zosimus, since with him it was equivalent to the greatest crimes, merely to be a Christian.

most fidelity and obedience, whom he believed and entertained. Lest his former experience should render him sensible of his own interest, these were followed by many more, whom he received in a similar manner, until, through the folly of the emperor, the fugitives had again gained great influence. His folly was daily augmented by his voluptuous course of life; for whatever contributes to the relaxation of morals, received in his reign such encouragement, that every person, who affected to imitate the emperor, placed all human happiness in such pursuits. He encouraged mimics, and dancers, and that dissolute and lascivious music, which was in use during his reign and subsequently, and all that could conduce to obscenity, to such a degree, that the empire was totally ruined by those who imitated that species of madness. Add to this, that the temples of the gods were every where violated, nor was it safe for any one to profess a belief that there are any gods, much less to look up to heaven and to adore them.

While Theodosius was thus occupied, the emperor Gratian sent Vitalianus to command the Illyrian legions, a person by no means calculated to raise them from their depressed condition. Meantime the Celtic nations were harrassed by two bands of Germans from beyond the Rhine, one of which was commanded by Fritigerne, the other by Allothus and Safraces. The emperor was therefore compelled to permit them, on condition of leaving the Celtic provinces, to cross the Ister and to enter Pannonia and the Upper Mœsia. His design and endeavour was to free himself from their continual incursions. They therefore passed the Ister, with the intention of proceeding through Pannonia into Epirus, and after crossing the river Achelous, to attack the cities of Greece. They first determined to supply themselves with a store of provisions, and to remove Athomaricus, the head of the royal family of Scythia, that none might be left in their rear to impede or prevent their enterprize. They accordingly attacked him, and easily drove him from the places where he lay. He therefore repaired with great expedition to Theodosius, who was then recovering from a disease which had nearly caused his death. Theodosius gave a kind reception both to him and to the Barbarians who followed him, even proceeding some distance from Constantinople to meet him. Nor did he afterwards treat him with less respect, but at his death, which happened shortly afterwards, interred him in a royal sepulchre, which was so magnificent, that the Barbarians were filled with amazement at its extreme splendour, and returned to their country without offering any further molestation to the Romans, so charmed were they with the

liberality and magnificence of the emperor. They who had followed the deceased chief likewise kept a continual guard on the bank of the river, to prevent any incursions being made against the Romans.

At the same time Theodosius had additional good fortune. He repulsed the Scyri and Carpodaces, who were mixed with the Huns, and so defeated them as to compel them to cross the Ister, and to return into their own country. The success of the emperor revived the courage of the soldiers, who now appeared to recover from their former calamities. The husbandmen had now the liberty of cultivating their lands, and of feeding their cattle with security. Thus did Theodosius appear to repair their losses. Meanwhile Promotus, who was commander of the forces in Thrace, encountered with Ædotheus, who had levied an immense army, not only among the nations upon the Ister, but among others situated in unknown countries at a great distance, which he was then leading across the river. Promotus here made such havoc among the troops, that the river was filled with dead bodies, and the number which fell on the shore was almost too great to be counted.

While the affairs of Thrace were thus situated, those of Gratian were in great perplexity. Having accepted the counsel of those courtiers who usually corrupt the manners of princes, he gave a reception to some fugitives called Alani, whom he not only introduced into his army, but honoured with valuable presents, and confided to them his most important secrets, esteeming his own soldiers of little value. This produced among his soldiers a violent hatred against him, which being gradually inflamed and augmented incited in them a disposition for innovation, and most particularly in that part of them which was in Britain, since they were the most resolute and vindictive. In this spirit they were encouraged by Maximus, a Spaniard, who had been the fellow-soldier of Theodosius in Britain. He was offended that Theodosius should be thought worthy of being made emperor, while he himself had no honourable employment. He therefore cherished the animosity of the soldiers towards the emperor. They were thus easily induced to revolt and to declare Maximus emperor. Having presented to him the purple robe and the diadem, they sailed to the mouth of the Rhine. As the German army, and all who were in that quarter approved of the election, Gratian prepared to contend against Maximus, with a considerable part of the army which still adhered to him. When the armies met, there were only slight skirmishes for five days; until Gratian,

perceiving that the Mauritanian cavalry first deserted from him and declared Maximus Augustus, and afterwards that the remainder of his troops by degrees espoused the cause of his antagonist, relinquished all hope, and fled with three hundred horse to the Alps. Finding those regions without defence, he proceeded towards Rhætia, Noricum, Pannonia, and the Upper Mœsia. When Maximus was informed of his route, he was not negligent of the opportunity, but detached Andragathius, commander of the cavalry, who was his faithful adherent, in pursuit of Gratian. This officer followed him with so great speed, that he overtook him when he was passing the bridge at Sigidunus, and put him to death. By which exploit he confirmed the authority of Maximus.

Upon this occasion it may not be improper to relate a circumstance which has some reference to the present part of my narration. Among the Romans, the persons who had the superintendance of sacred things were the *Pontifices*, whom we may term *Gephyraei*, if we translate the Latin word *Pontifices*, which signifies bridge-makers, into the Greek. The origin of that appellation was this : At a period before mankind were acquainted with the mode of worshipping by statues, some images of the gods were first made in Thessaly. As there were not then any temples (for the use of them was likewise then unknown), they fixed up those figures of the gods on a bridge over the river Peneus, and called those who sacrificed to the gods, *Gephyraei*, Priests of the Bridge, from the place where the images were first erected. Hence the Romans, deriving it from the Greeks, called their own priests *Pontifices*, and enacted a law, that kings, for the sake of dignity, should be considered of the number. The first of their kings who enjoyed this dignity was Numa Pompilius. After him it was conferred not only upon the kings but upon Octavianus and his successors in the Roman empire. Upon the elevation of any one to the imperial dignity, the pontifices brought him the priestly habit, and he was immediately styled, *Pontifex Maximus*, or chief priest. All former emperors, indeed, appeared gratified with the distinction, and willingly adopted the title. Even Constantine himself, when he was emperor, accepted it, although he was seduced from the path of rectitude in regard to sacred affairs, and had embraced the Christian faith. In like manner did all who succeeded him to Valentinian and Valens. But when the Pontifices, in the accustomed manner, brought the sacred robe to Gratian, he, considering it a garment unlawful for a Christian to use, rejected their offer. When the robe was restored to the

priests who brought it, their chief is said to have made this observation, If the emperor refuses to become Pontifex, we shall soon make one.

The reign of Gratian being thus terminated, Maximus, who now considered himself firmly fixed in the empire, sent an embassy to the emperor Theodosius, not to intreat pardon for his treatment of Gratian, but rather to increase his provocations. The person employed in this mission was the imperial chamberlain (for Maximus would not suffer an eunuch to preside in his court), a prudent person, with whom he had been familiarly acquainted from his infancy. The purport of his mission was to propose to Theodosius a treaty of amity, and of alliance, against all enemies who should make war on the Romans, and on refusal to declare against him open hostility. Upon this, Theodosius admitted Maximus to a share in the empire, and in the honour of his statues and his imperial title. Nevertheless, he was at the same time privately preparing for war, and endeavouring to deceive Maximus by every species of flattery and observance. He gave instructions to Cynegius, the prefect of his court, whom he had sent into Egypt in order to prohibit there all worship of the gods, and to shut up their temples, that he should shew the statue of Maximus to the Alexandrians, and erect it in some public place, declaring to the people, that he was associated to himself in the empire. In this Cynegius obeyed his commands, closing up the doors of the temples throughout the east, Egypt, and Alexandria, and prohibited all their ancient sacrifices and customary observances. As to the calamities which the Roman empire suffered from that period, a distinct account of the facts themselves will be the best demonstration.

About this time, a nation of Scythia made its appearance from beyond the Ister, who were never before known to the inhabitants of those countries. They are called, by the Barbarians in those parts, the Prothyngi. These being very numerous, furnished with arms of every description, and remarkably robust, easily overpowered the Barbarians of the interior, proceeded as far as the banks of the Ister, and demanded permission to cross that river. Promotus, the commander of the forces in that quarter, drew out his troops as far as he could extend them along the bank of the river, and hindered the passage of the Barbarians. While he was thus employed, he invented a stratagem to this effect. He called to him some of his own soldiers, who understood their language, and in whom he could confide in affairs of that nature, and sent them to agree with the Barbarians upon betraying

their own party. These men proposed to the Barbarians to deliver the whole army into their hands in consideration of a large reward. The Barbarians replied, that they were not able to give so much. However, to induce them to believe their promises, they adhered to their original proposals, and would not abate in any part of the reward. At length they agreed to the sum, which was in part to be paid immediately, and the remainder at the accomplishment of the treason. Having arranged the method of giving the signal, and the time for the execution of the project, they communicated to the commander each circumstance; that the Barbarians would commence the enterprize in the night, and would cross the river to attack the Roman army.

The Barbarians, therefore, having placed all their best troops on board a great number of small vessels, commanded them to cross over first, and to fall on the soldiers while they were asleep. Next to these, they sent those of an inferior description to support the former when they had commenced the attack; and after them the useless multitude of every age, who are ready to boast of victories which others have gained. Promotus having been previously informed of all their arrangements, was fully prepared against their designs. He therefore ranged his ships in a triple line close together along the side of the river, the length of twenty stadia. By this plan he not only prevented the enemy from crossing over, but sunk many of them in their vessels. The night being dark and without a moon, the Barbarians were unacquainted with the preparations which the Romans had made, and therefore embarked with great silence, supposing the Romans to be ignorant of their design. When the signal was made, the Romans sailed up to them in large and strong ships with firm oars, and sunk all that they met, among which not one man was saved by swimming, their arms being very heavy. The vessels which escaped from the Roman ships, upon approaching those which lay along shore, were so assaulted with whatever was at hand, that they and all on board were lost at the same time, nor were any of them able to pass this wall of Roman vessels.

This produced among them an immense slaughter, greater than had ever occurred in any former naval action. Thus the river was filled with dead bodies and with arms. As many of them as were able to swim to the bank were destroyed by those who were ranged along it. The engagement being ended, the soldiers began to plunder. They carried away all the women and children, and acquired possession of all the provisions. Promotus then sent for Theodosius, who was not far from thence, to witness

his brave exploit. When he beheld the number of prisoners, and the quantity of spoil, he gave the captives their liberty, and by bestowing gifts upon them, endeavoured to attach them to himself, supposing that they would be of service to him in a war against Maximus.

Another occurrence which happened at that period is worthy of being related. In the part of Scythia contiguous to Thrace is a town called Tomi, in which was a garrison commanded by Gerontius, a stout and valuable soldier. Before that town was placed a select corps of Barbarians, who excelled the rest of their countrymen in strength and courage. Although these men were favoured by the emperor with a larger allowance of corn and other provisions than any other of the soldiers; yet they did not repay these distinctions with good will, but with hatred to the governor of the town, and contempt of the Roman soldiers. Gerontius on discovering their design, which was to attack the town, and to confuse the government, consulted with his most prudent soldiers on the method of punishing those insolent Barbarians. Finding them fearful, and consequently backward in giving their assent, he took his arms, and issued with a few of his guards to engage the whole body of Barbarians. Having opened the gates, he marched out against them, while his soldiers were yet asleep, and shackled by fear as by a chain, or had mounted the wall to witness what should occur. Meantime the Barbarians laughed at the temerity of Gerontius, and thinking him desirous of death, sent against him men of extraordinary strength. Gerontius engaged with the first man whom he encountered, who immediately catching hold of his buckler resolutely opposed him. At length, one of the guards, who saw them closed, coming to his assistance, cut off the arm of the Barbarian, and caused him to fall from his horse. While the Barbarians stood in astonishment at his courage and audacity, Gerontius attacked others of the enemy. The soldiers upon the wall, witnessing the exploits of their commander, recollected that they were Romans, and sallying out, killed most of the Barbarians, who were astonished at so sudden an eruption. A few only of them escaped to an edifice, which was held in high veneration by the Christians, and esteemed an asylum or sanctuary.

Gerontius, having delivered this part of Scythia from all impending dangers, and from the Barbarians who had formed attempts against it, but were subdued by his remarkable valour and conduct, expected some remuneration from the emperor. On the contrary, Theodosius was offended, that the Barbarians, whom he

had so much honoured, were cut off; although they had been a great annoyance to the public repose. He therefore privately required Gerontius to be brought before him in custody, to plead in defence of his brave achievements for the advantage of the Romans. Upon this occasion, Gerontius charged the Barbarians with rebellion, and related the depredations and ravages they had committed among the inhabitants of that town. The emperor, however, continued regardless of all he said, and persisted in accusing him of having removed them, not for the public good, but in order to acquire the presents which the emperor had given them. Gerontius replied, that he had sent their property to the public treasury after their death. He had only taken from them some golden necklaces which the emperor had presented to them as ornaments. Notwithstanding this justification he had great difficulty in escaping the dangers that surrounded him, though he distributed all he possessed to the eunuchs, and paid a proportionable sum for his goodwill to the Romans.

While affairs thus hastened towards ruin under the reign of Theodosius, in whose time no virtuous action was thought commendable, but every species of luxury and licentiousness increased daily beyond all bounds, an insurrection arose among the inhabitants of the great city of Antioch in Syria, who were unable to support the continual addition of new taxes which the collectors invented. Having disgracfully thrown down the statues of the emperor and empress, they used expressions corresponding with their actions, which were mixed with humour and that species of raillery to which they accustom themselves. When the emperor, who was highly incensed at these actions, threatened to punish them according to their fault, the senate of the city, dreading his resentment, determined to send ambassadors to excuse the actions of the populace. They made choice of the philosopher Libanius, whose commendations are contained in the writings which he has left, and of Hilarius, a man of a noble family and of great learning. The former of these made an oration before the emperor and the senate concerning the insurrection. He succeeded in appeasing the anger which the emperor had felt against the Antiochians. The emperor, being now perfectly reconciled to that city, enjoined him to make a second oration on that subject; and appointed Hilarius, who was renowned for his virtues, governor of Palestine.

Affairs being thus situated in the east, in Thrace, and in Illyricum, Maximus, who deemed his appointments inferior to his merits, being only governor of the countries formerly under Gratian, pro-

jected how to depose the young Valentinian from the empire, if possible totally, but should he fail in the whole, to secure at least some part. Full of this resolution, he prepared to cross the Alps into Italy. Perceiving, however, that it would be necessary for him to pass through narrow defiles, and over craggy and pathless mountains, and beyond these, through morasses and fens which admit of no passengers, except those who travel very slowly, much less of so considerable an army, he deferred the enterprize until he could form better measures. Valentinian, however, sending ambassadors from Aquileia to desire a continuance of peace, Maximus complied with his request, and pretended to be gratified with the proposal. Valentinian, therefore, sent Domninus to treat, who, though by birth a Syrian, was a steady friend to the emperor. As he was next to the emperor in authority, he seemed likewise to excel all others in fidelity and experience, and whatever private measures he wished to adopt, he imparted to this person alone. When Domninus arrived with Maximus, and had informed him of the motive of the embassy, he was received with the utmost kindness and respect. Maximus conferred on him so great honours, and so many presents, that Domninus supposed that Valentinian would never again have so good a friend. To such a degree did Maximus succeed in deluding Domninus, that he sent along with him part of his own army to the assistance of the emperor against the Barbarians, who dreadfully oppressed the Pannonians under his dominion. Domninus departed from him highly gratified not only by the many presents he had received, but at being accompanied by those were sent with him. He therefore imprudently by crossing the Alps rendered the passage more practicable to Maximus. That he would do this had been foreseen by Maximus, who had therefore made every preparation, and followed him with all his forces. He moreover detached guards before him, to prevent the passage of any that way, who might give intelligence to the attendants of Domninus, that Maximus was penetrating into Italy. This precaution had its full success, it being impossible for any person to pass through the narrow defile of the mountains without being perceived. Upon learning that Domninus and his retinue had passed the defiles of the Alps, and the marshes beyond them, which are extremely difficult for the march of an army, not fearing to meet any enemy in those devious places, he immediately entered Italy without resistance, and marched to Aquileia.

This so much surprised Valentinian, and rendered his situation so desperate, that his courtiers were alarmed lest he should be

taken by Maximus and put to death. He, therefore, immediately embarked, and sailed to Thessalonica with his mother Justina, who, as I before mentioned, had been the wife of Magnentius, but after his decease was taken in marriage by the emperor Valentinian on account of her extraordinary beauty. She carried along with her her daughter Galla. After having passed many seas, and arriving at Thessalonica, they sent messengers to the emperor Theodosius, intreating him now at least to revenge the injuries committed against the family of Valentinian. He was astonished at hearing of this, and began to forget his extravagance, and to lay some restraint on his wild inclination for pleasure. Having held a consultation, it was determined that he with part of the senate should proceed to Thessalonica. This journey they performed, and there again consulted what measures to pursue. It was at length agreed, with the unanimous assent of the assembly, that Maximus should receive the punishment due to his offences. Their opinion was, that such a person was undeserving of life, who had not only murdered Gratian and usurped his dominions, but after having succeeded in his usurpation, had extended his progress, and also deprived the brother of Gratian of the territory which had been allotted to him. Though Theodosius was highly incensed at these actions, yet his natural effeminacy, and the negligent habits of his former life, rendered him unwilling to undertake a war. He therefore pointed out to them the inconveniences which unavoidably arise from civil discord, and that the commonwealth must of necessity receive fatal wounds from both parties. He therefore stated that it would be better first to send an embassy, and that if Maximus would surrender the empire to Valentinian and remain at peace, the empire should be divided between them all as before, but if he should yield to his ambition, they would immediately commence a war against him. No person in the senate dared to speak in opposition to this, because it appeared to be calculated for the public advantage.

Meanwhile Justina, who was a person of great experience, and knew the best manner of conducting her affairs, understanding that Theodosius was naturally inclined to love, introduced into his presence her daughter Galla, who was extremely beautiful. Then embracing the knees of the emperor, she supplicated with great humility that he would neither suffer the death of Gratian to pass unrevenged, to whom he owed the empire, nor them to remain neglected and destitute of every hope. As she spoke these words she shewed him her daughter, who was in tears, lamenting her misfortunes. When Theodosius had listened to this suppli-

cation, and had observed the beauty of Galla, his eyes discovered the wound she had inflicted on his heart. Yet he deferred that affair to a future occasion, and in the mean time gave them favourable hopes. Becoming daily more inflamed with love for Galla, he requested Justina to grant him her daughter, since his former wife Placilla was dead. To this demand she replied, that she would by no means accede to it, unless he would make war on Maximus to avenge the death of Gratian. Resolving, therefore, to obtain her consent, he exerted himself in preparing for war. Being thus incited by his passion for Galla, he not only conciliated the soldiers by augmenting their stipend, but was roused from his negligence in other affairs, resolving, since he was compelled by necessity, to provide for affairs that would require attention after his departure. For this purpose, as Cynegius, the prefect of the court, had died on his journey homeward from Egypt, he considered on a person proper to succeed in that office. After having examined the character of many persons, he at length found one suitable, named Tatianus, for whom he sent to Aquileia. Tatianus had held other offices under Valens, and was in every respect a worthy person. Theodosius, therefore, declared him prefect of the court, sending him the ensigns of magistracy, and made his son Proculus prætor of the city. In this he truly acted with wisdom, in committing the highest offices to such worthy men, who knew how to make the most judicious dispositions for the advantage of the subjects in the absence of the emperor. He also provided for the army, giving the command of the horse to Promotus, and that of the foot to Timasius. When all things were prepared for his journey, he was informed that the Barbarians, who were mixed with the Roman legions, had been solicited by Maximus with the promise of great rewards if they would betray the army. Upon perceiving that the design was discovered, they fled to the fens and marshes of Macedon, where they concealed themselves in the woods. Being pursued and searched for with great diligence, most of them were slain. The emperor, being delivered from this alarm, marched with great resolution with his whole army against Maximus. He, however, first placed Justina and her daughter on board a ship, committing them to the care of persons who were to convey them in safety to Rome; believing that the Romans would receive them with great pleasure, because they were disaffected towards Maximus. He intended to lead his army through the Upper Pannonia and over the Appennine mountains to Aquileia, in order to surprise the enemy before they were prepared.

While Theodosius was on his march, Maximus, having learnt that the mother of Valentinian and her children were to cross the Ionian sea, collected a number of swift-sailing ships, which he sent under the command of Andragathius to cruize for them. But Andragathius, though he sailed about in every direction, failed of his purpose; for they had already crossed the Ionian strait. Collecting, therefore, a competent navy, he sailed along all the adjacent coasts, in expectation that Theodosius would attack him with his navy.

While Andragathius was thus employed, Theodosius, having passed through Pannonia and the defiles of the Appennines, attacked unawares the forces of Maximus before they were prepared for him. A part of his army, having pursued them with the utmost speed, forced their way through the gates of Aquileia, the guards being too few to resist them. Maximus was torn from his imperial throne while in the act of distributing money to his soldiers, and being stripped of his imperial robes, was brought to Theodosius, who, having in reproach enumerated some of his crimes against the commonwealth, delivered him to the common executioner to receive due punishment.

Such was the end of Maximus and of his usurpation. Having fraudulently overcome Valentinian, he imagined that he should with ease subdue the whole Roman empire. Theodosius, having heard, that when Maximus came from beyond the Alps he left his son Victor, whom he had dignified with the title of Cæsar, he immediately sent for his general, named Arbogastes, who deprived the youth both of his dignity and life. When this intelligence reached Andragathius, who was then cruizing in the Ionian sea, it excited in him so great an apprehension of the innumerable dangers to which he was exposed, that he did not wait the arrival of his enemies, but became his own executioner. He threw himself into the sea, preferring rather to trust to the waves than to men who were his greatest enemies.

Theodosius then delivered to Valentinian as much of the empire as his father had possessed; in which he only acted as he was enjoined by his duty to those who so merited his kindness. Having afterwards embodied the choicest soldiers of Maximus with his own, he sent Valentinian into Italy, Celtica, and other countries, to arrange the affairs of his share of the empire. His mother accompanied him, to supply, as much as was possible in a woman, the prudence which his youth required.

Returning himself to Thessalonica, he found the affairs of Macedon in the utmost confusion. The Barbarians, who had secreted

themselves in the fens and woods near the lakes, and had escaped from the former incursion of the Romans, having found an opportunity while Theodosius was occupied in the civil war, pillaged Macedon and Thessaly without opposition. Upon hearing of the late victory, and that the emperor was upon his return, they again concealed themselves in the marshes, and issuing privately from thence at break of day, carried off all that they found, and returned to their usual abode. To so great degree did they extend these ravages, that the emperor at length thought them to be rather dæmons than men. Being therefore in doubt, he communicated his design to no person. He took with him five horsemen, each of whom he ordered to lead three or four horses, that when any horse became weary, the rider might have another to mount, and the horses might by that means be enabled to endure the fatigue of the enterprize which he intended. He gave no cause to suppose that he was the emperor, but travelled through the country as a private individual. When he or his retinue was in want of food, they procured it from the country people. He arrived at length at a small inn, in which resided an old woman, whom he requested to admit him into her house, and to give him some wine. She complied with both these demands. While she was entertaining him very hospitably with wine and the provisions which were then accidentally in the house, the night approached, and he therefore desired her to allow him to sleep there, to which she likewise consented. In the room, where the emperor lay, he perceived a man who remained perfectly silent, and appeared to have no desire to be known. The emperor, being surprised at this appearance, called the old woman, and demanded of her who the man was and from whence he came. Her reply was, that she could neither give him that information, nor wherefore he came there; all she knew being, that since the emperor Theodosius and his army had returned home, he had been her guest and had paid her every day for his entertainment; that he had gone out every morning, walked where he pleased, and returned at night as from some hard labour, and after having eaten something had lain down in the position in which he now saw him. The emperor, having heard the story of the woman, judged it convenient to make a further inquiry into the affair; and taking hold of the man, commanded him to declare who he was. The man not returning any answer, he beat him in order to force him to confess. But the man continuing unmoved by these blows, he commanded the horsemen to prick him with their swords, and told him that he was the emperor Theodosius. He then con-

fessed that he was a spy in the service of the Barbarians who were concealed in the fens, and informed him where they were; and in what places he could most conveniently attack them. The emperor immediately cut off his head.

After this joining his army, which was encamped at no great distance, he brought his forces to the place which he knew to be the residence of the Barbarians. He attacked and slew them without distinction of age, dragging some out of the fens in which they were concealed, and killing others in the water, thus causing a great slaughter of the Barbarians. Timasius, the commander, who admired the valour of the emperor, now desired him to permit the soldiers, who by this time were exhausted with hunger and unable to continue to toil in the marshes, to refresh themselves. To this the emperor assented, and the trumpet sounded a retreat; upon which the soldiers ceased pursuing the Barbarians. When they had abundantly satisfied themselves with eating and drinking, they were so overpowered with wine and fatigue that they fell asleep. This being observed by the remaining Barbarians, they seized their arms, and falling on the soldiers, who were already subdued by sleep and intoxication, they pierced them with their spears and swords, and other instruments of death. The emperor himself with his whole army were in the most imminent danger of death, had not some, who had not yet dined, hastened to the tent of the emperor, and informed him of the circumstance. The emperor and those who were with him, being considerably alarmed, resolved to avoid the impending danger by a precipitate flight. But being met, as they were escaping, by Promotus, who had been sent for by the emperor, he desired the emperor to consult his own safety and that of those who were with him; as he himself would attend to the Barbarians, and punish them as for their obstinacy they deserved. He had no sooner said this, than he hastened to the Barbarians, whom he found still among the sleeping soldiers, and slew so many of them, that scarcely any of them escaped with safety into the marshes.

Such were the most remarkable incidents which happened to the emperor Theodosius after his return from the defeat of Maximus. When he again arrived at Constantinople, he was elated with pride for his victory over Maximus, but was so much depressed at what his army and himself had suffered from the Barbarians in the marshes, that he resolved to bid adieu for the future to all wars. Committing, therefore, the management of those affairs to Promotus, he began to resign himself to his former mode of life, and delighted in splendid banquets, theatrical

spectacles, horse-races, and voluptuousness. These opposite features of his character have incited in me a degree of wonder. For though naturally addicted to indolence and other vices which I have before mentioned, and, therefore, when unmolested by any formidable accident, giving way to his nature, yet when roused by any circumstance, by which his affairs were threatened with danger, he laid aside his languor, and relinquishing his pleasures, prepared himself for manly, vigorous, and difficult enterprises. And notwithstanding he was so resolute as by experience we are informed, yet, when free from anxiety, he would again become the slave of his natural vices of indolence and luxury.

Of the magistrates whom he had appointed, Rufinus was considered the chief, who was by birth a Celtic Gaul, and commanded the court guards. Upon him the emperor reposed the entire confidence of all his affairs, and held no other person in great estimation. This gave offence to Timasius and Promotus, who, after having subjected themselves to so many dangers for the public good, were placed only in the second rank of favourites. And Rufinus was by this rendered so haughty and assuming, that in a public assembly he uttered some very strong expressions against Promotus. Promotus, unable to endure these, struck Rufinus in the face with great violence and wounded him. On this Rufinus immediately repaired to the emperor, and shewing him his face, excited him to such rage, that he declared if their envy against Rufinus should not diminish, they should very shortly see him emperor. Rufinus, who for other reasons was an enemy to many other persons, through his excessive ambition of being superior to all, on hearing this, persuaded the emperor to send Promotus from the court to some place where he might exercise the soldiers. Having obtained his desire, he employed some Barbarians to wait in ambuscade as he was entering Thrace. These, as they were commanded, attacked him by surprize, and killed him. He was a man superior to the desire of wealth, and had behaved with sincerity both toward the commonwealth and the emperors; but was justly rewarded for his folly in serving those who conducted the public affairs with so much negligence and impiety.

When this action was rumoured abroad, and had become the theme of general conversation, every moderate and sober-minded person was displeased at such enormities; yet Rufinus, at the same time, as if in reward for some glorious deed, was made consul. Charges, without any reasonable foundation, were then alledged against Tatianus and his son Proculus, who had given

no other offence to Rufinus, than that of having discharged without bribery, and as much as was possible according to their duty, their offices of prefect, the one of the court, and the other of the city. To effect what was designed against them, Tatianus, being first deprived of his office, was brought to trial, and Rufinus was appointed prefect of the imperial court. Although there were apparently other persons commissioned to sit as judges in this process besides Rufinus, yet he alone had authority to pronounce sentence. When Proculus discovered the plot, he effected his escape. Upon this Rufinus, who thought him an active person, and feared lest he should invent some mode of giving him uneasiness, went to his father Tatianus, and by deceitful oaths induced him to believe all that he said. He even persuaded the emperor to give both the father and son the most favourable hopes; until he had thus deluded Tatianus from a well-grounded suspicion into vain thoughts of security, and induced him by letters to recall his son. But as soon as Proculus arrived, he was seized and thrown into prison. Tatianus being sent to reside in his own country, they sat several times in judgment on Proculus, until at length the judges, as they had agreed with Rufinus, commanded him to be carried into the suburbs, called Sycæ, and there to suffer death. The emperor, on hearing this, sent to recall the sword from his throat; but the messenger of Rufinus proceeded so slowly, that before he arrived at the place, the head of Proculus was severed from his body.

During these occurrences, intelligence was brought that the emperor Valentinian was no more, and that his death happened in this manner: Arbogastes, a Frank, who was appointed by the emperor Gratian lieutenant to Baudo, at the death of Baudo, confiding in his own ability, assumed the command without the emperor's permission. Being thought proper for the station by all the soldiers under him, both for his valour and experience in military affairs, and for his disregard of riches, he attained great influence. He thus became so elevated, that he would speak without reserve to the emperor, and would blame any measure which he thought improper. This gave such umbrage to Valentinian, that he opposed him on several occasions, and would have done him injury had he known how to effect it. At length Valentinian, no longer able to submit to his correction, when Arbogastes was approaching him as he sat on the imperial throne, looked sternly upon him, and presented him with a writing, by which he dismissed him from his command. Arbogastes, having read it, replied, "You neither gave me the command, nor can

deprive me of it;" and having said this, tore the writing to pieces, threw it down, and retired. From that period their hatred was no longer kept to themselves, but appeared in public. Valentinian sent frequent letters to the emperor Theodosius, acquainting him with the arrogant behaviour of Arbogastes towards the majesty of an emperor, and requesting him speedily to send assistance, or that he should suddenly make him a visit. Meantime Arbogastes, hesitating how to proceed, at length formed the following resolution:

There was in the court a person named Eugenius, a man of learning, who was a professor and teacher of rhetoric. He had been recommended to the notice of Arbogastes by Rictomeris as a person of a kind and obliging disposition, with a desire that he would make him his familiar friend, being one who would be serviceable to him in any circumstances where the assistance of a real friend would be needful. When Rictomeris was departed to the emperor Theodosius, by daily conversation Eugenius became the sincere friend of Arbogastes, who had no secret which he did not confide to him. Recollecting Eugenius, therefore, at this juncture, who by his extraordinary learning and the gravity of his conversation seemed well adapted for the management of an empire, he communicated to him his designs. But finding him not pleased with the proposals, he attempted to prevail on him by all the arts he could use, and entreated him not to reject what fortune so favourably offered. Having at length persuaded him, he deemed it advisable in the first place to remove Valentinian, and thus to deliver the sole authority to Eugenius. With this view he proceeded to Vienna, a town in Gaul, where the emperor resided; and as he was amusing himself near the town in some sports with the soldiers, apprehending no danger, Arbogastes gave him a mortal wound. To this audacious action the soldiers quietly submitted, not only because he was so brave and warlike a person, but because they were attached to him through his contempt of riches. As soon as he had performed this action, he declared Eugenius emperor, and infused into them the most favourable hopes that he would prove an excellent ruler, since he possessed such extraordinary qualifications.

When these events were related to Theodosius, his wife Galla filled the whole court with confusion by her lamentations for the death of her brother. The emperor likewise was overcome by grief and anxiety, having not only lost his associate in the empire, who was a young man and so nearly related to him, but the empire having fallen into the hands of men disaffected to himself, and

likewise invincible ; Arbogastes being brave and skilful, and Eugenius learned and virtuous. Although he made these reflections and frequently revolved them in his mind, yet he resolved at once as it were to throw the die for all that he possessed, and therefore made every preparation for war. In pursuance of his design he intended to make Rictomeris commander of the cavalry, having experienced his courage in many wars, and to appoint other officers over the legions. But Rictomeris dying of disease he was compelled to make a different choice. While the emperor was deliberating on this, an embassy arrived from Eugenius, to learn from the emperor Theodosius whether he would acknowledge the title of Eugenius, or declare his election void. The person sent on this embassy was Rufinus, an Athenian, who neither brought letters from Arbogastes, nor made any mention of him. While Theodosius deferred the time in order to consult on the answer to this mission, another occurrence intervened. When Theodosius was first made emperor, he admitted to his friendship and alliance some Barbarians, whom he attached both with promises and large presents, nor did he fail by all civilities to endeavour to acquire the regard of the officers of each nation, but admitted them even to his own table. Amongst these arose a debate, in which two different opinions were maintained. Some of them declared, that it was better to break the oaths they had taken when they entered into the service of the Romans ; while others on the contrary maintained, that they ought not on any consideration to act in opposition to their own agreements. The person who wished to trample on his engagements, and persuaded his countrymen to the same, was Priulfus ; and on the other side Fraustius maintained that they ought to observe what they had sworn. A considerable time elapsed before it was known that such a controversy existed among them, until on one occasion when they were at the emperor's table, and had drunk more than usual, they quarrelled with each other, and declared their sentiments. The emperor, therefore, when he had discovered the opinion of each individual, put an end to the entertainment. As they left the palace, they became so warm, that Fraustius, unable any longer to contain his rage, drew his sword, and killed Priulfus. As his soldiers would have fallen upon Fraustius, the guards of the emperor interposed, and prevented the tumult from proceeding farther ; although when the emperor heard of it, he was regardless of what had been done, and suffered them to kill each other as they pleased. In the mean time, having deluded the ambassadors with presents and fair words, he sent them home, and as

soon as they were departed, continued his preparations for war. Conceiving the principal object, as it really is, to be the choice of commanders, he gave the command of the Roman army to Timasius, and next to him to Stilico, who had married Serena, the niece of Theodosius. The Barbarian allies he placed under the conduct of Gaines and Saulus, with whom Bacurius was likewise joined in commission, who was of Armenian extraction, a man expert in military affairs, and devoid of evil inclinations. Having thus made choice of his principal officers, he was hastening to march, when his wife Galla was delivered of an infant, but was no sooner eased of her burden than deprived of life. The emperor (having mourned for her a whole day, according to the rule of Homer), proceeded with his army to the war, leaving behind him his son Arcadius, who had some time previously been made emperor. This prince being young, his father, in order to amend the defects of his nonage, left with him Rufinus, who was prefect of the court, and acted as he pleased, even as much as the power of sovereignty enabled the emperor himself to do. Having done this, he took with him his younger son Honorius, quickly passed through the intermediate countries, and having exceeded his expectations in crossing the Alps, arrived where the enemy was stationed; Eugenius being astonished at seeing him there whom he so little expected. But as he was arrived there, and consequently was under the necessity of engaging, he judged it most prudent to place the Barbarian troops in front, and to expose them first. He ordered Gaines with the troops under his command to make the first attack, and the other commanders of Barbarian soldiers to follow him, either cavalry, horse archers, or infantry. Eugenius then drew out his forces. When the two armies were engaged, so great an eclipse of the sun happened, that for more than half the time of the action it appeared rather to be night than day. As they fought therefore a kind of nocturnal battle, so great a slaughter was made, that in the same day the greater part of the allies of Theodosius were slain, with their commander Bacurius, who fought very courageously at their head, while the other commanders escaped very narrowly with the remainder. When night came on and the armies had rallied, Eugenius was so elated with his victory, that he distributed money among those who had behaved with the greatest gallantry in the battle, and gave them time to refresh themselves, as if after such a defeat there was no probability of another engagement. As they were thus solacing themselves, the emperor Theodosius about break of day fell suddenly on them with his whole forces, while they were still reclined

on the ground, and killed them before they knew of the approach of an enemy. He then proceeded to the tent of Eugenius, where he attacked those who were around him, killing many of them, and taking some of them in their flight, among whom was Eugenius. When they had got him in their power, they cut off his head, and carried it on a long spear around the camp, in order to shew those who still adhered to him, that it was now their interest to be reconciled to the emperor, inasmuch as the usurper was removed. All who had survived the engagement immediately came over to the emperor, hailing him with the appellation of Augustus, and entreating him to pardon their offences; to which the emperor readily consented. Arbogastes, who had no inclination to make experiment of the emperor's clemency, took refuge in the most craggy mountains. Perceiving there that a general search was making for him, he stabbed himself, preferring a voluntary death to being taken by the enemy.

The emperor Theodosius after these successes proceeded to Rome, where he declared his son Honorius emperor, and appointing Stilico to the command of his forces there, left him as guardian to his son. Before his departure, he convened the senate, who firmly adhered to the ancient rites and customs of their country, and could not be induced to join with those who were inclined to contempt for the gods. In an oration he exhorted them to relinquish their former errors, as he termed them, and to embrace the Christian faith, which promises absolution from all sins and impieties. But not a single individual of them would be persuaded to this, nor recede from the ancient ceremonies, which had been handed down to them from the building of their city, and prefer to them an irrational assent; having, as they said, lived in the observance of them almost twelve hundred years, in the whole space of which their city had never been conquered, and, therefore, should they change them for others, they could not foresee what might ensue. Theodosius, therefore, told them, that the treasury was too much exhausted by the expence of sacred rites and sacrifices, and that he should, therefore, abolish them, since he neither thought them commendable, nor could the exigencies of the army spare so much money. The senate in reply observed, that the sacrifices were not duly performed, unless the charges were defrayed from the public funds. Yet thus the laws for the performance of sacred rites and sacrifices were repealed and abolished, besides other institutions and ceremonies, which had been received from their ancestors. By these means, the Roman empire, having been

devastated by degrees, is become the habitation of Barbarians, or rather having lost all its inhabitants, is reduced to such a form, that no person can distinguish where its cities formerly stood. That affairs were thus brought into so melancholy a state will be evident from a particular narrative of them. The emperor Theodosius, having consigned Italy, Spain, Celtica, and Libya to his son Honorius, died of a disease on his journey towards Constantinople. His body was embalmed, and deposited in the imperial sepulchres of that city.

FIFTH BOOK.

THE whole empire being vested in Arcadius and Honorius, they indeed appeared by their title to possess the sovereign authority, although the universal administration of affairs was under Rufinus in the east, and under Stilico in the west. By these all causes were determined, at their own pleasure; for whoever bribed plentifully, or by any other means of friendship or consanguinity could make the judge his advocate, was sure to succeed in the process. From hence it happened that most of those great estates, which cause the possessors to be generally esteemed fortunate, devolved to these two; since some endeavoured by gifts to avoid false accusations, and others relinquished all their possessions to obtain an office, or in any other manner to purchase the ruin of particular cities. While iniquity of every kind presided, therefore, in the respective cities, the money from all quarters flowed into the coffers of Rufinus and Stilico; while on the reverse, poverty preyed on the habitations of those who had formerly been rich. Nor were the emperors acquainted with any thing that was done, but thought all that Rufinus and Stilico commanded was done by virtue of some unwritten law. After they had amassed immense wealth, Rufinus began to concert the means of becoming emperor, by making his own daughter, who was now marriageable, the wife of the emperor; for by that he conceived he should possess a plausible argument in favour of his pretensions to government. With this intent he privately intimated the affair by means of some of the emperor's attendants, supposing that no one perceived his aim, although the report of it was circulated through the whole city. For all persons conjectured his intention by his pride and arrogance, which increased so much every day, that the general hatred against him was augmented. Notwithstanding this, as if he proposed to dis-

guise small faults with greater enormities, he had the audacity to be guilty of another atrocity.

Florentius, who, when the great Julian was Cæsar, had been prefect of the court in the countries beyond the Alps, had a son named Lucianus, who had used the patronage of Rufinus, and had given him the best part of his estate. For this reason Rufinus professed on every occasion great kindness for the young man, and was continually speaking in his commendation to the emperor Arcadius, who made him count of the east, a dignity which authorizes every one on whom it is conferred to superintend the conduct of all the prefects of provinces through the east, and to correct whatever is improperly done. Lucianus, exhibiting toward those under his authority all the virtue that becomes a governor, was celebrated for his justice, temperance, and all other endowments which adorn a worthy magistrate; neither having respect of persons, or any other thoughts than such as were suggested to him by the laws. From this cause, when Eucherius, the emperor's uncle, desired him to perform an action not proper for him to comply with, he repulsed him, and by that exasperated him to such a degree, that he calumniated him to the emperor. The emperor observing that Rufinus was the occasion of it, by having conferred so much power to such a person; Rufinus, as if in resentment for the blame laid to his charge by the emperor, without communicating his design to any person, proceeded with a very small retinue to Antioch. Having entered that city at midnight, he seized on Lucianus, and brought him to trial without any accusation. He afterwards commanded him to be beaten on the neck with leaden balls until he expired. Rufinus then caused him to be carried in a litter, closely covered, to cause the people to suppose that he was not yet dead, and that he should receive some act of humanity. The city was so much disgusted by this unusual manner of proceeding, that he was compelled to conciliate the people by erecting a portico, which exceeds in elegance every structure in the city. When he had effected this, he returned to Constantinople, where he exerted himself in order to procure an affinity with the emperor. But fortune ordered the affair in a different manner, and the expectation of Rufinus was frustrated by these means. Promotus had two sons, who while Theodosius was living were brought up with his children. One of these had in his house a young lady of remarkable beauty, whom the emperor was advised by Eutropius, one of his eunuchs, to make his wife, with great commendations of her beauty. Perceiving that the emperor listened to what he said with some

satisfaction, he shewed him her picture, by which he inflamed Arcadius with so violent a passion for the lady, that he at length persuaded him to a resolution to marry her, while Rufinus in the mean time was ignorant of the circumstance, and expected that his own daughter would shortly be empress, and that he himself should be an associate in the empire. The eunuch, as soon as he perceived that his design was effected, commanded the people to dance with garlands in their hands, as they were accustomed to do on the wedding-day of an emperor. Having procured from the palace an imperial robe and other attire proper for an empress, which he gave to the servants of the emperor to carry, he proceeded through the city attended by the populace. They all supposed that those ornaments were to be presented to the daughter of Rufinus, and ran along with those that carried them, yet on arriving at the house of Promotus, they entered it with the presents, and delivered them to the young lady, who resided there with the son of Promotus. It thus became manifest who was chosen to become the emperor's wife. The hopes of Rufinus being thus rendered abortive, on seeing another woman made empress, he employed himself in inventing a method to remove Eutropius.

Thus were affairs situated in that part of the empire which was under the government of Arcadius, while Stilico, who was governor of the western empire, gave his daughter by Serena in marriage to the emperor Honorius. Serena was the daughter of Honorius, brother to Theodosius, the father of the two emperors. Stilico, by this alliance with the emperor, strengthened his authority, having likewise almost the whole Roman army under his command. For Theodosius having died in Italy after having cut off Eugenius, Stilico was commander of the whole army, out of which he selected the strongest and most courageous soldiers, whom he retained with himself, sending the most feeble part and the refuse of it into the east. After having done this, being much incensed against Rufinus, who desired to be invested in the east with power to balance his in the west, he resolved to go to Arcadius, wishing to obtain the disposal of all his affairs likewise at his own will and pleasure. He asserted, that when Theodosius was on his death-bed, he gave him a special charge to take care of the affairs of both emperors. When Rufinus understood this, he endeavoured by all the art in his power to prevent the expedition of Stilico into the east, and likewise to disperse and weaken the military force of Arcadius. Indeed, while he was projecting these schemes, he found men for his purpose more

wicked than he desired, by whose aid he occasioned great calamities to the Romans. In what manner I am about to relate.

Musonius, a Greek, had three sons, who were named Musonius, Antiochus, and Axiochus. Of these Musonius and Axiochus endeavoured to excel their father, both in learning and integrity. But Antiochus adopted a contrary course, accustoming himself to nothing but wickedness. Rufinus, finding him adapted to his purpose, made him proconsul of Greece, because he wished that the Barbarians, when they made inroads, should find but little trouble in laying it waste, and committed the garrison at Thermopylæ to the care of Gerontius, who would be serviceable in all his designs against the commonwealth. When Rufinus had concerted these infamous devices, he discovered that Alaric became seditious and disobedient to the laws, for he was displeased that he was not entrusted with the command of some other military forces besides the Barbarians, which Theodosius had allotted to him when he assisted in the deposition of the usurper Eugenius. Rufinus, therefore, privately communicated with him, prompting him to lead forth his Barbarians, and auxiliaries of any other nation, as he might with ease render himself master of the whole country. Alaric on this marched out of Thrace into Macedon and Thessaly, committing the greatest devastations on his way. Upon approaching Thermopylæ, he privately sent messengers to Antiochus the proconsul, and to Gerontius the governor of the garrison at Thermopylæ, to inform them of his approach. This news was no sooner communicated to Gerontius than he and the garrison retired and left the Barbarians a free passage into Greece. Upon arriving there, they immediately began to pillage the country and to sack all the towns, killing all the men, both young and old, and carrying off the women and children, together with the money. In this incursion, all Bœotia, and whatever countries of Greece the Barbarians passed through after their entrance at Thermopylæ, were so ravaged, that the traces are visible to the present day. Thebes only was excepted, being preserved partly by its own strength, and partly by the impatience of Alaric to proceed to Athens, which prevented him from besieging this city. The Thebans having thus escaped, he advanced to Athens, expecting to take that city with ease, since by reason of its magnitude it could not easily be defended; nor being contiguous to the Pyræus could it hold out long before it would be compelled to surrender.

Such was the hope of Alaric. But the antiquity of the city, in the midst of these impious designs, was able to call to its aid

the presiding deities by which it was preserved. It is, therefore, worthy of the pains to describe the cause to which the city owed its preservation; it being divine and supernatural, and calculated to excite devotion in all who hear it. When Alaric advanced with all his forces against the city, he saw Minerva, its tutelary goddess, walking along the wall, in the same form in which she is represented among the statues of the gods, which is in armour ready to attack those who oppose her. Before the walls he saw Achilles standing in an heroic posture, such as that in which Homer represents him engaging the Trojans so furiously in revenge for the death of Patroclus. Alaric, being struck with awe by this sight, desisted from his attempt on the city, and sent heralds with proposals for peace. These being accepted, and oaths mutually exchanged, Alaric entered Athens with a small number of troops. He was there entertained with all possible civility, and treated with great hospitality; after which he received some presents, and departed, leaving the city and all Attica uninjured. Thus Athens, which was the only place that was preserved from the earthquake which happened under the reign of Valens, and shook the whole of Greece, as I mentioned in the preceding book, escaped also from this extreme danger.

Alaric, therefore, through the dread of the apparitions he had seen, left all Attica uninjured, and proceeded to Megaris, which he took at the first attempt. From hence, meeting with no resistance, he proceeded towards the Peloponnesus. Gerontius thus allowed him to pass over the isthmus, beyond which all the towns, being unfortified and confiding in the security which they derived from the isthmus, were capable of being taken without the trouble of fighting. For this reason Corinth was first assaulted and immediately taken, with the small towns in its neighbourhood, and afterwards Argos, with all the places between that and Lacedæmon. Even Sparta shared in the common captivity of Greece, being no longer fortified with warlike defenders, but through the avarice of the Romans exposed to treacherous magistrates, who readily assented to the corrupt inclinations of their governor in all that was conducive to public ruin.

Rufinus, on learning the calamities which Greece had sustained, was still more anxious to be emperor; for now that the commonwealth was in confusion, there appeared to him no obstacle to such an enterprize. Stilico, having caused a considerable number of troops to embark, hastened to assist the Achæians in their distress. Arriving in the Peloponnesus, he compelled the Barba-

rians to fly to Pholœ, where he might with ease have destroyed them all, through the want of provisions, had he not yielded himself up to luxury and licentiousness. He likewise permitted his soldiers to plunder what the Barbarians had left; thus giving the enemy an opportunity to depart from Peloponnesus, to carry their spoils with them to Epirus, and to pillage all the towns in that country. When Stilico heard of these transactions, he sailed back into Italy without having effected any thing, except bringing on the Greeks much greater and more grievous calamities by means of the soldiers whom he had taken with him.

Upon his return into Italy, he immediately resolved to effect the death of Rufinus, in the following manner: He informed the emperor Honorius that he might conveniently send some auxiliary legions to his brother Arcadius, to defend the miserable nations under his dominion. The emperor commanding him to act as he judged expedient, he gave orders what troops should be sent upon that occasion, appointing Gaines their commander, to whom he communicated his design against Rufinus. When these troops were arrived near Constantinople, Gaines went forward, and informed the emperor Arcadius of their approach, and that they were come for the purpose of assisting him in his necessity. The emperor being pleased at their coming, Gaines advised him to meet them on their entrance into the city, which he observed was an honour usually conferred on the soldiers in similar instances. The emperor, being persuaded to this, went out of the city, and the soldiers paid him the usual marks of respect, which he received with kindness. At length, the signal being made by Gaines; they all fell on Rufinus, and surrounding him struck him with their swords, so that one struck off his right hand, another his left; a third divided his head from his body, and went away singing songs of triumph. They even so insulted him after he was dead, as to carry his head round the whole city, asking every person they met to give something to an insatiable miser.

Thus Rufinus, who occasioned many intolerable calamities to private individuals, and was the author of much public mischief, suffered the punishment due to his atrocious actions. Meantime Eutropius, who acted as an instrument in all the designs of Stilico against Rufinus, had the superintendance and controul of all that was done in the court. Although he appropriated to himself the principal part of the property of Rufinus, yet he granted to other persons a share of it. The wife of Rufinus, with her daughter, took refuge in a church belonging to the Christians, through fear of sharing the fate of her husband;

until Eutropius assured them that they might sail unmolested to Jerusalem, which was formerly the habitation of Jews, but since the reign of Constantine had been adorned with edifices constructed by the Christians. Here they passed the remainder of their days. Eutropius, wishing to remove all persons of any weight, that no man might have so great an influence with the emperor as himself, formed a plot against Timasius, who had been a commander since the reign of Valens. A false accusation was made against him to this effect.

A native of Laodicea in Syria, named Bargas, who was a retailer of provisions, having been detected there in some misdemeanour, fled from Laodicea to Sardes; where he became famous for his knavery. Timasius having visited Sardes, and seen this man, who possessed sufficient wit and cunning to flatter any person into a kindness for him, he made him his familiar, and shortly gave him the command of a cohort. He likewise took him with himself to Constantinople, which displeased the magistrates, for Bargas had been formerly expelled from that city for some villainies of which he had been guilty. Eutropius, however, was well pleased with it, having found him a person adapted for his purpose in his false charge against Timasius. He, therefore, made him the informer, employing him to impeach Timasius of treason in aiming at the throne. In this cause the emperor sat as president of the court, but Eutropius stood near him, being the imperial chamberlain, and possessing full authority to pass the sentence. But perceiving the people to be all displeased, that a vender of provisions should accuse a person who had been so great and honourable, the emperor left the court, and left the whole affair to Saturnius and Procopius. The former of these was old, and had filled several offices of high importance, yet not without adulation, accustoming himself even in judicial cases to humour those who were the chief favourites of the emperor. On the other hand, Procopius, who was father-in-law to the emperor Valens, was a morose inflexible man, and in many instances spoke the truth boldly. Upon this occasion, being appointed a judge in the cause of Timasius, he stated to Saturnius these objections: that Bargas was not a proper person to accuse Timasius, that a person who had held so many important offices, and a man of so great honour, ought not to perish at the accusation of so mean and worthless an individual, and, that it was most improper that a benefactor should suffer from him, whom he had patronized. But Procopius gained no advantage

by speaking with such freedom, since the opinion of Saturnius prevailed and was approved.

Timasius was, therefore, sentenced to reside in Oasis, and was sent there under a common guard. This was a barren inhospitable place, from which no person had ever returned after being carried there. The road to it being through a sandy uninhabitable desert, those who travel to Oasis are ignorant of the course they pursue, as the wind fills up the tracks of the feet with sand, nor is there any tree or house by which they can direct themselves. Yet a report was in general circulation, that Timasius was rescued by his son Syagrius, who having eluded those who were sent in search of him, employed some robbers to rescue his father. But whether that report was founded on truth, or was circulated to mortify Eutropius, remains unknown. It is only ascertained, that Timasius and Syagrius have never been seen since that period. Bargus, who had thus delivered Eutropius from all embarrassment respecting Timasius, was made commander of a legion, by which he acquired a considerable income, yet had the folly to hope for still greater rewards. For he did not reflect, that Eutropius, who had witnessed his villainy towards his benefactor Timasius, would naturally apprehend the same towards himself. When Bargus was absent from home on the duties of his office, Eutropius, therefore, persuaded his wife, who for some occasion had quarrelled with him, to present an information to the emperor, containing various accusations by which Bargus was impeached of the greatest crimes. Eutropius, on hearing this read before the emperor, immediately brought Bargus to trial, and on his conviction delivered him to be punished as he deserved. Upon this occasion, all men admired and praised the all-seeing eye of the deity, which no wicked man can escape.

Eutropius, being intoxicated with wealth, and elevated in his own imagination above the clouds, planted his emissaries in almost every country, to pry into the conduct of affairs, and the circumstances of every individual; nor was there any thing from which he did not derive some profit. His envy and avarice, therefore, excited him against Abundantius, who was born in that part of Scythia which belongs to Thrace, but had been a soldier from the reign of Gratian, had received great honours under Theodosius, and was appointed at that period consul. Eutropius, having the inclination to deprive him at once of his estate and dignity, the emperor authorized it, at least in writing; and Abundantius, being immediately banished from the court, was ordered to spend the remainder of his days at Sidon in Phœnicia. By these means,

though at Constantinople, Eutropius had no person who dared even to look at him. He recollected however that Stilico was master of every thing in the west; and, therefore, formed contrivances to prevent his coming to Constantinople. For this purpose, he persuaded the emperor to convoke the senate, and by a public decree to declare Stilico an enemy to the empire. This being accomplished, he immediately made Gildo his friend, who was governor of that part of Africa which belongs to Carthage, and by his assistance separating that country from the dominion of Honorius, he annexed it to the empire of Arcadius. While Stilico was in extreme displeasure at this, and knew not what course to pursue, an extraordinary circumstance happened. Gildo had a brother named Masceldelus, against whom he had formed a design through the barbarous ferocity of his disposition, and, therefore, compelled him to sail into Italy to Stilico, to complain of the severity of his brother. Stilico without delay gave him a competent number of men and ships, and sent him against Gildo. Upon his arrival at the place where he heard that his brother was stationed, he attacked him with all his forces before he was prepared for battle, and after a furious engagement defeated him to such a degree, that Gildo hanged himself, in preference to falling into the hands of his enemies. By means of this victory, the brother of Gildo restored Africa to Honorius, and returned to Italy. Though Stilico was envious of him for his great achievement, yet he pretended an attachment to him, and gave him favourable expectations. But subsequently, as he was going to some place in the suburbs, and was passing over the bridge, Masceldelus among others attending on him, the guards, in obedience to a signal which Stilico gave them, thrust Masceldelus into the river, where he perished through the violence of the stream.

From this period the animosity between Eutropius and Stilico was very evident, and the subject of general discourse. Yet though they were at variance with each other, they agreed in insulting with security the miseries of the people, the one having given his daughter Maria in marriage to the emperor Honorius, and the other governing Arcadius as if he were a sheep, or any other tame animal. For if any of the subjects had a villa remarkable for elegance, one of them would become its master. If any silver or gold were heard of, it flowed from its former proprietors into their coffers; great numbers of sycophants being dispersed in all places, who were ordered to give notice of such things.

As the emperors on both sides were in this state, all of the Senatorian order were grieved that affairs were so badly circumstanced, particularly Gaines, who had neither been rewarded with honour in proportion to his long services, nor could indeed be satisfied with any presents that were or could be bestowed on him, so insatiable was his avarice. What stung him more than the rest was, that the money all flowed into the chests of Eutropius. Being, therefore, highly enraged, he made Tribigildus an associate in his design, who was a man of extraordinary boldness, and ready for any hazardous enterprize. He had under his command not Romans but Barbarians, who were stationed in Phrygia, where the care of them was committed to him by the emperor. Pretending to go into Phrygia, to inspect the Barbarians under his command, Tribigildus left Constantinople. Leading with him the Barbarians whom he commanded, he attacked all places or persons that he met with in his march, nor did he refrain from murdering men, women, or children, but destroyed all before him. In a short time he had collected such a multitude of slaves and other desperate men, that he placed all Asia in extreme danger. Not only was Lydia filled with tumult, the inhabitants flying to the sea-coasts, and from thence sailing with their families into the islands, or to some other country; but the whole of Asia situated by the sea was in expectation of greater dangers than they had ever experienced. When these occurrences were communicated to the emperor, he did not compassionate the general calamity, for indeed he was incapable of understanding what was proper to be done (so extremely feeble was he in mind), but gave the whole administration of the empire to Eutropius. When Eutropius had obtained this, he appointed Gaines and Leo his generals, intending to send the latter into Asia to attack the Barbarians, or other promiscuous people who had overrun it; and to send Gaines through Thrace and the Hellespont, if they should be troublesome in that quarter.

Leo, who was appointed to relieve the emergencies of Asia, was a man devoid of all military conduct, and of every other qualification by which he might deserve to be elevated to his present rank, excepting only that he was the familiar friend of Eutropius. However, for that reason alone he was employed; and Gaines was sent into Thrace, to prevent Tribigildus and his followers from crossing the Hellespont, or if there should be occasion, to engage him by sea. When these commanders were thus instructed, they led off their forces to their respective stations. Gaines, mindful of the compact between himself and

Tribigildus, and that the time was at hand for the execution of the project, commanded Tribigildus to lead his army toward the Hellespont. Had he concealed his design against the commonwealth, and departed quietly from Constantinople with his Barbarians, his whole plan would have been accomplished. Nor was there any thing to prevent him from seizing on Asia, and from devastating all the east. But as fortune was at that time pleased to preserve those cities to the Roman dominion, Gaines was overpowered by his hot and violent disposition as a Barbarian, and left Constantinople with almost all his forces. When he approached Heraclea, he instructed Tribigildus how to act. But Tribigildus resolved by no means to proceed toward the Hellespont, through apprehension of meeting with the forces in that quarter; and, therefore, when he had ravaged all Phrygia, he fell upon Pisidia, where meeting with no obstacle, he pillaged all the country and retired.

Though this intelligence was communicated to Gaines, he was unconcerned at the ravages that had been committed, in consequence of the agreement subsisting between himself and Tribigildus. Leo in the meantime continued in the vicinity of the Hellespont, and was prevented by fear from engaging with Tribigildus, excusing himself, that he was afraid lest Tribigildus should send out a part of his forces, and lay-waste all the country near the Hellespont, availing himself of his absence. By these means Tribigildus was enabled to take all the towns without opposition, and to put to death all their inhabitants together with the soldiers. Not a single Barbarian would fight for the Romans, but in the conflicts joined their own countrymen against the subjects of the empire.

Meanwhile Gaines pretended to be moved by the misfortunes of the Romans, yet professed to admire the artifice and bravery of Tribigildus, declaring that he was invincible by reason of his prudence, and that he gained victories more by his conduct than by force. Therefore, when he had crossed into Asia, he made no attempt to prevent the destruction of the towns and provinces, but confined himself merely to following the enemy, expecting that Tribigildus would proceed into the east, and privately sent forces to his assistance. He had not yet disclosed his present intentions. If Tribigildus had passed into Phrygia, and from thence had proceeded not into Pisidia, but directly into Lydia, he could have encountered no obstacle, but when he had made himself master of that country, might likewise have devastated Ionia. By crossing the sea from thence into the islands, he might have

procured as many ships as he desired, by which, there not being any army able to resist him, he would have been enabled to overrun the whole east, and to pillage every country there, as well as Egypt. But not thinking on these advantages, he resolved to march into Pamphylia, which borders on Pisidia. He there fell into difficult roads, through which his horse could not by any means pass. As no army resisted their progress, an inhabitant of Selga (a small town of Pamphylia), named Valentine, who possessed some learning, and was not inexpert in military affairs, collected a band of slaves and peasants, who had been accustomed to contend with the robbers in that quarter. These he posted on the hills above those places where Tribigildus had to march, so that they could see every one who passed that way without being themselves seen, although the enemy should march past in the open day. Tribigildus, and his Barbarians, chusing the plainest way into the lower part of Pamphylia, and entering in the night into the fields under Selga, the Barbarians suffered severely by stones of immense size thrown down upon them. They had no way of escape, there being on one side of the road a deep lake and morasses, and on the other side a steep narrow passage, which would scarcely admit two men abreast. This ascent being round and winding is by the natives called the Snail, from its similitude to that animal. In this were placed a sufficient number of men under Florentius to obstruct any who should attempt to pass through it. The Barbarians being blocked up in this place, and great quantities of huge stones continually thrown at them, they were almost all killed; since they were confined in so small a space, that the stones which fell from above could not fail to kill some of them. Being therefore in great perplexity, most of them plunged with their horses into the lake, and to avoid death by the stones perished in the water. Tribigildus, however, with three hundred of his men, ascended the Snail, where he bribed Florentius and the guards who were with him with a vast sum of money to permit them to pass. Having by this means effected his escape, he suffered the remainder to be totally destroyed. Although Tribigildus concluded that he had thus delivered himself from the danger which Valentine had brought on him, yet he presently felt into far greater peril than the former. Almost all the inhabitants of the several towns, arming themselves with whatever was in their reach, inclosed him and the three hundred men who had escaped with him, between the rivers Melanes and Eurymedon, one of which runs above Sida, and the other through Aspendus. Being thus reduced to great embarrassment, he sent to Gaines.

This commander, though grieved at what had occurred, yet as he had not disclosed his sentiments with regard to the rebellion, sent Leo, the next in command to himself, to the assistance of the Pamphylians, and to join with Valentine against Tribigildus to prevent him and his men from crossing the rivers. Leo, though naturally pusillanimous and through his whole life devoted to voluptuousness, obeyed his orders. Gaines upon this became afraid lest Tribigildus, being enclosed on every side, and without strength to engage the enemy, should be destroyed. He therefore sent other Barbarian troops who were with him into the Roman camp to enable Tribigildus to escape. These Barbarians, whom Gaines sent to Leo as auxiliaries, fell upon every Roman with whom they met, ravaged the country, and killed the soldiers. Nor did they cease to attack all places, until they had cut off Leo and all his army, and converted the whole country into a desert. Thus the design of Gaines met with success. Tribigildus, having escaped from Pamphylia, inflicted still greater miseries than before on the cities of Phrygia. Gaines from hence took occasion to magnify the exploits of Tribigildus to the emperor, and so far alarmed the senate and the whole court, that he persuaded them that Tribigildus would advance to the Hellespont itself, and might nearly subvert the empire, unless the emperor should attend to his demands.

Gaines acted thus from policy, at once to conceal from the emperor his own inclinations, and to acquire by those concessions, which Tribigildus should extort, an opportunity of putting his own projects into execution. For he was not so much displeased at being himself neglected, as at the exaltation of Eutropius to the highest degree of power, so as to possess the dignity of consul, bear that title for a considerable time together, and to be honoured with the patrician rank. This it was that principally excited Gaines to sedition. When his design, therefore, was ripe, he first planned the death of Eutropius. With this purpose, while he was still in Phrygia, he sent to the emperor, and informed him that he despaired of any success, since Tribigildus was so artful a warrior, and, moreover, that it was impossible to sustain his fury, or to deliver Asia from the present extremities, unless the emperor would comply with his request, which was, that Eutropius, who was the chief cause of all the mischief which had happened, might be delivered into his hands, to be disposed of at his own pleasure.

When the emperor Arcadius heard this, he immediately sent for Eutropius, deprived him of all his dignities, and dismissed

him. Upon this he immediately fled for shelter to a Christian church, which had been made a sanctuary by himself. But Gaines being extremely urgent, and declaring that Tribigildus would never be appeased until Eutropius was removed, they seized him by force, notwithstanding the law for establishing churches as sanctuaries, and sent him to Cyprus under a strict guard. As Gaines still continued very impressively to urge the emperor Arcadius to dispatch him, the emperor's attendants made an equivocating evasion of the oath that was sworn to Eutropius when he was dragged out of the church, and caused him to be sent back out of Cyprus. Then, as if they had only sworn not to put him to death while he was at Cyprus or Constantinople, they sent him to Chalcedon, and there murdered him. Fortune thus treated Eutropius in a most singular manner on both hands, first in exalting him to such a height as no eunuch had ever before been raised to, and then in exposing him to death, through the hatred of those who were enemies to the commonwealth.

Gaines, though now evidently inclined to innovation, yet thought himself still undiscovered. Therefore, being absolutely master of the will of Tribigildus, as he was much his superior in power and influence, he assisted him in making peace with the emperor. After they had mutually exchanged oaths, he returned again through Phrygia and Lydia. Tribigildus followed him the same way, marching through Lydia so as not to pass by Sardes, the metropolis of that country. When they had formed a junction at Thyatira, Tribigildus repented that he had left Sardes unpillaged, since it was easy to take a city like that, destitute of all defence. He, therefore, resolved to return there along with Gaines and to attack that city. Their design would certainly have been carried into effect, had not a great quantity of rain fallen, which occasioned a great flood on the land, and swelled the rivers so as to render them impassable; by which their journey was obstructed. They then divided the country between them, and Gaines led his forces towards Bithynia, and Tribigildus his towards the Hellespont, permitting the Barbarians who followed them to pillage all before them. By the time when the one had arrived at Chalcedon, the other had taken possession of all the places near Lampsacus. Thus Constantinople, and even the whole empire, was in extreme danger. Gaines then desired the emperor to come to him, being resolved to confer with no one except himself in person. The emperor submitted to this, and they met in a place near Chalcedon, where is a church dedicated to the martyr Euphemia, who is honoured for her devotion to

Christ. It was there agreed that Gaines and Tribigildus should repair from Asia into Europe, and that the most eminent persons in the whole state should be given up to them to be put to death. Among these were Aurelianus, who was consul for that year, Saturnius who had been consul, and John, to whom the emperor confided all his secrets, and who was said by many people to be the father of the presumed son of Arcadius.

This tyrannical and insolent demand was complied with by the emperor. But Gaines, when he had these men in his own hands, was content with their suffering banishment. He afterwards crossed into Thrace, where he commanded Tribigildus to follow him, leaving Asia, which was now beginning to recover breath, and had a probability of being delivered from all the dangers that had surrounded it. While he resided at Constantinople, he distributed his soldiers into several quarters; depriving the city even of the court-guards. He gave the Barbarians private instructions, when they saw that the soldiers were departed from the city, immediately to attack it, being now destitute of all protection, and to deliver the sole authority into his hands.

Having given these orders to the Barbarians under his command, he left the city, pretending that the fatigues of war had impaired his health, and that he was, therefore, in need of being refreshed, which he should never obtain unless he lived some time without anxiety. He therefore left the Barbarians in the city, who considerably exceeded in number the court-guards, and retired to a villa, about forty stadia from the city; expecting an opportunity of attacking it when the Barbarians within should make their attempt. Gaines was filled with these hopes; and had he not been led away by the impetuosity natural to a Barbarian, and anticipated the season proper for his enterprize, the Barbarians must inevitably have made themselves masters of the city. But not waiting for the signal, he led his soldiers to the wall, and caused the sentinels to give an alarm. Upon this a general tumult immediately arose, with shrieks of women and mingled cries, as if the city had already been taken. At length the inhabitants collected together, and fell on the Barbarians within the city. Having dispatched these with swords, stones, or whatever weapons they could find, they ran to the wall, and with the assistance of the guards so assailed the troops of Gaines, that they repulsed them from entering the city.

The city having thus escaped the danger, and the Barbarians within being surrounded, more than seven thousand of them fled into a church belonging to the Christians, which stands near

the palace, intending by that sanctuary to preserve themselves. The emperor commanded them to be slain even in that place; nor would he permit them to be protected by it from the just punishment which their daring actions merited. But although the emperor gave this command, none had courage to lay hands on them, through apprehension that they would defend themselves. They, therefore, deemed it best to take off the roof of the church, over what they term the altar, and to throw down firebrands upon them, until every man should be burnt to death. By these means the Barbarians were destroyed. This, in the eyes of some who were zealous for christianity, appeared a most abominable crime to be committed in the midst of so great a city.

Gaines, being disappointed in this great attempt, now made open preparation for war against the commonwealth. Attacking first the countries of Thrace, he found the cities well protected by walls, and defended by their magistrates and inhabitants. For having been accustomed to wars, and learned from former incursions how to provide for their own safety, they were ready to fight with the utmost zeal. Gaines, therefore, perceiving nothing left without the walls but grass, for they had collected all the fruits of the country and the cattle, resolved to leave Thrace, and to hasten into Chersonesus, intending to return through the streights of the Hellespont into Asia. While he was hesitating on these measures, the emperor and the senate unanimously appointed Fraiutus commander in the war against Gaines. He, though, a Barbarian by birth, was yet a Grecian in every other respect, not only in his manner of living, but in his disposition and his religion. They therefore committed the management of the army to him, who had been a celebrated leader in many wars, and had delivered all the east, from Cilicia to Phœnice and Palestine, from the depredations of robbers. When he had received the command, he marched against Gaines, and obstructed the passage of the Barbarians into Asia across the Hellespont. While Gaines was making preparation to engage, Fraiutus, unwilling that his men should be inactive, kept them in continual exercise. By this he so disposed them for service, that instead of being as formerly indolent and inactive, they were discontented that Gaines so long delayed the war.

Thus was Fraiutus occupied in Asia, inspecting not only his camp both day and night, but also the motions of the enemy. He likewise made provision for naval affairs, possessing a fleet, competent for action, of the ships called *Liburnæ*, from *Liburnia*, a town in Italy, where ships of that kind were first built. These

appear to have been as swift-sailing vessels as those of fifty oars, although much inferior to the triremes. Polybius, the historian, gives us a description of the proportion of the six-oared ships, which the Romans and Carthaginians used in their engagements with each other. Gaines, having forced his way through the long wall into the Chersonesus, had ranged his troops along the whole length of the elevated shore in Thrace, which extends from opposite Parium as far as Lampsacus, Abydos, and the narrowest part of the strait. The Roman general, on the other hand, sailed continually about the coast of Asia, to observe the designs of the enemy. Gaines, from the want of provisions, being uneasy at the protraction of the time, cut down a quantity of timber in a wood in the Chersonesus, which he fastened together with great accuracy, and rendering it capable to contain both men and horses, placed his troops upon it, and suffered them to float with the stream. These rafts were incapable of being managed with oars, or of admitting of the pilot's art, being hastily constructed by the rude contrivance of Barbarians. He himself remained on shore, in the hopes of presently acquiring a victory, supposing that the Romans would not be sufficiently strong to contend against his men in an engagement. The prudent Roman general was not incautious, and, therefore, forming a conjecture of what was in agitation, he commanded his ships to put off a little from land. Perceiving the rude vessels of the Barbarians to be carried with the current in whatever direction it drove them, he first attacked the foremost of them in front, and his ship, having a stem of brass, overpowered it, not only distressing it with his ship, but throwing darts at the men who were in it, and thus sunk both them and their vessel. When the crews of his other ships saw this, they imitated the example, killed some of them with their darts, while others, falling off the rafts, were drowned, and scarcely any of them escaped with life. Gaines, being much grieved by this signal discomfiture, and having lost so many of his troops, removed from the Chersonesus into that part of Thrace which is beyond it. Fraiutus did not then think it expedient to pursue Gaines, but mustered his forces in the same place, being contented with the victory which fortune had bestowed on him. Fraiutus was now the subject of general animadversion, for not pursuing Gaines, but sparing him, because those who were escaped with him were the fellow-countrymen of Fraiutus. But being conscious of no such intention, he returned to the emperor, proud of his victory, which he openly and boldly ascribed to the favour of the gods whom he worshipped. For he was not ashamed, even in

the presence of the emperor, to profess that he worshipped and honoured the gods after the ancient custom of his forefathers, and would not in that instance follow the vulgar people. The emperor received him with great kindness, and appointed him consul. Meantime Gaines, having lost the greater part of his army as I have related, fled with the remainder to the river Ister. Finding Thrace to be devastated by the former inroads it had sustained, he pillaged every thing that was in his reach. Apprehending, however, that another Roman army would follow him, and attack his Barbarians, who were but a small number, and entertaining a suspicion of the Romans who accompanied him, he put every man of them to death, before they were apprized of his intention. He afterwards crossed the Ister with his Barbarians, designing to retire into his own country, there to spend the remainder of his days.

While Gaines was thus proceeding, Uldes, who was at that period chief of the Huns, considering it unsafe to permit a Barbarian followed by his army to fix his habitation beyond the Ister; and at the same time supposing that by expelling him from the country he should gratify the Roman emperor, provided means to oppose him. Having mustered a considerable number of troops, he drew them up in order of battle against the enemy. On the other hand, Gaines, perceiving that he could neither return to the Romans, nor in any other manner escape the attacks of Uldes, armed his followers and encountered the Huns. After several conflicts between the two armies, in some of which the party of Gaines was successful, many of his men being slain, Gaines himself was at length also killed, having fought with great bravery.

The war being terminated by the death of Gaines, Uldes, the chief of the Huns, sent his head to the emperor Arcadius, and was rewarded for this achievement. He, therefore, entered into a league with the Romans. Affairs being now conducted without any order, through the emperor's want of prudence, Thrace was again disturbed. A band of fugitive slaves, and others who had deserted from the armies, pretending to be Huns, pillaged all the country, and took whatever they found out of the walls. At length, Fraiutus marched against them, and killing all he could meet with, delivered the inhabitants from their fears. * * * * *

* * * * * apprehended that they would be treated with severity.

* Here occurs a chasm in the history, the sense of what is wanting appears to be this: Gaines formerly required Aurelianus, Saturnius, and John, to be placed in his power. It is probable that he committed them to custody,

Meeting, however, with him, they landed in Epirus, where consulting their own security, being in great danger through their extraordinary offence, they gave their prisoners an opportunity to escape; although it is said by some, that they were bribed by them to set them at liberty. However they might escape, they most unexpectedly returned to Constantinople, where they appeared before the emperor, the senate, and the people.

From this time, the hatred which the empress had conceived against John, who was a Christian bishop, was greatly increased. Although she had formerly been incensed against him, for having been severe upon her in his public homilies before the people, yet at this period, when he and the other two had returned, she became openly his enemy. In order, therefore, to satisfy her resentment, she used great efforts to induce the bishops of every place to consent to the removal of John. The first and chief of these was Theophilus, the bishop of Alexandria in Egypt, who was the first who had opposed the ancient sacred rites and observances. Although a synod was proposed to be held for this purpose, John, finding that equity was little attended to, left Constantinople of his own accord. This giving offence to the people, to whom he had always shewn kindness, a tumult was excited in the city. The Christian church was then filled with those men whom they call Monks. These are persons who abstain from lawful marriage, and who fill large colleges, in many cities and villages, with unmarried men, incapable of war, or of any other service to the commonwealth. These men, by their arts, have from that to the present time acquired possession of extensive lands, and under the pretext of charity to the poor, have reduced (I might almost say) all other men to beggary. These Monks having now entered the churches, prevented the people from coming to their usual devotion. This so enraged the populace and the soldiers, that they attempted to suppress, and as it were to lop off, the luxuriant insolence of the Monks. The signal being given them for this purpose, they made a fierce attack, and without trial or examination put all the Monks to the

until he should think it expedient to punish them. The keepers appear to have given their prisoners leave to escape, fearing that they would be harshly treated if they fell into the hands of Fraiutus. It is the conjecture of Sylburgius that *λίαν* is the termination of the word *Θεσσαλίαν*, Thessaly; or of *Παραλίαν*, which signifies the vicinity of the sea-coast; and that Fraiutus designed to enter that country, in order to apprehend the traitors and punish them as they deserved. We must suppose the following words to relate to them.

sword, until they had filled the churches with dead bodies, and pursuing those who fled, wounded every one whom they met in black clothes. Among these many were killed through mistake, who were either in mourning, or wore such a dress from any other cause.

John, having returned again, attempted a repetition of the same measures, and excited similar commotions in the city. The number of sycophants was now greater than it had ever formerly been, always attending on the court-eunuchs. Upon the death of any wealthy person they brought information of his estate, as if he had no children or relations. Upon this the emperor's letters were issued, commanding the estate to be put in possession of a particular person. Inheritances were ever disposed of to any who begged them, although the children of the party stood by, lamenting and calling on their parent. In fine, every thing combined to fill the cities with grief, and to injure the inhabitants. For the emperor being a mere idiot, his wife, who exceeded in arrogance the rest of her sex, and was devoted to the insatiable avarice of eunuchs and her female attendants, who had the greatest influence with her, caused every one to be weary of life; so that to modest persons nothing was then so eligible as death.

As if these circumstances did not sufficiently heighten the public misery, another inconceivable disaster fell on Constantinople. John, as I have related, having returned from his banishment, and instigating the populace against the empress in his usual sermons, finding himself expelled both from his episcopal see and from the city, embarked and left the city. Those who had espoused his party, endeavouring to prevent any person from succeeding to his bishopric, privately set fire to a church in the night, and left the city at break of day, in order to avoid detection. As soon as it was day, the people discovered the extreme danger in which the city stood. Not only was the church burnt to the ground, but the adjacent houses were likewise consumed, especially those on which the violence of the wind directed the flames. Besides these, the fire extended to the senate-house, which stood before the palace, and was a most beautiful and magnificent edifice. It was adorned with statues by the most celebrated artists, which had a most splendid appearance; and with marble of such colours, as are not now to be found in any quarries. It is said that the images which were formerly consecrated in Helicon to the muses, and in the time of Constantine suffered by the universal sacrilege, having been erected

and dedicated in this place, were burnt at the same time, as if to denote the disregard which all men should one day bear to the muses.

At that time occurred a miracle which I think not unworthy of being mentioned. Before the doors of the temple of the senate were the statues of Jupiter and Minerva, standing on two pedestals, as they still continue. That of Jupiter is said to be the Jupiter Dodonæus, and that of Minerva the same which was formerly consecrated in Lindus. When the fire consumed the temple, the lead on its roof melted and ran down on the statues, and all the stones which could not resist the force of the fire likewise fell upon them, until at length the beauty of the building was converted into a heap of rubbish, and it was generally supposed that these two statues were also reduced to ashes. But when the ruins were removed, the statues of these two deities alone appeared to have escaped the general destruction. This circumstance inspired all persons above the ordinary rank with more favourable hopes for the city, as if these deities resolved to afford it their continual protection.

Leaving these circumstances, however, to be disposed of at the will of the deity, I return to my narrative. An universal sorrow now prevailed for the calamity of the city, which was solely attributed to what is called blind chance; while the emperor's attendants were occupied in rebuilding the ruined houses. At the same time it was reported at court, that a great number of Isaurians, who reside in the inaccessible crags of Mount Taurus, had overrun the adjacent country in several bands. Although they were not sufficiently strong to attack the fortified towns, yet they ravaged all the unwalled villages, and plundered every thing before them. For by the former ravages which Tribigildus and his Barbarians had committed there, their present incursions were rendered more easy. When this intelligence was brought, Arbazacius was sent as commander to the relief of the oppressed Pamphylians. Taking along with him a competent army, he pursued the robbers into the mountains, took most of their villages, and destroyed immense numbers of their men. Indeed, he might with ease have perfectly subdued them, and have placed the towns in absolute security, had he not relaxed from his vigour, by yielding himself to luxury and lascivious pleasures, or through his avarice preferred riches to the public advantage. Being summoned for this treacherous behaviour before the emperor, he expected to undergo a trial; but by giving to the empress a part of what he had taken from the Isaurians, he not

only escaped the law, but spent the rest of his money in such pleasures as the city afforded.

The Isaurians thus contented themselves with the commission of private robberies, and had not yet broken out into an open invasion of neighbouring nations. In the mean time, Alaric, having marched, as I before related, out of the Peloponnesus, and all the country through which the river Achelous flows, halted in Epirus, in which reside the Molopians, the Thesprotians, and other nations. He intended to remain there until Stilico had completed what they had agreed on, which was to this effect. Stilico, perceiving that the ministers of Arcadius were averse to him, intended, by means of the assistance of Alaric, to add to the empire of Honorius all the Illyrian provinces. Having formed a compact with Alaric to this purpose, he expected shortly to put his design in execution. While Alaric waited for his commands, Rhodogaisus, having collected four hundred thousand of the Celts, and the German tribes that dwell beyond the Danube and the Rhine, made the preparations for passing over into Italy. This intelligence, when first communicated, occasioned a general consternation. While the several towns sunk into despondency, and even Rome itself was filled with apprehension of its danger, Stilico took with him all the forces that were stationed at Ticinum in Liguria, which amounted to about thirty cohorts, and all the auxiliaries that he could procure from the Alani and Huns, and without waiting for the approach of the enemy, crossed the Danube with all his forces. Thus attacking the Barbarians before they were aware, he completely destroyed their whole forces, none of them escaping, except a few which he added to the Roman auxiliaries. Stilico, as may be supposed, was highly elated by this victory, and led back his army, receiving garlands from the people of every place, for having in so unusual a manner delivered Italy from the dangers which she so much dreaded and expected. He arrived at Ravenna, an ancient city, which is the metropolis of the province of Flaminia, and a Thessalian colony. It is called Rhene, because it is surrounded by water (as the word Rhene imports), and not so named, as Olympiodorus of Thebes relates, from Remus, the brother of Romulus, who founded it; for he must yield in this to Quadratus, who has mentioned this very circumstance in his history of the emperor Marcus. At Ravenna, Stilico being intent on his preparations for attacking the Illyrian towns, and by the aid of Alaric expecting to separate them from Arcadius, and to unite them to the empire of Honorius, two impediments at the same time happened to fall in his

way. These were a report that Alaric was dead, and letters from the emperor Honorius at Rome, informing him that Constantine had revolted, and had advanced from the island of Britain into the Transalpine provinces, where he conducted himself in the cities as emperor. The rumour concerning the death of Alaric appeared doubtful, before some persons arrived and assured him of the reality of it. But the report that Constantine had set up for the empire was universally believed. Stilico, being thus prevented from executing his intended expedition against the Illyrians, proceeded to Rome to consult with other persons concerning the present state of affairs.

After the autumn was terminated, and winter had commenced, Bassus and Philippus being chosen consuls, the emperor Honorius, who had long before lost his wife Maria, desired to marry her sister Thermantia. But Stilico appeared not to approve of the match, although it was promoted by Serena, who wished it to take place from these motives. When Maria was about to be married to Honorius, her mother, deeming her too young for the marriage-state and being unwilling to defer the marriage, although she thought that to submit so young and tender a person to the embraces of a man was offering violence to nature, she had recourse to a woman who knew how to manage such affairs, and by her means contrived that Maria should live with the emperor and share his bed, but that he should not have the power to deprive her of virginity. In the meantime Maria died a virgin, and Serena, who, as may readily be supposed, was desirous to become the grandmother of a young emperor or empress, through fear of her influence being diminished, used all her endeavours to marry her other daughter to Honorius. This being accomplished, the young lady shortly afterwards died in the same manner as the former. About the same time, Stilico was informed, that Alaric had left Epirus, and having passed through the defiles that form a passage from Pannonia to Venice, had pitched his camp at a town called Emo, which is situated between the Upper Pannonia and Noricum. It would not be impertinent to notice what is remarkable concerning this town and its origin. It is said, that the Argonauts, being pursued by Ætas, arrived at the mouth of the Ister by which it discharges itself into the Pontus, and deemed it their best resource to proceed up that river against the stream, by the help of oars and convenient gales of wind, until they should approach nearer to the sea. Having effected this, and arrived at that place, they left a memorial of their arrival there, which was the building of the town. Afterwards placing

their ship, the Argo, on machines purposely constructed, they drew it four hundred stadia, as far as the sea-side, and thus arrived at the Thessalian shore, as is related by the Poet Pisander, who has comprehended almost the whole story in a poem called *The Heroic Marriages of the Gods*. Alaric, having marched out of Emo, and crossed the river Aquilis, passed over the Apennine mountains, and entered Noricum.

