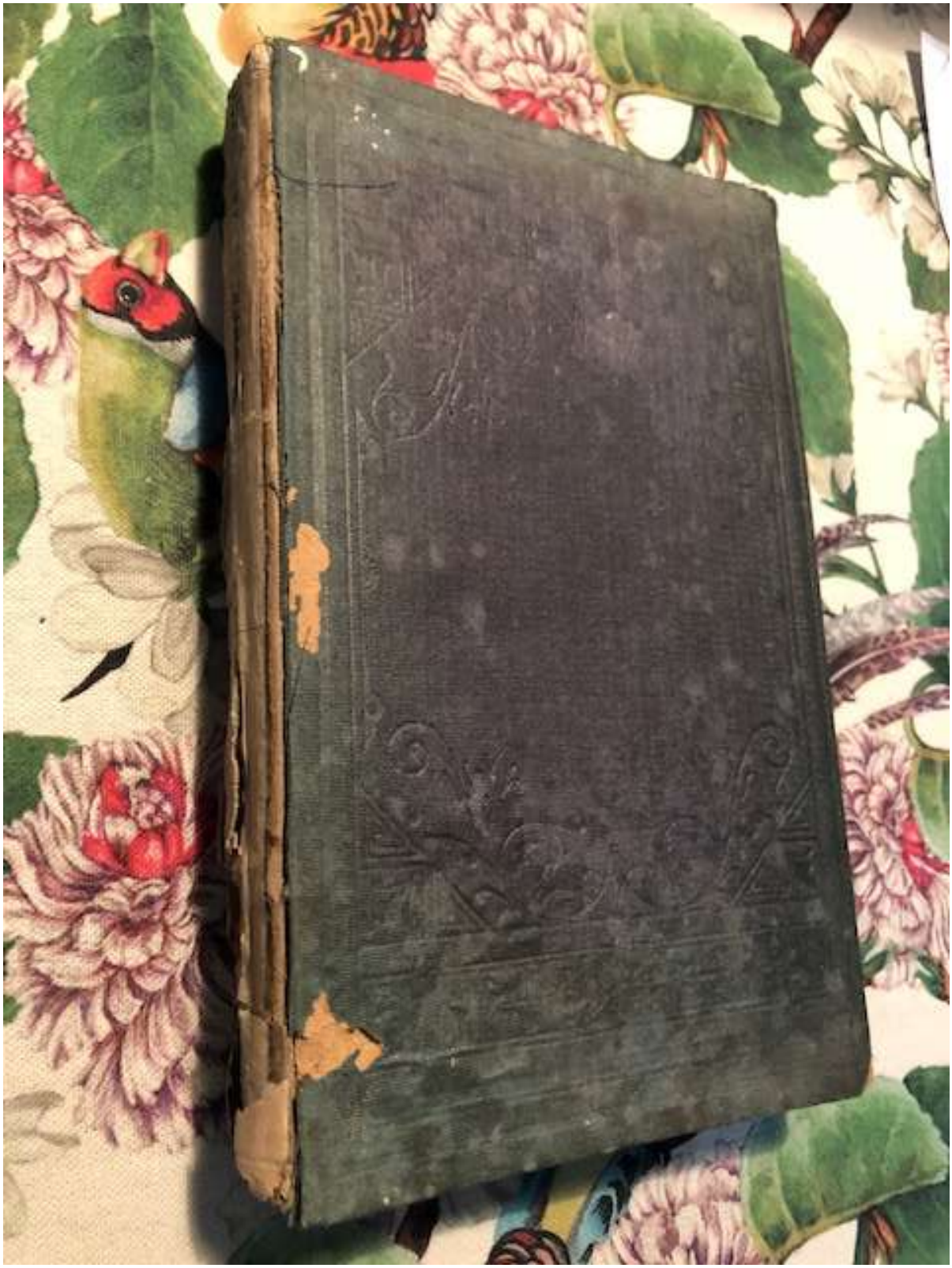

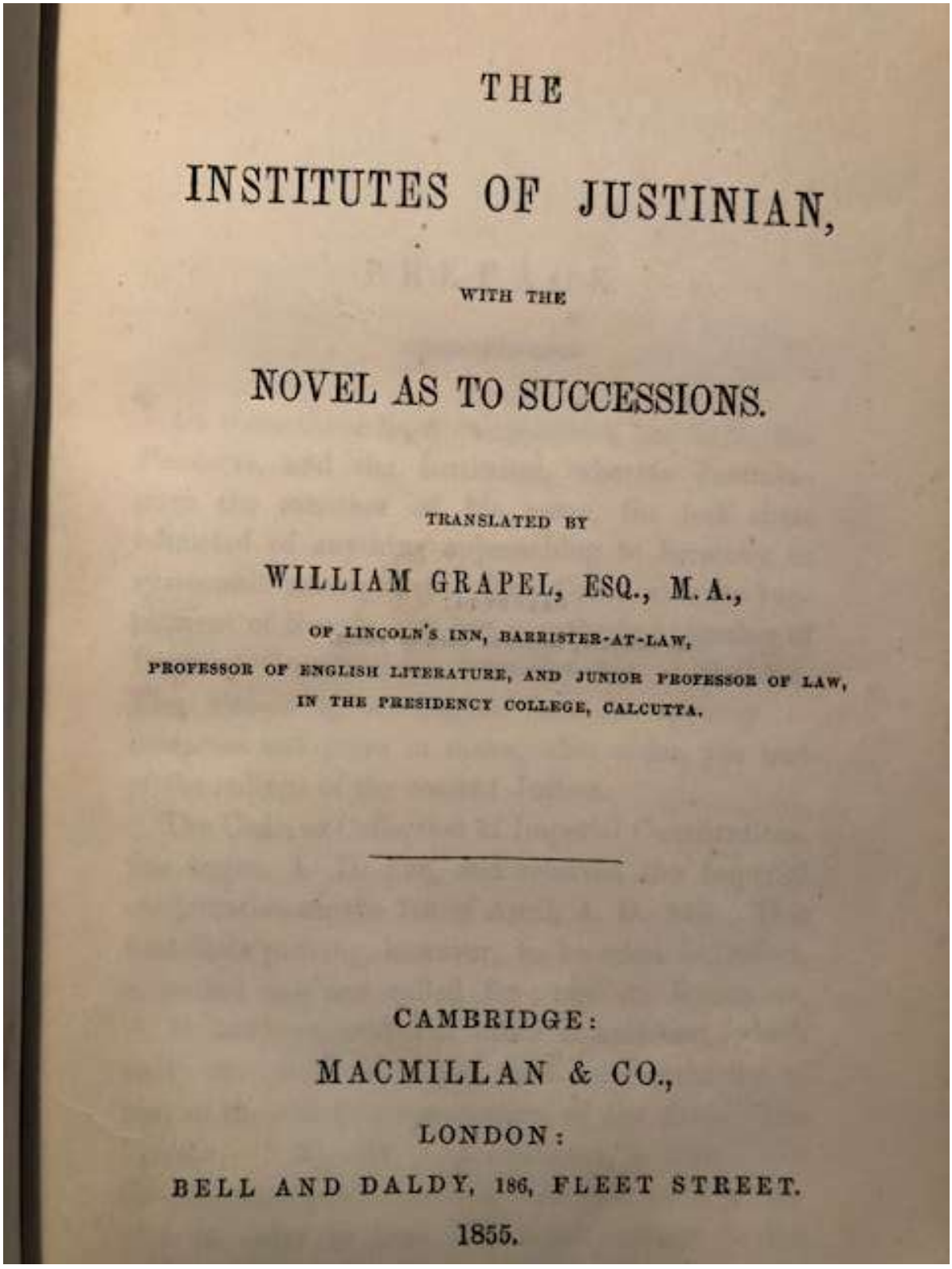

THE

INSTITUTES OF JUSTINIAN,

WITH THE

NOVEL AS TO SUCCESSIONS.

TRANSLATED BY

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TITLE 8.

OF PERSONS INDEPENDENT, AND OF THOSE SUBJECT TO OTHERS.

WE come now to another division, relative to the rights of persons; for some are independent and some are subject to the power of others. Of those, again, who are subject to the power of others, some are in the power of parents, others in that of masters. Let us, then, first inquire as to those who are subject to others: for when we have ascertained who these are, we shall, at the same time, discover who are independent. And first let us inquire as to those who are in the power of masters.

Section I.—Slaves are in the power of their masters. This power is derived from the Law of Nations; for among all nations alike it is observable that masters have had the power of life and death over their slaves; and that whatsoever is acquired by the slave is acquired for the master.

Section II.—But at the present time, no subjects of the Empire are permitted, save for some reason recognized by the laws, to inflict any extraordinary punishment upon their slaves. For according to a Constitution of the Emperor Antoninus, he who, without due reason, slays his own slave, is to be punished with no less rigour than if he had slain the slave of another. Excessive severity on the part of masters is also restrained by another Constitution of the same Emperor. For, when consulted by certain Governors of provinces concerning those slaves who take sanctuary either in temples, or at the statues of the Emperors, he ordained that if the severity of the masters should appear excessive, they

should be compelled to make sale of their slaves on equitable terms, so that the masters might receive the full value of such slaves. And this decision is a just one; for it greatly concerns the public weal, that no one be permitted to misuse even his own property. The exact words of this Rescript so sent by Antoninus to Ælius Marcianus are as follows:—

"The power of masters over their slaves ought by no means to be wrongfully diminished. But it is for the interest of masters themselves that relief against cruelty, denial of sustenance, or any other insufferable wrong, should not be refused to those who crave it on just grounds. Take cognizance, therefore, of the complaints of those slaves, belonging to the family of Julius Sabinus, who have fled for sanctuary to the statue of the Emperor; and if you are assured that they have been over-harshly treated, or wantonly disgraced, order them to be sold, so that they may not again fall into the power of their former master; and, if Sabinus seek to evade this, my Constitution, let him know that I shall severely visit his contumacy."

