

Book III.
Title XV.

Where crimes should be tried.
(Ubi de criminibus agi oportet.)

Bas. 7.5.76.77.

3.15.1. Emperor Severus and Antoninus to Laruina.

It is well known that investigation of crimes, which are punished by the laws, or under the ordinary procedure, should be finished where the crimes have been committed or (the trial is) commenced, or where the persons who are said to be guilty are found.¹ Promulgated October 4 (196).

Note.

Bas. 7.5.76 states the foregoing law as follows: “Public and extraordinary crimes (for the latter see headnote C. 9) are tried either where they are committed, or where trial thereof has been commenced, or where those who committed them have been seized.” If we accept the law as above translated and as interpreted in the Basilica, it is uncertain what the law means by the place where the trial was commenced (as stated in the Basilica), unless it was the domicile of the defendant. The law says that the crimes shall be tried where they “are committed or commenced.” Could that relate to the commencement of the commission of the crime, which might be in one province, whereas the completion thereof might be in another? The authorities are agreed that a defendant might be tried in the place of his domicile, and that, too is indicated in the next law. It is also clear that the prosecution for the crime might be had in the jurisdiction where the crime was committed. That is attested by the foregoing law and by many statements in the Digest: D. 48.2.7.4 and 5; D. 1.18.3. In fact it became usual to try the defendant in the place where the crime was committed. Novel 134, c. 5.

The foregoing law indicates that the defendant might also be tried in the place where he was arrested, as might be done in case of the flight of some persons. C. 3.23.1.10 Cujacius 882 holds that the place of seizure of the defendant was a proper forum. Mommson, Strafrecht at 357, 358, doubts that the foregoing law is sufficient authority for holding that to have been the law, and Geib, in his work on Roman criminal procedure disputes that such was the law, and believes that the foregoing law simply directed the municipal magistrates that when the defendant was arrested, they should hold him and investigate the case until they were in position to have the actual trial of the case properly opened.

3.15.2. The same Emperors and the Caesars to Nica.

He who knowingly sells a free person commits the crime of kidnapping (plagum). If the person who may make a complaint² goes before the proper judge, the latter will try the cause, if the accused, whom you allege to have sold the free boy, lies there.³

¹ Blume penciled in this last clause, and added a question mark in the margin, without striking the typewritten original which reads: “or where the persons charged with their commission are found.” Scott uses “guilty parties.” See 6 [12] Scott 280.

² The typewritten original, which Blume did not strike when he penciled this is, along with a question mark, reads: “If the proper person, therefore, makes a complaint and goes

Written February 4 (294) at Sirmium.

before...” Scott translates this as “...the person entitled to make a complaint...” See 6 [12] Scott 280.

³ [Blume] C. 4.43.12 note.