The Apennine mountains are situated on the borders of Pan-
nonia, and render the way into Noricum very narrow, wherefore, if the pass were guarded by a small number, a large force would find great difficulty in penetrating it. Notwithstanding this difficulty, Alaric advanced through into Noricum, and from thence sent messengers to Stilico, to desire a sum of money not only in consideration of his stay in Epirus, which he said was made at the persuasion of Stilico, but also to defray his journey into Noricum and Italy. But Stilico, although he received the embassy, left those who brought it at Ravenna, and proceeded himself to Rome, with a design to consult the emperor and the senate upon this affair. When the senate was assembled at the imperial palace, and deliberated whether to declare war, most of them were disposed for war. Stilico, and a few others who complied with him merely through fear, were of a contrary opinion, and voted for a peace with Alaric. When those who preferred a war desired of Stilico his reason for chusing peace rather than war, and wherefore, to the dishonour of the Roman name, he was willing basely to purchase it with money, he replied, "Alaric has continued this length of time in Epirus that he may join with me against the emperor of the east, and separating the Illyrians from that dominion, add them to the subjects of Honorius." This, he said, would have been effected before this period, had not letters in the mean time arrived from the emperor Honorius, which deferred the expedition to the east, in expectation of which Alaric had spent so much time in that country. When Stilico had said these words, he produced an epistle from the emperor, and said that Serena was the occasion of all, wishing to preserve an inviolable friendship between the two emperors.

The senate, therefore, imagining that Stilico spoke nothing but what was reasonable, decreed that Alaric should receive three thousand pounds of silver in consideration of maintaining peace, although most of them gave their voices more in dread of Stilico than of their own judgment or inclination. For this reason, Lampadius, a person of exalted birth and rank, having uttered this Latin sentence, *Non est ista pax, sed pactio servitutis*, This is not

a peace, but a bond of servitude, he was compelled, as soon as the senate was dismissed, to fly into a neighbouring church, belonging to the Christians, from the fear of being punished for the freedom with which he had expressed himself.

Stilico, after having in this manner made peace with Alaric, prepared very earnestly for his journey, in order to put his designs in execution. The emperor declared, that he would also proceed from Rome to Ravenna, to view and encourage the army, especially as so powerful an enemy was arrived in Italy. Yet this he did not say of his own inclination, but was prompted to it by Serena. For she wished him to reside in a more secure city, that if Alaric should infringe the treaty and attack Rome, he might not take the emperor's person. She was the more zealous for his preservation, since her own security depended on his. Stilico, however, being much averse to the emperor's journey to Ravenna, contrived many obstacles to prevent it. As the emperor, notwithstanding, would not alter his intentions, but was still determined on his journey, Sarus, a Barbarian, and captain of a company of Barbarians at Ravenna, excited a mutiny before the city at the instigation of Stilico. His design was not really to throw affairs into confusion, but to deter the emperor from coming to Ravenna. But as the emperor persisted in his resolution, Justinian, an excellent lawyer at Rome, whom Stilico chose as his assistant and counsellor, through the sagacity of his judgment, formed a near conjecture of the design for which the emperor made that journey, and that the soldiers in Ticinum, who were disaffected to Stilico, when the emperor arrived there, would reduce him into circumstances of great danger. He, therefore, continually advised him to dissuade the emperor from his present intentions. But when Justinian found that the emperor would not listen to the counsel of Stilico, he forsook him, lest through his familiarity with Stilico he should share in his misfortunes.

Before this juncture a report had been circulated at Rome, that the emperor Arcadius was dead, which was confirmed after the departure of Arcadius for Ravenna. Stilico being at Ravenna while the emperor was at a city of Æmilia, called Bononia, about seventy miles distant, the emperor sent for him to chastise the soldiers, who mutinied amongst each other by the way. Stilico, therefore, having collected the mutinous troops together, informed them that the emperor had commanded him to correct them for their disobedience, and to punish them by a decimation, or putting to death every tenth man. At this they were in such

consternation, that they burst into tears, and desiring him to have compassion on them, prevailed on him to promise them a pardon from the emperor. The emperor having performed what Stilico had promised, they applied themselves to public business. For Stilico was desirous of proceeding to the east to undertake the management of the affairs of Theodosius, the son of Arcadius, who was very young, and in want of a guardian. Honorius himself was also inclined to undertake the same journey, with a design to secure the dominions of that emperor. But Stilico, being displeased at that, and laying before the emperor a calculation of the immense sum of money it would require to defray the expence of such an expedition, deterred him from the enterprise. He likewise observed to him, that the rebellion of Constantine would not admit of his going so far, as not to protect Italy and Rome itself, since that usurper had over-run all Gaul, and then resided at Orleans. Moreover, though what he had pointed out was sufficient to deserve the attention and presence of the emperor, Alaric was also approaching with a vast force of Barbarians, who, being a Barbarian and void of faith, when he should find Italy devoid of all aid, would certainly invade it. He, therefore, deemed it the best policy and most conducive to the public advantage, that Alaric should undertake the expedition against the rebel Constantine along with part of his Barbarians and some Roman legions with their officers, who should share in the war. Stilico added that he himself would proceed to the east, if the emperor desired it, and would give him instructions how to act there.

The emperor, deceived by these specious representations of Stilico, gave him letters both to the emperor of the east and to Alaric, and departed from Bononia. But Stilico remained there, and neither proceeded to the east, nor performed any thing else that was designed. He did not even send over any of the soldiers, who were in Ticinum, to Ravenna or any other place, lest they should meet the emperor by the way, and incite him to do any thing to the prejudice of himself.

Stilico, being in these circumstances, although he was not conscious of any ill intention either against the emperor or the soldiers, Olympius, a native of the vicinity of the Euxine sea, and an officer of rank in the court-guards, concealed under the disguise of the Christian religion the most atrocious designs in his heart. Being accustomed, because of his affected modesty and gentle demeanor, to converse frequently with the emperor, he used many bitter expressions against Stilico, and stated that he was desirous to proceed into the east, from no other motive than to

acquire an opportunity of removing the young Theodosius, and of placing the empire in the hands of his own son, Eucherius. These observations he made to the emperor as they were travelling, having then a good opportunity of doing it. And when the emperor was at Ticinum, Olympius, accustoming himself to visit the sick soldiers, which was the master-piece of his hypocrisy, dispersed among them, likewise, similar insinuations. When the emperor had been at Ticinum four days, all the soldiers being convened into the court, the emperor appeared before them, and exhorted them to a war against the rebel Constantine. Finding that none of them were moved at any thing relative to Stilico, Olympius was observed to nod to the soldiers, as if to remind them of what he had said to them in private. At this they were excited almost to madness, and killed Limenius, who was prefect of the court in the nations beyond the Alps, and with him Charibaudes, the commander of the legions in those parts. For these two had accidentally escaped from the hands of the usurper, and were come to the emperor at Ticinum. Beside these two were slain Vincentius and Salvius, the former, the commander of the cavalry, and the latter of the domestic forces. As the tumult increased, the emperor retired into the palace, and some of the magistrates escaped. The soldiers, then dispersing themselves about the city, killed as many of the magistrates as they could lay hands on, tearing them out of the houses into which they had fled, and plundered all the town. So violent was the commotion, that the emperor, finding the disorder beyond remedy, put on a short mantle, and without either his long robe or his diadem, issuing into the midst of the city, had great difficulty in appeasing and restraining their fury. For those magistrates who were taken, even after their flight, were murdered. Among these were Næmorius commander of the court-bands, Petronius, the treasurer and steward of the emperor's private property, and Salvius, whose office it was to proclaim the intentions of the emperor upon any occasion, which officer had borne the title of Questor from the time of Constantine. Nor could the latter escape death, though he embraced the emperor's knees. The tumult continued till late in the night, and the emperor fearing lest any violence should be committed against his own person also, for which reason he withdrew. They then happened to find Longinianus, the prefect of the court for Italy, whom they put to death. All these magistrates were slain by the infuriated soldiers. There likewise perished so great a number of promiscuous persons as is beyond all computation.

When intelligence of this reached Stilico, who was then at Bononia, he was extremely disturbed by it. Summoning, therefore, all the commanders of his confederate Barbarians, who were with him, he proposed a consultation relative to what measures it would be most prudent to adopt. It was agreed with common consent, that if the emperor were killed, which was yet doubtful, all the confederated Barbarians should join together, and fall at once on the Roman soldiers, and by that means afford a warning to all others to use greater moderation and submissiveness. But if the emperor were safe, although the magistrates were cut off, the authors of the tumult were to be brought to condign punishment. Such was the result of the consultation held by Stilico with his Barbarians. When they knew that no indignity had been offered to the person of the emperor, Stilico resolved to proceed no further in punishing or correcting the soldiers, but to return to Ravenna. For he reflected both on the number of the soldiers, and that the emperor was not steadfastly his friend. Nor did he think it either honourable or safe to incite Barbarians against the Roman army.

Stilico being therefore filled with anxiety concerning these circumstances, the Barbarians who were with him were very desirous of putting in force their former resolutions, and therefore endeavoured to dissuade him from the measures which he afterwards thought proper to be adopted. But being unable to prevail with him, they all determined to remain in some place until they should be better apprized of the emperor's sentiments towards Stilico, with the exception of Sarus, who excelled all the other confederates in power and rank, and who, accompanied by the Barbarians under his command, having killed all the Huns who formed the guard of Stilico while they were asleep, and having seized all the carriages that followed him, entered his tent, in which he remained to observe the event. Upon this Stilico, observing that his Barbarians were quarrelling among each other, hastened to Ravenna, and engaged the cities, in which were any women or children belonging to the Barbarians, not to afford reception to any of the Barbarians if they should come to them. In the meantime Olympius, who was now become master of the emperor's inclination, sent the imperial mandate to the soldiers at Ravenna, ordering them immediately to apprehend Stilico, and to detain him in prison without fetters. When Stilico heard this, he took refuge in a Christian church that was near, while it was night, His Barbarians and his other familiars, who, with his servants, were all armed, upon seeing this expected what would ensue.

When day appeared, the soldiers, entering the church, swore before the bishop, that they were commanded by the emperor not to kill Stilico, but to keep him in custody. Being brought out of the church, and in the custody of the soldiers, other letters were delivered by the person who brought the first, in which the punishment of death was denounced against Stilico, for his crimes against the commonwealth. Thus, while Eucherius, his son, fled towards Rome, Stilico was led to execution. The Barbarians who attended him, with his servants and other friends and relations, of whom there was a vast number, preparing and resolving to rescue him from the stroke, Stilico deterred them from the attempt by all imaginable menaces, and calmly submitted his neck to the sword. He was the most moderate and just of all the men who possessed great authority in his time. For although he was married to the niece of the first Theodosius, was entrusted with the empires of both his sons, and had been a commander twenty-three years, yet he never conferred military rank for money, or converted the stipend of the soldiers to his own use. Being the father of one only son, he offered to him the office of tribune of the Notarii, and limited him neither to desire nor attempt obtaining any other office or authority. In order that no studious person, or astrologers, may be ignorant of the time of his death, I shall relate, that it happened in the consulship of Bassus and Philippus, during which the emperor Arcadius submitted to fate, on the twenty-second day of August.

After the death of Stilico, all the affairs of the court were managed by Olympius at his own pleasure and inclination. He also possessed the office of Magister, or governor of the court, while the other offices were disposed of by the emperor at his recommendation. Meanwhile, not only all the friends of Stilico, but all others who had any regard for him, were searched out. Among these, Duterius, who commanded the guard of the imperial bed-chamber, was examined, as was likewise Petrus, tribune of the Notarii. These were publicly put to the torture to force them to some confession relative to Stilico; yet as they would state nothing either against him or themselves, Olympius was disappointed of his views. He, however, caused them to be beat to death with cudgels. Although many others, who were suspected of being the adherents of Stilico, and acquainted with his designs, were examined and put to torture to induce them to confess a knowledge of his ambition to be emperor; yet since none of them would make such a confession, the inquirers at length desisted from their enterprise. In the mean time, the emperor Honorius

commanded his wife Thermantia to be taken from the imperial throne, and to be restored to her mother, who notwithstanding was without suspicion. He likewise ordered Eucherius, the son of Stilico, to be searched for and put to death. Having found him in a church at Rome, to which he had fled for refuge, they did not molest him, through respect to the place. At the same time, Heliocrates, the treasurer, produced in Rome the emperor's letter, commanding the confiscation of the property of all who had borne any office in the time of Stilico. But as if all these circumstances were not sufficient to satisfy the evil genius that held mankind in bonds of wickedness, and confounded all things through the neglect of sacred observances, the former disasters were heightened by an additional one, which thus happened.

The soldiers who were in the city, on hearing of the death of Stilico, fell upon all the women and children in the city, who belonged to the Barbarians. Having, as by a preconcerted signal, destroyed every individual of them, they plundered them of all they possessed. When this was known to the relations of those who were murdered, they assembled together from all quarters. Being highly incensed against the Romans for so impious a breach of the promises they had made in the presence of the gods, they all resolved to join with Alaric, and to assist him in a war against Rome. Having therefore collected to the number of thirty thousand men, they fixed themselves in whatever place they pleased. But Alaric was not sufficiently excited even by these men to undertake a war, but still preferred peace, being still mindful of the league into which he had entered with Stilico. He therefore sent ambassadors with a desire to procure a peace, even if he acquired for it but a small sum of money. He likewise desired Ætius and Jason, the former son to Jovius, and the latter to Gaudentius, as hostages; and offered to send them two from among his own nobility under similar circumstances. A peace being made on those terms, he would lead his army out of Noricum into Pannonia. When Alaric demanded peace on those conditions, the emperor refused to grant it, although if he would have disposed of his affairs with prudence, he must have chosen one of two alternatives that were before him. He ought either to have deferred the war, and to have procured a peace by a small sum; or if he preferred to contend, he should have collected together as many legions as possible, and have posted them in the route of the enemy, to obstruct the Barbarians from advancing any further. He should likewise have chosen a proper person to lead them, and have conferred the command on Sarus, who

alone was sufficient to strike terror into the enemy, both by means of his intrepidity, and of his experience in warlike affairs; who had also under him a force of Barbarians sufficient to make a good defence. The emperor, on the contrary, neither accepting the offers of peace, making Sarus his friend, nor collecting the Roman army, but placing all his dependance on Olympius, occasioned the innumerable calamities by which the commonwealth was overwhelmed. For the command was bestowed on such persons as were contemptible in the opinion of the enemy. Turpilio was appointed commander of the cavalry, Varanes of the infantry, Vigilantius of the domestic forces. For these reasons all persons were in despair, and thought the complete destruction of Italy even then before their eyes.

As affairs were thus ordered, Alaric began his expedition against Rome, and ridiculed the preparations made by Honorius. Being unwilling to enter on so important an affair with not more than nearly equal forces to his enemy, he sent for Ataulphus, his wife's brother, from the upper Pannonia, to share with him in the enterprize, he having under him a very considerable force of Goths and Huns. However, he did not wait for the arrival of his brother-in-law, but marching forward with expedition, passed by Aquileia and the other cities beyond the Po, namely Concordia, Altinum, and Cremona. When he had crossed that river, being as it were at some festival, and having no enemy to obstruct him, he arrived at a castle of Bononia, called Occuparia. From thence, passing through all Æmilia, and leaving Ravenna in his rear, he advanced to Ariminum, a great city of Flaminia. Moving by that likewise with haste, and by all the other towns of that province, he came to Picenum, which is situated at the extremity of the Ionian bay. From thence marching towards Rome, he sacked all the castles and towns in his way. Thus if Arsacius and Tarentius, the two eunuchs, had not hastened to bring Eucherius, the son of Stilico, from those quarters to Rome to be executed according to the command of the emperor, the youth would certainly have fallen into the hands of Alaric, and would have been saved. The eunuchs having fulfilled the injunctions laid on them to that effect, and having delivered Thermantia, the wife of Honorius, to her mother, went by sea to the emperor in Gallia Celtica, where he then resided, because they were not able to go to him by the same way they had come. For these reasons, the emperor conceiving that he should render good service to the commonwealth by rewarding these two eunuchs for their great exploits in restoring Thermantia to her mother, and in putting to

death Eucherius, appointed Tarentius imperial chamberlain, and gave the next post under him to Arsacius. Having then cut off Bathanarius, who was commander of the troops in the greater Libya, and had married the sister of Stilico, he gave that command to Heraclianus, the person who had killed Stilico, and who received this honour as the recompense of his action.

When Alaric was near Rome, besieging its inhabitants, the senate suspected Serena of bringing the Barbarians against their city. The whole senate therefore, with Placidia, uterine sister to the emperor, thought it proper that she should suffer death, for being the cause of the present calamity. They observed, that "Alaric, upon Serena being removed, will retire from the city, because no person will remain by whom he can hope the town to be betrayed into his hands." This suspicion was in reality groundless, as Serena never had any such intentions. However she suffered justly for her impieties toward the gods, which I am now about to relate. When the elder Theodosius, after defeating the rebel Eugenius, arrived at Rome, and occasioned in all persons a contempt and neglect of divine worship, by refusing to defray the charge of the holy rites from the public funds, the priests of both sexes were dismissed and banished, and the temples were deprived of sacrifices. Serena, insulting the deities with derision, was determined to see the temple dedicated to the mother of the gods. In this perceiving some ornaments around the neck of the statue of Rhea, suitable to the divine worship that was paid to her, she took them off the statue, and placed them upon her own neck. An aged woman, who was the only one remaining of the vestal virgins, upbraided her severely for so impious an action. Serena not only returned very violent language, but commanded her attendants to drive or carry her away. Notwithstanding, the old woman, as she was leaving the place, prayed that whatever was due to such impiety might fall on Serena, her husband, and children. Serena did not notice what she had said, but left the temple pleased with the ornaments she had obtained. Yet afterwards she was frequently visited by an appearance, not only imaginary, in her dreams, but real, when she was awake, which predicted her death. Other persons likewise beheld the same appearance. So far did that just power of vengeance, whose office it is to punish the wicked, discharge its duty, that although Serena knew what would happen, she was without caution, and submitted that neck which she had decorated with the attire of the goddess, even to a halter. It is likewise said that Stilico, for an impiety not much unlike this of which Serena was guilty, did not escape the secret hand of vengeance. He is said to have commanded the doors

of the capitol to be stripped of a large quantity of gold with which they were covered. They who were employed in that act found on some part of the doors this inscription, "These are reserved for a wretched prince." The veracity of the prediction contained in this inscription was proved, for he indeed died in the most wretched and miserable manner.

However, the death of Serena did not remove Alaric from the siege, but he blocked up the gates all round, and having possessed himself of the river Tiber, prevented the arrival of necessaries from the port to the city. The Romans, on perceiving this, still resolved to persevere in their defence, expecting daily to receive auxiliaries from Ravenna. But none coming to their assistance, and being disappointed in their hopes, they diminished the allowance of grain, and ordered that not more than half of the former quantity of provisions should be dressed each day; and afterwards when the scarcity increased, only a third part. Receiving no relief, and all their provisions being consumed, the famine, as might be expected, was succeeded by a pestilence, and all places were filled with dead bodies. As the dead could not be interred outside the city, for the enemy was in possession of all the avenues, the city was made their sepulchre. Thus it was in danger of being depopulated by an additional cause, and though no want of provisions had subsisted, yet the stench arising from the putrid corpses was sufficient to infect them with disease. Læta, the wife of the late emperor Gratian, and her mother Pissamena, supplied great numbers with food for some time. For since they were allowed from the treasury the provisions of an imperial table, through the generosity of Theodosius, who had conferred on them that privilege, many received the bounty of these two ladies, and obtained from their house what preserved them from famine. But the distress was arrived to such extremity, that they were in danger of being eaten by each other. They tried all methods of support, which are abominable in the eyes of all mankind. They then resolved on sending an embassy to the enemy, to inform him that they were willing to accept any reasonable conditions of peace, and at the same time were ready for war, since the people of Rome had taken up arms, and by means of continual military exercise were become well disposed for action. Basilius was appointed their ambassador, who was a Spaniard, and governor of a province. Johannes, the chief of the imperial notaries, went with him, because he was acquainted with Alaric, and might be the means of effecting a reconciliation. The Romans did not certainly know whether Alaric himself was present or not, or whether

it was he who besieged the city. For they were deluded by a report that it was another person, who had been a friend of Stilico, which had occasioned him to come against their city.

When the ambassadors came to him, they were ashamed of the ignorance in which the Romans had so long remained, but delivered the message of the senate. When Alaric heard it, and that the people having been exercised to arms were ready for war, he remarked, "The thickest grass is more easy to cut than the thinnest." Having said this, he laughed immoderately at the ambassadors. But when they spoke of peace, he used such expressions as were in the extreme of arrogance and presumption. He declared, that he would not relinquish the siege on any condition but that of receiving all the gold and silver in the city, all the household goods, and the Barbarian slaves. One of the ambassadors observing, "If you take all these, what will you leave for the citizens?" He replied, "Their Souls." When the ambassadors received this answer, they desired time to communicate it to the citizens, and to consult with them in what manner they should act. Having obtained that permission, they related all the conversation that had passed in their embassy. On this the Romans, being convinced that it was really Alaric who attacked them, and despairing therefore of all things that conduce to human strength, called to mind the aid which the city had formerly met with in emergencies; and that they, by transgressing their ancient institutions, were now left destitute of it.

While they were occupied in these reflections, Pompeianus, the prefect of the city, accidentally met with some persons who were come to Rome from Tuscany, and related that a town called Neveia had delivered itself from extreme danger, the Barbarians having been repulsed from it by storms of thunder and lightning, which was caused by the devotion of its inhabitants to the gods, in the ancient mode of worship. Having discoursed with these men, he performed all that was in his power according to the books of the chief priests. Recollecting, however, the opinions that were then prevalent, he resolved to proceed with greater caution, and proposed the whole affair to the bishop of the city, whose name was Innocentius. Preferring the preservation of the city to his own private opinion, he gave them permission to do privately whatever they knew to be convenient. They declared however that what they were able to do would be of no utility, unless the public and customary sacrifices were performed, and unless the senate ascended to the capitol, performing there, and in the different markets of the city, all that was essential. But

no person daring to join in the ancient religious ordinances, they dismissed the men who were come from Tuscany, and applied themselves to the endeavouring to appease the Barbarians in the best possible manner. With this design they again sent ambassadors. After long discussions on both sides, it was at length agreed, that the city should give five thousand pounds of gold, and thirty thousand of silver, four thousand silk robes, three thousand scarlet fleeces, and three thousand pounds of pepper. As the city possessed no public stock, it was necessary for the senators who had property, to undertake the collection by an assessment. Palladius was empowered to rate every person according to his estate, but was not able to complete the whole sum out of all, either because many persons concealed part of their property, or because the city was impoverished, through the avarice and unceasing exactions of the magistrates appointed by the emperor. The evil genius, who at that time presided over the human race, then incited the persons employed in this transaction to the highest pitch of wickedness. They resolved to supply the deficiency from the ornaments that were about the statues of the gods. This was in effect only rendering inanimate and ineffacious those images, which had been fixed up, and dedicated to sacred rites and ceremonies, and were decorated with precious attire, for preserving the city in perpetual felicity. And since every thing then conspired to the ruin of the city, they not only robbed the statues of their ornaments, but also melted down some of them that were made of gold and silver. Among these was that of Valour or Fortitude, which the Romans call Virtus. This being destroyed, all that remained of the Roman valour and intrepidity was totally extinguished; according to the remarks of persons who were skilled in sacred rites and observances.

The money being thus raised, they thought it advisable to send an envoy to the emperor to confer with him concerning the ensuing treaty, and to inform him that Alaric required, not only money, but the sons of certain noblemen as hostages; being willing on these conditions to make peace, and likewise to enter into an alliance with the emperor, and to assist the Romans against all their enemies. The emperor resolving to conclude a peace, the money was paid to the Barbarians. This being done, Alaric gave the citizens a free market for three successive days, with permission to pass securely through certain gates of the city, and to bring corn from the port. By these means the citizens having a little recovered breath, by selling the remainder of their goods, or exchanging one article for another, to purchase necessaries,

the barbarians departed from Rome, and pitched their camps in several places in Tuscany. Almost all the slaves in Rome then fled from the city, and enrolled themselves among the barbarians, to the number of forty thousand. Some of the straggling barbarians attacked the Romans who were going down to the port, and bringing up their provisions. When Alaric understood this, he used his utmost endeavours to prevent such proceedings, which were without his knowledge or consent. The Romans now appeared to possess a small respite from their misfortunes. The emperor Honorius was now entering on the consulship, having enjoyed that honour eight times, and the emperor Theodosius in the east three times. At this juncture the rebel Constantine sent some eunuchs to Honorius, to intreat pardon from him for having accepted of the empire. When the emperor heard this petition, perceiving that it was not easy for him, since Alaric and his barbarians were so near, to prepare for other wars; and consulting the safety of his relations who were in the hands of the rebel, whose names were Verenianus and Didymius; he not only granted his request, but likewise sent him an imperial robe. But his care for his relations was in vain, they having been put to death before this embassy. Having done this, he sent home the eunuchs.

The peace with Alaric being not yet confirmed, as the emperor had neither given him the hostages, nor complied with all his desires, the senate sent Cecilianus, Attalus, and Maximianus, on an embassy to Ravenna. Although these persons made a lamentable representation of the miseries which Rome had endured, and described the number who had tragically perished; yet they derived no benefit from it, because Olympius kept all in a confused state, and impeded the due course of affairs. From this cause the emperor dismissed the ambassadors without having effected the purpose of their mission; and discharged Theodorus from his office of prefect of the city, giving it to Cecilianus, and appointed Attalus to be treasurer. As Olympius was wholly intent on searching all places for those who were reported to have any knowledge of the affairs of Stilico, several persons were called in question on false accusations. Among these were Marcellianus and Salonius, two brothers, belonging to the imperial Notaries. These two were delivered by Olympius to the prefect of the court. Though by his order they were beaten and used with every severity, yet they made not the smallest disclosure such as Olympius was anxious to obtain from them.

The affairs of Rome being now in no better condition than before, the emperor sent for five regiments of soldiers, who were

quartered in Dalmatia, to guard the city of Rome. These regiments consisted of six thousand men, who for strength and discipline were the flower of the whole Roman army. Their general was Valens, a person ready for the greatest and most hazardous enterprizes. He disdained, therefore, to appear so cowardly as to march by a way that was not guarded by the enemy. Thus Alaric, delaying until he came up to him, and attacking him with all his forces, cut off all his troops, except a hundred, who with much difficulty escaped, together with their commander. He arrived in safety at Rome, together with Attalus, whom the senate had sent to the emperor. Perceiving that the public calamities were accumulating, Attalus, on his arrival at Rome, dismissed Heliocrates from the office which the emperor had been induced to confer on him by the persuasions of Olympius. Heliocrates was employed to make an inquisition into the estates of those who were banished on account of their acquaintance with or relation to Stilico, and to make a return of them to the treasury. But he being a man of great moderation, and of good disposition, considered it an impiety to insult the unfortunate; and therefore did not make strict enquiries, but on the contrary sent private notice to many of the parties to conceal what they were able. Being for this reason considered a worthless person, he was seized and carried to Ravenna, to suffer for his humanity towards the unfortunate. He would undoubtedly have died for it, through the cruelty which then prevailed, had he not wisely fled to a church belonging to the Christians. Maximilianus, having fallen into the hands of the enemy, was redeemed by his father, Marinianus, with thirty thousand pieces of gold. For since the emperor deferred the peace, and did not fulfil what had been agreed on, the Romans could no longer pass freely out of the city. The senate therefore a second time sent ambassadors to the emperor concerning the peace, along with whom the bishop of Rome also went. There were in their retinue some barbarians, whom Alaric sent to protect them from their enemies who infested the different roads.

When these ambassadors were arrived with the emperor, Ataulphus, for whom Alaric had sent, as I before mentioned, had crossed the Alps, between Pannonia and Venice. When the emperor heard of his approach, and that he had with him an inconsiderable force, he ordered all his troops both horse and foot, which were in the different towns, to march under their own officers to meet him. To Olympius, who was commander of the court guards, he gave the Huns who were in Ravenna, amounting to three hundred. These finding the enemy had arrived at Pisa,

attacked them, killed eleven hundred Goths, and returned in safety to Ravenna, with the loss of only seventeen men.

The eunuchs of the court now laid before the emperor informations charging Olympius as the occasion of all the disasters, which had happen'd to the commonwealth, and thus procured his removal from the office he then held. On this, fearing some greater misfortune, he fled into Dalmatia. In the meantime, the emperor sent Attalus, the prefect of the city, to Rome; and being very solicitous that nothing belonging to the treasury should be concealed, he also sent Demetrius to assist Attalus, and made diligent inquiry into the public funds. After making many innovations in the magistracy, and in other respects; discharging those who were previously in high authority, and bestowing their offices on others; he appointed Generidus commander of the forces in Dalmatia, who already held the chief command of those stationed in the upper Pannonia, Noricum, and Rhætia, as far as the Alps. This Generidus, although of Barbarian extraction, was in disposition inclined to all virtues, and was remarkably devoid of covetousness. While he adhered to ancient ordinances, and could not endure to relinquish the old mode of worshipping the gods, a law was promulgated, prohibiting all who were not christians from wearing a girdle in the court. This law being established, Generidus, who was at that time a military officer in Rome, laid aside his girdle, and remained in his own house. The emperor requiring him, as one enrolled among the officers, to attend at court in his due course, he replied that there was a law which forbade him the use of a girdle, or that any one should be reckoned among the officers who did not reverence the christian religion. The emperor answered, that the law indeed was obligatory on all others, but excepted him alone, who had undertaken such dangerous enterprizes for the commonwealth. Generidus said in reply, that he could not suffer himself to accept of an honour that appeared to affront all who by means of that law had been put out of commission. Nor did he execute his office, until the emperor, compelled both by necessity and shame, completely abolished the law, and gave all persons liberty of enjoying their own sentiments in all offices, whether civil or military.

Generidus, having commenced with this act of gallantry, employed and instructed the soldiers with continual labour and exercise. He distributed corn among them, suffering no person to deprive them of any part of it, as was formerly the practise. He likewise gave suitable recompenses out of his own public allowance to those who were most deserving. Appearing therefore thus

great, he was not only a terror to the adjacent barbarians, but a security to the nations which were under his care. The soldiers at Ravenna, having mutinied, took possession of the port, and with rude clamours demanded the emperor to come before them. But he, through dread of the tumult, having secreted himself, Jovius issued among them, who was prefect of the court, and honoured with the rank of a patrician. Pretending to be ignorant of the occasion for which they mutinied, although he himself was said to be the author of it, together with Illebichus, who commanded the domestic cavalry, he asked them their reason for being so violent. On hearing the soldiers reply, that they must deliver into their hands Turpillio and Vigilantius, the two generals, with Terentius, the imperial chamberlain, and Arsacius, next to him in dignity, the emperor fearing an insurrection of the soldiers condemned the two generals to perpetual exile. They being therefore placed on board a ship, were murdered by those who were appointed to carry them to the place of banishment. Jovius indeed had commanded them to do this; fearing lest if they should ever return, and discover the intrigue that was formed against them, they might excite the emperor to punish him for it. Terentius was sent into the east, and Arsacius was ordered to reside in Milan. The emperor having made Eusebius chamberlain in lieu of Terentius, given the command which Turpillio had held to Valens, and appointed Illebichus prefect instead of Vigilantius, appeared in some measure to mitigate the rage of the soldiers.

Jovius, having now transferred all the power of managing the emperor into his own hands, resolved to send ambassadors to Alaric, to desire him to come even to Ravenna, and to tell him that they would there conclude the peace. Alaric, being prevailed on by the letters he received both from the emperor and Jovius, and being advanced as far as Ariminum, thirty miles from Ravenna, Jovius hastened thither also (having been the friend and familiar acquaintance of Alaric in Epirus), to treat concerning the alliance. The demands of Alaric were; a certain quantity of gold each year, and a quantity of corn; and that himself and the Barbarians who were with him should inhabit both the Venetias, Noricum, and Dalmatia. Jovius, having written these demands in presence of Alaric, sent them to the emperor, with other letters which he privately conveyed to him, to advise him to appoint Alaric commander of both his armies, by which means he might be induced to relax the severity of his conditions, and make a peace on tolerably moderate terms. When the emperor received this letter,

he condemned Jovius for his forward temerity, and wrote to him, telling him, that it was proper for him, as prefect of the court, and understanding what the public revenues were capable of, to assign the quantity of corn and gold, but that no dignity or command should ever be conferred on Alaric, or any of his family.

When Jovius received this letter, he opened and read it in the hearing of Alaric; who though he bore all the rest with patience, yet on finding the command denied to himself and all his family, was so enraged, that he immediately commanded his Barbarians to march to Rome with the greatest expedition, and there revenge the affront offered to him and all his family. Jovius being disappointed on seeing the emperor's unexpected letter, returned to Ravenna. Being desirous to acquit himself of all blame, he bound Honorius under several oaths never to make peace with Alaric, but to wage against him a continual war; which he himself likewise swore by touching the head of the emperor, and caused all others who were in office to do the same.

Affairs having thus been concerted, the emperor called ten thousand Huns to his assistance in the war against Alaric. In order that he might have provisions ready for them on their arrival, he ordered the Dalmatians to bring corn, sheep, and oxen. He sent out scouts to gain information of the way by which Alaric intended to march to Rome. But Alaric, in the mean time, repented of his intention of proceeding against Rome, and sent the bishops of each city, not only as ambassadors, but also to advise the emperor not to suffer so noble a city, which for more than a thousand years had ruled over great part of the world, to be seized and destroyed by the Barbarians, nor such magnificent edifices to be demolished by hostile flames, but to prefer entering into a peace on some reasonable conditions. He instructed them to state to the emperor, that the Barbarians wanted no preferments, nor did he now desire the provinces which he had previously chosen as his residence, but only the two Norica, which are situated on the extremity of the river Danube, are harassed by continual incursions, and yield to the treasury a very small revenue. Besides this he only demanded annually as much corn as the emperor should think proper to grant, and would remit the gold. And that a friendship and alliance should subsist between himself and the Romans, against every one that should rise to oppose the empire. When Alaric had made these extremely temperate propositions, his moderation being universally admired, Jovius, and the other ministers of the emperor, declared that his demands could not possibly be acceded to, since all persons, who held any com-

mission, had sworn not to make peace with Alaric. For if their oath had been made to the deity, they might indeed probably have dispensed with it, and have relied on the divine goodness for pardon; but since they had sworn by the head of the emperor, it was by no means lawful for them to infringe so great a vow. So cautious were they who then held the chief management of affairs, as they were destitute of the care and protection of heaven.

SIXTH BOOK.

ALARIC having thus received insult in return for his reasonable demands, hastened towards Rome with all his forces, designing closely to besiege that city. At the same time Jovius, a man of great learning and virtue, came to Honorius as ambassador from Constantine, who had usurped the government of Gallia Celtica, desiring a confirmation of the peace which had formerly been agreed on, and requesting pardon for the death of Verenianus and Didymius, who were relations of the emperor Honorius. He pleaded in excuse, that they were not killed with the concurrence of Constantine. Finding Honorius in great perplexity, he told him that it was convenient to him to make some concessions, since he was so much embarrassed with the affairs of Italy, and that if he would suffer him to go back to Constantine to inform him of the circumstances in which Italy then stood, he would shortly return with all the forces in Celtica, Spain, and Britain, to the relief of Italy and Rome. On these conditions Jovius was permitted to depart.

Since I have not given a relation of the occurrences in Celtica, it would here be proper to notice what had previously taken place there. When Arcadius was reigning, Honorius being consul the seventh time and Theodosius the second, the troops in Britain revolted and promoted Marcus to the imperial throne, rendering obedience to him as the sovereign in those countries. Some time subsequently, having put him to death for not complying with their inclinations, they set up Gratian, whom they presented with a diadem and a purple robe, and attended him as an emperor. Being disgusted with him likewise, they four months afterwards deposed and murdered him, delivering the empire to Constantine. He having entrusted to Justinian and Nevigastes the command of the Celtic legions, crossed over from Britain. Having arrived at Bononia, which is the nearest to the sea-side, situated in the lower Germany, and continuing there some days, he conciliated the attachment of all the troops between that place

and the Alps, which separate Gaul from Italy, thus appearing now secure in the empire. At the same time Stilico sent Sarus at the head of an army against Constantine. Having encountered with the division commanded by Justinian, he slew that general with the greater part of his soldiers. Having acquired great spoils he advanced to besiege Valentia, where he understood that Constantine had placed himself, it being a strong city, well fortified and a secure residence. Nevigastes, the surviving commander, having made overtures of peace to Sarus, was received by him as a friend. But Sarus, although he had both given and received an oath to the contrary, immediately put him to death, without regard to what he had sworn.

Constantine then conferred the command, vacant by the death of Justinian and Nevigastes, on Edobinchus, a Frank by extraction, but a native of Britain, and on Gerontius, a Briton. Sarus, being in dread of the courage and the military experience of these two, raised the siege of Valentia after he had continued in it seven days. The officers of Constantine attacked him so briskly, that he had much difficulty to escape with life, and was under the necessity of giving up all his spoils to the Bacaudæ, a tribe of freebooters, to allow him to pass into Italy. When Sarus was thus safely returned to Italy, Constantine, having mustered all his forces, resolved to place a sufficient guard on the Alps in the three passes, which form the passage from Italy into Celtica, commonly termed the Cottian, the Pennine, and the maritime Alps. This was the reason for his taking these precautions. Some years before, Arcadius being in his sixth consulate, and Probus was his colleague, the Vandals, uniting with the Alani and the Suevi, crossed in these places, and plundered the countries beyond the Alps. Having there occasioned great slaughter they likewise became so formidable even to the armies in Britain, that they were compelled, through fear of their proceeding as far as that country, to choose several usurpers, as Marcus, Gratian, and after them Constantine. A furious engagement ensued between them, in which the Romans gained the victory, and killed most of the barbarians. Yet by not pursuing those who fled, by which means they might have put to death every man, they gave them opportunity to rally, and by collecting an additional number of barbarians, to assume once more a fighting posture. For this cause, Constantine placed guards in these places, that those tribes should not have so free access into Gaul. He likewise secured the Rhine, which had been neglected since the time of the emperor Julian. Having thus arranged affairs throughout all Gaul, he decorated

his eldest son, Constans, with the habit of a Cæsar, and sent him into Spain. For he wished to obtain the absolute sovereignty of that country, not only through the desire of enlarging his own dominions, but of diminishing the power of the relations of Honorius. He was apprehensive, lest when they had collected together an army of the soldiers who were in that quarter, they might on some occasion cross the Pyrenæan mountains and attack him, while Honorius might send an army from Italy, and by surrounding him on every side, depose him from his throne. Constans therefore went into Spain, having with him Terentius as his general, and Apollinarius as prefect of his court. Having appointed all the officers, both civil and military, he sent his army under their conduct against the relations of the emperor Honorius, who had thrown all Spain into a state of disturbance. These having commenced the first assault against Constans with their Lusitanian soldiers, and finding themselves overpowered, collected an immense number of slaves and peasants, by whose assistance they had nearly reduced him to the most precarious danger. But even in this emergency their expectations were frustrated, but they with their wives fell into the hands of Constans. This disaster being made known to their brothers, Theodosius and Lagodius, one of them fled into Italy, and the other safely escaped to the east. After these achievements in Spain, Constans returned to his father, carrying with him Verenianus and Didymius, and leaving there his general Gerontius with the Gallic troops to guard the pass from Celtica into Spain; although the Spanish soldiers desired that charge to be confided to them, as had formerly been the case, and that the safety of their country might not be committed to the care of strangers. Verenianus and Didymius, being brought to Constantine, were immediately put to death.

Constans was afterwards a second time sent into Spain, and took with him Justus as his general. Gerontius being dissatisfied at this, and having conciliated the favour of the soldiers in that quarter, incited the barbarians who were in Gallia Celtica to revolt against Constantine. Constantine being unable to withstand these, the greater part of his army being in Spain, the barbarians beyond the Rhine made such unbounded incursions over every province, as to reduce not only the Britons, but some of the Celtic nations also to the necessity of revolting from the empire, and living no longer under the Roman laws but as they themselves pleased. The Britons therefore took up arms, and incurred many dangerous enterprizes for their own protection, until they had freed their cities from the barbarians who besieged them. In a

similar manner, the whole of Armofica, with other provinces of Gaul, delivered themselves by the same means; expelling the Roman magistrates or officers, and erecting a government, such as they pleased, of their own.

Thus happened this revolt or defection of Britain and the Celtic nations, when Constantine usurped the empire, by whose negligent government the barbarians were emboldened to commit such devastations. In the meantime, Alaric, finding that he could not procure a peace on the conditions which he proposed, nor had received any hostages, once more attacked Rome, and threatened to storm it if the citizens refused to join with him against the emperor Honorius. They deferred their answer to this proposal so long, that he besieged the city, and marching to the port, after a resistance of some days, made himself master of it. Finding that all the stores of the city were there, he threatened to distribute them among his men, unless the Romans should accede to his terms. The whole senate having therefore assembled, and having deliberated on what course to follow, complied with all that Alaric required of them. For it would have been impossible to avoid death, since no provisions could be brought from the port to the relief of the city. Accordingly they received the embassy of Alaric, invited him to their city, and, as he commanded, placed Attalus, the prefect of the city, on an imperial throne, with a purple robe and a crown; who presently declared Lampadius prefect of the court, and Marcianus of the city, and gave the command to Alaric and Valens, who formerly commanded the Dalmatian legions, distributing the other offices in proper order. He then proceeded towards the palace, attended by an imperial guard; although many ill omens occurred in his way. The following day, entering the senate, he made a speech full of arrogance, in which he told them with great ostentation that he would subdue the whole world to the Romans, and even perform greater things than that. For this the gods perhaps were angry and designed soon afterwards to remove him.

The Romans were therefore filled with joy, having not only acquired other magistrates, well acquainted with the management of affairs, but likewise Tertullus, with whose promotion to the consulship they were exceedingly gratified. None were displeased with these occurrences, which were thought conducive to public advantage, except only the family of the Anicii; because they alone having got into their hands almost all the money in the city, were grieved at the prosperous state of affairs. Alaric prudently advised Attalus to send a competent force into

Africa and to Carthage, in order to depose Heraclianus from his dignity, lest he, who was attached to Honorius, should obstruct their designs. But Attalus would not listen to his admonitions, being filled with expectations given him by the soothsayers, that he should subdue Carthage and all Africa without fighting, and would not send out Drumas, who, with the barbarians under his command, might easily have turned Heraclianus out of his office. Disregarding the counsels of Alaric, he gave the command of all the troops in Africa to Constantine, yet sent along with him no good soldiers. In the mean time, while the affairs of Africa continued uncertain, he undertook an expedition against the emperor, who was at Ravenna. Upon this, the emperor was so terrified and perplexed, that he sent out ambassadors to propose that the empire should be divided between them. Jovius, whom Attalus had made prefect of the court, replied that Attalus would not leave Honorius so much as the bare title of emperor, nor even an entire body; for that he intended to send him to reside in an island, and to maim him in some of his limbs. These arrogant expressions excited a general alarm, and Honorius was prepared to fly. When he had for that purpose collected a considerable number of ships into the port at Ravenna, six regiments of auxiliary soldiers arrived there, which were expected when Stilico was living, but did not come from the east until that period; amounting in number to six thousand. At their arrival, Honorius, as if awaked from a deep sleep, confided the defence of the walls to those who were come from the east, and resolved to remain at Ravenna, until he should receive better intelligence of the affairs of Africa. He intended, indeed, if Heraclianus obtained the ascendancy, when all was settled and secure in that quarter, to make war with all his forces against Alaric and Attalus. On the contrary, if his adherents in Africa should be defeated, he meant to sail into the east to Theodosius, with the ships which he had in readiness, and to relinquish the empire of the west.

While such were the intentions of Honorius, Jovius, who as I before mentioned was sent ambassador to Honorius, began to entertain treasonable designs, being corrupted by Honorius through means of other persons. He therefore declared to the senate, that he would no longer act as an ambassador, and used reproachful expressions before them, telling them that since those whom they had sent into Africa had failed of success, they ought to send over Barbarians against Heraclianus. For Constantine being slain, their hopes from that part of the world were become very precarious. Attalus being enraged, and having employed other per-

sons to superintend the execution of his orders, others were sent into Africa with money, to assist in the present exigencies there. When Alaric understood this, he was displeas'd at it, and began to despair of the affairs of Attalus, who form'd his projects with the most foolish temerity, without either reason or prospect of advantage. Having therefore made these considerations, he resolv'd to relinquish the siege of Ravenna, although he had before determin'd to prosecute it until he took the place. To this he had been persuas'd by Jovius, who, when he heard that the commander sent in to Africa by Attalus had totally fail'd in his purpose, apply'd himself wholly to the affairs of Honorius, and was continually speaking to Alaric to the prejudice of Attalus, with the design of inducing him to believe, that as soon as Attalus should have secur'd the empire into his own hands, he would concert the death of Alaric, and all his relations. While Alaric continued faithful to the oath which he had given to Attalus, Valens, the commander of the cavalry, was arrested on suspicion of treason. Alaric in the mean time proceeded with his army to all the cities of Æmilia, which had refus'd to accept Attalus as their sovereign. Some of these he speedily reduced; but having besieg'd Bononia, which resist'd him many days, without being able to take it, he advanced towards Liguria, to compel that country likewise to acknowledge Attalus as its emperor.

Honorius, having sent letters to the cities of Britain, counsel'd them to be watchful of their own security, and having rewarded his soldiers with the money sent by Heraclianus, liv'd with all imaginable ease, since he had acquir'd the attachment of the soldiers in all places. Heraclianus having guarded all the ports of Africa in the strictest manner, that neither corn nor oil, nor any other provision, should be convey'd to the port of Rome, the city sustain'd a famine more grievous than the former. The venders of provisions likewise conceal'd all their goods, in hope of gaining considerable profit, by fixing on their commodities what price they pleas'd. By these means the city was reduc'd to such extremities, that some persons, as if they wish'd that human flesh might be eaten, cried out in the Hippodrome, "Fix a certain price on human flesh."

On this occasion Attalus went to Rome, and conven'd the senate. After some debate most of them were of opinion that the Barbarians and the Roman soldiers ought to be sent into Africa, and that Drumas should be their commander, he being a person who had already given proofs of his fidelity and good will. Only Attalus and a few more dissented from the majority of the senate,

he being unwilling to send out a Barbarian as commander of a Roman army. This was the first time that Alaric formed a design against Attalus to depose him or deprive him of life; although Jovius had previously instigated him to it by incessant calumnies, and false accusations. In order therefore to put his design in execution, he led Attalus out before the city of Ariminum, where he then resided, and stripping him of his diadem and purple robe, sent them to the emperor Honorius. But although he reduced Attalus to the condition of a private individual before all the people, he kept him and his son Ampelius at his own house, until he had made peace with Honorius, when he procured their pardon. Placida, the emperor's sister, was also with Alaric, in the quality of an hostage, but received all the honour and attendance due to a princess.

Such was the state of Italy, while Constantine gave a diadem to his son Constans, and from a Cæsar raised him to an emperor; after having deprived Apollinarius of his office, and appointed another person prefect of the court in his room. In the meantime Alaric proceeded to Ravenna to confirm the peace with Honorius; but fortune invented another obstacle beyond all expectation, and as it were pointed out what should befall the commonwealth. For while Sarus was stationed with a few Barbarians in Picenum, and joined neither with the emperor nor with Alaric, Ataulphus, who had an animosity against him on the ground of some former difference, came with his whole army to the place where Sarus happened to be. As soon as Sarus perceived him approaching, finding himself not able to contend with him, as he had only three hundred men, he resolved to fly to Honorius, and assist him in the war against Alaric. * * * * *

SUPPLEMENT.

THE remainder of this Book is lost. Photius in his *Bibliotheca* mentions, that the history of Zosimus ended with the taking of Rome by Alaric. Since Zosimus is unfortunately deficient in this point, and a particular narrative of the sacking of Rome is not met with in any other author, the following account is extracted from Baptista Egnatius.

Alaric had besieged Rome for two years successively, and Honorius, who then lay idly at Ravenna, had neither resolution nor power to relieve it. For being in nothing more unconcerned than in the safety of the city after the death of Stilico, he had appointed no person to command the army, and manage the war against the Goths. This determined the Goths on besieging the city, perceiv-

ing that the Roman soldiers were either fled or very negligent of their duty, the Barbarians having long endeavoured in vain, and being unable to take it by assault, were obliged to have recourse to stratagem. They pretended to return into their own country, and selected three hundred young men of great strength and courage, whom they bestowed on the Roman nobility as a present, having previously instructed them to oblige their masters by all possible observance, and on a certain day appointed, about noon, when the nobility were either asleep or otherwise unmindful of business, to meet suddenly at the gate called Porta Avinaria, where having surprised and killed the guards, they should open the gate for those who would be there in waiting. Meanwhile the Goths delayed their return home, under pretence of still wanting something, until the three hundred youths, making a good use of their opportunity, opened the gate to their countrymen. The Goths, on being admitted, immediately began to plunder the city, although they committed more dishonour than mischief to the citizens. It is the opinion of some, that the gate was opened by the contrivance of Proba, a lady of great rank and wealth, who compassionated the people of Rome, who were dying of famine and of several distempers, like sheep. There are two circumstances relative to this occasion worthy of being noticed. The one is, that an edict was made by Alaric, that whoever took refuge in the churches of saints, especially in those of Peter and Paul, should receive no injury; which was accordingly observed with great care. The other was, that when Honorius received intelligence at Ravenna that Rome (Roma) was destroyed, he understood by it a certain strong Gaul, whose name was Roma, and thought it very remarkable that he should so soon be cut off, with whom a little before he had so diverted himself.

COMPARATIVE VIEW
OF
ANTIEN T AND OF MODERN
GEOGRAPHY.

In the following Tables, the Countries unknown to the Ancients, or of which the Names are uncertain, are left blank.

MODERN EUROPE.

GREENLAND, or the Arctic Continent

SPITSBERGEN Island

ICELAND Island, belonging to Norway

NORWAY. { 1. Wardhuis, or Norwegian Lapland
2. Drontheim
3. Bergen
4. Aggerhuis, or Christiana

SWEDEN { 1. Lapland and West Bothnia
2. Sweden Proper
3. Gothland
4. Finland
5. Islands of Gothland, Oeland, Aland, Rugen

DENMARK { Jutland { 1. Alburg
2. Wyburg
3. Aarhusen
4. Ryphen
5. Sleswick
Danish Islands in the Baltic { 1. Zealand
2. Funen
3. Falster
4. Longeland
5. Laland
6. Femeren
7. Alsen
8. Moen
9. Bornholm

RUSSIA in EUROPE { 1. Livonia and Estonia
2. Ingria, or the Government of Petersburg
3. Carelia, or the Government of Wiburg
4. Novogrod
5. Archangel, Samoieda
6. Moscow
7. Nishnei Novogrod
8. Smolenski
9. Kiew
10. Bielgorod
11. Woronesk
12. Azoff

ANCIENT EUROPE.

- | | | |
|-----------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SCANDINAVIA,
SCANDIA, VEL
BALTIA. | } | <ul style="list-style-type: none"> 2. Nerigon 3. Sitones |
| | } | <ul style="list-style-type: none"> 1. Scritofinni 2. Suiones 3. Gutae et Hilleviones 4. Finningia 5. Insulae Sinus Codani |
| | } | <ul style="list-style-type: none"> 1. Cimbri |
| | } | <ul style="list-style-type: none"> 3. Harudes 4. Phundusii, Sigulones 5. Saablingii |
| | } | <ul style="list-style-type: none"> 1. } Teutones 2. } |
| | } | <ul style="list-style-type: none"> Insulae
Sinus
Codani |
| SARMATIA
EUROPÆA. | } | <ul style="list-style-type: none"> 1. Hirri et Æsthi vel Ostiones 4. Budini 6. Basilici 8. Cariones 10. & 4. Budini 11. Roxolani 12. Iazyges |

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|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| FRANCE. | { <ol style="list-style-type: none"> 1. Picardy 2. Isle of France 3. Champagne 4. Normandy
 5. Bretany
 6. Orleannois
 7. Lionnois
 8. Provence 9. Languedoc 10. Guienne 11. Gascoigne 12. Dauphiné 13. Burgundy and Franche-comté 14. Lorraine and Alsace |
| UNITED NETHERLANDS. | { <ol style="list-style-type: none"> 1. Holland 2. Friesland 3. Zealand 4. Groningen 5. Overysseil 6. Guelderland and Zupten 7. Utrecht |
| AUSTRIAN, FRENCH, and DUTCH NETHERLANDS. | { <ol style="list-style-type: none"> 1. Brabant, } <i>Dutch</i>
 } <i>Austrian</i> 2. Antwerp, <i>Austrian</i> 3. Mechlin or Malines, <i>Austrian</i> 4. Limburg, } <i>Dutch</i>
 } <i>Austrian</i> 5. Luxemburgh, } <i>French</i>
 } <i>Austrian</i> 6. Namur, <i>Austrian</i> 7. Hainault, } <i>Austrian</i>
 } <i>French</i> 8. Cambresis, <i>French</i> 9. Artois, <i>French</i> 10. Flanders, } <i>Dutch</i>
 } <i>Austrian</i>
 } <i>French</i> |

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|-----------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| GALLIA. | { | <ol style="list-style-type: none"> 1. Ambiani 2. Bellovaci, Parisii, Suessones 3. Remi, Catalauni, Tricasses, 13. Lingones 4. Unelli vel Veneti, Sali, Lexovii,
Veliocasses 5. Osismii, Veneti, Namnetes, An-
des, Redones 6. Aureliani, Carnutes, Senones,
Turonos, Pictonos, Bituriges, | } Celtæ |
| | { | <ol style="list-style-type: none"> 7. Ædui, Segusiani 8. Salyes, Cavares 9. Volcæ, Arecomici, Helvii, Tolosates 10. Petrocorii, Bituriges, Cadurci, Ruteni 11. Aquitani 12. Allobroges, Centrones 13. Lingones, Ædui, Sequani 14. Leuci, Mediomatrici, Triboci, Nemetes | |
| SAXONES. | { | <ol style="list-style-type: none"> 1. } Frisii 2. } 4. Cauci vel Chauci 5. Franci 6. Bructeri, Catti, Sicambri 7. Batavi | |
| BELGÆ,&c. | { | <ol style="list-style-type: none"> 1. Menapii, Tungrii 2. Toxandri 4. } Alemanni 5. } 6. Treveri 7. Remi 9. Atrebates, Veromandui 10. Belgæ, Morini | |

- GERMANY. {
1. Upper Saxony
 5. Lower Saxony
 3. Westphalia
 4. Upper Rhine
 5. Lower Rhine
 6. Franconia
 7. Austria
 8. Bavaria
 9. Suabia
- BOHEMIA. {
1. Bohemia Proper
 2. Silesia
 3. Moravia
- POLAND. {
1. Greater Poland
 2. Lesser Poland
 3. Prussia Royal
 4. Prussia Ducal
 5. Samogitia
 6. Courland
 7. Lithuania
 8. Warsovia
 9. Polachia
 10. Polesia
 11. Red Russia
 12. Podolia
 13. Volhinia
- SPAIN. {
1. { Galicia.
 2. { Asturia
 3. { Biscay
 4. { Navarre
 5. { Arragon
 6. { Catalonia
 7. { Valentia
 8. { Murcia
 9. { Granada
 10. { Andalusia
 11. { Old Castile
 12. { New Castile
 13. { Leon
 14. { Estremadura
- SPANISH ISLANDS. {
- Ivica
 - Majorca
 - Minorca

NATIONES
GERMANICÆ

- 1. Suevi, Lingæ, &c.
- 2. Saxones, Longobardi,
Gambriuii
- 3. Cherusci, Chamavi Gau-
chi, Germania Inferior
- 4. Germania Superior
- 5. Marci, Tinctori
- 6. Marcomanni, Hermonduri
- 7. Noricum
- 8. Rhætia
- 9. Vindelicia

Saxones

- 1. Boiohæmum
- 2. Corconti
- 3. Quadi

GERMANO-
SARMATÆ.

- 1. Peucini
- 2. Lugii
- 3. { Burgundiones, Rugii, Gu-
- 4. { thones
- 5. Ombroges
- 6. Scyri
- 7. { Germano-Sarmatia
- 8. }

- 11. }
- 12. } Bastarnæ
- 13. }

HISPANIA
vel IBERIA.

- 1. }
- 2. } Gallæcia,--Cantabri, Astures, Varduli
- 3. }
- 4. }
- 5. } Tarraconensis--Vascones, Valetani
- 6. }
- 7. } Carthaginensis---Æditani, Contes-
- 8. } tani
- 9. } Bætica---Bastiani, Bastuli, Turde-
- 10. } tani, &c.
- 11. Gallæciæ pars---Accæi, Arevaci
- 12. Tarraconensis pars--Carpetani, Oretani
- 13. Gallæciæ pars---Vettones
- 14. Lusitaniæ pars---Bæturia

INSULÆ HISPANIÆ.

- { Baleares

PORTUGAL. {
 Entre Minho e Douro
 Tralos Montes
 Beira
 Estremadura
 Entre Tajo
 Alentajo
 Algarva

SWITZERLAND. {
 1. Bern
 2. Friburg
 3. Basil or Bâle
 4. Lucern
 5. Soluturn
 6. Schaffhausen
 7. Zurick
 8. Appenzel
 9. Zug
 10. Schweitz
 11. Glaris
 12. Uri
 13. Underwald
 14. Geneva } Confederates of the
 15. Grisons, &c. } Swiss

ITALY. {
 1. Savoy
 2. Piedmont
 3. Montferrat
 4. Milan
 5. Genoa
 6. Parma
 7. Modena
 8. Mantua
 9. Venice
 10. Trent
 11. The Popedom
 12. Tuscany
 13. Lucca
 14. San Marino
 15. Kingdom of Naples

ITALIAN ISLANDS. {
 1. Sicily
 2. Sardinia
 3. Corsica
 4. Malta
 5. Lipari Islands
 6. Capri, Ischia, &c.

HUNGARY.
 TRANSYLVANIA.

SCLAVONIA.
 GROATIA.

LUSITANIA. }
 Calliaci
 Lusitani
 Celtici

HELVETIA. }
 1. }
 2. } Ambrones
 3. }
 4. }
 6. }
 7. } Tigurini
 8. }
 9. }
 10. }

14. Nantuates
 15. Veragri, Vallis Pennina, Lepontii

ITALIA. }
 1. Leponti, Segusini, Taurini }
 2. Orobi }
 3. }
 4. Insubres } Liguria
 5. }
 6. Anamani }
 7. Boii } Gallia Cis-
 8. Cenomani } alpina vel
 9. Venetia } Togata
 10. Tridentini }
 11. Lingones, Senones, Picenum, Umbria,
 Sabini, Pars Latii
 12. Tuscia vel Etruria
 13. Pars Tusciæ
 14. Pars Umbriæ
 15. Samnium, Pars Latii, Apulia, Campania,
 Lucania, Bruttium

INSULÆ }
 ITALICÆ }
 1. Sicilia, Sicania, vel Trinacria
 2. Sardo, vel Sardinia
 3. Cyrnus vel Corsica
 4. Melita
 5. Lipariæ Insulæ
 6. Capreæ, Ischia, &c.

DACIA.

PANNONIA.
 ILLYRICUM.

- TURKEY in
EUROPE. {
1. Dalmatia
 2. Bosnia
 3. Servia
 4. Wallachia
 5. Moldavia and Bessarabia
 6. Bulgaria
 7. Albania
 8. Macedonia
 9. Romania
 10. Livadia
 11. Morea
 12. Budziac Tartary or Bessarabia
 13. Little Tartary
 14. Crimea

- GREEK
ISLANDS. {
1. Corfu
 2. Cephalonia
 3. Zante
 4. Ithace, Thiace, &c.

- In the AR-
CHPELAGO. {
1. Candia
 2. Negropont
 3. Stalimene
 4. Scyro, &c.

- 1. Dalmatia
 - 2. Mæsia Superior
 - 3. Dacia Ripensis
 - 4. Getæ
 - 5. Pars Daciæ
 - 6. Mæsia Inferior
 - 7. Epirus
 - 8. Macedonia
 - 9. Thracia
 - 10. Thessalia
 - 11. Peloponnesus
 - 12. Scythia et pars Daciæ
 - 13. Parva Scythia
 - 14. Taurica Chersonesus
- GRÆCIA. {

- 1. Corcyra
 - 2. Cephalenia
 - 3. Zacynthus
 - 4. Ithaca, &c.
- INSULÆ
MARIS IONII. {

- 1. Creta
 - 2. Eubœa
 - 3. Lemnos
 - 4. Scyros, &c.
- INSULÆ MA-
RIS ÆGÆI. {

GREAT BRITAIN.

MODERN.		ANCIENT.	
SCOTLAND.	1. Edinburgh	1. } Damnii	} Vecturiones
	3. Haddington	2. }	
	4. Berwick	3. Ottodini	
	4. Roxburgh	4. }	} Selgovæ
	5. Selkirk	5. }	
	6. Dumfries	6. }	
	7. Kircudbright	7. }	} Novantes
	8. Peebles	8. }	
	9. Wigton	9. }	
	10. Lanerk	10. }	} Damnii
	11. Air	11. }	
	12. Dumbarton	12. }	
	13. Bute	13. }	} Picti
	14. Renfrew	14. }	
	15. Stirling	15. }	
	16. Linlithgow	16. }	} Caledonii
	17. Fife	17. }	
	18. Clackmannan	18. }	
	19. Kinross	19. }	} Epidii, Gadeni, Ceronones
	20. Perth	20. }	
	21. Argyle	21. Epidii, Gadeni, Ceronones	
	22. Kincardine	22. Vernicones, }	} Attacoti
	23. Forfar	23. Horestæ, }	
	24. Aberdeen	24. }	
	25. Banff	25. } Tæzali	} Vacomagi
	26. Elgin	26. }	
	27. Nairn	27. }	
	28. Inverness	28. }	} Cantæ
	29. Ross	29. }	
	30. Cromarty	30. }	
	31. Sutherland	31. }	} Scoti
	32. Caithness	32. Mertæ	
	33. Orkney	33. Orcades	
	34. Shetland	34. Thulé	
ENGLAND.	1. Cornwall	1. } Damnonii	
	2. Devonshire	2. }	
	3. Dorsetshire	3. Durotriges	
	4. Hampshire	4. }	} Belgæ
	5. Somersetshire	5. }	
	6. Wiltshire	6. }	
	7. Berkshire	7. Atrebatii	
	8. Oxfordshire	8. }	} Dobuni
	9. Gloucestershire	9. }	
	10. Monmouthshire	10. }	
	11. Herefordshire	11. }	} Silures
	12. Worcestershire	12. }	
	13. Staffordshire	13. }	
	14. Shropshire	14. } Cornavii	

GREAT BRITAIN.

	MODERN.	ANCIENT.	
ENGLAND continued.	15. Essex	15. Trinobantes	
	16. Hartfordshire	16. Catiuechlani	
	17. Kent	17. Cantii	
	18. Surry	18. } Regni	
	19. Sussex	19. }	
	20. Norfolk	20. } Simeni vel	
	21. Suffolk	21. } Icenii	
	22. Cambridgeshire	22. }	
	23. Huntingdonshire	23. } Catiuechlani	
	24. Bedfordshire	24. }	
	25. Buckinghamshire	25. Attrebatii	
		26. Lincolnshire	26. }
27. Nottinghamshire		27. }	
28. Derbyshire		28. } Coritani	
29. Rutlandshire		29. }	
30. Leicestershire		30. }	
31. Warwickshire		31. Cornavi	
32. Northamptonshire		32. Catiuechlani	
		33. Northumberland	33. } Ottadeni
		34. Durham	34. }
		35. Yorkshire	35. }
		36. Lancashire	36. } Brigantes
		37. Westmoreland	37. }
	38. Cumberland	38. }	
	39. Cheshire	39. Cornavii	
	40. Middlesex	40. Attrebates et Catiuechlani	
WALES.	1. Anglesey	1. Mona Insula	
	2. Flintshire	2. }	
	3. Montgomery	3. }	
	4. Denbighshire	4. } Ordovices	
	5. Carnarvonshire	5. }	
	6. Merioneth	6. }	
	7. Cardiganshire	7. }	
	8. Carmarthenshire	8. } Demetæ	
	9. Pembrokeshire	9. }	
	10. Radnorshire	10. }	
	11. Brecknockshire	11. } Silures	
	12. Glamorganshire	12. }	

		MODERN.		ANCIENT.		
IRELAND.	Leinster	1.	Louth	1.	Voluntii	
		2.	Meath East	2.	} Cauci	
		3.	Meath West	3.		
		4.	Longford	4.	Auteri	
		5.	Dublin	5.	} Blanii	
		6.	Kildare	6.		
		7.	King's County	7.	} Coriondi	
		8.	Queen's County	8.		
		9.	Wicklow	9.	Blanii	
		10.	Carlow	10.	} Manapi	
		11.	Wexford	11.		
		12.	Kilkenny	12.	Coriondi	
	Ulster	13.	Donnegal or Tyr- connel	} HIBERNIA VEL IRENE.	13.	Vennicnii
		14.	Londonderry		14.	} Robogdii
		15.	Antrim		15.	
		16.	Tyrone		16.	Erdini
		17.	Fermanagh		17.	} Voluntii
		18.	Armagh		18.	
		19.	Down		19.	} Voluntii
		20.	Monaghan		20.	
		21.	Cavan		21.	Cauci
	Munster	22.	Cork County	22.	Vodiæ, Iverni	
		23.	Waterford	23.	} Brigantes	
		24.	Tipperary	24.		
		25.	Limerick	25.	} Velabori	
		26.	Kerry	26.		
	27.	Clare	27.	} Gangani		
	Connaught	28.	Galway		28.	} Gangani
		29.	Roscommon	29.		
		30.	Mayo	29.	Auteri	
		31.	Sligoe	30.	} Nagnatæ	
		32.	Leitrim	31.		
		32.		32.		

MODERN.		ANCIENT.		
BRITANNIC ISLANDS.	{ 1. Shetland and Orkney 2. Western Isles of Scotland 3. Man 4. Anglesey 5. Wight	INSULÆ BRITANNICÆ.	{ 1. Thule 2. Ebudes Insulæ 3. Monæda vel Mona 4. Mona 5. Vectis	

ASIA.

MODERN.		ANCIENT.		
TURKEY in ASIA.	{ 1. Natolia 2. Amasia or Siwas 3. Aladulia 4. Caramania	ASIA MINOR.	{ 1. Mysia, Lydia, Caria, Phrygia, Bithynia, Galatia, Paphlagonia 2. Pontus 3. Armenia 4. Cappadocia Cilicia, &c.	
	{ 5. Irak 6. Diarbek 7. Curdistan 8. Turcomania 9. Georgia 10. Syria and Palestine		{ 5. Babylonia, Chaldea 6. Mesopotamia 7. Assyria 8. } Armenia Major 9. } 10. { Syria, Palmyrene { Phœnicia, Judea	
ARABIA.	{ Arabia Petraæ Arabia Deserta Arabia Felix	ARABIA.	{ Arabia Petraæ Arabia Deserta Arabia Felix	

- PERSIA. {
1. Chorassan
 2. Balk, Sablutan, and Candahar
 3. Sigistan
 4. Makeran
 5. Kerman
 6. Farsistan
 7. Chusestan
 8. Irak Agem
 9. Curdestan
 10. Aderbeitzen
 11. Georgia
 12. Gangea
 13. Dagestan
 14. Mazanderam
 15. Gilan Taberistan
 16. Chirvan

- INDIA. {
- | | | |
|-------------------------------|---|-------------|
| Mogol | } | Delli |
| | | Agra |
| | | Cambaia |
| | | Bengal |
| India
within the
Ganges | } | Decan |
| | | Golconda |
| | | Bisnagar |
| | | Malabar |
| Island of Ceylon | | |
| India
beyond the
Ganges | } | Pegu |
| | | Tonquin |
| | | Cochinchina |
| | | Siam |

- | | | |
|---------|---|-----------------------------------|
| PERSIA. | { | 1. Pars Hyrcaniæ et Sogdianæ |
| | | 2. Bactriana |
| | | 3. Drangiana |
| | | 4. |
| | | 5. Gedrosia |
| | | 6. Persis |
| | | 7. Susiana |
| | | 8. Parthia |
| | | 9. Pars Assyriæ |
| | | 10. Media |
| | | 11. |
| | | 12. } Iberia, Colchis, et Albania |
| | | 13. } |
| | | 15. Pars Hyrcaniæ |
| | | 16. Pars Albanæ |

- | | | | | | | |
|--------|---|--------------------------|---|--------------------------|---|---------------------------|
| INDIA. | { | India
intra
Gangem | { | Palibothra | | |
| | | | | Agora | | |
| | | | | Regna Pori et Taxilis | | |
| | | | { | | { | Dachanos |
| | | | | | | Prasii vel Gangaridæ |
| | | | | | | Male |
| | | | { | | { | Taprobana Ins. vel Salice |
| | | | | | | |
| | | | { | India
extra
Gangem | { | Sinarum Regio |
| | | | | | | |

MODERN.		ANCIENT.		
CHINA.	Niuche	}	}	
	Corea			Sinæ
	Laotong			Serica
	Pekin			Cathæa
	Xansi			
	Xensi			
	Xantum			
	Nanking			
	Chekiam			
	Honan			
	Huquam			
	Kiamsi			
	Fokien			
	Canton			
Quamsi				
Suchuen				
Quecheu				
Yunum				
CHINESE ISLANDS.	Formosa			
	Ainan			
	Macao			
	Bashee Islands			
RUSSIA in ASIA.	1. Astracan	}	}	
	2. Orenburg			1. SARMATIA Asiatica
	3. Casan			SCYTHIA } 2.
	4. Siberia. { Tobolsk			intra } 3.
	{ Jeniseia	IMAUM. }		
	{ Irkutsk			
	{ Kamschatka			
Independent Tartary.	1. Great Bucharìa	}	}	
	2. Karasm			1. Bactriana
ALUTH-TARTARS.	1. Little Bucharìa	}	}	
	2. Casgar			2. Sogdiana
	3. Turkestan			2. Aria
	4. Kalmuc Tartars			
	5. Thibet			
	6. Little Thibet			
CHINESE TARTARY.	Kalkas	}	}	
	Mongol Tartars			
	Mantchou Tartars			
	Corea			SINÆ

ISLANDS of CHI-NESE TARTARY. { Sagalien-Ula-hata
Jedso

ISLANDS of JAPAN. { Japan or Niphon
Xicoco
Ximo

PHILIPPINE ISLES. { Lucon or Manilla
Mindanao, &c.

MARIAN or LADRONE ISLANDS. Tinian

ISLES of SUNDA. { Borneo
Sumatra
Java, &c.

MOLUCCA ISLES. { Celebes
Amboyna
Ceram
Timor
Flores, &c.

MALDIVA ISLES.

MODERN AFRICA:

BARBARY. { 1. Morocco
2. Algiers
3. Tunis
4. Tripoli
5. Barca

1. EGYPT

2. BILDULGERID

3. ZAARA, or the DESERT

4. NEGROLAND

5. GUINEA

6. UPPER ETHIOPIA, { Nubia
Abyssinia
Abex

7. LOWER ETHIOPIA

8. LOWER GUINEA. { Loango
Congo
Angola
Benguela
Matanau

9. AJAN

10. ZANGUEBAR

11. MONOMOTAPA

12. MONOEMUGI

13. SOFOLA

14. TERRA de NATAL

15. CAFRARIA, or country of the HOTTENTOTS

ANCIENT AFRICA.

- 1. Mauretania Tingitana
- 2. Mauretania Cæsariensis
- 3. Numidia, Africa Propria
- 4. Tripolitana
- 5. Cyrenaica, Libya Superior

1. ÆGYPTUS

2. LIBYA INFERIOR, GÆTULIA

3. SOLITUDINES

4. AUTOLOLES

6. ÆTHIOPIÆ et LIBYÆ pars

7. ÆTHIOPIÆ pars

NORTH AMERICA.

BRITISH.

- | | | |
|---|---------------------------------------------------------------------------|------------------|
| { | 1. The countries on the east and west sides of Baffin's and Hudson's Bays | |
| | 2. Labrador, or New Britain | |
| | 3. Canada | |
| | 4. Nova Scotia | |
| | 5. New England | } United States. |
| | 6. New York | |
| | 7. New Jersey | |
| | 8. Pennsylvania | |
| | 9. Maryland | |
| | 10. Virginia | |
| | 11. North Carolina | |
| | 12. South Carolina | |
| | 13. Georgia | |
| | 14. Florida | |

ISLANDS.

- | | |
|---|------------------------|
| { | 1. Newfoundland |
| | 2. Cape Breton |
| | 3. Bermudas |
| | 4. Long Island |
| | 5. Bahama Islands |
| | 6. Jamaica |
| | 7. St Christopher's |
| | 8. Nevis |
| | 9. Monserrat |
| | 10. Antigua |
| | 11. Dominica |
| | 12. St Vincent |
| | 13. Tobago |
| | 14. Grenada |
| | 15. Barbadoes, &c. &c. |

SPANISH.

- | | |
|---|------------------------|
| { | 1. Mexico or New Spain |
| | 2. New Mexico |
| | 3. Louisiana |

ISLANDS.

- | | |
|---|----------------------------|
| { | 1. Cuba |
| | 2. Porto Rico |
| | 3. West part of St Domingo |
| | 4. Trinidad |
| | 5. Margarita |
| | 6. Cubagua, &c. |

DUTCH ISLANDS.

- 1. Part of St Martin's Isle
- 2. Eustatius
- 3. Aves
- 4. Buenayres
- 5. Curacoa
- 6. Aruba

FRENCH ISLANDS.

- 1. Miquelon
- 2. St Pierre
- 3. Part of St Martin's Isle
- 4. St Bartholomew
- 5. Martinico
- 6. Guadaloupe
- 7. Desiada
- 8. Mariegalante
- 9. St Lucia
- 10. Part of St. Domingo

DANISH ISLANDS:

- 1. St Thomas
- 2. Santa Cruz

SOUTH AMERICA.

FRENCH. } Part of the Province of Guiana, Cayenne,
&c. &c.

SPANISH. } 1. Terra Firma
2. Country of the Amazons
3. Peru
4. Chili
5. Terra Magellanica
6. Paraguay
7. Tucuman

DUTCH. Part of Guiana, Surinam, &c.

PORTUGUESE. } Brasil, and many islands on the
coast
Part of Guiana

The Empire of *Assyria*, under Ninus and Semiramis, about 2200 before J. C. comprehended,

Asia Minor
Colchis
Assyria
Media Chaldea
Egypt

The Empire of *Assyria*, as divided about 820 before J. C. formed three kingdoms.

Media
Babylonia-Chaldea } Syria
 } Chaldea
Lydia All Asia Minor

The Empire of the PERSIANS, under Darius Hystaspes, 522 before J. C. comprehended,

Persis
Susiana
Chaldea
Assyria
Media
Bactriana
Armenia
Asia
Parthia
Iberia
Albania
Colchis
Asia Minor
Egypt
Part of Ethiopia
Part of Scythia

The Empire of ALEXANDER THE GREAT, 330 before J. C. consisted of,

1. All Macedonia and Greece, excepting Peloponnesus
2. All the Persian Empire, as above described
3. India to the banks of the Indus on the east, and the Iaxartes or Tanais on the north.

The Empire of ALEXANDER was thus divided 306 before J. C. between Ptolemy, Cassander, Lysimachus, and Seleucus.

Empire of Ptolemy. { Egypt
Lybia
Arabia
Coelosyria
Palestine

Empire of Cassander. { Macedonia
Greece

Empire of Lysimachus. { Thrace
Bithynia

Empire of Seleucus { Syria, and
All the rest of Alexander's empire

The Empire of the PARTHIANS, 140 before J. C. comprehended,

Parthia
Hyrcania
Media
Persis
Bactriana
Babylonia
Mesopotamia
India to the Indus

The ROMAN Empire, under the Kings, was confined to the City of Rome, and a few miles around it.

The ROMAN Empire, at the end of the Republic, comprehended,

All Italy
 Great part of Gaul
 Part of Britain
 Africa Proper
 Great part of Spain
 Illyria, Istria, Liburnia, Dalmatia
 Achaia
 Macedonia
 Dardania, Moesia, Thracia
 Pontus, Armenia
 Judaea, Cilicia, Syria
 Egypt

Under the Emperors,

All Spain
 The Alps, Maritimæ, Piedmont, &c.
 Rhætia, Noricum, Pannonia, & Mœsia
 Pontus, Armenia
 Assyria
 Arabia
 Egypt

} were reduced
 into Roman
 provinces.

Constantius Chlorus and Galerius divided the Empire into *Eastern* and *Western*; and under Constantine each had a distinct capital or seat of Empire.

The extent of each division was fluctuating from time to time; but in general,

The *Western* Empire comprehended

{ Italy
 Illyria
 Africa
 Spain
 The Gauls
 Britain

The *Eastern* Empire comprehended

{ Asia
 Pontus, Armenia
 Assyria, Media, &c.
 Egypt
 Thrace
 Dacia
 Macedonia

The Empire of *Charlemagne*, A. D. 800, comprehended,

<i>France.</i>	}	Neustria, comprehending Bretany, Normandy, Isle of France, Orleannois
		Austria, comprehending Picardy, and Champagne
		Aquitania, comprehending Guienne, and Gascony
		Burgundia, comprehending Burgundy, Lionnois, Languedoc, Dauphiny, Provence

Marca Hispanica, or Navarre and Catalonia

Majorca, Minorca, and Ivica, Corsica

Italy, as far south as Naples

Istria, Liburnia, Dalmatia

Rhætia, Vindelica, Noricum

Germany, from the Rhine to the Oder, and the banks of the Baltic



A CHRONOLOGICAL TABLE,

FOR THE BYZANTINE HISTORIANS.

EXPLANATION OF THE TABLE OF CHRONOLOGY.

THE Plan of the following CHRONOLOGICAL TABLE, though extremely simple, requires, as being a new one, a short Explanation. In order to give a distinct View of the Succession of Princes in the chief Empires or Kingdoms, without employing for that purpose different columns, which distracts too much the attention, and occupies unnecessarily a great deal of space, the Series of the Sovereigns of different Nations is distinguished in this Table by their being printed in different Typographical Characters. Thus, the Series of the Kings and Emperors of Rome is printed in a larger Roman Type than the rest of the Table;—as,

14 **T**iberius Emperor of Rome.

THE Series of the Popes is distinguishable by this character ¶ prefixed to each name;—as,

1513 ¶ Pope Leo X.

THE Names of the Emperors of Germany are printed in Roman Capitals;—as,

887 **ARNOLD**, Emperor of Germany.

THE Kings of England are marked by the Black Saxon Type;—as,

1066 **William** (the Conqueror) King of England.

THE Kings of Scotland, by a larger Capital beginning the word;—as

1309 **R**OBERT III. King of Scotland.

AND the Kings of France are distinguished by the Italic Type;—as

1498 *Louis XII.* King of France.

By this method the Succession of the Sovereigns in the different Kingdoms is immediately distinguishable to the eye, as well as the Duration of their Reigns, while the intervening space is filled by the Remarkable Events that occurred in that Period all over the World ; and thus the connexion of General History is preserved unbroken. A marginal Column is added of ILLUSTRIOUS PERSONS, which, being appropriated chiefly to men of Learning and Genius, presents to the Reader a View of the Progress of Science, and affords an easy means of forming an estimate of the Literary Character of any particular Age in the History of Mankind.

A

CHRONOLOGICAL TABLE,

FOR THE BYZANTINE HISTORIANS.

Yrs. B. C.		<i>Illustrious Persons.</i>
4004	THE Creation of the World, according to the Hebrew text of the Scriptures. According to the version of the Septuagint 5872. According to the Samaritan version 4700.	
2348	The universal Deluge.	
2247	The building of Babel.—The Dispersion of Mankind, and the Confusion of Languages.	
2217	Nimrod supposed to have built Babylon, and founded the Babylonish Monarchy, and Assur to have built Nineveh, and founded the Monarchy of Assyria.	
2188	Menes (in Scripture Misraim) founds the Monarchy of Egypt.	
2084	The Shepherd Kings conquer Egypt.	
2040	Mœris King of Thebes and Memphis in Egypt.	
1996	The birth of Abram.	
1897	Sodom and Gomorrah destroyed by fire from Heaven.	
1896	Isaac born.	
1856	Inachus founds the Kingdom of Argos in Greece.	
1836	Jacob and Esau born.	
1825	The Shepherd Kings abandon Egypt.	
1823	Death of Abraham.	
1796	The Deluge of Ogyges in Attica.	
1722	Sesostris or Rameses King of Egypt.	
1635	Joseph dies in Egypt.	
1582	The Chronology of the Arundelian Marbles begins with this year.	1588 Atlas, <i>Astronom.</i>
1571	Moses born in Egypt.	
1556	Cecrops founds the Kingdom of Athens.	
1546	Scamander founds the Kingdom of Troy.	
1532	Judgment of the Areopagus between Mars and Neptune, two princes of Thessaly.	
1529	The Deluge of Deucalion in Thessaly.	
1522	The Council of the Amphictyons instituted.	
1520	Corinth built.	
1506	Erectheus or Erythionius institutes the Panathenæan Games.	
1493	Cadmus builds Thebes, and introduces letters into Greece.	
1491	Moses brings the Israelites out of Egypt.	
1453	The first Olympic Games celebrated in Greece.	

Yrs. B. C.		<i>Illustrious Persons.</i>
1452	The Pentateuch, or five books of Moses, written.	
1451	The Israelites led into the land of Canaan by Joshua.	
1438	Pandion King of Athens.	1430 Bacchus, <i>ob.</i>
1406	Minos reigns in Crete, and gives laws to the Cretans.	
1376	Sethos reigns in Egypt.	
1322	Belus reigns in Babylon.	
1267	Ninus reigns in Assyria.	1284 Orpheus, Linus, <i>f.</i>
1266	Œdipus marries his Mother Jocasta, and reigns in Thebes.	
1263	The Argonautic Expedition.—(According to the Newtonian chronology 937).	Jason, Hercules, <i>f.</i>
1257	Theseus unites the Cities of Attica.	
1252	Tyre, the capital of Phœnicia, built.	
1225	Siege of Thebes.—War between Eteocles and Poly- nices.	
—	Eurysthenes and Procles Kings of Lacedæmon.	
1215	Second War of Thebes, or war of the Epigonoï.	1213 Nestor, <i>f.</i>
—	Semiramis supposed to have reigned at Babylon.	
1207	Gideon Judge of Israel.	
1202	Teucer built Salamis.	
1193	The Trojan war begins.	Menelaus, Ulysses, <i>f.</i>
1184	Troy taken and burnt by the Greeks.—(According to the Arundelian Marbles 1209.)	Hector, Achilles, <i>f.</i>
1182	Eneas lands in Italy.	1180 Darus, Phrygius, <i>Hist. f.</i>
1155	Samson born.	
1104	Return of the Heraclidæ into Peloponnesus.	Dictys, Cret. <i>f.</i>
1099	Samuel delivers Israel.	
1079	Saul King of Israel.	
1070	Medon first Archon of Athens.	
1069	Codrus King of Athens devotes himself for his coun- try.	
1055	David King of Israel.	
1040	Dedication of Solomon's Temple.	1040 Sanchoniathon, <i>f.</i>
980	Rehoboam King of Israel.	
889	Athaliah, wife of Jehoram, usurps the throne of Judah.	907 Homer, Hesiod, <i>f.</i>
886	Homer's Poems brought from Asia into Greece.	896 Eijah, <i>Prophet, f.</i>
884	Lycurgus reforms the Constitution of Lacedæmon.	
869	The city of Carthage built by Dido.	
820	Nineveh taken by Arbaces and Belesis, which finishes that kingdom.	873 Lycurgus, <i>ob.</i> Elisha, <i>Prophet, ob.</i>
776	The FIRST OLYMPIAD begins in this year.	
769	Syracuse built by Archias of Coriuth.	768 Isaiah, <i>Prophet.</i>
767	Sardanapalus King of Assyria.	
760	The Ephori, popular Magistrates, instituted at Lace- dæmon.	
757	Halyattes King of Lydia.	
754	Decennial Archons elected at Athens.	
752	The Foundation of Rome by Romulus.	
758	Rape of the Sabines.	
747	The Era of Nabonassar made use of by Ptolemy.	
738	Candaules King of Lydia.	736 Eumelus, <i>Poet.</i>
724	Hezekiah tenth King of Judah.	
721	Salmanazar takes Samaria, and carries the Ten Tribes into captivity, which puts an end to the Israelitish kingdom.	

