

Novel 19.

Children

(De liberis ante dotalia instrumenta natis.)

Justinian to Johannes, glorious Prefect of the Orient the second time, ex-consul and patrician.

Preface. It is reported to us that some foolish doubt has arisen whether our constitution, made in reference to children born before the execution of a marriage contract where such contract is subsequently executed, applied to cases not yet adjudicated by final decisions. [Yet, when laying down the individual laws, we expressly mentioned, in our first constitution that legislated on this]¹ subject that the law should be applied to all cases not adjudicated by final decision or not compromised, whether the parents were still living or were already deceased. Supplementing that law, we enacted another,^b that this should be true, although no children were born after the execution of a marriage contract, or if born, had died, and we also stated in this second law that it should apply retroactively except in cases already decided or compromised. But in as much as [there were some]², who audaciously interpreted our legislation wrongly, though it was sufficiently clear, we were compelled to promulgate a third constitution,^c by which we directed that though a man had a lawful wife and legitimate children by her, if such wife should

¹ Text is missing here from Blume's typewritten manuscript. The manuscript lacks a period after "decisions" and continues with "subject that..." Seeming to verify this notion is the fact that a few lines below this is a note ^b, but no note ^a, which, presumably, was part of the omitted text. In addition, the manuscript lacks content for notes ^b and ^c at the end of the preface.

The omission was called to my attention by David Miller, who also generously supplied the bracketed text from his own translation from the original Greek, which is in progress. S.P. Scott's version of the relevant text is: "We very clearly recall that when We enacted the laws with reference to this subject We expressly directed in a former constitution..." 7 [16] Scott, The Civil Law 104 (photo. reprint 1973)(1923).

² In Blume's manuscript this is "these were new," but, as Miller points out, this probably is an interpolation, and the bracketed text makes much more sense. S.P. Scott has this as: "After the enactment of these two laws, certain audacious persons tried to change their meaning..." Id.

thereafter die or the marriage should be dissolved by divorce, and the man should thereafter marry someone else whom he might lawfully marry, by whom he had children, these children should also be legitimate though a marriage contract was not executed until after they were born. We did not mention in that law that it should apply in all cases where the father was still alive or to those that had not yet been decided or compromised. From that fact some concluded that the provisions in reference to children born before the execution of a marriage contract did not apply to children already born before the enactment of the laws, particularly since the provisions on that point, set forth in the first and second of said constitutions, were left out of the compilation of the Code. But these conclusions are without foundation. We rightly left these provisions in the first and second constitutions out of the Code, and rightly left the point unmentioned in the third. For in enacting special laws it was undoubtedly necessary to know whether it was intended to apply retroactively, but in making a general collection of the laws in the Code, which bears our name, we rightly directed such provisions to be left out, in order not to burden it with anything that was superfluous. We said nothing as to the time in the third constitution, since it is too clear to mention, that matters added by interpretation must also be applied in those cases to which the interpreted law applies.

b. This may refer to Novel 12.

c. Novel 18 may be referred to here.

c. 1. But since there are men who attempt to raise a dispute, or who err, in matters so clear, we add this additional law, ordaining that the provisions made in the three constitutions referred to, shall apply to all the cases expressly mentioned in the first one; that is to say, that these laws shall apply to all causes, whether the father of such children is still alive or has died and the cases have not been ended by final decision or compromise. The only cases excepted herefrom are those which were already finally decided or compromised before the enactment of these laws.

Epilogue. Your Sublimity will take care to make this, our will, stated in this imperial law, known to all.

Given March 17, 536.