

Book III.
Title VI.

Those who are legally in court and those who are not.
(Qui legitimam personam in iudiciis habent vel non.)

Bas. 7.19.

3.6.1. Emperor Gordian to Candida.

If the president of the province decided against you at a time when you were under the age of puberty and when you appeared in court with your¹ adversary without consent of your guardian, the decision will be without legal effect.

Given December 13 (239).

3.6.2. Emperors Diocletian and Maximian and the Caesars to Aurelia of Ageniacha.

Just a minor under the age of puberty may sue and be sued in a civil case by consent of his guardian, so a minor over the age of puberty may sue and be sued in such a case with the consent of his curator.²

Given January 14 (294).

3.6.3. Emperors Honorius and Theodosius to Julianus, Proconsul of Africa.

The action for instantaneous possession may be brought by any person. But a fraudulent petition cannot, under color of regaining possession, prejudice another, especially since the suit appears to be started without summoning a person with a legal standing in court. But a summoning of a minor can be of no avail, inasmuch as such proceeding should be taken against a curator.

Given March 6 (414).

C. Th. 4.22.6.

Note.

The action for instantaneous possession was an interdictal action considered in C. 8.4 for the purpose of recovering possession of property lost by the unlawful acts of another and was tried rather summarily. C. 8.4.8 and note. As stated in the foregoing law, the action might be brought by any person, even a minor, for the reason that it was the policy of the Roman law to discourage unlawful aggression upon another's property. The petition for the action was required to be based on valid grounds and not on false allegations, and the suit was required to be instituted against a person having a legal standing in court. A minor could not be summoned; his guardian was required to be summoned instead. A curator was, in a sense, the guardian of a minor over the age of puberty. The persons who had no legal standing in court were slaves and minors, but both classes might bring the action mentioned in the foregoing law.
10 Cujacius 873.

¹ Blume original typed translation of this phrase, which he put in parentheses, but did not strike out is "tried a case against."

² [Blume] The rescript probably the same as Vat. Fr. 326.