Yrs. B. C.		Illustrious Persons.
715	Numa Pompilius , second King of Rome.	
711	Sennacherib, King of Assyria, invades Judæa.	
710	Dejoces King of Media.	
708	Habakkuk prophesied.	
703	Corcyra founded by the Corinthians.	
696	Manassch sixteenth King of Judah.	
688	Judith kills Holofernes the Assyrian General.	
684	Annual Archons elected at Athens.	
681	Esarhaddon unites the kingdoms of Babylon and Assyria.	Archilochus, <i>Poet.</i> Tyrtaeus, <i>Poet.</i>
672	Tullus Hostilius , third King of Rome.	Terpander, <i>A.</i>
670	Psammeticus King of Egypt.	
667	The combat between the Horatii and Curiatii.	Alcman, <i>A.</i>
658	Byzantium founded by Pausanias King of Sparta. Phraortes King of Media.	Stesichorus, <i>A.</i>
640	Ancus Martius fourth King of Rome.	
627	The forty years of Ezekiel began.	
626	Periander Tyrant of Corinth.	
—	Nabopolassar, father of Nebuchadnezzar, begins to reign at Babylon.	
624	Draco, Archon and Legislator of Athens.	Arion, <i>Musician, A.</i>
616	Tarquinius Priscus , fifth King of Rome.	612 Pittacus of Mitylene.
606	Nebuchadnezzar takes Jerusalem, and carries the Jews into captivity.	—Bias of Priene. Alcæus, <i>Poet, A.</i> Sappho, <i>Poetess, A.</i>
601	Battle between the Medes and Lydians, who are separated by a great eclipse of the sun, predicted by Thales. (Newton. Chron. 585.)	
—	End of the Assyrian Empire.—Nineveh taken by Nebuchadnezzar.	
600	Jeremiah prophesied,	
599	Birth of Cyrus the Great.	590 Memnermus, <i>Po. A.</i>
594	Solon, Archon and Legislator of Athens.	
578	Servius Tullius sixth King of Rome.	Jeremiah, <i>Prophet, ob.</i>
572	Nebuchadnezzar subdues Egypt.	Æsop, <i>Fab.</i>
571	Phalaris Tyrant of Agrigentum.	562 Cadmus of Miletus, <i>Hist. A.</i>
562	Comedies first exhibited at Athens by Thespis.	—Pherecydes of Scyros, <i>Phil. A.</i>
—	Cræsus reigns in Lydia.	558 Solon, <i>ob.</i>
551	Confucius, the Chinese Philosopher, born.	556 Chilo of Lacedæmon.
550	Pisistratus Tyrant of Athens.	
548	The ancient temple of Delphos burnt by the Pisistratidæ.	554 Anacharsis of Scythia.
538	Babylon taken by Cyrus.—End of the Babylonian Empire.	548 Thales, <i>Phil. ob.</i> —Theognis, <i>Poet, A.</i>
536	Cyrus ascends the throne of Persia.—He puts an end to the Jewish captivity, which had lasted seventy years.	547 Auaximander, <i>ob.</i> —Phocylides, <i>Poet, A.</i>
534	Tarquinius Superbus , seventh King of Rome.	546 Orpheus, <i>A.</i>
—	Daniel prophesied.	544 Bion, <i>Poet, A.</i>
529	Death of Cyrus the Great.—Cambyses King of Persia.	Thespis, <i>Com. A.</i>
—	Death of Pisistratus Tyrant of Athens.	Anacreon, <i>Poet, A.</i>
522	Darius, son of Hystaspes, King of Persia.	Scylax, <i>Geog.</i>
520	The Jews begin to build the second temple, which is finished in four years.	Diogenes, <i>Phil. born.</i>
510	The Pisistratidæ expelled from Athens, and the Democracy restored.	

<i>Yrs.</i> <i>B. C.</i>		<i>Illustrious Persons.</i>
510	Statues erected at Athens to Harmodius and Aristogiton.	
509	The Tarquins expelled from Rome, and the Regal government abolished.	Heraclitus, <i>Phil. A.</i>
508	The first alliance between the Romans and Carthaginians.	Anaximenes, <i>Phil. ob.</i>
504	Sardis taken and burnt by the Athenians.	
498	The first Dictator created at Rome, (Lartius).	Pythagoras, <i>ob.</i>
497	Institution of the Saturnalia at Rome.	
493	The port of Piræus built by the Athenians.	
490	The Battle of Marathon, in which Miltiades defeats the Persians.	Theano, <i>Phil. A.</i>
488	The first Tribunes of the people created at Rome.— (According to Blair 493).	Simonides, <i>Poet. A.</i>
—	Miltiades dies in prison.	
486	Xerxes succeeds his father Darius in the kingdom of Persia.	
485	Coriolanus banished from Rome.	
483	Quæstors instituted at Rome.	
—	Aristides banished from Athens by the Ostracism.	
480	The Spartans, under Leonidas, cut to pieces at Thermopylæ.	
—	Naval victory gained by the Greeks over the Persians at Salamis.	
479	Attica laid waste, and Athens burnt, by Mardonius.	Confucius, <i>Chinese,</i>
—	Victories over the Persians at Platæa and Mycale.	<i>Phil. ob.</i>
—	Xerxes leaves Greece.	
477	300 Fabii killed by the Veientes.	
476	Themistocles rebuilds Athens.	
—	Valerius triumphs over the Veientes and Sabines.	
—	The Roman citizens numbered at 103,000.	
—	A great eruption of Ætna.	
—	Hiero King of Syracuse.	
471	Volero, the Roman Tribune, obtains a law for the election of magistrates in the comitia held by tribes.	
470	Cimon, son of Miltiades, defeats the Persian army and fleet in one day, at the mouth of the river Eurymedon.	
469	Capua founded by the Tuscans.	
464	Artaxerxes (Longimanus) King of Persia.	Zeno, <i>Phil. A.</i>
—	Cimon banished by the Ostracism.	
463	Egypt revolts from the Persians.	
462	The Terentian law proposed at Rome.	
456	Cincinnatus Dictator at Rome.	Æschylus, <i>Poet, ob.</i>
—	The Ludi Sæculares first instituted at Rome.	Democritus, <i>Phil. A.</i>
455	Commencement of the Seventy Prophetical Weeks of Daniel.	
453	The number of the Tribunes of the people at Rome increased from five to ten.	Aristarchus, <i>Crit. A.</i>
452	The two books of Chronicles supposed to have been written at this time by Ezra.	Leucippus, <i>Phil. A.</i>
451	Creation of the Decemviri at Rome, and Compilation of the laws of the Twelve Tables.	
449	Peace between the Greeks and Persians concluded by Cimon, glorious for Greece.	
—	Death of Virginia, and abolition of the Decemvirate.	

Yrt. B. C.		<i>Illustrious Persons.</i>
445	The Law of Canuleius for the intermarriage of the Patricians and Plebeians at Rome.	
—	Military Tribunes created.	444 Herodotus, <i>Hist. fl.</i>
437	The Censorship first instituted at Rome.	
436	Pericles in high power at Athens.	Empedocles, <i>Phil. fl.</i>
432	Meton's nineteen years Cycle of the Moon.	—Parmenides, <i>Phil. fl.</i>
431	The Peloponnesian war begins, which lasted twenty-seven years.	435 Pindar, <i>ob.</i>
430	The History of the Old Testament ends about this time.	432 Phidias, <i>Sc. ob.</i>
—	Great Plague, at Athens, eloquently described by Thucydides.	
—	Malachi the last of the Prophets.	
428	Death of Pericles.	
423	Darius Nothus King of Persia.	Anaxagoras, <i>Phil. ob.</i>
418	Disturbances at Rome on account of the Agrarian Law.	415 Meton, <i>ob. post.</i>
414	The Athenians defeated before Syracuse.	
413	Alcibiades, accused at Athens, flies to the Lacedæmonians.	
412	A Council of 400 governs Athens.	
405	Lysander defeats the Athenians at Ægos Potamos.	407 Euripides, <i>ob.</i>
404	Artaxerxes II. (Mnemon) King of Persia.	406 Sophocles, <i>ob.</i>
—	End of the Peloponnesian war.	
403	Lysander takes Athens.—Government of the Thirty Tyrants.	
401	The Younger Cyrus defeated by his brother Artaxerxes, and killed.	Cebes, <i>fl.</i> —Euclid, <i>Phil.</i>
—	Retreat of the Ten Thousand Greeks.	
—	Persecution and death of Socrates.	
—	Thrasybulus drives out the Thirty Tyrants, and delivers Athens.	
399	A Lectisternium celebrated at Rome for the first time.	
397	The Lake of Alba drained by the Romans.	397 Xeuxis, <i>Paint. fl.</i>
396	Syracuse unsuccessfully besieged by the Carthaginians.	Socrates, <i>ob.</i>
391	Marcus Furius Camillus Dictator at Rome.—Veii taken.	Thucydides, <i>Hist. ob.</i>
387	Dishonourable peace of Antalcidas between the Spartans and Persians.	389 Aristophanes, <i>ob.</i>
385	Rome taken by the Gauls under Brennus.	Ctesias, <i>Hist. ob.</i>
382	Phæbidas, the Spartan, seizes the citadel of Thebes.	
380	Pelopidas and Epaminondas deliver Thebes from the Lacedæmonians.	378 Lysias, <i>Or. ob.</i>
371	Battle of Leuctra, in which the Lacedæmonians are defeated by the Thebans under Epaminondas.	
364	Pelopidas defeats the Tyrant of Pheræa, but is killed in battle.	Pelopidas, <i>ob.</i>
363	Battle of Mantinea, in which Epaminondas is killed.	
362	Curtius leaps into a gulph in the Forum at Rome.	
361	Darius Ochus (or Artaxerxes III.) King of Persia.—(According to Blair, 358).	Democritus, <i>Abd. ob.</i>
358	War of the Allies against Athens.	361 Hippocrates, <i>ob.</i>
—	Philip of Macedon takes Amphipolis, Pydna, and Potidea.	359 Xenophon, <i>Hist. ob.</i>
357	Dion overcomes the party of Dionysius at Syracuse.	
356	Alexander the Great born at Pella in Macedonia.	
—	The Temple of Diana, at Ephesus, burnt by Erostratus.	

Yrs. B. C.		<i>Illustrious Persons.</i>
356	The Phocian or Sacred War begins in Greece.	
—	Philip conquers the Thracians, Pæonians, and Illyrians.	
350	Darius Ochus subdues Egypt.	Plato, <i>ob.</i>
348	Philip of Macedon takes Olynthus.	
—	End of the Sacred War.	
347	Dionysius restored at Syracuse, after an exile of ten years.	
346	Philip admitted a Member of the Amphictyonic Council.	
343	Syracuse taken by Timoleon, and Dionysius the Tyrant finally banished.	
—	The war between the Romans and Samnites, which led to the conquest of all Italy.	
340	The Carthaginians defeated near Agrigentum.	
—	P. Decius devotes himself to his country.	
338	Battle of Cheronæa gained by Philip over the Athenians and Thebans.	Isocrates, <i>Or. ob.</i>
337	Philip chosen Generalissimo of the Greeks.	
336	Philip murdered by Pausanias.	
—	Alexander the Great King of Macedon.	Parrhasius, <i>Paint. fl.</i>
—	Alexander the Great destroys Thebes.	
335	Darius III. (Codomannus), King of Persia.	
—	Alexander chosen Generalissimo by the States of Greece.	Apelles, <i>Paint. fl.</i>
334	Alexander defeats the Persians on the bank of the Granicus.	
333	The Persians defeated by Alexander at Issus.	
332	Alexander conquers Egypt, and takes Tyre.	
331	Darius defeated by Alexander at Arbela.	
330	Darius Codomannus killed. End of the Persian empire.	
—	Alexander takes possession of Susa, and sets fire to the palace of Persepolis.	
328	Alexander passes into India, defeats Porus, founds several cities, penetrates to the Ganges.	
—	The voyage of Nearchus from the Indus to the Euphrates.	326 Lycippus, <i>Sc. fl.</i>
325	Papirius Cursor, Dictator at Rome, triumphs over the Samnites.	
324	Alexander the Great dies at Babylon, at the age of thirty-three.	Diogenes, <i>Phil. ob.</i>
321	The Samnites make the Roman army pass under the yoke at Caudium.	322 Demost. <i>Or. ob.</i>
320	Ptolemy carries 100,000 Jews captives in Egypt.	— Aristotle, <i>ob.</i>
317	Agathocles Tyrant of Syracuse.	
312	Era of the Seleucidæ.	
311	Cassander, Lysimachus, and Ptolemy, conclude a peace with Antigonus.	
304	Demetrius besieges Rhodes.	
303	Demetrius restores the Greek cities to their liberty.	Pyrrho, <i>Phil. ob.</i>
301	Battle of Ipsus in Phrygia, in which Antigonus is defeated and slain.	
—	Fabius Maximus and Valerius Corvus Dictators.	
300	Seleucus founds Antioch, Edessa, and Laodicea.	Arcesilaus, <i>Math. fl.</i>
298	Athens taken by Demetrius Poliorcetes.	Euclid, <i>Math. fl.</i>
294	Seleucus resigns his wife Stratonice to his son Antiochus.	293 Menander, <i>Poet, ob.</i>

Yrs. B. C.		<i>Illustrious Persons.</i>
286	Law of Hortensius, by which the decrees of the people were allowed the same force as those of the senate.	288 Praxiteles, Sc. ob. post.
285	The astronomical era of Dionysius of Alexandria.	
284	Ptolemy Philadelphus King of Egypt.	Theophrastus, fl.
283	The Library of Alexandria founded.	284 Demetrius Phal. fl.
281	Commencement of the Achæan League.	283 Theocritus, Poet, fl.
280	Pyrrhus invades Italy.	
—	Antiochus Soter King of Syria.	
277	The translation of the Septuagint made by order of Ptolemy Philadelphus.—(Playfair, 285).	
—	Antigonus Gonatas reigned in Macedon thirty-six years.	
275	Pyrrhus unsuccessful against the Carthaginians in Sicily.	
274	Pyrrhus, totally defeated by the Romans near Beneventum, evacuates Italy.	
272	The Samnites finally subdued by the Romans.	270 Epicurus, Phil. ob.
266	Silver money is coined at Rome for the first time.	268 Berosus, Hist. fl.
265	The citizens of Rome numbered at 292,224.	
264	The first Punic war begins.—The Chronicle of Paros composed.	Zeno, Phil. ob.
260	Provincial Quæstors instituted at Rome.	261 Manetho, Hist. fl.
—	First naval victory obtained by the Romans under the Consul Duilius.	259 Zoilus, Crit. fl.
255	Regulus defeated and taken prisoner by the Carthaginians under Xantippus.	
253	Manasseh chosen High Priest of the Jews.	
251	Great victory of Metellus over Asdrubal.	Aratus of Sicyon, fl.
250	The Romans besiege Lilybœum,—are defeated by Hamilcar.	247 Jesus son of Sirach.
241	End of the first Punic war.	244 Callimachus, Po. fl.
—	Attalus King of Pergamus succeeds Eumenes.	
240	Comedies are first acted at Rome.	Liv. Andronicus, Po. fl.
235	The Temple of Janus shut for the first time since the reign of Numa.	
228	Hamilcar killed in Spain.	
225	Great victory of the Romans over the Gauls.	Fabius Pictor, Hist. fl.
219	Hannibal takes Saguntum.	
218	The second Punic War begins.	
217	Hannibal defeats the Romans under Flaminius.	
—	Fabius Maximus Dictator.	
216	Battle of Cannæ, in which the Romans are totally defeated by Hannibal.	
212	Philip II. of Macedon defeats the Ætolians.	
—	Marcellus takes Syracuse, after a siege of two years.	Archimedes, Math. ob.
211	Capua surrenders to the Romans.	
—	Antiochus the Great conquers Judea.	
210	Asdrubal vanquished in Spain by the Scipios.	
—	Publius Scipio sent into Spain, takes New Carthage.	
206	Philopœmen Prætor of the Achæans.	
203	The Carthaginians recal Hannibal to Africa.	
—	Sophonisba poisoned by Massinissa.	203 Nævius, Poet, ob.
201	Syphax led in triumph to Rome by P. Scipio.	
197	Philip defeated by the Romans at Cynocephale.	
196	The battle of Zama, and end of the second Punic War.	

<i>Yrs.</i>		<i>Illustrious Persons.</i>
<i>B. C.</i>		
190	The Romans enter Asia, and defeat Antigonus at Magnesia.	185 Philopoemen, <i>ob.</i>
183	The elder Cato Censor at Rome.	184 Plautus, Poet, <i>ob.</i>
173	War between the Romans and Perseus King of Macedonia.	
172	Antiochus defeats the generals of Ptolemy in Egypt.	
170	Antiochus Epiphanes takes and plunders Jerusalem.	
169	Terence's comedies performed at Rome.	169 Ennius, Poet, <i>ob.</i>
167	Perseus defeated by Paulus Æmilius, and brought prisoner to Rome. End of the kingdom of Macedonia.	
166	Judas Maccabeus drives the Syrians out of Judea.	Cæcilius, Poet, <i>ob.</i>
164	The Roman citizens numbered at 327,032.	159 Terence, Poet, <i>ob.</i>
149	The third Punic War begins.	156 Aristarchus, Gr. <i>ob.</i>
147	Metellus defeats the Achæans.	
146	Corinth taken by the Consul Mummius.	
—	Carthage taken and destroyed by the Romans.	
137	The Romans shamefully defeated by the Numantines.	140 Critolaus, Phil. <i>ob.</i>
135	The history of the Apocrypha ends.	139 Accius, Tr. P. <i>ob.</i>
—	Antiochus besieges Jerusalem.	
133	Tiberius Gracchus put to death.	131 Pacuvius, Tr. P. <i>ob.</i>
—	Numantia taken. Pergamus becomes a Roman province.	128 Carneades, Phil. <i>ob.</i>
121	Caius Gracchus killed.	124 Polybius, Hist. <i>ob.</i>
113	Carbo the Consul drives the Cimbri and Teutones out of Italy.	115 Apollodorus, Gr. <i>ob.</i>
111	The Jugurthine War begins.	
108	Marius defeats Jugurtha.	
103	Jugurtha starved to death at Rome.	Lucilius, Poet, <i>ob.</i>
102	Marius defeats the Teutones and Cimbri.	
91	The war of the Allies against the Romans.	
90	Sylla defeats the Marsi, Peligni, Samnites, &c.	
89	The Mithridatic War begins.	
88	Civil war between Marius and Sylla.—Sylla takes possession of Rome.	Alexander Polyh. <i>fl.</i>
86	Mithridates King of Pontus defeated by Sylla.	
83	Sylla defeats Norbanus.—The Capitol burnt.	84 Cinna, <i>ob.</i>
82	Sylla perpetual Dictator.—His horrible proscription.	
80	Julius Cæsar makes his first campaign.	
79	Cicero's first oration for Roscius.	
78	Sylla resigns all power,—and dies.	
77	The War of Sertorius.	
72	Lucullus repeatedly defeats Mithridates, and reduces Pontus to a Roman Province.	73 Sertorius, <i>ob.</i>
70	Crassus and Pompey chosen Consuls at Rome.	Terentius Varro, <i>fl.</i>
63	Victories of Pompey.—He takes Jerusalem, and restores Hyrcanus to the government of Judæa.	Hortensius, Orat. <i>fl.</i>
62	Catiline's conspiracy quelled at Rome by Cicero.	T. Pomp. Atticus, <i>fl.</i>
61	Pompey enters Rome in triumph.	Asinius Pollio, <i>fl.</i>
59	The first Triumvirate—Pompey, Crassus, and Cæsar. Cæsar proposes a new Agrarian law.	
58	Clodius the Tribune procures the banishment of Cicero.	
57	Cæsar defeats Ariovistus in Gaul.	
—	Cicero brought back from exile with high honour.	
55	Cæsar lands in Britain for a short campaign.	Lucretius, Poet, <i>ob.</i>

<i>Yrs.</i> B. C.		<i>Illustrious Persons.</i>
54	Cæsar invades Britain a second time, and conquers a part of the country.	
53	Crassus killed in Mesopotamia.	
52	Milo defended by Cicero for the slaughter of Clodius.	51 Possidonius, <i>ob. post.</i>
49	Cæsar passes the Rubicon, and marches to Rome.	49 Trogus Pompeius <i>fl.</i>
—	Commencement of the era of Antioch, October 49 A. C.	
48	Battle of Pharsalia, in which Pompey is defeated.	
—	Pompey slain in Egypt.	
—	The Alexandrian Library of 400,000 volumes burnt.	
46	Cato besieged in Utica,—kills himself.	46 Alex. Polyhistor, <i>fl.</i>
45	The Kalender reformed by Julius Cæsar, by introducing the Solar Year instead of the Lunar.—The first Julian Year began 1st January 45 A. C.	
44	Julius Cæsar killed in the Senate-house.	44 Julius Cæsar, <i>ob.</i>
—	Octavius, grand-nephew and heir of Julius Cæsar, comes to Rome, and is opposed at first by Antony.	Diod. Siculus, <i>Hist. fl.</i>
43	Second Triumvirate—Octavius, Mark Antony, and Lepidus.	M. T. Cicero, <i>ob.</i>
42	Battle of Philippi, in which Brutus and Cassius are defeated.	A. Hirtius, <i>Hist. fl.</i>
40	Herod marries Mariamne, daughter of Hyrcanus, and obtains from the Romans the government of Judæa.	40 Catullus, <i>Poet, fl.</i>
34	Antony divides Armenia among the Children of Cleopatra,	M. Junius Brutus, <i>fl.</i>
33	Mauritania reduced into a Roman province.	35 Sallustus, <i>Hist. ob.</i>
32	War declared by the Senate against Antony and Cleopatra.	Pub. Syrus, <i>Poet, fl.</i>
31	Battle of Actium, and end of the Roman Commonwealth.	Manilius, <i>Poet, fl.</i>
—	Octavius Emperor of Rome.	33 Dioscorides, <i>Phy. ob.</i>
30	Death of Mark Antony and Cleopatra. Alexandria taken by Octavius.	Corn. Gallus, <i>Poet, fl.</i>
27	Octavius receives the title of Augustus.	Messala Corvinus, <i>Hist. fl.</i>
23	Death of Marcellus.—Agrippa in Spain.	
20	Porus King of India sends an embassy to Augustus.	Propertius, <i>Poet, fl.</i>
17	Augustus revives the secular games.	25 Corn. Nepos, <i>Hist. ob.</i>
15	The Rhæti and Vindelici defeated by Drusus.	19 Virgilius Maro, <i>ob.</i>
10	The temple of Janus shut by Augustus for a short time.	Vitruvius, <i>Arch. fl.</i>
8	Augustus corrects an error of the Roman Kalender,	12 M. V. Agrippa, <i>ob.</i>
—	Death of Mœcenas.	Grat. Faliscus, <i>Poet. fl.</i>
5	Augustus ordains a census of all the people in the Roman empire.	Horatius Flaccus, <i>ob.</i>
4	JESUS CHRIST is born four years before the commencement of the vulgar era.	
<i>Yrs.</i> A. C.		N. Damascenus, <i>ob.</i>
9	The Roman legions, under Varus, cut to pieces in Germany.	Labeo, <i>Capito, Icti, fl.</i>
—	Ovid the Poet banished to Tomos.	Hýginus, <i>Math. fl.</i>
14	Tiberius Emperor of Rome.	4 Phædrus, <i>Poet, fl.</i>
19	Germanicus dies at Antioch.	5 Dionysius Hal. <i>Hist. fl.</i>
—	Tiberius banishes the Jews from Rome.	Titus Livius, <i>Hist. ob.</i>
		17 Ovidius, <i>Poet. ob.</i>
		Tibullus, <i>Poet. ob.</i>
		17 Celsus, <i>Med. fl.</i>
		23 Valerius Max. <i>fl.</i>

Yrs. A. C.		<i>Illustricus Persons.</i>
26	John the Baptist preaches in Judæa the coming of the Messiah.	25 Strabo, <i>Geo. ob.</i>
27	Tiberius retires to the island of Capræ.	
—	Pilate made Governor of Judæa.	Velleius Paterculus, <i>ob.</i>
31	Sejanus disgraced, and put to death by Tiberius.	32 John the Baptist, <i>ob.</i>
33	† St Peter first Pope.	—Columella, <i>fl.</i>
—	JESUS CHRIST is crucified.	
35	The conversion of St Paul.	
37	Caligula Emperor of Rome.	37 Isodorus, <i>Geo. fl.</i>
39	St Matthew writes his gospel.	Philo Judæus, <i>fl.</i>
40	The name of Christians first given to the disciples of Christ at Antioch.	
41	Claudius Emperor of Rome.	
—	Herod persecutes the Christians, and imprisons Peter.	
42	Sergius Paulus, proconsul, converted by St Paul.	42 Asinius Pollio, <i>fl.</i>
43	Expedition of Claudius into Britain.	
44	St Mark writes his Gospel.	
45	Vespasian in Britain.	
47	The <i>Ludi Sæculares</i> performed at Rome.	45 Pomp. Mela, <i>Geo. fl.</i>
48	Messalina put to death by Claudius, who marries Agrippina, the mother of Nero.	
50	St Paul preaches in the Areopagus at Athens.	50 Aretæus Capp. <i>ob.</i>
51	Caractacus, the British King, is carried prisoner to Rome.	
54	Nero Emperor of Rome.	
55	Britannicus poisoned by Nero,	56 Cornutus, <i>Phil. fl.</i>
59	Nero puts to death his mother Agrippina.	Apollonius Tyanensis, <i>fl.</i>
60	Suetonius Paulinus defeats the Britons.	Quint Curtius, <i>Hist. fl.</i>
61	The Britons, under Queen Boadicea, defeat the Romans.	62 Persius Sat. <i>ob.</i>
64	The first persecution of the Christians raised by Nero.	65 An. Seneca, <i>Phil. ob.</i>
—	Rome set on fire by Nero.	—An. Lucanus, <i>Po. ob.</i>
66	Bareus Soranus and Thræsea Pætus put to death by Nero.	66 Petronius Arb. <i>ob.</i>
—	† Pope Linus.	Dioscorides, <i>Med. fl.</i>
67	Massacre of the Jews by Florus, at Cæsarea, Ptolemais, and Alexandria.	
—	St Peter and St Paul put to death.	
—	Josephus, the Jewish historian, governor of Galilee.	
—	† Pope St Clement.	
68	Galba Emperor of Rome.	
69	Otho Emperor of Rome.	
—	Vitellius Emperor of Rome.	
70	Vespasian Emperor of Rome.	74 Silius Italicus, <i>Poet, ob.</i>
—	Jerusalem taken and destroyed by Titus.	Clemens, <i>Romanus, fl.</i>
77	† Pope St Cletus.	
78	A great pestilence at Rome, 10,000 dying in one day.	
79	Titus Emperor of Rome.	
—	Herulaneum and Pompeii destroyed by an eruption of Vesuvius.	
80	Conquests of Agricola in Britain.	Pliny Elder, <i>Nat. Hist. fl.</i>
81	Domitian Emperor of Rome.	84 Valerius Flaccus, <i>Poet, fl.</i>
83	† Pope Anacletus.	

Yrs. A. C.		<i>Illustrious Persons.</i>
89	Apollonius of Tyanea defends himself before Domitian against an accusation of treason.	90 Martialis, Poet, <i>ob.</i>
95	Dreadful persecution of the Christians at Rome, and in the provinces.	—Dio Chrysostom, <i>ob.</i>
—	St John writes his Apocalypse.	93 Josephus, Hist. <i>ob.</i>
—	— writes his Gospel.	95 Quinctilian, Gr. <i>ob.</i>
96	Nerva Emperor of Rome.	96 Statius, Poet, <i>ob.</i>
—	¶ Pope Evaristus.	Sulpitia, Poet, <i>fl.</i>
68	Trajan Emperor of Rome.	99 Tacitus, Hist. <i>ob.</i>
—	Trajan forbids the Christian Assemblies.	—Julius Frontinus, <i>ob.</i>
100		
103	The Dacians subdued by Trajan.	103 Pliny Junior, <i>fl.</i>
107	Trajan's victories in Asia.	
108	St Ignatius devoured by wild beasts at Rome.	
—	¶ Pope Alexander I.	
115	The Jews in Cyrene murder 200,000 Greeks and Romans.	
117	¶ Pope Sixtus I.	
118	Adrian Emperor of Rome.	
—	Persecution of the Christians renewed by Adrian, but afterwards suspended.	119 Plutarch, <i>ob.</i>
120	Adrian's wall built across the island of Britain.	C. Suetonius, Hist. <i>fl.</i>
127	¶ Pope Telesphorus.	128 Juvenal, Poet, <i>ob.</i>
131	Adrian visits Egypt and Syria.	130 Aul. Gellius, <i>ob.</i>
132	— publishes his perpetual edict or code of the laws.	Æl. Adrianus, <i>fl.</i>
135	The Romans destroyed 580,000 Jews in Judæa.	Arrian, Hist. & Phil. <i>fl.</i>
137	Adrian rebuilds Jerusalem by the name of Ælia Capitolina.	Terrentianus Maurus, <i>fl.</i>
138	¶ Pope Hyginus.	Justin Martyr, <i>fl.</i>
—	Antoninus Pius Emperor of Rome.	
142	¶ Pope Pius I.	140 Ælian, Hist. <i>ob.</i>
150	¶ Pope Anicetus.	L. Apuleius, <i>fl.</i>
154	Justin Martyr publishes his Apology for the Christians.	Ptolemy, Geog. <i>fl.</i>
161	Marcus Aurelius Antoninus, and Lucius Verus, Emperors of Rome.	148 Appian, Hist. <i>ob.</i>
162	¶ Pope Soter.	M. Antoninus, Phil. <i>fl.</i>
167	Polycarp and Pionices suffered martyrdom in Asia.	Epictetus, Phil. <i>ob.</i>
169	War with the Marcomanni.	163 Pausanias, Hist. <i>ob.</i>
171	Death of Verus. Marcus Aurelius sole Emperor.	165 Polycarp, Bish. <i>fl.</i>
—	¶ Pope Eleutherius.	167 Justin, Hist. <i>fl.</i>
177	Persecution of the Christians at Lyons.	170 Demetrius Phaler, <i>ob.</i>
180	Commodus Emperor of Rome.	
185	¶ Pope Victor I.	Lucian, <i>ob.</i>
189	The Saracens defeat the Romans.—This people for the first time mentioned in history.	Julius, Pollux, <i>ob.</i>
193	Pertinax Emperor of Rome.—Didius Julianus purchases the empire.	Herodianus, Hist. <i>fl.</i>
—	Pescennius Niger declared Emperor in the East.	Iamblichus, Poet. <i>fl.</i>
—	Septimius Severus Emperor of Rome.	Galen, Phys. <i>ob.</i>
194	Niger defeated by Severus, and put to death.	Sextus Empiricus, <i>fl.</i>
		Maximus Tyrius, Phil. <i>fl.</i>
		Plotinus, Phil. <i>fl.</i>
		Julius Solinus, <i>fl.</i>

<i>Yrs.</i> <i>A. C.</i>		<i>Illustrious Persons.</i>
195	Byzantium besieged, surrenders to Severus.	
196	Albinus proclaimed Emperor in Britain.	196 Athenaeus, <i>ob.</i>
197	— defeated by Severus, he kills himself.	Tertullian, <i>ob.</i>
—	¶ Pope Zephyrinus.	
200		202 Ireneus, <i>ob.</i>
202	The fifth persecution against the Christians, principally in Egypt.	Hegesippus, <i>Hist. fl.</i>
208	Severus, with his sons Caracalla and Geta, in Britain.	Dionysius Cato, <i>Poet, fl.</i>
209	The Caledonians repulsed, and a wall built between the rivers Forth and Clyde.	Philostratus, <i>fl.</i>
211	Caracalla and Geta Emperors of Rome.	206 Clemens Alex. <i>fl.</i>
212	Caracalla murders Geta.	207 Minucius Felix, <i>fl.</i>
217	Caracalla put to death.	Papinianus <i>ob.</i>
—	Macrinus Emperor of Rome.	213 Oppian, <i>Poet, ob.</i>
—	¶ Pope Calixtus I.	
218	Heliogabalus Emperor of Rome.	220 Julius Africanus, <i>fl.</i>
222	Alexander Severus Emperor of Rome.	Diogenes Laertes, <i>ob.</i>
—	A tribute paid by the Romans to the Goths.	Ælianus, <i>Hist. fl.</i>
—	¶ Pope Urban I.	
226	The Persians totally defeated by Alexander Severus.	
230	¶ Pope Pontianus.	229 Dion Cassius, <i>fl.</i>
235	¶ Pope Anterus.	Ulpianus, <i>fl.</i>
—	Maximinus assassinates Alexander Severus, and is proclaimed Emperor of Rome.	Julius Paulus, <i>fl.</i>
236	The sixth persecution of the Christians.	L. Pomponius, <i>fl.</i>
—	¶ Pope Fabianus.	
237	Maximinus defeats the Dacians and Sarmatians.	Censorius, <i>fl.</i>
238	Maximus and Balbinus Emperors of Rome.	Modestinus, <i>Ictus, fl.</i>
—	Gordian Emperor of Rome.	
242	Gordian defeats the Persians under Sapor.	243 Ammonius, <i>ab. post.</i>
244	Philip the Arabian Emperor of Rome.	247 Herodian, <i>Hist. fl.</i>
248	The Secular Games celebrated at Rome.—Pompey's Theatre burnt.	
—	St. Cyprian elected Bishop of Carthage.	
249	Decius Emperor of Rome.	
250	The seventh persecution of the Christians under Decius.	
—	¶ Pope St. Cornelius.	
251	Vibius Volusianus Emperor of Rome.	
—	Gallus Emperor of Rome.	
252	¶ Pope Lucius I.	
253	The Goths, Burgundians, &c. make an irruption into Mœsia and Pannonia.	
254	Valerianus Emperor of Rome.	Origen, <i>ob.</i>
—	¶ Pope Stephen I.	
257	The eighth persecution of the Christians.	
—	¶ Pope Sixtus II.	258 Cyprian, <i>ob.</i>
259	The Persians ravage Syria.	
—	¶ Pope Dionysius.	
260	Gallienus Emperor of Rome.	
—	The Temple of Diana at Ephesus burnt.	

Yrs.	A. C.		<i>Illustrious Persons</i>
261		Sapor, the Persian, takes Antioch, Tarsus, and Cæsarea.	
267		The Heruli invade and ravage Greece.	
268		Claudius II. Emperor of Rome.	Novatianus, fl.
269		The Goths and Heruli, to the number of 320,000, defeated by Claudius.	
		¶ Pope Felix I.	
270		Aurelian Emperor of Rome.	270 Plotinus, Phil. ob.
271		The Alemanni and Marcomanni ravage the empire.	
272		The ninth persecution of the Christians.	
273		Zenobia Queen of Palmyra defeated by Aurelian at Edeffa.	Longinus, ob. Achilles Tatius, Ast. fl.
274		¶ Pope Eutychianus.	
275		Tacitus Emperor of Rome.	Paulus Samosatenus, fl.
276		Florianus Emperor of Rome.	276 Modestus, fl.
277		Probus Emperor of Rome.	
278		Carus Emperor of Rome defeats the Quadi and Sarmatians.	280 Manes, Phil. ob.
		Carinus---Numerianus, Emperors of Rome.	
283		¶ Pope Caius.	
		Fingal King of Morven died.	
284		Diocletian Emperor of Rome.	Nemesianus, Poet, fl.
286		The empire attacked by the northern nations.	285 Arnobius, fl.
		Carausius usurps the government of Britain, and reigns seven years.	289 Gregory, Hermogenes, fl.
290		The Gregorian and Hermogenian Codes published.	291 Ælius Spartianus, Hist. fl.
292		Partition of the Empire by Dioclesian between two Emperors and two Caesars.	Julius Capitolinus, Hist. fl. Vul Gallicanus, Hist. fl. Trebellius Pollio, Hist. fl.
295		¶ Pope Marcellinus.	Ælius Lampridius, Hist. fl.
		Alexandria in Egypt taken by Diocletian.	Hierocles, Poet, fl.
300			303 Fl. Vopiscus, Hist. fl.
302		The tenth persecution of the Christians.	Steph. Byzantinus, Hist. fl.
304		¶ Pope Marcellus.	
		Resignation of Diocletian and Maximia.	Alciphron, Rhet. fl.
		Galerius and Constantius Emperors of Rome.	
305		Maximinus Emperor of Rome.	
306		Constantine the Great Emperor of Rome—stops the persecution of the Christians.	311 Lactantius fl. Ossian, Poet, fl.
		¶ Pope Eusebius.	
		¶ Pope Melchiades.	
314		¶ Pope Sylvester.	
325		Constantine abolishes the combats of Gladiators.	
		assembles the first General Council at Nice, where the doctrines of Arius are condemned.	
326		St. Athanasius, Bishop of Alexandria, introduces monachism in the Roman empire.	
329		Constantine removes the seat of empire to Constantinople.	
336		¶ Pope Marcus.	336 Arrius, Presb. ob. Stobæus, Philol. fl.
337		¶ Pope Julius I.	Eusebius, Hist. fl.
		Death of Constantine.—The empire divided among his three sons.	Donatus, fl.

Yrs. A. C.		Illustrious Persons.
337	Constantine II. Constans, and Constantius , Emperors of Rome.	
352	☩ Pope Liberius.	Eutropius, Hist. fl.
356	☩ Pope Felix I.	Libanius, Soph. fl.
357	The Germans defeated by Julian at Strasburg.	Julian, Phil. fl.
358	☩ Pope Felix II.	
361	Julian Emperor of Rome---abjures Christianity, and is elected Pontifex Maximus.	
—	— attempts fruitlessly to rebuild the temple of Jerusalem.	
363	Jovian Emperor of Rome.	Iamblichus, Phil. ob.
364	Valentinian Emperor of the West,--- Valens Emperor of the East.	Aurel. Victor fl.
366	☩ Pope Daemiasus.	Végetius, Hist. fl.
367	Gratian Emperor of the West.	371 St. Athanasius, ob.
376	Valentinian II. Emperor of the West.	372 Eunapius, fl.
376	Valens allows the Goths to settle in Thrace.	R. Festus Avienus, fl.
878	The Goths advance to the gates of Constantinople.--- Death of Valens.	Pappus, Math. fl.
379	Theodosius the Great Emperor of the East.	379 St. Bazil, ob.
381	Second General Council held at Constantinople.	380 Ammian. Marcel.ob.
383	The Huns overrun Mesopotamia---are defeated by the Goths.	Prudentius, Poet. fl.
384	Symmachus pleads the cause of Paganism against St. Ambrose in the Senate.	
385	☩ Pope Syricus.	389 Gregory Naz. ob.
391	Theodosius Emperor of the West and East.	392 Ausonius, Poet, ob.
395	Arcadius Emperor of the East and Honorius of the West.	
—	The Huns invade the eastern provinces.	
397	St. Chrysostom chosen Patriarch of Constantinople.	397 St. Ambrose, ob.
399	☩ Pope Anastasius.	399 Hesychius, fl.
—	Gainas the Goth obtains honours from Arcadius.	Claudian, Poet, fl.
400		
—	Alaric the Goth ravages Italy	Heliodorus, Hist. Æth. fl.
401	☩ Pope Innocent I.	Longus, fl.
403	Stilicho, General of Honorius, defeats Alaric near Pollentia.	
404	F ERGUS I. King of Scotland, supposed to have begun his reign.	
406	The Vandals, Alans, &c. invade France and Spain.	407 St. Chrysostom, ob.
408	Theodosius II. Emperor of the East.	Servius, Com. fl.
410	Rome sacked and burnt by Alaric.—Death of Alaric.	Orosius, Hist. fl.
411	The Vandals settled in Spain.	
416	The Secular Games celebrated at Rome.	416 Macrobius, Philol. ob.
—	The Pelagian Heresy condemned by the Bishops of Africa.	
417	☩ Pope Zozimus.	
418	☩ Pope Boniface I.	
420	Pharamond first King of the Franks supposed to have begun his reign.	420 St. Jerome, ob.
422	☩ Pope Cælestinus.	Sulpitius Severus, ob.

Yrs.

A. C.

Illustrious Persons.

424	Valentinian III. Emperor of the West.	
426	The Romans withdraw finally from Britain.	
428	Ætius , the Roman General, defeats the Franks and Goths.	426 Zozimus, <i>Hist. fl.</i> 430 St. Augustine, <i>ob.</i> Olympiodorus, <i>Hist. fl.</i> Pelagius, <i>Her. ob.</i>
431	The third General Council held at Ephesus.	
432	¶ Pope Sixtus III.	
435	The Theodosian Code published.	
439	Genseric the Vandal invades and plunders Italy.	
—	Eudocia the Empress, wife of Theodosius, retires to Jerusalem.	
—	Carthage taken by the Vandals.—Kingdom of the Vandals in Africa.	
440	¶ Pope Leo the Great.	
442	Theodosius forced to make a disgraceful peace with Attila the Hun.	
—	Attila causes his brother Bleda to be murdered.	
445	The Britons in vain solicit the Romans to assist them against the Picts and Scots.	444 St. Cyril, <i>ob.</i>
—	Attila the Hun overruns Illyrium, Thrace, Dacia, Mœsia, and Scythia.	
448	The Romans engage to pay a heavy tribute of gold to Attila.	
449	<i>Merovæus King of the Franks.</i>	Eutychus, <i>fl.</i>
450	Marcian Emperor of the East.	450 Sozomen, <i>Hist. ob.</i>
—	Attila ravages Germany and France.	
451	Theodoric King of the Visigoths killed in battle. The Huns defeated by Ætius.	
—	The Saxons arrive in Britain under Hengist and Horsa.	
—	The fourth General Council held at Chalcedon.	
452	Foundation of the city of Venice.	
455	Petronius Maximus Emperor of the West.	
—	Avitus Emperor of the West.	
—	Rome taken and plundered by Genseric the Vandal.	
456	<i>Childeric King of the Franks.</i>	
457	Leo the Great Emperor of the East.	
—	Majorianus Emperor of the West.	
461	Severus Emperor of the West, raised by Ricimer.	463 Victorius of Acquit. <i>fl.</i>
—	¶ Pope Hilarius.	466 Prosper, <i>ob.</i>
467	Anthemius Emperor of the West.	
468	Euric King of the Visigoths drives the Romans out of Spain.	
—	¶ Pope Simplicius.	
470	Ælla the Saxon takes possession of the kingdom of Sussex.	
471	Ælla defeats all the British Princes.	
472	Great eruption of Mount Vesuvius, seen from Constantinople.	
—	Olibius Emperor of the West.	
473	Glycerius Emperor of the West, degraded and stripped by	
474	Julius Nepos Emperor of the West.	
—	Zeno Emperor of the East.	

Yrs. A. C.		<i>Illustrious Persons.</i>
475	Augustulus Romulus Emperor of the West, raised by his father Orestes, General to Nepos.	
476	Orestes put to death by Odoacer King of the Heruli.	476 Hierocles, fl.
—	Rome taken by Odoacer, now King of Italy.	Q. Calaber, Poet, fl.
—	EXTINCTION OF THE WESTERN EMPIRE of the Romans, 507 years from the battle of Actium, and 1224 from the building of Rome.	
481	Clovis King of the Franks.	
—	Zeno makes Theodoric, the Ostrogoth, his General, and creates him Consul.	
483	☞ Pope Felix III.	482 Sidonius Apollinaris, ob.
485	Battle of Soissons gained by Clovis.	Simplicius, Phil. fl.
488	Theodoric, the Ostrogoth, entirely defeats Odoacer, and is acknowledged King of Italy by the Emperor Zeno.	
490	The Burgundians, under Gondobald, ravage Italy.	
—	Ireland, called the Isle of Saints, famous for its schools.	
491	Anastasius Emperor of the East.	491 St. Patrick, ob.
493	Odoacer put to death by Theodoric.	492 Gennadius, ob.
496	☞ Pope Anastasius II.	Malchus, Soph fl.
497	Clovis and the Franks converted to Christianity.	
498	☞ Pope Symmachus.	
499	Alliance between Clovis and Theodoric the Great.	
500	—	
—	Gondobald, the Burgundian, becomes tributary to Clovis.	
501	The Burgundian laws published by Gondobald.	501 Zosimus; Hist. ob.
502	Cabades King of Persia ravages part of the Eastern Empire.	
504	The Eastern Empire makes peace with Cabades.	
507	Clovis defeats Alaric the Visigoth, and receives a congratulatory embassy, with a diadem, from Anastasius.	Steph. Bezaninus, fl.
508	Theodoric the Great defeats Clovis in the battle of Arles, and then makes peace with him.	
510	Clovis makes Paris the capital of the kingdom of the Franks.	
511	Death of Clovis.—Division of his kingdom among his four sons.	Proclus, Phil. fl.
—	<i>Childebert, Thierry, Clotaire, and Clodimir, Kings of the Franks.</i>	
512	The Heruli allowed by Anastasius to settle in Thrace.	
514	☞ Pope Hormisdas.	
515	Arthur King of the Britons supposed to have begun his reign.	
516	The Computation of Time by the Christian Æra introduced by Dionysius the Monk.	Priscian, fl.
517	The Getæ ravage Illyrium, Macedonia, and Epirus.	Hesychius, Hist. fl.
518	Justin I. Emperor of the East, raised from obscurity.	
519	Justin restores the Orthodox Bishops, and condemns the Eutychians.	
—	Cabades King of Persia proposes that Justin should adopt his son Cosroes, and makes war on a refusal.	

Yrs.	A. C.		Illustrious Persons.
	523	¶ Pope John I.	
	525	The Arian Bishops deposed by Justin,—highly re- sented by Theodoric.	
	—	Antioch and many other cities almost destroyed by an earthquake, but rebuilt by Justin.—He adopts his nephew Justinian.	
	526	Theodoric puts to death Boethius and Symmachus.	Boethius, Phil. ob.
	—	¶ Pope Felix IV.	
	527	Justinian I. Emperor of the East.	
	529	Belisarius, general of Justinian, defeats the Persians.	529 Fulgentius, ob.
	—	The Books of the Civil law published by Justinian.	Tribonianus, fl.
	530	¶ Pope Boniface II.	Achilles Tatius, Hist. fl.
	532	Justinian congratulates Cosroes on succeeding to the throne of Persia, and concludes a perpetual peace with him.	
	—	Great insurrection at Constantinople, quelled with prodigious slaughter by Belisarius.	
	533	Athalaric King of the Ostrogoths dying, is succeeded by his mother Amalasona.	Procopius, Hist. fl. Marcellinus, Hist. fl. Jo. Philoponus, fl.
	—	¶ Pope John II.	
	534	<i>Theodobert King of Metz.</i>	
	—	Belisarius defeats Gelimer and the Vandals in Africa.	
	535	¶ Pope Agapetus.	
	536	¶ Pope Sylvester.	
	537	Belisarius subdues the Ostrogoths in Italy and takes Rome.	
	538	¶ Pope Vigilius.	
	540	Belisarius refuses to accept the crown of Italy.	
	543	Totila, the Goth, recovers Italy from the Romans.	
	547	— takes and plunders Rome.	
	548	<i>Theodebald King of Metz.</i>	Simplicius, Phil. fl.
	549	Rome retaken by Belisarius.	
	550	Commencement of the kingdom of Poland under Lechus.	Stobæus, fl.
	—	Rome recovered by Totila.	
	551	The manufacture of silk introduced into Europe.	
	553	Totila defeated by Narses the Eunuch, and put to death.	552 Jornandes, Hist. ob.
	555	¶ Pope Pelagius I.	
	558	The Huns, breaking into Thrace, are defeated by Belisarius.	
	559	Belisarius degraded, and ungratefully used by Justi- nian.	
	—	<i>Clotaire sole King of France.</i>	
	560	¶ Pope John III.	
	—	Belisarius restored to his honours and command.	
	562	<i>Caribert, Gontran, Sigebert, and Childeric Kings of France.</i>	562 Cassiodorus, Hist. ob.
	565	Justin II. Emperor of the East.	565 Belisarius, ob.
	566	Narses, recalled from Italy, invites the Lombards to take possession of the country.	Agathias, Hist. fl.
	568	Italy conquered by the Lombards.	
	571	Birth of Mahomet the false prophet.	570 Gildas, Hist. ob.
	574	¶ Pope Benedict I.	
	578	Tiberius II. Emperor of the East.	

Yrs. A. C.		Illustrious Persons.
	† Pope Pelagius II.	
580	The Latin tongue ceases to be spoken in Italy about this time.	
582	Maurice Emperor of the East.	
584	Clotaire II. King of Soissons.	
590	Antioch again destroyed, with 30,000 inhabitants, by an earthquake.	Evagrius, Hist. fl.
	† Pope Gregory the Great.	
596	Thierry II. and Theodobert II. Kings of Paris and Austrasia.	595 Gregory of Tours, Hist. ob.
	Augustine the Monk converts the Saxons to Christianity.	
600		
602	Phocas Emperor of the East acknowledges the supremacy of the Popes.	
604	† Pope Sabinianus.	
607	† Pope Boniface III.	
	The Pantheon at Rome dedicated to God, the Virgin, and the Saints.	605 Augustine, Monk, ob.
608	† Pope Boniface IV.	
609	The Jews of Antioch massacre the Christians.	
611	Heraclius Emperor of the East.	
613	The French Maires du Palais first introduced by Clotaire as Regents.	
614	Clotaire II. sole King of France.	Secundus, Hist. fl.
	Queen Brunehilda, accused of numberless crimes, is put to death by Clotaire II.	
615	† Pope Deus-dedit.	
616	Jerusalem taken by the Persians under Cosroes II.	
618	† Pope Boniface V.	
622	Era of the Hegyra, or flight of Mahomet from Mecca to Medina.	
625	† Pope Honorius I.	
	The Persians, under Cosroes II. with the Huns, Abari, and Slavonians, besiege Constantinople.	
628	Dagobert and Charibert Kings of France.	
632	Death of Mahomet.—Abubeker succeeds him as Caliph of the Saracens.	Mahomet, Prophet, ob.
633	Abubeker dies, and is succeeded by Omar in the Caliphate.	
636	Jerusalem taken by Omar and the Saracens, who keep possession of it 463 years.	636 Isidorus, Hisp. ob.
638	Sigebert II. and Clovis II. Kings of France.	
640	† Pope Severinus.	
	† Pope John IV.	
	The library of Alexandria, founded by Ptolemy Philadelphus, is burnt by the Saracens.	
641	Constantine , Emperor of the East for a few months, poisoned by his stepmother.	641 George Pisides, ob.
	Heraclionas and Tiberius III. Emperors of the East.	
642	Constans , son of Constantine, Emperor of the East.	
	† Pope Theodorus.	

Yrs. A. C.		<i>Illustrious Persons.</i>
645	Otman succeeds Omar in the Caliphate.	
648	Cyprus taken by the Saracens under Mawia.	
649	☩ Pope Martin I.	
653	The Saracens take Rhodes, and destroy the Colossus.	
654	<i>Childeric II. King of Austrasia.</i>	
—	☩ Pope Eugenius I.	
655	Ali Caliph of Arabia.—Mawia Caliph of Egypt.	Ildefonsus, Hist. fl.
657	☩ Pope Vitalianus.	
658	The Saracens obtain peace of the Emperor Constans, and agree to pay a yearly tribute.	
668	Constantius V. (Pogonatus) Emperor of the East.	
669	Sicily ravaged by the Saracens.	
672	☩ Pope Adeodatus.	
—	The Saracens ineffectually besiege Constantinople.— Their fleet destroyed by the Greek fire used by Callinicus.	Paulus Ægineta, Med. fl. Callinicus, Math. fl.
675	The Saracens attempt to land in Spain, but are repulsed by Wamba King of the Visigoths.	
676	☩ Pope Donus.	
679	<i>Thierry IV. King of all France.</i>	
—	☩ Pope Agatho.	
680	The sixth General or Œcumenical Council of Constantinople.	Adamnanus Scotus, Hist. fl.
682	☩ Pope Leo II.	
684	☩ Pope Benedict II.	
685	☩ Pope John V.	
—	Justinian II. Emperor of the East.	
—	The Britons, totally subdued by the Saxons, retreat into Wales and Cornwall.	
686	☩ Pope Conon.	
—	Ceadwalla King of Wessex subdues Sussæx and Kent.	
687	☩ Pope Sergius.	
690	Pepin Heristel, <i>Maire du Palais</i> , defeats Thierry, and acquires the Chief power in France.	
692	<i>Clovis III. King of France.</i>	
694	Justinian II. dethroned, mutilated, and banished by Leontius.	
695	<i>Childebert III. King of France.</i>	
—	Leontius Emperor of the East,—dethroned and mutilated by	
697	Apsimar or Tiberius Emperor of the East.	
699	The Saraceans defeated by John the Patrician.	
700		
—	The Saracens again defeated with great slaughter by Heraclius, brother of Tiberius.	
701	☩ Pope John VI.	
704	Justinian II. escapes from prison, defeats Tiberius, and is restored to the throne.	
707	Justinian II. defeated by the Bulgarians.	
708	☩ Pope Sisinnius.	
—	☩ Pope Constantine.	
711	Philippicus Bardanes Emperor of the East.	
—	<i>Dagobert III. King of France.</i>	
713	Anastasius II. Emperor of the East.	

Yrs. A. C.		Illustrious Persons.
713	Spain conquered by the Saracens under Muça the general of the Caliph Walid.	
714	☞ Pope Gregory II.	
—	Theodosius Emperor of the East.	
—	Charles Martel, <i>Maire du Palais</i> , governs all France for twenty-six years.	
716	<i>Childeric II. King of France.</i>	
—	Leo (the Isurian) Emperor of the East.	
720	Omar II. besieges Constantinople without success.	
—	<i>Thierry IV. King of France.</i>	
726	Leo forbids the worship of images, which occasions a great rebellion of his subjects, the Pope defending the practice.	
728	Leo orders Pope Gregory to be seized, and sent to Constantinople; but the order is frustrated, and Leo confiscates the imperial domains of Sicily and Calabria.	
729	The Saracens ravage Gallia Narbonnensis.	
731	☞ Pope Gregory III.	
732	Charles Martel defeats the Saracens between Tours and Poitiers.	
736	Leo persecutes the Monks.	
737	Death of Pelagius, who preserved the Christian monarchy in Asturia.	
740	The duchy of Spoleto, seized by the Normans.—Recovered by the Pope.	
741	☞ Pope Zachary.	
742	<i>Childeric III. King of France.</i>	
—	Constantine (Copronymus) Emperor of the East.	
—	Enemy to images and saint-worship.	
743	— defeats and puts to death Artabazdus, who had seized Constantinople.	
745	— destroys the fleet of the Saracens.	
749	The race of the Abassidae become Caliphs of the Saracens.	
751	<i>Pepin (Le Bref) King of France, founder of the second or Carolingian race.</i>	
752	☞ Pope Stephen III.	
753	Astolphus King of the Lombards erects the dukedom of Ravenna, and claims from the Pope the dukedom of Rome.	
754	Pope Stephen requests the assistance of Pepin against the Lombards.	
—	Pepin invades Italy, and strips Astolphus of his new possessions, conferring them on the Pope as a temporal sovereignty.	
—	Almanzor Caliph of the Saracens, a great encourager of learning.	
756	Desiderius or Didier proclaimed King of the Lombards with the Pope's consent.	
—	Abdalahman I. takes the title of King of Cordova, and is the founder of the splendid dominion of the Moors in Spain.	
757	☞ Pope Paul I. renews the alliance with Desiderius.	
759	☞ Pope Stephen III. quarrels with Desiderius.	

Muça the Saracen, *ob.*735 Bede, *Hist. ob.*Fredegair, *Hist. fl.*

Yrs. A. C.		Illustrious Persons.
762	Almanzor builds Bagdat, and makes it the seat of the empire of the Caliphs.	760 Jo. Damascenus, <i>ob.</i>
767	The Turks ravage Asia Minor.	
768	<i>Charles (the Great) and Carloman Kings of France.</i>	
—	¶ Pope Stephen IV.	
770	Constantine dissolves the Monasteries in the East.	
772	<i>Charlemagne sole Monarch of France.</i>	
—	— makes war against the Saxons.	
—	¶ Pope Adrian I.	
774	Charlemagne defeats Desiderius, and puts an end to the kingdom of the Lombards, which had subsisted 206 years.	
775	Leo IV. Emperor of the East.	
778	Battle of Roncezvalles between the Christians and Moors in Spain, where Rolando is killed.	
779	Charlemagne conquers Navarre and Sardinia.	
781	Constantine (Porphyrogenitus) Emperor of the East.	
—	Irene, Empress, Regent in her son's minority, keeps him in entire subjection.	
—	— she re-establishes the worship of images.	
785	Charlemagne subdues the Saxons.	
—	Haroun Alraschid Caliph of the Saracens.	
—	— invades and ravages a part of the empire.	
786	Constantine assumes the government of the empire, and imprisons his mother.	
787	The Danes for the first time land in England.	
—	The seventh General Council, or second of Nice, is held.	
788	Irene puts to death her son Constantine, and is proclaimed sole Empress.	
793	Irene proposes to marry Charlemagne, which being disapproved of by her subjects, she is dethroned and confined to a monastery.	Geo. Syncellus, <i>fl.</i>
—	Nicephorus Emperor of the East.	
794	Charlemagne defeats and utterly extirpates the Huns.	
795	¶ Pope Leo III.	
797	The Saracens ravage Cappadocia, Cyprus, Rhodes, &c.	
—	Nicephorus associates his son Saturacius in the empire.	
800	NEW EMPIRE OF THE WEST. —Charlemagne crowned Emperor at Rome.	801 Paul Diaconus, <i>ob.</i> Mesue Arab. Med. <i>fl.</i>
807	Haroun Alraschid courts the alliance of Charlemagne.	804 Alcuin Hist. <i>ob.</i>
811	Michael (Curopalates) Emperor of the East.	
813	Leo (the Armenian) Emperor of the East.	
813	Almamon, Caliph of the Saracens, a great encourager of learning.	
814	<i>Lewis (le Débonnaire) Emperor and King of France.</i>	
816	The eastern empire ravaged by earthquakes, famine, conflagrations, &c.	814 Charlemagne, <i>ob.</i>
—	¶ Pope Stephen V.	
817	¶ Pope Pascal I.	
—	Lewis (le Deb.) divides the empire among his sons.	

Yrs. A. C.		<i>Illustrious Persons.</i>
821	Michael (Balbus or the Stammerer) Emperor of the East.	
824	† Pope Eugene II.	
127	Egbert unites the kingdoms of the Saxon Heptarchy—Beginning of the kingdom of England.	
—	† Pope Valentine.	
828	† Pope Gregory IV.	
829	Theophilus Emperor of the East.	
838	Ethelwolf King of England.	
—	The Scots under Kenneth entirely subdue the Picts.	
840	LOTHARIUS Emperor of Germany.	
—	<i>Charles (the Bald) King of France.</i>	
841	Lotharius defeated by his two brothers in the battle of Fontenai, and deposed.	Albumazar, Ast. fl.
842	LEWIS (of Bavaria) Emperor of Germany.	Eginhart, Hist. ob.
—	Michael III. Emperor of the East.	
843	The Normans plunder the city of Rouen.	
844	† Pope Sergius III.	
845	The Normans plunder Hamburg, and penetrate into Germany.	
847	† Pope Leo IV.	
848	The Venetian Fleet destroyed by the Saracens.	
851	† Pope Joan supposed to have filled the Papal chair for two years.	
—	Basilius associated Emperor of the East.	
855	LEWIS II. Emperor of Germany.	
857	Athelbald and Athelbert Kings of England.	857 Photius Patr. ob.
858	† Pope Nicholas I.	
866	Athelred King of England.	
867	The Danes ravage England.	
—	Basilis sole Emperor of the East.	
—	† Pope Adrian II.	
—	Photius, Patriarch of Constantinople, excommunicates Pope Adrian.	870 Godescalus, ob.
872	Alfred (the Great) King of England.	
—	† Pope John VIII.	874 Ado, Hist. ob.
875	CHARLES (the Bald) Emperor of Germany.	
877	LEWIS (the Stammerer) Emperor of Germany and <i>King of France.</i>	
879	Lewis III. and Carloman Kings of France.	878 Hubba, Dane, ob.
—	The kingdom of Arles begins.	
880	CHARLES (the Gross) Emperor of Germany and <i>King of France.</i>	
—	Ravages of the Normans in France.	
882	† Pope Marinus.	882 Hincomarus, ob.
884	† Pope Adrian III.	883 Scotas Erigena, ob. Nicetas, Hist. fl.
886	LEO (the Philosopher) Emperor of the East.	Alfred, fl.
—	The University of Oxford founded by Alfred.	
887	ARNOLD Emperor of Germany.	
—	The Normans besiege Paris, which is gallantly defended by Bishop Goselin and Count Eudes.	
888	Eudes or Odo King of France.	
890	Alfred the Great composes his Code of Laws, and divides England into Counties, Hundreds and Tithings.	

A. C.		Illustrious Persons.
891	† Pope Formoses.	
896	† Pope Stephen VII.	
897	† Pope John IX.	
898	<i>Charles III. (the Simple) King of France.</i>	
900		
—	† Pope Benedict IV.	
—	LEWIS IV. Emperor of Germany.	
901	Edward (the Elder) succeeds Alfred as King of England.	
904	† Pope Leo V.	
905	† Pope Sergius III.	
911	CONRAD I. Emperor of Germany.	
—	Constantine IX. Emperor of the East.	
912	The Normans are established in Normandy under Rollo.	
913	† Pope Anastasius,	
914	† Pope Landon.	
915	Constantine and Romanus Emperors of the East.	
—	† Pope John X.	
—	The University of Cambridge founded by Edward the Elder.	
920	HENRY (The Fowler) Emperor of Germany,	
923	<i>Rodolph King of France.</i>	
925	Athelstan King of England.	
928	† Pope Leo VI.	
929	† Pope Stephen VIII,	
931	† Pope John XI.	
936	OTHO (the Great) Emperor of Germany,	
—	† Pope Leo VII.	
—	<i>Louis IV. (d'Outremer) King of France.</i>	
939	† Pope Stephen IX.	
940	Howel-Dha, King of Wales, an eminent Lawgiver.	
941	Edmund I. King of England.	
943	† Pope Marinus XIII.	942 Eudes de Cluni ob.
946	† Pope Agapet.	
948	Edred King of England.	
954	<i>Lotharius King of France.</i>	Alfarabius, Ar. Ast. f.
955	Edwy King of England.	
956	† Pope John XII.	
959	Romanus II. Emperor of the East,	
—	Edgar King of England.	
963	† Pope Leo VIII.	
—	Nicephorus Phocus Emperor of the East.	
964	Otho the Great conquers Italy.	
965	† Pope John XIII.	
967	Antioch recovered from the Saracens by Nicephorus.	
969	John Zemisses Emperor of the East,	
972	† Pope Benedict VI.	970 Luitprand, Hist. ob.
973	OTHO II. Emperor of Germany.	
974	† Pope Boniface VII.	
975	† Pope Benedict VII.	
—	Basilius and Constantine X. Emperors of the East.	

A. C.		
976	Edward II. King of England.	
978	Ethelred II. King of England.	
983	Otho III. Emperor of Germany.	
984	† Pope John XIV.	
986	† Pope John XV.	
—	Lewis V. (le Faineant) King of France.	
987	Hugh Capet, King of France, founder of the third race of the French Kings.	
991	The Arabic numeral cyphers first introduced into Europe.	
996	Robert (the Wise) King of France.	
—	† Pope Gregory V.	
999	† Pope Sylvester II.	
1000		
1002	HENRY II. Emperor of Germany.	
—	Great massacre of the Danes by Ethelred King of England.	
1003	† Pope John XVI.	
—	† Pope John XVII.	
1004	† Pope John XVIII.	
1005	Churches first built in the Gothic stile.	
1009	† Pope Sergius IV.	
1012	† Pope Benedict VIII.	
1013	The Danes, under Sueno, get possession of England.	
1015	The Manichean doctrines prevalent in France and Italy.	
1016	Edmund (Ironside) King of England.	
—	Six battles fought with the Danes under Canute in England.	
1017	Canute the Dane (the Great) King of England.	
1018	The Normans invade Italy.	
1024	† Pope John XIX. or XX.	
—	CONRAD II. (the Salic) Emperor of Germany.	
2025	Musical characters invented by Guido Aretino.	
1028	Romanus Argyrus Emperor of the East.	
1031	Henry I. King of France.	
1033	† Pope Benedict IX.	
1034	Michael IV. Emperor of the East.	
1036	Harold (Harefoot) King of England.	
1039	HENRY III. Emperor of Germany.	
—	Canute II. or Hardicenufe King of England.	
1040	Macbeth usurps the throne of Scotland by the murder of Duncan.	
1041	Edward (the Confessor) King of England, restores the Saxon line.	
—	Michael (Calaphales) Emperor of the East.	
1042	Constantine (Monomachus) Emperor of the East.	
1043	The Turks, under Tangrolipix, subdue Persia.	
1045	† Pope Gregory VI.	
1046	† Pope Clement II.	
1048	† Pope Damasus II.	
1049	† Pope Leo IX. the first Pope who maintained a regular army.	
		1008 Amoin, Hist. ob.
		1010 Rhazes, Ar. Phil. ob.
		Guido Aretino, Monk, ob.
		1050 Avicenna, Arab. Phys. ob.

- A. C.**
 1054 **Theodora** empress of the East.
 — Pope Leo IX. taken prisoner by the Normans.
 1055 ¶ Pope Victor II.
 — The Turks take Bagdat, and overturn the empire of the
 the Caliphs.
 1056 **HENRY IV.** emperor of Germany.
 1057 **Malcolm III.** (Canmore) King of Scotland.
 — **Isaac** (Comnenus) emperor of the East.
 ¶ Pope Stephen X.
 1058 ¶ Pope Nicholas II.
 The Saracens driven out of Sicily by Robert Guiscard
 the Norman.
 1059 **Constantine XII.** (Ducas) emperor of the East.
 1060 *Philip I. King of France.*
 1061 ¶ Pope Alexander II.
 1065 The Turks take Jerusalem from the Saracens.
 1066 **Harold II.** King of England reigned nine months.
 1066 **William** (the Conqueror) King of England.
 1068 **Romanus Diogenes** emperor of the East.
 Edgar Atheling seeks refuge in Scotland.
 Margaret sister of Edgar Atheling, married to Malcolm
 King of Scotland.
 1070 The feudal law introduced into England.
 1071 **Michael Ducas** emperor of the East
 1073 ¶ Pope Gregory VII.
 1076 The emperor Henry IV. excommunicated and deposed
 by the Po. e.
 1078 **Nicephorus** (Boton) emperor of the East.
 1079 Doomsday-book begun by William the Conqueror.
 1081 **Alexis I.** (Comnenus) emperor of the East.
 Henry IV. emperor besieges Rome.
 1084 — recrowned emperor of Germany.
 1086 ¶ Pope Victor III.
 1087 ¶ Pope Urban II.
 **William II.** (Rufus) King of England.
 1093 St Margaret Queen of Scotland died.
 **DONALD** Bane King of Scotland died.
 1095 **DUNCAN II.** King of Scotland.
 The first Crusade to the Holy Land.--Peter the Hermit.
 1098 The Crusaders take Antioch.
 **EDGAR** King of Scotland.
 1099 Jerusalem taken by Godfrey of Boulogne.—The
 Knights of St. John instituted.
 — ¶ Pope Pascal II.
 1100 — **Henry I.** (Beauclerc) King of England.
 1102 Guiscard of Normandy takes the title of King of
 Naples
 1104 Baldwin King of Jerusalem takes Ptolemais.
 1106 **HENRY V.** Emperor of Germany.

Illustrious Persons.

Suidas, ff.

Will. of Spire, Mat. ff.

1085 Berenger, Poet of
 Provence, ob.

1089 Abp. Lanfranc, ob.

1105 Raymond Count de
 Thoulouse, ob.

A. C.

- 1107 **A**ALEXANDER I. King of Scotland.
 1108 *Lewis VI. (le Gros) King of France.*
 1118 ¶ Pope Gelasius II.
 — The order of Knights Templars instituted.
 — **John** (Comnenus) Emperor of the East.
 1119 ¶ Pope Calixtus II.
 1124 **D**AVID I. King of Scotland.
 — ¶ Pope Honorius II.
 1125 **LOTHARIUS II.** Emperor of Germany.
 1130 ¶ Pope Innocent II.
 1135 *Stephen* King of England.
 1137 *Lewis VII. (le Jeune) King of France,—*married to Eleanor of Guienne.
 — The Pandects of the Roman law discovered at Amalphi.
 1138 **CONRAD III.** Emperor of Germany.
 — The Scots, under David I. defeated by the English in the battle of the Standard.
 1139 **Alphonso I.** King of Portugal rescues that kingdom from the Saracens.
 1140 The Canon Law first introduced into England.
 1141 Stephen king of England taken prisoner in the battle of Lincoln by the troops of Matilda.
 1143 — recovers his kingdom.
 — ¶ Pope Cælestinus II.
 — **Manuel** (Comnenus) Emperor of the East.
 1144 ¶ Pope Lucius II.
 1145 ¶ Pope Eugene III.
 1147 The second Crusade excited by St. Bernard.
 1150 The study of the Civil Law revived at Bologna.
 1151 The Canon Law is collected by Gratjan, a Monk of Bologna.
 1152 **FREDERICK I.** (Barbarossa) Emperor of Germany.
 1153 **M**ALCOLM IV. King of Scotland.
 — ¶ Pope Anastasius IV.
 — Treaty of Winchester—Compromise between King Stephen and Prince Henry.
 — **Henry II.** (Plantagenet) King of England.
 1154 ¶ Pope Adrian IV.
 — The parties of the Guelphs and Ghibellines disturb Italy.
 1157 The Bank of Venice instituted.
 1158 Interview between Henry II. and Malcolm IV. at Carlisle.
 1159 ¶ Pope Alexander III.
 1160 The Albigenses maintain heretical doctrines.
 1164 Institution of the order of Teutonic Knights in Germany.
 — **T. Becket** condemned by the Council of Clarendon.
 1165 **W**ILLIAM (the Lion) King of Scotland.
 1171 **T. Becket** murdered at Canterbury.
 1172 Conquest of Ireland by Henry II.
 1180 *Philip Augustus King of France.*

*Illustrious Persons.*1113 Sigebert, *Hist. ob.*
Anna Comnena, *Hist. A.*Will. of Malmesbury,
*Hist. A.*1143 Peter Abelard, *ob.*Geoff. of Monmouth, *A.*Eustathius Com. on
Hom. *A.*Peter Lombard, *ob.*Hen. of Huntingdon, *A.*Ran. de Glanville, *A.*

A. C.

	<i>Illustrious Persons.</i>
1180 Alexius II. (Comnenus) Emperor of the East.	
1181 † Pope Lucius III.	
1183 Andronicus (Comnenus) Emperor of the East.	
1185 † Pope Urban III.	
— Isaac Angelus Emperor of the East.	John of Salisbury, <i>ob.</i>
1187 † Pope Gregory VIII.	
.... The city of Jerusalem taken by Saladin.	
1138 † Pope Clement III.	
1189 Richard I. (Cœur de Lion) King of England.	Will. of Newburgh, <i>f.</i>
.... The third Crusade under Richard I. and Philip Augustus.	
1190 HENRY VI. emperor of Germany.	
1191 † Pope Cælestinus III.	
1192 Richard I. defeats Saladin in the battle of Ascalon.	R. of Hoveden, <i>Hist. f.</i>
.... Guy of Lusignan King of Jerusalem.	
1195 Alexius Angelus (the Tyrant) emperor of the East.	
1198 PHILIP emperor of Germany.	
— † Pope Innocent III.	
1199 John King of England.	
1200	Peter of Blois, <i>Hist. f.</i>
1202 The fourth Crusade sets out from Venice.	Gerv. of Canterbury, <i>f.</i>
— Constantinople taken by the French and Venetians.	Saxo Grammaticus, <i>ob.</i>
1203 Alexius and Murbzuphlus Emperors of the East.	
1204 Baldwin I. Emperor of Constantinople, and Theodore I. (Lascaris) emperor of Nicæa.	
.... The Inquisition established by Pope Innocent III.	
1206 Henry emperor of Constantinople.	
1208 OTHO IV. emperor of Germany.	
.... London incorporated, obtains a charter for electing its Mayor and Magistrates.	
1210 Crusade against the Albigenses, under Simon de Mountfort.	
1212 FREDERICK II. emperor of Germany.	
1214 ALEXANDER II. King of Scotland.	
1215 Magna Charta signed by King John.	
1216 Henry III. King of England.	
.... Peter and John Ducas emperors of the East	
1219 Robert emperor of the East.	
.... Damietta taken by the Crusaders.	
1223 Lewis VIII. King of France.	1224 Raymond Count de Thoulouse, <i>ob.</i>
1226 † Pope Honorius III.	
.... St Lewis XI. King of France.	
1227 † Pope Gregory IX.	
— Gengiskan and the Tartars overrun the empire of the Saracens.	Gengiskan, <i>ob.</i>
1228 Baldwin II. French emperor of Constantinople.	
1234 The Inquisition committed to the Dominican Monks.	
1237 Russia brought under subjection by the Tartars.	
1241 † Pope Cælestinus IV.	
1243 † Pope Innocent IV.	
1248 The fifth Crusade under St. Lewis.	

- 1249 **A**LEXANDER III. King of Scotland.
- 1251 CONRAD IV. emperor of Germany.
- 1254 † Pope Alexander IV.
- ... Interregnum in the empire of Germany, from the death of Conrad IV. 1254, in the election of Rodolph in 1273.
- 1255 **Theodore II.** (Lascaris) emperor of Nicæa.
- 1258 Bagdat taken by the Tartars.—End of the empire of the Saracens.
- 1259 **John** (Lascaris) Emperor of Nicæa. 1259 Mat. Paris, *Hist. ob.*
- 1260 **Michael** (Palæologus) Emperor of Nicæa.
- The Flagellants preach baptism by blood.
- 1261 † Pope Urban IV.
- The Greek Emperors recover Constantinople from the French.
- 1263 The Norwegians invade Scotland, and are defeated by Alexander III. in the battle of Largs.
- 1264 † Pope Clement IV.
- The Deputies of Boroughs first summoned to Parliament in England.
- Henry III. of England taken prisoner in the battle of Lewes.
- 1265 Charles Count of Anjou King of Sicily.
- 1270 **Philip III. (the Bold)** King of France.
- 1271 † Pope Gregory X.
- 1272 **Edward** (Longshanks) King of England.
- 1273 **RODOLPH** (of Hapsburg) Emperor of Germany, first of the Austrian family. 1274 St T. Aquinas, *ob.*
- 1276 † Pope Innocent V.
- † Pope Adrian V.
- † Pope John XXI.
- 1277 † Pope Nicholas III.
- 1281 † Pope Martin IV.
- 1282 The Sicilian Vespers, when 8000 French were massacred. 1280 Albertus Mag. *Phil. ob.*
- 1283 **Andronicus I.** (Palæologus) Emperor of the East.
- The conquest of Wales by Edward I. 1284 Roger Bacon, *Phil. ob.*
- 1285 † Pope Honorius IV.
- ... **Philip IV, (the Fair)** King of France.
- 1286 **M**ARGARET (of Norway) Queen of Scotland.
- 1288 † Pope Nicholas IV.
- 1290 Interregnum in Scotland for two years.—Competition between Bruce and Baliol for the Crown, decided by Edward I.
- 1291 Ptolemais taken by the Turks.—End of the Crusades.
- 1292 **J**OHAN BALIOL King of Scotland.
- **ADOLPHUS** (of Nassau) emperor of Germany.
- † Pope Cælestinus V.
- 1293 From this year there is a regular succession of English Parliaments.
- 1294 † Pope Boniface VIII.
- 1295 **Michael Andronicus** emperor of the East.

- A. C.*
 1296 Interregnum in Scotland for eight years.—Sir William Wallace nobly supports the liberty of his country, defeats the English at Stirling, and drives them out of the kingdom.
 1298 Wallace chosen Regent of Scotland,—defeated at Falkirk.
 — ALBERT I. (of Austria) emperor of Germany.
 — The present Turkish empire begins under Ottoman in Bithynia.
 1300 Cimabue, Paint. *ob.*
 1301 Quarrel between Philip the Fair and Pope Boniface VIII.
 1302 Comyn and Fraser defeat the English thrice in one day. The Mariner's Compass said to be discovered at Naples.
 1304 Wallace betrayed, delivered up, and put to death by Edward I.
 1306 ROBERT I. (Bruce) King of Scotland.
 1307 The establishment of the Swiss Republics.
 — EDWARD II. King of England.
 1308 HENRY VII. emperor of Germany.
 — Pope Clement V.
 — The seat of the Popes transferred to Avignon for seventy years.
 1310 Rhodes taken by the Knights of St. John of Jerusalem.
 1311 Pierce Gaveston, favourite of Edward II. put to death.
 1312 The Knights Templars suppressed by Philip the Fair.
 1314 The Scots under Robert Bruce defeat the English under Edward II. at Bannockburn.
 — LEWIS V. (of Bavaria) emperor of Germany.
 1314 Lewis X. (*Hutin*) King of France.
 1315 John King of France.
 1316 Pope John XXII.
 . . . Philip V. (*the long*) King of France.
 1320 Andronicus II. (Palæologus) emperor of the East.
 1321 Charles IV. (*the Fair*) King of France.
 1327 EDWARD III. King of England.
 1328 Philip VI. (*of Valois*) King of France.
 1329 DAVID II. King of Scotland.—Randolph Earl of Murray Regent.
 1331 The Teutonic Knights settle in Prussia.
 1332 Edward Baliol, assisted by Edward III. is crowned at Scone King of Scots, but is soon driven out of the kingdom.
 1333 Casimir III. (the Great) King of Poland.
 1334 Pope Benedict XII.
 1340 Gunpowder invented by Swartz, a monk of Cologne.
 — Oil painting invented by John Van Eyk.
 1341 John V. (Palæologus) emperor of the East.
 — John Cantacuzenos; his governor, usurps the throne
 1342 Pope Clement VI.
 1346 Battle of Cressy, won by Edward III. and the Black Prince, over the French.

Joh. Duns Scotus, *ob.*
 1308 Jo. For dun, *Hist. ob.*

1315 Guy Earl of Warwick, *ob.*
 Raym. Lulli, Phil. *ob.*

Dante Alighieri, Po. *ob.*

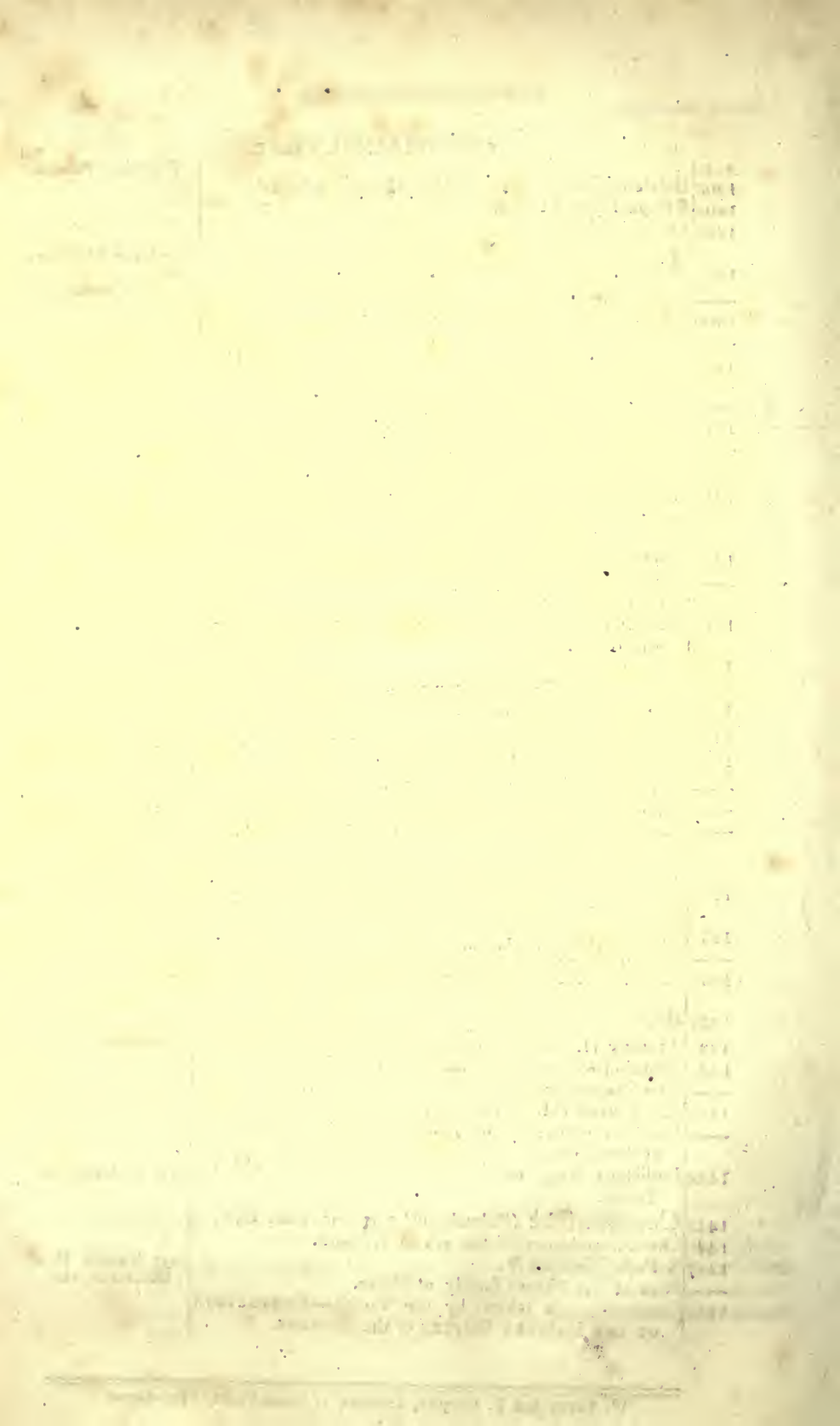
Castruc. Castracani, *ob.*

1330 Mortimer Earl of March, *ob.*

1346	Battle of Durham, in which David II. of Scotland is taken prisoner.	
1347	CHARLES IV. emperor of Germany.	
—	Colo Rienzi assumes the government of Rome.	
1350	The Order of the Garter instituted by Edward III.	
—	Peter (the Cruel) King of Castile.	
1351	John II. King of France.	
1352	¶ Pope Innocent VI.	
—	The Turks first enter Europe.	
1356	The battle of Poitiers, in which John II. King of France is taken prisoner, and afterwards brought to London.	
1362	¶ Pope Urban V.	
—	The law-pleadings in England changed from French to English.	1363 Edwar Baliol, ob.
1364	Charles V. King of France.	
1370	¶ Pope Gregory XI.	
—	R OBERT II. King of Scotland.	
1377	The Pope's return from Avignon to Rome.	1374 F. Petrarch, Po. ob.
—	Richard II. King of England.	1376 G. Boccace, Po. ob.
—	Wickliffe's doctrines propagated in England.	—Ed. Black Pr. ob.
1378	The schism of the double Popes at Rome and Avignon begins, and continues thirty-eight years.	
—	¶ Pope Urban VI. Rome.	
—	Pope Clement VII Avignon.	
—	WENCESLAUS, Emperor of Germany, deposed in 1400.	
1380	Charles VI. King of France.	Mat. of Westm. Hist. ob.
—	Tamerlane invades and subdues Chorassar.	—Bert. du Guesclin, ob.
1311	Wat Tyler's and Jack Straw's insurrection in England.	
—	Peace between Venice and Genoa.	
—	Bills of exchange first used in England.	
1383	Cannon first used by the English in the defence of Calais.	1383 Abulfeda, Sar. ob.
1384	Philip the Bold, Duke of Burgundy, succeeds to the earldom of Flanders.	
1386	Tamerlane subdues Georgia.	1385 Wickliffe, ob.
1388	Battle of Otterburn between Percy (Hotspur) and Douglas.	
1389	¶ Pope Boniface IX.	
1390	R OBERT III. King of Scotland.	
1391	Manuel II. (Palæologus) emperor of the East.	
1392	The Cape of Good Hope discovered by the Portuguese.	
1394	The Jews banished from France by Charles VI.	
—	¶ Pope Benedict XIII.	
1395	Sigismund King of Hungary defeated by Bajazet I.	
1398	Tamerlane subdues part of Hindostan and takes Delhy.	
1399	Henry IV. King of England.	
1400		Froissart, Hist. ob.
1402	Bajazet is taken prisoner by Tamerlane in the battle of Angoria.	Sir John Gower, Poet, ob.
—	Battle of Halidown Hill, in which the Scots are defeated.	1400 G Geoff. Chaucer, Poet, ob.

