

Book II.  
Title XXVI (XXVII).

If (restitution of rights is demanded) against a judgment.

2.26.1. Emperor Alexander to the Julii.

If you received less than was due in the trial concerning the guardianship, you can bring an action for the remainder only if you were not of age at the time of the trial and the benefit of age is now extended to you. But if the decision was rendered after you became of legal age, you cannot bring a second action for the same species of rights as things.<sup>1</sup>

Promulgated January 28 (231).

2.26.2. Emperor Gordian to Serena.

If, when your father asserted that you were in his power and that his emancipation of you was of no effect, the proconsul, trying the matter, pronounced that you subject to his power, the governor of the province, since you now ask that you be restored to your rights as against that decision, will, in an investigation to be granted, do his duty according to law.

Promulgated November 17 (238).

Note.

This rescript apparently is in conflict with C. 2.41.2 wherein Justinian provided that restitution of rights could not be had against parents. Probably, however, the instant rescript was intended to remain in effect, for the gist of the proceeding herein was to uphold a status in which the ordinary relation of parent and child did not exist, as it had been severed by emancipation. See Savigny, 7 System 225.

2.26.3. Emperor Philip and Caesar Philip to Aeliana.

You can in no wise demand the aid of restitution of rights before the praetor or the honorable president of the province, as against the decision of the person then acting as judge in place of the emperor; for as against a decision of a person who tries a case in plac of the emperor, only the emperor will grant restitution.<sup>2</sup>

Promulgated October 15 (245).

2.26.4. Emperor Diocletian and Maximian to Urbanus.

Since you affirm that you are minors as well as undefended, the president of the province will take care, in accordance with his duty, that no disadvantage will befall you. But if any matter of yours was decided with your guardians or curators assisting you by a proper defense,<sup>3</sup> you understand that the aid of restitution of rights is necessary to you; that is true also if the lawsuit was carried on through your legally appointed procurator.<sup>4</sup>

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<sup>1</sup> [Blume] See C. 3.1.2. Scott translates this as “a suitable defense.” See 6 [12] Scott 228 (in C. 2.27.4).

<sup>2</sup> [Blume] Note C. 3.4.1.

<sup>3</sup> [Blume] “justa defensione”—perhaps “by proper representation”?

<sup>4</sup> [Blume] If the minors were undefended, the decision was void, and no restitution of rights was needed. C. 7.43.6. If they were defended, restitution of rights might be had, the decision being only voidable.

Given April 16 (286).

2.26.5. The same emperors and Caesars to Marcianus.

It is clear that minors under or over the age of puberty may ask restitution of rights when a decision is rendered by the president against their guardians or curators just as well as when a decision is rendered against them personally.

Given at Nicomedia, November 1 (294).