

Book II.
Title XLI (XLII).

To whom and against whom restitution of rights cannot be granted.

2.41.1. Emperor Alexander to Cononides. (?)¹

The person trying a case of restitution of rights should, of course, consider carefully whether the person who alleges that he, while a minor, was harmed, has been a careful head of the family, and has shown himself to be industrious in his public transactions, making it unlikely that he slipped by reason of his age. Still, if it is found, upon investigation, that he was defrauded, he shall not, as though barred, be denied the usual aid, for the sole reason that on account of the urgent needs of his native city he was appointed as a decurions while a minor, or because, by the raising of children, he provided for the continuation of his line.²

Promulgated September 22 (232).

2.41.2. Emperor Justinian to Johannes, Praetorian Prefect.

Since it was a question with the ancients whether children could complain against their parents, or freedmen against their patrons, as if not treating them becomingly, and some thought that no restitution of rights could be granted against such persons, natural (parental) authority, and reverence due to patrons, forbidding such impudence, except for weighty reason or where such person was disgraceful, while others thought that a distinction as to persons or reasons ought to be rejected; that restitution, moreover, should be granted only when a minor would say that he had been defrauded by his own want of knowledge, rather than by the deceit of his father or patron, in order, therefore, that the honor (due to) parents, patron and patroness may in all cases remain undiminished and unimpaired, we ordain that restitution (of rights) shall under no circumstances be granted either against parents of either sex or against a patron or patroness. For the reverence due to these persons excludes them (the children and freedmen) from restitution (of rights) since the former will, without any doubt, take care that nothing against their good name will arise.

Given at Constantinople September 1 (531).

Note.

See C. 2.26.2 (in apparent conflict). Justinian by Nov. 155 modified this law in 533 by permitting a minor child to have restitution of rights against her mother acting as the child's guardian.

¹ Question mark in Blume's typed manuscript.

² [Blume] As to decurions, see C. 10.32 and headnote, also C. 10.50.1. Last clause probably an addition of compilers. 45 Z.S.S. 304.