Book V.
Title XII.

Concerning the rights relating to dowries.
(De jure dotium.)

Bas. 29.1.88; D. 23.3.

5.12.1. Emperors Severus and Antoninus to Nirepharus.

If title fails to property given as dowry, and a simple or solemn promise (to give it as dowry) was made, the son in law may bring an action (condictio) either on the simple promise or on the stipulation against the father in law or the woman or their heirs. 1. But if no simple or solemn promise was made he has, after eviction, an action as for the purchase price of the premises, if the property was given as a dowry at a definite value. But if the property was not valued and was given in good faith, the husband has no right of action. If the giver of the dowry, however, perpetrated fraud, he has an action for the fraud, unless such fraud was committed by a woman, for in that case, he has an action on the special facts (in factum) so that no action that involves infamy may be brought against her.
Promulgated August 1 (201).

Note.

In this case property had been turned over to the husband as a dowry. Title thereto failed; he was evicted therefrom and wanted to know whether he had any remedy. If the property was promised him as a dowry, he could sue on the promise. Originally that was required to be by stipulation or other solemnity, but in later law, represented herein by interpolation, a simple promise sufficed. C. 5.11.6. If, on the other hand, the property was simply turned over to him as a dowry, without an accompanying express promise of it as such, and without fraud, then he had no remedy whatever, unless it had been turned over to him at a fixed valuation, as was frequently done. In such case, he was considered as a purchaser; the property was at his risk; the valuation of it was then the dowry, and he ordinarily was required to return it after dissolution of marriage. C. 5.18 headnote. Hence he could sue for the property if it was not turned over to him (law 10 h.t.), or could sue for the value of it, if he was evicted from it. Vat. fr. 105. Condemnation is an action on fraud (dolo—C. 2.20), made the defendant infamous, which was not deemed desirable in certain cases. C. 2.20.5 note.

5.12.2. Emperor Antoninus to Alcibiades.

If a stipulation was added concerning the return of a portion of the dowry, and a condition attached thereto came into operation, the person for whose benefit it was made has a right of action. 1. Accordingly, if your sister Palla has a right of action for restoration of part of the dowry by reason of the fact that your mother, with the intention of giving, gave Palla the right to have a condition attached to the stipulation that she, Palla, should receive half of the dowry after the mother's death, she, your sister, need not fear a defense of fraud because she is heir to her mother, who was a party to the dotal document, in less portion than half, unless it shall be clearly shown that her mother changed her mind as to the dowry agreement, and, later, wanted her daughter to be content, as to her portion of the inheritance, with the prelegacy made to her, and that she

released her (the mother's) husband from any demand (as to paying half of the dowry to Palla).
Promulgated July 30 (213).

Note.

Palla, the daughter, with her mother's consent, exacted a stipulation from the latter's second husband for the return to her of one half of the dowry. Thereafter the mother died and left Palla as one of her heirs in her will. If a provision had been made that Palla should receive what was left under the will in place of what she was to receive under the stipulation, she could not claim both, and to do so was fraud, which could be set up. Bas. 21.1.89; see also law 19 h.t.

5.12.3. Emperor Alexander to Euphenius.

Although a father could have had the right after the death of his married daughter to the return of the dowry given by him, still the husband rightly, by his testament, gave liberty to the slaves which he had received as such dowry, either directly or indirectly by way of a trust, and when given, should not be invalidated since the husband has a right also while living and during the existence of the marriage to manumit slaves received as a dowry.
Promulgated December 8 (222).

Note.

It had been the Greek law that a wife was the absolute owner of her dowry if consisting of goods which are not consumable, the husband becoming the owner of consumable goods for the return of which he became responsible when the marriage ended. But neither the father of the wife, nor the husband had any rights whatever in unconsumable goods, among which slaves and land may be counted. A daughter received her dowry in satisfaction of her share of the father's estate. But under Roman law, a father who furnished his daughter a dowry had the right to have it returned to him upon her death, unless he had waived it by contract (C. 5.18. headnote), or was a daughter excluded from his inheritance. C. 6.58.1.

