

Novel 72.

Concerning curators and guardians and the care of minors.

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

Preface. Although all matters pertaining to the republic need considerable attention on the part of a lawgiver, in order that everything may be in proper condition and no wrong is committed, still the obligations of minors and the care of such minors is, above all, worthy of the greatest attention of those who have received from God the power to enact laws. We refer to the emperor. We have heard many lawsuits, where it appeared that remarkable curators obtain by assignments, demands against minors, under and over the age of puberty but still within the second period of life,^a and soon become owners of the property of such minors, assuming debts that perchance do not exist at all, or obtaining assignments of debts that are very uncertain for a small price, or suppress receipts for debts that are found among the effects of the minors, and so, obtaining assignments and for many other reasons—(for what will not a man inclined to dishonesty resort to)—they claim the property of the minors.

Note.

a. Evidently between the beginning of the age of puberty and the end of minority.

c. 1. We want to correct all these matters, and further (ordain): That if a minor or his property is obligated to a man, he shall not become his guardian, although a statutory one. For what would he not do for his own advantage when he has his own and his adversary property in his power? On that account we also ordain that if it is clear that the person about to become the manager is obligated to the minor, he shall not become such manager, lest he may steal some document or suppress some other proofs of the minor and so turn the management into a loss of property of the minor. It is, accordingly, plainly forbidden by law that any one who states that the

property of the decedent (the father of the minor) or the minor himself or his property, is obligated to him, or any one who is obligated to the latter, shall manage such latter's property, or have permission to do anything of the kind.

c. 2. If it happens that a person who has undertaken such management becomes the creditor of the minor, by reason of an inheritance to which the minor is liable, falling to him, or by reason of some other fact, he shall no longer be considered a proper person to manage the affairs of the minor alone, but some other guardian or curator shall be added, as we find in many cases under the laws, so that the latter may see that the party who has acquired such obligation against the minor will do nothing to the prejudice of the latter. He must give his attention to that, and having taken an oath to do so, he must also be in fear of the penalty attached to unfaithfulness in relation to his joint (guardian) or curator.

c. 3. In order, however, not to give everybody an excuse from undertaking a guardianship or curatorship by saying that the property of minors is pledged to them, or that they themselves are clearly obligated to such minors, we ordain that if anyone states that the minor is liable to them or that his property is pledged to him or that the minor's parents are liable to him, he shall prove that fact within the time given for excuses before the judge who appoints such guardian or curator, and he shall thereupon be excused; or if the fact (of the indebtedness) is uncertain, he must take an oath, with the holy bible before him, that he feels certain that the minor is liable to him and that he excuses himself on that account; and if that is done, the guardianship or curatorship shall not be given him, but he shall keep away from it as far as possible, in order that we may not, thereby, give the minor an enemy rather than a guardian.

c. 4. If he keeps still [silent] in the beginning and is made curator (or guardian), he shall lose every cause of action against the minor, although well-founded, because he purposely disregarded this law. And if any one who is clearly liable to the minor keeps still [silent], he too shall be subjected to the penalty of not being able to free

himself from the debt by any payment, or by any release, perhaps fraudulently made during the time of his management.

c. 5. But if any one, as stated, has been appointed curator (or guardian), examines the minor's affairs, and takes assignments (of debts against the minor) to himself either by gift, sale or otherwise, he must know that such transaction is invalid, that such debt cannot be collected by himself personally or through another, and that what he has done is as void as though not done from the beginning. For it is clear that when such is the state of his mind, he will, while destroying his soul, nevertheless, do and manage everything for the benefit of what appears to be his own affairs. **1.** We prohibit him from taking such assignments not only while he is curator (or guardian), but also thereafter, lest he manage his office in evilly contemplating such action, and when he has ceased to be such manager and while he has covered up his fraudulent acts, he then, after his duties as such manager have ceased, fraudulently receive such assignment. What he has done (in that direction) shall also be void then, and no right of action assigned shall have any validity as against the minor whose affairs he managed, but shall be considered as not taken; but the benefit thereof shall accrue to the minor's advantage, though taken on good grounds. Nor shall it revert to the assignor, so that no act contrary to law would seem to have been done, but the assignee shall lose all rights acquired thereby contrary to our laws, and the benefit thereof shall accrue to the minor. For unless we imposed this penalty, fraud would be easy, the assignee would have the assignor sue, obtain (the benefit of) the assignment through an intermediary, and thus fraudulently circumvent the law. We make these provisions as to any curator or guardian, in whatever cases the laws have provided for such, as in the case of spendthrifts, insane or demented persons, or in other cases already provided by law or where, contrary to expectation, such appointment is found to be necessary through nature's action.

c. 6. Since we see that some guardians and curators, mindful of God, hesitate to undertake such charge—while those who want to seize the property of wards hope

and eagerly ask for such charges—and we further notice that such charge is burdensome, especially on account of the necessity of loaning out money, we ordain that persons who have charge of minors need not loan out the money of such minors at interest,^a but may deposit it and keep it safely for their wards, since it is better to safely preserve the principal for them, than to lose such principal through the desire of obtaining interest, so that such guardian (or curator) may not be in danger if he does not loan out the money, and again be in danger if he does loan it out but incurs some losses in connection therewith. If, however, he wishes to loan it out voluntarily, by taking pledges or other security which is beyond question, he will be relieved as to the interest for two months in each year which the laws call *laxamentum* (relief)^b but he must know that he will loan the money out at his peril.

Notes.

a. This was applicable only where the income from land was sufficient to support the minor. If there was no such land, the property had to be used to produce an income. See cc. 7 and 8 of this Novel.

b. There is some difference in opinion as to whether the guardian was entirely relieved from the payment of the interest for two months in each year—that is, that he himself would get the benefit thereof or whether he was simply not responsible for the non-payment of that much.

c. 7. If the person under guardianship or curatorship has ample income, the guardian or curator shall use it (for the necessities of the person in charge); if there is more than sufficient, he may deposit the surplus. If the property of the other person in charge consists of movable property, the guardian or curator shall be compelled to loan at interest only so much as is necessary to support the minor and manage his property and he may deposit the remainder for safe-keeping. He may inquire, with care, whether he may not, with any unused money, to buy some (immovable) property which brings a certain return, against which the public dues

are moderate, and the vendor of which is solvent and with certain income.¹ And we give him permission to do this; but he must know that if he neglects any of these things (in reference to using care) the risk of such purchase falls on him.

c. 8. If the minor's property consists only of money, the interest on which is barely sufficient to nourish him and his, and furnish the other necessary support of life, then necessity leads us to the point that the guardian or curator, bearing God in mind, should conduct his charge as though he were managing his own property. And when the order is made by which the charge is delivered to him, he must also take an oath while touching the holy gospels, that he will in every way act for the benefit of the minor. This shall not, however, relieve him from rendering his accounts or from complying with (other) requirements of the law, but (is designed) to make him more careful in his administration of the property, since he is apt to be more faithful in that respect by bearing his oath in mind. This law is made for the protection of those who are in need of guardianship or curatorship. But if we find anything else (that is necessary), we shall not hesitate to embody that also in a law, as we continually consider ourselves the father of those who are unable to take care of themselves.

Epilogue. Your Sublimity will make this our will known to all by edicts sent to the provinces under you, so that no one may be unaware of what we have piously ordained for the benefit of our subjects.

Given June 1, 538.

¹ Blume added an asterisk here and inserted after this chapter "whose guaranty of the title is good."