THE LAWS OF THE TWELVE TABLES

TABLE I.

Concerning the summons to court.

Law I.

When anyone summons another before the tribunal of a judge, the latter must, without hesitation, immediately appear.[1]

Law II.

If, after having been summoned, he does not appear, or refuses to come before the tribunal of the judge, let the party who summoned him call upon any citizens who are present to bear witness.[2] Then let him seize his reluctant adversary; so that he may be brought into court, as a captive, by apparent force.

Law III.

When anyone who has been summoned to court is guilty of evasion, or attempts to flee, let him be arrested by the plaintiff.

Law IV.

If bodily infirmity or advanced age should prevent the party summoned to court from appearing, let him who summoned him furnish him with an animal, as a means of transport. If he is unwilling to accept it, the plaintiff cannot legally be compelled to provide the defendant with a vehicle constructed of boards, or a covered litter.[3]

[1] Under the Roman method of procedure, until the thorough organization of the judicial system by the emperors, service of summons was always made by the plaintiff in the action. This was even sometimes done after the custom of regularly appointing court officials for that purpose had been established. — Ed.

[2] Notification of the bystanders was made to show that the arrest of the defendant was to compel his appearance before the tribunal, a proceeding authorized by law; and not to insult him, or forcibly restrain him of his liberty, which might form the ground of prosecution for an illegal act. — Ed.

[3] Litters were originally used exclusively by women and sick persons during the early ages of Greece and Rome. They, afterwards, in the time of the Empire, became a favorite mode of conveyance with the Romans, and especially with the wealthy nobles, who vied with one another in the profuse and costly decoration of their luxurious *lecticæ*, upholstered in silk, embellished with ebony, ivory, and lazulite, and glittering with precious stones and gold. The *sella*, one form of the litter, was almost

identical with the sedan chair of the eighteenth century. The vehicle referred to in the text was probably a public one, like our cabs and carriages for hire. — Ed.

Law V.

If he who is summoned has either a sponsor or a defender, let him be dismissed, and his representative can take his place in court.[1]

Law VI.

The defender, or the surety of a wealthy man, must himself be rich; but anyone who desires to do so can come to the assistance of a person who is poor, and occupy his place.

Law VII.

When litigants wish to settle their dispute among themselves, even while they are on their way to appear before the Prætor, they shall have the right to make peace; and whatever agreement they enter into, it shall be considered just, and shall be confirmed.

Law VIII.

If the plaintiff and defendant do not settle their dispute, as above mentioned, let them state their cases either in the *Comitium* or the Forum, by making a brief statement in the presence of the judge, between the rising of the sun and noon; and, both of them being present, let them speak so that each party may hear.

Law IX.

In the afternoon, let the judge grant the right to bring the action, and render his decision in the presence of the plaintiff and the defendant.

Law X.

The setting of the sun shall be the extreme limit of time within which a judge must render his decision.

TABLE II.

Concerning judgments and thefts.

Law I.

When issue has been joined in the presence of the judge, sureties and their substitutes for appearance at the trial must be furnished on both sides. The parties shall appear in person, unless prevented by disease of a serious character; or where vows which they have taken must be discharged to the Gods; or where the proceedings are interrupted

through their absence on business for the State; or where a day has been appointed by them to meet an alien.

[1] From this it will be seen that the office of defensor, or "defender," of the party sued was one of the most ancient recognized by Roman jurisprudence. Its duties were often undertaken without solicitation, through motives of friendship or compassion, or the influence of family ties; and, as the defendant's representative, he occupied the legal position of the former, including the unqualified assumption of all his liabilities arising from, or dependent upon the matter in litigation. — Ed.

Law II.

If any of the above mentioned occurrences takes place, that is, if one of the parties is seriously ill, or a vow has to be performed, or one of them is absent on business for the State, or a day has been appointed for an interview with an alien, so that the judge, the arbiter, or the defendant is prevented from being present, and the furnishing of security is postponed on this account, the hearing of the case shall be deferred.

Law III.

Where anyone is deprived of the evidence of a witness let him call him with a loud voice in front of his house, on three market-days.

Law IV.

Where anyone commits a theft by night, and having been caught in the act is killed, he is legally killed.[1]

[1] While the ordinary presumption certainly arises that no one can encounter a desperate malefactor in his house at night without incurring risk of serious injury; still, the Roman jurists, in enacting this provision, evidently had in view the prevention of homicide except when absolutely necessary, even under circumstances which might justify almost any violent act in the defence of life and property. Other lawgivers, generally speaking, did not recognize such nice distinctions.

The rule, somewhat modified, has been adopted by the majority of subsequent judicial systems as being thoroughly consonant with the principles of justice. It was incorporated, with but slight alteration, into the Visigothic Code, and Las *Siete Partidas*. *"Fur nocturnus captus in furto, dum res furtivas secum portare conatur, si fuerit occisus, mors eius nullo modo vindicetur." (Forum Judicum*, VII, II, 16.) "*Otro tal decimos quo seria, si algun one /allasse algun ladron de noche en su casa, e lo quisiesse prender para darlo a la justicia del lugar, si el ladron se amparasse con armas. Ca entonce, si lo matare, non cæ por esso en pena." (Las Siete Partidas,* VII, VIII, 3.) As stated above, to render the modicide justifiable, the Visigoths required that the thief should be in possession of the stolen property; and the Castilian law provided that he should be armed and resist arrest while in the house of the owner.

