Book VI.
Title LII.

Concerning those who transmit (to their heirs) inheritance before wills are opened.
(De his qui ante apertas tabulas hereditates transmittunt.)

Bas. 35.14.117.

6.52.1. Emperors Theodosius and Valentinian to Hermisda, Praetorian Prefect.

We order by this ordinance that hereafter sons or daughters, grandsons or granddaughters, great-grandsons or great-granddaughters, appointed heirs by the father or mother, grandfather or grandmother, great-grandfather or great-grandmother, though they are not substituted for each other, and whether they are appointed sole heirs or jointly with outsiders, are, before the will of the decedent is opened an whether they know that they are appointed heirs or not, capable of transmitting the portion of the inheritance left them to their offspring of either sex and of any degree, and if such persons do not refuse the inheritance, they may, without hindrance claim it as owing them. This shall apply, too, in reference to legacies or trusts bequeathed by a father, mother, grandfather or grandmother, great-grandfather or great-grandmother. For it is highly improper that grandsons or granddaughters, great-grandsons or great-granddaughters should, by fortuitous circumstances or accidents to which humanity is subject, be defrauded out of their ancestral inheritance, and that others, contrary to the ancestral desire and wish, should enjoy the benefit of an unhoped for legacy or inheritance. For those whose interests are justly consulted, should have a solace for their sorrow.
Given April 3 (450).

Note.

A comment on this law will be found at note to C. 6.30.3, dealing with the subject of transmissal of rights by an heir who died before entering upon an inheritance. The law was particularly aimed at lapses dealt with in the preceding title, and provides in substance that if issue were instituted and died before the will was opened, their rights, including inheritances, legacies and trusts, passed to their offspring, so that there was no lapse. Buckland 318. The transmissal of rights was only to offspring, so that this law probably did not relate to self-successors who inherited in any event without accepting. Note to C. 6.30.3. Before the enactment of this law, the gifts here mentioned would have ordinarily lapsed, if the donee thereof died before the opening of the will whereby they were granted. 9 Donellus 346; 9 Cujacius 829. That rule was changed in the cases contemplated herein. Under C. 6.51.5, a later enactment, legacies and trusts did not generally lapse merely by reason of the death of the donee under a will before the opening thereof. A further extension of the intent of the present law - to prevent lapses - is found in C. 6.30.19.