

Book IV.
Title LVII.

If a slave has been alienated under the condition that he be manumitted, or the reverse.
(Si mancipium ita fuerit alienatum ut manumittatur vel contra.)

4.57.1. Emperor Alexander to Patricensis.

If Patroclius gave you to Hermia upon condition that after fifteen continuous years of service you should have your freedom so as to become a Roman citizen, and that time has passed, and Patroclius has not changed his mind, or if he has already died, you have acquired your liberty, since it is agreed that a condition that slaves should be manumitted applies not only to slaves who are sold but also to those of whom a gift is made. Nor could Patroclius, after he once transferred ownership of you to Hermia thereafter sell you to another. Hence, you did not need to sue for that freedom, which you already had acquired by law, but only to defend the liberty which you had obtained. Promulgated November 8 (222).

Note.

When a slave was sold or given to be either freed at once, or within a certain time, or after a certain time, the slave became free at the set time. Even though gifts between husband and wife were ordinarily forbidden (C. 5.16), yet a gift of a slave to be manumitted was valid. C. 5.16.22. Manumission was favored, especially by Justinian, and that principle is embodied in many laws of the Code. As to manumission generally, see C. 7, titles 1-16. As to persons manumitted, that is to say, freedmen, see C. 6. titles 1, and 3-8.

4.57.2. The same Emperor to Eutychnias.

If Chrestes sold his slave, who was his natural son, upon condition that the purchaser should manumit him, then, although he has not been manumitted, he is nevertheless free according to the constitution of the divine Marcus and Commodus directed to Aufidius Victorinus. Promulgated December 5 (222).

4.57.3. The same Emperor to Fulcinius Maximus.

If Justa shall have sold to Saturninus a girl by the name of Firma, then in her seventh year, upon condition that the latter should be free when she should be twenty-five years old, then, although the fact that the purchaser should give her freedom was not inserted in the written pact, but it was (merely) stated that she should be free, then the law of the divine Marcus and Commodus applies. Therefore, upon completion of the twenty-fifth year, Firma became free, nor is she prejudiced because she was manumitted in the twenty-seventh year, when she was already free under the law; and her son, conceived by her after her twenty-fifth year, is free. Promulgated February 1 (224).

Note.

The time as to the freedom of the woman became important because of the birth of the child. If such child was born while the mother was free, the child was freeborn; if born while the mother was a slave, the child would be a slave, because such children followed the status of the mother.

4.57.4. Emperor Gordian to Cornelia Jucunda.

If the person who received the purchase price for you, upon condition that he should give you liberty, it is clear that you became free at the time when he could have given, but did not give, you liberty. And hence there is no uncertainty that your offspring is free.¹

Promulgated April 27 (240).

4.57.5. The same Emperor to Aurelius Marinus.

If a sale of slaves is made upon condition that they should not be freed, they cannot acquire their liberty although they are manumitted. For a condition, which adheres to the person, cannot be changed by the act of the party who bought under that condition. 1. Nor is there any just ground for collecting a penalty, if any is attached to the condition, in case of non-compliance therewith. For what reason, therefore, the seller who added that condition to the sale, should be able to call you before the procurator (of the fisc), is hard to understand, since the fisc should not mix in contracts of private persons, and the notice sent to you does not refer to any personal action of yours if you did not yourself make the manumission.

Promulgated August 17 (240).

Note.

The condition was equally effective, if contained in a testament. If it was intended to be temporary only, it ceased to be effective after the expiration of the temporary purpose. C. 7.12.2. Manumission in violation of the condition was absolutely void, hence no penalty could be collected.

4.57.6. Emperors Diocletian and Maximian and the Caesars to Helvidia Rufina.

If you sold the girl upon condition that she should be manumitted, in default of which a hundred pounds of gold should be paid, and the contract is not performed, she is none the less released from the bonds of servitude and given liberty, which could have been granted her. And the penalty for breaking the contract cannot be claimed, since it is justly considered that when the wish of the seller is not changed, the act of the manumitter (after delaying to manumit), is represented by the legal force of the condition. Subscribed May 17 (293).

¹ [Blume] See note to C. 7.16.8; see also C. 4.6.9.