THE DIGEST OR PANDECTS.

BOOK XL.

TITLE I.

CONCERNING MANUMISSIONS.

1. *Ulpianus, On Sabinus, Book VI.*

It has been decided that anyone who is born on the *Kalends* of January can manumit his slave after the sixth hour of the night preceding the *Kalends,* as having, at that time, completed his twentieth year. For anyone more than twenty years old is permitted to manumit a slave, but a minor under that age is forbidden to do so. Hence, he is not considered under the age of twenty, who is in the last day of his twentieth year.

2. *The Same, On Sabinus, Book XVII.*

If an heir should manumit a slave who has been bequeathed, while the legatee is deliberating whether he will accept him or not, it is settled that the slave will be free if the legatee should finally conclude to reject the bequest.

3. *Paulus, On the Edict, Book XXXIX.*

Where a slave is given by way of pledge, he cannot be manumitted, even if the debtor is wealthy.

4. *Ulpianus, Disputations, Book VI.*

An Epistle of the Divine Brothers, addressed to Urbius Maximus, sets forth that a slave purchased with his own money is in a position to demand his freedom.

(1) In the first place, such a slave cannot properly be considered to have been purchased with his own money, as a slave cannot have money of his own. But if we close our eyes, he must be held to have been bought with his own money, since he was not purchased with that of him who redeemed him from slavery. Hence, whether the money came from the *peculium* which belongs to the vendor, or from some fortunate acquisition by the slave; or was provided by the kindness or liberality of a friend; or whether someone advanced it, or promised it, or caused himself to be delegated; or whether the slave was ransomed by his undertaking to pay the debt, he must be considered to have been purchased with his own money. For it is sufficient if he who has lent his name to the purchase did not spend any of his own money.

(2) If a slave, purchased by someone who is unknown to him, should afterwards tender him the price for which he was sold, it must be said that he should not be heard, for this ought to be done in the beginning in order that a fictitious sale may be made, and a confidential agreement entered into between the purchaser and the slave.

(3) Therefore, if this was not done in the first place to enable the slave to be ransomed with his own money, or if the slave did not give the money with this intention, he will not be entitled to his freedom.

(4) Hence, it may be asked, when this was the intention in the beginning, and the purchaser hastened to pay the money, and he should afterwards be reimbursed, can the slave avail himself of the benefit of the Imperial Constitution ? I think that he can do so.

(5) Therefore, if the purchaser should advance the money to the slave, and the latter repays it to him, he can acquire his freedom.

(6) Whether it was or was not mentioned in the contract (for instance, in the case of a sale), that the slave would be manumitted, the better opinion is that he will be entitled to his freedom.

(7) Hence, if anyone should purchase a slave with the money of the latter, but without agreeing to manumit him, the humane opinion of those who have treated the question in that the slave should obtain his freedom, as the purchaser was merely fictitious and lent the use of his name, and besides, he has lost nothing.

(8) It, however, makes no difference by whom a slave purchased with his own money is acquired, whether by the Treasury, by a municipality, or by a private individual, nor what may be the sex of the purchaser. If the vendor is under twenty years of age, the constitution will apply. Nor is the age of the purchaser taken into consideration, for, even if he is a minor, it is only just that he should keep his word, as, by doing so, he will not sustain any injury.

The same rule is applicable to the purchaser who is a slave.

(9) The constitution does not apply to slaves who are absolutely incapable of being granted their freedom; as, for example, where a slave is to be sent out of the country, or has been sold or bequeathed by will under the condition that he.shall never be manumitted.

(10) When a slave is ransomed with his own money, even though he did not pay the entire price, it must be said that he is entitled to his freedom if he contributed his labor to make up what was due, or if he afterwards obtained property by his industry.

(11) If he should purchase a part of himself with his own money, and the other part belonged to him already, the constitution will not apply, any more than if, having the ownership of himself, he only purchased the usufruct of the same.

(12) But what if he owned the usufruct of himself, and he purchased the ownership? In this case, he is in such a position that the Imperial Constitution will apply.

(13) Where two persons purchase a slave, one of them with his own money, and the other with the money of the slave, it must be held that the constitution will not be applicable, unless he who purchased him with his own money is prepared to manumit him.

(14) Where, however, anyone buys half of a slave, and acquires the other half by some profitable transaction, it must be said that there is ground for the application of the constitution.

5. Marcianus, Institutes, Book II.

If a slave should allege that he was purchased with his own money, he can appear in court against his master, whose good faith he impugns, and complain that he has not been manumitted by him; but he must do this at Rome, before the Urban Prefect, or in the provinces before the Governor, in accordance with the Sacred Constitutions of the Divine Brothers; under the penalty, however, of being condemned to the mines, if he should attempt this and not prove his case; unless his master prefers that he be restored to him, and then it should be decided that he will not be liable to a more severe penalty.

(1) Where, however, a slave is ordered to be free after having rendered his accounts, an arbiter between the slave and his master, that is to say, the heir, shall be appointed for the purpose of having the accounts rendered in his presence.

6. *Alfenus Varus, Digest, Book IV.*

A slave, having agreed to give a certain sum in order to obtain his freedom, paid it to his master, but the latter died before manumitting him, and ordered him to be free by his will, and also bequeathed him his *peculium.* The slave asked whether the money, which he had paid to his master in consideration of obtaining his freedom, should be refunded to him by the heirs of his patron, or not? The answer was that if, after the master had received the money, he kept an account of it as his own, it immediately ceased to form part of the *peculium*- of the slave; but if, in the meantime, before he manumitted him, he set the money aside, as having been paid by the slave, it should be considered to belong to his *peculium,* and the heirs must return

it to the manumitted slave.

7. *The Same, Digest, Book VII.*

Two sons under paternal control had, as part of the *'peculium* of each, separate slaves. One of them, during the lifetime of his father, manumitted a young slave who belonged to his *peculium.* The father, by his will, bequeathed to each son his own *peculium,* as a preferred legacy. The question arose whether the above-mentioned slave became the freedman of both of the sons, or only of the one by whom he had been manumitted? The answer was that if the father made his will before the son manumitted the slave, he would only become the freedman of that one, for the reason that he would be considered to have been bequeathed with the remainder of the *peculium.* If, however, the father had made his will afterwards, he would not be held to have intended to bequeath the slave who had been manumitted; and as he did not bequeath the said slave as a preferred legacy, after the death of the father he would be the slave of the two brothers.

8. *Marcianus, Institutes, Book XIII.*

Those who are reduced to slavery by way of penalty undoubtedly cannot manumit anyone, because they themselves are slaves.

(1) Nor can those who are accused of a capital crime manumit their slaves, as this has been decreed by the Senate.

(2) The Divine Pius stated in a Rescript addressed to Calpurnius, that freedom given to slaves by a person who has been convicted under the Cornelian Law, or who was aware that he would be convicted, will be of no force or effect.

(3) The Divine Hadrian stated in a Rescript that where slaves have been manumitted in order that their master might be released from liability for crime, they were not legally entitled to their freedom.

9. *Paulus, Rules.*

When a slave is sold under the condition that he shall not be manumitted, or is forbidden by will to be manumitted, or is forbidden to be manumitted by a prefect of the Governor on account of some offence which he has committed, he cannot obtain his freedom.

10. *Book II of the Six Books of the Imperial Decrees having Reference to Judicial Investigations.*

^lianus, a debtor of the Treasury, having many years before purchased a female slave named Evemeria under the condition that he should manumit her, did so. As the Agent of the Treasury did not find the property of the debtor sufficient to satisfy his creditors, he raised a question with reference to the status of Evemeria. It was decided that there was no ground for the exercise of the right of the Treasury, under which all the property of debtors is liable by the law of pledge, because the slave had been purchased under the condition of being manumitted, and if this had not been done, she would have 'been entitled to her freedom under the Constitution of the Divine Marcus.

11. *The Same, On the Edict, Book LXIV.*

An heir, by manumitting a slave who has been bequeathed under a condition, and does this while the condition is pending, does not render the slave free.

12. *The Same, On the Edict, Book L.*

A slave who has been guilty of kidnapping, and for whom his master has paid the penalty, is forbidden by the Favian Law to be manumitted within ten years; and in this case we do not consider the time when the will was made, but the date of the death of the testator.

13. *Pomponius, On Plautius, Book I.*

The slave of an insane person cannot be manumitted by a relative of the latter who has been appointed his curator, because the manumission of a slave is not included in the administration of the property. If, however, the insane person should owe the slave his freedom on account of a trust, Octavenus says that, in order to remove all doubt, the slave should be delivered by the curator to the person to whom he is to be transferred in order to be manumitted by him.

14. *Paulus, On Plautius, Book XVI.*

We cannot manumit a slave in the presence of one whose authority is equal to ours. A Pra?tor, however, can manumit a slave in the presence of a Consul.

(1) When the Emperor manumits a slave he does not touch him with a wand, but the slave who is manumitted becomes free by the mere expression of the Imperial will, in accordance with the law of Augustus.

15. *Marcellus, Digest, Book XXIII.*

There is no doubt that a slave can be manumitted *mortis causa.* You must not, however, understand if a slave is ordered to be free in this manner that he will not become so if his master should recover his health; for just as if he had been absolutely manumitted before the Praetor, when anyone thinks that he is about to die, and his death is expected, so, in this instance, freedom is granted during the last moments of the person who bestows the manumission, as his will is considered to continue to exist on account of the tacit condition of the death of the person manumitting the slave. The case is the same as if someone should deliver property under the condition that, if he dies, it shall belong to the person who receives it; since the property will not be alienated if the donor retains the same intention during his lifetime.

16. *Modestinus, Rules, Book I.*

If a son under twenty years of age manumits his slave with the consent of his father, he makes him the freedman of the latter; and proof of the manumission is unnecessary, on account of the consent of the father.

17. *The Same, Rules, Book VI.*

Slaves whom a son under paternal control acquires while in the army are not included in the property of the father, and the latter cannot manumit slaves of this kind.

18. *Gaius, On the Lex Julia et Papia, Book XII.* The vendor can manumit a slave whom he has agreed to sell, and the promisor one whom he has contracted to deliver.

19. *Papinianus, Questions, Book XIII.*

Where anyone has received a sum of money from another in consideration of manumitting his slave, the freedom of the latter can be extorted from him without his consent, although it is frequently the case that his own money is paid, and, above all, if his brother or his natural father furnished it; for the case is similar to one where a slave is redeemed with his own money.

20. *The Same, Opinions, Book X.*

It is superfluous for a minor of twenty years of age to prove the manumission of a slave, if he receives him for the purpose of manumitting him, after the promulgation of the Rescript of the Divine Marcus addressed to Aufidius Victorinus; for if he had not manumitted him, the slave would, nevertheless, obtain his freedom.

(1) The same rule of law does not apply where the grant of freedom is charged by a trust; for,

in this case, the donor must prove the fact, as the manumitted slave will not otherwise obtain his freedom.

(2) A certain man sold a female slave under the condition that she should be manumitted by the purchaser after the expiration of a year; and, if this was not done, it was agreed that the vendor should lay his hand upon her, or that the purchaser should pay *ten aurei.* The contract not having been observed, it was decided that the slave, nevertheless, became free in accordance with the terms of the aforesaid constitution; as, very frequently, laying on of the hand takes place for the purpose of giving assistance. Therefore the money cannot be recovered, as the benefit of the law was secured in accordance with the wishes of the vendor.

(3) At the time of the alienation of a slave, it was agreed that, having been transferred with the intention of granting him his freedom, he should be manumitted after the expiration of five years; and also that in the meantime he must pay a certain sum every month.

I gave it as my opinion that the said monthly payments did not form part of the condition under which he was liberated from bondage, but in order to show that his servitude was only temporary; for a slave who has been transferred in order to be free cannot, in every respect, be compared to one who is to be manumitted under a certain condition.

21. *The Same, Opinions, Book XIII,*

A husband who is solvent can manumit a dotal slave during the continuance of the marriage. If, however, he is not solvent, even though he may have no other liabilities, the slave will be prevented from obtaining his liberty, as the dowry is understood to be due as long as the marriage continues to exist.

22. *The Same, Definitions, Book II.*

A grandson can manumit a slave with the consent of a grandfather, as a son can do with the consent of his father; but the manumitted slave will become the freedman of the father, or the grandfather.

23. *The Same, Opinions, Book XV.*

Gaius Seius purchased Pamphila under the condition that she would be manumitted within a year; and, before that time had elapsed, Seius himself was judicially decided to be a slave.

I ask whether Pamphila was entitled to her freedom after a year had elapsed, in accordance with the condition of the sale. Paulus answered that the slave who had been purchased was acquired by the master of Seius, under the same condition subject to which she had been sold.

24. *Hermogenianus, Epitomes of Law, Book I.*

It is provided by the *Lex Junia Patronia* that where the decisions of Courts are conflicting, judgment must be rendered in favor of freedom.

(1) It has frequently been established by Imperial Decrees that, where witnesses for and against freedom appear in equal numbers, judgment must be rendered in favor of freedom.

25. *Gaius, On Manumissions, Book I.*

The law provides that even infants are entitled to freedom.

26. *Javolenus, On the Last Works of Labeo, Book IV.*

Labeo holds that a slave who is insane can be manumitted and obtain his freedom by every proceeding known to the law.

TITLE II.

CONCERNING MANUMISSIONS BEFORE A MAGISTRATE.

1. *Pomponius, On Sabinus, Book I.*

It is settled that a ward can, with the authority of his guardian in the presence of the Prsetor, manumit his slave as well as before the said guardian acting as Praetor.

2. *Ulpianus, On Sabinus, Book XVIII.*

Where a minor of twenty years of age is the usufructuary of a slave, can he consent to his obtaining his freedom? I think that the slave can obtain it, if he gives his consent.

3. *The Same, Disputations, Book IV*.

If the heir manumits a slave who has been bequeathed, and the legatee afterwards rejects the legacy, the grant of freedom has a retroactive effect. The same rule applies where a slave is absolutely bequeathed to two persons, and one of them afterwards repudiates the manumission made by the other; for, in this instance also, the grant of freedom has a retroactive effect.

4. *Julianus, Digest, Book XLII.*

If a father should permit his son to manumit his slave, and, in the meantime, should die intestate, and his son, not being aware that his father was dead, should grant the slave his freedom, the slave will become free through the favor conceded to liberty, as it does not appear that the master changed his mind.

If, however, the father had, by means of a messenger, forbidden his son to liberate the slave, and the son did not know this, and, before ascertaining it, he should manumit the slave, the latter will not become free; for in order that a slave may obtain his freedom through the manumission of a son, the intention of the father must continue to exist; since, if he should change his mind, it would not be true that the son had manumitted the slave with his father's consent.

(1) Whenever a master manumits his slave, even though he may think he belongs to another, it is, nevertheless, true that the slave is manumitted with the consent of his master, and therefore he will become free.

And, on the other hand, if Stichus does not think that he belongs to the person who manumits him, he will, nevertheless, obtain his freedom, for there is more in the fact itself than in opinion; and, in both cases, it is true that Stichus was manumitted with the consent of his master.

The same rule of law will apply where both the master and the slave are mistaken, and one of them thinks that he is not the master, and the other believes that he is not his slave.

(2) A minor of twenty years of age, who is a master, cannot legally manumit without appearing before the proper authority.

Paulus says that if a minor of twenty years of age permits a slave over whom he has the right of pledge to be manumitted, the manumission is legal; because he is not understood to have actually liberated him, but only not to have interfered with his manumission.

5. *Julianus, In the Same Book.*

The question has often been asked whether a magistrate appointed for the purpose of examining manumissions can, himself, manumit a slave. I remember that Javolenus, my preceptor, manumitted his slaves in Africa and in Syria, when he was a member of the board of magistrates ; and I followed his example, and liberated some of my slaves in my tribunal, both while I was Praetor and Consul; and I advised certain other Praetors and Consuls to do the same.

6. *The Same, On Urseius Ferox, Book II.*

There is no doubt that a slave held in common by minors of twenty years of age can be

manumitted before the proper tribunal; even though one of the owners may not assent to the proceedings.

7. *Gaius, Diurnal or Golden Matters, Book I.*

It is not absolutely necessary for the manumission to take place in the tribunal, and therefore slaves are frequently manumitted while in transit, when the Praetor, the Proconsul, the Deputy, or the Emperor confers this benefit upon them while on the way to the bath, to the tribunal, or to the public games.

8. *Ulpianus, On the Edict, Book V.*

When I was in the country with a Praetor, I permitted a slave to be manumitted before him, although no lictor was present.

9. *Marcianus, Institutes, Book XIII.*

Just cause for manumission exists, where a slave has saved his master from the danger of losing his life, or from disgrace.

(1) It should be remembered that freedom must be granted after it has once been received, no matter what reason may be alleged against it afterwards. For the Divine Pius stated in a Rescript that where a case has once been proved it cannot be revived, provided the person is not permitted to manumit a slave belonging to another; for anything that is alleged can be contradicted by evidence, but where it has once been proved, it cannot be reconsidered.

10. *The Same, Rules, Book HI.*

The son of a deaf or dumb father can manumit a slave by his order. The son of an insane person, however, cannot do so.

11. *Ulpianus, On the Duties of Proconsul, Book VI.*

When a minor under the age of twenty years manumits a slave, the manumission is ordinarily accepted, where the person who manumits is the natural son or daughter, brother or sister of the slave;

12. *The Same, On the Lex JElia Sentia, Book II.*

Or if they are related to him by blood (for such relationship is taken into consideration).

13. *The Same, On the Duties of Proconsul.*

Or if he or she is the foster-brother, instructor, teacher, or nurse of the minor, or the son or daughter of the person above mentioned, or his pupil, or the attendant who carries his books, or if a slave is manumitted in order to become an agent; provided, in this instance, that he is at least eighteen years of age; and it is also required that the minor who manumits him shall have more than one slave.

Likewise, if a virgin or a woman is manumitted for the purpose of marriage, if an oath is exacted from the master in the first place that she will be married within six months, as this was decreed by the Senate.

14. *Marcianus, Rules, Book IV.*

It is more usual for women to manumit their foster-children, but this is also permitted in the case of men; and it is sufficient for one to be allowed to manumit a slave in whose support he has a more than ordinary interest.

(1) There are some authorities who think that women can manumit a slave for the purpose of marrying him, but this should be limited to a case where he was bequeathed to the woman who has been his fellow-slave.

(2) If a man, who is impotent, wishes to manumit a female slave for the purpose of marrying

her, he can do so. This rule, howevery does not apply to one who has been castrated.

15. *Paulus, On the Lex Mlia Sentia, Book I. }*

A minor of twenty years of age should also be permitted to manumit a slave for the purpose of complying with a condition; for instance, where anyone lias been appointed an heir under the condition of liberating a slave.

(1) Many just causes for manumission may exist with reference to time past; for example, where the slave has assisted his master in battle, has protected him against robbers, has cured him when he was ill, or has revealed treachery with which he was threatened, and in other instances which it would take too long to enumerate; as there are a great many other reasons for which it would be honorable for freedom to be granted by a decree, and which should be taken into a consideration by the magistrate before whom the matter is brought.

(2) Several slaves can be manumitted at the same time in the presence of a magistrate, and the presence of the slaves is sufficient to enable several to be manumitted.

(3) A master who is absent can state the reason for manumissions by his attorney.

(4) If two masters manumit the same female slave for the purpose of marrying her, the reason should not be accepted.

(5) Those persons who have their domicile in Italy, or in some other province, can manumit their slaves before the Governor of another province, after having made application to the proper tribunal.

16. *Ulpianus, On the Lex ^Elia Sentia, Book II.*

The judges, when hearing the reasons for manumissions, must remember that these must be based, not on dissoluteness, but on affection; for the *Lex &lia Sentia* is understood to grant lawful freedom, not for the purpose of pleasure, but on account of sincere attachment.

(1) If anyone should transfer a slave to a minor of twenty-one years of age, either in consideration of a price paid, or as a donation, under the condition that he shall liberate him, he can offer this as a just reason for manumission, stating the condition which had been imposed, and can then grant the slave his freedom. He, however, will be required to show that this was the agreement between the parties, so that the matter may be decided in accordance with the condition of the donation, or with the affection of the person who gave the slave to be manumitted.

17. *Paulus, On the Edict, Book L.*

We can manumit a slave in the presence of the Proconsul after he has left the City.

(1) We can also manumit a slave in the presence of his deputy.

18. *The Same, On Plautius, Book XVI.*

A slave can be manumitted before a son under paternal control, who is acting as a magistrate, although he himself, being subject to paternal authority, has, as a private individual, no right to manumit a slave.

(1) A Praetor cannot manumit a slave in the presence of his colleague.

(2) A son can also manumit a slave in the presence of his father, with the consent of the latter.

19. *Celsus, Digest, Book XXIX.*

If a minor of twenty years of age manumits a female slave who is pregnant, before the proper tribunal, for the purpose of marrying her, and, in the meantime, she should have a child, the condition of the child whom she brought forth, that is to say, whether it is a slave or a freeman, shall remain undetermined.

20. *Ulpianus, On the Duties of Consul, Book II.*

If a minor of twenty-five years of age is charged by the terms of a trust to manumit a slave, he should be permitted to do so immediately, unless he was charged to manumit his own slave. For, in this instance, the amount of the benefit, which he will obtain from the will of the person who made the request, must be compared with the value of the slave whom he was requested to manumit.

(1) Where, however, a slave was donated to the minor under the condition that he should be manumitted, he ought to be allowed to manumit him, in order to prevent the Constitution of the Divine Marcus from becoming applicable during the delay granted by the Consul.

(2) Where anyone wishes to manumit a female slave in order to marry her, and he can, without dishonor to his rank, marry a woman of this kind, he should be permitted to do so.

(3) Marcellus also says that if a woman desires to emancipate her natural son, or any of the other persons previously mentioned, she should be allowed to do so.

(4) A Consul can manumit a slave before himself, if he should happen to be a minor of twenty years of age.

21. *Modestinus, Pandects, Book I.*

I can, in accordance with the Constitution of the Divine Augustus, manumit a slave in the presence of the Prefect of Egypt.

22. *Paulus, Questions, Book XII.*

A father sent a letter from a province to his son, whom he knew to be at Rome, by which he permitted him to liberate before a magistrate any slave whom he might select out of those whom he had with him for his personal service, and the son subsequently manumitted Stichus in the presence of the Praetor. I ask whether he rendered him free? The answer was, why should we not believe that the father could authorize his son to manumit any slaves which he had for his personal service? For he only granted his son the privilege of making a choice, and, as for the rest, he himself manumitted the slave.

23. *Hermogenianus, Epitomes of Laiv, Book I.*

At the present time, it is usual for manumission to be made by means of the lictors, the master remaining silent, and although solemn words are not spoken, they are considered to be spoken.

24. *Paulus, On Neratius, Book II.*

A minor who is no longer an infant can legally manumit a slave before the proper tribunal.

Paulus: Provided his guardian authorizes him to do so, and he liberates him in such a way that the *peculium* does not follow the slave.

25. *Gaius, On Manumissions, Book I.*

If a minor manumits a slave for the purpose of making him his guardian: Fufidius says that this should be approved. Nerva, the son,

holds the contrary opinion, which is correct. For it would be the height of absurdity for the judgment of a minor to be held to be sufficiently good to enable him to select a guardian, when in every other transaction he is controlled by the authority of his guardian, because his judgment is weak.

TITLE III.

CONCERNING THE MANUMISSION OF SLAVES BELONGING TO A COMMUNITY.

1. *Ulpianus, On Sabinus, Book V.*

The Divine Marcus granted the power of manumission to all corporate bodies that have the right to assemble.

2. *The Same, On Sabinus, Book XIV.*

For this reason, such bodies can claim the estates of their freedmen to which they are legally entitled.

3. *Papinianus, Opinions, Book XIV.*

A slave belonging to a municipality, who has been lawfully emancipated, will retain his *peculium,* if he has not been previously deprived of it; and therefore his debtor is released from liability by paying him.

TITLE IV.

CONCERNING TESTAMENTARY MANUMISSIONS.

1. *Ulpianus, On Sabinus, Book IV.*

Where freedom is granted to a slave several times in a will, that disposition will prevail by which he can best obtain his freedom.

2. *The Same, On Sabinus, Book V.*

If anyone should appoint an heir as follows, "Let Titius be my heir, and if Titius should not be my heir, let Stichus be my heir; let Stichus be free," Aristo says that Stichus will not be free, if Titius becomes the heir.

It seems to me that he can be held to be free, as he does not receive his liberty in two different degrees, but it is granted to him twice; which is our practice.

3. *Pomponius, On Sabinus, Book I.*

A minor of twenty years of age, who is in the army, is not permitted to manumit his slave by will.

4. *The Same, On Sabinus, Book II.*

If anyone should make the following provision in his will, namely, "Let Stichus be free, and let my heir pay him ten *aurei,"* there is no doubt that the money will be due him, even if the head of the household should manumit him during his lifetime.

(1) The same rule will apply if the testator should say: "Let Stichus be free, either immediately or after a certain time; and when he becomes free, let my heir pay him ten *aurei."*

(2) It has been decided that if a legacy of freedom is bequeathed as follows, "Let my heir pay ten *aurei* to such-and-such a slave, if I grant him his freedom in the presence of the magistrate," although, strictly speaking, this is different from a testamentary manumission, still, according to the dictates of humanity, the legacy will be valid if the master, during his lifetime, should emancipate the slave.

5. *The Same, On Sabinus, Book III.*

Those provisions which are the least burdensome should be considered where freedom is granted by a will, and where there are several provisions of this kind, that which is the least burdensome is understood to be the one the most advantageous to the person manumitted. Where, however, freedom is granted by a trust, the last clause written must be taken into account.

6. *Ulpianus, On Sabinus, Book XVIII.*

If the master of a slave appoints as his heir the usufructuary of said slave, and freedom is

granted to the latter conditionally, as the slave in the meantime belongs to the heir, the usufruct will become extinguished on account of the merger which results, and if the condition should be fulfilled, the slave .will obtain his freedom absolutely.

7. *The Same, On Sabinus, Book XIX.*

Neratius says, that when freedom is granted to a slave as follows, "If I should have no child at the time of my death, let Stichus be free," he will be prevented from obtaining his freedom in case a posthumous child is born. But, while the birth is in anticipation, shall we say that the slave remains in servitude; or shall we hold that he will become a freedman by retroactive effect, if no child should be born? I think that the latter opinion should be adopted.

8. *Pomponius, On Sabinus, Book V.*

Where the following provision was inserted into a will, "Let Stichus be free if he has transacted my business properly," the degree of diligence displayed by Stichus must be considered with reference to its benefit to the master, and not to the slave; and he must also manifest his good faith by paying over any balance which may remain in his hands. ,

9. *Ulpianus, On Sabinus, Book XXIV.*

Where a slave was bequeathed in order to be manumitted and, if he should not be manumitted, he was directed to be free, and a legacy was bequeathed to him, it has been frequently decided that he is entitled to his freedom, and that the legacy is due to him.

(1) Where it is stated in a constitution that a slave cannot be manumitted who is forbidden by will to be set free, I think that this only refers to slaves belonging to the testator or to his heirs, for it cannot apply to a slave belonging to another.

10. *Paulus, On Sabinus, Book IV.*

Where the *peculium* of a slave is bequeathed as a preferred legacy, and a sub-slave, who forms part of the *peculium,* is directed to be free, it is established that he will become free, for there is a great deal of difference between genus and species. For it is settled that the species can be removed from the genus, as it consists of the *peculium* which was bequeathed, and the sub-slave who was manumitted.

(1) If a slave who is bequeathed is ordered to be liberated from servitude he will become free; but where, in the first place, he is considered to be free, and he is afterwards bequeathed, if it is evident that the intention of the testator was that he should be deprived of his liberty, and as it is at present held that he will be deprived of it, I think that he will form part of the legacy. If, however, the matter is in doubt, then the more favorable opinion should prevail, and he will become free.

11. *Pomponius, On Sabinus, Book VII.*

If, after a slave has been bequeathed, his freedom has been left him under a trust, the heir or the legatee will be compelled to manumit him.

(1) "If Stichus and Pamphilus, pay ten *aurei,* let them be free;" one of them can become free by paying five *aurei,* even though the other may not pay anything.

(2) Where a slave is ordered to be free by a will, he immediately becomes free just as soon as one of several appointed heirs enters upon the estate.

12. *Ulpianus, On the Edict, Book L.*

Where anyone leaves a slave his freedom under the condition of his taking an oath, there will be no ground for the application of the Praetorian Edict for the purpose of remitting the oath; and this is reasonable, for if anyone should remit the condition upon which the freedom of the slave depends, he will prevent the freedom itself from taking effect, as the slave cannot obtain

it except by complying with the condition.

(1) Hence, if anyone should bequeath a slave a legacy with his freedom, the latter will not be entitled to the legacy, unless he complies with the condition of taking the oath.

(2) If, however, he should receive his freedom absolutely, and the legacy was granted under the condition of his taking the oath, Julianus, in the Thirty-first Book of the Digest, thinks that the condition of taking the oath should be remitted.

(3) Moreover, I hold that the same rule will apply where the condition was imposed upon the grant of freedom, and the testator, during his lifetime, manumitted the slave; for, in this instance, the condition on which the legacy depended is remitted.