CHRONOLOGICAL TABLE.

A. C.		Illustrious Persons.
1403	Battle of Shrewsbury, in which Hotspur is killed.	
1404	☞ Pope Innocent VII.	
1405	Death of Tamerlane.	
1406	J AMES I. King of Scotland.	1408 Owen Glendour, <i>ob.</i>
—	☞ Pope Gregory XII.	1409 Nich. Flamel, Alch. <i>ob.</i>
1409	Council of Pisa, where Pope Gregory is deposed.	
—	☞ Pope Alexander V.	
1410	JOSSE (Marquis of Brandenburgh) emperor of Germany.	
—	☞ Pope John XXIII.	
1411	SIGISMUND emperor of Germany.	
—	The University of St. Andrew's in Scotland founded.	
1413	Henry V. King of England.	
1414	Council of Constance, in which two Popes were deposed, and the Popedom remained vacant near three years.	
1415	Henry V. defeats the French at Agincourt.	1415 Em. Chrysoloras, <i>ob.</i>
—	John Huss condemned by the Council of Constance for heresy, and burnt.	
1416	Jerome of Prague condemned by the same Council, and burnt.	
1417	☞ Pope Martin V.	
—	Paper first made from linen rags.	
1420	The island of Madeira discovered by the Portuguese.	Alain Chartier, Poet, <i>ob.</i>
1421	John VI. (Palæologus) emperor of the east.	
1422	Amurath besieges Constantinople.	1422 T. Walsingham, <i>Hist. ob.</i>
—	Henry VI. King of England.	
—	<i>Charles VII. King of France.</i>	
—	James I. King of Scots liberated from captivity by the English.	1424 Earl of Buchan, Const. of France, <i>ob.</i>
1425	The Court of Session in Scotland instituted by James I.	Monstrelet, <i>Hist. fl.</i>
1428	Joan of Arc, the Maid of Orleans, compels the English to raise the siege of that town.	Joan d'Arc, <i>ob.</i>
1231	☞ Pope Eugene IV.	
—	Rise of the Medici family at Florence.	
1236	Paris recovered by the French from the English.	
1437	J AMES II. King of Scotland.	
1438	ALBERT II. Emperor of Germany.	Scanderberg, <i>fl.</i>
1439	Reunion of the Greek and Latin churches.	
—	The Pragmatic Sanction established in France.	
1440	FREDERICK III. Emperor of Germany.	
—	Invention of the art of Printing by John Guttenberg at Strasburg.	
1444	Ladislaus King of Hungary killed in battle with the Turks.	1443 L. Aretin, <i>ob.</i>
1445	Constantine (Palæologus) emperor of the East.	
1446	Great inundation of the sea in Holland.	
1447	☞ Pope Nicholas V.	
—	Rise of the Storza family at Milan.	1447 Humph. D. of Gloucester, <i>ob.</i>
1453	Constantinople taken by the Turks.— EXTINCTION OF THE EASTERN EMPIRE of the ROMANS.	



THE
HISTORY
OF
AMMIANUS MARCELLINUS.

NOW FIRST TRANSLATED INTO ENGLISH,
FOR THE USE OF THE ARMY.

WITH
A PRELIMINARY DISCOURSE
IN WHICH ARE CONTAINED
THE FOUR BOOKS

OF
JUSTINIAN'S INSTITUTES
Of the Roman Law.

London :

Printed by W. Green and T. Chaplin, 1, Crane-Court, Fleet-Street,
FOR J. DAVIS MILITARY CHRONICLE AND MILITARY CLASSICS OFFICE,
38, ESSEX-STREET, STRAND, AND TO BE HAD OF ALL THE
BOOKSELLERS.—1814.

HISTORY

A HISTORY OF THE UNITED STATES

BY CHARLES A. BEAMAN

THE HISTORY OF THE UNITED STATES

FOR THE STUDENT

Published by the American Book Company, New York, N. Y.
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ADVERTISEMENT
TO THE STUDIOUS READER.

AS it is impossible for any one to have a clear understanding of the Roman or Byzantine Historians without an accurate knowledge of the LAWS by which the Roman empire was governed, it is deemed pertinent to accompany this part of our subject by the INSTITUTES of Justinian. It may be unnecessary to add, that these Institutes are a classification, under certain Tables and Chapters, of the whole body of the Roman laws, of those laws by which the Roman empire was governed from the Punic War to Augustus, and thence to Constantine, and from Constantine downwards. The reader, therefore, will derive a threefold advantage from an attentive study of them, as first, he will become acquainted with those principles, and that system, by which the world was governed for so many centuries ; secondly, he will be enabled to understand the frequent allusions of the Historians and Poets to the terms, rules, and practices of their own laws ; and thirdly, he will trace to the fountain-head the modern laws of all the nations in Europe. It is needless to insist on the utility of thus ascending to the source of law and jurisprudence. The reader will obtain more accurate learning by an attentive study of these short INSTITUTES than by a year devoted to Vinius and the other innumerable commentators.

THE FOUR BOOKS
OF
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TRANSLATED INTO ENGLISH

By Dr. HARRIS.



A

BRIEF ACCOUNT OF THE RISE AND PROGRESS

OF

THE ROMAN LAW.

THE Roman state was at first governed solely by the authority of Romulus; but, when the people were increased, he divided them into thirty *Curie*, which he constantly assembled for the confirmation of his laws: and this practice of consulting the people was afterwards followed by the Roman Kings, all whose laws were collected by *Sextus Papirius*, and called *jus Papirianum*, from the name of their compiler. But, after the expulsion of Tarquin and the establishment of the republic, the greatest part of those Regal laws soon became obsolete; and those, which still remained in force, related chiefly to the priesthood. It thus happened, that the Romans for many years laboured under great uncertainty in respect to law in general; for, from the commencement of the consular state to the time of establishing the Twelve Tables, they were not governed by any regular system. But at length, the people growing uneasy at the arbitrary power of their magistrates, it was resolved, after much opposition from the patricians, that some certain rule of government should be fixed upon: and, to effect this purpose, a decemvirate was first appointed, composed solely of senators, who, partly from the laws of Greece and partly from their own laws still subsisting, framed ten tables, which, in the year of Rome 303, were submitted to the inspection of the people, and highly approved of. These however were still thought to be deficient; and therefore in the year following, when a new decemvirate was appointed, which consisted of seven patricians and three plebeians, they added two tables to the former ten: and now the whole was regarded but as one body of law, and entitled, by way of eminence, the *twelve tables*. But, although these new collected laws were most deservedly in the highest esteem, yet their number was soon found insufficient to extend to all matters of controversy, their conciseness was often the occasion of obscurity, and their extraordinary severity called aloud for mitigation. It therefore became a consequence, that the twelve tables continually received some explanation, addition, or alteration, by virtue of a new law, a senatorial decree, or a *plebiscite*. And here it will be proper to observe, how they differ: a *plebiscite* was an ordinance of the plebeians or commonalty, which had the force of a law,

without the authority of the senate; and a *senatus-consultum*, or senatorial decree, was an order made by the senators assembled for that purpose; but to constitute a law, properly so called it was necessary, that it should first be proposed by some magistrate of the senate, and afterwards be confirmed by the people in general. Recourse was also had to the interpretation and decisions of the learned, which were so universally approved of, that, although they were unwritten, they became a new species of law, and were called *auctoritas prudentum* and *jus civile*. It must be here observed, that, soon after the establishment of the twelve tables, the learned of that time composed certain solemn forms, called actions of law, by which the process of all courts and several other acts, as adoption, emancipation, &c. were regulated. These forms were for above a century kept secret from the public, being in the hands only of the priests and magistrates; but about the year U. C. 448 they were collected and published by one Flavius, a scribe; and, from him, called the Flavian law; for which acceptable present the people in general shewed many instances of their gratitude. But, as this collection was soon found to be defective another was afterwards published by *Sextus Ælius*, who made a large addition of many new forms, which passed under the title of *jus Ælianum*, from the name of the compiler.

In process of time there also arose another species of law, called the *prætorian edicts*: which, although they ordinarily expired with the annual office of the prætor, who enacted them, and extended no farther than his jurisdiction, were yet of great force and authority; and many of them were so truly valuable for their justice and equity, that they have been perpetuated as laws.

These were the several principal parts of the Roman law, during the free state of the commonwealth; but, after the re-establishment of monarchy in the person of Augustus, the law received two additional parts; the imperial constitutions and the answers of the lawyers.

The constitutions soon became numerous, but were not framed into a body till the reign of Constantine the great; when Gregorius and Hermogenes, both lawyers of eminence, collected in two codes the constitutions of the pagan emperors, from the reign of Adrian to that of Dioclesian inclusive: but these collections were not made by virtue of any public authority, and are not now extant.

Another code was afterwards published by order of the emperor Theodosius the younger, which contained the constitutions of all the Christian Emperors, down to his own time; and this was generally received both in the eastern and western empires.

But these three codes were still far from being perfect; for the constitutions, contained in them, were often found to be contradictory; and they wanted, but too plainly, that regulation, which they afterwards underwent through the care of Justinian; who in the year of Christ 528 ordered the compilation of a new code, which was performed and published the year following by Tribonian and others; the three former codes being suppressed by the express ordinance of the Emperor. When this work was thus expeditiously finished, the emperor next extended his care to the Roman law in general, in order to render it both concise and perfect. The answers and other writings of the antient lawyers had long since acquired the full force of a law, and were now so numerous as to consist of nearly two thousand volumes; from which, by command of Justinian, the best and most equitable opinions were chosen; and being first corrected, where correction was necessary, were afterwards divided into fifty books, called *digests* or *pandects*: and, that they might be the more firmly established, the Emperor not only prohibited the use of all other law-books, but also forbad that any comment should be written upon these his new digested laws, or that any transcript should be made of them with abbreviations. But during the time of compiling the digests, it was thought expedient by Justinian, for the benefit of students, that an abridgement should be made of the whole Roman law; which work was soon performed in obedience to his order, and confirmed with the digests, under the title of institutions.

The emperor afterwards, upon mature deliberation, suppressed the first edition of his code, and published a second, which he intitled *Codex repetitæ prælectionis*, having omitted several useless laws, and inserted others, which were judged serviceable to the state.

The Justinian law now consisted of three parts, the institutions, the digests, and the second code. But the emperor, after the publication of the second code, continued from time to time to enact diverse new constitutions or novels, and also several edicts; all which were collected after his disease, and became a fourth part of the law.

The thirteen edicts of Justinian and the most of the novels were originally conceived in the Greek tongue; and so great was the decline of the Roman language at Constantinople within forty years after the death of this emperor, that his laws in general were not otherways intelligible to the major part of the people, than by the assistance of a Greek version: but, notwithstanding this disadvantage, they still subsisted entire, till the publication

of the Basilica, by which the east was governed, till the dissolution of the empire.

The laws published by Justinian were still less successful in the west; where, even in the life-time of the emperor, they were not received universally; and, after the Lombard invasion, they became so totally neglected, that both the code and the pandects were lost, till the 12th century; when it is said, that the pandects were accidentally recovered at Amalphi, and the code at Ravenna. But, as if fortune would make an atonement for her former severity, they have since been the study of the wisest men, and revered, as law, by the politest nations.

IMPERIAL PROMULGATION

IN

CONFIRMATION OF THE INSTITUTES.

IN THE NAME OF OUR LORD JESUS CHRIST.

THE EMPEROR, CÆSAR FLAVIUS JUSTINIANUS, ALEM-
MANICUS, GOTTHICUS, FRANCICUS, GERMANICUS, ANTI-
CUS, ALANICUS, VANDALICUS, AFRICANUS, PIUS, FELIX,
INCLYTUS, VICTOR AC TRIUMPHATOR, SEMPER AUGUS-
TUS, to the Roman Youth greeting.

Of the use of Arms and Laws.

THE imperial dignity should be supported by arms, and guarded by laws, that the people, in time of peace as well as war, may be secured from dangers and rightly governed : for a Roman Emperor ought not only to be victorious over his enemies in the field, but should also take every legal course to clear the state from all those members, whose crafts and iniquities are subsersive of the law. Be it the care therefore of him, upon whom government devolves, to be renowned for a most religious observance of law and justice, as well as for his triumphs.

Of the Wars and Laws of Justinian.

I. By our incessant labours, and the assistance of divine providence, we have acquired the double fame of a lawgiver and a conqueror ; for the Barbarian nations have proved us in battle and submitted to our yoke ; even Africa and many other provinces, after so long an interval, are again added to the Roman empire : and yet this vast people, and our whole dominions, are governed either by laws enacted by ourselves ; or laws, which, though framed by others, have by our sovereign authority been better regulated.

Of the Composition of the Code and Pandects.

II. When we had ranged the imperial constitutions in a regular order, and made those, which were before confused and contradictory, to agree perfectly with each other, we then extended our care to the numerous volumes of the antient law ; and have now completed, through the favour of heaven, a work, which exceeded even our hope, and was attended with the greatest difficulties.

Of the end and use of the Institutes.

III. As soon as this our undertaking was accomplished, we summoned Tribonian, our chancellor, with Theophilus and Dorotheus, men of known learning and tried fidelity, whom we enjoined by our authority to compose the following Institutions, to the intent, that the rudiments of law might be more effectually learned, by the sole means of our imperial authority; and that your minds for the future should not be burthened with obsolete and unprofitable doctrines, but instructed only in those laws, which are allowed of and practised: and, whereas it was formerly necessary, that all students should go through a course of study, at least for the space of four years, preparatory to their reading the constitutions, they may now, (having been thought worthy of our princely care, to which they are indebted for the beginning and end of their studies,) apply themselves immediately to the imperial ordinances.

Division of the Institutes.

IV. When therefore, by the assistance of Tribonian and other illustrious persons, we had digested the whole antient law into fifty books, called Digests or Pandects, it was our pleasure, that the Institutions should be divided into four books, which might serve as the first elements, introductory to the science of the law.

Subject matter of the Institutes.

V. And, in these, we have briefly set forth the old laws, which formerly obtained, and those also, which for a time have lain dormant, but are now revived by our princely care.

Authority of the Institutes.

VI. The four books of our Institutions were compiled by Tribonian, Theophilus, and Dorotheus, from all the institutions of the antient law, but chiefly from the commentaries, institutions, and other writings of Caius. As soon as these our Institutions were finished and presented to us, we read and diligently examined their contents; and, in testimony of our approbation, we have now given them a constitutional authority.

Exhortation to the Study of the Law.

VII. Receive therefore our laws, and so profit by them, that, when the course of your studies is completely finished, you may with reason expect to bear a part in the government, and be enabled to exercise those offices, which are committed to your charge.

Given at *Constantinople* on the eleventh day before the calends of *December*, in the third consulate of the emperor *JUSTINIAN*, always august.

THE
INSTITUTIONS
OR
ELEMENTS OF JUSTINIAN.
Book the First.

TITLE I.
OF JUSTICE AND RIGHT.
D. I. T. I.

Definition of Justice.

JUSTICE is the constant and perpetual desire of giving to every man that, which is due to him.

Definition of Jurisprudence.

I. Jurisprudence is the knowledge of things divine and human, and the exact discernment of what is just and unjust.

Of the Method in treating the Subject of Right.

II. These definitions being premised, we shall now proceed. But it seems right to begin our Institutions in the most plain and simple manner, although afterwards we intend to treat every particular with the utmost exactness; for, if at first we overload the mind of the student with a variety of things, we may cause him either wholly to abandon his studies, or bring him late, through a series of labours, to that knowledge, which he might otherwise have attained with ease and expedition.

First Precepts of General Law.

III. The precepts of the law are these: to live honestly, not to hurt any man, and to give to every one that, which is his due.

Of Public and Private Law.

IV. The law is divided into public and private. Public law regards the state of the commonwealth: but private law, of which we shall here treat, concerns the interest of individuals, and is tripartite, being collected from natural precepts, from the law of nations, and from the civil law of any particular city or state.

TITLE II.

OF NATURAL LAW, OF THE LAW OF NATIONS, AND
CIVIL LAW.*Of Natural Law.*

THE law of nature is not a law to man only, but likewise to all other animals, whether they are produced on the earth, in the air, or in the waters. From hence proceeds the conjunction of male and female, which we among our own species style matrimony; from hence arises the procreation of children, and our care in bringing them up. We perceive also, that the rest of the animal creation are regarded; as having a knowledge of this law, by which they are actuated.

Distinction of the Jus Gentium and Jus Civile---In Definition and Etymology.

I. Civil law is distinguished from the law of nations, because every community uses partly its own particular laws, and partly the general laws, which are common to all mankind. That law, which a people enacts for the government of itself is called the civil law of that people. But that law, which natural reason appoints for all mankind, is called the law of nations, because all nations make use of it. The people of Rome are governed partly by their own laws, and partly by the laws, which are common to all men. But we propose to treat separately of these laws in their proper places.

In Appellation and Effects.

II. All civil laws take their denomination from that city, in which they are established: it would therefore not be erroneous to call the laws of Solon or Draco the civil laws of Athens; and thus the law, which the Roman people make use of, is styled the civil law of the Romans, or of the Quirites; for the Romans are also called Quirites from Quirinus. Whenever we mention the words civil law, without addition, we emphatically denote our own law; thus the Greeks, when they say the poet, mean Homer, and the Romans Virgil. The law of nations is common to mankind in general, and all nations have framed laws through human necessity; for wars arose, and the consequences were captivity and servitude; both which are contrary to the law of nature; for by that law all men are free. But almost all contracts were at first introduced by the law of nations; as for instance, buying, selling, letting, hiring, society, a deposit, a *mutuum*, and others without number.

Division of the Law into written and unwritten, and subdivision of the written Law.

III. The Roman law is divided, like the Grecian, into written and unwritten. The written is six-fold, and comprehends the laws, the plebiscites, the decrees of the senate, the constitutions of princes, the edicts of magistrates, and the answers of the sages of the law.

Of a Law and a Decree of the People.

IV. A law is what the Roman people enact at the request of a senatorial magistrate; as for instance, at the request of a consul. A plebiscite is what the commonality enact, when requested by a plebeian magistrate, as by a tribune. The word commonality differs from people, as a species from its genus; for all the citizens, including patricians and senators, are comprehended under the term people. The term commonality includes all the citizens, except patricians and senators. The plebiscites, by the Hortensian law, began to have the same force, as the laws themselves.

Of the Senatus Consultam.

V. A senatorial decree is what the senate commands and appoints: for, when the people of Rome were increased to a degree, which made it difficult for them to assemble for the enacting of laws, it seemed but right, that the senate should be consulted instead of the whole body of the people.

The Constitution of the Prince.

VI. The constitution of the prince hath also the force of a law; for the people by a law, called *lex regia*, make a concession to him of their whole power. Therefore whatever the emperor ordains by rescript, decree, or edict, it is a law. These acts are called constitutions. Of these, some are personal, and are not to be drawn into precedent; for, if the prince hath indulged any particular man upon account of his merit, or inflicted any extraordinary punishment on a criminal, or granted him some unprecedented indulgence, these acts extend not to others in the like circumstances. But other constitutions are general, and undoubtedly bind all people.

Of the Honorary Jurisdiction.

VII. The edicts of the prætors are also of great authority. These edicts are called the honorary law, because those, who bear honours in the state, have given them their sanction. The curule ædiles also, upon certain occasions, published their edicts, which became a part of the *jus honorarium*.

Of the Responsa Prudentum.

VIII. The answers of the lawyers are the opinions of those, who were authorised to give their answers concerning matters of law. For antiently there were persons, who publicly interpreted the law; and to these the emperors gave a licence for that purpose. They were called *jurus-consulti*, and their opinions obtained so great an authority, that it was not in the power of a judge to recede from them.

Of the un-written Law.

IX. The unwritten law is that, which usage has approved; for all customs, which are established by the consent of those, who use them, obtain the force of a law.

Reason of the above Division.

X. The division of the law, into written and unwritten, seems to have taken rise from the peculiar customs of the Athenians and Lacedemonians. For the Lacedemonians trusted chiefly to memory, for the preservation of their laws; but the laws of the Athenians were committed to writing.

Division of Law into what is mutable and what immutable.

XI. The laws of nature, which are observed by all nations, inasmuch as they are the appointment of divine providence, remain constantly fixed and immutable. But those laws, which every city has enacted for the government of itself, suffer frequent changes, either by tacit consent, or by some subsequent law, repealing a former.

Of the Objects of Law.

XII. The laws, which we make use of, have relation either to persons, things, or actions. We must therefore first treat of persons; for it would be to little purpose to aim at knowledge in the law, while we are ignorant of persons, on whose sole account the law was constituted.

TITLE III.

OF THE RIGHTS OF PERSONS.

D. I. T. 5.

Division of Persons.

THE first general division of persons, in respect to their rights, is into freemen and slaves.

Definition of Liberty.

I. Liberty, or freedom, from which we are denominated free, is that natural power, which we have of acting, as we please, if not hindered by force, or restrained by the law.

Definition of Slavery.

II. Slavery is that, by which one man is made subject to another, according to the law of nations, though contrary to natural right.

Etymology of the Terms Servus and Mancipium.

III. Slaves are denominated *servi*, from the verb *servare*, to preserve: for it is the practice of our generals to sell their captives, being accustomed to preserve, and not to destroy them. Slaves are also called *mancipia* (*a manu capere*) in that they are taken by the hand of the enemy.

In what Manner Slaves are constituted.

IV. Slaves are either born such, or become so. They are born slaves, when they are the children of bond-women: and they become slaves, either by the law of nations, that is, by captivity, or by the civil law, which happens, when a free person, above the age of twenty, suffers himself to be sold, for the sake of sharing the price given for him.

The Distinctions of Freedmen and Slaves.

V. In the condition of slaves there is no diversity; but among those, who are free, there are many: thus some are *ingenui*, others *libertini*.

TITLE IV.

THE INGENUOUS.

Definition of the Term Ingenuous.

THE term *ingenuous* denotes a person, who is free at the instant of his birth, by being born in matrimony of parents, who are both ingenuous, or both libertines; or of parents, who differ in condition, the one being ingenuous, and the other a libertine. But, when the mother is free, although the father is a slave, or even unknown, the child is ingenuous: and when the mother is free at the time of the birth of her infant, although she was a bond-woman when she conceived it, yet such infant will be ingenuous. Also if a woman, who was free at the time of conception, is afterwards reduced to slavery and delivered of a child, her issue is, notwithstanding this, free born; for the misfortune of the mother ought by no means to prejudice her infant. It has been a question, whether the child of a woman, who is made free during pregnancy, but becomes bond before delivery, would be free born? Martianus proves, that the child of such woman would be free: for, in his opinion, it is sufficient, if the mother

hath been free at any time between conception and delivery ; and this opinion is strictly true,

On the erroneous Manumission of Ingenuous Persons.

I. When any man is by birth ingenuous, it will not injure him to have been in servitude, and to have been afterwards manumitted: for there are diverse constitutions, by which it is enacted, that manumission shall not prejudice free birth.

TITLE V.

OF LIBERTINES, OR FREEDMEN.

Definition and Origin of Libertines and of Manumission.

LIBERTINES, or freed-men, are those, who have been manumitted from just servitude. Manumission implies the giving of liberty ; for whoever is in servitude, is subject to the hand and power of another ; but whoever is manumitted, is free from both.

Manumission took its rise from the law of nations ; for all men by the law of nature are born in freedom ; nor was manumission heard of, whilst servitude was unknown. But, when servitude, under sanction of the law of nations, invaded liberty, the benefit of manumission became then a consequence. For all men at first were denominated by one common appellation, till, by the law of nations, they began to be divided into three classes, viz. into *liberi*, or those, who are born free ; into *servi*, or those, who are in slavery ; and into *libertini*, who are those, who have ceased to be slaves, by having freedom conferred upon them.

The Modes of Manumission.

I. Manumission is effected by various ways ; either in the face of the church, according to the imperial constitutions, or by the *vindicta*, or in the presence of friends, or by letter, or by testament, or by any other last will. Liberty may also be properly conferred upon a slave by diverse other methods, some of which were introduced by the constitutions of former emperors, and others by our own.

Time and Place proper for Manumission.

II. Slaves may be manumitted by their masters at any time, even whilst the prætor, the governor of a province, or the præconsul is going to the baths, or to the theatre.

Of the Division of Libertines now set aside.

III. The *libertini* were formerly distinguished by a threefold division. Those, who were manumitted, sometimes obtained what was called the greater liberty, and thus became Roman citizens ; sometimes they obtained only the lesser liberty, and

became Latins, according to the law *Junia Norbana*; and sometimes they obtained only the inferior liberty, and became *Dedititii*, by the law *Ælia Sentia*. But, the condition of the *Dedititii* differing but little from slavery, the inferior liberty has been long since disused; neither has the name of Latins been frequent. It therefore being our ardent desire to extend our bounty, and to reduce all things into a better state, we have amended our laws by two constitutions, and re-established the antient usage; for antiently liberty was simple and undivided; that is, it was conferred upon the slave, as his manumittor possessed it; admitting this single difference, that the person manumitted became only a libertine, although his manumittor was ingenuous.

We have entirely abolished the name of *Dedititii* by a constitution published among our decisions, by which, at the instance of Tribonian, our quæstor, we have suppressed all disputes concerning the antient law. We have also, at the suggestion of the same illustrious person, altered the condition of the Latins, and corrected the laws, which related to them, by another constitution, which eminently distinguishes itself among the imperial sanctions: and we have made all the freed-men in general citizens of Rome, regarding neither the age of the person manumitted, nor of the manumittor, nor any of the forms of manumission, as they were antiently observed. We have also introduced many new methods, by which slaves may become Roman citizens; and the liberty of becoming such is that alone, which can now be conferred.

TITLE VI.

PERSONS UNABLE TO MANUMIT, AND REASON OF THAT INABILITY.

First head of the law Ælia Sentia, on Manumission with intent to defraud Creditors.

IT is not in the power of every master to manumit at will: for whoever manumits with an intent to defraud his creditors, may be said to commit a nullity, the law *Ælia Sentia* impeding all liberty thus granted,

Of Emancipation by Will.

I. A master, who is insolvent, may appoint a slave to be his heir with liberty, that thus the slave may obtain his freedom, and become the only and necessary heir of the testator, on supposition that no other person is also heir by the same testament; and this may happen, either because no other person was instituted heir, or because the person, so instituted, is unwilling to act, as

such. This privilege of masters was for wise and just reasons established by the above-named law *Ælia Sentia*: for it claimed a special provision, that indigent men, to whom no man would be a voluntary heir, might have a slave for a necessary heir to satisfy creditors; or otherwise, that the creditors themselves should make sale of the hereditary effects of the master in the name of the slave, lest the deceased should suffer ignominy.

Of constructive Manumission.

II. A slave also becomes free by being instituted an heir, although no mention was made of liberty in the testament: for our imperial constitution regards not only masters, who are insolvent, but, by a new act of our humanity, it extends generally; so that the very institution of an heir implies the conferring of liberty. For it is highly improbable, that a testator, although he hath omitted to mention liberty in his testament, would be willing, that the person, whom he hath instituted, should remain in servitude, since a testator would thus defeat his own purpose, and be destitute of an heir.

Of fraudulent Manumission.

III. A man may be said to manumit in order to defraud creditors, if he is insolvent at the time, when he manumits, or if he becomes insolvent by manumitting. It is however the prevailing opinion, that liberty, when granted, is not impeached, unless the manumittor had an intent to defraud, although his goods are insufficient for the payment of his creditors; for men frequently imagine themselves to be in better circumstances, than they really are. We therefore understand liberty to be then only impeded, when creditors are doubly defrauded; that is, both by the intention of the manumittor, and in reality.

Of Manumission by Minors.

IV. By the before-named law *Ælia Sentia*, a master, under the age of twenty years, cannot manumit, unless a just cause is assigned, which must be approved of by a council, appointed for that purpose, at whose command liberty is conferred by the *vindicta*.

Lawful causes of Manumission.

V. A minor is deemed to assign a just reason for manumission, when he alleges any of the following, viz. that the person to be manumitted is his father or mother, his son or daughter, his brother or sister, his preceptor, his nurse, his foster child, or his foster brother; or when he alleges, that he would manumit his slave, in order to constitute him his proctor; or his bond-women, with an intent to marry her, on condition, that the marriage is performed

within six months. But a slave, who is to be constituted a proctor, cannot be manumitted for that purpose, if he is under seventeen.

Of assigning a Cause.

VI. A reason, which has once been admitted in favour of liberty, whether true or false, cannot afterwards be disallowed.

Amendment of the Ælian Law.

VII. When certain bounds were prescribed by the law Ælia Sentia to all under twenty, with regard to manumission, it was observed, that any person, who was fourteen complete, might make a testament, institute an heir, and bequeath legacies, and yet that no person, under twenty, could confer liberty; which was not longer to be tolerated: for can any just cause be assigned, why a man, permitted to dispose of all his effects by testament, should be debarred from infranchising his slaves? But liberty being of inestimable value, and our ancient laws prohibiting any person to make a grant of it, who is under twenty years of age, We therefore make choice of a middle way, and permit all, who are in their eighteenth year, to confer liberty by testament. For since, by all former practice, persons at eighteen were permitted to plead for their clients, there is no reason, why the same stability of judgment, which qualifies them to assist others, should not be of advantage to themselves, by enabling them to infranchise their own slaves.

TITLE VII.

OF THE FUSIAN CANINIAN LAW.

By the law *Fusia Caninia*, all masters were restrained from manumitting more, than a certain number, by testament; but we have thought proper to abrogate this law, as odious and destructive of liberty; judging it inhuman, that persons in health should have power to manumit a whole family, if no just cause impedes the manumission, and that those, who are dying, should be prohibited from doing the same thing by testament.

TITLE VIII.

OF THOSE WHO ARE INDEPENDENT AND THOSE WHO ARE UNDER THE POWER OF OTHERS, (QUI SUI VEL ALIENI JURIS SUNT.)

Another division of Persons.

We now proceed to another division of persons; for some are independent, and some are subject to the power of others. Of those, who are subject to others, some are in the power of parents.

others in the power of their masters. Let us then inquire, what persons are in subjection to others; for, when we apprehend, who these persons are, we shall at the same time discover those, who are independent. Our first inquiry shall be concerning those, who are in the power of masters.

Of the Law of Nations respecting Slaves.

I. All slaves are in the power of their masters, which power is derived from the law of nations: for it is equally observable among all nations, that masters have always had the power of life and death over their slaves, and that whatsoever is acquired by the slave is acquired for the master.

Of the right of Roman Citizens over Slaves.

II. All persons, under our imperial government, are now prohibited to inflict any extraordinary punishment upon their slaves, without a legal cause. For, by a constitution of Antoninus, it is enacted, that whoever kills his own slave, without a just cause, is not to be punished with less rigour, than if he had killed a slave, who was the property of another. The too great severity of masters is also restrained by another constitution, made by the same prince: for Antoninus, being consulted by certain governors of provinces concerning those slaves, who take sanctuary either in temples, or at the statues of the emperors, Ordained, that, if the severity of masters should appear at any time excessive, they might be compelled to make sale of their slaves upon equitable terms, so that the full worth of such slaves might be given to masters: and this constitution seems just and reasonable, inasmuch as it is a maxim, expedient for the commonwealth, "that no one should be permitted to misuse even his own property." The rescript of this emperor, sent to Ælius Martianus, is conceived in the following words: The power of masters over their slaves ought by no means to be wrongfully diminished, neither ought any man to be deprived of his just right. But it is for the interest of all masters, that relief against cruelties, the denial of sustenance, or any other insufferable injury, should not be refused to those, who justly implore it. Therefore take cognizance of all complaints, made by those of the family of Julius Sabinus, whose slaves took sanctuary at the sacred statue; and, if you are made sensible of their having been more hardly treated than they ought, or of their having suffered any great injury, order them to be forthwith sold; and in such a manner, that they may never more be made subject to their former master: and, if Julius Sabinus endeavours by any fraud to evade our constitution, be it known to him, that such his offence shall be punished with the utmost rigor.

TITLE IX.

OF THE PATERNAL POWER.

THE children, whom we have begotten in lawful wedlock, are under our power.

Of Marriage.

I. Matrimony is a social contract between a man and woman, obliging them to an inseparable cohabitation during life.

The Paternal power peculiar to the Romans.

II. The power, which we have over our children, is peculiar to the citizens of Rome; for there is no other people, who have the same power over their children, which we have over ours.

Those subject to the Paternal power.

III. The issue of yourself and your legal wife are immediately under your own power. Also the issue of a son and son's wife, that is, either grand-sons or grand-daughters by them, are equally in your power; and the same may be said of great grand-children, &c. But children born of a daughter will not be in your power, but in the power of their own father, or father's father, &c.

TITLE X.

OF MARRIAGE.

Of those who can legally contract Marriage.

THE citizens of Rome contract valid matrimony, when they follow the precepts of the law; the males, when they arrive at puberty, and the females, when they attain to a marriageable age. The males, whether they are *patres familiarum*, fathers of a family, or *fili familiarum*, the sons of a family; but, if they are the sons of a family, they must first obtain the consent of the parents, under whose power they are. For reason, both natural and civil, convinces us, that the consent of parents should precede marriage: and from hence it became a question, whether the son of a madman could contract matrimony? But, the opinions of lawyers being various, we published our decision, by which the son, as well as the daughter of a madman, is permitted to marry without the intervention of his father, provided always, that the rules set forth in our constitution, are observed.

Of Parents and Children.

I. We are not permitted to marry all women without distinction for there are some, with whom marriage is forbidden. For matrimony must not be contracted between parents and their children,

as between a father and daughter, a grand-father and his grand-daughter, a mother and her son, a grand-mother and her grand-son; and the same prohibition extends with respect to all ascendants and descendants in a right line in *infinitum*. And if such persons cohabit together, they have said to have contracted a criminal and incestuous marriage; which is undoubtedly true; inasmuch as those, who only hold the place of parents and children by adoption, can by no means marry: and the same law remains in force, even after the adoption is dissolved. Whoever therefore hath once been either your adopted daughter or grand-daughter, the same cannot afterwards be taken by you to wife, although she hath been emancipated.

Of Brothers and Sisters.

II. Matrimony is also prohibited between collaterals, but the prohibition is not of so great an extent, as that, which relates to parents and their children. A brother and sister are forbidden to marry, whether they are the children of the same father and mother, or of either. And, if any person becomes your sister by adoption, as long as such adoption subsists, a marriage contracted between her and you can not be valid. But, when the adoption is destroyed by emancipation, she may then be taken to wife. Also if you yourself are emancipated, there will not then remain any impediment, although your sister by adoption is not so. From hence it appears, that, if a man would adopt his son-in-law, he should first emancipate his daughter, and that, whoever would adopt his daughter-in-law, should previously emancipate his son.

Of the Daughter and Grand-Daughter of a Brother or Sister.

III. It is unlawful to marry the daughter of a brother, or a sister; neither is it lawful to marry the grand-daughter of a brother, or sister, although they are in the fourth degree. For when we are prohibited to take the daughter of any person in marriage, we are also prohibited to take his grand-daughter. But it appears not, that there is any impediment against the marriage of a son with the daughter of her, whom his father hath adopted; for they bear not to each other any relation either natural or civil.

Of Cousins.

IV. The children of two brothers, or two sisters, or of a brother and sister, may legally be joined together in matrimony.

Of Aunts.

V. A man is not permitted to marry his aunt on the father's side, although she is only so by adoption; neither can a man marry his aunt on the mother's side; because they are both esteemed to be the representatives of parents. And for the same

reason no person can contract matrimony with his great-aunt, either on his father's or his mother's side.

Of Affinity.--Of Wives, Daughters, and Daughters-in-law.

VI. We are under a necessity of abstaining from certain marriages, through a veneration for affinity; for it is unlawful to marry a wife's daughter, or a son's wife, in that both are in the place of daughters: and this rule must be understood to relate not only to those, who actually are, but also to those, who have been, our daughters-in-law at any time. For marriage with a son's wife, whilst she continues to be his wife, is prohibited on another account, viz. because the same woman can not, at one, and the same time, be the wife of two. And the marriage of a man with his wife's daughter, whilst her mother continues to be his wife, is also prohibited, because it is unlawful for one man to have two wives at the same time.

Of the Wife's Mother and a Step-Mother.

VII. A man is forbidden to marry his wife's mother, and his father's wife, because they both hold the place of mothers; and this injunction must be observed, although the affinity is dissolved: for, omitting our veneration for affinity, a father's wife, whilst she continues to be so, is prohibited to marry, because no woman can have two husbands at the same time. A man is also restrained from matrimony with his wife's mother, her daughter continuing to be his wife, because it is against the law to have two wives.

Of the Son of a Husband and Daughter of a Wife.

VIII. The son of a husband by a former wife, and the daughter of a wife by a former husband, and *e contra*, the daughter of a husband by a former wife and the son of a wife by a former husband may lawfully contract matrimony, even though a brother, or sister, is born of such second marriage between their respective parents.

Of Daughters after Divorce.

IX. If a wife, after divorce, brings forth a daughter by a second husband, such daughter is not to be reckoned a daughter-in-law to the first husband. It is nevertheless the opinion of Julian, that we ought to abstain from such nuptials. It is also evident, that the espoused wife of a son is not a daughter-in-law to his father; and that the espoused wife of a father, is not a step-mother to his son: yet those, who abstain from such nuptials, demean themselves rightly.

Of servile Cognation.

X. It is not to be doubted, but that servile cognation is an impediment to matrimony, as when a father and daughter, or a brother and sister, are manumitted.

Of other Prohibitions.

XI. There are, besides these already mentioned, many other persons, who, for diverse reasons, are prohibited to marry with each other; all whom we have caused to be enumerated in the digests, collected from the old law.

Of the Penalties on unlawful Marriages.

XII. If any persons presume to cohabit together in contempt of the rules, which we have here laid down, they shall not be deemed husband and wife, neither shall their marriage, or any portion given on account of such marriage, be valid; and the children, born in such cohabitation, shall not be under the power of their father. For, in respect to paternal power, they resemble the children of a common woman, who are looked upon as not having a father, because it is uncertain who he is. They are, therefore, called in Latin *spurii*, and in Greek ἀπάτορες; i. e. without a father: and from hence it follows, that, after the dissolution of any such marriage, no portion, or gift, *propter nuptias*, can legally be claimed. But those, who contracted such prohibited matrimony, must undergo the farther punishments set forth in our constitutions.

Of Legitimation.

XIII. It sometimes happens, that the children, who at the time of their birth were not under the power of their parents, are reduced under it afterwards. Thus a natural son, who is made a Decurion, becomes subject to his father's power; and he also, who is born of a free-woman, with whom marriage is not prohibited, will likewise become subject to the power of his father, as soon as the marriage instruments are drawn, as our constitution directs; which allows the same benefit to those, who are born before marriage, as to those, who are born subsequent to it.

TITLE XI.

OF ADOPTIONS.

Continuation.

IT appears from what has been already said, that all natural children are subject to paternal power. We must now add, that not only natural children are subject to it, but those also, whom we adopt.

Division of Adoption.

I. Adoption is made two ways, either by a rescript from the emperor, or by the authority of the magistrate. The imperial rescript impowers us to adopt persons of either sex, who are *sui juris*; i. e. independent and not under the power of their parents; and this species of adoption is called arrogation. But it is by

the authority of the magistrate, that we adopt persons actually under the power of their parents, whether they are in the first degree, as sons and daughters; or in any inferior degree, as grandchildren, or great grand-children.

Of those who may adopt, and those who may not.

II. But now, by our constitution, when the son of a family is given in adoption by his natural father to a stranger, the right of paternal power in the natural father is not dissolved, neither does any thing pass to the adoptive father, neither is the adopted son in his power, although such son is by us allowed to have the right of succession to his adoptive father, if he dies intestate. But if a natural father should give his son in adoption, not to a stranger, but to the maternal grandfather of such son; or if a natural father, who hath been emancipated, should give his son, begotten after emancipation, to his paternal or maternal grandfather, or great-grandfather, in this case, the rights of nature and adoption concurring, the power of the adoptive father is established both by natural ties and legal adoption, so that the adopted son would be both in the family, and under the power of his adoptive father.

Of the Arrogation of a Minor.

III. When any person, not arrived at puberty, is arrogated by the imperial rescript, the cause is first inquired into, that it may be known, whether the arrogation is justly founded, and expedient for the pupil: for such arrogation is always made on certain conditions; and the arrogator is obliged to give caution before a public notary, thereby binding himself, if the pupil should die within the age of puberty, to restore all the goods and effects of such pupil to those, who would have succeeded him, if no arrogation had been made. The arrogator is also prohibited to emancipate, unless he has given legal proof, that his arrogated son deserves emancipation; and even then he is bound to make full restitution, of all things belonging to such son. Also if a father, upon his death-bed, hath disinherited his arrogated son, or when in health hath emancipated him, without a just cause, then the father is commanded to leave the fourth part of all his goods to his son, besides what such a son brought to him at the time of arrogation, and acquired for him afterwards.

Of the Age of the Adoptor and Adopted.

IV. A junior is not permitted to adopt a senior; for adoption imitates nature; and it seems unnatural, that a son should be older than his father. He, therefore, who would either adopt or arrogate, should be a senior to his adopted or arrogated son by full puberty, that is, by eighteen years.

Of Adoption of Grand-Sons and Grand-Daughters.

V. It is lawful to adopt a person either as a grand-son or grand-daughter, great grand-son or great grand-daughter, or in a more distant degree, although the adoptor hath no son.

VI. A man may adopt the son of another as his grand-son, and the grand-son of another as his son.

Of Adoption in place of Grand-Son.

VII. If any man, who has already either a natural or an adopted son, is desirous to adopt another, as his grand-son, the consent of his son, whether natural or adopted, ought in this case to be first obtained, lest a *suus hæres*, or proper heir, should be intruded upon him. But, on the contrary, if a grand-father is willing to give his grand-son in adoption, the consent of the son is not necessary.

Of those who may be adopted.

VIII. He, who is either adopted or arrogated, bears similitude in many things to a son born in lawful matrimony; and therefore, whoever is adopted either by rescript, or before a prætor, or before the governor of a province, the same, if he is not a stranger, may be given in adoption to another.

Of Adoption by Impotents.

IX. It is observed as a common rule both in adoption, and arrogation, that such, who are impotent [whom we denominate *Spadones*] may adopt children; but that those, who are castrated, can not adopt.

Of Adoption by Women.

X. Women are also prohibited to adopt; for the law does not permit them to have even their own children under their power; but, when death hath deprived them of their children, they may, by the indulgence of the prince, adopt others, as a comfort and recompence for their loss.

Of Adoption by Rescript.

XI. It is peculiar to that kind of adoption, which is made by rescript, that, if a person, having children under his power, should give himself in arrogation, both he, as a son, and his children, as grand-children, would become subject to the power of the arrogator. It was for this reason, that Augustus did not adopt Tiberius, till Tiberius had adopted Germanicus; so that Tiberius became the son, and Germanicus the grand-son of Augustus, at the same instant, by arrogation.

Of the Adoption of Slaves.

XII. The following answer of Cato was approved of by the ancient lawyers, viz. that slaves, adopted by their masters, obtain

freedom by the adoption. And, from hence instructed, we have enacted by our constitution, that a slave, whom any master nominates to be his son, in the presence of a magistrate, becomes free by such nomination, although it does not convey to him any filial right.

TITLE XII.

HOW THE PATERNAL POWER (PATRIÆ POTESTAS) MAY BE TERMINATED.

Of Death.

LET us now inquire how those, who are in subjection to others, can be freed from that subjection. The means, by which slaves obtain their liberty, may be fully understood by what we have already said in treating of manumission: but those, who are under the power of a parent, become independent at his death, yet this rule admits of a distinction. When a father dies, his sons and daughters are, without doubt, independent; but, by the death of a grand-father, his grand-children do not become independent unless it happens, that there is an impossibility of their ever falling under the power of their father. Therefore, if their father is alive at the death of their grand-father, and they are till then under his power, the grand-children in this case, become subject to the power of their father. But, if their father is either dead or emancipated before the death of their grand-father, they then can not fall under the power of their father, and therefore become independent.

Of Deportation.

I. If a man, upon conviction of some crime, is deported into an island, he loses the rights of a Roman citizen; and it follows, that the children of such a person cease to be under his power, as if he was naturally dead. And, by a parity of reasoning, if a son is deported, he ceases to be under the power of his father. But, if by the indulgence of the prince a criminal is wholly restored, he regains instantly his former condition.

Of Relegation.

II. A Father, who is relegated, retains his paternal power; and a son, who is relegated, still remains under the power of his father.

Of those reduced to Slavery by Law.

III. When a man is judicially pronounced to be the slave of punishment, he loses his paternal jurisdiction. The slaves of punishment are those, who are condemned to the mines, or sentenced to be destroyed by wild beasts.

Of Dignity.

IV. If the son of a family becomes a soldier, a senator, or a consul, he still remains under the power of his father, from which neither the army, the senate, nor consular dignity can emancipate him. But it is enacted by our constitution, that the patrician dignity, conferred by our special diploma, shall free every son from all paternal subjection. For it is absurd to think, that a parent may emancipate his son, and that the power of an emperor should not be sufficient to make any person independent, whom he hath chosen to be a father of the commonwealth; or, in other words, a senator.

Of Captivity and Postliminium.

V. If a parent is taken prisoner by the enemy, altho' he thus becomes a slave, yet he loses not his paternal power, which remains in suspense by reason of a privilege granted to all prisoners; namely, the right of return: for captives, when they obtain their liberty, are repossessed of all their former rights, in which paternal power of course must be included; and, at their return, they are supposed, by a fiction of law, never to have been absent. If a prisoner dies in captivity, his son is deemed to have become independent, not from the time of the death of his father, but from the commencement of his captivity. Also, if a son, or grand-son, becomes a prisoner, the power of the parent is said, for the reason before assigned, to be only in suspense. The term *postliminium* is derived from *post* and *limen*. We therefore aptly use the expression *reversus postliminio*, when a person, who was a captive, returns within our own confines.

Of Emancipation and its Effects.

VI. Children also cease to be under the power of their parents by emancipation. Emancipation was effected according to our antient law, either by imaginary sales and intervening manumissions, or by the imperial rescript; but it has been our care to reform these ceremonies by an express constitution, so that parents may now have immediate recourse to the proper judge or magistrate, and emancipate their children, grand-children, &c. of both sexes. And also, by a prætorian edict, the parent is allowed to have the same right in the goods of those, whom he emancipates, as a patron has in the goods of his freed-man. And, farther, if the children emancipated are within the age of puberty, the parent, by whom they were emancipated, obtains the right of wardship or tutelage, by the emancipation.

VII. A parent having a son under his power, and by that son a grandson or grand-daughter, may emancipate his son, and yet re-

tain his grand-son or grand-daughter in subjection. He may also manumit his grandson or grand-daughter, and still retain his son under his power; or, if he is so disposed, he may make them all independent. And the same may be said of a great-grandson, or a great-grand-daughter.

Of Adoption.

VIII. If a father gives his son in adoption to the natural grand-father or great-grand-father of such son, strictly adhering to the rules laid down in our constitutions for that purpose enacted, which injoin the parent to make his intention manifest before a competent judge, in the presence of the person to be adopted, in no wise contradicting, and also in the presence of the adoptor, then does the right of paternal power pass wholly from the natural father to the adoptive, in whose person, as we have before observed, adoption has its fullest extent.

Of Grandson born after the Son was Emancipated.

IX. It is necessary to be known, that, if a son's wife hath conceived, and you afterwards emancipate that son or give him in adoption, his wife being pregnant, the child, which she brings forth, will, notwithstanding this, be born under your paternal authority. But, if the conception is subsequent to the emancipation or adoption, the child so conceived becomes subject, at his birth, either to his emancipated father, or his adoptive grand-father.

Children cannot compel their Parents to Emancipate.

X. Children, either natural or adopted, can rarely compel their parents by any method to dismiss them from subjection.

TITLE XIII.

OF TUTELAGE.

Of Persons in their own Right.

LET us now proceed to another division of persons. Of those, who are not in the power of their parents, some are under tutelage, some under curation, and some under neither. Let us then inquire what persons are under tutelage and curation; for thus we shall come to the knowledge of those, who are not subject to either. We will first treat of those persons, who are under tutelage.

Definition of Tutelage.

I. Tutelage, as *Servius* has defined it, is an authority and power, given and permitted by the civil law, and exercised over such independent persons, who are unable, by reason of their age, to protect themselves.

Definition of a Tutor.

II. Tutors are those, who have the authority and power before mentioned; and they take their name from the nature of their office. For they are called tutors, *quasi tutores*; as those, who have the care of the sacred buildings, are called *æditui, quod ædes tueantur*.

Of Tutors by Will.

III. Parents are permitted to assign tutors by testament to such of their children, who are not arrived at puberty, and are under their power. And this privilege of parents extends without exception over sons and daughters. But grand-fathers can only give tutors to their grand-children, when it is impossible, that such grand-children should ever fall under the power of their father, after the death of their grand-father. And therefore, if your son is in your power at the time of your death, your grand-children by that son cannot receive tutors by your testament, although they were actually in your power, because at your decease they will become subject to their father.

Of Posthumous Children.

IV. As posthumous children are in many cases reputed to have been born before the death of their fathers; therefore tutors may be given by the testament of a parent as well to a posthumous child, as to a child already born, if such posthumous child, had he been born in the life-time of his father, would have been his proper heir and under his power.

Of Emancipated Children.

V. But if a father gives a tutor by testament to his emancipated son, such tutor must be confirmed by the sentence of the governor of the province without inquisition.

TITLE XIV.

OF WHO MAY BE NOMINATED TUTORS BY WILL.

NOT only the father of a family may be appointed by testament to be a tutor, but also the son of a family.

Of a Slave.

I. A man may by testament assign his own slave to be a tutor with liberty. But note, that, if a master by testament appoints his slave to be a tutor without mentioning liberty, such slave seems tacitly to have received immediate liberty, and is thus legally-enabled to commence a tutor: yet, if a testator through error, imagining his slave to be a free person, by testament appoints him as such, to be a tutor, the appointment will not avail. Also the absolute

appointment of another man's slave to be a tutor is altogether ineffectual: but, if the appointment is upon condition, that the person appointed obtains his freedom, then it is made profitably: but, if a man by testament appoints his own slave to be a tutor, *when he shall obtain his liberty*, the appointment will be void.

Of Minors and Madmen.

II. If a madman, or a minor, is by testament appointed to be a tutor, the one shall begin to act, when he becomes of sound mind, and the other, when he has completed his twenty-fifth year.

III. It is not doubted, but that a testamentary tutor may be given either *to a certain time*, or *from a certain time*, or conditionally, or before the institution of an heir.

Tutors are Personal.

IV. A tutor can not be assigned to any particular thing, or upon any certain account, but can only be given to persons.

Of Tutors generally.

V. If a man by testament nominates a tutor for his sons or his daughters, the same person seems also to be appointed tutor to his posthumous issue; because, under the appellation of son or daughter, a posthumous child is comprehended. But, should it be questioned, whether grand-children are denoted by the word sons, and can receive tutors by that denomination, we answer that under the general term, *children*, grand-children are undoubtedly included, but that the word sons does not comprehend them: for the word son, and grandson, widely differ in their signification. But, if a testator assigns a tutor to his descendents, it is evident, that not only his posthumous sons are comprehended, but all his other children.

TITLE XV.

OF THE LAWFUL TUTELAGE OF AGNATES.

THE *Agnati* are, by the law of the twelve tables, appointed to be tutors to those, to whom no testamentary tutor was given; and these tutors are called legitime.

Who are Agnates.

I. *Agnati* are those, who are collaterally related to us by males, as a brother by the same father, or the son of a brother, or by him a grandson; also a father's brother, or the son of such brother, or by him a grandson. But those, who are related to us by a female are not said to be *agnate*, but *cognate*, bearing only a natural relation to us. Thus the son of a father's sister is not related to you by *agnation* but by *cognition*, and you are related to him in the

same manner; that is, by *cognition*; for the children of a father's sister follow the family of their father, and not that of their mother.

II. The law of the twelve tables, in calling the *agnati* to tutelage in case of intestacy, relates not solely to persons altogether intestate, in whose power it was to have appointed a tutor, but extends also to those, who are intestate only in respect to tutelage; and this may happen, if a tutor, nominated by testament, should die in the lifetime of the testator.

How the Rights of Agnation and Cognition are lost.

III. The right of agnation is taken away by almost every diminution, or change of state; for agnation is but a name given by the civil law; but the right of cognition is not thus altered; for although civil policy may extinguish civil rights, yet over our natural rights it has no such power.

TITLE XVI.

OF DIMINUTION.

DIMINUTION is the change of a man's former condition, which is effected three ways, according to the threefold division of diminution into the greater, the less, and the least.

Of the greater Diminution.

I. The greater diminution is, when a man loses both the right of a citizen and his liberty, which is the case of those, who by the rigor of their sentence are pronounced to be the slaves of punishment—and of freed-men, who are condemned to slavery for ingratitude to their patrons—and of all such, who suffer themselves to be sold, in order to become sharers of the price.

Of the less Diminution.

II. The less or mesne diminution is, when a man loses the rights of a citizen, but retains his liberty; which happens to him, who is forbidden the use of fire and water, or to him, who is transported into an island.

Of the least Diminution.

III. The least diminution is then said to have been suffered, when the condition of a man is changed without the forfeiture either of his civil rights, or his liberty; as when he, who is independent, becomes subject by adoption; or when the son of a family hath been emancipated by his father.

Of the Manumission of a Slave.

IV. The manumission of a slave works not any change of state in him, because he had, before manumission, no state or civil capacity.

Of Change of Rank.

V. Those, whose dignity is rather changed than their state, are not said to have suffered diminution; and therefore it appears, that they, who are removed from the senatorial dignity, do not suffer diminution.

VI. What has already been said in a section of the preceding title, to wit, that the right of cognation remains after diminution, relates only to the least diminution. For, by the greater diminution, as for instance, by servitude, the right of cognation is wholly destroyed, even so as not to be recovered by manumission. The right of cognation is also lost by the less or *mesne* diminution, as by deportation into an island.

To what Agnati the Right of Tutelage belongs.

VII. Although the right of tutelage belongs to the *agnati*, yet it belongs not to all the *agnati* in common, but to those only, who are in the nearest degree. But, if there are many in the same degree, the tutelage belongs to all of them, however numerous. For example, if there are several brothers, they are called equally to tutelage.

TITLE XVII.

OF THE TUTELAGE OF FREED-MEN.

BY the same law of the twelve tables, the tutelage of freed-men, and freed-women, is adjudged to belong to their patrons, and to the children of such patrons: and this tutelage is called legitime, although it exists not nominally in the law; but it is as firmly established by interpretation, as if it had been introduced by express words. For, inasmuch as the law commands, that patrons and their children shall succeed to the inheritance of their freed-men or freed-women, who die intestate, it was the opinion of the antient lawyers, that tutelage also by implication should belong to patrons and their children. And the law, which calls the *agnati* to the inheritance, commands them to be tutors, because the advantage of succession ought to be attended in most cases with the burden of tutelage. We have said, in *most cases*, because when any person, not arrived at puberty, is manumitted by a female, such female is called to the inheritance, but not to the tutelage.

TITLE XVIII.

OF THE LEGITIME TUTELAGE OF PARENTS.

IN similitude of the tutelage of patrons, another kind of tutelage is received, which is also called legitime; for if any parent eman-

cipates a son or a daughter, or a grand-son or a grand-daughter, who is the issue of that son, or any others descended from him by males in a right line and not arrived at puberty, then shall such parent be their legitime tutor.

TITLE XIX.

FIDUCIARY TUTELAGE.

THERE is another kind of tutelage called *fiduciary*: for, if a parent emancipates a son or a daughter, a grandson or a grand-daughter, or any other of his children, not arrived at puberty, he is then their *legitime* tutor: but, at his death, his male children of age become the *fiduciary* tutors of their own sons, or of a brother, a sister, or of a brother's children emancipated by the deceased. But, when a patron, who is a *legitime* tutor, dies, his children also become *legitime* tutors. The reason of which difference is this: a son, although he was never emancipated, becomes independent at the death of his father; and therefore, as he falls not under the power of his brothers, it follows, that he can not be under their legitime tutelage. But the condition of a slave is not altered at the death of his master; for he then becomes a slave to the children of the deceased. It must here be noted, that the persons above mentioned can not be called to tutelage, unless they are of full age; and our constitution hath in general commanded this rule to be observed in all tutelages and curations.

TITLE XX.

OF THE ATILIAN, JULIAN, AND TITIAN, LAWS.

BY virtue of the law *Atilia*, the prætor of the city, with a majority of the tribunes, had authority to assign tutors to all such, who otherwise were not intitled to tutors: but, in the provinces, tutors were appointed by the respective governors of each province, in consequence of the law *Julia* and *Titia*.

Of contingent Tutors.

I. If a tutor had been given by testament conditionally, or from a certain day, another tutor might have been assigned by virtue of the above named laws, whilst the condition depended, or till the day came. Also if a tutor had been given simply, *i. e.* upon no condition, yet, as long as the testamentary heir deferred taking upon him the inheritance, another tutor might have been appointed during the interval. But the office of such tutor ceased, when the cause ceased, for which he was appointed; as when the event of the condition happened, the day came, or the inheritance was entered upon.

If the Tutor was taken by the Enemy.

II. By the *Atilian* and *Julio-titian* laws, if a tutor was taken by the enemy, another tutor was immediately requested, whose office ceased of course, when the first tutor returned from captivity; for he then resumed the tutelage by his right of return.

Of the disuse of the Atilian law.

III. The *Atilian* and *Julio-titian* laws, concerning the appointment of tutors, were first disused, when the consuls began to give tutors to pupils of either sex, with inquisition; and the prætors were afterwards invested with the same authority by the imperial constitutions. For, by the above mentioned laws, no caution was required from the tutors for the security of their pupils, neither were these tutors compelled to act.

Of the present law of Tutelage.

IV. But, by the latter usage, at *Rome* the præfect of the city, or the prætor according to his jurisdiction, and, in the provinces, the governors, (each in his respective province) may assign tutors, after an inquiry into their morals and circumstances: and an inferior magistrate, at the command of a governor, may also appoint tutors, if the possessions of the pupil are not large.

Law of Justinian.

V. But we, for the ease of our subjects, have ordained by our constitution, that the judge of *Alexandria* and the magistrates of every city, together with the chief ecclesiastic, may give tutors or curators to pupils or adults, whose fortunes do not exceed five hundred *aurei*, without waiting for the command of the governor, to whose province they belong. But all such magistrates must, at their peril, take from every tutor, so appointed, the caution required by our constitution.

Reason of Tutelage.

VI. It is agreeable to the law of nature, that all such, who are not arrived at puberty, should be put under tutelage, to the intent that all, who are not adults, may be under the government of proper persons.

Of Accounts by Tutors.

VII. Tutors therefore, since they have the administration of the affairs of their pupils, may be compelled to render an account, by an action of tutelage, when their pupils arrive at puberty.

TITLE XXI.

OF THE AUTHORITY OF TUTORS.

THE authority or confirmation of a tutor is in some cases necessary, and in others not necessary. When a man stipulates to make

a gift to a pupil, the authority of the tutor is not requisite; but, if a pupil enters into a contract, there is a necessity for the tutor's authority; for it is an established rule, that pupils may better their condition, but not impair it, without the authority of their tutors. And therefore in all cases, where there are mutual obligations, as in buying, selling, letting, hiring, mandates, deposits, &c. he, who contracts with the pupil, is bound by the contract; but the pupil is not bound, unless the tutor hath authorised it.

Exception.

I. But no pupil, without the authority of his tutor, can enter upon an inheritance, or take upon him the possession of goods, or an inheritance in trust; for, although there may be a probability of profit, there is a possibility of damage.

How the Tutor is to exert his Authority.

II. If a tutor would authorise any act, which he esteems advantageous to his pupil; such tutor ought to be present at the negotiation: for the authority of a tutor can have no effect, when given by letter, by messenger, or after a contract is finished.

A Case in which a Tutor cannot act.

III. When a suit is to be commenced between a tutor and his pupil, inasmuch as the tutor cannot exercise his authority, as such, against himself, a curator, and not a prætorian tutor, (as it was formerly the custom,) is appointed, by whose intervention the suit is carried on; and, when it is determined, the curatorship ceases.

TITLE XXII.

HOW TUTELAGE IS TERMINATED.

Of Puberty.

PUPILS, both male and female, are free from tutelage, when they arrive at puberty. The ancients judged of puberty in males, not by years only, but also by the habit of their bodies. But our imperial majesty, regarding the purity of the present times, hath esteemed the inspection of males to be an immodest practice, and hath thought it proper, that the same decency, which was ever observed in respect to females, should be also observed in respect to males: and therefore, by our sacred constitution, we have enacted, that puberty in males should be reputed to commence immediately after the completion of their fourteenth year. But, in relation to females, we leave that wholesome and antient rule of law unaltered, by which they are esteemed marriageable after the twelfth year of their age is completed.

Of the Diminution of the Pupil.

I. Tutelage is determined before puberty, if the pupil is either arrogated or suffers deportation; and it also determines, if he is reduced to slavery, or becomes a captive.

Of a conditional Tutor.

II. But, if a testamentary tutor is given upon a certain condition, after that condition is fulfilled, the tutelage ceases.

Of the death of Tutor or Pupil.

III. Tutelage is also determined either by the death of the tutor, or by the death of the pupil.

Of the Diminution of Tutor or Pupil.

IV. When a tutor suffers the greater diminution of state, by which he at once loses his liberty and the privileges of a citizen, every kind of tutelage is then extinguished. But, if the least diminution is only suffered, as when a tutor gives himself in arrogation, then no species of tutelage is extinguished, except the legitime. But every diminution of state in pupils takes away all tutelage.

Of the term of Tutelage.

V. Those, who are by testament made tutors for a term only, are, at the expiration of such term, discharged from the tutelage.

Of the removal of Tutors.

VI. They also cease to be tutors, who are either removed from their office upon suspicion, or excuse and exempt themselves from the burden of tutelage for just reasons, of which we shall treat hereafter.

TITLE XIII.

OF CURATORS.

Of Adults.

MALES arrived at puberty, and females marriageable, do nevertheless receive curators, until they have completed their twenty-fifth year: for, although they have attained to puberty; they are not as yet of an age to take a proper care of their own affairs.

By whom Curators are appointed.

I. Curators are appointed by the same magistrates, who appoint tutors. A curator cannot be absolutely given by testament, but a curator, named in a testament, must be confirmed such, either by a prætor or the governor of a province.

To whom Curators are given.

II. No adults can be obliged to receive curators, unless *ad litem*; for a curator may be appointed to any special purpose, or to the management of any particular affair.

Of Madmen and Prodigals.

III. By a law of the twelve tables, all madmen and prodigals, although of full age, must nevertheless be under the curation of of their *agnati*. But, if there are no *agnati*, or if such, who do exist, are unqualified, then curators are appointed; at *Rome*, by the præfect of the city, or the prætor; and in the *provinces*, by the governors, after the requisite inquiry.

Of Impotents.

IV. Those, who are deprived of their intellects, or deaf, or mute, or subject to any continual disorder, inasmuch as they are unable to take a proper care of their own affairs, must be placed under curators.

Of Pupils.

V. Sometimes even pupils receive curators; for instance, when the legal tutor is unqualified: for a tutor must not be given to him, who already has a tutor. Also, if a testamentary tutor, or a tutor given by a prætor or the governor of a province, appears to be afterwards incapable of executing his trust, it is usual, although he is guilty of no fraud, to appoint a curator to be joined with him. It is also usual to assign curators in the place of such tutors who are not wholly excused, but excused for a time only.

Of an Agent to the Curator.

VI. If a tutor, by illness or any other necessary impediment, should be hindered from the personal execution of his office, and his pupil should be absent, or an infant, then the prætor or the governor of the province shall decree any person, whom the tutor approves of, to be the pupil's agent, for whose conduct the tutor must be answerable.

TITLE XXIV.

Of the Surety of Tutors.

IT is a branch of the prætor's office to see, that tutors and curators give a sufficient caution for the safety and indemnification of their pupils. But this is not always necessary; for a testamentary tutor is not compelled to give caution, inasmuch as his fidelity and diligence seem sufficiently approved of by the testator. Also all tutors, and curators, appointed to be such, after inquiry, are supposed in every respect to be qualified, and are therefore not obliged to give security.

I. If two, or more, are appointed by testament, or by a magistrate, after inquiry, to be tutors or curators, any one of them, by offering caution, may be preferred to the sole administration, or cause his co-tutor, or co-curator, to give caution, in order to

be admitted himself to the administration. Thus it appears, that a man cannot demand security from his co-tutor or co-curator; but that, by offering caution himself, he may compel his co-tutor, or co-curator, to give or receive caution. But, when no security is offered, if the testator hath appointed any particular person to act, such person must be preferred; but, if no particular person is specified by the testator, then must the administration be committed to such person or persons, whom a majority of the tutors shall elect, according to the pratorian edict: but, if they disagree in their choice, the prator may interpose his authority. The same rule is also to be observed, when many, either tutors or curators, are nominated by the magistrate, viz. that a majority of them may appoint one of their number, to whom the administration shall be committed.

II. It is necessary to be known, that tutors and curators are not the only persons subject to an action, on account of the administration of the affairs of pupils, minors, and others under their protection. For a subsidiary action, which is the last remedy to be used, will also lie against a magistrate, either for intirely omitting to take sureties, or for taking such as are insufficient: and this action, according to the answers of the lawyers, as well as by the imperial constitutions, is extended even against the heir of any such magistrate.

III. And by the same constitutions it is expressly enacted, that all tutors and curators, who refuse to give caution, may be compelled to it.

IV. Neither the præfect of the city, nor the prator, nor the governor of a province, nor any other, who has power to assign tutors, shall be subject to a subsidiary action: but those magistrates only are liable to it, who exact the caution.

TITLE XXV.

OF EXCUSES OF TUTORS OR CURATORS.

Of the Number of Children.

PERSONS, who are nominated to be either tutors or curators, may, upon diverse accounts, excuse themselves; but the most general plea offered is that of having children, whether they are subject, or emancipated. For at *Rome*, if a man has three children living, in *Italy* four, or in the *provinces* five, he may therefore be excused from tutelage and curation, as well as from other employments of a public nature; for both tutelage and curation

are esteemed public offices. But adopted children will not avail the adoptor; they will nevertheless excuse their natural father, who gave them in adoption. Also grand-children by a son, when they succeed in the place of their father, will excuse their grandfather; yet grand-children by a daughter will not excuse him. But those children only, who are *living*, can excuse from tutelage and curation; for the deceased are of no service: and should it now be demanded, whether a parent can avail himself of those sons, whom war has destroyed? It must be answered, —that he can avail himself of those only, who have perished in battle: for those who have fallen for the republic, are esteemed to live forever, in the immortality of their fame.

Of the Collectors of Taxes.

I. The emperor *Marcus* declared by rescript from his *Semestrial* council, that whoever is engaged in the administration of affairs relating to the treasury, may be excused from tutelage and curation, whilst he is so employed.

Of Absence on public Business.

II. Those, who are absent on the affairs of the republic, are exempted from tutelage and curation; and if such, who are already assigned to be either tutors or curators, should afterwards be absent on the business of the republic, their absence is dispensed with, whilst they continue in the public service; and curators must be appointed in their place; but, when such tutors return, they must then take upon them the burden of tutelage. But they are not intitled (as *Papinian* asserts in the fifth book of his answers) to the privilege of a year's vacation: for that term is allowed to those only, who are called, at their return, to a new tutelage.

Of the greater Magistrates.

III. By a rescript of the emperor *Marcus*, all superior magistrates may, as such, excuse themselves: but they cannot desert a tutelage, when once they have undertaken it.

Of a Lawsuit with the Pupil.

IV. No man can excuse himself from taking the office of a tutor or curator, by alleging a lawsuit with the pupil or minor, unless the suit is for all the goods, or the whole inheritance of such pupil or minor.

Of three Tutelages.

V. Three tutelages or curatorships, which are not acquired merely for advantage, will exempt a man, during their continuance, from the burden of a fourth. But the tutelage or curation

of many pupils, as of three or more brothers, under one patrimony, is reckoned only as a single tutelage or curation.

Of Poverty.

VI. The divine brothers have declared by their rescript, and the emperor *Marcus* by his separate rescript, that poverty is a sufficient excuse, when it can be proved to be such, as must render a man incapable of the burden imposed upon him.

Of ill Health.

VII. Illness also, if it is so great as to hinder a man from transacting his own business, is a sufficient excuse.

Of illiterate Persons.

VIII. By the rescript of the emperor *Antoninus Pius*, illiterate persons are to be excused; although in some cases an illiterate man may not be incapable of the administration.

Of the enmity of the Father.

IX. If a father through enmity appoints any particular person, by testament, to be tutor to his children, the motive of such an appointment will afford a sufficient excuse. But he, who by promise hath engaged himself to a testator, is not to be excused from the office of tutelage.

Of ignorance of the Testator.

X. The divine brothers have enacted by their rescript, that the pretence of being unknown to the father of a pupil is not to be admitted solely, as a sufficient excuse.

Eruptions.

XI. A capital enmity, against the father of a pupil or adult, will sufficiently excuse any man, either from tutelage or curatorship, if no reconciliation hath intervened.

XII. Also he, whose condition hath been controverted at the instance of the father of the pupil, is upon that account excused from the tutelage.

Of Age.

XIII. Any person, who is above seventy years of age, may be excused both from tutelage and curation. Also minors, as such, were formerly excusable; but, by our constitution, they are now prohibited from aspiring to these trusts; and of course all excuses are become unnecessary. It is also enacted by the same constitution, that neither pupils, nor adults, shall be called even to a legitimate tutelage. For it is absurd that persons, who are themselves under governors, and known to want assistance in the administration of their own affairs, should notwithstanding this be admitted, either as tutors or curators, to have the management of the affairs of others.

Of Military Service.

XIV. And we must also observe, that no military person, although willing, can be admitted to become a tutor or curator.

Of Grammarians, Orators, and Physicians.

XV. Both at *Rome* and in the *provinces*, all grammarians, teachers of rhetoric, and physicians, who exercise their professions within their own country, and are within the number authorised, are exempted from tutelage and curation.

Of the time and manner of excuse.

XVI. He, who can allege many excuses, and hath failed in his proof of those, which he hath already given, is not prohibited from assigning others within the time prescribed. But tutors and curators of whatever kind, whether legal, testamentary, or dative, (if they are willing to excuse themselves) ought not to prefer an appeal merely on account of their appointment; but they should first exhibit their excuses before the proper magistrate: and this they ought to do within fifty days after they are certified of their nomination, on supposition, that they are within an hundred miles from the place, where they were nominated. But, if they are at the distance of more than an hundred miles, they are allowed a day for every twenty miles, and thirty days besides; which, taken together, ought never, according to *Sevola*, to make a less number of days than 50.

Extent of the office of a Tutor.

XVII. When a tutor is appointed, he is reputed to have the care of the whole patrimony of his pupil.

The Tutor not required to be Curator.

XVIII. He, who hath been the tutor of a minor, can not be compelled to become his curator: and, by the rescript of the emperors *Severus* and *Antoninus*, although the father of a family should, by testament, appoint any person to be first the tutor of his children, and afterwards their curator, if the person so appointed is unwilling to take upon him the curation, he is by no means compellable.

Of Husbands.

XIX. The same emperors have likewise, by their rescript, enacted, that an husband may excuse himself from being a curator to his wife, even after he hath begun to act.

Of false Allegations.

XX. If any man should, by false allegations, have appeared to merit a dismissal from the office of tutelage, he is not therefore freed from the burden of this office.

TITLE XXVI.

OF SUSPECTED TUTORS AND CURATORS.

THE accusation of a suspected tutor, or curator, is derived from the law of the twelve tables.

The Cognizance belongs to the Prætor.

I. At *Rome* the power of removing suspected tutors belongs to the prætor, and in the *provinces* to the governors, or to the legate of a proconsul.

Who may be suspected.

II. We have already shewed, what magistrates may take cognizance of suspected persons: let us now therefore inquire, what persons may become suspected: And indeed all tutors may become so, whether they are testamentary, or of any other denomination. For even a legitime tutor may be accused; neither is a *patron* less subject to an accusation; but we must remember, that, as such, his reputation must be spared although he is removed from his trust, as a suspected person.

Who may accuse Tutors.

III. It now remains, as a consequence, that we inquire, by whom suspected persons may be accused. It must therefore be known, that an accusation of this sort is of a public nature, and open to all. For, by a rescript of the emperors *Severus* and *Antoninus*, even women are admitted to be accusers; yet such only, who are induced to it by their duty, or by their relation to the minor: thus a mother, a nurse, or a grand-mother, may become accusers; and also a sister: But the prætor can at discretion admit any women, who acting with a becoming modesty, but impatient of wrongs offered to pupils, appears to have no other motive than to relieve the injured.

Adults may accuse their Curators.

IV. No pupil can bring an accusation of suspicion against his tutor: but adults, by the rescript of *Severus* and *Antoninus*, are permitted, when they act by advice of persons related to them, to accuse their curators.

Who may be suspected.

V. Any tutor, who does not faithfully execute his trust, let his circumstances be ever so sufficient to answer damages, may, according to *Julian*, be pronounced suspected. And it is also the opinion of the same *Julian*, (which opinion is adhered to in our constitutions,) that a tutor may be removed from his office, as suspected, even before he has begun to execute it.

Of the effect of Removal.

VI. When any person is removed upon *suspicion*, if it is of *fraud*, he is stigmatized with infamy; but, if of *neglect* only he does not become infamous.

Of the effect of Accusation.

VII. If any tutor is accused upon suspicion, his administration, according to *Papinian*, is suspended, whilst the accusation is under cognizance.

How the Action is finished.

VIII. If a suspected tutor or curator should die, pending the accusation, then the cognizance of it is extinguished.

If the Tutor fails of Appearance.

IX. If a tutor fails to appear, with an intent to defer the appointment of an allowance for the maintenance of his pupil, it is provided by the constitution of *Severus* and *Antoninus*, that the pupil shall be put into the possession of his tutor's effects; and that, a curator being appointed, those things, which will be impaired by delay, may be immediately put to sale: and therefore any tutor, who, by absenting himself, impedes the grant of an allowance to his pupil, may be removed, as suspected.

X. But if a tutor makes a personal appearance, and falsely avers, that the effects of his pupil are insufficient for an allowance, such tutor shall be remitted to the præfect of the city, and punished by him in the same manner, as he, who hath acquired a tutelage by bribery.

Of fraudulent Administration.

XI. Also a freed-man, who is proved to have fraudulently administered the tutelage of the son, or grandson of his patron, must be remitted to the præfect to be condignly punished.

Surety no excuse for a suspected Tutor.

XII. It is lastly to be observed, that they, who unfaithfully administer their trust, must be immediately removed from it, although they tender a sufficient caution. For the act of giving caution alters not the malevolent purpose of the tutor, but procures him a longer time for the continuance of his depredations. We also deem every man suspected, whose immoralities give cause for it: but a tutor or curator, who, although poor, is yet faithful and diligent, can by no means be removed, as a suspected person, merely on account of poverty.

THE
INSTITUTIONS
OR
ELEMENTS OF JUSTINIAN.
Book the Second.

TITLE I.

OF THE DIVISION OF THINGS.

Twofold Division of Things.

WE have already treated of persons in the foregoing book; let us now therefore inquire concerning things, which may be divided into those, which can, and those, which can not come within our patrimony and be acquired; for some things are in common among mankind in general;—some are public;—some universal;—and some are such, to which no man can have a right. But most things are the private property of individuals, by whom they are variously acquired, as will appear hereafter.

Of the Air, running Water, the Sea, and the Shore.

I. Those things, which are given to mankind in common by the law of nature, are the air, running water, the sea, and consequently the shores of the sea: no man therefore is prohibited from approaching any part of the sea-shore, whilst he abstains from committing acts of violence in destroying farms, monuments, edifices, &c. which are not in common, as the sea is.

Of Rivers and Harbours.

II. All rivers and ports are public; and therefore the right of fishing in a port, or in rivers, is in common.

Definition of the Shore.

III. All that tract of land, over which the greatest winter flood extends itself, is the sea-shore.

Of the Use and Property of Banks.

IV. By the law of nations the use of the banks of rivers is also public, as the rivers themselves are; and therefore all persons have the same liberty to bring their vessels to the land, to unload them, and to fasten ropes to trees upon the banks of a river, as they

have to navigate upon the river itself: but, notwithstanding this, the banks of a river are the property of those, who possess the land, adjoining to such banks; and therefore the trees, which grow upon them, are also the property of the same persons.

Of the Use and Property of the Sea-shore.

V. The use of the sea-shore is also public and common by the law of nations, as is the use of the sea; and therefore any person is permitted to erect a cottage upon it for his habitation, in which he may dry his nets, and preserve them from the water; for the shores are not understood to be a property in any man, but are compared to the sea itself, and to the sand or ground, which is under the sea.

Of Things which are universal.

VI. Theatres, ground appropriated for a race or public exercises, and things of the like nature, which belong to a whole city, are universal, and not the property of any particular person.

Of Things which belong to no one.

VII. Things sacred, religious, and holy, cannot be vested in any person, as his own: for that, which is of divine right, is *nul-lius in bonis*, and can be no man's property.

Of sacred Things.

VIII. Those things, which have been consecrated by the pontiffs in due form, are esteemed sacred; such are churches, chapels, and also all moveable things, if they have been properly dedicated to the service of God: and we have forbidden by our constitution, that these things should be either aliened or obligated, unless for the redemption of captives. But, if a man should consecrate a building merely by his own authority, it would not be rendered sacred by such a consecration; but the very ground, upon which a sacred edifice hath once been erected, will, according to *Papi-nian*, continue to be sacred, although the edifice is destroyed.

Of religious Things.

IX. Any man may at his will render any place, which belongs solely to himself, religious, by making it the repository of a dead body; yet, when two are joint possessors of a place or spot of ground, not before used for such a purpose, it is not in the power of the one, without the consent of the other, to cause it to become religious. But, when there is a sepulchre in common among many, it is in the power of any one joint-possessor to make use of it, although the rest should dissent. And, when there is a proprietor, and an usufructuary, of the same place, the proprietor, without the consent of the usufructuary, can not render it religious.

But it is lawful to lay the body of a dead person in a place, belonging to any man, who has given his consent to it; and, although he should dissent after the burial, yet the place becomes religious.

Of holy Things.

X. Holy things also, as the walls and gates of a city, are in some degree of divine right, and therefore the property of no man. The walls of a city are esteemed *sancti* or holy, inasmuch as any offence against them is always punished capitally; and therefore all those parts of the laws, by which punishments are inflicted upon transgressors, we generally term *sanctions*.

Of private Property.

XI. There are various means, by which things become the property of private persons. Of some things we obtain dominion and property by the law of nature, which (as we have already observed) is also called the law of nations: and we acquire a property in other things by the civil law. But it will be most convenient to begin from the more antient law: and that the law, which nature established at the birth of mankind, is the most antient, appears evident: for civil laws could then only commence to exist, when cities began to be built, magistracies to be created, and laws to be written.

Of the occupation of the Feræ Naturæ.

XII. Wild beasts, birds, fish, and all the animals, which are bred either in the sea, the air, or upon the earth, do, as soon as they are taken, become instantly, by the law of nations, the property of the captor: for it is agreeable to natural reason, that those things, which have no owner, should become the property of the first occupant: and it is not material, whether they then are taken by a man upon his own ground, or upon the ground of another: but yet it is certain, that whoever hath entered into the ground of another for the sake of hunting or fowling, might have been prohibited from entering by the proprietor of the ground, if he had foreseen the intent. But, though wild beasts, or fowl, when taken, are esteemed to be the property of the captor, whilst they continue in his custody, yet, when they have once escaped and recovered their natural liberty, the right of the captor ceases, and they become the property of the first, who seizes them. And they are understood to have recovered their natural liberty, if they have run or flown out of sight; and even if they are not out of sight, when it so happens, that they can not without difficulty be pursued and retaken.

Of hunted Beasts.

XIII. It hath been a question, whether a wild beast is understood to belong to him, by whom it hath been so wounded, that it may easily be taken. And, in the opinion of some, it belongs to such person, as long as he pursues it; but, if he quits the pursuit, they say it ceases to be his, and again becomes the right of the first *occupant*. But others have thought, that property in a wild beast can not otherwise be obtained, than by actually taking it. And we confirm this latter opinion, because many accidents frequently happen, which prevent the capture.

Of Bees.

XIV. Bees also are wild by nature; and therefore, although they swarm upon a tree, which is yours, they are not reputed, until they are hived by you, to be more your property, than the birds, which have nests there; and therefore, if any other person shall inclose them in a hive, he thus becomes their proprietor. Their honeycombs also become the property of him, who takes them; but, if you observe any person entering into your ground, with that intent, you may justly hinder him. A swarm, which hath flown from your hive, is still reputed to continue yours, as long as it remains in sight, and may easily be pursued; but, in any other case, it will become the property of the *occupant*.

Of Peacocks, Pigeons, and tamed Animals.

XV. Peacocks and Pigeons are also naturally wild; nor is it any objection to say, that, after every flight, it is their custom to return: for bees do the same thing; and, that bees are naturally wild, is evident. Some have been known to have trained deer to be so tame, that they would go into, and return from the woods, at regular periods: and yet no man denies, but that deer are wild by nature. But, with respect to these animals, which go and return customarily, the rule to be observed is, that they are understood to be yours, as long as they appear to retain an inclination to return; but, if this inclination ceases, that they cease to be yours; and will again become the property of him, who takes them. And these animals seem then to cease to have an inclination to return, when they disuse the custom of returning.

Of Geese and Fowls.

XVI. But geese, and fowls, are not wild by nature; and this we are induced to observe, because there is a species of fowls, and a species of geese, which in contradistinction we term wild: and therefore, if the geese, or fowls of *Titius*, being disturbed and frightened, should take flight, they are nevertheless reckoned to

belong to him, in whatever place they are found, although he shall have lost sight of them: and whoever detains such animals, with a lucrative view, is understood to commit a theft.

Of Occupation in War.

XVII. All those things, which we take from our enemies in war, become instantly our own by the law of nations: so that free-men may be brought into a state of servitude by capture: but, if they afterwards escape, and shall have returned to their own people, they then obtain again their former state.

Of Wrecks.

XVIII. Precious stones, pearls, and other things, which are found upon the sea-shore, become instantly, by the law of nations, the property of the finder.

Of the product of Animals.

XIX. The product of those animals, of which we are the owners and masters, is, by the same law, esteemed to be our own.

Of Alluvion.

XX. And farther—that ground, which a river hath added to your estate by alluvion, [*i. e.* by an imperceptible increase,] is properly acquired by you according to the law of nations. And that is said to be added by *alluvion*, which is added in a manner, which renders it impossible to judge, how much ground is added in the space of each moment of time.

Of the effect of Floods.

XXI. But, if the impetuosity of a river should sever any part of your estate, and adjoin it to that of your neighbour, it is certain, that such part would still continue yours; but, if it should remain, for a long time, joined to the estate of your neighbour, and the trees, which accompanied it, shall have taken root in his ground, such trees seem, from the time of their taking root, to be gained and acquired to his estate.

Of Islands.

XXII. When an island rises in the sea, (an event which rarely happens) the property of it is in the occupant; for the property, before occupation, is in no man. But, if an island rises in a river, (which frequently happens) and is placed exactly in the middle of it, such island shall be in common to them, who possess the lands near the banks on each side of the river, according to the proportion of the extent and latitude of each man's estate, adjoining to the banks. But, if the island is nearer to one side, than the other, it belongs to them only, who possess lands next to the banks on that side, to which the island is nearest. But, if a river divides

itself and afterwards unites again, having reduced a tract of land into the form of an island, the land still continues to be the property of him, to whom it before appertained.

