

Book VI.
Title IV.

Concerning the property of freedmen and concerning the right of patronage.
(De bonis libertorum et de jure patronatus.)

Bas. 49.1.25.

6.4. 1. Emperors Severus and Antoninus to Secunda.

There is a great deal of difference, whether a slave is bought with his own money and manumitted by the purchaser, or whether he attained freedom from his master upon the payment of money. In the first mentioned case the patron is not admitted to any part of the inheritance (of the freedman) contrary to a testament; in the latter case he retains all the rights of patronage. 1. And, therefore, since the property of Sabianus, the patron's son who possessed the full rights of patronage, was confiscated to the fisc, as that of a public enemy, our fisc succeeded to the rights which he had in the property of the freedman of Sabinus, according to the orders which pleased the divine Pertinax and which we have adopted.

Promulgated July 2 (210).

Note.

Under the term "rights of patronage," as here used, is not included the right to services heretofore mentioned, for, as already stated, a manumitter was not entitled to such services, unless the manumission was gratuitous.

6.4.2. Emperors Valentinian and Valens to Florianus, Count of the Private Estate.

If freedmen, by the connivance of their patrons, have entered into marriage with our female slaves or serfs, the patrons (illi) must know that they will lose all the rights of patronage.

Given at Trier October 13 (367).

6.4.3. Emperor Justinian to Demosthenes, Praetorian Prefect.

If any patron hereafter states, either in connection with a manumission made during life or by testament or written or unwritten codicil, that his freedmen shall be released from the rights of patronage, he need not doubt, hereby annulling the ancient interpretation, that his freedmen are, by that mere statement, to be released from the rights of patronage; nor are, (in such event), the rights of succession on intestacy which they had, according to the ancients, in the property of their freedmen, reserved to them by us.

1. But as in the restoration of the rights of free-birth (natalium)¹, rights of patronage cease, so, too, all may know that the same force must be given to statements of that kind.

¹ [Blume] Granted by petition to the emperor. Generally the consent of the patron and his children was necessary. By such grant, the stain of slavery was wiped out, and the grantee was put on an equality with freeborn citizens, and all the rights of patronage ceased. D. 40.11.2-5; Hunter 671; Buckland 91. See also C. 6.8.1 and 2.

2. The law is the same if the rights of patronage are released by will, after the testator had made the manumission during his life; provided that restitutions of rights of free birth, by which almost alone the pure condition of free birth is bestowed on freedmen, shall have as full force as possible in our empire, since we sincerely wish it to be inhabited by free born men rather than by freedmen.

3. Nevertheless, the duty of reverence due from freedmen and the right which patrons have against ungrateful freedmen, shall remain unaffected, even though by statement in the manner mentioned by us, the right of patronage is lost, since that right is also lost by an (imperial grant) of the right of free birth, which is completely restored almost alone by imperial grant.²

4. Cases in which the right of patronage is taken away from patrons unworthy thereof by infliction of punishment, are not affected.

Recited at the 7th milestone in the new consistory of the palace of Justinian.

Given October 30 (529).

6.4.4. The same Emperor. (Synopsis from the Greek.)

This constitution, about to give a new form to the rights of patronage, first setting forth the rights of patronage which existed according to the twelve tables, the praetorian and the Papian law, commences its legislation thus:

1. It first enumerates those who have not been subjected to the right of patronage; for it is clear that in such case the right of patronage does not exist against the freedman in favor of the patron himself, nor those descended from him, and much less so in favor of his outside heirs. Likewise, if the master sees his slave perform military duty or acquire a title without objection, the slave does not alone become free by reason thereof, but is also released from every right of patronage.

2. Likewise, if anyone gives his female slave to prostitute her body for his gain, this makes her free and the master is deprived of every right of patronage; just as a master who neglects a sick slave, neither himself taking care of him nor sending him to a hospital, nor furnishing him with the accustomed victuals, loses every right in the slave's property.

3. Likewise, if anyone, not having a legal wife, through love toward a female slave, shall make her his concubine and remain in that state of mind till his death, without saying anything about her status, not only is she, as well as the children which she bore him, free, but the latter will also be considered freeborn, and will, in addition, obtain the ownership of their own special property (peculium); and the heirs of the master, whether children or outsiders, shall have no right of patronage as against them.

