

Book II.  
Title XXXVI (XXXVII).

If (restitution of rights is demanded) against the imperial exchequer.

2.36.1. Emperors Severus and Antoninus to Longinus.

If Probus, a minor, was overreached by Rufinus, our paymaster (dispensator), and rashly hastened to sell his property for a price far too low, our imperial exchequer will follow the authority of the ordinary public rule in connection with the law of restitution of rights.<sup>1</sup>

Given October 15 (200).

2.36.2. Emperor Alexander to Antiochus and others.

If you as well as your brothers demand restitution of rights against private persons, jurisdiction is vested in the honorable president of the province and he will determine, after cause is shown, whether he ought to grant you the help which you seek. But if you ask that against the imperial exchequer, you understand that you should go before my procurator,<sup>2</sup> together with the president, in the presence of the fiscal advocate. Given August 1 (226).

2.36.3. Emperors Diocletian and Maximian and the Caesars to Laurentius.

The fact that property of minors was excepted in the edict of the divine Marcus, our parent, does not help your demand, since, when the landed estate was sold for the debt of the father of the minor, or of the minor himself, no attack on the prescriptive period of five years is permitted when that has elapsed. 1. But since you assert that the land, together with its slaves, was sold through collusion or fraud of our then procurator for too low a price, our comptroller<sup>3</sup> (rationalis), when applied to, will, if he shall find that your allegations are true and that the due legal form to be observed at forced sales was not observed, revoke the sale, upon you making payment to the fisc for what is due, and restore the land to you.

Given February 13 (294) at Sirmium.

Note.

Marcus Aurelius had provided that property sold by the imperial exchequer could be reclaimed within five years, but not thereafter. Inst. 2.6.14. In 369 A.D. it was provided that no restitution of rights could be granted as against a tax-sale, even to minors. C. 10.3.5. The emperor Zeno provided that a sale by the imperial exchequer should give the purchaser an absolute title, leaving to the former owner, however, four years' time to make a claim against the exchequer. C. 7.37.2. That law was confirmed and extended by Justinian. C. 7.37.3. The sale, however, was, in any event, required to be regular, or it might be rescinded. C. 4.44.16; C. 4.46; C. 10.3. And a minor had to be represented by a guardian or curator. C. 4.46.3.

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<sup>1</sup> [Blume] i.e., it is subject to the rule of restitution of rights.

<sup>2</sup> [Blume] C. 3.26 headnote; also see C. 2.8.4; C. 2.46.1.

<sup>3</sup> Blume added "comptroller," striking "procurator of the fisc," but left a question mark in the margin. Scott uses "Fiscal Agent." See 6 [12] Scott 234 ( in C. 2.37.3).