Book VI.
Title XLIX.

As to the Trebellian senate decree.
(Ad senatus consultum Trebellianum.)

Bas. 41.3; D. 36.1.

Headnote.

1. This senate decree was originally passed in the time of Nero. It provided, in effect, that where a trust, which an heir was directed to turn over to a cestui que trust, was turned over by the heir to the cestui que trust, both should be capable of suing and being sued in proportion to their shares which they obtained out of the inheritance. In other words, the cestui que trust became, in effect, a coheir. The testator might, however, direct too great a portion to be turned over, so that it would not be worthwhile for the heir to enter on, that is, accept the inheritance. The Falcidian law, dealt with in the next title, allowing an heir to retain a fourth of the net value of the inheritance, applied at that time only when direct bequest, i.e. legacies, in the technical and original sense of that term, were made, and did not apply when the heir was directed to turn over a potion of the inheritance as a trust. Thus many heirs refused to accept. To remedy this, the Falcidian law was extended to apply to trusts. This was done in the time of Vespasian, by the so-called Pegasian law. This law, also containing other provisions, was repealed by Justinian, but the terms of another law, namely the Trebellian senate decree, were amended so as to also include the valuable portions contained in the Pegasian senate decree. The Trebellian senate decree, accordingly, as amended, contained the provision for the retention of the fourth by the heir. It was the Falcidian fourth as applied to trusts. In other words, the Falcidian fourth and Trebellian fourth are the same thing under Justinian, who abolished the difference between legacies and trusts.

Under this Trebellian senate decree, as amended, if the heir voluntarily transferred, in case the testator so requested, the whole inheritance to the cestui que trust, the latter alone was capable of suing and being sued in relation to the inheritance. This was true also, if the heir was requested by the testator to retain a specific thing in satisfaction of his Falcidian fourth, and he made transfer of the remainder. The specific thing authorized to be retained might be the greatest part of the inheritance, in which even it might be dangerous for the cestui que trust to accept his portion. If he did not accept, the heir, of course, remained liable to be sued for debts, just as he was in all cases before he made any transfer. These rules applied under the Trebellian senate decree whether a sole or part heir was requested to transfer, or whether the portion requested to be transferred was the whole of only a part of the property on which a person was heir.

2. We saw in the headnote to C. 6.39, that an heir appointed in a will was not ordinarily compelled to accept the inheritance, and if he did not, the legacies and trusts left in the will generally failed. But an exception was early made in the case where the whole or an undivided portion of an inheritance, called an universal trust, was left to an heir upon trust to turn it over to another, as above mentioned. And it was provided in both the Pegasian law and the Trebellian senate decree that in such case the appointed heir could be compelled to accept pro forma, if the cestui que trust so desired, so that it

might be turned over to the latter as directed in the will. When the transfer was made, all right of actions passed to and against the transferee. The rule applied whether a man was appointed sole heir or only a coheir with others, and whether he was requested to transfer all or only a portion of what was given him in the will. Inst. 2.23.3-9, and laws in the within title. This was the only exception to the rule that a man could not be compelled to accept an inheritance and the rule did not apply when specific bequests were directed to be paid by the heir - but only when a universal trust was created. D. 29.4.17. In case of a universal trust - when all or an undivided portion of an inheritance was directed by the testator to be transferred to a cestui que trust, the latter virtually became an heir, and it was deemed important for a man to have an heir pursuant to his testament.

6.49.1. Emperors Severus and Antoninus to Probus.

If you retained the fourth of the inheritance pursuant to the senate decree and delivered three-fourths thereof left as a trust, you may reclaim from the beneficiary of the trust the amount paid by you to creditors of the estate due from such three-fourths.
Promulgated March 18 (197).

6.49.2. Emperors Philip and Caesar Philip to Julianus.

The law is clear that payment of the debts against an inheritance and of legacies must be made in proper proportion by the party to whom part of the inheritance has been transferred pursuant to the Trebellian senate decree.[1]
Promulgated October 17 (244).

