

Book II.
Title LIV (LV).

Concerning alienation made for the purpose of changing an action.

2.54.1. Emperors Diocletian and Maximian and the Caesars to Catulus.

Since, on the one hand, the fact of possession creates the adversary for a real action, while on the other hand restitution of rights is also permitted by the perpetual edict when an alienation has been made for the purpose of changing an action, you know that if the possessors sold the property and delivered it to the buyer, so that the litigation (in reference thereto) would not be with him, you have been given the right, under to law, to sue either the seller or buyer as you chose.

Given November 26 (294) at Viminacium.

Note.

Not only did the law forbid transfer of property in litigation (C. 8.36), but also, with the exception of a few allowable cases, when parties were threatened with litigation, in order that the position of the other side might not be made worse. Transfers to the nobility were common in later imperial times and a constant danger. C. 2.13.14. By what action the transferor could be sued is greatly disputed. The rescript seems to mean that the complainant could receive restitution of rights by having the transfer declared void and giving an action in rem against the transferor, as well as against the transferee. Some authorities maintain that the only action here given (as well as under D. 4.7) was an action on the facts (in factum), and there is no doubt that that action displaced the special proceeding for restitution of rights in many cases. Others maintain that restitution of rights, and an action in rem pursuant thereto, was, though perhaps with limitations, maintainable. Lenel, E.P.(2nd) 123; 37 Z.S.S. 104 ff; Kretschmar in 40 Z.S.S. 136 ff; 48 Z.S.S. 556 ff; Beseler, 2 Beit. 153 ff; Karlowa, R.G. 1092 ff; Savigny, 7 System 104, 212; 30 Z.S.S. 451-454; Levy, Privatstrafe 81 ff.