

Book III.
Title XIX.

Where an action in rem must be tried.
(Ubi in rem action exercere debet.)

Bas. 7.5.81.82.

3.19.1. Emperors Diocletian and Maximian and the Caesars to Pancratius.

An action in rem must be brought, not against the vendor, but against the person in possession. Since, therefore, you state that you are in possession, you ask in vain that the person who claims ownership should sue your vendor rather than you. For if you notify the person who sold the property to you, he will understand that he takes the risk of eviction. And the rule of jurisdiction law should not be changed for either the plaintiff [or] defendant who live in the same province, because of the fact that, as you say, the vendor lives in another province.¹

Given April 13 (293).

Note.

There was an implied warranty against eviction in case of sale of land. This subject is fully dealt with in C. 8.44. To create liability against the vendor, he was entitled to be notified of a suit involving the possession of the property by the vendee. If he was notified, he was entitled to defend. But notwithstanding this right to defend, the venue of the action was in the province where the land was located; the vendor followed in this case the forum of his vendee; i.e. the possessor of the land.

The venue in an action in rem was originally the same as in personal actions. “The plaintiff follows the forum of the defendant in actions in rem and in personal actions.” Law 3 of this title. And the right to sue the defendant in actions in rem in the domicile of the later remained till Justinian and was, in fact, confirmed by him. C. 7.33.12. But the venue might also be laid in the place where the property was situated. Law 3 of this title; and this rule was confirmed and extended by Novel 69.

3.19.2. Emperor Constantine to all the provincials.

If a person in any manner in possession of immovable property for another is sued in an action in rem, he must immediately tell the court the name of the owner, so that the latter, whether living in the same city, in the country or in a province, may, within the space of a certain number of days fixed by the judge, which is to be brought to his knowledge,² meet the claims of the plaintiff by himself coming to the place where the property is situated or by sending a procurator. 1. But if he fails to do so within the time given him, the statute of limitations shall be interrupted as though a joinder of issue had

¹ This reflects changes penciled in by Blume without striking the typed original, which reads: “And the rule of law should not be changed when both plaintiff and defendant live in the same province, because of the fact that the vendor lives in another province.”

² Blume penciled in this language, added a question mark in the margin, but did not strike the typed original, which reads: “...number of days fixed by the judge, of which notice must be given him...” Scott translates the relevant passage as: “...a certain number of days may be fixed by the judge during which he [i.e., the owner—ed.] can be notified...” 6 [12] Scott 282.

taken place in the suit on the day when the person in possession was sued, and the judge, if the owner of the property does not present himself after he has been granted the favor of such time, shall cause him to be cited by lawful edicts, and if he remains in the same state of mind thereafter, the judge shall not delay in ending the matter summarily by putting the plaintiff in possession of the property, reserving to the absent person the right to litigate the allegations in the main cause thereafter.

Given July 23 (331).

Note.

It will be noted in the foregoing law that if the owner of the property failed to appear and defend after notice, edicts, or notices, were issued, as stated in note to C. 2.2.4 for him to appear. If he still failed to appear, the judge examined the right of the plaintiff summarily, that is to say, cursorily, and finding that he was in the right, put him in possession of the property, but not finally. As in C. 7.39.8.3, the defendant, the owner, had still a year in which to appear, given bond to remain in court, and defend. But after the year expired, and the owner still failed to appear, the plaintiff could get final judgment and exclude the owner. The foregoing law is treated at length by Steinwenter at 156 et seq., and also by Stintzing, Beklagtschaft at 51.

This law does not appear in the Basilica. Its place was taken by Novel 69, a rather elaborate enactment for the protection of provincials which, too, is fully considered by Stinging, *supra* at 74.³

3.19.3. Emperors Gratian , Valentinian and Theodosius.

The plaintiff follows the forum of the defendant, in actions in rem and in personal actions. But we order that actions in rem may also be brought against the possessor in the place where the property concerning which the contention arises is situated.

Given at Constantinople June 22 (385).

Note.

The rescript introduced new legislation. Prior thereto, an action was always to be brought where the defendant lived. Vat. Fr. §326. Where the praetor made an order that a party should be in possession, such order was always made in the district where the property was situated, and was in the respect different from an action. C. 3.20.1; D. 39.2.4.3. and 9.

³ Blume goes on to indicate that the novel is appended here, but it is not.