

Book VI.
Title XIV.

(The right of possession of an inheritance) given to children.
(Unde liberi.)

D. 38.6; Bas. 40.3.19.

6.14.1. Emperors Diocletian and Maximian to Sarpedones.

If your father died leaving three emancipated children, and they have received the right of possession of his inheritance granted to children (unde liberi), it is clear that they became heirs in equal portions (pro portione).
Promulgated March 4 (286).

Note.

The last three titles dealt with cases where there was a will. This and the succeeding titles to title 21 deal with cases where there was no will or no valid will, but where the testator died intestate. We have already noticed that unemancipated children (or grandchildren whose father was dead), being the natural heirs of the father, were, in the absence of a will, entitled to the inheritance under the civil law, and it was entirely unnecessary for them to ask for the right of possession under the praetorian law. They had the right, however, to ask for and receive it, if they wished. Inst. 3.9.3. Emancipated children, however, were compelled, until the enactment by Justinian of Novel 118, to ask for and receive the right of possession if they desired to inherit any part of their father's estate, and the part of those that did not ask for it, accrued to the others. Inst. 3.9.10. It may be recalled here, as stated in the note to the previous title, that if there was a will, and an unemancipated child did not ask for the right of possession in opposition to the will - that is to say, in other words, if he did not, by asking the right of possession, seek to set the will aside, in so far as it was possible under the law - he lost all rights, and he could not thereafter ask for the right of possession as on intestacy. There was a case, however, where he still might do so, and that was where the heirs appointed under the will did not accept. But in such case, he must make good all gifts which would have been good if he had claimed the right of possession in opposition to the will. D. 29.4.6.9; D. 38.6.2. The first law in this title contemplates that the emancipated children were the only children of the decedent. The title "bonorum possessio, unde liberi" refers to that part of the praetorian edict from which (unde) the children (descendants) derived their right of possession to an inheritance.

6.14.2. The same Emperors and the Caesars to Zosimus.

If there is a son or a grandson who is the decedent's unemancipated heir of his body (suus) either pursuant to a testament or on intestacy, there can be no other heir on intestacy (further removed in degree of relationship).
Given May 9 (293).

Note.

The foregoing law is somewhat equivocal. It provides that if decedent leaves an unemancipated child and grandchild, there can be no other "heirs." The word "heir" may be used in a technical sense, and a person who received the right of possession, as an

emancipated child might do, he or she was not an “heir,” but what we may call a quasi-heir, being placed in the position of an heir by the praetor. That is the usual meaning given to this law, though it has been translated here as meaning that heirs farther removed in degree of relationship could not claim any part of the inheritance. In any event, the law is not inconsistent with the first law of this title.

6.14.3. Emperor Constantius to Leontius, Count of the Orient.

Whoever repudiates the inheritance of his father who died after the (paternal) grandfather had died intestate, cannot, especially if he is emancipated, receive the property of his deceased paternal grandfather, unless he receives the benefit thereof through the right of possession of the inheritance.

Given April 6 (349).

Note.

The grandfather in the present case died first, and intestate. Thereafter the father died, and his son, the grandfather’s grandson, who was emancipated, did not apply for the right of possession of his father’s estate, but rather refused to accept it. The present law seems to say that notwithstanding that fact, he could still apply for the right of possession of his grandfather’s estate. It is clear, however, that this could not be true in all cases. If the father had once acquired the inheritance of the grandfather, the property thereof would have become merged in and become part of his own, and it was a rule of law that his heir could not accept part of his inheritance and reject part, but must either absolutely accept or reject. Hence, the benefit of the present law could have applied only if the grandfather’s inheritance had not yet been accepted by the father, and had not yet been mingled with his own property. 9 Cujacius 620. There was an exception, however. Suppose the grandfather died testate, appointing an outsider as his heir. Such appointed heir did not accept, but before that was known, the father died also. In such case the grandson became self-successor to his grandfather, without reference to the father, and in such case his acceptance or rejection of his father’s estate had nothing to do with the estate of his grandfather.