Novel 107.

Concerning last wills made in regard to children.
(De ultimis voluntatibus in liberos factis.)

The same Augustus (Justinian) to Bassus, magnificent count of the devoted Domestics, representing Johannes, glorious praetorian prefect the second time, ex-consul-ordinary and patrician.

Preface. A law was enacted by Constantine[a] of blessed memory, which aims at the ancient simplicity, but the variety of things and nature which often makes a change in them have brought it about that an amendment in that law is necessary to be made by us. The law provides that the last will of decedents who are parents shall in every respect be valid as to children, and it displays such reverence for those who are parents, that it permits them to state matters obscurely, providing that though their directions are not clear, but may be found in any signs, indications or writings, they shall be valid; and it provides this in reference to unemancipated as well as to emancipated children. Aside from this, the constitution of Theodosius[b] makes the same provision not only as to fathers, but also as to mothers and other ascendants of either sex. Making use of such permission, men have left things so obscure that a seer rather than an interpreter is necessary—neither designating the persons, nor indicating the property by a definite mark, and not even stating the amount, and leaving everything to guess and conjecture.

(a) C. 3.36.26; C. Th. 2.24.1.

(b) Nov. Th. 1.16.5; C. 6.23.31.

c. 1. We, therefore, wanting everything to be clear and definite—for what is more proper in connection with laws than clarity, especially as to the directions of decedents?—direct that if a person who knows how to write, wants to make disposition (of his property) among his children, he shall in the first place state the time, write the name of his children in his own handwriting, and besides state the portions for which he appoints them as heirs, doing so not

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in numerals but with letters of the alphabet fully written out, so that they will be clear and left in no doubt. If he also wants to make a distribution of the property, or make an appointment (of an heir or heirs) for certain property, he shall also designate the marks whereby it may be known, so that everything is stated in his writing and no opportunity for contention is left to the children. If hewants to leave some legacies or trusts to his wife or to outsiders, or provide for manumissions, and this is stated in his own handwriting and he has affirmed, in the presence of witnesses, that the contents of his directions have been written by him and he wants them to be in force, then this shall be valid, and shall not be void simply because merely written on paper without observance of the solemnities in connection with testaments, but shall differ from a formal testament only in that the right hand and the language of the testator (instead of other formalities) give vitality to the paper.

c. 2. And if (such testament in) this form remains in existence till his death, no one shall thereafter be able to produce testimony that perhaps he wanted to change or vary such will, or do something else like that, since he could have destroyed what he had written, and could have made another will declaring his wishes which would have been valid. For we permit him to do this, if he expressly declares in the presence of seven witnesses, that he had made such will, but does not want it to be in force any longer, but wants to make another. And he may do this (make another will) by a perfect testament, having all the earmarks thereof, or orally by a perfectly expressed will, so that he will die with a will written or oral, his first directions having been nullified by perfect testament or wish.

c. 3. And since we know that some men make a division of property among their children, and cause the latter to subscribe there-

to, we also permit such form to be pursued. And if a man divides his property, calls his children together, and causes them to subscribe and ratify such division and they acknowledge that this has been done in that manner, such division of such property shall be valid according to our constitution[a] which we have made relating thereto and which shall be valid in all things contained therein and is ratified hereby. And if he (the parent) himself subscribed the division alone, and has made everything clear by his writing, this, too, shall be valid, since that, too, is already stated in our law. It is clear that this law applies (only) in those cases which happen in the future.

Epilogue. Your Glory, learning of this our will, declared by this imperial law, will make it known to all, so that nothing that has been ordained rightly and with forethought for our subjects, may be hidden from them.

Given February 1 (541).

(a) Novel 18, c.7.