Book IV.
Title L.[1]

If anyone has purchased property for another, or for himself under another's name, or with another's money.
(Si quis alteris vel sibi alterius nominee vel aliena pecunia emerit.)

Bas. 19.15.

4.50.1. Emperor Antoninus to Mercatores Secundus.

If land and slaves were bought with money of your father, yet since you state that purchases were made in the name of your mother, you cannot be ignorant of the fact that your mother became owner by delivery (thereof to her). Of course, if you think that you have a claim on account of the payment of the purchase price, sue her in a civil action. Promulgated July 30 (213).

Note.

Subrogation. According to Greek thought, the man with whose money any property was acquired by another was entitled to subrogation in some form. Thus it was claimed that if property was bought with another's money, the latter should be owner of such property. That was contrary to Roman ideas, and again and again the emperors stated that ownership of property was acquired by delivery thereof pursuant to sale (C. 2.3.20), no matter where the price paid for it came from. Laws, 1, 3, 6, 8, 9 h.t.; C. 3.32.6; C. 3.38.4; C. 4.19.21.1; C. 4.37.2; C. 5.12.12; C. 5.16.9 and 16; C. 8.14.3; C. 8.27.20. So a claim was made that loans made with another's money were the loans of such other. But the claim was denied (C. 4.2.2; C. 4.2.7; C. 4.34.8), unless the loans were made in the name of such other. C. 4.27.3. Subrogation was claimed to securities taken in connection with a loan made with another's money, but denied. C. 8.13.16; C. 8.27.19; but see C. 4.27.3. So, too, when a debtor bought land with borrowed money, and the lender claimed an implied lien on the land, he was told that he did not have it. C. 8.13.17. And a wife was denied a lien claimed on the property bought by her husband with her dowry. C. 7.8.7. As the basis of all these claims was the same—namely the thought of subrogation—so the denial thereof, too, probably rests upon an ultimately identical foundation, namely the thought that contracts and transactions were, ordinarily, personal to the parties thereto (C. 4.27.1 note), except in exceptional cases, when, as by causing property to be delivered to another, or by making a loan in the name of another direct benefit to another was intended and legally permitted and effectuated.

Exceptions came to be made in the Roman law, influenced in most cases by Greek thought, most of them being post-classical, some originating with Justinian. Thus when property was bought with the money of a soldier, the latter had the right to claim it as against the purchaser. C. 3.32.8 (itp). See also C. 8.54.3. So a loan made with money of a soldier or a minor might be claimed by such soldier or minor respectively against the lender. C. 5.39.2; D. 12.1.26. A number of implied or statutory liens were given where a minor was given a lien on property bought with his money by his guardian. C. 7.8.6. See also C. 5.51.3. If a man loaned money for the restoration of a building, he was, apparently as early as the time of Marcus Aurelius given a lien on such building. D. 20.2.1. So after Diocletian, a wife was given a lien on property bought with her

[1] [Blume] Rev. 2/17/32.

dowry. C, 8.17.12.5; Sinai Sch. 11. Justinian gave bankers the right to sue for and recover property bought with the money loaned by them, in case the loan was not paid, and he created, to a limited extent, a lien on saleable positions in the imperial bureaus bought with another's money. C. 8.13.27. The thought of subrogation may also be noticed in the preference given to a special mortgage on property bought with loaned money, over a general mortgage previously given. C. 8.17.7.

4.50.2. Emperor Alexander to Septima.

If your father, after emancipating you, delivered lands to you which he had bought in your name while you were in his power, or if you have been in possession thereof with the consent of your father, you have acquired ownership thereof.
Given March 20 (222).

Note.

The fact that a father bought property in the name of a child in his power did not make the property that of the child, since all property of such child, acquired through the father, belonged to the latter in any event. Headnote C. 6.60; C. 8.46.2 note. But the father, having become the owner of the property, could give it to the child after emancipation, and that could be done by transferring possession or permitting possession to continue after emancipation. A father could not make a valid gift to a child in power, but if the child was emancipated and the gift was not expressly revoked, it was thereby ratified. C. 8.53.11 note.

4.50.3. The same Emperor to Fabius Paternus.

If, as you say, the slaves which you mention were bought in your name and that of your brother, to whose rights you succeeded and they were delivered to you, you are not forbidden to sue for them in legal manner, though the instrument of purchase states that your mother paid the purchase price.
Given June 17 (228).

