

Book VII.
Title XVI.

Concerning a cause involving liberty.
(De liberali causa.)

Bas. 48.20; Dig. 40.12.

Headnote.

Cases involving liberty (*causae liberales*) were privileged cases, and might be tried and decided on days not open for ordinary litigation. D. 2.12.3.1. If a person apparently free was claimed into servitude, the case was triable at the domicil of the alleged slave. C. 3.22.3. If a person in servitude claimed his liberty, the case was triable at the domicil of the apparent master. C. 3.22.4.

7.16.1. Emperor Antoninus to Saturnina.

By stating that you sold your free-born sons,¹ you acknowledge having committed an illegal and dishonorable act. But because you act ought not to prejudice the sons, go before a competent judge, if you wish, so that a trial may be had according to the rules of law.

Promulgated February 9.

7.16.2. The same to Verenianus.

If the men whom you state to be your slaves, are claimed by your opponent to be free, an investigation of their status should be made in the usual manner; for an adjudication as to who owns them cannot be set up as a defense in an action for their freedom.

Given February 5 (214) at Rome.

7.16.3. Emperor Alexander to Quirinus.

If a free man betakes himself to the bed of another's female slave, he does not become the slave of the owner of the woman, though he was warned to keep away from her.

Promulgated February 5 (225).

7.16.4. The same to Jucundus.

Even if the man whom you claim as your slave was pronounced free in a trial during your absence, a second action to have him declared a slave should not be allowed you.² But if you appealed after you learned the decision of the judge, the question will be investigated in the imperial council (in *auditoris*) as to whether the decision was according to law.

¹ [Blume] As to sale of children, see note C. 4.43.2.

² [Blume] See to the same effect, C. 7.16.27; see note to C. 7.14.8; see also C. 7.43.11, as to effect of an adjudication.

7.16.5. The same to Sabinus.

The woman whom you state to be your slave has not any the less the right to claim her freedom (by reason of manumission), simply because you bought her at a sale held by the fisc.³ Nor is her claim barred because she was more than twenty years old at the time of the sale. Such an allegation as to age is no defense against Roman citizenship, unless it is shown that she sold herself into servitude for the purpose of sharing in the price. 2. Of course the burden of proof, since she alleges manumission from servitude, falls on her. And if she does not prove her allegation, you will retain the undisturbed right of possession.

Note.

If a man more than twenty years of age caused himself to be sold as a slave, in order to participate in the price that the sale brought, he was not, on account of his fraud, permitted to claim thereafter that he was a freeman, except in exceptional cases where he paid back the price. See note to C. 7.18.1.

The burden of proof was as follows: If a man finding himself in slavery claimed freedom, he had the burden of proof; if a man lived in freedom, and someone claimed him as a slave, the latter had the burden of proof. D. 40.12.7.5. C. 4.19.10; C. 4.19.15. What has been said as to a man, applied equally, of course, to a woman.

7.16.6. Emperors Valerian and Gallien and the Caesar Valerian to Vansumetius.

Not even if you had voluntarily stated in writing that you were a slave, and not free, would you thereby have prejudiced you right. So much the more is that true when you testify that you had made such statement under compulsion.

7.16.7. Emperor Aurelian to Secundus.

If you were manumitted by the man whose slave you were, a suit calling your liberty in question is useless, especially by the heir of the manumitter; for though liberty was not given regularly (but only informally), he is bound to confirm the wish of the decedent since he accepted the inheritance.

Note.

So D. 40.12.31, says that a son who is his father's heir is forbidden to claim a person, manumitted by his father, as a slave. The basis is the respect due from the heir to the decedent's wish, and it is here probably only meant that the heir may not object to the manumission on technical grounds. Buckland, Roman Law of Slavery 650.

7.16.8. Emperors Diocletian and Maximian to Veneria.

Since you state that your former master agreed to manumit you and your daughter for a certain sum of money given him, and he has only liberated you, the rector of the province will, when you go before him, exhort him, reserving the honor due from freedmen to a patron, to perform his agreement.
Promulgated (286).

³ [Blume] The woman mentioned in this law had evidently been sold by the fisc for taxes or other indebtedness due from the man who claimed the woman as his slave.

Note.

Law 36 of this title says that if an owner makes an agreement with a female slave that she should be free after a certain time of service, such agreement is not binding. Buckland, Roman Law of Slavery, 642, says that one would have thought that this case would be on the same level as the present law (C. 7.1.8). The difference in the two cases is probably this: In the present law the money was actually paid; on the party had performed; in law 36 of this title, the promise was a mere naked pact.

