

Book VII.  
Title XLVIII.

When it is said that the proper judge (referee) has not given judgment.  
(Si non a competenti iudice iudicatum esse dicatur.)

7.48.1. Emperor Alexander to Sabinianus.

If a judge appointed for a definite matter gives judgment on some other matter, he acted without effect.

January 3 (223).

Note.

The jurisdiction of judges is dealt with in other portions of the Code. See for example C. 3.13. A judgment rendered by a judge without jurisdiction was void. Magistrates with regular and complete jurisdiction, as presidents of provinces, frequently appointed referees, trier of facts, to try a case, instead of trying it themselves. This was true throughout the period of the statute process and formulary procedure, and even after the latter had been abolished. C. 3.3.2 note. But his referee was compelled to confine himself to the trial of the case assigned to him. If, for instance, he was to try a case arising out of a lease, he could not give judgment for money borrowed.

7.48.2. Emperor Gordian to Licinia.

If a military judge tries a case, which should be tried in civil court, without being appointed by one who could do so (i.e. by a civil magistrate), his decision does not have the force of a judgment though no appeal is taken from it.

Note.

This shows that a military magistrate, like the master of the soldiery, had no jurisdiction in cases between private individuals, unless he was specially appointed as such by a civil magistrate who had jurisdiction in the case. This was true as to fiscal authorities. C. 3.3.1.

7.48.3. Emperors Diocletian and Maximian and the Caesars to Phileta.

If a judge (referee) appointed to try the question of ownership decided nothing against you on that point, the rector of the province will, when you go before him, try and decide that question himself, inasmuch as the question of ownership is not even affected by a decision as to possession.

Subscribed at Heraclea November 5 (294).

Note.

In this case, evidently, the referee appointed by the judge had gone outside of the issues and had not decided the case in hand - namely that involving ownership. Hence his judgment was void, and the case could be tried anew by the magistrate who appointed the referee. See 9 Cujacius 1014; see C. 7.45.9.

7.48.4. Emperors Gratian, Valentinian and Theodosius to Politus, Vicar.

The rule holds also true in suits between private individuals that a decision given by an improper (incompetent) judge, does not bind the litigants.

Given at Rome, September 22 (379).

C. Th. 4.16.2.

Note.

In this case a military judge, or a fiscal authority, perhaps, had appointed a referee. These authorities had no jurisdiction in such cases. C. 3.3.1; C. 7.48.2.