4. Likewise, if anyone, in a trial involving the question of freedom, is defeated by the master, and pay the estimated value of the slave, the slave, for whom the price is paid to the master, becomes free, nor has the master any rights of patronage over him any more than over a freedman who, according to the ancient laws, was bought with his own money; for even the ancient laws denied the rights of patronage given to a manumitter by the praetorian edict, to him.

5. Likewise, if a patron has a freedman or freedwoman stipulate to pay him money, instead of services, or bound them by an oath not to enter into matrimony or

² [Blume] It would seem that the meaning is that while statements of release from patronage restore almost all rights of free-birth, the complete restoration thereof is effected only by imperial grant.

procreate children, he, too, loses all rights of patronage, as he also formerly lost the rights of patronage which were given him by the twelve tables and by the praetorian edict.

6. Likewise, if a freedman proclaims himself freeborn, and the patron, by collusion, permits him to be pronounced freeborn, such patron too, if the collusion entered into with the freedman is proven, loses every right of patronage.³

7. Likewise, if any one, honored by freedom, to be granted him by a trustee, suffers, contrary to good morals, delay on the part of the person who should give him his freedom, he may go before the president, prove that the trustee is absent or is hiding, and he will be set free pursuant to the senate decree, nor will he be subject to any right of patronage.

8. Likewise, if the son of a patron institutes a capital accusation against a freedman of his father, or attempts to drag him back into slavery, such freedman, too, will be released from every right of patronage, as he was also formerly released from the rights of patronage given by the praetorian edict.

9. These persons are exempt from the rights of patronage; and the constitution next directs what it wants the rights of patronage to be as to the other freedmen. 9a. If a freedman or freedwoman have property of less than 100 aurei, the constitution takes no account of such amount, but permits them to leave this by testament as they wish; provided, however, that if they die intestate and without children, it gives the right of intestate inheritance-succession to patrons.

10. If a freedman, having property of more than 100 aurei, leave children, grand-children or great-grandchildren, or great-great-grandchildren, male or female, descending through male or female line, and whatever the number, whether manumitted before their parents, at the same time or after they were, or whether born after the manumission of the parents, these descendants are, by the constitution, called to the inheritance-succession of the freedmen, because it is just by nature that descendants should succeed to the property of parents.

10a. For when the law of the twelve tables finds children in the power of a freedman, it gives nothing to patrons, and the praetor, moreover, when children of a freedman are living, whether unemancipated or emancipated, does not permit the patron to impugn a testament.

10b. The present constitution, therefore, follows these examples, and if there are any children of a freedman or freedwoman, it gives no right of intestate inheritance-succession to patrons or their children, but calls the children of freedmen to such succession, although, born in slavery, they were manumitted along with their parents.

11. And it not only calls the children when only those survive who, born in slavery, were manumitted along with the father or mother, but also it the freedman or freedwoman has other children who after the manumission were born of the same or another marriage - all of them are called.

11a. And what is more wonderful, the constitution wants these same children to inherit from each other, grants, moreover, to the freedman and freedwoman the right of inheritance-succession to their own children, just as fathers and mothers of freeborn children are called to the inheritance of their children, and it wants the right of patronage to cease in these cases, so that children shall inherit from the freedman and freedwoman,

³ [Blume] See headnote C. 7.20.

the children from each other and parents from their children, and no right of inheritance-succession by patrons exists, if there are such persons surviving.

12. Having provided these things concerning freedmen who die intestate, the constitution next considers freedmen who have made a testament, and it orders, that if the freedmen or freedwomen have appointed their children as their heirs, patrons have no right of inheritance-succession.

13. If the former have disinherited the children, and that unjustly, so that, upon complaint, the testament may be annulled - for the constitution grants also this right to any children of freedmen- then, too, it wants the patrons to have no right of inheritance-succession, just as if the freedman or freedwoman had died intestate and the children had succeeded by intestate succession.

14. If the freedmen or freedwomen have disinherited their children for just cause, the patrons may be called just as if the former had died without children.

14a. Since, moreover, manumittors seem to be cognate relatives of freedmen, therefore, as the nearest relatives in degree are called to the legal inheritance-succession among freemen, so also in the case of freedmen.

