

Book VI.
Title III.

Concerning service of freedmen.
(De operis libertorum.)

Dig. 38.1; Bas. 49.3.50.

Headnote.

Manumission of a slave, upon which he became a freedman, did not entirely release him from duties toward his former master. The latter, commonly called the patron, was entitled to certain rights of succession mentioned later. He was also entitled to obsequium,¹ which is not easily defined, but implied the duty of respectful conduct and devotion, and was due, to some extent, also to the parents and children of the patron. D. 37.15.5 and 6. The freedmen could not bring an action involving discredit against the patron and these relatives, or without leave of a magistrate, any action at all. He could not be accuser, or give evidence in a criminal case against a patron. Buckland 89.

It was usual for the patron to require of the person manumitted, as a reward for the manumission, the performance of services (operae), or the making of certain gifts. D. 38.1.7.4. Gifts seem to have been only for special occasions. Buckland 90. Services were personal (officiales), or in connection with trade (fabriles) - that is to say, that the freedman should perform certain services in the line of his trade. The contract might (by stipulation) provide for services for children after the death of the patron. D. 38.1.5 and 22. It is stated in a number of laws, including laws 3 and 7 of this title, that the patron could not, in manumitting a slave, exact money to take the place of services to be performed by the latter. But a distinction must be noted here in the two kinds of services. If they were in the line of a freedman's trade, and the patron did not need them, he might hire them out, and in such case it was not considered that he received money to take the place of services, but that he was simply exacting the services. D. 38.1.25. So, too, the freedman might make a bargain with the patron for a release from services, and the money agreed to be paid in such case might be exacted. C. 6.3.4; Buckland 90.

The services exacted from the freedman could not be excessive, and were required to be suitable to the age, status and training of the freedman. D. 38.1.16. Generally, the freedman worked for his patron a certain portion of every day. D. 38.1.1. To entitle the patron to services, the manumission was required to be gratuitous, and not pursuant to compulsion. Thus if made, because required in a trust, no services were due. C. 6.3.5. The duties could not be such as to impose a real burden on freedom (D. 38.1.32), and enough time was required to be left to the freedman to support himself. D. 38.1.19 and 30. A freedwoman was released therefrom when she became fifty years of age. D. 38.1.35. Loss of time by reason of the freeman's sickness was the loss of the patron. D. 38.1.34. The freedman was required to support the patron in case the latter was in want. No absolute reciprocal duty rested on the patron, although he might, in case he failed to support a sick freedman, lose his right to inherit from the freedman, as shown later. A number of cases in which rights of patronage did not exist or ceased are stated in the following laws in this and subsequent titles.

¹ Blume has penciled in here "58 Z.S.S. 112."

6.3.1. Emperors Severus and Antoninus to Romanus.

If the performance of services was imposed on you at the time of manumission, you must perform them. It is indeed customary for patrons and freedmen to agree that instead of service something else the equivalent thereof (in money) shall be furnished, although the price (of such services) cannot be demanded, except when necessary in an extraordinary case for the purpose of furnishing sustenance (to the patron), on account of his poverty, since you were compelled to support the patron, if his means fail, although the performance of no services was imposed.

Promulgated December 30 (204).

Note.

As already stated in the headnote to this title, the patron could not demand or receive money to take the place of services except that, where he did not need services of the freedman in the line of the latter's trade, he might lease out the freedman's work. The present law provides that the patron cannot demand money from the freedman to take the place of services, except in case of sickness. Agreements, however, were customary, as shown by this law and by D. 37.14.6.1; D. 38.1.39, that in case the freedman failed to perform the services agreed on, he should pay a certain price in place of it. But it was at the option of the freedman to do either. Buckland 90.

6.3.2. The same Emperors to Eutychetes.

A slave delivered to another for purposes of manumission cannot be redelivered to slavery by the manumitter, nor is he compelled to perform services imposed on him, (as a condition of manumission).

Promulgated April 26 (205).

Note.

Where there was compulsion on the manumitter to manumit, he could not exact the performance of services on the part of the freedman (law 5 h.t.; C. 6.7.1.); nor could he reduce him again to slavery on account of ingratitude, as might be done in other cases. C. 6.7.2.

6.3.3. The same Emperors to Quintianus.

If a man for a consideration manumitted his slave upon receiving compensation from an outsider to take the place of services, he must return such money as not owing, whether services were imposed or not.

Promulgated November 1 (206).

Note.

