Book VIII.
Title XLIV.[1]

Concerning evictions.
(De evictionibus.)

Headnote.

The present title deals with evictions. Other matters relating to sales of property are found in C. 4, title 38 and subsequent titles.

8.44.1. Emperors Severus and Antoninus to Munatius.

A purchaser of an inheritance must recover the property from the possessors thereof at his expense and risk. And if the inheritance was lawfully sold, the purchaser has no right of action because of eviction from individual pieces of property, unless it is otherwise expressly agreed between the parties.
Promulgated February 24 (200).

Note.

While a vendor was generally a warrantor of quiet enjoyment of the property sold, (law 8 h.t., n), he was not compelled to warrant anything more than that. In the case contemplated in the present law, the vendor sold an inheritance and not the specific things belonging thereto, and hence he was not responsible if some of the things did not reach the vendee without the former's fault. An agreement to the contrary might, however, be made. D. 21.2.5. See also law 10 h.t.

8.44.2. The same to Quarta.

Since your grandfather gave a guaranty against eviction when he gave you the land, you may, under a stipulation, sue your co-heirs on account of your eviction from the land, in the proportion, of course, in which they receive the inheritance. But the maker of a gift cannot be held liable in such action, if he gave merely a simple pact.[2]
Promulgated February 26 (205).

8.44.3. The same to Aurelianus.

Whoever purchases property and is in possession of it, cannot, as long as he is not evicted therefrom, sue his vendor (on any warranty against eviction), because the claim is made that the property belongs to someone else or that it is mortgaged.
Promulgated July 25 (210).

Note.

For the history of warranty against eviction, see 1aw 8 h.t. note.

Ordinarily the action on a warranty for quiet enjoyment (against eviction) lay only after actual eviction. There was no implied warranty of title. D. 18.1.25.2. But prior eviction was not necessary if the vendor warranted against liens (1aw 12, law 22 h.t.) - and in Justinian law any representation constituted such warranty (C. 4.49.9; C. 4.58 h.n.) -- or if the vendor fraudulently sold property subject to a lien or which he knew he did not

[1] [Blume] Corrected 1/15/3.
[2] [Blume] See also D. 21.1.62.

own (D. 19.1.13.6; D. 19.1.30.1), or if the eviction was frustrated merely by reason of the fact that the vendee had acquired the property by another title, as by gift (D. 19.1.13.15), or when he paid the owner off pursuant to judgment (D. 21.2.16.1). And the vendee had the right to ask to be protected, if before the delivery of the property or before the payment of the purchase price, he was endangered by the existence of adverse claims. L. 5.1.24 h.t. And see D. 19.1.52.1.

8.44.4. Emperor Antoninus to Georgius.

If land given to you in payment was pledged to other creditors, the situation of the pledge is not changed. If, therefore, you are evicted by reason of that pledge, you have an analogous action (utilis) against the debtor. For a contract of that sort is like a sale.
Promulgated July 22 (212).

8.44.5. The same to Patroina.

If some of the lands which you bought were pledged by the vendor and have not yet been delivered to you, you will, in an action on the purchase, obtain the right to have them redeemed from the creditor. That will also be true, if you set up the defense of fraud against the vendor who claims the purchase price in an action on the sale.[3]
Promulgated September 17 (212).

8.44.6. Emperor Alexander to Octavius.

There is no doubt that, although the vendor did not give a special warranty against eviction, an action lies on the purchase, if eviction actually takes place.[4]
Promulgated March 8 (222).

8.44.7. The same to Hilarianus.

There is no doubt that if a vendor was notified (of a suit for eviction), and the purchaser was evicted, the surety (of the vendor) may be sued on account of the eviction, though he did not know of the suit.[5]
Promulgated April 3 (222).

8.44.8. The same to Clementius.

Unless the purchaser of a farm notifies the vendor or his heir (of the suit for eviction), he has no right to sue, if evicted, either on a stipulation, or for the recovery of double penalty, or on the contract of purchase, either against the vendor or his sureties. And so if the purchaser was not present at the trial, or if present was, in the absence of the vendor or his sureties, defeated through the wrongful action (injuria) of the judge, he has no recourse against such vendor or his sureties.
Promulgated December 6 (222).

Note.

Warranty against eviction.

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[3] [Blume] See 41 S.Z. 56.
[4] [Blume] Note C. 8 h.t.
[5] [Blume] Sureties were often exacted.