TITLE 9.

OF PARENTAL AUTHORITY.

OUR children, begotten in lawful wedlock, are in our power.

Section I.—Marriage, or Matrimony, is a binding together of a man and woman, obliging to an indivisible union during life.

Section II.—The right of power, however, which we have over our childen is peculiar to citizens of Rome; for there are

property will remain in the son, without any diminution, while the father will enjoy the benefits of a share larger than before, of a half, namely, in lieu of a third.

Section III.—Whatever, also, our slaves acquire, whether by delivery, contract, or in any other way, is acquired for us; and this, even though we are ignorant of, or averse to, such acquisitions; for the slave himself, being in the power of another, can have no property of his own. Also, if he be instituted heir, he cannot enter on the inheritance save at his master's bidding; and if, at the bidding of his master, he do enter, the master acquires the inheritance, precisely as if he himself had been instituted heir. In like manner, a legacy left to a slave is acquired by the master. Further it is to be observed that, by those who are in our power, we acquire not the property alone, but also the possession. For what thing soever they have acquired in possession, that also we are deemed to possess; wherefore, through their means, we may acquire a title by long use and prescription.

Section IV.—In regard to those slaves in whom we have the usufruct only, it has been held, that whatever they acquire by means of our property, or by their own labour, shall belong to us; but that what they have acquired from any other source, shall belong to their real owner. Thus, if a slave be instituted heir, or receive a legacy, or gift, the inheritance, legacy, or gift will belong not to the usufructuary, but to the proprietor. The same rule holds with regard to any one who is *bonâ fide* in our possession, whether he be free, or another man's slave; for the rule which holds as to the usufructuary, holds also as to the *bonâ fide* possessor; therefore, whatever is by such acquired, other than from the two sources above-mentioned, becomes the property of the man himself, if he be free, or of his master, if he be a slave. A *bonâ fide* possessor who, by long use or prescription, has gained the property in a slave, acquires, as absolute owner, all that the slave acquires. But

the usufructuary master can gain no property in his slave by use or prescription; first, because he has not the strict possession, but merely the right of usufruct; and secondly, because he knows that the slave belongs to another. But what we acquire by means of those slaves in whom we have the usufruct, or of those whom we possess *bonâ fide*, or by means even of any free person, who acts *bonâ fide* as our slave, we acquire not in ownership alone, but in possession. We say this, both as to slaves and freemen, with reference only to the distinction before laid down, and speak but of those acquisitions which they have made, either by means of our property, or by their own labour.

Section V.—From the above remarks it is clear, that we can by no means acquire by free persons not under our power, and whom we do not possess *bonâ fide*; nor can we do so, by slaves belonging to other people, of whom we have neither the usufruct, nor the just possession. And this is the meaning of the assertion, that no acquisition can be made by means of a stranger; except, indeed, that in accordance with a Constitution of the Emperor Severus, possession may be acquired for us by a free person, as for instance by an agent or procurator, not only with, but even without, our knowledge; and by this possession, we acquire the property, provided it were the owner who delivered the thing; or a title by use and prescription if it were not.

Section VI.—The remarks which have been made, as to the modes of acquiring property in particular things, will suffice for the present. For, afterwards, we shall more conveniently treat of legacies, by which, also, we acquire a property in particular things, and of *fidei-commissa*—bequests in trust—by which particular things are left to us. Let us now show by what means things may be acquired *per universitatem*—that is, wholly, and in gross. If, for example, we are made heir, or if we sue for possession of the property of another, or

arrogate a son, or if the goods of any are adjudged to us in order to preserve his liberty, in all these cases all that did belong to the person passes to us, whole and entire. First, then, let us treat of inheritances, which are of two kinds, such, namely, as accrue to us by testament, and such as come by intestacy. We will first treat of those which come to us by testament; and in doing this, it is necessary to begin by an explanation of the formalities required in making testaments.

TITLE 10.

OF TESTAMENTS.

THE word "Testament," is derived from the Latin *testatio mentis*—an evidence of the will.

Section I.—Now, that nothing of ancient usage be absolutely forgotten, it is needful to remark that in former days two kinds of testament were in use; whereof the one was used in times of peace and quiet, and was named *calatis comitiis, i. e.* from the convention of the *comitia:* the other was used at the moment of setting out to battle, and was called *procinctum;* a third kind was afterwards added, called the testament *per æs et libram,—i. e.*, "by brass and balance," which was effected by emancipation, that is, by a fictitious sale in the presence of five witnesses and of the *libripens*—or, "balance-holder"—all Roman citizens who had arrived at years of puberty—and also in the presence of him who was called *emptor familiæ*—"the purchaser of the inheritance." The two former kinds of testaments fell into disuse, in very distant times; and that "by