13. *The Same, Disputations, Book V.*

Where freedom was granted to two slaves under the condition that they should build a house, or erect a statue, the condition cannot be divided between them. Doubt can only arise where one of them, having complied with the condition, appears to have carried out the wishes of the testator, and therefore will be entitled to his freedom, which is the better opinion; unless the testator had expressed himself otherwise.

One of the slaves, by doing what he was directed to do, complied with the condition so far as he himself was concerned, and while he did not do so with respect to the other, still the condition will no longer bind the latter, for he cannot comply with it any further after it has once been fulfilled.

(1) The same question can also arise where a legacy is bequeathed to two artisans or painters, under the condition that they shall paint a picture, or build a ship; for the intention of the testator must be considered, and if he imposed the condition of the performance of one upon the other, the result will be that when one of them does not do anything, the condition will not be fulfilled, although the other may be ready to do his share.

If, however, it can be shown that the testator would have been content, if whatever he had written or stated was only done by one of them, the matter will be readily disposed of; for one of them will, by his act, benefit either himself and his associate, or himself alone, according as it appears to have been the intention of the testator.

(2) This question can also be discussed in the case where a testator grants freedom to two slaves, if they render their accounts. For Julianus asks, if one of them is ready to render his account, and the other is not, whether the former will be prevented from doing so by the latter. And he very properly says that if their accounts were kept separately, it will be sufficient for the one who renders his to obtain his freedom; but if both of them kept their accounts together, one of them shall not be considered to have complied with the condition, unless he pays the balance remaining in the hands of the other.

We must understand this to mean that the books containing the accounts shall also be given up.

(3) If, however, a female slave, together with her children, is directed to be liberated, even if she has no children, she will, nevertheless, become free; or if she should have any, and they are not capable of obtaining their freedom, the result will be the same.

This rule will also apply even though the slave herself cannot become free, as her children will still obtain their liberty; for the clause, "together with her children," does not impose a condition, unless you suggest that the intention of the testator was otherwise; since, under such circumstances, these words must be understood to establish a condition. But that they do not impose a condition is proved by the Edict of the Prsetor by which it is provided *as* follows: "I will order the mother of the unborn child and her children to be placed in possession of the estate." For it is settled that even if there are no children, the mother of the

unborn child should still be placed in possession of the estate.

14. *The Same, Disputations, Book Vill.*

When a slave is granted his freedom absolutely, and is appointed an heir under a condition, it has been decided that even if the condition is not complied with, he will be entitled to his freedom.

15. *Julianus, Digest, Book XXXIII.*

"I give and bequeath Stichus to Sempronius; if Sempronius should not manumit Stichus within a year, let the said Stichus be free." The question arose, what is the rule in this case? The answer was that where freedom is granted as follows, namely, "If Sempronius should not manumit Stichus, let Stichus be free," and Sempronius does not manumit him, he will have no right to Stichus, but he will be free.

16. *The Same, Digest, Book XXXVI.*

Where the following provision is inserted into a will, "When Titius reaches the age of thirty years, let Stichus become free, and let my heir give him such-and-such a tract of land," and Titius dies before reaching his thirtieth year, Stichus will obtain his freedom, but he will not be entitled to the legacy. For it is only in favor of freedom that it is admitted, after the death of Titius, that a time is held to exist during which freedom may be granted; but the condition on which the legacy depended is considered to have failed.

17. *The Same, Digest, Book XLII.*

Freedom which is granted to take effect at the last moment of life, as for example, "Let Stichus be free when he dies," is held to be of no force or effect.

(1) The following testamentary disposition, "Let Stichus be free, if he does not ascend to the Capitol," must be understood to mean if he does not ascend to the Capitol as soon as he possibly can. Hence, Stichus would obtain his freedom in this way, if having the power to ascend to the Capitol he abstained from doing so.

(2) The question arose whether freedom should be considered to have been conditionally granted by the following provision in a will: "Let Pamphilus be free, in order that he may render an account to my children." The answer was that freedom should be granted absolutely, and that the addition, "In order that he may render an account," does not impose any condition upon the grant of freedom; still, because the manifest wish of the testator was expressed, the slave should be compelled to render his account.

(3) Where a slave is indefinitely ordered to be free after several years, he will become free after the expiration of two years. The favor-conceded to liberty requires this, and the words themselves are susceptible of such a construction; unless the person who is charged with the grant of freedom can prove by the clearest evidence that the intention of the testator was otherwise.

18. *The Same, On Urseius Ferox, Book II.*

Where a testator appointed two heirs, and directed that his slave should be free after the death of one of them, and the heir upon whose death the freedom of the slave depended died during the lifetime of the testator, Sabinus gave it as his opinion that the slave would become free.

(1) The following condition, "Let him be free when I die," includes the entire duration of life, and therefore is held to be void. It is better, however, that the words should be interpreted in a more favorable manner, and in such a way that the testator may be considered to have granted freedom to his slave after his death.

(2) The following gives rise to greater doubt, "Let him be free in a year," as this can be understood to mean, "Let him be free after the year of my death," and it can also be

understood as follows, "Let him be free after the year when I made this will," and if the testator should happen to die within a year, the grant of freedom will be of no force or effect.

19. *The Same, On Urseius Ferox, Book III.*

A certain man charged his heir to manumit his slave, and if his heir did not do so he directed that he should be free, and he left him a legacy. The heir manumitted the slave. Several authorities hold that he obtained his freedom by the will, ana", as this was the case, that he was also entitled to the legacy.

20. *Africanus, Questions, Book I.*

A testator bequeathed his slaves, and made the following provision in his will: "I ask that you regard my slaves as worthy of their freedom, if they have acted meritoriously towards you." It is the duty of the Praetor to compel freedom to be given the slaves, unless they have done something which renders them unworthy of obtaining their freedom, without such services being required of them as may be considered necessary for them to deserve it.

The person who was asked to liberate them will still have the right to fix the time when he will do so; as, if he does not manumit them during his lifetime, his heir can be compelled to grant them their freedom immediately after his death.

21. *The Same, Questions, Book IV.*

"Let Stichus, or rather Pamphilus, be free." It was decided that Pamphilus should be free, for the testator appeared to have, as it were, corrected a mistake.

The same rule will apply where it was stated in a will, "Let Stichus be free, or rather let Pamphilus be free."

22. *The Same, Questions, Book IX.*

A testator appointed his son, who had not reached the age of puberty, his heir, and ordered that Stichus should be emancipated after he had rendered an account of the silver plate, which was in his care. This slave had stolen a portion of the silver plate, which he had divided with the guardian, and he gave the other part of it to the guardian who took an account of it. Advice having been asked as to whether Stichus was free, the reply was given that he was not.

But, on the other hand, as it has been decided if a slave who is to be free under a certain condition is directed to pay a certain sum of money, and pays it to the guardian, or it is the guardian's fault that the condition was not complied with, he will obtain his freedom; this must be understood to mean that all is done in good faith, and without any fraud on the part of the slave or the guardian, just as is observed in the alienation of the property of a ward. Therefore, if the slave should tender the money and the guardian should not be willing to accept it because his ward will be defrauded, the slave cannot obtain his freedom, unless he was not guilty of fraud. The same rule applies with reference to a curator.

(1) The question also arose, where the slave was ordered to render an account of the silver plate, in what way he should be understood to have complied with the condition; that is to say, if any vessels had been lost without his fault, and he delivered the remaining ones to the heir, in good faith, whether he would be entitled to his freedom. The answer was that he would be entitled to it, for it is sufficient if he rendered an honest and just account.

In short, he is considered to have complied with the condition by rendering to the heir such an account as the careful head of a household would accept.

23. *Marcianus, Institutes, Book I.*

A slave, who has been manumitted by a will, only becomes free when the will is valid, and the estate is entered upon on account of it; or where anyone obtains possession of the estate on the ground of intestacy because of the rejection of the will.

(1) Where freedom is granted by a will, it is obtained as soon as the estate is accepted by one of the heirs. If it is granted after a certain period, or under a condition, it will be obtained when the time arrives, or the condition is fulfilled.

24. *Gaius, Diurnal or Golden Matters, Book I.*

Slaves ordered to be free are considered to be expressly mentioned where they are clearly designated, either by their trades or offices, or in any other manner whatsoever, as, for instance, "My steward; my butler; my cook; the son of my slave Pamphilus."

25. *Ulpianus, Rules, Book IV.*

Where a slave is ordered to be free by the terms of a will, he will obtain his freedom as soon as any portion of the estate whatsoever is accepted; provided it is accepted by one belonging to the degree in which the slave is ordered to be free, and that he has been unconditionally manumitted.

26. *Marcianus, Rules, Book IV.*

The Divine Pius and the Divine Brothers stated beneficently in a Rescript that where a slave, who was appointed a substitute, had been bequeathed a legacy, together with his freedom, in case he should not be an heir, but the bequest of his freedom was not repeated, the result would be the same as if this had been done.

27. *Paulus, On the Lex JElia Sentia, Book I.*

Those who can grant freedom by applying to a tribunal can also appoint slaves their necessary heirs; and this necessity itself renders the manumission proper.

28. *The Same, On the Law of Codicils.*

"Let Stichus be free, if I do not by a codicil forbid him to be manumitted," is the same as if a testator said, "Let Stichus be free, if I do not ascend to the Capitol," for an heir can be appointed in this way.

29. *Scsevola, Digest, Book XXIII.*

A man repudiated his wife, who was pregnant, and married another. The first one, having had a son, exposed it, and it was taken away and brought up by another, and bore the name of its father; but both the father and mother during their lives remained ignorant that it was living. The father died, and his will having been read, it was held that the son was neither disinherited nor appointed an heir by the will, and he, having been recognized by his mother and his paternal grandmother, obtained the estate of his father on the ground of intestacy, as the heir at law.

The question arose whether the slaves who obtained their freedom under the will were free, or not. The answer was that the son should not suffer any wrong, if his father did not know that he was living, and therefore, as he was under the control of his father, who was not aware of the fact, the will was not valid.

But if manumitted slaves remain for five years in a state of freedom, the favor with which liberty is regarded does not permit that when it has once been granted them it shall be revoked.

30. *Ulpianus, On the Edict, Book XIX.*

Where slaves who are in the hands of the enemy are ordered to be free, they will obtain their freedom, even though at the time that the will was executed, or when the testator died, they did not belong to the latter, but were in captivity.

31. *Paulus, On the Edict, Book XXVI.*

Where one of several slaves who have the same name is ordered to be free, and it is not apparent which one was meant, none of them will obtain freedom.

32. *Ulpianus, On the Edict, Book LXV.*

It must be remembered that grants of freedom made by a will take effect whenever there is a necessary heir, even though he should reject the estate; provided they were not made contrary to the *Lex JElia Sentia.*

33. *Paulus, Questions, Book XII.*

Freedom cannot be granted for a certain time.

34. *The Same, On the Edict, Book LXXIV.*

Therefore, where the following is inserted into a will, "Let Stichus be free for ten years," the addition of the term is superfluous.

35. *The Same, On the Edict, Book L.*

Servius was of the opinion that freedom could be granted directly to slaves who had belonged to the testator, both at the time when the will was made, and when he died. This opinion is correct.

36. *The Same, On Plautius, Book VII.*

I manumitted a slave by will as follows, "Let him be free if he will swear to pay to my son, Cornelius, ten *aurei* in lieu of his services." The question arises, what is the law in this case? It must be acknowledged that the slave will comply with the condition by taking the oath, but he will not be bound to pay the money in lieu of his services, because he will not be bound unless he takes the oath after his manumission.

37. *The Same, On Plautius, Book IX.*

A slave is considered to have been manumitted specifically by a codicil, when his name is mentioned in the will.

38. *The Same, On Plautius, Book XII.*

Freedom can be granted to a slave by will as follows, "Let him be free when he has a right to be so by law."

39. *The Same, On Plautius, Book XVI.*

"Let my slave, Stichus, be free, if my heir should alienate him." This grant of freedom is void, because it has reference to the time when the slave will belong to another. Nor can the objection that a slave, who is to be free under a certain condition, will obtain his freedom by virtue of the will, even if he should be sold, be raised; for where freedom is legally granted, it cannot be annulled by the act of the heir. But what if a legacy is bequeathed in this manner? There is no reason to hold a different opinion under such circumstances, for no difference exists between a grant of freedom and a legacy, so far as this question is concerned. Therefore, freedom is not directly granted by the following clause, "Let my slave be free, if he ceases to belong to my heir," because there is no instance where a concession of this kind will be available.

40. *Pomponius, On Plautius, Book V.*

Julianus says that where the same slave is granted a sum under the terms of a trust, and is also ordered to be free, the heir must grant him his freedom; for he says that he is not, by virtue of the trust, compelled to pay the value of the slave, as he gives him his freedom to which he is entitled.

(1) But where freedom is granted to a slave conditionally, under the terms of a trust, and the

slave himself is given at the time, the heir will not be obliged to deliver him, unless security is furnished by the beneficiary of the trust that, if the condition is fulfilled, he will liberate the slave; for in almost all cases freedom granted by virtue of a trust is considered as having been directly granted. Ofilius, however, says that if a testator bestowed freedom by means of a trust, with the intention of depriving the slave of a legacy, this opinion is correct. But if the legatee can prove that the heir was charged by the testator, he will still be obliged to pay the value of the slave to the legatee.

41. *The Same, On Plautius, Book VII.*

Where freedom is granted as follows, "Let Stichus be free the twelfth year after my death," it is probable that he will become free at the beginning of the twelfth year, for this was the intention of the deceased. There is, however, a great deal of difference between the two expressions, "the twelfth year," and "after twelve years," and we are accustomed to say "the twelfth year" when ever so little of the twelfth year has arrived, or elapsed. He who is ordered to be free the twelfth year is ordered to be free for every day during that year.

(1) Where the following provision is inserted in a will, "Let my slave, Stichus, be free, if he pays my heir a thousand *sesterces* at the end of one, two, and three years, after my death, or if he gives security to do so," the slave cannot become free before the expiration of the third year, unless he pays the entire sum immediately, or gives security; as the advantage which the heir derives from immediate payment should be compensated by the rapidity with which the grant of freedom is made.

(2) Labeo says that where a testamentary grant of freedom is made as follows, "Let Stichus be free within a year after my death," he will become free immediately. And if his freedom had been bequeathed as follows, "Let him be free, if he pays such-and-such a sum to my heir within ten years," and he pays it at once, he will become free without delay.

42. *Marcellus, Digest, Book XVI.*

If anyone should insert the following clause into his will, "I desire my slave to be the freedman of such-and-such a person," the slave can demand his liberty, and the other party can claim him as his freedman.

43. *Modestinus, On Manumissions.*

Direct grants of freedom can be legally made by will, and by a codicil confirmed by a will. Grants of freedom under a trust can be made *ab intestato,* and by codicils not confirmed by a will.

44. *The So/me, Opinions, Book X.*

Msevia, at the time of her death, bequeathed freedom to her slaves named Saccus, Eutychia, and Hirena, conditionally, in the following terms: "Let my male slave, Saccus, and my female slaves, Eutychia and Hirena, be free, under the following condition, namely, that they burn a lamp on my tomb every other month, and celebrate funeral rites there,"

As the said slaves did not regularly visit the tomb of Maevia, I ask whether they would be free. Modestinus answered that neither the wording of the entire clause nor the intention of the testatrix indicated that the freedom of the slaves should be suspended under a condition, as she desired them to visit her tomb as persons who were free; but that it was, nevertheless, the duty of the judge to compel them to obey the order of the testatrix.

45. *The Same, Pandects, Book II.*

It is commonly stated that where freedom is granted under several conditions, the one which is the least onerous should be observed; and this is true where the conditions are imposed separately. Where, however, they are imposed together, the slave will not be free unless he complies with all of them.

46. *Pomponius, Various Passages, Book VII.*

Aristo replied to Neratius Appianus as follows: If a slave is directed to be free by will when he reaches the age of thirty years, and, before doing so, he is sentenced to the mines, and afterwards is released, there is no doubt that he will be entitled to the legacy left with his freedom, nor will his right be affected by his sentence to the mines. The rule is the same when the slave is appointed an heir under a condition, for he will become the necessary heir.

47. *Papinians, Questions, Book VI.*

Where freedom is granted through mistake, under a forged codicil, although it is not due, still it must be granted by the heir, and the Emperor has decided that twenty *solidi* must be paid to the heir by each slave who is liberated.

(1) When an appointed heir manumits a slave for the purpose of complying with a condition, and the son, by subsequently bringing an action to declare the will inofficious gains his point, or the will is pronounced forged, the result will be that in this case the same course must be pursued as is prescribed in the one involving a forged codicil.

48. *The Same, Questions, Book X.*

Where a partner granted freedom to a slave by will, as follows, "Let Pamphilus be free, if my partner should manumit him," Servius gave it as his opinion that if the partner should manumit the slave, he will become the common freedman of the heirs of the deceased and of the partner who manumitted him; for it is neither new nor unreasonable for a slave held in common to obtain his freedom by the exercise of different rights.

49. *The Same, Opinions, Book VI.*

Where a female slave was manumitted by the will of a soldier, as follows, "I direct that Samia shall obtain her freedom," it was held that she obtained her freedom directly in accordance with military law.

50. *The Same, Opinions, Book IX.*

It was decided by the Divine Marcus, with a view to the preservation of freedom, that his decree on that subject should apply to cases where a will was held to be void, and that the property of the estate should be sold; and, on the other hand, it was especially provided where the estate is claimed by the Treasury as being without an owner, that this decree shall not be applicable.

(1) In order that slaves manumitted by a will might obtain the property of the deceased, it was decided that they must give a suitable bond in court, just as the other freedmen of the deceased, or foreign heirs. Minors, who are appointed heirs, and, as is customary, claim assistance with reference to the estate of the deceased, are not deprived of this advantage.

51. *The Same, Opinions, Book XIV.*

A centurion, by his will, forbade his slaves to be sold, and asked that they be manumitted, so far as they were deserving of it. The answer was that freedom was lawfully granted, since, if none of the servants had given cause for offence, all of them would be entitled to be free; but if some of them were excluded on account of having committed a crime, still the others ought to obtain their freedom.

(1) Where the following provision was inserted into a will, "Let those slaves who have not given cause for offence be free," it was held that the grant of freedom was conditional, and that it should be interpreted in such a way that the testator, when liberating his slaves, did not intend to include those whom he had subjected to punishment, or had excluded from the honor of serving him or from transacting his business.

52. *Paulus, Questions, Book XII.*

The Emperors to Missenius Fronto. Freedom having been granted by the will of a soldier in the following terms, "I wish or I order my slave Stephen to be free," the slave can obtain his freedom whenever the estate is entered upon. Therefore, when the following words were added, "Provided, nevertheless, that he remains with my heir as long as he is a young man, but if he refuses to do so, or treats my proposal with contempt, let him continue to be held as a slave," they do not have the effect of revoking the freedom to which the slave was entitled.

The same rule is observed with reference to the wills of civilians.

53. *The Same, Opinions, Book XV.*

Lucius Titius granted freedom to his slave under the condition that he should render a faithful account of his administration to his son, Gaius Seius. When Gaius Seius had reached the age of puberty, the slave, having been sued by the curators of the former, paid in court everything that was due. A bond having been required of the curators, the slave was declared to be free. Now Gaius Seius, the son of the testator, denies that the money was legally paid to his curators, and I ask whether this was the case. Paulus answered that the balance of the account of the slave did not seem to have been paid to the curators of the youth in such a way as to comply with the condition prescribed by the will in accordance with law; but if the money had been paid in the presence of the minor, or had been entered in his accounts, the condition should be considered to have been fulfilled, just as if it had been paid to him himself.

54. *Scsevola, Opinions, Book IV.*

A man who had a slave named Cratistus made the following provision in his will, "Let my slave, Cratinus, be free." I ask whether the slave Cratistus can obtain his freedom, as the testator had no slave called Cratinus, but only the said slave, Cratistus. The answer was that no impediment existed because a mistake had been made in a syllable.

(1) Certain testamentary heirs, before entering upon the estate, agreed with the creditors that the latter should be content with half of their claims; and a decree having been issued by the Praetor to this effect, they accepted the estate. I ask whether the grants of freedom made by the will would take effect. The answer was that they would take effect, if the testator had no intention of committing fraud.

55. *Msecianus, Trusts, Book II.*

A grant of freedom having been made under a condition, the decision was rendered that if neither the slave nor the heir was responsible for the condition not having been complied with, the slave would be entitled to his freedom. I think that the same opinion should be given where freedom is granted under the terms of a trust to slaves belonging to an estate.

(1) It is not absurd to hold that this rule also applies to the slaves of the heir.

(2) We cannot reasonably doubt that this is also applicable to slaves whom the heir was charged to purchase; for in this instance, it would be unjust for him to be compelled to purchase them as if the condition had been fulfilled, because it might happen that the owner would refuse to comply with the condition, in order to obtain the price of a slave, and not demand him as the condition.

56. *Paulus, Trusts, Book I.*

If anyone grants freedom to a slave by will, both directly and under a trust, it is in the power of the slave to choose whether he will obtain his freedom directly, or by virtue of the trust. This the Emperor Marcus also stated in a Rescript.

57. *Gaius, On Manumissions, Book III.*

When a wealthy man becomes the heir of a person who is poor, let us see whether this will be of any advantage to the slaves who are granted their freedom by will, without the creditors of

the estate being defrauded. And, indeed, there are certain authorities who hold that when a rich man appears as the heir, it is the same as if the testator had died after having increased his estate. But I have been informed (and this is our practice), that it makes no difference whether the heir is rich or poor, but the amount of the estate of which the testator died possessed must alone be taken into consideration. Julianus adopts this opinion to the extent that he holds that grants of freedom will not take effect where the testator was insolvent, and ordered the slave to be free, as follows, "Let Stichus be free when my debts are paid."

This opinion, however, does not coincide with that of Sabinus and Cassius, which Julianus himself appears to accept, as he thinks that the intention of the testator who manumitted the slave should be considered. For a person who orders his slave to be free under such a condition does so without any intention of committing a fraud, since he is held clearly to desire that his creditors shall not be cheated.

58. *Msecianus, Trusts, Book III.*

It is true that, where a slave is directed to be free under the terms of a will, and is afterwards alienated by the testator, and again becomes a part of the estate before it is entered upon, he will obtain his liberty as soon as the estate is accepted.

59. *Scasvola, Digest, Book XXIII.*

Titia bequeathed freedom directly to certain of her male and female slaves, and then inserted the following provision in her will, "And I wish all the slaves attached to my personal service, whose names are inscribed in my registers, to be free."

The question arose whether Eutychia who, along with the other personal slaves, was emancipated at the time when the will was executed, and who, when the testatrix died, was married to a steward who was a slave, would obtain her freedom under the general head of "Slaves attached to my personal service." The answer was that there was nothing to prevent her obtaining her freedom, even though at the time of the death of the testatrix she had ceased to be one of her attendants.

(1) Stichus received his freedom directly by the will of his master, and was accused of having fraudulently secreted much of the property of the estate.

The question arose if, before he could demand his freedom, he should not restore to the heirs the property which he was proved to have taken. The answer was that, according to the facts stated, the slave in question should be free.

Claudius: The point raised seems to have been finally disposed of, for the interest of the heirs will be sufficiently consulted by having recourse to the Edict concerning thefts.

(2) Lucius Titius provided by his will, "Onesiphorus shall not be free unless he renders an exact account of his administration." I ask whether Onesiphorus can demand his freedom by virtue of these words? The answer was that, in accordance with what is stated, he is rather deprived of freedom than granted it.

60. *The Same, Digest, Book XXIV.*

The following provision was inserted in a will, "I wish that a thousand *solidi* be given to Eudo, for the reason that he is the first child born after his mother obtained her freedom." If Eudo cannot prove that he was born after the manumission of his mother, I ask whether he can obtain his freedom by virtue of these words of the will. The answer was that this inquiry should not prejudice him.

61. *Pomponius, Epistles, Book XL*

I know that many persons, desiring that their slaves may never become free, are accustomed to insert the following clause in their wills, "Let Stichus be free when he dies." Julianus,

however, says that where freedom is granted at the last moment of life, it has no effect; as the testator is understood to have made a disposition of this kind for the purpose of preventing rather than of bestowing freedom. Hence, if the following should be inserted in a will, namely, "Let Stichus be free, if he should not ascend to the Capitol," it will be of no force or effect, if it is evident that the testator intended to grant the slave his freedom at the last moment of his life, nor will there be ground for a Mucian Bond.

(1) If the following provision should be inserted in a will, "Let Stichus be free if he should go to Capua," the slave will not be free unless he goes to Capua.

(2) Octavenus goes still further, for he holds that if a testator, having granted freedom to his slave under any condition whatsoever, should add, "I am unwilling that he be manumitted by my heir before the condition is fulfilled," this, addition will be void.

TITLE V.

CONCERNING FREEDOM GRANTED UNDER THE TERMS OF A TRUST.

1. *Ulpianus, On the Edict, Book XIV.*

Where any persons among those who have been charged with a grant of freedom under a trust are present, and others are absent for some good reason, and others still have concealed themselves, the slave to whom freedom was bequeathed under the trust will become free, just as if those who were present, and those who were absent for good reasons had been charged with the execution of the trust; and therefore the share of the right of patronage to which those who concealed themselves are entitled will accrue to the others.

2. *The Same, On the Edict, Book LX.*

If anyone, when dying intestate, should bequeath freedom to a slave by a codicil, and the estate should not be entered upon, the benefit conceded by the Constitution of the Divine Marcus will be available. In a case of this kind, it directs that the slave shall be entitled to his freedom, and that the estate shall be awarded to him if he gives sufficient security to the creditors of the same to pay the full amount which is due to each one of them.

3. *The Same, On the Edict, Book LXV.*

Creditors generally have the right to bring praetorian actions against freedmen under these circumstances.

4. *The Same, On the Edict, Book LX.*

Hence, as long as it remains doubtful whether there is a successor or not, the Constitution will not apply, but as soon as it is certain, it will become operative.

(1) Where he who can obtain complete restitution rejects the estate, shall we hold that the Constitution will not become operative as long as his right to complete restitution continues to exist, because it is uncertain whether anyone will appear as an heir at law? The better opinion is that the Constitution will apply.

(2) But what if, after judgment has been rendered for the purpose of procuring freedom, the heir should obtain complete restitution? It can by no means be said that freedom which has once been granted can be revoked.

(3) Let us see whether those who receive their freedom must be present or not. And, as property awarded on account of freedom can be granted to them, even without their consent, this can also be done in their absence.

(4) But what if some of them were present, and others were absent? Let us see whether those who are absent will be entitled to their freedom. It can be said, just as in the case where an estate is entered upon, that those who are absent will also become free.

(5) If freedom is granted on a certain day, must we wait until the day arrives? I think that we should do so; therefore, the property will not be awarded before that time. But what should be done if freedom was granted under a condition? If some grants of freedom were made absolutely, and others conditionally, the property can be awarded immediately. When, however, all the grants of freedom were conditional, what then must be said? Must we wait until the condition is fulfilled, or shall we immediately award the property so that freedom will only be granted when the condition has been complied with? The latter opinion is preferable. Hence, when the property has been awarded, and freedom directly granted, it is immediately acquired; when it is granted at a certain time, it will be acquired when the time arrives; when it is conditional, it will be acquired when the condition is fulfilled. Nor is it unreasonable to hold that, while the condition upon which the grants of freedom are dependent is in abeyance, even though all the grants of freedom were conditional, the Constitution will apply. For it must be said where there is a prospect of freedom, the property must be awarded, when there is the slightest occasion for it, if this can be done without any loss to the creditors.

(6) If the slave who receives the grant of freedom, under the condition of the payment of ten *aurei* either to the heir, to someone who is not mentioned, or to the person entitled to the estate, the question arises, can the slave obtain his freedom? The better opinion is that the money should be paid to the person to whom the estate is awarded, as the condition appears to have been transferred to him. It is, however, certain if he was directed to pay it to some other person than the heir, that it must be paid to the individual designated.

(7) Where slaves have received their freedom under the terms of a trust, they do not become freedmen immediately, as soon as the estate is awarded, but they can obtain their freedom left" them by the trust; that is to say, they should be manumitted by the person to whom the estate is adjudged.

(8) The Emperor intended that an estate should be awarded only where sufficient security is given to the creditors for the payment of the entire amount due to each of them. Proper security must, therefore, be furnished. What is meant by the term "proper"? It signifies that sureties or pledges should be given. If, however, the creditor has faith in the promisor, without his furnishing a surety, the security will be considered sufficient.

(9) In what way should security be furnished to creditors ? Should it be given to them individually, or to one appointed by the entire number in the name of all ? It is necessary and is part of the duty of the judge to call the creditors together, and appoint one of their number to whom security shall be furnished in the name of all.

(10) Let us see whether security should be given to the creditors before the estate is awarded, or whether this should be done under the condition that security shall be furnished? I think that it will be sufficient if everything provided by the Constitution of the Divine Marcus is included in the decree.

(11) We should understand the entire amount to mean both principal and interest.

(12) The Constitution shows whose freedmen they who are manumitted become, so that those who receive their freedom directly will be the freedmen of the deceased; unless he who claims that the estate should be awarded to him alone wishes this to be done in such a way that those who have been emancipated directly may become his own freedmen.