Of Rivers.

XXIII. If a river, entirely forsaking its natural channel, hath began to flow elsewhere, the first channel appertains to those, who possess the lands, close to the banks of it, in proportion to the breadth of each man's estate next to such banks: and the new channel partakes of the nature of the river, and becomes public. And, if after some time the river shall return to its former channel, the new channel commences to be the property of those, who possess the lands, contiguous to the banks of it.

Of Inundation.

XXIV. But it is otherwise in respect to lands, which are overflowed only; for an inundation alters not the face and nature of the earth; and therefore, when the waters have receded, it is apparent, that the property will be found still to remain in him, in whom it was vested before the inundation.

Of Specification.

XXV. When a man hath made any *species*, or kind of work, with materials, belonging to another, it is often demanded, which of them ought, in natural reason, to be deemed the master of it;—whether he, who made the *species*, or he who was the undoubted owner of the materials? as, for instance, if any person should make wine, oil, or flour, from the grapes, olives, or corn of another,—should cast a vessel out of gold, silver, or brass, belonging to another man,—should make a liquor, called *mulse*, with the wine and honey of another,—should compose a plaster or collyrium, with another man's medicines,—should make a garment with another's wool,—or should fabricate, with the timber of another, a bench, a ship, or a chest?—And after much controversy concerning this question, between the *Sabinians* and *Proculians*, the opinion of those who kept a mean between the two parties, proved most satisfactory to us: and their opinion was this:—that, if the *species* can be reduced to its former, rude materials, then the owner of such materials is also to be reckoned the owner of the new *species*: but, if the *species* can not be so reduced, then he who made it, is understood to be the owner of it: for example; a vessel can easily be reduced to the rude mass of brass, silver, or gold, of which it was made; but wine, oil, or flour, can not be converted into grapes, olives, or corn; neither can *mulse* be resolved and separated into wine and honey.

But, if a man makes any species, partly with his own materials, and partly with the materials of another: as, for instance, if he should make *mulse* with his own wine, and another's honey; or a plaster, or eye-water, partly with his own, and partly with another man's medicines; or should make a garment with an intermixture of his own wool with the wool of another,—it is not to be doubted, in all such cases, but that he who made the *species*, is master of it; since he not only gave his labour, but furnished also a part of the materials.

Of Accession.

XXVI. If any man shall have interwoven the purple of another into his own vestment, then the purple, although it may be more valuable, doth yield and appertain to the vestment by accession; and he, who was the owner of the purple, may have an action of theft, and a personal action, called a *condiction*, against the purloiner; nor is it of any consequence, whether the vestment was made by him, who committed the theft, or by another: for although things, which become, as it were, extinct by the change of their form, can not be recovered identically, yet a *condiction* may be brought for the recovery of the value of them, either against the thief, or against any other possessor.

Of Confusion.

XXVII. If the materials of two persons are incorporated together, then the whole mass, or composition, is common to both the proprietors: for instance, if two owners shall have intermixed their wines, or shall have melted together their gold or their silver. The same rule is also observed, if diverse substances are so incorporated, as to become one *species*: as when *mulse* is made with wine and honey; or when an *electrum* is composed, by an intermixture of gold and silver in different proportions: for in these cases it is not doubted, but that the species becomes common. Neither is any other rule observed, when either homogeneous, or even different substances, are confounded and incorporated together fortuitously, without the consent of their proprietors.

Of Commixion.

XXVIII. If the corn of *Titius* hath been mixed with the corn of another by consent, then the whole is in common; because the single bodies, or grains, which were the private property of each, are, by the mutual consent, made common. But if the intermixture was accidental, or if *Titius* made it without consent, it then seems, that the corn is not in common; because the single grains still remain ununited, and in their proper substance: for

corn, in such a case, is no more understood to be in common, than a flock would be, if the sheep of *Titius* should accidentally intermix with the sheep of another. But, if the whole quantity of corn should be retained by either of the parties, then an action in *rem* lies for the quantity of each man's corn: and it is the business and duty of the judge to make an exact estimate of the *quality*, or value, of the corn, belonging to each party.

Of what adheres to the Soil.

XXIX. When any man hath raised a building upon his own ground, he is understood to be the proprietor of such building, although the materials used in it were the property of another: for every building is an accession to the ground, upon which it stands. But, notwithstanding this, he, who was the owner of the materials, does not cease to be the owner; yet he cannot demand his materials, or bring an action for the exhibition of them; for it is provided, by a law of the twelve tables, that a person, whose house is built with the materials of another, cannot be compelled to restore those materials; but by an action, intituled *de tigno juncto*, he may be obliged to pay double the value: and here note, that all the materials for building are comprehended under the general term *tignum*. The above cited provision, in the law of the twelve tables, was made to prevent the demolition of buildings. But, if it happens that, by any cause, a building should be dissevered, or pulled down, then the owner of the materials, if he hath not already obtained double the value of them, is not prohibited to claim his identical materials, and to bring his action *ad exhibendum*.

Of building with your Materials on the Ground of another.

XXX. On the contrary, if a man shall have built an edifice with his own materials, upon the ground of another, such edifice becomes the property of him, to whom the ground appertains; for, in this case, the owner of the materials loses his property, because he is understood to have made a voluntary alienation of it: and this is the law, if he was not ignorant that he was building upon another's land: and therefore, if the edifice should fall, or be pulled down, such person can even then have no claim to the materials. But it is apparent, if the proprietor of the ground, of which the builder was in confirmed possession, should plead, that the edifice is his, and refuse to pay the price of the materials, and the wages of the workmen, that then such proprietor may be repelled by an *exception of fraud*: and this may assuredly be done, if the builder was the possessor of the ground *bona fide*. But it

may be justly objected to any man, who understood that the land appertained to another, "that he had built rashly upon that ground, which he knew to be the property of another."

Of Planting.

XXXI. If *Titius* sets another man's plant in his own ground, the plant will become the property of *Titius*: and, on the contrary, if *Titius* shall have set his own plant in *Mævius's* ground, the plant will appertain to *Mævius*; on supposition in either case, that it hath already taken root; for, until then, the property of the plant remains still in him, by whom it was planted. But from the instant in which a plant hath taken root, the property of it is changed: so that, if the tree of a neighbour borders so closely upon the ground of *Titius* as to take root in it, and be wholly nourished there, we may affirm, that tree is become the property of *Titius*: for reason doth not permit, that such a tree should be deemed the property of any other, than of him, in whose ground it hath cast its roots: and therefore, if a tree, planted near the bounds of the lands of one person, shall also extend its roots into the lands of another, such tree will become common to both the land proprietors.

Of Sowing.

XXXII. As all plants are esteemed to appertain to the soil, in which they have rooted, so every kind of grain is also understood to follow the property of that ground, in which it is sowed. But as he who hath built upon the ground of another, may (according to what we have already said) be defended by an *exception of fraud*, if the proprietor of the ground shall demand the edifice; so he, who at his own expence and *bona fide* hath sowed in another man's land, may also be benefited by the help of this *exception*.

Of Writing.

XXXIII. As whatever is built upon, or sowed in the ground, belongs to that ground by accession; so letters also, although written with gold, appertain to the paper or parchment upon which they are written. And therefore, if *Titius* shall have written a poem, an history, or an oration, upon the paper or parchment of *Seius*, then *Titius* will not be deemed the master of his own work, but the whole will be reputed to be *Seius's* property. But if *Seius* demands his books or parchments from *Titius*, and at the same time refuses to defray the expense of the writing, then *Titius* can defend himself by an *exception of fraud*: and this he may certainly do, if he was in possession of such papers and parchments *bona fide*; that is, honestly, and believing them to be his own.

Of Pictures.

XXXIV. If any man shall have painted upon the tablet of another, some think, that the tablet should yield and accede to the picture: but it is the opinion of others, that the picture (whatever the quality of it may be) should accede to the tablet. But it appears to us to be the better opinion, that the tablet should accede to the picture; for it seems ridiculous, that the painting of an *Appelles*, or a *Parrhasius*, should yield, as an accession, to a worthless tablet. But if he, who hath painted upon a tablet, demands it from the owner and possessor, and offers not the price of it, then such demandant may be defeated by an *exception of fraud*: but, if the painter is in possession of the picture, the owner of the tablet is intitled to an action called *utilis*, i. e. *beneficial*: in which case, if the owner of the tablet demands it, and does not tender the value of the picture, he may also be repelled by an *exception of fraud*, if he, who hath painted upon the tablet, was the possessor of it upon good faith. But, if he, who hath painted upon it, or any other, shall have taken way a tablet feloniously, it is evident, that the owner of it may prosecute such person by an action of theft.

Of Fruits reaped in error.

XXXV. If any man shall have purchased lands from another, believing the seller to have been the true owner, when in fact he was not, or shall have obtained an estate *bona fide*, either by donation, or any other just means, it is agreeable to natural reason, that the fruits, which he shall have gathered, shall be reckoned to have become his own, on account of his care in the culture and tillage: and therefore, if the true owner shall afterwards appear and claim his lands, he can have no action against the *bona fide* possessor, for those fruits and that product, which have been consumed. But this exemption from such an action is not granted to him, who knowingly keeps possession of another's estate; and therefore, when ever there is a *mala fides*, the possessor is compellable to restore all the mesne profits together with the lands.

Of the Usufructuary.

XXXVI. He, to whom the usufruct of lands belongs, can gain no property in the fruits of such lands, until he hath actually gathered them; and therefore, if the usufructuary should die, whilst the fruits, although ripe, are yet ungathered, they could not be claimed by his heirs, but would be acquired by the proprietor of the lands; and the same may be said in general, in relation to farmers.

What are fruits.

XXXVII. In estimating the product of animals, we not only reckon milk, skins, and wool, but also their young : and, therefore lambs, kids, calves, colts, and pigs, appertain by natural right to the usufructuary ; but the offspring of a female slave is not to be included within this product ; and can belong to him only, in whom the property of such female slave is vested : for it seemed absurd to think, that man, for whom nature hath framed all things, should be enumerated among the productions of the brute creation.

Of the duty of the Usufructuary.

XXXVIII. He, who has the usufruct of a flock, ought (according to the opinion of *Julian*) to preserve the original number of his sheep intire, by supplying the place of those, which die, out of the produce of the flock : and the duty of a usufructuary is the same in regard to other things ; for he ought to supply the place of dead vines, or trees, by substituting others in their stead ; and to act in every respect, like a good husbandman.

Of Treasure trove.

XXXIX. It hath been allowed by the emperor *Adrian*, in pursuance of natural equity, that any treasure, which a man finds in his own lands, shall become the property of the finder ; and that whatever is casually found, in a sacred or religious place, shall also become the property of him, who finds it. But, if a person, not making it his business to search, should fortuitously find a treasure in the ground of another, the emperor hath granted the half of such treasure to the proprietor of the soil, and half to the finder. He hath in like manner ordained, that, if any thing is found within the imperial demesnes, half shall appertain to the finder, and half to the emperor : and, similar to this, if a man finds any valuable thing in a place or district belonging to the treasury, the public, or the city, the same emperor hath decreed, that half shall appertain to the finder, and half to the treasury, the public, or the city, to which the place or district belongs.

Of Tradition. 1. The Rule and its reason.

XL. Things are also acquired (according to the law of nature) by tradition or livery ; for nothing is more conformable to natural equity, than to confirm the will of him, who is desirous to transfer his property into the hands of another : and therefore corporeal things, of whatever kind they are, may be delivered ; and, when delivered by the true owner, are absolutely aliened. *Stipendiary* and *tributary* possessions (and those, which are situated in the provinces, are so called) may also be aliened in the same manner ; for between these, and the *Italian* estates, we have now

taken away all distinction, by our imperial ordinance : so that, on account of a donation, a marriage-portion, or any other just cause, *stipendiary* and *tributary* possessions may undoubtedly be transferred by livery.

2. *Of Limitation.*

XXI. Things, although sold and delivered, are not yet acquired by the buyer, until he hath either paid the seller for them, or satisfied him in some other manner ; as by a bondsman or pledge. And, although this is so ordained by a law of the twelve tables, yet the same rule of justice is rightly said to arise from the law of nations ; that is, from the law of nature. But if the seller shall have given credit to the buyer, we must affirm, that the things will then become instantly the property of the latter.

3. *Ampliation.*

XLII. It makes no difference, whether the owner of a particular thing delivered it himself, or whether another, to whom the care and possession of it was intrusted, shall have delivered it with the owner's consent. And, for this reason, if the free and universal administration of all business is committed by a proprietor to any certain person, and the committee, by virtue of his commission, shall sell and deliver any goods, then will such goods become the property of the receiver.

Of Fictitious Tradition..

XLIII. In some cases, even without delivery, the mere consent of the proprietor is sufficient to transfer property : as when it happens, that a person hath lent any thing to you, hath let it, or deposited it in your possession, and hath afterwards sold it to you, made a donation of it, or given it to you, as a marriage portion : for although he shall not have delivered it, for any of these last mentioned purposes, yet, as soon as it is by consent reputed to be yours, you have instantly acquired the property of it ; and that as fully, as if it had actually been delivered to you, as a thing sold, a donation, or a marriage portion.

Of the Delivery of Keys.

XLIV. Also if a person hath sold any species of merchandise, deposited in a store-house, such person is understood to have transferred the property of his merchandise, as soon as he hath delivered the keys of the store-house to the buyer.

Of Missile Gifts.

XLV. It also sometimes happens, that the property of a thing is transferred, by the master of it, to an uncertain person : thus for instance, when the prætors and consuls cast their *missilia*, or liberalities, among the people, they know not what any particular

man will receive ; and yet, because it is their will and desire, that what every man then receives shall be his own, it therefore instantly becomes his property.

Of Derelicts.

XLVI. By a parity of reason it appears true, that a thing, which hath been made a *derelict* by the owner, will become the property of the first occupant. And whatever hath either been thrown away, or abandoned by the owner, to the intent, that it might never more be reckoned among his possessions, is properly accounted a *derelict*: and therefore ceases to be his property.

Of Goods thrown over-board.

XLVII. But the law is otherwise in respect to those things, which are thrown over-board in a storm, for the sake of lightening a ship; for such things remain the property of the owners, inasmuch as it is evident, that they were not thrown away, through dislike, but that each person in the ship might avoid the dangers of the sea. And, upon this account, whoever hath, with a lucrative intention, taken away such goods, although found even upon the high sea, he is guilty of theft. And, with these, those goods may be ranked, which have dropped from a carriage in motion, without the knowledge of the owner.

TITLE II.

OF THINGS CORPOREAL AND INCORPOREAL.

Second Division of Things.

THINGS may also be farther divided into *corporeal* and *incorporeal*. Things *corporeal* are those, which may be touched; as, for example, lands, slaves, vestments, gold, silver, and others innumerable. Things *incorporeal* are those, which are not subject to the touch, but consist in rights and privileges; as inheritances, usufructs, uses, and all obligations, in what manner soever they are contracted: nor is it an objection of any consequence to urge, that things *corporeal* are contained in an inheritance: for fruits, gathered from the earth, are *corporeal*; and that also is generally *corporeal*, which is due to us upon an obligation; as a field, a slave, or money: but it must be observed, that we here mean only the *right* to an inheritance, the *right* of using and enjoying any particular thing, and the *right* of an obligation; all which *rights* are undoubtedly *incorporeal*. And to these may be added the *rights*, or rather qualities, of rural and city estates, which are also termed *services*.

TITLE III.

OF THE RIGHTS AND SERVICES OF COUNTRY AND CITY
ESTATES.

THE rights or services of rural estates are these; a *path*, a *road*, an *highway*, and an *aqueduct* or free passage for water. A *path* denotes the right of passing and repassing on foot over another man's ground, but not of driving cattle or a carriage over it. A *road* implies the liberty of driving either cattle or carriages: and therefore he, who hath a *path*, hath not a *road*: but he, who hath a *road*, hath inclusively a *path*; for he may use such *road*, when he doth not drive cattle. An *high-way* is a service, which imports the right of passing, driving cattle, &c. and includes in it both a *path* and a *road*: and an *aqueduct* is a service, by which one man may have the right of a free passage or conduit for water, through the grounds of another.

Of the Services of City Estates.

I. The services of city-estates and inheritances are those, which appertain and adhere to buildings: and they are therefore called the services of city-estates, because we call all edifices city-estates although they are built upon farms or in villages. It is required by city-services, that neighbours should bear the burdens of neighbours; and, by such services, one neighbour may be permitted to place a beam upon the wall of another;—may be compelled to receive the droppings and currents from the gutter-pipes of another man's house, upon his own house, area, or sewer; or may be exempted from receiving them;—or may be restrained from raising his house in height, lest he should darken the habitation of his neighbour.

Of other rural Services.

II. Some are with reason of opinion, that, among rural services, we ought to reckon those, by which we obtain the right of drawing water, watering and feeding cattle, making lime, digging sand, &c. in the ground of another.

Of those who may owe or acquire Services.

III. All these services are called the services of estates or inheritances; because they can not be constituted without an inheritance to support them; for no man can either owe, or acquire, a rural or city-service, if he possesses neither house nor lands.

How Service is contracted.

IV. When ever any one is willing to demise the right of a service to another, he may do it by contract and stipulation. A

man may also by testament prohibit his heir from heightening his house, lest he should obstruct the view of his neighbour: or may oblige his heir to permit the rafter of another man's house to be laid upon his wall: or to receive upon his own house the droppings of anothers: or to suffer any person to walk, drive cattle, or draw water in his grounds.

TITLE IV.

OF USUFRUCT.

Definition of Usufruct.

AN *usufruct* is the right of using and enjoying, without diminution, the things, which are the property of another. But although an *usufruct* is a right, and therefore incorporeal, yet, as it appertains always to a substance, it necessarily follows, that, if the substance perishes, the *usufruct* must cease.

How it is constituted.

I. The *usufruct* of things is frequently separated from the property; and this happens by various means: it happens, for instance, when the *usufruct* is bequeathed by testament: for the heir hath then only the nude property vested in him, whilst the legatee possesses the *usufruct*—or, on the contrary, it happens, when a testator hath bequeathed his lands without the *usufruct*; for then the legatary hath only the nude property, whilst the heir enjoys the profits: for the *usufruct* may be bequeathed to one man, and the lands, without the *usufruct*, to another. Yet, if any man would constitute an *usufruct* otherwise, than by testament, he must do it by paction and stipulation. But, lest the property of lands should be rendered wholly unbeneficial by deducting the *usufruct* for ever, it was thought convenient, that the *usufruct* should by certain means become extinguished, and revert to the property.

In what things it consists.

II. The *usufruct* not only of lands and houses is grantable, but also the *usufruct* of slaves, cattle, and other things; except those, of which the nature is such, that they may be consumed by using; for the *usufruct* of such things is neither grantable by civil policy, nor natural reason; and among these may be reckoned wine, oil, cloaths, &c. And money also is almost of the same nature; for by constant use, and the frequent change of owners, it in a manner becomes extinguished. But the senate, through a motive of public utility, hath ordained, that the *usufruct* of these things may be

constituted, if a sufficient caution is given upon this account to the heir: and therefore, if the *usufruct* of money is bequeathed, the money is so given to the legatary, as to make it instantly his own: but then the legatary, lest he should die, or suffer diminution, is obliged to give security to the heir for the repayment of a like sum. Other things also, which are in their nature liable to consumption in using, when the *usufruct* of them is bequeathed, are so delivered to the legatary, as to become wholly his property; but in this case, after an exact valuation hath been made, caution must be given to the heir for the payment of a sum, equal to such valuation, either at the death of the legatary, or if it happens, that he should suffer diminution. It is not therefore to be understood, that the senate hath created an *usufruct* of these things; which is impossible; but that the senate hath constituted a *quasi-usufruct* by means of a caution.

How it is finished.

III. The *usufruct* of a thing determines by the death of the usufructuary; and by two of the three diminutions; namely, the greatest and the middle diminution, or change of state: and also by not being used, according to the manner, and during the time prescribed: all which things are set forth in our constitution. The *usufruct* of a thing also determines, if the usufructuary hath surrendered it to the lord of the property; but a cession of it to a stranger does not work a surrender to the proprietor: or, on the contrary, an *usufruct* determines, if the usufructuary hath acquired the property of it: and this is called consolidation. And it is certain, if an house hath been consumed by fire, or hath fallen by means of an earthquake, or through decay, that then the *usufruct* of such house is wholly destroyed; and that no *usufruct* of the area, or ground of it, can afterwards become due to the usufructuary.

When it is finished.

IV. When the whole *usufruct* of a thing is determined, it then reverts to the property; and, from that instant of time, the owner of the nude property commences to have a full and intire power over the thing.

TITLE V.

OF USE AND HABITATION.

What is common both to use and usufruct.

THE *usufruct*, and the nude use of a thing, are both of them constituted, and both determined by the same means.

The difference between the usufruct and the use of Land.

I. There is less benefit and emolument in the *use* of a thing, than in the *usufruct*: for he, who hath but simply the use of lands, is understood to have nothing more than the liberty of using such a quantity of herbs, fruit, flowers, hay, straw, and wood, which may be sufficient to supply his daily exigencies: and he is permitted only to be commorant upon the land, on condition, that he neither becomes troublesome to the owner, nor impedes the husbandmen in their country-labors. And an usuary, having but a mere use, can neither, let, sell, or give away his right to another, although it is in the power of an usufructuary to convey his *usufruct*, either by lease, sale, or donation.

Use of Houses.

II. He, who hath but the mere use of an house, is understood to have a right in it so far only, as to enable him to inhabit it himself; for he hath no power to transfer this right to another: and it is hardly thought allowable, that he should receive a guest or a lodger. But the usuary, notwithstanding what has been said, hath a right to inhabit the house together with his wife, his children, and his freed-men: and also with such other free persons, who are in the quality of servants. And, agreeably to this, if the use of an house appertains to a woman, she also hath the liberty of living in it with her husband, and her dependents.

Of the use of a Slave and Beast of burthen.

III. He also, who hath simply the use of a slave, can benefit *himself* only by the labor and service of such slave: for it is by no means in the power of the usuary to transfer his right over to another. And the same law prevails in regard to beasts of burden.

Of the use of Cattle.

IV. If the use of cattle is left by testament; as, for example, the use of sheep; yet the usuary can neither use the milk, the lambs, nor the wool; for these of right belong to the *usufruct*. But the usuary may undoubtedly employ the sheep, in soiling and improving his lands.

Of Habitation.

V. An habitation, whether given by testament, or constituted by any other means, appears to be neither an use, nor an *usufruct*, but seems to be rather a *particular right*. And for the public utility and in conformity to the opinion of *Marcellus*, we have permitted, by our decision, that he, who hath an habitation, may not only live in it, but also let it to another.

VI. What we have already delivered, concerning real services, usufructs, uses, and habitations, may at this time be sufficient. Concerning inheritances, and obligations, we will treat in their proper places. We have already explained summarily by what means things are acquired, according to the law of nations; let us now therefore examine, by what means they are acquired according to the civil law.

TITLE VI.

OF USUCAPION AND PRESCRIPTION.

The requisites of Usucapion. 1. Good Faith. 2. Possession for time prescribed. 3. A just Title.

IT was antiently decreed by the civil law, that he, who by means of purchase, donation, or any other just title, had obtained a thing from another, whom he thought to be the true owner of it, (although in reality he was not,) and, if it was moveable, had possessed it *bona fide* for the space of one year, either in *Italy* or the provinces—or, if it was immoveable, had possessed it for the term of two years within the limits of *Italy*, should prescribe to such thing by use: and this was held to be law, lest the dominion, or property of things, should be uncertain. But although it was thought by the more antient legislators, that the above mentioned terms were of sufficient length to enable every owner to search after his different kinds of property, yet a better determination hath suggested itself to our thoughts, lest the true owners should be defrauded, or too hastily excluded, by the circumscription of time and place, from the benefit of recovering their just due: and we have therefore promulged our ordinance, by which it is provided, that things moveable may be prescribed to after the expiration of three years, and that a possession, during a long tract of time, will also found a prescription to things immoveable: and note, that, by a *long tract of time*, we mean ten years, if the parties are present, (*i. e.* in the province,) and twenty years, if either of them is absent. By these means the property of things may be acquired; and this not only in *Italy*, but throughout our dominions in general, if the possession was justly founded.

Of Things out of Commerce.

I. But it is certain in some cases, that although there hath been a possession incontestably *bona fide*, yet no length of time will be sufficient to found a prescription; and this happens, when a man possesses, as his property, a free person, a thing sacred or religious, or a fugitive slave.

Of Things stolen or forcibly detained.

II. It is also equally certain, that no prescription can be founded to things moveable, which have been stolen; or to things immoveable, seized by violence; although such things have been possessed *bona fide*, during the length of time required by our constitution: for a prescription to things stolen is prohibited by a law of the twelve tables, and also by the law *Atilia*; and the laws *Julia* and *Plautia* forbid a prescription to things seized by violence. And it is not to be inferred from these laws, that a thief, or disseizor only, is prohibited to take by prescription: (for such are prohibited for another reason, namely, because they are fraudulent and dishonest possessors;) but all other persons are also disabled from prescribing to things stolen, or seized forcibly, although they shall have purchased such things *bona fide*, or otherwise received them upon a just account; and from hence it follows, that things moveable can not easily be prescribed to, even by honest possessors: for whoever hath either sold or delivered the goods of another knowingly, upon any consideration, he is guilty of theft. But this rule sometimes admits of exceptions: for in some cases a thing moveable may be prescribed to: thus, if an heir, thinking a particular thing to be hereditary, which in reality had only been lent, let to, or deposited with the deceased, shall have sold, given it, or otherwise disposed of it to another, who received it *bona fide*, it is not to be doubted but that the receiver may prescribe; for such thing can never be reputed *stolen*, inasmuch as it was honestly possessed from the beginning; and the heir, who hath aliened it, believing it to have been his own property, hath committed no theft. Also if he, who hath the usufruct of a female slave, either sells or gives away the child of such slave, believing it to be his own property, he does not commit theft; for theft can not be constituted without an intention to commit it. It may also happen, by various means, that one man may transfer the property of another without theft, and give a right of prescription to the possessor. And in regard to things immoveable the law ordains, that, if any man should take possession of an estate without force, by reason either of the absence, or negligence of the owner, or because he died without heirs, and (although he hath thus possessed the land dishonestly) shall have made livery of it to another, who took it *bona fide*, the land by long possession may be acquired by such taker, who can not be said to have received either a thing stolen, or possessed by violence: for the opinion of those antient lawyers, who held, that lands and things immoveable, might be stolen, is now abolished:

and it is therefore provided by the imperial constitutions, in favour of all such, who possess an immoveable property, that a long and undoubted possession ought not to be taken away.

Of purging defective Titles.

III. A prescription may sometimes be founded even to things, which have been stolen, or possessed by violence; as for instance, when such things shall have fallen again under the power of their true owner; for they are then reputed to be purged from the contamination of theft or violence, and may afterwards be claimed by prescription.

Of Things belonging to the Royal Treasury.

IV. The things, which appertain to our treasury, can not be acquired by prescription. But, when things escheatable have not been certified to the treasury, it is held by *Papinian*, that a purchaser, *bona fide*, may prescribe to any of them after delivery. And not only the emperor *Pius*, but the emperors *Severus* and *Antoninus* have also issued their rescripts, conformable to this opinion.

General Rule.

V. It is lastly to be observed, that, if any man shall purchase a particular thing *bona fide*, or obtain the possession of it by any other just title, he can by no means prescribe to it, unless the thing, in itself, is free from all manner of exception.

Of mistaken Possession.

VI. A mistake of the cause of possession shall not give rise to a prescription: as when he, who possesses a thing, imagines, that he hath purchased it, when he hath not purchased it; or that the thing was a gift, when in reality it was not given.

Of bona fide possession.

VII. If a thing immoveable is possessed by any man *bona fide*, so that the possession is justly commenced, then the heir of that man, when deceased, or the possessor of his goods, may continue the possession, so as to raise a prescription, although he is conscious, that what he possesses is the property of another; but, if the possession was commenced from the beginning *mala fide*, or unjustly, then will the continuance of it avail neither the heir, nor the possessor of the goods, although he was ignorant of any malefeazance. And we have enacted by our imperial constitution, that the time of usucapion or prescription to things moveable shall be continued in the same manner from the deceased to his successor.

VIII. And in regard to the computation of the years, necessary to raise a prescription, the emperors *Severus* and *Antoninus* have ordained by their rescript, that, between seller and buyer, the time of the continuance of the possession of the one shall be joined to the time of the continuance of the possession of the other.

Of Imperial Gifts, or Grants.

IX. It is enacted by an edict of the emperor *Marcus*, that, when a thing is purchased from the treasury, the purchaser, after an uninterrupted possession of it for the space of five years, subsequent to the sale, may repel the true owner by an exception of prescription. But the emperor *Zeno*, of sacred memory, hath well provided by his constitution, that all those, who by sale, donation, or any other title, have received things either moveable, or immoveable, from the public treasury, may instantly be secured in their possession, and made certain of success, whether they are plaintiffs or defendents—and that those, who think, that they are intitled to certain actions, either as proprietors or mortgagees of the things aliened, may commence their suits against the treasury, at any time within the space of four years, but not afterwards. And, in our own sacred ordinance, which we have lately promulged in favour of those, who receive any thing, whether moveable or immoveable, from the private possessions either of our-self, or of the empress, our consort, we have made the same regulations, which are contained in the above mentioned constitution of the emperor *Zeno*, concerning fiscal alienations.

TITLE VII.

OF DONATIONS.

Of Donation.

THERE is another way, by which property is acquired, namely by donation; of which there are two kinds; the one *mortis causa*, i. e. on account of death; the other *non mortis causa*, i. e. not on account of death; and this takes effect, during the life of the donor.

Of Donation in prospect of Death.

I. A donation on account of death is that, which is made under an apprehension or suspicion of death; as when any thing is given upon condition, that, if the donor dies, the donee shall possess it absolutely; or that the thing given shall be returned, if the donor should survive the danger, which he apprehends; or should repent, that he hath made the gift; or, if the donee should die before the donor. Donations *mortis causa*, are now reduced, as far

as possible, to the similitude of legacies : for, when it was much doubted by our lawyers, whether a donation *mortis causa* ought to be reputed as a gift, or as a legacy, inasmuch as, in some things, it partakes of the nature of both, we then *constituted* and *ordained*, that every such donation should be considered as a legacy ; and be made in the manner, which our constitution directs. But, in brief, a donation, *mortis causa*, is then said to be made, when a man so gives, as to demonstrate, that he would rather possess the thing given himself, than that the donèe should possess it ; and yet, at the same time, evinces, that he is more willing that the donee should possess it, than his own heir.

The donation, which *Telemachus* makes to *Piræus* in *Homer*, is of this species.

He (when *Piræus* ask'd for slaves, to bring
 The gifts and treasures of the *Spartan* king)
 Thus thoughtful answer'd :—those we shall not move,
 Dark and unconscious of the will of *Jove*.
 We know not yet the full event of all :
 Stabb'd in his palace, if your prince must fall,
 Us, and our house, if treason must o'erthrow,
 Better a friend possess them than a foe.
 But on my foes should vengeance heav'n decree,
 Riches are welcome then, not else, to me ;
 'Till then, retain the gifts.— POPES'S ODYSSEY. lib. 17.

Of simple Donation.

II. Donations, made without any thought or apprehension of death, we call donations *inter vivos* ; and these admit of no comparison with legacies : for, when once they are perfected, they cannot afterwards be revoked without cause : and donations are then esteemed perfect, when the donor hath declared and manifested his will either in writing or otherwise. And it is appointed by our constitution, that a donation *inter vivos* shall, in imitation of a sale, necessarily inforce a delivery ; for when things are given they become fully and perfectly vested in the donèe, and it is incumbent upon the donor to deliver them : and, although it is enacted by the constitutions of our predecessors, that donations, amounting to the value of two hundred *solidi*, shall be publicly and formally enrolled and registered, we have yet thought it expedient to enlarge this sum to five hundred *solidi* by our ordinance, by which we permit all donations of less value to be firm and binding without insinuation or enrollment ; and there are likewise some donations, which, although they exceed five hundred *solidi*, are yet of full force without insinuation, We have also,

for the enlargement of donations, enacted many other rules, all which may be collected by perusing our constitutions, set forth for that purpose. It nevertheless remains to be observed, that, when a donation is fully and validly made, the donor may revoke it on account of ingratitude in the donèe in some particular cases: and this may be done, lest he, who hath been liberal and kind to another, should in any of the instances, enumerated in our constitution, suffer either injury or damage from him, upon whom a benefit was conferred.

Of Donation before Marriage and by reason of Marriage.

III. There is also another species of donation *inter vivos*, which was wholly unknown to the ancient lawyers, being introduced by later emperors; this species of donations *inter vivos* was called *ante nuptias* (i. e. before marriage), and contained in it the following tacit condition; namely, that it should then take effect, when the marriage was performed; and these donations were properly called *ante nuptias*, because they could never be constituted after the celebration of matrimony. But, inasmuch as it was permitted by the antient law, that portions might be augmented after marriage, the emperor *Justin*, our father, hath enacted by his constitution, that donations called *ante nuptias* might also be augmented at any time, whilst the matrimony subsisted: and, as it was improper, that a donation should be still termed *ante nuptias* when it had received an augmentation *post nuptias*, i. e. after matrimony, we therefore being desirous, that our sanctions might become as perfect as possible, and that names should be properly adapted to things, have ordained and constituted, that the above mentioned donations may be not only augmented, but may also receive their commencement at any time during matrimony, and that for the future they shall not be called donations *ante nuptias*, but donations *propter nuptias*; i. e. on account of marriage: and thus these donations are made equal with portions; for as portions may be augmented, and even made, when matrimony is subsisting and persons are actually married, so donations, which are introduced on account of matrimony, may now not only precede marriage, but be augmented, or even constituted, after the celebration of it.

Of the Right of Accretion.

IV. There was formerly another manner of acquiring property by the civil law; namely by accretion; as for instance, if *Primus* had possessed a slave in common with *Titius*, and *Primus* had enfranchised that slave, either by the *vindicta* or by testament, then would the share of *Primus* in that slave be lost, and accrue

to *Titius*. But, inasmuch as it affords a bad example, that a man should be defrauded of his liberty, and that those masters, who are most humane, should suffer loss, whilst those, who are most severe, receive emolument, we have thought it necessary, that a proper remedy should be applied to this grievance; and we have found a method, by which the manumittor, his co-partner, and the freed person, may all partake of our beneficence: for we have decreed, (and it is manifest, that the antient legislators have often transgressed the strict rules of law in favor of liberty,) that freedom, although granted by one partner only, shall immediately take effect: so that the manumittor shall have reason to be pleased with the validity of his gift, if his co-partner is indemnified by receiving his share of the worth of the slave.

TITLE VIII.

WHO MAY ALIENATE AND WHO MAY NOT.

Of the Husband.

IT sometimes happens, that the proprietor of a thing cannot alien it, and on the contrary that he, who is not the proprietor, may alien it: for example, by the law *Julia* an husband is prohibited to make an alienation of lands, which came to him in right of his wife, unless his wife consents to the alienation: and yet every man is deemed the proprietor of whatever is given to him, as a marriage portion. But, in this respect, we have corrected the law *Julia*, and brought it into a better state; for, having observed, that this law regards only those immoveable possessions, which are situated within the precincts of *Italy*, and that, although it inhibits the husband to make a mortgage of such possessions, even with the consent of his wife, yet it permits him, with the consent of his wife, to make an alienation, we have therefore provided a remedy by our imperial authority; so that now no husband can either alien or mortgage, even with the consent of his wife, any immoveable possession, whether *provincial* or *Italian*, obtained with her, as a marriage portion; and we have been induced to make these regulations, lest the frailty of women should occasion the ruin of their fortunes.

Of Creditors.

I. But a creditor, by virtue of a compact, may sell or alien a pledge, although it is not his own property; yet this seems to be allowable for no other reason, than because the pledge is understood to be aliened by the consent of the debtor, with whom it was covenanted from the commencement of the contract, that

the creditor might be permitted to sell the pledge, if the money borrowed was not paid at the time stipulated. But, lest the creditors should be impeded from prosecuting, what is justly due to them, and lest debtors, on the contrary, should lose the property of their possessions too soon, we have in our ordinance, promulged for this purpose, instituted certain methods, by which the sale of pledges may be warrantably made: and, through the whole tenor of our constitution, a sufficient caution hath been taken in regard to both creditors and debtors.

Of Pupils.

II. It must now be observed, that no pupil, whether male or female, hath power to alien any thing without the authority of a tutor: and therefore, if a pupil, without the authority of his tutor, shall lend money to any man, such pupil contracts no obligation: for he is incapable of vesting the property of his money in the borrower; and therefore the money may be claimed by *vindication*, (that is, by a real action,) if it exists intire and unspent. But if money, lent by a minor, is consumed by the borrower, *bona fide*, (*i. e.* believing that the lender was of full age) it may be recovered from such borrower by condiction, that is, by a personal action. And, if such money is consumed by the borrower *mala fide*, an action *ad exhibendum* will lie against him.

III. But, on the contrary, the property of any thing may be transferred to pupils, whether male or female, without the authority of their tutors: yet, if a debtor makes a payment to a pupil, it is necessary that the debtor should be warranted by the authority of the pupil's tutor; otherwise he will not be acquitted of the debt: and this, for a most evident reason, was ordained by a constitution, which we promulged to the advocates of *Cæsarea*, at the suggestion of that most eminent man *Tribonian*, the quæstor of our sacred palace: and by this constitution it is enacted, that the debtor of a minor may lawfully pay any sum to his tutor or curator, if a judicial decree, permitting the payment, is previously obtained without expense to the minor: for, when the payment of a debt is warranted by, and subsequent to, the decree of a judge, it is always attended with the fullest security. But, although money hath been paid to a pupil, otherwise than we have ordained, yet, if he should afterwards require, that the money should be paid him again, and demand it by action, he might be deprived of his plea by an *exception of fraud*, if it could be proved, that he had become richer by the increase of this money; or even that he had preserved it safely. But, if the pupil hath

squandered and consumed the money paid to him, or lost it either by theft or violence, an exception of fraud will be of no benefit to the debtor, who will be compelled to make a second payment, because the first was made inconsiderately, without the authority of the tutor, and not according to our ordinance. Pupils are also incapacitated to pay money without the authority of their tutors; because money, when paid by a pupil without such authority, doth not become the property of him to whom it is paid: for the alienation of no one thing is granted to a pupil without the authority of his tutor.

TITLE IX.

BY WHAT PERSONS THINGS MAY BE ACQUIRED.

Summary.

THINGS may be acquired not only by ourselves, but also by those who are under our power; and also by slaves, of whom we have the usufruct only—acquisitions may also be made for us by free-men—and even by slaves, whom we possess *bona fide*, although they are the property of another. Let us therefore inquire diligently concerning all these persons.

Of Children under Power.

I. It was anciently the law, that whatever estate came to children, whether male or female, who were under the power of their parents, it was acquired for the parents of such children without any diminution, if we except the *peculium castrense*: and these estates were so absolutely vested in the parents, that what was acquired by one child they might have given to another child, or to a stranger; or might have sold it, or applied in what manner, and to what purpose they thought proper: but this seemed to be inhuman; and we have therefore, by a general constitution, mitigated the rigour of the law in regard to children, and have, at the same time, maintained that honour which is due to parents; having ordained, that, if any thing accrues to the son by means of the father's fortune, the *whole* shall be acquired for the father, according to ancient practice: for can it be unjust, that the wealth, which the son hath obtained, by means of the father, should revert to him? but that the dominion and property of whatever the son of a family hath acquired, by any other means, shall remain in the son; and that the father shall be intitled only to the usufruct of such acquisitions. And this we have thought proper to decree, lest that, which hath accrued to a man from his labour or good fortune, should be unjustly transferred to another.

Of the Emancipation of Children.

II. We have also regarded the interest of children in respect to emancipation: for a parent, when he emancipated his children, might, according to former constitutions, have taken to himself, if he was so inclined, the property of the third part of those things, which were excepted from paternal acquisition, retaining it as the price of emancipation. But it appeared to be inhuman, that the son should be thus defrauded of the third part of his property, and that the honour, which he had obtained by becoming independent, should be decreased by the diminution of his estate; and we have therefore decreed, that the parent instead of the third part of the property, which he formerly might have retained, shall now be intitled to an half-share, not of the property, but of the usufruct; so that the property will, for the future, remain intire in the son, and the father will enjoy a greater share: namely, half instead of a third part.

Of our Slaves.

III. Whatever our slaves have at any time acquired, whether by delivery, stipulation, donation, bequest, or any other means, the same is reputed to be acquired by ourselves, and we thus acquire things, although we are ignorant of, or even averse to, the acquisition; for he, who is a slave, can have no property. And, if a slave is instituted an heir, he cannot otherwise take upon himself the inheritance, than at the command of his master; but, if the slave is commanded to do this, the inheritance is as fully acquired by the master, as if he had been himself made the heir; and consequently a legacy, left to a slave, is acquired by his master. It is farther to be observed, that masters acquire by their slaves not only the property of things, but also the possession; for whatever is possessed by a slave, the same is deemed to be possessed by his master; who may therefore found a prescription to it by means of his slave.

Of Usufructuaries.

IV. In regard to those slaves, of whom the possessor has the usufruct only, it is an established rule, that, whatever they acquire by means of his goods, or by their own work and labour, it appertains to their usufructuary master: but whatever is obtained by a slave, otherwise than by those means, it belongs to him, who hath the property of the slave: and therefore, if a slave is instituted an heir, or hath received a legacy, or gift, the inheritance, legacy, or gift, will not be acquired for the usufructuary master, but for the proprietor.

Continuation.

V. The same rule is observed in regard to him, who is possessed as a slave *bona fide*, whether he is a free-man, or the slave of another: for the law concerning an usufructuary master prevails equally in relation to a *bona fide* possessor; and therefore whatever is acquired otherwise, than by the two causes abovementioned, it either belongs to the person possessed, if he is free; or to the proprietor, if the person possessed, is the slave of another. But a *bona fide* possessor, who hath gained a slave by *usucapion* or prescription, (inasmuch as he thus becomes the absolute proprietor,) can acquire by virtue of such slave, by all manner of ways. But an usufructuary master can not prescribe; first, because he can never be strictly said to possess, having only the power of using; and farther, because he knows, that the slave belongs to another. We nevertheless may acquire not only property, but also possession, by means of the slaves, whom we possess *bona fide*, or of whom we have only the usufruct; and even by means of a free person, of whom we have a *bona fide* possession. But, in saying this, we adhere to the distinction, which we have before explained, and speak of those things only, of which a slave may acquire the possession, either by means of the goods of his master, or by his own industry.

Of other Persons.

VI. It is apparent from what has been said, that we can by no means make acquisitions by free persons, who are not under our subjection, nor possessed by us *bona fide*: neither can we acquire property by another's slave, of whom we have neither the usufruct, nor the just possession. And this is meant, when it is said, that nothing can be acquired by means of a stranger; which we must understand with an exception; for it hath been determined according to the constitution of the emperor *Severus*, that possession may be acquired for us by a free person, as for instance by a proctor, not only with, but even without our knowledge; and, by this possession, the property may be gained, if the delivery was made by the proprietor; and an *usucapion* or prescription may be acquired, although the delivery was made by one, who was not the proprietor.

VII. The observations, which we have already made, concerning the acquisition of particular things, may suffice for the present; for we shall treat more opportunely hereafter in another place of the rights of legacies and trusts. We will now proceed to shew, how things may be acquired *per universitatem*, that is, wholly and in gross by one single acquisition: for example; if *Titius* is

nominated an heir, or seeks the possession of the goods of another, or arrogates any one as his son, or if goods are adjudged to him for the sake of preserving the liberty of slaves; in all these cases, the intire inheritance passes to *Titius*. Let us now, therefore, inquire into inheritances, which are of a twofold nature; for they proceed either from a testacy, or an intestacy. We will first treat of those, which come to us by testament; and, in doing this, it will be necessary to begin by explaining the manner of making testaments.

TITLE X,

OF WILLS.

Etymology.

A testament is so called from the latin word *testatio*; because it bears witness or testimony to the determination of the mind.

Of Antient Wills.

I. But, lest the antient usage should be forgotten, it is necessary to observe, that two kinds of testaments were formerly in use; the one was practised in times of peace, and named *calatis comitiis*; because it was made in a full assembly of the people; and the other was used, when the people were going forth to battle, and was stiled *procinctum testamentum*. But a third species was afterwards added, which was called *per æs et libram*, because it was effected by emancipation, which was an alienation, made by an imaginary sale in the presence of five witnesses, and the *libripens* or balance-holder, all citizens of *Rome* above the age of fourteen, and also in the presence of him, who was called the *emptor familiæ* or purchaser. The two former kinds of testaments have been disused for many ages; and that, which was made *per æs et libram*, although it continued longer in practice, hath now ceased in part to be observed.

Of the Honorary or Prætorian Will.

II. The three kinds of testaments before mentioned all took their rise from the civil law; but afterwards another species was introduced by the edict of the prætor; for, by the *honorary* or *prætorian* edict, the signature of seven witnesses was decreed sufficient to establish a will without any emancipation or imaginary sale; but this signature of witnesses was not required by the civil law.

Of the Union of Civil and Prætorian Law.

III. When the civil and prætorian laws began to be blended together partly by usage, and partly by the emendation, made by

the imperial constitutions, it became an established rule; that all testaments should be made at one and the same time according to the civil law: that they should be sealed by seven witnesses according to the prætorian law, and that they should also be subscribed by the witnesses, in obedience to the constitutions. Thus the law concerning testaments seems to be tripartite: for the civil law enforces the necessity of having witnesses to make a testament valid, who must all be present at one and the same time without interval; the sacred constitutions ordain, that every testament must be subscribed by the testator and the witnesses; and the prætorian edict requires sealing, and fixes the number of witnesses.

Solemnity added by Justinian.

IV. To all these solemnities we have made an addition for the better security of testaments and the prevention of frauds, having enacted by our constitution, that the name of the heir shall be expressed, by the hand-writing either of the testator, or of the witnesses; and that every thing shall be done in conformity to the tenor of our ordinance.

Of Seals.

V. Every witness to a testament, according to *Papinian*, may use the same signet: for otherwise, what must be the consequence, if seven seals should happen all to bear the same device? It is also allowable to seal with the signet of another.

Who may be Witnesses.

VI. Those persons are allowed to be good witnesses, who are themselves legally capable of taking by testament: but yet no woman, slave, or interdicted prodigal, no person under puberty, mad, mutè, or deaf, nor any one, whom the laws have reprobated and rendered intestable, can be admitted a witness to a testament,

Of a Slave reputed to be Free.

VII. If a witness, at the time of attesting, was reputed to have been a free person, but afterwards appeared, to have been a slave at that time, the emperor *Adrian*, declared in his rescript to *Cato*, and afterwards the emperors *Severus* and *Antoninus* by their rescript decreed in a similar case, that they would aid such a defect in a testament, and cause it to be accounted equally firm, as if it had been made, as it ought; if the witness, at the time of sealing, was, in the estimation of all men, taken to be a free person, no one having made a question of his condition.

Of two or more Witnesses of the same Family.

VIII. A father and a son under his power, or two brothers, under the power of the same father, may be made witnesses to

a testament: for nothing hinders, but that several persons may be admitted witnesses, out of the same family, to a business, in which that family is not interested.

Of the Family of the Testator.

IX. No person can be a witness to a testament, who is under the power of the testator. And, if the son of a family gives away his military estate by testament after his dismissal from the army, neither his father, nor any one under the power of his father, can be admitted a witness to it. For, in this case, the law does not allow of a domestic testimony.

Of the Heir.

X. No heir can be admitted a witness to that testament, by which he is appointed heir; neither can the testimony of any one be admitted, who is in subjection to such heir; nor the testimony of his father, to whom he is himself under subjection; nor the testimony of his brothers, if they are under the power of the same father; for this whole business, which is performed for the sake of completing a testament, is now always transacted between the testator, and the real or very heir. But formerly there was great confusion; for although the antients would never admit the testimony of the *emptor familiae*, or the supposed heir, nor of any one allied to him by subjection, yet they admitted that of the real heir, and of those, who were connected with him by subjection; and the only precaution taken was to exhort and persuade those persons not to abuse their privilege. But we have corrected this practice, preventing by the coercion of law that, which the antient lawyers endeavoured to prevent by persuasion only: for we permit neither the real heir, who represents the *emptor familiae* of the antients, nor any person allied to such real heir, to be a witness to the testament, by which he was nominated. And it is for this reason, that we have not suffered the old constitutions to be inserted in our Code.

Of Legataries and Trustees.

XI. But we refuse not the testimony of legataries and trustees, and of those, who are allied to them; because such persons are not universal heirs or successors: and, by virtue of our constitution, we have even specially granted to all legataries and trustees the liberty of bearing testimony; and therefore we grant this permission much more readily to those, who are in subjection to them, and to those, to whom they are subject.

Of the Material of the Will.

XII. It is immaterial, whether a testament is written upon a tablet of wax, upon paper, parchment, or any other substance.

Of the plurality of Tablets.

XIII. Any person may commit the same testament to diverse tablets, each of which will be an original, if the requisite forms are observed. And this sometimes is necessary; as when a man, who is going a sea-voyage, is desirous to carry his will with him, and at the same time to leave a counter-part of it at home for his better security. Innumerable other reasons for doing this may arise, according to the various necessities of mankind.

Of the Nuncupative Testament.

XIV. What we have already said concerning written testaments, is sufficient. But if any man is willing to dispose of his effects by a nuncupative testament; i. e. by a testament without writing, let him be assured, if, in the presence of seven witnesses, he declares his will by word of mouth, that such verbal declaration will be a complete and valid testament according to the civil law.

TITLE XI.

OF THE MILITARY TESTAMENT.

Formalities dispensed with in Military Wills.

THE before-mentioned strict observation of formalities, in the construction and formation of testaments, is dispensed with by the imperial constitutions, in regard to all military persons, on account of their unskilfulness in these matters. For, although they neither call the legal number of witnesses, nor observe any other solemnity, yet they may make a good testament, if they are actually upon service against an enemy. This was introduced by our own ordinance with good reason; and thus, in whatever manner the testament of a military person is conceived, whether in writing, or not in writing, it prevails according to his intention: but, when soldiers are not upon an expedition, and live in their own houses or elsewhere, they are by no means entitled to claim this privilege; but a soldier, who is upon actual service against an enemy, may make a testament, although he is the son of a family, and consequently under power; but, according to the common and general law, he must observe all the formalities, which are required of others, who are not soldiers, when they make their testaments.

Rescript of Trajan.

I. The emperor *Trajan* wrote, as follows, in his rescript to *Catilius Severus* concerning military testaments. "The privilege, which is given to military persons, that their testaments, in what-

ever manner made, shall be valid, must be understood with this proviso, that it ought first to be apparent, that a testament was made in some manner: and here observe, that a testament may be made without writing, even by a person, who is not in the army. And therefore, if it appears, that the soldier, concerning whose goods question is now made before you, did, in the presence of witnesses, purposely called, declare what person should be his heir, and upon what slave, or slaves, he would confer the benefit of liberty, he shall be reputed to have made his testament without writing, and his will shall be ratified. But, if it is only proved, that he said to some one, as it often happens in discourse, *I appoint you my heir — or — I leave you all my estate*, such words do not amount to a testament. Nor are any persons more interested than the soldiery, that words so spoken should not amount to a will; for, if this was once allowed, witnesses might without difficulty be produced after the death of any military man, who would affirm, that they had heard him bequeath his estate, to whomever they please; and thus the true intentions of many would be defeated."

Of Mute and Deaf Soldiers.

II. A soldier, though mute and deaf, may yet make a testament.

Of Soldiers and Veterans.

The privilege of making testaments without the usual formalities was granted by the imperial constitutions to military men, to be enjoyed only during the time of actual service, and whilst they lived in their tents. For, if veterans after dismissal, or even soldiers, if not upon service against the enemy, would make their testaments, they must not omit the forms required to be observed in common by all the citizens of *Rome*. And, if a testament is made by a soldier, even in his tent upon an expedition, yet, if the solemnities of the law are not adhered to, such testament will continue valid only for one year after his dismissal from the army. Suppose therefore, that a soldier should die testate within a year after his dismissal, and the event of the condition, upon which his heir is instituted, should not happen, until after the expiration of the year, would the testament of such soldier be valid? We answer, that it would prevail as a military testament.

Of a Will made before Military Service.

IV. If a man, before his entrance into the army, should make his testament without observing the requisite formalities, and afterwards, when he became a soldier, and was upon an expedition, should open his testament for the sake of adding to it, or of subtracting something from it; or if he should cause it to appear

manifestly by any other means, that he was willing that his testament should be valid, we pronounce, that it would be valid, by virtue of this new act, amounting to a republication of his will.

Of a Soldier given in Arrogation or Emancipation.

V. If a soldier is given in arrogation, or, being the son of a family, is emancipated, his testament is nevertheless good, having the same effect as if he had republished it by a new declaration; for it is by no means invalidated by his change of state.

Of the Fictitious Military Peculium.

VI. We must here make it known, that, since the ancient laws, as well as the latter constitutions, have, in imitation of the *peculia castrensia*, or military estates, given to some persons *peculia quasi castrensia*, or *quasi* military estates, and have indulged some of these in the liberty of making testaments, whilst they were under power, we therefore, extending this privilege still farther, have by our ordinance permitted all persons who possess these estates, to make their testaments, on condition that they observe the common solemnities of the law. But whoever thoroughly inspects our constitution, will have an opportunity of informing himself of every point which relates to the before-mentioned privilege.

TITLE XII.

WHO CANNOT MAKE A WILL.

Of the Sons of a Family.

THE right of making a testament with effect is not granted to all persons alike: for those, who are under the power of others, have not this right: insomuch that, although parents have given permission, their children will not be the more enabled by it to make a testament legally valid; if we except such, whom we have already mentioned, and principally those, who, on account of their being in the army, have permission, by virtue of our constitutions, to dispose by testament of whatever they have acquired by military service, although they are still under the power of their parents. This permission was at first granted by *Augustus*, *Nerva*, and that excellent prince *Trajan*, to actual soldiers only; but afterwards it was extended by the emperor *Adrian* to the veteran, that is, to those who had received their dismissal: and therefore, if the son of a family bequeaths his *castrensian* or military estate, it will pass to him who is instituted the heir; but, if such son dies intestate without children or brothers, his estate will then pass of common right to his father, or other paternal ascendants. We may from hence infer, that

whatever a soldier, although under power, hath acquired by military service, it cannot be taken from him even by his father; and that the creditors of the father can neither sell it, or otherwise disturb the son in his possession; and that what is thus acquired is not liable to be shared in common with brothers, upon the demise of the father; but that it remains the sole property of him who acquired it: although by the civil law the *peculiu* or estates of those, who are under power, are reckoned among the wealth of their parents; in the same manner as the *peculium* of a slave is esteemed the property of his master. But those estates must be excepted, which by the constitutions of the emperors, and chiefly by our own, are prohibited for diverse reasons to be acquired for parents. Upon the whole, if the son of a family, who is neither possessed of a military or *quasi*-military estate, makes a testament, it will not be valid, even although he is afterwards emancipated, and becomes *sui juris* before his death.

Of Persons below the age of Puberty and Madmen.

I. A person, within the age of puberty, can by no means make a good testament; because he is not supposed to possess that judgment of mind, which is requisite: and the same holds true of a madman, inasmuch as he is deprived of his senses. And the testament of a minor under puberty will not become valid, although he arrives at puberty before his death; neither will the testament of a madman become valid, although he afterwards regains his senses, and then dies. But, if he makes his testament, during a lucid interval, he is a legal testator; since it is certain, that the testament, which a man hath made, before the malady of madness has seized upon him, is good: for a subsequent fit of phrensy can neither destroy the force of a regular testament, nor the validity of any other transaction, in which the rules of the law have been punctually observed.

Of Prodigals.

II. A prodigal also, who is under an interdiction, and prohibited from having the management of his own affairs, can not make a testament: but, if he hath bequeathed his estate before interdiction, his testament will be valid.

Of the Deaf and Dumb.

III. A man deaf and dumb is not always capable of making a testament: but we would be understood to mean this of him, who is so deaf as to be unable to hear at all, and not of him, who is afflicted only with a thickness of hearing; and of him, who is so dumb, as to be totally deprived of utterance, and not of him,

who only labors under a difficulty of speech: for it often happens, that the most literate persons lose the faculty of hearing and speaking by various misfortunes; we have therefore published a constitution, which aids all such persons; so that in certain cases they may make testaments, if they observe the rules of our ordinance, and may do many other acts, which are there permitted. But, if any man, after making his testament, becomes either deaf or mute by reason of ill health or any other accident, his testament will notwithstanding this remain good.

Of the Blind.

IV. A blind man is not allowed to have the power of making a testament, unless he observes those rules, which the law of the emperor *Justin*, our father, has introduced.

Of Captives.

V. The testament of him, who is in the hand of an enemy, is not valid, if it was made during his captivity; even although he lives to return. But a testament, made by a man in the city, or before captivity, is good, either by virtue of the *jus postliminii*, if the prisoner returns; or by virtue of the law *Cornelia*, if he dies a captive.

TITLE XIII.

OF THE DISINHERITING OF CHILDREN.

Antient Law.

THE solemnities of law, which we have before explained, are not alone sufficient to make a testament valid. For he, who has a son under his power, should take care either to institute him his heir, or to disinherit him nominally: for, if a father, in his testament, pretermits or passes over his son in silence, the testament will have no effect. And even if the son dies, living the father, yet no one can take upon himself the heirship by virtue of that testament, inasmuch as it was null from the very beginning. But the antients did not observe this rule in regard to daughters and grand-children of either sex, though descended from the male line; for although these were neither instituted heirs, nor disinherited, yet the testament was not invalidated; because a right of accretion intitled them to a certain portion of the inheritance: parents were therefore not necessitated to disinherit these children nominally, but might do it *inter cæteros*. A child is nominally disinherited, if the words of the will are, *let Titius my son be disinherited*; or even thus—*let my son be disinherited*, without the addition of any proper name, on supposition, that the testator had no other son living.

Of Posthumous Children.

I. Also posthumous children should either be instituted heirs, or disinherited; and in this the condition of all children is equal: but, if a posthumous son, or any posthumous descendent in the right line, whether male or female, is pretermitted in a testament, such testament will nevertheless be valid at the time of making; but, by the subsequent birth of a child of either sex, it will be annulled. And therefore, if a matron, from whom there is reason to expect a posthumous child, should miscarry, nothing can prevent the written heirs from entering upon the inheritance. But female posthumous children may be either nominally disinherited, or *inter cæteros* by a general clause; yet, if they are disinherited *inter cæteros*, something must be left them to shew, that they were not omitted through forgetfulness. But male posthumous children, *i. e.* sons, and their descendents in the direct line, cannot be disinherited otherwise, than nominally in this form—*whatever son is hereafter born to me, I disinherit him,*

Of Children as it were Posthumous.

II. Those also are reckoned in the place of posthumous children, who, succeeding in the stead of proper heirs, become, by a *quasi*-birth, proper heirs to their parents: for example, if *Titius* has a son under his power, and by him a grandson, or grand-daughter, then would the son, because he is first in degree, have the sole right of a proper heir, although the grandson, or grand-daughter by that son, is under the same parental power. But, if the son of *Titius* should die in his father's life-time, or should by any other means cease to be under his father's power, the grandson or grand-daughter would succeed in his place, and would thus, by what may be called a *quasi*-birth, obtain the right of a proper heir. Therefore, as it behoves a testator for his own security, either to institute or disinherit his son, lest his testament should be deemed not legal, so it is equally necessary for him either to institute or disinherit his grandson or grand-daughter by that son, lest, if his son should die in his (the testator's) life-time, his grandson or grand-daughter, succeeding to the place of his son, should make void his testament by a *quasi*-agnation. And this has been introduced by the law *Julia Vellia*, in which is set forth a form of disinheriting *quasi*-posthumous children, similar to that of disinheriting posthumous children.

Of Emancipated Children.

III. In regard to emancipated children, the *civil law* does not make it necessary, either to institute them heirs or to disinherit them in a testament; inasmuch as they are not *sui hæredes*, *i. e.*

proper heirs. But the prætor commands, that all children in general, whether male or female, if they are not instituted heirs, shall be disinherited; the males nominally; the females *inter cæteros*: for, if children have neither been instituted heirs, nor properly disinherited in the manner, which we have mentioned, the prætor gives them the possession of the goods, contrary to the disposition of the testament.

Of Adopted Children.

IV. Adopted children, as long as they continue under the power of their adoptive father, are intitled to the same rights, as children born in lawful matrimony: and therefore they must either be instituted heirs, or disinherited, according to the rules laid down in regard to natural and lawful children. But it is neither enacted by the civil law, nor enjoined by prætorian equity, that children emancipated by an adoptive father, should be numbered among his natural children, so as to partake of their rights: whence it happens, that adopted children, as long as they continue in adoption, are reputed strangers to their natural parents, who are not necessitated either to institute them heirs, or to disinherit them: but, when they are emancipated by their adoptive father, they are then in the same state, in which they would have been, if they had been emancipated by their natural father.

New Law.

V. These were the rules, which the antient lawyers introduced. But we (not thinking, that any distinction can reasonably be made between the two sexes, inasmuch as they both contribute alike to the procreation of the species, and because, by the antient law of the twelve tables, all children, male as well as female, were equally called to the succession *ab intestato*, which law the prætors seem afterwards to have followed) have by our constitution introduced the same law in regard both to sons and daughters, and to all the other descendents in the male line, whether in being, or posthumous; so that all children, whether they are proper heirs or emancipated, must either be instituted heirs or nominally disinherited. And, in regard to adopted children, we have introduced certain regulations, which are contained in our constitution of adoptions.

Of the Testament of a Soldier.

VI. If a soldier makes his testament, whilst he is upon a military expedition, and neither nominally disinherits his children already born, nor his posthumous children, but passes them over in silence, although it is known to him, that he has such children, or that his wife was enceinte, it is provided by the constitutions of the emperors, that such silence shall be of equal force with a nominal disinherison.

Of the Testament of a Mother or maternal Grand-father.

VII. Neither a mother, nor a grandfather on the mother's side, is under any necessity of either instituting their children heirs, or of disinheriting them, but may pass them by in silence; for the silence of a mother, a maternal grandfather, and of all other ascendants on the mother's side, works the same effect, as an actual disinherison by a father. For a mother is not obliged to disinherit her children, if she does not think proper to institute them her heirs; neither is a maternal grandfather under a necessity either of instituting or disinheriting his grandson or grand-daughter by a daughter; inasmuch as this is not required either by the civil law, or the edict of the prætor, which gives the possession of goods *contra tabulas* (i. e. contrary to the disposition of the testament) to those children, who have been passed over in silence. But children, in this case, are not without a remedy against the testament of their mother or maternal grandfather, which shall be shewed hereafter.

TITLE XIV.

OF APPOINTING HEIRS.

Who may be appointed Heirs.

A man may appoint slaves, as well as freemen, to be his heirs by testament; and may nominate the slaves of another as well as his own: yet, according to the opinion of many, no master could formerly institute his own slaves to be his heirs, without giving them their liberty: but, at present, by virtue of our constitution, masters may appoint their proper slaves to be their heirs, without making even any mention of liberty: and this we have introduced, not for the sake of innovation, but because it seemed most just; and because *Paulus*, in his commentaries upon *Sabinus* and *Plautius*, affirms, that this was also the opinion of *Atilicinus*. Here note, that we call a slave *proprius servus*, if the testator had only a nude property in him, the usufruct being in another. But, in a constitution of the emperors *Severus* and *Antoninus*, there is a case, in which a slave was not permitted to be instituted an heir by his owner, although his liberty was expressly given to him. The words of the constitution are these—*It is consonant to right reason, that no slave, accused of adultery with his mistress, shall be allowed, before a sentence of acquittal, to be made free by that mistress, who is alleged to be a partner in the crime.* It therefore follows, that, if a mistress institutes such a slave to be her heir, the institution is of no avail.—The expression *alienus servus* (i. e. the slave of another,) is also sometimes used to denote him, of whom the testator had the usufruct, though not the property.

Of Slaves appointed Heirs.

I. When a slave hath been instituted by his master, and remains in the same state, he will obtain his freedom at the death of his master, by virtue of the testament, and become his necessary heir. But, if that slave is manumitted in the life-time of his master, it is in his power either to accept or refuse the inheritance; for he will not become a necessary heir, as he can not be said to have obtained both his liberty and the inheritance, by virtue of the testament. But, if such instituted heir should be aliened, he can not then enter upon the inheritance but at the command of his new master, who by means of his slave may become the heir of the testator. For a slave, who hath been aliened, can not afterwards obtain his liberty, or take an inheritance to his own use, by virtue of the testament of that master, who made the alienation, although his freedom was expressly given by such testament: because a master, who has aliened his slave, seems to have departed from having any intention to infranchise him. And, when the slave of another is appointed an heir, but remains in the same condition, he can not take the inheritance, but by his master's order; and, if the slave is aliened in the lifetime of the testator, or even after his death, at any time before he has actually taken the inheritance, he must then either accept, or refuse it, at the command of his new master. But, if the slave is infranchised, living the testator, or after his death, before he has accepted the heirship, he either may, or may not, enter upon the inheritance at his own option.

Of Slaves become Heirs.

II. The slave of another may legally be instituted an heir, after the death of his master; for the slaves of an inheritance, not entered upon, are intitled to the *factio passiva testamenti*, i. e. are capable of taking, though not of giving, by testament; and the reason of this is, because an inheritance, which is open, and not as yet entered upon, is supposed to represent the person of the deceased, and not the person of the future heir: and thus the slave even of a child in the womb may be constituted an heir.

Of the Slave of many Masters.

III. If the slave of many masters, who are all capable of taking by testament, is instituted an heir by a stranger, then that slave acquires a part of the inheritance for each master, who commanded him to take it, according to their several proportions of property.

Of a Plurality of Heirs.

IV. A testator may appoint one heir, or as many heirs as he pleases *in infinitum*.

Of the Division of an Inheritance.

V. An inheritance is generally divided into twelve *uncia*, that is, parts or ounces, all which are comprehended under one total, termed an *As*: and each of these parts, from the *uncia* to the *As*, has it's peculiar name; viz.

Sextans—a sixth part, or two ounces.

Quadrans—a fourth, or three ounces.

Triens—a third, or four ounces.

Quincunx—five ounces.

Semis—a moiety, or six ounces.

Septunx—seven ounces.

Bes—two thirds, or 8 ounces; *quasi bis triens*.

Dodrans—nine ounces, or three fourths; *quasi, dempto quadrante, As*.

Dextans—ten ounces; *quasi, dempto sextante, As*.

Deunx—eleven ounces out of twelve; *quasi, demptâ unciâ, As*.

But it is not necessary, that an *As*, or *total*, should always be divided into twelve parts; for an *As* may consist of what parts the testator pleases; and, if a man names but one heir, and appoints him *ex semisse*, *i. e.* the heir of six parts; yet the whole *As* will be included; for no man can die partly testate and partly intestate, except a soldier, whose intention is solely to be regarded. And a testator may also divide his estate into as many parts, as he thinks convenient.

Of the respective Portions.

VI. When a testator hath instituted many heirs, it is incumbent upon him to make a division of his effects, if he does not intend, that all his heirs should share his inheritance in equal portions: for, if no distribution is made by the testator, it is evident, that all his heirs must be equal sharers. But if the shares of some of the nominated heirs in a testament should be expressed, and the share or shares of one or more should be omitted, then he or they, whose share or shares had not been specified, would be intitled to the undisposed remainder of the inheritance. But, if a whole *As*, or inheritance, is given among some of the nominated heirs, yet they, whose shares are mentioned, are intitled only to a moiety; and he or they, whose shares are not mentioned, are called to the succession of the other moiety. And, when a whole inheritance is not given away, it is immaterial whether an heir, whose share is not specified, holds the first, middle, or last place in the nomination: for, whatever place he holds in it, he is equally intitled to the part not bequeathed in the testament.

If any part remain unbequeathed.

VII. Let us now inquire, what the law would direct, if a part of an inheritance should remain unbequeathed, and yet a certain portion of it should be given by testament to every nominated heir: as if three should be instituted, and a fourth given to each. It is clear in this case, that the undisposed part would vest in each of them in proportion to the share bequeathed to him, and that each would be reputed the written heir of a third. And, on the contrary, if many are nominated heirs in certain portions, so as to exceed the *As*, then each heir must suffer a defalcation *pro ratâ*—for example, if four are instituted, and a third is given to each, then this disposition would work the same effect, as if each of the written heirs had been instituted to a fourth only.

If more portions than twelve are bequeathed.

VIII. If more parts or ounces, than twelve, are bequeathed, then he, who is instituted without any prescribed share, shall be intitled to what remains, of a *dupondius*; that is, of twenty-four parts: and, if more than twenty-four parts are bequeathed, then the heir, who is nominated without any determinate share, is intitled to the remainder of a *tripondius*, *i. e.* of thirty-six parts or ounces. But all these parts are afterwards reduced to twelve.

Of the manner of instituting an Heir.

IX. An heir may be constituted simply, or conditionally—but not *from* or *to* any certain period: as if a testator should say to *Titius*, *be thou my heir after five years* to be computed *from my death*—or—*from the calends of such a month*—or—*'till the calends of such a month*. For time, thus added, is in law deemed superfluous; and such an institution takes place immediately, as if it was a simple appointment.

Of an impossible Condition.

X. An impossible condition in the institution of heirs, the disposition of legacies, the appointment of trusts, or the conferring of liberty, is treated as unwritten or void.

Of more Conditions.

XI. If many conditions are jointly required in the institution of an heir; as thus, *if this thing and that thing be done*, then both must be complied with. But, if the conditions are placed separately and in the disjunctive, as thus, *if this, or that be done*, it will then be sufficient to obey either.

Of Strangers to the Testator.

XII. A testator may appoint persons, whom he hath never seen, to be his heirs. He may, for example, institute his brother's

sons, who are in a foreign country, although he does not know where they are; for the want of this knowledge in a testator will not vitiate the institution of an heir.

TITLE XV.

OF VULGAR SUBSTITUTION.

Of Heirs of different Degrees.

A man by testament may appoint many degrees of heirs; as thus — *if Titius will not be my heir, let Seius be my heir.* And he may proceed in such a substitution as far as he shall think proper; and lastly, in default of all others, he may constitute a slave to be his necessary heir.

Of the number of Heirs in different Degrees.

I. A testator may substitute many in the place of one, or one in the place of many, or one in the place of each, or he may substitute even his instituted heirs reciprocally to one another.

Of the Portions of the Substitutes.

II. If a testator, having instituted several co-heirs in unequal portions, substitutes them reciprocally the one to the other, and makes no mention of their shares of the inheritance in the substitution, he seems to have given the same shares by the substitution, which he gave by the institution; and this is agreeable to the rescript of the emperor *Antoninus*.

Of a Co-heir substituted.

III. If a co-heir is substituted to an instituted heir, and a third person is substituted to that co-heir, the emperors *Severus* and *Antoninus*, have by rescript ordained, that such substituted person shall be admitted to the portions of both the co-heirs without distinction.

Of the Substitute to a Slave.

IV. If a testator constitutes the slave of another to be his heir, supposing him to be free, and adds—*if he does not become my heir, I substitute Mævius in his place*—then, if that slave should afterwards enter upon the inheritance at the command of his master, *Mævius*, the substitute, would be admitted to a moiety. For the words, *if he does not become my heir*, in regard to him, whom the testator knew to be under the dominion of another, are taken to mean, if he will neither become my heir himself, nor cause another to be my heir: but in regard to him, whom the testator supposed to be free, they imply this condition; viz. if my heir will neither acquire the inheritance for himself, nor for him to whose dominion he may afterwards become subject. But it

was determined by *Tiberius*, the emperor, in the case of his own slave *Parthenius*, that a substitute in such a case should be admitted to a moiety.

TITLE XVI.

OF PUPILLARY SUBSTITUTION.

Summary.

A parent can substitute to his children, who are within puberty, and under his power, not only in the manner before mentioned, which is thus “—if my children will not be my heirs, let some other person be my heir—but he may write—if my children actually become my heirs, but die within puberty, let another become their heir: for example: let *Titius*, my son, be my heir; and, if he either does not, or does, become my heir, and dies before he ceases to be under tutelage, [*i. e.* before he arrives at the age of puberty,] let *Seius* be my heir.” And, in this case, if the son does not enter upon the inheritance, the substitute becomes heir to the father; and, if the son takes the inheritance, and dies a pupil before the age of puberty, the substitute is then heir to the son. For custom has ordained, that parents may make wills for their children, when their children are not at age to make wills for themselves.

Of Substitution for Insanes.

I. Excited by humanity, and the reasonableness of the foregoing usage, we have inserted a constitution into our Code, by which it is provided, that, if a man has children, grand-children, or great-grand-children, who are mad or disordered in their senses, he may make a substitution of certain persons to such children, in the manner of a pupillary substitution, although they are arrived at the age of full puberty. But we have decreed, that this species of substitution shall be void, as soon as they shall have recovered from their disorder; and this we have done in imitation of pupillary substitution, which ceases to be in force, when the minor attains to puberty.

The property of Pupillary Substitutes.

II. In a pupillary substitution, made after the form before-mentioned, there are in a manner two testaments, the one of the father, the other of the son; as if the son had instituted an heir for himself: at least there is in such a substitution, one testament containing a disposition of two inheritances.

Another Form.

III. If a testator is apprehensive, lest, at the time of his death, his son, being as yet a pupil, should be liable to fraud and imposi-

tion, if a substitute should be publicly given to him, he ought to insert a vulgar substitution in the first tablet of his testament; and to write that substitution, in which a substitute is named, *if his son should die within puberty*, in the lower tablet, which ought to be separately tied up and sealed; and it also behoves the testator to insert a clause in the first part of his testament, forbidding the lower part to be opened, whilst his son is alive, and within the age of puberty. But, although it is certain, that a substitution to a son within puberty is not less valid, because it is written on the same tablet, in which the testator hath appointed him to be his heir, it is however unsafe and dangerous.

Who may Substitute.

IV. Parents are not only allowed to give a substitute to their children within puberty, if such children become their heirs, and die within puberty; but parents are also permitted to give a substitute to their disinherited children; and therefore, whatever a disinherited child, within the age of puberty, may have acquired by inheritances, by legacies, or by the gift of relations and friends, the whole will become the property of the substitute. All, which we have hitherto said concerning the substitution of pupils, whether they are instituted heirs, or disinherited children, is understood to extend also to posthumous children.

Pupillary Testament.

V. No parent can make a testament for his children, unless he hath made a testament for himself: for the testament of a child within puberty is a part and consequence of the testament of the parent, insomuch that, if the testament of the father is not valid, the testament of the son will not take effect.

Each Child may have a Substitute.

VI. A parent may make a pupillary substitution to each of his children, or to him, who shall die the last within puberty. He may substitute to each of his children, if he is unwilling, that any of them should die intestate; and he may substitute to the last, who shall die within puberty, if he is willing, that they should preserve among themselves the intire right of succession.

Nominal or general Substitution.

VII. A substitution may be made to a child within puberty, either nominally; as for example “—If my son becomes my heir, and dies a pupil, let TITUS be my heir;—or generally thus—Whoever shall be my heir, let the same person be a substitute to my son, if he dies within puberty.” And, by these general words, all, who have been instituted, and have taken upon

them the inheritance of the father, must be called, by virtue of the substitution, to the inheritance of the son, if he dies within puberty; each being intitled to a part of the son's inheritance, in proportion to the share, which he had in the father's.

How Pupillary Substitution is finished.

VIII. A pupillary substitution may be made to males, till they arrive at fourteen complete; and to females, till they have completed their twelfth year: and, when they exceed either of these ages, the substitution becomes extinct.

Who cannot receive a pupillary Substitution.

IX. A pupillary substitution cannot be made with effect, either to a stranger, who is instituted, or even to a son who is instituted, if his age exceeds that of puberty. But a testator may oblige his heir to give to another either a part, or even the whole of the inheritance, by virtue of a *fidei-commissum*, or gift in trust; which we will treat of in it's proper place.

TITLE XVII.

HOW TESTAMENTS ARE DISSOLVED.

A TESTAMENT, legally made, remains valid, until it is either broken, or rendered ineffectual.

How Testaments are broken. First by Adoption.

I. A testament is said to be broken, or revoked, when the force of it is destroyed, whilst the testator still remains in the same state. For, if a testator, after making his testament, should arrogate an independent person, by licence from the emperor, or, in the presence of the prætor, should adopt a child under the power of his natural parent, by virtue of our constitution, then that testament would be broken by this *quasi*-birth of a proper heir.

Of Posterior Testaments.

II. A former testament, although legally perfect, may be broken or revoked by a subsequent testament; nor is it material, whether the heir, nominated in the later testament, can or will take the heirship at the death of the testator; for the only thing regarded is, whether he might have been the heir: and therefore, if an instituted heir should refuse to take the heirship, or should die, living the testator, or after his death, and before he could enter upon the inheritance; or if he should die, before the condition is accomplished, upon which he was instituted, then, in any of these cases, the testator would die intestate; for the first testament would be invalid, being broken or revoked by the second, and the second would be of as little force, for want of an heir.

Of other Posterior Testaments.

III. If a man, who has already made a testament legally perfect, should make a subsequent testament equally good, and institute an heir in it to some particular things only, the emperors *Severus* and *Antoninus* have by rescript declared, that, in this case, the first will shall be broken or revoked, as a testament. But we have commanded the words of this constitution to be here inserted. The emperors *Severus* and *Antoninus* to *Cocceius Campanus* “ We determine, that a second testament, although the heir named in it is not universal, but instituted to particular things only, shall be as good in law, as if no mention had been made of particular things; yet it is not to be doubted, but that the written heir shall be obliged to content himself either with the things given him, or with the fourth part, allowed by the *Falcidian* law, and shall be bound to restore the rest of the inheritance to the heirs instituted in the first testament, on account of the words, denoting a trust, inserted in the second testament, by which words it is expressly declared, that the first testament shall subsist.”—And, in this manner, a testament may be said to be broken or cancelled.

Of invalidated Testaments.

IV. Testaments, legally made, are also invalidated, if the testator suffers diminution, that is, changes his condition: and, in the first book of our institutions, we have shewed by what means diminution, or a change of state, may happen.

Why so termed.

V. In the case of diminution, testaments are said to become *irrita*, i. e. ineffectual, although those, which are broken or revoked, and those, which, from the beginning, were not legal, do all equally become ineffectual (or *irrita*) in reality. We may also term those testaments broken, which are at first legally made, but are afterwards rendered ineffectual, by diminution, or change of state. But, as it is proper, that every particular defect should be distinguished by a particular appellation, those testaments, which are illegal, are termed *null*;—those which were at first legal, but afterwards lose their force, by some revocatory act of the testator, are said to be *rupta*, or broken; and those, since the making of which, the testator hath suffered a change of state, are said to be *irrita*, or ineffectual.

How they may be restored.

VI. But a testament, which was at first legally made, and hath afterwards been rendered void by diminution, is not always without effect; for the written heir is intitled to the possession of

the goods, by virtue of the testament, if it appears, that it was sealed by seven witnesses, and that the testator was a *Roman* citizen, and not under power, at the time of his death: but, if a testament became void, because the testator had lost the right of a citizen, or his liberty, or had given himself in adoption, and, at the time of his death, still continued under the power of his adoptive father, then the written heir could not demand the possession of the goods, in consequence of the testament.

Of the mere Will (nuda Voluntas.)

VII. A testament can not be invalidated solely, because the testator was afterwards unwilling, that it should subsist; so that, if a man, after making one testament, should begin another, and by reason of death, or change of mind, should not proceed to perfect that testament, it is provided by the oration or ordinance of the emperor *Pertinax*, that the first testament shall not be revoked, unless the second is both legal and perfect; for an imperfect testament is undoubtedly null.

Deficient Wills.

VIII. The emperor *Pertinax* hath declared by the same ordinance, that he would not take the inheritance of any testator, who left him his heir, because a law-suit was depending;—that he would never establish a will, deficient in point of form, if he was upon that account instituted the heir;—that he would by no means suffer himself to be nominated an heir by the mere word of mouth of a testator; and that he would never take any emolument by virtue of any writing whatever, not authorised by the strict rules of law. The emperors *Severus* and *Antoninus* have also often issued rescripts to the same purpose: “for although” say they, “we are certainly not subject to the laws, yet we live in obedience to them.”

TITLE XVIII.

OF INOFFICIOUS WILLS.

Reason of this Complaint.

INASMUCH as parents often disinherit their children without cause, or omit to mention them in their testaments, it has therefore been introduced as law, that children, who have been unjustly disinherited, or unjustly omitted in the testaments of their parents, may complain that such testaments are inofficious, under color that their parents were not of sane mind, when they made them: but, in these cases, it is not averred to be strictly true, that the testator was really mad or disordered in his senses, but it is urged as a mere fic-

tion only; for the testament is acknowledged to have been well made, and the only exception to it is, that the testament is not consistent with the duty of a parent. For, if a testator was really not in his senses at the time of making his testament, it is certainly null.

Who may lawfully complain.

I. Children are not the only persons allowed to complain, that testaments are inofficious; for parents are in like manner permitted to make the same complaint. Also the brothers and sisters of a testator are, by virtue of the imperial constitutions, preferred to infamous persons, if any such have been instituted by the deceased to be his heirs; but brothers and sisters are not therefore allowed to make a complaint against *any* heir, whom the testator shall have instituted. And collaterals, beyond brothers and sisters, can by no means complain of the undutifulness of a testament, if their right to complain is opposed; but if their right of complaining is not disputed, and the testament is annulled, yet those only can be benefited, who are nearest in succession upon an intestacy.

Adopted Children.

II. Adopted children, according to the distinction taken in our constitution, are admitted, as well as natural children, to complain against a testament, as inofficious, if they can obtain the effects of the deceased no other way; but if they can get the whole or a part of the inheritance by any other means, they then can not bring a complaint of undutifulness against the testament. Posthumous children also, who are unable to recover their inheritance by any other method, are allowed to bring this complaint.

If the Testator has left any Thing.

III. What we have hitherto said must be understood to take place only, when nothing has been left by the will of the deceased; for, if any single thing, or the least part of an inheritance, hath been bequeathed to those, who have a right to a fourth part or legitime portion of the testator's estate, they are barred from bringing a querele or complaint against the testament, as undutiful, but are intitled by action to recover whatever sum is wanting to complete their legitime, although it was not added by the testator, "that their legitime portion should be completed according to the arbitration of some person of an approved character."

Of a Legacy to the Tutor.

IV. If a tutor should accept a legacy in the name of his pupil, in consequence of a bequest made in the testament of such tutor's father, who left nothing to his son; the tutor may nevertheless complain in his own name against the testament of his father as undutiful,

V. And, on the contrary, if a tutor should bring a complaint of undutifulness in the name of his pupil, against the testament of his pupil's father, who left nothing to his son, and this testament should be confirmed by sentence, yet the tutor would not afterwards be barred, on account of this proceeding, from taking whatever was left him in that testament, which he controverted only for the benefit of his pupil and by virtue of his office.

Of the fourth or legitime Part.

VI. No person, who hath right, can be hindered from bringing a complaint of undutifulness unless he hath in some manner received his fourth or legitime part, as by being appointed heir, by having a legacy, or by means of a trust for his use; or unless his legitime part hath been given him by donation *propter mortem*, or even *inter vivos*, (in those cases, of which our constitution makes mention,) or by any other means set forth in our ordinances. What we have said of the fourth or legitime is to be so understood, that, if there are more persons than one, who have a right to bring a complaint of undutifulness against a testament, yet one fourth will be sufficient, divided among them all in equal portions.

TITLE XIX.

OF THE QUALITY AND DIFFERENCE OF INHERITANCES.

Division of Heirs.

HEIRS are divided into three sorts, called *proper*; *proper and necessary*; and *strangers*.

Of necessary Heirs.

