Book VI.
Title XXXV.

Concerning those who are deprived of inheritances as unworthy persons, and as to Silanian senate decree.
(De his quibus ut indignis auferuntur et ad senatus consultum Silanianum.)

Bas. 35.16.26; D. 29.5.34.9.

6.35.1. Emperors Severus and Antoninus to Celeres.

Heirs who have left the murder of a testator unavenged, are compelled to return all the benefits (which they received from his inheritance), nor are persons who knowingly neglected their duty of reverence to be considered as possessors in good faith before commencement of suit (of confiscation by the fisc). 1. They must, moreover, pay interest, after commencement of suit, on the amount received by them for property of the estate which they have sold, or on money received by them from debtors. 2. That, too, applies without a doubt as to money received by them from sale of fruits which they found on the land or took therefrom. 3. It is, however, sufficient to pay interest at six per cent per annum.
Given March 18 (204).

Note.[1]

The previous title dealt with some persons who should not receive an inheritance because of the commission of certain acts. The within title deals with persons who were deemed unworthy to receive the inheritance or a portion thereof. The main persons dealt with were those who, contrary to the Silanian senate decree, failed to avenge the death of the decedent, and forbade them to have any share in the inheritance of such decedent in case of such failure. This is a situation not found in our jurisprudence, and was peculiar to the Roman law mainly on account of the extensive system of slavery in the Roman empire. Slaves were at times guilty of murdering their master, and the aim of the law was to punish them swiftly and surely as a warning to others. Nor did the law tolerate negligence on the part of the slaves if their master or mistress was in danger.

The senate decree appears to have been passed under Augustus, about 10 A.D. It provided that where a man was murdered, all his slaves who were in the house with him at the time, or with him elsewhere, should be examined under torture as to the perpetrators and counselors of the crime, and then put to death for not having rendered him assistance. Slaves under the age of puberty were excluded from the condemnation and freedom was bestowed on any slave who discovered his master's murderer.
C. 7.13.1. Where it was suspected that a man had been murdered by persons belonging to his own establishment, by violent means, acceptance of the inheritance before the examination of the slaves caused a forfeiture of it to the State. A will could not, in such case, be lawfully opened and the right of possession of an inheritance could not be asked until that was done, and until the murder had been avenged (9 Cujacius 749; laws 3 and 9 of this title), provided that the latter was possible. Law 7 of this title. Slave might have been manumitted, if the inheritance had been entered on, and these would not then have

[1] Blume penciled in here "Weiss, G.P.R. 200f."

been (particularly in early law) subject to torture. This situation was sought to be avoided. Buckland, Roman Law of Slavery 96. Minors, however, under the age of twenty-five, and not alone minors under the age of puberty as mentioned in law 3 of this title, were excused because of their want of knowledge of the law. Law 6 of this title; C. 2.40.1; 9 Cujacius 747. See in general, Buckland, Roman Law of Slavery 96, 97; 1 Roby 185-187; Smith's Dict. Greek and Roman Antiq., under the head "senatus consultum-Silanium." See also C. 9.46.2 and 4.

6.35.2. The same Emperors to Verus.

Palla hade full power of managing her property, and no litigation which she finished can be reopened, simply because a minor (under the age of puberty) became her heir. 1. But if you, on behalf of the minor, want to attack a testament as forged, concerning which Palla made a compromise, you may do so, remembering, however, that if you fail to succeed in the cause, you must make good the portion which the minor now has under the testament, but of which he will be deprived in such case according to the rule of law[2], and, though you appear to sue in the minor's name, the president will also deliberate as to whether or not you suit, to reopen a matter once closed by a coheir, is vexatious.[3]

Promulgated April 25 (208).

Note.

The case here mentioned was something like the following: Titius made a testament in which he appointed Palla, her minor brother and some outsiders as heirs. Palla sued the outsiders claiming the will to be forged, but compromised the suit, by which she became entitled to inherit a certain share of the estate. She died, leaving her minor brother as her heir. The guardian of the minor wanted to attack the testament on behalf of such minor, not only as to the share which Palla received under the compromise, but also as to the share to which such minor would have been entitled if the testator had died intestate. The emperor answered the guardian's inquiry, as to whether he could make such attack, as follows: As to Palla's share, no such attack can be made, since Palla compromised the matter; but the attack may be made as to the minor's original share, which he would have received on intestacy, but it will be made, if at all, at the guardian's risk.