Under the law of Athens, a thief taken *flagrante delicto*, at night, could be killed with impunity. (Potter, Antiquities of Greece, I, 24, 126.)

With the Jews, homicide was not punishable when the culprit was killed under circumstances essential to constitute the crime known to us as burglary. "If a thief be found breaking up, and he be smitten that he die. no blood shall be shed for him; but if the sun be risen upon him, there shall blood be shed for him; for he should have made full restitution." (Exodus XXII, 2.)

With the Anglo-Saxons, a thief caught in the act, at any time, either by day or by night, could be slain with impunity. "He who slays a thief must declare on oath that he slew him offending." (Ancient Laws and Institutes of England; Laws of King Ine, 16.)

This principle does not appear to have been accepted in the earliest age of the Common Law. Glanvil does not mention it. Bracton, however, refers to it as being sound, and applicable by day or by night, without regard to place, if the homicide, at the time, could not avoid serious personal injury. "*Qui latronem occiderit, non tenetur, nocturnum vel diurnum, si aliter periculum evadere non possit*." (Bracton, *De Legibus et Covsuetudinibus Angliæ*, III, 155, 36.)

Fleta says: "*Quicunqiie enim furem nocturnum interfecerit, non teneatur, & qui invasorem domus suæ, se ipsum & hospitium suum saltem illa hora defendendo interfecerit, juste interficit*." (Fleta, *Commentarius Juris Anglicanæ*, I, XXIII, 14.) This applied not only to a burglar, but to anyone found in the "curtilage," or enclosure containing the residence, at any hour between nine P. M. and six A. M.; and under these conditions, homicide was authorized either in self-defense, or when it occurred in an attempt to arrest the intruder, or was committed in order to prevent his escape. The necessity for the homicide must be absolute in order to render it justifiable. "*Si necessitas evitabilis fuerit, absque occasione, reus est homicidii, qui si fuerit inevitabilis, ad pœnam homicidii non tenebitur, eo quod felonice non occidit." (Ibid*. I, 23.) It is held by Coke that the act of killing must be in self-defence, and be preceded by violent aggression on the part of the thief. "If a thiefe offer to rob or murder B, either abroad or in his house, and thereupon assault him, and B, defend himself without any giving back, and in his defence killeth the thiefe; this is no felony." (Coke, Institutes of the Laws of England, Vol. IV, Ch. 8.)

This doctrine is explicitly set forth in Stat. 24, Hen. VIII, Chap. 5. "If any person do attempt to break any mansion-house in the night time, and shall happen to be slain by any person or persons, etc. (tho a lodger or servant) they shall upon their trial be acquitted and discharged." The above mentioned Statute, as is held by a high authority, may be construed to apply to an illegal act of this kind committed during the day with felonious intent "It seems it extends not to a braking the house in the day-time, unless it be such a braking, as imports with it, apparent robbery, or an intention or attempt thereof." (Hale, The History of the Pleas of the Crown, I, XL, Page 488.)

This was also the rule in Scotland, "It is lawful to kill a Thief, who in the night offers to break our Houses, or steal our Goods, even though he defend not himself, because

we know not but he designs against our Life; and Murder may be easily committed upon us in the night, but it is not lawful to kill a Thief who steals in the day time, except he resist us when we offer to take him, and present him to Justice." (Mackenzie, The Laws and Customes of Scotland in Matters Criminal, I, XI, III.) The general rule, while well established, was formerly, to a certain extent, so far as its application is concerned, largely dependent upon the circumstances of each particular case. No distinction was made between an invasion of the house and an attack upon the person, provided the alarm experienced by the homicide was considered to be so well founded as to justify his act. In some respects great latitude was allowed the injured party. "The same right of defending our property, may also justify our killing a thief, or predonious invader, in the act of running away with our goods, if he cannot otherwise be taken, or the goods secured." (Burnett, A Treatise on the Criminal Law of Scotland, I, page 57.)

The laws of France and Italy excuse the homicide of an intruder who commits burglary or theft with violence. (*Code Pénal de France*, III, II, Arts. 322, 329.) (*Codice Penale*, II, III, Art. 376.)

In the United States, killing is only justifiable where the crime could not otherwise have been prevented, and where force is employed. When an attempt is made to commit a secret felony, without violence, the right does not exist. It is different, however, where the precincts of a man's home are invaded in the daytime, or at night. "An attack on a house or its inmates may be resisted by taking life. This may be when burglars threaten an entrance, or when there is apparent ground to believe that a felonious assault is to be made on any of the inmates of the house, or when an attempt is made violently to enter the house in defiance of the owner's rights."

"But this right is only one of prevention. It cannot be extended so as to excuse the killing of persons not actually breaking into or violently threatening a house." (Wharton, A Treatise on Criminal Law, Secs. 629, 630, 634, 635.) — Ed.

Law V.

If anyone commits a theft during the day, and is caught in the act, he shall be scourged, and given up as a slave to the person against whom the theft was committed. If he who perpetrated the theft is a slave, he shall be beaten with rods and hurled from the Tarpeian Rock.[1] If he is under the age of puberty, the Prætor shall decide whether he shall be scourged, and surrendered by way of reparation for the injury.

Law VI.

When any persons commit a theft during the day and in the light, whether they be freemen or slaves, of full age or minors, and attempt to defend themselves with weapons, or with any kind of implements; and the party against whom the violence is committed raises the cry of thief, and calls upon other persons, if any are present, to come to his assistance; and this is done, and the thieves are killed by him in the

defence of his person and property, it is legal, and no liability attaches to the homicide.

