

Book IX.  
Title XXIII.

Concerning those who make provision for themselves in a testament.  
(De his qui sibi adscribunt in testamento.)

Bas. 60.41.60, et seq; Dig. 48.10.

Headnote.

It was unlawful for anyone who wrote a testament for another, to insert therein a provision for the benefit of himself or a person in his power, since whatever belonged to the latter belonged to himself. It was even unlawful for a man to have his slave or other person in his power, do so. But if the testator confirmed such gift in his own handwriting, the gift was valid. In case of a child or slave, but not otherwise, a general confirmation was sufficient, as: "I dictated and confirm what is written above." Dig. 48.10.1.8 and 6. 1; D. 48.10.15 pr and 15.1; Bas. 60.41.1. If the man who wrote a testament also wrote a codicil which nullified the gift, the penalty did not apply. Nor did the law apply to a person under twenty-five years of age. Dig. 48.10.5. Nor did the penalty apply if the testament had not in fact been signed. Dig. 48.10.6 pr. See headnote to title 22 of this book. See C. 6.23.22.

9.23.1. Emperor Antoninus to Vallatius.

Although the jurists have given it as their opinion that for an emancipated son to appoint himself as heir, in writing, at the dictation of his father, is against the Cornelian law, nevertheless, since a son would have been the rightful successor of his father, on intestacy, upon receiving the right to the possession of the property, even though no testament had been made, it will be considered as if your father had performed a duty of love and had made you his heir in his own handwriting.  
Promulgated September 5 (212).

Note.

Where a mother received a benefit under a son's will written by her slave and where a daughter wrote, at the request of her mother, a provision in the latter's will, for her own benefit, the penalty under the law was not incurred. Dig. 48.10.15.4 and 5. This shows that women were not treated as harshly as men.

9.23.2. The same Emperor to Attibius.

If the testator added in his own handwriting to the codicils written by you, that he had left you a legacy or trust, you do not seem to have incurred the penalty of the senate decree. 1. But if he stated in the codicil that he dictated the testament (by which the legacy or trust was given you), you cannot receive such legacy or trust; but the punishment for falsification is forgiven you by imperial grace.  
Promulgated December 13 (213).

9.23.3. Emperor Alexander to Martialis.

It is forbidden by a senate decree and by an edict of the Divine Claudius, for those employed to write a testament, to insert therein any provision of future benefit to

themselves, although the testator dictates such provision, and any person doing so thereby incurs the penalty of the Cornelian law (against falsification). The senate or emperors have seldom granted the request of those who have sought a pardon therefor, even upon the ground of ignorance and readiness to relinquish the bequest.

Promulgated March 16 (223).

9.23.4. The same Emperor to Crescens.

The legacies which a husband with his own hand added to the testament of his wife, will be considered as invalid, and unless pardon has been granted, the punishment of the Cornelian law will be inflicted.

Promulgated February 3 (225).

9.23.5. The same Emperor to Gallicanus, a soldier.

Because you wrote the testament of a fellow-soldier, the addition which you added by his request, that you were to have his slave, will be considered invalid and you cannot claim such legacy. But in accordance with the tenor of my pardon, I remit the penalty of the Cornelian law, which, I think, you incurred rather through mistake than intentionally.

Promulgated June 15 (225).

9.23.6. Emperors Diocletian and Maximian to Aufidius.

If you wrote in your own handwriting, at your master's command, that you granted liberty, the authority of the senate decree does not permit you to have your liberty, though you say that the master did not subscribe his name and expressly recognized your liberty in his letters. But the penalty of falsification is remitted, since you could not have opposed the wish of your master.

Promulgated November 26 (290).