14b. Hence, if freedmen have children and the latter inherit from the former, they exclude the patron.

14c. But if no children survive or are disinherited, the patrons (and his relatives) are called to take the property of the freedmen, whose property exceeds 100 aurei, according to degree, so that in the first place patrons and patronesses are called, after them their children, and if they have no children surviving, their grandsons in the male or female line.

14d. For it is also said as to freeborn persons, that all blood relatives are called to the inheritance-succession according to degree of relationship, and when those of nearer degree fail, the others are in line and become heirs.

14e. But if the patron or patroness has no descendents, then we also call the blood relatives of the lateral line according to degree, those of nearer degree having preference over those of the remoter degree.

14f. The descendants and relatives of the patron to the fifth degree inherit from the freedmen.

15. The foregoing provisions are made for cases when freedmen have children. If they have no children at all, but make a testament and appoint outsiders as heirs, then we do not, according to the twelve tables, exclude the patrons, because a testament has been made, nor do we call them according to the Papian law, which provides that when one son is appointed heir, they shall receive one-third, but we call them to receive not more than a third part of the inheritance of the freedman; nor do we call all those who are called to the patron's inheritance-succession, but only the patron, patroness, their children, grand children, great-grandchildren, and great-great-grandchildren; that is to say, only those who descend from the patron to the fifth degree.

15a. Descendents, therefore, of remoter degree and collateral relatives, cannot, when outside heirs are appointed by a testament, claim a third part of the inheritance.

16. And as freeborn men, at the time of this Code, who had not received a fourth part (of the estate) may make complaint of an undutiful testament, so if a deceased freedman leaves a third part to his patron, free and clear of legacies and trusts, he excludes him.

16a. But the latter does not have his part clear if the freedman leaves to his children a legacy to be turned over to them by the patron. For as we require, to alleviate complaint (of undutiful testament), that the fourth part shall be free from all legacies, so we also require here that the third part of the patron be free from any legacy. But the third of the patron is subject to manumissions; for formerly, children who instituted complaint concerning an undutiful testament, also recognized manumissions, although patrons, who sought possession of one-half, as against a testament, did not recognize them. But all legacies from which a patron is (hereby) released, must be paid by the heirs of a freedman, first retaining the Falcidian portion of the two-thirds left them, not, however, the fourth, but only the sixth part.

17. If, therefore, the patron receives nothing under the will, he receives the third; if he is appointed as heir for less than a third, the third is made up, free and clear from every condition and delay; that is to say, if the freedman shall appoint him an heir upon condition, such condition is void.

17a. And even if such condition is one which will absolutely happen, but entails delay, as "if the time of the Kalends shall come," this condition, too, is void, giving the third unconditionally, whether that goes to one or more.

18. But in case patrons were appointed heirs for more than a third, and are burdened with legacies, they shall, if they are sole heirs, pay the legacies and trusts, retaining, however, one-third, for the Falcidian right of retainer inheres in this one-third.

18a. If they are not sole heirs, but for more than a third, as, perchance, for one-half or two-thirds, and they are burdened with legacies, then they shall pay to legatees and trustees the portion in excess of the third; the remainder (of such legacies or trusts) shall be paid by the other heirs, they retaining for themselves the Falcidian portion⁴ reserved for them.

19. However many the patrons may be, though owners of the slave in unequal portions, after they become patrons, they inherit in equal portions.

19a. But if the patrons are dead, and one has children, another grandchildren, the nearer in degree shall inherit; that is to say, the children of one patron exclude the grandchildren of another.

19b. And the inheritance-succession shall not be per stirpes, but per capita; that is to say, the inheritance shall be divided equally according to the number of children. And if two patrons, perchance, are dead, leaving children, one of them two, the other four, the inheritance shall be divided into six equal parts, not in two, because of being children of two patrons.

19c. If one of the patrons repudiates his portion, the other patrons take his part.

20. And if (the relatives of the freedmen of) nearer degree repudiate (the inheritance) those of a remoter degree are called; for we permit freedmen to inherit from blood relative; that is, if those of nearer degree refuse, those of the next degree inherit.

20a. This is also true among free born men, and while anciently those of remoter degree did not inherit, the principle was nevertheless applicable in guardianship, so that if he who perchance was first called excused himself, the next one was called.

