

Novel 61.

Immovable property embraced in a prenuptial gift shall not be pledged or otherwise alienated by a husband even with the consent of the wife, unless he secures her (otherwise) thereafter. The same shall apply to dowry.

(Ne res immobiles donationis ante nuptias aut pignori obligentur aut omnino alienentur a viro ne consentiente quidem muliere, nisi ei postea satisfiat, utque etiam in dotw valenat.)

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

Preface. We learned, in a cause brought before us, of a deplorable transaction, and have disposed of it in an appropriate manner. But, as is our custom, we have also enacted a general law to govern cases of that kind.

c. 1. And we ordain that if anyone has, in writing, made a prenuptial gift, or a gift on account of marriage - for we have decided that it should better be called by that name - whether a husband has done so personally or whether his father, mother, relative or outsider has done so for him, the husband shall not thereafter, if the gift contains immovable property, pledge or alienate the (immovable) property embraced therein, whatever (immovable) property has once become a part of such gift should not be alienated. In case the event arrives that the woman would have the benefit thereof, the situation should not be such that she would not find such property among that of her husband, but would find it to be alienated or pledged, perhaps to magnates, so that it would be impossible or difficult for her to reclaim it, and would require a law suit. (That situation should be obviated), since a direct method of aid is at hand. **1.** Hence let it be observed and may the person who makes a contract in connection therewith know, that it will be useless and that any writing or agreement with reference thereto shall be considered as though not written or made, but the benefit (of such gift) to the woman shall remain unaffected. And it appears to us that some of our judges acted properly when they, after the dissolution of the marriage, gave to the women an action in rem to recover such prenuptial gift; but this course, rightly adopted, was rejected by subsequent judges,

for unnecessary technical reasons. And persons who receive pledges of that kind will not be able to make their path clear by getting the consent of the women and thus depriving them of their rights. For consent either to hypothecation, purchase or alienation, though in writing, will not help the party receiving it, if such consent has been given only once. For the requirement made in the case of intercession by a woman as guarantor<sup>a</sup> namely, that it shall be binding upon her only if she confirms her act in writing after the lapse of two years, shall also apply here. **2.** So that, though she consents, this shall, as in case of intercession, not harm her unless as stated, she confirms her action thereafter. For mistakes might be made in a single transaction, since the woman may be induced to neglect her rights through fear of her husband or through trickery, but she will be more cautious upon reflection during a longer period of time. **3.** But we do not even grant this concession unconditionally, but permit such second consent to prejudice a woman only, if there is other property by means of which she may be indemnified for the immovable property contained in the prenuptial gift and alienated or pledged to some one else. If there is no other property, the woman shall not be prejudiced. Although she has given her consent twice or oftener, her act will be treated as an intercession as guarantor, and her rights will not be endangered, if it appear that there is not other property which will suffice to secure the amount of the prenuptial gift. And we do not merely look after women by these provisions, but the men themselves who dispose of such prenuptial gift even more, in as much as by reason thereof the property embraced the prenuptial gift remains part of the property and of the inheritance of the husband and is preserved for the benefit of their children, so that this law benefits the woman and the man alike. These provisions apply, of course, equally in case the husband alienates or pledges any of the dowry-property, as has already been fully stated and provided by laws.<sup>b</sup> **4.** We do not, however, entirely overlook the contracting parties. For although we want any contracts in relation to such property to be entirely void so far as alienations or hypothecations of their other property is concerned, so that we preserve intact the rights of the women in the immovable property embraced in the prenuptial gift, leaving such contracting parties the rights which they acquire by contracts in such other property. All

privileges given by us in connection with dowry shall remain, when the woman brings an action. No such privileges were given by us from the beginning and are not now given by us to other persons.<sup>c</sup>

Epilogue. Your sublimity will cause this our will, declared by this imperial law, to be made known to all in the usual manner by edicts sent to the provinces, so that none may be unaware of the law we have made. The glorious city prefect will make it known in this city.

Given December 1, 537.

<sup>a</sup> C. 4. 29. 22.

<sup>b</sup> C. 5. 13. 1. 15.

<sup>c</sup> Children had the same rights as the mother, but no others had. C. 7. 74 and note.