

Book IX.
Title XII.

On the Julian law concerning public or private force or violence.
(Ad legem Juliam de vi publica seu privata.)

Bas. 60.18.20; Dig. 48.6.7.

Headnote.

The Roman law tried to suppress self-help by the use of force and violence, and endeavored to encourage resort to the courts in matters of dispute. The civil action granted to recover possession of lands and houses seized forcibly or violently is dealt with at C. 8.4. The action for forcible or violent seizure of personal property, commonly called robbery, is dealt with in title 33 of this book. The notes found in connection with the laws of these two titles show clearly the effort made by the Roman law-makers to suppress all sorts of violence. But though the civil actions referred carried penalties, the use of force and violence in certain cases was also made a public crime under the so-called Julian law, passed in the time of Caesar or Augustus. Rape, covered by this law, is dealt with in the next title. Kidnapping, punished under a different - the Fabian law- is found treated in title 20 of this book. Murder, poisoning and other forms of violence are also treated under separate titles.

Violence was divided into public and private. It is impossible to define exactly what was covered by them. Mackenzie on Roman Law p. 412, says: "Public force was a breach of the peace committed by bodies of men in arms organized for purposes of sedition or obstructing the constituted authorities in the performance of their duty. In the last century of the Roman republic, violent riots by hired mobs became frequent, and persons convicted of this offense were banished. Private force was an illegal act of violence perpetrated on private account without arms; and this was punished by one-third of the offender's estate." But the definition is too narrow. The law was perhaps originally passed for the special purpose of suppressing violence by armed bodies of men, but at least in later times public violence came to include acts not on the part of armed men, but, perhaps, considered of equally dangerous character. The main acts prohibited under the law against public force, were, aside from rape, the following: To attack houses with armed men; to evict a person with an armed force, or commit robbery with such force; to appear in court or in a public assembly with arms for the purpose of intimidation; to cause a mob to assemble for various unlawful purposes; to interfere with the administration of justice; to assault or insult ambassadors; for a magistrate to abuse his power by causing a Roman citizen to be hung, whipped or tortured pending an appeal; for a magistrate to compel people to pay illegal taxes; to interfere by force with the burial of people; to extort an obligation or a gift from a man. Dig. 48.6. The arms here mentioned did not alone include weapons but also stones and clubs or other means of injury. Inst. 4.15.6. The penalty in case of an armed attack on another's possession, was death in case someone was killed; generally the penalty was deportation, which entailed, also, confiscation of all property. But the law of confiscation of property for the benefit of the fisc was almost completely repealed, except in cases of treason, by Nov. 134, c. 13, 2.

That violence was sought to be suppressed in every way is also shown in note to C. 8.4.6 and 7, which see. And arms had long been forbidden to be carried (C. 11.47.1). Justinian went so far as to regulate the manufacture thereof, and suppress the trade therein, as shown by Nov. 85. Private violence was simply force or violence of a less aggravated character. Thus to gather a crowd to beat or whip another, and no one is killed, or to prevent a man from being taken to court; or to drive another from his field; or for a man to torture another's slave; or for men to conspire to bring a suit against another for the possession of property of a debtor without order from court, were acts considered as private violence. Dig. 48.7.

9.12.1. Emperors Severus and Antoninus to Pelia.

Persons who destrain the property of a wife for the debt or civic obligation of her husband, appear to commit unlawful violence.
Given at Rome July 1 (205).

9.12.2. Emperor Antoninus to Verus.

If a third part of the goods of your guardian, condemned under the Julian law concerning private force and violence, has been confiscated, bring an action on the guardianship against the fisc for such portion, provided that there is no defense. For the succession bears the burden attached to the portion (he, she or it gets).
Promulgated February 15 (213).

Note.

To the same effect see C. 9.49.5, and see C. 4.2.1. The ward had a lien on the property of the guardian for what was due.

9.12.3. Emperors Diocletian and Maximian and the Caesars to Bianor.

If you are confident that the betrothed of your son was abducted, or your son locked up, you are not forbidden to bring, before the president in the customary manner, an accusation under the Julian law concerning force and violence.
Promulgated at Verona April 25 (293).

9.12.4. The same Emperors and Caesars to Liberatius.

If you think it necessary to bring an accusation on account of property which a slave has robbed, you may not bring it against the master, but must bring it against the person whom you allege to have committed the crime. 1. But since you say that lashes were also inflicted on you by Fuscinillus (the master of the slave), if he did so by a gathering of men, commence an action for this before the president, if you think proper to do so, under the Julian law concerning private force and violence, and he will not be unaware, if the crimes are proven, what punishment to mete out.
Subscribed at Sirmium June 15 (293).

Note.

As to civil actions for tort against a slave, see C. 3.41.