21. Moreover, not only are descendants of patrons called who have already been born, but also posthumous children and those given by them in adoption. The ancient

⁴ [Blume] By the Falcidian portion is meant the portion allowed them by law.

pretence and rule, also, by which a daughter of a patron was feigned to be his son, is no longer of any force, for today the daughter is herself called to the inheritance.

21-a. And they shall be called not only as claimants of the possession of an inheritance, but as statutory heirs, and when they are appointed as heirs (under a will) they will, of course, have the right of possession of the inheritance (*bonorum possessio*) according to the will. But the other rights of possession of an inheritance, which used to be conceded to patrons, shall cease.

22. If the freedmen or patrons have adopted children, we do not, though they are part of the family (*fili families*), treat them as children, but as outsiders. And if the patrons shall have died, leaving outside heirs, these are not called to the inheritance-succession of the freedman, for inheritance-succession from freedmen is by virtue of the law of relationship.

23. And since the ancient right of possession of an inheritance also accrued (to the patron) when the son of a freedman, born after manumission, died without testament and without blood-relatives, and called to the inheritance the manumitter of the father and his male relatives, whether remaining agnates or having suffered a change in status, but that if the patron of such freedman should himself be the freedman of someone, the patron of the patron and his relatives should be called, the present constitution ordains that if the children of a freedman, born after manumission, die intestate without having any blood-relatives, the patron and patroness alone shall be called. This relates only to sons and daughters of a freedman, when the patron or patroness survive them, and the latter shall no longer seem to inherit from a freedman (in such case) - for how can a person born after manumission be called a freedman? - but they inherit simply by virtue of this law. When - - - (a freedman who has another freedman as his patron)⁵ dies without a relative, the patron and patroness and their children are called, and the right of inheritance-succession exists not by reason of any rights which they have in the freedman, but because they are called as heirs by this constitution.

24. We also think it becoming and necessary to add to this law, that if it happens that a manumitter has disinherited his children and has left them no property, and it cannot be shown that they have been treated unjustly, such children shall have no rights as patron, contrary to the testaments of freedmen. But if such freedmen die intestate and without children, then, for the sake of humanity, we, nevertheless, call such children as heirs, tho perhaps unworthy, since we have specially made our law to conform it to nature.

25. We further direct that a father shall have the right of patronage which he also previously had when he emancipates a son or daughter, so that if the emancipated child die intestate and without children, or appoints outside heirs, the emancipator shall inherit all of the property of the intestate, and the third contrary to the provisions of a testament, as if the emancipation had been made upon trust (*contracta fiducia*).⁶

26. These provisions shall apply to those who in fact grant freedom, whom we alone permit the use of the name of patron. For those who by the ancient laws were simply treated as patrons, though they made no manumission, e.g. one who claims the

⁵ [Blume] Lacking in the text and lacking portion conjectured.

⁶ [Blume] I.e. as though the father had purchased the son from the fictitious vendee in emancipation and had then manumitted him as though a slave. This gave him the right of patronage.

right of patronage by reason of proving some collusion of the freedmen, or by virtue of a false oath, though they are not in fact patrons, and any other similar person mentioned in the ancient laws shall have no right of patronage, except the right of reverence, since we consider those only to be true patrons who in fact have granted freedom.

27. The same rights (herein mentioned) are given to descendants and other members of the family of those who manumit slaves in their testaments or any other last wishes, as against testamentary freedmen,⁷ as though they had been manumitted by themselves.

Given at Constantinople December 1 (531).

Note.

The present law, amending former provisions, fixes, in brief, the order of succession to the property of freemen as follows:

- (1) Children, emancipated or unemancipated, but not adopted children;
- (2) Patron or patroness;
- (3) Children of the patron, including those emancipated or given in adoption, but excluding adopted children;
- (4) Cognates of the patron to the fifth degree, per capita.

If the freedman possessed less than 100 gold pieces, his will was good against the patron, but if had that sum, unless he had children and left the inheritance to them, or they could upset the will, the patron could claim a clear third, free of charges, and issue of the patron, so far as great-grandchildren, had the same right. Children of the freedmen included those born in slavery, if now free. Buckland 376; Inst. 3.8; C. 6.42.3.

⁷ [Blume] Orcinos - all slaves manumitted by testament were called orcini.