(13) Should those who wish to become his freedmen be manumitted by him, or in awarding the estate ought we to mention that it is awarded upon the condition that the slaves who have been granted their liberty directly shall become his freedmen?

I think that this opinion should be adopted and stated in the decision, and the terms of the constitution also permit this to be done.

(14) When a slave, under the age of puberty, obtains his freedom, the party to whom the estate is awarded shall be entitled to his guardianship.

(15) If the deceased charged his heir to manumit certain slaves belonging to another, shall we say that the Constitution is applicable, or, indeed, will it not take effect? The better opinion is that there is ground for its application, because the person to whom the estate is awarded will be compelled to purchase the slaves, and have their freedom granted them by the PraBtor.

(16) If the legatee, and not the heir, is charged to manumit the slave, will the constitution fail to apply, because, the legacies not being due, the grants of freedom cannot be due either? The better opinion is that the same advantage will be available, as the intention of the constitution, generally speaking, is to grant freedom to all who are entitled to it, if the estate has been entered upon.

(17) The same constitution provides that if the Treasury acquires the estate, the grants of freedom must still be made. Therefore, if the property is without an owner, on account of the Treasury having either rejected or accepted it, the constitution will still apply. If, however, the Treasury obtains it in some other way, it is evident that the constitution will cease to be applicable. Hence, if the property of a legion, which is without an owner, escheats to the Treasury, the same opinion must be adopted.

(18) Likewise, where a minor of twenty years of age bequeaths a grant of freedom, we say that the slave will not be entitled to it, unless the minor left it under a trust. The slave will, however, be entitled to it if the minor should manumit him during his lifetime, provided he can give a good reason for doing so.

(19) Where freedom is granted and creditors defrauded by a testator who was not solvent at the time of his death, will the grant be valid? If the Treasury does not obtain the estate, the grant of freedom perhaps will be valid, because all that is due to the creditors is offered to them. If, however, the estate has been entered upon, it will not be valid. It is clear that if the Treasury should obtain the estate, there will be better ground for holding that the grant of freedom will not be valid. For anyone, strictly adhering to the terms of the constitution, might say that he can only blame himself, who desired that the estate should be awarded to him under the condition that the grants of freedom should be considered valid. *If* anyone, however, should follow the rule applicable where an estate is accepted, a direct grant of freedom will be void if the intention of the testator was fraudulent, and the result was that the creditors were cheated; nor will grants of freedom under a trust be executed if, by doing so, the creditors of the estate will be defrauded.

(20) When an estate has not escheated to the Treasury, and it has been adjudged for the purpose of preserving freedom, can the Treasury afterwards acquire it? The better opinion is that it cannot do so. It is evident that, if notice had not previously been given to the officials of the Treasury, and the estate is awarded for the preservation of freedom, it should be considered whether there is ground for the application of the constitution. If the estate is in such a condition that the Treasury must accept it, the award will be of no effect; but if it is not, there will be ground for it.

(21) Moreover, he to whom property had been adjudged should be compared to a possessor under the Praetorian Edict; and, according to this, he will be entitled to the rights of burial enjoyed by the deceased.

(22) Again, let us see whether the person to whom an estate is awarded can be sued by the creditors as an heir, or only on the bond which he has furnished. The better opinion is that he can only be sued on the bond.

(23) Where an estate is awarded to two or more persons, they will hold the property and the freedmen in common, and will have the right to bring an action in partition against one

another.

5. *Paulus, On the Edict, Book LVH.*

With reference to freedom granted by the terms of a trust, if the Praetor should, in the absence of the heir, decide that the slave was entitled to be free, he will become so, and will be the freedman of the deceased, if he was his slave, or of the heir if he belongs to the latter. Moreover, if the heir should die without a successor, the Senate, in the time of Hadrian, decreed that the freedom of the slave should be preserved.

6. *The Same, On the Edict, Book LX.*

Ten *aurei* were bequeathed by a testator, and the legatee was charged to purchase Stichus and manumit him. The Falcidian Law will apply, and the slave cannot be purchased for less than ten *aurei.* Some authorities hold that the legatee is entitled to three-fourths of the legacy, and should not be compelled to purchase the slave. They also think that even if an heir was requested to manumit his own slave, and only receives three-fourths of his legacy, he will not be compelled to manumit him.

Let us see whether, in this instance, another opinion should not be adopted. There are certain authorities who hold that, in the first place, the legatee should be compelled to assume the charge and purchase the slave, if he only receives three-fourths of his legacy. If, however, he is prepared to return what he has received, let us see whether he should be heard. The heir should be forced to pay the entire ten *aurei,* just as if the testator had expressly stated that the legacy should be paid in full.

7. *Ulpianus, On the Edict, Book LXIII.*

Where a hundred *aurei* are bequeathed to anyone, under the condition that the legatee shall purchase and manumit a slave belonging to another, and when the property of the heir is sold, the legatee shall only demand a portion and not all of his legacy, he cannot obtain it unless he gives security to manumit the slave; provided that the value of the portion which he will obtain will be as much as the price of the slave, and the master of the latter is ready to sell him for this price; otherwise, the legatee will be barred by an exception on the ground of bad faith.

8. *Pomponius, On Plautius, Book VII.*

Where a person to whom the sum of a thousand *sesterces* has been bequeathed is charged to manumit a slave worth twenty, he cannot be compelled to execute the grant of freedom under the trust, if he does not accept the legacy.

9. *Marcellus, Digest, Book XV.*

When an heir has been charged not to permit a certain slave to become the property of another, the slave can, immediately after having been alienated, institute proceedings to demand his freedom. Where, however, the alienation is not voluntary, but a necessity exists for it on account of some act of the testator, it is probable that the trust should not be executed, because the deceased is not supposed to have had an alienation of this kind in view.

10. *The Same, Digest, Book XVI.*

A certain man inserted the following provision in his will, "I do not wish my slaves, So-and-So and So-and-So, to be sold." Therefore, if he did not wish them to be sold and intended, if they were sold, that they should become free, their freedom should be granted them; for freedom is considered to have been bequeathed to a slave by the following clause, "I do not wish So-and-So to belong to anyone but you." Hence, in accordance with this, if the heir should attempt in any way to sell the slave, the latter can immediately claim his freedom, and if the heir should purchase him to prevent him from obtaining it, it will be of no advantage to him, because the condition has been fulfilled.

(1) A slave who was entitled to his freedom was sold. If he is willing to be manumitted by the heir, there will be no necessity to bring the purchaser, who has concealed himself, into court along with the present heir, as the slave can avail himself of the decree of the Senate to obtain his freedom under the will.

(2) A slave who was entitled to his freedom under a trust permitted himself to be transferred to a *bona fide* purchaser by the heir, who was not solvent. Do you think that an action can be granted against this manumitted slave, just as where a freeman deceived his purchaser by pretending that he was a slave? I, however, am inclined to believe that an action will properly lie against the vendor, as the case seems to be similar to that of a slave entitled to be free under a certain condition, and who suffered this to be done the day before he was to obtain his freedom by will.

11. *Modestinus, Differences, Book I.*

A ward cannot grant freedom to a slave by virtue of a trust without the authority of his guardian.

12. *The Same, On Manumissions.*

When Firmus Titianus bequeathed three slaves, who were tragedians, and added, "I charge you not to permit them to become the slaves of anyone else," the Emperor Antoninus stated in a Rescript that, as the property of Titianus had been confiscated, the slaves should be publicly manumitted.

(1) A legatee as well as an heir can be charged to manumit a slave, and if he should die before manumitting him, his heirs must do so.

(2) The Divine Antoninus and Pertinax stated in a Rescript, where an estate was claimed by the Treasury because there was a secret provision to deliver it to a person who is not capable of receiving it, that all grants of freedom made directly, or under the terms of a trust, should be executed.

13. *The Same, Rules, Book IX.*

If a female slave, who is pregnant, should suffer delay in being manumitted, not through the intention of the person charged with this duty, but accidentally, her child will not be free; but the person who should have manumitted the said slave will be compelled to deliver the child to its mother, in order that through her it may obtain its freedom.

14. *The Same, Opinions, Book X.*

Lucius Titius, having made a will, appointed Seia, his wife, and Titia, their common daughter, heirs to equal shares of his estate. In another place he said, "I desire my slave, Eros, who is also called Psyllus, to be free, if my wife consents." Therefore, as Seia, the wife of Lucius Titius, refused to accept her share of the estate, which went to her daughter Titia, under the substitution, I ask whether Eros, who was also called Psyllus, will be entitled to his freedom by virtue of the above-mentioned clause. Modestinus answered that the rights of Eros were not prejudiced, because the wife of the testator declined to accept the estate. I also ask whether his wife, Seia, who did not enter upon the estate, could legally oppose Eros when he demanded his freedom ? Modestinus answered that Seia's refusal of consent would be of no force or effect.

15. *The Same, Pandects, Book V.*

A person charged with the manumission of a slave under the terms of a trust can, in no way whatever, render the condition of the said slave worse; and therefore he cannot in the meantime sell him to anyone else, in order that he to whom he was sold may emancipate him; and if he should deliver the slave, he will be compelled to purchase and manumit him; for it is sometimes to the interest of a slave to be manumitted by an old man rather than by a young

one.

16. *Licinius Rufinus, Rules, Book V.*

Freedom can also be bestowed under the terms of a trust, and, in fact, to even a greater extent than where it is directly bestowed, for by means of a trust it can be granted not only to one's own slaves, but also to those of another; provided' words in common use and by which the intention of the testator is plainly expressed are employed.

17. *Claudius, On the Digest of Scsevola, Book XXI.*

Freedom is legally granted by a trust as follows, "When you think proper to manumit him."

18. *Scxvola, Digest, Book XXIII.*

The following provision was inserted in a will, "Let Pamphilus be free, if he transacts my business properly." As the testator died some years after making this will, and there was no ground for complaint of the conduct of Pamphilus, so far as his patron was concerned, the question arose whether he was entitled to his freedom under the will. The answer was that there was nothing in the case stated to prevent him from obtaining it.

19. *The Same, Digest, Book XXIV.*

A woman, having appointed her husband her heir, liberated her slaves by a trust, among whom was Stichus, the steward of her husband. The slaves having appeared before the Governor of the province for the purpose of obtaining their freedom, during the absence of their master who had a good reason for being away, and the Governor of the province having decided that the slaves were entitled to their freedom, the question arose whether proceedings could be instituted against Stichus to compel him to render an account of his administration as steward. The answer was that this could not be done.

(1) A man bequeathed a dowry and considerable other property to his wife, and charged her to manumit Aquilinus, her own slave, before the tribunal. The woman refused to do so, because the slave was her individual property. I ask whether he was entitled to his freedom. The answer was that if the wife had accepted not only her dowry, but also the other property left to her by the will, she could be compelled to manumit Aquilinus by virtue of the trust, and that, when he became free, he could demand anything that had been bequeathed to him.

20. *Pomponius, Epistles, Book VII.*

It is stated by Julianus that, when an heir who is charged to manumit a slave transfers the estate under the Trebellian Decree of the Senate, he can be compelled to manumit the slave; and if he should conceal himself, or be absent for some good reason, the Praetor, after proper cause is shown, must render a decision in accordance with the decrees of the Senate which relate to cases of this kind.

If, however, the beneficiary to whom the estate was transferred should have the custody of said slave, he himself can manumit him; and it is proper that the same formalities should be observed with reference to him, as is usually done with reference to purchasers in general.

Do you think that this is true? I, myself, actuated by the desire to acquire knowledge, have for seventy-eight years considered the following saying, which I have always in mind, as the best rule of life, "When I have one foot in the grave I shall still be glad to learn something." Aristo and Octavenus very properly hold that the slave in question does not form part of the estate subject to the trust, because the testator, by asking the heir to manumit him, does not seem to have had in view that he should be delivered to the beneficiary of the same. If, however, he should be delivered through a mistake of the heir, the opinion of Julianus should be adopted.

21. *Papinianus, Questions, Book XIX.*

"I request that Stichus shall not become the slave of another." It was decided by the Emperor

that freedom was granted by a trust under this clause: for what is more opposed to slavery than freedom ? Freedom, however, is not considered as granted after the death of the heir. The result is that if the heir, during his lifetime, should alienate the slave, he can immediately demand his freedom, and if the heir purchases him, it will be no impediment to his becoming free, as the condition has already been fulfilled.

This rule should also be adopted where the alienation by the heir was not voluntary, nor can it be stated, in opposition, that the alienation was not made by the heir himself; for the case resembles that of a slave who was to be free conditionally, where, to a certain extent, the condition has been complied with.

22. *The Same, Questions, Book XXII.*

When a tract of land and the sum of ten *aurei* are left to a legatee, instead of the price of one of his slaves, under the condition that he shall manumit the said slave, and he accepts the devise of the land, but rejects the bequest of the money to avoid the operation of the Falcidian Law, he can be compelled to accept it, together with the diminution resulting from the Falcidian Law, and to grant freedom to the slave under the terms of the trust, when he has once accepted the devise of the land.

(1) A testator, who had three slaves, charged his two heirs to manumit two of the said slaves whom they might select. One of the heirs failing to appear, the other mentioned the two slaves whom he desired to manumit. It can be said that they are liberated and obtain their freedom, just as if the heir who was present alone had the right to emancipate them. If, however, one of the slaves should die, and the heir should be absent for some good reason, or he of whom the request was made did not have the power of speech, it is established that the two surviving slaves will become free by the Decree of the Praetor.

(2) When a trustee who is charged with the grant of freedom is absent for a good and sufficient reason, or conceals himself; or where there are several heirs, some of whom are present and others absent for good cause; and still others do not appear in order to avoid the execution of the trust; or the heir charged with the grant of freedom is not living; or a proper heir rejects the estate; the Praetor must decree that the slave is entitled to his freedom under the trust provided by the will of Lucius Titius.

It has been expressly stated by a decree of the Senate that, although it may not be doubtful or obscure whose freedman the slave will become, the Praetor must decide which one of the heirs was absent for a good reason, and which one failed to appear for the purpose of preventing the execution of the trust.

23. *The Same, Opinions, Book IX.*

Freedom granted under the terms of a trust cannot be deferred under the pretext that the slave has stolen something belonging to the estate, or has administered its affairs improperly.

(1) The heir of an heir, who has transferred the estate under the Trebellian Decree of the Senate, can be compelled to grant freedom to a slave, where the trust has not been executed by the former heir, if the slave who is to be manumitted selects him as his patron.

(2) I gave it as my opinion that a son, who is a soldier, or who has served in the army, and who has accepted a trust created by his father requiring him to liberate a slave forming a part of his *peculium castrense* (the charge being that this should be done by his legitimate sons) ; if he should become the heir of his father he can be forced to emancipate the slave, because the deceased thought that he was manumitting his own slave after having given him to his son. The latter cannot be compelled by his brother, who is the co-heir of the owner of the slave, to pay him a portion of the price of the slave, as this would be contrary to the will of the father; nor, on account of this mistake, should the other property which his father gave to his son when he was about to depart for the army be brought into contribution for the benefit of the

brother, who remained under paternal control; as the said son, who is included among the other lawful heirs, can retain his *peculium castrense* as a preferred legacy.

(3) Where freedom is granted under the terms of a trust, and a son is charged with the execution of the same, after he arrives at a certain age, and he dies before reaching that age, freedom must be granted to the slave by his heir at the prescribed time; but it has been settled that this decision, which only applies to a particular case, does not extend to other kinds of trusts.

(4) A testator wished a slave to be manumitted by his son after the expiration of five years, if, during that time, the slave paid him a certain sum every day. The slave ran away after two years had elapsed, and did not pay the money. It was held that the condition had not been complied with.

If, however, the son, who was the heir, or his guardians, had chosen to accept the services of the slave during the two years, in lieu of payment, it was held that this would be no impediment to the freedom of the slave, as it was the fault of the heir that the remainder of the condition had not been fulfilled.

24. *Ulpianus, Trusts, Book V.*

Generally speaking, we say that persons who can leave money under a trust can also bequeath a grant of freedom in the same manner.

(1) A grant of freedom under a trust, which is bequeathed to a slave of the Emperor, or of a municipality, or of anyone else, is valid.

(2) Where freedom is bequeathed by the terms of a trust to a slave of the enemy, can it be maintained that it is not without force or effect? Perhaps someone may say that a slave of the enemy is unworthy to become a Roman citizen. If, however, it is bequeathed to him in case he becomes one of our allies, what is there to prevent anyone from holding that the grant of freedom is valid?

(3) Where freedom is bequeathed under the terms of a trust to a man who is already free, and he is subsequently reduced to slavery, he can demand his freedom, provided he was a slave at the time of the death of the testator, or when a condition was fulfilled.

(4) Freedom can legally be left under a trust to a slave who is yet unborn.

(5) A slave cannot expect his freedom if he has been sentenced to the mines. But what if freedom was left to him under the terms of a trust, and he was released from the penalty of the mines by the indulgence of the Emperor? It was stated in a Rescript by our Emperor that he will not be restored to the ownership of his former master; but in this case, it is not stated to whom he will belong. It is certain that when he becomes the property of the Treasury that he can expect to obtain his freedom by virtue of the trust.

(6) Freedom under the terms of a trust can be granted to a slave conceived and born of a woman who was condemned to the mines. What is there surprising in this, as the Divine Pius stated in a Rescript that he could be sold as a slave?

(7) Where it is requested by the testator that Stichus should not afterwards serve as a slave, it was held that freedom should be considered to have been granted to him under a trust; for he who asks that he shall not afterwards serve as a slave is considered to ask that he be granted his freedom.

(8) Where, however, the testator states, "You shall not alienate or sell him," the same rule will apply, provided that this was done by the testator with the intention that he should obtain his freedom. But if he inserted the clause with a different intention (for example, because he advised the heir to retain the slave; or because he desired to punish and torture the latter in order to prevent him from obtaining a better master, or did so with some other motive than

that of liberating him), it must be said that he should not be granted his freedom. This was mentioned by Celsus in the Twenty-third Book of the Digest.

It is not so much the terms of the trust as the intention of the testator, which usually confers freedom in such cases. As, however, freedom is always considered to be granted, it devolves upon the heir to prove the contrary intention of the testator.

(9) When anyone appoints a slave a guardian, because he thinks that he is free, it is absolutely certain that he cannot demand his freedom, nor can the right to the guardianship be maintained by him on account of the grant of freedom. This is held by Marcellus in the Fifteenth Book of the Digest, and Our Emperor, with his Father, also stated it in a Rescript.

(10) Where anyone grants liberty directly to a slave who has been pledged, although, by the strict construction of the law, the grant is held to be void; still, if freedom had been left to him by the terms of a trust, the slave can demand his liberation by virtue of it. For the favor conceded to freedom requires that we should interpret the bequest in this manner, and that the words of the will mean that freedom should be demanded, just as if the slave had been directed to be free under the terms of a trust. For it is well known that many things contrary to the strict construction of the law have been decided in favor of liberty.

(11) It is established that grants of freedom which are either direct, or dependent upon the terms of a trust, cannot be carried out under a will which has been broken by the birth of a posthumous child, where the testator has not charged his lawful heirs with their execution.

(12) Where anyone is requested to manumit his own slave, or the slave of another, and he receives less by the will of the testator than the value of the slave, whether he can be compelled either to purchase the slave belonging to another, or to manumit his own, is a question for consideration. Marcellus says that, as soon as he accepts the legacy, he will, by all means, be compelled to manumit his slave. And, indeed, this is our practice, as it makes a great deal of difference whether anyone is requested to manumit his own slave, or a slave belonging to someone else. If it is his own slave, he will be compelled to manumit him, even if the amount he receives is very small; but if it is the slave of another, he should not be forced to manumit him unless he can purchase the said slave for a sum equal to what he receives by the will of the testator.

(13) Hence Marcellus says that he also, who is appointed the heir, can be compelled to manumit his own slave, if he obtains anything from the estate after payment of its indebtedness, but if he obtains nothing, he cannot be forced to do so.

(14) It is clear that, if less has been bequeathed to anyone than the slave is worth, but the legacy has been increased for some reason or other, it will be perfectly just for him to be compelled to purchase the slave with the amount which he obtains from the estate; but it should not be said that he has been left less than the slave was worth, as his legacy has been increased by reason of the will. For if, through delay, the crops or the interest should be added to the amount bequeathed under the trust, it must be held that freedom ought to be granted.

(15) On the same principle, if the price of the slave has been reduced, it must be held that he should be forced to purchase him.

(16) Where, however, the legacy has been diminished, it must be considered whether he who expected to obtain a larger legacy can be compelled to manumit the slave. I think that if he is ready to refund the legacy, he cannot be forced to do so, for the reason that he accepted the legacy with a different prospect, and it has been unexpectedly diminished. Therefore, if he is ready to surrender the legacy, he shall be permitted to do so, unless what remains of it is sufficient to pay the price of the slave.

(17) But what if a person is charged to manumit several slaves, and the sum bequeathed is equal to the value of some of them, but not to that of all; can he be compelled to manumit

some of them ? I think that he can be compelled to manumit as many as the legacy will permit him to do. But who shall decide which ones shall be manumitted; must the legatee select them, or must the heir do so? Perhaps someone may very properly say that the order given in the will should be followed. If the order is not indicated therein, the slaves ought to be selected by lot, to prevent the Praetor from being suspected of favoring any through interest, or kindness; for he must render his decision by taking into account the alleged merits of each slave.

(18) In like manner, it must be held that, where a legatee is ordered to purchase certain slaves, and give them their freedom, and the money which was bequeathed for this purpose is not sufficient for the purchase of all of said slaves, the rule in this case will be the same as we have adopted in the preceding one.

(19) Where a legacy is bequeathed to anyone, and he is requested to manumit his own slave, and transfer the legacy to him, must freedom be granted under the terms of the trust? Some authorities are in doubt on this point, because if the legatee is compelled to give the slave his liberty, he will necessarily be obliged to execute the trust and transfer the legacy; and there are some authorities who hold that he should not be forced to do so. For if a legacy should be left to me, and I should be charged to immediately transfer it to Titius, and also to grant freedom under the trust to my slave, we should undoubtedly hold that I cannot be compelled to grant him his freedom, because I am not considered to have received anything to take the place of his value. It is clear that if I should be charged to pay the legacy after a certain time has elapsed, it may be held that I can be compelled to manumit the slave if, in the meantime, I have obtained any benefit from the legacy.

(20) Where anyone is asked to give to one person a tract of land, and to another a hundred *aurei,* at the time of his death, he will be compelled to pay whatever he has collected out of the profits of the land, if the amount is equal to that provided by the trust; so that, in this instance, it is not certain whether the money left under the trust, or the grant of freedom, will be due.

(21) Whenever freedom is legally bequeathed by the terms of a trust, the condition is such* that the right can neither be extinguished by a donation, nor by usucaption; for no matter into whose hands the slave whose freedom has been left under the trust may come, his owner will be compelled to manumit him. This has been frequently set forth in the Imperial Constitutions. Therefore, he into whose hands the slave may come will be compelled to grant him his freedom by virtue of the trust, if he who was requested to do so prefers it; for it has been settled by a broader interpretation that, even if freedom were left to a slave conditionally, and he should be alienated while the condition is pending, he is, nevertheless, alienated with the understanding that he is to be free if the condition is complied with. If, however, the slave is unwilling to be manumitted by him, but prefers to obtain his freedom from the person who was charged to emancipate him, the Divine Hadrian and the Divine Pius stated in a Rescript that he must be heard.

The Divine Pius also stated in a Rescript that even if he had been already manumitted and preferred to become the freedman of the person who had liberated him, he should be heard. But if the freedman can show that his rights may be, or have been prejudiced by his manumission, on account of some act of the person who manumitted him or for some other reason, relief must be granted him by one of these constitutions, in order that his condition may not become less endurable, which would be contrary to the wishes of the deceased. It is. clear that if the intention of the deceased was that the slave should be manumitted by anyone whomsoever, it must be said that the constitutions above referred to will not apply.

25. *Paulus, Trusts, Book HI.*

If the heir who sold the slave should die without leaving an heir, and the purchaser should be

living, and the slave should desire to become the freedman of the deceased, and not that of the purchaser, Valens decided that he ought not to be heard, for fear that the purchaser might lose both the price which he had paid and his rights over the freedman as well.

26. *Ulpianus, Trusts, Book V.*

Where anyone who was requested to manumit the slave of another transfers the slave to a third party on account of his death or the confiscation of his property, I think that it should be held that there is ground for the application of the constitutions, in order that the condition of the freedom bequeathed by the trust may not be rendered worse. For when anyone is charged to manumit a slave at the time of his death, and he dies before giving the slave his freedom, it has been decided that it is the same as if the slave had been bequeathed his freedom by him; for he could have granted him his freedom directly by his will.

The result of this is, that whenever anyone who obtains his freedom by virtue of a trust is manumitted by someone, other than the person charged with manumitting him, he w^Jl be entitled to the benefit of the constitutions, and will be regarded just as if he had been manumitted by him who was asked to do so; for the reason that favor is always shown to grants of freedom under a trust, and when they are bequeathed they should not be interfered with, as he to whom they are granted is in the meantime held to be in the enjoyment of his liberty.

(1) Therefore, it is apparent that relief should be granted where freedom is left under a trust, and that any delay which results should be considered as proceeding from the matter itself, and in reckoning the day from which freedom can be demanded, children should be given to their mother to be manumitted, where she is a liberated slave, and the children are born free from the day when freedom was demanded. For, generally, freedom which is left under a trust is demanded too late, or is not demanded at all, on account of the neglect or timidity of those who are entitled to it; or because of their ignorance of their rights; or on account of the authority and rank of those who are charged with the execution of the trust; which things should not stand in the way of the acquisition of freedom.

Hence we maintain, and it should so be decided, that children are born free from the very time when any delay is made in liberating their mother from servitude; and, moreover, the child of a female slave should be considered as manumitted from the very time when the mother had the right to demand her freedom, even though she may not have done so.

It is clear that relief should be granted to minors of twenty-five years of age in a case of this kind, and that any delay should be held to have proceeded from the matter itself; for, as it has been decreed and set forth in the Constitution of the Divine Severus that wherever delay takes place in the payment of money left to minors under a trust, it should be considered as having proceeded from the matter itself, there is still greater reason that this rule should be adopted where grants of freedom are involved.

(2) A certain Caecilius, who had given a female slave in pledge, provided by his will that, after the claim of his creditor had been satisfied, the slave should be manumitted by virtue of a trust. The heirs not having paid the creditor, the children afterwards born to the said slave were sold by him. Our Emperor and his Father stated in a Rescript that, in accordance with what had been decided by the Divine Pius, the children should not be defrauded of the freedom to which they are entitled, and that the price having been refunded to the purchaser, they should become free; just as if their mother had been manumitted at the time when they were born.

(3) Our Emperor and his Father also stated in a Rescript that if a will or a codicil had not been opened within five years after the death of the testator, and the female slave had had a child in the meantime, it should be delivered to its mother, in order that it might be granted its freedom; and that it should not remain in slavery on account of accidental delay.

(4) It is, therefore, apparent from this Rescript, as well as from the one which we have mentioned as promulgated by the Divine Pius, that these Emperors were unwilling that any accidental delay in granting freedom should prejudice the rights of a child born of a slave to whom freedom was granted under the terms of a trust.

(5) This, however, will not be the case where freedom is to be granted under a trust to a female slave by the substitute of a son under the age of puberty, if she had the child during the lifetime of the minor; or if she was to receive her freedom after the lapse of a certain time, or conditionally, and she brought forth the child before the time had arrived, or before the condition had been complied with; for the said child will not be entitled to freedom because the condition in this case is different, as the delay was not accidental, but was caused by the will of the testator.

(6) If a slave should be bequeathed to anyone in such a way that the legacy is held to be void, and freedom is bequeathed to the same slave under the terms of a trust, the question arises whether the grant of freedom must also be held to be void. And if the slave demands his freedom under the terms of the trust of the person under whose control he remains, where the legacy left to him who was charged to manumit him has been declared to be void, or if the slave himself was bequeathed as was stated above, whether the bequest of his freedom should not be considered to be without force or effect. I think it should be said that the grant of freedom under the trust remains unimpaired, even though nothing may come into the hands of him who was asked to manumit the slave. Hence, he who obtains the legacy must liberate the slave, for the reason that freedom granted under the terms of a trust permits no obstacle to be interposed.

(7) In the case of bequests of freedom, relief is granted by a decree of the Senate enacted in the time of the Divine Trajan, during the Consulate of Rubrius Gallus and Gselius Hispo, as follows: "If those charged with a grant of freedom, having been summoned by the Prse-tor, refuse to appear, and, after investigation, the Praetor finds that the slaves are entitled to be free, they will be in the same position under the law as if they had been directly manumitted."

(8) This Decree of the Senate has reference to those who are entitled to freedom by virtue of a trust. Hence, if they are not entitled to it, and it has been fraudulently obtained by a decision of the Praetor, freedom will not be granted under this Decree of the Senate. This Our Emperor and his Father stated in a Rescript.

(9) Those must be summoned before the Praetor who are obliged to grant freedom under a trust, but the Rubrian Decree of the Senate will not apply unless they are summoned. Hence, they should be summoned by notices, by edicts, or by letters.

