

Book IV.
Title XXVII.

Through what persons property is acquired for us.
(Per quas personas nobis adquiritur.)

4.27.1. Emperors Diocletian and Maximian to Marcellus.

It is undoubted law that, excepting possession, nothing can be acquired through a free person not subjected to another's power. 1. If a procurator, therefore, entered into a pact, to which a stipulation was added, were by it was agreed that not he, but the person whose business he managed, should have the right to have the property restored to him, no obligation accrued in favor of the master. Things, however, delivered to slaves are acquired for the master.

Given July 1 (290).

Note.

Transactions between individuals were ordinarily personal. Partially for that reason, perhaps, the rule of classical law—abolished by Justinian—was that a contract to take effect after the death of the promisee or promissory was invalid. Gaius. 3.100; C. 4.11.1; C. 8.37.11. And a man could not acquire rights for another. He could not, purporting to act as agent or otherwise, make a valid contract in the name, or in favor, of a third person, a rule particularly adhered to in stipulations. C. 4.50.6.3; C. 5.12.26; C. 5.14.4; C. 8.38.3. He had to make it in his own name. He could practically assign an obligation. That was ordinarily by mandate (C. 4.35) permitting the assignee to sue thereon in his own name. C. 4.39. If the man making a contract was in fact an agent, he could be compelled to assign it to his principal.

The rule that a man could not benefit another by a transaction in a direct manner had its exceptions. (1). A child's contract or other transaction accrued in favor of the father under whose power he was. That was true in case of a slave as well. C. 4.26; C. 3.32.1. (2). A messenger, through whom a contract was made was not considered an agent. C. 4.50.8. (3). From the 2d century on, possession might be acquired directly through a free agent. C. 7.32.1. (4). A loan of money might be made in the name of and for the benefit of a third person named as creditor. Law 3 h.t. (5). In some cases, generally for equitable reasons, a third person was subrogated to the benefit of a contract made by another. C. 4.39.5. A guardian's or curator's contract might thus inure. C. 5.39.3. A depositor could recover a deposit through in the hands of a third party, and under a contract with the depositor. C. 3.42.2. A beneficiary under an agreement exacted by another when giving a dowry or making a gift, could sue on such agreement. C. 5.14.7; C. 8.54.3.

4.27.2. (3). Emperor Justinian to Julianus, Praetorian Prefect.

If two or more have a slave in common and one of them has ordered that the slave exact a stipulation in his name for the payment to him of say ten pieces of gold or other property, but the slave has exacted a stipulation not in the name of the man who gave the order but made mention of another of the masters and has exacted a stipulation in his name, it was questioned among the wise ancients, to whom the right of action and the gain arising herefrom accrued, whether to the person who gave the order or to the person of whom the slave made mention, or to both.

1. Many authors wrote much on every side of the question, but the opinion of those who say that the stipulations that of the master who gave the order and that the gain accrues only to him, seems to us to be better than the opinion of those who think otherwise. The evil-mindedness of slaves must not be tolerated; they must not be permitted to ignore the master's order, exact a stipulation according to their own pleasure, and transfer to one master who perchance corrupted them, the property of another. It is not to be allowed that an impious slave should think that a master's order need not be obeyed, but bring a sudden gain to another who perhaps knows nothing about it.

2. But what was often said among the ancients that a master's command is not dissimilar to his being named (as the beneficiary of a stipulation), is true only then when a slave, ordered by one of his masters to exact a stipulation, exacts a stipulation without giving a name; in such case the property is acquired for the person only who gave the order; but if the slave has mentioned another master, then necessarily the property is acquired only for the latter; for the mention of a master's name should count for more than a master's command.

Note.

Par. 3 directly contradicts the provisions that precede. They cannot be harmonized, nor is it certain what rule Justinian meant to adopt. The law presents perhaps, the worst contradiction in the whole Justinian compilation. It seems to have been written "almost like in a dream." Salkowski, Sklavenerwerb, 97; Buckland, Roman Law of Slavery 383. Ordinarily a slave jointly owned acquired for all his owners in the proportion of their ownership.

4.27.3. The same Emperor to Johannes, Praetorian Prefect.

If money is loaned by a free person in the name of another, there accrues, through such loan, a personal action (condictio) in favor of him in whose name the money is loaned, but a mortgage or pledge, which is given to the procurator or placed with him, does not so accrue. We abolish such difference, and ordain that the action on the mortgage, and the pledge, shall, just as the personal action (condictio), by mere operation of law and without any assignment, accrue to the principal of the contract. 1. For if the procurator must, (in any event) under the laws, assign his right of action to the principal of the contract, why not, just as an assignment of the right of a personal action (in such cases) is deemed superfluous, should the principal of the contract, in a similar manner, have the right of action on the mortgage and the claim to the pledge or the right of retention thereof from the beginning, without any assignment?
Given November 1 (530).

Note.

The rule that one man might make a loan in the name of another, and that of money of either of them, so that the loan would accrue to the benefit of the man in whose name the loan was made, originated not later than the time of Aristo, early in the second century of the Christian era. D. 12.1.9.8; C. 4.2.4. Here direct agency was permitted, and the rule was, perhaps, brought about by bankers. See C. 4.2.2 and 7; C. 4.39.8.