Book VII.
Title XVII.

Abolishing sponsoring of liberty (assertio).
(De adsertione tollenda.)

Bas. 48.21.

Headnote.

A procurator differed from an assertor (sponsor or defender) in that the former carried on a suit at the risk of the principal, the latter at his own risk.

7.17.1. Emperor Justinian to Mena, Praetorian Prefect.

Ordering a milder method of proof and of termination of suits relating to servile status, (we direct) that if a person in slavery claims to be free, or a person enjoying freedom is claimed as a slave, the difficulty of (needing) a sponsor (adsertor) in either case, is eliminated, and he may himself defend against the assertions of the party who claims to be the master; and if he is in possession of liberty and is claimed into slavery, he may even appoint a procurator (to conduct the suit for him) which, however, a man in slavery who claims liberty, cannot do. The laws which formerly directed suits of sponsors to be examined a second and a third time, shall hereafter stand when no appeal is taken; if taken, then, as in other causes, the judge to whom the appeal is taken, shall look into it, and his decision shall not be re-examined, under the law which were made concerning suits of sponsors. 1. We also abolish the ancient rule relating to the defense of special property (peculium) and other things and matters[1], directing that the special property (peculium) of those (and of those only) who are in slavery and sue for their freedom and other property claimed, shall be put in safety to await the final decision of the judge. 2. All, however, whose liberty is called in question, shall, if they can, furnish a surety. If it is impossible for them to furnish him, and this is clearly shown to the judge, they shall give their own bond, under oath, knowing that, if, upon release under such bond, they absent themselves, and, cited by edicts, remain, nevertheless, absent for a year, they shall be subject to servitude and will be declared to be owned by those who brought the suit. 3. We want parties, moreover, who claim anyone into slavery, to know that if a suit is allowed in any court or pursuant to an imperial order, and the person claimed to be a slave has been notified and they thereafter sue him in another tribunal, they shall (except in case the person who is claimed to be a slave gives himself the occasion therefor) be deprived of their rights, although in fact the owners.
Given December 11 (528).

Note.

1. Under the law generally, a slave, or a person whose status was doubtful, could not appear and defend himself. A sponsor, called assertor, who was something like a procurator, was formerly necessary in order that a person whose liberty was questioned might be defended, or that a person in slavery who claimed his liberty might be able to pursue his claim. It would seem that in the later empire there were difficulties in

[1] [Blume] A bond had formerly been required, see note C. 7.18.3.

procuring sponsors. Constantine provided that if a person in enjoyment of liberty was claimed as a slave and could find no sponsor, he was to be taken about in the province bearing a label, showing that he needed a sponsor. If he failed to get one, he was to be handed over to the claimant, though he could renew his defense if he could afterwards find a sponsor. Prior to that time, a proclamation was probably issued of the necessity of such sponsor. C. Th. 4.8.5. In 393 a law was passed by Theodosius the Great that if a question of status was raised against one who had been living in liberty for twenty years, or who had held a public office or who lived as a free man in the presence and to the knowledge of the party subsequently claiming to be the master, he would not be required to have a sponsor (C. Th. 4.8.9). This law opened the road for abolishing the necessity thereof entirely.

2. The statement in the law of this title about a second and third investigation of a cause involving liberty needs some comment, since the general rule was that a judgment once closed and not appealed from was res judicata. Reference to a second investigation is made in Quintil. Inst. 5.21; 11.1.78. Buckland, Roman Law of Slavery 668-669, after referring to the various sources touching on this subject, states it as his opinion that they point to a conjecture that there was a rule, of which the source is now lost, requiring all such suits to be gone through twice or oftener, before different triors, before a final decision was reached. The law as to security, in force prior to Justinian, is not clear. The subject is discussed in Buckland, Roman Law of Slavery 655-657, 668-670.

7.17.2. The same to Johannes, Praetorian Prefect.

A point, formerly clear, has become doubtful by reason of the law by which we abolished the requirement of a sponsor, and we have, accordingly deemed it necessary to give it support by a clear-cut remedy. 1. When a suit concerning liberty was prosecuted by a sponsor, and the person who was claimed as a slave died during the pendency of such action, it was, nevertheless, necessary for the sponsor to finish the suit, so that the purchaser of the slave (contending against the sponsor) might, in case he was defeated and judgment was given in favor of liberty, have recourse against his vendor, by which such vendor, as a vendor of a free person, might be compelled to return to the purchaser whatever was specified in the contract of purchase and sale of whatever else the nature of the contract demanded. 2. But, since the very name of sponsor is at present abolished, as superfluous, if the person, on account of whose status a suit is prosecuted, should die, how can a trial be finished when only one person can be present at the trial? 3. Hence, we ordain that in such case the purchaser may have immediate recourse against the vendor, and the latter must either show that he sold a slave, or if he cannot do so, he must stand the loss as the seller of a free person.
Given September 1 (531).