CHAPTER TEN

IN IURE CESSIO HEREDITATIS


85. Item si legitimam hereditatem heres, antequam cernat aut pro herede gerat, ali in iure cedat, pleno iure fit ille heres, cui cessa est hereditas, proinde ac si ipse per legem ad hereditatem vocaretur. Quodsi postea quam heres extiterit, cesserit, adhuc heres manet et ob id creditoribus ipse tenebitur; sed res corporales transferet, proinde ac si singulas in iure cessisset, debita vero pereunt, eoque modo debitores hereditarii lucrum faciunt. 86. Idem iuris est, si testamento scriptus heres, postea quam heres extiterit, in iure cesserit hereditatem; ante aditam vero hereditatem cedendo nihil agit. 87. Suus autem et necessarius heres an aliqui agat in iure cedendo, quae eritur. Nostri praeceptores nihil eos agere existimant; diversae scholae auctores idem eos agere putant, quod ceteri post aditam hereditatem; nihil enim interest, utrum aliquis cernendo aut pro herede gerendo heres fiat an iuris necessitate hereditate adstringatur.

85. Likewise if an heir surrenders by in iure cessio a statutory inheritance to another person before he accepts it or behaves as heir, this person, to whom the inheritance is surrendered, becomes heir in full right, just as if he himself were called to the inheritance by law. But if he surrenders it after having become heir, he remains heir and so is himself liable towards the creditors. But he transfers the corporeal things, just as if he had surrendered them one by one by in iure cessio. The debts, however, perish and, in this way, the debtors to the inheritance make a profit. 86. The same is valid by law if an heir appointed in a testament surrenders the inheritance by in iure cessio after having become heir, but by surrendering the inheritance before accepting it, he achieves nothing at all. 87. But it is asked whether a suus et necessarius heres achieves anything by surrendering through in iure cessio. Our teachers think that they achieve nothing at all. The authorities of the opposite school think that they achieve the same as the others after accepting the inheritance. Indeed, it is of no interest whether somebody becomes heir by cretio or by behaving as heir or if somebody is bound to the inheritance by necessity of law.

The texts in question are found in the third book of Gaius’ Institutiones. Like the second book, the third book of Gaius concerned res. These can be divided into res corporales and res incorporeales.1 Whereas corporeal

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1 Gai., 2.12.
things are tangible, incorporeal things are intangible.\textsuperscript{2} Among the latter, Gaius does not only include usufruct and servitudes, but also the inheritance and obligations.\textsuperscript{3} This explains why not only the law of property (2.1–96) is dealt with under the title \textit{res}, but also the law of succession (2.97–3.87) and the law of obligations (3.88–225). The texts in question are found at the end of the part about the law of succession and deal with the \textit{in iure cessio hereditatis}.

However, Gaius also mentioned the \textit{in iure cessio hereditatis} earlier in the \textit{Institutiones}, i.e., in the part about the law of property. Starting from Gai., 2.28, Gaius discussed the transfer of \textit{res incorporales}: first, he dealt with the transfer of urban and rustic praedial servitudes (Gai., 2.29); next, he discussed the transfer of usufruct (Gai., 2.30–33), of the inheritance (Gai., 2.34–37) and of obligations (Gai., 2.38–39). Obviously, the paragraphs about the transfer of an inheritance concern us most:

\begin{itemize}
\item \textbf{34.} Hereditas quoque in iure cessionem tantum recipit. \textbf{35.} Nam si is, ad quem ab intestato legitimo iure pertinet hereditas, in iure eam aliui ante additionem cedat, id est ante quam heres extriterit, proinde fit heres is cui in iure cesserit, ac si ipse per legem ad hereditatem vocatus esset; post obligationem vero si cesserit, nihil minus ipse heres permanet et ob id creditoribus tenebitur, debita vero pereunt eoque modo debitores hereditarii lucrum faciunt; corpora vero eius hereditatis proinde transeunt ad eum cui cessa est hereditas, ac si ei singula in iure cessissent.
\item \textbf{36.} Testamento autem scriptus heres ante aditam quidem hereditatem in iure cedendo eam aliui nihil agit; postea vero quam adierit si cedat, ea accident, quae proxime diximus de eo ad quem ab intestate legitimo iure pertinet hereditas, si post obligationem \textit{in} iure cedat.
\item \textbf{37.} Idem et de necessariis heredibus diversae scholae auctores existimant, quod nihil videtur interesse, utrum \textit{aliquis} adeundo hereditatem fiat heres, an invitus existat; quod quale sit, suo loco apparebit. Sed nostri praeceptores putant nihil agere necessarium heredem, cum in iure cedat hereditatem.
\end{itemize}

\textbf{34.} Also an inheritance admits only of \textit{in iure cessio}. \textbf{35.} For if someone on whom an inheritance devolves \textit{ab intestato} by statutory law surrenders \textit{by in iure cessio} this inheritance to another person before acceptance, that is, before he has become heir, this person to whom he has surrendered it becomes heir, just as if he himself had been called to the inheritance by law. But when he has surrendered after having become bound (by acceptance), he himself remains heir none the less and so is liable towards the creditors. The debts, however, perish and in this way the debtors to the inheritance make a profit. But the corporeal things of

\textsuperscript{2} Gai., 2.13–14.
\textsuperscript{3} Gai., 2.14.