

Book VIII.
Title III.

The edict against legatees.
(Quod legatorum.)

Dig. 43.3.

8.3.1. Emperors Diocletian and Maximian and the Caesars to Latina.

Suitable provisions have been made by the Falcidian law for the person instituted as heir, if the inheritance is depleted by legacies, by granting him the right to retain a fourth. Hence if a legatee or cestui que trust detains the legacy or trust left him without the consent of your father, who, as you say, succeeded to the testator and who received the right to the possession of the inheritance, you may, in accordance with the interdict provided for instituted heirs against legatees, furnish a bond, necessary to be given, and sue to be put in physical possession, so that you may exercise the right of retention to which you are entitled.

Given December 17 (293).

Note.

It was the policy of the law that a legacy should be turned over to a legatee by the heir, and that a legatee should not take possession of any property bequeathed to him without the consent of such heir. If he did so, he might be compelled to return it by the interdict here mentioned; that is to say, he might, under the Justinian law, be subject to an action for the recovery of the property. In cases, however, in which the heir was required from that duty by the will, he must be ready, before possession could be recovered, to furnish such security. D. 43.3.1 and 2; D. 43.3.2.1 and 4. It will be noticed that in the very nature of things the possession of the heir, if recovered, could be only for a time, since he would be compelled later on to turn it over to the legatee, less his fourth which he had a right to retain.