Book IV.
Title XLIX.

Concerning actions on a purchase or sale.
(De actionibus empti et venditi.)

4.49.1. Emperor Antoninus to Aeliana.

Bring an action on the sale against the person to whom you sold the field; for you have no action in rem against a purchaser who is liable to you on a personal obligation (for the price).

Promulgated June 10 (215).

Note.

The action to enforce a contract of sale was the special contract action given for that purpose. It was called "on the sale" (ex vendito or venditi) when the seller sued, and "on the purchase: (ex empto) when the purchaser sued. These were personal and equitable actions. C. 4.10.4 note. See C. 4.38.8 note as to action for the price.

4.49.2. Emperors Valerian and Gallienus and the Caesar Valerian to Flavius Domitianus.

You can bring an action on the sale against your opponent in order to recover the remainder of the purchaser price.

1. And if you can show that in the equitable contract (of purchase and sale), in connection with which also people over twenty years of age receive relief at the hands of the judge, when fraud is committed, you were induced, through a reasonable error or through the fraud of your opponent, to agree that you owed a sum which in fact you did not owe, you will not be prejudiced by a counterclaim (for that sum), as though you owed him in turn.

2. You man, in the same action, demand the fruits that existed before the contract of sale was made and which were not included in the sale, but were appropriated by the purchaser.

Promulgated March 15 (259).

Note.

The contract of purchase and sale was one where the utmost good faith was required, and condemnation was only for the amount which was found to be equitably due. Hence, fraud and mistake was taken into consideration in the action. The vendor had the right to retain the fruits which had been gathered and had become personal property.

4.49.3. Emperors Diocletian and Maximian to Serapodorus.

Only a personal action arises in favor of the contracting parties out of an agreement (pact) for earnest money.[1]

Promulgated July 12 (290).

4.49.4. The same Emperors to Mucianus.

[1] [Blume] I.e. no claim exists on any property. See C. 4.21.17.2.

If delivery of the property sold is not made pursuant to the contract of purchase by the willfulness of the vendor, the president of the province will give judgment for damages in a sum equal to an amount which he thinks the purchase, if completed, would be worth to you.[2]
Promulgated September 6 (290).

4.49.5. The same Emperors and the Caesars to Decimus Caplusius.

The president of the province will take care to compel the purchaser, who takes possession and receives the produce, to pay the unpaid purchase price together with interest; for the receipt of the produce, as well as the favor extended to a minor, dictate that such interest should be paid even though there has been no delay.
Promulgated September 20 (290).

Note.

Minors were favored as to interest (C. 2.40.3), though there was no technical default. See C. 4.48.4. Furthermore, interest was due in an equitable contract when the property was delivered. C. 4.32.2.

4.49.6. The same Emperors and the Caesars to Neratius.

The action on a sale, if nothing else to the contrary was agreed on in the beginning, is not readily available for rescinding a completed sale, but lies for the recovery of the purchase price.
Subscribed at Byzantium April 8 (293).

Note.

The word "readily" is probably an interpolation. The non-payment of price gave rise, in classical law, only to an action for the price (C. 4.38.8 note), unless (as in C. 4.54.1) a contrary agreement was made.

4.49.7. The same Emperors and the Caesars to Diodorus.

If you sold slaves and their purchase price was paid out of their special property (peculium) which already belonged to you, without you knowing from what source payment was made, the result is that you still have an action for the price, since payment made by your own money furnishes no ground to release the purchaser.
Subscribed at Melanthis April 15 (293).

Note.

The peculium, special property, pin money of a slave was theoretically, at least, the property of the master. Headnote C. 4.26. Hence, if the purchase price of a slave was aid out of that without the consent of the master, it was not considered paid at all.

4.49.8. The same Emperors and the Caesars to Aurelius Eusebius.

If your father sold his portion, but did not put the purchaser in unhindered (vacus) possession of the land, it is certain that he still retains all rights to it. Nor could the payment of public dues (vectigal), as though delivery had been made, when in fact such delivery was only pretended, change the truth. 1. If you, therefore, go before the president of the province, and he learns that your father or his successors did not put the purchaser or his heirs of any degree, into unhindered possession, he will not hesitate to pronounce that it has not been transferred. And if he finds that you have been sued on the

[2] [Blume] Laws 10 and 12 h.t., and C. 7.47.1.

purchase to be let into unhindered possession, he will investigate whether the purchase price has been paid, and if he finds that it has not, he will order it to be paid you (before giving the purchaser possession).
Subscribed April 27 (293).

Note.

Despite the fact that a contract of sale was made, that of itself did not transfer title or ownership. Delivery (or mancipation) was necessary. C. 2.3.20.; C. 3.36.15; C. 4.39.6; law 11 h.t.

