

Book VI.
Title XIX.

Concerning repudiation of the right of possession of an inheritance.
(De repudiana bonorum possessione.)

Bas. 40.8.

6.19.1. Emperors Diocletian and Maximian and the Caesars to Theodotianus.

An emancipated son who repudiates the right of possession of an inheritance on the pretense of the absence of his council (patronus) cannot thereafter re-open the question.

Without day or consul.

See C. 2.6.4.

Note.

The repudiation of the right of possession doubtless refers to one made before the judge and before the right was granted by the latter. 9 Cujacius 631.

The law mentions only an emancipated son, not one that was not emancipated. The reason lies in the fact that an emancipated son was no longer a member of the family, but was an outsider. He could become heir, or rather quasi-heir, only by applying for and receiving the right of possession. But an unemancipated child did not need to apply for that right, for he was a self-successor, an heir by operation of law, and the repudiation on the part of such child is dealt with in title 31 of this book. If he repudiated, he repudiated the “inheritance,” instead of the right of possession of the inheritance.

6.19.2. The same Emperors and the Caesars to Theodorus.

A father is not permitted, in fraud of his son, to decline the right of possession of an inheritance which the latter has under the law.

Subscribed at Nicomedia November 26 (294).

Note.

The principle here mentioned applied also to a case where a child inherited under the civil law; that is to say, where he was entitled to an “inheritance” as opposed to the right of possession of an inheritance. Thus it is said in C. 6.30.11, that a father cannot deprive a child of the hope of acquiring an inheritance. This rescript was written at a time when a father acquired most of the property of an unemancipated child for his own benefit - a rule materially changed before and in Justinian’s time. See C. 6.61. So in C. 6. 42.26 it is stated that a father’s refusal to accept a trust left to a child, does not bind the latter.