

Book VIII.
Title LVIII.

Concerning the right because of children.
(De jure liberorum.)

8.58.1. Emperors Honorius and Theodosius to Isidorus, City Prefect.

No one shall hereafter ask of us the rights granted to persons who have a certain number of children, which we by this law at once concede to all.

Given September 13 (410).

C. Th. 8.17.2.

8.58.2. Emperor Justinian to Mena, Praetorian Prefect.

We correct, in accordance with equity, the injustice committed in the past against the mother of a deceased male or female child, and we ordain that she shall have the legal rights which are granted by the Tertullian Senate Decree, although a free woman does not have three, or a freedwoman four, children.

Given at Constantinople June 1 (528).

Note.

This title refers largely to the right of participation of mothers in the inheritance of their children. At first, the mother's right was very limited. In about A.D. 138, by the Tertullian Senate Decree, a free woman with three children and a freedwoman with four children was admitted to the inheritance of her children who died intestate. It is this right, mainly, which is referred to here, and had evidently been occasionally granted to women upon petition to the emperor, though they did not in fact have the number of children required under the Tertullian law. The limitation is swept away by this title, so that the mother could inherit from her intestate children in all cases. The Tertullian Senate Decree and the proportion that mothers inherited from their children is fully discussed in C. 6.56.

The first law of this title was, perhaps, part of a larger law which also embraced the last law of the preceding title. That law, too, is connected with rights depending on the number of children, as already noted in headnote to C. 6.51. Prior to that law, under the so-called Papian law, the amount of property which husband and wife could leave to each other, depended somewhat on the number of children they had. That limitation was abolished in 410, when C. 8.57.2 was enacted, and the first law of the present title may also refer, partially, to the same condition. Gothofredus Comm. C. Th. 8.17.3 discusses these two laws at length. See headnote to C. 6.51.