

Book VII.
Title XXXV.

Against whom the ordinary prescription (of ten or twenty years) cannot be set up.
(*Quibus non obiciatur longi temporis praescriptio.*)

7.35.1. Emperor Alexander to Venuleius, a veteran.

The time during which a soldier is engaged in an expedition¹ does not give rise to prescription against a claim of his which can be shown to be just.
Promulgated July 2 (224).

7.35.2. Emperors Diocletian and Maximian to Aurelius, Chief Physician.

Since you aver that the men against whom you complain during your absence forcibly invaded property belonging to you, and it is plain that you could not depart from our (imperial) court on account of your duties as physician, our praetorian prefect will summon the men in question and will try the dispute between you. 1. But you unnecessarily ask that the plea of prescription be not permitted to be set up against you, since justifiable absence and performance of public duties protects you against such claim.

Promulgated at Nicomedia February 18 (286).

Note.

The theory on which prescription was based was the presumed neglect of the owner. If he was not in position, however, to assert his claim, it was just that prescription should be suspended until such time as the disability was removed. Hence certain persons were allowed to rescind a title acquired by prescription, if they applied within one year after the disability ceased (C. 2.50.3), or as is stated here and in law *infra*, prescription did not apply. Among such persons were those absent of the service of the state (law 4 *infra*), as soldiers, army doctors, governors of provinces and other officials and their wives. D. 4.6.33.2; D. 4.6.35. 3 and 9; D. 4.6.45; C. 2.52.1; persons in custody or captured by brigands or pirates; D. 4.6.9; persons living in slavery; D. 4.6.11. See also laws 3 and 4, *infra*.

7.35.3. The same to Numidius, Corrector of Italy.

It is not unknown that the time during minority does not count as part of the long prescriptive period (ten or twenty years). For the latter commences to run when the owner of the property becomes of age.
Promulgated September 11 (290).

7.35.4. The same and the Caesars to Crispinus.

If undisturbed possession has continued without controversy, a plea of prescription is valid; (but) we decree that it cannot be set up against persons absent on public business or, generally, by reason of fortuitous circumstances.
Promulgated February 26 (292).

¹ [Blume] See note to C. 2.50.8.

7.35.5. The same to Januarius.

The law is certain that prescription of a long time (ten and twenty years) cannot be set up in an action on a loan, accommodation loan, deposit, legacy, trust, guardianship or any other personal action.²

Subscribed February 1 (293).

7.35.6. The same to Doleus.

Having been captured by the enemy and restored to your former condition upon return home (postliminis), you uselessly fear (adverse) possession of your opponent in a direct or other action brought by you to recover the property, since that fact is no defense against those who are entitled to restitution of their rights (as you are entitled in such case).

Given November 8 (294) at Heraclea.

7.35.7. The same to Cassandrus.

Possessors in good faith are protected against those present in the province by a prescription of ten years and against those absent from the province by prescription of twenty years. If the claimant invokes the aid of restitution to rights, the rule is that the time for which such aid is usually extended, because of business done (for the public), is deducted and the remainder is counted (to make up the prescriptive period).

7. 35. 8. Emperor Justinian to Mena, Praetorian Prefect.

We ordain that only soldiers engaged in an expedition may be aided by the time occupied in the expedition to defeat a defense (of prescription). The time during which they are not on an expedition and while they live in other places or in their own houses, will not avail them in claiming that privilege.³

Given at Constantinople April 1 (529).

² [Blume] Only limitation of action - extinctive prescription - which required a longer time, applied to personal actions. See C. 7.39.2, and note.

³ [Blume] The Basilica gives this abridgment of the law: "The ordinary prescription does not run against soldiers while they are on an expedition." See C. 2.50.8, which is nearly a duplicate.