6.49.3. Emperors Carus, Carinus and Numerian to Taticus.

If an inheritance was left to a community as a trust, you (the citizens) have the right pursuant to the Trebellian senate decree, to have three-fourths thereof, together with its income, turned over to you, and this is true also in case of intestacy[2] (in case such trust was left to the community by a codicil).
Without day or consul.

6.49.4. Emperors Diocletian and Maximian and the Caesars to Quintianus.

We think that you needlessly fear that you will lose the benefit of the portion of the inheritance left you as a trust on the ground that the grandmother of the testator (and yours) who was appointed part-heir and was requested to transfer it to you (as a trust), fraudulently repudiated the inheritance, so that her portion might go to another grandson, her coheir, upon who the payment of the trust was not specifically imposed, and on the ground that the grandmother, ordered to enter on the inheritance which (she said) she suspected as insolvent, died before she did so and before she did nay act as heir. For it was long ago ordered by the divine Antoninus, our predecessor, that, in view of the testator's intention, the trust must also be carried out by the substitute (her heir), the request for him to do so being implied. Nor need you fear the retention of the (Falcidian)

[1] [Blume] In other words, he was considered part-heir.
[2] [Blume] A man who made no testament, but only a codicil, was considered as dying intestate.

fourth, which your grandmother, who repudiated the inheritance, and who was ordered to accept it, though suspected as insolvent (as she said), could not retain.
Subscribed at Philippalis July 10 (293).

Note.

As noted in the headnote, a person charged to turn a universal trust or legacy, consisting of an inheritance, or an undivided portion thereof, over to the beneficiary of a trust, could be compelled to enter on the inheritance, and could retain a fourth thereof, after deduction of debts, if he made the transfer voluntarily; if he did not do so voluntarily, he lost such fourth. In this case the grandmother had refused to make the transfer, and she accordingly lost the fourth, and her substitute or heir occupied no better position than she did and was compelled to make the transfer, after the grandmother had died, without getting the benefit of such fourth.

6.49.5. The same to Verissinius.

An inheritance may legally be left in the form of a trust without writing. If your wife, therefore, stated, when she was on the point of death, that she wanted you and her stepson to have her inheritance, her wish must be carried out as to three-fourths of the property, since she made it clear that her intestate successors, required to deliver the trust, should only receive a fourth, after payment of the debts which fourth the senate decree permitted them to retain.
Subscribed at Sirmium April 27 (294).

6.49.6. Emperor Zeno to Dioscarus, Praetorian Prefect.

We direct that whenever a father or mother, appoints a son or sons, or daughter or daughters, as his heirs for equal or unequal portions, and asks one or some of them in turn to turn, or to unconditionally transfer his or her portion of the inheritance to the survivor or survivors[3] or some one or more of them, if he or she should die without children, the fourth, as authorized by the Trebellian senate decree[4], may be retained without counting any income as part thereof, though the testator ordered otherwise, but the three-fourths of the principal of the property derived from the inheritance shall be so transferred. 1. That shall apply also in retaining the Falcidian fourth, when the father or mother, having instituted a son or daughter - as above mentioned - as heirs, has asked that the latter's inheritance should be turned over to the grandsons or granddaughters, great-grandsons or great-granddaughters or remoter posterity. 1a. We order that no security need be given in

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[3] [Blume] The party when dead could not, of course, himself transfer it; but the trust was equally binding on his heir, and the meaning is that the heir of the deceased child should turn it over, retaining the Falcidian fourth. The word "restituere" is ordinarily used for turning the property over or transferring it. The word means "restore," as though the property was just temporarily in the hands of the trustee and actually all the time belonged to the beneficiary of the trust.
[4] [Blume] This fourth is the same as the Falcidian fourth mentioned later on in the law. See headnote.

the cases above mentioned for the purpose of preserving the trusts[5], unless the testator has specially required it to be given, or unless the father or mother enter in to a second marriage; for in these two cases, that is to say, when the testator specially wanted security to be given, or when the father or mother enter into a second marriage, it is necessary to furnish security according to the law. 2. But if the party upon whom rests the burden to transfer the trust dies, leaving surviving him a son, or grandson by a son or daughter, or a great-grandson or a posthumous child, the condition does not seem to have taken place and the claim for the trust, accordingly, fails.[6] 3. We also give warning that what we have said as to the retention of the Falcidian portion, without counting the income but counting only the property derived from the inheritance, and what we have said as to the giving of surety, must not be applied to persons and cases other than those mentioned. Promulgated September 1 (489) at Constantinople.

