

Book III.
Title XXXIX.

Concerning actions to settle boundaries.
(Finium regundorum.)

Bas. 59.9; D. 10.1.

Headnote.¹

An action to settle boundaries belonged to that class of actions in which, strictly speaking, neither party was plaintiff or defendant, and was closely allied to the action in partition. Inst. 4.6.20. It is said in D. 10.1.1 that the action was one in personam, although “it is an action for recovering a thing as owner” (pro vindicatione rei). It dealt only with “rural estates.” D. 10.1.2 pr. In making the award, it was first of all the duty of the judge to find out and reestablish the old boundary; but if there was not sufficient evidence of it, he was obliged to treat the land in dispute as common, and to partition it between them. D. 4.8.44; D. 10.1.2.1; D. 10.1.2. He might condemn either party to pay damages for mesne profits and deterioration of land illegally possessed. Each party was entitled to compensation for improvements made on the portion of the land which did not belong to him.

The twelve tables (Table 7.4) provided that “a space of five feet between adjoining land shall not be liable to prescription.” The boundary between land did not consist, as with us, of a definite line, but was considered as consisting of a strip five feet in width. 2 Karlowa 459. If the dispute between the parties related to this strip, then it might be settled in the action now under consideration, but if the dispute related to more ground, which was called a controversy de loco-place, space beyond the boundary line—as opposed to the boundary (finis), it was originally required to be settled in the ordinary action in rem for the recovery of property (vindicatio). But that was unnecessary under the later law, under which a boundary line might be settled without reference to the fact that the dispute involved a strip of five feet or more. C. 3.39.5. See generally 2 Karlowa 459 et seq.; Smith, Greek and Roman Antiquities, under the title “finium regundorum action.”

3.39.1. Emperors Diocletian and Maximian and the Caesars to Nicephorus.

An owner is not forbidden to sell a certain portion of his farm, changing his boundaries, and retain the rest. Nor may the purchaser claim more than he bought by measurement² pursuant to the sale, under the pretext that the former boundaries were different.

Given at Nicomedia December 13 (294).

3.39.2. The same Emperors and Caesars to Tatianus.

¹ Blume penciled in here the reference 39 S.Z. 173.

² [Blume] Melatione, conjectured. Scott has: “The purchaser cannot claim a greater amount of land than that which came into his hands in accordance with a contract of sale... 6 [12] Scott 337.

The variety of heirships and new agreements of neighbors, additions to one field and subtractions from the other being made, frequently changes former boundary monuments.

Given at Nicomedia December 24 (294).

3.39.3. Emperor Constantine to Tertullianus.

If anyone has first brought a proceeding to determine the boundaries of his property, which also involves the question of the ownership of the property, the proposition as to the possession shall be settled first and then a surveyor must be sent to the property, so that the suit may be ended when the truth is known. 1. Even if the opposing party absents himself to prevent the adjudication of such question, a surveyor, accompanied by the party present, shall still be sent for the said purpose by the rector of the province.

C. Th. 2.26.1

Given at Bessium February 22 (530).

Note.

If a neighbor took possession of property in possession of another, claiming the boundary to be other than the later, the question of possession was settled first, for it was the policy of the Roman law not to adjudicate title or boundary until the question of possession was settled. C. 3.8.3 note; C. 3.32.13; C. 8.1.3 and note, and laws and notes under C. 8.4. The foregoing law says that such question of possession should be first settled, if the boundary dispute involved the question of ownership. This evidently refers to nothing else than the boundary dispute over ground beyond the strip of five feet mentioned in the headnote to this title.

3.39.4. The same Emperor to Bassus, Praetorian Prefect.

If it is shown that one who brought an action to settle boundaries usurped property of another before any (judicial) determination was made, [he] shall lose not only what he wrongly claimed, but, so that everyone may be content with his own and may not seek the property of another, the person who invaded another's field and is defeated in the litigation, shall lose as much of his own as he sought to take from the other.

C. Th. 2.26.2.

Read publicly June 23 (330).

3.39.5. Emperors Valentinian, Theodosius and Arcadius to Neoterius, Praetorian Prefect.

An action involving a dispute as to a boundary line (finis) and the adjacent property (locorum), shall be freely decided without reference to the limitation of five feet.³

C.Th. 2.26.4.

Promulgated at Alexandria July 26 (385).

Note.

In the headnote to this title, it was stated that a boundary consisted of a strip five feet in width, and that a controversy not confined to that strip was called a controversy de loco. The meaning of the foregoing law evidently is that a dispute as to this line or to land outside thereof should be settled in an action to establish the boundaries, and that it

³ Blume apparently was unsure of this translation. In the inside back cover of this manuscript volume, he wrote: "3.39.5—right?"

should not be necessary to resort to the ordinary action to recover property (vindicatio) to settle the ownership of the land outside of such strip.⁴

3.39.6. Emperors Theodosius, Arcadius and Honorius to Rufinus, Praetorian Prefect.

Removing all treachery and machinations, we decree that in actions of boundary disputes the prescriptive period shall not be that of a long time (ten or twenty years) but only of thirty years.

C. Th. 2.26.5.

Given at Constantinople November 4 (392).

⁴ Penciled in after this law are the following: "See note German trans. See 10 Gluck 438, 452."