

Book V.  
Title XIX.

If the dowry is returned during marriage.  
(Si dos constante matrimonio soluta fuerit.)

5.19.1. Emperors Honorius and Theodosius to Marianus, Praetorian Prefect.

If a dowry is without legal cause returned by a husband to this wife during marriage, which is an invalid act in law since such return is clearly like a gift, and the wife dies, the dowry, together with the income thereon from the day that it was returned to her must be restored to the husband by her heirs, but the ownership thereof cannot be alienated away from her children contrary to law.

Given at Ravenna November 3 (422).

Note.

In classical law, a husband, upon the death of the wife, retained a dowry given by some one other than the wife's paternal ancestor. But under Justinian, he never retained any dowry except pursuant to a contract. C. 5.18.6. Hence there was in this case, in the sense of the Justinian law, a contract that the husband should retain the dowry upon the wife's death. See Bas. 28.9.1. Still, under Nov. 98, c. 1, enacted by Justinian, he had only a usufruct in the property, the fee belonging to the children. These children were the wife's heirs in case of intestacy. Hence the heirs mentioned in the rescript must refer to testamentary heirs. The instant rescript was substantially reenacted by c. 39, Nov. 22, except that it did not contain the provision of Nov. 98, c. 1 above mentioned, but, instead, provided that the fee should belong to the children, if the husband remarried, which had been the law since 422 A.D.