Book VIII.
Title VI.

The interdict as to retention of possession of immovable property.
(Uti possedetis.)

8.6.1. Emperors Diocletian and Maximian and the Caesars to Cyrillus.

The rector of the province will forbid any violence to be used against your possession of the farm in question, if you possess it neither by violence, stealth or suffrance; the rule of the perpetual edict as to giving bond with surety or transferring possession (to the opponent), having been observed, he will try the question of ownership.

Subscribed at Nicomedia October 13 (294).

Note.

Gaius 4.148, says that this interdict was given for retaining possession, in order to determine which of the parties should be plaintiff or defendant in a real action. It would seem, however, that that was not its only purpose, but that it was also issued for the purpose of preventing disturbance of possession or ouster. Berger in 9 Pauly-Wissowa 1683. In classical law an interdict was issued which equally applied to each, and fixed for each a rule of conduct, forbidding force to be used against the one in possession, without determining who was in possession. That point was determined subsequently by a circuitous process. Gaius 4.166ff. Under Justinian, the interdict was an action the same as any other action. The former interdict served as a rule of law. If the parties, each, claimed the property, the right of possession was determined from the facts as they existed at that time, provided that the person in physical possession did not gain it himself by force, secretly or by permission.

Law 1 h.t. evidently refers only to trying the matter, so that the parties as plaintiff and defendant might be determined for an intended real action. The rescript provides that a bond had to be given or the possession was transferred, according to the rule of the edict. Formerly a bond to satisfy the judgment had to be given. That was no longer the case under Justinian. A bond had to be given only to remain in court till the end of the litigation. Inst. 4.11.2. That is evidently the bond here mentioned. The one to whom possession was transferred had to give it; if he did not, then it was transferred to the other party, shifting the relative positions of plaintiff and defendant. The bond could not be compelled to be given, since no one was compelled to defend in a real action. Berger, supra 1659, 1660. See Windscheid, Pand. §159, note 3; 25 Z.S.S. 130; 14 Z.S.S 167.