

Book VII.
Title XXXI.

Concerning transforming prescription (usucapion) and abolishing the difference between things requiring formal conveyance and those not requiring it.
(De usucapione transformanda et de sublata differentia rerum Mancipi et nec Mancipi.)

7.31.1. Emperor Justinian to Johannes, Praetorian Prefect.

Since our vigilance abolished the name and substance of quiritarian-right¹, and the common defenses are valid in every place, that is to say, those relating to the lapse of ten, twenty and thirty years and those relating to the lapse of a still greater period, it is not beneficial that prescription should exist as to Italian property but should be excluded from the provinces. If a man in good faith had possession of the property of another in Italy, for a period of two years, the unfortunate owners thereof were barred without any right to reclaim it. And this happened to owners without knowledge of the facts, and there was nothing more cruel than that a man should in his absence and without knowledge lose his possessions by the lapse of such short period of time. 1. We, therefore, deem it best to change the prescriptive right as to Italian property which is immovable or considered such, the same as we chance the defense of the lapse of a year, so that here, too, only the periods of ten, or twenty or thirty years, or other period of defense shall be applicable, and the short prescriptive period heretofore in force shall cease to be in force. 2. And, as the ancients also extended the application of usucapion to things movable and self-moving, in any manner alienated and detained in good faith, not only in Italy, but in every part of the world, and fixed the period for such usucapion at one year, we have though it best to correct this; so that, if a man in good faith, detains another's movable or self-moving property in any part of the earth, whether in Italy or in the provinces for a continuous period of three years, he shall then have it in his own right, as though acquired by prescription. This only must be complied with, namely, that in all cases he takes possession in good faith, as the prescription of a long time requires, and so that, too, a former possession of a just possessor may be tacked to, and counted as part of, the ten and twenty years, as well as of the three years -- which we think should be observed in connection with movable property -- so that in all cases, the just detention of property which a predecessor had, based on a just title, shall not be interrupted by the later knowledge, perchance of a subsequent holder, that the property was that of another, although the possession arose in the first place as a result of a gift. In this manner, the sphere of operation of a long time, in which it is made applicable, will indeed be broadened, while the many losses to owners from short term usucapion, and its pernicious rights, will be diminished. Likewise, since the division of property into things requiring formal modes of conveyance, and those not requiring them (*res Mancipi et nec Mancipi*), is ancient and should justly be considered antiquated, the same rule shall apply to all things in all places, and all useless distinctions and differences are abolished. Given at Constantinople October 18 (531).

¹ [Blume] C. 7. 25.

Note.

Property under the early Roman law was divided into *res mancipi* and *res nec mancipi*-property, which could be transferred only by the formal mode of conveyance-*mancipatio*, mentioned in note to C. 7.25.1 - and property which might be transferred by delivery. The *res mancipi*-property requiring a formal mode of conveyance, in order to be transferred - consisted of Italian land and houses, slaves, oxen, mules, horses, asses and rustic servitudes. If they were not conveyed in the formal mode mentioned, the ownership thereof remained in the transferor, notwithstanding an attempted alienation, and though the property was delivered to the transferee. The property embraced within these classes was at that time evidently the only property which was considered of any value. But other classes of property came to be known, and such property could be sold by delivery; that is, it did not require any formal conveyance in order to be transferred. The sale by delivery came to be recognized as the more advantageous method; the difference here pointed out, in fact, gradually disappeared, and as the classes of property of value increased in number, as already seen in C. 7.25.1, the formal mode of conveyance was entirely abolished. See C. 2.3.20; Gaius 1.121; 2.15. and 15a, Leage 120; Maine, Ancient Law 269-271; Sohm, 324.²

² Blume penciled in here: *Mancipatio* - (define it) in 4th century. 34 S.Z. 169; Pauly-Wissowa 1005.