

Novel 19.

Children.

(De liberis ante dotalia instrumenta natis.)

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

Preface. It is reported to us that some foolish doubt has arisen whether our constitution, made in reference to children born before the execution of a marriage contract where such contract is subsequently executed, applied to cases not yet adjudicated by final decisions. [We very clearly recall that we expressly directed, when legislating on this] subject that the law should be applied to all cases not adjudicated by final decision or not compromised, whether the parents were still living or were already deceased.¹ Supplementing that law, we enacted another,^b that this should be true, although no children were born after the execution of a marriage contract, or if born, had died, and we also stated in this second law that it should apply retroactively except in cases already decided or compromised. But in as much as [there] were [those] who audaciously interpreted our legislation wrongly, though it was sufficiently clear, we were compelled to promulgate a third constitution,^c by which we directed that though a man had had a lawful wife and legitimate children by her, if such wife should thereafter die or the marriage should

¹ In Blume's original, the opening sentence appears to run into a second, from which the initial words have been omitted. After "final decisions" in line 4, where the bracketed words begin, the run-on sentence formerly continued —"subject that the law should be applied to all cases not adjudicated by final decision...." In Scott's translation, the first sentence has the same sense as Blume's and his second sentence starts: "We very clearly recall that when We enacted the laws with reference to this subject We expressly directed in a former constitution...." In their new draft, Miller and Saaris suggest for this second sentence: "Yet, when laying down the individual laws, we expressly mentioned, in our first constitution that legislated on this...." The bracketed words here draw on the consensus meaning and fit well into Blume's existing words. The notion that a line was omitted is supported by the fact that the sentence following contains a note designation "b," yet there is no endnote designation "a" preceding it.

^b [Missing.]

^c [Missing.]

be dissolved by divorce, and the man should thereafter marry someone else whom he might lawfully marry, by whom he had children, these children should also be legitimate though a marriage contract was not executed until after they were born. We did not mention in that law that it should apply in all cases where the father was still alive or to those that had not yet decided or compromised. From that fact some concluded that the provisions in reference to children born before the execution of a marriage contract did not apply to children already born before the enactment of the laws, particularly since the provisions on that point, set forth in the first and second of said constitutions, were left out of the compilation of the Code. But those conclusions are without foundation. We rightly left those provisions in the first and second constitutions[s] out of the Code, and rightly left the point unmentioned in the third. For in enacting special laws it was undoubtedly necessary to know whether it was intended to apply retroactively, but in making a general collection of laws in the Code, which bears our name, we rightly directed such provisions to be left out, in order not to burden it with anything that was superfluous. We said nothing as to the time in the third constitution, since it is too clear to mention, that matters added by interpretation must also be applied in those cases to which the interpreted law applies.

c.1 But since [there] are men who attempt to raise a dispute, or who err, in matters so clear, we add this additional law, ordaining that the provisions made in the three constitutions referred to, shall apply to all the cases, whether the father of such children is still alive or had died and the cases have not been ended by final decision or compromise. The only cases excepted herefrom are those which were already finally decided or compromised before the enactment of these laws.

Epilogue. Your Sublimity will take care to make this, our will, stated in this imperial law, known to all.

Given March 17, 536.