

Novel 68.

That the constitution of the emperor made relative to successions and gains in connection therewith when children have died shall apply to cases arising after the enactment of that constitution, and that the constitution of the emperor Leo shall apply to cases arising previously.

(Ut Constitutio pussimi imperatoris quae in successionibus in lucra nuptialia ex orbitatis casu etc.)

Emperor Justinian to Johannes, glorious praetorian prefect of the Orient the second time, exconsul and patrician.

Preface. We know that the constitution of Leo, of blessed memory,^a enacted in relation to those, both men and women, who enter into a second marriage, and directs that property derived from (the first) marriage should be preserved for the children of that marriage; that the one (husband or wife) who receives such property should have only the usufruct thereof, the ownership being preserved for the children; but that if the children and grandchildren are dead, and there is no one through whom the party that remarries would be deprived of ownership, the complete and entire benefit from such ownership should belong to such party receiving such property from marriage.

c. 1. We amended this law recently,^a providing that the heirs of deceased children or grandchildren, whether parents or other parties should not be without advantage therefrom, and that only that portion shall belong in absolute ownership to the surviving husband or wife which has been agreed to belong to them in case of childlessness, but the remainder shall go to the heirs of the children or grandchildren, making no innovation, however, as to the usufruct. 1. These provisions shall be in force now and hereafter, except in cases where the descendants died before the enactment of our constitution. If the gain had already accrued to the party entering into a second marriage, the descendants having died before the enactment of the law, that law shall not affect the property which the former law of Leo, of blessed memory, gave to him or her. And they shall

not only, in case such children or grandchildren are dead, securely hold the property which they gained and actually hold, but they may also bring an action in rem, avoidable to owners, to recover such of the property actually held by others. 2. We therefore settle all doubts on the subject by the present, short law, so that we may not be troubled by perpetual supplication, but may be released therefrom by this general law, the rule of the former law left brings in force as to the party that derived a benefit under its provisions.

Epilogue. Your Sublimity will make these provisions known to all by your own edicts and mandates.

(a) This law is not extant. See note to Nov. 22 c.3.