

nierint eaque, antequam ab emptore tollerentur, sua natura corrupta fuerint, si quidem de bonitate eorum affirmavit uenditor, tenebitur emptori: quod si nihil affirmavit, emptoris erit periculum, quia siue non degustavit siue degustando male probavit, de se queri debet. plane si, cum intellegeret uenditor non duraturam bonitatem eorum usque ad in¹ eum diem quo tolli deberent, non admonuit emptorem, tenebitur ei, quanti interesset ad⁵ monitum fuisse.

17 (16) IAVOLENUS libro septimo ex Cassio. Serui emptor si eum conductum rogavit, [E. 19, 6, 10] E donec pretium solueret, nihil per eum seruum acquirere poterit, quoniam non uidetur traditus is, cuius possessio per locationem retinetur a uenditore. periculum eius serui ad emptorem pertinet, quod tamen sine dolo uenditoris interuenierit.

18 (17) POMONIUS libro trigesimo primo ad Quintum Mucium. Illud sciendum est, [E. 19, 6, 11] E/ cum moram emptor adhibere coepit, iam non culpam, sed dolum malum tantum praestandum a uenditore. quod si per uenditorem et emptorem mora fuerit, Labeo quidem scribit emptori potius nocere quam uenditori moram adhibitam, sed uidendum est, ne posterior mora damnosa ei sit. quid enim si interpellauerit uenditorem et non dederit id quod emeram, deinde postea offerente illo ego non acciperim? sane hoc casu nocere mihi deberet. sed si per emptorem mora fuisset, deinde, cum omnia in integro essent, || uenditor f. 269 moram adhibuerit, cum posset se exsoluere, aequum est posterioriorem moram uenditori nocere.

19 (18) PAPIANUS libro tertio responsorum. Habitationum oueribus morte liber- [E. 19, 6, 12] P torum finitis emptor domus ob eam causam uenditori non tenebitur, si nihil aliud conuenit, quam ut habitationes secundum defuncti uoluntatem super pretium libertis praestarentur.

1 Ante pretium solum domini quaestione mota pretium emptor soluere² non co- [Uat. 12] getur, nisi fideiussores idonei a uenditore eius euictionis offerantur³.

20 (19) HERMOGENIANUS libro secundo iuris epitomarum. Uenditori si emptor in [E. 19, 6, 13] P pretio soluendo moram fecerit, usuras dumtaxat praestabit, non omne omnino, quod uenditor mora non facta consequi potuit, ueluti si negotiator fuit et pretio soluto ex mercibus plus quam ex usuris quaerere potuit.

VII.

R DE SERUIS EXPORTANDIS: UEL SI ITA MANCIPIUM UEL SEPTA NIERT UT MANUMITTATUR UEL CONTRA R

1 ULPIANUS libro trigesimo secundo ad edictum. Si⁴ fuerit distractus [Uat. 6. E. 19, 7, 1] S seruus, ne aliquo loco moretur, qui uendit in ea condicione est, ut possit legem remittere, ipse Komae retinere. quod et Papinianus libro tertio respondit: propter domini enim, inquit, securitatem custoditur lex, ne periculum subeat⁵.

F[P(VU)]

¹ in *del.* (*u. i.*) ² soluere] restitueret *Uat.* ³ nisi . . . , offerantur] tametsi maxime (maximi *cod.*) fideiussores euictionis offerantur, cum ignorans possidere coepit. nam usucapio frustra complebitur anticipata lite nec oportet euictionis securitatem praestari, cum in ipso contractus limine domini periculum imminet *Uat.* ⁴ sic *ins.* ⁵ Pap. l. III resp. Mulier seruum ea lege uenditit, ut, si redisset (redisse *cod.*) in eam euictiorem, unde placuit exportari, manus iniecio esset Quae uenditit si manum iniecerit non liberatae mancipium retinere poterit ac manumittere: adimi quippe libertatem et publice uenditionem ita fieri placuit (ut *ins. cod.*) propter pericula uenditorum, qui (quae *cod.*) uel inuentus seruis suis offensam uel duritiam possunt (possunt *cod.*) paenitendo remittere *Uat.*

1 eaque F | quidem PV 3 debet digesterum PV 20 finitis libertorum PV PV 4 ad in eum F² V, ad eum P² V, in 22 praetium F 23 ante praetium F 24 idonei al] FPU, idonea F 25 uenditoris P² 26 praetio F 27 praetio F 28 querere F F² 16 postea F² PVU, posteriore F² | hoc] 30 uentit] ueniat *ind.* F 34 ipse] *idem* *le-* *gerunt Graeci, male uertentes sic:* εν P² om] ΔΥΝΑΤΑ CΥΓΧΩΡΕΙΝ

before removal by the purchaser, the vendor will be liable to the purchaser, assuming that he vouchsafed its quality; if, though, the vendor said nothing, the purchaser bears the risk because, if he has not tasted the wine or, tasting, injudiciously approves it, he has only himself to blame. Of course, if the vendor knew that the quality would not last until the date for removal and did not warn the purchaser, he will be liable to the purchaser for the latter's interest in being warned.

17 (16) IAVOLENUS, *From Cassius, book 7*: Suppose the purchaser of a slave to ask to hire him until the price has been paid; he cannot acquire anything through that slave because a slave who remains, through a contract of letting, in the possession of the vendor is not regarded as delivered. But the purchaser will bear the risk of anything which befalls the slave without bad faith on the vendor's part.

18 (17) POMONIUS, *Quintus Mucius, book 31*: It should be known that once the purchaser is in delay, the vendor is no longer liable for negligence, but only for bad faith. But if both vendor and purchaser are in delay, Labeo writes that the delay should count against the purchaser rather than the vendor, but that it should be ascertained which was the later in falling into delay. For what if I give notice to the vendor and he does not give me the thing I have bought; and then, when he does offer it, I will not accept it? In such a case, certainly, it counts against me. But if the purchaser was in delay and then, before anything had been done, the vendor became guilty of delay, when it was in his power to perform, it is equitable that the later delay should count against the vendor.

19 (18) PAPIANUS, *Replies, book 3*: Rights of habitation having ended by the death of the freedmen enjoying them, the purchaser of a house will not on that account be liable to the vendor if their agreement was simply that in addition to the price, the rights should be granted to the freedmen in accordance with the wishes of their deceased manumitter. 1. If, before the price has been paid, proceedings are initiated over the issue of title to the thing, the purchaser does not have to pay the price, unless the vendor provides him with verbal guarantors of substance against possible eviction.

20 (19) HERMOGENIAN, *Epitome of Law, book 2*: If the purchaser is late in paying the price, he will have only to pay interest, not everything that the vendor might have gained if he had not been in delay; for instance, if the vendor was a trader and could have gained more than the amount of interest by his dealings.

7

SLAVES TO BE EXPORTED: THE SALE OF SLAVES WITH A PROVISION THAT THEY BE (OR NOT BE) MANUMITTED

1 ULPIAN, *Edict, book 32*: If a slave be sold with a provision that he shall not stay in some place, the vendor's position is such that he may waive the term and keep him at Rome. So Papinian, in his third book, replies: The term, he says, is observed for the vendor's security that he shall bear no risk.