

Novel 119.<sup>1</sup>

That a gift on account of marriage shall be a special contract, and concerning other subjects.

(Ut donatic propter nuptias specialis contractus sit, et de aliis capitibus.)

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The same Augustus (Justinian) to Peter, glorious Praetorian Prefect.

c. 1. We ordain by the present law that a gift on account of marriage shall be, and shall be considered, a special contract, not to be classed with other gifts, since an equal amount of dowry (from the woman) is put up against it. Whether, therefore, it is registered on the public records or not,<sup>a</sup> it shall be effective in every respect, both in regard to the woman and in regard to the man, and whether it is given or promised to the woman by the husband himself or by some one else, or whether the gift is made to the husband so that he may promise the same property (to the wife) as a marriage gift. We direct these provisions to be valid whatever the amount of the gift may be, and, as stated, though it is not registered.

a. See C. 5.3.17; C. 8.53.34; Nov. 127, c. 2. Registration of gifts made to a woman, so that she might give a dowry, was dispensed with by C. 5.12.31.

c. 2. We also order in the present constitution that minors from the time on that they are permitted to dispose of their (other) property by testament, they may also grant manumission to their slaves in their last wills, and their age shall be no impediment thereto, but the law previously prohibiting them shall be void.

c. 3. We further direct that if any one shall make mention, in some instrument, of some other instrument, no right to claim anything shall arise by reason of such mention, unless the other instrument of which mention is made, is also produced, or

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<sup>1</sup> Blume penciled in at the top of this page “cc. 2, 3, 9 lacking.” This no doubt referred to the fact that initially he had appended these chapters to Code provisions he believed they amended. Blume re-integrated these chapters into this Novel later, so they are included here.

other proof according to law is produced that the amount of which mention is made, is in fact owing. For we find this also in the former laws.<sup>2</sup>

c. 4. We also ordain that when an appeal has been taken, and both parties or only the appellant appear on the last day (of the appeal term) and make their presence known to the magistrate who is to examine the appeal, or to his assistants, or to those who lay the matter before the court, and the judge defers admitting them on the days fixed (to commence the hearing of the appeal), no prejudice shall result to the parties or to one of them (who appears), but the appeal shall also be heard thereafter and decided by a lawful decision.

c. 5. We have thought it best also to correct another subject which needs legislation. For since our laws direct that whenever our glorious praetorian prefects render a decision, no appeal shall be taken therefrom, we ordain that whenever a decision of our glorious prefects is rendered in any district, and one of the litigants feels himself aggrieved thereby, he may lay<sup>3</sup> a petition before the glorious prefect who rendered the decision, or before his assistants or before those who lay the matter before the court, within ten days after the decision was rendered, and when this is done, the decision shall not be carried into effect, unless the winning party give suitable sureties in an amount equal to the amount of the judgment, that if the decision is reversed in a lawful manner by subsequent re-examination,<sup>a</sup> he will restore the amount together with all lawful increase. But if the party deeming himself aggrieved does not file such petition within ten days after the decision, the execution of the decision shall proceed without the giving of any surety, the right of

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<sup>2</sup> The version Blume attached to Novel 73 differs somewhat from than this translation he recompiled later. It is as follows: "We further direct that if anyone in a document of his makes mention of another document, no right of action shall arise by reason thereof, unless the other document of which mention was made, is also produced, or other proof is adduced, showing that the amount of which mention was made is in fact due. We find this also in the ancient laws. (D. 22.3.31.)

