Book X.
Title XXXV.

When and to whom belongs a fourth part of the property of decurions and concerning the manner of its distribution.
(Quando et quibus debetur quarta pars ex bonis decurionum et de modo distributionis eorum.)

10.35.1. Emperors Theodosius and Valentinian to Florentius, Praetorian Prefect.

If the successor (heir) to a curial is not a member of the curia, we order that the fourth part of the property which he receives, whether as heir to all, or to part, or as possessor of the inheritance, shall with perfect right be claimed by the curia.
Given at Constantinople June 9 (428).

Note.

The instant law was evidently originally a part of the law shown in C. 10.34.2. The distinction between an heir, strictly so-called, and possessor of an inheritance, is pointed out in headnote to C. 6.9.

The law was but the beginning of legislation requiring certain property to be left to the curia, either directly to the curia, or indirectly through curial sons or sons-in-law. Justinian later provided that three-fourths of the property of a deceased curial should be left within the curia, either directly or indirectly as above mentioned. Novels 38, 87 and 101.

10.35.2. The same Emperors to Apollanius, Praetorian Prefect.

We remember that by the terms of a recent imperial law, a fourth portion of the property of deceased curials, falling by any last will or on intestacy to anyone except sons of curials, was assigned to the corporation of the curia. But many, as though seeking the opportunity of destroying the whole patrimony, by claiming a portion of each article, would so divide the whole, that, while desiring to injure the sharers of the property, also endanger their own rights. 1. Curbing this too great a license by this providential order, we deny the right even to the curials of arbitrarily taking possession of the property of the deceased. But the heir who receives the inheritance either on intestacy, or by a last testament, directly or as beneficiary of a trust, shall cause the whole patrimony left to be divided into four parts, subjecting all of it to lot, and the choice, by lot, shall be left to the curia for its fourth part, or to the heir or beneficiary of a universal trust, the three-fourths part. 1a. Thus, forsooth, the aforesaid successors and the curia will be freed from the disadvantage of a common dominion of the property. For it is a natural fault, that whatever is possessed in common is neglected, the person who does not possess the whole considering that he has nothing, and while he envies another his portion permits also his own to go to waste. 2. But when the fourth part of the property of the deceased must be turned over to the curia, the immovable property, which cannot easily be concealed, and the inspection of which hurts no one, may be appraised and divided in sight of the curials, but we do not permit the movable things, or self-moving, or documents (instrumenta), or anything of that nature, to be brought out in the open and exposed, but we direct that the successors, when they have sworn, after having carefully examined the property among themselves, what the property is and its value, they shall be

believed. For what is so harsh and unfair as, by exposing it, to reveal to the public the family poverty, or, by ostentation, lay open its riches to envy? 3. As to collection of accounts due, if the successors do not want to pay the part owing to the curia, then the duebills shall, under reliance on the oath (of the heirs), be produced, and each may demand from the debtors the proper proportion due; and on the other hand, if the deceased left any debts, both the successors as well as the curia will be compelled to pay the proper proportion. 4. If the oft mentioned successors deem best to decline to take an oath, then, as in the case of the immovable property, opportunity shall be given the curials of carefully examining all the various things, and all the property of the deceased shall be publicly exposed and the appraisal or division thereof shall be made in the presence of the curials. 5. In all cases, moreover, when the fourth part falls to the curia, all compromises made shall be valid and remain unimpaired. 6. As in the case of sons, grandsons and great-grandsons or curials, who, under our decree receive all of the property, we also order that a daughter, granddaughter or great-granddaughter married to a chief decurion (principali) of the same city where the father, grandfather or great-grandfather was born, shall be entitled to the property undiminished[1] which they receive by intestacy or by last will and testament (from such ancestor). 7. If, after the decease of the ancestor, they are found to be unmarried or widows, then there shall be a delay - in the case of young females till after they arrive at the age of puberty, in the case of the others who have passed the age of puberty, and in the case of widows, for a period of only three years after the death of the ancestor, during which the title to a fourth portion shall be in suspense, so that the female who, in the meantime, marries a curial of the same city, shall receive permanent dominion thereof, but if she, within that time, has married a stranger, or is at the expiration of the time not married at all, the aforementioned portion of the property, together with the income for three years, both from the urban as well as rural estate, shall become the property of the curia; but the rule as to the oath in reference to quantity and appraisal of movable things, and concerning bringing and defending actions, shall govern as in case of non curials. 8. So if the mother of a deceased or a grandmother shall at the time of the death of a son or grandson be found in marriage to a curial of the same city, their share shall not be diminished by a fourth. 9. We even free from the loss of the aforesaid portion an outside heir, not connected (to the decedent) by relationship, but who is subject to the curia of the same city.
Given at Constantinople March 8 (413).
C. Th. 22.2.

10.35.3. Emperor Justinian to Mena, Praetorian Prefect.

If anyone subject to curial duties leaves one or more sons or daughters, but leaves to the son or sons a small portion of his property, sufficient, however, to prevent them from raising the question of an unjust testament, leaving to others the main portion, so that in the division of the inheritance a small portion falls to the son or sons, who are curials - though the whole curial burdens devolves upon the males, whether sons, grandsons or great-grandsons, they being bound to their condition - we ordain that such injustice shall be remedied, and the testator shall be unable to leave to the males, whether one or more, a portion less than a fourth, which cannot be decreased by intermingling

[1] [Blume] Without the curia receiving anything.

sisters, so that they may participate in the curia and sustain it, not only with their bodies, but also with property. 1. In addition to this, we ordain that when any curial has been taken from the light of day, leaving several daughters, and one of them has married a curial (curiali) of the same city, but the others who have not contracted such relationship, or strangers are made heirs to the remainder of the property, the provisions of the Theodosian constitution written to Apollinius do not seem to give the curia its full share. But the curia shall (in such case) at all events, receive a fourth part of the inheritance, either by assigning it to the daughter who has married a curial (of the same city), or by taking it from the other heirs, exempting, however, the daughter who married a curial (of the same city) from giving any portion of such fourth, since, so far as she is concerned, the curia receives satisfaction through the husband; this shall be the rule not only when a curial testator passes away leaving a last will, but also when he dies intestate.[2] 2. And if a decedent has left less than he should, or nothing at all to a curial-son, or daughter who has married a decurion of the same city, the portion due must be made up and given to him out of the property of the curial-father; nor shall the curia be prejudice (and still receive a fourth), if, according to the aforesaid law, a son, grandson, great-grandson, father, grandfather or great-grandfather shall have been left (heirs) to a deceased curial, but shall be, by reason of any position of dignity or for any other reason, free from curial duties, and the Theodosian constitution is modified in this respect. 3. And we order generally, that sons, or daughters married to a curial, shall in any event receive no less than a fourth part, or if there are no sons or daughters, but other heirs, the curia itself, shall, according to former laws, receive a fourth of the property of a deceased curial as a solace.
Given at Constantinople June 1 (528).

10.35.4. The same Emperor.

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[2] [Blume] According to this provision, if a curial left only daughters, and one of the daughters had married a curial of the same city, then the rule was as follows: One-fourth must be left in any event for the benefit of the curia. This might be done by leaving that much to the daughter who had married a curial. If that much had no been left her, then the curia received the difference up to a fourth, this fourth to be collected from the inheritance outside of that left the daughter just mentioned. [Blume included this section in his list of "difficult points" in Book X and added "see explanation," that is, the foregoing footnote.]