

Book II.
Title XVIII (XIX).

Concerning volunteer agency.

Headnote.

Volunteer—or quasi—agency. It was permitted at Rome, when not forbidden by the owner, for one person to manage another's affairs, though he had no express authority. In other words, meddling in other men's property was at times considered perfectly legitimate. The person who did so is commonly termed an unauthorized or voluntary agent. The term generally used herein is that of volunteer or quasi agent. The obligations arising from this relation were, in later law, spoken of as quasi contractual (Inst. 3.27), and were similar to those arising in case of express authority—mandate—see C. 4.25; C4.26; C 4.27; and C. 4.35.

The right herein mentioned was recognized by the praetor's edict by providing that "if a man volunteers to manage the affairs of another—I will grant an action on that account." D. 3.5.3 pr. It arose largely, perhaps, out of the fact that Rome was engaged in many wars, and that men were frequently absent from home. In Inst. 3.27.1, in speaking of the reasons of the existence of such right, it is said: "The reason of this is the general convenience, otherwise, people might be summoned away by some sudden event of pressing importance, and without commissioning anyone to look after and manage their affairs, the result of which would be that during their absence these affairs would be entirely neglected." See also D. 3.5.1.

The service rendered by such unauthorized agent might be of almost any kind: repair of a house, becoming surety, defending in a lawsuit or doing almost any other thing in and about the property and affairs of another. But the acts done were ordinarily required to be necessary, and for the principal's benefit. D. 3.5.10.1. A volunteer-agent was not permitted to intermeddle in everything. Thus he had ordinarily no right to collect debts (Law 9 h.t.), or sell the ordinary property of another (L. 19 headnote), or sell the ordinary property of another (Law 19 h.t.), and such acts were invalid, unless ratified. So he could not, at least after the early law, bring a suit, for express authority to do that was ordinarily required. C. 2.12.24; L. 20. 2 h.t. Whatever the volunteer-agent did, he was required to do in good faith, and with care; and it was necessary for him to render an account to the principal. In turn, he was, ordinarily, entitled to reimbursement for his expenses, and to be released from all obligations usefully undertaken for the principal. In later law his outlay was required to be made with the expectation of recover. Law 1 h.t. The action given was an equitable one—one of good faith. G. 4.62. See C. 4.10.4. note. It was an action for "business carried on" (*negotia gesta*), here translated as "volunteer agency," that of the principal being the direct, that of the quasi-agent the counter-action. It was probably older that the action given on express agency, and Wlassack (Neg. Gest.) holds that it was originally given in all cases when one person carried on business for another. Even in Justinian law the action between a curator and ward was known as one on quasi-agency. See generally, Inst. 3.27; D. 3.5; and Zimmerman, Wlassack and Partsch on Neg. Gestio.

2.18.1. Emperors Severus and Antoninus to Sopatra.

Since you accused the guardians of your sons as suspected, and you sought other guardians or curators for them, you performed a duty of love. This fact (however) does not admit of an action of volunteer-agency, to recover the expenses paid out by you in such litigation, since also when a person, thru family affection has laid out expenses (for another), he can in no manner recover them.

Promulgated October 5 (196).

Note.

Parents and children owed each other the duty of support. C. 5.25; C. 8.46.5 and 9. Money expended by parents in looking after the guardianship of their children, and in maintaining and educating them, could not be recovered. L. 11 h.t. A similar rule applied to freedmen and husbands. Laws 5 and 13 h.t. Other, and beneficial expenditures made by them might be recovered in classical law. But in post-classical law intention was all important. So unless such (other) expenditures were made with intention to recover them, they were considered as made as a gift—on account of family-affection—and so could not be recovered, otherwise they could. To make such intention clear, declarations, frequently in writing, before witnesses could be made. C. 8.37.14 pr. The rule applied not only to expenditures made by parents, children, stepfathers and husbands (laws 11, 12, 13, 15 h.t.), but to others as well. The classical law is obscured by interpolations. 42 Z.S.S. 273-327.

