Book VI.
Title XXXIII.

Concerning abrogation of the edict of the divine Hadrian and how an appointed heir may be put in possession.
(De edicto divi Hadriani tollendo et quemadmodum scriptus heres in possessionem mittantur.)

6.33.1. Emperors Severus and Antoninus to Lucillus.

When a controversy arises between an appointed heir and his substitute, the person appointed in the first place should be put in possession.
Promulgated November 20 (196).

6.33.2. Emperor Alexander to Eutactus.

Although someone alleges that he is a pretermitted son of the deceased or that the testament is forged, is unfair, or defective in any other manner, or that the decedent was a slave, still the appointed heir is usually put in possession.
Promulgated October 27 (223).

6.33.3. Emperor Justinian to Julianus, Praetorian Prefect.

As the edict of the divine Hadrian, which was introduced in connection with the five percent inheritance tax, is with its many ambiguities, difficulties and confusing provisions, no longer effective, and since the five per cent inheritance tax has been abolished in our republic, and everything promulgated concerning the enforcement and interpretation of the edict, has become obsolete, we ordain that if any heir, appointed in a will as such, for all or part of an inheritance, exhibits to a proper judge a testament not scratched out, effaced or defective in any part, but which on its face is without blemish and is properly subscribed by the legal number of witnesses, he shall be put in possession of the things which belonged to the testator at the time of his death, and which are not legally detained by another, public official bearing witness to such possession. 1. But if anyone disputes the right to such possession, then the claim thereto and the objection shall be tried by a competent tribunal and possession shall be given to the party who shows the better right of legal grounds - either to the person who (in a previous ex parte proceeding) was granted the right of possession, or to the party detaining it and who thought that he should object. 2. The right (of the heir under the will) to be put in possession is not limited by any particular time, but whether put into possession, either early or late, only the authority of law and a ground giving rise thereto or to such objection is required. 3. Whether anyone is put in possession after a year or after the lapse of a longer time, provided that it is done pursuant to a legally executed testament, lapse of time is no obstacle, unless it be a period which can give complete security of ownership (in an adverse possessor), or which bars the right of the party who wants to be put in possession. For if sufficient time has run in one or both cases, it is clear that not only the right to be put in possession but also the main right (to claim the property at all) is barred.
Given at Constantinople March 21 (531).

Note.

The previous title dealt with the opening of a will. Suppose then it was opened and duly proven and it was found valid on its face, not effaced or defective in any part, so that prima facie it was a valid will, the heir or heirs appointed under that will had the right to take immediate possession of the property of the inheritance, and if necessary, public officials, the apparitors of the magistrate, aided him or them in gaining the possession. If any questions existed in regard to the will, these questions were required to be settled in the proper action, and no one, not an appointed heir under the will, had the right to resist the appointed heirs under the will in taking possession. If a substitute claimed that the first appointed heir had no right, he was required to litigate the question in a subsequent action. The same was true with a son who claimed that he was omitted, passed over, in the will. Whatever rights a party, not an appointed heir, might have, these rights were preserved, but were required to be litigated in a separate action. The wisdom of that policy is readily perceived. All that was required for the appointed heir to get possession was "the authority of law, and a ground giving rise thereto" or to the objection which another might have, which merely means that there must be a valid will, by reason of which the appointed heir sought possession, or if the will was claimed as invalid by someone, gave rise to an objection on the part of the latter. See C. 3.28.2.

The appointed heir under the will had the right to take possession, as aforesaid, of all the property which the decedent had had in his possession, but not of any other. If he claimed that other property was part of the inheritance, he was required to litigate that question in the proper action. Paul. 3.5.18.

Hadrian provided that the appointed heir could not obtain such possession except only within a year from the opening of the will. This provision had been made, because of the existence of a five per cent inheritance tax (on outside heirs), and in order to enforce the payment of the tax promptly, the appointed heir was required to seek and take possession promptly, or it was given to someone else. Subsequently the tax was repealed and the limitation of a year was accordingly without purpose. Hence, Justinian repealed that provision and provided that the appointed heir might claim the possession under the will at any time, unless barred by prescription. But see C. 3.28.36.2. The title speaks of repeal of the edict of Hadrian, from which we might infer that the edict simply contained the limitation of a year, and that other provisions of the law, fully set forth in Paul. 3.5.14-18, had existed before. See Lenel, Edictum Perpetuum 350; 9 Cujacius 739, who thinks otherwise.