

Book VII.
Title XXXVII.

Concerning four years' prescription.
(De quadriennii praescriptione.)

Bas. 50.13.

7.37.1. Emperor Constantine to Arfitum.

It is known that no question can be raised by our fisc (against the possessor) concerning ownerless goods - after a continuous period of (possession of) four years. It may also be added that those who receive (such property) as a gift from us, must not be disturbed, nor must a controversy be raised by our fisc against those who hold such property in any manner or by any title (from those who received such gift).

Note.

The period of four years here mentioned, doubtless read five years, when this law was first enacted, as seen by note to next law. This period was longer than the prescriptive period required for "goods," personal property, which was three years, and hence the four or five years' prescriptive period doubtless applied in all cases where the property was not acquired in good faith. Buckland 252. See C. 10.1.6.

7.37.2. Emperor Zeno to Aenea, Count of the Private Estate.

All who acquired any property movable, immovable or self-moving, consisting of any action or any right from the fisc, and all those who received any property, movable, immovable or self-moving, consisting of any action or right, from the emperor as a gift, shall have all the rights which purchasers of certain property acquired under imperial ordinances of the renowned Leo, of blessed memory and of our Piety. They shall enjoy the benefits and privilege of that kind, the same as if such provision had now or hereafter been made as to each property or patrimony (in question). And no action in rem, claiming ownership or hypothecation, and no action in personam, civil or praetorian, and no action provided by any law or imperial constitution, and no other action, whether specially mentioned in this ordinance or not, shall be brought against any purchasers, past or future, of the aforesaid property, or against those who have enjoyed or shall enjoy our bounty in respect to such property, granting (however) permission to (former) claimants to sue the fisc within four years, if they think that they have any right of action, but they shall have no such right of action (against the fisc) after the period of four years has elapsed. 1. Considering, further, the interests of purchasers of fiscal property in the light of a rule of justice, we order that whenever it is stated on the records of the proper bureau that it has received the price of the property sold, the purchasers shall not, after such statement has been so made, be molested for non-payment of such price, and shall not be compelled, tho they have not received the customary quittance, to prove that the price was paid. For as it is in the power of the man entitled to money to omit to state that he has received something which in fact he has not received, so it is proper that the purchasers who by such statement receive the fullest guaranty as to the payment of the price, should not, as stated, be burdened by any further requirement of proof.

Note.¹

Inst. 2.6.14, says: "Finally, it is provided by an edict of the Emperor Marcus, that after an interval of five years, a purchaser from the fisc of property belonging to a third person may repel the owner, if sued by him, by a defense. But a constitution of Zeno of blessed memory has protected persons who acquire things from the fisc by purchase, gift, or other title, affording them complete security from the moment of the transfer, and guaranteeing their success in any action relating thereto, whether they be plaintiffs or defendants; while it allows those who claim any action in respect of such property as owners or pledgees to sue the fisc at any time within four years from the transaction. A divine constitution which we ourselves have lately issued has extended the operation of Zeno's enactment, respecting conveyances by the fisc, to persons who have acquired anything from our own property or that of the empress." See next law. The sale to be valid, was required to be regular, otherwise it might be rescinded. C. 4.44.16; C. 4.46. If the land belonged to minors, restitution of rights might be granted. C. 2.36.3 note. See C. 10.3.5 note.

7.37.3. Emperor Justinian to Florus, Count of the Crown Domain and Curator of the Imperial Patrimony and to the illustrious Petrus, Curator of the Patrimony of the Most Serene Augusta and to the illustrious Macedonius, also Curator of the Imperial Patrimony.

Alienations by the fisc, were well protected by Zeno of sacred memory, so that men who received any property from our fisc by gift, purchase or other alienation, should not sustain any loss, if any adverse claims should be made against such contracts, looking either toward the eviction of such men or otherwise disturbing them under a claim of ownership or hypothecation, (Zeno providing) that no actions should be brought against the parties who purchased, received as a gift, or detained such property under any other title of alienation (by the fisc), but (that such actions might be brought) only against the fisc and that only during a period of four years, no action remaining even against the fisc after the lapse of that period. 1. We know that this has been zealously followed in fiscal alienations, but not in like manner in connection with the property received, not from the fiscal estate, but from the private estate of the emperor. 1a. That is surely irrational. For since everything is understood to belong to the emperor, what is the difference whether the property alienated is part of his private patrimony or belongs to the fisc? So if anything is alienated by the serene Augusta, why should it not enjoy the same prerogative? And why should it be necessary for our curators, thru whom we are accustomed to manage our property, to add to documents evidencing sales of property, warranties against eviction and other agreements useful in connection with private contracts, or to acknowledge such obligations in documents of other alienations, exchange or compromise, in case such documents are made? 1b. Such demand can be made only by those who do not acknowledge the imperial majesty, or the contrast between private fortune and imperial greatness, and who attempt to inflict injury and damage upon our curators by whom the property of the imperial patrimony is managed. 1c. Correcting all these things, we ordain by this general and perpetually valid law, that

¹ Blume penciled in here: "Hereditas might be claimed from fisc. D. 5.3.13 9 - Did this law or next repeal that? See notes 4 Heimbach 197-198.

all alienations coming from the imperial court, either from Our Clemency or from the serene Augusta, our consort, or from those who hereafter shall be worthy of the imperial name, whether the alienation has already been made or shall be made hereafter, shall remain valid and not subject to disturbance, whether made by ourselves or by our procurators pursuant to an imperial commission. 1d. And no one shall dare to sue those who receive movable, immovable or self-moving property or any incorporeal rights, or bread rations pursuant to any (imperial) alienations, or to hope that any method to defeat them is open to them, but every approach shall be barred, every chance or hope to exercise such willfulness shall be excluded. 2. They shall have an action in rem or an hypothecary action, to which they consider themselves entitled, against our house, as in case of the fisc, for four years, and the action may be commenced pursuant to our order an brought to a proper ending. But if four years are permitted to pass, no one shall have a right of action against our house. 3. And since we know that we ourselves and the most serene Augusta, our consort, have already given or sold or by some other title have transferred much property, especially to the holy churches, hospitals, almshouses, bishops, monks and other innumerable persons, and that such bounty came from our own patrimony or that of our serene consort, we ordain that such parties shall firmly hold what they obtained, and no action may be brought against them, but all (adverse claimants) shall have an opportunity to bring an action concerning such property against our house within four years from the present day, knowing that after the lapse of four years no one has the right to recourse (even) against our house. 4. For as the imperial fortune enjoys many privileges, both in regard to gifts which are valid without record of the transaction and in regard to property which the then serene emperor gave during marriage to the diving Augusta, or which he himself received as a gift from the serene Augusta, such gift being immediately valid, without waiting for time to receive confirmation, this too (of having imperial alienations be completely valid) is part of the imperial privilege. For why should not those who by their counsel and work labor day and night for the people of the whole earth have a prerogative worthy of their fortune? 5. Your Sublimity, therefore, and all other judges, will comply with what our Eternity has decided for the imperial dignity and for the protection of the recipients of property, which shall be valid from the time that we, with God's approval, took the imperial crown. Given at Constantinople November 27 (531).

Note.

The property theoretically all, as stated in this law, belonging to the emperor, was, nevertheless, divided and treated as (1) fiscal property, property belonging to the imperial treasury in general; (2) *res privata*, property of the crown domain; (3) according to His, Domanen, property of the imperial patrimony, being property strictly belonging to the reigning monarch individually; (4) Household lands. See headnote C. 11.62.