

Book IX.
Title XLIX.

Concerning the property of persons proscribed or condemned.
(De bonis proscriptorum seu damnatorum.)

Bas. 60.52.12.

Headnote.

While for a long time under the Roman law the property of those who were condemned to capital punishment - death, deportation or to the mines, was confiscated for the benefit of the fisc, the tendency in the later period was toward an amelioration of this situation in favor of children. And much of what is found in this title was modified by Nov. 134, c. 13, 2. To the same effect is Nov. 17, c. 12. And it was the custom that those who were deported and whose property was confiscated, were permitted to retain enough property for subsistence. Mommsen, Strafrecht 1010.

9.49.1. Emperor Antoninus to Marcellus.

It is known that the special property (peculium) of a slave condemned to capital punishment is not taken away from his master, but the master will receive back whatever property the slave is shown to have had, or the price thereof, if sold.¹ 1. The master will also have the right to demand the slave's presence, until the accounts kept by the latter may be rendered and balanced. But the master must bear in mind to have this done as soon as possible so that the slave may be returned for his punishment.

Promulgated July 30 (213).

9.49.2. Emperor Alexander to Fronto.

Persons deported can have no heir even to those things which they acquired after imposition of punishment, but such property is confiscated.

Promulgated February 5.

9.49.3. The same Emperor to Julianus.

If your son, while he was in your power, was sentence to deportation to an island, his special-military property (peculium), which he acquired in camp, or what you gave him when about to enter military service, should not be taken away from you.

Promulgated September 10 (226).

9.49.4. Emperor Gordian to Callimorphus.

A person condemned to a mine becomes a penal slave, and the property of a person who suffers such penalty is confiscated for the benefit of the fisc. Hence if such person was later freed by a pardon, as you say, any property which he had belongs to the fisc rather than to him.

Promulgated October 23.

¹ [Blume] i.e. the master has a right of action to recover the price.

9.49.5. Emperor Philip and Caesar Philip to Arruntianus.

If, as you say, the property of the man who managed your guardianship was confiscated for the benefit of the fisc pursuant to a sentence passed upon him, go before our procurator, who will not refuse what he shall learn to be a rightful demand (upon that property).

Note.

To the same effect see C. 9.12.2.

9.49.6. Emperors Diocletian and Maximian and the Caesars to Gaudentius.

It is absolute law that sons have no claim upon the property of a deported mother.

9.49.7. Emperors Valentinian, Valens and Gratian to Probus, Praetorian Prefect.

If anyone within a province is proscribed on account of the character of his crime, a most diligent search should be made of his property, through the solicitude of the official staff of the governor of the province, so that the Crown Domain² may not, through favor or collusion, be deprived of any gain. 1. A complete description shall be given, which shall contain the extent and character of the rural estate, what has been or what may be cultivated, what part has been found in vines, olives, plow-lands, pastures, forests; the charm and loveliness of the place, the ornamentation of the houses and possessions, the number of slaves occupied on the lands, whether urban or rural or what their trade is; how many cottagers³ there are or serfs; how many oxen are employed in cultivation and in plowing; the number of herds of cattle and draft-animals, and the kinds thereof; the quantity of gold and silver, vestments and necklaces, both as to kind and weight and variety, and what is found in store-chambers. 2. And finally, everything, which, as you perceive, we want, shall, after finishing the inventory, be delivered to the officials of the comptroller (rationalis) of the Crown Domain or to the palatine officers sent for this purpose, to be added to our patrimony. 3. And a report shall be immediately made to us in a public letter of the judge, stating each of the things by name, and neglect to do so will be punished. 4. And if after the investigation by the aforesaid officials, the comptroller (rationalis) who must make a second investigation, perchance finds more, the official staff guilty of fraud will be condemned to pay from their own property twofold the property taken away.

Given at Triers May 5 (369).

C. Th. 9.42.7.

9.49.8. Emperors Gratian, Valentinian and Theodosius to Eutropius, Praetorian Prefect.

If a deported person has children, unemancipated and emancipated, the portion of his property which is granted to his children, shall be transferred only to those who were in his power, if the emancipated children think it to their disadvantage to put into hotchpot what they received at the time of the emancipation. 1. But if they prefer to put the property and what was given them into hotchpot, the property which the fisc concedes

² [Blume] As this law shows, confiscated property went to the Crown Domain - rei privatae.