Law VII.

If a theft be detected by means of a dish and a girdle, it is the same as manifest theft, and shall be punished as such.[2]

[1] This mode of punishment was considered especially ignominious by the Romans, and was usually inflicted upon traitors.

"The rock Tarpeian, Fittest goal for treason's race, The promontory whence the traitor's leap Cured all ambition." — Ed.

[2] Various explanations have been suggested for the elucidation of this obscure passage. It has been supposed by some that a dish, perforated with two holes for the eyes, was carried by the thief to hide his face and conceal his identity; the girdle being intended for the removal of the booty. Others have advanced the theory that religious impostors, masquerading as members of the priesthood, passed the dish for the collection of money for alleged sacrificial purposes, and appropriated the amounts obtained to their own use. A few have maintained that the dish was employed to hold a piece of bread which had been subjected to certain magic ceremonies, and, for this reason compelled the thief to confess as soon as he had eaten it, a species of ordeal, as it were. The most plausible interpretation of the *furtum per lancem et licium refertum* is, however, that when the officer appointed for that purpose entered a house to seek for property which had been stolen, he was required to be naked, except for a girdle, and to hold a dish before his face, as a concession to the modesty of any woman he might encounter. The owner of the property was also entitled to make search under the same conditions. Nakedness was regarded as necessary in order to avoid anything being carried into the house which might afford ground for a false accusation. — Ed.

Law VIII.

When anyone accuses and convicts another of theft which is not manifest, and no stolen property is found, judgment shall be rendered to compel the thief to pay double the value of what was stolen.

Law IX.

Where anyone secretly cuts down trees belonging to another, he shall pay twenty-five *asses* for each tree cut down.

Law X.

Where anyone, in order to favor a thief, makes a compromise for the loss sustained, he cannot afterwards prosecute him for theft.

Law XI.

Stolen property shall always be his to whom it formerly belonged; nor can the lawful owner ever be deprived of it by long possession, without regard to its duration; nor can it ever be acquired by another, no matter in what way this may take place.[1]

TABLE III. Concerning property which is lent.

Law I.

When anyone, with fraudulent intent, appropriates property deposited with him for safe keeping, he shall be condemned to pay double its value.

Law II.

When anyone collects interest on money loaned at a higher rate per annum than that of the *unciæ*, he shall pay quadruple the amount by way of penalty.[2]

[1] This doctrine as set forth in the maxim "*Spoliatus debet, ante omnia, restitui*," is recognized by the courts of all civilized, and most semi-barbarous nations. — Ed.

[2] The rate of interest authorized by law at Rome was, despite statutory regulations, often a matter of avarice on one side and necessity on the other. Money lenders were accustomed to wring from distressed borrowers the last *sesterce* which heartless rapacity and extortion could exact. The rate was usually dependent upon agreement, and while the collection of compound interest was illegal, a bond for the increase of what was in arrears was sometimes required, which amounted to the same thing.

As shown by the text, the Twelve Tables forbade anything in excess of the *unciarum fœmus*, or interest on the twelve "ounces" into which the *as*, the integral amount representing capital for one year, as well as an estate when its assets were estimated for distribution, were divided. The term, however, is ambiguous, and has been interpreted in several ways. The best authorities hold that ten per cent is the rate referred to. — Ed.

Law III.

An alien cannot acquire the property of another by usucaption; but a Roman citizen, who is the lawful owner of the property, shall always have the right to demand it from him.

Law IV.

Where anyone, having acknowledged a debt, has a judgment rendered against him requiring payment, thirty days shall be given to him in which to pay the money and satisfy the judgment.

Law V.

After the term of thirty days granted by the law to debtors who have had judgment rendered against them has expired, and in the meantime, they have not satisfied the judgment, their creditors shall be permitted to forcibly seize them and bring them again into court.

Law VI.

When a defendant, after thirty days have elapsed, is brought into court a second time by the plaintiff, and does not satisfy the judgment; or, in the meantime, another party, or his surety does not pay it out of his own money, the creditor, or the plaintiff, after the debtor has been delivered up to him, can take the latter with him and bind him or place him in fetters; provided his chains are not of more than fifteen pounds weight; he can, however, place him in others which are lighter, if he desires to do so.

Law VII.

If, after a debtor has been delivered up to his creditor, or has been placed in chains, he desires to obtain food and has the means, he shall be permitted to support himself out of his own property. But if he has nothing on which to live, his creditor, who holds him in chains, shall give him a pound of grain every day, or he can give him more than a pound, if he wishes to do so.

Law VIII.

In the meantime, the party who has been delivered up to his creditor can make terms with him. If he does not, he shall be kept in chains for sixty days; and for three consecutive market-days he shall be brought before the Prætor in the place of assembly in the Forum, and the amount of the judgment against him shall be publicly proclaimed.

Law IX.

After he has been kept in chains for sixty days, and the sum for which he is liable has been three times publicly proclaimed in the Forum, he shall be condemned to be reduced to slavery by him to whom he was delivered up; or, if the latter prefers, he can be sold beyond the Tiber.

Law X.

Where a party is delivered up to several persons, on account of a debt, after he has been exposed in the Forum on three market days, they shall be permitted to divide their debtor into different parts, if they desire to do so; and if anyone of them should, by the division, obtain more or less than he is entitled to, he shall not be responsible.[1]

TABLE IV. concerning the rights of a father, and of marriage.

Law I.