C. 4.57.4, says that if an owner of a slave had received money for him, the slave becomes free as of the time when he should have been manumitted. The present law, as well as C. 4.6.9, does not make the slave free ipso facto, but requires the interposition of a proceeding in court. The same inconsistency is found in the Digest. Buckland, Roman Law of Slavery 641, 642. Perhaps there is no actual inconsistency. If the owner, upon receiving payment, would not free the slave, a proceeding in court became a matter of necessity. Still, even where that was necessary, the slave would nevertheless be considered as having been freed, when he should have been freed. This became important at least in one case, namely where a female slave was with child, which, in such case would be considered as born free, if the mother was not manumitted when she should have been.

7.16.9. The same and the Caesars to Proculus.

Since your petition states that the man against whom you direct it was born of a female slave, but that he, nevertheless, added a cognomen to his name which is used only for persons who are free, and that he also claims that he is not a slave but has merely a servile stain,⁴ it is noticed that you have directed your petition against a man who is not a slave.

7.16.10. The same to Stratius.

The law is certain that free persons cannot be made slaves, with their condition changed, by private agreements or by virtue of any private transaction.⁵
Given (294).

7.16.11. The same to Faustinus.

Slaves do not change their status by unlawfully and dishonestly aspiring to civic honors. Hence you must know that if the question of status is raised, you gain no advantage from the fact that your father held a public office. Trial as to your status will, accordingly, be had before the president of the province after the usual preliminaries are arranged.

293.

Note.

As to arrangement of preliminaries, see note to law 21 of this title.

⁴ [Blume] i.e. that he was born of a freedwoman.

⁵ [Blume] See C. 7.14.8, and note; C. 2.4.26, see an exception in note C. 7.16.5.

7.16.12. The same to Secundus.

If you are free-born, and some one bought you (as a slave), you retain the status which you had before. But if you were born of a female slave and your natural father, and master, sold you, you did not acquire you liberty by paying the purchaser the price.⁶ Promulgated February 14 (293).

7.16.13. The same to Antistia.

When a person is dead, a suit cannot be brought in which the principal issue is to determine the status of such person. But if the special property (peculium) of the man, whom you allege to have bequeathed his property to you, is sought to be recovered (vindicare) of the status of his sons is called into question, these matters must be decided by the president after the usual trial. Given April 27 (293).

Note.

Death ended inquiry into the status of a person where that was the principal issue, but that was not true where the title to property was involved. When, however, a person had been dead for five years, title to property derived from him could not, generally, be questioned. See C. 7. 21, and the various laws thereunder, and Buckland, Roman Law of Slavery 651.

7.16.14. The same to Quintiania.

When preliminary matters in the suit have been settled, the man whose liberty is questioned, is put in possession of liberty, and in the meantime will be considered free.⁷ Given at Heraclea April 28 (293).

7.16.15. The same to Palladius.

Neither a failure to register a birth excludes proof of origin, nor does a fictitious statement diminish the truth. Since, accordingly, all legal proof should be admitted for investigation into the truth, the president of the province will, when you go before him, see that the cause involving freedom will, after the usual preliminary arrangements, be (tried and) decided, as the rule of law demands.⁸ 293.

7.16.16. The same to Diogenia.

If you performed services as a free person, but a document was executed giving you in dowry as a female slave without you knowledge, that cannot prejudice your liberty, especially since you state that you were a minor, and it is agreed that minors under twenty years cannot in any manner change their status from that of free persons to slaves,⁹ in order that they may not inconsiderately lose the freedom which they cannot, on account of their age, even give to others without the consent of the council.

⁶ [Blume] A bastard had the status of his mother.

⁷ [Blume] See Buckland, Roman Law of Slavery 661; C. 5.34.1. As to preliminaries, see law 21 of this title.

⁸ [Blume] See note C. 4.19.14 and C. 4.20.2, as to registration of births.

⁹ [Blume] See note to law 5 of this title, and C. 7.14.14.

Promulgated at Hadrianapolis May 10 (293).

7.16.17. The same to Reginus.

When there are several free-born brothers, the status of one may thereafter, for many reasons, as by crimes thereafter committed or intervening circumstances, be entirely different from that of the others. Hence there is nothing to hinder that one and the same man cannot raise any question (of liberty) against you, while he may yet be able to recover (vindicare) or retain in slavery person whom you claim to be your brothers. 2. Other proofs, therefore, are necessary to show the freedom of your brother's for the fact that no question is raised against you is no sufficient proof of their liberty.
Subscribed May 23 (293).

7.16.18. The same to Loticus.

The fact that the man against whose heirs you direct you petition, leased you some property, is not sufficient proof that you are free-born, nor is it alone suitable evidence to reduce you to slavery.¹⁰
Subscribed at Philippalis July 15 (293).

