

Book VII.  
Title XXXVI.

(Prescription) against a creditor.  
(Adversus creditorem).

Bas. 50.14.

7.36.1. Emperor Gratian to Veneria.

Long silence fortified by prescription of a long time renders an action by a creditor following up a pledge inefficacious, except when the debtors themselves or their heirs are in possession of the pledged property. But when the defense of prescription of a long time is set up against the creditor by (and outside) possessor, the right of a personal action against the debtor remains unaffected.

7.36.2. Emperors Diocletian and Maximian and the Caesars to Marcella.

If you were not the debtor's heir, and a gift (of the property) to you is fortified by lawful possession of twenty years, the rule of law neither permits suit against you in a personal action, because you did not succeed to the debtor as heir, nor are lands that were pledged (but given to you) to be taken from you after the lapse of the period of a long time, since it has been stated in our rescripts and those of former emperors that prescription of ten years may be set up against creditors who are present in the province.

Note.

The statement in the two preceding laws that a hypothecary action, that is to say, an action by a pledgee or mortgagee of property to recover the pledged or mortgaged property in the hands of a third person may be barred in ten or twenty years, is confirmed by other laws in the Code, as C. 7.39.8 pr; C. 4.10.7; C. 8.13.7; C. 8.40.25; C. 8.44.19, and appears to be accepted as having been the law by Partsch 79-80; Mackeldy § 356; Hunter 447; 9 Cujacius 1118; contra, Girard, Manuel 831; Buckland 496.

C. 7.39.7 pr, states that it has been long known that such action is barred in thirty years, and that limitation was fixed in C. Th. 4.14.1, enacted in 424 A.D. On its face, this law seems to be inconsistent with the law expressed otherwise in the places cited. But the frequency in which the prescriptive period of ten and twenty years is mentioned, suggests that there was, at least till the time of Theodosius, a difference in the application of the respective periods, and Colquhoun § 2121, seems to say correctly, that a deficiency in title or good faith must be supposed in one case, namely in the case requiring the longer lapse of time. If, accordingly, a man acquired such pledged or mortgaged property from the owner thereof in good faith, and with good color of title, and held it for ten or twenty years - depending upon whether he lived in the same or a different province from the pledgee or mortgagee - he acquired a good prescriptive title. If color of title or good faith was absent, a prescriptive period of thirty years was required. In no case, apparently, was the prescriptive period of three years applicable, though the property involved was personal. C. 8.14.7. See 9 Donellus 1030-1036; Buckland 476; Girard, Manuel 831; Basilica 50.14, where the law of the present title were treated as in effect.