

Book VI.
Title XXX.

Concerning the right of deliberating and of entering on or acquiring an inheritance.
(De jure deliberandi et de adeunda vel adquirenda hereditate.)

Bas. 35.14.91; D. 28.8.29.

Headnote.

By the ancient law every heir who actually became such, that is to say, who entered upon the inheritance, was ordinarily bound to pay the debts of the estate to the same extent as though he had contracted them himself, whether the estate was solvent or not, in the same proportion, however, only in which he inherited the property.¹ C. 2.3.26; C. 6.30.10; C. 3.36.6 and citations; C. 6.30.22. If he had a claim, he could collect the proper proportions from them. C. 2.18.7. Such heir might, however, make an agreement with the creditors, before entering, that they should take less than the debts, and such agreement was valid. In fact a majority of the creditors could bind the minority by such agreement. D. 2.14.7.17; D. 2.14.8-10; D. 17.1.22. In the absence of such agreement, however, liability was, upon entering, complete. A soldier was exempt from this rule, and Justinian extended this exemption to one who should file an inventory as provided in law 22 of this title.

Hence it was important, until Justinian introduced the benefit which such inventory gave, that an heir should know whether he should enter upon the inheritance or not. No one was compelled to accept except a slave who was made a necessary heir as heretofore shown (and see C. 3.28.36.2a). That was true even with children. They all had the right to decline the inheritance. Excepting self-successors (and they, too, if pressed), all heirs were required to declare or otherwise show their intention to accept if they wanted to become actual heirs; that is to say, benefit by the inheritance, there being some difference in that respect for the praetorian heir, and heirs under a will or intestate heirs under the statutory law. Headnote C. 6.9 (8). But aside from the fact that a will might set a time for acceptance, heirs under a will or intestate successors under the statute might delay as they would, with resulting inconvenience to creditors, substitutes and legatees. But a time might be set either to accept or refuse, which could not be less than one hundred days, nor more than nine months, except that it could be a year by imperial order. See Radin 425. This time so given was called the time for deliberation. C. 6.30.22.13. A special time of six months was fixed in certain cases, to enable parties with the right to do so to bring an action to have a testament set aside as unjust. C. 3.28.36.2a. The time for deliberation might be set either upon application by the heir or by another interested party. If at the end of the time the heir had not declared himself, this was under, the ancient law, refusal, but under the Justinian law acceptance. C. 6.30.22.14; C. 3.28.36.2a; see C. 6.30.9; Mackeldy §742; Buckland 312. For acceptance on behalf of an insane person, see C. 5.70.7, and note.

¹ In the margin next to this sentence Blume wrote: "Greek law same," followed by a reference that seems to be "Weiss, G.P.R. 203-9, see p. 208."

6.30.1. Emperor Antoninus to Titia.

If your father died when you were emancipated, and you did not claim the right to the possession of his inheritance, you needlessly fear that you are liable for the obligations against it, because you, without any right, manumitted his slave and because you sold some property and slaves to defray funeral expenses.

Promulgated July (214).

Note.

In the present rescript, a father died, and his emancipated son meddled with the inheritance to the extent of selling some slaves to defray funeral expenses. He evidently had not been appointed as heir under a will. Hence he was simply a praetorian heir; he could accept the inheritance only by applying for the right of possession thereof, which he had not done. Hence he did not become actual heir by meddling with the estate, and he was not, accordingly, liable to pay the debts of the estate. By Novel 118, an emancipated son, however, was placed in the same position as one not emancipated.

6.30.2. Emperor Alexander to Florentinus, a soldier.

Since you state that you paid the paternal debt in proportion to your inheritance, there is no doubt that you manifested your intention to accept the inheritance from the deceased.

Promulgated February 8 (223).

Note.

In the present rescript the son was held to have accepted the inheritance by meddling with it to the extent of paying a portion of its debts. This was held to be an acceptance of the inheritance. He evidently was an unemancipated son, who, as pointed out in the note to the previous rescript, could accept the inheritance by merely meddling with it.

6.30.3. Emperor Gordian to Florentinus, a soldier.

If the son of your brother was, at the time of the latter's death, in his father's power, and he was appointed as heir for all the property, his appointment as heir took effect (upon such death) even before the will was opened, and if he was appointed as heir to only part of the property, he immediately (upon such death) became his father's heir of the body (*suus*) and you did not, because he died within a few days after your brother's death, on that account, become your brother's heir. 1. But if he was *sui juris* (during his father's life) and he died before accepting the inheritance, and you were your brother's legal heir, or you claimed the right of possession of the inheritance within the time fixed in the edict, the property which the decedent had, or which is wrongly claimed by another, will be ordered to be turned over to you by the care of the president.

Promulgated August 18 (241).

Note.