(10) This Decree of the Senate applies to all those who conceal themselves, and who are required to grant freedom under the terms of a trust. Hence, no matter who is charged, whether it is the heir or anyone else, there will be ground for the application of the Decree of the Senate; for all of those who are obliged to grant freedom by virtue of a trust are in such a position that the Decree of the Senate will be applicable to them.

(11) Wherefore, if the heir should conceal himself, and the legatee or the trustee who was asked to grant freedom to a slave is present, the Decree of the Senate will not take effect, and the grant of freedom will be prevented; for, in this instance, we suppose that the legatee has not yet obtained ownership of the slave.

27. *Paulus, Trusts, Book III.*

Therefore, in this case recourse must be had to the Emperor, in order that the interests of freedom may be consulted.

28. *Ulpianus, Trusts, Book V.*

Will there be ground for the application of the Rubrian Decree of the Senate, if a slave, to

whom freedom was bequeathed by a trust, should be sold by the person charged with his liberation, and the purchaser should conceal himself, but the trustee should appear? Marcellus says that the Decree will apply, because the party who was charged to manumit the slave is not present.

(1) The following words, "Refuse to appear," do not absolutely require that he whose duty it is to grant freedom should conceal himself, for if he does not do so, but merely fails to appear, the Decree of the Senate will be applicable.

(2) The same rule should also be observed where several heirs are charged with the granting of freedom under the trust, and a decision rendered that no good cause exists for their absence.

(3) The slave will become the freedman of those who are absent for a good reason, as well as of those who, being present, do not cause delay in the execution of the trust, just as if they alone had granted him his freedom.

(4) Where anyone, having been charged to manumit a slave that does not belong to the estate, conceals himself, a Decree of the Senate to provide for such an emergency was enacted during the Consulate of Emilius Juncus and Julius Severus as follows: "It is decided that where any one of those who are charged to grant freedom to a slave under a trust, for any reason whatsoever, and the slave did not belong to the person who made the request at the time of his death, and the trustee refuses to appear, the Prastor shall take cognizance of the case, and if it is established that the slave has a right to be manumitted, and the person charged with his manumission is present, he must decide accordingly. And, after he has rendered his decision, the condition of the slave will be the same in law as it would have been if he had been manumitted by the person who was charged to do so under the trust." (5) It must be held that persons are not present for a good reason, when no improper cause exists for their absence; as it is sufficient if they have not absented themselves for the purpose of defrauding the slave of his freedom, in order that they may appear to be absent for a good reason. It is, however, not necessary that anyone should be absent on public business. Hence, if he has his domicile in one place, and he applies for freedom under the trust in another, it must be said that it is not essential for him who is alleged to be the one from whom the grant of freedom is due to be summoned, because if while he is absent, it should be established that freedom ought to be granted, a decree can be rendered that he is absent for a good reason, and he will not lose his rights over his freedman; for no one can entertain any doubt that he is absent for a just cause who is at his own residence.

29. *Paulus, Trusts, Book HI.*

Where a slave is alienated after he has been placed in such a position that he ought to be liberated under the terms of a trust, the person to whom he belongs in the meantime will be compelled to manumit him. In this case, however, no distinction is made as to whether there is a good cause for his absence or not, for, in any event, he will be entitled to his freedom.

30. *Ulpianus, Trusts, Book V.*

When a decree is rendered by the Praetor that he who is absent has good reason for it, and he is already dead, Our Emperor stated in a Rescript that the decree must be transferred to his heir, and that the law would apply to him just as if the Praetor had decided that he himself was absent for a good reason.

(1) Where an infant was among the slaves entitled to manumission, the Senate decided that the age of one of them would prevent the others who were entitled to be free under the terms of the trust from obtaining their liberty.

(2) This rule will also apply where only one heir is appointed, and he is unable to speak for himself.

(3) When, however, the minor has a guardian, and he is unwilling to authorize the grant of freedom, the Divine Brothers stated in a Rescript that the slave should become free under the terms of the trust, just as if he had been manumitted by the minor himself, by the authority of his guardian; and that it should not be productive of any disadvantage to the minor, nor would it, in any way, prejudice the grant of freedom, if he did not have the slave as his freedman.

(4) Therefore, when any case occurs in which a child is not able to speak for himself, and yet is charged with a grant of freedom under a trust, we must take into consideration the spirit of the Decree of the Senate, which even extends to the infant heir of the person charged with the execution of the trust.

(5) Recourse should also be had to the Praetor under these circumstances, especially as it is provided by a Rescript of the Divine Pius that where some of those charged with the execution of the trust are present, and others have concealed themselves, and others again are absent for some good reason, and there is also an infant, the slave will not become the freedman of all of them, but only of the infant and of those who are absent for a good reason, or of those who are present.

(6) Where several heirs are appointed, and among them there is one who cannot speak for himself, but who has not been charged to manumit the slave, the grant of freedom will not lose its effect because the infant cannot sell his share of the slave to his co-heirs. The Vitrasian Decree of the Senate is applicable in this instance.

The Divine Pius, however, stated in a Rescript addressed to Cassius Dexter, that the matter could be disposed of as follows, namely, by appraising the shares of the slaves to whom freedom was granted under the terms of the trust, at their true value, and then directing the slaves to be manumitted by the persons charged with that duty. Those who manumitted them will, however, be liable to their brothers and coheirs, just as if judgment had been rendered against them on this account in court.

(7) The Divine Pius stated in a Rescript, with reference to an insane person, that freedom granted under a trust was not prevented on account of the condition of the appointed heir, where it was alleged that he was not of sound mind; and, therefore, if it should be established that freedom had been legally provided for by the trust, a decree must be rendered in which this is stated.

(8) Relief should be granted to a deaf and dumb person just as in the case of an infant.

(9) Where anyone dies without leaving an heir or other successor who can execute the trust conferring freedom, the Senate decreed that relief should be granted upon application being made to the Prsetor.

(10) If, however, a proper heir should reject the estate, relief should be granted by the Decree of the Senate to the person entitled to freedom under the trust; even though he cannot be said to die without an heir, who leaves a proper heir, even if he rejects the estate.

(11) The same rule will also apply where a minor of twenty-five years of age enters upon the estate of the person charged with granting him freedom, and obtains complete restitution because of his rejection of the estate.

(12) It may also be asked whose freedman the slave becomes; for, in accordance with the constitution, he obtains his freedom just as if he had acquired it by virtue of the will. He will, therefore, become the freedman of the deceased, and not of him who was charged with the execution of the trust.

(13) A Rescript of the Divine Marcus and Verus is extant which says that where one of those charged with the execution of the trust dies without leaving a successor, and the other is absent for some good reason, the slave shall be entitled to his freedom, just as if it had been granted to him regularly by the person who died without a successor, or by him who was

absent for a good reason.

(14) A very nice point may arise; that is, where an heir dies without a successor, whether the slave can obtain his freedom before it is certain that an heir or a possessor of the estate under the Praetorian Edict will not appear, or while it is still doubtful (for instance, while the appointed heir is deliberating), whether he will accept the estate. The better opinion is that it is necessary to wait until it is certain that no successor will appear.

(15) Our Emperor, Antoninus, stated in a Rescript that a slave who is entitled to freedom by virtue of a trust cannot receive anything under the will of the heir without his freedom being mentioned.

(16) The Divine Marcus also stated in a Rescript that grants of freedom under a trust could not be annulled or unfavorably affected by the age, the condition, the default, or the tardy action of those who were required to see that they were executed.

(17) Although a bequest of freedom made by a codicil which is void is not due, still, if the heir considered the codicil to be valid, and paid out anything under it, and desired that the slaves should remain free for the sake of carrying out the provisions of the trust, it has been declared by a Rescript of Our Emperor and his Divine Father that they will justly be entitled to their freedom.

31. *Paulus, Trusts, Book III.*

Freedom can be granted under a trust to a slave belonging to another, provided he has testamentary capacity with reference to his master.

(1) Where a person about to die intestate charged his son to manumit a certain slave, and a posthumous child was afterwards born to him, the Divine Fathers stated in a Rescript that, because the slave could not be divided, he should be manumitted by both the heir at law and the posthumous child.

(2) A person who is charged with a grant of freedom under a trust can manumit a slave, even at the time when he is forbidden to alienate him.

(3) If a patron acquires praetorian possession contrary to the provisions of the will, because his freedman has passed him over, he cannot be compelled to sell his own slave whom he was requested by his freedmen to manumit.

(4) Where the person to whom a slave belongs is unwilling to sell him in order that he may be manumitted, the Prsetor has no cause to interfere. The same rule applies when he wishes to sell him for more than *a* just price. If, however, the master is ready to sell his slave for a certain sum which, at the first glance, does not appear to be unjust, and he who was asked to manumit him contends that the price is unreasonable, the Praetor should interpose his authority, so that a just price having been paid with the consent of the master freedom may be granted to the slave by the purchaser.

If, however, the master is willing to sell the slave, and the latter desires to be manumitted, the heir should be compelled to purchase and manumit him; unless the master wished to manumit the slave in order that an action might be granted him against the heir to recover the price. The same should be done if the heir conceals himself. The Emperor Antoninus, also, stated this in a Rescript.

32. *Msecianus, Trusts, Book XV.*

If the master is ready to alienate the slave, but is not willing to do so before he is satisfied with the price, he ought not to be compelled to liberate him, lest, if he did it, he might obtain little or nothing, if he who is asked to manumit him should prove to be insolvent.

(1) If the slave does not consent, neither the master nor anyone else should be permitted to

proceed with the matter, because a trust of this kind is not one by which anything is acquired by the master; otherwise, the benefit of the trust would appear to accrue only to himself.

This might happen if the testator wished the slave to be purchased for more than he was worth, and be manumitted, for then the master could proceed with the execution of the trust; because it would be to his interest to obtain, in addition to the true value of the slave, any excess which the testator ordered to be given him; and it is to the interest of the slave to secure his freedom.

(2) This will occur where the heir or the legatee is directed to purchase certain property for a special sum of money, and deliver it to another; for then both the owner of the property and the person to whom it is to be delivered can proceed to compel the execution of the trust, as both of them are interested in doing so; the owner, in order that he may obtain any excess over and above the price which the testator has ordered to be given him, and the person to whom the property was left, in order that he may acquire it.

33. *Paulus, Trusts, Book III.*

Where the son of the deceased is asked to manumit a slave belonging to his father, it must be said that he can have him as his freedman under the Praetorian Edict, and impose services upon him; for he can do this as the son of the patron, even if the slave should obtain his freedom directly.

(1) There will be ground for the application of the Rubrian Decree of the Senate even when freedom is granted under a condition, provided compliance with the condition is not imposed upon the slave himself. Nor does it make any difference whether the condition consists of giving or doing something, or is dependent upon the occurrence of any other event, for the heir will lose his freedom as the son of the deceased if he places any obstacle in the way of the fulfillment of the condition, even though he can acquire his right over the freedman in another way.

Sometimes he suffers a penalty, for if he demands that the slave shall remain in servitude, or accuses him of a capital crime, he will lose praetorian possession contrary to the provisions of the will.

(2) Where a slave is bequeathed to anyone who is charged to manumit him, but refuses to accept him, he can be compelled to do so, or to assign his rights of action to whomever the slave may select, in order that the grant of freedom may not be annulled.

34. *Pomponius, Trusts, Book III.*

When the person to whom a slave is left to be liberated under a trust is unwilling, the slave should not be delivered to him in order to be manumitted; but he can become the freedman of another than the one who was requested to emancipate him.

(1) Campanus says that if a minor of twenty years of age should ask his heir to manumit a slave who belongs to him, his freedom must' be granted; because, in this instance, the *Lex ^lia Sentia* does not apply.

(2) A slave was bequeathed to Calpurnius Flaccus, who was charged to manumit him, and if he refused, the same slave was bequeathed to Titius, who was also charged to manumit him; and if he should fail to do so, the slave was ordered to be free. Sabinus says that the legacy is void, and that the slave will become free immediately by the terms of the will.

35. *Msecianus, Trusts, Book XV.*

The opinion of Gaius Cassius is not adopted, for he held that the obligation of manumitting his own slave should not be imposed upon the heir or the legatee, if the services of the slave were so necessary that he could not dispense with them; as, for instance, where he was his steward, or the teacher of children, or where he had committed an unpardonable crime. For

the testator is considered to have had these slaves in his power, and the owners have the right to reject the will, but if this is not done, the wishes of the deceased should be carried out.

36. *The Same, Trusts, Book XVI.*

Neither infants, insane persons, captives taken by the enemy, nor those whom religion or any honorable cause, or some calamity, or important business, or the danger of forfeiting life or reputation, or anything of this kind detains, come within the scope of the Rubrian Decree of the Senate; nor, indeed, minors who have no guardians, and even if they have any, are they or their guardians subject to its provisions, where any of the above-mentioned matters are involved. For, even if the latter designedly refrain from exerting their authority, I do not think that their wards should be deprived of the rights over their freedmen, because it is unjust that a ward should suffer wrong by the act of his guardian who, perhaps, may not be solvent, and only those are included in the Decree of the Senate who are obliged to grant freedom in accordance with the provisions of the trust. What course must then be pursued ? Relief is granted to such persons by the Dasumian Decree of the Senate, under which provision is made with reference to those who are absent for some good reason, in order that no impediment may be placed in the way of freedom, and that the rights over a freedman may not be taken from those who are not guilty of fraud.

(1) If an absent party is defended by an attorney, he is always held to be absent for some good reason, and he will not be deprived of his rights over his freedman.

(2) No objection can be urged against the jurisdiction of a magistrate who has cognizance of a grant of freedom under a trust, by alleging a personal privilege, or one attaching to a municipality or a corporation, or any office held by anyone, or the civil condition of any of the parties interested.

37. *Ulpianus, Trusts, Book VI.*

When an absolute grant of freedom is made under the terms of a trust to a slave who is said to have administered the affairs of his master, the Divine Marcus stated in a Rescript that it should not be delayed; but that an arbiter must immediately be appointed for the purpose of compelling the slave to render an account. The words of the Rescript are as follows: "It seems to be the more equitable course to grant freedom to Trophinus at once under the trust, because it is established that it was bestowed without the condition of his rendering an account. Nor would it be humane for the enjoyment of his liberty to be delayed on account of any pecuniary question which may arise. However, as soon as he obtains his freedom, an arbiter should be appointed by the Praetor before whom he who transacted the business must appear and render an account." Therefore, he is only obliged to render an account, but nothing is said as to his paying over any balance which may remain in his hands. I do not think that he can be forced to do so, for he cannot be sued after having obtained his freedom on account of any business which he transacted while in servitude.

It is clear that he can be forced by the Praetor to surrender any property mentioned in his accounts, and all the articles or money of which he has possession, as well as to give information with reference to special matters.

38. *Paulus, Decrees, Book III.*

A testator, whose will was not perfect, bequeathed freedom and a trust to a female slave whom he had reared. As all these bequests took effect under an intestate succession, it was asked whether the slave was manumitted by virtue of the trust. An interlocutory decree was rendered to the effect that even if the father had demanded that nothing be done *ab intestato,* his children, through respect for his memory, ought to have manumitted the slave to whom their father was attached. It was therefore decided that she was legally manumitted, and for this reason entitled to the benefit of the trust.

39. *The Same, Opinions, Book XIII.*

Paulus gave it as his opinion that, even though the slave of another whom a testator desired to be manumitted by one of his heirs, under the impression that he belonged to himself, was concerned, he who was asked to manumit him should be compelled to purchase the slave, and liberate him; as he did not think a case involving freedom, and one relating to the disposition of money under a trust, were similar.

(1) Paulus gave an opinion as follows, "Believe me, Zoilus, that my son Martial is grateful to you, and not to you alone, but also to your children" (meaning that the intention of the deceased, with reference to a benefit to be conferred upon the children of Zoilus, was included in this clause, they being slaves), "no greater service can be rendered them than to give them their freedom." Therefore the Governor should execute the will of the deceased.

40. *The Same, Opinions, Book XV.*

Lucius Titius gave his female slave, Concordia, to his natural daughter, Septicia. Afterwards, by his will, he bequeathed the abovementioned slave along with others to his daughter, for the purpose of manumitting her. I ask whether his daughter, Septicia, can be compelled to manumit the slave. Paulus answered that, if the donation of the slave was made during the lifetime of the natural father, and the daughter did not accept other legacies left by the will of her father, she could not be compelled by the terms of the trust to manumit the said female slave, who was her own property.

(1) Lucius Titius bequeathed his slave Stichus to Msevius, and asked that he should never be manumitted either by him or by his heir. Paulus gave it as his opinion that the testator had the power afterwards to liberate this slave, because he did not impose any condition upon himself but upon his legatee.

41. *Scssvola, Opinions, Book IV.*

"I wish Thais, my female slave, to become my freedwoman, after she has served my heir as a slave for ten years." The question arises, as the testator desired the slave to be his freedwoman, and the heir could not make her such, and freedom was not absolutely and directly granted her, whether she would remain in slavery even after the ten years had elapsed. The answer was that there was nothing in the case stated to show why Thais should not be entitled to freedom.

(1) Lucius Titius provided in his will as follows, "My dear son, Msevius, if Stichus, Damas, and Pamphilus have deserved it at your hands, I request you not to permit them to serve as slaves to another after my debts have been paid." If it was the fault of the heir that the debts of the estate were not paid, I ask whether the slaves can obtain their freedom under the terms of the trust. The answer was that the heir ought not to be blamed if he delayed payment of the debts on account of the convenience resulting to himself in managing his property; but if it should clearly be proved that he designedly did not pay the debts, in order to prejudice the grants of freedom, the latter will become operative.

(2) A testator charged the testamentary guardian of his children to manumit his slaves, but the person appointed was excused. I ask whether the other guardians appointed in the place of the one who was excused should be required to liberate the slaves. The answer was that, according to the facts stated, the appointed heir appeared to have been charged with the grants of freedom.

(3) "I give to Seius three pounds of gold and my notary Stichus, whom I charge him to manumit." Seius was appointed guardian by the same will, but excused himself from accepting the guardianship. The question arises whether the grant of freedom under the trust should, nevertheless, be executed. The answer was that there was nothing in the case stated which would prevent this from being done.

(4) A testator, having appointed his sister his heir, made the following provision with reference to his slaves, "I wish, and I charge you, my dear sister, to entertain the highest consideration for my stewards, Stichus and Damas, whom I have not manumitted, as they have not rendered their accounts. If you are also satisfied with those slaves, you know the feelings which I entertain towards them." Where the stewards were ready to render their accounts, and the heir did not grant them their freedom, I ask whether she should be heard if she alleged that she was not satisfied with them. The answer was that the displeasure of the heir should not be considered, but only what would satisfy a reliable citizen to enable them to obtain their freedom.

(5) Lucia Titia charged her heirs to purchase Pamphila, the female slave of Seia, and her children, and manumit them. An estimate of the amount which ought to be given for them was made by a judge, and, in the meantime, before the money was paid, Pamphila brought forth a child. I ask whether the child of Pamphila would belong to the heirs of Seia, or to the heir of Titia? The answer was that the child would be the property of the person to whom the mother belonged at the time of its birth; but if the heir was in default in executing the trust, he should be compelled also to grant freedom to the child.

(6) Lucius Titius made the following provision in his will: "I recommend So-and-So and So-and-So, slaves who are physicians, to you, and it depends upon you whether you have them as your good freedmen and medical attendants. I myself would grant them freedom, but I fear to do so, because the physicians of my sister, who were slaves, having been manumitted by her, and having served their time, abandoned her." I ask whether the above-mentioned slaves are entitled to their freedom under the trust. The answer was that, in accordance with the facts stated, the necessity of liberating them is not imposed upon the heirs, but that this depends upon their judgment.

(7) Titius granted freedom to his slave "in case he rendered his accounts." I ask whether the accounts rendered by him should include, as part of the sum remaining in his hands, any losses which may have accidentally been incurred. I gave it as my opinion that in any business which was transacted with the consent of the master, those losses which were the result of accident could not be charged to the slave, and must not be included, in the balance remaining in his hands.

(8) I also ask, where a slave is directed to surrender all of his *peculium,* whether the *peculium* should be calculated in such a way that only that will be included in it which would belong to the master for any reason whatsoever. The answer was that, in the case in question, what the master was entitled to should not be deducted from the *peculium.*

(9) I also ask, if the slave has placed in his *peculium* any of the balance remaining in his hands, whether this should be deducted from the *peculium* which he is required to surrender. The answer was that if what is mentioned has been placed in his *peculium,* it must be paid over as a part of the balance, for the condition is sufficiently complied with where the remainder of the *peculium* is delivered.

(10) A testator made a grant of freedom by his will as follows: "I desire my slave, Cupitus, to be free, after rendering his accounts, when my son Marcianus reaches the age of sixteen years." After the death of the testator, the guardians of his son required Cupitus to pay a debt due to the estate, and the latter paid to the said guardians the amount which he had collected. The son afterwards died under the age of puberty, his mother became his heir, and caused judgment to be rendered against the guardians on account of their administration of the guardianship. Cupitus demanded his freedom at the time when Marcianus would have been sixteen years of age, if he had lived; and offered to render his accounts for a year after the death of the testator, as the other accounts had been approved.

The question arose whether Cupitus could also be compelled to render the accounts for which

the guardians were responsible. The answer was that the slave in question seems to have complied with the condition of rendering his accounts, if he had rendered one of all the business which he had conducted, and which could properly be required.

With regard to the other proviso, the more indulgent interpretation should be adopted, that is, the child having died, the slave had waited long enough, as he did not demand his freedom until the time when the minor would have attained his sixteenth year if he had lived.

(11) "Stichus and Damas, my slaves, you will become my freedmen, if you render your accounts." The question arose whether, in order to obtain their freedom, they must not only render their accounts, but also give up any property which had been designedly and fraudulently appropriated by them. The answer was that, in the condition of rendering their accounts, everything which related to the administration and fidelity of the slave was included.

(12) Certain slaves did not comply with the condition of rendering their accounts within a specified time, and afterwards announced that they were ready to do so. The question arose whether they could obtain their freedom. The answer was that if they were to blame for not complying with the condition within the prescribed time, they would not become free, even if they were subsequently willing to render their accounts.

(13) "I request my heirs, and I charge them to manumit Stichus, after he renders his accounts, when my son reaches the age of sixteen years." I ask whether the testator intended that the slave should act as steward until the time when the son reached the age of puberty. The answer was that it was clear that the testator intended that Stichus should also render an account of this part of his administration.

(14) "I direct that my slave, Stichus, give and pay to my daughter and my wife, my heirs, so many *aurei,* without any controversy, and I charge them to manumit him." As the wife rejected the estate, the question arose whether the slave was obliged to pay both of them, or only the daughter. The answer was that the entire sum should be paid to the daughter, as she was the sole heir to the estate.

(15) A testator having appointed his son heir to his entire estate, granted him his freedom in the following words: "Let December, my accountant, Severus, my steward, and Victorina, the wife of Severus, become free in eight years, and I wish them to remain in the service of my son for that time. Moreover, I charge you, my dear son Severus, to treat December and Severus, to whom I have not immediately granted freedom, with due consideration, in order that suitable services may be rendered by them to you, and I hope that you will have them as good freedmen."

As the son of Titius was nine years of age at the time that the latter made his will, and Titius died two years and six months afterwards, I ask whether the eight years during which the grant of freedom was deferred should be reckoned from the date of the will, or from the time of the death of the testator. The answer was, that the testator appeared to have counted the eight years, during which the grant of freedom was in abeyance, from the day when the will was made, unless it can be proved that his intention was otherwise.

(16) "Let Spendophorus be free when my daughter marries in my family, if he renders a satisfactory account of his administration to her." The daughter, having died before reaching the age of puberty, and during the lifetime of her father, Seius became the heir by substitution. If Spendophorus did not transact the business of the minor, and ceased to administer the affairs of her father, I ask whether he would become free by the terms of the will, at the time when, if Titia had lived, she would be twelve years old. The answer was that according to the facts stated, if the slave had not transacted any business of which he would be compelled to render an account to the heir, he would become free.

(17) "I wish Stichus to be manumitted after he has rendered his accounts." Stichus, who was a banker, executed certain promissory notes with the approval of his master, and produced accounts signed by the latter, but he did not afterwards contract any other liabilities. The question arose whether the condition could be held to have been complied with, if there were some insolvent debtors whose claims others had attempted to collect. The answer was, that the fact that some of the debtors were not solvent had nothing to do with the obligation of rendering the account.

42. *Marcianus, Trusts, Book VII.*

Our Emperor, Antoninus Pius, in order that the last wills of his soldiers might in every respect be considered valid, where an appointed heir and his substitute died suddenly before entering upon the estate, ordered that those to whom freedom and the estate had been left under a trust, by soldiers, should become free and be heirs, just as if they had received both of these bequests directly.

Moreover, where slaves, by means of a trust, had acquired their freedom and an estate from a civilian, and the appointed heir and his substitute had also died suddenly, he held that this was sufficient for the confirmation of their freedom.

43. *Paulus, On Sabinus, Book IV.*

Freedom granted under the terms of a trust is not due to a slave whom his master afterwards placed in chains.

44. *Pomponius, On Sabinus, Book VII.*

A slave can legally bring suit against his master where the freedom has been bequeathed to him by a trust.

45. *Ulpianus, Disputations, Book HI.*

When a debtor is asked by his creditor to manumit a female slave who has been pledged to him, it can be maintained that freedom has been legally bequeathed by the debtor under the terms of the trust. For what difference does it make whether a certain amount is left by him, or freedom is granted under a trust?

Whether the value of the slave is more or less, he can be forced to grant her freedom; provided he has once acknowledged the validity of his creditor's will. We must understand that he has done so when, for instance, if he is sued by the heir, he avails himself of an exception; or proves the wishes of the creditor in some other way. For if the debtor should be sued by the heir of the creditor he can plead an exception on the ground of bad faith, because of the interest of the debtor in obtaining his slave.

(1) In granting freedom under the terms of a trust, even though the legatee may only have obtained a small bequest, it will, nevertheless, be necessary for him to manumit his slave. For, if a pecuniary trust should be divided, great injury will be done to the cause of freedom as well as to the beneficiary; therefore, it is better for him who accepts the legacy to be burdened than that the bequest of freedom should be annulled.

(2) Whenever freedom is bequeathed to a male or female slave under the terms of a trust, the slave is in such a position that he or she will remain in servitude until they are manumitted. If the person charged with this duty causes no delay in liberating the slave, no change will take place in his or her condition, and therefore it is established that the slave can, in the meantime, be bequeathed, subject to his manumission afterwards.

46. *The Same, Disputations, Book VI.*

Freedom can be granted under a trust as follows, "I charge my heir to manumit Stichus, if he should choose to do so," even though nothing else in the will dependent upon the consent of

the heir should be valid.

(1) It is clear that if freedom is bequeathed as follows, "If Stichus should be willing," it can be granted him.

(2) Where the following clause is inserted in a will, "I desire Stichus to be free if he is willing," it seems to me that the grant of freedom can be held to be valid, because the words rather imply a condition, just as if a bequest should be made to me, "If Titius should ascend to the Capitol."

(3) Where it was stated in a will, "If the heir should consent," the trust will not be valid, but this will only be the case where the testator left everything to the discretion of his heir, "If he chooses." Where, however, he left it to his judgment as a good citizen, we have no doubt that freedom should be granted; for it has been decided that a slave was entitled to be free where the testator made the following provision, "If you think proper, I ask you to manumit him," for this must be understood to mean if you, as a good citizen, approve it. For where freedom is bequeathed as follows, "If you approve my will," I think it should be granted, just as in the following case, "If he deserves it of you as a good citizen," or "If he should not offend you as a good citizen," or "If you approve of it," or "If you do not disapprove it," or "If you think that he is worthy." For where a testator left a bequest of freedom under a trust, in the Greek words meaning, "I desire you to grant freedom to So-and-So, if you think best," it was stated by the Divine Severus in a Rescript that the execution of the trust could be demanded.

(4) But, although a testator cannot leave it to the judgment of his heir whether or not he will grant freedom to a slave, he can let him decide when it shall be granted.

(5) A certain man, who bequeathed three slaves, charged his heir to manumit any two of them that he might select. A trust of this kind will be valid, and the heir can manumit whichever of the three slaves he chooses. And therefore if a legatee should claim those whom the heir wishes to manumit, he will be barred by an exception on the ground of bad faith.

47. *Julianus, Digest, Book XLII.*

If a father should appoint his two sons his heirs, and his will is annulled by the birth of a posthumous child, although the estate will belong to them equally, still, the grants of freedom under the trust ought not to be executed, as they are not compelled to pay any other legacies, or execute any other trusts.

(1) Where an heir who is charged to manumit a slave belonging to a third party, or one who is owned in common, or one in whom the usufruct belongs to another, conceals himself, relief will not improperly be granted under the Decree of the Senate.

(2) If freedom is bequeathed to Stichus by a trust under the condition that he shall render his account, and he is ready to pay over the balance in his hands, during the absence of the heir, it is the duty of the Praetor to select some reliable person under whose supervision the account may be rendered, so that the slave can deposit the money which is due according to the calculation; and then the Prsetor shall decree that the slave is entitled to his freedom under the terms of the trust.

It is proper for this to be done when the heir is absent for some good reason; for if he conceals himself, it will be sufficient to satisfy the Prsetor that it is not the fault of the slave that the condition is not complied with, and hence he must decree that he is entitled to his freedom.