I. A slave, instituted by his master, is a necessary heir; and he is so called, because at the death of the testator he becomes instantly free, and is compellable to take the heirship; he therefore, who suspects his circumstances, commonly institutes his slave to be his heir in the first, second, or some other place; so that, if he does not leave a sum equal to his debts, the goods, which are seized, sold, or divided among his creditors, may rather seem to be those of his heir than his own. But a slave, in recompense of this dishonour, is allowed to reserve to himself whatever he hath acquired after the death of his patron; for such acquisitions are not to be sold, although the goods of the deceased are ever so insufficient for the payment of his creditors.

Of proper Heirs.

II. Proper and necessary heirs are sons, daughters, grandsons or grand-daughters by a son or any other descendents in the direct line, who were in the power of the deceased at the time of his

death. But, in order to constitute grandchildren proper or domestic heirs, it does not suffice, that they were in the power of their grandfather at the time of his decease; but it is requisite, that their father should have ceased to be a proper heir in the life-time of his father, by having been freed, either by death or some other means, from paternal authority; for then it is, that the grandson or grand-daughter succeeds in the place of their father. And note, that heirs are called *sui* or proper, because they are domestic; and in the very life-time of their father are reputed masters or proprietors of the inheritance in a certain degree. Hence it is, that, if a man dies intestate, his children are preferred before all others to the succession; and are called necessary heirs, because, willing or unwilling, they become the heirs of their parent according to the law of the 12 tables, either by virtue of a testament or in consequence of an intestacy. But, when children request it, the prætor permits them to abstain from the inheritance, that the effects of their parents, rather than their own, may be seized by the creditors.

Of Strangers.

III. But all other heirs, not subject to the power of the testator at the time of his death, are called strangers: thus even children, who are not under the power of their father, but yet are constituted his heirs, are reckoned strangers in a legal sense: and, for the same reason, children, instituted heirs by their mother, are also reputed strangers; for a woman is not allowed to have her children under her own power. A slave also, whom his master hath instituted by testament and afterwards manumitted, is numbered among those heirs, who are called strangers.

Of the Faction of a Testament.

IV. In regard to strangers, it is requisite, that they should be capable of the faction of a testament, whether they are instituted heirs themselves, or whether those, under their power, are instituted. And this qualification is required at two several times;— at the time of making the testament, that the institution may be valid; and at the time of the testator's death, that such institution may take effect: and farther, whether an heir is appointed simply or conditionally, yet he ought to be capable of the faction of a testament at the time of entering upon the inheritance; for his right is principally regarded at the time of acquiring the possession. But, in the intermediate time, between the making of the testament and the death of the testator, or the completion of the condition of the institution, the heir will not be prejudiced by incapacity or change of state; because the three particular times,

which we have mentioned, are the times to be regarded. But a man, capable of giving his effects by testament, is not the only person, who is said to have *testamenti factionem*; for whoever is capable of taking for the benefit of himself, or of acquiring by testament for the benefit of another, is also understood to have the faction of a testament: and therefore persons mad, mute, or posthumous, also infants, the sons of a family, or slaves not your own, may all be said to have the faction of a testament in its passive signification. For, although such persons are incapable of making a testament, yet they are capable of acquiring by testament, either for themselves or others.

Of the Right of deliberating.

V. Strangers, who are appointed heirs, have the power of deliberating whether they will, or will not, enter upon an inheritance. But, if even a proper or domestic heir, who has the liberty of abstaining, should intermeddle, or, if a stranger, who is permitted to deliberate, should once take an inheritance, it will not afterwards be in his power to renounce it, unless he was under the age of 25 years: for the prætor, who in all other cases relieves minors, who have been deceived, affords them also his assistance, when they rashly take upon themselves an injurious inheritance. And here it must be noted, that the emperor *Adrian* once gave permission to a major, or person of full age, to relinquish an inheritance, when it appeared to be incumbered with a great debt, which had been concealed, till the heir had taken upon himself the administration. But this permission was granted as a very special instance of beneficence. The emperor *Gordian* afterwards promulged a constitution for the indemnification of heirs, yet confined the force of it to those only who were of the soldiery. But our extended benevolence hath rendered this benefit common to all our subjects in general, having dictated a constitution both just and noble, which, if heirs will strictly observe, they may enter upon their inheritance, and not be made farther chargeable than the value of the estate will extend; so that they are under no necessity of praying a time for deliberation, unless they omit to observe the tenor of our ordinance, chusing rather to deliberate and submit themselves to the danger attending the acceptance of an inheritance according to the antient law.

Of acquiring or losing the Inheritance.

VI. A stranger, who is instituted by testament, or called by law to take a succession in case of an intestacy, may make himself accountable as heir, either by doing some act as such, or by barely signifying his acceptance of the worship. And a man is

deemed to act as the heir of an inheritance, if he treats it as his own, by selling any part of it, by cultivating the ground, or by tilling it; or even if he declares his consent to accept it in any manner, either by act or speech; when he knows, at the same time, that the person, with whose estate he intermeddles, is dead testate or intestate, and that he himself is the heir: for to act as heir is to act as proprietor; and the antients frequently used the term heir, when they would denote the proprietor of an estate. But as a stranger may become an heir by a bare consent only, so on the contrary, by a mere dissent, he may bar himself from an inheritance. And nothing prevents, but that a person, who was born deaf and dumb, or became so by accident, may, by acting as heir, either acquire the advantages, or bring upon himself the disadvantages of an inheritance, if he was sensible of what he was doing, and that he was acting in the capacity of an heir.

TITLE XX.

OF LEGACIES.

Continuation.

AFTER what has been said, we will make some observations upon the doctrine of legacies; although a discussion of this part of the law may not seem exactly to fall in with the subject proposed; for we are treating only of those legal methods, by which things may be acquired universally: but, as we have already spoken at large of testaments and testamentary heirs, it is not without reason, that we intend to treat of legacies in the following paragraphs.

Definition.

I. A legacy is a species of donation, which is left or ordered by the deceased; and, if possible, must be performed by his heir.

Of the antient Kinds of Legacies.

II. Antiently there were four kinds of legacies in use; namely—*per vindicationem*—*per damnationem*—*sinendi modo*—and *per præceptionem*. And to each of these was assigned a certain form of words, by which their different species were signified; but these fixed forms have been wholly taken away by the imperial ordinance of the later emperors, *Constantinus*, *Constantius*, and *Constantians*. And we also being desirous that the wills of deceased persons might be corroborated, and that their intentions should be more regarded than their words, have, with great care and study, composed a constitution, which enacts, that the nature of

all legacies shall be the same; and that legataries, by whatever words they are constituted, may sue for what is left them, not only by a personal, but by a real or hypothecary action. But the reader may most perfectly comprehend the well weighed matter of this constitution by perusing the tenor of it.

Distinction of Legacies and Trusts.

III. But we have judged it expedient, that our constitution should not rest here, but extend still farther: for, when we observed, that the antients confined legacies within very strict rules, and yet were extremely favourable to gifts in trust, it was thought necessary to make all legacies equal to gifts in trust, that no difference in effect should remain between them; so that whatever is deficient in the nature of legacies may be supplied by the nature of trusts, and whatever is abundant in the nature of legacies may become an accretion to the nature of trusts.—But, that we may not raise difficulties, and perplex the minds of young persons at their entrance upon the study of the law, by explaining these things promiscuously, we have esteemed it worth our pains to treat separately, first of legacies, and afterwards of trusts, that, the nature of both being known, the student, thus instructed, may more easily understand their relation and intermixture,

Of the Subjects of a Legacy.

IV. A testator may not only bequeath his own property, or that of his heir, but also the property of others; and, if the thing bequeathed belongs to another, the heir can be obliged either to purchase and deliver it, or to render the value of it, if it cannot be purchased. But, if the thing bequeathed is not in commerce, and what the law will not permit to be purchased, the heir in this case can never be obliged to pay the value of it to the legatary; as if a man should bequeath to another the *Campus Martius*, the palaces of the prince, the temples, or any of those things, which appertain to the public: for such legacies can be of no moment or efficacy. But, when we said, that a testator might bequeath the goods of another man, we would be understood to mean, that this can be done only, if the deceased knew, that what he bequeathed belonged to another, and not, if he was ignorant of it; since, if he had known it, he probably would not have left such a legacy; and to this purpose is the rescript of the emperor *Antonius*. And it is incumbent upon the party, agent, or legatory to bring proof that the deceased knew, that what he left belonged to another; for the heir is by no means obliged to prove, that the deceased did not know it; because, by the general rule of law, the necessity of proving lies upon the complainant.

Of a pledged Thing.

V. If a man bequeaths a thing, which he hath pledged to a creditor, the heir is under a necessity of redeeming it: but in this case, as in the former, concerning the goods of another, the heir cannot be obliged to redeem the thing bequeathed, unless the deceased knew, that it was pledged; and this the emperors *Severus* and *Antoninus* have declared by their rescript. But nevertheless, whenever it appears to have been the express will of the deceased, that the legatary should himself redeem the thing left to him, then the heir is free from the obligation of doing it.

Of the Property of another acquired after the Will by a Legatee.

VI. If a thing bequeathed is the property of another, and the legatee becomes the proprietor of it in the life-time of the testator, it is necessary to be known by what means the legatee became the proprietor; for, if he bought it, he may nevertheless recover the price given, by an action in consequence of the testament; but, if he obtained it as a gift, or by any such lucrative title, no action will lie; for, it is a maxim, that two lucrative causes can never concur in the same person and thing. And therefore, if the same specific thing is left by two testaments to one and the same person, the question will be, when the legatary sues in virtue of one of the testaments, whether he hath obtained the thing itself, or the value of it, by virtue of the other? for, if he is already possessed of the thing itself, the suit is at an end, because he hath received it on a lucrative account; but, if he hath obtained the value of it only from the heir of one of the testators, he may bring an action for the thing itself, against the heir of the other.

Of Things which do not exist.

VII. Things, which do not exist, may be rightly bequeathed, if there is but a possibility, that they may exist: thus a man may devise the fruits, which shall grow on such a spot of ground; or the offspring, which shall be born of a particular slave.

Of a Legacy of the same thing to two.

VIII. When the same specific legacy is left to two persons either conjunctively or disjunctively, if they are both willing to accept it, it must be divided between them. But, if one of the legatees dies in the life-time of the testator, dislikes his legacy, or is by any means prevented from taking it, the whole vests in his co-legatee. A legacy thus worded is in the conjunctive, *I give and bequeath my slave STICHUS to TITIUS and SEIUS*:—but a legacy, worded as follows, is in the disjunctive—*I give and bequeath my slave STICHUS to TITIUS: I give and bequeath my*

slave STICHUS to SEIUS. And, although the testator should add, that he gives the *same slave* STICHUS to SEIUS, yet the legacy would nevertheless be understood to be left in the disjunctive.

IX. If a man hath bequeathed the ground of another, and the legatary hath purchased the property of that ground without the usufruct, which hath also afterwards accrued to him, it is said by *Julianus*, that the legatary may rightly bring an action by virtue of the testament, and demand the ground, because the usufruct is regarded as a service only. But it is the duty of a judge, in this case, to order the price of the property of the ground to be paid, the value of the usufruct being deducted.

Of the Property of the Legatee.

X. If a man bequeaths to another what already belongs to him, the legacy is ineffectual; for that, which is already the property of a legatee, can by no means become more so. And, although the legatee should, after the bequest, alien the thing bequeathed, neither the thing itself, nor even the value of it, would become due to him from the heir of the testator.

Of the Legacy of what is not your own.

XI. If a testator should bequeath what is his own, as if it was the property of another, the bequest would nevertheless be good; for truth is more prevalent than what is founded upon opinion only. But even suppose the testator to imagine, that what he bequeaths belongs already to the legatary, yet, if it does not, it is certain, that such a legacy would also be valid; because the will of the deceased can thus take effect.

Of the Alienation or Mortgage of a Legacy.

XII. But, if a testator bequeaths what is his own property, and afterwards aliens it, it is the opinion of *CELSUS*, that the thing bequeathed will nevertheless become due to the legatee, if the testator did not dispose of it, with an intention to oust him. The emperors *Severus* and *Antoninus* have published their rescript to this effect; and they have also signified by another rescript, that whoever has bequeathed a legacy, and hath afterwards pawned or mortgaged it, shall not be deemed to have retracted it; and that the legatee may therefore of course bring an action against the heir, and oblige him to redeem. And, if a testator shall have aliened but a part of the thing bequeathed, then all that part, which remains unaliened, is still due; and that, which is aliened, is only due, if it appears not to have been aliened by the testator with a design to retract the legacy.

Of the Legacy of a Discharge from Debt.

XIII. If a man bequeaths a discharge to his debtor, the bequest is effectual; and the heir can bring no suit against the debtor, or his heir, or any one, who represents him: but, on the contrary, the heir of the testator may be convened by the debtor, and obliged to give him his discharge. A man may also by testament command his heir not to sue a debtor, within a time limited.

Of a Legacy bequeathed to a Creditor.

XIV. On the contrary, if a debtor bequeaths by testament to his creditor the money, which he owes him, this legacy is ineffectual, if the value of the legacy amounts but merely to the value of the debt; for thus the creditor can receive no benefit from the legacy. But, if a debtor bequeaths simply to his creditor a sum of money, which was to be paid at a day certain, or which he owed upon condition, the legacy will take effect on account of the representation, *i. e.* on account of the immediate payment, the legacy becoming due before the debt.—But, according to PAPINIAN, if the day of payment should come, or the event of the condition happen in the life-time of the testator, the legacy would nevertheless be effectual, because it was once good; which is true. For we are by no means satisfied with the opinion of those, who imagine, that a legacy once good, may afterwards become extinct, by falling into a state, from which it could not have taken a legal commencement.

Of the Legacy of a Dower.

XIV. If a man gives back to his wife by legacy her marriage portion, the legacy is valid: for such a legacy is more beneficial to her than the action, which she might maintain for the recovery of her portion. But, if an husband bequeaths to his wife her marriage portion, and hath never actually received it, the emperors *Severus* and *Antoninus* have declared by their rescript, that, if it is left simply without any specification of a sum certain, the legacy is void; but that, if any certain sum, or thing is specified, or if the instruments, in which the exact value of the portion is mentioned, are referred to, the legacy is valid.

Of the destruction or change of the subject of a Legacy.

XVI. If a thing bequeathed should perish before delivery, otherwise than by the act or fault of the heir, the loss must fall upon the legatary. And, if the slave of another, who is bequeathed, shall be manumitted, and the heir hath not been privy to the manumission, he can be subject to no action. But, if a testator bequeaths the slave of his heir, who afterwards manumits that slave, it is the opinion of JULIAN, that the heir is answerable: nor is it at all material, whether he did or did not know of the

legacy. And also, if the heir hath made a present of a slave bequeathed, and the donee hath manumitted him, the heir is liable to an action, although he was ignorant of the bequest.

Of the Death of the Subjects of a Legacy.

XVII. If a testator gives by legacy his female slaves and their offspring, although the slaves die, yet their issue will become due to the legatary: and the same obtains, if ordinary slaves are bequeathed together with vicarial: for although the ordinary slaves die, yet the vicarial slaves will pass by virtue of the bequest. But, if a slave is bequeathed with his *peculium*, and afterwards dies, or is manumitted, or aliened, the legacy of the *peculium* becomes extinct. And the consequences will be the same, if a piece of ground is bequeathed with the instruments for improving it; for, if the testator aliens the ground, the legacy of the instruments of husbandry is of course extinguished.

Of the Legacy of a Flock.

XVIII. If a flock is bequeathed, and afterwards reduced to a single sheep, that sheep is claimable; and, if a flock receives an increase or addition, after it hath been disposed of by testament, the increase or addition will also, according to *Julian*, become due to the legatary. For a flock is deemed one body, consisting of separate members, as an house is reckoned one body, composed of materials, joined together and adhering.

Of the Legacy of Houses.

XIX. And lastly, when an house is bequeathed, the marble or pillars, which are added after the bequest is made, will pass under the general legacy.

Of the Peculium.

XX. When the *peculium* of a slave is bequeathed, it is certain, that the increase or decrease of it, in the life of the testator, becomes the loss or gain of the legatary. And, if the *peculium* of a slave is left to him together with his liberty, and such slave makes an acquisition to the *peculium*, subsequent to the death of the testator, and before the inheritance is entered upon, it is the opinion of *Julian*, that whatever is acquired within that period, will pass to him as the legatary; for such a legacy does not become due, but from the day of the acceptance of the inheritance. But it is the opinion of the same *Julian*, that, if the *peculium* of a slave is bequeathed to a stranger, an increase, acquired within the period above-mentioned, will not pass under the legacy, unless the acquisition was made, by means of something appertaining to the *peculium*; for the *peculium* of a slave does not belong to him,

after he is manumitted by testament, unless it is expressly given; although, if a master in his life-time manumits his slave, his *peculium* will pass to him of course, if not excepted; and thus the emperors *Severus* and *Antoninus* have decreed by their rescript. And the same emperors have also declared, that, when a *peculium* is bequeathed to a slave, it does not seem to be the intention of the testator, that such slave should have the power of demanding what he may have expended for the use of his master. And the same princes have farther declared, that a slave seems to be intitled to his *peculium*, if his liberty is left him, on condition, that he will bring in his accounts, and supply any deficiency out of the profits of his *peculium*.

Of corporeal and incorporeal Things.

XXI. Things incorporeal may be bequeathed as well as things corporeal: and therefore a debt, due to the testator, may be left as a legacy, and the heir be obliged to transfer his right of action to the legatary; unless the testator in his life-time received the money due to him; for in this case the legacy would become extinct. A legacy is also good, if conceived in the terms following:—"I command my heir to rebuild the house of *TITIUS*:" or, "to free him from his debts."

Of a particular Legacy.

XXII. If a testator bequeaths a slave, or any particular thing generally, the power of election is in the legatary, unless the testator hath declared otherwise.

Of the Legacy of an Option.

XXIII. The legacy of an option is made, when a testator commands his legatary to chuse any slave whom he likes, from among his slaves, or any one thing, which he best approves of, from any certain class of things; and such a legacy was formerly presumed to imply this condition, that, if the legatee in his life-time did not make his election, the legacy could not be transmitted to his heir. But, by virtue of our constitution, this presumed condition is now taken away, and the heir of the legatary is permitted to make his option, although the legatary in his life-time hath neglected to do it. And, upon a more diligent inspection, we have farther added to our constitution, that, if there are several legataries, to whom an option is left, and they differ in their choice, or if there are many heirs of one legatary, who are of divers sentiments, then *Fortune* must be the judge: for, lest the loss of the legacy should insue (which loss the generality of the antient lawyers, contrary to all benevolence, would have per-

mitted), we have decreed, that such dissensions between heirs, or legataries, should be decided by lot; so that the option of him, to whom the lot falls, shall be preferred.

To whom Legacies may be left.

XXIV. A legacy cannot be left but to those, who have the capacity of taking by testament.

Antient Law respecting uncertain Persons.

XXV. It was not formerly permitted, that either legacies, or gifts in trust, should be bequeathed to uncertain persons; for even a soldier was prohibited to bequeath to uncertain persons; as the emperor *Adrian* hath declared by his rescript: and an uncertain person is reputed to be one, whom the testator hath figured only in his imagination, without any determinate knowledge of him: as if a testator should thus express himself:—"Whoever shall give his daughter in marriage to my son, to that person let my heir deliver up such a piece of ground." And, if a testator had made a bequest *to the first consuls designed after his testament was written*, this also would have been esteemed a bequest to uncertain persons: and of the same kind there are diverse other examples. Freedom likewise could not be conferred upon an uncertain person; for it was necessary, that all slaves should be nominally enfranchised: but a legacy might have been given to an uncertain person under a certain demonstration; or, in other words, to an uncertain person, if he was one of a number of persons certain; as for instance, if a testator should bequeath in the manner following;—"I command *TITIVS* my heir to give such a particular thing to any one of my present collateral relations, who shall think proper to take my daughter in marriage." But, if a legacy or fiduciary gift had been paid to uncertain persons by mistake, it was provided by the constitutions, that such persons were not compellable to refund.

Antient Law respecting a posthumous Stranger.

XXVI. Formerly a legacy could not have been profitably or legally given to a posthumous stranger; and a posthumous stranger is he, who, if he had been born before the death of the testator, could not have been numbered among his proper heirs: and of consequence a posthumous grandson, by an emancipated son, was a posthumous stranger in regard to his grandfather.

New Law.

XXVII. Such was the state of the ancient law, which hath not been left without a proper emendation; for we have promulged a constitution, by which we have altered the law concerning un-

certain persons, not only in respect to inheritances, but in regard also to legacies and fiduciary bequests. But this alteration will evidently appear from a perusal of the constitution itself; which nevertheless gives no authority to the denomination of an uncertain tutor; for it is incumbent upon every parent to take care of his posterity in this respect, by a certain and determinate appointment.

Concerning a posthumous Stranger appointed Heir.

XXVIII. A posthumous stranger could formerly have been instituted, and may now be appointed, an heir, unless it appears, that he was conceived by a woman, who could not have been legally married to his father.

Of Error in the Name of the Legatee.

XXIX. Although a testator may happen to have mistaken the *nomen*, *cognomen*, *prænomen*, or *agnomen* of a legatary, yet, if his person is certain, the legacy is good. The same rule of law is also observed in regard to Heirs, and with great reason; for the use of names is but to point out persons; and, if persons can be denoted by any other method, it will make no difference.

Of false Demonstration.

XXX. The rule of law, which comes nearest to the foregoing, is, that a legacy is not rendered null by a false demonstration: suppose, for instance, that a bequest is thus worded:—"I give and bequeath *STICHUS* my slave, who was born in my family:"—in this case, although *Stichus* was not born in the family of the testator, but bought, yet, if there is a certainty of his person, the legacy is valid. And if a testator should write as follows:—"I bequeath *STICHUS* my slave, whom I bought of *SEIUS*"—yet, although he was bought of another, the legacy would be good, if there was no doubt as to the identity of the person of *STICHUS*.

Of a false Reason assigned.

XXXI. *A fortiori* a legacy is not rendered the less valid, although a false reason is assigned for bequeathing it: as if a testator should thus express himself:—"I give my slave *STICHUS* to *TITIVS*, because he took care of my affairs in my absence;" or, "because I was acquitted upon an accusation of a capital offence by his care and protection." For although *Titius* had never taken care of the affairs of the deceased, and although the testator was never acquitted from any charge of a capital crime by means of *Titius*, the legacy will nevertheless be good. But if the bequest had been declared to be conditional, as for example, if the testator

had expressed himself as follows “—I give to *Titius*, such a piece of ground, if it shall appear, that he hath taken a proper care of my affairs,” then the law would be different.

Of the Slave of the Heir.

XXXII. It hath been a question, whether a testator can legally give a legacy to the slave of his heir; and it is certain, that a legacy, purely and simply given to such a slave, can avail him nothing, although he should afterwards be freed from the power of the heir in the life-time of the testator; for a bequest, which would have been null, if the testator had expired immediately after he had made it, ought not to become valid, merely because the testator happened to enjoy a longer life. But a testator may give a conditional legacy to the slave of his instituted heir, and such legacy will be good, if the slave is not under the power of the heir, when the condition is fulfilled.

Of the Master of the Heir.

XXXIII. On the contrary it is not doubted, but that a slave may be appointed an heir, and that his then master may take even a simple legacy by the same testament: for, although the testator should die instantly after making his testament, yet the legacy is not understood to become immediately due from the slave, who is the heir: for the inheritance is here separate from the legacy, and another may become heir by means of the slave, if he should be transferred to a new master, before he hath entered upon the inheritance, at the command of his master, who is the legatary; or the slave himself may become heir in his own right by manumission; and, in these cases, the legacy would be good. But, if the slave should remain in the same state, and enter upon the inheritance by order of his master, who is the legatary, the legacy would, as such, become extinct.

Of the manner of giving Legacies. Of the order of the words.

XXXIV. A legacy could not formerly have been given with effect, till the heir was instituted; because a testament receives its whole force and efficacy from the institution of the heir, which is understood to be the basis and foundation of it; and by a parity of reasoning it was also necessary, that the institution of an heir should always precede the grant of freedom in a testament. But we have thought it to be wrong and absurd, that a strict regard should be paid to the mere order of writing, in direct opposition to the express intention of a testator; and the ancients themselves seem to have been of this opinion in general; we have therefore, by virtue of our constitution, amended the law in this point; so that a legacy may now be given; and, *a fortiori*, a grant

of liberty, which is always favored, may be bequeathed, before the institution of an heir, where there is but one; and, either before or between the institutions of heirs, where there are several.

Of a Legacy after the death of the Heir.

XXXV. A bequest, made to take place after the death of an heir or legatary, was also ineffectual: for, if a testator had written, "when my heir is dead, I give and bequeath an hundred AUREI to Titius,—or even thus, I give and bequeath an hundred AUREI to be paid to Titius, on the day preceding the day of the death of my heir,—or, on the day preceding the day of the death of my legatary,—” the legacies in any of these cases would have been void. But we have corrected the antient rule of law in this respect, by giving all such legacies the same validity, which is given to gifts in trust; lest trusts should be found to be more favored, than legacies.

Conditional Penal Inheritances.

XXXVI. Also formerly, if a testator had given, revoked, or transferred a legacy *pœnæ nomine*, he would have acted ineffectually; and a legacy is reputed to be bequeathed *pœnæ nomine*, [*i. e.* as a punishment or penalty,] when an heir is put under the necessity of doing or not doing something: as for instance, if a testator had thus written; "if my heir gives his daughter in marriage to TITIVS; or, if he does not give her in marriage to Titius, let him pay ten Aurei to Seius; or thus—if my heir shall alien my slave Stichus; or, on the contrary, if my heir shall not alien my slave Stichus, let him pay ten Aurei to Titius." And this rule was so far observed, that it was expressly ordained by many constitutions, that even the emperor could not receive a legacy, which was bequeathed *pœnæ nomine*; nor could a penal legacy be valid, even when it had been bequeathed by the testament of a soldier; although, in every other respect, the intention of a testator in a military testament was always scrupulously adhered to. And even freedom could not be bequeathed, nor, in the opinion of Sabinus, could an heir be added in a testament, *sub pœnæ nomine*: for, if a testator had said, "let Titius be my heir, but if he gives his daughter in marriage to Seius, let Seius also be my heir," the appointment of Seius would have been void; for the manner, in which an heir was laid under coercion, whether it was by the gift of a legacy, or by the addition of another heir, worked no alteration in the general rule of law. But this scrupulosity hath been by no means agreeable to us, and we have therefore ordained, that in general the doctrine of the law in regard to any thing left, revoked, or transferred, in punishment of an heir, should not differ from the rules of law

observed in relation to other legacies, when the performance of the condition of obtaining them is neither impossible, prohibited by law, nor contrary to good manners: for the morality, religion, and justice of the present times, will not suffer such testamentary dispositions to take place.

TITLE XXI.

OF THE REVOCATION OR TRANSFER OF LEGACIES.

Of the Revocation of Legacies.

A revocation of a legacy is valid, although it is inserted in the same testament or codicil, in which the legacy was given. And it is immaterial, whether the revocation is made in words contrary to the bequest; as when a testator gives a legacy in these terms, "I give and bequeath to Titius,"—and revokes it by adding, "—I do not give and bequeath to Titius:" or whether the revocation is made by any other form of words.

Of the Transfer.

I. A legacy may also be transferred from one person to another; as thus "—I give to Seius my slave Stichus, whom I have bequeathed to Titius." This may be done in the same testament or codicil, in which the legacy was first given; and thus a legacy may be taken tacitly and by implication from Titius and transferred to Seius.

TITLE XXII.

OF THE FALCIDIAN LAW.

Reason and Sum of this Law.

IT remains to speak of the law *Falcidia*, by which legacies have received their latest regulation. By the law of the 12 tables,—*uti quisque legasset suæ rei, ita jus esto*,—a testator was permitted to dispose of his whole patrimony in legacies; but it was thought proper to restrain this licence even for the benefit of testators themselves, because they frequently died intestate, their heirs refusing to enter upon an inheritance, from which they could receive no profit, or but very little. And this occasioned the introduction first of the law *Furia*, and afterwards of the law *Voconia*: but, when neither of these was found adequate to the purpose intended, the *Falcidian* law was at length enacted; which prohibits a testator to give more in legacies, than three fourths of all his effects; so that, whether there is one or more heirs, there must now remain to him, or them, an intire fourth part of the whole.

Of the Plurality of Heirs.

I. When two heirs are instituted, for example, *Titius* and *Seius*, and *Titius's* moiety of the inheritance is wholly exhausted, or overcharged by legacies, which he has expressly ordered to pay; and on the other side *Seius's* moiety is either not incumbered, or is charged with legacies, which amount only to a part of his share; it hath in this case been a question, whether, although *Seius* hath a fourth or more of the whole inheritance, it may not nevertheless be lawful for *Titius* to make a stoppage out of the legacies, with which he is charged, so as to retain a fourth part out of his own moiety? and it hath been determined, that *Titius* may make such stoppage: for the reason and equity of the law *Falcidia* extends to each heir in particular.

Quantity of the Inheritance.

II. But the law *Falcidia* hath regard only to the quantity of the estate at the time of the death of the testator; and therefore, if he, who is worth but an hundred *aurei* at his decease, bequeaths them all in legacies, the legatees must suffer a defalcation; for they will receive no manner of advantage, although the inheritance, after the death of the testator and before it is entered upon, should so increase by the acquisitions of slaves, the children of female slaves, or the product of cattle, that after a full payment of the 100 *aurei* in legacies, an intire fourth of the whole estate might remain to the heir; for, notwithstanding the increase of the testator's estate, subsequent to his death, a fourth part of the hundred *aurei* would still be due to the heir, and the legacies would remain subject to a defalcation upon that account. But, on the contrary, if a testator hath bequeathed 75 *aurei* in legacies, and was worth an hundred *aurei* at his death, then although it should happen, that, before the entrance of the heir, the estate should so decrease by fire, shipwreck, or the loss of slaves, that the whole value of it should not be more than 75 *aurei*, and perhaps less, yet the legacies would still be due without defalcation; nor is this law prejudicial to an heir, who is always at his election either to refuse or accept an inheritance; but it obliges legataries to come to an agreement with the heir to take a part, lest they should lose the whole of their legacies by his desertion of the testament.

Deductions before the effect of the Falcidian law.

III. The *Falcidian* portion is not taken by the heir, till the debts, funeral expences, and the price of the manumission of slaves, have all been previously deducted; and then the fourth part of the remainder appertains to the heir, and the other three parts are divided among the legataries in a ratable proportion: for

example, let it be supposed, that 400 *aurei* have been bequeathed in legacies, and that the estate, from which these legacies are intended to issue, is worth but exactly that sum; it follows, that a fourth must be subtracted from the legacy of each legatary; but, if the testator gave in legacies no more than 350 *aurei*, and there remained after debts paid 400, then an eighth only ought to be deducted from each legacy. And, if a testator hath bequeathed 500 *aurei* in legacies, and there remain clear in the hands of the heir but 400, then a fifth must first be deducted from every legacy, and afterwards a fourth: but that, which exceeds the real value of the goods of the deceased, must first be subtracted, and then follows the deduction of what is due to the heir.

TITLE XXIII.

OF FIDUCIARY INHERITANCES.

Continuation.

LET us now proceed to trusts; in treating of which, we will first speak of fiduciary inheritances.

Origin of Fiduciary Trusts.

I. It must be observed, that in the first times all trusts were weak and precarious; for no man could be compelled to the performance of what he was only *requested* to perform. And yet, when testators were desirous of giving an inheritance or legacy to persons, to whom they could directly bequeath neither, they then committed the inheritance or legacy in trust to those, who were capable of taking; and such commitments were called fiduciary, because the performance of the trust could not be enforced by the law, but depended solely upon the honour of the trustee. But the emperor *Augustus*, having been frequently moved with compassion on account of particular persons, and detesting the perjury and perfidiousness of trustees in general, commanded the consuls to interpose their authority; and this, being a just and popular command, gave them by degrees a continued jurisdiction; and in process of time trusts became so common, and were so highly favoured, that a prætor was purposely appointed to give judgment in these cases, and was therefore called the commissary of trusts.

Of the Fiduciary Trusts of the Heir.

II. We must here observe, that there is an absolute necessity of appointing an heir in direct terms to every testament; but he then may be requested to restore the inheritance to any other person; yet without an heir a testament is ineffectual. And therefore, when a testator says—*let LUCIUS TITIUS be my heir*—he may

add—and I request you, LUCIUS TITIUS, that, as soon as you enter upon my inheritance, you would restore it to CAIUS SEIUS. But a testator is at liberty to request his heir to restore a part of the inheritance only, and may make him a trustee upon condition, or from a day certain.

Effect of the Restitution of the Inheritance.

III. After an heir hath restored an inheritance in obedience to the trust reposed in him, he nevertheless continues heir. But he, who hath received the inheritance from such fiduciary heir, is sometimes reputed to be in the place of the heir, and sometimes in the place of a legatary.

Of the Trebellian Senatus-Consultum.

IV. In the reign of NERO the emperor, when TREBELLIVS MAXIMVS and ANNÆVS SENECA were consuls, it was provided by a decree of the senate, that, if an inheritance was restored by reason of a trust, all actions, which by the civil law might be brought by or against the heir, should be given to and against him, to whom the inheritance was restored.—And, after this decree, the prætor began to give equitable and beneficial actions to and against the receiver of an inheritance, as if he was the heir.

Of the Pegasian Senatus-Consultum.

V. But, when written heirs were requested to restore the whole, or almost the whole, of an inheritance, they often refused to accept it, since they could receive but little or no emolument; and thus it happened, that trusts were frequently extinguished. But afterwards in the consulate of *Pegasus* and *Pugio*, in the reign of the emperor *Vespasian* the senate ordained by their decree, that an heir, who was requested to restore an inheritance, might retain a fourth, as in the case of legacies by the *Falcidian* law. And an heir is also allowed to make the same deduction from particular things, which are left to him in trust for the benefit of another. For, some time after this decree, the heir alone bore the burden of the inheritance, (*i. e.* all the charges and demands incident to it;) but afterwards, whoever had received a share or part of an inheritance, by being benefited under a trust, was regarded as having a partial legacy; and this species of legacy was called *partition*, because the legatary took a part of the inheritance together with the heir; and thence it arose, that the same stipulations, which were formerly used between the heir and legatary in part, were also interposed between the person benefited under the trust, and the heir or trustee, to the intent, that the profit and loss might be in common between them in due proportion.

Where it is Applied.

VI. And therefore, if a written heir, or heir in trust, had not been requested to surrender more than three fourths of the inheritance, he was obliged to restore so much of it, by virtue of the *Trebellian senatus-consultum*; and all actions, whether in favour of, or against, the inheritance, were brought, or sustained, by the heir and *fidei-commissary*, according to their respective shares; and this obtains, in regard to the heir, by virtue of the civil law: and, in regard to the *fidei-commissary*, by virtue of the *Trebellian* decree. But, if the written heir was requested by the testator to restore the whole inheritance, or more than three fourths, then the *Pegasian senatus-consultum* took place; for, if he had once taken upon himself the heirship voluntarily, he was obliged to sustain all charges; and this, whether he did, or did not, retain the fourth, to which he was intitled. But, when an heir retained a fourth part, the stipulations, called *partis et pro parte*, were entered into, as between a legatary in part and an heir; and, when the heir did not retain a fourth, then the stipulations, called *emptæ et venditæ hereditatis*, were interposed. But, if the written heir, or heir in trust, refused to accept the inheritance on suspicion, that there would not be assets, and that the acceptance would be detrimental to him, it was provided by the *Pegasian* decree, that the prætor, at the instance of the *fidei-commissary*, might compel such heir to take upon himself the inheritance, and then restore it; and that afterwards all actions should be brought by or against the *fidei-commissary* only; as it is ordained by the *Trebellian* decree. And in this case stipulations are not necessary; for the heir, who restores the inheritance, is made effectually secure, and all hereditary actions are transferred to and against him, by whom the inheritance is received; there being, in this instance, a concurrence of both decrees, the *Pegasian* and the *Trebellian*.

Trebellian Decree.

VII. But, as the stipulations, which took their rise from the *Pegasian* decree, were displeasing even to the antients themselves, insomuch that *Papinian*, a man of a true sublime genius, does not scruple to call them captious in some cases, and, as simplicity is far more agreeable to us in all matters of law, than unnecessary difficulties, it hath therefore pleased us, upon comparing the agreement and disagreement of each decree, to abrogate the *Pegasian*, which was subsequent to the *Trebellian*, and to transfer a greater authority to the *Trebellian* decree, by which all *fidei-commissary* inheritances shall be restored for the future, whether the testator hath given by his will a fourth part of his estate to his written heir,

or more or less than a fourth, or even nothing; so that, when either nothing is given to the heir, or less than a fourth part, he may be permitted to retain a fourth, or as much as will complete the deficiency, by virtue of our authority, or even to demand a repayment of what he hath paid in his own wrong, all actions being divided between the heir and the *fidei-commissary* in a just proportion according to the *Trebellian* decree. But, if the heir spontaneously restores the whole inheritance, all actions must be brought either by or against the *fidei-commissary*. And, whereas it was the principal effect of the power of the *Pegasian* decree, that, when a written heir had refused to accept an inheritance, he might be constrained to take it, and restore it, at the instance of the *fidei-commissary*, to whom, and against whom, all actions passed, we have transferred that power to the *Trebellian* decree; so that this is now the only law, by which a fiduciary heir can be compelled to enter upon the inheritance, when the *fidei-commissary* is desirous, that it should be restored; and the heir, in this case, can neither receive profit, nor suffer loss.

The application of what is above said.

VIII. But it makes no difference, whether an heir, who is instituted to the whole of an inheritance, is requested by the testator to restore the whole or a part of it only—or whether an heir, who is nominated but to a part of an inheritance, is requested to restore that intire part, or only a portion of it; for we have ordained, that the same rule of law shall be observed, whether an heir is requested to restore the whole or a part only of an inheritance.

Farther Effects of this Decree.

IX. If an heir is requested by a testator to give up an inheritance, after deducting some specific thing, amounting to a fourth, as a piece of ground, &c. he may be compelled to give it up by the *Trebellian* decree, in the same manner, as if he had been requested to restore the remainder of an inheritance, after reserving to himself a fourth. There is however this difference, that, in the one case, when an heir is requested to give up an inheritance, after deducting a particular thing, then all actions, passive as well as active, are transferred by virtue of the decree to the *fidei-commissary*, and what remains with the heir is free of all incumbrance, as if acquired by legacy; and, in the other case, when an heir is requested in general terms to give up an inheritance, after retaining a fourth to himself, all actions are proportionably divided; those, which regard the three fourths of the estate, being transferred to the *fidei-commissary*; and those, which regard to the single fourth, remaining for the benefit of the heir. And, even

if an heir is requested to give up an inheritance, after making a deduction of some particular thing, which amounts to the value of the greatest part of it, all actions, both active and passive, are nevertheless transferred to the *fidei-commissary*, who ought therefore always well to consider, whether it will be expedient or not, that the inheritance should be given up to him. And the law is the same, whether an heir is requested to give up an inheritance after a deduction of two, or more, specific things—or of a certain sum of money, which exceeds in value the greatest part of the inheritance. Thus what we have said of an heir, who is instituted to the whole of an inheritance, is equally true of him, who is instituted only to a part.

Of Fiduciary Bequests.

X. And farther, even a man, who is willing to die intestate, may request the person, which he thinks will succeed him, either by the civil or prætorian law, to give up the whole inheritance, or a part of it, or any particular thing, as a piece of ground, a slave, a sum of money, &c. But this liberty is granted to intestates in regard to trusts only; for legacies are not valid, unless they are bequeathed by testament.

Of Fidei-Commissaries.

XI. A *fidei-commissary* may also himself be requested to pay over, or give up, to another, either the whole, or a part, of what he receives; or even to give some other thing in lieu of it.

Of the Proof of Fiduciary Trusts.

XII. All fiduciary gifts or bequests depended formerly in a precarious manner upon the sole *faith* of the heir; from which they took as well their name as their essence; and the emperor *Augustus* was the first, who thought it proper to reduce them under a judicial cognizance. But we have since endeavoured to exceed that prince; and at the instance of that most excellent man *Tribonian*, the quæstor of our palace, we have enacted by our constitution, that, if a testator hath trusted to the faith of his heir for the surrender of an inheritance, or any particular thing, and this trust can not be made manifest by the depositions of five witnesses, (which is known to be the legal number in such cases,) there having been not so many, or perhaps no witnesses present, the heir at the same time perfidiously refusing to make any payment, and denying the whole transaction, then in this case the *fidei-commissary*, having previously taken the oath of calumny, may put the heir, although he is even the son of the testator, to his oath, and thus force him either to deny the trust upon oath, or comply with it, whether the trust is universal or particular; and

this is allowed, lest the last will of a testator, committed to the faith of an heir, should be defeated. And we have thought it right, that the same remedy should be taken against a legatary, or even a *fidei-commissary*, to whom a testator hath left any thing with a request to give it up. And, if any man, to whom something hath been left in trust to be given to another, should confess the trust, after he hath denied it, but endeavour at the same time to shelter himself under the subtlety of the law, he may nevertheless be compelled to perform his duty.

TITLE XXIV.

OF WHAT MAY BE LEFT IN FIDUCIARY TRUST.

Summary.

A MAN may also leave particular things in trust; as a field, silver, cloaths, or a certain sum of money;—and may request either his heir to restore them, or even a legatary: although a legatary can not be made chargeable with a legacy.

Subjects of such Trust.

I. A testator may leave not only his own property in trust, but also the property of his heir, of a legatary, of a *fidei-commissary*, or of any other: so that a legatary or *fidei-commissary* may not only be requested to give what hath been left to him, but what is his own, or even what is the property of another. And the only caution necessary to be observed by the testator is, that no man be requested to give more, than he hath received by means of the testament; for the excess will be ineffectually bequeathed. And, when the property of another is left in trust, the person, requested to restore it, is obliged either to obtain from the proprietor the very thing bequeathed, or to pay the value of it.

Of the Liberty of Slaves.

II. Liberty may also be conferred upon a slave by virtue of a trust: for an heir, a legatary, or a *fidei-commissary*, may be requested to manumit: nor does it make any difference, whether the testator requests the manumission of his own slave, of the slave of his heir, of the slave of a legatary, or of the slave of a stranger: and therefore, when a slave is not a testator's own property, he must be bought, if possible, and manumitted. But, if the proprietor of the slave refuses to sell him, (which refusal the proprietor may justify, if he hath taken nothing under the will of the testator,) yet the fiduciary bequest is not extinguished, but deferred only, till it can be conveniently performed. It is here to be observed, that he, who is manumitted in consequence of a

trust, does not become the freedman of the testator, although he was the testator's own slave, but he becomes the freedman of the manumittor: but a slave, to whom liberty is directly given by testament, becomes the freedman of the testator, and is called *Orcinus*; and no one can obtain liberty directly by testament, unless he was the slave of the testator, not only at the time of the testator's death, but also at the time of the making of his testament. And liberty is understood to be directly given, not when a testator requests that his slave shall be made free by another, but when he commands that the freedom of his slave shall commence instantly by virtue of his testament.

Of the verbal Form of Trusts.

III. The terms generally used in the commitment of trusts are the following:—*peto, rogo, volo, mando, fidei tuæ committo*:—any of which words, singly taken, is as firm and binding, as if all were joined together.

TITLE XXV.

OF CODICILS.

Origin of Codicils.

IT is certain, that codicils were not in frequent use before the reign of *Augustus*: for *Lucius Lentulus*, by whose means trusts became efficacious, was the first, who caused authority to be given to codicils. When he was dying in *Africa*, he wrote several codicils, which were confirmed by his testament; and in these he requested *Augustus* to perform some particular act in consequence of a trust: the Emperor complied with the request; and many other persons afterwards, being influenced by the authority of the Emperor's example, punctually performed trusts, which had been committed to their charge: and the daughter of *Lentulus* paid debts which, in strictness of law, were not due. But it is reported, that *Augustus*, having convened upon this occasion the sages of the law, and also *Trebatius*, whose opinion was of the greatest authority, demanded, whether codicils could be admitted to be of force, and whether they were not repugnant to the very reason of the law? to which *Trebatius* answered, that codicils were not only most convenient, but most necessary, on account of the great and long voyages, which the *Romans* were frequently obliged to take, to the intent, that where a man could not make a testament, he might bequeath his effects by codicil. And afterwards, when *Labeo*, a lawyer of great eminence, disposed of his own property by codicil, it was no longer a doubt, but that codicils might be legally allowed.

Antecedent Codicils.

I. Not only he, who hath already made his testament, is permitted to make a codicil, but even an intestate may commit a trust to others by codicil: yet, when a codicil is antecedent to a testament, the codicil, according to *Papinian*, cannot otherwise take effect, than by being confirmed by the subsequent testament. But the emperors SEVERUS and ANTONINUS have by rescript declared, that a thing, left in trust in a codicil preceding a testament, may be demanded by a *fidei-commissary*, if it appears that the testator hath not receded from the intention, which he at first expressed in his codicil.

An Inheritance not given by Codicil.

II. But an inheritance can neither be given nor taken away by codicil, lest the different operations of testaments and codicils should be confounded: and of course an heir cannot be disinherited by codicil.—But although an inheritance can neither be given nor taken away by codicil, in *direct* terms, yet it may be legally left from the heir in a codicil, by means of a trust or *fidei-commissum*. But no man is allowed to impose a condition upon his heir by a codicil, nor to substitute *directly*.

Of the Plurality of Codicils.

III. A man may make many codicils, and they require no solemnity.

THE
INSTITUTIONS
OR
ELEMENTS OF JUSTINIAN.

Book the Third.

TITLE I.

OF INHERITANCES WHICH ARE LEFT BY AN INTESTATE.

EVERY person is said to die intestate, who hath either not made a testament ; or, if he has made one, hath neglected to use the solemnities prescribed by law. A man is also said to die intestate, if his testament, although rightly made, is either cancelled or rendered void ; or if no one will take upon himself the heirship by virtue of the testament.

First Order.

I. The inheritances of intestates, according to the law of the twelve tables, belong primarily to the *sui hæredes*, *i. e.* to the proper or domestic heirs of such intestates.

Who are proper Heirs.

II. And, as we have observed before, those are esteemed *sui hæredes*, or proper heirs, who, at the time of the death of the deceased, were under his power ; as a son or a daughter, a grandson or a grand-daughter by a son, a great-grandson or great-grand-daughter by a grandson of a son, &c.—neither is it material, whether these children are natural or adopted. But, in the number of natural children, we must reckon these, who, although they were not born in lawful wedlock, are, nevertheless, according to the tenor of the imperial constitutions, intitled to the rights of proper heirs, by being admitted into the order of Decurions. We must also add those persons, who are comprised within our own constitutions, by which it is ordained, that, if any person, without intending matrimony, shall keep a woman, with whom he is not prohibited to marry, and have children by her, and shall afterwards, through the dictates of affection, marry that woman, and have other children by her, sons or daughters, then not only

these latter children, born after the celebration of marriage, shall be legitimate, and in the power of their father, but also the former, who gave occasion to the legitimacy of those who were born afterwards. And we have thought it expedient, that this law shall also obtain in regard to the children born before marriage, although the children born subsequent to it are dead; or even although there never were any children subsequent to the marriage. But a grandson or grand-daughter, a great-grandson or great-grand-daughter, is not reckoned in the number of proper heirs, unless the person preceding them in degree hath ceased to be under paternal power, either by death or some other means, as by emancipation: for, if a son, when his father died, was under the power of his father, the grandson can by no means be the proper or domestic heir of his grand-father; and, by a parity of reasoning, this rule is understood to take place in relation to all descendants in the right line. But all posthumous children, who would have been under the power of their father, if they had been born in his life-time, are esteemed *sui hæredes*, or proper heirs.

Incompetence.

III. Persons may become *sui hæredes*, or proper heirs, without their knowledge, and even although they are disordered in their senses: for, as inheritances may be acquired without our knowledge, it is a consequence, that they may also be acquired by persons deprived of their understanding. And here observe, that the dominion of an inheritance is continued in the heir from the very instant of the death of his ancestor, and that the authority of a tutor is not necessary to enable a pupil to inherit, because inheritances may be acquired by proper heirs, without their knowledge: neither does a disordered person inherit by the assent of his curator, but by operation of law.

Of Posthumous Heirs.

IV. But sometimes a child becomes a proper heir, although he was not under power, at the time of the death of his parent; as when a person returns from captivity after the death of his father: and this is effected by the *jus postliminii*, or right of return.

Of Infamous Persons.

V. On the contrary, it may happen, that a child, who, at the time of the death of his parent, was under his power, shall not be his proper heir: as when a parent, after his decease, is adjudged to have been guilty of lese-majesty, by which crime his memory is rendered infamous; for a criminal of this sort can have no proper heir, inasmuch as all his possessions are forfeited

to the treasury. But a son, in this case, may strictly be said to have been the proper heir of his father, and afterwards to have ceased to be so.

Of the Division of an Inheritance.

VI. When there is a son or a daughter, and a grandson or grand-daughter by another son, they are called equally to the inheritance of their parents; nor does the nearest exclude the more remote; for it appears just, that grandsons and grand-daughters should succeed in the place of their father. And, by the same reasoning, if there is a grandson or grand-daughter by a son, and a great-grandson or great-grand-daughter by a grandson, they ought all to be called to the inheritance. And, inasmuch as it hath been esteemed right, that grandsons and grand-daughters, great-grandsons and great-grand-daughters, should succeed in the place of their parent, it seemed convenient, that inheritances should not be divided into *capita*, but into *stirpes*: so that, where there is a son and grand-children by another son, the son possesses half the inheritance, and the grand-children, however numerous, are entitled only to the other half, as the representatives of their father. And in like manner, where there are grand-children by two sons, the one son leaving one or two children, and the other three or four, the inheritance must be equally divided, half belonging to the single grand-child, or the two grand-children by the one son, and half to the three or four grand-children by the other son.

When Heirs become so.

VII. Whenever it is demanded, whether any person is a proper heir, we must enquire at what time it was certain, that the deceased died without a testament; and a man is said to die without a testament, if his testament is relinquished. Thus if a son is disinherited and a stranger is instituted heir, and, after the death of the son, it becomes certain, that the instituted heir was not in fact the heir, either because he was unwilling, or unable, to accept the inheritance, in this case, the grandson of the deceased becomes the proper heir of his grandfather: for at that time, when it was certain, that the deceased died intestate, there was no other heir, but the grandchild; and this is evident.

Of Posthumous Grandchildren.

VIII. And although a child is born after the death of his grandfather, yet, if he was conceived in the life-time of his grandfather, he will, at the death of his father and after his grandfather's testament is deserted by the instituted heir, become the proper heir of his grandfather. But, if a child is both conceived

and born after the death of his grandfather, such child, although his father should die and the testament of his grandfather be deserted, could not become the proper heir of his grandfather; because he was never allied to his grandfather by any tie of cognation: neither is he, whom an emancipated son hath adopted, to be reckoned in any respect among the children of his adoptive father's father. So that the adopted children of an emancipated son can neither become the proper heirs of their father's father in regard to the inheritance, nor demand the possession of goods, as next of kin. This is what we have thought it expedient to observe concerning proper heirs.

Of Emancipated Children.

IX. Emancipated children by the civil law have no right to the inheritances of their parents; for those are not proper heirs, who have ceased to be under the power of their parent deceased, before his death, neither are they called to inherit by any other right according to the law of the twelve tables. But the prætor, induced by natural equity, grants them the possession of goods, by the edict beginning, *unde liberi*, as fully, as if they had been under power at the time of the death of their parent; and the prætor grants this, whether they are sole, or mixed with others, who are *proper heirs*: therefore, when there are two sons, the one emancipated, and the other under power at the time of his father's death, the latter, by the civil law, is alone the heir, and alone the proper heir: but, when the emancipated son, by the indulgence of the prætor, is admitted to his share, then the proper heir becomes the heir only of his own moiety.

If an Emancipated Child shall become an Adopted one.

X. But those, who after emancipation have given themselves in adoption, are not admitted, as children, to the possession of the effects of their natural father, if, at the time of his death, they were in the adoptive family. But, if in the life-time of their natural father they were emancipated by their adoptive father, they are then admitted by the prætor to take the goods of their natural father, as if they had been emancipated by him, and had never entered into the family of the adopter: and consequently, in regard to their adoptive father, they are looked upon as mere strangers. But those, who are emancipated by their adoptive father, after the death of their natural father, are nevertheless reputed strangers to their adoptive father: and, in regard to the inheritance of their natural father, they are not at all the more intitled to reassume the rank of children. These rules of law have been established, inasmuch as it was unjust, that it should

be in the power of an adopter to determine at his pleasure, to whom the inheritance of a natural father should appertain, whether to his children, or to his *agnates*.

Comparison of Natural and Adopted Children. § VII

XI. Adopted children have therefore fewer rights and privileges, than natural children: for natural children, even after emancipation, retain the rank of children by the indulgence of the prætor, although they lose it by the civil law: but adopted children, when emancipated, lose the rank of children by the civil law, and are denied admittance into the rank of children by the prætor; and not without reason: for civil policy can by no means destroy natural rights; nor can natural children ever cease to be sons and daughters, grandsons and grand-daughters, although they may cease to be proper heirs; but adopted children, when emancipated, commence instantly strangers; for the right and name of son or daughter, which were obtained by the civil right of adoption, may be destroyed by another civil right; namely, by emancipation.

Of the possession of Goods contrary to the Tables. § VIII

XII. The same rules are observed in regard to that possession of goods, which the prætor, contrary to the testament of the parent, grants to the children, who are not mentioned in the testament, that is, to such, who are neither instituted heirs, nor properly disinherited. For the prætor calls those, who were under power at the time of the death of their parents, and those also, who are emancipated, to the same possession of goods; but he repels those, who were in an adoptive family at the time of the decease of their natural parents. And as the prætor admits not those adopted children, who have been emancipated by their adoptive father, to succeed him *ab intestato*, much less therefore does the prætor admit such children to possess the goods of their adoptive father contrary to his testament; for, by virtue of the emancipation, they cease to be in the number of his children.

Whence are Cognates. § IX

XIII. We must nevertheless observe, that, although those, who were in an adoptive family, but have been emancipated by their adoptive father, after the decease of their natural father, dying intestate, are not admitted by that part of the edict, by which children are called to the possession of goods, yet they are admitted by another part, by which the *cognates* of the deceased are called to the possession of his effects. But, by this last-named part of the edict, the *cognates* are only called, when there is no opposition from *proper heirs*, emancipated children, or *agnates*:

for the prætor first calls the *proper heirs* with the emancipated children; then the *agnates*, and lastly the nearest *cognates*.

Emendation of the Antient Law.

XIV. These were the rules of law, which formerly obtained; but they have received some emendation from the constitution, which we promulged, relating to those persons, who are given in adoption by their natural parents: for we have found frequent instances of sons, who by adoption have lost their succession to their natural parents, and who, by the ease with which adoption is dissolved by emancipation, have also lost the right of succeeding to their adoptive parents. We therefore, correcting as usual whatever is amiss, have enacted a constitution, by which it is decreed, that, when a natural father hath given his son in adoption, all the rights of such son shall nevertheless be preserved intire, in the same manner, as if he had still remained under the power of his natural father, and there had been no adoption; except only, that the person adopted may succeed to his adopter, if he dies intestate. And it is also enacted, that, if the adopter makes a testament and omits the name of his adopted son, such son can neither by the civil nor the prætorian law obtain any part of the inheritance, whether he demands the possession of the effects *contra tabulas testamenti*, (contrary to the letter of the testament,) or prefers a complaint, alleging, that the testament is inofficious: for an adopter is under no obligation either to institute, or disinherit, his adopted son, inasmuch as there subsists not between them any natural tye or relation. And we have farther decreed, that no adopted person shall receive any benefit from the *Sabinian senatus-consultum*, by being one of three sons: for in this case he shall neither obtain the fourth part of his adoptive father's effects, nor be intitled to any action upon that account. But all those, who are adopted by their natural parents, *i. e.* by a grand-father or great-grand-father, &c. are excepted in our constitution: for, inasmuch as such persons are united together by the concurrence both of natural and civil rights, we have thought proper to retain the old law in relation to those adoptions; in the same manner, as when the father of a family hath given himself in arrogation. But all, which we have here observed, may be collected from the tenor of the above-mentioned constitution.

Of Descendants from Females.

XV. The antient law, shewing most favour to descendants from males, called those grand-children only, who were so descended, to the succession as proper heirs, and preferred them by the right of agnation; for the old law, reputed the grand-children born of

daughters, and the great-grand-children born of grand-daughters, to be *cognates*, prohibited such children from succeeding to their grand-father and great-grand-father, maternal or paternal, till after the line of *agnati* was exhausted. But the emperors *Valentinian*, *Theodosius*, and *Arcadius*, would not suffer such a violence against nature to continue in practice; and, inasmuch as the name of grand-child and great-grand-child is undoubtedly common, as well to descendants by females, as to descendants by males, they therefore granted an equal right of succession to descendants from males and descendants from females. But, to the end that those persons, who have been favoured by nature, as well as by the suffrage of antiquity, might enjoy some peculiar privileges, the same emperors have thought it right, that the portions of grand-children, great-grand-children, and other lineal descendants of a female, should be somewhat diminished, and therefore they have not permitted such persons to receive so much by a third part, as their mother or grand-mother would have received; or their father or grand-father, paternal or maternal, at the decease of a female; for we now treat concerning inheritances, derived from a female: and, although there were only grand-children by a female to take an inheritance, yet the emperors did not call the *agnates* to the succession. And as, upon the decease of a son, the law of the twelve tables calls the grand-children, and great-grand-children, male and female, to represent their father in respect to the succession of their grand-father, so the imperial ordinance calls them to succession in the place of their mother or grand-mother, with the before-regulated diminution of a third part of their share. But, as there still remained matter of dispute between the *agnati* and the above-named grand-children, the *agnati* claiming the fourth part of the estate of the deceased by virtue of a certain constitution, we have therefore not permitted it to be inserted into our Code from that of *Theodosius*. And we have farther taken care to alter the old law by our ordinance, having enacted, that *agnates* shall not be intitled to any part of the goods of the deceased, whilst grand-children born of a daughter, or great-grand-children born of a grand-daughter, or any other descendants from a female in the right line, are living; lest those, who proceed from the transverse line, should be preferred to lineal descendants. And we now decree, that this our ordinance shall obtain according to its full tenor. But as the old law ordered, that every inheritance should be divided into *stirpes*, and not into *capita*, between the son of the deceased and his grandsons by a son, so we also ordain,

that distribution shall be made in the same manner between sons and grandsons by a daughter, and between all grandsons and grand-daughters, great grandsons and great-grand-daughters, and all other descendants in a right line; so that the issue either of a mother or a father, or of a grand-mother or a grand-father, may obtain their portions without any diminution; and, if on the one part there should be only one or two claimants, and on the other part three or four, that the greater number shall be intitled only to one half, and the less number to the other half of the inheritance.

TITLE II.

OF THE LEGITIMATE SUCCESSION OF AGNATES.

The second Order of legitimate Heirs.

WHEN it happens, that there are no proper heirs to succeed the deceased, nor any of those persons whom the prætor or the constitutions would call to inherit with proper heirs, then the inheritance, by a law of the twelve tables, appertains to the nearest *agnate*.

Of natural Agnates.

I. *Agnates*, as we have observed in the first book, are those, who are related or cognated by males, (*quasi a patre cognati*;) and therefore brothers, who are the sons of the same father, are *agnates* in regard to each other; they are also called *consanguinei*, being of the same blood; but it is not required that they should have the same mother. An uncle is also agnated to his brother's son, and *vice versa* the brother's son to his paternal uncle: and *brothers patruei*, that is, the children of brothers, who are also called *consobrini*, are likewise reckoned *agnates*. In this manner we may enumerate many degrees of agnation; and even those who are born after the decease of their parents, obtain the rights of consanguinity: the law nevertheless does not grant the right of inheritance to all the *agnati*, but to those only, who are in the nearest degree, when it becomes certain that the deceased hath died intestate.

Of adopted.

II. The right of agnation arises also through adoption; thus, the natural and adopted sons of the same father are *agnates*; but such persons are without doubt improperly called *consanguinei*. Also if a brother, a paternal uncle, or any other, who is agnated to you in a more remote degree, should adopt any person into his family, then such adopted person is undoubtedly to be reckoned in the number of your *agnati*.

Of Male and Female.

III. Succession among males proceeds according to the right of agnation, although they are in the most distant degree. But it hath pleased the antient lawyers, that females should only inherit by consanguinity, if they are sisters; and not in a more remote degree; though males might be admitted in the most distant degree to inherit females: thus, in case of death, the inheritance of your brother's daughter, or of the daughter of your paternal uncle or aunt, would appertain to you; but your inheritance would not appertain to them. And this was so constituted, because it seemed expedient for the benefit of society, that inheritances should for the most part fall into the possession of males. But, inasmuch as it was extremely unjust, that females should be thus almost wholly excluded as strangers, the prætor admitted them to the possession of goods in that part of his edict, in which he gives the possession of goods on account of proximity: yet they are only admitted upon condition, that there is no *agnate*, or nearer *cognate*. But the law of the twelve tables did not introduce these dispositions; for that law, according to the plainness and simplicity, which are agreeable to all laws, called the *agnates* of either sex, or any degree, to succession, in the same manner as it admitted *proper* heirs. But the middle law, which was posterior to the law of the twelve tables, and prior to the imperial constitutions, subtilly introduced the before-mentioned distinction, and entirely repelled females from the succession of *agnates*, no other method of succession being known, till the prætors, correcting by degrees the asperity of the civil law, or supplying what was deficient, added in their edicts a new order of succession, being induced to it by a motive of humanity; and, by introducing the line of cognation on account of proximity, they thus assisted the females, and gave them the possession of goods, which is called *unde cognati*. But we, although we have adhered to the law of the twelve tables, and strictly maintained it in regard to females, must yet commend the humanity of the prætors, though they have not afforded a full remedy in the present case. But, since the same natural degree of relation, and the same title of agnation appertains as well to females as to males, what reason can be assigned that males should be permitted to succeed all their *agnati*, and that no means of succession should be open to any female *agnate*, except a sister? We therefore, reducing all things to an equality, and making our disposition conformable to the laws of the twelve tables, have by our constitution ordained, that all legitime persons, that is, descendants from males, whether

male or female, shall be equally called to the rights of succession *ab intestato* according to the prerogative of their degree, and be by no means excluded, although they possess not the rights of consanguinity in so near a degree as sisters.

Of the Sons of Sisters.

IV. We have farther thought it necessary to add a clause to our constitution, by which one degree is transferred from the line of cognation to the line of legitimate succession, i. e. of *agnation*: so that not only the son and daughter of a brother (according to our former definition of *agnates*) shall be called to the succession of their paternal uncle, but the son or daughter of a sister, who is either by the same father or by the same mother, may also be admitted with *agnates* to the succession of their maternal uncle; but no one of the descendants of the son or daughter of a sister is by any means to be admitted. And, when a person dies, who at his decease was both a paternal and maternal uncle, that is, who had nephews or neices living both by a brother and by a sister, then such children succeed in the same manner, as if they were all descendants from males, when the deceased leaves no brother or sister, and they take the inheritance not *per stirpes*, or according to their respective stocks, but *per capita*, i. e. by poll: but, if there are brothers or sisters, and they accept the succession, all others of a more remote degree are excluded.

Of Relations and Strangers.

V. When there are many degrees of *agnates*, the law of the twelve tables calls those, who are in the nearest degree: if therefore, for example, there is a brother of the deceased, and a son of another brother, or a paternal uncle, the brother is preferred. But, although the law of the twelve tables calls the nearest *agnate* in the singular number, yet it is not to be doubted, but that, if there are many, in the same degree, they ought all to be admitted. And, although properly the nearest degree must be understood to denote the nearest degree of many, yet, if there is but one degree of *agnates*, the inheritance must undoubtedly appertain to those, who are in that degree.

Of what time Relationship is Regarded.

VI. When a man dies and leaves no testament, then that person is esteemed his proximate kinsman, who was the nearest of kin at the decease of the intestate. But, when the deceased hath actually made a testament, then that person is esteemed his nearest of kin, who was so at the time, when it became certain, that the testamentary heir had declined the inheritance; for, till then, a man, who

hath made a testament, can not be said to have died intestate: and thus an intestacy does not sometimes become evident, till after a long time; in which space, the proximate kinsman being dead, it often happens, that he becomes the nearest of kin, who was not so at the death of the testator.

Of the Successory Edict.

VII. But it hath obtained as law, that there should be no succession among *agnates*; so that, if the nearest *agnate* is called to an inheritance, and hath either refused the heirship, or been prevented by death from entering upon it, his own legitime heir would not be admitted to succeed him. But this the prætors have in some measure corrected, and have not left the *agnates* of a deceased person wholly without assistance, but have ordered, that they should be called to the inheritance as *cognates*, because they were debarred from the rights of agnation. But we, being earnestly desirous to render our law as perfect and complete as possible, have ordained by our constitution, which, induced by humanity, we published concerning the right of patronage, “that legitime succession should not be denied to *agnates* in the inheritances of *agnates* :” for it was sufficiently absurd, that a right, which by means of the prætor was open to *cognates*, should be shut up and denied to *agnates*: but it was more abundantly absurd, that, in tutelages, the second degree of *agnates* should succeed upon failure of the first; and that the same law, which obtained in that, which was onerous, should not also obtain in that, which was lucrative.

Of the Legitimate succession of Parents.

VIII. A parent, who hath emancipated a son or a daughter, a grandson or a grand-daughter, or any other of his lincal descendants under a fiduciary contract, is admitted to their legitime succession. But it is now effected by our constitution, that every emancipation shall for the future be always regarded, as if it had been under such a contract; although among the antients the parent was never called to the legitime succession of his children, unless he had actually emancipated them under a fiduciary contract.

TITLE III.

OF THE TERTYLLIAN SENATUS-CONSULTUM.

Of the Law of the Twelve Tables and the Prætorian Right.

SUCH was the rigour of the law of the twelve tables, that it preferred the issue by males, and excluded those, who were related

by the female line, so that the right of succession was not permitted to take place reciprocally between a mother and her son, or a mother and her daughter. But the prætors, on account of the proximity of cognation, admitted those, who were related by the female line to the succession, giving them the possession of goods, called *unde cognati*.

Of the Constitution of Claudius.

I. But these narrow limits of the law were afterwards enlarged by the emperor Claudius, who first gave the legitimate inheritance of deceased children to their mothers, in assuasion of their grief for so great a loss.

Of the Tertullian Senatus-Consultum. Of the Right of Children.

II. But afterwards by the *Tertullian senatus-consultum*, made in the reign of Adrian, the emperor, the fullest care was taken, that the succession of children should pass to their mother, though not to their grand-mother: so that a mother, who is born of free parents, and has the right of three children, and also a *libertine* or freed-woman, who has the right of four children, may be admitted, although they are under the power of a parent, to the goods of their sons or daughters, dying intestate. But, when a mother is under power, it is required, that she should not enter upon the inheritance of her children, but at the command of him, to whom she is subject.

Who are preferred to the Mother.

III. But, when a deceased son leaves children, who are proper heirs, or in the place of proper heirs, either in the first or an inferior degree, they are preferred to the mother of such deceased son. And the son, or daughter, of a deceased daughter is also preferred by the constitutions to the mother of the deceased daughter; i. e. to their grand-mother. Also the father of a son, or daughter, is preferred to the mother; but a grand-father or great-grand-father is not preferred to the mother, when the inheritance is contended for by these only without the father. Also the consanguine brother either of a son or a daughter excluded the mother; but a consanguine sister was admitted equally with her mother. But, if there had been both a brother and a sister of the same blood with the deceased, the brother of the deceased excluded his mother, although she was honoured with the privilege of those, who have children: But the inheritance, in this case, was always divided in equal parts between brothers and sisters.

A New Constitution.

IV. But by a constitution, which we have inserted in the code, and honoured with our name, we have thought proper, that mothers should be favoured in regard to the law of nature, on account of their pains in child-bearing, their great danger, and death itself, which they often suffer; we therefore have esteemed it to be highly unjust, that the law should make that detrimental, which is in its nature merely fortuitous; for, if a married woman, who is free-born, does not bring forth three children, or if a freed-woman does not become the mother of four children, can such persons, for that reason only, be with justice deprived of the succession of their children? for how can a failure of this nature be imputed to them as a crime? We therefore, not regarding any fixed number of children, have given a full right to every mother, whether ingenuous or a freed-woman, of being called to the legitime succession of her child or children deceased, whether male or female.

The Preference of the Mother.

V. But, in examining the constitutions of former emperors, relating to the right of succession, we observed, that these constitutions were partly favourable to mothers and partly grievous; not always calling them to the entire inheritance of their children, but in some cases depriving them of a third, which was given to certain legitime persons; and in other cases, doing the contrary; i. e. allowing a mother a third only. It hath therefore seemed right to us, that mothers should receive the succession of their children without any diminution, and that they should be exclusively preferred before all legitime persons, except the brothers and sisters of the deceased, whether they are *consanguine*, or only *cognate*: But, as we have preferred the mother to all other legitime persons, we are willing to call all brothers and sisters, legitime or otherwise, to the inheritance together with the mother: yet in such manner, that, if only the sisters, *agnate* or *cognate*, and the mother of the deceased survive, the mother shall have one half of the effects, and the sisters the other. But, if a mother survives, and also a brother or brothers, or brothers and sisters, whether *legitime* or *cognate*, then the inheritance of the intestate son or daughter must be distributed *in capita*; i. e. must be divided into equal shares.

Of the Tutor.

VI. As we have taken a particular care of the interest of mothers, it behoves them in return to consult the welfare of their children. Be it known therefore, that, if a mother shall neglect,

during the space of a whole year, to demand a tutor for her children, or shall neglect to require a new tutor in the place of a former, who hath either been removed or excused, she will be deservedly repelled from the succession of such children, if they die within puberty.

Of the Tertullian Senatus-Consultum.

VII. Although a son or a daughter is of spurious birth; yet the mother, by the *Tertullian senatus-consultum*, may be admitted to succeed to the goods of either.

TITLE IV.

OF THE ORFICIAN SENATUS-CONSULTUM.

Origin and Sum of the Senatus-Consultum.

ON the contrary children are reciprocally admitted to the goods of their intestate mothers, by the Orfician *senatus-consultum*, which was enacted in the consulate of Orficius and Rufus, in the reign of the emperor Marcus Antoninus; and, by this decree, the legitime inheritance is given both to sons and daughters, although they are under power; and they are also preferred to the consanguine brothers, and to the *agnates*, of their deceased mother.

Of the Grandson and Grand-daughter.

I. But, since grandsons and grand-daughters were not called by the *senatus-consultum* to the legitime succession of their grandmother, the omission was afterwards supplied, by the imperial constitutions: so that grandsons and grand-daughters were called to inherit, as well as sons and daughters.

Of the effect of Diminution.

II. But it must be observed, that those successions, which proceed from the *Tertullian* and *Orfician senatus-consulta*, are not extinguished by diminution. For it is an established rule, that new legitime inheritances are not destroyed by diminution; but that it affects only those inheritances, which proceed from the law of the twelve tables.

Of Spurious Children.

III. It is lastly to be noted, that even illegitimate children are admitted by the *Orfician senatus-consultum* to the inheritance of their mother.

Of the Right of Accretion.

IV. When there are many legitime heirs, and some renounce the inheritance, or are hindered from entering upon it by death,

or any other cause, then the shares or portions of such persons fall by the right of accretion to those, who have accepted the inheritance: and, although the acceptors happen to die even before the refusal or the failure of their coheirs; yet the portions of such coheirs, will appertain to the heirs of the acceptors, of the inheritance.

TITLE V.

OF THE SUCCESSION OF COGNATES.

Third Order of Heirors.

AFTER the proper heirs and those, whom the prætor and the constitution call to inherit with the proper heirs, and after the legitimate heirs (among whom are the *agnati*, and those, whom the above mentioned *senatus-consulta* and our constitution have numbered with the *agnati*) the prætor calls the nearest *cognates*, observing the proximity of relation.

Of Agnates who have suffered Diminution.

I. By the law of the twelve tables, neither the *agnates*, who have suffered diminution, nor their issue, are esteemed legitimate heirs; but they are called by the prætor in the third order of succession: we must nevertheless except a brother and sister, although they are emancipated, but not their children; for the constitution of Anastasius calls an emancipated brother or sister to the succession of a brother or sister, together with those, who have not been emancipated, and are therefore *integri juris*; but it does not call them to an equal share of the succession, as may easily be collected from the very words of the constitution. But this constitution prefers an emancipated brother or sister to other *agnates* of an inferior degree, although unemancipated; and consequently to all *cognates* in general.

Of those who are connected by Women.

II. Those also, who are collaterally related by the female line, are called by the prætor in the third order of succession, according to their proximity.

Of Children given in Adoption.

III. Children, who are in an adoptive family, are likewise called in the third order of succession to the inheritance of their natural parents.

Of Spurious Children.

IV. It is manifest, that base born children have no *agnates*; inasmuch as *agnation* proceeds from the father, *cognation* from the mother; and such children are looked upon as having no

father. And, for the same reason, consanguinity cannot be said to subsist between the bastard children of the same woman; because consanguinity is a species of *agnation*. They can therefore only be allied to each other as they are related to their mother, that is, by *cognition*; and it is for this reason, that all such children are called to the possession of goods by that part of the prætorian edict, by which *cognates* are called by the right of their proximity.

Of Agnates and Cognates.

V. In this place it will be necessary to observe, that any person may, by the right of *agnation* be admitted to inherit, although he is in the tenth degree; and this is allowed both by the law of the twelve tables, and the edict, by which the prætor promises, that he will give the possession of goods to the legitime heirs. But the prætor promises the possession of goods to *cognates*, only as far as the sixth degree of *cognition*, according to their right of proximity; and in the seventh degree, to those *cognates* only, who are the descendants of a cousin german.

TITLE VI.

OF THE DEGREES OF COGNATION.

Division of Cognition

IT is necessary in this place to shew how the degrees of *cognition* are to be computed: and first we must observe, that there is one species of *cognition*, which relates to ascendants, another to descendants, and a third to collaterals. The first and superior *cognition* is that relation, which a man bears to his parents—the second, or inferior, is that, which he bears to his children—and the third is that relation, which he bears to his brothers and sisters, and their issue; and also to his uncles and aunts, whether paternal or maternal. The superior and inferior *cognition* commence at the first degree; but the transverse or collateral *cognition* commences at the second.

Of the first, second, and third Degree.

I. A father, or a mother, is in the first degree in the right line ascending: and a son, or a daughter, is also in the first degree in the right line descending. A grand-father, or a grand-mother, is in the second degree in the right line ascending: and a grandson, or grand-daughter, is in the second degree in the right line descending: and a brother, or a sister, is also in the second degree in the collateral line. A great grand-father, or a great grand-mother, is in the third degree in the right line ascending; and a

great-grandson, or great-grand-daughter, is in the third degree in the right line descending; and the son or daughter of a brother or sister is also in the third degree in the collateral line; and by a parity of reasoning an uncle, or an aunt, whether paternal or maternal, is also in the third degree. A paternal uncle, called *patruus*, is a father's brother;—a maternal uncle, called *avunculus*, is a mother's brother;—a paternal aunt, called *amita*, is a father's sister;—and a maternal aunt, called *matertera*, is a mother's sister. And each of these persons is called in Greek *Δεος* or *Δεία* promiscuously.

Fourth Degree.

II. A great-great-grand-father, or a great-great-grand-mother, is in the fourth degree in the right line ascending; and a great-great-grandson, or a great-great-grand-daughter, is in the fourth degree in the right line descending. Also, in the transverse or collateral line, the grandson, or the grand-daughter, of a brother or a sister, is in the fourth degree; and consequently a great uncle, or great aunt, paternal or maternal, is in the fourth degree: and also cousins german, who are called *consobrini*. But some have been rightly of opinion, that the children of sisters are only properly called *consobrini*, quasi *consororini*;—that the children of brothers are properly called *fratres patruelès*, or brothers *patruel*, if males; and *sorores patruelès*, or sisters *patruel*, if females;—and that, when there are children of a brother, and children of a sister, they are properly called *amitini*; but the sons of your aunt by the father's side call you *consobrini*, and you call them *amitini*.

Fifth Degree.

III. A great-grand-father's grand-father, or a great-grand-father's grand-mother, is in the fifth degree in the line ascending, and a great-grandson, or a great-grand-daughter, of a grandson or grand-daughter, is in the fifth degree in the line descending. And, in the transverse or collateral line, a great-grandson, or great-grand-daughter, of a brother or sister, is also in the fifth degree: and consequently a great-grand-father's brother or sister, or a great-grand-mother's brother or sister, is in the fifth degree. The son or daughter also of a cousin german is in the fifth degree; and so is the son or daughter of a great uncle or great aunt, paternal or maternal; and such son, or daughter, is called *propior sobrino* and *propior sobrina*.

Sixth Degree.

IV. A great-grand-father's great-grand-father, or a great-grand-father's great-grand-mother, is in the sixth degree in the

line ascending ; and the great-grandson, or great-grand-daughter of a great grand-son, or a great-grand-daughter, is likewise in the sixth degree in the line descending. And, in the transverse or collateral line, a great-great-grandson, or a great-great-grand-daughter, of a brother or sister, is also in the sixth degree: and consequently a great-great-grand-father's brother or sister, and a great-great-grand-mother's brother or sister, is in the sixth degree. And the son or daughter of a great-great-uncle, or great-great-aunt, paternal or maternal, is also in the sixth degree ; and so also is the son or daughter of the son or daughter of a great-uncle or great-aunt, paternal or maternal. The grandson also, or the grand-daughter, of a cousin german, is in the sixth degree ; and, in the same degrees between themselves, we reckon the *sobrini* and the *sobrinx* ; that is, the sons and daughters of cousins german in general, whether such cousins german are so related by two brothers, or by two sisters, or by a brother and a sister.

Of the other Degrees.

V. It is sufficient to have shewn thus far, how the degrees of *cognition* are enumerated: and, from the examples given, it is evident in what manner we ought to compute the more remote degrees; for every person generated always adds one degree; so that it is much easier to determine, in what degree any person is related to another, than to denote such person by a proper term of *cognition*.

Of the Degrees of Agnation.

VI. The degrees of *agnation* are enumerated in the same manner as the degrees of *cognition*.

TITLE VII.

OF SERVILE COGNATION.

IT is certain, that the part of the edict, in which the possession of goods is promised, according to the rights of proximity, does not relate to servile *cognition*; neither hath such *cognition* been regarded by any antient law. But, by our own constitution, concerning the rights of patronage, which right was heretofore obscure, and every way confused, we have ordained (humanity so suggesting) that, if a slave shall have a child, or children, either by a free-woman or by a bond-woman, with whom he lives *in contubernio*, and, on the contrary, that if a bond-woman shall have a child, or children, of either sex, by a freeman, or by a slave, with whom she lives *in contubernio*, and such father and mother are afterwards enfranchised, the children shall succeed to their

father or mother, no regard being paid to the right of patronage. And we have not only called these children to the succession of their parents, but also to succeed each other mutually, whether they are sole in succession, having all been born in servitude and afterwards manumitted, or whether they succeed with others, who were conceived after the enfranchisement of their parents, and whether they are all by the same father and mother, or by a different father, or a different mother. And, in brief, we have been willing, that children born in slavery, and afterwards manumitted, should succeed in the same manner as those who are the issue of parents legally married.

Collation of Orders and Degrees.

I. By what we have already said, it appears, that those, who are in an equal degree of *cognition*, are not always called equally to the succession; and farther, that even he who is the nearest of kin, is not constantly to be preferred. For, inasmuch as the first place is given to *proper heirs*, and to those who are numbered with proper heirs, it is apparent, that the great-grandson, or great-great-grandson, is preferred to the brother, or even the father or mother of the deceased: although a father or mother, (as we have before observed,) obtain the first degree of relation, a brother the second, a great-grandson the third, and a great-great-grandson the fourth: neither does it make any difference, whether such grand-children were under the power of the deceased at the time of his death, or out of his power; either by being emancipated, or by being the children of those who were emancipated: neither can it be objected, that they are descended by the female line. But, when there are no proper heirs, nor any of those who are permitted to rank with them, then an *agnate*, who hath the full right of *agnation* in him, although he is in the *most distant* degree, is generally preferred to a *cognate*, who is in the nearest degree; thus the grandson, or great-grandson of a paternal uncle is preferred to an uncle or aunt, who is maternal. We therefore observe, that, when there are no proper heirs, nor any who are numbered with them, nor any who ought to be preferred by the right of *agnation*, (as we have before noted,) then he who is in the nearest degree of *cognition*, is called to the succession; and that, if there are many in the same degree, they are all called equally. But a brother and sister, although emancipated, are yet called to the succession of brothers and sisters; for, although they have suffered diminution, they are nevertheless preferred to all *agnates* of a more remote degree.

TITLE VIII.

OF THE SUCCESSION OF FREED-MEN.

Of the Law of the Twelve Tables.

LET us now treat of the succession of freed-men. A freed-man had it formerly in his power, without being subject to any penalty, wholly to omit in his testament any mention of his patron; for the law of the twelve tables called the patron to the inheritance, only when the freed-man died intestate, and without *proper heirs*; and therefore, though a freed-man had died intestate, yet, if he had left a proper heir, the patron would have received no benefit: and, indeed, when the natural and legitimate children of the deceased became his heirs, there seemed no cause of complaint; but, when the freedman left only an adopted son, it was manifestly injurious that the patron should have no claim.

Of the Prætorian Edict.

I. The law was therefore afterwards amended by the edict of the prætor: for every freedman, who made his testament, was commanded so to dispose of his effects, as to leave a moiety to his patron: and, if the testator left nothing, or less than a moiety, then the possession of half was given to the patron *contra tabulas*, i. e. contrary to the disposition of the testament. And, if a freedman died intestate, leaving an adopted son his heir, the possession of a moiety of the effects was in this case also given to the patron, notwithstanding such heir: yet not only the natural and lawful children of a freed-man, whom he had under his power at the time of his death, excluded the patron, but those children also, who were emancipated, and given in adoption, if they were written heirs for any part, or even, although they were omitted, if they had requested the *possession CONTRA TABULAS*, by virtue of the *prætorian edict*. But disinherited children by no means repelled the patron.

Of the Papian Law.

II. But afterwards the rights of those patrons, who had wealthy freed-men, were enlarged by the *Papian law*; by which it is provided, that an equal share shall be due to the patron out of the effects of his freed-man, whether dying testate or intestate, who hath left a patrimony of an hundred thousand *sestertii* and fewer than three children: so that, when a freed-man hath left only one son or daughter, then a moiety of the effects is due to the patron, as if the deceased had died testate, without either son or daughter. But, when there are two heirs, male or female, a third part only is due to the patron; and when there are three, the patron is wholly excluded.

Of the Constitution of Justinian.

III. But by our imperial constitution, (which we have caused to be promulged in the Greek language, for the benefit of all nations), we have ordained, that, if a freed-man, or freed-woman, dies possessed of less than an hundred *aurei*, (for thus have we interpreted the sum mentioned in the *Papian law*, counting one *aureus* for a thousand *sestertii*.) the patron shall not be entitled to any share in the succession, where there is a will. But, if either a freed-man, or freed-woman, dies intestate, and without children, we have in this case reserved the right of patronage entire, as it formerly was, according to the law of the twelve tables. But, if a freed person dies worth more than an hundred *aurei*, and leaves one child, or many, of either sex or any degree, as the heirs and possessors of his goods, we have permitted, that such child or children shall succeed their parent, to the intire exclusion of the patron and his heirs: and, if any freed persons die without children and intestate, we have called their patrons or patronesses to their whole inheritances. And if any freed person, worth more than an hundred *aurei*, hath made a testament, omitted his patron, and left no children, or hath disinherited them; or if a mother, or maternal grand-father, being freed persons, have omitted to mention their children in their wills, so that such wills cannot be proved to be inofficious, then, by virtue of our constitution, the patron shall succeed, not to a moiety as formerly, but to the third part of the estate of the deceased, by the possession of the goods, called *contra tabulas*: and, when freed persons, men or women, leave less than the third part of their effects to their patrons, our constitution ordains, that the deficiency shall be supplied; and that this third part, due to patrons, shall not be subject to the burden of *trusts*, or legacies, even for the benefit of the children of the deceased: for the co-heirs only of the patron shall be loaded with this burden. In the before-mentioned constitution, we have collected many more cases, which we have thought necessary in relation to the right of patronage, that patrons and patronesses, their children and collateral relations, as far as the fifth degree, might be called to the succession of their freed-men and freed-women; as will appear more fully from our ordinance itself. And, if there are many children of one patron or patroness, or of two or more patrons or patronesses, he, who is nearest in degree, is called to the succession of his freed-man or freed-woman; and, when there are many in equal degree, the estate must be divided *in capita*, and not *in stirpes*; and the same order is decreed to be observed among the collaterals of patrons

and patronesses: for we have rendered the laws of succession almost the same in regard to the *ingenui* and *libertini*.

