

Book IV.
Title XXXVI.

If a slave gives a mandate to purchase him.
(Si servus se emi mandaverit.)

Bas. 14.1.8.

4.36.1. Emperors Diocletian and Maximian and the Caesars to Aurelia Dionysia.

If a slave gave a mandate to a stranger to purchase him, no right of action was believed to arise on the mandate on behalf of the slave, since, if he were free, his mandate to buy him would be null; nor was such action believed to arise in favor of the owner, since a man's mandate to buy what is his already is useless. Still, it has been decided that some cause of action arises, upon good reason, (in favor of the owner), since the object was to create a cause of action, not on the mandate, but on another contract (i.e. the same made) on account of the mandate. 1. Hence, if you (a female slave) gave a mandate to purchase you without the knowledge of the owner, and money which you took from your own special property (peculium) was paid for you, the purchaser could not in this manner be released from paying the purchase price by money other than the peculium. Still, it has not been thought best, if you were delivered to the purchaser, but not yet manumitted to give (to the former owner) such inconsistent remedies as an action on the mandate for the recovery of the female slave, as well as for the recovery of the purchase price. Of course, he has the choice whether he wants the slave or the price (paid otherwise than by the peculium), since payment with the peculium, which was already his, could not release the purchaser from his obligation.¹

Given at Sirmium October 1 (293).

Note.

This law is considered by Buckland, Roman Law of Slavery 216, 640. The mandate was of no value on behalf of the slave, since, if he were free—and that was the only way by which he could have validly given a mandate for his own benefit—his mandate to buy himself would have been void; nor was the mandate valid on behalf of the master, since a man's mandate to buy what was already his (the slave being owned by him) was also bad. Nevertheless, the mandate was of some value if a sale actually followed, and gave the master a right of action either to recover the purchase price or to get the slave back. See also Papinian in D. 17.1.54 pr., where it is said: "When a slave gives a stranger a commission for his own purchase, this is no mandate. But if the mandate was given for the further purpose of the slave being manumitted, and he is not manumitted, the owner can either as vendor recover the price, or on the score of affection proceed upon the mandate, supposing the slave to be a natural son or brother."²

¹ [Blume] See C. 4.49.7.

² Blume added here: Cohnfeldt, Interesse p. 74.