Note.

The general rule was that the heir was entitled to the income of the inheritance until the time when he was required to surrender it, unless the testator either expressly or by implication desired it to be surrendered along with the principal. D. 36.1.19 pr. While that was true, it was also the general rule that where the claim of the beneficiary was suspended for a certain time, or until a certain even, the income which the heir received in the meantime counted as part of his fourth which he was entitled to retain. D. 36.1.19.1; D. 36.1.23.2, unless the delay in the delivery was due to the beneficiary himself. D. 36.1.23.2. The foregoing rules were, as noticed, made inapplicable in the cases specified in the present constitution, and in those only.

6.49.7. Emperor Justinian to Johannes, Praetorian Prefect.

We ordain that it shall be permitted to make a transfer of a universal trust left to a minor, to his guardian without bond (from the latter), whenever the minor is still unable to talk or is absent, lest requirements, in connection with property of minors under the age of puberty which are too rigid, turn out to be to their detriment. 1. That shall be the law also if a trust is owing to an insane person, so that transference thereof may be made to his curator alone, on behalf of the insane person; for the insane person is incapable of either understanding or consent. And in either case the transferrors have perfect protection under our law. 1a. This applies too if such minors or insane persons are required to transfer property to others. 1b. Moreover, whenever anyone was ordered to transfer an inheritance and he maliciously, after joinder of issue or before that time, contumaciouls y hid himself, or if he who was bound to make a transfer or the trust died before hi did so, without leaving an heir or successor, or if a cestui que trust to whom an inheritance was transferred pursuant to the Trebellian senate decree, was himself directed to transfer property of an inheritance to another, it was doubted among the ancients how in these three cases a transfer of rights of action could be effected; and Domitius

[5] [Blume] Security was ordinarily required in such cases to insure the fulfillment of the trust, unless the testator directed the contrary. D. 36.3.1.2; D. 36.3.15; D. 6.54.2 and note.

[6] [Blume] Trusts for the transference to other than issue at death were usually in absence of issue, and if this limitation was not expressed, it was implied. C. 6.42.30; D. 6.25.7 and note; D. 35.1.102.

Ulpianus thought that legislation was required on the subject. 1c. We, therefore, ordain that whether the party upon whom the duty to transfer is imposed, is absent or is prevented from doing so by death, without leaving a successor, or whether the transfer was ordered to be made by one cestui que trust to another, the rights of action (utiles) are transferred by operation of law.
Given at Constantinople October 23 (530).

Note.

A trust might at times be detrimental rather than beneficial for the cestui que trust, because of the debts that might be against it. It was therefore doubted whether a guardian of a child unable to speak or absent, or a curator for an insane person, was able to accept the trust for such child or insane person. The doubt was resolved in favor of the proposition, for the reason, as Justinian says, not to give such power would often be detrimental to the ward. The parties required to deliver such trust were accordingly authorized to turn it over in such cases to the guardian or curator, and were, upon such delivery, lawfully released from their obligation.

6.49.8. The same to Johannes, Praetorian Prefect.

A testator ordered his heir to transfer the whole inheritance, which he bequeathed to the latter, to another, and then provided a special trust for another. And it was aksed, from whom the special cestui que trust was to receive what was left him, whether from the heir, so that the general (first) cestui que trust would receive the property out side of the special trust, or whether the special trust, consisting of money or other property, should be turned over to the general cestui que trust, together with all other property, and that the latter should deliver the special trust to the special cestui que trust. 1. We, therefore, ordain that the whole property shall, pursuant to the Trebellian senate decree, be turned over to the general cestui que trust and the latter shall turn over to the special cestui que trust the property left to the latter.
Given at Constantinople October 18 (532).