etsi[1] in diebus triginta renuntiasset minorem modum agri esse, quamuis multis post annis
1 posse eum quo minor is modus agri fuisset repetere. In lege fundi aquam accessuram
dixit: quaerebatur, an etiam iter aquae accessisset. respondit sibi uideri id actum esse, et
2 ideo iter quoque uenditorem tradere oportere. Qui agrum uendebat, dixit fundi iugera
decem et octo esse, et quod eius admensum erit, ad singula iugera certum pretium stipu-
3 latus erat: uiginti inuenta sunt: pro uiginti deberi pecuniam respondit. Fundi uenditor
frumenta manu sata receperat: in eo fundo ex stipula seges erat enata: quaesitum est, an
pacto contineretur. respondit maxime referre, quid est actum: ceterum secundum uerba
non esse actum[2], quod ex stipula nasceretur, non magis quam si quid[3] ex sacco saccarii
4 cecidisset aut ex eo quod auibus ex aere cecidisset natum esset. Cum fundum quis uen-
diderat et omnem fructum receperat, et arundinem caeduam et siluam[4] in fructu esse re-
5 spondit. Dolia, quae in fundo domini essent, accessura dixit: etiam ea, quae seruus qui
6 fundum coluerat emisset peculiaria, emptori cessura respondit. Rota quoque, per quam
aqua traheretur, nihilo minus aedificii est quam situla. 14

41 IULIANUS libro tertio ad Urseium Ferocem. Cum ab eo, qui fundum alii ob- [B. 19, 1, 41] *S*
ligatum habebat, quidam sic emptum rogasset, ut esset is sibi emptus, si eum liberasset,
dummodo ante kalendas Iulias liberaret, quaesitum est, an utiliter agere possit ex empto
in hoc, ut uenditor eum liberaret. respondit: uideamus, quid inter ementem et uendentem
actum sit. nam si id actum est, ut omni modo intra kalendas Iulias uenditor fundum libe-
raret, ex empto erit actio, ut liberet, nec sub condicione emptio facta intellegetur, ueluti
si hoc modo emptor interrogauerit: 'erit mihi fundus emptus ita, ut eum intra kalendas
1 Iulias liberes', uel 'ita ut eum intra kalendas a Titio redimas'. si uero sub condicione
facta emptio est, non poterit agi, ut condicio impleatur. Mensam argento coopertam mihi
ignoranti pro solida uendidisti imprudens: nulla est emptio pecuniaque eo nomine data
condicetur. 25

42 MARCIANUS libro primo institutionum. Domini neque per se neque per pro- [B. 19, 1, 42] *S*
curatores suos possunt saltem criminosos seruos uendere, ut cum bestiis pugnarent. et ita
diui fratres rescripserunt.

43 FLORENTINUS libro octauo institutionum. Ea quae commendandi causa in [B. 19, 1, 43] *S*
uenditionibus dicuntur, si palam appareant[5], uenditorem non obligant, ueluti si dicat ser-
uum speciosum, domum bene aedificatam: at si dixerit hominem litteratum uel artificem,
1 praestare debet: nam ‖ hoc ipso pluris uendit. Quaedam etiam pollicitationes uendito- [(B)] f. 259′
rem non obligant, si ita in promptu res sit, ut eam emptor non ignorauerit, ueluti si quis
hominem luminibus effossis emat et de sanitate stipuletur: nam de cetera parte corporis
2 pot*ius* stipulatus uidetur, quam de eo, in quo se ipse decipiebat. Dolum malum [B. 19, 1, 43] *S*
a se abesse praestare uenditor debet, qui non tantum in eo est, qui fallendi causa obscure
loquitur, sed etiam qui insidiose obscure[6] dissimulat.

44 MARCIANUS libro tertio regularum. Si duos quis seruos emerit pariter uno pretio, quo- *S*
rum alter ante uenditionem mortuus est, neque in uiuo constat emptio.

