

Novel 88.

Concerning deposits and protests to tenants, and suspension of payments of rations of bread.

(De deposito et denuntiatione inquilinorum deque suspendenda erogatione panum.)

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Emperor Justinian to Johannes, Praetorian Prefect.

Preface. Since we recently heard a lawsuit—which we often do, having public hearings in the palace—a question arose which we decided immediately. But we have learned that such questions arise frequently, and we have thought it well to make a general law in regard thereto.

c. 1. If a person receives gold or other property as a deposit from another upon conditions, and these conditions take place, he must, when these conditions are fulfilled, restore such gold or other property at all events and no one can, by making a protest, prevent such restitution of such deposit for which many other privileges have been provided both by previous lawgivers as well as ourselves. For the party who wants to forbid restitution may, without troubling the deposittee, sue the depositor as to the property in controversy, and thus obtain what is just and legal, and he should not inflict great damages upon the party whom he notified, by compelling him to claim protection (from the depositor), or trouble himself with the transaction, and prevent him, even against his wishes, from keeping faith with the depositor. But if anything of the kind is done anyway (i.e. a protest is made), then—since it is not enough to simply forbid certain actions, but fear should also be installed into delinquents—if any of the property, or money, perchance, is lost, and this fact is shown, or it is fortuitously damaged in any way, the loss will fall on the person who made the protest to the person who was prevented from receiving his own property back, not only if deposited money is prohibited from being returned, but also other property, so that through fear thereof men may abstain from vain and hateful hindrances of keeping faith (by returning such property).

c. 2. And we have thought it best to consider the whole subject of protests and regulate it by law. For we notice that they are frequently resorted to, particularly in this imperial city. Some men send protests to those who distribute the public food supply (annona) or even receive tickets (tesserae) from the prefect of food supply<sup>a</sup> (in place of the debtors), wanting to stop delivery of supplies to a person who, perhaps, lives on that alone, and has that as his only means of support. But the following is still harsher and more burdensome. Many persons who envy others the houses which they have in this fortunate city vex them, when they are about to receive their rent from their tenants, by sending protests to the latter, not to pay. The tenants receive such protests gladly, and part of them, because of poverty, use up the rent, part of them leave this great city; and so the rent is lost to those who perhaps have that as their only means of support, as we have mentioned in connection with distribution of food supplies (civiles annonae). **1.** No one, therefore, shall be permitted to do this, but if any person has a cause of action against another who is liable to him, let him not sleep on it, and not think of using (instead of an action) dishonorable and odious protests; and he must know that if he does anything of the kind, and delivery of bread or payment is not made through his fault, he will have to pay the damages resulting from such notice to tenants or distributors of food supply or from stopping distribution. For we want nothing of that sort to happen, and he must pay all damages to the owner from the time he sends such protest, and in addition, interest at four per cent for the money or property which the person damaged in this manner, could not receive. Nor is anyone permitted to set up the defense that the person having the right of receiving the property could, by giving security to defend (the depositary, tenant or distributor of food supply), receive his deposit or other property; for not everyone can easily find a surety for such defense. Our laws provide that no such defense is sufficiently furnished except through a surety and it is not always easy or possible to find such surety. Hence, we want these provisions, for the safety of our subjects, to be obeyed from now on to all future time, so that our republic may be permanently benefitted by this enactment which came to our mind while sitting as a judge, and which we have given to our subjects for the common advantage of all.

a. The *annonae civiles*—bread rations—were appurtenant to certain houses in Rome and Constantinople, under which the possessors were entitled to certain rations of supplies without charge. As to this and bread-tickets, *tesserae*, issued by the prefect of food supply, see C. 1.44. Creditors and others evidently notified the prefect of food supply not to distribute these bread-rations to the parties entitled thereto, and caused him to issue tickets to themselves, with which to pay themselves.

Epilogue. Your Sublimity, therefore, will take care to put this, our will, and the provisions made in this imperial law, into effect, and that it is obeyed in perpetuity. Given September 1, 539.

Note.

The foregoing law imposed a penalty on the person who makes the protest not to pay or turn over property. It doubtless aimed at the total suppression of such protests. Still, if a protest was made, the depositor was not required to turn the property deposited over to the depositor unless security was given. The foregoing Novel did not change the law in that respect. 2 Cujacius 983-984.