A vendor of real or corporeal personal property was bound to keep the vendee in the quiet enjoyment and possession of the property sold. The rule had its origin in early times. The duty was implied when property was properly conveyed by the formal mode of mancipation (C. 7.31.1 n), and a failure or refusal to defend the title successfully made the vendor liable in a penal action (actio auctoritatis) for double the price paid. Paul, Sent. 2.17.3. Mancipation had in later times a limited use, and where it was not applicable, as when property was transferred by mere delivery, a purchaser, if he wanted to be protected, was required to exact a stipulation (C. 8.37), which ordinarily, in practice, was for double penalty (of the price paid), in case of valuable property, and for simple penalty where the property was of comparative little value. Varro, De re rust. 2.10.5. Long before the time of Christ, the aediles, supervisors of the market, began to require stipulations warranting against eviction and against certain defects to be given when property was sold in the open market (C. 4.4.58 h.n.) and after the contract of sale (and purchase) came to be recognized as equitable, it came to be considered inequitable for a vendor not to enter into the usual stipulation, and suit on the contract could be brought to exact it. D. 19.1.11.8. If no such suit was brought, nevertheless, after eviction, in later classical law (see law 8 h.t.), a guaranty against eviction was implied (law 6 h.t.), unless there was a contract to the contrary, (42 Z.S.S. 458 n.) Just as in other cases. D. 1.7.19.4; 43 Z.S.S, 267; see 2 Pernice, Labeo 189; D. 21.1.31.20), and a direct action on the contract (ex empto) lay for double or simple penalty, depending on whether the property involved was valuable or otherwise. Paul, Sent. 2.17.2; D. 21.1.31.2. Under Justinian, however, the vendee merely recovered his damages, in cases of eviction, in the absence of an express stipulation (law 9; law 23; law 25 h.t.; D. 21.2.70; D. 21.2.60 (itp)), and in an amount not more than double the price paid. C. 7.47.1.

The warranty for quiet enjoyment did not apply, if the eviction was not pursuant to judicial order, but by force (C. 4.49.17), or if the judgment for eviction was rendered through the wrongful action of the judge (law 8; law 15 h.t; D. 21.2.51 pr), or if the vendee knew of the defect of title (1. 27 h.t), or failed to take possession (law 19 h.t.), or if the property perished before eviction. Law 26 h.t. Nor was there any liability unless the vendor, or his heirs, were notified of the suit (C. 48.1; C. 7.45.8.1), except in cases when notice could not be given or was waived. Law 29 h.t.; D. 21.2.63 pr. In case or partial eviction, liability was proportional. D. 21.2.1. The guaranty against eviction applied in other cases than sale, as in case of division of property, and in case of exchange. C. 3.36.14; C. 4.64.1. For sale under a lien, see C. 8.45.

8.44.9. The same to Terentius.

If a controversy is raised against you by someone as to the real estate which you allege to have bought in good faith, notify the seller or his heir, and if you win you will have what you purchased. But if you are evicted, you will recover from the (female) vendor or her heir the damage you have sustained, in which will be included the amounts paid out by you on the property purchased for betterments.
Promulgated December 22 (222).

8.44.10. The same to Largus.

If the vendor of a field showed the boundaries[6] and guaranteed (legem dixit) that no one would invade them, and you are evicted from them, the eviction is at the peril of the vendor. But if he sold the field, within its boundaries, which he did not show, the vendor has nothing to do with a suit as to such boundaries.
Promulgated November 25 (223).

8.44.11. The same to Clemens.

You will rightly defeat by the defense of fraud him whom you received as surety for your vendor and who raises a dispute on the ground that he bought the property, through his wife, before you bought it, (since) he gave his consent to the sale to you, even to the extent that he became a warrantor against eviction.[7]
Promulgated February 5 (231).

8.44.12. Emperor Gordian to Philippus.

If a person whom you bought as a slave has recovered is liberty, or if it was agreed when you bought him that, though no eviction had taken place, you should receive back your purchase price if any question should be raised on his account, the president of the province will, upon learning the proper amount, order that to be paid to you.
Promulgated March 9 (239).

8.44.13. The same to Loilus.

If pledged property which you describe was seized pursuant to a judgment, by the authority of the judge who had the right to make the order, and you purchased it, the (female) against whom judgment was rendered or her heir uselessly raise any dispute in regard thereto, since even in case eviction had followed at the suit of someone else, a right of action would, as justly stated in a rescript, be given against the party (the pledgor) who profited by the payment of the price.
Promulgated May 17 (239).

Note.

The pledgee obtained the pledged property pursuant to judgment, and had it sold. The pledgor and his heir could not reclaim it. And if the title was not good, and a third person came in and took it away from the purchaser, the pledgor was responsible to the latter, but only to the extent of the amount paid out by him plus interest. D. 21.2.74. See C. 8.45.2 n.