Under the rule, as it existed up to the time that Justinian placed emancipated and unemancipated children on nearly the same footing, such emancipated child could not acquire any interest in an inheritance until he asked for the right of possession, and hence if he did not ask for that right and died, the inheritance belonged to the party to whom it would have belonged if the emancipated son had never lived.

But self successors, including unemancipated sons, stood in a different situation. They became heirs immediately upon the death of the father (grandfather etc.), either upon intestacy or under a will (in the absence of disinheritance), and if there was a will, whether they knew of its existence or not, and whether it was opened or not, and without any acceptance of or entrance on the inheritance. They succeeded through ignorant of their title. C. 6.55.8; Inst. 3.1.3; D. 28.4.1.7; D. 38.16.14. Even if they refused an inheritance, they had, under the ancient law, the right to repent, before the property of the estate was sold, and accept. D. 28.8.8. This right, however, was limited except, in the case of minors, to three years, after refusal. C. 6.31.6. Minors could get restitution of rights. C. 2.38 and 39. It follows, of course, that even though such heirs had not accepted, either formally or by intermeddling with the inheritance, and they died, the rights which they had in the inheritance were transmitted to their heirs, testate or intestate. These are the principles enunciated in the present rescript.

There was some limitation. ²While such heirs were not compelled to say whether they would accept or not, if they were not pressed, if pressed, they would then have to declare whether they would accept or not. They might, it seems, then, as other heirs, be given time for deliberation. D. 28.8.8. If they refused, they could, as already stated, repent within the period of three years, unless the property of the inheritance was sold in the meantime.

Other heirs, under a will or on intestacy, could not, upon their death, transmit their rights in an inheritance, unless they had accepted it. They were not actual heirs before that - they were only entitled to the inheritance. C. 6.9.4; C. 6.30.7; C. 6.51.5. This was true with some limitations:

1. If an inheritance devolved on an infant - that is to say, if it was entitled to it (delata) - and the father in whose power it was did not enter upon the inheritance, then, if the child died in infancy, the father could enter upon it for himself. That was true also even if the infant was sui juris. C. 6.30.18.

2. If a descendant was instituted as heir by the testament of an ascendant and died before the opening of the testament, then the right to accept the inheritance vested in his descendants (but not in other heirs). C. 6.52.1. While that law is broad enough to embrace in its provisions self-successors, it has been construed as not applying to them. 9 Cujacius 830. This is doubtless correct, as otherwise it would to some extent conflict with the present law, (C. 6.30.3).

3. The provisions of the foregoing law were broadened by the provisions of C. 6.30.19. Under it, if an heir, not a self-successor, died within the first year after he knew of the devolution of the inheritance to him, or before the expiration of the time for deliberation (whether to accept or not) for which he prayed and which was granted to him, without having declared his determination, then his heirs could still enter into the inheritance during the remainder of the year, or of the deliberation term.

4. In a few cases, where, for certain reasons, an heir could not enter within the time required by law, he was granted restitution of his rights, and if he died before the expiration of the time during which he could get restitution, he transmitted the inheritance

² Blume penciled in at the beginning of this sentence a partially legible phrase appearing to be "If there cretio."

to his heirs. Mackeldy §746. This was true, for instance, if the heir could not enter because of his absence on state-affairs. C. 2.51.1.

6.30.4. Emperor Decius to Athenaides.

It has often been stated in rescripts that the customary form of law has been complied with, when, in case an inheritance falls to a son, under paternal power, the father acts as heir, with the consent of the son.
Promulgated February 20 (250).

Note.

Where an unemancipated son was called to an inheritance, the consent of both the parent with paternal power and the son was originally necessary for consent or refusal. The parent could not refuse his consent in fraud of his son. C. 6.19.2; C. 6.30.11; C. 6.42.26. And the son, under age, was entitled to restitution of his rights against either acceptance or refusal to accept. The method to be pursued in connection with such restitution, where the minor had accepted, is set out in Novel 119, c. 6, appended to C. 6.61.8. Up to the time of Constantine (C. 6.60.1), the property that was left to a son under power became the absolute property of the father, with the exception of military property, and in some cases of quasi-special-military property. Headnote to C. 6.60. But under Justinian, the father received only the usufruct, and that emperor changed the rule as to the necessity of the consent of both to acceptance or refusal. If either refused, the other might accept, with all the burdens, and where the son refused, the father would, if he accepted, receive not only the usufruct but also the fee of the property, and so if the father refused, and the son accepted, the father lost the usufruct. What applied to the son, applied also to the daughter. Mackeldy §736, and see especially C. 6.61.8.