9.12.5. The same Emperors and Caesars to Oplones.

Although it is a creditor who takes possession of a farm by force, he may be accused under the Julian law concerning private force and violence.

Subscribed at Nicomedia December 8 (294).

Note.

See C. 8.13.4.

9.12.6. Emperor Constantine to Catullinus, Proconsul of Africa.

Since many crimes are embraced in the one name of violence, and when some parties make an attack and others resist in indignation, blows and slaughter are frequently found to have taken place, it has been decided, that if perchance anyone, either on the side of the possessor, or on the side of the one who attempts to disturb possession, should be killed, punishment shall be visited on the party who made the attack and was the cause of the misfortune to the one or the other; nor shall punishment be any longer by relegation or deportation to an island, but by death, and no appeal shall suspend the sentence passed on him.

Given at Aquilia April 17 (317).

C. Th. 9.10.1.

9.12.7. The same Emperor to Bassus, City Prefect.

If anyone asserts that a farm or anything else belongs to him and thinks that possession should be restored to him, let him bring a civil action for that purpose, or bring forward, under the usual requirements of the law, an accusation for violence (by which possession was taken from him) remembering that if he cannot prove the accusation, he will receive the sentence, which the defendant would (otherwise) have received. 1. But if, omitting recourse to law, he uses violence against the possessor, we direct that first of all the cause of the violence shall be investigated, and it shall be determined who drove the other out of possession, so that the rights of the man who appears to have been expelled, may be restored and when that is immediately done and a criminal accusation is started - the person committing violence being deservedly destined for punishment - the termination thereof shall be deferred till after the end of the whole litigation, so that when the principal action¹ is finished, the person against whom the judgment is rendered shall be deported to an island and all his property shall be confiscated.

Promulgated at Rome October 7 (319).

C. Th. 9.10.3.

Note.

See C. 7.62.1.

¹ [Blume] *Negotio principali* - the principal action - is considered by Gothofredus to refer to the inquiry into the ownership of the property. That was probably true when the law was first passed, since it then provided that if the person committing the violence was owner of the property, half of it should be confiscated. Whether that is still the meaning in the Justinian Code may be doubted, and it may refer simply to the question which one was in possession or - which comes to the same thing - which one used the unlawful force or violence. For other laws involving other penalties in case of violence, see especially under C. 8.4 and C. 9.33. For penalty for unjust accusations, see note to 9.40.10.

9.12.8. Emperors Valentinian, Theodosius and Arcadius to Albinus, City Prefect.

We direct that slaves who are shown by the testimony of witnesses or by their own confessions to have committed violence, shall, if they did so without the knowledge of the master, be punished by death, and thus expiate their crimes. 1. But if they committed the violence through fear or exhortation of their masters, it is plain, according to the Julian law, that the master will be pronounced infamous and he will lose the dignity of his rank or birth, but the slaves who appear to have obeyed the former's reckless orders must be sentenced to the mines. 2. Plebeians, moreover, and infamous persons and those who are twice or oftener convicted of having committed violence, must suffer the punishment of the imperial constitutions.² 3. And the judge must know that he will be branded with infamy, if he delays or neglects (to punish) the crime of violence proven before him, or extends impunity or imposes lighter punishment than we have fixed.

Given at Milan March 6 (390).

C. Th. 9.10.4.

9. 12. 9. Emperors Honorius and Theodosius to Aurelianus, Praetorian Prefect.

To rob, and knowingly, to keep the goods robbed, for the robber, are not dissimilar crimes.

Given at Constantinople March 5 (415).

C. Th. 9.28.2.

9.12.10. Emperors Leo and Anthemius to Nicostratus, Praetorian Prefect.

We want no one, in the cities or in the country, to have permission to have any satellites (bucellarii) or Isaurians³, or armed slaves. 1. We ordain that if anyone, contrary to this wholesome ordinance of Our Clemency, attempts to have armed slaves, satellites or Isaurians on his lands or as his personal attendants, he shall, in addition to the fine of 100 pounds of gold, be visited with severe punishment. 2. The rectors of the provinces must be on the watch, that no one dares to violate these provisions of Our Clemency in any particular, knowing that if they disregard this order, they will be deprived of the girdle of their rank and office, will be fined 100 pounds of gold, and their safety and their life will be in danger. The chiefs of their staff shall, beside the loss of their property be visited with capital punishment.

Given August 28 (468).

² [Blume] That is, capital punishment. Gothofredus.

³ [Blume] They were the armed retainers or satellites of the Byzantine magnates, recruited mainly from among the Isaurians, a hardy and turbulent race of highlanders in Asia Minor. Holmes, 1 The Age of Justinian and Theodora 171, 172. The name means biscuit-eaters, and they were so called because they ate at the table of their masters. Do. Ann. Bas. 60.18.30.