8.44.14. The same to Secundinus.

Whether the father was the owner of the property (sold by him) or whether he was not the owner, but it belonged to his son, the latter, who is his father's heir, cannot raise any controversy (regarding it), for he, as such heir, may be notified to defend.[8]

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[6] [Blume] See note C. 2.3.20.
[7] [Blume] The doctrine of estoppel was applied. See also law 14.
[8] [Blume] i.e. a suit for eviction. Since the son, as heir, was liable on a warranty for quiet enjoyment, it would have been useless for him to try to recover the property. To the same effect is C. 4.51.3. See C. 3.32.14; C. 8.53.24; C. 4.51.5.

Promulgated July 19 (239).

8.44.15. Emperors Philip and Caesar Philip.

If you were defeated (in an action to recover the property), not through the wrongful action (injuria) of the judge, but for a legal reason, you may claim, in the usual manner, the pledge which you received as a guaranty against eviction.[9]
Promulgated August 1 (245).

8.44.16. Emperors Diocletian and Maximian to Alexander and Diogenes.

The president of the province will try the dispute as to the field which you purchased, and if he finds that part of it belongs to your opponent, he will order the expenses, incurred by you for betterments, to be paid back to you, after deducting what you received from the produce. But a suit for the price of the portion recovered by your opponent must be brought against the vendor and not against the owner, who recovered it.
Promulgated June 22 (290).

8.44.17. The same to Mucianus.

If you notified your seller when a dispute was raised against you as to the slave you had bought, and you did not deliver such slave without a decision of the judge, the president of the province will order you to be indemnified for the loss which, as you say, you sustained.
Promulgated November 9 (290).

8.44.18. The same Emperors and the Caesars to Eutychius.

If a dispute was raised as to the status of the man sold to you, and the usual defenses which the rule of law admits were interposed, but the decision given was in favor of liberty, you may, without doubt, on that account, if you purchased the salve without knowing his status, sue the seller or his sureties or his heirs. But if the decision declares that the man was a slave, you have no recourse against the seller.
(293).

8.44.19. The same to Theodorus.

If you sold pledged lands and the purchasers can protect themselves by the usual defense of prescription of a long time (ten or twenty years), you need not fear the dangers arising from the eviction of the purchasers.[10]
Subscribed April 30 (293).

8.44.20. The same to Solidus and others.

If your parents sold slaves and the question of ownership is raised, you are not forbidden to be present with the purchasers to defend the suit. 1. But if these slaves have already been taken from the purchasers, your request to reopen the litigation on your part

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[9] [Blume] See note to law 8 of this title.
[10] [Blume] As to the prescriptive period, see note to 7.36.2. As to responsibility of seller of a pledge, see C. 8.45.

is, if you did not take an appeal, contrary to law. 2. Of course, if you have been sued in an action on the purchase because of the eviction, and it is not shown that you were notified to defend the (former) suit, you know how far you may protect yourself.[11]
Subscribed June 26 (293).

8.44.21. The same to Heliodorus.

An action on the purchase is not barred by prescription of a long time (ten or twenty years), although it is shown that the purchaser was evicted from the property only after the lapse of a long period. 1. If, therefore, the man whom you state to have purchased (as a slave), now claims that he is free, you should call on the seller or his successors to sit by and assist you in the suit. 2. If the claimant is pronounced free, or that he is not a slave, and it is not shown that you made an agreement to release the seller from the responsibility for the eviction, the president of the province will, if the matter remains unchanged, direct payment to you of your damages.
Subscribed at Serdica June 21 (293).

Note.

An action on a purchase (ex empto) was a personal action and the prescription period of ten or twenty years applied only to real actions for the recovery of the possession of property. See headnote to C. 7.26 and note to C. 7.39.2. Further, no other limitation of action applied, first, because the cause of action did not accrue till eviction took place, and second, because the right to claim one's liberty was not barred by any lapse of time. Hence it is seen that a surety for a seller, and the latter himself, might be bound by their undertaking, express or implied, for an indefinite period of time.

8.44.22. The same to Julius.

Since you state that the vendor sold you a farm free from all claims, but that there was a preceding lawful lien thereon, which you paid, the existence of default in the stipulation for indemnity, joined to the contract of purchase, is clearly shown by the terms thereof.
Subscribed at Viminacium August 26 (293).

