

Book V.
Title LXXI.

Concerning lands or other property of minors, not to be alienated or pledged without
decree (of court).

(De praediis vel aliis rebus minorum sine decreto non alienandis vel obligandis.)

Bas. 38.9.42; D. 27.9.13.

5.71.1. Emperor Antoninus to Mucianus.

The sale of land which is taken and sold pursuant to a pledge thereof or a judgment, does not come within the senate decree enacted concerning alienation of lands of minors under or over the age of puberty, with approval of the praetor or the president of the province. But if you even now are of that age which is customarily aided (be relief), a competent judge, when called upon, will decide, in the presence of the opposite party, after investigation of the cause, whether he should restore you to your former rights.¹

Promulgated November 19 (212).

5.71.2. Emperor Gordian to Clearchus and Aphrodisius.

Restitution of your former rights is not necessary for you if your guardians or curators have without judicial order sold the possession though that was pledged. 1. But if your creditors have done that, you will have the benefit of the edict (as to restitution of rights) only if it is shown that you were damaged by virtue of a fraudulent sale made in collusion with the purchaser.

Promulgated January 30 (239).

Note.

The possession—farm—had in this case been hypothecated or pledged by the father of the minor, and the present law states that creditors could sell the farm under their hypothecation without obtaining an order of court therefor, and the minor was not entitled to any restitution of rights, unless the sale was conducted fraudulently. Excepting such cases, and unless the testator or father had directed the sale (C. 5.72.3) the land could not be sold without an order of court. As to what property minors might hold see headnote C. 6.60 and C. 8.46.2 note. The senate decree referred to in this title, forbidding sale of the land of minors without judicial order authorizing it, really was the so-called oration of the emperor Severus made in the senate, doubtless followed by a senate decree. D. 27.9.1. Buckland 155; 9 Cujacius 70; laws 7 and 9 of this title. As to the enlargement of this law, see C. 5.37.22 relating to the sale of urban property.

5.71.3. Emperors Valerian and Gallien to Theodosianus and others.

If some land had been acquitted for you while you were emancipated, it could not be alienated by your father, who was also your curator, without the consent of the president, especially if he sold it as though his own and not that of his ward, and you have an unimpaired right of suit against him.

Promulgated January 3 (258).

¹ [Blume] As to restitution of rights to minors generally see C. 2.21 and subsequent titles.

5.71.4. The same Emperors to Mithradates.

Not only are minors under or over the age of puberty forbidden to alienate rural and suburban lands, but they cannot transfer their ownership thereof either pursuant to compromise or exchange, much less by gift, or in any other manner. 1. Hence, if you gave a farm to your brothers pursuant to a compromise, you can bring a real action to recover it. But if you received anything from them through the same agreement, you should, in turn, restore that.

Promulgated April 17 (260).

5.71.5. The same Emperors to Serenus.

Although the president ordered the alienation or pledge of the suburban or rural land of a minor under the age of puberty, still the senate gave a right of action to such minor if he can prove that the president's scruples were overcome by false proofs, you are not forbidden to try this action.

Promulgated April 29 (260).

5.71.6. Emperors Carus, Carinus and Numerianus to Varus.

A sale of a landed estate of minors could not be made pursuant to petition brought before the praetor or president of a province or a procurator. Such sale cannot be legally made unless a judicial order is made in the usual manner, after proof shown upon the records, of the reasons which make a sale necessary.

Promulgated March 7 (283).

5.71.7. The same Emperors to Isidorus.

If you gave a promise in writing while under 25 years of age, to give up a gift which your father made you after you were emancipated, such writing will not injure your rights, since it is contrary to the authority of the senate decree.

Promulgated September 8 (283).

5.71.8. Emperors Diocletian and Maximian to Theodota.

Since you acknowledge in your petition that rural lands were given (you by a minor) as a prenuptial gift, contrary to the senate decree, the ownership thereof could not, because of the interdict of law, pass to you, and it is clear that the ownership thereof remained in your husband.

Promulgated November 3 (285).

5.71.9. The same Emperors to Mucianus.

Although the person whom you allege to have sold rustic lands of a minor did so while performing the duty of curator, still the sale, being made contrary to the oration of the divine Severus, was not improperly rescinded by the decision of the president. 1. You are not, however, forbidden to enforce the pledges of his own property which the same curator gave you as a protection against eviction.

