

Book V.
Title LXXV.

Concerning suing magistrates.
(De magistratibus conveniendis.)

Bas. 38.8.15; D. 27.8.

5.75.1. Emperor Antonine to Mucianus.

If the magistrates exacted a promise, by stipulation, from the guardians or curators whom they appointed or nominated for you, that they (the magistrates) should be indemnified for any loss on account thereof, and they took sureties, aside from those that guaranteed that you should sustain no loss, the action which you have instituted against your guardians or curators did not cancel a different obligation (namely) that of the magistrates that you should sustain no loss. 1. But an action against magistrates who appointed the curator lies only if your claim cannot be satisfied after resorting to all of the curator's property, and after demanding back the property which the curator fraudulently alienated. If you have brought that action, you may thereafter bring an action against the sureties whom the magistrates received as such after the rights against them have been assigned to you, although you have an action analogous (to that on the stipulation) even without such assignment.

Received January 5 (212).

Note.

The magistrates who appointed a guardian or nominated him by sending his name to the president were responsible for the guardian. In this case the magistrates took the usual surety on behalf of the guardian that the property of the minor should be safeguarded. In addition to that they also took an extra surety to themselves that they should be kept harmless of any damage. The guardian and his surety were required to be sued first and property fraudulently converted was first required to be pursued. If the minor was not fully indemnified by these methods, the magistrates then became responsible, and they were required to assign their right of action against the extra surety. But even if they did not make such assignment, the minor had a right of action against such extra surety nevertheless. Bas. 38.8.15. See C. 5.33.1 note; headnote C. 5.42.

5.75.2. Emperor Alexander to Paternus.

It is not customary to give an action against the heirs of a magistrate who, without gross negligence, failed to take adequate security for a minor under the age of puberty. Promulgated July 5 (224).

5.75.3. Emperor Gordian to Apromanus.

If you and your colleague, while functioning as magistrates, appointed a guardian without sufficient property, and failed to demand suitable security, and the minor cannot be protected in any other manner (and sues you) and you are both solvent, you do not without justice ask that an action against you respectively be for your proportionate parts. Given October 25 (238).

5.75.4. The same Emperor to Arruntianus.

The person nominating a guardian or curator without sufficient property cannot be sued until after resort to the property of the person nominated, his surety and his colleagues, who are jointly responsible for the administration, and after the claim of the minor, under or over the age of puberty, has not been satisfied in that manner. Promulgated March 15 (242).

5.75.5. Emperors Diocletian and Maximian and the Caesars to Eugenia.

It is clear that an action analogous to that on guardianship pursuant to a senate decree enacted upon motion of the divine Trajan, our father, is given to former minors under the age of puberty, for the purpose of being indemnified, municipal magistrates who nominate the guardians if the latter are not solvent at the end of their administration and if the amount due from such guardians cannot be collected from the surety. Given December 7 (294).

5.75.6. Emperor Zeno to Aelianus, Praetorian Prefect.

When the praetor gave the general management (of the property of a minor) to a curator and entered as is customary, a decree to that effect, it is clear that the appointment was not invalid, and it was the fault of the scrivener (that no sufficient surety was taken) who in estimating the property of the minor over the age of puberty, took security only as though patrimony did not exceed 200 pounds. 1. In such case the appointment of the curator is not to be criticized if any loss is shown to have occurred to the property of the minor contrary to the provisions of law, but suit must be brought, according to law, for the negligence or fraud of the scribe who permitted the true value of the property to be concealed.

Given December 28 (480).

Note.

Here the decree appointing the guardian was made by the praetor. Praetors were only found in the capital cities of the empire. In the provinces, municipal magistrates were responsible if they did not take sufficient sureties. That principle could not apply to the capital cities, since there were no local inferior magistrates, in the sense in which these existed in the municipalities of the provinces. The praetor was not responsible. Hence in this case, the scribe who was at fault in the making of the inventory was held responsible—doubtless where the curator himself was insolvent.