

Book IX.
Title XXVIII.

On the crime of embezzlement of public and sacred property (perculatus).

Bas. 48.13; Bas. 60.45.16; Inst. 4.18.9.

Headnote.

All who stole money or other property that belonged to the State, Church or municipality were guilty of this crime, which at first was punished by a three-fold penalty of the amount taken, in addition to restoration of the property taken. But Inst. 4.18.9 provides that judges who, during their term or office, embezzle public money, are punishable with death, as are also their aiders and abettors, and any who receive such money knowing it to have been stolen; that other persons who violate the provisions are liable to deportation. The action was limited to five years. Dig. 48.13.7. But it, as well as the action for maladministration in office, noted in the previous title, might be brought against the heirs, since the main subject involved was the money taken. Dig. 48.13.14. Even parties indirectly embezzling public money, or defrauding the public, as for instance inserting in a lease to public land a less sum than the actual rental, and appropriating the remainder, were liable under this law. Dig. 48.13.10. So a person who received public money for a certain purpose and failed to use it therefor, came within the penalty of the law. And so did a person receiving public monies in his hands, as from rental, and failing to pay it over. In these cases, it seems the penalty was lighter than in other cases, being punished by a third more than the money owing. This is stated in the Digest and is confirmed in the Basilica. Dig. 48.13.4.3.4;¹ Bas. 60.45.4.

Within the scope of the law also came falsifying the public currency or purloining it, or wrongfully allowing another access to the public records for the purpose of inspecting or transcribing them, or tampering with the public records, or appropriating spoils taken from the enemy. Dig. 48.13.6.1 and 2;² Dig. 48.13.8.1;³ Dig. 48.13.9.5;⁴ D. 48.13.13.⁵ A man who stole some unimportant articles in the day time from a church was punished by sentence to the mine, if a plebeian, otherwise, by deportation to some island. Dig. 48.13.6 pr.⁶

Perculatus was included in sacrilege dealt with in the next title, which was primarily intended to suppress the theft or misappropriation of sacred things. A person guilty thereof was at times thrown to the wild beasts, burned or crucified. Dig. 48.13.6 pr.⁷ The latter mode of punishment was, however, abolished by Constantine. The property of the state and of municipalities came to be included among such sacred things. Thus a public wall was sacred, and hence a man who broke through it was held guilty of

¹ In the Watson Digest this appears at D. 48.13.5 (4,3).2(5).

² D. 48.13.8 pr (6,1) and 8.1 (6,2) in Watson.

³ D. 48.13.10.1 (8) in Watson.

⁴ D. 48.13.11.5 (9.5) in Watson.

⁵ D. 48.13.15 (13) in Watson.

⁶ D. 48.13.7 (6) in Watson.

⁷ Id.

the crime here mentioned. Dig. 48.13.11.⁸ Sacred things kept by private individuals did not come within this law, but a person who stole them, as well as a person who stole sacred things from an unguarded temple - later a church or chapel - was dealt with more severely than a thief, but not as severely as other persons guilty under this law. Dig. 48.13.9 pr.⁹

9.28.1. Emperors Theodosius, Arcadius and Honorius to Rufinus, Praetorian Prefect.

The judges, who during their administration embezzle public money, are subject to the Julian law on embezzlement and we order them to be put to death. And none the less their accomplices or persons who receive embezzled money from them, knowing it to be embezzled, shall undergo the same punishment.

Given at Constantinople March 5 (415).

Note.

Under this subject belong the two laws in C. 10.6, which deal with abstraction of public money for the purpose of loaning it. The punishment for one who receives such loan is in some cases a four-fold penalty, and in other cases confiscation of goods and exile. The penalty for the lender is capital punishment (death).

⁸ D. 48.13.13 (11) in Watson.

⁹ D. 48.13.11 pr (9 pr) in Watson.