Where the child was but an infant, the father could accept without the infant's consent, and if it died before reaching the age of seven years, and before the father had declared his acceptance or refusal, the latter might accept for his benefit. C. 6.30.18 and note; Mackeldy, supra. Where a minor had no father, acceptance might be made, as stated in the next law and in note C. 6.30.18, by himself.

6.30.5. Emperors Valerian and Gallien to Paulus.

A minor under the age of puberty could, by acting as heir with the consent of his guardian, acquire an inheritance; but his own action and consent was necessary³, and his guardian, by acting for him, without his knowledge, could not acquire the inheritance for him.

Promulgated June 16 (257).

6.30.6. Emperors Diocletian and Maximian to Philippa.

If your grandmother appointed your father as heir to two-twelfths, the latter could become her heir by his mere intention to accept (made manifest). If he, therefore, in his testament, ordered the same twelfths to belong to you, you can sue for the right to the two-twelfths before the rector of the province.

Promulgated July 17 (290).

³ [Blume] See C. 7.32.3 note and law 18 h.t. note; but see Mackeldy §548 note 10.

Note.

The inheritance might be accepted in the most informal manner. Inst. 2.19.7. In this case his bequest thereof was construed as an acceptance.

6.30.7. The same Emperors and the Caesars to Eusebius.

Since you say that your sister died before she knew whether any inheritance had been left her by her brother, it is manifest and evident, that before she acted as heir or received the right of possession of the inheritance, she could not transmit such inheritance from the brother to her heirs.

Promulgated at Thirallis May 1 (293).

Note.

In this case the heir was not a self-successor. The inheritance therefore was required to be accepted before it could be transmitted by the heir. Note to law 3 of this title. Further, no one could accept until he or she had knowledge of the fact of heirship. Note to law 19 of this title.

6.30.8. The same Emperors and the Caesars to Claudius.

Although self-successors did not immediately take possession of the paternal property, still they, not knowing that the property was left them, cannot be excluded by the lapse of a long time (ten or twenty years) from rightly claiming it.

Subscribed at Sirmium December 16 (293).

Note.

A self-successor was not required to accept or reject an inheritance, if not pressed. He obtained it by operation of law. It was his without meddling with the property. Note to law 3 of this title. Now in order that a man could get title by adverse possession for a period of ten or twenty years (C. 7.33.12), he was required to be in possession of the property in good faith with color of title. Headnote C. 7.33. A person who claimed it as heir, when he was not an heir, or a mere possessor, had not color of title, and could not, therefore, acquire the right to the property by adverse possession for the period mentioned. C. 7.34.3. He might, however, acquire good title by adverse possession for thirty years. C. 7.39.3; Donellus 358. And further, if he had possession in good faith for ten or twenty years (depending on whether he lived in the same as, or a different province from, the real owner), and had good color of title - if for instance he claimed it under a purchase - then the adverse possession of ten and twenty years applied, and the present law must be understood in that light. C. 7.34.3.

6.30.9. The same Emperors and the Caesars to Plato.

If the right of succession arises by reason of a testament of your former curator, legally made, or by reason of the statutory right on intestacy, the heirs who did not repudiate the inheritance, may accept it. The rector of the province, therefore, if called upon, should, if such persons are not yet obligated by having accepted the inheritance, inquire whether they are heirs, and if they ask time for deliberation to accept, will grant a reasonable time.

Subscribed at Sirmium December 17 (293).

Note.

While an heir appointed under a will, or an heir on intestacy under the civil law could not get any benefit from an inheritance until after they accepted it, they might delay acceptance unless pressed, and if pressed they would be given time for deliberation as mentioned in note to law 1 of this title.

6.30.10. The same to Sabina.

If you, more than twenty-five years old, intermeddled with your father's property, neither the poverty of your father exempts you, nor the force used by your brother in taking your portion of the testament away from you, can protect you against the creditors who sue you under the civil law for the debts of the estate in the proportion in which you inherit the property.

Subscribed December 17 (294).

Note.

The son in this case was evidently an heir of the father under the civil law - that is to say, was not emancipated. Hence by intermeddling with the inheritance, he laid himself liable for the debts of the inheritance, but only in the proportion in which he inherited the property. Note to law 1 of this title. See C. 2.3.26; C. 3.36.6; C. 4.12.1; C. 4.16.1; C. 8.35.1.

6.30.11. The same to Philumena.

Your father, in whose power you were, could not, against your will, deprive you of the hope of acquiring an inheritance left you, nor give the slaves, belonging to the inheritance, liberty by manumission.⁴

Subscribed at Sirmium February 8 (294).

6.30.12. The same Emperors and the Caesars to Antonius.

There is no doubt that a minor over the age of puberty who claims the right of possession of property left him as an inheritance, acts as an heir.

Subscribed November 29 (294).

