Select Titles from the Digest of Justinian

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SELECT TITLES

FROM THE

DIGEST OF JUSTINIAN

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SELECT TITLES

FROM THE

DIGEST OF JUSTINIAN

EDITED

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PREFA CE.

A marked revival of the study of Roman law has taken place in England within the last few years; and students who might a short time ago have been satisfied with a knowledge of the Institutional writers and their Commentators, are now expected to have some familiarity with that great storehouse of legal wisdom the Digest itself.

But of the four hundred and thirty-two Titles which are contained in the Digest of Justinian few students can attempt to master thoroughly more than a small proportion. It has therefore been thought desirable to make a selection of the more important Titles, and to publish them successively in Parts, each of which may be obtained separately, though the whole series was so arranged as ultimately to form a complete work.

The selected Titles have been grouped under heads which are familiar to readers of the Institutes; viz. Introductory or General matter, the Law of Family, the Law of Property, and the Law of Obligations; and under each of these heads the order in which the several Titles follow one another is made to correspond as nearly as may be with that observed in the Institutes. The Titles thus brought into juxtaposition have however in many cases to be sought for in widely distant portions of the Digest. It may therefore be necessary to explain why it is that the Editors, while they have scrupulously presented these Titles without addition or omission, have felt themselves at liberty to print them in an order different from that which they occupy in the book at large.

The directions given by the Emperor Justinian to the Commissioners who compiled the Digest were:—to distribute ("digerere") its matter "in libros quinquaginta et certos titulos, tam secundum
PREFACE.

"nostri constitutionum codicis quam edicti perpetui imitationem,
"prout hoc ubis commodius esse patuerit!"

Again, after the completion of the work, he states that he has divided it into seven Parts, "non perperam, neque sine ratione, sed
"in numerorum naturam et artem respicientes, et consentaneam
"cis divisionem partium convenientes"; and proceeds to give a syllabus of its contents, which may be paraphrased as follows:

Pars prima, "quae Graeco vocabulo πρῶτα nuncupatur," contains four books (I—IV).

Pars secunda, "de iudiciis," contains seven books (V—XI).

Pars tertia, "de rebus," eight books (XII—XIX).

Pars quarta, "totius compositionis quasi quoddam umbilicum,”
eight books (XX—XXVII), viz:

XX. Hypothecae.
XXI. Aedilicum edictum, redhibitoria actio, duplae stipulatio quae de
euclionibus proposita est.
XXII. Usuaries, traiecticiae pecuniae, instrumenta, testes, probationes.
XXIII, XXIV, XXV. Sponsalia, nuptiae, dotes.
XXVI, XXVII. Tutelae, curationes.

Pars quinta, "de testamentis," nine books (XXXVIII—XXXVI), viz:

XXXVIII, XXXIX. Testamenta et codicilli.
XXX—XXXIV. Legata et fidieomiessae.
XXXV. Lex Falcidia.
XXXVI. S. C. Trebellianum.

Pars sexta, eight books (XXXVII—XLIV), viz:

XXXVII, XXXVIII. Bonorum possessiones, gradus et affinitates,
legitimar hereditates, ab intestato successio, Tertullianum et
Orphitianum S. C.
XXXIX. Operis noui nuntiationes, damni infecti, aedicia diruta et
eorum insidiae, de aqua puliua arcenda, publicani, donationes tam
inter uius quam mortis causa.
XL. Manumissiones, liberalis causa.
XLI. Acquisitio tam dominii quam possessionis.
XLII. Hi qui iudicati uel in iure confessi sunt, bonorum detentiones,
ut nequid in fraudem creditorum fiat.
XLIII. Omnia interdicta, exceptions, temporum proxitate.
XLIV. Obligationes et actions.

Pars septima, six books (XLV—L), viz:

XLV, XLVI. Stipulationes, fideiussores, mandatores, nuationes, soluta-
tiones, acceptationes, praetoriae stipulationes.

1 Const. Deo Aust. 5. 2 Const. Tanta, 1. 3 ibid. 2.
XLVII, XLVIII ("duo terribiles libri"). Delicta privata et extraordinaria, publica crimina, contumaces, poenae, condemnatorum substantiae.