F[*P*(*VU*)]

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[1] etsi] si? [2] actum] satum? [3] ex eo quod (*Catharinaeus*) *ins.* [4] et harundinem et siluam caeduam (*Cuiacius*)? [5] appareat (*u. i.*)? [6] obscure *del.* (*u. i.*)

2 modis P^a | re'pe'tere $F^{b?}$ 3 iter aqua accepisset P^a | siui F^1 4 iugere F^1 5 octo] nouem P^a | eius] esus F^{ac} | pr'a'etium F^2 6 respondi P 7 manus P^a | stipulata P^a | enata] nata P 9 non esse] *PU*, esse *F* | sacco's' *F* 10 aere] FP^a, ore *f*P^b*VU* 11 fructu] F^2PV^bU, fructum F^1V^a 12 etiam] et etiam P^a 16 quidem P^a | ut esset *bis* P^a 17 iulianus P^a 18 ementem] *fPU*,ementum *F* 20 ex empto erit actio ut liberet *om.* P^aV 22 liberet P^a | a titio] actio P^a 23 emptio est] emptonem P^a 24 ignoranti p. s. uendidisti *bis* F^a | solido P^aV | est *om.* P^aV | pecuniaquae *F* 27 seruos *om.* P^a | uestiis F^1 30 appareat P^a | obliga'uera'nt F^2, obligat P^a 31 uene F^1 | at] aut P^a 33 impromptu *FP* 34 effosis *FP* 35 potuis *F* (*em. f*) 36 eo est] eodem P^a 37 insidiosae *F* | obscure] *agnoscunt B:* οὐ μόνον ἀσαφῶς ἐπὶ παραγραφῇ λαλῶν, ἀλλὰ καὶ ἀμαυρῶς εἰς βλάβην ἀποπροσποιούμενος: *sed recte uidetur deleuisse Brencmannus, cum sibi opponantur ut* fallendi causa *et* insidiose, *ita* obscure loqui *et* dissimulare 38 qui P^a

within the month, a deficiency in acreage, he can, even after some years, recover for the true extent of the deficiency. 1. A provision in the sale of land said that water rights went with it; the question was whether a right of way to the water was also included. The reply was that the parties would appear to have intended that the vendor should also confer the right of way. 2. A vendor of land said that it comprised eighteen acres and stipulated a definite price per acre for it, as it should be measured: It was found that there were really twenty acres; the ruling was that the price of twenty was to be paid. 3. The vendor of land reserved corn sown by hand; on the land, a crop appeared from haulm; the question was whether it came within the clause. The answer was that it is of the greatest importance what the parties really agreed but that on the wording of the pact, there was not included what so grew, any more than that growing from what fell from the sower's bag or from that which fell, dropped by birds from above. 4. Where a vendor of land had reserved all its produce, the answer was that this included reeds for cutting and woodland. 5. A vendor said that the jars which were on his land would go with the land; the reply was that those also, which a slave who was cultivating the land had bought with his *peculium*, must go to the purchaser. 6. Again, waterwheels are no less part of a building than are water jars.

41 JULIAN, *Urseius Ferox, book 3:* A man agreed to buy land from one who had mortgaged it to a third party, provided that the vendor discharged the encumbrance before the first of July. The question was whether the purchaser could effectively bring the action on purchase to require the vendor to redeem the land. The reply was: Let us consider what was agreed between the parties. If their agreement was that come what may, the vendor should redeem the land before the first of July, the action on purchase will lie for its redemption and the sale will not be regarded as conditional, as though the purchaser said, "I will buy the land, if you redeem it by the first of July" or "provided that you redeem it in that time from Titius." But if the purchase were made under a condition, there will be no action to get the condition realized. 1. You unwittingly sold me, who did not know the facts, a silver-covered table as solid silver; the purchase is of no effect and a *condictio* will lie to recover the money paid.

42 MARCIAN, *Institutes, book 1:* Owners can, neither directly nor through procurators, sell their recalcitrant slaves to fight wild animals. The deified brothers so provided by rescript.

43 FLORENTINUS, *Institutes, book 8:* What a vendor says at the time of sale to commend his merchandise imposes no liability upon him, if its content be obvious, say, that the slave is handsome or a house well built. But if he assert that a slave is well educated or a craftsman, he must make that good; for he obtains a higher price in consequence. 1. There are, further, even some undertakings which do not bind the vendor, the case being such that the purchaser cannot be unaware of the facts; an instance is that of one buying a slave who has lost his eyes and stipulating for his soundness in which case, the stipulation is taken to refer to the rest of his body rather than to that in respect of which the purchaser has deceived himself. 2. The vendor must guarantee that he is free of fraud, which comprises not merely the use of obscure language in order to deceive but also circumventing concealment.

44 MARCIAN, *Rules, book 3:* Should a man buy together, for one price, two slaves, one of whom is dead at the time of the sale, there is no purchase of the other one, either.