CRETIO AND CONNECTED TOPICS

BY

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The word Cretio 1) is used in two distinct but connected senses. It sometimes means a direction in a will, requiring formal acceptance within a certain time (G. 2, 164 sqq.), but its primary meaning is the formal act of acceptance itself. Notwithstanding that the contrary opinion has been recently expressed by high authority, for intestacy 2), it seems clear on the texts that cretio

1) See for a recent study, LEVY-BRUHL, N. R. Hist. de Dr. 1914-1915, pp. 153 sqq., and the same author's Le Témoignage Instrumentaire. See also, FADDA, Concetti fondamentali del diritto ereditario Romano, 2, 40 sqq.

2) LENEL, Essays in Legal History (1913), ed. VINGHADOFF, 123 sqq., and Zeitschr. der Sav. Stift, 1916. This contention is part of a wider thesis which does not here concern us.
was an ancient traditional mode of acceptance of a *hereditas*, both under a will and on intestacy).

It was a solemn declaration necessary in the earlier law before a *hereditas* could vest in any heres other than a *suus* or a *necessarius*. It was an oral formula: 

"haec verba dicit" says *Gaius*; "nihil quaeritur nisi de dictione verborum", says the Autun *Gaius*.

It would however be a natural precaution to record it in writing, and the *cretiones* of *Sarapias* are in fact attested records of an act of *cretio*.

It seems to have been a fixed form, *Ulpian* does not indeed say "haec verba" like *Gaius*, but "verba dicere ad hunc modum"), but this more guarded expression is used to show that he does not mean "these words and no more". His form differs from that of *Gaius* only by the omission of the unnecessary words "testamento suo".

Where a testator imposed a requirement of *cretio*, he could as we shall see, impose other requirements, but, apart from these, the essential point seems to have been the use of the words "adeo cernoque" with a specification of the *hereditas* on which it was proposed to enter.

We are told that *aditio* was an *actus legitimus*, and thus could not be subject to *condicio* or *dies*), and we may be sure that this was true of the specially solemn form with which we are concerned. It would follow that it must be in latin, and thus we find, in the *cretiones* of *Sarapias*, that the record of the essential part is in latin, while unessential parts are in greek.

There seems no real evidence for the view that there was a time limit at civil law, and it is difficult to suppose that if

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1) G. 2, 167. 3, 62. 3, 84; Consult. 6, 19; Greg. Wis. 13, 14; C. Th. 2, 16, 2, 4.
2) G. 2, 165.
3) Aut. G. 37-42 etc.; see also Ulp. 22, 28.
4) Girard, Textes (4) 806; Bruns, Fontes (7) 1, 318.
5) The remark of Cicero (de Or. 1, 22, 101) "scribi solet" refers to the form in the will, though for the purpose of his whimsical application of them he puts the words "quibus sciam poteroque" in the first person.
6) Ulp. 22, 28.
7) D. 45, 1, 65 pr. The point is material: added words vitiated a *legis actio*, Vat. Frag. 318.
8) The Autun *Gaius* (38) also omits them and gives a slightly different form.
9) D. 50, 17, 77.
10) See the present writer, Law. Quar. Rev. XXXII, p. 97.