<sup>3</sup> The manuscript has "he may law a petition," but Schoell & Kroll's Latin is "licentiam petitionem offerre" so it seems likely that Blume intended "lay" here. Scott has "present" a petition.

re-examination of the decision being reserved to the party who feels himself aggrieved.

a. See Novel 82, c. 12.

c. 6. We further ordain that if minors want to release themselves from an inheritance which has fallen to them, and which they have accepted, and the creditors are all present in the place where restitution to former rights is sought by them, they shall be called together by the magistrate, and the minors shall renounce the inheritance in the presence of all. If some or all of the creditors are absent, we direct that the minors who want to do this shall go before the magistrate of the place where they live, and he shall summon the creditors through the usual citations, and if the creditors do not appear within the period of three months, the minors shall be permitted to withdraw from the inheritance without risk, and the magistrate before whom the restitution to former rights is sought shall take steps as to the manner in which the property of the inheritance, movable and immovable, is to be preserved, and an itemized inventory thereof shall be publicly made and enrolled on the public records.

c. 7. We further ordain that if anyone having possession of property in bad faith disposes of it by sale, gift or otherwise, and the person who believes himself to be the owner of the property and who knows of such disposition does not within ten years, if the parties are all present in the province, and within twenty years if the parties are not, sue the purchaser, donee or other transferee of the property, the person to whom such transfer has been made shall firmly and lastingly hold such property after such ten years, if the parties are all present in the province, and after twenty years, if not. If the owner of the property so transferred does not know of such transfer and of his ownership, he shall not be barred from claiming such property except after the prescriptive period of thirty years, and he who is in possession of such property in such manner cannot say that he possesses it in good faith, since he received it from a party who was in possession in bad faith.

c. 8. In reference to the prescription of ten years we have thought it best to provide that if he (the owner) is, during the ten years' period, present in the same province in some of the years, and absent in other years, he shall have (as against the prescriptive period) as many years in addition as he was so absent. All these provisions made in reference to the prescriptive period shall not apply to past but only to future matters and to cases which arise after the enactment of this law.

Note.

Buckland, at 251, says of c. 7 of this Novel: "It is not clear what is new here, for if he knew and could vindicate, this would have purged the furtivity in older law." Justinian, however, evidently believed that this was new legislation, and it would seem that it was. It appears for instance in C. 7.26.5 and C. 7.27.1, that if the seller who held land in bad faith sold it, and the purchaser bought it in good faith, the running of the prescriptive period of ten or twenty years commenced from the time of the sale, notwithstanding the bad faith of the seller. This appears also from C. 7.33.1. Under c. 7 of this Novel, however, bad faith of the seller prevented the application of this prescriptive period, unless the owner knew of the transfer; if he did not know of it, and that might happen, a prescriptive period of thirty years was required.

c. 9. Since, moreover, we directed previously to this law<sup>a</sup> that testators should inscribe the name of the heirs, either with their own hand, or by witnesses, but we learned that by reason of such subtlety, many testaments were invalidated, since testators were unable to comply with such subtlety, or perchance, some men did not want others to know their wishes, we direct that they may comply with this provision. But if they do not do so, but make their testaments according to former usage, their testaments shall be valid also in that manner, whether anyone inscribes the name of the heirs in his own or in another's hand, provided that the testator complies with the law in other respects.

a. C. 6.23.26.

c. 10. We ordain that the law which we enacted<sup>a</sup> to the effect that property transferred to the imperial house by the church should not be transferred to others, shall be void as to property which the imperial house has already received as well as that which it will hereafter receive.

a. Nov. 55, c. 1.

c. 11. If anyone makes a testament, and gives immovable property as a legacy to a member of his family or to anyone else and specially directs that it shall never be alienated, but shall remain the property of the legatee or his heirs, we direct that the Falcidian law<sup>a</sup> shall not apply to such legacy, since the testator himself has forbidden the alienation. This shall apply in all the cases which have not yet been terminated by final judicial decision or by amicable agreement or in some other manner.

a. See C. 6.50; Inst. 1.22, and Novel 1, c. 3.

Epilogue. Your Sublimity will take care that the provisions made by this law enacted by Our Serenity for all time, will be brought to the knowledge of all by edicts issued in this imperial city and by mandates sent to the presidents of all the provinces.

Given January 20, 544.