

Book V.
Title LXXIII.

If anyone not knowing that the property belongs to a minor buys it without an order of court.

(Si quis ignorans rem minoris esse sine decreto comparavit.)

Bas. 10.4.60.

5.73.1. Emperor Gordian to Felix.

If the woman who succeeded to the property of your guardian by inheritance sold and disposed of your landed-estate as property belonging to a minor under the age of puberty, the purchaser who knowingly bought the property from the heir of a guardian could not obtain the benefit of a defense arising from lapse of time. But if the woman sold it as her own, the purchaser unwittingly acquiring a third party's property, then he did not become immediate owner by delivery of the property to him, and he may only, since you do not deny that you are of age, set up the defense that the time fixed or prescription has elapsed.

Promulgated September 9 (238).

Note.

A distinction is here drawn between a purchaser in good faith and one in bad faith. Five things were required for a purchaser in good faith in this case: a just title, good faith, majority of the owner, possession of the legal time, possession without interruption. No prescriptive time ran in favor of purchasers in good faith, except the period of 40 years. C. 7.39.4 and note. But it was different in the case of a purchaser in bad faith. In his case the period of five years mentioned in C. 5.74.3 governed. As to prescriptive periods in general and limitations of actions, see C. 7.26 headnote; C. 7.39.

5.73.2. The same Emperor to Crispina.

If your landed-estates were sold contrary to the decree of the senate, sue the possessor thereof so that if you prove the fact, the property shall be returned to you, and all fruits thereof recovered, unless it appears that the purchaser was one in good faith.

Promulgated December 17 (241).

5.73.3. Emperors Diocletian and Maximian and the Caesars to Agatha.

Rustic or suburban landed-estates sold contrary to the senate decree, without a hearing and without the interposition of a judicial order, cannot legally be held even by a second purchaser¹ unless the fixed prescriptive period has elapsed.²

Promulgated at Nicomedia February 13 (294).

5.73.4. The same Emperors and Caesars to Alexander.

Since (an action has been instituted) against the purchaser to whom the property in suit was legally transferred by a party to whom a gift of it was made contrary to the senate decree, inquiry should be made whether he whose title is questioned is shown to have been in possession, without a controversy in good faith, during a period of 10 years

¹ [Blume] I.e., a purchaser who bought from the original.

² [Blume] Five years—C. 5.74.3.

while the prior owner, after he became of age, was present, or during a period of 20 years, while the prior owner was absent. If this plainly appears before Your Gravity, the claimant must, without hesitation, be excluded by the defense that the time fixed for prescription has elapsed.

Given at Dorastolus June 8 (303).

Note.

It will be noticed that in this case a gift of the property of a minor was made to someone who in turn transferred it to someone else. Where a gift was made of property of a minor the period of prescription was longer than in a case where property of a minor was sold without judicial decree. That distinction clearly appears in C. 5.74.2. Presence and absence refers to the same province, that is to say, whether both parties lived in the same province or not. C. 7.33.