XLIX. Appellationes.

L. Municipalia, decuriones, munera, publica opera, nundinae, pollicitationes, diuersae cognitiones, quae de significacione uerborum ueteribus inuenta sunt, quaque regulariter definita.

It is obvious, upon the Emperor's own showing, that the arrangement of the Digest is the result of historical accident rather than of any logical scheme. The grouping of the Titles into Books, and of these again into Parts, is thus of the roughest kind, and is based not so much upon affinity of subject as on the almost accidental order in which one topic after another was discussed in the Edict. It is not therefore surprising that Justinian himself attached so little importance to this order, that he directed a different method to be observed by the Professors who were entrusted with the guidance of legal education. The division into Parts seems indeed never to have taken root, since it is only occasionally referred to in the Florentine manuscript, or noticed in the fragments of the jurists of the sixth and seventh centuries; and the divisions into Books and into Parts were during the Middle Ages alike practically superseded by the still more arbitrary division into the Digestum uetus (Bk. I—XXIV, Tit. 2), the Infortiatum (Bk. XXIV, Tit. 3—XXXV, Tit. 2, § 82), the Tres partes (Bk. XXXV, Tit. 2, § 82—XXXVIII), and Digestum novum (Bk. XXXIX—L).

The relation of the Title to the Book, of the Book to the Part, and of the Part to the whole work having thus been explained, and shewn to be so arbitrary that the Editors have been obliged to look elsewhere rather than in the Digest itself for the principles upon which their selection should be arranged, it may be worth while to add a few remarks upon the relation of the Title to the "leges" or fragments of which it is composed, and upon the order in which they succeed one another. This subject was for the first time rendered intelligible by Bluhme, whose theory, which is now generally received, is as follows: The Digest...

1 For instance, while "pacta" are treated of in Bk. II, Tit. 14, the kindred topic of "verborum obligationes" is to be looked for in Bk. XLV, Tit. 1. The Lex Aquilia is the subject of Bk. IX, Tit. 2, but the other "obligationes ex delicto" are dealt with in Bk. XLVII. The Title "de inofficiis testamento" is not to be found in any of the nine books "de testamentis" (XXVIII—XXXVI), but is placed in Bk. V.

2 Const. Omnum Reipub.

3 Zeitschrift für geschichtliche Rechtswissenschaft, B. IV, Berlin, 1820.
Commissioners having, in accordance with their instructions, agreed upon the general plan of the work and its distribution into certain Books and Titles, proceeded to constitute themselves into three committees, each of which undertook to deal with a definite portion of the whole body of juristic literature which had to be examined. One committee took in hand the first mass of literature, consisting of the Libri ad Sabinum, and treatises on the Ius Ciuiile; another the second mass, consisting of commentaries on the Edict; and the remaining committee undertook the third mass, composed of the "quaestiones" and "responsa" of various jurists, of whom Papinian was the most important. A fourth mass, consisting probably of treatises of which copies were only obtained during the progress of the work, appears also to have been examined by this last committee, and the selections from it form a sort of appendix to the rest.

When the task of selection was completed, and the extracted passages had been arranged under the appropriate Titles, the three committees met and composed the present Digest, by bringing together their respective contributions to each Title. The sequence of the different masses in the Title was determined by the quantity and importance of their contents. Where, for instance, the Libri ad Sabinum furnish the bulk of a Title, the extracts from that mass are placed first, and those from the other masses follow according to their amount. Bluhme has carefully tabulated the list of books composing each mass, showing the order in which they were examined and compared, and has pointed out and accounted for the various instances in which the plan above described was departed from.

Each Title in the present Selection has been supplied with an analytical head-note, and with illustrative references to parallel passages in the Corpus Iuris and in the Institutes of Gaius. The text is that of the edition of the Digest published by Mommsen with the assistance of Krueger (Berlin, 1870), with only such slight variations in punctuation as do not affect the sense. In a few cases where the text offered extreme difficulty an emendation has been suggested in the notes.

T. E. H.
C. L. S.

Oxford,
June, 1881.
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