Who succeed to Freed-men.

IV. But what we have said relates to the *libertini* of the present time, who are all citizens of *Rome*; for there is now no other species of freed-men; that of the *Dedititii* and *Latini* being abolished: the latter of whom never enjoyed any right of succession; for although they led the lives of freed-men, yet, with their last breath, they lost both their lives and liberties: for their possessions, like the goods of slaves, were detained by their manumittor, who possessed them, as a *peculium*, by virtue of the law *Junia Norbana*. It was afterwards provided by the *senatus-consultum Largianum*, that the children of a manumittor, who were not nominally disinherited, should be preferred to any strangers, whom a manumittor might constitute his heirs; then followed the edict of *Trajan*, which ordained, that, if a slave either against the will, or without the knowledge of his patron, should obtain the freedom of *Rome* by the favour of the emperor, such slave shall continue free, whilst living, but, at his death, should be regarded only as a *Latin*. But we, being averse to these changes of condition, and dissatisfied with the difficulties attending them, have thought proper, by virtue of our constitution, for ever to abolish, together with the *Latins*, the law *Junia*, the *senatus-consultum Largianum*, and the edict of *Trajan*; to the intent, that all freed-men may become freed-men of *Rome*. And we have happily contrived by some additions, that the manner of conferring the freedom of *Latins* should now become the manner of conferring the freedom of *Rome*.

TITLE IX.

OF THE ASSIGNMENT OF FREED-MEN.

IN regard to the possession of freed-men it must be remembered, that the senate hath decreed, that, although the goods of freed-men belong equally to all the children of the patron, who are in the same degree, yet it is lawful for a parent to assign a freed-man to any one of his children, so that, after the death of the parent, the child, to whom the freed-man was assigned, is solely to be esteemed his patron: and the other children, who would have been equally admitted to a dividend of the goods of the freed-man, had he not been assigned, are wholly excluded; but, if the assignee happens to die without issue, the excluded children regain their former right.

Of the Sex of the Assigned.

I. Every freed-person is assignable, whether man or woman; and an assignment may be made not only to a son or grandson, but to a daughter or grand-daughter.

Of Children.

II. The power of assigning freed-persons is given to him, who hath two or more children unemancipated, so that a father may assign a freed-man or freed-woman to those children, whom he retains under his power: and hence it became a question, if a father should assign a freed-man to his son and afterwards emancipate that son, whether the assignment would, or would not be null? and the decision hath been in the affirmative; which hath been approved of by Julian and many others.

How this Assignment is to be made.

III. But it makes no difference, whether the assignment of a freed-man is made by testament, or not by testament; for patrons may assign even by word of mouth; which was permitted by the *senatus-consultum*, made in the reign of Claudian in the consulate of Sabellius Rufus and Asterius Scapula.

TITLE X.

OF THE POSSESSION OF GOODS.

THE right of succeeding by the possession of goods was introduced by the prætor, in amendment of the ancient law; which he corrected, not only in regard to the inheritances of intestates, (as we have before observed;) but in regard also to the inheritances of those, who die testate: for, if a posthumous stranger was instituted an heir, although he could not enter upon the inheritance by the civil law, inasmuch as his institution as heir would not be valid, yet by the prætorian or honorary law he might be made the possessor of the goods, when he had received the assistance of the *prætor*. But such stranger may at this time, by virtue of our constitution, be legally instituted an heir, being no longer regarded as a person unknown to the civil law. But the prætor sometimes bestows the possession of goods, intending neither to amend nor impugn the old law, but only to confirm it; for he gives the possession of goods *secundum tabulas* to those, who are appointed the heirs of the deceased by a regular testament. He also calls *proper heirs* and *agnates* to the possession of the goods of intestates; and yet the inheritance would be their own by the *civil law*, although the prætor did not interpose his authority. But those, whom the prætor calls to an inheritance

merely by virtue of his office, do not become legal heirs; inasmuch as the prætor cannot make an heir; for heirs are made only by law, or by what has the effect of a law, as a decree of the senate, or an imperial constitution. But, when the prætor gives any persons the possession of goods, they stand in the place of heirs, and are called the possessors of the goods. But the prætor hath also devised many other orders of persons, to whom the possession of goods can be granted, to the intent, that no man may die without a successor: and, by the rules of justice and equity, he hath greatly enlarged the right of taking inheritances, which was bounded within the most narrow limits by the laws of the twelve tables.

Prætorian Possessions.

I. The kinds or species of the possessions of goods or prætorian successions, when there is a testament, are the following. The first is that possession, which is given to children, of whom no mention is made in the testament; and this is called *possessio contra tabulas*; i. e. a possession contrary to the testament. The second is that which the prætor promises to all written heirs, and it is therefore called *secundum tabulas*; i. e. a possession according to the testament. These being fixed, the prætor proceeded to the possession of goods in regard to intestates;—and first he gives the possession of goods, called *unde liberi*, to the proper heirs, or to those, who by the prætorian edict, are numbered among the proper heirs:—secondly, to the legitime heirs:—thirdly, to ten persons, in preference to a stranger, who was the manumittor, viz. to a father, a mother, or a grand-father or grand-mother, paternal or maternal; to a son, a daughter, or to a grandson or grand-daughter, as well by a daughter as by a son; to a brother or sister, either consanguine or uterine:—fourthly, to the nearest *cognates*:—fifthly, to those who are, as it were, of the family, *tanquam ex familia*:—sixthly, to the patron or patroness, and to their children, and their parents:—seventhly, to a husband and wife:—eighthly, to the *cognates* of a manumittor or patron.

A new Law.

II. The prætor's authority hath introduced these successions; but we, not suffering any useless institutions to continue in the law, have nevertheless admitted by our constitutions the possession of goods *contra tabulas* and *secundum tabulas*, as necessary; and also the possessions of goods *ab intestato*, called *unde liberi* and *unde legitimi*; but we have briefly shewed, that the possession called *unde decem personæ*, which was ranked by the præ-

tor's edict in the fifth order, was unnecessary: for, whereas that possession preferred ten kinds of persons to a stranger, who was the manumitter at emancipation, our constitution, which regards emancipation, hath permitted all parents to manumit their children, a fiduciary contract being presumed; so that the possession *unde decem personæ* is now useless. The afore-mentioned fifth possession being thus abrogated, we have now made that the fifth, which was formerly the sixth, by which the prætor gives the succession to the nearest cognates. And, whereas formerly the possession of goods, called *tanquam ex familia*, was in the seventh place, and the possession of goods called *unde patroni patronæque, liberi et parentes eorum*, was in the eighth, we have now annulled them both by our ordinance concerning the right of patronage. And having brought the successions of the *libertini* to a similitude with those of the *ingenui*, (except that we have limited the former to the fifth degree, so that there may still remain some difference between them,) we think that the possessions *contra tabulas—unde legitimi—*and *unde cognati*, may suffice, by which all persons may vindicate their rights, the niceties and inextricable errors of those two kinds of possessions, *tanquam ex familia* and *unde patroni*, being removed. The other possession of goods, called *vir et uxor*, which held the ninth place among the antient possessions, we have preserved in full force, and have placed in an higher degree, namely; the sixth. The tenth of the antient possessions, called *unde cognati manumissoris*, being deservedly abrogated for causes already enumerated, there now remain only in force six ordinary possessions of goods.

Extraordinary Possession. VII

III. But to these a seventh possession hath been added, which the prætors have introduced with the greatest reason: for, by edict, this possession of goods is promised to all those, to whom it is appointed to be given by any law, senatus-consultum, or constitution: and the prætor hath not positively numbered this possession of goods either with the possessions of the goods of intestate or testate persons, but hath given it, according to the exigence of the case, as the last and extraordinary resource of those, who are called to the successions of testates or intestates, by any particular law, any decree of the senate, or any new constitution.

Of the Successory Edict. was introduced

IV. The prætor, having introduced many kinds of successions, and ranked them in order, hath thought proper, inasmuch as many persons of different degrees are often found in one species of succession, to limit a certain time for demanding the possession

of goods, to the intent, that the actions of creditors may not be delayed for want of a proper person, against whom to bring them, and that the creditors themselves may not obtain the possession of the effects of the deceased too easily, and so consult solely their own advantage: therefore, to parents and children, whether natural or adopted, the prætor hath given the space of one year, in which they may either accept or refuse the possession of goods. But to all other persons, agnates or cognates, he allows only a hundred days.

Of the Right of Accretion.

V. And, if any person intitled does not claim the possession of goods within the time limited, his right of possession accrues first to those in the same degree with himself; and, in default of persons in the same degree, then the prætor, by the successory edict, bestows the possession of goods upon those in the next degree, as if he who preceded had no right. And, if any man refuses the possession of goods, when it is open to him, there is no necessity to wait till the time limited is expired, but those who are the next in succession may be instantly admitted by virtue of the before-mentioned edict.

VI. It is here to be observed, that, in regard to the time prescribed for demanding the possession of goods, we count all the days which are *utiles*; i. e. those days on which the party, having knowledge that the inheritance is open to him, might apply to the judge.

Form of demanding.

VII. The emperors, our predecessors, have wisely provided in this case, that no person need be solicitous to demand the possession of goods in solemn form: for, if by any act it manifestly appears, that a man has in any manner consented to accept the prætorian succession within the prescribed time, he shall enjoy the full benefit of it.

TITLE XI.

OF ACQUISITION BY ARROGATION.

THERE is also an universal succession of another kind, which was introduced neither by the laws of the twelve tables, nor by the edict of the prætor, but by that law which takes its rise from general consent and usage.

What Things are thus acquired.

I. For example, if the father of a family gave himself in arrogation, all things which appertained to him, whether corporeal or

incorporeal, and whatever was due to him, became antiently the property of the arrogator; those things only excepted, which perished by diminution or change of state; as the duties of freed-men to their patrons and the rights of agnation. But, although use and usufruct were heretofore numbered among those rights which perished by diminution, yet our constitution hath prohibited that the use and usufruct of things should be taken away by the least diminution or change of state.

New Law.

II. But we have now limited the acquisitions obtained by arrogation, in similitude of what is gained by natural parents: for nothing is now acquired either by natural or adoptive parents, but the bare usufruct of those things, which their children possess adventitiously and extrinsically in their own right, the property still remaining intire in the adopted or natural child. But, if an arrogated son dies under the power of his arrogator, then even the property of the effects of such son will pass to the arrogator in default of those persons, whom we have by our constitution preferred to the father in the succession of those things, which could not be acquired for him.

Effect of this Acquisition.

III. On the contrary an arrogator is not bound at law to satisfy the debts of his adopted son in consequence of a direct action; but yet he may be convened in his son's name; and, if he refuses to defend his son, then the creditors, by order of the proper magistrates, may seize upon and legally sell all those goods, of which the usufruct, as well as the property, would both have been in the debtor, if he had not made himself subject to the power of another.

TITLE XII.

NEW SPECIES OF SUCCESSION.

A NEW species of succession hath taken its rise from the constitution of Marcus Aurelius. For, if those slaves, to whom freedom hath been bequeathed, are desirous, for the sake of obtaining it, that the inheritance, which hath not been accepted by the written heir, should be adjudged for their benefit, they shall obtain their request.

Rescript of Marcus.

I. And to the same effect is the rescript of the emperor Marcus to Pompilius Rufus; the words of which are these: "If the estate of Virginus Valens, who by testament hath bequeathed to

certain persons their freedom, must necessarily be sold, and there is no successor *ab intestato*, then the magistrate, who has the cognizance of these affairs, shall upon application hear the merits of your cause, that, for the sake of preserving the liberty of those to whom it was given, either directly or in trust, the estate of the deceased may be adjudged to you, on condition, that you give good security to the creditors, to pay them the whole of their just demands. And all those to whom freedom was directly given, shall then become free, as if the inheritance had been entered upon by the written heir; but those, whom the heir was ordered to manumit, shall obtain their freedom from you only. And, if you are not willing that the goods of the deceased should be adjudged to you on any other condition, than that even they, who received their liberty directly by testament, shall also become your freedmen, we then order, that your will shall be complied with, if the persons agree to it who are to receive their freedom. And, lest the use and emolument of this our rescript should be frustrated by any other means, be it known to the officers of our revenue, that, whenever our exchequer lays claim to the estate of a deceased person, the cause of liberty is to be preferred to any pecuniary advantage; and that the estate shall be so seized, as to preserve the freedom of those who could otherwise have obtained it; and this in as full a manner, as if the inheritance had been entered upon by the testamentary heir."

Use of this Rescript.

II. The contents of this rescript are calculated not only in favor of liberty, but also for the benefit of deceased persons, lest their effects should be seized and sold by their creditors: for it is certain, that, when goods are adjudged to a particular man, for the preservation of liberty, a sale by creditors can never take effect: for he to whom the goods are adjudged is the protector of the deceased, and must always be a person who can give security for the full payment of creditors.

Its Application.

III. This rescript takes place, whenever freedom is conferred by testament. But, when a master dies intestate; having bequeathed freedom to his slaves by codicil, and his inheritance is not entered upon, what will then be the consequence? We answer, that the favour of the rescript shall extend to this case; but it is most certainly not to be doubted, that, if a master dies testate, and by codicil bequeaths freedom, the rescript shall be of full force,

IV. The words of the rescript shew, that it is then in force, when there is absolutely no successor *ab intestato*. It therefore follows, that, as long as it remains doubtful, whether there is or is not a successor, the constitution shall not take place: but, when once it is certain that no one will enter upon the succession, the ordinance shall then have its effect.

V. But, if he who has a right to be restored *in integrum* (as a minor, for example) should delay to take upon him the inheritance of his father, it may then be asked, whether, notwithstanding this right of being restored, the constitution shall take place, and an adjudication of the goods pass to a stranger, or one of the slaves? And again, it may be demanded, what will be the consequence, if, after an adjudication has been made for the sake of liberty, the heir should be restored *in integrum*? We answer, that freedom, when once obtained, shall not afterwards be revoked.

VI. This constitution was made for the protection of liberty; and therefore, when freedom is not given, the constitution has no effect. Suppose then, that a master hath given freedom to his slaves either *inter vivos* or *mortis causa*, and that they, to prevent the creditors from complaining that this was done to defraud them, should petition, that the estate of the deceased may be adjudged to them, are these persons to be heard? We answer, that we incline to grant their request, although in this case the letter of the constitution is deficient.

VII. But perceiving that the rescript was deficient in many respects, we enacted a most express constitution, containing many cases which explain the rights of succession in the fullest manner; of which every person who reads that constitution will be sensible.

TITLE XIII.

CLAUDIAN DECREE.

THERE were many other kinds of universal successions before that, which we treated of in the foregoing title; as the *bonorum emptio*, which was first introduced, that the estates of debtors might be sold; but this was accompanied by many intricate and tedious proceedings; it continued nevertheless as long as the ordinary judgments were in practice; but, as soon as the extraordinary judgments were made use of, the solemn *emptio bonorum* ceased at the same time with the ordinary judgments. And creditors can now possess themselves of the goods of their debtors and dispose of them, as they think most proper, by the decree of a judge. But these points are treated of more perfectly and at

large in the books of our digests. There was also, by virtue of the Claudian decree, another universal acquisition called *miserabilis*: for example, if a free-woman had debased herself by being enamoured of a slave, she lost her freedom by the before named decree, and, together with her freedom, her estate and substance. But, it being our opinion, that this part of the decree was unworthy of our reign, and ought therefore to be expunged from our laws, we have not permitted it to be inserted in the digests.

TITLE XIV.

OF OBLIGATIONS.

LET us now pass to obligations. An obligation is the chain of the law, by which we are necessarily bound so make some payment, according to the laws of our country.

I. Obligations are primarily divided into two kinds, *civil* and *prætorian*. *Civil* obligations are those, which are constituted by the laws, or by any species of the civil law. *Prætorian* obligations are those, which the prætor hath appointed by his authority; and these are also called *honorary*.

II. The second or subsequent division of obligations contains four species; for some obligations arise by *contract*, others by *quasi-contract*; some by *malefeasance*, and others by *quasi-malefeasance*. We must first treat of those obligations, which arise from a *contract*; and of these there are also four kinds: for obligations are contracted by the thing itself, by word of mouth, by writing, or by the mere consent of parties. Let us now take a separate view of each of these methods of contracting.

TITLE XV.

OF THE DIFFERENT MODES OF OBLIGATION.

Of Loan.

AN obligation is contracted by the thing itself; that is, by the delivery of it, as a loan or *mutuum*: and any particular thing, which consists of weight, number, or measure, as wine, oil, corn, coin, brass, silver, gold, may be delivered as a *mutuum*; and these substances, when so delivered, become in specie the absolute property of the receiver: and, since the very identical things lent cannot be restored, but others of the same nature and quality must be paid in lieu of them, this loan is therefore called a *mutuum*; for, in this case *I so give, that what is mine may become yours, ut ex meo tuum fiat*. From this contract arises that action, which is called *certi conductio*.

Of erroneous Payment.

I. He also, who hath received what was not due to him, it being paid or delivered by mistake, is bound by the thing received, so that an action of condiction lies against him for the recovery of the thing, at the suit of him, who paid or delivered it erroneously. And this action may be brought against the receiver in these words, *si apparet, cum dare oportere*; in the same manner, as if he had accepted the thing delivered, as a *mutuum*. And hence it is, that a pupil, when a payment of any thing not due hath been made to him without the authority of his *tutor*, is not subject to the action called *condictio indebiti*; because he is not subject to an action on account of the delivery of the thing, as a *mutuum*. And yet this species of obligation does not seem to proceed from a contract; since he, who pays with an intention to satisfy his debts, appears more willing to dissolve, than to make, a contract.

Of Commodation.

II. He also, to whom the use of any particular thing is granted or *commodated*, is bound by the delivery of the thing, and is subject to an action called *commodataria*. But such person widely differs from him, who hath received a *mutuum*: for a *commodatum*, or thing lent, is not delivered, to the intent that it should become the property of the receiver; and therefore he is bound to restore the identical thing, which he hath received. There is also another difference; for he, who hath accepted a *mutuum*, is not freed from his obligation, if even by any accident, as by the fall of an edifice, fire, shipwreck, thieves, or the incursions of an enemy, he hath lost what he hath received: but he, who hath received a *commodatum*, or a thing lent for his use only, is indeed commanded to employ his utmost diligence in keeping and preserving it; (and it will not suffice, that he hath taken the same care of it, which he was accustomed to take of his own property, if it appears, that a more diligent man might have preserved it;) yet, if it is evident, that the loss of it was occasioned by a superior force, or some extraordinary accident, and not by any fault, he is then not obliged to make good the loss; but, if a man by choice will travel with what he has received as a *commodatum* or loan, and should lose it by shipwreck, or by the incursion of enemies, or robbers, it is not to be doubted, but that he is bound to make restitution, or to pay an equivalent. A thing is properly said to be lent or *commodated*, when one man permits another to enjoy the use of it, and receives nothing by way of hire: but, if a price for hire is paid, the thing is *let*, and not *lent*; for a *commodatum*, or loan, must be gratuitous.

Of a Deposit.

III. Any person, who is entrusted with a deposit, is bound by the delivery of the thing, and is subject to an action of deposit, because he is under an obligation of making restitution of that very thing, which he received. But a depositary is only thus answerable on account of fraud; for where a fault only can be proved against him, such as negligence, he is under no obligation; and he is therefore secure, if the thing deposited is stolen from him, even although it was carelessly kept. For he, who commits his goods to the care of a negligent friend, should impute the loss of them, not to his friend, but to his own facility and want of caution.

Of a Pledge.

IV. A creditor also, who hath received a pledge, is bound by the delivery of it; for he is obliged to restore the very thing, which he hath received, by the action called *pigneratitia*. But, inasmuch as a pledge is given for the mutual service of both debtor and creditor, (of the debtor, that he may obtain the money the more easily, and of the creditor, that the repayment may be the better secured,) it will suffice, if the creditor shall appear to have used an exact diligence in keeping the thing pledged: for, if such diligence appears to have been used, and the pledge was lost by mere accident, the law secures the creditor, as to the loss of the thing pledged, and he is by no means impeded to sue his debt.

TITLE XVI.

OF OBLIGATION BY WORDS.

AN obligation in words is made by question and answer, when we stipulate, that any thing shall be given or done; and from hence arise two actions, viz. the action called *condictio certi*, when the stipulation is certain; and the action called *condictio ex stipulatu*, when the stipulation is uncertain. This obligation is called a stipulation, because whatever was firm was termed *stipulum* by the ancients; the word *stipulum* being probably derived from *stipes*, denoting the trunk of a tree.

Of the Words of Stipulation.

I. The following words were formerly used in all verbal obligations.

Spondes? Spondeo.

Promittis? Promitto.

Fide-promittis? Fide-promitto.

Fide-jubes? Fide-jubeo.

Dabis? Dabo.

Facies? Faciam.

And it is not material, whether the stipulation is conceived in Latin, Greek, or any other language, if the stipulating parties understand it: neither is it necessary, that the same language should be used by each person; for it is sufficient, if a congruent and pertinent answer is made to each question. It is moreover certain, that two Greeks may contract in Latin. Anciently indeed it was necessary to use those solemn words before recited; but the constitution of the Emperor *Leo* was afterwards enacted, which takes away this verbal solemnity, and requires only the apprehension and consent of each party, expressed in any form of words.

Of Pure Stipulation.

II. Every stipulation is made to be performed simply, or at a day certain, or conditionally. A stipulation is made to be performed simply, when a man says do you promise to pay me five Aurei? and, in this case, the money may be instantly demanded. A stipulation is made to be performed at a day certain, when the day is added, on which the money is to be paid; as when a man says "do you promise to pay me ten Aurei on the first of March?" but note, that what we stipulate to pay at a day certain, though it becomes immediately due, yet it cannot be demanded before the day comes; nor can it even then be sued; for the whole day must be allowed for payment; because it can never be certain, that there hath been a failure of payment on the day promised, until that day is quite expired.

III. But, if a man thus stipulates; viz. do you promise to give me ten Aurei annually, as long as I live? the obligation is understood to be made purely or simply, and becomes perpetual so as to bind the heirs of the obligor; for an obligation cannot continue due for a time certain only: yet, if the heir of the stipulator demands payment, he shall be barred by an exception of agreement.

Of Conditional Stipulation.

IV. A stipulation is conditional, when an obligation is referred to an accident, and depends upon some thing to be done or not done, to happen or not to happen, before the stipulation can take effect: for instance, if a man stipulates thus; "do you promise to pay me five Aurei, if Titius is made a consul?" or thus, "do you promise to pay me five Aurei, if I do not ascend the capitol?" which last stipulation is in effect the same, as if he had stipulated, that five Aurei should be paid to him at the time of his death.

It is to be observed, that, in every conditional stipulation, there is only an hope, that the thing stipulated will become due; and this hope a man transmits to his heirs, if he dies before the event of the condition.

Of Place.

V. Even places are often inserted in a stipulation; as for example, “do you promise to give me such a particular thing at Carthage?” and this stipulation, though it appears to be made simply, yet in reality carries with it a space of time, which the obligor may make use of to inable himself to pay the money promised at Carthage. And therefore, if a man at Rome should stipulate in these words, “do you promise to pay me a sum of money this day at Carthage?” the stipulation would be null, because the performance of it would be impossible.

Of Conditions as respects Time.

VI. Conditions, which relate to time present or past, either instantly annul an obligation, or instantly inforce it; for example, if a man should thus stipulate, “do you promise me the payment of a sum of money, if Titius hath ever been a consul?” or thus, “if Mævius is now living?” if these things are not so, that is, if Titius hath never been a consul, and Mævius is not now living, the stipulation is void; and if they are so, that is, if Titius hath been a consul, and Mævius is actually living, then the stipulation is good and may be inforced; for events, which in themselves are certain, delay not the performance of an obligation, although to us they are not certain.

The Subjects of Stipulation.

VII. Not only things, as a field, a slave, or a book, but also acts, may be the subject of stipulations; as when we stipulate, that something shall, or shall not be done. And, in these stipulations, it will be right to subjoin a penalty, lest the value of the stipulation should be uncertain, and the demandant should therefore be forced to prove how far he is interested in it. And therefore, if a man stipulates, that something shall be done, a penalty ought to be thus added; “do you not promise to pay me ten AUREI, as a penalty, if the act stipulated is not performed?” But, if it is agreed in the same obligation, that some things shall be done, and that others shall not be done, then ought some such clause, as the following, to be added; “do you promise to pay me ten AUREI, as a penalty, if any thing is done contrary to agreement; or if any thing is not done according to our agreement?”

TITLE XVII.

OF THE PARTIES STIPULATING.

TWO or more persons may stipulate, and two or more may become obligors. The stipulating parties are bound, if, after all questions have been asked, the obligor answers, "I promise;" as when, for example, the obligor thus answers two persons separately stipulating, "I promise to pay each of you." For, if he first promises Titius, and afterwards promises another, who interrogates him, there will then be two obligations, and not two stipulators to one obligation. Two or more become obligors, if, after they have been thus interrogated, "MÆVIUS, do you promise to pay us ten AUREI? and, SEIUS, do you promise to pay us the same ten AUREI?" they each of them answer separately, "I do promise."

I. By these stipulations and obligations the whole sum stipulated becomes due to every person stipulating, and every obligor is bound for the payment of the whole. But as one and the same thing is due by each obligation, therefore any one of the stipulators by receiving the debt, and any one of the obligors by paying it, discharges the obligation of the rest, and frees all parties.

II. Where there are two obligors, the one may bind himself purely and simply, and the other may oblige himself only to make payment on a day certain, or upon condition: but neither the day certain, nor the condition, will secure the person, who is simply bound, from being sued for the payment of the whole.

TITLE XVIII.

OF THE STIPULATIONS OF SLAVES.

A SLAVE obtains the liberty of stipulating from the person of his master; but in many instances the inheritance represents the person of a master deceased: and therefore whatever an hereditary slave stipulates for, before the inheritance is entered upon, he acquires it for the inheritance; and of course for him, who afterwards becomes the heir.

Of the effect of Stipulation by a Slave.

I. A slave, let him stipulate how he will, for his master, for himself, for a fellow slave, or generally without naming any person, always acquires for his master. And the same obtains among children, who are under the power of their father, in regard to those things, which they can acquire for him.

Of the Stipulation of an Act.

II. But, when a fact or thing to be done is contained in a stipulation, the person of the stipulator is solely regarded; so that, if even a slave stipulates, that he shall be permitted to pass through a field, and to drive beasts or a carriage through it, it is not the master, but the slave only, who is to be permitted to pass.

Of a Slave in common.

III. If a slave, who is in common to several masters, stipulates, he acquires a share for each master according to the proportion, which each has in the property of him. But, if such slave should stipulate at the command of any particular master, or in his name, the thing stipulated will be acquired solely for that master. And whatever a slave in common to two masters stipulates for, if part cannot be acquired for one master, the whole shall be acquired for the other; as when the thing stipulated already belongs to one of the two.

TITLE XIX.

OF THE DIVISION OF STIPULATION.

SOME stipulations are judicial, others prætorian, others conventional; and others common; that is, both prætorian and judicial.

Of judicial Stipulations.

I. The judicial are those which proceed merely from the office of the judge; as when security is ordered to be given against fraud, or for pursuing a slave, who hath fled, or for paying the price of him.

Of Prætorian Stipulations.

II. The prætorian stipulations are those, which proceed from the mere office of the prætor; as when security is ordered to be given *pro damno infecto*; that is, on account of damage not yet done, but likely to happen; and for the payment of legacies. And note, that under prætorian stipulations we comprehend the Edilitian; for these proceed from the jurisdiction of the prætor.

Of Conventional Stipulation

III. Conventional stipulations are those, which are made by the agreement of parties; that is, neither by order of a judge or prætor, but by the consent of the persons contracting; and of these stipulations there are as many kinds, as of things to be contracted for.

Of Common.

IV. Common stipulations are those, which are ordered for the security of the effects of a pupil, (for the prætor ordains a caution to be given on this account, and sometimes a judge decrees it, when there is an absolute necessity,) or for the ratification of a thing done in another's name,

TITLE XX.

OF INEFFECTIVE STIPULATIONS.

EVERY thing, of which we have the property, may be brought into stipulation, whether it is moveable or immoveable.

Of what does not exist.

I. But, if a man hath stipulated, that a thing shall be given, which does not, or can not exist, as for instance, that *Stichus*, the slave, who is dead, but is thought to be living, or that a Centaur, who cannot exist, should be given to him, the stipulation is of no force.

Of Things not in Commerce.

II. And the law is the same, if a thing sacred, which was thought to be not so, is brought into stipulation; or if a man stipulates for a thing of constant public use, as a forum or a theatre; or for a free person, who was thought to be bond; or for a thing, which he cannot acquire; or for some thing, which is already his own: nor shall any such stipulation continue in suspense, because a thing public may become private, a freeman may turn slave, a stipulator may become capable of acquiring, or because what now belongs to the stipulator may cease to be his; but every such stipulation shall be instantly void. And, on the contrary, although a thing may properly be brought into stipulation at first, yet, if it afterwards falls under the class of any of the things before mentioned without the fault of the obligor, the stipulation is extinguished. And such a stipulation, as the following shall never be valid:—for instance, “do you promise to give me *Lucius Titius*, when he shall become a slave?” for those things, which in their natures are exempt from our dominion, are by no means to be brought into obligation.

Of an engagement for others.

III. If a man promises, that another shall give or do something, such promissor shall not be bound; as if a man should promise, “that *Titius* shall pay five *Aurei*.” but, if he promises, that he will cause *Titius* to pay five *Aurei*, his promise shall be binding.

Of Payment by another.

IV. If a man stipulates for any other, than for him, to whom he is subject, such stipulation is a void act: but nevertheless a payment of a thing promised may be made to a stranger; as if a man should thus stipulate, *do you promise to make payment to me, or to Seius?* for, when the obligation is to the stipulator, the payment may well be made to *Seius*, though against his will: and this is allowed in favor of the debtor, that he may be legally

freed from his debt: and the stipulator, if there is occasion, may have an action of mandate against *Seius*. And, if a man should stipulate, that ten *Aurei* shall be paid to him and to another, not under his power, the stipulation would be good: yet it hath been a doubt, whether the whole sum due would be due to the stipulator, or only a moiety; and it hath been resolved, that the stipulator in this case acquires a moiety only. But, if you stipulate for another, who is subject to your power, you acquire for yourself; for your own words are reputed your son's, and your son's words are reputed yours, in regard to all those things, which can possibly be acquired for you.

Of Interrogation and Response.

V. A stipulation is void, if the party interrogated does not answer pertinently to the demand made; as when a person stipulates, that ten *aurei* shall be paid him, and you answer five; or, *vice versa*, if he stipulates for five, and you answer, *I promise ten*. A stipulation is also void, if a man stipulates simply, and you promise conditionally; or, on the contrary, if he stipulates conditionally, and you answer purely, and in express terms; that is, if, when a man is stipulating conditionally or at a day certain, you answer him thus; *I promise you payment on this present day*. But, if you answer only, *I promise*, you seem in brief speech to agree to his *day* or *condition*. For it is not necessary, that in the answer every word should be repeated, which the stipulator expressed.

Of Stipulations by those under Power.

VI. A stipulation is also void, if you stipulate with him, who is in subjection to your power, or if he stipulates with you. For a slave is not only incapable of entering into an obligation with his master, but is also incapable of binding himself to any other person. But the son of a family can enter into an obligation with any other person, except his father.

Of the Deaf.

VII. It is evident, that a dumb man can neither stipulate, nor promise: and the same law is received in regard to deaf persons; for he, who stipulates, ought to hear the words of the obligor; and he, who promises, the words of the stipulator. But we speak not of him, who hears with difficulty, but of him, who has no hearing.

Of the Insane.

VIII. A madman can transact no business, because he understands not what he does.

Of Pupils.

IX. A pupil is capable of transacting any business, if his tutor consents, where his authority is necessary; as it certainly is, when the pupil would bind himself: but a pupil can stipulate or cause others to be bound to him, without the authority of his tutor. What we have said of pupils must be understood of those, who have some understanding; for an infant, or one next to an infant, differs but little from a person out of his senses: for pupils of such an age have no understanding: but a more favorable interpretation is given to the law in regard to those, who are but little removed from infancy, whenever their own utility is concerned; so that they are then allowed the same rights, as those, who are near the age of puberty. But a son, who is under the power of his father, and within the age of puberty, cannot bind himself, even although his father consents, and authorises the transaction.

Of impossible Conditions.

X. If an impossible condition is added to an obligation, the stipulation is null; and that condition is reckoned impossible, of which nature forbids the event: as, for example, if a man should say, *do you promise me ten Aurei, if I touch the heavens with my finger?* but suppose a stipulation to be thus made; “do you promise me payment, if I do not touch the sky with my finger?” such a stipulation would be understood to cause a simple obligation, the performance of which might be instantly demanded.

Of Absence.

XI. A verbal obligation, made between absent persons, is also void. But, when this doctrine afforded matter of strife to contentious men, alleging after some time past, that either they or the other parties were not present, we issued our constitution, addressed as a rescript to the advocates of *Cæsarea*, which effectually provided for the speedy determination of such suits: and by this we have ordained, that full credit shall be given to those written acts, or instruments, which declare, that the contracting parties were present, unless the party, who alleges absence, makes it evident by the most manifest proofs either in writing or by witnesses, that either he, or his adversary, was in some other place, during the whole day, in which the instrument was made.

Of Stipulation as respects Death.

XII. A man could formerly no more stipulate, that a thing should be given him after his own death, than he could stipulate, that a thing should be given him after the death of the obligor. Neither could any person under the power of another stipulate, that any thing should be given him after his death, because such

person would appear to speak the words of his father or master. And, if a man had stipulated in this manner, "do you promise to give me five aurei the day before I die?" or "the day before you die?" the stipulation was also invalid. But since all stipulations, as we have already said, take their rise and force from the consent of the contracting parties, we have thought it proper to introduce a necessary emendation in this respect, so that, whether it is stipulated that a thing should be given after, or immediately before, the death either of the stipulator, or the obligor, the stipulation shall be good.

Of preposterous Stipulation.

XIII. Also, if a man had stipulated in these words, "do you promise me a sum of money to-day, if a certain ship arrives to-morrow from Asia?" the stipulation would have been invalid, because preposterously conceived. But, since the emperor Leo, of renowned memory, was of opinion, that such stipulations ought not to be rejected in regard to marriage portions, it hath pleased us also to give a fuller force to this doctrine by ordaining, that every stipulation of like import shall hold good, not only in marriage portions, but likewise in all other contracts.

Of Stipulation at the Time of Death.

XIV. If a stipulation had been conceived in the following words; "do you promise to give me ten aurei at the time when I shall die?" or thus, "at the time when you shall die?" it was good by antient law, and is now valid.

XV. We may also legally stipulate that a thing shall be given, after the death of a third person.

Of written Promise.

XVI. If it is written in an act or instrument, properly attested, that a man hath entered into an obligation by promise, it will be always presumed, that the promise was in answer to a precedent interrogation, and that every thing was done regularly.

XVII. When many things are comprehended in one stipulation, a man binds himself to give them all, if he answers simply, "I promise." But, if he promises to give one, or some of the things stipulated, an obligation is contracted only in respect to those things which he promised to give. For, where there are many stipulations, it may happen, that only one, or some of them may be made perfect by a separate answer; and strictly we ought to stipulate for every thing severally, and to answer severally.

XVIII. No man can stipulate for another, as we have already observed; for stipulations and obligations have been invented, that every person may acquire for himself whatever may be of

advantage to him; and, if this is given to another, the stipulator has no interest. But, if a man would effectually contract for another, he should stipulate, that unless the covenants of his stipulation are performed, the obligor should be subject to a penalty, payable to him, who otherwise would receive no advantage from the obligation: for, when a penalty is stipulated, the advantage or interest of the stipulator is not regarded, but the quantity of the penalty is the only thing considered. And therefore, if a man should stipulate, that a certain thing should be given to Titius, it will not avail; but, if to the stipulation he adds a penalty, as thus, "do you promise to give me ten aurei, if you do not give the thing stipulated to Titius?" the stipulation of the penalty will take place, if the obligation is not performed.

XIX. But, if any man stipulates for the benefit of another, when he himself also receives an advantage from it, the stipulation is valid. Thus if he, who hath begun to administer the tutelage of a pupil, should afterwards cede or give up the administration to his co-tutor, and stipulate for the security of the estate of his pupil, in this case, (inasmuch as such a stipulation is for the interest of the stipulator, who would be obliged to answer all damages to the pupil, if the co-tutor did not justly administer the pupillary trust,) the obligation would bind. And upon the same principle, if a man stipulates, that a thing shall be given to his proctor or attorney, the stipulation shall prevail. And a stipulation is also good, which is made by a debtor for the use of his creditor, because it is the interest of the debtor, either that the penalty, upon which he borrowed money of his creditor, should not be exacted from him, or that his goods, which are hypothecated with his creditor, should not be sold.

XX. On the contrary, he who promises, that another, namely Titius, shall perform some particular act, is not bound by such promise, unless he makes himself subject to a penalty, if the act is not performed by Titius.

XXI. No man can legally stipulate, that a thing shall be given him, when it shall become his own.

XXII. If the stipulator stipulates in regard to one thing, and the obligor promises in relation to another, no obligation is contracted; and the parties are as much at liberty, as if no answer had been made to the interrogation: and this would be the case, if a man should stipulate, that Stichus should be given to him, and the obligor should intend to give Pamphilus, upon a thorough persuasion, that Pamphilus is called Stichus.

XXIII. A promise made for a dishonest purpose, as, for example, to commit homicide or sacrilege, is not binding.

XXIV. If a stipulation hath been entered into upon condition, and the stipulator should die pending the event of it, his heir will be entitled to an action against the obligor, if the event afterwards happens. And, if the obligor should die before the condition happens, his heir may be sued by the *stipulator*.

XXV. Whoever stipulates, that a thing shall be given to him this year or this month, cannot legally sue the obligor, till the whole year or month is elapsed. And, if a man stipulates, that a piece of ground, or slave, shall be given to him, he cannot instantly sue the obligor, but must wait, till such a space of time hath past, in which a delivery might reasonably have been made.

TITLE XXI.

OF SURETIES.

IT frequently happens, that others bind themselves for him who promises. These bondsmen or sureties are called *fide-jussors*, and are generally required by creditors for their greater security.

Where required.

I. *Fide-jussors* may be received in all obligations, whether contracted by the delivery of the thing itself, by words, by writing, or the mere consent of parties: nor is it material, whether the obligation is civil or natural; for a man may intervene, and oblige himself, as a *fide-jussor* or surety, even on the behalf of a slave; and this may be done, whether the person who accepts the *fide-jussor* is a stranger or the master of the slave, when the thing due is a natural debt or obligation.

Of the Heir.

II. A *fide-jussor* is not only bound himself, but by his death transmits the obligation to his heir.

III. A *fide-jussor* may be accepted either before or after an obligation is entered into.

Where there are more Fide-Jussors.

IV. Where there are *fide-jussors* or sureties, let them be ever so numerous, they are each bound by law *in solidum*, i. e. for the whole debt; and the creditor is at liberty to chuse from whom he will demand it. But, by a rescript of the emperor *Adrian*, a creditor may be obliged to demand separately from every *fide-jussor*, who is solvent at the time of contestation of suit, his share of the debt *pro rata*; and, if any of the *fide-jussors*, at the time of

the contestation of the suit, is not solvent, the burden falls upon the rest. But, if a creditor obtains his whole demand from one of the *fide-jussors*, the whole loss shall be his, if the party principal, for whom he was bound, is insolvent: for such *fide-jussor* can impute this loss only to himself, since he might have called to his aid the rescript of the emperor *Adrian*, and have prayed, that an action should not have been given against him, obliging him to the payment of more than his share of the debt, as a surety.

The Duty of the Fide-Jussor.

V. *Fide-jussors* ought not to be bound in a greater sum than the debtor owes, for whom they are bound; for their obligation is an accession to the principal obligation; and an accessory debt cannot be greater than the principal, though it may be less. Therefore, if the principal obligor promises ten *aurei*, the *fide-jussor* may be bound in five; but the *fide-jussor* cannot be bound in ten *aurei*, when the principal obligor is bound in only five. Also, when the obligor promises simply, the surety may promise conditionally; but, if the surety is bound simply, when the principal debtor is bound only conditionally, the obligation is void. And the terms *greater* and *less* take place not only in quantity but also in time; for an obligation to give or deliver a thing instantly is greater, than an obligation to give or deliver it after a time.

Of the Action of a Fide-Jussor.

VI. If a *fide-jussor* hath been obliged to pay money for the person for whom he was bound, the *fide-jussor* may have an action of mandate against him for the recovery of the sum paid.

VII. A *fide-jussor* may thus bind himself even in greek; *τη ἐμῇ πίστει κέλευω, λεγο*, that is, *I answer or speak solemnly upon my faith*. But, if a man should use the words *θερο* or *βουλομαι*, *I am willing*, or *φημι*, *I promise*, any of these would serve the same purpose, as *κέλευω* or *λεγο*.

VIII. We must here observe, that it is a general rule in all *fide-jussorial* stipulations, that whatever is alleged in writing to have been done, is to be presumed to have been actually done: and therefore, if a man in writing confesses, that he hath made himself a *fide-jussor*, it is also presumed, that all the necessary forms were observed.

TITLE XXII.

OF WRITTEN OBLIGATIONS.

A species of written obligation anciently prevailed, which was effected by registering the names of the contractors; but these contracts, which were called *nomina*, are not now in use. But, if a man confesses in writing, that he owes, what in reality he never received, he cannot, when an action is brought against him for this confessed debt, oppose an exception to it, setting forth, *that the money was never paid*; if much time has elapsed after the date of the obligation, and the limitation of this time has frequently been prescribed by the constitutions. Hence it is, at this day, that a man must be bound by his written note, if he cannot legally bring an exception; and from this written contract arises an action called a *condiction*, when no stipulation or verbal obligation can be proved. And formerly the imperial constitutions gave a large space of time, not less than five years, in which any man was allowed to bring an exception, *pecunia non numerata*, i. e. an exception of money not paid. But we, for the safety of creditors in general, have greatly contracted this allowance of time, by our imperial constitution, which ordains, that an exception shall not be brought after the expiration of two years.

TITLE XXIII.

OF OBLIGATIONS BY CONSENT.

OBLIGATIONS are made by consent in *buying, selling, letting, hiring, societies or partnerships, and mandates*. And an obligation, entered into by any of those means, is said to be contracted by consent; because neither writing nor the presence of parties is absolutely requisite. Neither is it necessary, that any thing should be given or delivered, to the intent, that the obligation should take effect; for it suffices, that the contractors consent; and, for this reason, these contracts may be entered into by absent parties, either by letters or messengers. And note also, that, in these contracts by consent, the parties are bound to each other mutually to do what is just and right; but in verbal obligations one party stipulates and the other promises.

TITLE XXIV.

OF BUYING AND SELLING.

THE contract of buying and selling is made perfect, as soon as the price of the thing to be sold is agreed upon, although it is not

paid; nor even an earnest of it given; for whatever is taken as earnest, does not constitute a contract, but serves only for a proof of it. And this is the law in regard to those bargains and sales, which are not in writing; for in such we have made no innovation. But, where there is a written contract, we have ordained, that a bargain and sale shall not become absolute, unless the instruments of sale are written by the contracting parties, or at least signed by them, if written by others. And, when the instruments of sale are drawn by a public notary, the contract is not binding, if any formality hath been omitted, or if the instruments are not complete in all their parts: for, if any thing is omitted, either the buyer or seller may recede from his agreement without penalty, if nothing has been given in the name of earnest. But, if earnest has once been given, then the buyer, whether the contract was written or unwritten, if he refuses to fulfill it, loses his earnest, and the seller, if he refuses, is compellable to restore double the value of the earnest, although no agreement of this kind was expressly made. But it is always necessary, that the price of the thing to be sold should be fixed; for, till then, there can be no *emptio-venditio*, i. e. buying and selling.

Of a certain or uncertain Price.

I. The price, as we have before observed, ought to be certain. And formerly, when it was covenanted, that a thing should be sold, *at whatever price Titius should value it*, the ancient lawyers much doubted, whether such a sale was good, or not good. But we have ordained by our decision, that as often as it is agreed, that a thing shall be sold, at a price to be fixed by a third person, such contract shall be valid under that condition; so that, if the nominee, or arbitrator, determines the price, it ought instantly to be paid according to the determination, and the thing sold ought to be delivered, and the sale perfected; for otherwise the buyer may have an action *ex empto*, i. e. on account of the thing bought; and the seller may have an action *ex vendito*, i. e. on account of the thing sold. But, if the arbitrator either refuses, or is unable to determine the price, the sale is null. And, as it hath been our pleasure, that this shall be the law in relation to sales, it is but right, that the same law should prevail, in locations and conductions; i. e. in letting and hiring.

Difference of Buying and Exchange.

II. The price of any thing bought should consist of cash or money told; for it hath been much doubted, whether the price of goods can be said to be paid, if any other thing is given for them than money; as, for instance, whether a slave, a piece of

ground, or a robe, can be paid, as the price of a thing. The lawyers *Sabinus* and *Cassius* thought, that a price might consist of any thing, and from hence it has been commonly said, that *emptio-venditio*, or buying and selling, is contracted by commutation, and that this species of buying and selling is the most ancient. The advocates for this side of the question quote *Homer*, who relates in the following lines, that a part of the Grecian army bought wine by giving other things in exchange for it.

Wine the rest purchas'd at their proper cost, with our else to
 And well the plenteous freight supplied the host: nor was it
 Each in exchange proportion'd treasures gave, complete in a
 Some brass or iron, some an ox or slave. *Pope.*

But the lawyers of another sect maintained the contrary, and declared, that commutation was one thing, and *emptio-venditio* another; for otherwise said they, in the commutation of any two things it can never appear, which has been sold, and which has been given, as the price of the thing sold; and it is contrary to reason, that each should appear to have been sold, and that each also should appear to have been given, as the price of the other. And the opinion of *Proculus*, who maintained, that commutation is a species of contract, separate from vendition, hath deservedly prevailed: for he is supported by other verses from *Homer*, and has enforced his opinion with the strongest arguments; and this is the doctrine, which our predecessors, the emperors *Dioclesian* and *Maximian*, have admitted, as it appears more at large in our digests.

Of the Risque of the Thing sold.

III. When emption and vendition are once contracted, (and this, as we have observed, is effected, as soon as the price is agreed upon, when there is no covenant in writing,) then the buyer is liable to the risque of the loss of the thing sold, or of the damage, which may happen to it, although it hath not been delivered to him. And therefore, if a slave, thus sold, should die, or receive any hurt, or if a building, or part of it, should be consumed by fire, or if the lands sold, or any portion of them should be washed away by a torrent, or be made worse by an inundation, or a storm, which may destroy the trees, the loss in all these cases must be sustained by the buyer, who is obliged to pay the price agreed upon, although he never had possession of the thing; for whatever the accident is, if it happens neither by the fraud, nor the fault of the seller, he is secure. But on the other hand, if, after the sale, any accession is made to the lands by alluvion or otherwise, this increase becomes the gain of the buyer; for it is

just, that he should receive the profit, who must have sustained the loss. But, if a slave, who is sold, either runs away or is stolen, and neither fraud nor negligence can be imputed to the seller, it must be inquired, whether the seller undertook the safe custody of the slave, till delivery should be made; if he did, he is answerable for the accident; if he did not, he is secure. The same law takes place in regard to all other animals and things. But when these accidents happen, and the buyer is to sustain the loss, the seller is obliged to make over his right of vindication and condition; that is, he must transfer to the buyer all right of action, whether real or personal, if necessary; for he who has not delivered the thing sold, is still considered as the proprietor of it. Actions also of theft, or damage done, must be transferred by the seller to the buyer, when the thing sold is stolen, or damaged, before delivery.

Of Conditional Buying.

IV. A sale may be contracted conditionally, as well as purely: for instance, when the person, who is inclined to sell, speaks thus; if within a certain time you shall approve of the slave Stichus, he shall be yours for so many aurei.

Of the Buying of a thing not in Commerce.

V. Whoever knowingly purchases a place sacred, or religious, or a public place, such as a forum or court of justice, he makes a void purchase. But, if a man should purchase any of the before-mentioned places, having taken them for profane or private, being imposed upon by the seller, then such purchaser, not being able to enjoy the possession of what he has bought, may have an action *ex empto* against the seller, and recover the damage suffered by the deceit. The same law also obtains, if any person, through error, should buy a freeman instead of a slave.

TITLE XXV.

OF LETTING AND HIRING.

LOCATION and conduction, i. e. letting and hiring, are nearly allied to emption and vendition, i. e. to buying and selling; and are governed by the same rules; for as emption and vendition are contracted as soon as the price of the thing is agreed upon, so location and conduction are contracted when the hire is once fixed by the parties. The locator, or person who lets, is entitled to an action, called *actio locati*, if he is aggrieved by the conductor or hirer; and the conductor may have an action called *actio conducti*, against the locator.

I. We are willing, that what we have before observed in regard to the sale of a thing, when the price is referred to a third

person, should also be understood to have been said of location and conduction, when the quantity of the hire is not agreed upon between the parties, but left to arbitration. And therefore, if a man sends his cloaths to a fuller to be scoured, or to a taylor to be mended, and does not previously agree upon any price, in this case location and conduction are not understood to be properly contracted: but an action may be brought by either party, *præscriptis verbis*, i. e. in words prescribed and adapted to the circumstances of the case.

In what Location and Conduction exist.

II. As it was formerly a question, whether emption and vendition could be contracted by an exchange of things, so it hath also been doubted, whether location and conduction can be said to exist, when one man lends another a particular thing for his use, and receives in return some other thing, of which he is also permitted to have the use; and it has been determined, that this exchange does not constitute location and conduction, but is a distinct species of contract: for example, if two neighbours have each of them an ox, and each agrees to lend his ox to the other alternately for ten days, to do the labours of the field, and the ox of the one dies in the possession of the other, in this case, he, who has lost his ox, can neither bring the action *locati* nor *conducti*, nor even the action *commodati*; for the ox was not lent gratuitously; but he may sue by virtue of an action called *præscriptis verbis*; i. e. by an action upon the case.

Of Emphyteusis.

III. The contract of buying and selling, and that of letting and hiring, are so nearly connected, that, in some cases, it has been difficult to distinguish the one from the other; as when lands have been demised to be enjoyed for ever, upon condition, that, if a certain yearly pension, or rent, is constantly paid to the proprietor, it shall not be in his power to take these lands from the tenant or his heirs, or from any other person, to whom such tenant or his heirs shall have sold them, given them gratuitously, or as a marriage portion, or otherwise disposed of them. But, when this contract, concerning which the ancient lawyers had great doubts, was by some thought to be an emption and vendition, and by others a location and conduction, the Zenonian law was enacted, which settled the proper nature of an emphyteusis, making it to be neither the one nor the other of the before-mentioned contracts, but declaring it to be supported by its own peculiar covenants, and ordaining, that whatever is agreed upon by the parties shall obtain and take place, as a contract; and

when there is no covenant, which declares upon whom the loss of the lands shall fall, that then, if the whole estate happens to be destroyed by a torrent, an earthquake, or any other means, the proprietor must be the sufferer: but, if a part only is destroyed, that the loss shall then be borne by the tenant; and this is the law in use.

IV. Also, if Titius, for example, should agree with a goldsmith to make a certain number of rings, of a particular size and weight, and to furnish the gold, for which Titius should promise him ten aurei, as the value both of the workmanship and the gold, it hath been a question, whether such a contract would be a buying and selling, or a letting and hiring. Cassius was of opinion, that it would be a buying and selling in regard to the matter, and a letting and hiring in regard to the work; but it is now settled, that, in this case, an emption and vendition would only be contracted. But, on the other hand, it is not to be doubted, that, if Titius should give his own gold, and agree to pay only for the workmanship, this contract would be a location and conduction.

Of the Obligations of the Hirer.

V. The conductor, or hirer, is not only obliged to observe strictly the covenants of the conduction, but is also bound in equity to perform whatever hath been omitted to be inserted. And whoever has given or promised hire for the use of cloaths, silver, horses, &c. is bound to take the same care of them as the most diligent master of a family would take of his own property. But, if the hirer does this, and yet loses the things hired by some fortuitous event, he shall not be answerable for the loss.

Of the Death of the Hirer.

VI. If the conductor, or hirer, dies before the time of the conduction is expired, his heir succeeds to his right, and is intitled to the thing hired, for the remainder of the term.

TITLE XXVI.

OF PARTNERSHIP.

Division of the Subject Matter.

IT is common for persons to enter either into a general partnership or society of all their goods, and this the greeks emphatically call, κοινωσια, i. e. communion; or into a particular partnership, which regards only some single species of commerce, as that of buying and selling slaves, oil, wine, or corn.

Of the Shares of Loss and Gain.

I. If no express agreement has been made by the partners concerning their shares of profit and loss; the loss must be equally borne, and the profit must be equally divided. But, if any particular agreement has been made, it must be observed; for it was never yet doubted, but that the covenant would be binding, if two persons should agree, that two shares of the profit and loss should belong to one partner, and that only the third part of both should belong to the other.

Of unequal Shares.

II. But it has been questioned, if *Titius* and *Seius* should covenant between themselves, that *Titius* should receive two parts of the profit and bear but a third of the loss, and that *Seius* should bear two parts of the loss, and receive but a third share of the profit, whether such an agreement would be binding? *Quintus Mutius* was of opinion, that such a covenant was contrary to the nature of partnership, and ought not therefore to be ratified; but *Servius Sulpicius*, whose opinion hath prevailed, thought otherwise, and for this reason; because the labour of some is so highly valuable, that it is but just, that they should be admitted into society upon the most advantageous conditions, for no man doubts, but that partnership may be entered into by two persons, when one of them only finds money, inasmuch as it often happens, that the work, and labour of the other, amounts to the value of it, and supplies its place. And also, contrary to the opinion of *Mutius*, it hath obtained as law, that a partner may by agreement take a share of the profit, and not be accountable for any part of the loss; for *Servius* thought, that this likewise might be done equitably: but it must be so understood, that, if profit accrues from one species of things and loss from another, only what remains, after the loss is compensated, shall be looked upon as profit.

Of Shares expressed.

III. It is also a settled point, that, if partners expressly mention their shares in one respect only, either solely in regard to gain, or solely in regard to loss, their shares of that, which is omitted, shall be the same as of that, which is mentioned.

How Partnership is dissolved.—Renunciation

IV. A partnership lasts as long as the partners persevere in their consent to continue such; and, if one of them renounces the partnership, the society is dissolved. But, if a man renounces with a fraudulent intent, and for no other end, but that he may

enjoy the sole benefit of some future fortune, which he expects, his renunciation will not avail: for, if a partner in common, as soon as he finds, that he has been appointed an heir, should renounce his partnership, that he may possess the inheritance exclusive of all others, he would nevertheless be compelled to divide the inheritance equally with his former partners; yet, if an inheritance, which he did not expect, should by accident fall to him after renunciation, the whole would be his own: but those, from whom a partner hath separated himself by renouncing, possess solely for themselves whatever they acquire, after the renunciation of that partner.

Of Death.

V. A partnership is also dissolved by the death of one of the partners: for he, who enters into partnership always chuses some certain known person to be his partner, upon whom he can depend. And, although a partnership is entered into by the consent of many, it is nevertheless dissolved by the death of one, although the rest survive; and this is the law, unless special covenants are made to the contrary at the time of forming the society.

The Termination of the Object.

VI. Also, if a partnership is entered into on account of some particular commerce, and an end is put to that commerce, the partnership is of course ended.

Of Confiscation.

VII. It is likewise manifest, that a partnership is dissolved by confiscation; to wit, if all the goods of a partner are confiscated; for when another (for example, the treasurer of the exchequer), succeeds in his place, he is reputed as civilly dead.

Of the Cession of Goods.

VIII. Also, if a man in partnership, being pressed by his debts, makes a cession or a surrender of his goods, and they are sold to satisfy either public or private demands, the partnership is dissolved. But, if the rest of the copartners should still desire to be in society either with or without this man, the first partnership would not continue, but a new one would commence.

Of Fraud and Negligence.

IX. It has been a question, whether a partner, like a depositary, is accountable for fraud only, or whether he is also accountable for his negligence? And it now prevails, that he is answerable for all the damages, which happen through his fault. And, if a man fails in having used the most exact diligence, such a failure is not comprehended under the term *culpa*, or fault: for a partner

is not liable to answer damages, if, in regard to the goods of the community, it appears, that he has used the same care and diligence towards them, which he has usually observed in keeping his own private property. And it is certain, that whoever chuses a negligent man for his partner, can lay the blame upon himself only and impute his misfortune to his own ill choice.

TITLE XXVII.

OF MANDATE.

A mandate is framed five ways; either when it is given solely for the benefit of the mandator; or partly for his benefit, and partly for that of the mandatary; or solely for the service of some third person; or partly for the profit of the mandator and partly for the service of a third person; or for the benefit of the mandator, and partly for the use of a third person. But, if a mandate is given solely for the sake of the mandatary, the mandate is useless: for no obligation can arise from it, nor of course any action.

When a Mandate is for the benefit of the Mandator.

I. A mandate is given solely for the benefit of the mandator, when he requires the mandatary to transact his business, to buy lands, or to become a surety for him.

Of the Mandatary.

II. A mandate is given partly for the benefit of the mandator, and partly for the benefit of the mandatary, if the mandator requires you to lend money upon interest to Titius, who would borrow it for the use of the mandator; or if, when you are upon the point of suing a man on account of a fide-jussory caution, or a suretyship, he should authorise you at his own risque to sue the principal debtor; or if he should empower you at his own hazard to stipulate for the sum, which he owes you, from some other person, whom he appoints.

A Mandate for the Use of a third Person.

III. A mandate is interposed only for the sake of a third person, when the mandator requires the mandatary to perform some office for Titius, to buy lands for him, or to become his bail.

For the Use of the Mandatary and Another.

IV. A mandate tends to the benefit of the mandator, and also of a third person, when the mandator requires you, who are the mandatary, to transact some affair for the common benefit of both him and Titius, or to buy lands for them both, or to be bound for them.

Of the Mandatary and Another.

V. A mandate is given in favour of the mandatary and of a third person, when the mandator requires you to lend money to Titius, upon interest; but if you are required to lend money without interest, the mandate can only be in favour of him, to whom it is lent.

VI. A mandate is given solely for your own benefit, if the mandator requires you rather to make a purchase of lands than to lend your money upon interest; or, on the contrary, rather to lend your money upon interest than to buy lands. But a mandate of this species seems rather to be good advice than a mandate; and is therefore not obligatory; for an action of mandate cannot be brought against a man on account of the advice which he has given, although it has not proved beneficial to him to whom it was given; inasmuch as every one is at full liberty to consult his own reason, whether the counsel given to him is expedient or not. And therefore, if you should be obliged to employ your money, which now lies dead, either by lending it out at interest, or in making a purchase, and you shall become a loser by following this advice, the adviser would not be liable to an action. And this is so true, that it has even been a question, whether an action of mandate will lie against him who hath required you by mandate to lend money to Titius, who is insolvent. But the opinion of Sabinus hath obtained, and a mandate in this case is now judged to be obligatory; for you would never have trusted Titius but in obedience to the mandate.

VII. A mandate contrary to good manners is not obligatory: as if Titius should command Sempronius to commit theft, or to do some act to the damage or injury of a third person; for, although Sempronius should suffer a penalty or punishment in consequence of his obedience to such a mandate, he will not be intitled to any action against Titius.

Of the Execution of a Mandate.

VIII. He who executes a mandate ought not to exceed the bounds of it; for example, if a mandator should require you to purchase lands, or to be bound for Titius, to the amount of an hundred aurei, you ought not to buy the lands at an higher price, or be bound for Titius in a greater sum: for, if you exceed the mandate, you will not be intitled to an action for the recovery of the excess. And Cassius and Sabinus were even of opinion, that, although you were willing to bring an action of mandate for no more than the hundred aurei, you could not recover them. But it was held by the lawyers of a different school, that the manda-

tary might sue the mandator for the hundred aurei: and this appears to be the more equitable opinion. But, if you buy certain lands at a less price than that which the mandator has allowed, you will undoubtedly be intitled to an action of mandate: for if he hath ordered that an hundred aurei shall be expended in the purchase of a particular estate, he will certainly be understood to have ordered, that the same estate should, if possible, be purchased at a less price,

Of the Revocation of a Mandate.

IX. A mandate, properly contracted, becomes null, if it is revoked whilst intire; that is, before any act hath been done in consequence of it.

Of Death.

X A mandate also becomes null, if either the mandator or the mandatary dies whilst it continues intire. But it is allowed, for the benefit of society, that, if a mandator dies, and the mandatary, not knowing of his death, should afterwards execute the mandate, he may bring his action against the heirs of the mandator: for otherwise an unblameable and undoubted want of knowledge would be prejudicial; and, in a similar case, it hath been determined, that, if the debtors of Titius, whose steward has been manumitted, should, without knowledge of the manumission, pay this freed-man what was due to Titius, they would be cleared from their debt, and the payment would be good; although, by the rigour of the law, it would be otherwise; since they had made their payment to another than him, to whom it ought to have been made.

Of Renunciation.

XI. Every man is at liberty to refuse a mandate; but, if it is once accepted, it must be performed, or renounced, as soon as possible, that the mandator may transact the business himself, or by another. But, if the renunciation is made so late, that the mandator can have no opportunity of transacting this business properly, an action will lie against the mandatary, unless he can shew some just cause for his delay in not making a timely renunciation.

Of Time certain and Condition.

XII. A mandate may be contracted to transact a particular business at a distant day, or upon condition.

Of Hire.

XIII. In fine, it must be observed, that if a mandate is not gratuitous, it then becomes another species of contract: for if a price is agreed upon, the contract of location and conduction com-

mences; and, in general, when a trust, or business, is undertaken without hire, the contract regards either a mandate or a deposit; but, when there is an agreement for hire, it constitutes location and conduction. And therefore, if a man gives his cloaths to a fuller, that they may be cleaned, or to a taylor, that they may be mended, and there is no agreement or promise made, an action of mandate will lie.

TITLE XXVIII.

Of Obligations from implied (quasi) Contracts.

HAVING already enumerated the various kinds of direct obligations, we will now treat of those which cannot be said properly to arise from a contract, but yet, inasmuch as they take not their origin from any thing criminal, seem to arise from an implied, or a quasi-contract.

Of Agency.

I. When one person transacts the business of another, who is absent, they reciprocally obtain a right to certain actions, called *actiones negotiorum gestorum*; *i. e.* actions on account of business done; and it is manifest, that these can arise from no proper or regular contract; for they take place only when one man assumes the care or affairs of another without a mandate; and, in this case, those persons for whom business is transacted are always bound without their knowledge; and this is permitted for the public good, because the business of those who are absent in a foreign country, and have not committed the administration of their affairs to any particular person, would otherwise be totally neglected: for no man would take this care upon himself, if he could not afterwards bring an action to recover what he had expended. But, as the principal is bound to reimburse the agent, who has negotiated his affairs properly, so is the agent bound to render a just account of his administration to his principal. And an agent, in this case, is obliged to use the most exact diligence; for it will not suffice, although he proves, that he has taken the same care of the affairs of his principal, which he usually took of his own, if it can by any means appear that a more diligent man could have acted with greater advantage to his principal.

Of Tutelage.

II. A tutor, although he is subject to an action of tutelage, is not reckoned to be bound by any pact or agreement; for between a pupil and his tutor there is no express contract. But, because tutors are not subject to an action of male-feasance, they are understood to be bound by an implied, or quasi-contract; and thus both tutor and pupil may bring actions reciprocally; the pupil

may bring a direct action of tutelage against his tutor, and the tutor, if he has expended his own money in the affairs of his pupil, or has been bound for him, or has mortgaged his own possessions to the creditors, is intitled to the action called *contra-ria tutela*.

Of the Community of a Thing.

III. When a thing happens to be in common among persons who have never entered into a voluntary partnership; as when the same field, or part of an inheritance, is devised or given generally between two; in this case the one may be called to answer the other by the action *communi dividundo*, either because the one hath taken to his use the whole product of the ground; or because the other hath been at the sole expence of maintaining it in good order. But neither of these persons can properly be said to be bound by contract; since they made no agreement between themselves; but, inasmuch as they are exempt from any criminal action, they are accounted as bound by a *quasi-contract*.

Of Community in a Hereditament.

IV. And the same law prevails in regard to him, who is bound to his co-heir and is liable to the action *familæ erciscundæ*, for the partition of an universal inheritance.

V. An heir for the same reason cannot properly be said to be bound by contract to a legatary; for the legatary can never be supposed to have entered into any compact either with the heir, or with the deceased: but, as the heir cannot be prosecuted by an action of male-feasance, he is presumed to be indebted to the legatary by a *quasi-contract*.

Of a mistaken Payment.

VI. He, to whom another has paid by mistake what was not due, appears to be indebted by *quasi-contract*; for he is certainly not bound by an express agreement: and, strictly speaking, he might rather be said, (as we have observed,) to be bound by the dissolution than by the making of a contract: for he, who paid the money with an intent to discharge his debts, seemed rather inclined to dissolve an engagement, than to contract one. But nevertheless, whoever receives money by the mistake of another, is as much bound to repay it, as if it had been lent to him; and he is therefore liable to an action of *condiction*.

Where an undue Debt (when paid) cannot be redemanded.

VII. In some cases money paid by mistake, when not due, cannot afterwards be demanded: for the antient lawyers have delivered it as a *maxim*, that where an action for double value of

the debt is given upon the denial of it, (as by the law *Aquiliana*, and in the case of legacies) the debtor, who has through error paid money to him, to whom it was not due, shall never recover it. But these lawyers would have this rule to take place only in regard to fixed and certain legacies, devised *per damnationem*. But our imperial constitution, which reduced all legacies and trusts to one common nature, hath caused this augmentation in *duplum* after denial to be extended to legacies and trusts in general: yet the privilege of not refunding what is paid by mistake is, by our constitution only granted to churches and other holy places, which are honoured on account of religion and piety.

TITLE XXIX.

BY WHAT PERSONS OBLIGATION IS ACQUIRED.

Of Those who are under Power of Another.

HAVING explained the various kinds of obligations, which arise from contracts or quasi-contracts, we must now observe, that we acquire obligations not only by means of ourselves, but also by those, who are under our power; as by our slaves, and our children: and whatever is acquired by our slaves is wholly our own; but that, which is acquired by our children, under our power, by virtue of their contracts, must be divided according to the decree of our constitution, which gives to the father the usufruct of the thing gained, but reserves the property of it to the son. But a father, in bringing an action, must act in obedience to our novel constitution.

I. We may also acquire things by means of freemen, and the slaves of others, whom we possess *bona fide*: but this we can only do in two cases; to wit, when they have gained an acquisition by their labour, or by virtue of something, which belongs to us.

II. We may always acquire in either of the above named cases, by means even of those slaves, of whom we have only the usufruct or use.

III. It is certain, that a slave, who is in common between two or more, acquires for his masters, in proportion to the property, which each of them has in him; unless he stipulates, or receives something, in the name of one of them only; as if he had thus stipulated; "do you promise to give such a particular thing to Titius, my master?" for although it was a doubt in times past, whether a slave, when commanded, could stipulate for the sole benefit of one of his masters; yet, since our decision, it has become a settled point, (as we said before,) that a slave, in this case, can acquire for him only, who hath ordered the stipulation.

TITLE XXX.

HOW OBLIGATIONS ARE DISSOLVED.

By Payment.

AN obligation is dissolved by the payment of what is due; or by the payment of one thing for another, if the creditor consents: neither is it material, by whom payment is made, whether by the debtor himself, or by another for him; for a debtor becomes free from his debt, when another has paid it, either with or without his knowledge, or even against his consent. Also when a principal debtor pays his creditors, then those, who have been bound for him, are free from their obligation: and, on the contrary, when a *fide-jussor* or bondsman clears himself from his obligation by payment, he not only becomes free himself, but the principal debtor is also cleared from his debt.

By Acceptilation.

I. An obligation is also dissolved by acceptilation; which is an imaginary payment: for, if Titius is willing to remit what is due to him by a verbal contract, it may be done, if the debtor says; do you regard what I promised you, as accepted and received? and Titius answers, I do. An acceptilation may also be made in Greek, if it is so worded, as to agree with the Latin form; *εχεις λαζων δηναρια τοσα; εχω λαζων*. But the obligations, which are thus dissolved, are verbal contracts, and no other: and it seems to be a just consequence, that an obligation, made by words only, may be dissolved by other words of a contrary import. But it is observable, that any species of contract may be deduced to a stipulation, and of course may be dissolved by acceptilation. And note, that as a debt may be paid in part by money, so may it be paid in part also by acceptilation.

Of the Aquilian Stipulation.

II. There is another species of stipulation, called commonly the Aquilian stipulation, by virtue of which every other kind of obligation may be reduced to a stipulation, and may afterwards be dissolved by acceptilation. For the Aquilian stipulation changes all obligations, and was constituted by Gallus Aquilius in the following manner. Do you promise, said Aulus Agerius to Numerius Nigidius, to pay me a sum of money, in lieu of what you was, or shall be, obliged to give me or to perform for my benefit, either simply, at a day to come, or upon condition; and in lieu of those things, which, being my property, you have, detain, or possess; or of which you have fraudulently quitted the possession; and for which I may, or shall be, entitled to any species of action,

plaint, or prosecution; Numerius Nigidius answered I do: and, when this was said, Numerius Nigidius asked Aulus Agerius, if he regarded the money as accepted and received, which he (Numerius) had promised? to which Aulus Agerius answered, that he did regard it as accepted and received.

Of Novation.

III. An obligation is also dissolved by novation; as when you stipulate with Titius to receive from him what is due to you from Seius. For, by the intervention of a new debtor, a fresh obligation arises, by which the prior obligation is discharged, and transferred to the latter. And sometimes, although the latter stipulation is of no force, yet the prior contract is discharged by the mere act of novation: as if Titius should stipulate to receive a debt, which I owe him, from a pupil without the authority of his tutor; for in this case the debt is lost, because the first debtor is freed from his debt, and the second obligation is null: but it is not the same, if a man stipulates from a slave, with a design to make a novation: for then the first debtor remains bound, as if there had been no second stipulation. And, if you stipulate from the same person a second time, a novation arises, if any thing new is covenanted in the latter stipulation, as when a condition, a day, or a bondsman is added, or taken away. But note, that, when a condition only is added, novation does not take place, till the event happens; and, till then, the prior obligation continues. It was observed as a rule among the ancient lawyers, that a novation arose, when a second contract was entered into with an intent to dissolve the former; but it was always a matter of great difficulty to know with what intent the second obligation was made; and the judges, having no positive proof before them, were forced to form their opinions upon presumptions, and according to the circumstances of every particular case. This uncertainty of judging gave rise to our constitution, which enacts, that a novation of a former contract shall only take place, when it is expressed by the contractors, that they covenanted with an intent to make a novation; and that, when this is not expressed the prior contract shall continue valid; and the second be regarded as an accessson to it: so that an obligation may remain by virtue of both contracts, according to the determination of our before named constitution, which may be better known by perusal.

By Dissent.

IV. We must observe farther, that those obligations, which are contracted by consent, may be dissolved by dissent. For, if Titius and Seius have agreed by compact between themselves,

that Seius shall have a certain estate for an hundred aurei, and afterwards before execution, that is, before the price is paid, or livery is made of the lands, if the parties dissent from their agreement, they are mutually discharged from it. And the same may be said of location and conduction, and of all other contracts which arise from consent.

END OF THE THIRD BOOK.

THE
 INSTITUTIONS
 OR
 ELEMENTS OF JUSTINIAN.

Book the Fourth.

TITLE I.

Of Obligations which arise from Crime.

HAVING explained in the preceding book the nature of obligations, which arise from contracts and quasi-contracts, it follows, that we should here treat of those, which arise from male-feasance and quasi-male-feasance. The former, as we have shewed in the proper place, are divided into four species; but the latter are of one kind only; for they all arise *ex re*, that is, from the crime or male-feasance itself; as from theft, rapine, damage, injury.

Definition of Theft.

I. Theft is a fraudulent subtraction of the thing itself, the use of it, or the possession, for the sake of gain. And this is prohibited by the law of nature,

Etymology.

II The word *furtum*, theft, is derived from *furvum*; black or dark; because theft is committed privately, and generally in the night:—or from *fraus*, fraud:—or from *ferendo*, which is of the same import with *aufserendo*, and denotes a subtraction, or taking away. Or perhaps *furtum* is derived from the Greek; for the Greeks call *fures*, φουρας; and φουρας is derived from φερειν, which signifies to take away.

Division.

III. Of theft there are two species, manifest and not manifest: for the thefts, called *conceptum* and *oblatum*, rather denote the species of action arising on account of theft, than the species of theft; as will appear in the next paragraph. A manifest thief, whom the Greeks call *ἐπ' αὐτοφωρῶ*, is he, who is taken in the act of thieving, or in the place, where he committed it; as if a man, having committed a theft within an house, should be apprehended before he had passed through the outward gate of it: or, having stolen grapes or olives, should be taken in the vineyard or olive orchard. Manifest theft is also farther extended: for, if the thief is apprehended, whilst he is seen to have possession of the thing stolen, or if he is taken in public or in private, by the owner or by a stranger, at any time before his arrival at the place, to which he proposed to carry it, he is guilty of a manifest theft. But if he actually arrives, before apprehension, at the place proposed, then, although the thing stolen is found upon him, he is yet not reputed in law to be a manifest thief. By this description, which we have given of manifest theft, it may be clearly understood what is meant by theft not manifest.

Of the division of Thefts into Conceptum, Oblatum, Prohibitum, and Exhibitum.

IV. A theft is called *conceptum*, i. e. found, when a thing stolen is searched for and found in the possession of some person in the presence of witnesses; and a particular action, called *actio concepti*, lies against such possessor, although he did not commit the theft. A theft is called *oblatum*, i. e. offered, when a thing stolen is offered for instance to Titius, and found upon him, it having been given to him by Seius, to the intent that it might rather be found upon Titius than upon himself: and in this case a special action, called *actio oblati*, may be brought by Titius against Seius, although Seius was not guilty of the theft. There is also an action, called *prohibiti furti*, which lies against him, who hinders another to enquire of theft in the presence of witnesses. And farther, a penalty was constituted, by the edict of the prætor, to be sued by the action *furti non exhibitum* against any man for not having exhibited things stolen, which upon a search were found to have been in his possession. But these four actions are become quite obsolete; for, since a search after things stolen is not now made according to the ancient formalities, these actions have of consequence ceased to be in use; for it is a settled point, that all, who knowingly have received and concealed a thing stolen, are subject to the penalty of theft not manifest.

Punishment.

V. The penalty of committing a manifest theft is quadruple, whether the thief is free or bond; and the penalty of committing a theft not manifest is double the value of the thing stolen.

How Theft is committed.

VI. Theft is committed not only, when one man takes the property of another for the sake of appropriating it to himself, but also in a more general sense, when one man uses the property of another against the will of the proprietor; thus, if a creditor makes use of a pledge, or a depository of the deposit left with him, or if a man, who hath only the use of a thing for a special purpose, converts it to other uses, a theft is committed. And, if any one borrows plate under pretence of using it, at an entertainment of his friends, and then carries it with him into a foreign country,—or if a man borrows an horse, and rides it farther than he ought, theft is also committed: and the ancients have held this to be law, in regard to him, who rides a borrowed horse into a field of battle.

Of the intent of Stealing.

VII. But it hath been nevertheless been adjudged, that whoever applies a thing borrowed to other uses than those, for which he borrowed it, is not guilty of theft, for unless the borrower knew, that he so applied it, contrary to the will of the owner, who would not have permitted such application, if he had been apprized of it. But it has also been held, that the borrower in this case is not guilty of theft, if it appears, that he thought, that the owner would have given his consent. And this is a good distinction; for a theft can never be committed, unless there appears to have been a design and intention of stealing.

Of the Will of the Master.

VIII. But, if a man imagines, that he uses a thing borrowed in some manner contrary to the intention and will of the proprietor, when in reality the proprietor consents, that it should be so used, theft is not committed: and from hence arises a question upon the following case. Titius solicited the slave of Mævius to rob his master, and to bring him the things stolen; of this the slave informed his master, who, being willing to discover Titius in the fact, permitted the slave to carry certain things to Titius as stolen; will Titius, in this case, be subject to an action of theft, or to an action for having corrupted a slave, or to neither? When this was proposed to us as a matter of doubt, and we perceived the altercations, which had formerly subsisted among the ancient lawyers upon the same point, some of them allowing of neither

of the before-named actions, and others allowing an action of theft only, we therefore, being willing to obviate all subtilities, decreed by our constitution, that not only an action of theft might be brought, but also the action *servi corrupti*, which lies for having corrupted a slave. For although the slave became not the worse for the solicitation, and therefore the causes, which introduce the action *servi corrupti*, do not concur; yet inasmuch as such solicitation was intended to corrupt, it hath therefore pleased us, that a penal action shall lie against the party soliciting in the same manner as if he had actually succeeded by corrupting the slave: and this we have ordained, lest impunity might encourage any evil-disposed persons to make the same attempt upon other slaves, who might have less strength of mind, and be more easily corrupted.

Of the objects of Theft. Of free Men.

IX. A theft may be committed even of free persons; as, for instance, when children, who are under power, are surreptitiously taken from their parents.

Of your own Property.

X. A man may also possibly commit a theft even of his own property; as when a debtor hath taken away any particular thing, which he had left in pledge with his creditor.

Of Auxiliaries in Theft.

XI. An action of theft will, in some cases, lie against persons, who did not actually commit the theft; it will lie, for example, against those, by whose aid and advice the theft was committed; and whoever strikes money out of your hand, to the intent that another may pick it up; or whoever so obstructs you, as to give an opportunity to his accomplice to take your sheep, oxen, or any part of your property, must be reckoned in the number of aiders and advisers. The ancient lawyers also included him in this number, who frightened away a herd from its pasture with a red cloth. But, if a man should do any of these acts wantonly, and without an intention of committing theft, then an action can lie only in *factum*; i. e. upon the case, or the fact done: but, when Titius commits theft by the aid of Mævius, they are both subject to an action of theft. Theft seems to be committed both by aid and advice, when a man puts a ladder to a window, or breaks open a door or window, to the intent, that another may commit theft; or when one man lends another iron bars, or ladders, knowing the bad purposes, to which they are to be applied. But it is certain, that he, who hath afforded no actual assistance, but hath only given his counsel by advising the crime, is not liable to an action of theft

XII. When persons under the power of parents or masters take any thing surreptitiously from such parents or masters, a theft is committed, and the thing is looked upon as stolen; so that it cannot be prescribed to by any one, until it hath first reverted into the power of the proprietor; and yet an action of theft will not lie; for between parents and their children, or masters and slaves, no action can arise upon any account. But if the fact was done by the aid and advice of any other, inasmuch as a theft is committed, an action of theft will lie against the aider.

XIII. An action of theft may be brought by any man, who has an interest in the safety of the thing stolen, although he is not the proprietor of it: and the proprietor himself can have no action, unless he has an interest.

XIV. From hence it follows, that a creditor may bring an action of theft, on account of a pledge stolen, although his debtor is solvent; because it may be more expedient for him to rely upon his pledge, than to bring an action against the person of his debtor; and, although the debtor himself should have been the taker of the pledge, yet an action of theft will lie against him.

XV. If a fuller receives cloths to clean, and they are afterwards stolen from him, the fuller may bring an action of theft, but not the owner; for the owner is reputed to have no interest in their safety, because he has a right of action, called *locati*, against the fuller. But, if a thing is stolen from a *bona fide* purchaser, he is intitled, like a creditor, to an action of theft, although he is not the proprietor. But an action of theft is not maintainable by the fuller, or any tradesman in similar circumstances, unless he is solvent; that is, unless he is able to pay the owner the full value of the thing lost; for, if the fuller is insolvent, then the owner, who cannot recover from the fuller, is allowed to bring an action of theft, having in this case an interest. And note, that whoever is unable to pay the whole of what is due, such person is esteemed insolvent, let the deficiency be ever so small.

Of Things lent.

XVI. The ancients were of opinion, that what we have said of a fuller is equally applicable to him, to whom something is lent. For as the fuller, by agreeing for a certain price, is obliged to make good the cloths committed to his custody, so is he also, who receives a loan for the sake of using it, under the like necessity of preserving it. But we have amended the law in this point by our decisions, so that it is now at the will of the owner either to bring an action of theft against the thief, or an action, on account of the thing lent, against the borrower. But, if the owner once

makes an election of the one, he can never afterwards have recourse to the other; and, if he chuses to prosecute the thief, the borrower is altogether free from any action; and if the owner, or lender, brings a suit against the borrower, he can by no means bring an action against the thief. But the borrower, who is convened on account of the thing lent, may bring an action of theft against the thief, if the owner, who convened him, was apprized that the thing was stolen; but, if the owner, either not knowing or doubting of the theft, institutes an action of loan against the borrower, and afterwards upon information is willing to withdraw it, and recur to an action of theft, he shall have liberty, in consideration of his incertainty, to prosecute the thief without obstacle, if the borrower has not satisfied his demand; but, if the borrower has given the owner satisfaction, then the thief is freed from any action of theft, which can be brought by the owner: but he is nevertheless subject to the prosecution of the borrower, who hath satisfied the owner. But it is most manifest, that, if the owner of any particular thing, not knowing, that it is stolen, should at first institute an action of loan against the borrower, but should afterwards, upon better information, chuse to pursue the thief by an action of theft, the borrower is secure, whatever may be the issue of the action brought against the thief. And this obtains as law, whether the borrower is able to answer the whole, or a part only, of the value of the thing.

Of Things deposited.

XVII. A depositary is not obliged to make good the thing deposited, unless he is himself guilty of some fraud, or malefeasance: and therefore, as a depositary is not obliged to make restitution, when the deposit is stolen, and he has consequently no interest in the conservation of the deposit, he is not allowed to bring an action of theft, which in this case can only be maintained by the owner.

XVIII. It hath been a question, whether a person within puberty, who hath taken away the property of another, can be guilty of theft? And it hath been determined, that, inasmuch as theft consists in the intention of defrauding, a person within puberty may be charged with theft, if he is near the age of puberty, and can be proved to have been sensible, that what he did was criminal.

XIX. An action of theft can only be brought for the penalty, whether double or quadruple: for the owner of the thing stolen may recover the thing itself either by vindication or condiction. An action of vindication may be brought against him, who hath possession, whether he is the thief or any other; but condiction is

maintainable only against the thief himself, or his heir; yet it will lie against either of them, whether he is or is not in possession of the thing stolen.

TITLE II.

OF THEFT BY FORCE.

HE who takes the property of another by force, is liable to an action of theft; [for who can be said to take the property of another more against his will, than he who takes it by force; and it hath therefore been rightly observed, that such a thief is one of the worst kind:] but the prætor hath nevertheless introduced a peculiar action in this case, called "vi bonorum raptorum;" which, if brought within a year after the robbery, inforces the payment of the quadruple value of the thing taken; but, if it is brought after the expiration of a year, then the single value only is claimable; and this action is of such a nature, that it may be brought for any single thing, though it was of the least value imaginable, if it was taken by force. But the whole quadruple value is not exacted merely for the penalty, as in an action of manifest theft; for, in this quadruple value, the thing itself is included, so that, strictly, the penalty is only threefold; but then it is inflicted without distinguishing whether the robber was or was not taken in the actual commission of the fact. For it would be ridiculous, that a robber who uses force should be in a better condition than he, who is only guilty of a clandestine theft.