6.35.3. Emperor Alexander to Antiochianus.

If an objection is raised against the children whom you say is your cousin, that the testament of their father, who is said to have been killed by his slaves, was opened and read before the slaves were interrogated under torture, the inheritance will fall to the fisc according to the (Silanian) decree of the senate; and the cause (of confiscation) should be

---

[2] [Blume] In general, anyone, who attacked a will, prosecuted the suit to a finish and lost, also lost any benefit under the will, and all his rights thereunder inured to the benefit of the fisc. D. 5.2.8.14 and 22.2 and 3; D. 34.9.5.1, 3, 5, 6 and16; D. 49.14.13.9; also C. 8 infra; C. 9.22.6 is specific.

[3] [Blume] The penalty under the former law, which fell into disuse, was a fine of one-tenth of the amount in dispute. Under Justinian the penalty was payment of all damages and costs. Inst. 4.16.1.

tried before my procurator, because the heirs were not, at that time, minors under the age of puberty.
Promulgated April 4 (222).

Note.

It seems that the opening of the will, or the acceptance of an intestate-succession, was not required to be deferred, except in case the death was brought about by violent means. Secret poisoning could not well be prevented by slaves. The heir was, however, thereafter required to attempt to avenge the death. D. 29.5.21 pr; law 9 of this title; Buckland, Roman Law of Slavery 97; 1 Roby 186; 9 Cujacius 749. Not only minors under the age of puberty, as intimated by this law, but also those under twenty-five years of age, were excused under the law. See law 6 of this title.

6.35.4. The same Emperor to Philomisus.

An inheritance devised by testament cannot be directly taken away by letter or codicil. But since the testatrix had declared that one of the heirs was not deserving of her bounty, the portion of such heir could not be legally transferred to another, and was rightly claimed by the fisc. Manumissions, however, ordered in the same letter, can be asked to be made out.
Promulgated November 30 (223).

Note.

That an heir could not be appointed under a codicil, and that an inheritance could not directly be taken away from an appointed heir by codicil has already been stated. See note C. 6.23.7; see also C. 6.36.2 and 7. Indirectly, namely by way of trust, this could, however, be done. A man might make a codicil and therein provide that the inheritance should be surrendered to another. Headnote C. 25.1; C. 6.42, dealing with the subject of trusts. This was simply another of the peculiar provisions of the Roman law where a man might do indirectly what he could not do directly.

So it is stated in the present law that a man might cancel an appointment of someone as heir, by declaring him, in a codicil, to be unworthy. In such case, the heir was deprived of his inheritance, and it fell to the fisc, subject, however, to the legacies and trusts imposed upon such potion; provided, however, that if it appeared that the testator wanted to die intestate, the legal heirs were in such case called to the inheritance, and not the fisc. D. 38.6.1.8; 9 Cujacius 752.

6.35.5. The same Emperor to Tyrannus.

An inheritance can not be taken from heirs, as unworthy, under the pretext that the burial of the (deceased testator) was not in compliance with the last wishes of the decedent.[4]
Promulgated March 9 (224).

[4] [Blume] C. 3.44.5 shows that under former laws such non-compliance caused a forfeiture of an inheritance, if nothing was said in the will. To the same effect see Paul., Sent. 3.5.13.

6.35.6. The same Emperor to Venustus and Clementinus.

It has been accepted that an accusation of leaving a death unavenged can not be brought against heirs less than twenty-five years old. 1. And since you state, moreover, that you brought an accusation and some of the defendants were punished, you need have no fear that my fisc will make you any trouble as to the paternal inheritance, though the party who is said to have directed the murder has appealed. It is, of course, a part of filial duty to resist the appeal. 2. And if you had been of age, it would have been your duty to contest it, in order to enable you to receive the inheritance.[5]
Promulgated June 17 (229).

6.35.7. The same Emperor to Vitalia.

If the murder of the testator, for the purpose of avenging it, was not demanded because the authors of the murder could not be found, no objection should be raised against the heirs, inasmuch as they are not guilty of any fault.
Promulgated March 5 (232).

6.35.8. Emperor Gordian to Tatia.

The situation of one who instituted an action claiming a will to be forged, conducted it to the end, and suffered an adverse judgment, is different from that of one who failed to carry through an accusation made. The fisc succeeds to the portion of the former, but a man who suffers no adverse judgment, does not lose the right to claim his portion.[6]
Promulgated January 18 (239).