The instant rescript appears to have been addressed to a Greek, who evidently thought that the husband had no right to manumit slaves which were a part of a dowry. But the husband was, under the Roman law, at least the nominal owner of the dowry during the time of the marriage, and as such had the right to manumit the slaves if not mortgaged. C. 7.8.1 and 7. In other words, the emperor rejected the idea that the husband had not rights in the dowry, although, as shown by headnote C. 5.18, his rights were curtailed more and more in later law. The Greek law seems to have been in mind also in laws 11, 17, 18, 22, 23, 24 h.t. See Mitteis, R.R.u.V.R. 230 ff; Weiss, Pfandrecht. Unters. 67 ff.

5.12.4. The same Emperor to Vateus.

No law forbids a woman to give all of her property to her husband as dowry.
Promulgated July 12 (223).

5.12.5. The same Emperor to Statia.

Whenever things are given as dowry at a certain valuation, the husband becomes owner thereof and debtor, as it were, for such value. Hence if it was not agreed that the

property should be restored on dissolution of the marriage, and it was valued according to law, he has the right to retain it if he offers you the value thereof in money.[1]
Given April 11 (226).

5.12.6. Emperor Maximus to Sulpicius.

Your grandmother, who gave a dowry for your daughter, could, although no stipulation was entered into, transmit to you, if you became her heir, a right of action on the simple agreement made concerning the dowry. For the cause of action on the agreement of the mother and of the father is not the same, since the agreement with the mother gives rise to an action on the special facts; but, it is believed that the father's right of action which he has by reason of a dowry, given to him out of his own property, cannot be changed by a simple contract.
Given February 11 (236).

Note.

A simple agreement, made when property was turned over as a dowry, that it should be returned when dissolution of the marriage was sufficient; no formal contract — stipulation—was necessary. It was a condition affixed to the transfer, and thus was binding. Law 8 h.t.; C. 5.14.1. That was undoubtedly the later law in all cases, though a stipulation with customary and ordinarily necessary in early law. Siber, R.R. 305. The latter art of the rescript is, perhaps, interpolated, and it s original meaning is conjectural. See Beseler, 3 Beitraege 168; Girard, Manuel 548; Czyhlarz, Dotalrecht 441.

5.12.7. Emperor Gordian to Marcus.

If a dowry was given you for your wife by your father in law, and no stipulation was entered into at the time of the gift, your father in law could not subsequently in an agreement with you, not made with the consent of his daughter, injure her situation. And, as is rightly asserted, when she, alone, brings a suit concerning the dowry, such agreement cannot operate to her disadvantage.
Promulgated October 1 (238).

Note.

A father, or an outsider, could, at the time of constituting a dowry, exact an agreement that it should be returned to the giver upon the dissolution of the marriage, and such agreement was enforceable. C. 5.14.1; D. 23.4.7.20 pr. 1; D. 24.3.29. But a dowry was a gift sui generis, and the wife had an interest therein, and so, after the dowry was once given, it could not be modified without her consent. D. 24.3.29 pr. See C. 5.14.3.

5.12.8. The same Emperor to Agrippina.

Although a mother did not have the express return of the dowry given by her stipulated for in case her daughter should die during marriage, but simply that she should in such case have it or that it should belong to her, still we think it just that when the daughter dies during marriage, such mother should have a right of action for the return of such dowry as on a (proper) stipulation. It follows that any addition to the dowry (made by her) may also be reclaimed in the same sort of action.[2]
Promulgated February 1 (240).

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[1] [Blume] See note law 1 h.t.
[2] [Blume] Note to law 6 h.t.

5.12.9. Emperor Decius and Caesar Decius to Urbincana.

Your right to recover your dowry property has preference over that of the city to which your husband became indebted subsequently.
Promulgated June 8 (250).