A father shall have the right of life and death over his son born in lawful marriage, and shall also have the power to render him independent, after he has been sold three times.[2]

[1] While a strict construction of the provisions of this law has been rejected by some jurists, there can be little doubt that its abhorrent features, far worse than those of the famous claim of Shylock, were susceptible of literal interpretation, and that the partition of the body of the unfortunate debtor was entirely dependent upon the inclination of his creditors to whom he had been adjudged. The statement of Aulus Gellius relative to a fact evidently well known to his countrymen, would seem to be conclusive upon this point. "*Nam, si plures forent, quibus reus esset judicatur, secare si vellent, atque partiri corpus addicti sibi hominis permiserunt*." (Aul. Gell. *Nodes Atticæ*. I. XX. 1.) Fabius, alluding to the same law, says that public sentiment was opposed to its enforcement. "*Quam legem mos publicus repudiavit*." In view of the eminent authority of these Roman writers, and the clear meaning of the text, the opinion entertained by some respectable commentators, that the word "*secare*," "to divide," merely has reference to the apportionment of the debtor's property, is hardly tenable, as it must have been already taken in execution and divided, before his person was delivered up to gratify the resentment of his disappointed creditors. — Ed.

[2] This privilege, the *patria potestas*, enjoyed by Roman fathers, was a relic of the patriarchal authority originally asserted by a man over his household, including the members of his immediate family, his slaves, and other dependents. Derived from ancient custom, it continued to exist for centuries after Rome had attained an exalted rank in the scale of civilization, and other practices of barbarous origin and primitive character had long been abandoned. It is said by Justinian (Code VI, 26) to have been an institution peculiar to the Romans; for while other nations possessed authority over their children unlimited by any legislative provision, few of their regulations bore even a distant resemblance to those which confirmed the Roman father in the exercise of his unquestioned and arbitrary power, the *jus vitæ et necis*. This power in early times was unbounded, and usually endured through life.

A marked peculiarity of this relation was what was known as the *unitas personæ*, under which a father and his son subject to his control were, by means of a legal fiction, held to be but a single person in law. Hence, when the father died, the son at once succeeded him; for the reason that, during his father's lifetime he had been a joint owner of the undivided estate. Despite the *unitas personæ*, the child was strictly not a person but a thing, one of the *res mancipi*, which by quiritarian right could be sold by the owner. The father was authorized to make any disposition of his offspring that he chose; he could scourge, maim, imprison, torture, or execute them at his pleasure. Nor was this right infrequently or sparingly exercised; the Roman annals are full of instances where sons were inhumanly treated and put to death by their fathers.

The acquisition of the *patria potestas* was dependent upon the status of the parent at the time of the birth of the child; he must be free, or *sui juris*, to be entitled to exercise paternal control, for if he were subject to the authority of another ascendant, his child would also come under the power of the latter.

Under ordinary circumstances, a son could acquire no property for himself, all he obtained belonged to his father. Exceptions were subsequently made in the cases of private, independent ownership of what was received by him while preparing for, or engaged in military service, or as a member of the priesthood; and finally of all acquisitions derived from maternal or other inheritances, or which were the remuneration of his individual labor or skill. This species of property designated *peculium castrense*, and *quasi peculium castrense*, was the subject of numerous Imperial enactments, which, in the course of time, afforded substantial relief to children oppressed by this legalized tyranny; as the censors, in the time of the Republic, had frequently exerted their authority for the same purpose.

Patria potestas was a necessary incident of lawful wedlock, which indeed was indispensable; and the authority thereby obtained was imposed on all the descendants through the son, but did not affect the offspring of a daughter who was subject to the *paterfamilias* of the family into which she had married. In addition to birth, paternal power could be acquired by means of the public acknowledgment of legitimacy, by adoption, and by matrimony.

As a natural result of placing children in the same category with slaves and domestic animals, liable to sale, barter, and the most cruel abuse, there was a time at which a child could be given up to the injured party by way of reparation for some unlawful act, or *noxa*, which it had committed; a practice condemned by Justinian in unmeasured terms.

It was not until about 370, during the reign of Valentinian and Valens, that measures were taken to place restrictions upon the irresponsible power of the head of the household; an example which was followed by many succeeding emperors. The sentiment expressed by Hadrian in condemning to exile a father who had killed his son, discloses the change of public opinion with which the excessive exercise of -paternal authority was, even in that day, regarded. "*Patria potestas in pietate debet, non in atrocitate, consistere*."

This right, in a greatly modified form, and relating principally to the obligations of obedience and support, is explicitly recognized by the jurisprudence of Continental Europe. — Ed.

Law II.

If a father sells his son three times, the latter shall be free from paternal authority.

Law III.

A father shall immediately put to death a son recently born, who is a monster, or has a form different from that of members of the human race.

Law IV.

When a woman brings forth a son within the next ten months after the death of her husband, he shall be born in lawful marriage, and shall be the legal heir of his estate.[1]

[1] At Common Law, the time prescribed was forty weeks. "*Et si ele eyt un enfant dedens t's XL semaines adõques soit cel enfant receu el heritage*." (Britton, Chap. 66, p. 166.) The countries whose jurisprudence is directly derived from that of Rome, as well as Japan, follow the rule of the text, and fix the limit at three hundred days. (*Code Civil de France*, Art. 315. *Código Civil de España*, Art. 108. *Codice Civile de Italia*, Art. 160. *Codigo Civil Portugues*, Art. 101. *Civil Code of*

TABLE V. concerning estates and guardianships.

