

Novel 94.

That mothers may unhindered act as guardian of their children although the latter own them or they owe the children, and that they shall (no longer) take the oath in reference to not entering into another marriage.
(Ut matres sine impedimento tutelam gerant, etc.)

The same Augustus (Justinian) to Johannes, Glorious Praetorian Prefect of the Orient the second time, ex-consul ordinary and patrician.

Preface. When we recently, through the many cases heard before us, discovered the frauds committed against minors, we enacted a law^a concerning the guardianship of them, providing that none should become their guardian who are either indebted to them or to whom they are indebted, so that they might not perchance commit any fraud against the minor when in control of the property. That law shall remain valid and is confirmed by the present law.

a. Nov. 72, c. 1-3.

c. 1. But since, contrary to our purpose and not rightly, that constitution is by some set up as a bar against mothers who want to become guardians of minors and want to undertake such guardianship according to ancient laws and according to our laws, we want to except mothers from the law which makes the provisions above mentioned. For it would be absurd to now prohibit what was in the first place introduced for the benefit of minors, and mothers cannot very well be considered in the same situation as others. For the natural, parental love of a mother toward her children renders her generally immune from suspicion, and she is not to be compared with others whom no tie of good will binds to the children. Hence mothers may, by making the renouncement (of remarrying) in accordance with the former rule, and by obligating their property,^a as has been formerly the custom, undertake the guardianship of their children, without fear of such exception (made in the later law), and so far as they are concerned the situation shall be as though no such law had been enacted in regard thereto. Hence whether they demand their dowry or the prenuptial gift, or whether any other debts are owing either by the

mothers to the minors or by the minors to the mother, due either from the father's property or their own property—for when one considers and examines the matter one will find many different situations—these matters shall not prejudice either party and shall be adjudicated and examined according to former laws, either in the case where the mother has the guardianship of her legitimate or of her natural children.

a. C. 5.35.2-3.

b. Cujacius thinks the exemption herein mentioned applied to a father and paternal grandfather as well. 2 Cujacius 974.

c. 2. In as much, moreover, as we very much fear that oaths in the name of the great God are rashly taken and violated, we think we should also amend the law^a which requires of mothers who are about to undertake the guardianship of their children to take an oath that they will not remarry; for we know that the law has been violated and perjury has been committed almost as often as an oath has been taken, so that it is clearly wrong to require an oath, which as soon as taken, is violated. And we should not because some keep their oath, give an occasion for impiety toward God to those who disregard it. Lawgivers do not give their attention, as is also stated by the ancient jurists,^b to matters which happen but seldom, but they devote their attention and care to matters which are usual. We therefore ordain that in other respects mothers must observe the law as heretofore in force, that they must renounce the benefit of the Velleian senate decree, and must do everything heretofore directed but they do not need to take an oath, but simple renunciation as to a second marriage and as to other matters shall suffice without the requirement of an oath in regard thereto. And as soon as a mother enters into a second marriage, she shall be expelled from the guardianship, and she who lied in court and preferred a second love to her promise and statement, shall undergo what she would have undergone if she had taken an oath

a. C. 5.35.2.

b. Dig. 50.17.64.

Epilogue. This law, enacted for the cause of piety—for we have enacted it so that the honor of God might not be insulted—shall be in force from this time on, and Your Sublimity will cause it to be made known in all the provinces. We have sent this law enacted concerning these things to the city prefect, who has jurisdiction in such matters, so that it may for all future time be observed through his care and that of the honorable praetor whose official duty it is to look after this. And from now on, every caution shall be exercised in connection with the property of minors, in order that it may be protected, and especially that a careful inventory be made thereof in the presence of the honorable clerk (scriba), to whose immediate care such matters are committed, and in the presence of the others customarily present, and sureties shall be carefully taken, and all things shall be done which are required by law through the watchfulness of the honorable praetor whose official duty it is to look after this. And you will publish this law in the imperial city, so that it may become known to all, and so that our provisions may not be unknown to anyone. We have (also) sent the law concerning these things, to be observed in the provinces, to our glorious praetorian prefects.

Given October 11, 539.