Novel 115. (542 A.D.)

This constitution deals with six subjects etc.
(Haec constitutio sex habet capita etc.)

Preface.

It has come to the notice of Our Serenity, that a final judgment was rendered by the president of the province in an action between Eustathius, beloved of God, bishop of the city of Tlos[a] and Pistus, deacon of the church of Telmessus[a], and that an appeal has been taken. Thereupon, the judges who examined the appeal, while in doubt, consulted Our Clemency as to whether to apply, in their examination of the case, the laws in force at the time when such final judgment was rendered or those subsequently promulgated by us. It appeared just to us that the laws in force at the time of the rendition of such judgment should be applied and the case terminated in accordance therewith, and if any such question arises hereafter, it is our will that it be settled in like manner.

(a) City of Lycia.

c. 1. We accordingly ordain that when a final decision has been rendered in a case followed by an appeal, the appellate judges shall terminate the case according to the laws in force at the time of the rendition of the final judgment. That shall apply also in revising the decision of the glorious praetorian prefects and in connection with cases referred to us by the judges, when the parties have rested their case and the judges consult us, by reports made to us, as to what the decision should be. In all the cases mentioned the laws in force at the time of the decision or consultation shall govern, although a law is subsequently enacted which provides something different and extends its force to past cases.

c. 2. We also add the following provision to the present law: It happens at times, among litigants, that one of the parties rests his case, but the other party - knowing his cause to be unjust, and unwilling to have the nature thereof known immediately - refuses to acknowledge, after certain matters have been investigated, and after such delays as the laws grant for the purpose of proof, that he has produced sufficient proof. So we direct that if one of the parties rests his case, but the other alleges that he has some other proof which he should produce, the judge hearing the case must urge the party that seeks a delay to produce the proof he wants within thirty days after the other party has rested his case. If he fails to do so, then, in order to overcome his evil intention, another month (only) shall be granted him by the judge. If he has not then produced the proof, a delay of another month shall be given him, and if he does not produce his proof within the aforesaid period of three months, granted to litigants who delay the case, then the judge shall no longer defer to render his decision, proper in the case, or to refer it, if he wishes, so that the end of the suit may not be drawn out by those whose cause is bad.

June 26 (536).

Note.

For delays granted in cases generally, see title 9 of this book.

NOVEL 115.

Note.

The masculine generally includes the feminine, unless otherwise indicated.

c. 3. We also want to add another subject to the present law. We ordain that no father or mother, grandfather or grandmother, great-grandfather or great-grandmother shall be permitted to pass over or disinherit a son, daughter or other descendants in his or her testament, although they have already given them the required legal portion by gift, legacy or trust, unless they are shown to have been ungrateful and the ascendants specially mention the fact of such ingratitude in the testament. But since the causes for which children may be declared ungrateful are set forth in various and scattered laws and are not set forth clearly, some of them not appearing to us to be adequate while others which are adequate having been omitted, it has seemed necessary to us to comprise them in the present law, permitting no one to declare a child guilty of ingratitude by virtue of any other law unless such cause is stated in this constitution. Adequate causes for doing so are the following:

1. If a child lays his hands upon his parents.
2. If a child is guilty of a grave and dishonorable wrong against them.
3. If a child has accused them in a criminal case not involving the emperor or the state.
4. If a child is a prisoner and associates with prisoners.
5. If a child attempts to plot against the life of the parents by poison or otherwise.
6. If a son has illicit relations with his stepmother or the father's concubine.
7. If a child calumniates his parents and by information inflicts great damage on them.

8. If one of the aforesaid parents (ascendants) happens to be incorcerated and children who could inherit by intestacy from him or her, or one of them, when asked, refuse to become surety for him or her, in so far as able, either as to the person or as to a debt. But this shall apply only to male descendants.

9. If one of the children is shown to have forbidden his (or her) parents to make a testament; and even though the latter are subsequently enabled to make such testament, they may disinherit a child for such reason; but if any parent dies without testament by reason of such prohibition, and other intestate heirs of the same or an inferior grade, or persons whom the deceased wanted to appoint as heirs or legatees, or persons who have in any way suffered damage by reason of such prohibition, are able to show that fact, the matter shall be decided according to other laws enacted concerning this matter.(a)

(a) C. 3,28,23.