The owner in possession had to pay the taxes. C. 4. 47. So, apparently, an idea arose that payment of taxes transferred ownership, which was not true. Comp. 3.32.25; C. 8.53.4.

4.49.9. The same Emperors and the Caesars to Aurelia Zania Antipatra.

If the tax burden (capitatio) is knowingly or unknowingly represented by the vendor as less than it is, and was found to be greater, he may be sued for as much as the purchaser, if he had known the facts in the beginning, would have given less as purchase price. But if the latter knew the burden and amount of such tax, he has no action against the vendor.
Subscribed May 18 (293).

Note.

It was Justinian law that misrepresentations as to quality, quantity, or condition of property sold, though made in good faith by the vendor, made him liable, unless the contrary was known. But in classical law, if they were in good faith, no liability existed, unless there was an express warranty. Law 4.58 headnote. The rescript is, accordingly, interpolated. Haymann, Haftung, 129.

4.49.10. The same Emperors and the Caesars to Titius Attalus.

Since you say that the seller of meat did not, in violation of the agreement, deliver it at the time agreed on, you can sue him before the president of the province for what it is worth to you to have had it delivered at that time.[3]
Subscribed December 16 (293).

4.49.11. The same Emperors and the Caesars to Flavis Eucarpia.

If the seller manumitted a female slave after he delivered her to you pursuant to a sale, he could not give her liberty when she had become the property of another. But if he manumitted her after the sale but before the delivery, he did so while he had all the rights of an owner and was not prohibited from making her a Roman citizen, but you have the right of a personal action against the seller on account of the broken contract.[4]
Subscribed December 23 (293).

4.49.12. The same Emperors and the Caesars to Eges Crispinus.

Just as a purchaser has the risk of spoiling of specific wine which he bought, so also the benefit of increased price belongs to him. And as that is true, so an agreement for the sale of a definite quality and quantity of wine should be performed. If such is not

[3] [Blume] Law 4 h.t.
[4] [Blume] Note to law 8 h.t.

delivered, an action on the purchase lies, not for the amount of the purchase price, but for the damage.
Subscribed February 4 (294).

Note.

A purchaser was, of course, entitled to have property of that quality and quantity delivered which he bought. If it was fundamentally different from what he bought, the contract was utterly void. D. 18.1.9 pr. If not fundamentally different, as where there was a difference in the quality of the wine, or where the wood in a table was different from that contracted for (D. 19.1.21.2), the contract was upheld, but damages were recoverable.

4.49.13. The same Emperors and the Caesars to Flavius Alexander.

The fruits, after a lawfully perfected contract, should belong to the purchaser, upon whom also falls the burden of taxes. The vendor can only, by the help of the judge, collect the price, and if a default is shown to have intervened, the interest thereon.[5]
Subscribed December 3 (294).

4.49.14. The purchaser of slaves rightly demands guarantees concerning their delivery, against their flight, as to their health, that they are not rovers, and that they are not liable for damage done by them.[6]
Subscribed November 27 (294).

4.49.15. The same Emperors and the Caesars to Aurelius Antoninus Aelianus.

In the absence of an agreement to the contrary, the purchaser of wheat can demand nothing beyond[7] the amount he bought when there is no default in delivery thereof.
Subscribed at Nicomedia December 18 (294).

Note.

The rescript probably refers to the fact that no interest could be demanded if there was no default.

4.49.16. The same Emperors and the Caesars to Aurelius Cyrillus.

It is well known that after a completed sale, the increase of cattle belongs to the purchaser; the vendor is entitled to be reimbursed for any expense which he has incurred in good faith.
Subscribed May 23 (294).

4.49.17. The same Emperors and the Caesars to Hermianus and Hernippus.

Since you acknowledge that you were forcibly expelled from the land by Nero, who, as you state, has no rights therein, you show that you have no cause of action against the person who sold and put you in possession of the property. You, therefore, see that you must bring an action in pattern of an interdict or other action that is given (in such case).

Note.

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[5] [Blum] As to default, C. 4.48.4 note. As to interest, C. 4.32.1 note.
[6] [Blume] See 4.58 headnote (2).
[7] The typed original reads “no more than.”

A vendor impliedly warranted that the purchaser should have the quiet enjoyment of the property bought. This subject is fully considered at C. 8.44. But that rule applied only as to matters existing at the time of the sale; the vendor was not answerable for defects of title which arose subsequently, except those due to his own act, or for acts like those described in the foregoing rescript, which had no connection with the title or right of possession of the vendor at the time of sale. See D. 21.2.11 pr; D. 21.2.51 pr. Moyle 115.[8]

[8] Probably, Moyle, The Contract of Sale in the Civil Law.