6.30.13. The same Emperors and the Caesars to Archepolides.

The law is certain that a self-successor may obtain his paternal inheritance without claiming the right of possession thereof.⁵

Subscribed at Nicomedia December 11 (294).

6.30.14. The same Emperors and the Caesars to Flavia.

If your brother succeeded to the property of his sister, either under the civil or the praetorian law, he may, having become her heir, sue the possessors thereof, though he is not (himself) shown to have had possession thereof.

Subscribed and Given at Nicomedia December 14 (294).

⁴ [Blume] See C. 6.19.2 and note.

⁵ [Blume] Headnote C. 6.9(5).

6.30.15. Emperor Constantius to Leontius, Count of the Orient.

There is no doubt that if a son under paternal power becomes his own master (*sui juris*) before he accepted an inheritance, by order of his father, he may thereafter accept it in his discretion for his own benefit.

Given April 6 (349).

C. Th. 8.18.5.

Note.

If a son was made *sui juris* - his own master - by emancipation, for example, and the inheritance to which he was entitled had not been previously accepted, he might do so thereafter. This acceptance did not relate back to the time when he might have accepted it, when it would have been, under the older law, acquired for the benefit of his father, if living. But it took effect only as of the time of the actual acceptance and accrued to his own benefit.

6.30.16. Emperors Arcadius and Honorius to Ennodius.

No one is compelled to buy, accept as a gift, or enter on an insolvent inheritance.⁶
Given December 26 (395).

C. Th. 12.1.149.

6.30. 17. The same Emperors and Theodosius to Anthemius, Praetorian Prefect.

We order that the technical solemnity of the formal declaration of accepting an inheritance shall be entirely abolished.

Given at Constantinople March 17 (407).

C. Th. 8.18.8.1.

Note.

The formal declaration for accepting an inheritance, here mentioned, was called *cretio*. It was made in certain traditional form of words, usually had witnesses, and was required to be in Latin. It gradually passed out of use. In C. 6.9.9, which also seems to apply to acceptance of an inheritance under the civil law, it was said that all sophistry of empty words in connection with accepting an inheritance was abolished, and "*cretio*" in its technical meaning had doubtless been out of use long before the enactment of that law which was in 339 A.D.

6.30.18. Emperors Theodosius and Valentinian to the Senate.

If to an infant, that is, to a child, less than seven years old, in the power of its father, grandfather or great-grandfather, is left an inheritance, pursuant to a will or an intestacy, by its mother or its maternal relatives, or by any other person, its parent, under whose power it is, will be permitted, to accept the inheritance in its name or to claim the right of possession of the inheritance. 1. But if the parent neglects to do so, and the infant dies within the age mentioned, the surviving parent shall be entitled, by virtue of his paternal right, to all the property inherited by the infant in any manner, as if already full acquired for the infant. 2. If the parent does not, however, survive, and after a guardian was or shall be appointed for the infant after his demise, such guardian may, during the infancy of the ward, accept the inheritance and claim the right of possession in its name

⁶ [Blume] Slaves as necessary heirs excepted. Title 27 of this book.

of all property inherited by the minor either during the life of the father or after the latter's death, and thus acquire such inheritance for the benefit of the infant. 3. But if there should be no guardian, or if there is and he neglects this, then, if the infant dies during infancy, all inheritances to which it was entitled but have not been accepted, are in the same position as if they had not been left to such infant at all, and shall belong to those persons who would have been entitled thereto if they had not been left to such infant. The same provisions as to an infant in the power of the parents shall apply if the infant is, for any reason, found to be its own master (*sui juris*). 4. If the minor has passed the age of seven, and dies subsequent to the death of the father and before reaching the age of puberty, the provisions of the ancient law shall be applied, leaving no doubt that such minor may, after his seventh year, accept an inheritance or claim the right of possession thereof with the consent of his parent, if under paternal power, or with the consent of his guardian, if *sui juris*, and if he have no guardian, he may go before the praetor and receive such right by the latter's decree.
Given at Ravenna November 6 (426).

Note.

See C. 7.32.3 note. Under this law, the inheritance granted to an infant, a minor child of a person other than the estate-leaver, was transmitted, or rather the right of acceptance thereof was granted to its father, if it died during infancy - that is, before it was seven years old. This is already mentioned in note to law 3 of this title.

If it had no father, the inheritance to which it was entitled was required to be accepted through a guardian; if that was not done, and it died, the inheritance was treated as though it never lived. In Nov. 158, appended to C. 6.30.19, the question was raised, whether the rule here mentioned was true, if the child died within a year after it became entitled to the inheritance. It was decided that it did not, but that it applied only if the infant died after such year and the inheritance had not then been accepted. Thus the rule was construed *pari passu* with C. 3.30.19.

