

Book IX.
Title XXXIII.

Concerning robbery.
(Vi bonorum raptorum.)

Bas. 60.17.31, et seq; Dig. 47.8; Inst. 4.2, (Hunter 241-2).

Headnote.

Robbery bears a resemblance on the one hand to theft and on the other to violence; it is in fact theft with violence of personal property. Theft is dealt with at length at C. 6.2 and headnote. Violence as a public crime is dealt with at C. 9.12. Force or violence used to obtain possession of lands and houses is dealt with in C. 8.4. The theft with violence here in question was a private offense, but might also be prosecuted as a public crime. When such offense was committed, the party injured had the choice of several civil actions. He might bring a personal action against the robber simply to recover the property or the value thereof; that is to say, an action in detinue, just as in the cases of theft. Again he might bring an action in rem for the recovery of the property against anyone in possession thereof. Again, treating the robbery as theft, he might also bring an action for the recovery of the penalty provided for theft. This latter action might be brought in addition to the actions already mentioned. Again a special action was provided for such a case which included a three-fold penalty and also the value of the property; but if this action was brought, the civil actions heretofore mentioned were barred. A recovery in an action for theft barred this action merely pro tanto. Dig. 47.8.1; Inst. 4.2 pr; Buckland, Roman Law 579. The latter action, involving as it did a penalty, could not be brought against heirs of the robber, any more than an action for the recovery of the penalty for theft could be brought against heirs. Dig. 27.8.2.27. The principles governing this action were largely those of the action to recover the penalty for theft, and might, in general, be brought by the same persons. Inst. 4.2.2; Dig. 47.8.2.23. The prosecution of robbery civilly did not bar a prosecution criminally. C. 9.31.1; Dig. 47.8.2.2; Bas. 60.17.2. And this crime illustrates that a certain act might be prohibited by various laws. Thus it might be punished as treason if several persons acted in combination and carried arms in a city. Dig. 48.4.1.1. And it might, evidently, in most, if not in all, cases, be punished as violence, public or private, treated in C. 9.12. The crime might take various aspects and might meet with different punishments, depending on the circumstances. Despoilers of persons (expilatores), if plebeians, were sentenced to the public work, temporarily or permanently; if of the better classes, they temporarily lost their rank or were ordered out of the country. Burglars, if plebeians, were flogged and sent to the mines temporarily or permanently; if men of rank, they were relegated. Nocturnal burglars were generally dealt with more severely than day-time burglars. Dig. 47.18. Cattle raiding, treated at C. 9.37, would frequently involve violence, and the persons guilty thereof were punished severely according to the circumstances of the case. Highway robbers, mentioned in C. 9.39, were punished by relegation or by being sent to the mines, and if frequently convicted, by death. Dig. 48.19.28.10.

9.33.1. Emperor Gordian to Valerius.

The law is clear that an action for robbery, which in addition to the penalty brings back what has been carried away, applies to movable and self-moving property, rather than to lands of which possession is wrongfully taken.

Promulgated March 1 (242).

9.33.2. Emperors Valerian and Gallien to Longinus.

If movable property, the ownership of which was transferred to you by a perfected gift, is carried away by force by the heir of the female giver, you are not prohibited from bringing an action on the robbery for the four-fold restoration of the property, within a year from the time when you were able to bring such action; after the year (you may bring an action) for simple restoration.

Promulgated April 25 (280).

9.33.3. Emperors Diocletian and Maximian and the Caesars to Euelpistus.

It is agreed that a creditor who robs property pledged to him does not do a lawful act, but commits a crime, and there is no doubt that he may be sued on the robbery, if within a year, for four-fold restoration; if thereafter, for simple restoration.¹

Subscribed at Sirmium January 7 (293).

9.33.4. The same Emperors and Caesars to Attulus.

Concerning these things which you say were robbed by another's slave without the owner's knowledge, the owner may be sued in a noxal action² on the robbery before the proper judge within a year, for four-fold restoration; and thereafter for simple restoration.

Subscribed April 30 (293) at Heraclea.

9.33.5. The same Emperors and Caesars to Domina.

Whether you contemplate an action on volunteer-agency against your stepmother, or an action on robbery, which may be for four-fold restoration within a year and for simple restoration thereafter³, you may invoke the presidential jurisdiction.

Subscribed July 2 (293) at Philippolis.

¹ [Blume] See C. 8.13.3 note.

² [Blume] The owner of the slave may surrender the noxa - the body committing the injury - and thus relieve himself from all responsibility. This is what is meant by noxal action. Inst. 4.8 pr. 1.

³ [Blume] The stepmother had managed the property and had carried some of it off.