

Book IX.
Title XXXII.

Concerning the crime of despoiling an inheritance.
(De crimine expilatae hereditatis.)

Bas. 60.29.7, et seq; Dig. 47.19.

Headnote.

Before an heir took possession of the property of an inheritance, he had no such title as to support an action either for the penalty of a theft or to recover the stolen property, although an action for production might be brought by him. There was an exception if the property was in the possession of someone, e.g. a pledgee or a person to whom it was loaned. A special criminal action for despoiling an inheritance not yet entered on was given, in case no action lay for the theft in which the guilty party was punished in the discretion of the judge. Severus and Antoninus gave the option to the heir to bring the criminal proceeding or the ordinary civil proceeding to recover the property of the inheritance. This would seem to imply that the judge must, in such criminal proceeding, order, among other things, the return of the property or the payment of the value thereof, for the criminal proceeding surely would not bar the recovery of the property or the value thereof. A widow could not be accused of this crime any more than she could be sued for theft; nor could the action be brought by one co-heir against the other. A slave given freedom by a testament or other last will was liable for a double penalty, similar to the penalty provided in an action for theft, if he willfully despoiled an inheritance, by stealing property or otherwise, before he inheritance was entered on. Dig. 47.4; Dig. 47.19; Dig. 47.2.14.14; D. 47.2.69-71.¹ For theft in general see C. 6.2. For cattle stealing see C. 9.37; for stealing by violence - robbery - see next title.

9.32.1. Emperors Severus and Antoninus to Euphrata.

You cannot bring an accusation for the crime of despoiling an inheritance, since you acknowledge that, after inspection of the things, the keys of the chest belonging to you in common were delivered to you co-heirs. Inasmuch, however, as the inquiry before the judge related to the production of the property, no counterclaim could be set up. But when things which are demanded, are produced, the direct action (to divide the inheritance) must be left to its judges (who have jurisdiction).
Promulgated April 20 (205).

Note.

That one heir may not bring an accusation for this crime against his co-heir, is clearly stated in C. 3.36.3. And that no counter-claim may be set up in an action for production of such property, appears from C. 4.31.14.

9.32.2. Emperor Antoninus to Primus.

You are not forbidden, if you go before the president of the province, to prosecute your stepfather for the crime of despoiling an inheritance.

¹ It appears as if this should be D. 47.2.68-71; in Watson this is D. 47.2.69-72.

Promulgated April 25 (215).

9.32.3. The same Emperor to Helena.

If you have entered upon the inheritance of your grandfather, you are not forbidden to bring an accusation for despoiling the inheritance against your former stepmother.

Promulgated January 3 (216).

Note.

The inheritance in this case refers to that of the grandfather, not the father of the child. Had it been that of the father of the child, no prosecution could have, as shown by the next law, been brought.

9.32.4. Emperor Gordian to Bassus.

The heirs of a man who has died, cannot bring an accusation for despoiling his inheritance against his widow, who is received in a convent (*rei humanae atque divinae domus*). 1. Hence bring an action in rem for the recovery of the things which, you complain, have been taken by her, or if she fraudulently parted with them, bring an action for their production. 2. She does not, however, though not liable for despoiling the inheritance, become the owner of the income from the property which she held illegally; but, if extant, they may be reclaimed (by *vindicatio*); if consumed, then without a doubt, (the value thereof) may be recovered by *condiction*.

Promulgated February 24 (242).

Note.

C. 6.2.17, too, states that a widow shall not be made defendant in a prosecution for the crime of despoiling an inheritance. That law mentions no convent. Both laws evidently refer to the inheritance of the woman's husband. Dig. 47.19.5 states that a widow is no more subject to prosecution for this crime than for that of theft. The preceding law, C. 9.32.3, refers to the inheritance of a grandfather, and is, therefore, not inconsistent with this law.

9.32.5. Emperor Philip and Caesar Philip to Sulpicius.

Legatees, freedmen of the deceased, cannot be deprived of the benefit of legacies, left them, by making the claim that they despoiled the inheritance, especially by deferring the investigation thereof.

Promulgated January 18 (245).

9.32.6. The same Emperor and Caesar to Basilia.

It is undoubtedly true that the accusation for despoiling an inheritance has generally been brought when there was a lack of some other action.

Promulgated February 20 (249).