2.18.2. The same emperors to Rufina.

By reason of benefit to them, it has been the accepted rule that an action is to be given also against those under the age of puberty, to the extent that they have been enriched, if their transactions have, through urgent necessity, been undertaken for their advantage. And such action is rightly given you on account of expenses which you claim you paid out for a minor when you took him to Rome for the purpose of having guardians appointed for him, if his mother¹ does not show that she was ready to do so at her own expense.

Promulgated January 15 (197).

Note.

Here the necessary business of the minor was carried on by a stranger, and so an action on volunteer agency was given. See C. 4 h.t.

2.18.3. The same emperors to Hadrianus.

If you paid money for your brother and coheir, you have an action on volunteer agency, and if you were compelled to pay the whole sum due on property (of the estate) which was pledged, in order to release it, you have the same action, or, if the mater is not adjusted between you, you will recover the amount in an action to divide the inheritance. Promulgated January 22 (199).

Note.

It will be noticed that the brother who paid the debt in this case had an election of remedies; either to sue in an action on volunteer agency, or to recover the amount paid in an action for partition. See law 19 h.t.

2.18.4. The same emperors to Claudius.

¹ [Blume] Read mater ejus idem.

Whoever has undertaken the management of the business of a female ward pursuant to a mandate of a guardian does not seem to have managed it as an unauthorized guardian,² but will be liable to the ward in an action on volunteer agency. Promulgated December 3 (201).

Note.

The (former) ward had the option to sue for mismanagement either the guardian or the one appointed by the latter to act for him. Bas. 17.2.4.

2.18.5. The same emperors to Trophimus.

Having performed the duty and not any the less rendered the obedience due from a freedman, you cannot have an action on volunteer agency against your patron's daughters who are minors under the age of puberty (for paying expenses on their behalf). Promulgated June 19 (203).

Note.

Bas. 17.2.5 states that the expenses here paid by the freedman were those for seeking a guardian for the minor. See C. 1 headnote.

2.18.6. The same emperors to Gallus.

You say that a curator was appointed for you in the testament of your father. That cannot be considered as legally done. Still if, as you allege, he mixed in the management (of your affairs),³ you have an action on volunteer agency against him as well as against his heirs.

Promulgated (207).

Note.

A father could by will appoint a guardian for his child, to act until the minor reached the age of puberty. Headnote C. 5.23. But he could not legally appoint a guardian, or curator—as he was then properly called—for a child over the age of puberty. C. 5.28.7 note. Still if such appointed curator acted, he was considered a volunteer agent, and he was accountable as such.

2.18.7. Emperor Antoninus to Euphrata.

If you were made an heir of two-twelfths of his estate by the person who managed your affairs as volunteer agent, then although you enter upon the inheritance, you have a claim as to the remaining ten-twelfths against your coheir, if you had any right of action against the decedent.

Promulgated at Rome, March 10 (216).

Note.

Inheritances were generally left by twelfths, although not invariably so. Each heir was liable to pay the debts of the estate in proportion of his inheritance. If he himself had a claim against the estate, he could collect it, except in proportion as he himself was heir, from the other heirs. C. 3.36.6; headnote Code 6.30.

2.18.8. The same emperor to Severus.

² [Blume] pro tutore. See C. 5.45.

³ There is a question mark penciled into the margin next to this.

Sue, in a civil action on volunteer agency, those who managed your business; nor will you be prejudiced if, because of your military service, you brought the action rather late, since such action is not barred by prescription of a long time (10 or 20 years).⁴
Promulgated July 27 (218).

2.18.9. The same emperor to Sallustius.

If Julianus collected money from your debtor and you ratified the payment, you have an action on volunteer agency against him.⁵
Promulgated February 22 (217).

