

Book VII.
Title II.

Concerning testamentary manumission.
(De testamentaria manumissione.)

Bas. 48.3.62 seq.

7.2.1. Emperors Severus and Antoninus to Brimus.

If a person more than twenty years old made a codicil, it is certain that the time of confirmation (of the codicil by will) cannot prejudice the manumission (granted by the codicil); for it is not so much the law as the will to manumit is considered (nec enim potestas juris, sed iudicii consideratur).

Note.

As already shown in headnote to C. 7.1, a minor under twenty years of age could not, ordinarily, manumit a slave, an exception being made by Justinian where a minor made such manumission by formal will executed before he reached that age. The present rescript was issued before such modification was made by Justinian, and must be borne in mind. In the present case, then, a minor had made a will before he was twenty years old. He stated therein that all codicils thereafter executed should be valid. The validity of that codicil ordinarily depended upon the validity of the will, and hence since he could not have a manumission when he made the will, the question arose as to whether a manumission made in the codicil after he became twenty years of age was valid. The answer is in the affirmative; for effect was given not so much to a fiction of the law (potestas juris), but to whether or not the power to manumit (potestas iudicii) existed at the time that the manumission was in fact made; in other words, the law, being restrictive of a civil right should be construed narrowly, and the right of the will to manumit should be given a liberal interpretation. Buckland, Rom. L. of Slavery 537; 9 Cujacius 882.

7.2.2. The same to Philetus.

Grants of liberty by testament are not effective if the inheritance is not entered on, or if the memory of the accused (who made the will) is condemned on account of a crime which did not find its ending in the death.

Note.

The statement in this law that the manumission failed in the inheritance was not accepted was not universally true. This subject is fully treated in headnote to C. 6.39, and note to C. 7.4.1. See also laws 6, 12 and 15 of this title.

A person might at times be condemned after his death - in a case of treason for instance. He could not manumit his slaves, or make gifts in his will, as against such condemnation. If at the time of making such manumission or other gift, he was already accused, or even if he was then conscious of his guilt and of his subsequent condemnation, he lost his power to make a manumission or other gift, as against ultimate condemnation. C. 9.8.6; D. 40.1.8.2; D. 40.9.15. That was not true, however, where only payment of rental to the fisc was involved. C. 4.61.1; Buckland, Rom. L. of Slavery 591.

7.2.3. The same to Euphrasyna.

When an inheritance has been accepted, freedom granted in the testament takes immediate effect, and though the appointed heir subsequently, through restitution to his rights, gives up the inheritance, that fact does not take away the effect of the manumission.

7.2.4. The same to Anchilaus.

Since your father was granted direct liberty in a testament, you cannot be compelled, through you are his heir, to render an account of the transactions which he managed during his slavery, since he was not granted his liberty upon that condition. 1. But a person to whom indirect liberty is granted, by way of trust, or direct liberty upon condition that he should render an account, cannot obtain such liberty until he has paid the amount due from him and has returned what he has fraudulently taken away. But if, upon accounting, he is not found to be a debtor, he receives unconditional freedom, after the inheritance has been accepted. Promulgated Nov. 25 (215).

Note.

If a will provided in direct words that a certain slave was thereby manumitted by the owner, this was a direct manumission. If a will however gave a slave to another, with direction to manumit the slave, this was a trust - the manumission was granted by way of trust; it was an indirect, fiduciary manumission. The latter method was often, if not generally, chosen in order to give to the person who would actually manumit, the rights of patron over that slave. The present title deals with direct manumissions; title 4 of this book deals with indirect manumissions. The differences between these two kinds of manumission were sometimes vital. One difference is pointed out in note to law 9 of this title. If a manumission was to take effect only after the death of the owner, direct liberty must be given by him in a formal will, or in a codicil confirmed by a formal will; but indirect, fiduciary, manumissions could be made without any formal will. C. 7.2.15; D. 40.4.43; 9 Cujacius 882.

7.2.5. Emperor Alexander to Quintianus.

If manumissions are made in a testament in fraud of creditors, they are, under the Aelian Sentian Law, invalid, although the heir of the debtor is solvent.

Note.

This law was passed in 4 A.D. Gaius 4.37.

