Book IV.
Title IV.

Concerning prohibited sequestration of money.
(De prohibita sequestratione pecuniae.)

Bas. 24.1.17.

4.4.1. Emperors Honorius and Theodosius to Johannes, Praetorian Prefect.

Whenever money is demanded by virtue of any contract, no sequestration shall be made. For a debtor should first be defeated (in a suit), and compelled to pay thereafter. This is not only in accord with the rule of law, but equity itself dictates that a person who claims money should produce his proof and defeat his debtor in a lawsuit.[1]

Note.

Property sequestered was a deposit of a thing, which was usually in dispute between two or more parties, in the hands of a third person, upon condition that the latter should keep it until the happening of a certain event, usually during the continuance of a controversy or suit, and at the happening of the event, or the end of the suit or controversy, to deliver it to the party entitled thereto, according to the condition. The sequestration might be voluntary or by order of a magistrate, and in the latter case, it was similar to our attachment. It was a special case of deposit. D. 16.3.6.; D. 16.3.17; headnote C. 4.34.

Sequestration, while doubtless usually of personal property, might be of real property, and the sequester became usually the juristic possessor thereof. D. 16.3.17.2. Several illustrations of sequestration by the court are contained in the Code. Thus in C. 7.17.1, it was provided that the special property of persons who were in slavery and who claimed to be free should be sequestered so as to await the outcome of the suit for freedom. So sequestration was at times permitted on appeal. C. 7.5.8. In C. 11.48.20 provisions are contained for the sequestration of rents during a dispute over the land between two claimants. D. 2.8.7.2 says: "If guarantee for appearance has not yet been furnished, where the trial relates to some movable, and the person who is required to find a surety is not thought trustworthy, the property should be deposited with the judge, if that is agreeable to the judge, until either a surety is found or else the case is concluded." This shows that sequestration was at times the substitute of giving a surety. Even in personal actions, a surety might be required of a defendant, if he was a suspected person. Gauis 4.102.

The foregoing sequestrations by the court related to property in dispute. The instant law dealt with a different kind of sequestration. It became the practice during the empire that if a due bill was sued on, the defendant was required either to pay or to sequester the money—that is to say, deposit it, before he was permitted to deny that the due bill was his. A rule of this kind was adopted by one of the prefects in Egypt in 138 A.D. Pauly-Wissowa, under "sequester." C. Th. 2.27.1.3, of the year 421 A.D., which perhaps stated a rule long in vogue, says the same thing. But this rule was repealed in the following year by the instant law, so that thereafter whenever money was south to be recovered and on a contract, the defendant was not compelled to say the suit was terminated.

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[1] [Blume] See Muther, Seq. und Arrest §§101-104. See also C. 2.28.1.