

Book VII.
Title VII.

Concerning a manumitted slave owned in common.
(De servo communi manumisso.)

Bas. 48.14.4.

7.7.1. Emperor Justinian to Julianus, Praetorian Prefect.

A great dispute arose among the ancient authorities of law as to slaves owned in common, as to their manumission, and when the portion of the person (who alone, of the owners in common) grants liberty, accrues to another owner (without effecting manumission), and when not, and particularly as to soldiers who grant liberty in such cases. 1. And in the books of Marcian is found a constitution of the divine Severus by which that emperor provided that it was necessary for an heir of a soldier (who was co-owner of a slave and manumitted him) to purchase the portion of the other co-owner and grant liberty to the slave. 1a. And another constitution of the Emperors Severus and Antoninus has been found by which the necessity is, in general terms, imposed on a partner to sell his portion (of the slave) to his co-partner, if liberty was granted to the slave (by the latter), although the partner received no share of the property of the deceased co-partner, the price to be fixed in the discretion of the praetor, according to what Ulpian says in his sixth book on trusts and Paulus in his third book on trusts, where, too, is reported what Sextus Caecilius, one of the founder of ancient law, stated, namely that a partner is compelled by the praetor to sell his portion, if a slave is freed, and it is clear that Marcellus, in his annotation of Julian's works, also states this. 1b. Finding these statements in the books of the ancient founders of law, and deciding such disputes, we ordain generally that there shall be no difference between slaves owned in common by soldiers and those owned by private persons, but where slaves are in any case owned in common, and one of them wants to manumit the slave in a lawful manner either by a gift among the living or by a last will, he may do this and the co-partner must sell his share which he owns in the slave, whether the half, the third, or any other portion; and if there are several partners, and one of them desires to grant liberty, all the others must sell their portion which they own in the slave to the co-owner who desires to grant such liberty, or to his heir, if a deceased co-owner, about to die, expressed that wish, although the slave himself is made the heir. A co-owner who has (thus) purchased the other shares, or his heirs, must grant liberty. 2. If one or more co-owners refuse to receive the price, the one who desires to grant liberty may tender it, through public officials, and deposit it, sealed, in a sacred building, and he has, in that manner, power to liberate the slave who thereupon shall have complete freedom, enjoy Roman citizenship and fear nothing from the other co-owners. For the latter may blame themselves if they delay in accepting the price, which they might have had (when it was offered to them). 3. And that no doubt may exist as to peculium - the special property - of the slave, we order that it shall belong to all the partners in proportion to their ownership; giving permission to the party who bequeaths such liberty upon his death to give his share of such special property to the slave. The rights of patrons regularly belong without question to the party who grants the liberty. 4. If the slave was engaged in managing accounts, then, in order that these may

not be lost and at the same time liberty be not delayed, the president of the province or a competent judge shall fix a time within which he shall be free, provided an account has been rendered and the amounts shown to be due thereby have been paid. 5. In order, moreover, that the price of a slave be not left uncertain and that it may be definitely known, we ordain that slaves, male or female, shall, if without a trade, be valued at 20 solidi,¹ provided that those who have only reached their tenth year shall only be valued at ten solidi; if they, male or female, have learned a trade, they shall, except in case of notaries and physicians, be valued at 30 solidi. A male or female notary shall be valued at 50 solidi; a male or female physician at 60 solidi. Eunuchs, owned in common, shall, if older than ten years and without a trade, be valued at 50 solidi; if they have a trade at 70 solidi; if less than ten years old, at not more than 30 solidi. 5a. And co-owners upon receiving their proper proportion will be compelled by the proper judge to grant liberty. 6. Moreover, if one of the co-owners wants to give or bequeath liberty to a slave and pay the price, and another or others of the co-owners wants to do the same, the one who first undertakes such act of liberality shall have the preference.² 6a. If they all offer to do so only by pretence, the proper judge will compel them all to grant liberty without receiving the price. All who grant freedom shall have the special property (peculium) of the slave, in proportion to their ownership, but the rights of patron (in such case) shall, according to the nature thereof, be enjoyed equally by all. The right of accrual (accretion)³, which the ancient laws introduced in connection with the manumission of slaves owned in common, shall no longer exist and have no further application in the future.
Given August 1 (530).

Note.

A man cannot be partly free and partly slave. But an owner of half cannot free the other half. Hence, under the ancient law, if a co-owner purported to free the slave, the manumission did not take effect. The act was not always void; if the purported manumission was formal, i.e. by the rod or by testament, the effect was simply to vest the share of the freeing owner in the other owner by way of accrual. Buckland, Roman Law of Slavery 575. The term co-owner herein used is treated as the equivalent of "partner" or "co-partner."

7.7.2. The same to the same.

Since it was accepted by all jurists that a slave owned in common partially belonged and partially did not belong to each owner, and that hence the slave could be honored by and given a legacy, as well as be himself bequeathed to another, the following question arose: Two or more owners had a slave in common but one of them bequeathed the part owned by him to the slave himself. This having given an occasion for doubt, a mighty dispute arose among the ancients. 2. We have again and again examined into the intent (involved in such a legacy) and think that it may be construed in two ways: The testator who left this legacy either thought that the slave could be made free in part, or, if he did not think that, he, through affection for his co-owner, wanted

¹ [Blume] The prices herein fixed as maximum and not as absolute prices. Note Bas. 48.14.4; Buckland, Roman Law of Slavery 577.

² [Blume] The advantage gained thereby consisted in the rights of a patron.

³ [Blume] As to such right see note (a), supra.

him to have such portion. He did not, in any event, want his heirs to have the slave, as it is clear that he was effectually severed from the testator's other property. Sponsors of liberty as we are, we, in weighing the matter, interpret the ambiguous wish of the testator to mean that he wanted to give the slave liberty as to his portion. 3. And since we have already decided what should be done in case of manumission of slaves owned in common, cases like the present shall be governed according to the tenor of that law. Let the slave, therefore, be free as to the portion of the testator, according to the latter's wish, the price of other portions shall, according to the tenor of the aforesaid law, be paid by the heir to the co-owners, and if they refuse to receive it, it shall be tendered, sealed and deposited at their risk, since it is the imperial duty to prefer a humane interpretation to one that is harsh.

Given at Constantinople November 17 (530).