Novel 1.

Concerning heirs and the Falcidian law.

Emperor Justinian to Johannes, the most glorious Prefect of the Orient the second time, ex-consul and patrician.

Preface. While we are occupied with cares of the whole state, and matters of importance demand our attention, having to see that the Persians remained quiet, that the Vandals and the Moors remain in obedience, that the Carthaginians retain their former liberty, recently regained, and that the Tzanians,[a] now first subjected to the Roman sway, be received as our subjects—something which God had never granted to the Romans till under our reign—many private affairs, too, are brought before us by our subjects, all of which we decide in the proper manner. But remedies frequently enjoyed by individuals, may, if embodied in a law, be of common benefit to all who are in need thereof; and we have, therefore, thought best to incorporate them in a law which itself will grant the remedy, making frequent imperial orders in future cases unnecessary. **1.** Appeals are made to us continuously; by some on account of legacies left but not paid; by others because of manumissions; by still others in relation to orders given by testators directing the heirs to turn over some property to, or do something for, others, while the parties thus directed dishonestly seek and receive the property but fail to carry out the orders given, although it had already been provided by former law-givers that directions of decedents, if not contrary to law, should be carried out in every respect. But since we find that laws so enacted are largely ignored, we deemed it well to revive them, in order thereby to extend protection to survivors and proper honors to decedents. **2.** We should first call to mind that the law imposes on some testators the duty to leave some portion of their inheritance to parties entitled thereto by nature, as for instance to children, grandchildren, fathers, mothers and at times to brothers, or to other descendants or ascendants mentioned by law; while on the other hand, no duty to leave any property to anyone is imposed on others who are free to bestow any bounty on whomsoever they wish.

a. A people in Armenia.

c. 1. Having mentioned the foregoing, we ordain that persons appointed by a testator as heirs, or who receive a universal or specific trust or a legacy must fully carry out the directions of the testator or of the person who conferred the honor of such gift upon them, if the direction is legal, and some law does not expressly declare that the gift shall be valid notwithstanding the noncompliance with such directions. **1.** And if anyone fails to do as has been ordered to be done, and what is left to him, so honored, is properly given him, and he, after admonishment from the court, delays for a whole year to comply with the orders given, then, if he is one of the parties entitled to some of the property under the law, but he is appointed as heir for a greater amount than that required to be left him, he shall only receive what he would have received—a fourth of the property (which he would have received) if the maker of such gift had died intestate; the remainder shall be taken from him, and if other heirs are appointed, each of them shall receive a part of such remainder, in proportion to the share for which each has been appointed as heir. If there are no other heirs appointed, or those appointed fail to accept, such remainder, so taken away, shall be added to the other property, and the legatees, beneficiaries of a trust, and slaves honored with manumission (by the testator) may enter upon and recover it, so that they may fully carry out the orders given, first giving assurance (cautio), as the circumstances of the property and person admit, that when they have received the property, they will do everything legally directed by the testators. But if no one of those who are mentioned in the testament, that is to say, a coheir, legatee, beneficiary of a trust or slave honored with manumission, wants to accept, then such property shall be given to the heirs in intestacy who are by law called to the inheritance after the appointed heir who is hereunder confined to his legal portion, they, too, giving assurance that they will carry out the terms of the will. And we want no disorder or confusion to arise on this point, but the party who, in regular order, has the first right after the person so circumscribed by our law, shall be called first; then the one next in order to him, and so on, the law [last] one, not wanting to accept, giving place to some outsider who will accept and carry

out the directions of the testament, and if there is no such outsider, the next in order will be the fisc, if it wants to accept and carry out such directions. We also want a regular order, in connection herewith, to be observed among the legatees and beneficiaries of a trust, giving the first right to accept to a universal cestui que trust, or if there are more than one, then to the one that receives the larger portion of the inheritance, because according to those of our laws wherein we alone applied the Trebellian senate decree to trusts, rejecting the circuities of the Pegasian law.[a] But if there is no one honored with a universal trust or he refuses to carry out the testator's wish, then such opportunity (to enter upon such property) will be given to those honored with the largest special legacies or trusts, and in like manner slaves honored with manumission will have such opportunity to accept and enjoy such property and carry out the testator's wish, giving assurance as above mentioned. If no one of the legatees or cestuis que trust, universal or special, is honored with a greater portion than the others, but all are equally honored, then the beneficiaries of a universal trust shall have the preference, on account of what we have stated above, or such of them as will carry out the testator's orders. The next preference is given to the other legatees and cestuis que trust who have no advantage over anyone else of their number in reference to the property bequeathed to them. They may all be called, if they wish, or such of them that consent. If no legatee or cestui que trust will do so (carry out the testator's wish), then slaves honored with manumissions shall have such right, in the order in which they were named in the will by their master. **2.** The foregoing provisions are made only for cases in which it is necessary to leave something to certain persons to whom an inheritance is naturally owing by a testator or the decedent. If no such person is appointed as heir and the testator has disposed of his property according to his pleasure, and the person appointed as heir does not, within the time fixed by us, carry out what he has been directed to do, he shall be deprived of what has been left him, and cannot retain any of it either under the Falcidian law or for any other reason. And in like manner, as previously mentioned, coheirs, if any, shall take his place, otherwise the property shall go to cestuis que trust, slaves and intestate heirs, in regular order as heretofor stated, all being required to carry out, as before specified, the legal