Note.

An Italian farm, given as a dowry, if not turned over to the husband at a certain amount of money, was protected against alienation. C. 5.13.1.15. In other cases, during classical law, the wife had for the protection of her dowry, in the absence of a contract, merely a preference right over unsecured creditors. C. 7.74.1. She could, however, protect herself fully, as was often done, particularly in later time, under the influence of eastern countries, by a contractual lien, which had preference from the date thereof. In the instant case the city and the wife probably both had a contractual lien, that of the city being later in date. Justinian gave the wife further protection by a series of laws, commencing in 528. Laws 29-31 h.t. C. 5.13.1; C. 8.17.12; Nov. 97, c. 3. She was, among other things, given a statutory lien, which was made superior to most others.

5.12.10. Emperors Diocletian and Maximian to Ingenuus.

Since you state that you received a dowry at a fixed valuation, it is clear that under the communal law you have an action as on the purchase thereof (exempto) by reason of the pact annexed to the dowry gift. For who doubts that you are indebted to your wife for the value fixed, since the deterioration of the property is at your risk, and the increase in value thereof accrues to your benefit.[3]
Promulgated April 20 (286).

5.12.11. The same Emperors and Caesars to Sevrra.

There is no doubt that your husband has a right of action for the theft of the things given as a dowry.
Given April 22 (293).

Note.

The husband was in the control of the dowry property during the marriage, and he therefore was the proper party to bring the accusation for theft.

5.12.12. The same Emperors and Caesars to Rufina.

A farm bought by your husband with dowry money does not become yours, since a husband cannot acquire a right of action on a purchase for his wife, and you have only an action for the return of the dowry. Hence if you go before the president of the province, and he shall learn that you have made no compromise, but have received back only a part of the dowry, he will take care that the remainder is restored to you.
Given April 24 (293).

Note.

Property bought became that of the purchaser to whom it was delivered, though bought with another's money. But that was contrary to Greek ideas, which the emperors combated herein. C. 4.50.1 note. Later, however, Justinian gave the wife a lien on property bought with her dowry. C. 8.17.12.5. See Pringsheim, Kauf 130 ff.

5.12.13. The same Emperors and Caesars to Catula.

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[3] [Blume] See note law 1 h.t.

If any property belonging to you was given by your mother during her lifetime as a dowry to your stepfather who had knowledge of the facts, you see that the gift is invalid, if no simple or formal promise was given in connection therewith.
Given April 30 (293).

Note.

In this case the stepfather received as a dowry property belonging to the daughter. He was evicted from the property and sought to recover damages. But since he knew that the property belonged to the daughter, there was no fraud, and since no stipulation was given against eviction he had no claim for damages, since the gift was gratuitous and was simply void as to all parties. Bas. 29.1.100. See law 1 h.t.

5.12.14. The same Emperors and Caesars to Basilissa.

A mother is not compelled to give any dowry for her daughter except for an important and reasonable cause or one specially stated by law. The father, moreover, has no right to give one out of the property of his wife without her consent.[4]
Subscribed at Philippopolis November 2 (293).

5.12.15. The same Emperors and Caesars to Ulpiana.

Since it is clear that a dowry should, according to good faith, be returned to a former wife, after a divorce from her,[5] although no dotal instruments were executed, but the gift is shown by other proof, it is clear that when the documents are lost, other proof, legally produced, will not be considered without force.
Given July 25 (293).

5.12.16. The same Emperors and Caesars to Aemitianus.

Your sister, who is heir to your intestate father, is not forbidden to give her undivided portion of the common estate as dowry.
Given July 7 (294).

5.12.17. The same Emperors and Caesars to Sabinianus.

Your mother in law cannot by sale take from you the property of which she had the usufruct, and which she gave you as dowry.
Given July 7 (294).