(3) Where freedom is bequeathed conditionally to a slave who forms part of the legacy, he should not be delivered to the beneficiary of the trust, unless the latter gives security that he will surrender him if the condition should be complied with.

(4) A certain woman, at the time of her death, made the following statement in the presence of several respectable men, and of her mother, who was entitled to the estate as her heir at law,

"I wish my female slaves, Msevia and Seia, to be free," and then died intestate. I ask, if her mother does not claim the estate as heir at law under the Decree of the Senate, and it should pass to the next of kin, whether the slaves will be entitled to freedom under the terms of the trust. I answered that they would be, for when the woman being at the point of death said, "I wish my female slaves, So-and-So and So-and-So, to be free," she is considered to have asked this to be done by all those who would be her heirs at law, or the possessors of her estate under the Praetorian Edict.

48. *The Same, Digest, Book LXII.*

Where the following was inserted in a will: "I bequeath Stichus to Titius," or "Let my heir give him to Titius, in order that he may manumit him," I held that if the legatee should claim Stichus, he can be opposed by an exception on the ground of bad faith; unless he gives security to grant him his freedom in accordance with the will of the deceased.

49. *Africanus, Questions, Book IX.*

Where a person to whom a slave is bequeathed and who is charged to manumit him conceals himself, the slave is held to become the freedman of the deceased.

The same rule will apply where not the legatee but the heir is charged with the execution of the trust. Where not all of them, but only some, are charged with its execution, it must also be said that the slave will become the freedman of the deceased.

Moreover, an equitable action should be granted against those who have concealed themselves, and in favor of their co-heirs, by whom the value of their shares must be paid, or they can properly bring suit in partition against them.

50. *"Marcianus, Institutes, Book VII.*

Where a slave has been bequeathed and manumitted under a trust, Cervidius Scaevola, having been consulted, held that the last disposition was valid, whether it had reference to freedom or to a legacy; for the reason that it is established that when freedom is bequeathed it may afterwards be taken away, and it is clear that this can be done at the request of the slave.

If, however, it is doubtful with what intention the testator bequeathed the same slave, after having left him his freedom, the bequest of freedom should have the preference. This opinion also seems to me to be the more correct one.

51. *The Same, Institutes, Book IX.*

Not only he who was requested to manumit a slave can give him his freedom, but his successors, whether they are such by purchase or by any other title, can do so. If, however, he should have no successor, the slave will escheat to the Treasury in order to obtain his freedom.

(1) Moreover, he who is requested to manumit a slave, can do so at a time when he is forbidden to alienate him.

(2) Where anyone is requested to manumit the slave of another, and a certain sum of money has been bequeathed to him to purchase and manumit the slave, and his master is unwilling to sell him, the legatee shall retain the legacy in accordance with the will of the deceased.

(3) Where freedom is bequeathed by a trust to a slave, the latter is, to some extent, in the position of a freedman, and occupies the place of a slave to be free under a condition, and all the more, because he must not be transferred to another in such a way that his freedom will be prevented, or he will be exposed to more severe rights of patronage.

(4) It is provided by the Dasumian Decree of the Senate that if the person who is charged with the grant of freedom should be absent for some good reason, and such a decision is rendered by the Praetor, the slave will be entitled to his freedom; just as if he had been regularly

manumitted according to the terms of the trust.

(5) A person is understood to be absent who does not appear in court.

(6) And for the reason that provision had only been made for the absence of heirs, it was added in the same Decree of the Senate that when anyone is charged with the grant of freedom, and has been pronounced to be absent for any good cause whatsoever, the result will be the same as if the slave had been regularly manumitted in accordance with the terms of the trust.

(7) It is, however, provided by the Articuleian Decree of the Senate that the governors of provinces shall have jurisdiction in cases of this kind, although the heir may not reside in the province.

(8) Where anyone is asked to manumit a slave who does not form part of the estate, but is his own property, the slave will obtain his freedom under the Juncian Decree of the Senate, after the decision has been rendered.

(9) The Divine Pius stated in a .Rescript that where anyone is absent for some good reason, or conceals himself, or, if present, is unwilling to manumit the slave, he shall be considered as being absent.

(10) It is stated by the same Decree of the Senate that a purchaser shall also manumit the slave.

(11) A co-heir, who is present, can manumit the slave just as if he had acquired from his co-heir the share of the latter in the slave. It is said that the same Emperor stated in a Rescript that this rule will apply to a co-heir who is a minor under the age of puberty and was not asked to manumit the slave.

(12) When anyone is requested to manumit a slave, in order to marry her, he should not be compelled to contract marriage with her, but it will be sufficient if he grants her her freedom.

52. *Ulpianus, Opinions, Book I.*

Where slaves, to whom freedom has been bequeathed under the terms of a trust, are afterwards sold by a creditor, they cannot be granted relief against the heir, except for good cause.

53. *Marcianus, Rules, Book IV.*

Where anyone is asked to manumit a female slave, and delays doing so, and, in the meantime, she has a child; it has been established by an Imperial Constitution that under such circumstances the child will be born free, and will even be considered freeborn. There are, however, certain constitutions by which it is provided that the child is freeborn from the very time that the grant of freedom takes effect, and this rule should undoubtedly be observed; for freedom is not a private but a public matter, so that he who is under obligation to grant it should tender it voluntarily.

(1) Where, however, the female slave had a child before she was entitled to her freedom under the trust, and this had been purposely brought about by the heir, in order that she might not yet be entitled to her freedom, as where he delayed entering upon the estate in order that any children born to the said female slave would belong to him, it is settled that they should be manumitted, but they must be delivered to their mother to be set free by.her, and become rather her freedmen than those of the heir, for where the latter is unworthy to have slaves, he is not worthy of having freedmen.

54. *Msecianus, Trusts, Book XVI.*

If the mother, after having received her child, or he who has succeeded to her place, refuses to grant it its freedom, he or she should be compelled to do so. Again, if the mother is unwilling

that the child should be delivered to her, or if she should die before this is done, it may not incorrectly be said that freedom should be granted to the child by the heir.

55. *Marcianus, Rules, Book IV.*

The same rule will apply where the heir did not designedly delay entering upon the estate, but deliberated as to whether or not he would accept it; and if he learned that he had been appointed heir after the slave had brought forth her child, it is decided that relief should be granted in this case; for, under such circumstances, the heir himself ought to manumit the child, and not deliver it to its mother to be emancipated.

(1) If, however, freedom has been directly bequeathed to the slave, and any of the above events should take place, in what way can relief be granted to the child? For, in these instances, freedom left under a trust is demanded, and the Prsetor comes to the relief of the children, but where freedom is left directly, no such a demand is made.

I think, however, that, in a case of this kind, the child is entitled to relief, and that the Prsetor, having been applied to, may grant the mother an action *in rem,* just as where freedom is left by a trust. Hence, Marcellus, in the Sixteenth Book of the Digest, states that where children who have been manumitted by will before the estate is entered upon are acquired by usucaption, relief must be granted them, in order that their freedom may be preserved by the Prsetor; and although they may have been to blame for suffering themselves to be acquired by usucaption, still, no responsibility can attach to children on this account.

56. *Marcelli, Opinions.*

Lucius Titius provided by his will as follows, "I desire 'that any codicils which I may hereafter execute shall be valid. If a child should be born to me by my wife, Paula, within ten months after my death, let it be the heir to half of my estate. Let Gaius Seius be the heir to half of my estate. I request my heirs, and I charge them to manumit my slaves Stichus, Pamphilus, Eros, and Diphilus, when my children arrive at the age of puberty." Then he inserted the following provision in the last part of his will: "If no children should be born to me, or if they should die before reaching the age of puberty, then let Mucius and Msevius be heirs to equal shares of my estate. I desire that the legacies bequeathed by my former will, under which I appointed my sons and Seius my heirs, to be paid by the heirs who may succeed them."

He afterwards executed a codicil as follows: "Lucius Titius to his heirs in the first degree and to their substitutes; Greeting. I ask you to pay those legacies which I have bequeathed by my will, as well as those which I shall bequeath by my codicil." As no children were born to Lucius Titius, I ask whether the freedom granted by the trust should be immediately given to the slaves Stichus, Pamphilus, Eros and Diphilus. Marcellus answered that there was a condition attached to the bestowal of freedom upon the slaves in question, which was that the children of the testator should become his heirs; but the condition did not appear to be repeated, and therefore that freedom should be immediately granted to the slaves by the heirs in the first degree and the substitutes. For, as was stated above, the testator requested that everything which he mentioned in his will shall be carried out. Moreover, he provided for the freedom of the said slaves, but he did so under a condition, and if the condition had been of any other kind it

would have been necessary to await its fulfillment. It is not, however, probable that he had this condition in his mind when he charged the substitutes, since if it should be fulfilled, the substitutes could not be admitted to the succession.

TITLE VI.

CONCERNING THE DEPRIVATION OF FREEDOM.

1. *Terentius Clemens, On the Lex Julia et Papia, Book XVIII.*

When freedom is taken away by law, it should either be considered as not having been granted, or as having afterwards been taken away by the testator himself.

TITLE VII.

CONCERNING SLAVES WHO ARE TO BE FREE UNDER A CERTAIN CONDITION.

1. *Paulus, On Sabinus, Book V.*

A slave who is to be conditionally free is one who will be entitled to his freedom at the expiration of a prescribed time, or upon the fulfillment of a certain condition.

(1) Slaves become free either under an express condition, or by the operation of the,law itself. It is clear in what way this takes place under an express condition. They are manumitted by operation of law where they are liberated for the purpose of defrauding creditors. For as long as it is uncertain whether a creditor will avail himself of his rights, the slaves are conditionally free, because, by the *Lex ^Elia Sentia,* the commission of a fraud under such circumstances must take effect.

2. *Ulpianus, On Sabinus, Book IV.*

We understand the position of the slave who is to be free under a condition to be such that, whether he is delivered after having been sold, while still retaining the hope of his freedom, or whether he has been acquired for his own benefit by usucaption, or whether when he is manumitted, he does not abandon the expectation of becoming the freedman of the deceased. The slave is not placed in such a position unless the estate has been entered upon by one of the heirs. But if he should be alienated, or acquired by usucaption, or manumitted before the estate is entered upon, his hope of the freedom bequeathed to him will be lost.

(1) Where, however, freedom has been left to a slave under a pupillary substitution, will he become conditionally free during the lifetime of the minor, after the estate of his father has been accepted? Cassius denies that he will; but Julianus holds the opposite opinion, which is considered the more correct one.

(2) Julianus further says that if a slave is bequeathed to the heir of the father, and, in the pupillary substitution he is ordered to be free, the grant of freedom will take precedence.

(3) If a slave is appointed heir to half of the estate, with the grant of his freedom conditionally, by the first will, will he occupy the position of a slave, who is to be conditionally free, so that, if his co-heir enters upon the estate, he cannot under the circumstances be acquired by usucaption? He cannot occupy the position of a slave to be conditionally free, as he received freedom from himself.

It is clear that it must be held that he will occupy the position of a slave to be conditionally free, if the condition under which he was appointed heir should not be complied with; in which case, according to Julianus, he will obtain his liberty because he is not held to have obtained it from himself but from his co-heir.

(4) In whatever degree a slave may have been substituted for a minor, with the bequest of his freedom, he occupies the position of a necessary heir. This opinion has been adopted on account of its convenience, and we approve it. Celsus, also, in the Fifteenth Book, thinks that a slave who is substituted with a bequest of his freedom occupies the position of one who is to be conditionally free.

3. *The Same, On Sabinus, Book XXVII.*

Slaves of this description must comply with the condition prescribed, if no one prevents them from doing so, and the condition is possible.

(1) Where, however, the slave is ordered to comply with the condition with respect to the heir, what must be said?" If he complies with it he will immediately become free, although the heir

may not consent. If the heir prevents him from complying with the condition, as, for instance, where he refuses ten *aurei* which the slave was ordered to pay him, there is no doubt that the slave will be free, because it is the fault of the heir that the condition was not fulfilled. And it makes little difference whether he tenders the amount out of his *peculium,* or whether he has obtained it from some other source, for it is established that a slave who pays money out of his *peculium* will be entitled to his freedom, whether he is ordered to pay it to the heir or to anyone else.

(2) Hence, the question arises, if a sum of money should be due to the said slave, either from the heir, because the slave had advanced it in transacting the business of his master, or from a stranger, and the heir does not wish to sue the debtor, or to pay the money to the slave, will the latter be entitled to his freedom on account of the delay he suffers through the fault of the heir? Either the *peculium* was bequeathed to the slave, or it was not; if it was bequeathed to him, Ser-vius says that it is the heir who is responsible for the delay of the slave obtaining his freedom, because something is due to him from the estate of his master which is not paid by the heir. Labeo adopts this opinion. Servius also approves it, and says that if the heir causes delay for the reason that he is unwilling to collect money from the debtors of the slave, the latter will be entitled to his freedom.

The opinion of Servius seems to me to be correct. Hence, as we think this opinion to be true, let us see whether the same rule should not apply, even where the *peculium* was not bequeathed as a preferred legacy to the slave. For it is settled that a slave, in order to be conditionally free, can make a payment out of his *peculium* whether he is ordered to do so to the heir, to himself, or to someone else; and if the heir should prevent him from doing so, the slave will be entitled to his freedom.

Finally, this is given to the master of the slave as a remedy, that is, he is forbidden to pay to a stranger what he was ordered to pay, lest he may run the risk of losing both the money and the slave; hence it can be maintained that, if the heir does not wish to collect the claim from the debtors of the slave, or to pay him himself, so that he may have the means with which to comply with the condition, the slave will be entitled to his freedom. Cassius also adopted this opinion.

(3) Again, the slave will not only obtain his freedom when he is prevented from paying what he was ordered by the testator to pay, but also if he is forbidden to ascend to the Capitol, or if he is prevented from going to Capua; for anyone who hinders a slave from taking a journey is understood rather to desire that he shall lose his freedom than to wish to avail himself of his services.

(4) Where the slave is ordered to pay a co-heir, and another of the heirs prevents him from doing so, he will also become free; but he to whom he was ordered to make payment and become free will be entitled to an action in partition against the one who prevented him, in order to obtain the amount of his interest in not having the slave prevented from paying him.

(5) If a slave who is ordered to pay ten *sesterces* and become free pays five, he will not be entitled to his freedom unless he pays the entire sum. Therefore, in the meantime, the owner of the five *sesterces* can claim them, but if the balance should be paid, then the first five, the ownership of which had not previously passed to him to whom they were given will be acquired by him; hence, the transfer of the first sum paid will remain in suspense, so that the *sesterces* will not, by retroactive effect, become the property of him who received them, but only where the remainder of the amount has been paid.

(6) If the slave should pay more than he had been ordered to do (for instance, if he had been ordered to pay ten *sesterces,* and he pays twenty), whether he counted the coins, or gave them in a bag, he will obtain his freedom, and can recover the surplus.

(7) If anyone should sell, without his *peculium,* a slave who had been ordered to pay ten

sesterces and become free, will the slave immediately obtain his liberty, because he has been prevented from making payment out of his *peculium,* for the reason that he was sold without it, or will he become free from the time that he was forbidden to touch his *peculium?*

I think that he will only become free from the time when he wished to make payment, and was prevented from doing so, and not from the very day when he was sold.

(8) Where anyone prevents a slave, who was ordered to pay ten *aurei* and become free from working, or where the heir deprives him of what he has earned by his labor, or if he should give the heir whatever he has obtained in this way, will he be entitled to his freedom? I think that if he should pay him what he has earned by his labor, or anything that he has obtained from any source whatsoever, he will be entitled to his freedom. If, however, he was prevented from working, he will not become free, because he is obliged to work for his master. I think that it is clear that he will become free if he should be deprived by his master of money earned by his labor, because he has been deprived of the power to pay it out of his *peculium;* but if the testator ordered him to pay the said sum of money earned by his labor, and he is prevented from working, I have no doubt that he will be entitled to his freedom.

(9) If, however, the slave should have abstracted any silver plate, or sold other property and made payment out of the proceeds, he will obtain his freedom, although if he has paid money which he stole he will not do so; for he is not considered to have given the said money but rather to have returned it. But if he stole money belonging to other persons, and paid it to the heir, he will not obtain his freedom, for the reason that the money which was stolen can be recovered from him who received it; still, if it was used in such a way that it can, under no circumstances, be recovered, the slave will be entitled to his freedom.

(10) Moreover, not only where the heir delays in making a grant of freedom, but where a guardian, curator, agent, or anyone else by whom the condition should be complied with does so, we say that the slave will be entitled to his freedom. And, indeed, this is our practice, in the case of a slave who is to be conditionally free, and it is sufficient that it is not his fault that he does not comply with the condition.

(11) If anyone should be ordered to pay the heir within thirty days after the death of the testator, and the heir enters upon the estate after that time has elapsed, Trebatius and Labeo say that if he did so without acting fraudulently, the slave will obtain his freedom within thirty days after the acceptance of the estate. This opinion is correct.

But what course must be pursued if the heir purposely delayed; will the slave be entitled to his freedom on this account from the time when the estate was entered upon? What if he had the money then, but did not have it after the estate was accepted? In this case, however, the condition is held to have been fulfilled, as the slave was not responsible for it not having been complied with in the first place.

(12) Where a slave receives his freedom under the following clause, "Let him be free when he can pay him ten *aurei,"* Trebatius says that, although he may have the ten *aurei,* or be in a position to obtain and keep his *peculium,* still he will not be entitled to his freedom unless he pays the money, or is not to blame for failing to pay it. This opinion is correct.

(13) Stichus was ordered to be free if he paid ten *aurei* to the heir annually for three years. If the heir was responsible for the nonpayment of the first instalment, it is established that the slave must wait until the date of the third payment, because the time is prescribed, and there are two payments remaining. If, however, the slave has only the ten *aurei* which he offered when the first payment was due, would it be of any advantage to him if he tendered them at the time of the second payment, or even at the time of the third, provided the second had not been accepted ? I think that it would be sufficient for him to do so, and that the heir has no right to change his mind. Pomponius also adopts this opinion.

(14) What must be done if the slave who was ordered to make the three annual payments should tender the entire amount to the heir without waiting for it to become due? Or if, having paid ten *aurei* at the end of the first year, he should offer twenty at the end of the second? The more indulgent interpretation is that he will be entitled to his freedom, as benefit will accrue to both parties; for the slave will obtain his freedom sooner, and the heir will receive without delay what he would have obtained after a certain time.

(15) Where freedom is granted to a slave, if he serves the heir for five years, and the heir should manumit him, he immediately becomes free, as it is the fault of the heir that he did not serve him; although, if the heir did not wish him to do so, he would not become free until after the term of five years had elapsed. The reason for this is evident, as a manumitted slave can no longer remain in servitude. But the master who does not desire the slave to serve him can still permit this to be done within five years. The slave, however, cannot serve him for the entire term of five years but he can do so for a shorter period.

(16) Julianus, also, in the Sixteenth Book of the Digest, says that if Arethusa was granted her freedom under the condition that she should bring forth three slaves, and the heir was responsible for her not doing so (for instance, because he gave her some drug to prevent her from conceiving), she will immediately become free. For why should we wait? It is just the same as if the heir should cause her to have an abortion, because she could have three children at a birth.

(17) Likewise, if the heir should sell and deliver a slave who is to be liberated conditionally, and who has been ordered to serve him, I think that the slave will immediately be entitled to his freedom.

4. *Paulus, On Sabinus, Book V.*

When the heir is absent on business for the state, and the slave has the money ready for payment,'he must wait until he to whom he is to pay it returns, or he must deposit it, sealed up, in a temple; and this having been done, he will immediately be entitled to his freedom.

(1) A slave is not considered to become conditionally free whose liberty is deferred for so long a time that he who is to be manumitted cannot live until it has elapsed; or, if his owner has prescribed such a difficult, or even an impossible, condition that his freedom cannot be acquired by complying with it; as, for instance, if it was that he should pay a thousand times a certain sum to the heir, or if he should order him to be free from the time of his death. A grant of freedom made in this manner is void, as Julianus says, because there is, in fact, no intention of granting the slave his freedom.

(2) If a slave is ordered to be free on condition of serving Titius for a year, and Titius should die, the slave will not immediately become free, but he will after the expiration of a year, because freedom is considered to have been given him not only under a condition, but also from a certain date. For it would be absurd for him to become free sooner when he did not comply with the condition than he would if he did comply with it.

(3) Where a slave is ordered to be free on the payment of ten *aurei* to two persons, and one of them refuses to accept five, it is better to hold that the slave can obtain his freedom by tendering the said five *aurei* to the other party.

(4) "Let Stichus be free, if he serves Titius for three years, or renders him services worth a hundred *solidi."* It is settled that freedom can be legally granted in this manner; for the slave of another can serve us as a freeman, and can, with greater propriety, render us his services; unless the testator, by the term services, meant ownership, rather than labor. Hence, if the heir prevents the slave from serving Titius, he will be entitled to his freedom.

(5) "Let Stichus be free if he serves my heir for a year." The question might arise how ought the word "year" be understood in this case; should it be a term which contains three hundred

and sixty-five consecutive days, or merely that many days? Pomponius says that the word should be understood in the former sense. If, however, illness, or some other just cause prevents the slave from serving during certain days, these ought to be included in the year. For those whom we take care of when ill are understood to serve us, if they are willing to do so but are precluded by bad health.

(6) If a slave is ordered to pay ten *aurei* to the heir, the latter will, through the indulgence conceded to freedom, be compelled to receive the money in separate payments.

(7) Where a slave was ordered to be free, "if Titius should ascend to the Capitol," and Titius refuses to do so, the grant of freedom is annulled.

This rule also applies to similar cases under the same conditions.

(8) Cassius, likewise, says that where a slave is ordered to serve for a year, the time when he was in flight or in litigation will not be included in favor of his freedom.

5. *Pomponius, On Sabinus, Book Vill.*

Where a slave who was to become free conditionally was ordered to render an account, and paid what appeared to be the balance remaining in his hands, and offered to give security with reference to what remained in doubt, Neratius and Aristo very properly hold that he will become free; as otherwise, many slaves might not obtain their liberty because of the uncertainties of accounts and the nature of business of this kind.

(1) A slave who is to become free conditionally, and is ordered to pay a sum of money but not to render an account, should pay it, and not furnish a surety that he will do so.

6. *Ulpianus, On Sabinus, Book XXVII.*

If a female slave who is to become free conditionally is sentenced to servitude as punishment for crime, and after her conviction the condition upon which her freedom is dependent is fulfilled, although it will be of no advantage to her, it will, nevertheless, benefit any child which she may have, for it will be born free, just as if its mother had not been convicted.

(1) What, however, would be the result if such a female slave should conceive while in servitude, and, having been captured by the enemy, should have a child after the condition upon which her freedom was dependent had been complied with; would her child be free at its birth? There is no doubt whatever that it would, in the meantime, be the slave of the enemy; but it is also true that it would become free by the right of *postliminium,* because if the mother had been in her own country the child would have been born free.

(2) It is clear that the more equitable opinion is that, if she should conceive while in the hands of the enemy, and bring forth the child after the condition had been fulfilled, it could profit by the right of *postliminium* and become free.

(3) A slave to be free conditionally will obtain his liberty from his purchaser if the condition is complied with. It must be remembered that this rule is applicable to slaves of both sexes. If the condition is fulfilled, it not only binds the person who purchased the slave, but also all those who have obtained ownership of him by any title whatsoever. Therefore, whether the slave has been bequeathed to you by the heir, or awarded to you in court, or acquired by you through usucaption, or transferred to you, or has become your property by any other right, we say that, beyond any doubt, the condition can be complied with so far as you are personally concerned. The same can be said with reference to the heir of the purchaser.

(4) Where a son under paternal control is appointed an heir, and a slave to be free conditionally is directed to pay to the son a certain sum of money, and be free, he will obtain his freedom by paying the said sum either to the son, or to his father; because the father is entitled to the benefit of the estate. If, however, he should pay the father after the death of the son, he will become free, as having made payment to the heir of the heir. For if a slave is

ordered to pay a sum of money to a stranger, and become free, and the latter becomes the heir of the heir, he will comply with the condition not with reference to the stranger, but as it were, with reference to the heir.

(5) Where a slave is directed to pay ten *aurei* and become free, and he is sold after having paid five, he must pay the remaining five to the purchaser.

(6) If your slave should purchase another slave, who is to be free conditionally, he must pay you what he was ordered to pay to the heirs. If, however, he has paid your slave, I think that he will be free, provided your slave bought him with money belonging to his *peculium,* and you have not deprived him of it; so that, in this way, he will be understood to have paid you, just as if payment had been made to any one of your slaves with your consent.

(7) When a slave is ordered to be free, not upon the payment of a sum of money but if he renders his accounts, let us see whether this condition will pass to the purchaser. And it must be remembered that usually only those conditions which refer to the payment of money pass to a purchaser, and that such as refer to acts to be performed do not pass to him; for instance, if he gives his son instruction, for these conditions attach to the person of those upon whom they are imposed.

The condition of rendering an account, however, which implies the existence of a balance, has reference to the payment of money; but the production of the books containing the amounts, and the calculation and examination of the accounts themselves, as well as their revision and investigation, have reference to acts to be performed. Therefore, can the slave obtain his freedom by paying the balance remaining in his hands to the purchaser, and by complying with the rest of the condition which concerns the heir? I think that the payment of the balance passes to the heir. Hence it happens that the condition may be divided. Pomponius, also, stated this opinion in the Eighth Book on Sabinus.

7. *Paulus, On Sabinus, Book V.*

The alienation of the usufruct does not carry with it the condition upon which the slave is to become free.

8. *Pomponius, On Sabinus, Book Vill.*

Where a slave is ordered to be free if he pays ten *aurei,* he must pay them to the heir; for when there is no one designated to whom payment shall be made, the slave will be entitled to his freedom by paying the heir.

(1) If each one of the heirs sells his share in a slave to different purchasers, the slave must pay to every purchaser the same proportion of the sum which was due to each heir. Labeo, however, says that if the names of the heirs are only mentioned in the will, equal portions should be paid them; but if the testator said "If he pays my heirs," the amounts will correspond to the shares of the estate to which the heirs are respectively entitled.

9. *Ulpianus, On Sabinus, Book XXVIII.*

No one should be ignorant of the fact that, in the meantime, the slave remains the property of the heir. Hence, he can be surrendered by way of reparation for damage caused by him, but even if this is done, he can still hope to obtain his freedom, for his surrender does not deprive him of it.

(1) If an heir sells a slave under a different condition than the one upon which his freedom is dependent, his status is not changed; and he can release himself from the control of the purchaser, just as he can do from that of the heir.

If, however, the heir should conceal the condition upon which the slave is to be liberated, he will be liable to an action on purchase; and good authorities hold that anyone who knowingly conceals the condition under which a slave is to become free, and sells him absolutely, is

guilty of swindling.

(2) The question has been discussed whether he is released, who has delivered up a slave, that was to be conditionally free, by way of reparation for injury committed. Octavenus thinks that he is released, and says that the same rule will apply if someone owed Stichus on account of a stipulation, and delivered him to be free under a certain condition. For if he should obtain his freedom before payment had been made, the entire obligation would be extinguished; because only that is included in it which can be settled by the payment of money; freedom, however, cannot be discharged or replaced by money. This opinion seems to me to be correct.

(3) The position of a slave who is to be conditionally free is only unchangeable, if the estate is entered upon; for, before this is done, he can be acquired as a slave by usucaption, and the expectation of his freedom disappears. If, however, the estate is entered upon subsequently, his hope of freedom is restored through the favor with which it is regarded.

10. *Paulus, On Sabinus, Book V.*

If an heir sells a slave who had been ordered to pay ten *aurei,* and delivers him to the purchaser, and says that he was entitled to his freedom if he pays twenty *aurei,* an action on purchase will lie against the vendor. If double the amount had been promised, an action for double damages will lie on the ground of eviction, and an action on purchase on account of the false statement.

11. *Pomponius, On Sabinus, Book XIV.*

If the heir should make a donation of a sum of money to a slave, who is to be conditionally free, in order that he may pay it to him and be liberated, Aristo says that he will not become free, but if the heir should give him the money absolutely he will obtain his freedom.

12. *Julianus, Digest, Book VII.*

Where a slave receives his freedom by a will, under the condition of rendering an account, he must pay the balance remaining in his hands to the heirs, in proportion to their respective shares of the estate; even if the names of some of them are mentioned in the condition.

13. *The Same, Digest, Book XLIII.*

Where a testator bequeaths a grant of freedom as follows, "Let Stichus be free, if my heir does not manumit him by his will," the intention of the testator is held to be that the slave will be free if the heir does not grant him freedom by his will. Hence, if the heir should emancipate the slave by his will, the condition is considered to have failed; if he does not emancipate him, the condition will be fulfilled at the time of the death of the heir, and the slave will obtain his freedom.

(1) If a slave held in common is ordered to be free under the condition of his paying ten *aurei,* he can pay the said sum out of his *peculium,* no matter in what way he may have obtained it; nor does it make any difference whether the *peculium* was in the hands of the heir, or in those of a joint-owner; or whether the slave was ordered to pay the money to the heir, or to a stranger. For it is a rule of general application that slaves who are to be free conditionally can alienate property belonging to their *peculium* for the purpose of complying with a condition upon which their freedom is dependent.