4.50.4. Emperors Valerain and Gallienus and the Caesar Valerian to Aurelius Cyrillus.

Although you inserted the name of your mother-in-law in the instrument of purchase, still, if you hold possession, you have become the owner. You needlessly fear the false claim of the woman, even though she has the written contract.
Given May 5.

Note.

Here it was claimed—a Greek idea—that the document of purchase was controlling. That was not Roman law, since purchase and delivery pursuant thereto determined ownership. This appears also in law 5 and law 6. 2 h.t. C. 4.22.2 and C. 5.16.16.

4.50.5. Emperor Diocletian and Maximian to Verus.

Since you say you at one time purchased land, with your own money, using the name of your wife only as a convenience, and that she, using the custody of the documents, committed to her keeping as an occasion, claimed control to good faith ownership of the property, the rector of the province, knowing, in accordance with his experience, that a gift made by your wife to her daughter, of property which she does not own, did not prejudice your ownership, will take care, when you show that your supplication is true, that the property together with its fruits is restored to you.

Given September 12 (290).

Note.

The man bought the property for himself, and it was doubtless delivered to him. Hence he, and not the wife became the owner, and she could not, accordingly, make a valid gift thereof to her daughter.

4.50.6. The same Emperors and the Caesars to Aurelius Dionysius.

It makes a great deal of difference whether your wife was the purchaser when you paid the money, and possession was delivered to her, or whether you made the contract of purchase in your name and only afterwards caused the name of your wife to be inserted in the purchase instrument.

1, For if your wife bought the property in her name and it was delivered to her, and none of it came to you, you have no action against her except for the price to the extent that you have become poorer and she richer.

2, But if you bought it and possession was delivered to you, and the name of your wife was merely inserted in the purchase-instrument at some time or other, the actual facts prevail over the writing.

3. But if you in fact managed the business of your wife and bought the property in her name, you did not acquire an action on the purchase for either her or for yourself, since you cannot acquire it for her, and you do want it for yourself. Therefore, on the inquiry of ownership that person has the better right to whom possession was delivered.
Given at Viminacium August 19 (293).

Note.

If the husband paid the price, he could recover it (in so far as the wife was enriched), because a gift between husband and wife was ordinarily void. C. 5.1. But the mere payment of the price did not make him owner, if the property was in fact delivered to the wife pursuant to purchase by or for her. See C. 5.16.16. The general rule here stated that a free man could not make a contract (directly) for another. The contract was void. There were exceptions. C. 4.27.1. Of course, the vendor could not recall property which he had delivered. The person to whom it was delivered became the owner.

4.50.7. The same Emperors and the Caesars to Aurelius Gerontius.

Since you say that you bought products of oil through persons who carried on your business and that the seller, after the receipt of the price, broke his contract, go before a competent judge, either personally or thought a person to whom you give a mandate for that purpose, provided that you acquired a right of action by reason of the fact that the purchase was made through persons who were subject to your power; but if persons sui juris, made the contract in accordance with your mandate and acquired a right of action on the purchase for themselves, then go before a competent judge through them or through those to whom they shall give a mandate (to sue) and such judge will take care that the contract is performed in accordance with good faith, which is accustomed to be observed in such contracts.
Subscribed August 19 (293).

Note.

If the contract was made through a person under the power of the principal, the benefit thereof was permitted to acquire directly to the later. If made through someone else, the contract, ordinarily, was required to be made in the name of the agent, who, then, in turn could be held responsible by his principal. C. 4.27.1 note.

4.50.8. The same Emperors and the Caesars to Maxima Valentina.

A person who buys property with another's money acquires a right of action on the purchase and ownership of the property not for the party with whose money he bought, but for himself, provided that the property is delivered to him. Hence, when you state that your cousin bought something with property owned in common by you and him, you will do better if you sue him for your money; for you have no claim against him in an action in rem for the property bought by him.[2]

Given at Sirmium February 2 (294).

4.50.9. The same Emperors and the Caesars to Eminius Rufinianus.

Nothing forbids that though one person pays the money, ownership may be transferred to another, with the consent of both contracting parties, or also through the will of the vendor alone. It has also been definitely decided that such contract may be made between absent parties, through an intermediary, as a messenger, or through a letter.[3]

Given at Sirmium (294).

[2] [Blume] C. 3.38.4.

[3] [Blume] C. 4.29.1 note.