directions of the testator. **3.** If a substitute has been provided for the appointed heir, the property will, of course, in the first place, go to such substitute, to do everything required by law; if he refuses, the property of which the heir is deprived as aforesaid, shall go to the coheirs, legatees, slaves, intestate heirs, outsiders and the fisc, according to what we have heretofore stated, who must carry out the directions of the testator. We have provided for so many successive successions, so that the inheritance of a decedent may not remain unaccepted. **4.** We do not, however, call or permit to be called disinherited children, who are justly excluded by the father, and receive no property under his will, even though they might wish to accept the contemplated property a thousand times. For the purpose of the law is single, namely, to have the directions of decedents carried out. And if a testator disinherits a person, how could it me just to call him to take property, from which the testator, by the disinherision [disinheriting], wanted to expressly exclude him? What we have said, namely that the property of which a person who fails to carry out a decedent's wish is deprived, shall first go to his substitute, next to his coheirs, then to legatees and cestuis que trust, then to slaves, then to intestate heirs, outsiders and the fisc, in order, was not said thoughtlessly or inconsiderately, overlooking something proper to be done, but advisedly and in consonance with law, inasmuch as we first call all the persons mentioned in the testament, to take said property, and only if they refuse, then intestate heirs and others. And in all cases in which the heirs appointed in the first place fail to carry out the directions of the testator, and in which we call the remaining persons mentioned in the testament and intestate heirs and other persons, to accept the property, we permit them to become heirs, have the rights of entrance upon the inheritance and of acting as heirs—as the law calls it—and to perform every duty as heir in any suit by or against them, as was also permitted by the authority of the ancient laws, constituting persons as heirs who were neither appointed as such, nor were called as such on intestacy. All these provisions shall apply, although the testator wants something to be given or done, not by the heir, but by a legatee or cestui que trust or donee of a gift in contemplation of death, so that when they are excluded from the property left them, the same order in calling on someone else to take it shall be observed, commencing with the substitute for the

legatee and ending with the fisc. Nor let anyone criticize this law because it may deprive him of property which has been left to him; but let him reflect that death is the end of every man's life, and consider not only what he may receive from others, but also that he will give orders upon his own death, and unless he has the aid of the law, everything that he arranged with great care, will be fruitless. For we enact laws not merely for men now under our sway, but for all future time.

a. See Code 6.49; 6.50—headnotes.

c. 2. We are next led to a consideration of the Falcidian law which permits heirs, even against the wishes of testators, to retain a fourth of the property, if the inheritance is exhausted by legacies. This seems repugnant to the wish of the decedent, but is permitted to be done by law. We must see that the wishes of decedents are in every way respected, and so we ordain that if the heirs want to enjoy the advantage accruing from said law, they must scrupulously observe the law, must not by purloining or by fraud attempt to get the Falcidian fourth, which, had they not committed fraud, they would, perhaps, not get. **1.** An heir, therefore, who fears that after paying off debts and legacies, he will not get such fourth, must make an inventory in the manner and within the time previously fixed by law, by which we protected heirs accepting an inheritance against loss of their own property, limiting the burdens resting upon them by the amount of such inheritance; and we only add, that such heir, who not only fears creditors but also legatees, and is not only afraid that he might suffer loss, but also that he might receive no benefit, should call in, for the purpose of being present at the taking of the inventory, all the legatees and cestuis que trust that live in the same city with him, or their agents, if the sex of the persons, their office, standing, age or necessities does not afford the principles an opportunity to be present. If some of them are absent, not less than three witnesses shall be called from among the citizens of the same city, who are worthy of credit, well to do, and of good reputation—for we do not consider notaries—tabularii—alone sufficient in such case—in whose presence the inventory may be completed; provided that returning legatees and those who complain that some property has been purloined or has been concealed, shall have the right to