(2) Where two slaves are ordered to be free on condition of rendering their accounts, and they have transacted business separately, there is no doubt that they can also comply with the condition separately. If, however, their administration has been conducted in common, and is so confused that it cannot be divided, it necessarily happens that if one of them fails to render an account, he will prevent the other from obtaining his freedom; nor will the condition be held to have been complied with with reference to one of them, unless both or either should pay all which may be found to be due as a balance after examination of the accounts.

(3) Where a slave is ordered to be free under the condition that he will swear that he will ascend to the Capitol, and immediately takes such an oath, he will become free even if he does not ascend to the Capitol.

(4) The slave of the heir, who is ordered to deliver property belonging to the heir himself, and be free, will be entitled to his freedom, because the testator can order the slave of the heir to be manumitted without imposing the condition of giving anything.

(5) The following clause, "Let Stichus be free when he is thirty years old; Stichus shall not be free unless he pays ten *aurei,"* has the same effect as if it had been said that they should let Stichus be free if he pays ten *aurei* and reaches the age of thirty years. For the deprivation of freedom, or of the legacy which is bequeathed under a certain condition, is considered to impose the contrary condition upon the legacy or the grant of freedom previously made.

14. *Alfenus Varus, Digest, Book IV.*

A slave, who was ordered to be free by the will of his master under the condition of paying ten *aurei* to the heir, paid to the latter the wages of his labor, and as the heir received from the same a larger sum than ten *aurei,* the slave alleged that he was free. Advice was taken on this point. The answer was that the slave did not appear to be free, as the money which he had paid was not in consideration of his freedom, but on account of the labor which he had performed; and that he was no more free on this account than if he had leased a tract of land from his master and paid him the money instead of giving him the crops.

(1) A slave was ordered to be free after he had given his services to the heir for the term of seven years. He took to flight and remained absent for a year. When the seven years had expired, the opinion was given that he was not free, for he had not rendered his services to his master while he was a fugitive, and he would not become free until he had served his master for the number of days that he was absent.

If, however, it had been stated in the will that he should be free after he had served seven years, he could become free if he served his master for the time of his flight, after his return.

15. *Africanus, Questions, Book IX.*

If a slave who was ordered to pay a certain sum of money at the death of the heir should have enriched the estate by an amount equal to that which he was ordered to pay, for instance, if he had paid the creditors, or had furnished the slaves with food, it was held that he would immediately be entitled to his liberty.

(1) An heir, who sold a slave who was to become free on the payment of ten *aurei,* stated at the time when he sold him that the condition was that the said ten *aurei* should be paid to him and not to the purchaser. The question arose, to which of the two must the slave pay the money in order to obtain his freedom? The answer was that he must pay it to the heir. If, however, he had stated the condition to be that the slave should make payment to a stranger, the opinion was given that the agreement would be valid, because the slave is considered to pay the heir, if he pays someone else with the former's consent.

16. *Ulpianus, Rules, Book IV.*

If a female slave who is to be free conditionally has a child, it will be the slave of the heir.

17. *Neratius, Parchments, Book III.*

A slave is ordered to be free if he pays ten *aurei* to the heir. He has the amount, but he owes an equal sum to his master. He will not be free by payment of these ten *aurei,* because where a slave is permitted to pay money out of his *peculium* for the purpose of complying with a condition, we must understand this to mean that he must not pay what does not belong to his *peculium.* I am perfectly aware that this money can be said to form part of his *peculium;* although if the slave had nothing else, he would have no *peculium.* But it cannot be doubted

that the intention of those who established the rule was that the slave should have the power of making payment out of his *peculium,* just as out of his patrimony, because this could be conceded as being done without any injury to his master. If, however, anyone should go farther, the case would not differ much from one where a person might hold that the slave complied with the condition by the payment of money which he had stolen from his master.

18. *Paulus, On the Granting of Freedom.*

If a slave is ordered to pay ten *aurei* annually for three years, and offers ten the first year, and the heir does not accept it, he will not immediately become free, for the reason that even if the heir did accept it, he would not be free.

19. *Ulpianus, On the Edict, Book XIV.*

Where a slave is ordered to be free, and a legacy is left to him to vest when the son of the testator shall reach his fourteenth year, and the son dies before that time, the slave will become free when the term has expired, on account of indulgence with which freedom is regarded; but the condition upon which the legacy is dependent is held to have failed.

20. *Paulus, On Plautius, Book XVI.*

When his *peculium* is bequeathed to a slave who was ordered to pay ten *aurei* to a stranger, and become free, but the heir prevents him from paying it, and the slave, having afterwards been manumitted, demands his *'peculium* by virtue of the legacy, can the heir, by means of an exception on the ground of bad faith, deduct from his *peculium* the sum which the slave should have paid in order that he, and not the manumitted slave, may be benefited, because the money was not paid; or will the heir be considered unworthy to profit by the money, having acted contrary to the will of the deceased ? As the slave lost nothing, and gained his freedom, it would be invidious for the heir to be fraudulently deprived of the money.

(1) In this case the question arises, if the slave should pay the money without the knowledge or consent of the heir, whether it would belong to the person who received it. Julianus very properly thinks that, in this instance, the right of the slave to pay the money is admitted even against the consent of the heir; and therefore it will become the property of him who receives it.

(2) If a slave is ordered to pay ten *aurei* to the heir, and the latter owes that sum to the slave, if the slave wishes to set off the amount, he will become free.

(3) A man to whom a slave was ordered to pay a certain sum of money in order to become free, died. Sabinus holds that if he had the ten *aurei* ready for payment, he would become free, because it was not his fault that they were not paid. Julianus, however, says that on account of the favor with which liberty is regarded, and by the law, as established, the slave will obtain his freedom even if the money was paid after his death, hence he obtains his freedom rather under the law than by virtue of the will; so that if a legacy was bequeathed to him at the time of the death of the person to whom he was directed to pay the money, he will obtain his freedom, but he will not be entitled to the legacy.

Julianus is of the same opinion, so that, in this instance, he resembles other legatees. The case of a slave whom the heir prevents from complying with the condition is, however, different; for, in this instance, he obtains his freedom under the will.

(4) The Divine Hadrian stated in a Rescript that a slave who is ordered to pay a sum of money to the heir can pay it to the heir of the latter; and, if this was the intention of the testator, the same rule must be held to apply to a legatee.

(5) There are certain conditions which, by their nature, cannot be complied with simultaneously, but require a division of time; as, for example, where a slave is ordered to give the value of ten *aurei* in labor, because labor is reckoned by days. Therefore, if a slave

who is to be free conditionally pays the *aurei,* one by one, he can be said to have complied with the condition.

The case of labor is, however, different because it can necessarily only be performed a part of the time. But if the heir refuses to accept it, the slave will not become free immediately, but after the time required for the labor to be performed has elapsed.

The same rule will apply where the slave is ordered to go to Capua and be free, and the heir forbids him to go; for then he will be free when the time necessary for him to go to Capua has expired, for time is considered essential in the performance of labor, as well as in making a journey.

(6) If a slave should receive his freedom as follows, "Let Stichus be free if my heir should not manumit him," he can be manumitted by the heir, and he is not deprived of his liberty contrary to the will of the testator. But so short a time is not required that the heir will be compelled to hasten or to return from his journey immediately in order to manumit the slave, or to desist from the transaction of necessary business for that purpose.

Nor, on the other hand, can the manumission be protracted for his lifetime, but the heir should emancipate the slave as soon as he can do so without great inconvenience to himself. If a time for the manumission has been prescribed, it must be taken into consideration.

21. *Pomponius, On Plautius, Book VII.*

Labeo, in his Book of Last Works, states the following case: "Let Galenus, my steward, be free, if he appears to have carefully conducted my business, and let him retain all his property, and receive a hundred *aurei* in addition." In this instance we should require such diligence as will benefit the master and not the slave.

Moreover, good faith should be added to the diligence, not only in keeping the accounts, but also in the payment of any balance which may remain. By the word "appears" is meant "can be considered to have." The ancients interpreted the following words of the Law of the Twelve Tables, "If rain-water causes damage," to mean if it can cause damage. And if this question is asked before whom the abovementioned diligence must be established, we must answer that this ought to be decided by the heirs in accordance with the judgment of a reliable citizen; for instance, if a slave is ordered to be free on condition of his paying a certain sum of money, and it is not stated to whom he shall pay it, he will become free just as he would if the testator had written, "If he should pay the sum to my heir."

(1) Pactumeius Clemens said that if a trust had been bequeathed as follows, "I charge you to deliver it to whichever of them you choose," and the heir did not make any choice as to whom he should deliver the property, he must deliver it to all, and this was decreed by the Emperor Antoninus.

22. *Paulus, On Vitellius, Book HI.*

Where a slave was ordered to pay a certain sum of money, and the person to whom he was to pay it was not mentioned, he must pay it to the heirs in proportion to their respective shares of the state, for each one of them must receive a share in proportion to his ownership of the slave.

(1) Where certain heirs are mentioned by the testator as those to whom the slave is required to make payment, he must do so in proportion to their respective shares of the estate.

(2) If a stranger is joined with the heirs who are mentioned, the full share must be paid to him, and amounts in proportion to their respective shares of the estate should be paid to the others. If the testator not only added Titius, but others besides, they will each be entitled to a full share, and their co-heirs to amounts in proportion to their interest of the estate; as is stated by Julianus.

23. *Celsus, Digest, Book XXII.*

"Let Stichus be free if he pays a hundred *aurei* in five years." The slave, after the five years have elapsed, can pay the said amount to the heir of the purchaser.

(1) Where the slave was ordered to be free if he rendered his accounts, and the heir, after the property belonging to the *peculium* has been sold, does not permit the slave to pay over the balance in his hands, he will be free just as if he had complied with the condition.

24. *Marcellus, Digest, Book XVI.*

"Let Stichus be free if he promises my heir ten *aurei,* or swears to give him his services." The condition will be fulfilled if the slave makes the promise, for it can be said that he has, to a certain extent, bound himself, even if the obligation may not be compulsory.

25. *Modestinus, Differences, Book IX.*

The Laws of the Twelve Tables are held to permit slaves, who are to be free conditionally, to be sold. In making the sale, rigorous conditions should, however, hot be imposed; for example, that the slave should not serve in a certain country, or should never be manumitted.

26: *The Same, Rules, Book IX.*

Where freedom has been granted to a slave by a will, under the condition that he renders his account, the heir can not only require a written account, but also one of any business which has been transacted without having been committed to writing.

(1) Where a slave was ordered to obtain his freedom after having rendered his account, he will still become free even if he has not transacted any business.

27. *The Same, Pandects, Book I.*

If the person to whom the slave is ordered to make payment should purchase him, and then sell him to another, he must pay the last purchaser, for Julianus decided that if he to whom the slave was ordered to make payment obtains the ownership of him, and alienates him, the condition will also pass to the purchaser.

28. *Javolenus, On Cassius, Book VI.*

Where the estate of a person who directed that his slave should become free within thirty days after his death, if he rendered his accounts, was not entered upon until after the thirty days had expired, the manumitted slave cannot become free by the strict construction of the law, as the condition was not fulfilled; but the indulgence with which freedom is regarded causes the condition to be considered as complied with, if it was not the fault of the person upon whom it was imposed that this was not done.

(1) It is stated in the Books of Gaius Cassius that if a slave, who is to be conditionally free, should acquire any property before the condition upon which his liberty is dependent is complied with, it will not be embraced in the bequest of his *peculium,* unless the legacy was made to include the time when he was free. As the *peculium* is susceptible of both increase and diminution, let us see whether its increase by the heir will form part of the legacy, provided the slave is not deprived of it. This is our present practice.

29. *Pomponius, On Quintus Mucius, Book XVIII.*

Slaves who are to be free conditionally scarcely differ, in any respect, from our other slaves. Therefore, they are in the same position as the others with reference to legal actions, whether these arise from crimes, from business transacted, or from contracts. The result of which is that in public prosecutions they are liable to the same penalties as other slaves.

(1) Quintus Mucius says that the head of a household stated in his will, "Let my slave Andronicus be free, provided he pays ten *aurei* to my heirs." A controversy then arose with

reference to the estate. One person declared that he was the heir, and alleged that it belonged to him, and another who was in possession of the estate said that he was the heir under the will. Judgment was rendered in favor of the one who said that he was the heir under the will. Then Andronicus asked, if he should pay twenty *aurei* to the latter, whether he would become free, as judgment had been rendered in his favor; or whether the judgment which the successful party had obtained had no reference to the matter in question; hence, if he paid the ten *aurei* to the appointed heir, and the case should be decided against the possessor, he would remain in slavery.

Labeo thinks that the opinion of Quintus Mucius can only be true, if the heir who gained the case should be decided to be the heir at law; for if the appointed heir should be found to have lost his case, through a just decision, and be held entitled to the estate under the will, the slave by paying him, will, nevertheless, comply with the condition, and will become free.

The opinion given by Aristo to Celsus is, however, perfectly correct, namely, that the money can be paid to the heir at law in favor of whom judgment has been rendered; as under the provisions of the Twelve Tables the term "purchase" is understood to have included every kind of alienation, and it makes no difference in what way any of the parties became the master of the slave; and therefore, he in favor of whom judgment was rendered is included in the law, and the slave who paid the money will be free.

Moreover, if he who is in possession and to whom the money was paid should be beaten in a contest for the estate, he will be obliged to surrender the money together with the property to the party who is successful.

30. *The Same, On Various Lessons, Book VII.*

Where a slave is ordered to be free as follows, "Let Stichus be free, if my heir does not alienate him," even if he is to be free conditionally, he can, nevertheless, be alienated.

31. *Gaius, On tine Lex Julia et Papia, Book XIII.*

If a legacy is bequeathed to a slave on the condition of his rendering his accounts, there is no doubt that, under the condition by which he is directed to receive the legacy, he must pay over any balance remaining in his hands.

(1) Therefore, when inquiry was made with reference to the following clause, "Let Stichus, together with his female companion, be free, after he has rendered his accounts," and Stichus should die before the condition is complied with, will his companion be free? Julianus says that there is a point in this case which also arises with respect to legacies, as where a testator says, "I give to So-and-So together with So-and-So," and one of the parties is lacking, the other is permitted to take the legacy; because the better opinion is that the case is just as if the testator had said, "I give to So-and-So and So-and-So." It is also said that there is another question, namely, whether the condition is also imposed upon the female companion. It is held that this is the case; hence, if Stichus has no balance in his hands, the woman will immediately become free; but if a balance remained in his hands, she must pay the money, nor will it be lawful for her to take it out of the *peculium,* because this is only permitted to those who are directed to make payment in their own names, in consideration of the freedom which is granted them.

32. *Licinius Rufinus, Rules, Book I.*

Where two heirs are appointed, and a slave is ordered to be free if he pays ten *aurei* to the heirs, and he is sold and delivered by one of the latter, he will become free by paying half of the sum to the other heir by whom he was not sold.

33. *Papinianus, Questions, Book II.*

The rights of slaves who are to be conditionally free cannot be injuriously affected by the heir.

34. *The Same, Questions, Book XXI.*

A slave was ordered to be free if he paid ten *aurei* to the heir. The heir manumitted the slave, and afterwards died. In this instance, the money should not be paid to the heir of the heir; for when it was decided that he must pay the heir of the heir, you will remember that this applied where the first heir who was to receive the money was the master of the slave; which rendered the condition (so to speak), ambulatory. There are, in fact, two reasons for which the condition should be complied with so far as the first heir is concerned; the first one is the ownership, and the second the designation of the person. The first reason applies to every successor to whom the slave may pass through the continuation of the ownership which is transferred; but the second one only has reference to the person who is especially designated.

(1) The Emperor Antoninus stated in a Rescript that where a slave was ordered to render his accounts and become free, if the heir should delay in receiving the accounts, the slave will, nevertheless, become free. This rescript should be understood to apply where the slave will become free if he does not defer the payment of the balance in his hands, but if he delays to do so, it will only become operative if he tenders the amount which should be refunded in good faith; for it will not be sufficient for the heir to be in default to enable the slave to be manumitted where nothing was done by him which would have contributed to his freedom, if the heir had not been in default. But what if a slave was manumitted as follows, "Let Damas be free, if he goes to Spain next year to gather the harvest," and the heir retains him at Rome, and will not suffer him to depart? Can we say that he will immediately be free before the crops are gathered ? For if a stipulation is made at Rome, as follows: "Do you promise to pay me a hundred *aurei* in Spain?" The time during which you may be able to reach Spain is included in the stipulation, and it has been decided that legal proceedings cannot be instituted until this time has elapsed. If, however, the heir, after having allowed the accounts, and calculated the balance due from the slave, declares publicly that he donates the amount to the latter, because he has nothing to pay it with, or if he states this openly in a letter sent to him; the condition upon which his freedom is dependent is held to have been complied with.

But what course should be pursued if the slave should deny that he has delayed payment of the balance, and therefore, because the heir is to blame for not receiving his accounts, he should become free, and the heir maintains that he was not responsible for delay, and that the slave should pay over the balance in his hands ? It shall be determined by the magistrate who has jurisdiction of the case whether the condition was complied with or not, and it is part of his duty to investigate the alleged default, as well as to cast up the accounts, and if he should ascertain that payment of the balance was delayed, to decide that the slave is not free.

If, however, the slave never denied that a balance was due, and should sue the heir in order to be able to render his accounts, and it was established that he was prepared to pay any balance that might remain, and offered a good surety for the payment of the money, and the heir was found to be in default, judgment must be given in favor of freedom.

35. *The Same, Opinions, Book IX.*

The slave will be considered responsible for failure to comply with the condition upon which his liberty is dependent if he cannot pay the money out of the *peculium* which he had when under the control of the vendor; because the will of the deceased does not extend to his *peculium* under another owner.

The same rule will apply where the slave was sold with his *peculium,* and the vendor retains it in violation of his contract; for although an action on purchase will lie, still, the slave did not have the *peculium* when he was under the control of the purchaser.

36. *The Same, Definitions, Book IL*

Persons learned in the law have placed in the class of slaves to be conditionally free one who

has been substituted for a son with the grant of his freedom by a second will. This rule is useful, as it prevents a son, who is a minor, from annulling his father's will by permitting the slave to be alienated subject to the charge of his freedom.

This interpretation of the law extends, without any distinction, to every case where the slave is substituted either in the second or the third degree.

37. *Gaius, On Special Cases.*

If it is stated in a will, "I give Stichus to Titius, in order that he may manumit him, and if he does not do so, let him be free," Stichus will immediately become free.

38. *Paulus, On Neratius, Book I.*

Not every impediment for which the heir is responsible has the same effect as compliance with the condition by the slave, but only where this is done for the purpose of preventing him from obtaining his freedom.

39. *Javolenus, On the Last Works of Labeo, Book IV.* "I give and bequeath Stichus to Attius, and if he pays him a hundred *sesterces,* let him be free." If the slave pays the *sesterces* to

Attius under the terms of the will, Labeo holds that the heir cannot recover them, because Attius received them from his own slave, and not from the slave of the heir. Quintus Mucius, Gallus, and Labeo himself think that the slave should be considered conditionally free, and Servius and Ofilius think that he should not. I adopt the former opinion, that is to say, that the slave belongs to the heir and not to the legatee, just as if the legacy had been taken away by the grant of freedom.

(1) "Let Stichus be free, when my debts are paid, or my creditors are satisfied." Even though the heir should be rich, Stichus will, nevertheless, not be free before the creditors have received their money, or their claims have been satisfied, or security has been furnished them in some other way; which is the opinion of Labeo and Ofilius.

(2) Labeo and Trebatius held that if the heir should give a slave money for the purpose of transacting business he cannot become free under the terms of the will, by paying this money, because he is considered rather to have returned it than to have paid it. I think, however, that if the money formed part of his *peculium,* he will become free under the testamentary provision.

(3) "Let my slave Damas be free, after he has given his services to my heir for seven years." The slave was implicated in a capital crime during the seven years, and the last year having elapsed, Servius stated that he should not be liberated. Labeo, however, held that he would be free after having served his master for seven years. This opinion is correct.

(4) "Let Stichus be free, if he pays a thousand *sesterces* to At-tia." Attia died during the lifetime of the testator. Labeo and Ofilius were of the opinion that Stichus could not become free. Trebatius agreed with them, if Attia died before the will was made; but if she died afterwards, he held that the slave would be free. The opinion of Labeo and Ofilius is reasonable, but it is our practice to consider the slave as free under the terms of the will.

(5) Where a slave is ordered to serve a stranger, no one can liberate him by furnishing his own labor in the name of the slave. The rule, however, is different where the payment of money is concerned; as, for instance, where a stranger liberates a slave by paying money in his behalf.

40. *Sctevola, Digest, Book XXIV.*

Freedom was granted to Stichus as follows, "I request my heirs, and I charge them to manumit Stichus, after he renders his accounts." As the slave had collected a great deal of money after the death of the testator, which remained in his hands, and had not included in his own accounts certain sums paid by tenants; and had despoiled the estate by secretly opening

warehouses and stealing furniture and clothing, and exhausting cellars of their contents, the question arose whether freedom under the trust should be granted him before he accounted for what fraudulently remained in his hands, and returned what he had stolen. The answer was that freedom should not be granted him under the terms of the trust until he had made restitution of the balance remaining in his hands, and everything which had been lost by his agency.

(1) "Let Pamphilus be free, if he gives all of his *peculium* to my heirs." As the slave owed more to his master than there was in the *peculium,* and had transferred everything belonging to his *peculium* in good faith to the heirs, the question arose whether he was entitled to freedom under the terms of the will. The answer was that there was nothing in the case stated to show that he was not entitled to it.

(2) A testator bequeathed his slave Stichus as a preferred legacy to his freedman, Pamphilus, whom he had appointed heir to a portion of his estate; and he bequeathed freedom to Stichus, as follows: "You will manumit him if, during the five continuous years from the day of my death, he pays you sixty *sesterces* every month." Pamphilus, having died before the expiration of five years, and having appointed his son and his wife his heirs, made the following testamentary provision with reference to Stichus: "I direct that my slave, Stichus, who was bequeathed to me under a certain condition by the will of my patron, shall give and pay to my son and to my wife, without any dispute, the amount for which he is liable, and if this is done, they shall manumit him after the prescribed time has elapsed."

If Stichus should not pay the sixty *sesterces* every month, the question arose whether he would be entitled to his freedom under the trust, after the five years had expired. The answer was that unless he made the payments he would not be entitled to the freedom granted to him under the terms of the trust.

(3) A slave was manumitted by a will as follows: "Let Stichus, my slave, who is also my steward, be free, if he renders an account of his entire administration to my heir, and satisfies him in this respect; and when he becomes free, I wish twenty *aurei* and his *peculium* to be given to him." The question arose, if the slave was prepared to render accounts of his administration for the many years during which he had conducted it without the signature of the testator approving them whether he would become free under the will, as the testator had not been able to sign the accounts because of his serious illness, but could, nevertheless, sign his will. The answer was that the slave would become free if his accounts were rendered in good faith, and the balance remaining in his hands was paid.

(4) I also ask whether any sums collected by the assistants of the slave, which either were not entered upon his register at all, or were entered fraudulently, will render him liable, as he was placed over his assistants. The answer was, if the matter was one for which he could be held accountable, the necessity for his rendering a statement of the same should be taken into consideration.

(5) I also ask if an account should be rendered of the rents which he had not collected from the lessees of land, or from tenants, over and above any sums which he may have advanced to them. The answer was that this has already been decided.

(6) I also ask whether he will be liable on the ground that he had removed all his property, that is to say, his *peculium,* before rendering his account. The answer was that this was no impediment to the performance of the condition, provided the account was rendered.

(7) Titius bequeathed to different persons by will each of the slaves employed by his steward, on condition that they should render their accounts to his heir. Then, in another clause of his will, he said: "I wish all the stewards whom I have bequeathed, or may manumit, to render their accounts within four months after my death, to their owners to whom they have been bequeathed by me." He then, lower down, ordered others of his stewards to be free, adding,

"If they render their accounts to my heir."

As it was the fault of the heir that their accounts were not rendered, I also ask whether the slaves ceased to be free under the condition; or whether they could, nevertheless, obtain their freedom under the will, by rendering their accounts and paying the balances remaining in their hands. The answer was that the legacies and grants of freedom would not take effect, unless the accounts were rendered, or if it was the fault of the heir that this was not done; but that it must be determined by the court whether time seemed to be included in the condition under which the legacies and the grants of freedom were to become operative; or whether the four months were added by the testator for the purpose of preventing further delay and to afford abundance of time for the rendering of the accounts to the heirs. It is, however, better to hold that the presumption is in favor of the slaves.

(8) The collector of a banker, almost all of whose fortune consisted of claims, gave freedom to his agents, who were his slaves, as follows: "No matter who may be my heir, if Damas, my slave, renders an account to him of the administration which he has carried on in his own name, and in that of Pamphilus, his fellow-slave, I wish both of them to be placed on an equal footing, and to become free within six months." The question arose if the words, "to be placed on an equal footing," applied to all the claims except the bad debts, so that the meaning of it was if they collected all that was due from all the debtors, and paid the heir, or satisfied him in some other way, and if they did not collect the claims within six months, whether they would not be entitled to their freedom.

The answer was, that it was clear that the condition was inserted in the above-mentioned clause of the will, and therefore that the slaves would be free if they complied with it, or the heir was responsible for their not doing so.

41. *Labeo, Epitomes of Probabilities, by Paulus, Book I.*

If you desire to permit one of your slaves to be liberated from servitude within a certain time, it makes no difference whether you make this provision under the condition that he "shall serve," or "render his services for the term of three years, in order to become free."

(1) Paulus: If anyone is ordered to be free if he promises to pay ten *aurei* to the heir, although a promise of this kind will be of no effect, he will, nevertheless, be liberated by making it.

42. *The Same, Probabilities, Book III.*

Where anyone bequeaths a slave to his wife, and orders him to be free in case she marries again, the slave will become free under this condition if she should marry a second time.

TITLE VIII.

CONCERNING SLAVES WHO OBTAIN THEIR FREEDOM WITHOUT MANUMISSION.

1. *Paulus, On Plautius, Book V.*

Whenever a slave is sold on condition of being manumitted within a specified time, even if the vendor and the purchaser should both die without leaving any heirs, he will be entitled to his freedom. This the Divine Marcus stated in a Rescript. Even though the vendor should change his mind, the slave will, nevertheless, become free.

2. *Modestinus, Rules, Book VI.*

By an Edict of the Divine Claudius, a slave who has been abandoned by his master on account of some serious infirmity will be entitled to his freedom.

3. *Callistratus, On Judicial Inquiries, Book HI.*

Where a slave has been sold on condition of being manumitted within a certain time, and the

day appointed for Eis freedom arrives during the lifetime of the vendor, and the latter has not changed his mind, the result is that the slave will be manumitted, just as if this had been done by the person who should have liberated him; but if the vendor should be dead, the Divine Marcus and his son stated in a Rescript that it was not necessary to obtain the consent of his heirs.

4. *Ulpianus, On Sabinus, Book III.*

When a slave is sold under the condition that he shall be manumitted during the lifetime of the purchaser, when the latter dies, he will immediately be entitled to his freedom.

5. *Marcianus, Rules, Book V.*

Where a slave has obtained his freedom as a reward for detecting the murderer of his master, he will become the freedman of the deceased.

6. *The Same, On the Hypothecary Formula.*

If anyone purchases a slave, who has been hypothecated, under the condition that he will manumit him, the slave will be entitled to his freedom under the Constitution of the Divine Marcus, even though the vendor may have hypothecated all the property which he had then, or might acquire in the future.

(1) The same must be said if he buys a female slave on condition of not subjecting her to prostitution, and he prostitutes her.

7. *Paulus, On Grants of Freedom.*

Our Emperor and his Father decided that a female slave would become free if the person in possession of her could have kept her from prostitution, but sold his right over her for money; as there is no difference whether you lead her astray and prostitute her, or whether you permit this to be done, and receive money therefor, when you can prevent it.

8. *Papinianus, Opinions, Book IX.*

A mother gave certain slaves to her daughter, under the condition that she would see that they became free after her death. As the condition of the donation was not complied with, I gave it as my opinion that, according to the spirit of the Constitution of the Divine Marcus, the slaves obtained their liberty with the consent of the mother, and that if she should die before her daughter, they would be entitled to their freedom unconditionally.

9. *Paulus, Questions, Book V.*

Latinus Largus sold a female slave under the condition that she should be manumitted, but did not mention any time when this must be done. I ask when she would be entitled to freedom, by virtue of the constitution, if the purchaser failed to manumit her? I answered that the understanding of the parties ought to be considered, whether the purchaser must manumit her as soon as he could, or whether it was in his power to liberate her whenever he chose to do so. In the first instance, the time can easily be determined; in the last, she will be entitled to her freedom at the death of the purchaser. If what was agreed upon is not apparent, the favor conceded to liberty will cause the first opinion to be accepted; that is to say, the slave will be entitled to her freedom within two months, if both the slave and her purchaser are present; but if the slave should be absent, unless the purchaser gives her her freedom within four months, she will obtain it by virtue of the Imperial Constitutions.

TITLE IX.

WHAT SLAVES, HAVING BEEN MANUMITTED, DO NOT BECOME FREE, BY WHOM THIS IS DONE; AND ON THE LAW OF JULIA SENTIA.