7.2.6. Emperor Gordian to Pisistratus.

If the inheritance of the testator by whom you say you were manumitted in his testament, is refused by the heirs, on account of debts, you ask with just reason, in order to preserve the liberty granted to you, that the wish of the testator be carried out upon you offering security to the debtors of the inheritance, especially since that was also provided for by the Divine Marcus, wisest of emperors. This rule should be applied also in case of an outside person.

Note.

"A new form of succession was added by a constitution of the Emperor Marcus, which provided that if slaves who have received a bequest of liberty from their master in a will under which no heir accepts, wish to have his property adjudged to them, in order

that effect may be given to the gift of freedom, their application shall be entertained" - provided that proper security is given to creditors for payment of their claims in full. The rule applied on intestacy where a bequest of liberty was made by codicil, not confirmed by will, and no one accepted the inheritance. Inst. 3.11.1. See also C. 7.2.15.1-6. So, too, in such case, an outsider could accept the inheritance in order to preserve the manumissions. Law 15 pr. of this title.

7.2.7. The same to Justa.

You should not, contrary to your mother's wish, confer freedom upon him whom she forbade to be made free, lest you appear to violate the laws of filial devotion. Promulgated Jan. 23 (240).

7.2.8. Emperor Philip and Caesar Phillip to Gemellus.

When the testator ordered freedom to be given when his son or daughter should be married, he did not fix the time of the grant of freedom, but rather fixed the condition thereof, so that if no such marriage takes place, freedom cannot be rightfully demanded.

7.2.9. Emperors Carus, Carinus and Numerian to Maurus.

The decedent could not confer direct freedom on your slave, though it is stated that you were appointed the decedent's heir. For no one can give direct liberty to another's slaves.

Promulgated Nov. 8 (283).

Note.

Direct liberty could not be given to another's slave. But a striking difference existed in that respect if the manumission was indirect; if an heir, for instance, was requested to purchase the liberty of another's slave, such request was valid, and the heir must carry out the request. C. 7.4.6; 9 Cujacius 882.

7.2.10. Emperors Diocletian and Maximian and the Caesars to Germanus.

If no law forbids (in other respects), slaves become freedmen, in case of direct testamentary, legal manumission, not only by the imposition of the cap, but also by an acceptance of the inheritance (under a will giving liberty by direct words).

Note.

The grant of the right to wear the cap of liberty was added by Justinian as one of the informal methods of manumission. C. 7.6. Previously the right to wear such cap probably gave less than full citizenship. Buckland, Rom. L. of Slavery 447. See also Smith's Dict. G. & R. Ant. under "pilleus" and "manumissio." But the right became effective only "if no law interfered;" for instance, the inheritance must be entered on. 9 Cujacius 883.

7.2.11. The same to Laurina.

It is clear that if the testament is not in conformity with law, no bequests of manumission made therein are effective, since you state that the will contains no provision that it should be valid as a codicil.¹

¹ [Blume] See headnote to C. 6.39.

Promulgated at Sirmium under date Mar. 17 (293).

7.2.12. The same to Rhizus.

If heirs under a legally executed testament have accepted the inheritance, in the usual form, the liberty granted you under the testament cannot subsequently be taken away by collusion between the appointed heirs and those claiming the estate by intestacy.

1. But if the heirs voluntarily repudiated the succession offered them, then, it is agreed, the written provisions of the testament have failed. 2. If the president, however, learns that they are in collusion so as to defraud you of your liberty, he will, according to the decision of the Divine Pius Antoninus, take care that your liberty is protected.²

Subscribed at Sirmium Dec. 1 (293).

7.2.13. The same to Martialis.

It is certain that freedom granted upon condition, cannot be taken away by the heir. Alienation or usucaption (prescription) cannot prejudice anyone, to whom a bequest of liberty is made upon condition, so as to prevent him, upon the happening of the condition, from acquiring his freedom.

7.2.14. Emperors Theodosius and Valentinian to Florentius, Pret. Prefect.

It is permitted to leave direct freedom by testaments written in Greek, so that such bequests shall be considered as direct manumissions just as if the testator had ordered them in legal (Roman) words.

Given at Constantinople Sept. 12 (439).

