Book VIII.
Title II.

The edict in case where the right of possession of an inheritance is granted.
(Quorum bonorum.)

Bas. ?. 9.[1]

8.2.1. Emperors Severus and Antoninus to Justus.

If you are about to claim the inheritance of the man whom you say was you father, lay before the judges having jurisdiction of the matter the proof of your claim. For, although you have received the right to possession of the inheritance as an overlooked son (in the testament), still you cannot be put into actual, physical possession unless you prove both that you are the decedent's son and that you were admitted to the inheritance or to the right of possession thereof.
Promulgated December 25 (197).

Note.

See headnote C. 6.9. The words "quorum bonorum" refer to the first words of the praetor's edict where the right referred to was granted. This was true also in the case of other interdicts. The present interdictal action was given where the right of possession of an inheritance had been granted, in order to make that right effective. Possession could be obtained, but did not apply to the recovery of debts due to the holder of such inheritance. To recover such debts the praetorian heir was required to bring a regular action just as any other claimant, and he had a right to such action. The interdict, like all possessory interdicts, was merely provisional. If the claimant proved his right to the action against the defendant, the property was handed over to him. No question of title was determined, and in the proper action the property might be taken away from him by a party who proved a better title to the inheritance. If, for instance, a will of a testator was produced, apparently valid, the right of possession to the inheritance, in accordance with the terms of the will (secundum tabulas) was granted to the heir appointed under the will, and he was entitled to the physical possession during the time that a contest was carried on to determine, for example, whether the will was forged or not. Thus, while the heir appointed under the will would succeed in the action here mentioned, he would have to give up possession to the real heir, after a proper action, if it was determined finally that the will was forged. So let us assume that a nephew was granted the right of possession, and succeeded in the present action. Later a son of the decedent appears who was thought to be dead. The latter would be entitled to recover the property. See also law 3 of this title.

In view of the fact that such was its purpose, it was, of course, aimed only against some other person who was interested in having that purpose defeated, namely some one who himself claimed to be the heir and held the property of the inheritance as such, or some one who held as mere possessor and who had no title at all, and who, accordingly, would be interested in having no one appear as heir. A third person, who held property under an independent title, of purchase, for instance, would not care who was heir, since

[1] Question mark is in Blume's original.

his title would in no way depend upon that question, and hence it was the rule that this interdict did not lie against one who claimed under an independent title, but only against one, who claimed as heir or as possessor. Gaius 4.144; D. 43.2.1.2; Girard 957; Buckland 336. Of course, the third person might have bought the property from a mere possessor, or from one who claimed to be heir, but to whom the right of possession of the inheritance had not been granted. Did he hold under an "independent title?" The point seems to be in doubt. 5 Donellus 620, while not discussing this direct question, seems to think not. That seems to be logical, as otherwise the purpose of this interdict might be entirely defeated. See also D. 5.3.13 pr; D. 5. 3.13.4; D. 5.3.13.9.[2] The same rule here mentioned applied to the regular action for an inheritance. C. 3.31.7 and note.

The interdict and the action which took its place, lay where physical[3]

As pointed out in headnote to C. 6.9 (subhead 9), the right of possession was granted informally, without any real inquiry into the facts, and hence such grant could not justly alone serve as a basis for putting the grantee of such right into actual possession. There must, in addition to proof of the grant or the right of possession, be a further foundation laid in order to succeed in this action. Thus, as stated in the first law, the person claiming to be an overlooked-son under a testament must prove that he is such son. If he claimed under the grant to children (unde liberi), he must prove that he belonged to that class. Proof, of course, must also be given that the property belonged to the inheritance. Other limitations will be mentioned in the next law, and note thereto. It is a matter of doubt, however, just how complete the proof of the right as praetorian heir was required to be. Buckland 387, for instance, states that he was also required to show that there was no valid previous grant to another. But it would seem that this was a matter of defense. See Vangerow § 509.

In each case where a person had the right mentioned in this title, he also had (C. 3.31.9), given in analogy to the action granted an heir under the [illegible] law, in which not alone the right of possession, but also the right to the title could be fully determined, and the question arises why he would not bring such action, instead of the one here considered, particularly in view of the absence of technicality in bringing an action in the time of Justinian. In other words, why would a man, in bringing an action, simply ask for possession, when he also actually wanted more? The answer doubtless is to be found partially in the fact that the action here considered was determined more quickly, that the inquiry was not nearly so strict as in the action involving title, and that it put the party succeeding therein in a defensive position in a regular action for the recovery of an inheritance. 9 Donellus 906; Buckland 388.

8.2.2. Emperors Diocletian and Maximian and the Caesars to Marcus.

If, upon petition for the right to the possession of the inheritance of your cousin (daughter of your father's brother), who died intestate without children, you, according to the edict, acquired the right of succession, and the matter is in statu quo[4], the rector of the province will cause the property, which was hers at the time of her death, to be turned

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[2] This citation is not correct. Interdicts for the recovery of legacies are in Book 43.3.

[3] This pasted-in addition to the note ends abruptly here.

[4] [Blume] That is to say, if the right has not been adjudicated in the regular action for the recovery of an inheritance. 9 Cujacius 1075.

over to you, according to the tenor of the edict for the physical possession of an inheritance (quorum bonorum) by those who hold the property as heirs or as possessors, or who have by fraud ceased to have possession.
Subscribed March 27 (294).

Note.

There was, as already stated, a limitation to the right to institute the action given by this title: It might be brought only against a person who held as heir (pro herede) or as possessor merely (pro possessore), or who as such, had by fraud ceased to have possession. A person held as heir when he believed himself such, but could not defend the claim successfully. He held as a mere possessor when he had no title at all, and was in the same position as a robber. D. 5.3.11. A person who had fraudulently turned the property over to someone else still remained liable in the instant proceeding, but this did not discharge the person to whom possession was fraudulently delivered. Both were liable, the former because he was held responsible for his fraudulent act. See D. 5.3.13.14.

8.2.3. Emperors Arcadius and Honorius to the Vicar Petronius.

It is clear that a husband is excluded from the succession to the property of his wife who dies intestate, when she has blood-relatives surviving her, since the responses of jurists, as well as the law of nature itself, makes them her successors. 1. We order, therefore, that the physical possession must, without delay, be transferred to the claimant under the edict which gives such possession, without excluding another action as to ownership.
Given at Milan July 27 (395).
C. Th. 4.21.1.

Note.

It will be noted in this law that the action, or interdict, given in the instant title, was simply a possessory action, and might only secure a temporary right. In this case the cognate relatives would succeed in obtaining possession, because it prima facie was the property of the decedent, having been, e.g. found among his effects. But the husband might later prove a better title to the property.