5.12.18. The same Emperors and Caesars to Menestratus.

If your mother in law gave a farm to your wife, reserving the usufruct thereof, and your wife gave you the reversion thereof, and your mother in law gave you the usufruct, there is no doubt that by reason of the agreement made among you the farm remained yours when your wife died during marriage. But if the mother in law only leased the usufruct to her daughter for an annual rental, the usufruct could not be extinguished by the death of the lessee.
Given December 19 (294).

Note.

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[4] [Blume] The duty to give dowry ordinarily devolved on the father. C. 5.11.7.
[5] [Blume] See C. 5.18 headnote.

A dowry given by someone else than the wife's father or other paternal ancestor remained, in the absence of a contract, during classical law, after the death of the wife, the property of the husband. C. 5.18 headnote. Justinian, however, took it from him and gave it to her heirs. C. 5.13.1.6. If, on the other hand, a contract for the return to the giver was entered into, that was binding. Law 6 and 8 h.t.

5.12.19. The same Emperors and Caesars to Achilles.

Since you say that the father who gave a dowry for his daughter exacted a stipulation in the dotal agreement that if she should die during marriage but after his own death, half of the dowry should be turned over to Ammia, but that he thereafter made a will, appointed Ammia, along with others, as his heir and provided that she should not make any claim under the foregoing stipulation, then unless it is shown that Ammia personally and directly exacted the stipulation for the return to her of such part of the dowry according to the provision of the agreement, she has no right of action (against you) on another's contract. But if it is shown that she acquired an obligation against you through a direct stipulation with her and that the testator made the foregoing provision in your favor, you can, in case she sues you after the condition above mentioned arose, defend against her claim to the extent that she received any property under her father's will, aside from the property which makes up the legal (Falcidian) fourth.
Given at Sirmium January 20 (294).

Note.

If the stipulation was exacted by Ammia herself it was valid, otherwise not. C. 5.12.26 and note. Even if she exacted the stipulation herself, still if she was given other property in lieu of it and accepted that, she could not sue on the stipulation to the extent of such other property. See law 19 h.t. But in such other property was not counted her fourth, her birthright portion, to which she was in any event entitled to under the law. C. 3.28 headnote. That fourth is here called the Falcidian fourth. See note C. 3.28.31.

5.12.20. The same Emperors and Caesars to Tiberius.

It is manifest law that in order to sustain the burdens of marriage the husband owns the income which he receives from dowry, or if he permits his wife to receive it as a gift, he has a right of action against her in so far as she has become enriched thereby.
Given at Sirmium April 27 (294).

Note.

Gifts between husband and wife, except gifts of dowry and gifts on account of marriage, were void. Title 16 of this book.

5.12.21. The same Emperors and Caesars to Geminus.

If an agreement was made between husband and wife to the effect that if the matrimony, perchance, for any reason be dissolved within five years, the dowry which was valued should be returned at the value fixed, it is manifest that the property itself of the same species should be restored, not the price of it, since the price is mentioned in an agreement to return property in kind, so that if any of it should become deteriorated or destroyed, it may not be demanded back at a different value than that fixed.
Given August 5 (294).

Note.

If property was valued, the price thereof was, ordinarily, returnable. Law 5 h.t. But if it was agreed that it should be returned in specie then it was different, even though it was agreed that the species to be returned should be of a certain value.

5.12.22. The same Emperors and Caesars to Polybiana.

A father cannot alienate property which he gave to his son in law as dowry for his daughter, and which he has not received back after dissolution of the marriage.[6]
Given September 28 (294).

5.12.23. The same Emperors and Caesars to Diogenes.

If your wife sold land given as a dowry, it makes no difference whether she sold it voluntarily or not, since she could not, without your consent, take from you property of which you acquired the ownership.
Given at Viminacium September 28 (294).

Note.

The husband became, theoretically, the owner of the dowry property. Still he was forbidden as early as the time of Augustus to alienate lands in Italy, not turned over to him at a fixed valuation, without his wife's consent, so that he could return the identical land that he received. C. 5.23.1. Inst. 2.8 pr. Under Justinian no dowry land could be alienated even by consent of both husband and wife. C. 5.13.1.15-15b.