10. If a son becomes a gladiator or a mime against the wish of the parents and remains in that occupation, except in cases where his (or her) parents are in the same occupation.

11. If one of the aforesaid parents wants to give his daughter or granddaughter in marriage, and give a proper dowry according to his ability, but the daughter or granddaughter refuses and prefers a dishonorable life. But if a daughter becomes twenty-five years of age and her parents delay in uniting her to a husband, and it happens that she, perchance, sins with her body, or marries a free husband without the consent of her parents, such conduct shall not be considered as ingratitude on the part of the daughter, since it was not her own fault but that of her parents.

12. If one of the aforesaid parents is mad and the children, or some of them, or if there are no children, then the other cognate relatives who inherit on intestacy, do not show him the proper attention or care, then if such parent becomes sane, he may declare

such child or children or cognate relatives who neglected him, as ungrateful in his testament. And if a stranger knows him to be mad and neglected by his children, cognate relatives or other persons appointed in the mad person's will as heirs, takes pity on him and wants to take care of him, he may notify the intestate or testate heirs in writing to take care of him. If they neglect to do so even after such notice, and such stranger takes such mad person into his house and takes care of him to the time of his death at his, the stranger's, own expense, then such person, though he be a stranger, who gives such mad person his care and attention, shall become the heir, and the persons appointed as heirs who, as stated, neglect to care for such mad person, shall be considered unworthy to be such heirs. But other provisions of the testament shall remain in force.

13. If one of the aforesaid parents happens to be in captivity, and one or all of his children fail to exert their efforts to redeem him, then if he is able to escape from the calamity of his captivity, he has it in his power whether or not to declare this a sufficient cause for ingratitude. If he is not liberated through the neglect or omission of his children, but dies in captivity, the persons who made no efforts to redeem him, cannot inherit from him, and if all the children neglected him in this matter, all his property left by him shall fall to the church of the city where he was born, and an inventory of his property shall be taken, so that none of it may perish. The property so falling to the church shall be used for the redemption of captives. These provisions apply only to persons who may not be disinherited without being declared and shown ungrateful. But the present matter gives us the occasion to enact a general law. And we therefore ordain generally that if a person in captivity has no children and his other intestate heirs fail to make an effort to redeem him and he dies in captivity, none of those who neglected him shall inherit from him, although he made a testament previous to his captivity in which he appointed such persons as his heirs.

force the laws which have already been enacted concerning other heretics, these things shall be observed as to Nestorians and Acephalians; that is to say, if parents are perchance discovered to adhere to the Jewish madness of Nestorius or to embrace the insanity of the Acephalians, separated on that account from the communion of the Catholic church, they shall not be permitted to appoint as their heirs any children except those who are orthodox and are in communion with the Catholic church, and if there are no children, then only agnate or cognate relatives who are Catholics. If some of the children, as happens, are orthodox and in communion with the Catholic church, while others are separated from her, the whole property of the parents shall descend to the Catholic children, although the former have made a will contrary to the provisions of this constitution. If brothers, separated from the church, later return, their portion shall then be turned over to them in the condition in which it then is, but the Catholics who detain the aforesaid portions shall suffer no detriment or harm by reason of the fruits or the management thereof in the meantime; and as we forbid alienation of such property which the orthodox receive in place of their brothers who are not in communion with the church, so the fruits and benefits of the management thereof in the past shall in no manner be demanded or taken from those who have held it. But if these who are not in communion with the church persevere in their error to the end of their life, then the orthodox brothers or heirs shall hold such property by absolute right of ownership. If all of the children are perverse and not in communion with the Catholic church, and there are other agnate or cognate relatives who adhere to the orthodox faith and are in communion with the church, they shall have preference over the heretic children and receive the inheritance. If the children as well as the other agnate or cognate relatives are strangers to the orthodox faith, then if the parents belonged to the clergy, their property shall belong to the church

