

Book VII.
Title XXI.

That the status of decedents shall not be questioned after five years.
(Ne de statu defunctorum post quinquennium quaeratur.)

Bas. 48.11; Dig. 40.15.

7.21.1. Emperors Severus and Antoninus to Niconis.

A proper judge, when appeal is made to him, will examine into the matter of prescription, and if it is evident that the patron of Domitia at the time of his death lived as a Roman citizen and departed this life more than five years before the suit as to the property of Domitia was commenced, her status as a freedwoman cannot be reinvestigated by inquiring into the status of her manumitter.

Note.

Death did not of itself terminate inquiry into a man's status, where that was not the principal issue. C. 7.16.13. But it was early made the general rule that a man's status should not be attacked after he had been dead five years. The rule seems to have first been laid down by an edict of the Emperor Nerva. D. 40.15.4. But there was evidently a subsequent senate decree to the same effect, such decree being referred to in C. 7.21.4.7 and 8.

7.21.2. The same to Maximus.

If he who appointed you as heir, is said to be a slave on account of the status of his mother, and the latter departed this life more than five years before the commencement of suit, such suit is barred by prescription, since inquiry into his status cannot be made except by examining the status of his mother. This is true, however, only if the latter lived, during her life, as a Roman citizen, without controversy. Promulgated September 13 (205).

7.21.3. Emperor Alexander to Olympiadis.

Although your former husband who had been sue as to his status, is deceased, the action against him, nevertheless, survives, because his inheritance is at stake, and should be decided by the judge, who will (also) adjudicate (the rights as to) the inheritance and the several things (which are a part thereof).

7.21.4. The same to Marcianus.

If the man whom you state to have been your slave and who was manumitted by your brother and appointed by him as his heir, lived as a Roman citizen, and you did not begin to raise the question as to his status within five years of his death, you must know that you cannot raise a controversy (as to his freedom), contrary to the rule of the senate decree, either as against his appointed heirs or against slaves whom he wanted to be free. 1. But if you commenced suit (raising that question) before that period of time expired, you are not forbidden to follow up his special property (peculium), and to try an action, properly instituted, against those manumitted by him, in accordance with the rule of the perpetual edict.

Promulgated June 9 (228).

7.21.5. Emperor Gordian to Severus.

The provision that an action as to the status of decedents may not be commenced after five years does not apply to a case of inquiry as to whether an emancipation (of a child) was legally made or left uncompleted.

7.21.6. Emperors Valerian and Gallien to Polla.

If your mother lived, according to the general understanding, as a free-born person, and five years have passed since the day of her death, you may defeat the city, as well as minors (under the age of puberty) if they attempt to raise any question of status against you, by the well know prescription. 1. But whether she lived as a free-born person at the time of her death, is a matter for judicial inquiry. If that differed at different times, the later time governs.

Promulgated June 8 (260).

7.21.7. Emperors Diocletian and Maximian to Heliodorus.

If your father lived as a free person, and no controversy as to his status, (namely) that he was a fiscal slave, was raised (during his lifetime) before the president of the province who had jurisdiction of such questions, but before a curator of the city who is not a competent judge in such matters, and five years have elapsed since his death, your status is protected by reason of the bar prescribed by the senate decree.

7.21.8. The same and the Caesars to Theodorus.

The right to reclaim property which was part of the special property (peculium) of you slave will not be barred by lapse of time, if the several articles thereof are in the possession of anyone without lawful ground of title (justus titulus). Nor does the senate decree forbidding the reopening of the status of decedents apply, if the decedent was a fugitive and died while hiding.

Given November 22 (299?).

Note.

This law contains two limitations to the general rule that the prescription of five years puts an end to the right to inquire into the status of a person, namely (a) where the person claimed to have been a slave was in hiding, and (b) where the property, the title of which was called in question, was not possessed in good faith. If, for instance, property was acquired from a person who did not openly, and by general acknowledgment, live as a free person, the title to such property might be inquired into notwithstanding the fact that the seller thereof was dead for five years. A note to Bas. 48.11.12, says that this could, however, not be done after the expiration of thirty years.