5.12.24. The same Emperors and Caesars to Aurelius and Lysimachus.

If you gave a dowry to the husband of your freedwoman and you did not, as a part of the pact or stipulation, have the provision made that it should be returned to you if the marriage should be dissolved, it was clear that it remained the property of the husband when that event occurred through fault of the wife, although you show that she was ungrateful to you.

Note.

Unless interpolated, which seems unlikely, the rescript presents difficulties. It is in harmony with C. 5.17.8 that a wife at fault should lose her dowry to her husband. But that law was not existent at the date of this rescript. According to Ulp. Reg. 6.12, the husband received one sixth if she was gravely at fault, otherwise one eighth. Cujas thought that the rescript should be interpreted to mean that the husband received only that which was just, namely the proportion provided by law. Obs. 21.17.

5.12.25. The same Emperors and Caesars to Eutychiana.

If a woman caused her husband to agree by stipulation to return the dowry, so that she might dispose of it by testament, since the thought of the making of a testament indicates a time antecedent to death, and does not contain a condition, but a consideration (causa), the stipulation will be of benefit to her heirs, even though the woman dies intestate.
Given at Antioch November 11 (294).

Note.

The dowry in this case coming from someone other than the father or other paternal ancestor would, in the absence of a contract, in classical law, have remained the property of the husband upon the death of the wife. C. 5.18 headnote. But the woman

[6] [Blume] C. 5.18.7.

here exacted a stipulation which in effect required the return of the dowry when "she was dying"—i.e. still during her life, and hence passed to her heirs. It was not like a stipulation in favor of a third person. It was valid even during classical law (C. 8.37.4) and in Justinian's time a stipulation in favor of heirs to take effect after death was valid. C. 8.37.11; C. 4.11.1.

5.12.26. The same Emperors and Caesars to Demosthenes.

If your common father, when he gave a dowry to his son in law, for his daughter, caused it to be agreed by stipulation that such dowry should be returned to you, an outsider, who was no longer in his power, he was unable to acquire a cause of action for himself, since that was not his will, nor for you, since the law prevents.
Given December 27 (294).

Note.

Contracts made for the benefit of a third party were void. C. 4.27.1 note. That included stipulations. C. 8.37.2 and 3 and notes. To the same effect is C. 5.14.4. An exception is found in C. 5.14.7. See also C. 4.50.63.

5.12.27. The same Emperors and Caesars to Pomeianus.

Although the dowry rightly remained that of the husband after the wife's death, her heirs, and not the former husband, are responsible for the customary payments (rents or taxes) for the property belonging to her inheritance.[7]
Subscribed December 6 (294).

5.12.28. Emperor Zeno to Aelianus, Praetorian Prefect.

A woman under age may, with the consent of her general or special curator, give a dowry to her husband and demand it back[8] though the husband at the time when the dowry was given furnished a surety for a less amount than the dowry. 1. This principle is true also if a man, under age, has given a prenuptial gift, with the consent, as has been stated, of his curator.
Given January 1 (480).

5.12.29. Emperor Justinian to Mena, Praetorian Prefect.

If the husband is reduced to poverty during marriage and the wife desires to look after her own interests, and wants to hold the property pledged to her for the dowry, prenuptial gift and her own property outside of her dowry, she shall not only have the right, if she is in possession of her husband's property, and is called to court on that account, to set up her (lien as a) defense for the purpose of defeating subsequent creditors' pledges, but we also order that if she commences an action according to law in reference to like liens against those who detain her husband's property, it shall not be an objection against her that the marriage is still subsisting, but she may recover such property from subsequent creditors or from others who have no better right under the laws, to the same extent as she could have done if the marriage had been dissolved under conditions which would have permitted her to recover the dowry and prenuptial gift; provided, however, that such woman shall have no right to alienate such property while

[7] [Blume] The inheritance in this case was separate property, different from that of the dowry.
[8] [Blume] At the proper time.

her husband is living and the marriage subsisting, so that the usufruct thereof may be used both for herself, her husband and their children, if they have any. 1. The creditors shall, of course, retain their rights unimpaired against the husband or his property, which he may, perchance, acquire thereafter; and the rights of the husband and wife in the dowry and prenuptial gift, according to the tenor of the dowry documents, shall remain unaffected after dissolution of the marriage.
Given December 11 (528).

