Book II.
Title II.

Concerning citation.

Headnote.

Originally the act of summoning defendant to court in an ordinary civil suit was a private matter. The defendant was compelled to go by force, if necessary when summoned by plaintiff. Twelve Tables 1.1. Refusal to go was, in time, made an offense, punishable by fine, and to rescue a defendant who was summoned was a like offense. But otherwise, the courts did not originally interfere. C. 4.183; D. 5.2.5. To avoid immediate appearance, it later became customary for the parties to make an agreement, with or without sureties, to appear in court before the praetor on a day certain. Cicero, pro Quinctio, 16.52; 19.61. This was called vadimonium. That system, however, was applicable mainly in Italy. It was never applicable in Egypt, and, perhaps, other provinces, and was apparently abolished by Marcus Aurelius. Victor Aurelius, De Caes. 16. A new system, called litis denuntiatio (notice of suit), took its place, one, which, in its essentials, had been in vogue in extraordinary proceedings (cognito) before the praetor or other magistrates. Under it a public official authorized the summoning of the defendant, after plaintiff had made known his claim, and the notice was served in some cases (mainly in Italy) by the plaintiff himself, in presence of witnesses, in other cases by a process server appointed by the public official. Constantine made the later method of service exclusive. C. Th. 2.4.2. Under this system, as we find it in the beginning of the fourth century, the defendant was given four months in which to appear in court. This gave too long a time, and it was abolished in some cases—e.g., in actions on due bills. Ch. Th. 2.4-3; 6; See C. 8.1.4. The so-called libellary procedure, already mentioned in headnote C. 2.1, gradually took its place and finally supplanted it entirely. Under that system, the defendant was cited to court by an officer thereof, and a copy of the petition or complaint, together with a copy of the citation, which usually consisted of a copy of the court's order, was served on him. Nov. 53, c. 3. The defendant was given but a few days to appear. It was ten days under Justinian, extended by him to 20 days. Nov. 53, c. 3; Nov. 82, c. 10. At the time of service, defendant was required to endorse his answer on the citation (libellus contradictinis) and sate whether or not he denied plaintiff's claim. He was also required to pay a fee to the process server, and give an undertaking, generally with sureties, for his appearance in court. Nov. 53. c. 3; C. 3.2.4 and 5; C. 1.4.26.11-13. For landowners and certain privileged persons, an oath to appear sufficed. C. 1.32.5; C. 1.4.26.11; C. 3.2.4; C. 12.1.17. If defendant could not or would not give the required undertaking, he was guarded (C. 3.2.1), or put in prison, limited, by Justinian, to 30 days. C. 9.4.8; C. 3.2.4. Some privileged persons, including women, could not be imprisoned. C. 1.48.1; Nov. 134, c.9; C. 10.53.6. If summons could not be served on defendant, proceedings similar to attachment proceedings were taken, and plaintiff put in possession of property, which, except where a man was absent on public business (C. 2.50.4) could be sold. G. 4.7; C. 7.72.9. In a real action, the party in possession was sued, and if he did not defend, plaintiff was put in possession. C. 3.19.2. See generally, citations at end of headnote C. 2.1.

2.2.1. Emperor Alexander to Tryphon.

As it is in accordance with good manners that deference be paid (by a freedman) to the wife of his manumitter, so he is forbidden to cite her into court when the circumstances require it, without permission of the praetor (magistrate).
Promulgated March 29 (230).

2.2.2. Emperor Gordian to Nocturnus.

It is absolutely certain law, that, if no permission under the edict is asked, a patron, patroness, or their parents and children, also their heirs, although outsiders, should not be cited into court by freedmen or freedmen's children. Nor is ignorance in this matter to be excused, inasmuch as deference is due to such persons by natural instinct. Since, therefore, you acknowledge that you cited the son of your patron into court, without permission of the president, you ask without reason that the punishment fixed by the perpetual edict[1] should be remitted by rescript.
Promulgated November 6 (239).

2.2.3. Emperors Diocletian and Maximium to Roxana.

Children under paternal power cannot sue the head of the family. But[2] you are not forbidden to do so if you are emancipated and have asked permission under the edict. This, too, must be followed with respect to the mother.
Promulgated November 6 (287).

2.2.4. (In Greek).

Whoever has, in this imperial city or in the provinces, once cited another into court, shall not, after the petition has been delivered, cite the same defendant further, either in writing, or without writing; that is, he shall not verbally claim an action against him (before another judge), but shall remain before the same judge.

1. If a defendant has received a complaint, then although his status becomes a different one thereafter, as having, perchance, filled an office, or having been ordained a clergyman, he shall, nevertheless, still answer before the first court (before which he was cited), which appeared to have jurisdiction over him, according to his former status, and he shall not be entitled to raise any objection to the jurisdiction of the court (over him).

2. If, however, a person has once cited (another) into court, and, after the defendant has received the complaint, cites him into another court on the same mater, he shall indemnify the defendant, and his cause, though just, shall fail.

Note.

In Epitome Juris (Heimbach) 14.53.2, it is stated: "No one must drag another to several courts in the same matter, since he must pay him double (damages) and his cause will fail." See also C. 3.1.12.

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[1] [Blume] The edict of the praetor—the judicial rules made—required that leave to sue had to be asked in certain cases, violation of which entailed a penalty of 50 gold pieces. D. 2.4.23-25; Inst. 4.16.3.

[2] [Blume] Literally, "if therefore."