If the minor was over the age of seven years, the former law applied, whether its father was living or not. 9 Cujacius 721; 9 Donellus 178. If the father lived, the inheritance could be accepted by the child pursuant to his authority. D. 29.2.8; D. 6.30.4. If the father did not live, it could be accepted by the child in conjunction with the authority of a guardian. C. 6.30.5. If there was no father or guardian, the praetor could enter a decree accepting the inheritance. But if not accepted at all, and the child died, the inheritance was not transmitted to its heirs but went to the legal heirs; provided, however, that the death occurred a year or more after it became entitled to the inheritance, as provided in the next law.

6.30.19. Emperor Justinian to Demosthenes, Praetorian Prefect.

Since we find in the ancient laws and particularly in the "Questions" of Julius Paulus, that unemancipated sons, still deliberating as to whether to accept the paternal inheritance, can (if they die during that time) transmit such inheritance, together with all the special rights belonging to such persons, to their posterity, we have thought it wise to extend this right in connection with the time for deliberation to all heirs whether cognates or outsiders. 1. We, therefore, ordain that any one, called to an inheritance by a testament or on intestacy, has taken time to deliberate, or has not yet done so, but has not renounced his right of succession, so that by reason thereof he appears to have deliberated, he transmits,

though he has done nothing which constitutes acceptance of the inheritance or acting as an heir, his right to choose (whether to enter or not) to his successors, provided that this right of transmission shall be limited to one year. 2. And if a person who knows that an inheritance belongs to him, either on intestacy or by virtue of a testament, dies within the year, without asking time for deliberation, this right to choose shall, for the remainder of the year, belong to his successors. 3. But if, after the testament is opened, or upon otherwise learning that he has been called as an heir, either on intestacy or by virtue of a will, he lets the year slip by without doing anything toward accepting or renouncing the inheritance, he and his successors, shall be excluded from such benefit. 4. If he died, however, within such year, he leaves the right to the remaining time for accepting the inheritance to his successors, but after the end of the time, no right to accept it will be left to his heirs.

Recited and Given October 30 (529).

Note.

A comment on this law, dealing with the right of transmissal of an inheritance by one (not a self-successor) who died before acceptance, is found at note to law 3 of this title. See also Nov. 158, appended hereto, and note. The time here mentioned commenced to run after the testament was opened, or after the heir had knowledge of the fact that he was entitled to the inheritance; for an heir such as here contemplated, could not transmit any right of which he had no knowledge; for the subject dealt with is the time for deliberation as to whether to accept the inheritance or not, and not one could deliberate on something he knew nothing about. 9 Donellus 355, 379; 9 Cujacius 831. See law 7 of this title. In some cases knowledge was not essential. See C. 6.52.1. In case such heir had no knowledge of his right to an inheritance, and he died without accepting, his heirs took nothing. This, of course, did not apply to self-successors. See law 3 of this title and note.

6.30.20. The same Emperor to Johannes, Praetorian Prefect.

Someone, in his testament, appointed an heir for certain twelfths⁷ and in another part of the will for other twelfths, or for some other definite proportion, and in still another place for another portion of the inheritance or for certain twelfths, but the appointed heir, accepting one or two of these provisions, deemed it best to refuse others, to the number or one, two or more. It was disputed among the ancients whether he could do so. 1. In like manner, there was also a dispute as to a case where the testator appointed a son below the age of puberty for one portion, and an outsider for another portion, also appointing such outsider as substitute for the minor. After the testator died, and the minor became his father's heir, and the outsider entered on the inheritance (of the portion left to him in the first place), the minor, still an infant, was taken from the light of day and the substitution took place. When the substitute refused to accept this portion, it was doubted whether he could repudiate the pupillary substitution after becoming an heir

⁷ [Blume] *Uncia* - it was the usual way for the Romans to divide their inheritance into twelfths, though it might be divided into other parts. Inst. 2.14.5. An heir could not accept part and reject part of what was left him. To the same effect is C. 6.51.10b. But where an inheritance was left and also a legacy, the latter might be accepted and the former refused. C. 6.37.12.

under the principal provisions of the testament. 2. We think that we should settle the doubt on both of these points at the same time, and we direct that in connection with the original appointment, as well as with pupillary substitution, all must be accepted or all repudiated, and an heir accepting a particular portion must accept all portions given him including one under a pupillary substitution.

Given at Constantinople April 30 (531).

