

Book VI.
Title XVI.

Concerning the edict relating to the order of succession.
(De edicto successorio.)

Bas. 40.2.3.

Headnote.

The edict herein relates, not to the right of succession in general, but to the order of succession; that is to say, to the subject that if persons of one class entitled to the right of possession of the inheritance make no claim, the persons of the next class are entitled thereto. As already stated, parents and children had one year after knowledge of the existence of the right, in which to apply for it, other had one hundred days. It might happen that a person would be entitled to claim the right under several classes. For instance, a child might claim it under his rights as such (*unde liberi*) within a year. If he failed to so claim it, he might still apply for it as agnate, and if no claim would be made to it during the time allowed that class, he might still claim it as a cognate. So an agnate who made no claim as such, might still claim it as a cognate, if no claim had been made by another agnate; be he might, in such case, as already mentioned in the previous title, be compelled to share with another cognate, who would be of the same degree of relationship with himself. D. 38.9; D. 38.7.2 pr.

6.16.1. Emperor Alexander to Julius.

If your mother failed, on account of her insanity, to receive the right of possession of the inheritance from her paternal uncle, you, as her son, are admitted to the right of possession of the inheritance from you great-uncle, pursuant to the edict, by which one who is of remoter degree of relationship is admitted when those of nearer degree make no claim.

Promulgated December 10 (223).

Note.

The right of possession was not granted to one who was insane, though it might be granted to a curator of such person. In this case the mother was the agnate of her paternal under (daughter of a brother); her son, however, was only a cognate. She could not claim the right of possession, and did not through a curator; nor did any other agnate make such claim, and there was no one nearer in degree of relationship, so that the mother's son had the right to make the claim. 9 Cujacius 922, 623. See C. 5.70.7 note.

6.16.2. Emperors Diocletian and Maximian and the Caesars to Firmus.

If the brother of the paternal grandmother of the decedents entered on the inheritance, pursuant to a testament, when said decedents in fact, as you allege, died intestate, a forged testament of them having been produced, and if he, your grandmother's brother, thereafter died intestate, without having claimed the right of possession of the inheritance, as one left by intestacy, and you, though in the fifth degree of relationship, have claimed the right of such possession, pursuant to the provisions of the edict relating to the order of succession, or do that before you are barred from doing

so, you will be entitled to such inheritance. But if he, whose relationship in the fourth degree is not questioned, claimed such right pursuant to the edict, without concealing that fact from you, then you have petitioned us to no purpose.

Subscribed at Sirmium April 8 (294).

Note.

The decedents in this case were related to the grandmother in the second degree, and to the brother of the grandmother in the fourth degree. See headnote title 9. This brother entered on the inheritance of the decedents under a forged testament, and, therefore, without effect. Still, thinking that the will was valid, and therefore, not knowing that he had the right of possession on intestacy, he was not barred from asking that. If he did, he acquired the property, and transmitted it to his heirs on intestacy. If he did not ask for the right, he did not acquire it, and hence could not transmit it, and the right of possession was in such case granted to the next in degree of relationship, the fifth, in which the claimant in this case stood. 9 Cujacius 623, 624.