

Book I.
Title XVII.

Concerning taking the kernels from the ancient law and concerning the authority of the jurists who are mentioned in the Digest.

(De veteri jure enucleando et auctoritate juris prudentium qui in Digestis referuntur.)

1.17.1. Emperor Justinian to Tribonian, the eminent Quaestor of the imperial palace.

Governing, by the grace of God, our empire which was delivered to us by the celestial majesty, we prosecute wars to success, we adorn peace, we bear up the status of the state, and we so direct our minds to the aid of the omnipotent God, that we do not put our trust in arms, nor in our soldiers, nor in our leaders in war, nor in our own skill, but we put all our hopes in the supreme trinity alone, from which proceeded the elements of the whole world and from which sprang their arrangement in the whole universe.

1. Nothing is so desirable in all things as the authority of the law, which disposes well of divine and human things, and expels all iniquity, and yet we find the whole course of our laws from the foundation of Rome and the time of Romulus, to be so confused that they reach to an infinite length and surpass the bounds of all human capacity. It was, therefore, first of all our desire to begin with the sacred emperors of your, to amend their enactments and to put them in clear order, so that, collected in one book, and, divested of all superfluous repetition and most iniquitous discord, they might afford mankind the ready help of their purity.

2. This being consummated, and put together in one volume under our shining name, we hastened, lifted up above scanty and unimportant matters, to pass on to the greatest and most complete improvement of the law, and to rearrange and improve the entire Roman jurisprudence and to present in one volume the scattered books of a number of authors, which no one ever dared to hope or to desire, and which indeed appeared most difficult, nay impossible, to us. However, lifting our hands to heaven and praying for the Eternal aid, we embraced this enterprise in our mind, trusting in God, who is able in the magnitude of his goodness to grant and consummate an achievement well nigh desperate.

3. And we bethought us of the excellent work of Your Sincerity and committed to you, before others, this additional work, having received proofs of our ability through the composition of the Code, and we directed you to choose as associates of your labor whom you would approve out of the number of accomplished professors and the eloquent lawyers of the highest court (of the praetorian prefecture). These men having been got together and introduced into our palace and accepted favorably by us on the strength of your testimonial, we have entrusted to them the execution of the entire plan, the whole to be carried out under the management of our most watchful mind.

4. We, therefore, direct you to read and work up the books on Roman law of the jurists of old to whom the sacred emperors granted the privilege of writing and interpreting the laws, so that the whole substance might be taken from them, getting rid, as far as possible, of all repetition and discrepancy, but collecting from them (in one volume) what will suffice for all. Other authors have written books dealing with law, but their writings have not been received or used by later authors, and we do not consider their volumes worthy to interfere with our sanction.

5. When this material shall have been collected with the great indulgence of the deity, it should be set forth in a work of great beauty and consecrated to a special and holy temple of justice, as it were, and divide the whole law into fifty books and into

distinct titles, in limitation of our Code of constitutions and of the perpetual edict, as far as this may appear convenient to you, so that there may be nothing left outside of the above mentioned compilation, but that the entire ancient law, in a state of confusion for some 1400 years and now made clear by us, may be, as it were, enclosed within a wall and leave nothing outside of it. All the authors of the law shall enjoy the same rank, preserving no superior authority for any one of them, since it cannot be said that any of them are either better or worse in all respects, but only particular authors in particular respects.

6. You must, however, when comparing a number of authors, not pronounce upon the work of one as better and juster, since it is possible that the opinion of one writer, though of inferior merit, is preferable in some points to many and even better authors. Hence opinions cited in the notes to Aemilius Papinianus, taken from Ulpianus, Paulus and Marcianus, which once were allowed no weight in consequence of the honor due to the renowned Papinianus, ought not to be rejected at once, but if you see that anything taken from them is necessary to supplement the labor of Papinianus, of the greatest genius, or to interpret his writings, you must not hesitate to set it down as being as good as law, so that all the learned authors whose work is embodied in this book may have as much authority as if their studies were derived from imperial constitutions and had been uttered by our own divine mouth. We justly ascribe everything to ourselves, since all their authority is derived from us. For whoever improves anything that lacks exactness deserves more credit than the original author.