Note.

This is the first of a series of Justinian's laws relating to dowry. Already in classical law the wife could, in case of the insolvency of the husband, bring an action to have the dowry returned to her. D. 24.3.24. This was done under the fiction that the marriage was dissolved, though it was not so in fact. Justinian made such fiction unnecessary (law 30 h.t.), and while enabling the wife to protect her rights, left the dowry to be continued, to be used for the benefit of the family. An action in rem by the wife was, when this law was enacted, possible only if a contractual lien existed, but, of course, became applicable to the statutory lien which was created later. See next law.

5.12.30. The same Emperor to Demosthenes, Praetorian Prefect.

A wife shall, after dissolution of her marriage, have the right to recover her dowry property, movable, immovable, or self-moving, provided it is still in existence, whether they were valued or not valued, and no prior creditor of her husband shall claim a better right in it by reason of an hypothecation, since this property belonged to the wife in the first place, and naturally remains hers. Simply because it seems to become part of the property of her husband according to the subtlety of the law does not destroy the truth.

1. We want her, therefore, to have an action in rem to recover such property as her own, and to have an action on her lien prior in right to all others, so that whether the property is considered as her own, by reason of her natural right, or whether it seems, according to the subtleties of the laws, to have become a part of the property of her husband, she shall be fully protected either way, that is to say, either by an action in rem or by an action on the lien.

2. But limitation of action, including usucaption, and the lapse of 10, 20, 30, or 40 years, or the lapse of any other greater or smaller time, may be set up as a defense against such woman, the limitation commencing to run from the time that they might bring an action; that is to say, if their husbands are rich, after the dissolution of the marriage; if poor, from the time that such misfortune clearly overtook them, since even during marriage women may assert their liens against the property of their poverty-stricken husbands, as, with the view of doing equity, has already been provided by our law. False claims based on a fictitious divorce in a matter of this kind shall, in cases contemplated by our law, be entirely extirpated.
Recited seven times in the new consistory of the Justinian palace.
Given October 30 (529).

Note.

This is the second law of Justinian to protect the wife as to her dowry. It was far reaching. It virtually made the wife the real owner of the dowry, in accordance with Greek ideas, and she was, accordingly, given an action in rem (vindicatio) to recover it. Upon the theory, however, that, as mentioned in other laws, the husband was the owner, she was given a hypothecary action—an action to enforce a lien. In other words, though she had no contractual lien, she was hereby given an implied, or statutory lien, and

C. 5.13.1.1b and C. 8.17.12 enacted the next year, stating that she was given an implied lien, are merely confirmatory hereof, except that the lien was extended to all of the husband's property. The rights herein given extended not only to property which actually was dowry property, but also to property which was turned over to the husband for dowry purposes at a fixed valuation, and which, accordingly, became the unqualified property of the husband. Note law 1 h.t. Further legislation on this subject is found in C. 5.13.1; C. 8.17.12 and Nov. 97 noted there. See, however, 44 Z.S.S. 554. 26 Z.S.S. 123.

5.12.31. Emperor Justinian to Julianus, Praetorian Prefect.

Although some persons, whether mothers, or other cognate relatives or outsiders, have customarily given dowries for women, men could legally marry them without registration of the gift. But when a woman had the return of her dowry promised to her by stipulation, upon the happening of a certain event, and this event came to pass, the woman was frequently compelled, where the dowry was not given by her, to transfer the right of action for the return of the dowry to the person who gave it, or to return the property personally, because the gift was not registered, and thus an unhappy woman was, perchance, found without dowry, after many years of matrimony, and after she had, perchance, raised children.