6.35.9. Emperors Diocletian and Maximian to Aeliana.

Since you allege that your brother was killed by poison, it is necessary for you, in order that the right to his inheritance may not be taken from you, to avenge his death. For although parties who are legal heirs incase of intestacy are not forbidden to accept the inheritance of those who perish by clandestine means, still they cannot retain it, if they have not avenged the death.
Promulgated (291).

6.35.10. The same Emperors and the Caesars to Silvana.

It is not proper that a sister who avenges the murder of her brother, as she is legally permitted to do, should be able to recover the inheritance of the brother from the wife who has been appointed his heir in his will. If, accordingly, you are confident of your innocence and that it cannot be shown that your husband was killed by your procurement, or that you are otherwise unworthy of the succession, you are perfectly secure against every vexatious claim.
Given at Sirmium April 20 (294).

Note.

The sister claimed the inheritance in this case on the ground that she and not the appointed heir in the will, had avenged the murder of the decedent. But the appointed

---

[5] [Blume] See note to law 1 of this title.
[6] [Blume] See note (a) to 6.35.2, supra.

heir was not at fault, and hence the sister's acts did not entitle her to the inheritance. 9 Cujacius 747.

6.35.11. Emperor Justinian to Johannes, Praetorian Prefect.

The Silanian senate decree should be approved and strengthened by us, as was done to the oration of the divine Marcus made concerning it, but we find in it no mention of manumissions, and inasmuch as a doubt arose among the ancients when manumissions were made in the testament of a murdered testator, it has seemed necessary to us to settle the doubt. 1. Slaves who formerly were granted freedom by a testament, and who, if they had actually received it, would have owned their subsequent earnings, did not become owners thereof when the revenge of the murder was delayed, and stood the risk of losing them though they received their liberty thereafter. 2. In order that they may suffer no loss in the meantime (while avenging the murder is delayed), and before the inheritance is entered on, especially if female slaves should give birth to children during that time, it seems to us best to construe the oration of the divine Marcus, most prudent of the princes, as having reference to manumissions, lest the prince of philosophy might appear to have left his order imperfect. His oration, accordingly, as to inheritances, legacies, trusts and especially as to manumissions, specially favored by philosophy, shall be so enlarged that the earnings acquired by such freedmen and freedwomen during such time shall be turned over to them after receiving their liberty; their offspring shall be free and considered as free-born; by no artifice shall such delay cause them any damage, and if they die in the meantime, their children, who, as stated, are free, shall inherit the property of their progenitors. 3. It has justly pleased us to make the constitution of the holy Marcus complete in every way, for we believe that nothing is really done, if anything remains to be added.

Given at Constantinople April 30 (531).

Note.

Where a decedent met with a violent death, his inheritance could not be entered on, as heretofore shown, till the death had, if possible, been avenged. Things granted by the decedent would accordingly be in suspense. Marcus had provided that inheritances, legacies and trusts granted to slaves should be preserved for them - if they would ultimately have received them, that is to say, would not be found guilty of complicity in the crime or guilty of not having prevented it - but he had not said anything as to the earnings of the slaves in the meantime, and he had not said anything about manumissions; that is to say, as to the time from which they should be considered effective. Justinian accordingly provided that such slaves should have the earnings of the meantime and that manumissions should be computed as effective from the death of the decedent, so that their children born thereafter should be free.

6.35.12. The same Emperor to Johannes, Praetorian Prefect.

There has been brought to the attention of our Serenity, the doubt in the ancient law as to the Silanian senate decree, and the slaves who are punished by death, if, living under the same roof, they fail to give aid to their master who is killed by treachery. The ancients fail to make certain who is embraced within the meaning of the words "under the same roof," whether those in the same bed room, dining room, porch, or sitting room (aula); and they add that, if the master should be killed on the highway or in the field,

servants who were present and failed to furnish help to overcome the peril, shall be punished, making no distinction as to the nature of the presence. 1. In order, therefore, to deprive them of the opportunity to avoid punishment when they are negligent in looking after their masters safety, we ordain that all slaves, in whatever place they may be, whether in the house, on the highway or in the field, who can hear the cry for help or who know of treachery (to their master) and who fail to furnish help, shall suffer the punishment of the senate decree. For they should run to prevent treachery wherever they know their master is in peril.
Given at Constantinople October 18 (532).