

Novel 96.

Concerning court-bailiffs (executores), and those who summon others and are summoned.

---

Emperor Justinian to Johannes, glorious praetorian prefect of the Orient the second time, ordinary exconsul and patrician.

Preface.

Since we hate vexatious suits and are opposed to all obstructive measures, we have thought that a remedy against them ought to be provided by law. For we have been informed that parties who have no real cause of action are in collusion with persons employed as bailiffs (executores) in a case, sue others and send complaints (of suit) to them, and when the defendants have suffered damage thereby, abandon them, go to a foreign land, and thus inflict irreparable damage. This is especially done in the provinces, where the gain is divided between the plaintiffs and the bailiffs in the case.

c. 1. In order that this may not continue, we ordain that plaintiffs shall not have a complaint served and be a cause of damage to defendants until they give an undertaking (cautio) to the defendant and the bailiff connected with the case, that they will appear before the judge to join issues within two months and that if they fail to do so, they will pay double the amount of damages caused thereby. The bond, however, shall not exceed 36 gold pieces (\$108) in amount. (a)

(a) As to bond when defendant was sued in another province, see Novel 53, c. 2.

Novel 96.

c. 2. The following matter, too, needs correction. For someone came before us and informed us that he had sued a party who owed him before one of our glorious magistrates; that thereupon the defendant to whom the plaintiff was indebted sued him before another judge. An unexpected situation arose; and as each in turn was plaintiff, it became miserable and ridiculous. For as soon as one of them wanted to prosecute his action, the other dragged him before the judge whom he himself had chosen, and thus dragging each other about, the litigation between them became interminable.

1. We, therefore, ordain that if a defendant who is sued believes that the plaintiff is indebted to him, shall not sue the plaintiff before another, but before the same judge who shall be such judge in both cases. If the judge before whom the action is brought displeases him, he may remedy the situation. For as we have given an interval of twenty days after service of the complaint, after which issues must be joined, he may object to such judge within that time and have another appointed, before whom both actions shall be tried, so that both the artful conduct above mentioned may be frustrated and each party may at the same time enjoy his legal rights. But if such defendant remains silent (during the twenty days) and wants to bring his suit before another judge after that time, he must wait until after the suit of plaintiff against him is finished; and when that is finished, he may then bring his suit before another judge, so that we may frustrate the artful conduct and snares above mentioned in the manner aforesaid.

Epilogue. Your Sublimity will take care to carry this our will and the provisions herein made into effect.

Given November 1 - 539.

Note.

The subject dealt with is that mentioned in note to law 10 of this title, namely that unnecessary lawsuits should be avoided and

that so far as possible all the controversies between the same parties should be settled in one dispute and before one man. This chapter of the Novel is appended here because it presents some difficulties in connection with the subject of change of judge. One of the parties brought an action before one of the glorious magistrates, that is to say, a magistrate of the highest - the illustrious - rank. It is provided that the defendant in that suit could take a change of judge; if he did not do so, he was required to bring forward a claim which he had against the plaintiff in the other action before the same judge - which must mean the magistrate, since cases could not be commenced before a referee. The Novel seems to contain a distinct assertion that objection might be made to any magistrate, which seems inconsistent with the provision as to presidents in Novel 86, and we find, further, no provision as to who was to be selected in place of the magistrate objected to, unless the general provision applied that in such case the parties should choose their own judge.