

Book V.
Title XXXIX.

When minors may sue or be sued by reason of an act of a guardian or curator.
(Quando ex facto tutoris vel curatoris minores agree vel conveniri possunt.)

Bas. 37.9.8; D. 26.9.

5.39.1. Emperor Antoninus to Saptimus.

If you had a judgment against the curator of Juliana, and the latter has passed her 25th year, an action analogous to one on a judgment against her and her property is to be brought. For it has often been decided that guardians and curators cannot, after finishing the term of their office, be sued by reason of managing (the property) of minors under or over the age of puberty.

Promulgated at Rome June 24 (213).

Note.

As stated in C. 37.26.3, rights of action against a guardian or curator were good against a minor who became of the proper age when the guardian or curator ceased to function. That is the sense of the present law. As to the action necessary on the judgment in order to enforce the latter, see C. 7.52.1 note.

5.39.2. Emperor Alexander to Sosandrus.

Although the promises, by stipulation, were made to your guardians, when they loaned out your money, you have an action analogous to that on a stipulation.

Promulgated August 18 (?).

Note.

Generally, a loan, particularly if by stipulation, accrued only to the direct lender. C. 4.50.1 note; C. 4.2.2 note. But an exception was made where money of a minor or of a soldier was lent. An analogous action was given in such case.

5.39.3. Emperor Gordian to Prudentianus.

If money was expended on a ward's property and was loaned to the curator or guardian, in the minor's name, a personal action justly lies against such minor.

Promulgated September 5 (239).

5.39.4. Emperors Diocletian and Maximian and the Caesars to Maximiana.

If those who were your guardians, while you were a minor, under the age of puberty, continued to manage your property thereafter or were appointed your curators and let out your land, you may properly sue them. But you have also an analogous (utilis) action under their contract against the heirs of the lessee.

Subscribed March 5 (293).

Note.

Bas. 37.9.11 explains this law as follows: The (former) minor may sue the guardians to assign the right of action to him, or he may, after the guardianship, sue the heirs of the lessee. The lessee himself had evidently died. See C. 5.51.11.

5.39.5. The same Emperors and Caesars to Onesima.

A minor under the age of puberty cannot acquire a right of action through a guardian except in certain instances.
Given December 13 (294).

Note.

The general rule was that the benefit of a contract could accrue only to the immediate parties thereto, and it is this principle that is sought to be stated in the present rescript. C. 4.27.1 note; C. 8.37.2 note; C. 8.37.3 note. The present title contains, as will be noted, an exception in the case where the guardian loaned money of the minor and where he leased out the minor's land.