

Book V.
Title XXI.

As to things taken away.
(Rerum amotarum.)

Bas. 28.11.31; D. 25.2.

5.21.1. Emperor Alexander to Polydeuca.

You may legally demand the right of an off-set. For it is not just for you to pay what you owe, till your counterclaim, too, is satisfied, especially since you say that you claim property which was taken from you because of a divorce. When you are therefore sued on a stipulation before a proper judge, you may show before him that the property carried away belongs to you.

Promulgated November 16 (229).

Note.

See C. 4.31.6. Under the old law the husband might retain property which was a part of the dowry in order to make himself whole for property which was unlawfully taken from him by the wife. In other words, he had a lien on such property. But the right of retention was abolished by Justinian. C. 5.13.1.4. That did not, however, abolish the right of counterclaim or set-off in an action to recover from him money due from him by reason of dowry which was valued—that is to say, where he had to return the value of the dowry instead of certain specific property. In cases where he was required to return specific property, he could not refuse to deliver it, and if he had a claim against his wife, he had a right of action against her as mentioned in the next two laws.

5.21.2. Emperors Diocletian and Maximian and the Caesars to Derenus.

If things of the wife are taken by the husband, or things of the husband by the wife, because of a divorce, the perpetual edict grants a cause of action on account thereof. However, during marriage neither of them has any right to bring a penal action, or one involving infamy, but an action on the special facts (in factum) is given for damage.¹ Given September 27 (290 or 293).

5.21.3. The same Emperors and Caesars to Quartio.

You may, as to the things which you say were carried away by your former wife because of a divorce, bring an action therefor against her heirs, not as to all of them, but as to the part thereof which they received. If the property itself exists, you may bring a real action to recover it (vindicatio).

Given December 4 (290 or 293).

¹ [Blume] See note C. 5.12.1. No action involving infamy, such as an action alleging theft or fraud, might be brought in certain cases. See C. 6.2. 22.4a; Levy, Privatstrafe 124.