

Book VII.
Title XXXIII.

Concerning prescription of ten or twenty years.
(De praescriptione longi temporis decem vel viginti annorum.)

Bas. 50.11.

7.33.1. Emperors Severus and Antoninus to Julianus.

When, after a dispute has been raised and abandoned, the property passes to a new owner in good faith, and from then on a new period of twenty years elapses without interruption, the then possessor should not be troubled. As he does not seek to tack his possession onto that of the prior owner, who was disturbed, neither should he be prejudiced because of the action that had been set in motion against the latter. 1. But if the prior possessor is disturbed, although he thereafter remains in possession for a long time without interruption, he cannot use the defense of prescription of a long time. This rule applies to a city as well.

Given (a. 202).

Note.

The rescript does not state how far the suit must have progressed in order to interrupt prescription. In suits under classical law, joinder of issues was necessary, but notice of suit was sufficient under the extraordinary procedure. C. 3.19.2; law 10 h.t. Patsch, Die longi temporis praescriptio 41. The ancient usucaption, applicable only to Romans, was not strictly speaking, interrupted by joinder of issues, differing in this respect from prescription. But this meant little, for the reason that the case was decided by the state of things as of the time of joinder of issues, and the defendant was condemned, if the time was not then complete. G. 4.114. D. 6.1.18. See as to the last clause, Patsch, supra 32-40.

7.33.2. Emperors Diocletian and Maximian.

Prescription of a long time usually protects those who have held possession, commenced in good faith, continuously, uninterrupted by any suit.¹
Promulgated November 27 (286).

7.33.3. The same and the Caesars to Antonius.

If the vineyards which your mother gave to your stepfather as a dowry, belong to you, and the time elapsed has not ripened into completed prescription, the president of the province will cause such vineyards to be restored to you.

7.33.4. The same to Hermus.

Long possession simply pursuant to the right of succession as heir without any just title (justus titulus), cannot alone serve as a basis for prescription.
Promulgated April 10 (293).

Note.

¹ [Blume] C. 3.32.26.

See C. 7.29, as to prescription in favor of one claiming as heir. C. 7.32.11, says that the vices inherent in possession follow the possessor's heirs. Hence the predecessor in interest of the heir must have had color of title, and must have possessed the property in good faith, in order that the heir might receive a prescriptive title. This differs materially from the rule of the common law.

7.33.5. The same to Saterichus.

The law is very plain that one who claims ownership from another, to whom, without having a true title, only an error of the claimant gave any ground for his possession, cannot be defeated by prescription of a long time.²
Subscribed at Sirmium April 21 (293).

7.33.6. Part of a letter of the Emperors Diocletian and Maximian and the Caesars to Primosus, President of Syria.

If a sale was made through fraud and deceit, even though among persons over twenty-five years old, the subsequent time could not confirm it, since prescription of a long time can not apply, (if based on) contracts made in bad faith.
293.

7.33.7. The same to Anthea.

Loss of documents of purchase does not prejudice the right of parties who are protected by prescription of a long time, nor can the wicked act of another disturb the security acquired by length of possession.
Given December 31 (293).

7.33.8. The same to Celsus.

If the man against whom you complain defended the former slaves of your mother, as though he was an adopted son, and intention (on the part of you mother) to adopt him, the affection of an intended and [illegible] adoption³, does not alone furnish a sufficient basis for him to acquire ownership of such slaves. 1. If the man, therefore, against whom you complain, acquired possession of the slaves with such beginning only, you may bring an action to recover them without having to fear the defense of prescription.
A.D. 294.

Note.

"Again women cannot adopt, for even their natural children are not subject to their power; but by imperial clemency they are enabled to adopt, to comfort them for the loss of children who have been taken from them." Inst. 1.11.10; C. 8.47 (48).5; Gaius 1.104. Hence, where, as here, the mother had a legitimate child, she had no right whatever to adopt any other child. Her intention to do so did not, accordingly, give such other child any claim to such slaves or place him in position to gain a prescriptive title by taking possession of them. He had no sufficient color of title.

² [Blume] See C. 7.27.3, and note.

³ Blume penciled in this phrase, having lined out "such adoption not being permissible..."

7.33.9. The same to Demosthenes.

A purchaser in good faith rightly demands to be absolved (gain his suit) against one present (in the province), by prescription of ten years, which it is sufficient to set up in the beginning (of the suit), after the claimant has proven his claim, by producing proof that he is protected by just possession.

294.

Note.

This law appears to contemplate that the defense of prescription should be set up in the beginning of the suit. But, as appears from C. 8.35.9, that does not appear to have been absolutely necessary, since it was a defense in bar. See Partsch l.t. p.68.

7.33.10. The same to Reginus.

Prescription, the time of which is only completed after a delay in joining issues does not benefit those that acquire possession in good faith, since the time prior to the commencement of a suit is considered.⁴

Promulgated December 9 (294).

7.33.11. Emperor Justinian to Mena, Praetorian Prefect.

As to the prescription which applies in ten or twenty years, we make it clear by this enactment that if it is proven that a man has occupied property, in good faith, for ten or twenty years pursuant to a donation or any kind of gift, the time of possession of any prior occupant being tacked to his own, he is protected by the defense of prescription, nor shall he be defeated because the title is based on a gift.

Given June 1 (528).

7.33.12. The same to Johannes, Praetorian Prefect.

Three doubts arose among the ancients in connection with prescription, the first as to the location of the property, the second as to the persons, (namely) whether the presence of one or both is required, the third whether such presence of the claimant and the possessor and of the property in dispute should be in the same province or in the same city-community. We shall consider all of these questions in the present law, so that nothing will be left outside of its scope. 1. We, therefore, ordain that in a matter of this kind the domicil of both parties, that of the claimant and that of the possessor, is to be considered; that is to say, the man who claims ownership or hypothecation, as well as the man who is in possession of the property, should have their domicil in one place; that is to say, in the same province (in order that the ten year prescription may be good). For it appears to us to be better, that the domicil to be considered should not be confined to a city-community but should rather be extended to a province, and if both have their domicil in the same province, the case shall be considered as between person who are present and the claimant will be defeated by a ten years' prescription. 2. It shall make no difference whether the property in dispute is in the same province, or in a neighboring one or in places across the sea, separated by long distance. 3. If, on the other hand, both parties do not have their domicil in the same province, but one is in one, the other in another, the case shall be decided as one between absent persons, and the prescriptive

⁴ [Blume] See note to law 1 of this title.

period of twenty years applies. But there is nothing to prevent the parties from bringing an action as to the property in the provincial courts (of the residence of the parties), let alone in this flourishing city, whether such property is located in the same province or not.⁵ 3a. For of what advantage would it be for the property to be in one province rather than in another, when the right to it is incorporeal, and ownership thereof or a lien thereon may be returned to the owner or creditor, wheresoever it may be located? Our forbears created actions and laws governing them, with a logical and almost divinely-inspired mind, so that these incorporeal forces might extend their power everywhere with corporeal effect. 3b. Let the matter, therefore, be definitely settled according to this provision and let no one hereafter doubt as to how this question of presence or absence is to be decided, so that when the points of a good beginning of a title, of possession and of the domicile of both parties has been examined, the suit may be settled as to property wherever situated, without further inquiry into knowledge or ignorance (of adverse possession), lest further occasion for inextricable doubt arise. The same rules shall apply if the property is not such as pertains to the soil, but is incorporeal, consisting of a right, such as usufructs and servitudes.

Given at Constantinople November 27 (531).

⁵ [Blume] As to the venue of actions in rem, see C. 3.19.