

Book VII.
Title XXVII.

Concerning prescription (usucapion) pursuant to a gift.
(De usucapione pro donato.)

Dig. 41.6; Bas. 50.6.

7.27.1. Emperor Alexander to Macedonius.

Whether the places mentioned in your petition were given to you by the owner thereof, or by a man who did not own them, but you received them in good faith and were in possession of them during a period sufficient for prescription, they will have been lawfully acquired by you, and cannot be taken from you.
Promulgated March 11.

Note.

According to c. 7, Nov. 119, the prescriptive period of ten and twenty years (applicable to real estate) did not apply if the transferor of the property held it in bad faith, unless the owner knew of the transfer. If he did not know of it, only the prescriptive period of thirty years applied.

7.27.2. Emperors Diocletian and Maximian and the Caesars to Capitonis.

The law is clear that one who gives away another's female slave takes nothing from the rights of the owner. In fact, a man who takes property without the owner's consent, commits theft and no prescription can apply thereto.
Subscribed April 9 (293).

7.27.3. The same to Rhodanus.

No one has power to annul a completed gift. And just as that is true, so, too, a mistake caused by a false reason (in obtaining possession) is not cured by possession in good faith. This applies to acquisition of ownership by prescription.

Note.

The law means to say that if there was in fact no gift, which was supposed to have been made, the property could not be acquired by prescription. Inst. 2.6.11, says: "If there be a mistake as to the legal mode by which possession is acquired, and which it is wrongly supposed will support prescription, prescription cannot apply. Thus a man's possession may be founded on a supposed sale or gift, when in point of fact, there has been no sale or gift at all." If a man bought a thing which he knew had been forbidden to be sold by the praetor, or if he bought from a minor under the age of puberty, thinking that the latter could sell without the consent of his guardian, he obtained no title upon which prescription could be based. Dig. 41.3.12; D. 41.4.2.15. Sometimes an error was excusable. Where, for example, a man bought from a minor under the age of puberty, thinking him of legal age, to enable him to sell, such sale - doubtless if the belief was justified - gave rise to prescriptive title. See C. 7.33.5.