

LIBER OCTAUVS DECIMUS

f. 266

I.

RE DE CONTRAHENDA EMPTIONE ET DE PACTIS INTER SEPA
EMPTOREM ET VENDITOREM COMPOSITIS ET QUAE RES
VENIRE NON POSSUNT R

- 1 PAULUS libro trigensimo tertio ad edictum. Origo emendi uendendique a per-^[B.19.1.1 S*]mutationibus coepit. olim enim non ita erat nummus neque aliud merx, aliud pretium uocabatur, sed unusquisque secundum necessitatem temporum ac rerum utilibus iudicia permittabat, quando plerumque uenit, ut quod alteri superest alteri desit, sed quia non semper nec facile concurrebat, ut, cum tu haberes quod ego desiderarem, inuicem habere¹⁰ quod tu accipere uelles, electa materia est, cuius publica ac perpetua aestimatio difficultibus permutationum aequalitate subueniret. eaque materia forma publica percussa usum dominiumque non tam ex substantia praebet quam ex quantitate nec ultra¹¹ merx utrumque, sed alterum pretium uocatur. Sed an sine nummis uenditio dici hodieque possit, dubitatur, ueluti si ego togam dedi, ut tunicam acciperem. Sabinus et Cassius esse¹⁵ emptionem et uenditionem putant: Nerva et Proculus permutationem, non emptionem hoc esse. Sabinus Homero teste utitur, qui exercitum Graecorum aere ferro hominibusque uinum emere refert, illis uersibus¹:

ἔθενε ἀρ' οἰνίζοντο κερκωμόντες ἄχαιοι
 ἄλλοι μὲν χλακῶ, ἄλλοι δ' ἀίβοσι κλαίρω,
 ἄλλοι δὲ ῥινόε, ἄλλοι δ' ἀγίχι βόεσσι,
 ἄλλοι δ' ἀναπαύδεσσιν.

sed hi uersus permutationem significare uidentur, non emptionem, sicut illi²:

ἔνεδ' αἶψε γλαῦκος κρονιάς φρένας ἐξένετο Ζεῦς,
 ὅς πρὸς Τυδείην Διομήδεα τεύχε' ἄμειβεν.

magis autem pro hac sententia illud diceretur, quod alias idem poeta dicit³:

πρίλατο κτεάτεσσιν εἰσίν.

sed uerior est Nerae et Proculi sententia: nam ut aliud est uendere, aliud emere, alius emptor, alius uenditor, sic aliud est pretium, aliud merx: quod in permutatione discerni non potest, uter emptor, uter uenditor sit. Est autem emptio iuris gentium, et ideo con-³⁰ sensu peragitur et inter absentes contrahi potest et per nuntium et per litteras.

- 2 ULPIANUS libro primo ad Sabinum. Inter patrem et filium contrahi emptio ^[B.19.1.2 S]F[P(VU)]

¹ Il. 7, 472 ² Il. 6, 234 ³ Od. 1, 430

³ contrahende emptionem in ind. P^o, rubr. om. suo loco P. 4 res] ind. F et res, ues F, om. U 5 ueniri ind. F² U 6 uenditque P^o 12 permutationem F¹ [quantitatis] quam ci-¹⁰ tius P^o, quantitatis quam locius L^o 13 quam] quoniam P^o 14 hodiequ' a'e F², hodie U 15 et cassius] ex cassius F¹ 16 et uendi-¹⁵ tionem... emptionem om. P^o | uerua] F² PU, neratus F¹ | hominibusqui F¹ 18 re-²⁰ ferit P^o 19 Graeca om. in spatio uacua PU, om. item V: Graeca desesse notant P¹ V² U 20 χλακῶι F¹ | δεαδ. F^o, Δ εαδ. F^o 21 αγίχι F¹, ubi praeterea iota mutum non scribitur 24 Graeca om. P, item, sed ut in fine ex αμειβεν remanserit eodem, U 25 αμειβεν F 27 πρίλατο ηργετέσσιν εἰσίν P, πρίλατο κτεάτεσσιν εἰσίν Y, πρίλατο κτεάτεσσιν εἰσίν U 28 est ueruae] ueruae P^o

BOOK EIGHTEEN

I

CONCLUSION OF THE CONTRACT OF PURCHASE, SPECIAL
TERMS AGREED BETWEEN THE VENDOR AND
PURCHASER, AND THINGS WHICH CANNOT BE SOLD

- 1 PAUL, *Edict, book 33*: All buying and selling has its origin in exchange or barter. For there was once a time when no such thing as money existed and no such terms as "merchandise" and "price" were known; rather did every man barter what was useless to him for that which was useful, according to the exigencies of his current needs; for it often happens that what one man has in plenty another lacks. But since it did not always and easily happen that when you had something which I wanted, I, for my part, had something that you were willing to accept, a material was selected which, being given a stable value by the state, avoided the problems of barter by providing a constant medium of exchange. That material, struck in due form by the mint, demonstrates its utility and title not by its substance as such but by its quantity, so that no longer are the things exchanged both called wares but one of them is termed the price. 1. And today it is a matter for doubt whether one can talk of sale when no money passes, as when I give an outer garment to receive a tunic; Sabinus and Cassius hold such an exchange to be a sale, but Nerva and Proculus maintain that it is barter, not sale. Sabinus invokes as authority Homer who, in the lines which follow, relates that the army of the Greeks bought wine with copper, iron, and slaves: "Then the long-haired Achaeans bought themselves wine, some with copper, others with splendid iron, ox-hides, oxen themselves, or slaves." These lines, however, suggest barter not purchase, as also do the following: "And now Jupiter, son of Saturn, so deranged the mind of Glaucus that he exchanged his armor with Diomedes, son of Tydeus." Sabinus would have found more support for his view in what this poet says elsewhere: "They bought with their possessions." Still the view of Nerva and Proculus is the sounder one; for it is one thing to sell, another to buy; one person again is vendor and the other, purchaser; and, in the same way, the price is one thing, the object of sale, another; but, in exchange, one cannot discern which party is vendor and which, purchaser. 2. Sale is a contract of the law of nations and so is concluded by simple agreement; it can thus be contracted by parties not present together, through messengers, or by correspondence.

- 2 ULPIAN, *Sabinus, book 1*: Normally, there can be no sale and purchase between a