7. We also want you to be intent upon another thing: if you find anything in old books which is not well placed, or anything superfluous or wanting in finish, you should get rid of unnecessary prolixity, fill up what is deficient, and present the whole work in proper form and with engaging appearance. You should at the same time no less observe this: if you find anything incorrectly expressed in the ancient laws or constitutions which the old writers cited in their books, you must rectify it and put it in proper form, so that whatever is chosen and set down by you may be deemed genuine and as the best version and be treated as if written originally; and no one shall argue that our version is faulty by a comparison of the ancient text. For since by an ancient law, called the *lex regia*, all legal authority and all power of the Roman people was transferred to imperial authority, and since we do not divide the whole of the law, ascribing one part to one author, another to another, but want it all to be our own, how can antiquity interfere with our legislation? In fact we want all the law referred to, when once set forth, to be so completely in force that if anything was put in one way by the ancient writers, but in another way by our work, no fault should be found with the writing, but it should be ascribed as being our choice.

8. Thus there is no place in any part of the aforesaid code for ambiguity--antinomia, for thus it is called from old times, taken from the Greek language—but there must be full agreement, full consistency and no one is to raise any dispute on the question.

9. Repetition, too, as already sated, shall be absent from a compilation such as this; and any provisions made in the imperial constitutions which have been inserted in the Code, we do not allow to be again set down as parts of the old law, since the sanction of imperial constitutions suffices for their authority, unless, perchance, this should be done by way of contrast, supplement, or more complete exactitude; but even then it must be done very sparingly, lest, if this kind of exception be allowed, a certain amount of thorns may spring up in such meadow.

10. Again, if any rules included in the old books have fallen into disuse by this time, we by no means permit you to set them down, but we want only such rules to be maintained which have been put in force in the most usual course of courts, or have been approved by long custom in this revered city, in accordance with the work of Salvius Julianus, which points out that all cities ought to follow the custom of Rome, the head of the world, and not Rome follow that of other cities. And by Rome we should understand not merely the old city, but our own royal city, too, which, by the grace of God, was built under the best of auguries.

11. We therefore order that everything should be governed by those two books, one that of the (imperial) constitutions, the other that of the excerpts (from the ancient jurists) to be put into a future book, or (by these two works and an additional work), if anything may be published by us as Institutions (an elementary work), in order that the immature mind of the student, being supplied with simple principles, may the more easily be brought to the comprehension of the higher learning.

12. We command that our complete work, as it will, with God's assistance, be composed by you, shall bear the name of Digest or Pandects, and no person learned in the law shall at any time venture to add any commentary thereto and upset, by his own language, the concise method of the said book, as was done in old times, when, by the contradictory opinions of the expositors, the whole law was little short of being thrown into confusion, but it shall suffice to make admonitory notes by indexes and ingenious use of titles, called paratitle, avoiding (new) confusion by interpretation.

13. Lest, moreover, the writing itself should hereafter give rise to any ambiguity, we direct that the text of this book shall not be written by the use of the trickery of ciphers and compendious conundrums, which themselves and by their mischievous character have occasioned many ambiguities, even when the number of the book or some similar matter was intended to be signified; we do not allow even such things to be shown by special numerical figures, but they must be set out in ordinary letters.

14. Your Wisdom, therefore, together with the other able men, must, by the grace of God, endeavor to accomplish all these things, and bring them to a well conceived and speedy close, so that the complete book, digested into fifty heads, may be put before us in strong and eternal memory of the matter in hand, in proof of the providence of the Almighty God, to the glory of our rule and of your service.

Given at Constantinople, December 15 (530).

1.17.2. Emperor Caesar, Flavius, Justinian to the Senate and to all the people.

So great is the providence of divine kindness toward us, that it ever deigns to support us with eternal acts of liberality. After the Parthian wars were hushed in eternal peace, after the nation of the Vandals was destroyed, and Carthage, nay rather all Libya, was again taken into the Roman empire, we also contrived that the ancient laws, already bowed down with age, should, by our care, reach new beauty and come within moderate bounds, a thing which previous to our order no one ever expected or deemed possible for human endeavor. It was indeed wonderful to reduce the Roman law from the time of the foundation of the city to that of our rule, almost reaching 1400 years, wavering (with uncertainty) by reason of intestine feuds which even extended to imperial constitutions, to one harmonious system, so that it should present no contradiction, no repetition and no approach to repetition and that no two enactments should appear to deal with one question. This was indeed a special work of man. We have therefore in our accustomed manner looked to the aid of Immortality, and calling on the supreme deity, we have

