

Book VIII.
Title VIII.

Concerning production of children, their abduction and concerning the production of a free man.

(De liberis exhibendis seu de ducendis et de homine libero exhibendo.)

Headnote.

An action (in classical law an interdict proceeding) might be brought by a father or mother to procure the custody of his or her children, by a husband to obtain the society of his wife, and by anyone (D. 43.29.3.9) for the purpose of obtaining the release of a freeman from slavery. To deprive a free man of his liberty was also a crime. C. 9.20. A special proceeding was provided for cases in which the fact of freedom was disputed. C. 7.16.

8.8.1. Emperor Antoninus to Justinus.

If, as you state, while you were your own master, you won a suit involving property of your mother, you may sue those against whom you obtained judgment. But if someone appears who contends that you are his son and in his power, the truth of his claim will be investigated in an interdict-proceeding (action) for that purpose. Promulgated April 8 (212).

Note.

For the action to enforce a judgment see C. 7.52. Until the later law, a son's property belonged to his father. C. 8.46.2 note. Hence where, as here, a man claimed to be the father of the person who obtained the judgment, this point had to be decided first, since, if it was true, the father owned such judgment, and hence had the right to sue on it.

8.8.2. Emperors Diocletian and Maximian and the Caesars to Cyrilla.

Go before the president of the province and demand that your sons be produced. Subscribed at Byzantium April 9 (293).

Note.

The action (interdict) lay against the person having the custody of the child. D. 43.30.3.3. The father had ordinarily the first right to such custody. D. 43.30.3.5. But if the mother who lived apart from him had the child, and it appeared for the best interests of the latter that it remain with the mother, any action against her could not succeed, and, on the contrary, custody might be awarded to her. C. 5.24.1; D. 43.30.1. 3.

8.8.3. Emperors Diocletian and Maximian and the Caesars to Euodia.

If you think best to sue Phillipus, in a suit in pattern of the interdict, concerning the production of his daughter (your wife), the rector of the province will, when you go before him, exercise his jurisdiction for your benefit. Subscribed at Nicomedia November 20 (293).

Note.

It was contrary to public policy that a father should disturb the relations between his daughter and her husband, and a husband had the right to sue his father-in-law who detained his wife. D. 43.30.1 and 5; 2; C. 5.4.11; C. 5.17.5.