

Book III.  
Title XVIII.

Where a person should be summoned who has promised to pay at a certain place.  
(Ubi conveniatur qui certo loco dare promisit.)

Bas. 7.5.80.

3.18.1. Emperor Alexander to Heraclida.

If a person who has promised to pay a sum of money at a definite place fails to do so, he may be sued in another place in an arbitrary action (*action arbitraria*), in which the benefit or detriment to the respective parties to have the money paid in the place (where it was promised to be paid) rather than in the place in which is claimed, is taken into consideration.

Given March 10 (255).

Note.

A contract might be sued on in the domicile of the defendant, and, with some limitations, in the place where, notwithstanding the domicile, the defendant was a citizen—from which he sprang. 2 Bethmann-Hollweg at 122, 125; Wenger at 42. If, however, a contract was payable at a different place, suit might be brought there. But it was not necessary to sue in the latter place. If the suit was brought in some other place where that was permissible, the equities existing in view of the contract were taken into consideration. If it was worth something to plaintiff to be paid at the place where the defendant was sued, this amount was subtracted from the claim; and if it was worth something to defendant to pay in that place rather than in the designated place of the contract, that amount was added. An action where this question arose was called “*action arbitraria*”—an action where the judge arbitrated, took equities into consideration. Inst. 4.6.33; Wenger at 43, 141; 2 Bethmann-Hollweg at 128.