desired that God should be made the originator and the guardian of the whole work, and we have entrusted the entire task to Tribonianus, a distinguished man, master of the offices, ex-quaestor of the imperial palace and ex-consul, and we have laid on him the whole management of the enterprise described, so that with other illustrious and learned colleagues, he might fulfill our desire. Besides this our majesty has ever investigated and scrutinized the composition of these men, whenever anything was found doubtful or uncertain, and, supported by the celestial deity, we improved it and reduced it to suitable shape. Thus all has been done by Jesus Christ, our Lord and God, who vouchsafed the means of success both to us and to our servants herein.

1. We have already arranged the imperial constitutions in twelve books and placed them in the Code which is illuminated with our name. Subsequent to this, we, undertaking a great work, allowed the same eminent man both to collect and reduce to a certain limit the most learned works of ancient times, which were almost in confusion and disorder. In the midst of our careful researches, it was intimated to us by the above mentioned, excellent man that there were nearly 2,000 books written by the ancients, and more than 3,000,000 lines left us by them, all of which were necessary to be read and carefully considered, and to select out of them whatever might be best. This was accomplished by the grace of heaven and the favor of the supreme Trinity, in accordance with our instructions which we gave at the outset to the excellent man above mentioned, so that everything of great importance was collected into fifty books, and all ambiguities were settled without leaving any discordant passage. We gave these books the name of Digest or Pandects, for the reason that they contain all questions of legal matters and the legal decisions thereof, (these men) having taken to their bosom matter collected from all sides, concluding the whole task within the space of about 150,000 lines. We have divided the books into seven parts, not incorrectly, nor without reason, but with due regard to the nature and use of numbers, and in order to make the division of parts in keeping therewith.

2. The first part of the whole frame, accordingly, which in Greek is called *prota*, is separately put into four books.

3. The second link has seven books, which are called *de judiciis* (on trials at law).

4. In the third group we have put everything that comes under the title *de rebus* (on things), with eight books assigned to it.

5. The fourth place, which is, as it were, the center of the whole compilation, takes eight books. This contains everything that relates to hypothecations, in order that it (the place where it is considered) might not be far distant from (the treatment of) the actions *pigneraticia* (action by pledgor for property pledged) which is considered in the book *de rebus*. Another book, inserted in the same part has the edict of the aediles and the action for cancellation of a sale, and the stipulation for returning double the price received, which is given in case of eviction, because these matters are connected with the subject of purchase and sale, and the aforesaid actions have been handmaids thereof, as it were, from the beginning. In the scheme of the old edict indeed, they wandered off into out of the way places, widely apart from one another, but by our care they are put into the same group, as it is only right that discussions on almost identical subjects should be put close together. Another book has been devised by us to follow the first two, to deal with interest on money and with bottomry loans, documents, witnesses, proofs and presumptions, in three separate books, placed close to the portion dealing with things. After these we have assigned a place to the rules laid down anywhere as to betrothal, marriages and dowries, all of which we have set forth in three books. We have composed

two books on guardianship and curatorship. The framework thereof, consisting of eight books, we have set down in the middle of the whole work, and it contains all the most practical and best expressed rules collected from all quarters.

6. We then come to the fifth link of our Digest, to which the reader will find consigned whatever was anciently said on the subject of testaments and codicils, both of civilians and soldiers: which part is called “on testaments.” Next comes the subject of legacies and testamentary trusts, in five books in number.

6a. And as there is nothing so closely bound up with anything else, as an account of the Falcidian law with legacies, or as the trebellian senate decree with testamentary trusts, we appropriate two books to these respective subjects, and thus complete the whole fifth part in nine books. We have thought proper to put the Trebellian senate decree by itself, because we desire to get rid of the stumbling blocks and obscurities of the Pegasian senate decree with which the ancients themselves were disgusted, and we have included all the law we lay down on the subject in the (book on the) Trebellian senate decree.

