

Novel 84.

Concerning half-brothers (and sisters) on the father's side and on the mother's side.

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

Preface. The new things which nature everywhere produces—a preface often used in laws and which will again be used whenever nature performs her proper functions—have brought about the necessity for many new laws. The ancients tell us of agnatic (statutory) and cognatic successions, and (the writings of) those who investigated the ancient laws have come down to us, but in which we have corrected many things. A matter of that kind has (now) come before us. **1.** Someone took himself a wife, and he had children by her; then she died and he married another woman, by whom he had children, who were brothers and sisters on the father's but, [not]<sup>1</sup> on the mother's side. Later he entered into a third marriage, and had some more children. After his death, his widow married again, and had other children who were brothers and sisters of the children of her first marriage on the mother's, but not on the father's, side. And then, after the mother's death, it happened that one of the children died, leaving no children and testament, leaving many brothers and sisters, some half-brothers and sisters on the mother's side, some on the father's side, and others full brothers and sisters on the mother's as well as the father's side. Such, then was the new situation, which nature brought about. And such beginning being shown us by nature, we might conjecture other cases of like kind brought about either through the death of the husband or that of the wife or through other different, lawful marriages. The question then was whether all of them would be called to the inheritance of the deceased brothers, both the half-brothers (and sisters) on the mother's side and those on the father's side, as well as the full-blood brothers and sisters both on the father's and mother's side.

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<sup>1</sup> Blume penciled “not?” into the typed manuscript here. This seems correct, as the Latin in Schoell and Kroll is: “...prioribus consanguinei solum, non tamen uterini” [emphasis added].

c. 1. Having, therefore, examined all the laws which we have gathered together, the ancient as well as our own, we do not find such a question has arisen,<sup>a</sup> and it is proper that we should decide it now, though late, therein considering that some of the brothers have cognatic relationship with the decedent, which we have combined with the agnatic—while others have agnatic relationship—the latter having the same paternal, the former the same maternal, origin, and that others, again, have the unquestioned support of both law as well as nature, inasmuch as they have come from the same mother's womb and have sprung from the same paternal seed, and their full-blood origin on both sides is, as it were, a distinctive sign. Now if such brother had wanted to liberate the law and the contending persons from all dispute, he would have made a testament and would have made his wishes known, and those that would have been honored in his writing would have been called to the inheritance. But since he did not want to do so, or could not do so—for a thousand different accidents befall men and sudden death overtakes them—this law will decide the matter. 1. Now the present law wants to give a preference in the succession to those that have the same father as well as the same mother over those that have only the same father or the same mother. And this variety in nature does not disturb us, but we make such new invention of nature lawful and decree that the more perfect shall have the better right, and do not permit the less perfect to be on the same footing of equality with the former. Many things have induced us to this course. In the first place, there is the law which, if a son dies, leaving no children surviving him, calls to his inheritance as to the property which he received from this mother or from a marriage or from some other source, and which are not acquired by him for the benefit of the father,<sup>b</sup> the brothers (and sisters) born from the same marriage, then those born from different marriage, and after them the father. This is proof that our former legislation contained the seed of the present law. For if, with the father surviving, full-blooded brothers (and sisters) are preferred to the father himself and to the children born from another marriage, it is proper that when the father is dead and children only survive, the full-blooded brothers (and sisters) should be preferred to those who are only related through one parent. And it is in consonance with this that the provision formerly made as to property derived from

the mother, from a marriage or from other sources, not acquired for the benefit of the father, should also apply and be in force as to his remaining property. This law, then, is made for the case which, as stated, gave occasion for its enactment. And though the novelty of nature (here considered) arose out of three marriages, nothing prevents the application of this law in a case where there are half-blood and full-blood children from only two marriages, or in a case where the number of marriages is further extended and a like situation arises. In all such cases where such order among children is found, this law shall have effect, and those who have a double right shall exclude those who have but a single right.

a. See C. 6.59.5.

b. C. 6.59.11 and C. 6.61.6.

c. 2. If no such situation exists, but there are only half-blood children either on the father's side or on the mother's side, such cases shall be governed by former laws, which have fixed the order of succession. This law shall apply not only in the case in which this question has arisen, but to all future (like) cases, as well as to those that are still pending. In cases that have already been decided by a judge or which have compromised, the settlement made shall remain effective and are not in need of this law.

Epilogue. Your Sublimity will make this our will, declared by this imperial law, known to all and you must zealously observe it in the future.

Given May 18, 539.