Such appointment of heirs shall be void, but other matters in the testament shall remain in force, and the property of such persons shall, in like manner, fall to the churches of the cities where he was born, to be used only for the redemption of captives, so that those who are not themselves redeemed by their own people may by their property enable the redemption of others, and their souls, too, may be aided by such pious action. This shall apply also if a captive, prior to his captivity, appointed a stranger as his heir, who, knowing of such appointment, neglected to redeem the captive. This penalty shall be imposed on those who have arrived at the age of eighteen. In cases where it is necessary to pay money for the redemption of captives, and a person has no money of his own, he may, if he has reached the aforesaid age, borrow money, pledging movable or immovable property, either his own or that of the daptive, since we order contracts of that kind to be valid as to all the things mentioned which are given or expended for the redemption of captives, as though made by persons sui juris and of full age, so that parties who, as stated, contract with such persons in regard to the matters aforesaid will sustain no detriment, since the person who returns from captivity must ratify such contracts as though made by himself.(a)

(a) See C. 8,50.

14. If anyone of the aforesaid parents who is orthodox, knows that his son or sons do not acknowledge the Catholic faith and are not in communion with the holy church, in which all blessed patriarchs, unanimously and with one accord, preach the true faith which the four synods, the Nicaeau, the Constantine politician, the first Ephesian and the Chalcedonian are known to embrace and to proclaim, and such children persevere in such infidelity, their parents have power to declare them ungrateful and disinherit them in their testament for that reason. We say this as to the cause of ingratitude; but looking after orthodox children in general, we order that, keeping in

of the city where they had their domicil, provided, however, that if the ecclesiastics neglect to claim the property of such persons within the space of a year, the ownership thereof shall belong to our fisc; if such parents are laymen, then, in like manner, their property shall all belong to the Crown Domain. These provisions apply although such parents die without a testament. All orders directed in other constitutions against other heretics shall also apply against Nestorians, Acephalians and all others who are not in communion with the Catholic church in which the aforesaid holy synods and the patriarchs are acknowledged, and shall also apply to the heirs of such persons. For if we labor in behalf of earthly things, how much more should we do so with the greatest care on behalf of the safety of souls.

15. If, accordingly, parents mention the aforesaid grounds of ingratitude or some or one of them, in their testament, and the designated heirs prove such grounds or one of them to be true, then the testament shall remain in effect. If that is not done, the disinherited children will not be prejudiced, the testament will be invalid so far as the appointment of heirs is concerned, and the children will inherit on intestacy in equal shares, so that the children may not be condemned by fictitious accusations or suffer any fraud in connection with the property of their parents. If it happens that legacies or trusts are left by such testaments, or manumissions are made therein or appointments of guardians are made, or other subjects recognized by law are mentioned therein, all such provisions shall be carried out, and the gifts therein shall be paid as though the testament were not overturned in that respect, but valid. The foregoing provisions are made as to testaments of parents.

c. 4. It has appeared to be proper, moreover, to make, on the other hand, the same provisions, with some distinctions, with reference to testaments of children. We therefore ordain that children shall not be permitted to pass over their parents or exclude them from the property over which they have power of testamentary disposition, unless they specially mention the causes which we are about to enumerate. These are:

1. If parents deliver their children (to public authorities for a crime) punishable with death, except for the crime of treason.
2. If it is shown that parents have plotted against the life of their children by poison or incantations or in some other manner.
3. If a father has illicit relations with his daughter-in-law or with his son's concubine.
4. If parents forbid their children to dispose by testament of property over which the latter have power of testamentary disposition; and all the provisions which we made in that respect as to prohibiting parents from making testaments shall be observed.
5. If a husband perchance gives poison to his wife, or a wife to her husband, for the purpose of causing death or mental aberration, or the one plots in some other manner against the other, then such a crime, being a public one, shall indeed be investigated and punished according to law, and children have the right in their testaments to leave nothing of their property to persons who are known to have committed such a crime.
6. If parents neglect to take care of a child or children who are mad, then all the provisions made in the case of mad parents shall apply.
7. We also add the case of misfortune of captivity in which children find themselves who are not liberated therefrom through the inattention and negligence of their parents. In such case the parents shall in no manner receive the property of the

children, and all provisions made on that subject about parents and cognate or agnate relatives who inherit on intestacy and about outside designated heirs, shall govern.

