

Book VI.
Title XXIV.

Concerning the appointment of heirs and what persons cannot be appointed as such.¹
(De heredibus instituendis et quae personae heredes institui possunt.)

Bas. 35.13.12.

6.24.1. Emperor Titus Aelius Antoninus to Antestianus.

If persons appointed as heirs are deported, they cannot, as though foreigners, inherit. The inheritance will be in the same situation as if they had not been appointed as heirs.

Without day and consul.

Note.

Only citizens could be appointed as heirs. A man sentenced to be deported lost his citizenship and hence could not inherit. Slaves were an apparent exception to the rule, but apparent only, for the slave either became free along with his appointment as heir, or he acquired the inheritance for the benefit of his master, a citizen. If persons not able to take were appointed as heirs, the will was construed as though no such appointment had been made. Headnote to C. 6.51, and see Mackeldy §662, as to other persons incapable of inheriting, note C. 10.11.1.

6.24.2. Emperor Antoninus to Calcilius.

If your father was appointed as “residuary” heir for any portion which another, appointed as heir, could not take, and such other could not be admitted to any part of the inheritance on account of his status, your father inherited the whole; for the meaning of “residuary” also may include the whole.

Promulgated at Rome June 17 (212).

6.24.3. Emperor Alexander to Vitalis, a soldier.

Since you say that Alexander, a knight, appointed, in the first place, one Julianus, as his freedman, to be his heir, and provided for a substitute for him in these words: “but if the first named heir will not or cannot for any cause enter upon my inheritance, then I substitute Vitalis as heir in his place;” and if after the death of the testator Julianus was shown to be the joint slave of the deceased soldier (Alexander) and of Zoilus, the brother of the deceased, the question whether you should be admitted as heir by virtue of the substitution depends on the intention of the will. 1. For if the testator appointed Julianus as his heir, believing him to be his own freedman, and that he would be his freedman, not wanting the inheritance to belong to anyone else, through him, the condition of the substitution has arisen and the inheritance belongs to you. If, however, the words of the substitution refer to the right that the substitute should become heir only if no one else should become heir through Julianus - for he could refuse to enter on the inheritance even though his master ordered it - then the substitution did not take place, if Julianus, obeying his master, accepted the inheritance.

Promulgated April 26 (223).

¹ [Blume] See also and read in this connection C. 6.48.

Note.

In this case Alexander appointed Julianus his heir, calling him his freedman, and substituting Vitalis as heir in his stead in case Julianus would not or could not enter on the inheritance. Now the testator was mistaken in calling Julianus his freedman, for he was the slave both of the testator and of one Zoilus. If he was mistaken and believed that Julianus was his slave alone and that he would be his freedman alone (intending, as the law says, that he alone and not some master through him should receive the inheritance), then the appointment was invalid, because of the error, and the substitute took his place. C. 6.20.7; C. 6.23.4 and 5; C. 6.24.14; 9 Cujacius 671; 9 Donellus 127. If, on the contrary, the testator was not mistaken, and he wanted the joint master of Julianus to have the inheritance (for whatever a slave acquired, he acquired for the benefit of his master), the substitution failed when Julianus accepted the inheritance, and the substitution would have applied only in case Julianus had not accepted.

6.24.4. Emperor Gordian to Ulpian.

If your father appointed someone as though his son to be his heir, erroneously, believing him to be such son, and if he would not have appointed him if he had known him to be another's, and such person was subsequently shown to be a spurious child, the inheritance must, according to the orders of the divine Severus and Antoninus, be taken from him.²

Promulgated October 6 (238).

6.24.5. The same Emperor to Cassianus.

A wife does not appear any the less legally appointed as heir because she was called a relative in the testament instead of a wife.

Promulgated September 27 (241).

6.24.6. Emperor Philip and Caesar Philip to Antonius.

If your wife appointed you, her husband, as heir for the purpose of paying a debt, not only the law but also the wish of the decedent opposes your demand that you should receive payment of your debt in addition to receiving your portion of the inheritance.

Promulgated February 18 (246).

Note.

If the testatrix in this case attached no condition to the portion of the inheritance given to the husband, he was entitled to one-half thereof; but inasmuch as in such cases he would be liable for half of the debts, half of the debt owing him became merged with his inheritance (C. 6.50.14.), but he was entitled to recover the other half from the other heir. If the inheritance, however, was left upon condition that the debt should be paid, the whole thereof was extinguished upon acceptance of the inheritance. See note C. 4.16.5.

6.24.7. Emperors Diocletian and Maximian to Tizanis.

Not even among foreigners could anyone obtain a brother by adoption. Since, therefore, what you say your father wanted to do, is void, the president of the province will take care that the portion of the inheritance held by the person, against whom you complain as an appointed heir by virtue of being an adopted brother, is restored to you.

² [Blume] See note to preceding law and references there given.

Promulgated December 3 (285).

Note.

Someone adopted another as his brother, and thereupon left him an inheritance. This sort of adoption was void, as only an adoption as child or grandchild etc. could be made. The bequest made to one as to a brother, when he was not such brother was void. See C. 6.23.5; C. 6.44.2 note.

6.24.8. The same Emperors to Hadrianus.

There is no doubt, that a guild cannot take an inheritance, unless it has special privilege.

Promulgated May 23 (290).

Note.

Uncertain persons could not, as a general rule, become an heir. Guilds were classed as such, and could not take an inheritance, unless by special privilege. Justinian changed the rule. C. 6.48. They had been allowed to take legacies from the time of Marcus Aurelius. D. 34.5.20.

