

Book IV.
Title XXXIX.¹

Concerning the sale of inheritance and rights of action.
(De hereditate vel actione vendita.)

4.39.1. Emperors Serverus and Antoninus to Geminius.

It is absolutely certain that when an inheritance is sold in the name of the fisc, the debt thereon falls on the purchaser of the property, and the fisc is not responsible to the creditors of the inherited estate.

Given November 3 ().

Note.

An inheritance expected to be derived from a living person was not saleable (D. 18.4.1), nor could it be the subject of a contract, unless with the consent of such living person. C. 2.3.30; C. 8.38.4. An existing inheritance—the estate of a deceased person considered as a collective entity—might be sold the same as other property, and, on the whole, the purchaser took the place of the heir. But he was not required to submit to suits brought by creditors or beneficiaries of the estate, though he was responsible over to his vendor. Law 2 h.t. C. 6.37.2. That was not true, however, when the imperial treasury, having acquired an inheritance, sold it. In that case, the purchaser was directly responsible.

4.39.2. Emperor Antoninus to Titius Florianus.

The rule of law demands that when creditors of the inherited estate and legatees and beneficiaries of a trust want to sue you, you must answer, and you must, in turn, sue the person to whom you sold the inheritance. For you ask too late that he should give you a bond, since that was not agreed on at the time that the inheritance was sold. Although he bought upon condition that he should pay the creditors of the inheritance, he is not compelled to appear unwillingly in actions relating to the inheritance.

Note.

Agreements were personal to the parties. C. 4.27.1. But heirs stood in his stead. That far the agreement remained personal, so a third party, who purchased the inheritance did not have to submit to suit. C. 6.37.2; C. 8.53.22. If the purchaser, however, voluntarily sued the purchaser [vendor],² and he submitted, then the vendor, or original party, could defend himself by the defense of a tacit agreement.

4.39.3. Emperor Alexander to Quintianus and Timotheus.

Suits are usually sold without the knowledge or consent of the person against whom actions are assigned by mandates.

Given February 6 (223).

Note.

While contracts and other obligations were personal to the parties thereto, yet debts could, indirectly, be sold or transferred the same as other property, by the original

¹ [Blume] Rev. 3/22/32.

² This note was pasted on as a later revision. Blume has typed purchaser here, but the context indicates he must have meant vendor. He also wrote next to it “original note sent.”

creditor appointing the intended transferee his agent to sue thereon, and do so for his, the transferee's, benefit. And the grantee of a debt came to be able to sue in his own name. Law 5 h.t. note. On account of the influence of dignitaries in the empire, and the facts that debts were frequently assigned to them, transfers of debts came to be frowned upon. Assignments to dignitaries was forbidden. C. 2.13.1 and 2. Later, an assignee could not collect from a debtor more than he paid for the debt. C. 4.35.22 and 23. Justinian forbade former guardians and curators to acquire by transfer any debt against their former ward. Nov. 72, c. 5. Rights of action, or property, could not be transferred during litigation.
C. 8.36.

4.39.4. The same Emperor to Aurelius Diogenes, a soldier.

Whoever, uncertain of the quantity of an inheritance, sells it, persuaded by the purchaser that the quantity is small, cannot be sued in an equitable action (on the purchase) to deliver the property or assign rights of action; and he may sue to recover it in his own right.

Given September 15 (223).

Note.

In this case the purchaser had (doubtless knowingly—C. 4.58 headnote) misrepresented the size of the inheritance and was guilty of fraud. On that account the seller was not bound to deliver what he had sold.

4.39.5. The same Emperor to Novarius Onesimus.

The purchaser of an inheritance should enjoy the same rights when actions are assigned to him, as the person whom he represents, although it has become the rule that also analogous actions are given against the debtors of the inheritance.

Promulgated March 1 (224).

Note.

Two methods of suit were given—one in the name of the transferor, if authorization to sue was given, the other in the transferee's own name. Originally, just as at common law, a debt or obligation or other right was required to be sued on by or in the name of the original creditor. That had its inconveniences—e.g., if the transferor died, the authorization to sue became void. The emperor Pius gave the purchaser of an inheritance the right to sue on obligations due the inheritance in his own name.

D. 2.14.16 pr. And the rule thereafter, gradually became that whenever there was a grant of a debt, as by sale, pledge, legacy, gift, or in similar ways, the grantee had, even in the absence of authorization to sue, an action-analogous, "utilis," as it was called—in his own name. Laws 5, 7-9 h.t.; C. 4.10.1 and 2; C. 4.15.5; C. 6.37.18; C. 8.16.4; C. 8.23.1; C. 8.53.33. The grantee could protect himself by giving notice to the debtor. [References and three additional lines to this pasted note appear to have been torn off.]

4.39.6. The same Emperor to Pomponius, a soldier.

The person who sold you the inheritance remained owner thereof until he delivered the inherited property to you,³ and hence could transfer ownership by selling it to others. But since he broke the contract, he will be compelled, when sued on the contract of purchase, to pay you your damage.

³ [Blume] C. 4.49.8—that seller remained owner till delivery. C. 2.8.20; C. 3.36.15.

Promulgated June 24 (230).

4.39.7. Emperors Diocletian and Maximian to Manasea.

When it had come to the point that even duebills of debtors were pledged it was considered proper that as an (independent) analogous (utilis) action is given to a purchaser of a debt, so, too, as has been answered (by the jurists) such actions are also to be granted to a creditor (pledge).⁴

4.39.8. The same Emperors and the Caesars to Vigilianus.

By purchasing a debt, the purchaser does not become the owner of the property pledged, (to secure such debt), but he has the right, to recover it, in pattern of the right of the original creditor, either by being appointed the agent (by mandate) to do so for his own benefit, or in an analogous (utilis) action according to provisions made long ago.

Note.

Originally a special assignment was necessary to transfer pledges. But at least from the beginning of the third century, a grant of a debt carried the securities with it. D. 18.4.6; C. 4.10.6 and 7. See C. 4.27.3.

4.39.9. Emperor Justinian to Johannes, Praetorian Prefect.

It is certain and undoubted law that as the person who purchases a personal action may bring an action (utilis) in his own name, so the person who purchases an action in rem may do the same. For since the word “action” is a general one, applicable to all actions, whether in rem or in personam, and includes them all according to the ancient founders of law, there is nothing which could make a difference in analogous actions of that kind.

Given at Constantinople, November 1 (531).

⁴ [Blume] C. 8.16.4.