Law I.

No matter in what way the head of a household may dispose of his estate, and appoint heirs to the same, or guardians; it shall have the force and effect of law.[1]

Japan. Art. 820.) According to Moslem law, the presumption of legitimacy may be established at any time from six lunar months — adopted as the shortest period of gestation — to two years. (*Syed Ameer AU*, Mohammedan Law, Vol. II. II, 2, p. 191.) As is well known, the Civil Law maxim, "*Pater est quem nuptiæ demonstrant*," is not accepted by the Common Law, which requires the birth to precede the marriage in every instance. The law of Scotland coincides with that of Rome on both the above-mentioned points. (More, Lectures on the Laws of Scotland, Vol. I, Chap. I. Sec. II.) — Ed.

[1] This law, which placed the distribution of his estate absolutely in the hands of the testator, without regard to the natural claims of consanguinity, was strictly observed for centuries. The abuse to which the privilege was liable became in time so flagrant that various measures were introduced to correct it. If the legacies bequeathed were large enough to include all, or so much of the assets as to render the remainder undesirable or burdensome, the estate was forthwith rejected by the heir. This act invalidated the will, and the heir-at-law took possession, the legacies being, of course, no longer of any effect. To obviate the confusion and injustice resulting from this proceeding, the Tribunal of the Centumviri devised the *querela inofficiosi testamenti*, or complaint of inofficious testament; by means of which the will was declared void on account of the mental incapacity of the testator, which was considered to be established *prima facie* by the existence of the clause of disinheritance. The *Lex Furia Testamentaria* limited the amount of a bequest to the insignificant sum of one thousand asses, which the ingenuity of testators evaded by simply increasing the number of legacies.

The *Lex Voconia*, passed A. U. C. 594, prohibited any legatee from accepting a bequest which exceeded in value the amount obtained by the heir. Women were also discriminated against by this law, presumably to prevent the affection of the testator from being indulged in their favor at the expense of members of his family; as well as

to avoid the excessive accumulation of property in the hands of persons generally considered as ill-qualified to make a proper use of it.

The *Lex Voconia* having proved ineffective, the *Lex Falcidia,* by which the previous enactments on this subject were repealed, was introduced one hundred and twenty years later. It provided that the heir, should, under ordinary circumstances, be entitled to one-fourth of the estate after all claims had been paid; and that no legacy should exceed three-fourths of the amount of the same. In case this rule was violated, the heir was authorized to diminish the bequests *pro rata*, until the sum to which he was entitled was made up. This apportionment, known as the "*Quarta Falcidia*," or "*Falcidian Fourth*," has, without substantial change, under the name of "*legitime*," been incorporated into much of the jurisprudence of Europe. It is in force in Louisiana, where it exists in favor of all direct descendants, and of ascendants in the first degree. "Donations *inter vivos* or *mortis causa* cannot exceed two thirds of the property of the disposer, if he leaves at his decease a legitimate child; one half, if he leaves two children, and one third, if he leaves three or a greater number." (Civil Code of Louisiana, Arts. 1480, 1481.) With the exception of the above-mentioned State, no similar restraints are, in this country, imposed upon the testamentary disposition of property, which is, of course, always subject to the dower of the widow. The same rule prevails in England. — Ed.

Law II.

Where a father dies intestate, without leaving any proper heir, his nearest agnate, or, if there is none, the next of kin among his family, shall be his heir. '

Law III.

When a freedman dies intestate, and does not leave any proper heir, but his patron, or the children of the latter survive him; the inheritance of the estate of the freedman shall be adjudged to the next of kin of the patron.

Law IV.

When a creditor or a debtor dies, his heirs can only sue, or be sued, in proportion to their shares in the estate; and any claims, or remaining property, shall be divided among them in the same proportion.

Law V.

Where co-heirs desire to obtain their shares of the property of an estate, which has not yet been divided, it shall be divided. In order that this may be properly done and no loss be sustained by the litigants, the Prætor shall appoint three arbiters, who can give to each one that to which he is entitled in accordance with law and equity.

Law VI.

When the head of a family dies intestate, and leaves a proper heir who has not reached the age of puberty, his nearest agnate shall obtain the guardianship.[1]

Law VII.

When no guardian has been appointed for an insane person, or a spendthrift, his nearest agnates, or if there are none, his other relatives, must take charge of his property.

[1] This was done under the presumption that the person most closely connected with the minor by the ties of consanguinity, and being next in the order of succession and hence directly interested in the preservation of the estate, would be most likely to properly discharge the duties of the trust. The English doctrine, which coincides with that adopted by the Greeks at the instance of Solon, is directly the opposite. It excludes from guardianship those who could, under any circumstances, become heirs, and therefore evinced a preference for cognates. The temptation to foul play to which the next of kin to the minor was supposed to be liable, is stated by the early English jurists in very energetic language. "*Nunquam enim custodia alicujus de jure alicui remanet, de quo habeatur suspicio quod possit vel velit aliquod jus in ipsa, hereditate clamare.*" (Glanvil VII, II.) Coke compares a guardian of this description to a ravening wolf: "*quasi agnem committere lupo ad devorandum*," are the terms in which he characterizes such an appointment. (Coke Inst. I. 88.) — Ed.

TABLE VI. concerning ownership and possession.

Law I.

When anyone contracts a legal obligation with reference to his property, or sells it, by making a verbal statement or agreement concerning the same, this shall have the force and effect of law. If the party should afterwards deny his statements, and legal proceedings are instituted, he shall, by way of penalty, pay double the value of the property in question.