6b. In all this we have said nothing about escheats, lest a head of law which during unfortunate happenings and bad times for Rome, grew in importance with public distress, and drew strength from civil war, should remain in our day, when our reign is strengthened by divine grace and a flourishing peace and placed above all nations in the matter of war-perils and thus allow a melancholy reminiscence to cast a shadow on a joyful age.

7. Next comes the sixth part of the Digest, in which are placed the various kinds of the right of possession of property, whether relating to freeborn persons or freedmen, as well as the whole law dealing with degrees of relationship, kinship by marriage, statutory inheritance the whole of intestate succession, and the Tertullian and Orfitian senate decrees, which, respectively regulate the succession of children to their mother and of mothers to their children. We have assigned two books to all the varieties of right of possession of property, and have reduced the whole to a clear and compendious scheme.

7a. After this we take the things laid down by the ancient authors as to the prohibition of erection of new structures, as to threatened damage, destruction of buildings or threats thereof, and as to keeping off of rainwater; we further take whatever we find provided by statute as to tax-farmers as well as to the making of voluntary gifts both among the living and in anticipation of death, all of which we have put into a single book.

7b. Manumissions and trials as to liberty are the subjects of another book.

7c. And the many discursive passages on acquisition of ownership and possession and the sources thereof are put in a single book.

7d. A further book is assigned to the subject of persons against whom judgment has been rendered or who have confessed during the making up of the issues; also to the subject of detention of goods and sales of the property (of insolvents) and as to preventing frauds on creditors.

7e. After this, interdicts are dealt with in a lump; then come defensive pleas, lapses of time, obligations and actions, the result being that the above mentioned sixth part of the whole of the Digest is kept within eight books.

8. The seventh and last division of the Digest is made up of six books, and all the law that is met with as to stipulation or verbal obligations, sureties, mandators, novations, discharges of debt, formal receipts and praetorian stipulations is set down in two books which it was impossible to even number among the ancient books.

8a. After this we have put two terrifying books on the subject of private, extraordinary and public crimes, in which are described the whole severe treatment and awful penal measures applied to criminals, mixed with which are the provisions which have been made as to incorrigible men, who endeavor to conceal themselves and who resist authority, as well as the matter of penalties which are imposed on condemned persons or remitted and the subject of their property.

8b. Next we have devised a separate book on appeals from final decisions in civil and criminal cases.

8c. Everything else which we find devised by the ancients and strictly laid down for municipal authorities or as to decurions, public offices, public works, rights of market and promises and various trials, assessments and the meaning of words, are taken into the fiftieth book, which closes the whole compilation.

9. The whole of the above has been completed by the agency of the eminent and learned magistrate Tribonianus, ex-quaestor and ex-consul, a man adorned alike with the art of eloquence and of legal science, as well as distinguished in practical life, and one who has no greater or dearer object than obedience to our commands. And this work has been completed by the assistance of magnificent and hard-working men, that is to say: Constantinus, illustrious Count of the Imperial Exchequer and master of the Bureau of Petitions and Imperial Appeal-cases, who has long deserved our esteem on account of his good repute and distinction; also Theophius, illustrious master and learned in the law, who wields admirably the best sway in the law over this splendid city; also the illustrious Dorotheus, of great eloquence and of quaestorian rank, whom, when he was engaged in teaching law to students in the splendid city of Berytus, we, moved by his great reputation and renown, summoned to our presence and made to share in the work in question; also Anatolius, illustrious master, who, like the last, was invited to his work when acting as an exponent of the law at Berytus, a man who came on an ancient stock, as both his father Leontius and his grandfather Eudoxius¹ left behind them an excellent reputation of legal learning; also Cratinus, illustrious Count of the Imperial Exchequer, who was once a most efficient professor of this revered city. All these were chosen for the above mentioned work, together with the learned Stephanus, Mena, Prosdocius, Eutolmius, Timotheus, Leonides, Leontius, Plato, Jacobus, Constantinus and Johannes, who are of counsel at the great tribunal of the prefecture of the Orient, but who derive testimonials as to their excellence from all quarters and who were chosen by us for the completion of so great a work. And when all had met together under the guidance of the eminent Tribonianus, so as to complete this great work in pursuance of our commission, the whole was, by the grace of God, consummated in fifty books.