6.30.21. The same Emperor to Johannes, Praetorian Prefect.

A testator appointed as his heir a person who was sued in court concerning his status by another who claimed to own such heir as his slave. The person so claiming to be such owner ordered such heir to accept the inheritance, so that he (such claimant) might acquire the inheritance thru him⁸, who, however, disdained to obey such claimant as his master. Doubt arose among the ancients whether any punishment for such insolence might be imposed. 1. The ancients were divided in their opinions. We think we should settle the dispute by making a distinction. 2. If the appointment (as heir) is made thus: "I appoint a certain slave of his (naming him) as heir," it is plain that the appointment is made for the benefit of the master, and in such case the appointee must be compelled by a competent judge to accept and acquire the inheritance, but he shall suffer no loss by doing so, if he is thereafter pronounced to be free; he has no right to actions as heir, nor shall any be brought against him as such, and he shall in no way be prejudiced thereby. But all gain shall accrue to and all loss shall be suffered by the person attempting to drag him into slavery. 3. If he was appointed as such heir, however, as though he were free, and no mention is made of a master or a slave, he shall not be compelled to accept the inheritance, and the right to defend his liberty in court shall not be denied him. The inheritance must take its legal course, and the judgment as to the personal status must be awaited⁹, whether he is suing or is being sued (to determine what shall become of the inheritance), so that if he is pronounced a slave, he acquires it for himself, if [he] should want to accept it.

Given at Constantinople April 30 (531).

6.30.22. The same Emperor to the Senate.

We know that there have already been promulgated by us two constitutions, one¹⁰ concerning those who think it necessary to have time for deliberation whether to accept an inheritance left to them, the other¹¹ concerning unforeseen debts and concerning the uncertain outcome of the condition of the estate which in various ways burdens the heirs, and we are not unaware of the ancient constitution which the divine Gordian wrote to Plato concerning soldiers who have accepted an inheritance in ignorance, and which provides that they may be sued only to the extent of the property belonging to the inheritance, but that their own property cannot be reached by the creditors of the estate,

⁸ [Blume] Property acquired by a slave belonged to the master.

⁹ [Blume] The question of status was generally determined first, before the question dependent thereon was determined. See Buckland, Roman Law of Slavery 654; C. 3.31.8.

¹⁰ [Blume] Law 19 of this title.

¹¹ [Blume] Not extant.

the contents of which (constitution) were embodied by us in one of the aforesaid constitutions. For that exalted legislator thought that soldiers were better acquainted with arms than with laws. 1. It, accordingly, appeared proper to us to collect all of these into one law; and not only aid soldiers by a beneficent act like that mentioned, but also to extend its benefit to all, and not only in case an unexpected indebtedness should show up, but also in case an heir should find an inheritance which he has accepted to be debt-ridden. Thus the right of deliberation becomes unnecessary, except for faint-hearted persons who fear things that are not even worthy of any suspicion. 1a. When, therefore, an inheritance has been left to someone either by a testament or on intestacy, whether the whole or a part thereof, and the beneficiary prefers to accept the inheritance unconditionally (without making an inventory) and with high hopes, or intermeddles with it, so that he may not thereafter repudiate it, he is in no need of an inventory, since he is liable to all the creditors for the debts against the inheritance which he has entered according to his pleasure. 1b. If in like manner, anyone thinks that he should, without hesitation, refuse and refrain from an inheritance, he may, within three months from the time that he received knowledge that he has been appointed or has been called as an heir, openly renounce it, without making an inventory or waiting for any other situation, and he shall thereupon be considered a stranger to the inheritance, whether it is debt-ridden or otherwise.¹² 2. But if he is doubtful whether to accept the inheritance of the decedent or not, he need not consider any deliberation necessary, but he may accept it and intermeddle with it, but must make an inventory of the property which the decedent had at the time of his death, beginning to make it within thirty days after the will was opened or after the opening thereof has become known to him or after he has learned that he is entitled to an intestate inheritance. 2a. And this inventory must be completed within sixty additional days in the presence of notaries and others necessary in the making thereof. 2b. The heir must subscribe it, stating the quantity of the property and that he has not and will not intentionally withhold anything therefrom. If he does not know how to write or it is difficult for him to do so, a special notary is to be summoned for the particular purpose of subscribing the inventory for him, after he himself has affixed the holy sign (of the cross) thereto with his own hand; witnesses must be called who know the heir and who are present when he orders the notary to subscribe his name for him. 3. If the heirs do not live in the place in which the inheritance or the greater part thereof is situated, we give one year from the testator's death to complete such inventory. That time is sufficient, though the property is ever so far away, to give them opportunity of making an inventory in writing, either personally, or by procurators sent to the places where the property is situated. 4. And if they fully observe the foregoing requirement of making the inventory, they may have and enjoy without danger the benefit of the Falcidian law, against legacies, and they are liable to the creditors of the estate only in so far as the property which they receive will reach. 4a. And creditors who come first shall be satisfied, and if nothing is left, the late-comers will have no remedy against the heirs who shall not be compelled to lose any of their own property, lest, while hoping for gain they incur a loss. If, in the meantime, legatees appear, they shall also satisfy them out of the inheritance of the deceased, either by turning property of the inheritance over to them or by the sale