2.18.10. Emperor Alexander to Secundus and others.

If you took care of another's sick slave who was not useless to his master, and you have done something for the latter's benefit, you can recover your expenses in a proper action.
Promulgated November 20 (222).

2.18.11. The same emperor to Herennia.

You cannot justly ask to be repaid the cost of support which you furnished to your sons, since maternal love prompted you to do that. But if you paid out anything usefully in their affairs and in an acceptable manner and you show that you did so not out of maternal liberality but with the intention of receiving it back, you may recover it in an action on volunteer agency.⁶
Promulgated January 20 (227).

2.18.12. The same emperor to Theophilus.

If a son pays a debt for his father, he has no right of action on account of this payment, whether he was in the power of his father when he paid it, or whether, when he was emancipated, he paid it as a gift. If your father, therefore, who was emancipated, paid his father's debts, in managing his father's business, without an order to do so, you have a right of action on volunteer agency against your paternal uncles.
Promulgated August 1 (230).

Note.

The rescript as it stands is equivocal. It was probably interpolated (42 Z.S.S. 312), the second sentence, as the first, probably, stating that recovery could not be had. The opposite was finally stated in the second sentence, in accordance with the later ideas noted at law 1 h.t.

2.18.13. The same emperor to Aquila.

You cannot recover from your father-in-law what you paid out for your sick wife, but you should charge it up to your affection. But if you paid out anything on account of her funeral, with intention of receiving it back, you may rightly sue her father to whom the dowry was returned.
Promulgated October 25 (230).

⁴ [Blume] See C. 7.39.3 note.

⁵ [Blume] See C. 8.37.3. An action on mandate also was available where the principal ratified the acts. Buckland, Textbook 534.

⁶ [Blume] Note law 1 h.t.

Note.

It was the duty of a husband to support his wife; but he was not also required to pay her funeral expenses. Wives generally brought a dowry to their husbands, but, unless there was an agreement to the contrary, it was generally returnable upon the death of the wife. C. 5.12.1 note. See also C. 1 headnote.

2.18.14. The same emperor to Mucianus.

If you supported your stepdaughters, or paid compensation to their teachers on their behalf, out of paternal affection, you have no claim for the return of such outlay. But if what you disbursed for expenses you paid with intention of receiving it back, you should bring an action on volunteer agency.

Promulgated July 10 (239).

Note.

A stepfather owed no duty to support to his stepchildren. Hence he could recover expenses therefor, unless paid out as a gift. L. 1 h.t.

2.18.16. Emperors Gallus and Volusianus to Eutychianus.

If, in managing you sister's business you paid taxes on her behalf, or you did so pursuant to her mandate or her request, you can recover what shall appear to have been paid by you by an action on volunteer agency or on the mandate.

Promulgated April 21 (252).

2.18.17. Emperors Diocletian and Maximian and the Caesars to Claudia.

It is agreed that also the heirs of a curator should be held responsible for fraud or gross negligence when used in an action analogous to that on volunteer agency; (but) that the duty of administration (of the affairs of a minor) does not pass to them and that, therefore, they have no power of transferring the property of a minor woman over the age of puberty.⁷

Given at Sirmium December 20 (293).

2.18.18. The same emperors and Caesars to Pomponius.

Good faith requires that interest should be paid on expenses paid in managing business for another; you can invoke such law, in an action on volunteer agency, also against those whose business, as you say, you transacted through necessity.

Given December 24 (293).

2.18.19. The same emperors and Caesars to Alexander.

⁷ [Blume] Here the heirs continued the business of the curator. They had no right to dispose of property. They were responsible, apparently, only for fraud or gross neglect, not ordinary negligence, as other agents without mandate. [Blume penciled in a question mark here.] L. 20 h.t.

When an article is sold as a whole by one of the heirs, the coheir of the seller who ratifies the sale may, in an action on volunteer agency, sue concerning the price (i.e. for his portion).⁸

Given at Sirmium February 13 (294).