³ [Blume] Persons who looked after cottages. They were not slaves - not serfs. Gothofredus.

to the children of a condemned person shall be divided in equal parts. This rule shall also be followed in connection with putting a dowry of a daughter, or a granddaughter by a son of the deported person, into hotchpot.

Given at Thessalonica June 17 (380).

C. Th. 9.42.8.

9.49.9. Emperors Arcadius and Honorius to Caesarius, Praetorian Prefect.

If anyone hereafter, which we hope may not happen, is punished by proscription, his wife may immediately, as if by self-help, seize her own property by whatever title acquired, or at least have returned whatever is held by others. Her dowry also - not what was given in name only in the marriage contract but what she shall prove to have actually delivered - shall be returned to her.⁴ Those things, too, which she received before marriage as a gift from her then guiltless husband, or which came to her, through the bounty of her husband during marriage and before proscription, shall remain her unquestioned property. 1. So, too, if it clearly appears that the father, prior to the time of the crime or accusation, gave anything to his emancipated children, it, too, shall remain theirs, without necessity of worry on their part. But the property which neither the wife nor the emancipated children, is able to claim, shall be seized by public officials and specially reported to me, adding, whether the condemned person has any children and whether such children claim any property in their possession by reason of a gift. 2. And in case of those who are indebted to the fisc, and are proscribed and condemned because of the status of their account (with the public treasury), we direct that if the wife had anything of her own or was given anything by her husband before the beginning of the transactions out of which the fraud and crime and trial in court arose, and if anything was given to emancipated sons before the crime began, it shall remain unimpaired in the hands of the recipients; nor shall anything be liable to the fisc, except what he had in personal ownership when his obligation (to the fisc) arose, or what he thereafter acquired either in his own name or in that of his wife, sons or anyone else by conducting business transactions. 3. Excepted herefrom are the accountants of the imperial procurator⁵, who are excluded from every benefit of the law, unless their accounts have been examined and approved by me, so that they may only transmit property which they hold innocently.

Given at Constantinople August 11 (396).

C. Th. 9.42.1 and 15.

9.49.10. Emperors Theodosius and Valentinian to Hierius, Praetorian Prefect.

Whenever anyone is condemned to suffer death or deportation for any crime, and he dies without children, his property shall fall to the fisc. But if he leaves children or grandchildren by deceased children, half of it shall be claimed by the fisc, the other half shall go to such descendants. The rule applies if he should leave posthumous children. 1. If such fate overtakes a decurion, he will be succeeded, in case he has no children, by the

⁴ [Blume] See also C. 5.16.24; C. 7.73.1.

⁵ [Blume] Caesariani id est Catholiciani - were officials of the imperial procurator (rationalis) of the Crown Domain, who took possession of heirless property, kept accounts and handled the property. Why they were also called Catholiciani, seems uncertain. Mommsen, Strafrecht 289 note 6; C. 10.1.5.

curia, which may retain all the property and itself perform the duties (resting upon the deceased) or do so through another appointed by it (as decurion), who will do so at his peril.⁶ 2. But if the decurion has (male) children, though not yet born, the entire fortune of their father shall go to them. 3. If he leaves only a daughter or daughters, half of the property shall go to her or them, half of it to the curia. 4. If part of the offspring are males, half of it shall go to them on account of their curial duty, and the other half, which the indulgence of the emperor grants to all alike, shall be equally divided between them all. Excepted therefrom are cases of treason, for whoever wickedly commits that crime justly transmits the punishment to his posterity.⁷

Given at Constantinople January 23 (426).

C. Th. 9. 42. 24.

9.49.11. (Synopsis in Greek).

Whoever detain the goods of a condemned traitor of his country, must, if in this imperial city, report it within two or three months, if in the provinces, in eight months; otherwise they must pay fourfold.

⁶ [Blume] It is doubtless implied that the property goes to such person. An effort was made for many years to keep the curia in such financial shape as to meet the burdens resting upon it. Hence the property of a decurion was not diverted to the Crown Domain in the cases contemplated here.

⁷ [Blume] See C. 9.8.5.