Novel 91.

When the dowry of the first and the second wife is demanded, the first wife or the children born of the first marriage shall have the preference. And if a wife or the person who promised a dowry on her behalf wants to deliver it to the husband, and he fails to accept what was promised, and the marriage is dissolved, the prenuptial gift promised by him may be demanded from him.
(Ut cum dotis prioris et secundae fit, etc.)

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

Preface. Recently, when adjudicating a case, a matter came in controversy which is worthy of much consideration, and which is not unworthy of clearer legislation. For some man after loosing his first wife and having married again, and having received a dowry from both, and having left children by his first marriage, died. The second wife then wanted to demand the dowry given by her, making use of the privilege granted by us,[a] but the children of the first marriage objected and themselves demanded the dowry of their mother, and it was doubtful whether in case of the death of the first wife the children, who contended against the dowry of the second wife, could receive that of the first wife. For we have not given and do not give such privilege to heirs or creditors, [b] but to children alone. So, many controversies arose in this matter, the second wife saying that the husband had, prior to his marriage with her, consumed the dowry of the first wife, and that it would not be right, since the husband left only sufficient to satisfy the second dowry, that she should lose her dowry and that the children should receive a dowry that had already been consumed. But the children relied upon a lien, claiming that as long as there was property of the deceased, the lien of the deceased wife took precedence over the lien of the second wife.

a. C. 8.17.12, which gave the wife a prior lien for her dowry.

b. The general lien, here mentioned as a privilege, was a privilege personal to the widow and children and no other. C. 7.74.1, note.

c. 1. This being the controversy, it is certain and has already been provided by us that if there are any of the things of the first or second dowry in existence, they must go to the children of the first wife or to the second wife, or if the latter is also dead, to her children, to the extent that each party (side) can show the ownership thereof. In such case an action in rem concerning the ownership clearly lies, and each party (side) will receive his or her own, without needing any privilege. If no property of either dowry exists, or part of it exists and part of it not, then, whether the women survive—the first marriage having perhaps been dissolved by divorce giving the first wife the right to her dowry—or whether the women are dead, one or both of them leaving children, the first wife, or her children, setting up the first dowry, have the prior right in so far as the property (of the first dowry) is not in existence. The same thing applies in case of grandchildren or great-grandchildren or descendants of remoter degree, of either sex. For as in case when there are two public debts,[a] the older has a prior right over the later one, so here too, it is necessary to first give the privileges (granted by law) to the first dowry, and then only to the second dowry; nor is one dowry given precedence over another and one lien over another, but the more ancient one, ripened by time, retains the strength and privileges that it has, and we do not want time to change or destroy liens in any way. We say this, not unaware that this has already been provided in another part of our legislation; but since this matter has been brought before us, and has given rise to various disputes, we therefore found it necessary to enact the present law—not in order to provide anything new, but in order to make it clearer to everybody.

a. Debts due to two different departments of the fisc.

c. 2. It is also proper to add something else to the law, which likewise was rendered necessary by the dispute that was raised. If a woman owes a dowry and she is ready to deliver it, whether it is furnished by herself, or someone else, either a relative or an outsider, furnishes it—whether it comes from the father or an outsider, as the law says—and the husband, or perchance the father or grandfather refuses to accept it, and the woman or her representative[a] states the readiness to deliver in the presence of witnesses and is ready to deliver the dowry, or perhaps does something

more, and, perhaps, tenders it, and, in case it is movable property, seals and deposits it according to law, or goes into court and asks ex parte that this[b] be done, and messengers from the judge announce this fact to the husband or his representatives[c] and the latter still perseveres in the refusal to accept, he cannot, in case of dissolution of the marriage refuse to pay the prenuptial gift as though no dowry had been given. For a person who wants to deliver, but the person who is asked to accept refuses, the former is in the same situation as a person who delivered. And this shall apply along with other rules relating to dowry, for as we deny to the woman who, by delaying, has failed to give a dowry, the right to the prenuptial gift, so if she is ready to give it, but the person to receive it refuses to do so, we give her the right to demand the prenuptial gift in case of dissolution of the marriage, although, through the husband's fault, she did not give the dowry.

a. Either the wife, or the party who furnishes the dowry for her.
b. I.e., the deposit he made.
c. Either the father or grandfather or the husband himself.

Epilogue. Your Sublimity must be zealous to carry this our will, declared by this imperial law, into force and effect.
Given October 1, 539.