1. We therefore ordain that in none of such cases shall registration be necessary, but such gifts shall be valid as to all persons, and the woman shall heave her dowry, if the contemplated event gives it to her, and she shall remain the owner thereof unless the party who originally gave the dowry caused a stipulation to be exacted to the effect that the dowry should be returned to him when such event should happen; for when no thought has been given to children originally, but the party who gave the dowry exacted the promise of the return of the property to himself, the matter cannot be treated as above.

2. But in all other cases, in which the giver has no stipulation (for the return of the property to him) the woman shall have a solace for her sadness through (her right to) an action on the dowry.

3. If in like manner an outsider (that is to say, one who does not have the person in his power for whom he gives), makes a prenuptial gift to a woman for some man who is about to marry her, and such giver has the necessary registration made in case the gift exceeds the legal limit, or in case the future housewife is a minor, the documents shall be valid not only as to her to whom the prenuptial gift is made, but also as to him for whom he made it, so that if any gain arises in his favor pursuant to the dotal agreements, it shall not accrue to such giver, but to the husband himself, who may hold it firmly and irrevocably, unless here, to, the giver had the return of the property in such event promised to him by stipulation, lest in such case, as in the case of the wife mentioned above, the husband find himself in evil circumstances.

4. But if the sum (given) is small, or the transaction is such that the registration is of no use, then also the gift to either person shall be valid (without such registration), and the husband shall receive his gain in the contemplated event, unless the giver has a promise thereof, by stipulation, in his favor.

5. We ordain also that if anyone has stipulated or promised to give lands, certain rents, a house, or civic ration of bread supply (panes civilis) as a dowry, he shall immediately, after the expiration of two years from the time of the marriage, turn the rents, income and ration of brad supply over to the husband, although the principal promised has not yet been delivered. If the whole dowry consists of gold, then likewise the interest thereon at four per cent shall be paid after the lapse of two years.

6. But if the dowry consists of things other than immovable property or gold, whether of silverware, ornaments for women, clothing, or other things, then, if they were valued, interest shall likewise accrue thereon, after two years, at four per cent per annum. By valuation, a term which should be better explained, is to be understood a fixation of value of each class or of each division of the classes of goods given as dowry, e.g., of silverware, ornaments, clothing, or other classes, without waiting (so far as the payment of interest is concerned) till the various items are valued and then added up—because that is too critical and ruinous by reason of its exactness (to the husband).[9]

7. If, however, the movable things were not valued at all, then, after the lapse of two years, the provisions shall govern which the laws provide in maters of this kind after the joinder of issue.

8. And if the property promised is mixed, and consists partly of gold and partly of other movable things or of immovable property, the rules already made according to the foregoing classification shall govern. The husband, however, shall not be denied the right to claim the dowry when he wishes, lest the promisor of the dowry may think that he may delay the payment thereof by (simply) paying the rents or income or interest or other accretions. But whether the husband wants to claim the dowry before or after the lapse of two years, he may (at any time) sue for it according to law.

Given March 21 (530).

Note.

Commencing with the early part of the third century gifts were required to be registered. Small gifts were exempted later. C. 8.53.1 note. If, accordingly, an outsider provided a woman with a dowry, and it was of the amount requiring registration, the gift was invalid, so that the giver could recall it, and compel the woman to give up what she recovered of it, or assign her right of action to him. The instant law remedied that situation, requiring no registration in such cases. And unless an express contract was made by such outsider that the property should be returned to him, he had no further right thereto. The rescript states that a stipulation was necessary to secure him any future right. Ordinarily an informal contract sufficed. Law 6 h.t. note. And that was true also under C. 5.31.13b. And it is doubtful that the instant rescript meant to change that.

[9] [Blume] The reason given is obscure.