Law II.

Where a slave is ordered to be free by a will, upon his compliance with a certain condition, and he complies with the condition; or if, after having paid his price to the purchaser, he claims his liberty, he shall be free.

Law III.

Where property has been sold, even though it may have been delivered, it shall by no means be acquired by the purchaser until the price has been paid, or a surety or a pledge has been given, and the vendor satisfied in this manner.

Law IV.

Immovable property shall be acquired by usucaption after the lapse of two years; other property after the lapse of one year.

Law V.

Where a woman, who has not been united to a man in marriage, lives with him for an entire year without the usucaption of her being interrupted for three nights, she shall pass into his power as his legal wife.[1]

Law VI.

Where parties have a dispute with reference to property before the tribunal of the Prætor, both of them shall be permitted to state their claims in the presence of witnesses.

Law VII.

Where anyone demands freedom for another against the claim of servitude, the Prætor shall render judgment in favor of liberty.

[1] This indicates the existence of woman as a mere chattel to be acquired by uninterrupted possession and use for a year, like any other species of personal property. It has been stated, with much probability, that this kind of matrimonial union was the most common and popular one in the early days of Rome. Our Common Law marriage authorized by some States, and which requires the public acknowledgment of the woman as a wife, bears a considerable analogy, in certain respects, to the cohabitation, *matrimonii causa*, of the text. — Ed.

Law VIII.

No material forming part of either a building or a vineyard shall be removed therefrom. Any one who, without the knowledge or consent of the owner, attaches a beam or anything else to his house or vineyard, shall be condemned to pay double its value.

Law IX.

Timbers which have been dressed and prepared for building purposes, but which have not yet been attached to a building or a vineyard can legally be recovered by the owner, if they are stolen from him.

Law X.

If a husband desires to divorce his wife, and dissolve his marriage, he must give a reason for doing so.

TABLE VII. concerning crimes.

Law I.

If a quadruped causes injury to anyone, let the owner tender him the estimated amount of the damage; and if he is unwilling to accept it, the owner shall, by way of reparation, surrender the animal that caused the injury.[1]

Law II.

If you cause any unlawful damage . . . .[2] accidentally and unintentionally, you must make good the loss, either by tendering what has caused it, or by payment.

Law III.

Anyone who, by means of incantations and magic arts, prevents grain or crops of any kind belonging to another from growing, shall be sacrificed to Ceres.[3]

This was the origin of the proceedings growing out of *noxa*, an injurious or unlawful act committed by an animal, a slave, or a child under paternal control, for which the owner, master, or parent was held responsible. Whatever caused the damage was held to be primarily liable, under the rule, "*omnes noxales actiones caput sequntur*"; hence the injured party had a right to seize the offending animal or slave, and hold it as security until his claim was satisfied; which has an exact parallel in the case of a stray found upon the premises of another, and detained or impounded under the English or American law. At first, in neither instance, could me author of the damage be sold, or the injury be otherwise redressed; this defect was, however, subsequently remedied by the passage at Rome of the *Lex Aquilia*, which granted an action directly against the owner; and by the enactment of the Statutes 5 & 6 Wm. IV. which permitted a sale of the animal in question, after certain legal formalities had been complied with. The American law is similar. — Ed.

[2] Original manuscript illegible.

[3] The intimate association of religion with law in the early life of Rome is disclosed by the frequent appearance of the formula "*sacer esto*," "Let him be devoted to the infernal gods"; which was attached to many criminal enactments by way of penalty. This not only rendered the offender infamous, as implying the commission of an act of sacrilege, but was virtually a proclamation of outlawry, and enabled anyone to kill him with impunity.—ED.

LAW IV.

If anyone who has arrived at puberty, secretly, and by night, destroys or cuts and appropriates to his own use, the crop of another, which the owner of the land has laboriously obtained by plowing and the cultivation of the soil, he shall be sacrificed to Ceres, and hung.

If he is under the age of puberty, and not yet old enough to be accountable, he shall be scourged, in the discretion of the Praetor, and shall make good the loss by paying double its amount.

LAW V.

Anyone who turns cattle on the land of another, for the purpose of pasture, shall surrender the cattle, by way of reparation.

LAW VI.

Anyone who, knowingly and maliciously, burns a building, or a heap of grain left near a building, after having been placed in chains and scourged, shall be put to death by fire.[1] If, however, he caused the damage by accident, and without malice, he shall make it good; or, if he has not the means to do so, he shall receive a lighter punishment.

LAW VII.

When a person, in any way, causes an injury to another which is not serious, he shall be punished with a fine of twenty *asses.*

LAW VIII.

When anyone publicly abuses another in a loud voice, or writes a poem for the purpose of insulting him, or rendering him infamous, he shall be beaten with a rod until he dies.

LAW IX.

When anyone breaks a member of another, and is unwilling to come to make a settlement with him, he shall be punished by the law of retaliation.

[1] The punishment, in this instance, is an adaptation of the *lex talionis,* and the atrocious character of the offence seemed, in the opinion of many of the nations of antiquity, to justify the extreme severity of the penalty. The Visigoths adopted it where the building was in a city. (For. Jud. VIII. II. 1.) The Gentoo Code applied it where any crops or houses were burned. (Gentoo Code XVIII.) The law of England also authorized it. *"Ceux que ferount de ceo atteynts soient ars, issint que eux soient punys par meme cкle chose dount Us pкcherent."* (Britton IX. 16.)' Bracton says the act must be maliciously and feloniously committed, and that, when this is the case, the crime is capital, but he does not specify the mode of execution. Arson was felony at Common Law. (Hale, Pleas of the Crown, Vol. I, Chap. XLIX.) Incendiaries are styled "fire raisers" in Scotland, and by the ancient law of that country the offence, if wilful, was treason, and was punished by hanging. (Mackenzie, The Laws and Customes of Scotland in Matters Criminal, I. IX. 1.) —ED.

