

Book III.  
Title XXII.

Where an action concerning personal status should be brought.  
(Ubi causa status agi debeat.)

Bas. 7.5.86.

3.22.1. Emperor Alexander to Aurelius Aristocratis.

The female who fled while in your service into another province and now claims freedom is not unjustly compelled to litigate the matter in the place whence she fled as a fugitive. Therefore the president of the province who represents the law where she is found must take care that she is returned to the place where she served; and she must not be heard in the place where she is seized.

Promulgated August 20 (231).

3.22.2. Emperor Decius and the Caesars Decius and Quintus to Felix.

It is known to all that our procurator cannot try causes involving personal status.<sup>1</sup>  
Promulgated December 1 (250).

3.22.3. Emperors Diocletian, Maximian and the Caesars to Zenonis.

If you are in possession of freedom, then since the plaintiff even in an action involving personal status must follow the forum of the defendant, the case concerning your liberty must be tried where the person who is claimed to be a female slave is living, even though the plaintiff is decorated with the rank of a senator.<sup>2</sup>

Given at Byzantium April 12 (293).

3.22.4. The same Emperors and Caesars to Sisinnia.

It is the undoubted law that if anyone in servitude claims liberty the case as to the personal status must be tried where the person who claims to be master has his established domicile.<sup>3</sup>

Given at Byzantium March 6 (294).

3.22.5. The same Emperors and Caesars to Diogenes, President of the Islands.

We decided long ago that if cases involving the status of a freedman or slaves arise between the fisc and private persons, they must be referred to our comptroller (rationalis) or master of the (crown) estate; that is to say, from the place where the suit is started; but if the cases involve the question of free birth, they must be tried by the rector of the province.

Given August 2 (294).

Note.

Buckland, Roman Law of Slavery at 657, note 6, says that whether the rule of this law requiring cases in which the fisc was concerned to go before the procurator—

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<sup>1</sup> [Blume] See C. 3.1.3 and note, and law 5 of this title. If the question of status arose incidentally, the procurator had jurisdiction.

<sup>2</sup> [Blume] See headnote C. 7.16.

<sup>3</sup> [Blume] See headnote C. 7.16.

rationalis —applied to cases in which liberty was claimed, is not clear. In any event, if a person claimed liberty by reason of free birth, as distinguished from manumission, the question was triable only before the provincial governor, rector or president, and not before the fiscal officer. A distinction is drawn, as noted, between a freedman and a free born man, who claimed to be a freedman, but was claimed to be a slave by the fisc, arose, it was tried by the fiscal officer. The law is not found in the Basilica. If the question of freedom arose only incidentally, the fiscal officer had jurisdiction. C. 3.1.3.

#### 3.22.6. Emperor Justinian to Mena, Praetorian Prefect.

The limitation of five years in suits involving the question as to whether anyone is free-born or is a freedman—after which an imperial hearing became necessary according to the ancient laws—shall hereafter be abolished and such suits shall also be tried in the same manner as others, after said time, either in the provinces before the moderators, or in this fair city before the proper high authorities. These provisions shall apply even in a case commenced against a person of senatorial rank, as to such status or servile condition. Given August 3 (528 or 529).

#### Note.

The status of free birth was far superior to that of a freed or manumitted person. The latter was frequently subject to many duties to his former master. C. 6.3; C. 6.6; C. 6.7. Hence, though a man was manumitted, still if he discovered that he was in fact free-born, he would naturally want to show that fact. Under the former law, however, he could not do so before the ordinary courts unless he did so within five years after he was manumitted. D. 40.14.2.1; D. 40.16.2.3. After that time he could only appeal to the emperor. Note C. 7.14.1; Buckland, Roman Law of Slavery at 650. By the foregoing law, Justinian simply substituted the ordinary courts for his own court and abolished the limitation of five years.