2.18.20. The same emperors and Caesars to Octavia.

Not similar to a guardian or curator is considered a person who, without a mandate, voluntarily carries on another's business since the duty of their office, forsooth, puts a limit to their management for the former but his own desire (sets such limit) for the latter, and it fully suffices, if anyone's interests are looked after by a friend in even a few matters.

1. Accordingly, a person who is neither a guardian nor curator may be sued by you as to transactions, which he managed voluntarily, since he is responsible not only for fraud and gross neglect, but also for slight neglect, and he will be compelled to return with interest what shall appear to be owing you from him.

2. But as to the other matters, property which, belonging to you, but detained by others, he failed to recover cannot be demanded from him, who, over objection could not even have the right to sue; and you must, accordingly, turn our claims against those who, as you allege, have your property.

Given at Sirmium April 24 (294).

Note.

It is thought that originally, perhaps, an intermeddler in another's affairs—a person without authority—was liable only for fraud resulting in damage. 39 Z.S.S. 268; 45 Z.S.S. 292. But he came, in classical law, to have greater responsibility, making him liable for negligence also, unless in a case where interference was essential to prevent great loss. D. 3.5.3.9. The terms gross and slight negligence, however, are post-classical and interpolated. 38 Z.S.S. 268. For the doctrine of care, see C. 4.34.1 note. Though a man undertook to look after some affairs, he was not, ordinarily, compelled to look after all. C. 2.12.17 note. Nor was he responsible for unavoidable casualty. L. 22 h.t.

The rescript shows that a person without authority—i.e. unless he was a true, as opposed to a false procurator (C. 2.12 headnote) could not, over objection, carry on a lawsuit.

2.18.21. The same emperors and Caesars to Mitra.

If your blood relatives manumitted their slaves, the fact that you contend that they (the slaves) managed your property cannot serve as an impediment to their freedom. And what is more, it is beyond doubt that, after their manumission, they cannot be sued for any act preceding it, if the management of both periods is not connected but is separated.⁹

2.18.22. The same emperors and Caesars to Eulogius.

Persons who, without a special agreement, manage another's business are not responsible for loss caused by accident.

⁸ [Blume] The sale of another's property was invalid (C. 3.32.3), unless ratified. An exception existed in the case of perishable property.

⁹ [Blume] C. 4.14 as to liability on transactions of slaves after manumission.

Given November 21 (294).

Note.

There could not be a special agreement in a volunteer agency. Hence that clause is an interpolation.

2.18.23. The same emperors and Caesars to Theodorus.

Transactions conducted by a volunteer agent give rise to a personal, not a real, action.

Given at Nicomedia, November 20 (294).

2.18.24. Emperor Justinian to Julianus, Praetorian Prefect.

In case anyone, against the wish and the special prohibition of the owner of property, intermeddled in the management thereof, there was a doubt among the important authorities whether such volunteer agent should have any action against the owner for expenses incurred in connection therewith.

1. Some gave him a direct action or an action analogous thereto, others denied him any, among whom was Salvius Julianus. Deciding these things, we ordain, that if the owner has objected and has forbidden another to administer his affairs, then, according to the opinion of Julianus, no counter-action¹⁰ lies against him—that is to say, after the notice sent by the owner, not permitting the other to meddle with his property, even though the matters may have been managed well.

2. But, what if the owner has looked on and seen many useful expenses incurred by a manager, and then by fraudulent pretense forbids him—in order that he may not have to repay the money laid out previously? We in no manner permit that; but from the day on that such notice (of prohibition) has been given, either in writing or without writing, in the presence of other persons as witnesses, from that time on no action shall lie for betterments made thereafter. But as to the previous ones, if made beneficially, we permit the volunteer agent to have an action against the owner, limited in time according to its nature.

Given at Constantinople, November 17 (530).

¹⁰ [Blume] The action given to the principal was called the direct action, the action given to the volunteer agent was called the counter-action.