

Book III.
Title IV.

Those who have jurisdiction to appoint referees, and those who may be appointed as such.

(Qui pro iurisdictione iudices dare darive possunt.)

Bas. 7.3.31.

3.4.1. Emperors Theodosius and Valentinian to Cyrus, Praetorian Prefect.

We direct, after careful deliberation, that an assignment of cases for trial to another shall be valid if such cases are within the original jurisdiction of the person assigning them.

1. But if anyone undertakes to assign a case not within his original jurisdiction, the person to whom it is assigned must ignore the order of assignment, and if he obeys it, contrary to law, his acts done by virtue of such assignment shall be void as completely as if those who made the assignment had been sitting as judges in cases not within their jurisdiction; so that not even an appeal shall be necessary to be taken from the decisions by the defeated parties.

2. These provisions shall govern, unless judges specially appointed by us have assigned cases to others; for if these have assigned cases, trials of appeal therein shall rightly go back (to be heard by) them without regard to persons or the nature of the cases. Given May 20 (440).

Bas. 7.3.31.

Note.

As already stated at note to C. 3.1.5, the emperor had the right, and frequently—generally doubtless at the request of parties who did not want to try their case before the ordinary judge—did appoint special judges to try a case who then had the same power as a magistrate, and from whom an appeal might be taken, unless appointed without the right of appeal. It seems that such appointments were made almost from the beginning of the imperial regime. 2 Bethmann-Hollweg 110, 111; 3 Bethmann-Hollweg 181. These special judges had the right to delegate their power, while ordinarily, as stated in C. 3.1.5, a person to whom a case was delegated could not delegate it in turn. No restitution of rights could be granted as against a decision of such special judges except by the emperor. C. 2.26.3. Bas. 7.3.31.