1. *Ulpianus, On Sabinus, Book I.*

Celsus, in the Twelfth Book of the Digest, having the public welfare in view, says that a person born deaf can manumit a slave.

2. *The Same, On Sabinus, Book HI.*

A slave cannot obtain his freedom if, after having been banished, he remains in the City.

3. *Gaius, Concerning Legacies; On the Urban Edict.*

If the choice of a slave is given by the testator, or the slave is bequeathed without mentioning any particular one, the heir cannot annul or diminish the right of selection belonging to the legatee by manumitting some of the slaves, or all of them. For where the option or choice of a slave is granted, each slave is held to have been bequeathed under a condition.

4. *Ulpianus, Disputations, Book III.*

We cannot manumit a slave who has been given in pledge.

5. *Julianus, Digest, Book LXIV.*

When an estate is not solvent, even though the heir may be wealthy, freedom will not be acquired under the will.

(1) If, however, an insolvent testator leaves a bequest of freedom as follows, "Let Stichus be free, if my creditors are paid in full," he cannot be considered to have ordered his slaves to become free in order to defraud his creditors.

(2) If Titius has no other property than his slaves, Stichus and Pamphilus, and promises them to Msevius, under the following stipulation: "Do you promise to give either Stichus or Pamphilus?" and then, having no other creditor, he should manumit Stichus, the freedom of the latter will be annulled under the *Lex JElia Sentia.* For although it was in the power of Titius to give Pamphilus, still, as long as he did not do so, he could not, without defrauding the stipulator, give Stichus, for the reason that Pamphilus might die in the meantime.

If, however, he only promised to give Pamphilus, I have no doubt that Stichus will obtain his freedom; although in like manner, Pamphilus might die, as it makes a great deal of difference whether the slave who is manumitted was included in the stipulation or not. For anyone who pledges Stichus and Pamphilus as security for five *aurei,* when each of them is worth five *aurei,* can manumit neither; but if he was to give Stichus alone in pledge, he will not be considered to have manumitted Pamphilus for the purpose of defrauding his creditor.

6. *Scaevola, Questions, Book XVI.*

Julianus refers to a person who owned nothing but two slaves; for if he had other property, why can it not be held that he has the power to manumit one of said slaves? For if one of them should die, he will still be solvent, and if one of them should be manumitted, he will also be solvent, and accidents which may occur are not to be considered; otherwise, the person who promised one of the slaves and indicated which one could not manumit any slave.

7. *Julianus, On Urseius Ferox, Book II.*

Where anyone who is in possession of all his property confirms a codicil, and then grants freedom to his slaves by the codicil, with the intention of defrauding his creditors, his bequest will be of no force or effect; as, under such circumstances, bequests of freedom are prevented By law. For the intention of the testator to commit the fraud is not referred to the time when the codicil was confirmed, but to the time when freedom was granted by the codicil.

(1) A minor of twenty years of age who desired to manumit a slave, without having any good reason to offer to the Council for doing so, gave him to you, so that you might manumit him. Proculus denied that the slave was free, because a fraud was committed against the law.

8. *Africanus, Questions, Book HI.*

The *Lex Julia Sentia* does not apply where a man who owes money under a condition manumits a slave by virtue of a trust.

(1) Where a soldier makes a will under military law, and bequeaths freedom to slaves for the purpose of defrauding his creditors, and then dies insolvent, the bequest of freedom will be void.

9. *Marcianus, Institutes, Book I.*

A slave will not become free who has compelled his master to manumit him, and the latter, having been intimidated, states in writing that he is free.

(1) Moreover, a slave will not become free who was not defended by his master for a capital crime, and afterwards was acquitted.

(2) Where slaves are sold under the condition that they shall not be manumitted, or where they are forbidden by will to be manumitted, or where this is done by order of the Governor of a province, and they should, nevertheless, be emancipated, they will not obtain their freedom.

10. *Gaius, Diurnal or Golden Matters.*

A person is considered to defraud his creditors by manumitting a slave who was insolvent at the time that he manumitted him, or ceased to be solvent after granting him his liberty. For men very frequently think that their property is more valuable than it really is, which often happens to those who, through the agency of slaves and freedmen, conduct commercial enterprises beyond sea, and in countries in which they do not reside, because they are often impoverished by transactions of this kind for a long time without being aware of it; and they grant their slaves freedom by manumitting them as a favor, without any intention of committing fraud.

11. *Marcianus, Institutes, Book XIII.*

Where a municipality is defrauded by the manumission of slaves, the latter do not obtain their freedom, as has been promulgated in a decree of the Senate.

(1) It is provided by the Imperial Constitutions that when the Treasury is defrauded by grants of freedom, the latter are void. The Divine Brothers, however, stated in a Rescript that grants of freedom are not annulled merely by the fact that the person who emancipated the slaves was a debtor to the Treasury, but that he committed fraud if he was insolvent when he did so.

12. *Ulpianus, On Adultery, Book V.*

The legislator had in view that slaves should not by manumission be released from liability to torture; and therefore he forbade them to be manumitted, and prescribed a certain term within which it would not be lawful to set them free.

(1) Therefore, a woman who is separated from her husband is forbidden, under any circumstances, to manumit or alienate any of her slaves, because in the words of the law, "She cannot either manumit or alienate a slave who was not employed in her personal service, or on her land, or in the province," which is, to a certain extent, a hardship, but it is the law.

(2) And even if the woman, after a divorce, purchases a slave, or obtains one in any way, she cannot manumit him under the provisions of the law. Sextus Csecilius also mentions this.

(3) A father, however, whose daughter is under his control, is only forbidden to manumit or alienate such slaves as have been given to his daughter for her personal service.

(4) The law also prohibits a mother from manumitting or alienating any slaves which she has given for the service of her daughter.

(5) It also forbids a grandfather and grandmother fo manumit their slaves, as the intention of the law is that they also may be subjected to torture.

(6) Sextus Csecilius very properly holds that the time prescribed by the law for alienating or manumitting slaves is too short. For he says, suppose a woman has been accused of adultery within the sixty days; how can the trial for adultery readily take place, so as to be concluded within the said sixty days? Still, according to the terms of the law the woman, even though she has been accused of adultery, is permitted, after this time, to manumit the slave who is suspected of having committed adultery with her, or another slave who should be put to torture.

And, indeed, relief should be granted in this instance, so that slaves wlio are indicated as guilty, or who have knowledge of the crime, may not be manumitted before the trial is ended.

(7) If the father or mother of the woman should die within the sixty days, they can neither manumit nor alienate any of the slaves whom they have given to the daughter for her personal service.

13. *Paulus, On Adultery, Book V.*

If a slave is manumitted before the sixty days have elapsed, he will be conditionally free.

14. *Ulpianus, On Adultery, Book IV.*

If a husband should die within the sixty days, let us see whether the woman can manumit' or alienate the slaves above referred to. I do not think that she can do so, although she may have no other accuser than her husband, as the father of the latter can accuse her.

(1) The law simply prohibits a woman from manumitting her slaves within sixty days after the divorce.

(2) Manumission is also prohibited whether she is divorced or repudiated.

(3) If the marriage is dissolved by the death of the husband, or on account of any penalty to which he has rendered himself liable, manumission will not be prevented.

(4) Even if the marriage is terminated by agreement, it is held that manumission or alienation is not prevented.

(5) When the woman, during the existence of the marriage but while she is contemplating divorce, manumits or alienates a slave, and this is established by conclusive evidence, the alienation or manumission will not be valid, as having been done to evade the law.

(6) We must understand every kind of alienation to be meant.

15. *Paulus, On the Lex Julia, Book I.*

The question arose whether anyone accused of the crime of *lese majeste* could manumit a slave, inasmuch as he was the owner of slaves before his conviction. The Emperor Antoninus stated in a Rescript addressed to Calpurnius Crito that, from the time when the accused party was certain of having the penalty inflicted upon him, he would lose the right of granting freedom rather through his consciousness of guilt, than from his condemnation for crime.

(1) Julianus says that, after a father has granted his son permission to manumit a slave, and the son, not being aware that his father is dead, manumits the slave, the latter will not become free. If, however, the father is living, and has changed his mind, his son will be considered to have manumitted the slave against the consent of his father.

16. *The Same, On the Lex &lia Sentia, Book III.*

Where freedom is granted to a slave by a trust, and a minor of twenty years of age sells the slave under condition that he shall be manumitted, or purchases him under the same condition, the alienation will not be prevented.

(1) If a minor of twenty years of age relinquishes the share which he has in a slave owned in

common, for the purpose of manumitting him, his act 'will be void. If, however, he can prove that there was a good reason for doing so, no fraud will be held to have been committed.

(2) It is provided by this law that no one shall manumit a slave for the purpose of defrauding his creditors. Those are designated creditors who are entitled to an action on any ground whatsoever against the person who intended to defraud him.

(3) Aristo gave it as his opinion that, where a slave was manumitted by an insolvent debtor of the Treasury, he could be returned to servitude, if he had not been free for a long time; that is to say, for not less than ten years. It is clear that anything which has been paid out for funeral expenses, with a view to defrauding the Treasury, can be recovered.

(4) Where money is due from a person who is insolvent to anyone under a condition, and a slave is manumitted by the debtor, his freedom will remain in suspense until the condition is complied with.

(5) If a son should manumit a slave with the consent of his father, and either the father or the son is aware that the former is not solvent, the grant of freedom will be void.

17. *The Same, On Grants of Freedom.*

If a private individual, being compelled by the people, should manumit a slave, the latter will, nevertheless, not be free even though his owner may have given his consent; for the Divine Marcus forbade the manumission of slaves caused by the clamor of the populace.

(1) Likewise, a slave is not emancipated if his master states falsely that he was free, in order to avoid punishment by the magistrates, if he has no intention of manumitting him.

(2) With reference to those whom it is not lawful to manumit within a certain time, if they receive their freedom by a will, the time when it was executed should not be considered, but the time when the slaves were entitled to be free.

18. *The Same, On Plautius, Book XVI.*

If the estate of the testator was solvent at the time of his death, but ceased to be so when it was accepted, any grant of freedom by the testator which defrauds the creditors is void. For, as the increase of an estate is of benefit to liberty, so also its diminution injures it.

(1) Where a slave to whom freedom is bequeathed is ordered to pay to the heir a sum of money equal to his value and become free, let us see whether any fraud is committed against the creditor, because the heir obtains the amount *mortis causa;* or, indeed, where a stranger pays the amount for the slave; or the slave himself pays it out of other property than his *peculium;* is any fraud perpetrated? But, as the fact that the heir is wealthy is of no advantage to the bequest of freedom, so neither should the person who pays the money be able to profit by it.

19. *Modestinus, Rules, Book I.*

Freedom granted by a person who is afterwards himself legally decided to be a slave is of no effect.

20. *The Same, On Cases Explained.*

Where freedom is bequeathed to a slave belonging to another, without the consent of his owner, the bequest is not valid according to law, even though the person who manumits him afterwards becomes the heir of the owner. For even if he becomes his heir by the right of relationship, the grant of freedom will be confirmed by his acceptance of the estate.

21. *The Same, Pandects, Book I.*

A female slave cannot be manumitted on account of marriage by anyone but the man who intends to marry her; because if one man should manumit her for this reason, and another

should marry her, she will not become free. Hence Julianus gave it as his opinion that she would not be liberated from servitude even if the person who manumitted and repudiated her should marry her within six months; on the ground that the Senate had reference to a marriage which should have taken place after the manumission, without any other preceding it.

22. *Pomponius, On Quintus Mucius, Book XXV.* The curator of an insane person cannot manumit a slave belonging to the latter.

23. *The Same, Various Passages, Book IV.*

Freedom is always considered to have been granted fraudulently with respect to creditors, when this is done by a person who knows that he is not solvent, even though it was granted to a slave who deserved it.

24. *Terentius Clemens, On the Lex Julia et Papia, Book IX.*

If anyone who has creditors should manumit several slaves, the grants of freedom to all of them will not be void, but only the first ones emancipated will become free; provided enough remains to satisfy the claims of the creditors. This rule was frequently stated by Julianus. For instance, where two slaves are manumitted, and the creditors will be defrauded by granting freedom to both, but not by granting it to either, one of them will not obtain his freedom; and this is generally he who is manumitted second, unless the first one designated is of greater value; and it will not be necessary to reduce the second to slavery if the value of the first will discharge the indebtedness, for, in this instance, the one which is mentioned in the second place will alone be entitled to his liberty.

25. *Papinianus, Opinions, Book V.*

Where freedom is granted by will, in fraud of creditors, although the first creditors may be satisfied, the grants of freedom are void, so far as the others are concerned.

26. *Scaevola, Opinions, Book IV.*

The heir of a debtor manumitted a slave who had been given in pledge. The question arose whether he became free. The answer was that, according to the facts stated, if the debt was still unpaid, he would become free by the manumission.

Paulus: Therefore, if the money was paid, he would be free.

27. *Hermogenicmus, Epitomes of Law, Book I.*

A slave is manumitted in fraud of creditors, and is forbidden to be free, whether the day for payment of the debt has already arrived, or whether the debt is payable within a certain time, or under some condition. The case of a legacy bequeathed under a condition is different, for the legatee will not be included among the creditors until the condition has been complied with. The *Lex &lia, Sentia,* in this respect, applies to creditors of every description whatsoever; and it has been decided that the beneficiary of a trust is also included among them.

(1) A slave who is given in pledge cannot be manumitted without the consent of the creditors before their claims have been satisfied. The consent of a creditor, who is a ward without the authority of his guardian, is of no benefit to a grant of freedom, just as no advantage results where, under similar circumstances, the ward, who is the usufructuary, consents to the manumission.

28. *Paulus, Opinions, Book HI.*

The act of an heir, who manumits his own slave that the testator bequeathed to him, is void, because it has been decided that neither his knowledge nor his ignorance of the bequest should be considered.

29. *Gaius, On Manumissions, Book I.*

When a slave is given by way of pledge, in general terms, there is no doubt that he belongs to the debtor, and can legally obtain his freedom from him, if this is not prevented by the *Lex Mlm Sentia,;* that is to say, if the owner is solvent, and his creditors do not appear to have been defrauded by his act.

(1) Where a slave is bequeathed under a condition, he belongs absolutely to the heir while the condition is pending; but he cannot obtain his freedom from him lest injury be done to the legatee.

30. *Ulpianus, On the Lex JElia, Sentia, Book IV.*

If anyone should purchase a slave under the condition of manumitting him, and, not having done so, the slave obtains his freedom under the Constitution of the Divine Marcus, let us see whether he can be accused of ingratitude. It may be said that, as the purchaser did not manumit him, he is not entitled to this right of action.

(1) If my son should manumit my slave with my consent, it may be doubted whether I have the right to accuse him of ingratitude for the reason that I did not manumit him. I should, however, be considered as having manumitted him.

(2) But if my son manumits a slave forming part of his *castrense peculium,* there is no doubt that I will not have this right, because I, myself, did not manumit him. It is clear that my son himself can accuse him.

(3) Anyone can accuse a freedman of ingratitude as long as he remains his patron.

(4) If, however, several patrons desire to accuse their freedman of ingratitude, let us see whether the consent of all of them will be necessary, or whether only one can do so.

The better opinion is that, if the freedman displayed ingratitude against only one of his patrons, he can accuse him; but the consent of all of them will be necessary, if they are all in the same degree.

(5) If a father should assign a freedman to one of his children, Julianus says he alone can accuse him of ingratitude, for he alone is his patron.

31. *Terentius Clemens, On the Lex Julia et Papia, Book V.*

The question arose, what would be the rule if a patron compelled his freedwoman to swear that she would not marry as long as her children are under the age of puberty? Julianus says that he would not be held to have acted against the *Lex Julia Sentia,* as he did not enjoin her to remain in perpetual widowhood.

32. *The Same, On the Law of Julia et Papia, Book I.*

If he who is under the control of a patron should compel the woman to swear, or to enter into a stipulation not to marry against the consent of the patron, unless the latter releases the woman from her oath, or her promise, he will come within the provisions of the law, for he himself will be held to have acted in bad faith.

(1) Patrons are not prohibited by the *Lex JElm Sentia* from receiving the wages of their freedmen, but they are forbidden to compel them to surrender them. Therefore, if a freedman voluntarily pays his wages to his patron, he will have no recourse against him under this law.

(2) This law does not apply to a freedman who has promised certain days of labor, or a sum of money, as by performing labor he can become free. Octavenus approves this opinion, and adds that a patron is understood to have compelled his freedman to pay him the wages of his labor, where his acts show that his intention was only to obtain the said wages, even if he stipulated for days of labor.

TITLE X.

CONCERNING THE RIGHT TO WEAR A GOLD RING.

1. *Papinianus, Opinions, Book I.*

Where provision for support is left to a freedman along with several others, he will not cease to be entitled to it because he has obtained from the Emperor the right to wear a gold ring.

(1) A different opinion prevails in the case of a freedman who has been judicially declared to be freeborn, and has been returned to his former condition through the collusion of another patron, which has been exposed, and who desires to obtain for himself the support that the third patron relinquished; for, in this instance, it has been established that the freedman will forfeit the right to wear a gold ring.

2. *The Same, Opinions, Book XV.*

A decision rendered with reference to the free birth of a freedman within five years was set aside. I gave it as my opinion that he had lost his right to wear a gold ring which he had received and relinquished before the decision was rendered.

3. *Marcianus, Institutes, Book I.*

The Divine Commodus also deprived those of the right of wearing a gold ring who had obtained it without the knowledge or consent of their patrons.

4. *Ulpianus, On the Lex Julia et Papia, Book HI.*

Even women can obtain the right to wear a gold ring, as well as that of being considered freeborn, and be restored to the privileges they are entitled to by their birth.

5. *Paulus, On the Lex Julia et Papia, Book IX.*

He who has obtained the right to wear a gold ring is considered as having been freeborn; even though his patron may not have been excluded from his succession.

6. *Ulpianus, On the Lex Julia et Papia, Book I.*

A freedman who has obtained the right to wear a gold ring (although he may obtain the right attaching to the condition of being freeborn, reserving the rights of his patron), is still considered as freeborn. This the Divine Hadrian stated in a Rescript.

TITLE XI.

CONCERNING THE RESTITUTION OF THE RIGHTS OF BIRTH.

1. *Ulpianus, Opinions, Book II.*

Where anyone, who stated to the Emperor that he was born free, has been restored by him to the rights to which he was entitled by birth, is proved to have been born of a female slave, he is considered to have obtained nothing.

2. *Marcianus, Institutes, Book I.*

Persons who are born slaves sometimes obtain the rights of those who are freeborn, by subsequent operation of law; as where a freedman is restored by the Emperor to the rights to which he is entitled by birth; for he is restored to these rights to which all men originally are entitled, but to which he himself could assert no claim by birth, as he was born a slave. He acquires the said rights in their entirety, and is in the same position as if he had been born free, hence his patron cannot succeed to his estate. For this reason the Emperors do not usually restore anyone to his birthright, unless with the consent of his patron.

3. *Scsevola, Opinions, Book VI, Gave the Following Opinion.*

You ask, if our Most Holy and Noble Emperor should restore anyone to his original

birthright, whether he can enjoy all the rights of one who is born free. This does not admit, and never has admitted of any doubt, because it has been established that he who obtains this privilege from the Emperor is restored to all the rights of a person who is born free.

4. *Paulus, Opinions, Book IV.*

A freedman cannot be restored to his birthright without the consent of the son of his patron; for what difference does it make whether the wrong was done to the patron, or to his children?

5. *Modestinus, Rules, Book VII.*

The freedman who desires to be restored to his natural birthright must obtain the consent of his patron, for the authority of his patron over him is lost if he acquires it.

(1) A freedman who is restored to his birthright is considered, in every respect, as if he had become freeborn, and, in the meantime, had not endured the infamy of servitude.

TITLE XII.

CONCERNING ACTIONS RELATING TO FREEDOM.

1. *Ulpianus, On the Edict, Book LIV.*

If a person who is free, but is held in possession as a slave, is not willing to go into court to establish his true condition, for the reason that he desires to do some wrong to himself or to his family, in this instance, it is but just that permission should be given to certain persons to appear in his behalf, as for example, to a father who alleges that his son is under his control; for if his son refuses to institute proceedings, he can do so for him.

This right is granted to his father even if he is not under the control of the latter, for it is always to the interest of a parent that his son should not be reduced to servitude.

(1) On the other hand, we say that the same power is granted to children in behalf of their parents, even against the consent of the latter, as it is no small disgrace for a son to have his father a slave.

(2) For the same reason it has been decided that this power is also granted to other blood-relatives,

2. *Gaius, On the Edict of the Urban Prs&tor, Title,: Concerning Actions Relating to Freedom.*

Because the slavery to which our relatives are subjected causes us grief and injury.

3. *Ulpianus, On the Edict, Book LIV.*

I go still further, and hold that this power ought to be granted to natural relatives also, so that if a father has a son in servitude who is afterwards manumitted, he can demand his freedom should he again be reduced to slavery.

(1) A soldier is also permitted to appear in court in a case where the freedom of any of his near relatives is involved.

(2) When no one of this kind who can act for the party interested appears in court, then it becomes necessary to authorize his mother, his daughters or his sisters, as well as other women related to him by blood, or even his wife, to appear before the Praetor, and present the case; so that, after proper cause is shown, relief may be granted him even against his consent.

(3) The same rule applies if I should allege that the party in question is my freedman or freedwoman.

4. *Gaius, On the Edict of the Urban Prsetor, Title: Actions Relating to Freedom.*

The right to appear in court should, however, only be granted to a patron where the liberty of

his freedman is involved, and the latter has permitted himself to be sold without his patron's knowledge.

5. *Ulpianus, On the Edict, Book LIV.*

For it is to our interest to preserve our rights over our freedmen and freedwomen.

(1) When several of the above-mentioned persons appear in court in behalf of a slave, the authority of the Praetor must be interposed to select the one whom he considers to be preferable.

This rule should also be observed where several patrons appear for that purpose.

6. *Gaius, On the Edict of the Urban Prsetor, Book II.*

It will be even more equitable to adopt such a course where the person who has been reduced to slavery is insane, or an infant; for this privilege should then not only be granted to near relatives but also to strangers.

7. *Ulpianus, On the Edict, Book LIV.*

Where men who are free, especially those who are over twenty years of age, have permitted themselves to be sold, or have been reduced to slavery for any other reason, no obstacle will arise to prevent them from demanding their freedom, unless they allowed themselves to be sold in order to share the purchase-money.

(1) When a minor of twenty years of age permits himself to be sold for the purpose of sharing the purchase-money, this will not prejudice him after he reaches the age of twenty years. If, however, he permitted himself to be sold and obtained a portion of the purchase-money after reaching his twentieth year, freedom can be refused him.

(2) If anyone should knowingly buy a man who is free, the right to demand his liberty will not be refused to him who was sold, as against the buyer, no matter at what age he was purchased; for the reason that he who bought him is not excusable, even if when he did so he who was the object of the sale well knew that he was free. But if another, without being aware of the fact, should afterwards purchase him from one who did know, freedom should be refused him.

(3) If two persons should buy a slave together, one of them knowing that he was free, and the other being ignorant of it, let us see whether he who was aware of the alleged slave's condition will prejudice the one who was not. This, indeed, is the better opinion. For, otherwise, the question would be whether he who was ignorant of the man's condition will only be entitled to his share in him, or to the entire alleged slave. Will what we have stated with reference to the share of the other apply to the purchaser who had knowledge? He, however, who bought the man, being aware that he was free, is unworthy to have anything.

Again, the one who was ignorant of his true condition cannot have a greater portion of the ownership than he purchased. The result therefore will be that the ignorance of one will benefit the other who bought the man knowing that he was free.

(4) There are other reasons for which the right to demand freedom is refused; as, for example, where a slave is said to be free by the terms of a will, and the Prsetor forbids the will to be opened, because the testator is said to have been killed by his slaves; for he who desires to appear in court and who may, perhaps, be liable to punishment, should not be entitled to a judgment giving him his freedom.

If, however, the right should be granted because it is uncertain whether he is guilty or innocent, the decision should be deferred until it is established who is responsible for the death of the testator, as it will then appear whether he will be liable to punishment or not.

(5) Where anyone who is in slavery claims his freedom, he occupies the place of a plaintiff. If, however, being at liberty, he is demanded as a slave, the person who alleges that he is his

slave assumes the part of the plaintiff. Hence, when the matter is in doubt, in order that the proceedings may be conducted in their proper order, the question should be argued before the magistrate who has cognizance of cases involving freedom, so that it may be determined whether the alleged slave should be reduced from freedom to servitude; or, on the other hand, whether, being in bondage, he ought to be liberated.

If, however, it should appear that he who contends that he is free was in that condition without having been guilty of fraud, he who alleges that he is his owner will take the part of the plaintiff, and will be required to prove that he is his slave. But if it is decided that, at the time when the proceedings were instituted, the alleged slave was not at liberty, or had fraudulently obtained his freedom, he who asserts that he is free must prove that this is the case.

8. *The Same, On the Edict, Book LV.*

The right to appear in a case involving freedom is granted to an usufructuary, even if the owner (that is to say, he who alleges that he is the owner), also desires to institute proceedings respecting the status of the slave.

(1) Where several persons claim the ownership of the slave, alleging that he belongs to them in common, they shall be sent before the same judge. This was decreed by the Senate. But if each one of them should say that the entire slave and not merely a share in him belongs to him alone, the Decree of the Senate will not apply. For then there will be no reason to apprehend that different decisions will be rendered, as each of the alleged owners claims that the slave is his individual property.

(2) Where, however, one person claims the usufruct in the slave and another the ownership, or where one claims the ownership, and the other says that the slave has been pledged to him, the same judge must decide the case; and it makes little difference whether the slave was pledged to him by the same person who claims him as the owner, or by someone else.

9. *Gaius, On the Edict of the Urban Prsetor, Title: Actions Relating to Freedom.*

Where two parties, that is to say, the alleged usufructuary and the alleged owner, are defendants at the same time against him who has brought an action to obtain his freedom, one of them may happen to be absent. It may be doubted whether, under such circumstances, the Prsetor can permit the one who is present to appear alone against the alleged slave, because the rights of the third party should not be prejudiced by the collusion or the negligence of another.

It can more properly be held that one of them may proceed in such a way that the rights of the other will remain unimpaired. If the absent party should appear before the case has been terminated, he must be sent before the same judge, unless he gives a good reason why this should not be done; for instance, if he alleges that the judge is his enemy.

(1) We say that the same rule will apply where of two or more persons who assert that they are the owners of the alleged slave some are present, and others are absent.

(2) Therefore, in both cases, we must consider if the one who first instituted proceedings should be defeated, whether this will benefit the other, who gained his case, or *vice versa;* that is to say, if either one of them should succeed, whether this will profit the other; as the heir of a freedman obtains an advantage from the fact that his patron had been defrauded by the manumission of slaves.

If it is held that a judgment rendered in favor of one will benefit the other; the result will be that if the latter again brings suit, he can be opposed by a replication on the ground that the matter has already been decided. If, indeed, it is held that he does not derive any advantage from the decision, the doubt will arise whether what was claimed by the party who lost the case belongs to either of them, or whether he against whom the action was brought, or he who was successful, is entitled to it; and it is evident that a praetorian action ought to be granted to

the party who gained the case, as the Prsetor should, by no means, permit the man to be part slave and part free.

10. *Ulpianus, On the Edict, Book LV.*

What we have said with reference to the alleged slave, proving that he has been free, must be understood to mean not that he who demands his liberty must show that he was absolutely free, but that he was in possession of his freedom without any fraud on his part.

But let us see what would be considered fraud on his part. Julianus says, that all those who believe that they are free are not guilty of fraud, provided they act as freemen, even though they are actually slaves. Varus, however, says that one who knows himself to be free, and takes to flight, cannot be considered to be at liberty without any fraud on his part; but at the moment when he ceases to conceal himself as a fugitive slave, and acts as if he was free, he begins to be at liberty without fraud on his part. For he holds that he who knows that he is free, and afterwards conducts himself like a fugitive slave, should be considered to act as a slave from the very fact that he has taken to flight.

11. *Gaius, On the Edict of the Urban Pr&tor, Title: Actions with Reference to Freedom.*

Even though, during his flight he acted as a freeman, we hold that the same rule will apply.

12. *Ulpianus, On the Edict, Book LV.*

Hence, it should be noted that a person who is free can be fraudulently at liberty, and that a slave can be at liberty without being guilty of fraud.

(1) A child who is stolen in infancy served as a slave in good faith, although he was free; and afterwards, while ignorant of his condition, left his master and secretly began to live in freedom. He does not remain at liberty without being guilty of fraud.

(2) A slave can also be at liberty without committing fraud, as, for instance, where he receives his freedom by a will and is not aware that the will is void; or where he obtains it before a magistrate from someone whom he believed to be his owner, when he was not; or where he has been brought up as free, when, in fact, he was a slave.

(3) Generally speaking, whenever anyone thinks that he is free, without being guilty of deceit, whether he is induced to do so by good or bad motives, and he remains at liberty, it must be held that he is in the same condition as if he was free without being guilty of fraud, and therefore he can enjoy all the advantages of a possessor of freedom.