7.2.15. Emperor Justinian to Johannes, Praetorian Prefect.

A constitution of the divine Marcus³ declares that if a man leaves a testament, or dies without one, so that intestate succession takes place, and makes bequests of freedom, but no one wants to accept the inheritance of the deceased because it is thought to be insolvent, or if indirect (fiduciary) manumissions have perchance been made, even without any writing, any outsider or one of the slaves who was himself granted freedom, which is in danger, on account of insolvency, is permitted to accept the inheritance upon condition and upon giving security that he will satisfy all creditors and will give freedom to those to whom the testator wanted it given. Various doubts have arisen out of this constitution. 1. It was asked whether, if the property of the estate were sold upon finding no heir, it would be possible for a slave or someone else to enter on the inheritance after such sale, and recover the property sold from the purchasers, upon satisfying the creditors and granting the manumissions provided for. 1a. And though the divine Severus held that this could not be done after the property had once been sold, we, admonished by the opinion of Ulpian, are pleased, especially in order that granted liberty may not be lost, to order that a remedy of a year after the sale should be added to the provisions of the constitution of the divine Marcus, during which time all the creditors may be satisfied. No new burden is thereby imposed on purchasers who are often obliged to submit to a rescission (during that time). The slave to whom freedom had been granted, or any

² [Blume] See Headnote to C. 6.39, and note C. 7.4.1; also law 15 of this title.

³ [Blume] See Inst. 3.11.1.

outsider, may, before or within a year after the sale, accept the inheritance and recover the property, first giving security that he will satisfy all creditors as well as complete all manumissions (provided for by the decedent). 1b. And if anyone promises to complete the manumissions, and to pay the debts in part, and the creditors consent thereto, in such case, too, the constitutions of the wisest of emperors should apply, and we direct that such person shall be admitted to the inheritance, at least when that is done by the consent of the creditors; for we permit no such claim to be made against the consent of the creditors. 2. The oration of the divine Marcus shall be applied also, if some of the slaves accept freedom, others, however, reject it, and the one who claims the inheritance must be heard in such case, but the slaves shall have the free choice to accept freedom or remain in servitude. 2a. For although no slave is permitted to reject Roman citizenship, still in such a case, in order that some of the slaves may not remain in servitude, on account of the ingratitude of others, all of those who wish it (and to whom it has been granted) may receive it, but those who do not wish it, or refuse it, shall remain in voluntary slavery, and learn to know the one, whom they did not want as patron, as master, and that perhaps a harsh one. 3. And even if he (the slave who wishes to take the inheritance) does not promise to complete all of the manumissions (provided for by the deceased), but only certain ones, it is better, if the property of the inheritance suffices to satisfy the creditors, to also give freedom to all the slaves (to whom it has been granted), although he has not promised it. But if the property is insufficient to pay the creditors, it is better that at least a few receive freedom. So far a settlement of ancient doubts. 4. And perfecting the aforesaid constitution still more, we ordain that if there is not one, but there are several claimants of the inheritance and two or more claim it at the same moment, they may enter it jointly, all of them, first giving security that they will satisfy creditors and make the manumissions provided for. 4a. If they claim it at different times, the first one making the claim shall have the first right, if he can furnish the security; if he fails to do so, the others follow him in right successively, according to the time in which they respectively make their claim. And this shall be done within a year. 5. Moreover, if one of them promises to free some of the slaves (to whom freedom was granted) but not all of them, but another appears ready to give the proper security to satisfy all creditors and made all the required manumissions, the latter should, in justice, receive the inheritance, so that freedom may be granted to all of them without distinction. This privilege is extended not only to a slave to whom a bequest of liberty was made, but also to one to whom such bequest was not made, so that the latter may do a graceful act by bestowing liberty on another, though it was not given to himself. 6. If these different claims are made before the first claimant receives the property of the inheritance, and his freedom, preference must be given (as heretofore stated) to the second, third or other claimant who promised the most manumissions. 7. And even if the property has already been turned over to the first claimant, and he has completed the manumission of some of the slaves, but another of the slaves of the same inheritance, or some outside free person wants to promise to make a larger number of manumissions and give security, he shall be permitted to do so and receive the inheritance; but the first claimant shall retain his liberty, although the property is taken from him. All this shall be done within a year from the time that the first claimant makes application to the judge. (531-532).

Note.

It will be noticed that under this law, and under the circumstances therein mentioned, even a slave who was not manumitted under the will, was enabled to accept the inheritance in order to preserve the manumissions granted in the testament. If he accepted the inheritance, and it was granted to him, he thereby became free, since no one could enter upon an inheritance who was not free. 9 Cujacius 885; law 10 of this title.