

Book V.
Title XLIV.

Concerning the appointment of a guardian or curator in connection with a lawsuit.
(De in litem dando tutore vel curatore.)

5.44.1. Emperor Antoninus to Miltiades.

If you have any claims against your minor wards under the age of puberty, you may establish them (in court) with your co-guardians present and defending the minor, or if they have no other guardians, curators should be appointed to defend such suit for them.¹

Promulgated July 20 (213).

5.44.2. Emperor Alexander to Euaristus.

Whether you have a right to recover² part of your father's farm, will be decided by the judge who has jurisdiction. You should, however, consider the duty in which you say you find yourself as guardian lest, if eviction follows on account of your claim, you mulct your minor ward, heir of the seller, in damages beyond the value of your interest in the farm, since the heir should be defended by you, and since you have the right of offset or may bring an action against the minor (to recover your interest in the property). But that your rights, if you have any, may not be delayed, curators will be appointed for the minor to make the proper defense in an action (against the minor) in which you may be the claimant.³

Promulgated April 20 (224).

5.44.3. Emperor Gallien to Vallerius.

A guardian or curator appointed for a lawsuit cannot be held responsible for the management of property, since the management of a particular transaction only was enjoined on him. If, accordingly, as you allege, you did nothing aside from that transaction, you are sued to no purpose (as to the management of the property).

Promulgated April 1 (265).

5.44.4. The same Emperor to Irenaeus.

If you paid out money in good faith as guardian appointed for a lawsuit (ad litem) you may demand payment thereof in the usual manner from your co-guardians.

Promulgated November 1 (267).

¹ [Blume] See C. 5.34.11 note.

² [Blume] In an action called a contrary action on guardianship, which lay when the guardianship had ceased. Hunter 725.

³ [Blume] Reference is made to the following situation: A, the deceased father of the minor C, and of B, the guardian and uncle of C, were joint owners of a farm left them by their father. A, during his life, sold the whole of the property to D without B's knowledge. B wanted to bring a suit against D and if eviction should follow as to B's interest, the minor, as heir of his father would have to compensate D for the damages on account of the eviction, which might be larger than the value of B's interest. B is advised to rely on a direct claim against the minor rather than to bring suit against D.

5.44.5. Emperors Diocletian and Maximian and the Caesars to Tigranis.

Whether the burden of guardianship of the children of your brother rests on you by reason of the fact that you are testamentary or statutory guardian, you need have no fear as to the disputes which you say you formerly had with your brother, since if a lawsuit is commenced, a procurator will be appointed who will be curator ad litem, so that the customary forms of law, when a guardian is required, may be observed, and both parties may be protected.

Subscribed April 28 (294).