10. We had, moreover, so much respect for ancient authority that we have by no means suffered them to consign the names of those learned in the law to oblivion, but each one of the ancient lawyers who wrote on law have been mentioned in our Digest; all that we did was to provide that if, in the rules given by them, there appeared anything superfluous or imperfect or of small importance, it should be amplified or curtailed to the requisite extent and be reduced to the most correct form; and in many cases of repetition or contradiction what appeared to be better has been set down in place of everything else and included under one authority, as for all, so that whatever has now been written may appear clearly to be ours and to be composed by our order, none being at liberty to compare the ancient text with what our authority has introduced, as in fact there have

¹ Blume has penciled in here "Omission?"

been many transformations made on the ground of practical utility. It goes so far that where an imperial enactment is set down in the old books, we have not even spared this, but resolved to correct it and put it in better form, leaving the very names of the old authority, but preserving by our improvement whatever the real sense of the statutes made suitable and necessary. And because of this, what formerly was a matter of question, has now become perfectly settled, leaving no room for doubt.

11. But since we saw that men insufficiently educated and standing in the vestibules of law, though on the way towards the secrets thereof, are unable to carry such mass of knowledge, we thought it best that a simple summary should be prepared, so that they (the students), colored thereby, and imbued, as it were, by the first principles of the whole subject, might proceed to the innermost recesses thereof and with undazzled eyes take in the exquisite beauty of the law. We therefore summoned the eminent Tribonianus, who has been chosen for the direction of the whole work and the illustrious and eloquent professors Theophilus and Doretheus, to collect the books composed by the ancient authors which contain the first principles and have been called Institutes, one by one, take whatever was useful and to the purpose and in accordance with the practice of the present age, polish it, and put it into four books, establishing the foundations and elements of the whole course of education, by which young men may be supported, to be ready for weightier and more perfect rules of law. We instructed them to bear in mind at the same time our own constitution which we have promulgated as an improvement of the law, and not to omit inserting the same improvement in composing the Institutes, so that it should be clear both where there had been any doubt previously and what points have been afterwards established. The whole work as completed by these men has been put before us and read through, and we thereupon received it willingly and judged it not to be unworthy of our mind and we ordered that the books should be the equivalent to enactments of our own, as is more plainly declared in our own address which we have placed at the beginning of the whole.

12. The whole frame of the Roman law being thus set forth in three divisions, namely, the Institutes, Digest or *Padects*, and Constitutions, has been completed and consummated in three years,² whereas when the work was first taken in hand, it was not expected to be finished in ten years. And we have offered this work with dutiful intent to Almighty God for the preservation of mankind and have rendered full thanks to the Supreme Deity who vouchsafed us the successful waging of war and the enjoyment of honorable peace and the giving of the best laws not only for our own age but for all time, both present and future. We say it to be necessary, accordingly, to make the same sanction known to all men, to the end that they should recognize the endless confusion in which the law was, and the judicious and lawful exactitude to which it has been brought, and that they might have laws in the future which are both direct and compendious, within everyone's reach and of such a nature as to make it easy to possess the books which contain them; our object being that people should not simply be able to procure volumes containing a superfluous number of legal rules by spending a lot of their wealth, but that the means of purchasing at a trifling price should be offered to the poor and rich alike, so that a great deal of learning might be procured with a small outlay.

13. Should it happen that in so great a collection of legal rules, taken as it is from an immense number of books, some cases of repetition should occur, no one should be

² Blume has inserted here the original Latin "quae ut primum separi coepti" and has placed a question mark in the margin alongside of it.

severe upon this; it should rather, first of all, be ascribed to human weakness which is part of our nature, since it belongs rather to the deity than to mortal man to have a memory for all things and to fall short in nothing; as indeed has been said by our forebears. It should also be borne in mind that there are some rules of exceeding brevity³ in which repetition may be admitted to good purpose, and it has been practiced in accordance without deliberate intent, the fact being that either the rule was so material that it had to be referred to under different heads of inquiry, because the two subjects were connected together, or else, where it was involved in other different inquiries, it was impossible to exclude it from some passages, without throwing the whole into confusion. And in these passages, in which there were well-reasoned arguments set forth by the ancient writers, it would be altogether an unlawyer-like proceeding to cut out and get rid of something that was inserted in one after another, as it would confuse the mind and sound absurd to the ears of anyone to whom it would be presented.