7.16.19. The same to Paulus.

We think that the man for whom you supplicate us, rather than you, had the main interest in the cause. For since you acknowledge that you set him free, it is more to his interest to protect his status in the usual manner. Your interest, too, will thereby suitably be litigated. For if he is claimed as slave by the man against whom you direct you petition, and the former slave asserts his liberty by reason of your manumission, proof of his origin as a slave and that he was manumitted by you, whereby he gained his liberty, protects your right as patron. If he consents to slavery, you have a right under the law to go before the president of the province and defend him even against his wish.
293 A.D.

7.16.20. The same to Aeternalis.

Just as liberty once granted cannot be revoked, so master lost nothing through transactions with their own slaves, not entered into for the purpose of manumission.
Subscribed August 27 (293).

7.16.21. The same to Thallusa.

By the working of the edict: "If there is a controversy whether a slave is claimed from slavery to liberty or from liberty to slavery," it is clearly shown that in a case in which it appear that a woman is in possession of liberty not without fraud, the same preliminary order (as to burden of proof) will be made as in a case where a party is in actual slavery, and fraud of the slave takes from master none of their rights.
Subscribed at Sirmium October 7 (293).

Note.

If a slave claimed liberty, he had the burden of proof; if a man was free, on the other hand, and another claimed him as a slave, such claimant had the burden of proof; if

¹⁰ [Blume] Comp. C. 4.65.23.

the point whether a person was free or not was doubtful, it was preliminarily decided by the presiding judge in a summary investigation for the purpose of fixing the burden of proof. And if a person was in possession of freedom by fraud, a point, too, decided on such preliminary hearing, the burden of proof was on him in the same manner as though he was in actual slavery. D. 40.12.5; C. 7.19, infra.

This is the "praejudicium" - preliminary order referred to in the foregoing law (2 Karlowa 1113), and was part of the preliminary matters related to giving of bond, sequestration of property, and - before Justinian's time - a defender of liberty on behalf of the person claiming to be free. These will be referred to later in connection with C. 7.17.

1. The German translation is different. Karlowa discusses the point involved fully.

7.16.22. The same to Pardalea.

Birth, and not confession, determines one's parents. Hence, if you, born of a certain female slave, were thereafter manumitted, and you acknowledged yourself as a female slave born of some other female slave (not actually your mother), you could not, through such pretence or such error, lose the liberty acquired by manumission, since slaves become such only in a definite manner and not by confession.¹¹

Given November 27 (293).

7.16.23. The same to Muscia.

If direct liberty was left you in the testament of your master and the daughters, appointed heirs therein, succeeded to his estate, the fact that you serve one of the daughters, either according to the master's wish or contrary thereto, gives the others no right to rescind you liberty.

293.

7.16.24. The same to Sebastianus.

An acknowledgment by a female on the public record, in answer to an question that she is a slave, does not bar her to set up (in another case) the defense that she is free. Subscribed December 30 (293).

7.16.25. The same to Licentianus.

Just as the omission to execute documents showing a manumission which is legally made does not destroy the grant of liberty, so if you gave freedom to a slave, the loss of the documents evidencing it cannot injure him.

Subscribed February 9 (294).

7.16.26. The same to Molentus.

Just as a patron cannot deprive a person whom he manumitted of his liberty, so he must furnish a document of manumission.

Subscribed March 9 (294).

¹¹ [Blume] See note to law 5 of this title and to C. 7.18.1.

7.16.27. The same to Aurelius Asterius.

If Arrianus, when his freedom was questioned in a suit instituted by Leonides, was pronounced free, the defeated party could not legally claim him as a slave a second time.¹² 1. And if the man, appointed by Arrianus as your co-heir, conspired with him (Leonides), who had brought the suit, or with his heirs (to re-open the question), that did not prejudice you, and the agreement between them could not change the truth or the nature of the property of the decedent.¹³

Given at Sirmium March 30 (294).

7.16.28. The same to Eurymedontis.

The dignity of a paternal grandfather who filled a magistracy cannot aid a grandson in proving his liberty, since in an action involving liberty the status of the mother, not of the father, is considered. Not even the status of the maternal grandfather will alone suffice, since, though the maternal grandmother may be shown to have been free, still, status is accustomed to be changed for many reasons.¹⁴

Given at Sirmium April 10 (294).

7.16.29. The same to Troila.

A woman born of a mother who was a slave, and purchased by the man whose bed she shares, still remains a slave unless she is manumitted.

294.

7.16.30. The same to Euty chius.

Liberty once granted cannot be revoked under the sole pretense that due honor (obsequium) was not paid.

294.

Note.

Bas. 48.20.29, interprets the term obsequium as meaning the payment of due honor or respect, and Buckland, Roman Law of Slavery, seems to take the same view. That appears to have been the ordinary meaning. But if that were the meaning here, this rescript would seem to be inconsistent with C. 6.7.3. Hence Mitteis, R.R.u.V.R. 393, thinks, apparently rightly, that it here means performance of services, which a freedman generally owed a patron, just as it has that meaning in C. 6. 3. 7, D. 50. 4. 4. 2. It seems to have been the custom in Greece to reduce a former slave again to servitude for the violation of any condition which they might fix at the time of manumission. But the right was not that broad in Roman law. See e.g. C. 6.3.12; C. 7. 9. 1; law 33 h.t.