(4) The proof of good faith, however, is referred to the time when he was at liberty without being guilty of fraud, which is when legal proceedings with reference to him were first instituted.

(5) Where the services of a slave are due to anyone, he can also avail himself of the action relating to freedom.

(6) If a person who claims his freedom has caused me any damage during the time when he was serving me as a slave in good faith (as, for example, if I really, believing myself to be his owner, was sued in a noxal action, and judgment was rendered against me, and I paid the appraised damages, instead of surrendering the alleged slave by way of reparation), judgment will be rendered against him in my favor.

13. *Gaius, On the Edict of the Urban Prsetor, Title: Actions Relating to Freedom.*

It is certain that in the action *in factum* under discussion, judgment should only be rendered for the amount of damages which were caused by fraud, and not for what was due to negligence. Therefore, even if the alleged slave should be released from liability in a case of this kind, still, suit can afterwards be brought against him under the Aquilian Law, as by this law he will also be liable for negligence.

(1) Again, it is certain that in this action not only our own property but also that of another for which we are responsible can be claimed as having been lent or hired. But it is clear that this proceeding does not apply to property merely deposited with us for safe-keeping, because it is not at our risk.

14. *Ulpianus, On the Edict, Book LV.*

The Prsetor very properly opposes the deceitful conduct of those who, knowing that they are free, fraudulently permit themselves to be sold as slaves; for he grants an action against them.

(1) This action will lie whenever he who permitted himself to be sold as a slave is in such a position that he cannot be refused permission to demand his freedom.

(2) We do not consider that he has acted in bad faith who did not voluntarily inform the purchaser of the fraud, but only when he himself deceived him.

15. *Paulus, On the Edict, Book LV.*

That is to say, no matter whether the person who suffered himself or herself to be sold is of the male or the female sex; provided he or she is of an age at which fraud can legally be committed.

16. *Ulpianus, On the Edict, Book LV.*

The same rule applies to one who pretends to be a slave, and is sold as such, with the intention of deceiving the purchaser.

(1) If, however, he, who was sold was under the influence of either force or fear, we say that he was not guilty of fraud.

(2) The purchaser is entitled to this action when he was not aware that the alleged slave was free, for if he knew that he was free, and then bought him, he cheated himself.

(3) Therefore, if a son under paternal control makes a purchase of this kind, and he himself was aware of the facts, but his father was ignorant of them, he will not be entitled to an action for the benefit of his father, if he made the purchase with reference to his *peculium.* But, in this instance, the question arises whether, if the father directed him to make the purchase, he will be prejudiced by the knowledge of his son. I think that it will prejudice him just as it would prejudice an agent.

(4) If the son was not aware that the man who was sold was free, and his father knew it, I think that it is clear that the father will be barred from bringing an action, even if the son made the purchase with reference to his *peculium;* provided the father was present and could have prevented his son from doing so.

17. *Paulus, On the Edict, Book LI.*

The same rule will apply to the case of a slave, and where a purchase was made under our direction by an agent; and it is just as if I had ordered a certain man to be purchased, knowing him to be free, although he who was ordered to buy him may not have been aware of the fact, as an action will not lie in his favor. If, on the other hand, I was not aware that the man was free, but the agent knew it, the action will not be refused me.

18. *Ulpianus, On the Edict, Book LV.*

He, therefore, will be liable for as much as he has paid, or for the amount for which he bound himself, that is to say, for double the price.

(1) Let us see, however, whether merely the purchase money or also whatever may have been added to it should be doubled. I think that either all that was paid on account of the sale ought, by all means, to be doubled,

19. *Paulus, On the Edict, Book LI.*

Or what was exchanged or set off, in lieu of the purchase money (for it also is understood to have been given as such under these circumstances) ;

20. *Ulpianus, On the Edict, Book LV.*

And what he bound himself to pay should be doubled.

(1) Hence, if the purchaser has lawfully paid something to anyone in order to obtain this action, it must be said that it comes within the terms of this Edict, and will be doubled.

(2) Where anyone is said to have bound himself, we must understand this to have been done either to the vendor or to someone else; for whatever he, either himself, or through another, gave to the vendor himself, or to some other person by his order, is equally included.

(3) We should consider the purchaser to be bound where he cannot protect himself by an exception, but if he can do so, he is not held to be bound.

(4) It sometimes happens that he who makes the purchase will be entitled to an action for quadruple the value of the property. For a suit for double damages will lie in his favor against the alleged slave himself, who, being free, knowingly permitted himself to be sold; and, in addition to this, he will be entitled to an action for double damages against the vendor, or against him who promised him double damages.

21. *Modestinus, Concerning Penalties, Book I.*

Therefore, double the amount of what the purchaser either paid, or bound himself for with reference to the sale, will be due. According to this, whatever either of the parties may pay will not operate to release the other; because it has been decided that this action is a penal one. Hence, it is not granted after the lapse of a year, nor can it be brought against the successors of the person liable to it, as it is a penal action. Therefore, the action which arises from this Edict may, very properly, be said not to be extinguished by manumission, because it is true that the vendor cannot be sued after legal measures have been taken against him who demanded his freedom.

22. *Ulpianus, On the Edict, Book LV.*

Not only the purchaser himself, but also his heirs, can institute proceedings by means of this action *in factum.*

(1) We understand anyone to make a purchase, even where he does so by another, as, for instance, through an agent.

(2) Where, however, several persons make a purchase, while all of them will be entitled to this action, still, if they have bought different shares, they can bring suit in proportion to the respective amounts of the price which they have paid; or if each one bought the entire interest in the slave, each will be entitled to an action to recover in full; nor will the knowledge or the ignorance of any one of them benefit or prejudice the others.

(3) If the purchaser was not aware that the man who was sold was free, and he afterwards learned this, his rights will not be prejudiced, because he was ignorant of the fact at the time. But if he knew it when the sale took place, and afterwards doubted its truth, this will be of no advantage to him.

(4) Knowledge does not prejudice, nor ignorance benefit the heir and other successors of the purchaser in any way.

(5) If, however, anyone should make the purchase by an agent, who knows that the man is free, it will prejudice him; and Labeo thinks that the knowledge of a guardian will, under these circumstances, prejudice his ward.

(6) This action is not granted after a year, as it is an equitable as well as a penal one.

23. *Pauliis, On the Edict, Book L.*

If I should sell and transfer to you the usufruct in a man who is free, Quintus Mucius says that he will become a slave, but the ownership will not become mine, unless I sell the usufruct in good faith, for, otherwise, there will be no owner.

(1) In a word, it must be noted that what has been said with reference to men sold as slaves, and whose claim to freedom is denied, also applies to such as are donated, and given by way of dowry; just as it does to those who have permitted themselves to be given in pledge.

(2) Where a mother and her son both demand their freedom, the cases of the two should be joined, or that of the son should be deferred until the mother's case has been decided; as was decreed by the Divine Hadrian. For where the mother has instituted proceedings before one judge, and her son before another, Augustus stated that the condition of the mother must first be established, and after that the case of the son should be heard.

24. *The Same, On the Edict, Book LI.*

After the preliminaries of a suit involving the demand for freedom have been legally complied with, he who brought it to establish his status is considered to be free, and actions will not be refused him against one who alleges that he is his owner, no matter what actions he may desire to bring. But what if these are suits, the right to which is extinguished by lapse of time, or by death? Why should he not be granted the power to institute these proceedings in security after issue has been joined?

(1) Moreover, Servius says that, in cases where the right to bring actions is barred after a year has elapsed, the year must be reckoned from the day on which the case relating to freedom was disposed of.

(2) If, however, it is considered desirable to proceed against others, it will not be necessary to wait until the first case has been decided, lest in the meantime means may be found to bar these actions by the introduction of someone who will dispute the right of the alleged slave to be free. In like manner, an action can legally be brought or not, according to the decision in the case involving the freedom of the party in question.

(3) If the alleged owner should bring an action, the question arises whether the defendant will be obliged to join issue. Several authorities hold that if he brings an action *in personam,* he must undertake the defence of the case, but judgment must be suspended until the question of his freedom has been determined; nor should it be held that his attempt to obtain his freedom is prejudiced, or that he remains at liberty with the consent of his master. For after the case brought to establish his freedom has been decided, he is considered, in the meantime, to be free; and as he himself can bring actions, so also, actions can be brought against him; but it will depend upon the result, as the judgment will either be valid if it is in his favor, or it will be void if it is adverse to his freedom.

(4) Where he who demands his freedom is accused of theft, or of wrongful damage by anyone, Mela says that he must, in the interim, furnish security that he will be present when the decision is rendered, to prevent the condition of one whose freedom is in doubt from becoming preferable to that of a person whose freedom is certain; but judgment must be deferred to avoid committing any wrong against liberty.

Likewise, where an action of theft is brought against the possessor of a man alleged to be a slave, and he is afterwards sued in the name of him who claimed his freedom, the decision of the case must be suspended ; so that if the latter is ascertained to be free, the case against him can be transferred, and if the judgment should be unfavorable, the action to enforce it can be granted against him.

25. *Gaius, On the Edict of the Urban Prastor: Title, Actions Relating to Freedom.*

If an option has been bequeathed to anyone demanding his liberty in court, whatever has been stated with reference to the bequest of an estate will also apply to that of an option.

(1) The right to bring a second action to obtain freedom is sometimes granted; as for instance, where a party alleges that he lost the first case because his freedom depended upon a condition which had not previously been complied with.

(2) Although it is commonly stated that, after a case involving freedom has been decided, the person whose condition was in controversy is considered to be free; still, if he is really a slave, it is certain that he, nevertheless, will acquire for his master whatever has been delivered to or promised him, just as if no question had arisen concerning his freedom. We shall see that there is no dispute as to his possession, since his master ceases to possess him after the case has been decided.

The better opinion is that he acquires possession, although he is not possessed by him. And, as it has been settled that we acquire possession by our slaves, even if they are fugitives, why should it be wondered at that we also acquire possession by one whose right to freedom we deny?

26. *The Same, On the Provincial Edict, Book XX.*

Where anyone claims a person who is at liberty as his slave, and only brings the action for the purpose of having recourse in case of eviction, he cannot be sued in an action on injury.

27. *Ulpianus, On the Duties of Consul, Book II.*

The Divine Brothers, in a Rescript addressed to Proculus and Munatius, stated as follows: "As Romulus, whose condition is disputed, is near the age of puberty, and at the request of his mother, Varia Hado, and with the consent of Varius Hermes, his guardian, judgment in the case was postponed until the child should reach the age of puberty, it is left to your discretion to determine what will be advantageous to the minor, the position of the parties interested being taken into account."

(1) If the person who raised the question concerning the condition of another fails to appear at the trial, he who demands his freedom is in the same condition as he was before the controversy arose with reference to it. He, however, is benefited to this extent, namely, that he who disputed his status will lose his case. This fact, however, does not render him freeborn who previously was not so, for the failure of an adversary to appear does not confer the right of freedom.

I think that judges will act lawfully and regularly if they pursue the regular order; so that where the party claiming the man as his slave fails to appear, his adversaries shall be given the choice either of having the case continued, or of having it heard and determined. If the judges should hear the case, they must decide that the party in question does not appear to be the slave of So-and-So. This decision does not take undue advantage of anyone, as the person whose estate is in controversy is not found to be freeborn, but is merely held not to be a slave.

Where, however, one who is in slavery claims his freedom, the better course for the judges to pursue will be to continue the case, in order to avoid deciding that the said person appears to be born free, when no adversary appears, unless there should be good reason to cause them to hold that it is clear that judgment should be rendered in favor of liberty; as is also stated in a Rescript of Hadrian.

(2) If, however, he who demands his freedom fails to appear, and his opponent is present, it will be better to proceed with the case and have judgment rendered. If the adversary offers sufficient evidence, the judge shall decide against freedom. It may, however, happen that the absent party will be successful, for the decision may be rendered in favor of freedom.

28. *Pomponius, On Quintus Mucius, Book XII.*

A slave is not considered to be at liberty with the consent of his master when the latter does not know that he belongs to him. This is perfectly true; for the slave is only at liberty under such circumstances when he acquires possession of freedom with his master's consent.

29. *Arrius Menander, On Military Affairs, Book V.*

Where anyone institutes proceedings to obtain his freedom, and enlists in the army before a decision is rendered, he should be held to occupy the same position as other slaves, and he will not be relieved because, in some respects, he is considered as free. And, although he may have appeared to be free, he can be dishonorably discharged, that is, dismissed from the army, and driven from the camp as one who demanded freedom while in slavery, or who was at liberty through fraud. But anyone who has been falsely and maliciously claimed as a slave shall be retained in the service.

(1) Where anyone who has been judicially declared freeborn enlists in the army, and the decision is reversed within five years, he shall be returned to his new master.

30. *Julianus, On Minicius, Book V.*

Where two persons separately claim a man as their slave, and each of them alleges that he owns half of him, and, by one judgment, he is declared to "be free, and by another, he is pronounced to be a slave, the most convenient course will be for the judges to be compelled to agree. If this cannot be done, Sabinus states that it has been held that the man should be taken as a slave by the party who gained the case.

Cassius (as well as myself), adopts this opinion, and, indeed, it is ridiculous for the man to be considered half slave, and also to be protected in the enjoyment of half his freedom.

It is, however, convenient to decide that he was free, on account of the favor conceded to liberty, and to compel him to pay to the party who gained the case half of his value, as appraised by a reliable citizen.

31. *Ulpianus, Opinions, Book I.*

A son who appears as the heir of his father is forbidden from demanding as a slave one who had been manumitted by his father.

32. *Paulus, Rules, Book VI.*

A decree of the Senate was enacted concerning the property of those who, as slaves or as freedmen, have acquired the status of freeborn persons. With reference to those who were formerly in a state of slavery, it permits them only to take with them what they conveyed into the houses of their alleged masters, and to those who, after their manumission, desired to recover their original rights. This also was conceded, namely, that whatever they had acquired after their manumission (but not anything obtained through the agency of the person who set them free), they could take with them; and that they must leave all other property with him from whose household they departed.

33. *The Same, Actions Relating to Freedom.*

Anyone who knowingly purchases a man who is free, even if the latter permits himself to be sold, cannot, nevertheless, oppose him, if he demands his freedom. Where, however, he sells the man to another person who was ignorant of the facts, the supposed slave will not be permitted to demand his liberty.

34. *Ulpianus, Pandects.*

The Emperor Antoninus decided that no one should be permitted to demand his freedom, unless he previously had rendered an account of the administration which he had conducted

while in slavery.

35. *Papinianus, Opinions, Book IX.*

It has been settled that the slaves destined for the care of a temple which Titia intended to build, and who had not been manumitted, belonged to her heir.

36. *The Same, Opinions, Book XII.*

A master who has gained his case, and wishes to take away his slave, cannot be compelled to accept the appraised value instead of the slave.

37. *Callistratus, Questions, Book II.*

A private agreement cannot make anyone either the slave or the freedman of another.

38. *Paulus, Opinions, Book XV.*

Paulus gave it as his opinion that if (as is stated) after a sale has been made unconditionally, the purchaser voluntarily sent a letter by which he declared that, after a certain time, he would manumit the slave whom he had bought, this letter had no reference whatever to the Constitution of the Divine Marcus.

(1) He also gave it as his opinion that the Constitution of the Divine Marcus applied to the cases of slaves who were sold under the condition of being manumitted after a certain time; and that a female slave, for whom her master had received money for the purpose of manumitting her, was entitled to the same favor of freedom, as he would also have authority over her as his freedwoman.

(2) The question arose whether a purchaser could legally grant freedom to his slave, if his price had not yet been paid. Paulus answered that if the vendor had delivered the slave to the purchaser, and had been furnished with security for his price, he would belong to the purchaser, even if the money had not been paid.

(3) Gaius Seius sold Stichus, his slave, under the condition that Titius would manumit Stichus at the end of three years, if he served him continually during that time. Stichus fled before the three years had elapsed, and returned in a short time after the death of Titius. I ask whether Stichus would be prevented from obtaining his freedom under the terms of the sale, by having taken to flight before the three years had expired? Paulus gave it as his opinion that, according to the facts stated, Stichus should be manumitted, and was entitled to his freedom after the term which had been prescribed.

39. *The Same, Opinions, Book V.*

He who is not required to produce proofs of his free birth should be heard, if he himself voluntarily desires to offer them.

(1) Magistrates who have cognizance of causes involving freedom of birth can impose penalties, to the extent of exile, against anyone who rashly and maliciously institutes proceedings.

(2) Guardians or curators cannot raise any question as to the condition of the wards whose guardianship and whose property they have administered.

(3) A husband is not prohibited from raising a question as to the condition of his wife or his freedwoman.

40. *Hermogenianus, Epitomes of Law, Book V.*

Where a minor of twenty years of age permits himself to be sold under an agreement to share his price, he cannot, after his manumission, demand that he be declared freeborn.

41. *Paulus, Articles Referring to Actions for Freedom.*

If there is any doubt as to the condition of a person who demands his freedom, he should first be heard, if he wishes to prove that he himself is in possession of freedom.

(1) The judge who has jurisdiction of cases where freedom is involved should also take cognizance of property which has been stolen, or serious damage committed by the claimant. For it can happen that, being confident that he will obtain his freedom, he may have ventured to steal, or spoil, or waste property belonging to those whom he was serving as a slave.

42. *Labeo, Last Works, Book IV.*

If a slave whom you have purchased demands his freedom, and an unjust decision is rendered in his favor by the judge, and the master of the said slave makes you his heir, after the case has been decided against you, or the slave becomes yours in any other way, you can again claim him as yours; and the rule relating to *res judicata* cannot be pleaded against you. Javolenus says this opinion is correct.

43. *Pomponius, Decrees of the Senate, Book HI.*

The Emperor Hadrian published a Rescript with reference to those who had stolen the property of the persons whom they were serving as slaves, and afterwards demanded their freedom, the words of which Rescript are as follows: "As it is not just that a slave, in expectation of his freedom, should take property belonging to the estate of his master, where freedom is to be granted him under the terms of a trust, so it is not necessary to seek for any reason to delay the grant of his freedom." Hence, in the first place, an arbiter should be appointed, in whose presence it should be determined what can be preserved for the heir, before he can be compelled to manumit the slave.

44. *Venuleius, Actions, Book VII.*

Although it was formerly doubtful whether only a slave or a freedman could be obliged by his patron to swear to observe the conditions which were imposed upon him in consideration of his liberty, it is, however, better to hold that he cannot be bound to a greater extent than a freeman. Hence it is customary to exact this oath from slaves, in order that they may be restrained by religion, and be required to again be sworn after they become their own masters; provided they take the oath, or make the promise at the very time when they are manumitted.

(1) Moreover, it is lawful to insert the name of the wife with reference to any donation, present, or daily labor to be given or performed by the manumitted slave.

(2) A pratorian action on account of labor to be performed should be granted against one who, before reaching the age of puberty, took the oath, that is to say if he was legally capable of doing so; as a boy under the age of puberty can render services if he is either a nomencla-tor or an actor.

TITLE XIII.

CONCERNING THOSE WHO ARE NOT PERMITTED TO DEMAND THEIR FREEDOM.

1. *Ulpianus, On the Duties of Proconsul, Book I.* Those who are more than twenty years of age cannot demand their freedom, if any of the price for which they have been sold should come into their hands. Where anyone has suffered himself to be sold for any other reason, even though he may be over twenty years of age, he can demand his freedom.

(1) The right to demand his freedom should not be refused a minor under twenty years of age, for the above-mentioned reason, unless he remained in slavery after reaching the age of twenty years; for then, if he had shared in the price, it must be said that the right to demand his freedom will be refused him.

2. *Marcellus, Digest, Book XXIV.*

A certain man extorted a slave from Titius by violence, and directed him to be free by his

will. The slave will not become free, even if the testator died solvent; for otherwise, Titius will be defrauded, as he can bring an action against the heir of the deceased on the ground that the bequest of freedom was void; but if the slave should obtain his freedom, Titius will not be entitled to an action, because the heir will not be held to have gained anything by the fraud of the deceased.

3. *Pomponius, Letters and Various Passages, Book XL*

Permission to demand their freedom is denied those who have suffered themselves to be sold. I ask whether these decrees of the Senate also apply to children born of women who have suffered themselves to be sold. There can be no doubt that a woman of over twenty years of age, who has suffered herself to be sold, will be refused permission to demand her freedom. Nor should it be granted to those children born to her during the time of her servitude.

4. *Paulus, Questions, Book XII.*

"Licinnius Rufinus, to Julius Paulus: A slave who was entitled to freedom under the terms of a trust, permitted himself to be sold after having reached his twentieth year. I ask whether he shall be forbidden to demand his freedom." The example of a man who is free causes me some difficulty; for if the slave should have permitted himself to be sold after having obtained his freedom, he would be refused permission to demand it; nor should he be understood to be in a better position when, being in slavery, he permitted himself to be sold, than if he had done so after having obtained his freedom.

On the other hand, however, a difficulty arises, because in the case in question the sale is valid and the man can be sold, but in the case of a freeman the sale is void, and there is nothing to be sold. Therefore, I ask that you give me the most complete information on this point.

The answer was that the sale of a slave as well as that of a man who is free can be contracted for, and a stipulation providing against eviction can be entered into. For, in this instance, we do not refer to anyone who knowingly purchases a man who is free, as a right to demand his freedom is not refused him as against the purchaser. He, however, who is still a slave, can be sold even against his own consent, although he is acting fraudulently when he conceals his condition, as it is in his power immediately to obtain his freedom, but he cannot be blamed when he is not yet entitled to be free.

Suppose that a slave, who is to be free conditionally, suffers himself to be sold; no one will say that he has not the right to demand his freedom, in case the condition, which is not in his power, should be fulfilled ; and, indeed, I think that the same rule will apply if it was in his power to comply with it. In the case proposed, it will be better to adopt the opinion that he should not be permitted to demand his freedom, if he could have done so, and preferred to let himself be sold; because he is unworthy of the aid of the Praetor having jurisdiction over trusts.

TITLE XIV.

WHERE ANYONE IS DECIDED TO BE FREEBORN.

1. *Marcellus, Digest, Book VII.*

If the'freedman of one person is declared to be freeborn as the result of an action brought by another, his patron can prosecute the same claim against him without being barred by an exception based on prescription.

2. *Saturninus, On the Duties of Proconsul, Book I.*

The Divine Hadrian decided that anyone who was of age, and permitted himself to be sold in order that he might receive a portion of the price, should be forbidden to bring an action to obtain his freedom; but that he could do so under certain circumstances, if he returned his

share of the price which had been paid.

(1) Those who are freedmen, and assert their claim to freedom by birth, shall not be heard after the lapse of five years from the date of their manumission.

(2) Those who, after the lapse of five years, allege that they have discovered documents establishing their rights to be considered freeborn, must have recourse to the Emperor, who will examine their claims.

3. *Pomponius, Decrees of the Senate, Book V.*

By the following words: "Their birth having been acknowledged," the Decree of the Senate must be understood only to refer to those who would have been considered freeborn.

(1) By the clause, "Would have left," it must be understood that whatever such persons have obtained from the property of him by whom they were manumitted must be restored.

Let us see in what manner this must be interpreted, whether they must return whatever has been acquired by them by means of the property of their masters, or what they have abstracted from them without their knowledge, or whether this includes the property which has been granted and donated by the persons who manumitted them. The latter is the better opinion.

4. *Papinianus, Questions, Book XXII.*

The Rescript which forbids freedom of birth to be demanded before the Consuls or Governors of provinces, after the lapse of five years from the date of manumission, excepts no cases or persons.

5. *The Same, Opinions, Book X.*

I gave it as my opinion, that a patron should not be barred by prescription after the lapse of five years from the date of the judgment entered in favor of freedom, when he is ignorant that such a judgment has been rendered.

6. *Ulpianus, On the Edict, Book XXXVIH.*

Whenever a dispute arises as to whether anyone is a freedman or services are demanded of him, or obedience from him is required, or where an action implying infamy is to be brought, or he who alleges that he is the patron is summoned to court, or proceedings are instituted without good cause, a prejudicial action will lie.

The same prejudicial action will also be granted where a person confesses that he is a freedman, but denies that he has been liberated by Gaius Seius. It will also be granted where one or the other party requests it, but he who represents himself to be the patron shall always take the part of the plaintiff, for he must prove that the person in question is his freedman, and if he does not do so he will lose his case.

TITLE XV.

NO QUESTION AS TO THE CONDITION OF DECEASED PERSONS SHALL BE RAISED AFTER FIVE YEARS HAVE ELAPSED AFTER THEIR DEATH.

1. *Marcianus, On Informers.*

It is not lawful for either private individuals or the Treasury to raise any question with reference to the civil condition of deceased persons after five years from the time of their death.

(1) Nor can the condition of him who died within five years be reconsidered, if, by doing so, the status of one who has died more than five years previously will be prejudiced.

(2) Nor can any question be raised with reference to the condition of a man who is living, if, by doing so, the condition of one who died more than five years previously will be prejudiced.

This point was decided by the Divine Hadrian.

(3) Sometimes, however, it is not permitted to raise a question with reference to the status of the deceased within five years from the time of his death. For it is provided by a Rescript of the Divine Marcus that if anyone has been judicially declared to be freeborn, it may be permitted to review the decision rendered during the lifetime of the person who has been pronounced freeborn, but not after his death. To such an extent is this true that even if the review of the case has been begun, it will be extinguished by death; as is set forth in the same Rescript.

(4) If anyone reviews a decision of this kind in order to reduce the person to an inferior condition, this should be opposed, according to what I have already stated. But what if the intention was to improve his condition, as, for instance, to have him declared a freedman instead of a slave; why should this not be permitted ? What course must be pursued, if he is said to be a slave, the issue of a female slave, who has been dead for more than five years ? Why should he not be alleged to prove that she was free; for this itself is in favor of the deceased?

Marcellus in the Fifth Book of the Duties of Proconsul stated that this should be done. I also adopted the same opinion in the audience room.

2. *Papinianus, Opinions, Book XIV.*

It is settled that, in the reconsideration of a case, no question should be raised with reference to the freedom of children which may involve the reputation of their mothers or fathers, after the latter had been dead for more than five years.

(1) In a matter of this kind, which is worthy of public supervision, relief should be granted to minors instituting proceedings for restitution, where they had no guardians to act for them during the five years which have elapsed.

(2) This prescriptive term of five years which protects the status of deceased persons is not affected by the filing of any action before death; if it can be proved that the right to bring the said action has been extinguished by the long silence of him who originally brought it and then desisted.

3. *Hermogenianus, Epitomes of Law, Book VI.*

The condition of a person who died more than five years previously is considered to be more honorable than at the time of his death, and no one will be prevented from claiming this for him. Therefore, even if he died in slavery, he can be proved to have been free at his decease, even after the lapse of five years.

4. *Callistratus, On the Rights of the Treasury.*

The Divine Nerva was the first of all who, by an Edict, forbade that any question should be raised regarding the condition of anyone after five years from the date of his death.

(1) The Divine Claudius also stated in a Rescript addressed to Claudian that if, by the pecuniary question which had been raised, any prejudice appeared to be caused to the status of the deceased, the inquiry must cease.

TITLE XVI.

CONCERNING THE DETECTION OF COLLUSION.

1. *Gaius, On the Edict of the Urban Prsetor, Title: Actions Relating to Freedom.*

To prevent the excessive indulgence of certain masters toward their slaves from contaminating the highest Order in the State, through suffering their slaves to claim the right of free birth and to be judicially declared free, a Decree of the Senate was enacted in the time

of Domitian, by which it was provided, that: "If anyone can prove that an act was due to collusion, and the man pronounced to be free was actually a slave, the latter will belong to him who exposed the collusion."

2. *Ulpianus, On the Duties of Consul, Book II.*

The Emperor Marcus decided that collusion could be detected within five years after a decision declaring a person entitled to the privilege of free birth.

(1) We understand that the five years must be continuous.

(2) If it is clear that if the age of him who is accused of collusion renders it necessary that the investigation should be deferred until the age of puberty, or to some other time, it must be held that the term of five years will not run.

(3) Moreover, I think that the term of five years has been prescribed not to terminate the inquiry, but to begin it. It is, however, different with respect to him who, being a liberated slave, demands that he be given the rights of a person who is freeborn.

(4) It is provided by a Rescript of the Divine Marcus that even strangers, who have the right to assert claims for others, shall be permitted to expose collusion.

3. *Callistratus, On Judicial Inquiries, Book IV.*

Where anyone, without having any legal adversary, is judicially declared to be entitled to the rights of a freeborn person, the decision will be without effect, and just as if none had been rendered. This is provided by the Imperial Constitutions.

4. *Ulpianus, On the Lex Julia et Papia, Book I.*

Where a freedman, through collusion, has been declared to be entitled to the rights of a freeborn person, and the collusion has been established, he is, in some respects regarded, as a freedman. In the meantime, however, before the collusion has been exposed, and after the decision with reference to his rights as a freeborn person has been rendered, he will be regarded as freeborn.

5. *Hermogenianus, Epitomes of Law, Book V.*

It is only permitted, under the pretext of collusion, to review a judgment rendered with reference to the right of free birth but once.

(1) Where several persons appear at the same time for the purpose of proving the collusion, when proper cause is shown, a decision must be rendered after taking into account the morals and the ages of all the parties concerned; and especially should it be ascertained which one of them has the greatest interest in exposing the collusion.