¹² [Blume] The meaning of this provision, that an heir could decline within three months is obscure. See Cujacius and Donellus on this law.

thereof. 5. If there are creditors who are not fully paid after the patrimony is exhausted, they will not be permitted to disquiet either the heir or those who bought of him property, the proceeds of which have been applied to the satisfaction of legacies, trusts or other creditors. But permission will not be denied creditors to move against legatees and employ the action on hypothecation or the personal action of recovering money paid them by mistake (*condictio indebiti*) and recover what the legatees have received, for it would be absurd to deny legal aid to creditors who want to collect what belongs to them, but to lend the aid of the law to legatees, who are merely after gain, in making them secure in what they receive. 6. But if the heirs have given the property belonging to the estate to the creditors thereof in payment of debts, or have satisfied such creditors with money, other (unsatisfied) creditors who have rights according to law by reason of prior hypothecations, are permitted to move against the creditors so satisfied and recover from them, according to law, either in an action on hypothecation or in a personal action (*condictio*), the property which has been turned over or paid to them, unless the latter will pay them the debt. 7. But no action shall lie, as has been often stated, against the heir, who has disbursed all the property of the estate. 8. Nor shall anyone be allowed to sue purchasers of property of the estate which the heir has sold in order to pay debts and legacies, since creditors, who claim rights prior to those of subsequent creditors or legatees are, by suing such subsequent creditors and legatees, sufficiently protected by us.¹³ 9. In computing the patrimony, we give an heir the right to repay himself out of the

¹³ [Blume] Prior to the right to make an inventory given in the present law, the question of priority among creditors could not well arise, since the heir who accepted was liable for all the debts in proportion as he inherited. See C. 4.16 and notes to the laws there, and headnote to this title. Thus if a man was given an undivided one-third of the inheritance - and that was the general method of appointment - he was liable for one-third of the debts, and the other heirs who received the two-thirds of the inheritance were liable for that proportion of the debts. After the introduction of the inventory, it became important in which priority debts were to be paid. It was accordingly provided, that funeral expenses, costs of registration of the will, costs of inventory and other expenses of the estate should be paid first. C. 6.22.9. Next came the debts, including that to the heir, who was on the same footing with the others. Secured debts had a preference, but the heir was permitted to pay indiscriminately in the order in which the debts came before him, giving the secured creditors the right merely to have recourse against the unsecured debtors, if their debt was not paid in full by the property which the heir had in hand, and no recourse against the heir was left. That was true even with legacies, which it seems could be paid, if claim therefore was made first, with simply the right of recourse of the creditors, if the latter should not be paid in full, for debts had a preference over legacies. This would not be considered a safe method to proceed in our day. Novel 1, c.3, appended to C. 6.50, provides that an heir could not pay one legatee in full without paying all, and this, accordingly worked a material modification of the present law. Inasmuch as the Falcidian fourth to which an heir was entitled had a preference over legatees, in practical working, the heir probably did not pay legatees, ordinarily, unless he was reasonably certain that the estate was ample. If the heir made no inventory, he was liable for all the debts, without reference to the amount thereof, and he was not entitled to the Falcidian fourth. If he made it he was liable for debts only as far as the estate

estate and retain whatever he may prove to have paid for funeral expenses, causing the will to be made of record, the making of the inventory or for any other necessary expenses of the estate. If he himself had any rights of action against the decedent, they should not be extinguished (by an equivalent amount of property of the estate), but he stands on the same footing as other creditors, the priority however, among the creditors being preserved. 10. If creditors or legatees or beneficiaries of a trust think that more property was left by the decedent than is mentioned in the inventory, they have the right to prove that fact in whatever legal manner they wish, perchance, either through torture of the slaves of the estate, according to our former law which provide for examination of slaves, or by the oath of the heir, if other proofs are lacking, so that, after thorough search for the truth, the heir may nether gain nor lose through such inheritance. And let it be observed that if the heirs have abstracted any property from the estate, or have concealed, or have caused any property to be carried away, they shall be compelled, after conviction, to restore, or add to the inventory of the estate, double the amount thereof. 11. Until, however, an inventory is made, that is within three months, if the property is near, or within a year, if the property is situated at a distance, according to the foregoing distinction, the creditors, legatees or trustees shall have no right to disquiet the heirs or summon them into court or claim property of the estate by reason of any hypothecations, but that time shall, by operation of law, be granted to the heirs for deliberation, but the prescriptive period shall not run against creditors during that interval. 12. But if heirs, after accepting the inheritance or after meddling with it, whether present or at a distance, fail to make an inventory, and the time given by us for the completion thereof has passed, then by the very failure to make it, according to the provision of the present constitution, they shall be considered as heirs who are obligated for all the debts of the estate and they shall not enjoy the benefit of our law which they deemed it proper to scorn. 13. These provisions are made for those who do not claim the right of deliberation, which right is, we think, entirely superfluous after the enactment of this law, and ought to be abolished. For since it is allowed, by virtue of the present law, to accept an inheritance, and get rid of it without loss, what place is left for deliberation? 13a. But because some persons deem it necessary to supplicate us for time for deliberation, out of useless fear or artful trickery, in order that they may dally along for a year, look over the estate and plan some fraud against it, more than once getting such time for deliberation, through tearful assertions and repeated supplication, and lest anyone think that we completely scorn antiquity, we grant the right to ask for time for deliberation, either from us or from our judges, but not for a longer period than a year from our imperial highness, and not for more than nine months from our judges. No further time shall be given even by imperial grant and if it has been given, such grant shall be considered of no effect. And we give the right to make such request once and no more. 14. If anyone has done so (and has

