

Book IV.
Title LIV.¹

Pacts made between the purchaser and the seller.
(De pactis inter emptorem et venditorem compositis.)

Headnote.²

Collateral agreements might be annexed (C. 2.3 headnote) to a sale, as well as gift, giving rise, if violated, to an action on the contract, originally probably to an action on the facts (factum). Important were; that the vendor should have the right to repurchase; that the sale should be on approval of purchaser; that the vendor should have the right to declare the sale void, if the price were not paid by a time fixed; that the sale should be void, if the vendor should receive a better offer within a time fixed. The terms of these specified agreements had, or could have the force of conditions, which were generally conditions subsequent. It is disputed whether in the two cases last mentioned the vendor also had vindication, an action in rem (C. 3.32 headnote); he seems to have had in the last mentioned case. D. 20.6.3.

Other agreements could be annexed—e.g. that the transferee should not sell. C. 4.51.7. Certain agreements and conditions annexed to the sale of slaves were binding upon everyone, even innocent purchasers. C. 4.55-57.

4.54.1. Emperor Antoninus to Claudia Diotima.

If you sold land under the agreement that, unless the price were paid within a definite time, the (female) purchaser would lose the earnest money and that ownership should revert to you, the condition of the contract must be carried out. Given (216).

Note.

An agreement that if the price were not paid within a fixed period, the vendor might declare the sale void, was called *lex commissoria*. It was strict forfeiture, similar to that in mortgages. See C. 8.34. The purchaser lost his earnest money and partial payments, if the forfeiture was enforced. D. 18.3.6 pr. Ownership did not revert *ipso facto*, if it had previously been transferred, and forfeiture gave rise only to a personal action, to enforce the agreement. Laws 1 and 4 h.t. speak as though ownership reverted *ipso facto*, giving rise to a real action. But in these cases, it was probably still in the vendor, and the purchaser held possession only on sufferance. There is much dispute on these laws.

4.54.2. Emperor Alexander to Charisius, a soldier.

If your parents sold a farm under the agreement that if they or their heirs should at any time or within a fixed time have repaid the purchase price to the purchaser it should be restored, and you are ready to comply with the aforesaid agreement, but it appears that the heirs are not, you have, so that the faith of the contract may be maintained, a right of action on special terms (*praescriptis verbis*) or on the sale, and your opponent must account for the things that came into his hands from the farm after he was tendered the amount pursuant to the agreement.

¹ [Blume] Rev. 2/20/32.

² Blume wrote here: See Wiezsacker and revise.

Given September 1 (222).

Note.

An agreement to resell to vendor created only a personal obligation, originally enforceable by an action on the case (in factum). D. 19.5.12. That action was by the compilers changed to the action in special terms. C. 4.64 headnote.

4.54.3. The same Emperor to Felix, a soldier.

If a person has sold land under the agreement that it should be restored to him unless the remainder of the purchase price should be paid within a fixed time, he does not have the right to bring a real action (vindicatio) if he did not give mere permissive possession, but he has an action on the sale.³

Given July 13.

4.54.4. The same Emperor to Claudius Julianus and Proculianus.

A person cannot enforce the agreement of forfeiture (commissoria) made in connection with a sale if he does not elect, after the time fixed for the payment of the price to ask for the recovery of the property, but prefers to sue for the interest on the purchase price.

4.54.5. Emperor Gordian to Aurelius Longinus, a veteran.

If you made a pact in the beginning of the sale that the person to whom you sold the property should pay you interest on the purchase price not paid when due, you justly think, in going before the president, that it should be awarded to you. For even though no agreement with reference thereto was made in the beginning, you may justly demand such interest in a suit, for the delay—but for that only—not only from the debtor himself but from his surety.

Note.

If property sold was delivered, interest, in the absence of agreement to the contrary, commenced to run on any unpaid purchase price immediately. Note C. 4.32.1; C. 4.32.2.

4.54.6. Emperors Carus, Carinus, and Numerian to Olybrius Romulus.

Since you state that you transferred your farm to another for a small price on completion of certain things agreed on between you, that matter could not work to your injury, since it is proper that when the promise (of the purchaser) is not performed, the ownership of the property should revert to its former status. And if you, therefore, go before a competent judge, he will take care, through his authority, that the farm which you mention, together with its fruits, is restored to you without delay, especially since your opponent will receive his money back and will not suffer any damage.

Note.

While the rescript sounds as though, possibly, ownership reverted ipso facto, there is no indication that an action in rem—good against third parties—was given. The action given was probably the contract action.

4.54.7. Emperors Diocletian and Maximian and the Caesars to Febianus Muscus.

³ [Blume] See note law 1 h.t.

If the person whom you mention bought property of you under an agreement that it should be considered as unsold, if the amount paid should be returned within a fixed time, you do not rightly ask that the agreement should be released by our rescript. And if the purchaser should conceal himself, so as to retain the ownership of the property, you can protect your rights against his fraud by notice (in court) and by sealing and depositing the money.⁴

4.54.8. The same Emperors and the Caesars to Auxanon.

It is certain that agreements made between the purchaser and the seller at the time of the contract of sale must be fulfilled, if not cancelled by a later agreement.

4.54.9. Emperor Justinian to Johannes, Praetorian Prefect.

If a pact is made in connection with a sale or other alienation that the new owner shall not erect a burial monument in the place sold or transferred to him in some other manner, or consecrate it for any holy purpose, we ordain—although the point was doubted by the ancients—that such a pact shall be valid by virtue of this law, and shall remain inviolate. 1. For it may perchance have mattered much to the vendor that he should not have a person as a neighbor whom he did not want and because of whom the prohibition was specially made. For if a vendor, or person alienating property in some other manner, would not transfer his right otherwise than upon reliance on such agreement, it would not be bearable that he should be deceived by putting a different construction on the contract.

Given at Constantinople October 18 (531).

Note.

The law here translated was evidently made to correct D. 2.14.61 which states: “No man can by means of a pact deprive himself of the right to consecrate his own ground, or to bury a dead body on his own land, or to dispose of his estate without his neighbor’s consent.”

⁴ [Blume] For notice in court and deposit of money, see C. 4.32.19.