investigate the matter not only by putting slaves under torture—for we also permit this according to the provisions previously made by us concerning torture of slaves—but also by the oath of the heir, and by the oath of the witnesses who say that they were present at and saw the transaction and that they know of no fraud of which the heir is guilty, and in that manner discover the truth as to the property left by the testator. Provided further, that if all or a part of the legatees, in the same city, who have been notified, refuse to come to be present at the taking of the inventory, the heir may, in the absence of such legatees, made [make] the inventory while the witnesses only are present, reserving to the legatees, however, also in such case, the right as to the oath of the heir and the torture of slaves, above mentioned. If all these provisions are complied with, the heir shall have the right to the Falcidian fourth. For we believe that in this way we neither impair the law, heretofore found so excellent, nor do violence to the wish of the decedent; for if a man does not want to die intestate, and wants to confer some benefit out of his inheritance on someone, thinking that he has sufficient property to give the amount given by him, when that is not in fact true, it is clear that the wish of the decedent is not violated, but his mistake is merely corrected. **2.** If the heir, however, does not make an inventory in the manner aforesaid, he shall not be entitled to the Falcidian fourth, but shall pay legatees and cestuis que trust in full, although the amount of the legacies exceeds that of the inheritance. We do not consider that as impairing our law, which we enacted for the purpose of protecting heirs so that they would not lose any of their own property to creditors; he, rather, pays them the penalty of his own fraud, because he transgressed the law, inasmuch, had he proceeded with caution, he would not have sustained any loss, but on the contrary would have benefitted by the Falcidian law. We state this only in reference to cases when the testator acted in error as to his property, or when, perchance, he should have given greater amount to the heir, disposing of less (than he thought); for that too is an error of judgment and not a perfect or accurate disposition of his property. If, however, the testator expressly declares that he does not want his heir to retain the Falcidian fourth, the testator's wish shall be valid, and the heir that voluntarily complies with the testator, who perchance leaves his property for pious and holy purposes, must put

his gain not in receiving, but in the consciousness of doing good, and so should not consider the inheritance without value. But if such heir refuses to carry out such wish, he loses the right under his appointment as heir, and must give place, according to what we have heretofore said, to substitutes, coheirs, legatees, cestuis que trust, slaves, intestate heirs and others, in the order heretofore fixed by us in such matters.

c. 3. We do not permit an heir who is perfectly acquainted with the amount of the inheritance, to pay some of the legatees, fully carrying out the testator's wish in that particular—as is permitted by the laws of our predecessors—and hold back something from the others, and so carry out the testator's wish in part and disobey it in another part. And a party, thus well knowing the amount of the inheritance, who immediately proceeds to carry out the testator's will, must carry it out in full, and cannot afterwards change his mind for the worse; for that would not be perfect fulfillment of the testator's wish. Nor may such party, with such knowledge, proceed to pay incautiously, and afterwards make trouble for the recipients, seeking to recover back from them what has been paid. For when you act, you should act only after reflection; and when you have acted rightly, you cannot turn your mind in the direction of an unjust cause, unless, perchance, that action was induced by just reasons, and something unexpected comes up that diminishes the property and gives rise to the right of reclaimer.

Note.

See C. 6.30.22.8 and note.

c. 4. We also provide that not too much time shall be consumed in connection with such matters, and we ordain that no inquiry or suit shall occupy more than a year, and that an heir shall pay a legacy and comply with the bequest of a testator, according to its nature and do everything heretofore stated within a year after acceptance of the inheritance. The beginning of the year, as we have already indicated, shall count from the time that a decree of admonition (to accept) is made in court. For if a year passes by, due to the fault of the heir, he will lose what has

been left him, and others, heretofore mentioned, will take his place. **1.** But this law shall not prejudice minors under the age of puberty, or minors not of age. If the former suffer any loss for any of the causes enumerated by us, they have a double remedy, an action for restitution to their former rights and an action against negligent guardians or curators. Nor do we except successions in favor of patrons from this law; their legal portion, as defined by law, shall not be diminished, but if any property in excess thereof is left them, and they are unwilling to do what is asked of them by the freedmen, the same rule shall govern which we stated at the beginning of this constitution; provided that the shall retain their legal portion exempt from every burden, and only the remaining property shall be left in the manner already specified for such cases. These provisions are make particularly because in the constitution enacted by us concerning the rights of patrons, we provided for the succession of freedmen to be similar to that of free-born men. **2.** And since there are two kinds of testaments, written and nuncupative, we ordain that all these provisions shall apply equally to written testaments and to every kind of last wish, and to all persons—whether they are in private station or are soldiers; whether they belong to the church or are officials in the palace, we enact this law to apply to them all.

Epilogue. We have enacted these provisions for the common good, so that the living may enjoy the bequests left to them, and that the dying may leave this life with a calm mind, knowing that the law will aid them though they are in the grave and will carry their directions into effect. And since this is in the interest of all, Your Eminence will issue edicts, which will let the world know the binding effect of this law, and which shall be sent to all the provinces of the Roman empire, including those heretofore subject thereto as well as those now added thereto by the grace of God. When the Metropolitan magistrates receive the edicts, they must, as heretofore provided in a law by us, send them into all the cities, so that no one may remain ignorant of a law which suffers no one either to live in poverty, or die in anxiety. Given at Constantinople, January 1, 535.