CHAPTER SIX

LEGATUM PER VINDICATIONEM (2)

1. Gai., 2.200: Text and Controversy

Illud quæritur, quod sub condicione per vindicationem legatum est, pendente condicione cuius esset. Nostri praeceptores heredis esse putant exemplō statuliberi, id est eius servi, qui testamento sub aliqua condicione liber esse iussus est, quem constat interea heredis servum esse. Sed diversae scholae auctores putant nullius interim eam rem esse; quod multo magis dicunt de eo, quod sine condicione pure legatum est, antequam legatarius admitterat legatum.

When something is bequeathed conditionally by way of a legatum per vindicationem, it is asked whose it is while the condition is pending. Our teachers think that it belongs to the heir, by analogy with the statuliber, that is that slave who is granted freedom by will under some condition. It stands that this slave belongs to the heir during the interim. But the authorities of the other school think that, during the interim, this thing belongs to no one. This they say more convincingly of a thing bequeathed unconditionally, before the legatee acknowledges the legacy.¹

The controversy under consideration is related to the controversy in Gai., 2.195. Both texts pertain to the discussion about the legatum per vindicationem (Gai., 2.193–200). When a testator makes a legatum per vindicationem, he may add a condition precedent; the legatee becomes the owner of the legacy after the condition is fulfilled. This kind of situation gives rise to the following legal question: 'If something is bequeathed conditionally by way of a legatum per vindicationem, to whom does it belong while the condition is pending?' About this

¹ The following editors have translated the verb ‘admittere’ as ‘to accept’: J. Reinach, Gaius Institutes, Paris 1950, p. 74 (‘Pour la période antérieure à l’acceptation du legs par le légataire’); F. De Zulueta, The Institutes of Gaius, Part I: Text with Critical Notes and Translation, 3rd edn., Oxford 1958, p. 125 (‘...Up to when the legatee accepts the legacy’); A.C. Oltmans, De Instituten van Gaius, 3rd edn., Groningen 1967, p. 85 (‘Vóordat de legataris het legaat aanvaardt’). However, this translation is incorrect, for a legatum per vindicationem cannot be accepted by the legatee. The verb ‘admittat’ has been translated correctly by W.M. Gordon – O.F. Robinson, The Institutes of Gaius, London 1988, p. 223: 'Before the legatee acknowledges the legacy'.
legal problem, the Sabinians and the Proculians held different views. While the former assigned the bequeathed object to the heir during the interim, the latter took the view that it belonged to no one.

Gaius, moreover, mentioned the argument in support of the Sabinian view. The Sabinians argued that, while the condition was pending, the legacy belonged to the heir, ‘exemplo statuliberi’, i.e., by analogy with a *statuliber*. A *statuliber* is a slave who is granted freedom by will under a condition. Pending the condition, such a slave was called *statuliber* and belonged to the heir.

The Proculian view that the legacy belonged to no one while the condition was pending may have been taken by analogy with their view about a legacy, bequeathed unconditionally by way of a *legatum per vindicationem*, before the legatee acknowledged it, as Gaius indirectly suggested. The closing sentence of Gai., 2.200 (i.e., ‘this they say more convincingly of an item bequeathed unconditionally, before the legatee acknowledges the legacy’) refers to the controversy in Gai., 2.195. According to the Proculians, an ignorant legatee did not immediately become the owner of an item bequeathed to him unconditionally in a *legatum per vindicationem*; he had to indicate his intention to have it. In the meantime, during the period between the *aditio hereditatis* and the acknowledgement, the legacy belonged to no one and was qualified a *res nullius*. Gaius, moreover, seemed to suggest by the words ‘quod multo magis dicunt’ that this reasoning was more convincing than the Proculian reasoning in case of a conditional legacy. Since it was by definition impossible that a *legatum per vindicationem* bequeathed unconditionally (‘sine condicione pure’) belonged to the heir before the legatee acknowledged it, it could be regarded as a *res nullius*.

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3 Ulp., Ep., 2.1–6.