

Book VII.
Title I.

Concerning manumission by the staff and before the council.
(De vindicta libertate et apud consilium manumissione.)¹

Headnote.

Manumission.

Manumission is the giving of freedom to a slave; the persons manumitted become freedmen (liberti), and the manumitter was known as the patron, who had certain rights, as, for instance, to the service of the slave, as mentioned in C. 6.3, and to inherit his property in certain cases, as mentioned in C. 6. 4. Manumission was made in various ways, of which manumission (1) by rod (vindicta), referred to in title one of this book, (2) by testament or codicil, treated in title 2 of this book, and (3) in church, set forth in C. 1.13.1, were the formal methods. There were informal ways, as by letter. See C. 7.6.1, *infra*, and other modes hereinafter referred to in C. 7.6.

1. Manumission by rod (vindicta).

In this form the state was represented by the consul, praetor, president or other officer. The proceeding was a fictitious suit, (Inst. 1.5.1). The vindicta was a rod or staff, the symbol of dominion. The slave to be manumitted could not be himself a party to the suit and was represented by an assertor of liberty, often a lector, but frequently, in later law, dispensed with. D. 40.2.8. The exact proceeding is somewhat in dispute. According to some, which seems plausible, the representative of the slave claimed his freedom, touching the slave with the rod - which gave the name to this form of manumission - and the master did not object. Inst. 1.5.; 1 Roby 26, note; Buckland, Roman Law of Slavery 442. Hunter, Roman Law, gives a different account.

Manumission in council, treated in title one of this book, was a proceeding of manumission by the rod, to which was added a proceeding before a council. This council was added, apparently, specially for the purpose of enabling slaves under thirty years of age to become Roman citizens (Gaius 1.18), and of enabling minors who were otherwise, on account of their age, not able to do so, to manumit their slaves. The consent of the council was required in such cases. It was selected by the presiding judge and consisted in Rome of five senators and five Roman Knights; in the provinces, of twenty recuperatores - citizens of Rome. In Rome there were fixed days for manumission before the council; in the provinces the board met on the last day of court. Gaius 1.20; Ulpian frag. 1.13a. In later times, in Constantinople, the manumission might be made before the council in the presence of the advocates of the fisc of the court of the praetorian prefect. C. 2.7.23.5. In order that a minor might be enabled to manumit a slave at all, certain valid reasons, or legal grounds, must be proven to the council. It was a sufficient reason if the slave to be manumitted was, for instance, the father or mother of the manumitter, or his son or daughter, or his natural mother or sister, his teacher or governor, his nurse or foster-brother, or a slave whom he wished to make his agent, if not less than seventeen years of age, or a female slave whom he intended to marry, provided he married her in

¹ Blume penciled in above this title "Hartman-Ubbelohde 240-1."

six months. If a reason was once shown and approved by the council, whether true or false, the resulting manumission could not be revoked. Inst. 1.6.5 and 6. A minor, under twenty, could not manumit any slave except by consent of the board and upon a definite legal ground above mentioned. Gaius 1.38; C. 1.10.6; C. 7.11.4; C. 7.16.16. Justinian modified the rule to some extent and permitted a minor not less than seventeen years of age to manumit by will only. Inst. 1.6.70. If he gave liberty to a slave in his will by way of trust, when under that age, the manumission, it seems, was valid, if sufficient legal grounds could have been shown to the council if he had lived. C. 7.4.5; C. 6.21.4; D. 40.5.4.18. By Nov. 119, c. 2, Justinian gave a minor the same rights to manumit by will which he had in disposing of other property - a right which a minor had when he reached the age of puberty.

2. Liberty without manumission.

Although there is a general statement to the contrary (C. 7.14.8), there were various ways by which a slave became free without manumission, some of which are enumerated in C. 7.6, and will not be mentioned here. Other cases are:

1. Where a female slave was given over to prostitution, she became free, or at least could be claimed as free by anyone. C. 1.4.12, (same as C. 11.4.6); C. 1.41.14, (same as C. 11.41.7). See also C. 7.6.4, and C. 4.56.1 and 2.

2. Persons castrated on Roman Territory. Nov. 142.

3. A slave abandoned by his master. Nov. 142. C. 4.42. See also C. 8.51.

4. A slave sold or given upon condition of being manumitted. C. 4.57.1-6.

5. A slave who was ordained as an officer of the church, (Nov. 123.17), or became a monk. C. 1.3.37; Nov. 5.2.

6. Slaves who avenged the murder of their master, and persisted in avenging it. C. 7.13.1.

7.1.1. Emperor Antoninus to Tertius.

The status of those who are manumitted before the council cannot, as a rule, be called in question after the approval thereof by the judges (councillors) and after manumission has taken place, though they are said to have been liberated upon false grounds.

Promulgated Oct. 7 (211).

7.1.2. Emperors Diocletian, Maximian and the Caesars to Sallustius. It is most certain that a second manumission can neither give anything to or take anything from a person who has once been granted Roman citizenship.

Given April 30 (293).

7.1.3. The same to Attia.

The law is not doubtful that no woman can manumit by the rod through a husband, nor anyone else through a procurator.²

² [Blume] The owner of the slave himself as well as the slave must be present. Buckland, R. L. of Slavery 442.

7.4.1. Emperor Constantine to Maximus, City Prefect.

An obedient slave may, with the consent of the patron, obtain liberty before our council or before the consuls, praetors, presidents or magistrates of the cities who have a right of that kind.

(319-323).