

Novel 155.

That mothers are subject to an accounting for their guardianship.
(Ut matres tutelae rationibus obnoxiae sint.)

Emperor Justinian Augustus to Belisarius, Master of the Soldiers

Preface. Martha, a woman of honorable rank, has addressed a petition to us which states: That Sergius, of worthy memory, her father, had died while she was still of tender years; that Auxentia, of honorable rank, her mother, had undertaken petitioner's guardianship, and had managed her property, after having deposed on the records that she would not remarry, and after having taken the oath prescribed in our laws concerning the same; that her mother, having done this, thereafter, as though no oath had been taken by her, had noted but very few things in the inventory made by her, as though but trifling and insignificant property had been left to petitioner; that her mother subsequently entered into a second marriage, designated Peter as petitioner's guardian, had two children by said second marriage, on account of which she had no great affection for petitioner; that the guardian appointed through her mother had ceased to be such when petitioner had barely entered the thirteenth year, and her mother had persuaded her to seek a curator for the second period (12-25) of her life, and to sign a pact with her mother, renouncing therein every right of action which she might have under the law in connection with an accounting; that petitioner was then in her sleeping chamber and understood nothing of what was done, and while living with her mother, without being able to speak to anyone of what was done against her interest, it would have been impossible, even if she had known that she was damaged, to have prevented any plan taken to ensnare her; that time, however, had brought it about that she now understood the plans against her, and she had begged her mother not to misuse what had been done against petitioner, but to act toward petitioner as becomes a mother and to restore the paternal property to petitioner as the law requires; but that her mother, giving her whole affection to the children of the second marriage had paid no attention to such statements; that she, on the contrary produced against

petitioner an imperial law^a which states that petitioner would not be entitled to restitution as against her, although the law provides nothing of the kind as to mothers who have undertaken the guardianship of their children and have then entered into a second marriage, but was enacted for a different purpose and for different reasons. Petitioner, accordingly, addressed a supplication to us, to make the purpose of the imperial law clear and beyond doubt, and that her mother, Auxentia, misusing its terms, should not convert the property left petitioner by her father, to her own use.

a. C. 2.42.2.

c. 1. The supplication containing these statements, we justly turn our attention to the present imperial pragmatic sanction, by which we ordain, that since our (former) imperial law makes no mention of those women who have undertaken the guardianship of their children and thereafter enter into a second marriage, the honorable Auxentia is not permitted to rely upon such law, both because the aforesaid reasons as well as the records, pursuant to which she undertook the guardianship of her daughter Martha, prove that she too the oath provided by law that she would not contract a second marriage, but that she, disregarding her oath, united herself to a second husband, had children by such marriage, and that she brought it about that the honorable Martha, her daughter, made the agreement in reference to the restitution of the latter's property. We ordain moreover that the honorable Martha may legally use her right of restitution to her former condition, especially since she says that she has not yet passed the twenty-fifth year of her age, and it will be no defense to set up against her the imperial law (formerly) enacted by us, which provides that children cannot have restitution rights against their parent, and freedmen against their patrons, because that law says nothing concerning those who have undertaken the guardianship of their children; on the contrary another law^a was thereafter enacted by us which provides that persons appointed as guardians shall not undertake such guardianship of minors, unless at the time of their appointment make of record a protocol stating that they will not leave the minors unprotected, and that if a mother happens to undertake the guardianship of

her children, she shall do likewise and shall be liable in every respect to an accounting for her guardianship, and that if she wants some one else appointed as guardian for her children, she may do so at the risk of her own property. Hence it is in every way proper in this case that if the honorable Martha can prove that the time within which restitution of rights may be sought has not passed, she will be entitled to such restitution and to all other rights by which the laws extend grace and assistance to those who are of imperfect age. And while our majesty also ordains that every respect, honor and regard due from children to parents must be observed, still no damage must be inflicted by the latter upon the former. And we do not consider it right that parents should neglect the children of a former marriage, and do not think it proper that the property coming to such children from their father, should be converted by their mother to their own use or to that of the person to whom they united themselves by a second marriage, or to that of the children of such marriage.

a. C. 5.37.28.

Epilogue. Your Sublimity together with the blessed archbishop of the city of Theopolis (Antioch) must zealously carry this our will, declared by this imperial pragmatic sanction, into force and effect.

Given Feb. 1, 533.