

Book VI.  
Title XXXI.

Concerning repudiating and refraining from an inheritance.  
(De repudianda vel abstinenda hereditate.)

Bas. 35.14.11.

6.31.1. Emperor Antoninus to Mucianus.

If it appears that you abstained from your father's inheritance and it has been clearly proven that you lived in the house not as heir but as a tenant or watchman, or for any other such good reason, my procurator will forbid that you be sued as heir of your father.

Promulgated July 15 (214).

Note.

At C. 6.19, the subject of repudiation of the right to the possession of an inheritance is considered; in other words, the repudiation by a praetorian heir - quasi heir. The present title deals with the repudiation on the part of an heir under the civil law, who only was considered under the Roman law as a technical "heir." The general subject of the previous title is continued in the present one. Law 1 of this title merely states that the conduct there mentioned should not be construed as an intermeddling with the inheritance.

6.31.2. The same Emperor to Severus.

If you abstained from your father's inheritance, you cannot, on account of the fact that you purchased the farms from the creditors - if you did so in good faith - be legally sued by subsequent creditors who loaned money to your father on the same pledges (of the farms).

Promulgated June 27 (215).

Note.

Creditors who had a prior lien took possession of property of an inheritance and sold it. A son of the decedent bought it. Creditors inferior in right to the creditors who sold, claimed that the son by making such purchase intermeddled in the inheritance, accepted it, and was therefore liable for its debts. The rescript says that such conduct did not amount to an acceptance, unless the purchase was merely a subterfuge.

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

A self-successor who claimed a testament to be unjust, but who afterwards declared that he would no longer claim his father's inheritance, and did so, not for the purpose of making a gift but with the intention of making a compromise, cannot be defeated by setting such agreement up as a defense, since he could not reject an inheritance once acquired, and since a compromise in connection with which nothing is given, received or promised, is invalid.

Without day (294).

Note.

In this case a son, a self-successor, by the very act of claiming a testament to be undutiful, unjust, accepted the inheritance. His subsequent compromise, when he received nothing whatever thereunder was invalid. C. 2.3.38. In fact, as stated in the next law, an heir, by once accepting an inheritance, could not subsequently repudiate it, although, of course, he could make a compromise, if supported by a valid consideration.

6.31.4. The same Emperors and the Caesars to Modestinus, a soldier.

Just as a person, more than twenty-five years of age, who repudiates an inheritance before accepting it, cannot thereafter claim it, so a renunciation of an inheritance once acquired, is invalid, but he retains the right he already had, and the rule that an acknowledgment is equivalent to a judgment<sup>1</sup>, does not apply to one who repudiates an inheritance, but only to one who acknowledges that a sum of money is due. Subscribed at Sirmium December 28 (293).

6.31.5. The same Emperors and the Caesars to Claudiana.

The repudiation by minors under the age of puberty, without consent of their guardian, of an inheritance to which they are entitled, does not injure them.<sup>2</sup> Subscribed at Sirmium December 30 (293).

6.31.6. Emperor Justinian to Johannes, Praetorian Prefect.

Whenever any self-successor refused a father's inheritance, but afterwards wanted to accept it, he had in all cases been permitted to do this as long as the paternal property remained in the same situation, and he could accept it even after the lapse of many years. Amending this law, we ordain that whenever the property has already been sold, no further right of acceptance shall be left him. This, too, was the rule in antiquity. 1. But if the property has not been alienated, and he is over twenty-five years of age, and he no longer has the right of restitution to his former rights, he shall have the privilege to accept only for three years. 2. If he is a minor, however, or within the age when restitution of rights may be granted him, then he has three years after the end of four years - which are granted as the judicial period for restitution<sup>3</sup> - in which he may accept an inheritance, if the property remains in the same situation, and recall his renunciation. 3. He has no right whatever to the paternal inheritance after this time has elapsed, unless the property, perchance, was sold while he was still a minor, for he will not, in that event, be denied the right, when he seeks restitution of his rights, to accept the inheritance and recover the property upon paying his father's creditors.<sup>4</sup> Given at Constantinople October 18 (532).

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<sup>1</sup> [Blume] D. 42.2.1. The present law refers mainly to an heir who was not self-successor, for the latter had the right to repent after he had refused the inheritance, and had still the right to accept within a period of three years, provided that the property had not been sold. Law 6 of this title.

<sup>2</sup> [Blume] See C. 2.38.2; C. 2.39.

<sup>3</sup> [Blume] C. 2.52.7.

<sup>4</sup> [Blume] See comment on this law at note C. 6.30.3. See 1 Vangerow 299.