8.44.23. The same to Eustochia.

Since the heirs also of a vendor may be liable on account of an eviction, if the community of Thessalonica, claiming that the property which you bought is pledged to it, begins to sue for it by virtue of that right, notify the heirs of the vendor, of whatever degree they may be, to sit by in the suit. It is well known that in the absence of an agreement to the contrary, whether they are present or absent, they are, if you are evicted from the farm which you bought, liable for your damage sustained by reason of the eviction, and not (merely) for the purchase price which you paid.
Subscribed at Sirmium December 31 (293).

8.44.24. The same to Eutychius.

If after a completed sale, but before the price of the property sold was paid, a dispute was raised over the property, or persons, sold as slaves, claim their liberty, then,

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[11] [Blume] See note C. 8 h.t.

since eviction is threatened, at the very threshold of the contract, the purchaser, if a guaranty with surety (against eviction) is not offered him, cannot, according to the rules of law, be compelled to pay the whole or that part of the price which remains unpaid. 1. Hence, since you allege that when part of the price of a house which you purchased was paid, you were warned not to purchase because it was pledged, the judge will take care that you be safeguarded in what you acquired by the sale.
Subscribed at Sirmium January 27 (294).

Note.

D. 18.6.19.1 is to the same effect. Some authorities maintain that in classical law the purchaser would not need to pay under the circumstances stated, even though sureties were furnished. 41 S.Z. 143.

8.44.25. The same to Saturnina.

If Saturninus sold you a free woman, not knowing her status, and now represents her in a suit for her liberty, and she is pronounced free, you may sue the vendor on the stipulation for double penalty, in an amount therein named, or for your damage in an action on the purchase (empti actio).
Subscribed February 13 (294).

8.44.26. The same to Neon.

If a man sold you a slave who subsequently died, (then) since the danger of eviction has passed, he cannot be sued by you.
Subscribed at Sirmium March 31 (294).

8.44.27. The same to Theophilus.

If Athenocles knowingly bought property belonging to a third party or property which was pledged, and took no guaranty against eviction, he demands, contrary to the rule of law, to recover what he paid on that account (i.e. for the property). But if he bought without knowing these facts, your request not to be compelled to pay him is not in conformity with law.[12]
Subscribed September 15 (294).

8.44.28. The same to Maximianus.

There is no doubt that the rights of a seller inure to the benefit of a purchaser. If a dispute, therefore, was raised against you as to the title of property, you may use the defenses which your vendor, as well as those which you have yourself.
Subscribed at Scuppa October 5 (294).

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[12] [Blume] See also C. 3.38.7 (end). In C. 6.43.3.4 Justinian, for special reasons, provided for the recovery of the purchase price paid for a burdened legacy, known by the purchaser to be burdened. And in Nov. 7, c. 5 pr, he gave an action for the return of the purchase money paid for property of a charitable institution, forbidden to be sold, but the action lay only against the individual who made the sale.

8.44.29. The same to Rhesus.

If your mother exchanged lands with the former curators of your brother, and was evicted from those which she received in exchange after she had given notice to defend, or had no opportunity to do so, reason suggests that the curators should be subject to suit for damages.

Subscribed at Nicomedia December 7 (294).

8.44.30. The same to Hastius.

That the purchaser of a slave from your mother exacted a stipulation, with double penalty, against eviction, furnishes no ground upon which to convict him of knowledge that the slave belonged to someone else, and is no basis for injury to his good name, so as to consider him a purchaser in bad faith. If you wish to show that fact, you must prove it by other evidence.

Subscribed December 13 (294).

8.44.31. The same to Agathus.

The fact that a deceased became surety in favor of the purchaser on behalf of the vendor of property, (warranting quiet enjoyment to the purchaser) does not prevent his heir from suing to recover the property, based upon his own title (not derived from the deceased), saving the action for eviction (against him).

Subscribed at Nicomedia December 15 (294).

Note.

The original rule doubtless existed on account of the simplicity of proceedings - as held by Ihering. The decision here made is inconsistent with law 11, and law 14 h.t, and with C. 3.32.14 and C. 4.51.3, but it probably represents classical law. D. 21.2.73 gives the heir with an independent title a right of action to recover the property, or that he might be defeated by an exception of fraud. This exception is, doubtless an interpolation, and was inserted so as to correspond, as nearly as possible with law 11 and law 14 of this title. The instant rescript does not mention this exception, perhaps by oversight. It is, of course, apparent, that Justinian's law represents the sensible view. It was useless to give the heir with an independent title the right to recover the property, and then later make him liable on the warranty for quiet enjoyment. See Beseler in 45 Z.S.S. 251; Kruger, Exceptio doli 60, 66; Partsch, Griech. Burgshaftsrecht, 351, 352.