

Book VII.
Title XVIII.

Those who are not permitted to claim liberty and concerning the property of those who are not forbidden to claim liberty.

(Quibus ad libertatem proclamare non licet et de rebus eorum qui ad libertatem proclamare non prohibentur.)

Dig. 40.42; Bas. 48.9.

7.18.1. Emperor Gordian to Proculus.

The cause of a man who suffers himself to be sold by concealing his status is different from that of a man who shares in the price. For the right to claim liberty is not denied to the former, but is denied to the latter who shares in the price, though he is a Roman citizen. 1. And the juriconsults have justly answered that the same distinction is to be observed in case of one to whom fiduciary liberty was given.

Promulgated May 1 (239).

Note.

No one could knowingly but a person who was free, even with the latter's consent, and liberty could be claimed at any time thereafter. D. 40.12.7; D. 40.13.4; see C. 7.16.37. But it was different where the purchaser did not know the status of the person bought by him, since he might then be defrauded. And where a person over twenty years of age, knowing that he was free, sold himself in order to share in the purchase price, he could not thereafter claim his liberty, although, even in such case, that was at times permitted when the purchase price was returned. D. 40.13; D. 40.14.2; D. 1.5.5.1; see D. 28. 3. 6. 5, (loses citizenship). The rule applied to male as well as female, and the offspring of such female born during her slavery were also slaves. D. 40.13.3. A pledge or gift stood on the same level as a sale, if under similar circumstances. D. 40.12.7 pr; D. 40.12.23.1; D. 28.3.6.5. But a minor who sold himself when under twenty years of age, could claim his liberty, unless he participated in the price after he reached that age. C. Th. 16.16; D. 40.12.7.1; D. 40.13.1.2. Persons seem to have frequently sold themselves on account of impoverishment. See e.g. C. 7.16.22. That was not uncommon in ancient times, either permanently or temporarily, especially in order to satisfy debts, as, for instance, among the Germans (Caes., *Bell. Gall.* 6.1.3; Tac., *Germ.* 24); the Greeks (Plutarch c. 13), and in early times among the Romans. C. 7.53, headnote 1.) See Mitteis, *R.R.u.V.R.* 357ff. As to sale of children, see C. 4.43.

7.18.2. Emperors Diocletian and Maximian and the Caesars to Melana.

Former emperors decreed that persons who belonged to a band or robbers, and who were made slaves by imperial bounty¹, or fiscal authority, cannot be freed.

7.18.3. Emperor Constantine to Maximus, City Prefect.

If a person claims liberty but he acknowledges that property in his possession belongs to the party who claims to be his master, such property must, in order of the

¹ [Blume] instead of inflicting death.

judge, be immediately returned and restored, since it is not in dispute. 1. But if the status of the property is doubtful by reason of denial of ownership, it shall be conserved through a bond, and the claim thereto deferred. If the finding shall be in favor of liberty for the claimant, the latter must render an account of his doings -- since the interests of those who commit things to the care of slaves must be protected -- and what he owes may be demanded to be paid, so that, with slavery ceasing, he who formerly occupied the position of master may receive back what he gave as such master to one supposedly his slave, together with what was acquired by the increase and fruits thereof, and together with what he (such supposed slave) secretly and furtively took, since whatever a man gave as peculium (special property) to another supposedly his slave, should not belong to one who is free. 2. But property obtained (by such claimant) under a testament or gift, and whatever was bought or constructed with the income therefrom, must be turned over to him, who is free-born. But all of the property (in dispute), insofar as separated from that mentioned before (and not in dispute) should, when the trial as to liberty is finished, be sequestered, taken out of the hands of both parties and placed in possession of the court, so that both parties may thereafter contest for the ownership thereof.

Given at Thessalonica May 18 (323).

Th. 4.8.6 (2).

Note.

This law, taken from the Theodosian Code, is discussed at length by Muther, Sequestration u. Arrest, §§ 95 to 98. It provided for a case in which a person who was freeborn claimed that he was free. If the claimant was in possession of property which he acknowledged to belong to the opponent, an order was entered directing that this property be restored to the latter. He might be in possession of property also which he claimed as his own. Now according to the 12 tables (which provides for vindiciae secundum libertatem) the claimant was in possession of freedom during trial and so also had possession of the property which was in dispute, (which, if he was actually a slave was his peculium). This property might have been derived from inheritances, bequests, gains made from various sources, and in order that final return to the opponent might be insured, if it should be determined in the suit that he was actually a slave, a bond was required to be given. But, at the period when this law was written, namely in 323 A.D., a person whose status was that of slavery could not sue personally, but was required to have a sponsor (assertor libertatis), and it was this sponsor who was required to give the bond already mentioned. Then the suit for freedom was tried. If it was determined that the claimant was actually a free man, the ownership of the property still in dispute was determined in a later contest, provided, however, that under the specific provisions of this law, property obtained by the claimant under a testament of gift or the increase thereof was in such suit given to the claimant, but there might be other property belonging to the peculium which belonged to the former master, namely that which was entrusted to the person formerly in slavery by the former master, together with the increase thereof, and whatever had been taken furtively.

It may be mentioned here that Justinian by C. 7.17.1, abolished the necessity for such claimant to have a sponsor and the necessity to give such bond, requiring the property to be sequestered during the pendency of the suit, and probably up to the time that the whole matter both as to freedom and to ownership of property was determined.