As already noted in headnote, the patron could not take money to take the place of the services. Yet it is clear that a man had a perfect right to liberate his slave for a compensation. C. 6.4.1; see C. 4.57.1; C. 4.6.9; C. 7.16.8. The provisions are accordingly, at first blush inconsistent. The explanation probably lies in the fact that in the present law the money was paid not for the manumission, but purely to take the place of services, and probably in addition to money paid to the manumitter for the manumission. See Buckland, Roman Law of Slavery 642.

6.3.4. Emperor Antoninus to Valerianus.

If you prove that money is owing you from your freedman, by virtue of the sale to him of his (obligation) of services, the president will order it to be paid to you, for by reason thereof the freedman has the right to leave his property by testament, provided it will not appear that the promise to pay was given for the purpose of burdening the freedom of the slave.

Promulgated April 18 (212).

Note.

The meaning of this constitution is made clearer as it is given in the Basilica 49.3.53: “If a patron sells (back) to the freedman the obligation of services, which the former caused to be promised to him by stipulation, so that such freedman might dispose of his property by testament as he might wish, an action for the price is rightly brought, unless, perchance, the sale was made to burden the freedom of the freedman.” While ordinarily, as seen in constitutions 1 and 7, the patron could not receive the price of the services for the services themselves, still when there was a further consideration by reason of the patron releasing his right to inherit a portion of the property of the freedman, the sale was valid. See also D. 38.2.37; Basilica 49.4.33.

6.3.5. The same Emperor to Terentius.

Your mother cannot claim services from a freedman whom she manumitted pursuant to a trust, except only during the period in which the slave was manumitted by her before the date specified by the trust.² But unless the freedman shall show her the honor due to a patron, she may go before a competent judge to have him punished as he deserves.

Promulgated May 13 (212).

6.3.6 Emperor Alexander to Caecilius.

Freedmen and freedwomen of persons deceased owe services neither to outside heirs of patrons nor to husbands of patronesses.

Promulgated November 1 (222).

6.3.7. The same Emperor to Minicius.

Patrons are not permitted to receive money to take the place of services, even under the claim that if the services imposed are not performed, the value of the duty not performed should be converted into money payment. 1. If a freedman, moreover, had two sons in his power, even at different times, he is released from the performance of services (for his patron) by the Julian law concerning marriage of the (various) classes (of men).

Given May 21 (224).³

6.3.8. The same Emperor to Augustinus.

² [Blume] That is to say, if the slave was manumitted before the required time, services could be required for the length of time which intervened between the time of the actual manumission and the time that the manumission was required to be made, but not thereafter. Law 2 h.t.; C. 6.7.1.

³ Blume penciled in here “Obsequium—meaning; see 58 Z.S.S. 112 ff.”

If you were bought with your money by the person who manumitted you, you owe him no services, nor may you be punished by him as an ungrateful person (for not rendering services). But he must not be disclaimed as you patron.⁴
Given September 11 (224).

6.3.9. The same Emperor to Laetorius.

You have increased the dignity of your freedwoman by marrying her, and she is not, therefore, compelled to render you (freedmen's) services (operae) since you should be content with the benefit of the law, that she cannot marry another man without your consent.

Given February 20 (225).

6.3.10. The same Emperor to Herculianus.

If Titus, when he made a testament, gave freedom to his slave upon this condition: "I want Gaius, my slave, to be manumitted three years after the date of my death, provided he does for my heirs what he did for me while living," then since such slave performed some daily work for the testator (during his life) and for his heirs after his death up to the date fixed for his freedom, it is clear that having acquired his liberty, he cannot be compelled to render any further services.

Given August 7 (225).

6.3.11. Emperor Gordian to Africanus.

The child born of a freedwoman is free-born. But the person who gave consent to the marriage of his freedwoman does not, although he cannot demand services from her, lose his (other) rights as patron.

Promulgated August 3 (238).

6.3.12. Emperors Diocletian and Maximian and the Caesars to Veneria.

Those who are manumitted are free to live where they will, nor can they be again reduced to slavery by the sons of patrons, to whom they only owe reverence, unless they are shown to be ungrateful, since the laws do not even compel them to live with their patrons.⁵

Subscribed May 24 (293).

6.3.13. Emperors Valentinina, Valens and Gratian to Probus, Praetorian Prefect.

Whoever takes another's freedman to his house, must, as a penalty, compensate (the patron) for the services (due him from such freedman).⁶

Given July 13 (371).

⁴ [Blume] Obsequium, respectful conduct toward the patron was still due.

⁵ [Blume] See note to C. 6.7.2.

⁶ [Blume] See C. 11. 53.1, with a similar provision.