

Book IX.
Title XIX.

Concerning violated sepulchres.¹
(De sepulchro violato.)

Bas. 60.23.12, et seq; Dig. 47.12.

9.19.1. Emperor Gordian to Tena.

Those who do not hesitate to knowingly seize, buy or sell property destined for, or already devoted to, religious purposes, although the sale is invalid, nevertheless have become enmeshed in the crime of desecration of religion.
Promulgated February 27 (240).

9.19.2. Emperor Constantius to Titianus, City Prefect.

If a slave is seized in the act of demolishing sepulchers, and he does so without his master's knowledge, he shall be sentenced to the mine; but if he was instigated to do so by the authority or command of his master, he shall be punished by relegation. And if anything taken from the sepulchers is discovered to have been brought to the master's house or villa, such house, villa or other building, shall be confiscated for the benefit of the fisc.

Given at Milan June 25 (340).

C. Th. 9.17.1.

9.19.3. The same Emperor to Limenius, Praetorian Prefect.

If anyone touches a sepulcher with intent to injure it, and the judges of such places neglect to punish such act, the latter will be punished by no less a fine than the known² penalty of twenty pounds of gold, fixed for violators of sepulchers, and they must pay this into our treasury.

Given March 28 (349).

C. Th. 9.17.2.2.

9.19.4. The same Emperor to the people.

Those who violate sepulchers - the houses, as I might say, of the dead - seem to perpetrate a double crime; for they despoil the dead by tearing down, and they pollute the living by erecting a building (with the material taken from the sepulchers). If anyone, therefore, takes stones, marble, columns or any other material from sepulchers for the purpose of building, or sale, he shall be compelled to pay ten pounds of gold to the fisc, whether a man defending his own sepulchers makes complaint thereof in court, or

¹ [Blume] The crime was one of those that was prosecuted publicly, that is to say, the accusation might be brought by anyone, the interested party being given the preference to do so.

² [Blume] This penalty was first fixed in A.D. 349 and the word "known" is not found in the law as contained in the Theodosian Code. The former penalty had been much more severe.

whether anyone else makes an accusation or the official staff reports it. 2. This punishment is in addition to the former penalty; for the (former) punishment imposed on violators of sepulchers is in no way modified. Persons who rob interred bodies or steal the ornaments buried with them, are subject to the same penalty.

Given at Milan June 13 (357).

C. Th. 9.17.4.

9.19.5. Emperor Julian to the people.

Audacity extends to the tombs of the dead and to consecrated mounds, whom our forefathers considered it almost a sacrilege to even move a stone therefrom, or disturb the earth or tear up the sod. And some of the things are removed for ornaments for dining rooms and porticoes. 1. Consulting their interest, we prohibit this to be done, lest they (the transgressors) fall into the sin of disturbing the sanctity of the dead (bustorum) under the penalty fixed for sacrilege.

Given at Antioch February 12 (363).

C. Th. 9.17.5.

Note.

See C. 9.29 as to sacrilege for which the penalty was severe. Busta has here been translated as bodies of the dead and the penalty mentioned is confined to the disturbance thereof, since that is in keeping with Dig. 47.12.3.7, which provides that if corpses are despoiled, the despoilers, if armed, are punished by death; if unarmed, they are sentenced to the mines. If the corpse itself was taken, the penalty was death, sentence to the mines or deportation or relegation. Dig. 47.12.3.11. The penalty for removing marble etc. is fixed in the constitutions preceding this.

9.19.6. Emperor Justinian to Theodosius, City Prefect.

Since it is unjust and contrary to the spirit of our times that the remains of a deceased person should be insulted by those who hinder his sepulture by demanding the payment of a debt, alleging that the deceased is their debtor, and lest such insult might be offered hereafter by compelling those whose duty it is to look after the funeral of the deceased, to loose their rights³, any act done, after the deceased has been prepared for sepulture, either collecting what is claimed to be due or taking a due-bill or a surety or pledges, shall be entirely void, and the pledges given shall be restored, the money paid returned, the sureties released, and, in general, everything, without any change whatever, shall be returned to its former situation and the principal transaction shall be dealt with anew. And a person guilty of such flagitious conduct shall pay a fine of fifty pounds of gold, or if he is not able to do so, bodily punishment shall be inflicted on him by the proper judge.

Given at Constantinople December 1 (526).

³ [Blume] Either their rights of inheritance, or compelling them to pay something they do not owe. See also C. 8.13.3, note. See Korosec, Erbenhaftung 42.