

Book VI.
Title XXXII.

How testaments are opened, inspected and copied.
(Quemadmodum aperiantur testamenta et inspiciantur et describantur.)

D. 29.3; Bas. 35.6.12.¹

6.32.1. Emperor Alexander to Procula.

The proper judge will order the testament, which you say was made, to be produced and read publicly.

Promulgated March 31 (223).

6.32.2. Emperor Valerian and Gallien to Alexander.

You allege that a testament was given you by your father in order to bring it to his native city. You may take it there, so that it may be made a matter of record, according to the rules and customs of the place, provided that if the witnesses are not present, you must first apply to the rector of the province either personally in court or through petition, so that, with his permission, you may cause honorable men to be summoned, in whose presence the testament may be opened and by whom it must be sealed again.

Promulgated December 21 (256).

Note.

As shown in C. 6.23.19, a will might be registered and made public by a testator in his lifetime. In such cases, of course, the formality of opening a will after the death of the testator was dispensed with. But private wills were required to be opened as soon as possible after the death of the testator. It might, of course, happen that the testator had himself left the will open so that anyone might read it. D. 29.3.10. But even in such case, doubtless, the will was taken to the proper office, in order to be properly proved, authenticated and registered. In the ordinary case, where the will was not open, it could not be opened except in the presence of the proper officers. Wills in the capital cities were directed to be kept in the office of the master of the census. C. 6.23.18. Judging from that law and C. 6.23.23, it would seem that wills in these cities were opened in that office and in the presence of the head thereof, who was under the jurisdiction of the city prefect. In provinces, they were opened in the presence of the governor thereof, and, it seems, before municipal magistrates. In Bruns, *Fontes Juris Romani Antiqui* 317-319, is contained the proceeding of the opening and proving of a will before two municipal magistrates, in the presence of three of the chief men. C. Th. 12.1.151, provides that no municipal records should be made except in the presence of three of the chief men. The powers of the municipal magistrates were, perhaps, limited, as indicated in the present law, and the governor, in the provinces, or city prefect in the capital cities, alone could make special orders. The ceremony of opening was about as follows: All or a majority of the witnesses who had sealed the will were got together by the order of the proper judge or officer; the seals were recognized by the witnesses, the thread holding the will

¹ Blume penciled in above this reference: "See Signum in P.W." by which is probably meant Pauly-Wissowa.

was broken, the will opened and read aloud and opportunity given for taking a copy. But no copy could be made of the date on the will, as shown by law 3 of this title, because it might have helped forgers to give a consistent date to a fabricated will purporting to revoke the true will. D. 29.3.2.6. If the father had also made a will for a child under the age of puberty, that was considered a part of his own will, but it was not always advisable to let it be known who was appointed as heir, or substitute, for the child, and hence that part of the will was not opened unless the proper officer directed that to be done. The will was then sealed up with the public seal and deposited in the archives, and this was evidently the registration thereof. On application it could be got at and again copied or inspected.

It might happen that the witnesses to the will could not readily be procured. In that even, as stated in the present law, honorable witnesses were summoned in whose presence the will was opened, resealed, and the proving of the will by the witnesses thereto deferred till later. If the witnesses could not attend to acknowledge their seal and signature, the will was sent to them for that purpose. If anyone had a will in his possession and refused to take it to the proper office to be opened, an interdict or order was issued for the production of the will. This subject is treated in C. 8.71 and note. As to opening of a will in general, see full discussion in Hunter 773; Amos 327-328; 1 Roby 184-195; Paul., Sent. 4.6; D. 29.3.

6.32.3. Emperors Diocletian and Maximian and the Caesars to Aristoteles.

The rector of the province will, after you have taken an oath that you do not make your request for vexation, order you to be given opportunity of inspecting and copying the last will of your father, excepting the date and name of the consul therein, and excepting further any portion which the decedent forbade to be opened or which reflects on anyone's good name.²

Given April 26 (294).

6.32.4. Emperors Gratian, Valentinian and Theodosius to Hesperium, Praetorian Prefect.

A codicil or (similar) writing or any kind should be publicly produced in the same manner as testaments.

Given at Milan July 30 (379).

² [Blume] See. C. 8.7.