

Book VI.
Title XVII.

Concerning the Carbonian edict.
(De Carboniano edicto.)

D. 37.10; Bas. 40.5.17.

6.17.1. Emperors Diocletian and Maximian and the Caesars to Flora.

If a question as to the status of yourself and your son is raised by those against whom you direct your petition, you notice that the demand, that the property which your son claims as an inheritance from his father be turned over to him, is premature, since while he is a minor under the age of puberty, and the right of possession is given him, according to the rule of the Carbonian edict, he can be put into actual possession only after giving security; if he does not furnish that, the part which he claims will remain in the common possession of all the claimants, but the trial of the question of his slavery will be deferred to the time when he arrives at the age of puberty.

Subscribed at Sirmium October 21 (293).

Note.

When it was alleged that a child under the age of puberty claimed to be an heir, but that he or she was not really such because e.g. illegitimate or a slave, the child was given the right of possession, and if surety was given it was actually put in possession. The trial as to the actual heirship was ordinarily deferred till the person in question reached the age of puberty. D. 37.10.1 pr. The object was to give the child a maintenance, and it did not have to make an accounting therefore. It was considered better to do this than to let it starve. D. 37.10.5.2 and 3; D. 5.2.20. The judge, however, might, particularly when that was to the interest of the child, which would be true if evidence might be lost by delay, grant an immediate hearing as to the heirship. D. 37.10.3.5. The decree giving the right of possession was not granted informally, as in the ordinary case, but decretalis, i.e. after a hearing, and if the case was clear that the child was not an heir, the benefit here mentioned was denied. D. 37.10.1 pr; 3.4.

In this connection may also be mentioned another grant of the right of possession which was decretalis, i.e. by formal decree, after hearing. If it was shown that a wife was pregnant with child at the time of the death of its father, so that the child would be self-successor of the latter, it could have the right of possession, a curator being appointed. D. 37.9.1.2. The woman was, in the meantime, entitled to maintenance out of the estate, with no duty to account, even though it should turn out that the child was not born alive. In this case, too, it was deemed more important to protect the child than that the property should go into the hands of some other person without diminution. D. 37.9.1.2.; D. 37.9.1.3 and 19.

6.17.2. Emperors Valentiniana, Theodosius and Arcadius to Rufinus, Praetorian Prefect.

The benefit of the Carbonian edict will be granted at the request of persons who may legally appear in court in person, when marriage is undoubted, the offspring guarded and legal right to succession is shown, and the posthumous (novus) heir, granted the right

possession, may, without molestation, meanwhile enjoy the property of other till the age of puberty.

Given at Constantinople September 28 (393).

C. Th. 4.3.1.

Note.

The interpretation to C. Th. 4.3.1, from which this was taken, states: "If anyone dies, leaving behind him a pregnant wife, the law orders that the woman shall be guarded by relatives till childbirth. If she gives birth to a child in the proper time, the child born will succeed to the inheritance of the father according to its proportion, and will possess without molestation, until the 15th year, the property left by the father."