6.24.9. The same Emperors and the Caesars to Julia.

It has been decided that an outsider may also be appointed as heir in the event of death (cum morietur - while he is dying).

Promulgated October 17 (293) at Sirmium.

Note.

The general rule was that an event certain to come but indefinite as to time was not a condition, but fixed the time. Headnote C. 6.25; C. 4.11.1. Now an heir could not be appointed from a certain day, any more than after a certain day, and the day was struck out. D. 28.5.34. An appointment commencing when the appointee was dying, so that his heirs would get the benefit, was certain to come, though the time was uncertain. Hence the rule here stated was an exception, and the appointment was considered either as under a condition precedent, or the rule as to time was relaxed. See Savigny, 3 System 213; Buckland, R.L. 295 note 7.

The law applied only to outsiders. Sons, and under the later law, all children, were required to be disinherited expressly, if they were to be disinherited at all, and could not, accordingly, be instituted as heirs conditionally, unless the fulfillment of the condition was in their power. The condition here mentioned was not of that kind.

9 Cujacius 679.

6.24.10. The same Emperors and the Caesars to Asclepiada.

The reason to the law dictates that an inheritance can be acquired by those who have not been permitted (to do so), neither through themselves being appointed as heirs nor through their slaves.

Subscribed at Sirmium August 17 (294).

6.24.11. Emperors Theodosius and Valentinian to Hierius.

A person may appoint a total stranger as his heir.

Given at Constantinople February 20 (428).

C. Th. 5.1.1.

6.24.12. Emperor Leo to Erythrius, Praetorian Prefect.

Houses, rights to bread rations, buildings or slaves, may become the property of this famous city or of any other city, by inheritance, legacy, trust or gift. Given February 25 (469).

Note.

Cities were considered among "uncertain persons" and hence had been unable to take inheritances or gifts, except from their own freedmen. Ulp. Reg. 22. 5. That rule was hereby modified. Justinian carried the change further. C. 6. 48. They could take legacies, however, from the time of Nerva (Ulp. Reg. 24. 28). Rations for food supply were given to people in Rome for many years and were later introduced in Constantinople as well. They consisted of grain, baked bread and other means of support doled out to poor citizens at certain times, and often appurtenant to houses so as not to be salable except in connection with the sale of these houses. See C. 11.25, and C. 1.44, and references there made. These rations were called *annonae civiles*, translated, for short, as bread-rations.

6.24.13. Emperor Justinian to Mena, Praetorian Prefect.

Whenever certain persons were appointed heirs for a definite thing or were directed to be content with certain things as stated in the appointment, and who, it is certain, must be considered as legatees, but others were appointed as heirs to a certain proportion or without specifying any portion, and who according to the ancient laws are considered as heirs to a certain number of twelfths (of the estate), we decree that only those shall sue or be sued as heirs, who have been appointed as such for a definite proportion or with no stated proportion, and persons who are heirs only for a definite property shall not suffer by reason of any such action. Given at Constantinople April 6 (529).

Note.

It had already been fully pointed out in note to C. 6.23.7, that the meaning of the term "heir" under the Roman law was not quite the same as we generally understand that term, and that, ordinarily, an "heir" was a person who represented the estate as successor and who received the whole or a certain undivided portion of an inheritance, these portions being, according to custom, generally given in the amount of a twelfth or multiples thereof. Inst. 2.14.5; D. 28.5.51.2. See D. 14.5.7; D. 28.5.13.1; D. 28.5.35 pr. Paul., *Sent.* 3.46 [?] 6. See *Woess* 145 ff.³ A person who received a definite piece of property under a will was, generally, not an "heir", but a legatee without right to represent the estate. There was an exception to this rule. Where there was no appointment of an heir for the whole or undivided portions of the inheritance, but the appointment was solely for a definite piece or definite pieces of property, the appointees for this property were considered as "heirs", and not as "legatees" alone. D. 28.5.14; *Buckland* 294. In the present law certain persons were appointed as heirs for definite pieces of property; others were appointed as heirs for undivided portions of the inheritance. Hence the general rule was in force - the former being considered merely as legatees, and the latter only as "heirs" - and the latter only could sue for debts due the estate or could be sued for debts due from it.

³ Blume penciled in the latter two references, and they are partially illegible.

6.24.14. The same Emperor to Johannes, Praetorian Prefect.

Since in the books of Ulpian, which he wrote to Massurius Sabinus, the following case was related, it has appeared to us best to make it plainer: 1. Some person (whose name was not Plotius), in making a testament, made a statement as to heirship in these words: "Let Sempronius be the heir of Plotius." Some of the ancients thought that there was an error in the name and that the appointment was as valid as though the testator's name had been Plotius, and that he had appointed Sempronius as his heir. 2. But we think this opinion a gross error, for no person is so dull or stupid that he does not know his own name. If the testator himself, however, was heir of Plotius, it is clear that he appointed Sempronius as his own heir, so as to make him the heir of Plotius through the medium of his own - the testator's - person; and we reason this according to the ancient rule which wanted the heir of an heir to be also heir of the testator. 3. But, if nothing of that sort happened, an appointment of this kind is useless and inane, unless the testator has first appointed Plotius as his own heir and has then added: "Sempronius shall be heir of Plotius;" for that should be construed as if he had stated that if Plotius should not become his heir, then Sempronius should take the place or part of Plotius (as substitute), so that according to these words, Plotius would be the appointed heir and Sempronius his substitute. 4. But if the testator was neither an heir of Plotius, nor first appointed Plotius as his own heir, still wanting Sempronius, however, to be heir of Plotius, such appointment is of no validity, since it is not likely that anyone should make an error in his own name.

Given July 30 (531).