reached, and he was entitled to the Falcidian fourth. By Novel 1, however, it was provided that such fourth could not be retained, if the testator provided against its retention, and further, should not be retained, unless an inventory was made somewhat different from the manner provided in the present law. See that Novel, appended to C. 6.50, which contains a rather complete provision for making the inventory. As against creditors, however, the manner making an inventory as provided in the present law was, seemingly, sufficient. If he asked time for deliberation, old [illegible] remained.

received time for deliberation) and has made an inventory - for even persons who deliberate must make a detailed inventory - he shall not be permitted, if he has not refused but has accepted, to enjoy the benefit of our law after the expiration of the time so granted, but he shall be liable to the creditors for all the debts (of the estate), according to the ancient laws. 14a. For since [there are] two methods have been formed,¹⁴ one in accord with the ancient laws which gave time for deliberation, the other unused and new, discovered by our majesty, by which persons who accept an inheritance may be kept from loss, we give him the right to choose the method provided by our constitution and enjoy its benefit, or, if he thinks best to disregard that, resort to the aid of deliberation, and abide by the result thereof; and if he does not decline the inheritance within the time given, he shall be liable for all the debts of the estate, and though the value of the inheritance is small, his liability shall not be limited to the amount of the patrimony, but he shall, as though he were heir, be liable for the whole indebtedness, and he who preferred the ancient burden to the newly-given benefit has no one but himself to blame. 14b. We accordingly want to add, in the very act of giving the right to time for deliberation and in the rescript to be promulgated for that purpose, that all persons must take notice that if they, after seeking time for deliberation, accept the inheritance or act as heir, or if they do not decline the inheritance, they shall be liable for all the burdens of the estate. 14c. If anyone, moreover, seeks for time for deliberation with an evil purpose, but entirely fails to make an inventory, and he either accepts the inheritance or fails to decline it, he shall not alone be liable to the creditors for the whole indebtedness, but he shall even be deprived of the benefit of the Falcidian law. 14d. But if he declines the inheritance after deliberation, and has not made an inventory, he will be compelled to turn the property of the estate over the creditors or to those who are entitled to the inheritance by law, the amount thereof to be determined within a limit fixed by the court, by the oath of those receiving the property.¹⁵ 15. It must be clear that our constitutions already promulgated on the same subjects, in one of which the contents of the Gordian constitution was embraced, are repealed by the present constitution, which covers all cases. 16. For since a better solution has been found by fuller treatment, and three constitutions have been combined into one which states a commendable rule of law applicable to soldiers and other people alike, why should we suffer people subject to our sway to be disquieted by the former laws? Provided, however, that soldiers who through want of knowledge fail to carry out the precise requirement of the present law, shall, nevertheless, only be liable to the extent of the value of the inheritance: This law, conscript fathers, shall, we ordain, hereafter apply in all such cases (contemplated herein).

¹⁴ Blume's original text was: "For since there are two methods open to an heir, one in accord..." He lined out "open to an heir" and penciled in what seems to be "have been found," without also lining out "there are." Scott translates this passage thusly: "As, however, two ways are open..." 6 [14] Scott at 20.

¹⁵ [Blume] This was a heavy penalty, inasmuch as the amount to be turned over, fixed by the oath of those entitled to receive it, might be very high, even though controlled by the court. But this method of penalizing a party was permitted in some cases. The provision virtually compelled the party who had asked for time of deliberation and had received the property to make an inventory.

Given November 27 (531).

Note.

The provisions made in the foregoing law that heirs and creditors should have the right to dispute the inventory made by the heir, and should be able to examine witnesses and slave as to the actual property of the inheritance, was modified by and should be read in connection with Novel 48, which provided that where the testator made a statement of his property under oath, the heirs should not be able to question that fact. The old law was left in force as to creditors.