

Book VI.
Title LIV.

As to possession of legacies or trusts given to preserve them and when security should be given.

(Ut in possessionem legatorum etc. servandorum causa mittatur etc.)

Bas. 44.31; D. 36.3.4.

Headnote.

We saw at C. 6.43, the various rights of action which a legatee or beneficiary of a trust had in enforcing his rights. Some remedies, or rather measures of relief, are mentioned in C. 6.47. In Novel 1, appended to C. 6.50, Justinian extended a drastic remedy. On application to a judge, the latter would decree fulfillment within a year. On failure the heir was excluded, except as to his birthright portion to which he might be entitled, his rights passing to other beneficiaries who were required to give security. The order was, generally, first substitutes, then coheirs, then legatees, etc., then slaves, then intestate heirs not expressly disinherited, and then the fisc.

Apart from these rights, a legatee could claim, whether the legacy was immediate or deferred or conditional, that the person liable should give him security for due performance, unless the testator had prohibited this, which he might do, or unless the fisc was the party liable. The security required was by means of a surety. If it was refused, the legatee had the right to be put in possession of the inheritance, but for the purpose of custody only. He could not sell anything, except what was necessary to be dealt with at once. Further, even though security had been given, still if there was six months' delay in payment of the legacy, he could be put in possession of the property of the person liable (C. 6.54.6), and in this case he might use and enjoy the property till he had satisfied his claim from the income. All of these provisions were, particularly under Justinian, applicable also to trusts. Buckland 344, and see the laws of this title.

6.54.1. The Divine Pius to Salvius.

Since the plaintiff asks nothing except that security be given for a trust, the judge, sitting in the matter, should not too closely investigate whether the trust is owing or not, but should merely decide that security should be given.

Without day or consul.

6.54.2. The Divine Marcus to Stratonica.

We have, by experience, found it to be to the public interest that security, required for the purpose of effectuating the wish of testators in connection with legacies and trusts, may be dispensed with if such is the wish of the decedent, and the desire to dispense with it may be indicated by any form of words.¹

Without day or consul.

¹ [Blume] As to waiver of security see law 7 of this title and C. 6.49.6.

6.54.3. Emperors Severus and Antoninus to Symphorus.

If a pledge was given or a sale was made by the heir after you were put into possession for the purpose of preserving a legacy or trust, it is clear that your claim has the preference, since you have a lien under the praetorian law.

Promulgated November 21 (196).

Note.

When the legatee or beneficiary of a trust was put in possession this possession gave the possessor a lien for the claim which he had against the property. Law 5 of this title. C. 8.17.2 and note.

6.54.4. The same to Protagora.

Since you state that Artemidora became heir of the father of your minor wards, and that she was ordered by the testament to turn the property over to said wards upon her death, as a trust, still your minor wards have no right of action against the debtors of the estate. 1. Of course, in order that Artemidora may be required to give security for the trust, if the testator has not forbidden that, summon her before her judge.

Promulgated June 29 (215).

Note.

The remedy given legatees and beneficiaries of a trust did not extend as for as suing persons who were indebted to the estate.

6.54.5. Emperor Alexander to Paulina.

Persons put into possession to protect a trust do not acquire ownership, but a lien. But even after such lien is acquired, you may go before the proper judge, who will take care that the wish of the decedent (as to payment of the trust) is carried out.

Promulgated August 11 (224).

6.54.6. The same to Donatus.

The praetorian edict is definite that a person to whom security for a legacy or trust is not given, is put in possession of the property belonging to the inheritance, or which has fraudulently ceased to belong to it, or, according to a constitution of the divine Antoninus (Caracalla)², my father, into possession of the heirs own property if security for the trust is not given in six months after claim therefore is first made.

Promulgated January 8 (225).

6.54.7. The same Emperor to Proculianus.

You should know that the divine Marcus and the divine Commodus decided that security for a trust and legacy may be ordered to be dispensed with. The security, however, required of a usufructuary that he will use (the property of which he has the usufruct) in good husbandlike manner, cannot be waived in a testament.³

Promulgated February 10 (225).

² [Blume] See headnote, and also D. 36.4.16 and 17. See C. 2.12.3.

³ [Blume] See law 2 of this title.

6.54.8. Emperors Diocletian and Maximian and the Caesars to Julius and Zenodorus.

It is certain that when persons who administer public property and who by reason of the duty of their office should have taken security for a conditional trust left to the city, but have failed to do so, and action should be brought against them or their heirs for the amount for which they have failed to take sufficient security to protect the public.⁴
Subscribed February 23 (294).

⁴ [Blume] See C. 11.31.2.