

Book IV.
Title III.

Concerning patronage.
(De suffragio.)

4.3.1. Emperors Theodosius, Arcadius and Honorius to Rufinus, Praetorian Prefect.

If any persons desire to have their wishes laid before the emperor and ask some other person to assist them and by solemn promise (sponsione) agree to make compensation therefor, they shall carry out the promises when they have obtained what they sought, and if they cunningly delay, they may be forced to pay.

1. If gold, silver or other movable things have been given on that account, delivery alone suffices and the contract shall remain in force, since a voluntary transfer of movable property in good faith is completed in this manner.

2. But if the agreement contemplates delivery of country or urban estates, a contract in writing must be made by which they are transferred to another, which must be followed by actual delivery, and it must be shown on the public records (gesta) that the transaction has been completed; for such estates cannot pass into the ownership of another, or be lost to the former possessor in any other manner.

3. And if anyone dares to take possession while he only has a letter of instruction as to such assistance (commonitorium—which contains the promise to give such property), he shall be held guilty of force and violence, the possession shall be returned to its former condition and the person who undertook to take possession by force shall be barred from claiming by law what he should have so claimed in the first place.

Given at Constantinople March 3 (394).

C. Th. 2.29.2.

Note.

The law relates to compensation to be paid to a man whose services were engaged in helping to procure, as the law is generally understood, an office at the hands of the emperor. The document in which the request was contained, and in which compensation was promised, is here called a commonitorium. This law allowed such contracts to be enforced (by *condictio*), provided that the person who sought the assistance had his wishes fulfilled. If movable property was promised in compensation, and was delivered pursuant to the agreement, ownership thereof vested in the transferee by the mere fact of delivery. If land, however, was promised, three things were necessary (without reference to the letter requesting the assistance), namely, an agreement that the property should be transferred, actual delivery, and a public record showing the transaction finished.

Authors differ as to whether this law was repealed by Novel 8. Gothofredus thinks not. He draws a distinction between money paid for services such as are mentioned in the present law, and money paid (*suffragium*) for an office. The latter was forbidden. C. 9.27.6. And the fact that both laws were retained in the Justinian Code shows that the distinction mentioned, even though the word *suffragium* was also used to denote the services mentioned, existed at least at that time. Other authors have thought that the present law was repealed by Novel 8. Among these is 9 *Cujacius* 198. The Novel referred to states that officials shall receive their position without the payment of any *suffragium*, so that they will not find it necessary to plunder the people. Its purpose was broad and sweeping, and if it still was necessary to give large compensation for obtaining office, even to the extent of conveying as compensation rural or urban estates,

it would seem that the Novel accomplished very little. The present law is not found in the Basilica, which lends color to the view that it was considered repealed.