

Book VII.
Title XIX.

Concerning the order of the trial of issues.¹
(De ordine cognitionion.)

Bas. 48.22.

7.19.1. Emperor Alexander to Vitalius.

Since you yourself acknowledge that a controversy as to your status has been raised, how can you ask, before your status has become clear, that you should be given permission to make an accusation against the party who contends that you are his slave? Inasmuch as you rely, as you say, on the status of your progenitors, go before the president in the regular way, who, having first tried the cause involving liberty, will not doubt, in accordance with the result of that trial, to decide in reference to the accusation. Promulgated (223).

Note.

A slave had no right to bring an action, civil or criminal. Hence where a man's status was questioned, that had to be determined first, and if he was a slave, he would not be permitted to bring an accusation.

7.19.2. The same to Gallia.

If there is a controversy as to liberty and as to an inheritance, the issue as to liberty should be tried first. If an action for an inheritance is brought (and a defense is interposed that the plaintiff is a slave, a case involving liberty should be formulated, but the plaintiff, who is in enjoyment of liberty, wins a sufficient victory, if he receives a favorable decision as to the inheritance. Promulgated August 9 (223).

Note.

Buckland, Roman Law of Slavery 672, says that this law is obscure and possibly corrupt; that it may mean that the court will decide the issue of status incidentally. A decision giving the inheritance to the plaintiff necessarily, at least in the ordinary case, involved the decision that the plaintiff was free. He could not sue for it at all unless he was free. Planck, Mehrheit 222, n. 8, says that it sufficed to determine that the claimed slave was in possession of liberty, but that if he was, he had to give it up if in the liberali causa, thereafter to be tried, he was found to be a slave. See D. 40.12.25.2.

7.19.3. The same to Valerianus.

If an accusation of a crime is brought against a woman whom you state to be free-born (which, however, is in doubt), the issue as to her liberty should be tried first, in regular order, and the president must grant a hearing therefore, since, if an offense is shown, it is necessary to know first of all whether to try it has having been committed by a free and free-born person, or by a female slave. Promulgated November 27 (223).

¹ [Blume] on the subject generally, C. 3.8.

Note.

A discrimination was made in the method of punishing for crime. This subject is fully dealt with in headnote to C. 9.47.

7.19.4. Emperor Gordian to Menedemus.

If your status (as a free man) is questioned (in court), and the suit as your liberty is terminated, (then), if the decision is in your favor, you are not forbidden to sue the man who claimed to be your master (for calling your status in question). If, however, he opposes to your accusation (for defamation of your status), the fact that you are not his, but another's slave, the suit as to your liberty fails, of course, but an examination of the matter by the judge will show whether the accusation should, on account of the status of the person, be brought into court, or dismissed.²
Given November 22 (239).

7.19.5. Emperors Diocletian and Maximian and the Caesars to Alpheus.

Since you state that you want to sue for what is due you, but that the question of your status has been raised against you, it is customary, after arranging the usual preliminaries - if the law permits that³ - to first try the issue of liberty before the president and to order payment to you of the amount due (only) if you have been pronounced free, or not to be a slave, since your debtor should not be compelled to pay, while it is uncertain whether the debt is due you as a free man, or to you master - in case the decision should pronounce you to be slave.
Subscribed at Beracium April 30 (293).

7.19.6. The same to Alexandria.

Since you state that your things were robbed or removed by parties whom you contend to be your slaves, while these parties claim that they are free, the issue as to their liberty must be made up first, before the president of the province, and the issue as to damages and the removal of the goods only later, so that, if these parties are pronounced free, or not to be slaves, judgment may, after proof, be rendered for damage done and for things taken; but if they are not so pronounced, the investigation as to the removal of the property falls to the ground.⁴
Given at Sirmium December 30 (293).

7.19.7. Emperor Constantine to Bassus.

If a suit as to status is commenced and the party claimed to be a slave asserts that the party claiming to be his master has stolen something from him, it should be first considered whether, the person in servitude thinks of claiming liberty, or whether he is in enjoyment of liberty and is claimed into servitude. 1. If it is evident that he is in servitude, and claims liberty, the question as to his liberty should be decided first, and the question as to the property taken should be investigated only, if required. 2. If, on the

² [Blume] The law fully discussed by Planck, Mehrheit etc., 59. If the man was a slave, he had no standing in court.

³ [Blume] The party might be one who is forbidden to raise the question.

⁴ [Blume] Because no suit between master and slave could be brought.

other hand, something has been taken from a man, who (though in enjoyment of liberty) is claimed into servitude, everything that has been taken from such man will be returned to him only if he promises, with sufficient sureties, that the property will be kept safely.

3. If he cannot give sureties, the property in controversy must be sequestered till the dispute is settled; provided, however, that, if there is no other way, the expenses of the litigation and the support of the man, in an amount equitably fixed by the judge, must be paid therefrom. 4. But if things are taken from a man, when no question as to his status has yet been raised, and the property has been ordered returned, but the defeated party then raises the question as to status, so as to escape satisfying the judgment, it will be necessary to (first) restore the property without receiving any surety, and thereafter try the question as to liberty according to law.

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