

Book IX.
Title LI.

Concerning persons sentenced and restored to their former condition.
(De sententiam passis et restituta.)

Dig. 48.23; Bas. 60.68.

Headnote.

This title deals with restoration of rights by the emperor after condemnation. Unless a special order to that effect was made, property once confiscated was not restored. Nov. 134, c. 13, 2, and enacted in A.D. 556, subsequent to all the within laws, should, however, be borne in mind in this connection.

9.51.1. Emperor Antoninus, when saluted by Oclatinus Adventus and Opellius Marcrinus, Praetorian Prefect, and by men of honorable rank, and by friends, chiefs of staffs, and by men of both orders, and he had advanced, and when Julianus Licinianus, who had been deported into an island by Aelius Ulpianus, then legate, was brought before him, Antoninus Augustus said:

I restore you to your province with all your rights.

And he added:

That you may know, moreover, what restoration to your rights means, I restore you to your honors, rank and all other things.

9.51.2. The same Emperor to Quietus.

Since you say that your father was sentenced to a mine, and his goods were, therefore, rightly taken by the fisc, the fact that only his punishment was remitted by an imperial pardon did not restore his property, unless he obtained a special grant thereof.

9.51.3. Emperor Alexander to Stratonicianus.

If your debtor suffered the punishment of his sentence which was followed by the confiscation of his goods, then, although he was afterward restored to Roman citizenship, and received back, not all of his property, but only certain things by favor of the emperor, he is nevertheless released from his former debts by reason of his punishment. But if he received back a certain proportion of his property he is liable pro rata.¹ But if his goods

¹ [Blume] A distinction is drawn. If the pardoned person received certain specific property back, he is no longer liable on his debts; if he receives a certain proportion back, he is liable on his debts in the same proportion. A similar provision was found in the law of inheritance. If a man appointed heir was directed to turn over the inheritance after retaining specific property, and the inheritance was turned over, the appointed heir was not liable for any debts; but if he retained a certain proportion, he was liable for the debts pro rata. Inst. 2.23.9. The rule was a technical one, and perhaps established because of the difficulty of determining the proportion of liability where specific property was retained or received back.

were taken on account of a debt which he owed to the fisc, he and his sureties remain liable to his other creditors.

9.51.4. The same Emperor to Valentina.

The guardian of your sons the possession of whose inheritance you say you received, who was condemned to the mine, and who was afterward released by reason of a general pardon, is not liable to you, though he may be richer, in an account on the guardianship carried on by him, if he was not, by his pardon, specifically restored to his former status, including the right to his property.

9.51.5. The same Emperor to Julianus.

If your goods were confiscated and you were condemned to an island, (then) although you returned by reason of a general pardon, the rights of action which you had remain part of the confiscated property, and your request to be granted actions against the heirs of your guardians is not in order.

9.51.6. Emperor Gordian to Fabianus.

If a son was deported to an island and in this manner was taken from paternal power, and he afterwards, as you state, returned to his native land by reason of a pardon granted by the Divine Alexander, and his former rank² was restored, nevertheless the paternal power was not thereby restored.³

9.51.7. Emperor Philip and Caesar Philip to Cassius.

Our general pardon granted to exiles and deported persons the right to return, but did not restore positions in the imperial service, formerly taken away, nor does it leave the reputation unimpaired and unaffected.

9.51.8. Emperor Valerian and Gallien to Selencus.

You uselessly think that you still own the slave, who was sentenced to the mines and who was afterwards released from his punishment. For it has been the rule that the former ownership is not restored by the occasion of such pardon. However, the president of the province will not on that account permit him to conduct himself unlawfully toward you with impunity. And if he holds any of your property, the imperial procurator will judge between you, for he commenced to be the slave of the fisc.

9.51.9. Emperors Diocletian and Maximian to Restituta and others.

If your father, deported to an island, was restored to his rights by a general pardon, without a special grant that he should again have his children in his power, there is no doubt that he could not acquire the benefit from an inheritance through you, for you were emancipated by the sentence passed on him.

Note.

² [Blume] By special grant. See next law, notes to Bas. 60.68.10.

³ [Blume] Deportation had the same effect as death; hence extinguished paternal power. Inst. 1.12.1.

By grace of the emperor the deported person might be restored to all of his former rights. Relegation did not extinguish paternal power. Inst. 1.12.1 and 2.

9.51.10. The same Emperors to Demetrius.

Since you returned to your household by virtue of an imperial pardon, you needlessly fear that you will be prosecuted by reason of the notation of the president (of your name in the register of accused persons), which has been annulled (by our pardon).

9.51.11. The same Emperors and Caesars to Phillipus.

The misfortune (of proscription) of a man who had commenced a suit as to a farm, and who by our grace was restored to his former rights, including his property, did not change the former status of the suit.

Note.

Bas. 60.68.15, interprets this law thus: "If a man was proscribed after he had commenced a suit, and he is thereafter restored to his rights, including his property, he may then prosecute the suit."

9.51.12. The same Emperors and Caesars to Tryphon.

If she, whose punishment of deportation was remitted by imperial grace, received her property back, she dishonestly attempts, under cloak of her punishment, to evade payment to her creditors.

9.51.13. Emperor Constantine to Maximus, City Prefect.

As to the question of a testament, which a son of a deported father who returns, had executed, it is accepted that, the notations of Ulpian and Paulus being set aside, the decision of Papinian should prevail, that a son should (again) be in the power of a father to whom his dignity and property has been restored.⁴ 1. Provided, however, that (other) transactions of the son, whose plans a legal age had confirmed, shall be upheld when he returns to his father's power, lest a rescission thereof would accomplish, which would be exceedingly absurd, that a man should at the same time not be in his father's power nor be his own master. 2. But persons below the legal age are prohibited from transacting any business. If a guardian was appointed for them when the father was condemned, such guardian must resign his trust upon the return of the father, who should not return (as father) merely in name, but should perform his paternal duty, unaffected by any baseness, so as to protect and increase his children's property. 2a. For if he shall use his paternal power as a license to injury and squander their patrimony, then, as in the case of a man who is insane, demented, prodigal and slave of licentiousness and vice, the care of their property is not to be entrusted to him. 2b. (In that case) he shall refrain from administering it, without ceasing to be guardian,⁵ and shall make all losses of the minors good out of his own means. 2c. But the sentence of deportation shall not prejudice the

⁴ [Blume] The meaning of this, in so far as the testament of the son is concerned, is that it becomes void. This is made clear by Bas. 60.68.17 and notes. See also Gothofredus' commentary on this law.

⁵ [Blume] In reference to the burdens connected therewith.

father (as to his rights). If his known integrity has restored him in reality,⁶ so in (connection with) his duty to his children, the management of the property shall be turned over to him, whose custody is provided for in imitation of that of the law;⁷ for unless this management is given to good fathers, the return (of the father) will be sadder than his departure. 3. The pardon, therefore, shall be as effective for restitution as was the sentence for correction, and as deportation of itself carries confiscation of all property with it, so a pardon shall be effective as a restitution of property and dignity, and, in a word, of everything lost. And let children seek emancipation from their fathers, as the result of the performance of their duty, so that their liberty may not be a witness of condemnation, but of paternal leniency.

Given at Sirmium September 14 (321).

C. Th. 9.43.1.

⁶ [Blume] Ut natura, ita officio, etc, i.e. he is actually present with his children, so too he is restored to his duty, etc.

⁷ [Blume] By appointment of guardians and curators.