7.16.31. The same Emperors to Corsiana.

If the question of slavery was dishonestly raised against you, you may, after you have been pronounced to be no slave, and after duly commencing an action for malicious prosecution or intentional injury, whichever path for revenge you choose, and after due

¹² [Blume] See C. 7.16.4.

¹³ [Blume] Whether it was peculium - special property - of a slave, of the decedent's own property to dispose of as he wished.

¹⁴ [Blume] See law 11 of this title, and C. 4.19.10.

settlement of the preliminary matters therein, demand a decision against her, and you may also, if a decision in favor of liberty has been rendered, demand restitution of the property which you can prove was taken from you.¹⁵

Subscribed October 11 (294).

7.16.32. The same to Athenaides.

The signature of a son attached to the document evidencing manumission by the master cannot add, or, if omitted, cannot detract from the liberty granted.¹⁶

Given November 5 (294).

7.16.33. The same to Melitiana.

Although your master manumitted you, upon receiving money therefor, the liberty once granted could not be rescinded.

Subscribed November 10 (294).

Note.

The statement is too broad. A freedman might be again reduced to slavery if he was ungrateful. C. 6.7.2. That could not, however, be done by one who freed the slave pursuant to a duty, rather than for a consideration. C. 6.7.1.

7.16.34. The same to Hermiona.

A female slave is not made free by reason of concubinage.

Given November 13 (294).

7.16.35. The same to Atellius.

The question of servitude cannot any the less be raised against a person because he, as guardian, is said to have managed the property of a minor under the age of puberty.

Given at Sirmium December 5 (294).

7.16.36. The same to Theodora.

A mistress who makes an agreement with a female slave that the latter should be free after a certain time of service, need not comply with the agreement.¹⁷ And just as that is true, so, on the contrary, if it is proven a woman and her sons are free and she agreed to put them into your service, she is not compelled to comply with the agreement.¹⁸

294.

¹⁵ [Blume] See Buckland 663, 665; C. 9.35.9; D. 40.12.39.1. It was intentional wrong (injuria) to call a free man a slave.

¹⁶ [Blume] The practice in Greek law was for the heir to sign the documents. Hence the question arose whether that was necessary also under Roman law. Buckland, Slavery, 453, note 5; Mitteis, R.R.u.V.R., 373.

¹⁷ [Blume] See note to C. 7.14.8.

¹⁸ [Blume] See C. 2.4.26, - a similar law.

7.16.37. The same to Olympius.

If you sold your free son to your son-in-law, the latter, who is connected by such close ties, cannot pretend ignorance of the son's status, and neither participant of the crime can accuse the other.¹⁹

294.

7.16.38. The same to Philoscrapis.

The question of your status can not any the less be raised against you in the name of the city because when you were appointed harbormaster (limenarcha) no one opposed you.

Given at Nicomedia December 17 (294).

7.16.39. The same to Euty chius.

It is clear that free persons posing as slaves cannot change their status.

Subscribed at Sirmium December 27 (294).

7.16.40. A copy of the sacred letter to Verinus.

If a case involving freedom either by reason of manumission or free birth arises, there is nothing to hinder, according to our edict, the full investigation of it and the rendition of a judgment according to the rule of justice even in the absence of one of the parties.

7.16.41. Emperors Constantine and Licinius to Titianus, President of Cappadocia.

We order that all letters of the female plaintiff which she addressed to Aelius as chief magistrate (principalis), shall be null and void and considered of no effect, and inquiry must be made whether the same Aelius is free-born. Nor shall it be an objection to the woman that she wrote to him as decurion and chief-magistrate, or that the latter pretended to be decurion or chief-magistrate, especially since not alone the acknowledgment of witnesses and of his relatives acknowledges the servile condition, but it appeared by the words the same Aelius in another suit, that he is of servile status.

Note.

Subsequent to the writing of her letters, the woman evidently claimed that Aelius was her slave, and brought an action to test that question. Her letters, addressed to Aelius, were produced against her, but the rescript states that these letters were no evidence to show that Aelius was not the plaintiff's slave as claimed.

7.16.42. Emperor Constantine to Maximus, City Prefect.

It is agreed that children have the status of their mother who gave them birth. The question of the status of children born before commencement of suit (against the mother) must be raised in a suit directly against them. Only those who are born during the pendency of the action against her enjoy the fortune of their mother and will either be delivered to their rightful masters or have their liberty along with their progenitrix.

Given at Sirmium June 12 (322).

¹⁹ [Blume] See not to C. 7.16.5.