8. If one of the aforesaid children who is orthodox learns that his parent or parents are not Catholics, the same provisions shall apply to them which we made above as to parents.

9. If children accordingly state such cause or causes in their testament and the designated heirs prove one or more of them, the testament shall remain in force and effect. If this is not done, the testament is invalid as to the appointment of heirs and the property shall be given to the persons who inherit on intestacy. But legacies, trusts, manumissions, appointments of guardians and other provision shall, as above mentioned, remain valid. If other laws contain anything contrary to this constitution relative to a legacy, trust, manumissions or other subjects, such contrary provisions shall not be valid. The foregoing penalties of disinherison and omission in a will have been provided against the aforesaid persons for ingratitude. If any of these causes involve a crime, the authors thereof must also suffer the punishment provided by law.

c. 5. These things have been enacted so as to abolish testamentary wrongs to parents and children. If such persons are appointed as heirs, but are ordered to be satisfied with certain things, the testament cannot, in such case, be annulled, and if less than the required legal portion is left, the deficiency must be made up by the heirs, according to the provisions of other laws. For the main aim of Our Serenity is to destroy the wrongs to parents and children arising from disinherison and omission from the will. Parents should remember that they, too, were children and received the same advantage. So, too, children must take pains to comply with the desires of their parents, since they hope to be parents and wish to be honored by their children. Hence it is plain that this law is

made for the benefit and safety of both, and has not been made without cause, but upon good grounds. For we have learned that Pulcheria, though stated by her mother to be a grateful daughter, was disinherited in the former's testament, both as to the paternal as well as to the maternal property. Since we know that the will was made through fraud and trickery (of others), it could not be permitted to be valid, and we have ordered the daughter to be the heir of her father and mother, as is stated in our written decision in that matter.

c. 5. - - 1. We further remember of having enacted a law, by which we ordered that no one should be permitted to detain the bodies of dead persons on account of a debt or to hinder their burial(a). At present we have learned that some persons detained, on account of a debt, the father of a deceased son, when he was returning from a funeral. We have, therefore, thought it pious and humane to forbid such cruel conduct by this law. We accordingly ordain that no one shall be permitted to sue the heirs of the deceased or his parents, children, wife, agnate, cognate or other relatives or his sureties before the expiration of nine days, after they begin to mourn, or to molest them in any way, send them any summons or call them into court on account of any debt of the deceased or for any other cause which specially involves the aforesaid persons (on account of such deceased). If any person dares to detain any such person within nine days or to sue him or to demand from him any stipulation, promise or guaranty, all that shall be invalid. If any one has any cause of action against such persons, he may bring it according to law, after the expiration of the nine days; provided, however, that the plaintiff shall not be prejudiced by the delay in connection with the statute of limitation or in connection with any other legal defense.

Note.

(a) C. 9, 19, 6; Nov. 60, c.1.

c. 6. It also appears to be proper to settle another subject by the present law, relating to agreements to fulfill subsisting obligations (constitutae pecuniae). We, therefore, ordain that if any person, either for himself or for another, promises to discharge an existing obligation of another, saying for instance to another: "I will pay you," he will be bound in the sum which he stated and must satisfy and pay the debt. But if he says: "You will be paid," then, since no payor was mentioned, the matter stands as though he had said nothing and will not be compelled to pay. If he should say: "You will be paid by me and by this and that person," he cannot, by such words, bind the other persons whom he mentioned but who fail to give their consent, nor shall he himself, who made such statement, be compelled to pay on behalf of the persons whom he named, but he shall be compelled to pay only that proportion of the debt which he appears to owe according to law. If he should say: "You will be paid by me or this or that person," the persons named shall not be prejudiced thereby, if they do not consent, but he himself must pay the whole debt; and if he has any right of action over against the persons named, he must bring it according to law and so obtain the benefit which the laws give him.

Epilogue. All these provisions shall apply to causes not yet finished by judicial decision or amicable settlement. Your Sublimity will take care that this, our general law, comes to the notice of all, by issuing the customary edicts in this city, and by sending orders to the presidents of the provinces.

February 1, 542.