14. In like manner, where any provision has been made by imperial constitutions we have by no means allowed it to be put in the book of the Digest, as the reading of such constitution is all that is wanted, save where this too is done for the same reasons as those for which repetition is admitted.

15. As for any contradiction occurring in this book, none has any claim to a place in it, nor will any be found, if we consider nicely the ground of diversity; some differential feature will be discovered, however obscure, which does away with the imputation of inconsistency, puts a different complexion on the matter and keeps it outside the limits of discrepancy.

16. Again, should anything happen to be passed over which, among so many thousand things, lies hidden in the depths, and, being suitable to be placed (in the light) is covered with darkness and was unavoidably left out, who could with reason find fault with this, considering in the first place how limited the mind of mortal man is, and secondly the intrinsic difficulty of the case, where the passage, being closely bound up with a number of useless ones, gave the reader no opportunity of detaching it from the rest? It may be added too that it is much better that a few valuable passages should escape notice than that people should be encumbered with a quantity of useless matter.

17. There is one remarkable fact which comes to light in these books, namely that the old books, plentiful as they were, are found to be of smaller compass than the compendious supply now open. The fact is that the men who carried on actions at law previously, in spite of the number of rules of law that had been laid down, made use of only a few of them in the course of a trial, either because of a deficient supply of books, the power to procure them being out of their reach, or simply owing to their own ignorance; and cases were decided according to the good pleasure of the judge rather than according to the letter of the law. In the present compilation of our Digest, the law has been collected from numerous volumes, the very names of which the men of old could not tell, and had never heard; and the whole has been so composed of a most ample material, that (on the one hand) the ancient plenty appears deficient, our own collection (on the other hand) very rich. Of this ancient learning, the excellent Tribonianus has furnished us with a large supply of books, a number of which were unknown even to the most erudite men. These were read through, and all the most valuable passages were

³ Blume has underlined the words beginning with “there are some...,” has placed a question mark in the margin, and has written above the underlined phrase “repetition in some aid brief matters.”

extracted and found their way into our excellent work. The authors of this composition did not only peruse those books from which they took the rules they have set down; but they also read a great deal more, in which they found nothing of value or nothing new which they could extract and insert in our Digest, and which, accordingly, they very reasonably rejected.

18. Now whatever is divine is most perfect, but the character of human law runs on indefinitely and there is nothing contained in it which can abide forever, since nature is ever eager to produce new forms, so that we fully anticipate that emergencies may hereafter arise which are not enclosed in the bonds of legal rules. Whenever any such case arises, let the remedy be sought at the hands of the august emperor, since God put the imperial power at the head of human affairs to the end that it should be in position, whenever a new contingency arises, to meet the same with amendment and arrangement and to put it under apt form and regulations. We are not the first to state this, but it comes from ancient stock. Julianus himself, that most acute founder of law and of the perpetual edict, set down in his own writings, that whenever anything should turn out to be defective, the want should be supplied by imperial legislation. Indeed not only he, but the divine Hadrian in the consolidated edict and the senate-decree which followed it, laid down in the clearest terms, that if anything was not found set down in the edict, later authority might meet the defect in accordance with the rules, the aims and the analogy thereof.

19. Knowing all these things, accordingly, conscript fathers and men of the whole world, render fullest thanks to the supreme Divinity who has kept so greatly beneficial a work for your times, for that of which, in the Divine judgment, antiquity was not considered worthy has been vouchsafed to your age. Worship and keep these laws, accordingly, and let the ancient ones sleep, and let none of you so much as compare them with the former ones, nor, if there be any discrepancy between them, ask any question, since we want that which is set down here to be alone observed. In every trial, moreover, or other contest, where rules of law have to be enforced, let no one seek to quote or maintain any rule of law save as taken from then above mentioned Institutes and Digest and constitutions as composed and promulgated by us, unless he, together with the judge who allows such things to be heard, wish to have the charge of forgery as an adulterator and to suffer more severe penalties.

20. Lest it should be unknown to you, however, what the books of ancient lawyers are from which this composition is taken, we have directed that this likewise should be set down at the beginning of (the extracts in) or Digest, so that it may be quite clear from what authors and from which and from how many thousands of their books this temple of Roman jurisprudence has been constructed.

