

Book II.
Title XLVI (XLVII).

What and before whom the trial of restitution is to be had.

2.46.1. Emperor Antoninus to Severus.

If anything is adjudicated by my procurator, it cannot be rescinded by restitution of rights (granted) by the decision of the president. For only emperor is accustomed to restore rights as against the decision of his procurators.¹

Promulgated November 27 (215).

2.46.2. Emperors Diocletian and Maximian to Aquilina.

Since you say that you delivered the things, which were agreed to be given pursuant to a compromise, it follows that if you are thinking of suing for their return either through a proceeding for restitution of rights or by any other suit, you should go before the president of the province where those whom you sue have their domicile.

2.46.3. Emperor Justinian to Johannes, Praetorian Prefect.

Since we know that it is doubted, in connection with demands for restitution of rights, claimed by persons under or over twenty-five years of age, whether, in accordance with what is stated in previous sanctions either of the ancient law or of us, hearings should held only before a judge of some (general) jurisdiction or also before petty judges (penanei iudices, we ordain that hearings of this kind may be had not only before judges sitting on a tribunal, but also before those judges who have been specially appointed by our august majesty or by the administrators of public affairs, in this imperial city or in the provinces, so that he who appointed the special judge, may seem as though he himself, hearing the case while sitting on a tribunal, were giving restitution of rights and examining the reasons therefor.

1. But no one shall dare to broaden the meaning of our constitution so far as to think that such sanction also embraces referees selected by common agreement or appointed by judges who have no inherent jurisdiction, but only the power of deciding, since, in general, we want those only to try such causes who have definite administrative positions, to which jurisdiction is attached, or who are appointed by them, and especially if the hearing of causes is delegated to them by Our Majesty.

2. And that nothing may be left in doubt, we think we should add this, that only those whom we have enumerated above shall be permitted to try and decide as to restitution of rights, whether this is specially delegated to them, which was not unknown to the ancients, or whether they are appointed as judges generally, or in other cases, but in which the question of restitution arises incidentally.

Given at Constantinople August 30 (531).

Note.

The term “jurisdiction” expressed the unlimited power of administering the civil (as opposed to the criminal) law in the ordinary course of procedure. Hunter, Roman Law 41. Municipal judges or magistrates could not give restitution of rights.

¹ [Blume] For jurisdiction of imperial procurator where the imperial exchequer was interested, see C. 4.48.1; C. 2.36.2.

D. 50.1.26.1. So, according to the foregoing law, arbitrators, as we commonly understand the term, could not do so.