Promulgated November 5 (285).

5.71.10. The same Emperors to Gratus.

The president will lend you aid in reseeking ownership of the lands which were alienated without a judicial decree. And if it clearly appears that the full price, which was paid to your curator, did not become part of your patrimony, he will permit you to be

sued only for that part of the money which appears to have been turned over as your property.

Promulgated August 8 (290).

5.71.11. The same Emperors to Trophimus.

If a minor under 25 years of age, your patron, sold rural lands without a decree, it is useless to consider the smallness of the price, since the authority of the senate decree has retained ownership (in the minor) and took away the right of alienation. 1. But if he made a sale of the property for a small price after a decree was legally given, not knowing its value, he will, after investigation, be awarded restitution of his former rights, according to the authority of the perpetual edict.

Promulgated November 20 (290).

5.71.12. The same Emperors and the Caesars to Leontius.

Only on account of debt, and pursuant to a presidential decree, after investigation, is provincial, rustic² land of a minor permitted to be sold.

Subscribed at Heraclea April 30 (293).

5.71.13. The same Emperors and Caesars to Zenonilla.

Nor is it permitted to sell without decree of the president land of a minor subject to public dues (vectigale), whether the land is part of the imperial patrimony, or emphyteutic land.³

Subscribed at Sirmium August 25 (293).

5.71.14. The same Emperors and Caesars to Fronto.

Cite the response of the jurist Papinian and the opinion of others of whom you made mention, and set up the defense of fraud, showing the amount paid on account of the debt of the minors under the age of puberty,⁴ if they sue to recover the land sold you without a decree of the president, together with the income thereof without offering to pay the principal with interest thereon, which they owed to the fisc.

Subscribed November 14 (294).

5.71.15. The same Emperors and Caesars to Sabina.

If you discharged a debt which you owed, while you were under 25 years of age, by transferring rural land in payment, (the transfer is void, since) the authority of the senate decree did not permit you to part with your ownership (without a judicial order).

Subscribed November 24 (293).

5.71.16. The same Emperor and Caesars to Eutychia.

If, while under the age of puberty, you with the consent of your guardian, but without an order of the president of the province in which the land is located, sold rural or

² Blume has lined out "rustic" and penciled in above it "rural" in all other cases in which the former appears in this title. It must be assumed his failure to do so here was an oversight.

³ [Blume] C. 4.66. This was land on perpetual lease; the other land here mentioned was similar in character.

⁴ [Blume] For the purpose of compelling payment of it before restoring the land.

suburban land, differing from urban places not by reason of locality but by the quality thereof,⁵ you could not, according to the senate decree, lose the ownership thereof or right thereto, and it is clear that you may bring an action to recover it (vindicatio), together with the fruits thereof, and if such fruits are no longer in existence you have the right to bring a personal action (condictio) therefor. 1. But if the purchaser can prove that you were unable to meet your civic duties or honors (muneribus sive honoribus) out of the remainder of your property, and that, besides the money which you received as the price was used to your advantage, he can, by the help of the defense of fraud, recover the price, with interest which you would have paid, together with the outlay for betterment of the land.

Subscribed at Anchialus April 8 (294).

5.71.17. The same Emperors and Caesars to Philippus.

Not even land owned in common between minors is under the senate decree permitted to be sold without decree of the president. For it has long been the rule that only when a co-owner, who is of age, asks for a division, may an alienation be made without decree.

Subscribed December 7 (294).

5.71.18. Emperors Constantine and Caesar Constantius to Severus.

If minors, either personally or on account of their father, are pressed by debts due to the fisc or those arising out of private contracts, a sale (of real estate of minors to pay these debts) is valid only if a decree of a Constantinian praetor has been obtained after the reasons therefor and the actual facts are fully shown.

Given at Serdica December 18 (3220).

C. Th. 3. 32. 2.

Note.

The Constantinean praetor was one of the praetors which Constantine the Great created in Constantinople. See Gothofredus on C. Th. 6.4.5. But the law applied generally, namely, that the order for sale was required to be made by either the praetor, where there was one, or another magistrate having jurisdiction. Bas. 38.9.59.

⁵ [Blume] Praedia rustica (rural lands) were such as were devoted solely to agriculture; p. suburbana were gardens with buildings, whether in the city or country and different from urban places, not because of the locality, but in the use made of it.