

Book III.
Title XXVII.

When it is permitted to avenge one's self or (a breach of) public fidelity without a judge.
(Quando liceat sine iudice unicuique vindicare se vel publicam devotionem.)

Bas. 60.39.16.

3.27.1. Emperors Valentinian, Theodosius and Arcadius to the Provincials.

We grant everyone the right to resist a soldier or a person in private station who enters fields as a nocturnal plunderer, or besets frequented roads with intentions of robbery,¹ and who is worthy to be subjected to immediate punishment pursuant to such permission and to receive the death and incur the danger which he himself threatened. For it is better to forestall, rather than to punish the deed. 1. We therefore grant you permission to avenge yourself and make an act which is too late to be punished in court subject to this edict. Let no one spare a soldier when he becomes a robber and should be opposed by weapons.²

Given July 1 (391).

C. Th. 9.14.2.

Note.

The right of self defense existed under the Roman law. C. 9.16.2 and 3. The occasion which gave rise to the law here annotated were deserters from the army of Theodosius the Great in 391 A.D., who plundered and murdered in Macedonia. Gothofredus on this law. It was doubted whether arms could be used against them, because these had been forbidden to be carried (C. 11.47.1) some years previously. Theodosius, accordingly, issued an edict permitting the killing of these deserters, who invaded the fields, beset the highways and endangered the safety of the people. But while a special occasion gave rise to this law, it was retained in the Justinian Code, which shows that the country was not free from depredations on the part of deserters in his time. That in fact is also shown by the next law, and the retention of it in the Justinian Code, which specifically deals with deserters from the army, and which practically treats deserters and highway robbers as being one and the same. Dill, in his work on Roman Society in the last century of the empire, 236-241, graphically depicts the dangers to the country from this source, and the subject is more fully considered in note to C. 9.39.2.

3.27.2. Emperors Arcadius, Honorius and Theodosius to Hadrianus, Praetorian Prefect.

We rightly give provincials permission to seize deserters. Let swift punishment be inflicted on those that dare to resist. Everyone may know that provincials have the right, for the purpose of insuring public peace, to inflict public punishment upon robbers and deserters from the army.

Given October 2 (403).

C. Th. 7.18.14.

¹ Blume underlined this last phrase and placed a question mark in the margin next to it. Scott renders this as "intending to attack him." 6 [12] Scott 291.

² Blume placed a question mark in the margin adjacent to this sentence. Scott's version reads: "...hence let no one spare a soldier, who must be encountered with weapons in the same manner as a thief." 6 [12] Scott 291.