

Book VIII.
Title V.

If the possession of absent persons is disturbed by force or in any other manner.
(Si per vim vel alio modo absentis perturbata sit possessio.)

8.5.1. Emperor Constantine to Severus.

Judges must admit (to bring an action in court) a person representing absent persons who are deprived of the possession of their property, and give the powerful assistance of their authority, and so, that they need not carefully inquire merely whether the property of the man who is absent in any manner has been invaded, and which (on his behalf) a relative, parent, next of kin, friend, serf, freedman, or slave holds by any title. Nor must they bar persons who are ejected and hold in the name of absent persons, from bringing an action because they have no mandate to bring the suit; nor, if they are slaves, reject them in court, because such people cannot, under the law, ask for an action. Nay, it is proper that they should be permitted to bring suit even after the time given by law for recovery of possession, and immediate possession must be restored to them without delay, as if the returned owner had himself brought action. 1. We give the latter the right to bring an action to recover the property at any time he may return, because restitution might in the meantime be delayed, due to faithlessness of slaves or negligence of relatives, parents, next of kin, friends, serfs, freedmen. For the fact that the time fixed for recovery of possession has passed, should not prejudice absent persons, but after the status which was wrongly disturbed has been restored, all other questions shall remain unaffected for the purpose of any other suit,¹ which must be litigated by the proper, lawful persons², since it suffices to come to the aid of those who are in possession in the name of an absent person against the violence of resident persons (by restoring the possession of which they have been deprived).

Given at Milan October 23 (326).

C. Th. 4.22.1.

Note.

That a great deal of forcible seizure of the property of others who happened to be away from home took place, making a law of this sort necessary, is apparent from a number of authorities. Gothofredus comments on this law. See also 8.4.11.

8.5.2. Emperors Arcadius and Honorius to Petronius, Vicar of Spain.

Neither an imperial rescript, which the supplication of a litigant obtained, nor an interlocutory order of the judge is permitted in any way to disturb the status of possession, when the person who holds it is absent, because the merits of suits are disclosed by the assertion of the parties with both being present.³

Given at Milan December 18 (397).

¹ [Blume] As to ownership.

² [Blume] Slaves could not ordinarily bring an action on behalf of another, nor could anyone else, unless duly authorized. Hence this provision gives a special remedy. See 2 Cujacius 1091.

³ [Blume] See note to 8.4.6.

C. Th. 4. 22. 5.