LAW X.

When anyone knocks a tooth out of the gum of a freeman, he shall be fined three hundred *asses;* if he knocks one out of the gum of a slave, he shall be fined a hundred and fifty *asses.*

LAW XL

If anyone, after having been asked, appears either as a witness or a balance-holder, at a sale, or the execution of a will, and refuses to testify when this is required to prove the genuineness of the transaction, he shall become infamous, and cannot afterwards give evidence.

LAW XII.

Anyone who gives false testimony shall be hurled from the Tarpeian Rock.

LAW XIII.

If anyone knowingly and maliciously kills a freeman, he shall be guilty of a capital crime. If he kills him by accident, without malice and unintentionally, let him substitute a ram to be sacrificed publicly by way of expiation for the homicide of the deceased, and for the purpose of appeasing the children of the latter.

LAW XIV.

Anyone who annoys another by means of magic incantations or diabolical arts, and renders him inactive, or ill; or who prepares or administers poison to him, is guilty of a capital crime,[1] and shall be punished with death.

LAW XV.

Anyone who kills an ascendant, shall have his head wrapped in a cloth, and after having been sewed up in a sack, shall be thrown into the water.[2]

LAW XVI.

Where anyone is guilty of fraud in the administration of a guardianship, he shall be considered infamous; and, even after the guardianship has been terminated, if any theft is proved to have been committed, he shall, by the payment of double damages, be compelled to make good the loss which he caused.

[1] *"Paricida esto."* A mistake in the derivation of this word has resulted in much confusion. *Paricidium* was at first employed to denote felonious homicide, and was therefore synonymous with murder. The root is *par,* and not *pater.* The term afterwards obtained a much broader signification than it had originally, and was applied indiscriminately to the killing of relatives. It was sometimes even used to designate treason, or generally, any capital crime.—ED.

[2] The scope of this law—that took its name from a *culeus,* or leathernsack— was vastly enlarged by the *Lex Pompeia de Paricidiis,* which virtually made every blood-relative, or person connected by affinity with the culprit, subject to its penalty. A dog, a viper, a cock, and an ape, were sewed up with him in the sack. The ancient writers have not assigned any reason for the selection of these singular companions that shared the fate of the murderer. If no body of water was at hand, the sack and its contents were exposed to wild beasts.—ED.

Law XVII.

When a patron defrauds his client, he shall be dedicated to the infernal gods.

TABLE VIII. concerning the laws op real property.

Law I.

A space of two feet and a half must be left between neighboring buildings.[1]

Law II.

Societies and associations which have the right to assemble, can make, promulgate, and confirm for themselves such contracts and rules as they may desire; provided nothing is done by them contrary to public enactments, or which does not violate the common law.

Law III.

The space of five feet shall be left between adjoining fields, by means of which the owners can visit their property, or drive and plow around it. No one shall ever have the right to acquire this space by usucaption.

Law IV.

If any persons are in possession of adjoining fields, and a dispute arises with reference to the boundaries of the same, the Prætor shall appoint three arbiters, who shall take cognizance of the case, and, after the boundaries have been established, he shall assign to each party that to which he is entitled.

Law V.

When a tree overhangs the land of a neighbor, so as to cause injury by its branches and its shade, it shall be cut off fifteen feet from the ground.

Law VI.

When the fruit of a tree falls upon the premises of a neighbor, the owner of the tree shall have a right to gather and remove it.

Law VII.

When rain falls upon the land of one person in such a quantity as to cause water to rise and injure the property of another, the Prætor shall appoint three arbiters for the purpose of confining the water, and providing against damage to the other party.

[1] This was done in order to render access to the owner's property more convenient, to prevent conflagrations, and to facilitate the extinguishing of fire. — ed.

Law VIII.

Where a road runs in a straight line, it shall be eight feet, and where it curves, it shall be sixteen feet in width.

Law IX.

When a man's land lies adjacent to the highway, he can enclose it in any way that he chooses; but if he neglects to do so, any other person can drive an animal over the land wherever he pleases.

TABLE IX. concerning public law.

Law I.

No privileges, or statutes, shall be enacted in favor of private persons, to the injury of others contrary to the law common to all citizens, and which individuals, no matter of what rank, have a right to make use of.

Law II.

The same rights shall be conferred upon, and the same laws shall be considered to have been enacted for all the people residing in and beyond Latium, that have been enacted for good and steadfast Roman citizens.

Law III.

When a judge, or an arbiter appointed to hear a case, accepts money, or other gifts, for the purpose of influencing his decision, he shall suffer the penalty of death.

Law IV.

No decision with reference to the life or liberty of a Roman citizen shall be rendered except by the vote of the Greater *Comitia*.

