

Novel 158.

That the right of deliberation shall also be transmitted to children under the age of  
puberty.

(Ut deliberandi jus etiam ad impuberes transmittatur.)

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The same Augustus (Justinian).

Preface. A supplication has been read to us of Thecla, whose name is also Manos, which states that a certain (other) Thecla had died, leaving a daughter, Sergia, below the age of puberty, and who, surviving her mother barely sixteen days, succumbed to the pestilence that recently overtook mankind. The suppliant says that she is the sister of the father of Sergia, but that Cosma, the brother of Thecla, had claimed the inheritance of Sergia, and had sued the petitioner therefor; that petitioner, in order not to have any unjust controversy, had gone to John, advocate of the provincial court, and had asked him as to the law in this matter; that he had given her an answer in writing stating that under the law she was entitled to the inheritance of Sergia; that she, accordingly had chosen John as her judge in the cause, while Asclepius, an employee in the bureau of the master of soldiers in the Orient acted for Cosma; that then John had given a decision contrary to the written decision to the written answer to her, setting forth, in support of his decision, the law of Theodosius,<sup>a</sup> of sacred memory, holding that the person not yet seven years of age could not acquire her maternal inheritance, unless he or she had a guardian, but that it belonged to those to whom it would fall as though the minor under the age of puberty who died had not been called to the inheritance. (Petitioner states) that not alone had he stated this in his decision, but he also induced her, our suppliant, to enter into a pact in conformity with the decision, suggesting that also to Asclepius, who acted on behalf of Cosma. So petitioner asks us that we do not permit any wrong to be inflicted upon her, especially since in the Code bearing our name there is a law<sup>b</sup> which provides that an infant which is able to speak (i.e. is seven years old) can rightly acquire her mother's inheritance, and since we enacted a further law<sup>c</sup> providing that if anyone is called to an inheritance, and dies before claiming or renouncing it, [it] transmits the right of deliberation in connection with such

inheritance to his heirs. The law recently enacted by us (Novel 118), putting agnates and cognates on the same footing in regard to inheritances, does not apply in this case, since this case is older than the date from which, according to our order, that law was to become effective.

- a. C. 6.30.18.
- b. C. 6.30.18.4
- c. C. 6.30.19.

c. 1. We therefore ordain that Your Glory, if you learn these to be the facts, extend aid to the petitioner, preserving for her the law which gives her the benefit of time for deliberation, since Sergia died within a year of the death of her mother, and that you give petitioner the right, if she wishes it, to enter upon the inheritance of the mother of Sergia. For the law of Theodosius, of blessed memory, and our law, are not in conflict. Both laws are in the same book and we have stated in a constitution which we enacted in reference thereto<sup>a</sup> that it contained nothing contradictory. Our law shall prevail in the present case and those that are similar to it; the law of Theodosius of sacred memory shall prevail in those cases in which a year and the time for deliberation has gone by. It is clear that pacts made after a decision, with a free person who was not even able to acquire anything (thereby), could not give to Cosma a right of action on what was contained in such pact.

Given July 14, 544.

Notes.

- a. Const. Cordi, secs. 3, 4.

The present Novel deals with the right of transmitting an inheritance by an heir who had not accepted it or entered upon it, and who died during the time for deliberation, namely a year.

Thecla, the mother, died leaving an infant daughter, Sergia, who died within a few days after her mother's death. Sergia's father also was dead, and the only relatives she left were the suppliant, a paternal aunt, and therefore an agnate, and a maternal uncle, and therefore a cognate. The uncle claimed the inheritance of Thecla, claiming that it should be treated the same as though Sergia had not lived,

since the inheritance was not accepted through a guardian, and that if that is not done, and the infant dies, the inheritance is treated as though the minor had not lived. C. 6.30.19, however, provided that the inheritance might be accepted at any time within a year, either by the heir or the latter's heir. The Novel decides: that the provisions of C. 6.30.19 should apply, since the year had not elapsed, and that the above provisions of C. 3.30.18 should be limited to a case where the infant died after the year, without the inheritance having been accepted.

The Novel says that the provisions of Novel 118 should not apply. That Novel put agnate and cognate relatives on an equal footing, and if it had been in force, the paternal aunt and the maternal uncle would have shared the inheritance equally. Under the former law, however, agnates had preference over cognates, and the paternal aunt was, accordingly, entitled to the whole inheritance.