20a. We have chosen those authorities or commentators who were worthy of so great a work as this, and whom older, pious emperors did not scorn to admit. We have given them all the same pinnacle of rank, allowing none to claim any preeminence for himself. For since we have laid down that these laws too should be equivalent to constitutions issued by us, how should any greater or less importance be attributed to any among them, where one rank and one authority is granted to all?

21. One thing, which seemed good to us at the very beginning, when, with the Divine sanction, we commissioned the execution of this work, seems opportune to us to command also now, namely, that none of those who are either now or hereafter learned in the law, shall venture to append any commentary to these laws, save that he may translate them into the Greek language with the same order and sequence as those in which the

Roman text is written, or, as the Greeks call it kata poda, or if he like, to make notes by ingenious use of titles and to compose what the Greeks call paratitla. We shall not allow them to boast of any further interpretations or rather perversions of the laws, lest their long dissertations cause such confusion as to bring discredit on our legislation. This happened in the case of the ancient commentators on the perpetual edict, who drew out a work of moderate size beyond all bounds by the diversity of the commentaries, so as to bring almost the whole Roman law into confusion; and if we do not put up with them, how can we ever allow room for the vain disputes of future generations? If any should venture to do so, they will be liable to be prosecuted for forgery and their books will be destroyed in every way. But if, as stated, anything should appear doubtful, this must be referred to the imperial majesty by the judges and the truth be pronounced by the august authority, to which alone belongs the right to make and interpret laws.

22. We also lay down the same penalty of forgery for those persons who at any future time should venture to write down our laws by the occult means of ciphers. We want everything, the names of the authors as well as the titles and numbers of the books to be plainly written in so many letters and not by means of marks, so that anyone who acquires one of these books for himself in which there are marks used in any passage of the book or volume will have to understand that the volume which he owns is useless; if anyone has these objectionable marks in any part of a volume such as described, we decline to allow him to cite any passage therefrom in court; and a clerk who should venture to write such marked will not only be punished criminally, as already stated, but he will also have to give the owner twice the value of the book, if the owner unknowingly bought such book or ordered it to be written. This has already been provided in a constitution sent to the professors of law.

23. These laws, set down in these books, namely the Institutes, or elements, and the Digest or Pandects, shall be in force from and after our third and most happy consulship, on the 30th day of December in the present twelfth indiction, to remain in force for all time to come and together with our constitutions display their authority in all causes, whether hereafter arising or still pending and not yet adjudicated or arbitrated. Cases that have been disposed of by judicial decree or set at rest by friendly compromise shall not by any means be stirred up again. We have done well to bring out this body of law in our third consulship, since it is the happiest one which the favor of Almighty God and of our Lord Jesus Christ has given to our state; in it the Parthian wars were ended and consigned to lasting rest; in it the third division of the world came under our sway, since, after Europe and Asia, all Libya too was added to our dominions; and now the great work on our law is finally completed, (so that) all the gifts of heaven have been poured on our third consulship.

24. Now, therefore, let all our judges in their respective jurisdictions take up this law, and both within their own provinces and in this royal city, observe and apply it and particularly the distinguished prefect of this revered city. It will be the duty of the three distinguished praetorian prefects, the Oriental, the Illyrian and the Libyan, to make the same known by the exercise of their authority to all those who are subject to their jurisdiction.

Given at Constantinople December 16 (533).

Note.

The foregoing two laws are identical with appendices 1 and 3 of the Digest and have heretofore been translated by Charles Henry Monro by an excellent translation. That translation has been used to a large extent in making the present translation,

although some, though not important, changes have been made herein. These laws show that the Justinian compilation was composed of the Institutes, the Digest or Pandects, and the Constitutions embodied in the so-called Justinian Code. Later, Justinian made a number of new enactments called Novels (new constitutions). A number of these Novels were translated into Latin at the time and a compilation of them is called the Authenticum. The foregoing two laws indicate reasonably clearly the course that was pursued, under the direction of Tribonian in composing the Digest, which is divided into fifty different books, and consists of excerpts from law-writers, and corresponds in a measure to the text books on law at the present time. The Institutes present a book on elementary law. The Code presents various imperial enactments or statements or interpretations of the law.