Law V. Public accusers in capital cases shall be appointed by the people.[1]

[1] "*Quæstores Paricidii*." These officials discharged the triple functions of detectives, State attorneys, and executioners. They were two in number, and are supposed by

some authorities to have been identical with the urban quæstors of subsequent times, which conjecture, however, has no positive evidence to support it. They were originally appointed by the King, and, under the Republic, by the consuls. It was their duty to investigate and prosecute capital crimes, such as arson, murder, witchcraft, and the destruction of growing crops, all of which in ancient times were punishable with death. They summoned the*Comitia*, or Assembly of the People, for the trial of an offender, and executed the sentence after it had been pronounced. — Ed.

Law VI.

If anyone should cause nocturnal assemblies in the City, he shall be put to death.

Law VII.

If anyone should stir up war against his country, or delivers a Roman citizen into the hands of the enemy, he shall be punished with death.

TABLE X. Concerning religious law.

Law I.

An oath shall have the greatest force and effect, for the purpose of compelling good faith.

Law II.

Where a family adopts private religious rites every member of it can, afterwards, always make use of them.[1]

Law III. No burial or cremation of a corpse shall take place in a city.[2]

Law IV.

No greater expenses or mourning than is proper shall be permitted in funeral ceremonies.

Law V.

No one shall, hereafter, exceed the limit established by these laws for the celebration of funeral rites.

Law VI.

Wood employed for the purpose of constructing a funeral pyre shall not be hewn, but shall be rough and unpolished.

[1] The Romans, like all primitive peoples, originally worshipped their ancestors, of whom one, styled the *lars familiaris*, was always selected as the tutelary diety. The

various ceremonies attending this worship were of a private character, and hence were entirely distinct from those performed in the temples and at the public altars. Religion being so closely interwoven with State affairs in the Roman polity, its mode of celebration was, in every instance, rigidly prescribed by law. — Ed.

[2] It was the custom at Rome, prior to the enactment of the Laws of the Twelve Tables, for the deceased relatives of the family to be buried in their own homes, which gave rise to the worship of the *Lares*, above referred to. The inconvenience and unsanitary results growing out of this practice no doubt contributed largely to its abrogation. — Ed.

Law VII.

When a corpse is prepared for burial at home, not more than three women with their heads covered with mourning veils shall be permitted to perform this service. The body may be enveloped in purple robes, and when borne outside, ten flute players, at the most, shall accompany the funeral procession.

Law VIII.

Women shall not during a funeral lacerate their faces, or tear their cheeks with their nails; nor shall they utter loud cries bewailing the dead.

Law IX.

No bones shall be taken from the body of a person who is dead, or from his ashes after cremation, in order that funeral ceremonies may again be held elsewhere. When, however, anyone dies in a foreign country, or is killed in war, a part of his remains may be transferred to the burial place of his ancestors.

Law X.

The body of no dead slave shall be anointed; nor shall any drinking take place at his funeral, nor a banquet of any kind be instituted in his honor.

Law XI.

No wine flavored with myrrh, or any other precious beverage, shall be poured upon a corpse while it is burning; nor shall the funeral pile be sprinkled with wine.

Law XII.

Large wreaths[1] shall not be borne at a funeral; nor shall perfumes be burned on the altars.

Law XIII.

Anyone who has rendered himself deserving of a wreath, as the reward of bravery in war, or through his having been the victor in public contests or games, whether he has obtained it through his own exertions or by means of others in his own name, and by his own money, through his horses, or his slaves, shall have a right to have the said wreath placed upon his dead body, or upon that of any of his ascendants, as long as the corpse is at his home, as well as when it is borne away; so that, during his obsequies, he may enjoy the honor which in his lifetime he acquired by his bravery or his good fortune.

Law XIV.

Only one funeral of an individual can take place; and it shall not be permitted to prepare several biers.

[1] "*Longæ Coronæ*." This term, while obscure, would seem to refer to garlands of excessive size, exhibited by way of pomp and ostentation at the celebration of funeral rites. The greater part of the legislation of this Table was evidently framed for the correction of the inordinate display of wealth and luxury already becoming prevalent at the burial of the dead. — Ed.

Law XV.

Gold, no matter in what form it may be present, shall, by all means, be removed from the corpse at the time of the funeral; but if anyone's teeth should be fastened with gold, it shall be lawful either to burn, or to bury it with the body.

Law XVI.

No one, without the knowledge or consent of the owner, shall erect a funeral pyre, or a tomb, nearer than sixty feet to the building of another.

Law XVII.

No one can acquire by usucaption either the vestibule or approach to a tomb, or the tomb itself.

Law XVIII.

No assembly of the people shall take place during the obsequies of any man distinguished in the State.

TABLE XI. supplement to the five preceding ones.

Law I.

Affairs of great importance shall not be transacted without the vote of the people, with whom rests the power to appoint magistrates, to condemn citizens, and to enact laws. Laws subsequently passed always take preference over former ones.

Law II.

Those who belong to the Senatorial Order and are styled Fathers, shall not contract marriage with plebeians.

TABLE XII. supplement to the five preceding ones.

Law I.

No one shall render sacred any property with reference to which there is a controversy in court, where issue has already been joined; and if anyone does render such property sacred, he shall pay double its value as a penalty.

Law II.

If the claim of anyone in whose favor judgment was rendered after the property had been illegally seized, or after possession of the same had been delivered, is found to be false, the Prætor shall appoint three arbiters, by whose award double the amount of the profits shall be restored by him in whose favor the judgment was rendered.

Law III.

If a slave, with the knowledge of his master, should commit a theft, or cause damage to anyone, his master shall be given up to the other party by way of reparation for the theft, injury, or damage committed by the slave.

END OF THE LAWS OF THE TWELVE TABLES.