L. The action "de vi bonorum raptorum," is only maintainable when there is fraud used, as well as force; for, if a man, being ignorant of the law, and erroneously thinking any particular thing to be his own, should take it away by force from the possessor, upon a full persuasion that he, as proprietor, could justify such a proceeding, he ought to be acquitted upon this action: neither is he subject, under the before-mentioned circumstances, to an action of theft. But, lest robbers should from hence find out a way of practising their villainies with impunity, it is provided by the imperial constitutions, that no man shall be at liberty to take by force any moveable thing, or living creature, out of the possession of another, although he believes it to be his own; and that, whoever offends, by forcibly seizing his property, shall forfeit it; and that, whoever takes the property of another, imagining it to be his own, shall be obliged, not only to restore the thing itself, but also to pay the value of it as a penalty. And the emperors have thought proper that this should obtain, not only in regard to things moveable and moving, which

may be carried away, but also in regard to invasions, or forcible entries, made upon things immoveable, as lands or houses, to the intent that mankind may be deterred from committing any species of rapine.

II. In this action, it is not considered, whether the thing, taken by force, is or is not the property of the complainant; for, if he has an interest in it, the action is maintainable; and therefore, if a thing is let, lent, or pledged to Titius, or deposited with him, so that he becomes interested in the preservation of it, as he may be, even in the case of a deposit, if he hath promised to be answerable for its safe custody; or, if Titius was a bona fide professor, or entitled to the usufruct, or has any other right which gives an interest, he may bring this action, not for the recovery of the absolute property, but of that only to which his interest extends. And we may in general affirm, that the same causes which entitle a man to institute an action of theft, when any thing hath been privately stolen from him, will also entitle him to bring the action "*vi bonorum raptorum*," when force hath been used.

TITLE III.

OF THE AQUILIAN LAW.

THE action for injurious damage is given by the law Aquilia; which enacts, in the first chapter, that, if any man injuriously kills the slave, or four-footed beast of another, which may be reckoned in the number of his cattle, he shall be condemned to pay the owner the greatest price which the slave or beast might have been sold for, at any time within a year, computing backward from the day when the wound was given.

Of Quadrupeds to be considered as Cattle.

I. As the law does not speak of four-footed beasts in general, but of those only which may be reckoned cattle we may collect, that wild beasts and dogs do not come within the intendment of the law, which can be understood to include only those animals which feed in herds; as horses, mules, asses, sheep, oxen, goats, &c.—It hath also been determined, that swine are comprised under the term cattle, because they feed in herds; and this Homer testifies in the *Odyssy*, for which he is quoted by *Ælius Marcian* in his institutions. "You will find him taking care of the swine, which feed in herds on the *Corasian rock*," &c. *Odys. b. 13.*

Of Injury.

II. A man who kills another without having a right or authority so to do, is understood to kill him injuriously; but, when

there is a right, there can be no punishment; and therefore he is not subject to the law who kills a robber, or an assassin, if there was no other way of avoiding the danger threatened.

Of Accidents, Fraud, and Negligence.

III. Neither is he subject to the Aquilian law, who hath killed another by accident; if no fault can be found in him. But the law does not punish a man less for damage done by his fault or negligence than for damage done by fraud or design.

Of throwing Darts.

IV. But if a man, by throwing a javelin for his diversion or exercise, happens to kill a slave who is passing, we must, in this case, make a distinction: for if the slave is killed by a soldier, whilst he is exercising in a place appointed for that purpose, the soldier is guilty of no fault; but, if any other person should accidentally kill a slave by throwing a javelin, he is guilty of a fault; and even, if a soldier should kill a slave accidentally by throwing a javelin in any other place than that appointed for soldiers to exercise in, he also is guilty of a fault.

Of felling Trees.

V. If a man is lopping a tree, and happens to kill a slave who is passing, the lopper is guilty of a fault, if he worked near a public road, or in a way leading to a village, without giving a proper warning by proclamation; but if he made due proclamation, and the other did not take proper care of himself, the lopper is exempt from fault; and he is equally exempt from fault, although he did not make proclamation, if he worked apart from the high road, or in the middle of a field; for a stranger has no right of passage through such places.

Of neglecting a Cure.

VI. Also, if a physician, or chirurgeon, who has made an incision in the body of a slave, should afterwards neglect or forsake the cure, by which the death of a slave is occasioned, he is guilty of a fault.

Want of Skill in a Profession.

VII. The want of skill in a profession is also regarded as a fault; thus a physician, for instance, is culpable, and of course subject to an action, who occasions the death of a slave by an unskilful incision, or a rash administration of medicines.

Of want of Skill in Drivers.

VIII. If a mule-driver, by reason of unskilfulness, is unable to manage his mules, and a slave is run over by them, the mule-driver is in fault; and, if he wants strength to rein them in, when another man is able to do it, he is then equally culpable;

and the same may be said of a rider, who, through want either of strength or skill, is not able to manage his horse.

IX. These words of the law Aquilia, "Let him who kills a slave, or beast of another, forfeit the greatest price which either could have been sold for in that year," are to be understood in the following sense; as thus, if Titius accidentally kills a slave who was then lame, or wanted a limb or an eye, but had been within the space of a year perfect in all his parts, and very valuable, then Titius shall be obliged to pay, not what the slave was worth on the day when he was killed, but what he was worth at any time within a year preceding his death, when he was in the fullest vigour. An action, therefore, upon the law Aquilia, has always been regarded as penal; for it obliges a man to pay not only the full value of the damage done, but often much more than the full value; and, of consequence, can by no means pass against the heir of the offender: but it might legally have been transferred against the heir, if the condemnation had never exceeded the quantum of the damage.

X. It hath prevailed by construction, though not by virtue of the express words of the law, that not only the value of a slave is to be computed, as we have already mentioned; but that an estimation must be made of whatever farther damage is occasioned by his death; as if Titius, for example, should kill a slave at the time, when he was instituted an heir, and before he had actually entered upon the heirship at the command of his master; for, in this case, the loss of the inheritance must be brought into the computation. Also if an horse, or mule is killed, by which a pair, or set, is broken, or if a slave is slain, who made one of a company of comedians, an estimation must be made not only according to the value of that slave or animal, but according to the value of those, which remain; for, if they are damaged, the diminution of their value is also taken into the account.

XI. The master of a slave, who is killed, is at liberty to sue for damages by a private action, founded upon the law Aquilia, and at the same time to prosecute the offender publicly, for a capital crime.

XII. The second chapter of the law Aquilia is not in use.

XIII. By the third chapter of this law, a remedy is given for every other kind of damage; and therefore, if a man wounds a slave, or four-footed animal, which is ranked among cattle, or which is not ranked among cattle, as a dog or wild beast, an action will lie against him by virtue of this third part of the law. A reparation may also be obtained, under this chapter, for all

damage injuriously done to animals in general, or to things inanimate; and the same chapter appoints an action for the recovery of the value of whatever is burned, spoiled, or broken; but the term *ruptum* would alone be sufficient in any of these cases; for in whatever manner a thing is damaged, or corrupted, it is understood to be ruptum, or spoiled, in some degree; so that whenever a thing is broken, burned, or even torn, bruised, spilled, or in any manner made worse, it may be said to be ruptum. It hath also been determined, that if a man intermixes any thing, with the wine or oil of another, so as to corrupt or impair its natural goodness, he is liable to an action founded upon this chapter of the law Aquilia.

XIV. It is evident, that the first part or chapter of the law subjects every man to an action, who through design or accident kills the slave or beast of another, and that the third part gives a remedy for any other damage, so occasioned. But by this third chapter the person, who did the damage, is not obliged to pay the highest price, which the thing damaged might have been sold for, at any time within the year, but only the value of it at any time within thirty days, previous to the damage.

XV. But it is not said in the third part of the law, that the highest value of the thing damaged shall be recovered by action. But, in the opinion of Sabinus, the valuation ought to be made, as if the word highest had not been admitted; for, when Aquilius, the tribune, proposed this law, the commonalty of Rome thought it sufficient to insert the word highest in the first chapter.

XVI. It has been determined, that, if a man hath, with his own hand or body, done damage to another, a direct action will lie by virtue of this law. But when damage is done by any other means, as by imprisoning a slave, or impounding the cattle of another, till they die with hunger; by driving a beast of burden so vehemently as to spoil him; by chasing a herd of cattle, till they leap down a precipice; or by persuading a slave to climb a tree, or go down into a well, by which he is killed or maimed; then the action, called *utilis*, is given, by which reparation may be obtained. And note, that, if Titius thrusts the slave of another into the water from the top of a bridge or bank, and the slave is drowned, in consequence of the fall, it is plain, that Titius occasioned this damage with his own hands, and he is therefore subject to a direct action. But if the damage received was not done by the hand or body of another, and is not corporal, so that neither a direct nor beneficial action can be brought by virtue of the Aquilian law, then in these circumstances an action upon the case, or fact,

will lie against the causer of the damage; and therefore, if any man through compassion should unchain the slave of another, and so promote his escape, a reparation may be obtained against him by an action upon the fact.

TITLE IV.

OF INJURIES.

THE word *Injuria* in a general sense denotes every act, which is unjust; but, when specially used, it is of the same import with *contumelia*, which takes its derivation from *contemno*, and is in greek termed *ὑβρις*: sometimes it signifies a fault, called by the greeks *ἀδικημα*, in which acceptation it is used in the law *Aquila*, when damage, injuriously given, is spoken of: at other times it signifies iniquity or injustice, which the greeks call *ἀνομίαν* and *ἀδικίαν*: therefore, when the prætor or judge pronounces sentence unjustly against any person, such person is said to have suffered an injury.

I. An injury may be done not only by beating and wounding, but also by convitious language, or by seizing the goods of a man, as if he were a debtor, when the person, who seized them, well knew, that nothing was due to him. It is also manifest, that an injury may be committed by writing a defamatory libel, poem, or history; or by maliciously causing another so to do; also by continually soliciting the chastity of a boy, girl, or woman of reputation; and by various other means, which are two numerous to be specified.

II. A man may receive an injury not only in his own person, but in that of his children under his power, and also in the person of his wife; for this is now the more prevalent opinion: and therefore, if an injury is done to *Seius's* daughter, who is married to *Titius*, an action may be brought not only in the name of the daughter, but in the name either of her father or her husband; but, if the husband receives an injury, the wife is not allowed to institute a suit in his defence; for it is a maxim, that wives may be defended by their husbands, but not husbands by their wives. And note, that a father-in-law may also commence a suit in the name of his son's wife, on account of an injury done to her, if her husband is under the power of his father.

III. An injury is never understood to be done to a slave; but is reputed to be done to the master, through the person of his slave: but what amounts to an injury in regard to a wife or child, does not amount to an injury, suffered through the person of a slave; and therefore to constitute an injury, by means of the per-

son of a slave, some considerable damage must be done to him, and something which openly affects his master; as if a stranger should beat the slave of another in a cruel manner: for in this case an action would lie; but, if a man should only give ill language to a slave, or strike him with his fist, the master can bring no action upon that account.

IV. If an injury is done to the common slave of many masters, the estimation of the injury received is not to be made according to their several proportions of property in the slave, but according to the quality of each master; for is it to them, to whom the injury is done.

V. If Titius has the usufruct of a slave, and Mævius the property, then any injury, which is done to that slave, is understood to be done to Mævius the proprietor.

VI. But, if an injury is done to a free person, who is in the service of Titius, Titius can bring no action of injury, but the servant must commence a suit in his own name, unless the person, who beat him, did it principally for the sake of affronting his master; and, in this case, Titius may also bring an action of injury. The same law likewise obtains, if your servant is the slave of another; for as often as he receives an injury, which was intended to affront you, you may yourself bring an action of injury.

VII. The punishment of an injury, according to the Twelve Tables, was a return of the like injury, if any limb was broken; but, if a blow only was given, or a single bone broken, then the punishment was pecuniary, which was not without effect among the ancients, who lived in great poverty. The prætors afterwards permitted the parties injured to fix their damages at a certain sum, which might serve as a guide to the judge, but not preclude him from lessening the estimate at his discretion. The species of pecuniary punishment, which was introduced by the law of the Twelve Tables, fell by degrees into desuetude, and that which the prætors gave rise to is now solely in use, and is termed honorary; for the estimation of an injury is either increased or diminished according to the degree and quality of the person injured; and this distinction of degree is not improperly observed even in regard to slaves; so that the same injury may be variously estimated, according to the state and condition of him who suffered it; at an higher rate, if he had acted as steward or agent to his master, and at a lower estimation if he was a slave of an inferior sort.

Of the Cornelian Law.

VIII. The law Cornelia speaks also of injuries, and hath intro-

duced an action, which lies, when a man alleges that he hath been struck or beaten, or that another hath forcibly entered into his house; and any man is allowed in this case to allege an house to be his own, whether it is in reality his, or whether he only hires or borrows it, or even lives in it as a guest.

Of an atrocious Injury.

IX. An injury is esteemed atrocious, sometimes from the nature of the fact, as when a man is wounded by another, or beaten with a club; sometimes from the place, as when an injury is done in a public theatre, in an open market, or in the presence of a prætor; and sometimes by reason of the rank of the person, as when a magistrate, or a senator, receives an injury from one of mean condition; or when a parent is injured by his child, or a patron by his freedman; for an injury done to a senator, or to a parent by his child, or to a patron by his freedman, must be atoned for by an heavier punishment than an injury done to a stranger, or a person of low degree. Also the part in which a wound is given may constitute an injury atrocious; as if a man should be wounded in his eye; but it makes no manner of alteration, whether such an injury is done to the father of a family, or to the son of a family: for the injury will neither be the more nor the less atrocious upon this account.

Of the Civil and Criminal Remedy.

X. In fine, it must be observed concerning every injury, that the party injured may sue the offending party, either criminally or civilly. If the party injured sues civilly, the damage occasioned by the injury must be estimated, and the penalty enjoined accordingly, as we have before noticed; but, if he sues criminally, it is the duty of the judge to inflict an extraordinary punishment upon the offender; observing the constitution of Zeno, which permits all persons who have a right to be called illustrious, and, of consequence, all who enjoy a superior title, either to pursue or defend criminally any action of injury by their procurators; but the tenor of this law will more fully appear by a perusal of the ordinance itself.

XI. An action of injury does not only lie against him who hath done an injury, by giving a blow, &c. but also against him, who, by his craft and persuasion, hath caused the injury to be done.

XII. All right to an action of injury may be lost by dissimulation; and therefore, if a man takes no notice of an injury at the time in which he receives it, he cannot afterwards, although he repents of his former behaviour, commence a suit on account of that injury.

TITLE VI.

Of Obligations which arise from (quasi ex delicti) from constructive Criminality.

IF a judge make a suit his own, by giving an unjust determination, an action of male-feasance will not properly lie against him; but, although he is not subject to an action of male-feasance, or of contract, yet, as he hath certainly committed a fault, although it was not by design, but through imprudence and want of skill, he may be sued by an action of quasi-male-feasance; and must suffer such a penalty, which seems equitable to the conscience of a superior judge.

I. Whoever occupies a chamber, from whence any thing hath been either thrown or spilt, by which damage is done, he is liable to an action of quasi-male-feasance; and it is not material, whether the chamber is the property of the occupier; whether he pays rent for it; or whether he inhabits it gratis; and the reason why such occupier is not suable for a direct male-feasance, is, because he is generally sued for the fault of another. Any man is also subject to the same action, who hath hung or placed any thing in a public road, so as to endanger passengers by the fall of it; in which case, a penalty of ten aurei is appointed; but, when any thing hath been thrown or spilt, the action is always for the double of what the damage amounts to. If a freeman is killed by accident, the penalty is fifty aurei; but, if he only receives some hurt, the quantum of the damage is at the discretion of the judge, who ought to take the fees of the physicians into the account, and all other expences attendant upon the cure, over and above the time which the patient hath lost in his illness, or may lose by being unable to pursue his business.

II. If the son of a family lives separate from his father, and any thing is either thrown or spilt from his apartment, or so hung or placed, that the fall of it may damage, it is the opinion of Julian, that no action will lie against the father, and that the only son can be sued. The same rule of law is also to be observed, in regard to the son of a family, who hath acted as a judge, and given an unjust determination.

III. The master of a ship, tavern, or inn, is liable to be sued for a quasi-male-feasance, on account of every damage, or theft, done or committed in any of these places, by himself or his servants: for although no action, either of direct male-feasance, or of contract, can be brought against the master, yet, as he has, in some measure, been guilty of a fault, in employing dishonest persons as his servants, he is therefore subject to a suit for quasi-male-fea-

sance. But, in all these cases, the action given is an action upon the fact, which may be brought in favour of an heir, but not against him.

TITLE VI.

OF ACTIONS.

Definition.

IT now remains, that we should treat of actions. An action is nothing more than the right, which every man has, of bringing an action at law for whatever is due to him.

First Division.

I. All actions in general, whether they are determinable before judges or arbitrators, may be primarily divided into two kinds, real and personal; for the plaintive must sue the defendant, either because the defendant is obligated to him by contract, or hath been guilty of some male-feasance; and, in this case, the action must be personal, in which the plaintiff alleges, that his adversary is bound to give, or to do something for his service; or some other matter, as the occasion requires: or otherwise, the plaintiff must sue the defendant, on account of some corporeal thing, when there is no obligation; in which case the action must be real: as for example, if Sempronius possesses land, which Titius affirms to be his property, the other denying it, Titius must bring a real action against Sempronius for the recovery.

Of the Confessory and Negatory Action.

II. Also, if any man brings an action, alleging, that he has a right to the usufruct of a field, or house, or a right of driving his cattle, or of drawing water in the land of his neighbour, such action is denominated real. And an action relating to the rights of houses or city estates, which rights are called services, is also of the same kind; as when a man commences a suit, and alleges, that he has a right of prospect, a right to raise the height of his house, a right of making a part of it to project, or a right of laying the beams of his building upon his neighbour's walls. There are also contrary actions to these, which relate to usufructs, and the rights of country and city estates; as when the complainant alleges, that his adversary is not entitled to the usufruct of a particular ground, or to the right of passage, &c. &c. These actions are also real, but are negative in their nature, and cannot therefore be used in regard to things corporeal; for, in respect to things corporeal, the agent, or plaintiff, is the person out of possession; for a possessor can bring no action; there are however,

many cases, in which a possessor may be obliged to act the part of a plaintiff; but we refer the reader to the books of the digests.

Of Prætorian Civil Actions.

III. The actions, of which we have made mention, and all actions of a similar nature, are derived from the civil law; but the prætor, by virtue of his jurisdiction, hath introduced other actions, both real and personal, of which it will be necessary to give some examples: for he often permits a real action to be brought, either by allowing the demandant to allege, that he hath acquired by prescription, what he hath not so acquired; or, on the contrary by permitting a former possessor to allege, that his adversary hath not acquired by prescription, what, in reality, he hath so acquired.

Of the Publician Action.

IV. If any particular thing, belonging to one man, should be delivered in trust to another, that it might be deposited with him upon some just account, as by reason of a purchase, a gift, a marriage, or a bequest, and it should so happen, that such trustee should lose the possession, before he hath gained a property in the thing possessed, he could have no direct action for the recovery of it: inasmuch as real actions are given by the law for the revindication of those things only, in which a man hath vested property or dominion. But, it being hard, that an action should be wanting in such a case, the prætor hath supplied one, in which the person, who hath lost his possession, is allowed to aver, that he hath a prescriptive right to the thing in question, although he hath not obtained it; and he may thus recover the possession. This action is called *actio Publiciana*, because it was first instituted by the edict of *Publicius* the prætor.

Of the Rescissory Action.

V. On the contrary, if any man, whilst he is abroad in the service of his country, or a prisoner in the hands of the enemy, should gain a prescriptive title to a thing, which belongs to another, who was not abroad, then the former proprietor is permitted at any time, within a year after the return of the possessor, to bring an action against him, the prescriptive title being rescinded, and the proprietor being allowed to allege, that the possessor hath not effectually prescribed, and that therefore the thing in litigation is his own. The same motive of equity hath also induced the prætor to allow the use of this species of action to certain other persons, as we may learn more at large from the digests.

Of the Paulinian Action.

VI. If a debtor disposes of any thing, by delivering it to some person in order to defraud his creditors, the creditors are then

permitted, notwithstanding the delivery, to bring an action for the thing, if they have previously obtained the sentence of the proper magistrate, for putting themselves into possession; that is, they are allowed to plead, that the thing was not delivered, and of course, that it continues to be a part of their debtor's goods.

Of the Servian or Hypothecary Action.

VII. Also the action Serviana, and the action quasi-Serviana, (which is also called hypothecary,) both take their rise from the prætor's jurisdiction. By the action Serviana, a suit may be commenced for the stock and cattle of a farmer, which are obligated as a pledge for the rent of the ground which he farms of his landlord. The action quasi-Serviana is that, by which a creditor may sue for a thing pledged or hypothecated to him; and, in regard to this action, there is no difference between a pledge and an hypothec, though in other respects they differ; for by the term pledge is meant that which hath actually been delivered to a creditor, especially if the thing was a moveable; and, by the word hypothec, we comprehend what is obligated to a creditor by a nude agreement only, without a delivery.

Of the Prætorian personal Actions.

VIII. Personal actions have also been introduced by the prætors, in consequence of their authority; such is the action "de pecunia constituta;" which much resembles that called "reciptia;" which we have now taken away by our constitution; as unnecessary; and whatever advantageous matter it contained, we have added it to the action "de pecunia constituta." The prætors have likewise introduced the action concerning the peculium of slaves, and the sons of families; and also the actions, in which the only question is, whether the plaintiff hath made oath of his debt; they have likewise introduced many others.

Of Money constituted.

IX. A suit may be commenced by the action "de pecunia constituta," against any person who hath engaged to pay money, either for himself or another, without stipulation; but, when there is a stipulation, the prætorian action is not wanted; for the performance of the promise may be enforced by the civil law.

Of the Peculium.

X. The prætor hath also given actions "de peculio" against fathers and masters, inasmuch as they are not legally bound by the contracts of their children and slaves: for it is but equity that parents and masters should be condemned to pay to the extent of a peculium, which is, as it were, the patrimony, and separate estate of a son, a daughter, or a slave.

Of Action on Oath.

XI. Also if any man, at the prayer or request of the adverse party, makes oath, that the debt which he sues for is unpaid and due to him, the prætor most justly indulges him with an action upon the fact; in which no inquiry is made whether the debt is due, but whether the oath hath been taken.

Of Penal Actions.

XII. The prætors have also introduced a great number of penal actions, by virtue of their authority. But, to mention some only out of many, they have provided, for instance, an action against him who hath wilfully damaged or erased an edict; against an emancipated son, or a freed-man, who hath commenced a suit against his parent or patron, without a previous permission from the proper magistrate; and also against any person, who, by force or fraud, hath hindered another from appearing to the process of a court of justice. But these are only some instances out of a great number, which might be produced.

Of prejudicial Actions.

XIII. Prejudicial actions are also real; such are those, by which it is inquired, whether a man is born free, or made free; whether he is a slave or a bastard. But of these actions, that only proceeds from the civil law by which it is inquired, whether a man is free born; the rest all take their rise from the prætor's jurisdiction.

Of Condictio.

XIV. Actions being thus divided into real and personal, it is certain that a man cannot sue for his own property by a condictio, or a personal action in the following form; viz. "If it appears that the defendant ought to GIVE it me:" for the act of giving implies the conferring of property, and therefore that which is the property of the plaintiff can never be understood to be given to him, or to become more his own than it already is. But, notwithstanding this, in order to shew a detestation for thieves and robbers, and to increase the number of actions which may be brought against them, it hath been determined, that, besides the double and quadruple penalty to which they are liable, they may be pursued by a condictio for the thing taken, in the very form before recited, if it appears that they ought to GIVE it. And this is allowed, although the party injured may also bring a real action against them, by which he may demand the thing taken as his own.

Of the Names of Actions.

XV. Real actions are called vindications; and personal actions,

in which it is intended, that something ought to be done or given, are called *condictiones*; for the word *condicere* was in our old language of the same import with *denuntiare* to denounce: but the term *condiction* is now improperly used to denote a personal action, by which the plaintiff contends, that something ought to be given to him; for denunciations are not in use.

Second Division.

XVI. Actions are also further divided into those which are given, for the sake of obtaining the very thing in dispute; into those which are given for the penalty only; and, lastly, into mixed actions, which are given for the recovery both of the thing and the penalty.

Of Actions of Damages.

XVII. All real actions are given for the recovery of the thing in litigation; and almost all the personal actions, which arise from a contract, are also given for the recovery of the thing itself; as the action for a *mutuum*, a *commodatum*, or on account of a stipulation; also the action on account of a deposit, a mandate, partnership, buying and selling, letting and hiring. But when a suit is commenced for a thing deposited by reason of a riot, a fire, or any other calamity, the *prætor* always gives an action for a double penalty, besides the thing deposited, if the suit is brought against the depository himself, or against his heir, for fraud; in which case the action is mixed.

Of Actions for Penalty.

XVIII. In cases of male-feasance, some actions are given for the penalty only, and some both for the thing and the penalty; and these are therefore called mixed actions. But, in an action of theft, whether manifest or not manifest, nothing more is sued for than the penalty, which, in manifest theft as quadruple, and, in theft not manifest, double: for the owner may recover by a separate action whatever hath been stolen from him, if he alleges that the thing stolen is his own; and he is intitled to this action, not only against the thief, but against any other person who is in possession of his property. The thief may also be sued by a *condiction*, or personal action, for the recovery of the thing stolen.

Of mixed Actions.

XIX. An action for goods taken by force is a mixed action; because the value of whatever is included under the quadruple value to be recovered by the action; and thus the penalty is but triple. The action, introduced by the law *Aquilia*, on account of damage injuriously done, is also a mixed action; not only when it is given for double value against a man denying the fact, but

sometimes, when the action is only for single value; as when a man hath killed a slave, who at the time of his death was lame, or wanted an eye, but had within the year, previous to his decease, been free from any defect, and of great price; for in this case the defendant is obliged to pay as much as the slave was worth at any time within the year preceding his death, according to what has already been observed, b. 4. t. 3. A mixed action may also be brought against those, who have delayed to deliver a legacy, or gift in trust, given for the benefit of a church, or any other holy place, till they have been called before a magistrate for that purpose: for then they are compelled to deliver up the thing, or to pay the money bequeathed, and also the value of as much more, by way of penalty; and thus they are condemned to pay the double of what was due.

Of other mixed Actions.

XX. There are also some actions, which are of a mixed nature, by being, in effect, as well real as personal; of this sort is the action *familie erciscundæ*, which may be brought by coheirs for the partition of their inheritance; such also is the action *de communi dividundo*, given for the division of any particular thing or things, which, exclusive of an inheritance, are in common: and likewise the action *finium regundorem*, which takes place among those, whose estates are contiguous. And, in these three actions, it is wholly in the power of the judge to give the ground, or thing in dispute, to either of the parties litigant, and then to oblige that party, if necessity so requires, to recompense his adversary, by paying him a sum certain, in amends for any inequality in the adjudication.

Third Division.

XXI. All actions are for the single, double, triple, or quadruple value of the thing in litigation; for no action extends farther.

Of Actions for the simple Value.

XXII. The single value is sued for, when an action is given upon a stipulation, a loan, a mandate, the contract of buying and selling, letting and hiring; and also upon other very numerous accounts.

For double.

XXIII. The double value is sued for, in an action of theft not manifest, of injury, by virtue of the law *Aquila*, and sometimes an action of deposit. The double value is likewise sued for, in an action brought, on account of a slave corrupted, against him, by whose advice such a slave hath fled from his master, grown disobedient, luxurious, or become in any manner the worse; and,

in this action, an estimation is to be made of whatever things the slave hath stolen from his master, before his flight. An action for the detention of a legacy, left to an holy place, is also given for double the value, as we have before remarked.

For triple.

XXIV. A suit may be brought for triple value, when any person inserts a greater sum, than is due to him, in the libel of convention, to the intent, that the officers of any court may exact a larger fee, or sportule, from the defendant; in which case the defendant may obtain the triple value of the extraordinary fee from the plaintiff, including the fee in the triple value. The fees of officers are regulated by our constitution, and it is not to be doubted, but that the action, called *condictio ex lege*, may be given by virtue of that ordinance.

For quadruple.

XXV. A suit may be commenced for quadruple or fourfold value, by an action for theft manifest, by an action for putting a man in fear, and by an action on account of money, given to bring on a litigious suit against some third person, or on account of money given to desist from it. A condition *ex lege*, for the quadruple value, arises also from our constitution against those officers of courts of justice, who demand any thing from the party defendant, contrary to the regulations of the said constitution.

Subdivision of Actions.

XXVI. But an action of theft not manifest, and an action on account of a slave corrupted, differ from the others, of which we have spoken, in that they always enforce a condemnation in double the value; but in an action, given by the law *Aquila* for an injury done, and sometimes in an action of deposit, the double value may be exacted in case of a denial; yet whenever the party defendant makes a confession, then the single value is all which can be recovered. But, when a demand is made by an action for a legacy to pious uses, due to any holy place or society, the penalty is not only doubled by the denial of the defendant, but also by any delay of payment, which may be adjudged to have given a just cause for citing the defendant before a magistrate; but, if the legacy is confessed and paid, before any citation issues at the command of the judge, the party complainant must rest satisfied with the single value.

Second Subdivision.

XXVII. An action for putting a man in fear differs also from other actions in *quadruplum*, because it is tacitly implied in the nature of this action, that the party, who hath obeyed the com-

mand of the judge or magistrate, in restoring the things taken, may be dismissed; for, in all other actions for the fourfold value, every man must be condemned to pay the full penalty, as in the action of theft manifest.

Of Actions of good faith.

XXVIII. The fourth division of actions is into those of good faith, and those of strict right. Those of good faith are the following; viz. actions of buying and selling, letting and hiring; of affairs transacted, of mandate, deposit, partnership, tutelage, loan, mortgage; of the partition of an inheritance, and of the division of any particular thing or things, which belong in common to diverse persons; also actions in prescribed words, which are either estimatory, or derived from commutation; and lastly that action, by virtue of which we demand an inheritance: for although it hath long been doubtful to what class this action belonged; yet it is now clearly determined by our constitution, that the demand of an inheritance is to be numbered among the actions of good faith.

Of Marriage-Portion Action.

XXIX. The action, called *rei uxoriæ*, which was given for the recovery of a marriage portion, was formerly numbered among the actions of good faith; but when, upon finding the action of stipulation to be more full and advantageous, we abrogated the action *rei uxoriæ*, and transferred all its effects, with the addition of many other powers, to the action of stipulation, which is given on account of marriage portions, we then not only thought, that this action of stipulation, as far as it related to marriage portions, deserved to be numbered with actions of good faith, but we also added to it, by implication, the full powers of an action of hypotheque; and we have likewise judged it proper, that women, in whose sole behalf we enacted our constitution, should be preferred to all other creditors by mortgage, whenever they themselves sue for their marriage portions.

Of the Discretion of the Judge.

XXX. In all actions of good faith a full power is given to the judge of calculating, according to the rules of justice and equity, how much ought to be restored to the plaintiff; and, of course, when the plaintiff is found to be indebted to the defendant in a less sum, it is in the power of the judge to allow a compensation, and to condemn the defendant in the payment of the difference; and, even in actions of strict right, the emperor Marcus introduced a compensation, by opposing an exception of fraud: but we have extended compensations much farther by our constitution, when the debt of the defendant is evident; so that actions

of strict right, whether real, personal, or of whatever kind they are, may be diminished by compensation; except only an action of deposit, against which we have not judged it proper to permit any compensation to be alleged, lest the pretence of compensation should give a colour and encouragement to fraud.

Of arbitrary Actions.

XXXI. There are also some actions which we call arbitrary, because they depend entirely upon the arbitration of the judge; for, in these, if the party does not obey the legal command of the court, by exhibiting whatever is required, by restoring the thing in litigation, or by paying the value of it, or by giving up a slave in consequence of an action of male-feasance, the judge ought immediately to proceed to condemnation by his definitive sentence. Of these arbitrary actions some are real and some personal: some are real, as the action *Publiciana*, *Serviana*, and *quasi-Serviana*, which is likewise called *hypothecary*: others are personal, as those by which a suit is commenced on account of something done by force, fear, or fraud: or on account of something which was promised to be paid or restored in a certain place; and the action *ad exhibendum*, which was given to the intent, that something particular should be exhibited, is also of the same kind: and, in all these and the like actions, the judge has full power to determine, according to the equity and nature of the thing sued for, in what manner and proportion the plaintiff ought to receive satisfaction.

Fifth Division.

XXXII. A judge ought always to take as much care as possible so to frame his sentence, that it may be given for a thing or sum certain; although the claim upon which the sentence is founded may be for an uncertain sum or quantity.

Of the Claim of more than is due.

XXXIII. Formerly, if a plaintiff claimed more in his libel than was due or belonged to him, he failed in his cause; that is, he even lost that which really did belong to him; nor was it easy for him to be restored to it by the prætor, unless he was under the age of 25 years: for in this, as well as in other cases, it was usual to aid minors, if it appeared, upon examination, that the error was owing to their youth; and whenever an error was such, that one of the most knowing of men might have been led into it, then even persons of full age might have been aided by the magistrate: as for example, if a legatee had demanded his whole legacy, and codicils were afterwards produced, by which a part of it was revoked, or new legacies bequeathed to other persons, so that the

plaintiff appeared to have demanded more than three-fourths of his legacy: because it was subject to a diminution by the law *fallida*; yet, in such a case, the legatee would be relieved, notwithstanding the excess of his demand. It is here necessary to be observed, that a man may demand more than what is due to him in four several respects, viz. in respect to the thing itself; to time; to place; and to the cause. In respect to the thing itself; as when the plaintiff, instead of ten aurei, which are due to him, demands twenty; or if, when he is, in reality, the owner but of part of some particular thing, he claims the whole as his own, or a greater share of it than he is entitled to. In respect to time, as when the plaintiff makes his demand before the day of payment, or before the time of the performance of a condition; for, as he who does not pay so soon as he ought, is always understood to pay less than he ought; so, by a parity of reasoning, whoever commences a suit prematurely demands more than his due. In respect to place: as when any person requires, that what was stipulated to be given or delivered to him at a certain place, should be given or delivered to him at some other place, without taking any notice in his libel of the place specified in the stipulation; as if Titius, for example, should stipulate in these words: "Do you promise to give such a particular thing at Ephesus?" and should afterwards declare simply in his libel, that the same thing ought to be given to him at Rome: for Titius would thus be understood to demand more than his due, by endeavouring to deprive his debtor of the advantage which he might have had in paying his creditor at Ephesus. And, it is upon this account, that an arbitrary action is given to him who would demand payment in another place than that which was agreed upon; for, in that action, the advantage which might have accrued to the debtor, by paying his debt in the place stipulated, is always taken into consideration at the discretion of the judge. This advantage is generally found the greatest in merchandise; as in wine, oil, corn, &c. which in different places, bear different prices; and, indeed, money itself is not lent every where at the same interest. But if a man would sue the performance of a stipulation at Ephesus, or at any other place, where it was agreed, that the stipulation should be performed, he may legally commence his suit by a pure action, that is without mentioning the place; and this the prætor allows of, inasmuch as the debtor does not lose any advantage. Next to him, who demands more than his due, in regard to place, is he, who demands more than his due, in regard to the cause; as for instance, if Titius stipulates thus with

Sempronius;—"do you promise to give either your slave Stichus or ten aurei?" and then demands from Sempronius, either the slave specially, or the money specially: for in this case Titius would be adjudged to have demanded more than his due; the right of election being in Sempronius, by whom the promise was made, and therefore, when Titius sues either for the money specially, or for the slave, he deprives the adverse party of the power of election, and betters his own condition, by making that of his adversary the worse: and it is upon this account, that an action has been given, by which the party agent may make his demand conformable to the stipulation, and claim either the slave, or the money. And farther, if a man should stipulate generally, that wine, purple, or a slave, should be given him, and should afterwards sue for the wine of Campania, the purple of Tyre, or the slave Stichus in particular, he would then be adjudged to have demanded more than his due; for the power of election would thus be taken from the adverse party, who was not bound by the stipulation to pay the thing demanded; and although, in any of these cases, the thing sued for should be of little or no value, yet the demandant would be thought to claim more than his due; because it is often easier for the debtor to pay the thing stipulated, although it may be of greater value than the thing demanded.—Such was the law according to the ancient practice, in regard to an over-demand, viz. that the demandant should lose even that, which was really due to him. But this law has been greatly restrained by the constitution of Zeno the emperor, and by our own; for, if more than is due is demanded in regard to time, the judge must be directed in his proceeding by the constitution of that emperor of glorious memory; but, if more is demanded, in respect to quantity, or on any other account, then the loss suffered by him, upon whom the demand is made, must be recompensed, as we have before declared, by the condemnation of the party agent in triple damages.

Of the Claim of less than is due.

XXXIV. If a plaintiff sues for less than what he has a claim to, demanding, for instance, only five aurei, when ten are due; or the moiety of an estate, when the whole belongs to him; he acts safely by this method, for the judge, in consequence of Zeno's constitution, may nevertheless condemn the adverse party, under the same process, to the payment or delivery of all, which appears of right to belong to the plaintiff.

Of an Error.

XXXV. When a plaintiff demands one thing instead of another, he risks nothing by the mistake, which he is allowed to correct

under one and the same process: as if a litigant should demand the slave Eros, instead of the slave Stichus, or should claim, as due by testament, what is found to be due upon a stipulation.

Sixth Division. Of Peculium.

XXXVI. There are also some actions, by which we do not always sue for the whole, which is due to us; but for the whole, or less, than the whole, as it proves to be most expedient; thus, when a suit is brought against the peculium of a son or a slave, if the peculium is sufficient to answer the demand, the father or master must be condemned to pay the whole debt; but, if the peculium is not sufficient, the judge can condemn the defendant only to the extent of its value. We will hereafter explain, in its proper place, what we mean by the term *peculium*.

Of the Restitution of Dower.

XXXVII. Also, if a woman commences a suit for the restitution of her marriage portion, the man must be condemned to pay as far as he is able; i. e. as far as his income or faculties will permit: and therefore, if the portion demanded and the faculties of the man are equal, he must be adjudged to satisfy the whole demand; but, if his faculties are less than the claim, he must nevertheless be condemned to pay as much as he is able. But the claim of a woman may in this case be lessened by a retention; for the husband is permitted to retain an equivalent for whatever he hath necessarily expended upon the estate given with his wife, as a marriage portion; but this will fully appear by a perusal of the digests, to which the reader is referred.

Of Actions against Parents, &c.

XXXVIII. And, if any person commences a suit against his parent or patron, or if one partner sues another, the plaintiff can by no means obtain sentence for a greater sum, than his adversary is able to pay; and the same is to be observed, when a donor is sued on account of his donation.

Of Compensations.

XXXIX. When a compensation is alleged by the defendant, it generally happens, that the plaintiff recovers less than his demand, for it is in the power of the judge, as we have before declared, to make an equitable deduction from the demand of the plaintiff of whatever he owes to the defendant, and to condemn the defendant to the payment only of the remainder; as it hath already been observed,

Of the Creditors of Insolvents.

XL. Creditors also, to whom a debtor hath made a cession of his goods, may afterwards, if he hath gained any considerable

acquisition, bring a fresh suit against him, for as much as he is able to pay, but not more; for it would be inhuman to condemn a man *in solidum*, who hath already been deprived of his whole fortune.

TITLE VII.

OF BUSINESS DONE WITH THOSE UNDER POWER.

WE have already made mention of the action, by which a suit may be brought against the peculium, or separate estate of a son or a slave: but it is now necessary to speak of it more fully, and also of some other actions, which are given on account of children and slaves against their parents and masters. But, inasmuch as the law is almost the same, whether an affair is transacted with a slave, or with him, who is under the power of his parent, we will therefore, to avoid being prolix, treat only of slaves and their masters, leaving what we say of them to be understood also of parents and children under power; for, whenever there is any thing peculiar to be observed, in regard to children and parents, we intend to point it out separately.

Of what is done by Command of the Master.

I. If any business is negotiated by a slave, who acts by the command of his master, the prætor will give an action against the master for the whole value of the transaction; for whoever makes a contract with a slave, is presumed to have done it upon a confidence in the master.

Of the Exercitory and Institory Actions.

II. The prætor also gives two other actions *in solidum* upon the same motive; the one of which is called *exercitoria*, the other *institoria*. The action *exercitoria* takes place, when a master hath constituted his slave to be the commander of a vessel, and some contract hath been entered into with such slave merely upon that account and this action is named *exercitoria*, because he to whom the profits of a ship or vessel appertain, is called *exercitor*. The action *institoria* is made use of, when a master hath given his slave the management of a ship, or committed any particular affair to his direction, by which some one hath been induced to enter into a contract with such slave; and this action is called *institoria*, because all persons, to whom a negotiation is committed, are denominated *institores*. The prætor hath likewise been induced, by the same equity, to give these two actions against any man who employs a free person, or the slave of another, in the management of a ship, a warehouse, or any particular affair.

Of the Tributary Action.

III. The prætor hath also introduced another action called *tributoria*, or tributary; for if a slave, without the command, but with the knowledge of his master, traffics with the product of his peculium, and persons are thus induced to contract with him, the prætor ordains, that the merchandize, or money, arising from his traffic, shall be distributed between the master, (if he has any just claim,) and the rest of the creditors, in a ratable proportion; and the master himself is always permitted to make the distribution; but, if any creditor complains that too small a share hath been apportioned to him, the prætor will allow him to use the before-named action, which is called *tributoria*, on account of the distribution.

Of the Action respecting the Peculium.

IV. The action concerning a *peculium*, and things converted to the profit of the master of a slave, hath likewise been introduced by the prætor; for although a contract hath been entered into by a slave, without the consent of his master, yet, where the money arising from it is converted to the benefit of such master, the master ought to be answerable for the performance of it; and, even although the master should receive no emolument from the transaction, yet it is right, that he should be answerable for as much as the peculium of his slave is found to be worth. But, to be more explicit, we understand, that, whenever money, or any other thing, is necessarily used or expended by a slave upon his master's affairs, it is a conversion of it to his benefit; as for example, if a slave, who hath borrowed money, should pay the debts of his master, repair his buildings, purchase an estate, provision, or any other thing, which is useful; and therefore, if out of ten aurei, borrowed by a slave, he should pay only five to his master's creditors, and squander the rest, the master would nevertheless be condemned to the payment *in solidum* of the five aurei, which had been expended for his use; but, as to the other five, he could be obliged to pay only so much as the peculium would answer; and from hence it will appear, that, if all the ten aurei, which were borrowed, had been converted by the slave to his master's emolument, the lender might have recovered the whole ten from the master; for although it is one and the same action, by which a suit is commenced against a peculium, and for the recovery of what a slave hath converted to his master's use, yet this action carries with it two different condemnations; and it is for this reason, that the judge does not begin to make an estimate of the value of the peculium, till he has previously examined, whether

the whole, or any part of the money, arising from the slave's contract, hath been expended for the service of the master: but, when the judge proceeds to the valuation of the peculium, a deduction is made of whatever the slave owes to his master, or to any other under the power of his master, and the remainder only is understood to be strictly the peculium, and chargeable with debts due to strangers. But it sometimes happens, that what one slave owes to another, under the power of the same master, is not deducted; as when the slave, who is the creditor, composes a part of his debtor's peculium; for, if a slave is indebted to his vicarial slave, this debt cannot be deducted from the peculium.

Of the Concurrence of Actions.

V. It is, nevertheless, not to be doubted, but that he who hath made a contract with a slave at the command of the master of that slave, and is entitled either to the action *institoria* or *exercitoria*, is also entitled to the action *de peculio* and *de in rem verso*; but it would be highly imprudent in any party to relinquish an action, by which he could most easily recover his whole demand; and, by recurring to another, reduce himself to the difficulty of proving that the money he lent to the slave was turned to the use of the master, or that the slave is possessed of a peculium sufficient to answer the whole debt. He also, to whom the action *tributoria* is given, is equally entitled to the action *de peculio*, and *de in rem verso*; but it is expedient, in some cases, to use the one, and in some cases the other: yet it is frequently most expedient to use the action *tributoria*; because, in this, the condition of the master is not principally regarded; i. e. there is no previous deduction made of what is due to him, his title being esteemed in the same light with that of other creditors: but, in the action *de peculio*, the debt due to the master is first deducted, and he is condemned only to distribute the remainder among the creditors. Again, in some cases, it may be more convenient to commence a suit by the action *de peculio*, because it affects the whole peculium, whereas the action *tributoria* regards only so much of it as hath been made use of in traffic; and it is possible that a slave may have trafficed only with a third, a fourth, or some very small part, and that the rest consists of lands, slaves, or money lent at interest. Upon the whole, therefore, it greatly behoves every man to chuse that remedy which may be most beneficial to him; but, if the creditor of a slave can prove a conversion to the use of the master of that slave, he ought most certainly to commence his suit by the action *de in rem verso*.

the whole or any part of the slave's *Of Children.*

VI. We understand what we have said concerning a slave and his master to take place equally in regard to children under power and their parents.

Of the Macedonian Senatus-Consultum.

VII. But children are, in some respects, particularly regarded by the Macedonian decree of the senate, which prohibits money to be lent them, whilst they are under the power of their parents; for creditors are not suffered to bring any action, either against the children, even after they are emancipated, or against their parents, who emancipated them. This was a caution which the senate thought proper to take, because young heirs, who were loaded with their debts, contracted for the support of luxury, have often endeavoured, by private methods, to take away the lives of their parents.

Of the direct Action against the Father and Master.

VIII. But, in fine, we must observe, that whatever hath been contracted for at the command of a parent or master, and converted to their use, may be recovered by a direct action against the father or master, in the same manner, as if the contract had been originally made with them. And it is likewise certain, that he who is liable to the action *institoria* or *exhibitoria*, may also be sued by a direct action, inasmuch as the contract is presumed to have been made at his command.

to use the action institoria; because, in this, the condition of the

master is not principally **TITLE VIII.**

OF NOXAL ACTIONS.

Of Slaves.

NOXAL actions are given on account of the offences of slaves; as when a slave commits a theft or robbery, or does any other damage or injury. And, when the master or owner of a slave is condemned upon this account, it is in his option either to pay the valuation of the damage done, or to deliver up his slave as a recompense.

Of what is Noxa and Noxia.

I. The term *noxa* denotes the slave, by whom the male-feasance was done; and, by the word *noxia*, we understand the male-feasance itself, be it of what kind it will, theft, damage, rapine, or injury.

The Reason of these Actions:

II. It is with the utmost reason allowable, that a master should

deliver the slave, who is culpable, as a full compensation to the party injured; for it was unjust, that it should be in the power of slaves to cause their masters to suffer any greater damage, than the value of their own bodies would amount to.

Effect of the surrender of the Slave.

III. If a noxal action is given against a master, he may free himself from it by delivering his slave into the possession of the plaintiff, in whom the property in such slave will become absolutely vested; but, if the slave can pay his new master in money the value of the damage, the slave may be manumitted by the assistance of the prætor, although his new master is ever so unwilling.

Of the Origin of these Actions.

IV. Noxal actions are constituted either by the laws, or by the edict of the prætor. They are constituted on account of theft by the law of the twelve tables, and, on account of damage injuriously done, by virtue of the law Aquilia. But, on account of injuries and goods taken by force, they are constituted by the edict of the prætor.

Of the Object of the Noxal Action.

V. Every noxal action follows the person of the slave, by whom the male-feasance was committed; but, as long as he continues under the power of his master, his master only is liable to an action; and, if he becomes subject to a new master, then the new master becomes liable: but, if the slave is manumitted, he may be prosecuted by a direct action; for then the *noxæ deditio* is extinguished; because no surrender can then be made of him by whom the male-feasance was committed. But, on the contrary, an action, which was at first direct, may afterwards become noxal; for if a man, who is free, does any male-feasance, and afterwards becomes a slave, (and we have in our first book declared in what cases this may happen,) then the action, which was before direct, begins to be a noxal action against his master.

A Male-feasance against the Master.

VI. Although a slave commits a male-feasance against his master, yet no action is given; for no obligation can arise between a master and his slave, and therefore, if that slave passes under the power of another master, or is manumitted, no action can be brought either against him in his own person, or against his new master; from whence it follows, that if the slave of another should commit any male-feasance, for example, against Titius, and should afterwards become the slave of the same Titius, the action is ex-

tinguished; for it is a maxim, that an action becomes extinct, whenever it is brought into a state, in which it could not have had a commencement: and hence it is, that although a slave, from whom a master hath received damage, should cease to be under the power of that master, yet no action can afterwards be given against such slave; neither can a slave, who hath been aliened or manumitted, bring any action against his late master, by whom he hath been ill treated.

Of Children.

VII. The ancients indeed admitted this law of the forfeiture of the person to take place, even in cases, in which their children were concerned, whether male or female: but the later ages have rightly thought, that such a rigorous proceeding ought, by all means, to be exploded; and it hath therefore passed wholly into disuse: for who could suffer a son, and more especially a daughter, to be delivered up as a forfeiture to a stranger? for, in the case of a son, the punishment of the father would be greater, than that of the son; and, in the case of a daughter, the rules of modesty forbid such a practice. It hath therefore prevailed, that noxal actions should only take place in regard to slaves; and, in the books of the ancient commentators of the law, we find it often repeated, that the sons of a family may themselves be convened for their own misdeeds.

TITLE IX.

OF DAMAGE DONE BY QUADRUPEDS.

Of the Action in this case.

A noxal action is given by the law of the 12 tables, whenever any damage is done by brute animals, through wantonness, fright, or furiousness; but, if they are delivered up in atonement for the damage done, the defendant must be discharged from the action: for it is thus written in the law of the 12 tables, "if an horse, apt to kick, should strike with his foot; or if an ox, accustomed to gore, should wound any man with his horns, &c." But a noxal action takes place only in regard to those animals, which act contrary to their nature; for, when the ferocity of a beast is innate, no action can be given; so that, if a bear breaks loose from his master, and mischief is done, the person, to whom this animal belonged cannot be convened; for he ceased to be the master as soon as the beast escaped. But it is here to be noted, that the word *pauperies* denotes a damage, by which no injury is intended; for an animal, which hath no reason, cannot be said to have committed an injury. This is what relates to noxal actions.

Of the Ædilitian Action.

I. It must be observed, that the edict of the Edile prohibits any man to keep a dog, a boar, a bear, or a lion, where there is a public passage or highway: and, if this prohibition is disobeyed, and any freeman receives hurt, the master of the beast may be condemned in whatever sum seems agreeable to equity in the opinion of the judge; yet, in regard to every other damage, the condemnation must be in the double of what the damage amounts to. It is here necessary to inform the student, that not only the Edilitian action, but also an action for the damage, called *pauperies*, may both take place against the same person; for, although actions, and more especially those, which are penal, concur together on account of the same thing, they are not destructive the one of another.

TITLE X.

OF AGENTS.

Of Law Agents.

ANY man may commence a suit, either in his own name, or in that of another; as in the name of a proctor, a tutor, or a curator: but anciently, one person could not sue in the name of another, unless in a cause of liberty, tutelage, or where a society was concerned. It was afterwards permitted by the law *Hostilia*, that an action of theft might be brought in the name of those, who were captives in the hands of the enemy,—or who were absent upon the affairs of the republic,—or who were under the care of tutors. But, as it was found in later times to be highly inconvenient, that any man should be prohibited, either from suing, or defending in the name of another, it by degrees became a practice to sue by proctors; for ill-health, old age, the necessity of voyaging, and many other cases, continually prevent mankind from being able to prosecute their own affairs in person.

How the Proctor is appointed.

I. It is not necessary to use any certain form of words in appointing a proctor, nor to make the appointment in the presence of the adverse party; for it is generally done even without his knowledge: and note, that whoever is employed either to sue or to defend for another, is understood to be a proctor.

How Tutors and Curators are appointed.

II. We have already explained in the first book of our institutions, how tutors and curators may be appointed.

TITLE XI.

OF SECURITIES.

Of Personal Judgment.

IN taking security, the ancients pursued a different method from that, which the moderns have made choice of; for anciently, if a real action was brought, the defendant, or party in possession, was compelled to give security, to the end, that, if he lost his cause and would neither restore the thing itself, nor pay the estimation of it, the demandant might be enabled either to sue such defendant, or the parties bound for him; and this species of caution is termed *judicatum solvi*: nor is it difficult to understand, why it is so called; since every demandant stipulated, that the thing adjudged to him should be paid. We have already observed, that whoever defended his own cause, was obliged to give security, it is therefore with much greater reason, that the proctor in the cause of another should be compelled to give caution. But, if a demandant in a real action had sued in his own name, he was under no necessity of giving security; yet, if he sued only as a proctor, he was obliged to give caution, that his acts would be ratified by his principal, *rem ratam dominum habiturum*; for the danger was, lest the client or party principal should bring a fresh suit for the same thing: and, by the words of the edict, even tutors and curators were compellable to give caution, as well as proctors, though it was sometimes remitted, when tutors, or curators, were demandants; and such was the practice in regard to real actions.

I. The same rules, which were observed in real, obtained also in personal actions, in regard to the taking security on the part of the plaintiff; and, if the defendant in a personal action proceeded in another's name, he was obliged to give caution; for no one was reputed a competent defendant in the cause of another, unless security was given; but, whenever any man was convened in a personal action to defend his own cause, he was not compelled to give caution, that the thing adjudged should be paid.

New Law.

II. But at present we observe a very different practice; for, if a defendant is now convened either in a real or personal action, in his own cause, he is not compellable to give security for the payment of the estimation of the suit, but only for his own person; to wit, that he will remain in judgment till the cause is determined: and this security is sometimes given by sureties; sometimes by a promise upon oath, which is called a juratory caution; and sometimes by a simple promise without an oath, according to the quality of the person of the defendant.

Of the Proctor of the Plaintiff.

III. But, if a suit is commenced or defended by a proctor, the proctor of the plaintiff, if he does not either, enrol a mandate of appointment in the acts of court, or cause his client to nominate him publicly, is obliged to give security, that his client will ratify his proceeding. The same rule is also to be observed, if a tutor, curator, or any person, to whom the management of the affairs of others is entrusted, commences a suit by a proctor.

Of the Proctor of the Defendant.

IV. But, when a party is convened, if he is ready to nominate a proctor, such party may appear in open court, and confirm the nomination, by giving the caution *judicatum solvi* under the usual stipulation; or he may appear out of court, and become himself the surety, that his proctor will perform all the covenants in the instrument of caution; and whether the party convened does this in court, or out of court, he is obliged to make his estate chargeable, that his heirs, as well as himself, may be liable to an action. And a farther security must likewise be given, that he will either appear in person at the time of pronouncing sentence, or that his sureties, in case of his non-appearance, shall be bound to pay whatever the sentence exacts, if no appeal is interposed.

Of the same.

V. When a defendant does not give an appearance, then any other person, who is willing, may take upon himself the defence for him, and this may be done either in a real or personal action, without distinction, if the caution *judicatum solvi* is entered into for the payment of the estimation of the suit; for no man, (according to the ancient rule already mentioned,) can be said to defend the cause of another legally, unless security is given.

VI. But all such formalities may be more perfectly learned from the usage and practice of courts.

VII. We have judged it expedient, that these forms shall obtain, not only in Constantinople, but also in all our other provinces, in which a different practice may have hitherto prevailed through the want of knowledge; for it is necessary, that all the provinces should be guided by the example of the capitol of our dominions, and follow the practice of our royal city.

TITLE XII.

OF PERPETUAL AND TEMPORAL ACTIONS.

ALL those actions which took their rise from the law, the decrees of the senate, or the constitutions, were antiently reputed

perpetual; but the latter emperors have, by their ordinances, fixed certain limits both to real and personal actions. Actions, given by virtue of the prætor's authority, are generally limited to the space of one year; for such is the duration of his office: but sometimes the prætorian actions are made perpetual; that is, they are extended to the limits introduced by the constitutions: such are those actions which the prætor gives to the possessors of goods, and to others who hold the place of heirs. The action of manifest theft is also perpetual, although it proceeds from the mere authority of the prætor; for it was thought absurd that this action should determine within the space of a year.

Of Actions which pass to the Heirs.

I. But all actions in general, which either the law or the prætor gives against any man, will not also be given against his heirs; for it is a most certain rule of law, that penal actions, arising from a male-feasance, will not lie against the heir of an offender; as, for instance, actions of theft, rapine, injury, or damage injuriously done; but nevertheless these actions will pass to heirs, and are never denied, but in an action of injury, and in other cases of a similar nature; yet sometimes even an action of contract will not lie against an heir; as when a testator acts fraudulently, and nothing comes to the possession of the heir by reason of the fraud: but, if the penal actions, of which we have already spoken, are once contested by the principal parties concerned, they will afterwards pass both to and against the heirs of such parties.

Of Satisfaction during the Cause.

II. It remains to be observed, that, if the defendant before sentence gives full satisfaction to the plaintiff, it is the duty of the judge to dismiss such defendant, although, at the time of contestation of suit, his cause was so bad, that he deserved to be condemned; and, upon this account, it was anciently a common saying, that all actions were dismissible.

TITLE XIII.

OF EXCEPTIONS.

Principle of Exception.

IT follows, that we should treat of exceptions. Exceptions have been introduced into causes for the defence of the party cited; for it often happens, that a suit, which in itself is just, may yet become unjust, when commenced against a wrong person.

Of Exception on account of Fear and Fraud.

I. If a man, who is compelled by fear, or induced by fraud or mistake, makes a promise to Titius, for example, by stipulation; yet it is evident that he is bound by the civil law, and that Titius may have an efficacious action; but it would be unjust, that a condemnation should follow; and therefore the party who made such promise is permitted to plead exceptive matter in bar to the action, by setting forth, that the promise was extorted by fear or fraud, or otherwise by alleging the peculiar circumstances of the case, whatever they are; and these are called exceptions *in factum compositæ*; i. e. exceptions on the fact.

On account of Money not paid.

II. The same practice prevails, if Sempronius, for example, causes Titius to stipulate to repay him money, which Titius never received from him. It is certain that Sempronius in this case may bring an action; for Titius is bound by the stipulation; yet, as it would be unjust that he should be condemned upon that account, he is allowed to defend himself by an exception *pecunie non numeratæ*, i. e. on account of money not paid. But by our express constitution we have shortened the time allowed for bringing this exception, as we have already observed in the former book.

Exception of Compact.

III. And farther, although a debtor enters into a compact with his creditor, that his creditor shall not sue him, yet the debtor remains bound; for obligations are not to be wholly dissolved by a mere agreement: and therefore an action in this form, *si paret, eum dare oportere*, would be efficacious against the debtor; but, as it would be unjust, that the debtor should be condemned to make payment, notwithstanding the agreement, he is therefore permitted to defend himself by an exception of compact.

By Oath.

IV. If an oath is administered to a debtor at the instance of his creditor, and such debtor swears, that nothing is due from him, yet he still remains obligated: but, as it would not be right, that the plaintiff should afterwards complain of perjury, the debtor may defend himself by alleging his own oath by way of exception. Exceptions of this sort are likewise equally necessary in real actions; as when the party in possession takes an oath at the request of the demandant, and swears, that the thing in dispute is his own, and the demandant will nevertheless endeavour to recover it: for although the demandant's allegation is true; viz. that the

thing claimed appertains to him; yet it is unjust, that the possessor should be condemned.

Of a thing formerly adjudged.

V. If a man hath been sued either upon a real or personal action, the obligation nevertheless remains; and therefore, in strict law, he may again be sued upon the same account; but, in case of a second suit, he may be relieved, if he alleges by way of exception, that the cause hath already been adjudged.

Other exceptions.

VI. It may suffice to have given these instances of exceptions in general; but in how many and in what various cases they are necessary, may be more fully learned from the larger books of the digests.

First Division.

VII. Some exceptions proceed from the lawsthem selves, or from those regulations, which hold the place of laws; but others take their rise from the authority of the prætor.

Second Division.

VIII. Some exceptions are called perpetual and peremptory; others are termed temporary and dilatory.

Of Peremptory Exceptions.

IX. The perpetual and peremptory are those, which always obstruct the party agent, and destroy the force of the action—of this sort is the exception of fraud, of fear, and of compact, when it is agreed, that the money shall not be sued for.

Of Dilatory.

X. Temporary and dilatory exceptions are those, which operate for a time, and create delay; such is the exception of an agreement not to pursue a debt within a certain time, as within five years; but at the expiration of that time the creditor may proceed: and therefore those, against whom an exception of agreement, or any other similar exception can be objected, must delay their action, and not sue, till the time agreed upon is expired; and it is for this reason, that those exceptions are termed dilatory; and formerly if the party agent had sued within the time, in which it was agreed not to sue, and an exception was interposed, it not only hindered such parties from obtaining in that cause, but it also disabled them from proceeding, even after the expiration of the time agreed on; for they were reputed to have lost their right, by having commenced a temerary suit. But we have been willing to mitigate this rigour, and have decreed, that whoever presumes to commence a suit before the time limited by the agreement, shall

be subject to the constitution of Zeno concerning those, who demand more than their due : and, if a party agent breaks in upon the time, which he has before spontaneously allowed, or contemns the limits, which the nature of some actions allow, the party defendant, who suffers such injurious treatment, becomes entitled to twice the time before allowed, and, even when that is expired, can not be obliged to give an appearance, till he has been reimbursed the whole of his expences ; and this we have ordained in *terrorem*, that all plaintiffs may be taught to observe the proper time of commencing their suits.

Of Dilatory by reason of the Person.

XI. Dilatory exceptions may also arise by reason of the person of the party suing ; such are those, which are made against proctors ; as if a suitor should employ a soldier, or a woman to act for him : for soldiers are not permitted to appear in any cause, even in behalf of a father, a mother, or a wife, although they obtain the sanction of an imperial rescript ; but they are allowed to act in their own affairs, without offending against military discipline. But we have put a stop to the exceptions of infamy, which were formerly made, both against proctors and their constituents, having observed them to be little practised, and fearing, lest by means of such altercations, a disquisition into the merits of causes should be retarded.

TITLE XIV.

OF REPLICATIONS.

Of the Replication.

SOMETIMES an exception, which appears at the first view to be valid, is nevertheless not so ; and, when this happens there is a necessity for an additional allegation in aid of the plaintiff, which is called a replication, because the force of the exception is replicated, that is, unfolded, and destroyed by it ; as if a creditor should covenant with his debtor not to sue him, and it should afterwards be agreed between them, that the creditor may sue, in consequence of which agreement the creditor brings an action, to which the debtor excepts, alleging the agreement of his creditor not to sue him ; in this case, the exception would be of weight ; for, as such an agreement was entered into, it remains good, although a subsequent one was afterwards made to a contrary effect ; but, as it would be unjust, that a creditor should be concluded by the exception, he is allowed to make a replication, by reason of the subsequent compact.

Of Duplication.

I. It also sometimes happens, that a replication at first appears to be concludent, though it is not so in reality; and, when it so happens, then another allegation, called a duplication, must be offered in support of the defendant.

Of a Triplication.

II. And when a duplication carries with it an appearance of justice, but is, upon some account, injurious to the party agent, he may also, in his turn, give another allegation, which is termed a triplication.

Of other Exceptions.

III. But the great variety of business, which continually occurs, often extends the use of all these exceptions, much farther, than we have mentioned; but of these a fuller knowledge may be obtained by a perusal of the larger volumes of the digests.

Of Exceptions by Bondsmen.

IV. The exceptions, by which a debtor may defend himself, are generally allowed to be used by his bondsmen; and this is a right practice: for a demand, made upon them, is, as it were, a demand upon the debtor himself, who is compellable by an action of mandate to pay over to his sureties whatever they have been obliged to pay upon his account: and therefore, if a creditor hath covenanted with his debtor not to sue him, the bondsmen of such debtor may be aided by an exception of compact, in the same manner, as if the promise had been made expressly to them. But there are some exceptions, which cannot be made use of in behalf of sureties; for although, when a debtor hath made a cession of his goods, he may defend himself by alleging that cession, as an exception to a suit brought by a creditor, yet the same exception cannot be alleged by the bondsmen; and the reason is evident: for whoever demands sureties hath always this principally in view, that he may be able to recover his debt from those sureties, in case of failure in the principal debtor.

TITLE XV.

OF INTERDICTS.

Definition.

WE are now led to treat of interdicts, or of those actions, which supply their place. Interdicts were certain forms of words, by which the prætor either commanded or prohibited something to be done; and these were chiefly used when any contention arose concerning possession, or quasi-possession.

First Division.

I. The first division of them is into prohibitory, restoratory, and exhibitory interdicts. The prohibitory are those, by which the prætor prohibits something to be done, as when he forbids force to be used against a lawful possessor; or against a person, who is burying another, where he hath a right; or when he forbids an edifice to be raised in a sacred place, or hinders a work from being erected in a public river, or on the banks of it, which may render it less navigable. The restoratory are those interdicts, by which the prætor orders something to be restored, as the possession of goods to the universal successor, who has been kept out of possession by one, who hath no right; or when the prætor commands possession to be restored to him, who hath been forcibly ejected. And the exhibitory interdicts are those, by which the prætor commands some exhibit to be made, as of a slave, for example, concerning whose liberty a cause is depending; or of a freed-man, from whom a patron would exact the service due to him; or of children to their parent, under whose power they are. Some nevertheless imagine, that interdicts can with propriety be only prohibitory, because the word *interdicere* signifies to denounce and prohibit; and that the restoratory and exhibitory interdicts might more properly be called decrees: yet it hath obtained by usage, that they should all be termed interdicts, because they are pronounced between two; (*inter duos dicuntur,*) the demandant and the possessor.

Second Division.

II. The second division of interdicts is into those, which are given for the acquisition, the retention, or recovery of a possession.

Of Interdicts of Acquisition.

III. An interdict for the acquisition of possession is given to him whom the prætor appoints to be the possessor of the goods of a deceased person. This interdict is called *Quorum bonorum*, and the effects of it are, that it obliges all persons who retain goods in their hands as heirs or possessors, to restore such goods to them to whom the possession of them hath been committed by the magistrate; and note, that he is reputed to possess, as heir, who thinks and takes himself so to be; and that he is deemed to possess, as possessor, who, without authority, retains a part, or the whole, of an inheritance, knowing that the possession does not belong to him. An interdict of acquisition is so called, because it is useful to him only who first endeavours to acquire the possession; and therefore this interdict would be useless to any

one who had once acquired a possession, but afterwards lost it. The interdict called the Salvian interdict is also appointed for the acquisition of possession; and is used by the proprietors of farms, in order to acquire the goods which their tenants have pledged and engaged, as a security for the payment of rent.

Of Interdicts of Retention.

IV. The interdicts *Uti possidetis* and *Utrubi* have been introduced for the sake of obtaining possession; for, when there is a controversy between two parties concerning property, it is necessary to enquire which of them is in possession, that it may be known which of them ought to be the demandant; for, till the possession is ascertained, an action of demand cannot be instituted; and natural reason teaches us, that, when one of the parties is in possession, the other must, of course, be the demandant in the suit: but, as it is by far more advantageous to be the possessor than the demandant, there is generally great contention for the possession; for although the possessor is not in reality the true proprietor, yet the possession will still remain in him, if the plaintiff does not prove the thing in litigation to be his own: and therefore, when the rights of parties are not clear, the sentence is always against the demandant. By the interdict *Uti possidetis*, the possession of a farm or house is contended for; and, by the interdict *Utrubi*, the possession of things moveable is disputed. These interdicts anciently differed much in their force and effects: for, by the interdict *Uti possidetis*, that party who was in possession at the time of bringing the interdict, prevailed, if he had not obtained the possession from his adversary by force, clandestinely, or precariously; but it was not material in what manner the possessor had obtained the possession from any other person: and, by the interdict *Utrubi*, that party prevailed who had been in possession for the greatest part of the year preceding the contest, if he had not acquired that possession clandestinely, precariously, or by force. But the present practice is nevertheless otherwise; for the power of both interdicts in regard to possession is now made equal; so that in any cause, instituted either for things moveable or immoveable, that party prevails who was in possession at the time of contesting the suit, if it is not made apparent that he gained such possession by force, by clandestine means, or precariously.

Of retaining and acquiring Possession.

V. A man is regarded as a possessor, not only when he is himself in possession, but also when any other, who is not under his power, holds possession in his name; as, for instance, a farmer,

or a tenant. Any person may also possess, by means of those to whom he hath committed the thing in litigation, either as a deposit or a loan; and this is what is meant by saying, that a possession may be retained by any one, by means of another, who possesses in his name. It is moreover held, that a possession may be retained, by the mere intention only; for although a man is neither in possession himself, nor any other for him, but has quitted the possession of certain lands with an intent to return to them again, he shall nevertheless be deemed to continue in possession. We have already explained, in our second institution, by what persons any man may acquire possession; and although it may be retained *solo animo*, that is, by an intention only, yet it is indubitable, that a mere intention is not sufficient for the acquisition of possession.

Of the Interdict of recovering.

VI. The interdict for the recovery of possession is generally made use of when any person hath been forcibly ousted from the possession of his house or estate; for the party ousted is then entitled to the interdict *Unde vi*, by which the intruder is compelled to restore him to possession, although he, who had been thus forcibly ousted, was himself in possession by clandestine means, by force, or precariously. But, as we have before observed, it is provided, by the imperial constitutions, that, whenever any man seizes a thing by force, if it is his own, he shall lose his property in it; and, if it belongs to another, he shall be compelled, not only to make restitution, but also to pay the full value to the party who suffered the force. But whoever ousts another of possession by force, is likewise subject to the law *Julia, de vi privata*, or *de vi publica*:—if the seising or intrusion was effected without weapons, then the offender is only liable to the law *de vi privata*; but if it was effected by an armed force, he is then subject to the law *de vi publica*. We comprehend not only shields, swords, and helmets under the term arms, but also clubs and stones.

Third Division.

VII. The third division of interdicts is into simple and double interdicts; the simple are those, in which there is both a plaintiff and a defendant; and of this sort are all restoratory and exhibitory interdicts: for the plaintiff, or demandant, is he, who requires something to be exhibited or restored; and the defendant is he, from whom the exhibition or restitution is required. But of the prohibitory interdicts some are simple, some double; they are simple, when the prætor forbids something to be done in a sacred

place, on a public river, or upon the banks of it; and the demandant is he, who desires, that some act should not be done, and the defendant is he, who endeavours to do it. The interdicts *Uti possidetis* and *Utrubi* are instances of the double interdicts: and they are called double, because in these the condition of either litigant is equal, the one not being understood to be more particularly the plaintiff or the defendant, than the other; inasmuch as each sustains the part of both.

VIII. It would be superfluous at this day to speak of the order and ancient effect of interdicts; for, when judgments are extraordinary, (and at present all judgments are so,) an interdict is rendered unnecessary,; and judgments are therefore now delivered without interdicts, in the same manner, as if a beneficial action was given in consequence of an interdict.

TITLE XVI.

OF THE PENALTIES OF FALSE LITIGATION.

Of Penalties in general.

OUR legislators and magistrates have ever been careful to hinder mankind from entering into rash and litigious contentions: and we also are studious to effect the same purpose. And, that such suits may be the better prevented, the rashness both of plaintiffs and defendants hath been properly restrained, by pecuniary punishments, the coercion of an oath, and the fear of infamy.

Of the Oath and Penalty of Prosecuting.

I. By virtue of one of our constitutions, an oath must be administered to every man, against whom an action is brought; for a defendant is not permitted to plead, till he hath first sworn, that he proceeds as a contradictor, upon a firm belief, that his cause is good. But actions lie, in particular cases, for double and triple value against those, who have given a negative issue; as when a suit is commenced on account of injurious damage, or for a legacy left to a sacred place, as a church, hospital, &c. There are also actions, upon which more than the simple value is recoverable at the time of their commencement; as upon an action of theft manifest, which is for fourfold the value; and upon an action of theft not manifest, which lies for double the value; because in these, as well as in some other cases, the action is at first given for more than the simple value, whether the defendant denies or confesses the charge brought against him. But the calumny of the plaintiff is also under restraint, for he too is compelled by our constitution to swear, that he did not commence the suit with an

intention to calumniate; but upon a thorough confidence, that he had a good cause: and, what is more, the advocates on both sides are likewise compellable to take a similar oath, the substance of which is set forth in another of our constitutions. This practice hath been introduced in the place of the ancient action of calumny, which compelled the plaintiff to pay the tenth part of his demand as a punishment; but this action is now disused; and instead of it, we have introduced the before-mentioned oath, and have ordained, that every rash litigant, who hath failed in his proof, shall be compelled to pay his adversary the damages and costs of suit.

Of Infamy.

II. In some cases the parties condemned become infamous, as in actions of theft, rapine, injury, or fraud. The parties condemned are likewise rendered infamous, in an action of tutelage, mandate, or deposit, if it is a direct, and not a contrary action. An action of partnership has also the same effect; for it is direct in regard to all the partners; and therefore any one of them, who is condemned in such action, is branded with infamy. But not only those who have been condemned in an action of theft, rapine, injury, or fraud, are rendered infamous; but those also who have bargained to prevent a criminal prosecution; and this is a right practice; for there is a wide difference between a debtor, on account of a crime, and a debtor upon contract.

Of summoning to Trial.

III. All actions take their commencement from that part of the prætor's edict, in which he treats *de in jus vocando*; that is, of calling persons into judgment: for the first step to be taken, in all matters of controversy, is to cite or call the adverse party to appear before the judge, who is to determine the cause. And, in the same part of the edict, the prætor hath treated parents and patrons, and even the children of patrons and patronesses, with so great a respect, that he does not suffer them to be called into judgment by their children or their freedmen, until application hath been first made to him, and leave obtained; and, if any man presumes to cite a parent, a patron, or the children of a patron, without such previous permission, he is subject to a penalty of fifty solidi.

TITLE XVII.

OF THE OFFICE OF JUDGE.

Of the Office of Judge in general.

IT now remains, that we should enquire into the office and duty of a judge. And it is certain, that it ought to be his principal

care never to determine otherwise than the laws, the constitutions, or the customs and usages direct.

Of the noxal Judgment.

I. And therefore, if a suit is commenced by a noxal action, the judge ought always to observe the following form of condemnation, if the defendant deserves to be condemned; e. g. "I condemn Publius Mævius to pay Lucius Titius ten aurei, or to deliver up the slave who did the damage."

Of real Actions.

II. When a cause, commenced upon a real action, is brought before a judge for his determination, and he thinks proper to pronounce against the demandant, the possessor ought then to be acquitted; but, if the judge thinks it just to condemn the possessor, the party condemned must be admonished to restore the very thing which was in dispute, together with all its produce. But, if the possessor alleges that he is unable to make an immediate restitution, and petitions for a longer time, without any seeming intention to frustrate the sentence, he is to be indulged; provided always, that he gives caution, by a sufficient bondsman, for the full payment of the condemnation and costs of suit, if he should fail to make restitution within the time appointed. And, if an inheritance is sued for, a judge ought to determine just in the same manner, in regard to the profits, as he would in a suit for some particular thing only; for, if the defendant appears to have been a possessor *in mala fide*, then almost the same reasoning prevails in both actions in regard to the profits, whether they were taken by the possessor, or, through negligence, not taken by him: but if the defendant was a possessor *bona fide*, then no account is expected, either of fruits consumed, or of fruits not gathered, before the contestation of suit; yet note, that, from the time of contestation, all fruits must be accounted for, whether they were gathered and used, or left ungathered, through the negligence of the possessor.

Of the Action to exhibit.

III. If a man proceeds by an action *ad exhibendum*, it is not sufficient, that the defendant should exhibit the thing in question, but he must also be answerable for all profits and emoluments accruing from it; that the plaintiff may be in the same state, as if his property had been restored to him at the time, when he first brought his action; and therefore, if the possessor, during his delay to surrender the thing in dispute, shall gain a prescriptive title to it, yet such possessor shall nevertheless be condemned to restitution; for he shall not be allowed to avail himself of his own

delay. And farther, it is the duty of the judge to take an account of the profits of the middle time : that is, of the time between contestation and sentence. But, if the defendant declares, that he is not able instantly to produce the thing adjudged, and prays a farther time, without any appearance of affecting a delay, a term ought to be assigned him, upon his giving caution to make restitution. But, if he neither obeys the commands of the magistrate in instantly producing the thing adjudged, nor in giving a sufficient caution for the production of it at a future day, he must then be condemned to pay the full damages, which the demandant hath sustained by not having the thing delivered to him at the commencement of the suit.

Partition of an Inheritance.

IV. When a suit is commenced by the action *familie erciscundæ*, for the partition of an inheritance, it is the duty of the judge to decree to each heir his respective portion: and, if the partition when made, is more advantageous to the one than to the other, then ought the judge, as we have before observed, to oblige him, who has the largest part, to make a full recompense in money to his coheir: it therefore follows, that every coheir, who hath taken the profits of an inheritance to his sole use, and consumed them, is liable to be compelled to make a restitution. And this is the law not only when there are two heirs, but also when there are many.

Of dividing what is Common.

V. The same law is also observed, when a suit is brought upon the action *communi dividundo*, for one particular thing only, it being but a part or parcel of an inheritance, as for example, a field, or any piece of ground, which, if it can be conveniently divided, ought to be adjudged to each claimant in equal portions; and, if the share of one is larger than the share of another, the party, possessing such large portion, must be condemned to make a recompense in money. But, if the thing sued for is of such a nature, that it can not be divided, as a slave, or an horse for example, it must be given intirely to one of the copartners, who must be ordered to make a satisfaction in money to the other.

Of determining Boundaries.

VI. When the action *finium regundorem* is brought for the determination of boundaries, the judge ought first to examine, whether it is absolutely requisite to proceed to an adjudication: but it is, in one case, undoubtedly necessary; and this happens, whenever it becomes expedient, that any grounds should be divided by more conspicuous boundaries than they formerly were;

for necessity then makes it requisite, that a part of one man's ground should be adjudged to another, in which case it is incumbent upon a judge to condemn him, whose estate is enlarged, to pay an equivalent to the other, whose estate is diminished. It is also by virtue of this action, that any one may be prosecuted, who hath committed any fraud in relation to boundaries, by either removing stones, or cutting down trees, which supplied the place of landmarks. The same action will also subject any man to condemnation on account of contumacy, if he refuses to suffer his lands to be measured at the command of a judge.

Of Adjudication.

VII. And note, that whatever is adjudged by virtue of a sentence proceeding from any of these actions, the same instantly becomes the property of him, to whom it was so adjudged.

TITLE XVIII.

OF PUBLIC JUDGMENTS.

Difference from private.

PUBLIC judgments are not introduced by actions; nor are they in any thing similar to the other judgments, of which we have been treating. They also differ greatly from one another in the manner of being instituted and prosecuted.

Etymology.

I. These judgments are denominated public, or popular, because, in general, they may be sued to execution by any of the people.

Division.

II. Of these judgments some are capital, and others not capital. Those, we term capital, by which a criminal is prohibited from fire and water, or condemned to death, to deportation, or to the mines. The other judgments, by which men are fined and rendered infamous, are public indeed, but yet not capital.

Examples. Of lese Majesty.

III. The following laws denounce public judgments. The law *Julia majestatis* extends its force against those, who have been hardy enough to undertake any enterprize against the emperor or the republic. The penalty of this law is the loss of life, and the very memory of the offender becomes infamous after his death.

Of Adultery.

IV. The law *Julia*, which was made for the suppression of adulteries, not only punishes those men with death, who violate the marriage bed of others, but also those, who commit acts of

detestable lewdness with persons of their own sex. The same law also inflicts a punishment upon all, who are guilty of the crime called *stuprum*: which is that of debauching a virgin, or a widow of honest fame, without using force. The punishment of this crime in persons of condition is the confiscation of a moiety of their possessions: but offenders of low degree undergo a corporal chastisement with relegation.

Of Assassins.

V. The law *Cornelia de sicariis* punishes those, who commit murder, with death, and also those, who carry weapons, called *tela*, with an intent to kill. The term *telum*, according to Caius's interpretation, commonly signifies an arrow made to be shot from a bow, but it is now used to denote any missive weapon, or whatever is thrown from the hand; it therefore follows, that a club, a stone, or a piece of iron, may be comprehended under that appellation. The word *telum* is evidently derived from the Greek adverb *τηλου*, *procul*, because thrown from a distance. And we may trace the same analogy in the Greek word *βελος*; for what we call *telum*, the Greeks term *βελος*, from *βαλεσθαι* to throw; and of this we are informed by Xenophon, who writes thus:—"Darts also were carried, spears, arrows, slings, and a multitude of stones" Assassins and murderers are called *sicarii* from *sica*, which signifies a short crooked sword or ponyard. The same now also inflicts a capital punishment upon those, who practice odious arts, or sell pernicious medicaments, occasioning the death of mankind, as well by poison, as by magical incantations.

Of Parricides.

VI. The law *Pompeia de parricidiis* inflicts a new punishment upon those, who commit parricide, which is the most execrable of all crimes; and by this law it is ordained, that whoever, either publicly or privately, hastens the death of a parent or a child, or of any person comprized under the tie, or denomination, of a parent, shall be committed as a committer of parricide; and that any one, who hath advised, or been privy to the death of any of these persons, is also guilty of parricide, although he is a stranger, and not related to their family. A criminal, in case of parricide, is neither put to death by the sword, by fire, nor by any other ordinary punishment; for the law directs, that he shall be sewed up in a kind of sack, with a dog, a cock, a viper, and an ape, and, being put up in this horrid inclosure, shall be thrown either into the sea, or an adjacent river, according to the situation of the place, where the punishment is inflicted: thus, whilst he is yet alive, he is deprived of the very elements; so that his living body

is denied the benefits of the air, and his dead body the use of the earth. But if a man is guilty of the murder of any other person, related to him, either by cognation or affinity, he is only subject to the punishment inflicted by the law *Cornelia de sicariis*.

Of Forgery.

VII. The law *Cornelia de falsis*, which is also called *testamentaria*, punishes any man, who knowingly, and with a fraudulent intent, hath written, signed, dictated, or produced a false will, or any other instrument: it also punishes every one who hath made, engraved, or in any manner counterfeited the seal of another. The punishment inflicted by the law upon slaves in these cases is death; but the punishment of free persons is deportation.

Of Force.

VIII. The law *Julia*, concerning public and private force, takes place against all who use force, whether they are armed or unarmed; but, if proof is made of an armed force, the punishment is deportation by that law; and, if the force was not accompanied with arms, the penalty to be inflicted is the confiscation of one third part of the offender's goods: nevertheless, if a rape is committed upon a virgin, a widow, a nun, or upon any other person, both the ravishers and their accomplices are all equally subject to a capital punishment, according to the decision of our constitution, in which the student may read more at large of this matter.

Of Peculation.

IX. The law *Julia de peculatu* punishes those, who have been guilty of theft, in regard to public money, or any thing which is sacred; but, if judges themselves, during the time of their acting as such, commit a theft of this kind, their punishment is capital; and the punishment of all those, who assist in such a theft, or knowingly receive the money stolen, is also capital. But all other persons, who offend against this law, are only subject to deportation.

Of Men-stealers.

X. The law *Fabia* against plagiaries is also numbered among public judgments; but, in consequence of the imperial constitutions, the offenders against this law are sometimes punished with death, and sometimes by a milder punishment.

Of buying Offices, Bribery, Monopoly, Defalcation.

XI. There are also other public judgments; such are the Julian laws *de ambitu* (buying offices); *repetundarum* (bribery); *de annona* (monopoly); *de residuis* (defalcation), which do not

punish with death, but inflict other punishments upon those who offend.

Conclusion.

XII. But it is now time to conclude our institutions; and we declare it to be our intent, that this brief exposition of public judgments should serve only as an index, to give a general idea of that knowledge, which, through the blessing of God, may be most fully and particularly obtained, by perusing the digests with diligent attention.

BLESSED BE THE MAJESTY OF GOD AND OUR LORD JESUS CHRIST.

END OF THE INSTITUTIONS.

THE
INSTITUTIONS
OR
ELEMENTS OF JUSTINIAN,
In Four Books.

TRANSLATED FROM THE ORIGINAL LATIN,

BY

DR. HARRIS.

London :

Printed by W. Green & T. Chaplin, 1, Crane-Court, Fleet-Street,
FOR THE PROPRIETORS, MILITARY CHRONICLE AND MILITARY CLASSICS
OFFICE, 14, CHARLOTTE-STREET, BLOOMSBURY, AND TO BE HAD OF
ALL THE BOOKSELLERS.—1814.

THE

PROCEEDINGS

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