Book IX.
Title XXXI.

Whenever a civil action excludes a criminal one and whether both can be brought by the same person.
(Quando civilis actio criminali praejudicet et an untraque ob eodem exerceri potest.)

Bas. 60.62.1.

9.31.1. Emperors Valens, Gratian and Valentinian to Antonius, Praetorian Prefect.

It has been generally held by most of the jurists that whenever both a civil and criminal action lies in connection with a matter, both actions may be brought, without reference as to whether the one or the other is brought first, so that if a civil action is brought first, the criminal action is not barred, and vice versa. 1. For instance, if a person, ousted from possession by force, has resorted to the interdictal procedure, provided in such case (unde vi) in order to recover it, he is not forbidden to also institute a public prosecution under the Julian law concerning violence. So if, in case of the suppression of a testament, resort is had to the interdictal procedure for its production, still a prosecution under the Cornelian law[1] on (forgery of) testaments may be brought;[2] so when a freedman declares himself free-born, he may be sued civilly for the services which he owes, as well as criminally under the Visellian law.[3] 2. To this class belong a civil action for penalty of theft and the criminal action under the Fabian law[4], and many others which cannot be enumerated; so that after the one action has been brought, the matter therein involved may again be considered in the action which remains. 3. After this statement of the law, no doubt remains that the crime falsification also, concerning which a civil suit was tried, may again be tried in a criminal.
Given at Triers January 12 (378).
C. Th. 9.20.1.

Note.

Property rights, as above stated, might generally be protected by civil suit, though the right to a criminal action also arose out of the same transaction. But where in private delicts, as in theft (see headnote to C. 6.2), and malicious wrong (injuria) Inst. 4.4.10; D. 47.10.35.45; Savigny 251), the right was given to bring a criminal and a civil suit, an election had to be made which action to bring, but restoration was, it seems, decreed in the criminal as well as the civil suit. And though several actions for a private delict might be concurrent, if full recovery, together with the legal, pecuniary penalty, was once obtained, any other action, looking to the same end was barred. Thus an action for robbery barred an action for the penalty of theft, since the amount recoverable in the

[1] [Blume] C. 9.22.
[2] Blume underlined "forgery of" and put a question mark in the margin. He also wrote in the inside back cover of the manuscript: "'forgery in bracket?'" Scott translates the relevant passage as: "…the Cornelian Law having reference to wills." See 7 [15] Scott 56.
[3] [Blume] C. 9.21.
[4] [Blume] C. 9.20.

former action was as much, and frequently more, than the amount recoverable in an action for the penalty of theft. In cases of private delict an extra penalty, however, was at times imposed, but generally not.

While the law is clear that a purely civil suit was not barred by a criminal suit, or vice-versa, a further question arises in case the same act constituted several different crimes denounced by the law. D. 44.7.53 says that if several delicts are embraced in one act, several actions may be brought, but they cannot all be employed. D. 48.2.14 says that the senate decreed that no one should become defendant for the same crime under several laws. In other words where an act was denounced as a crime under several different laws -- the law, for instance, denouncing a certain act as treason, as well a murder and as public violence -- the person guilty of the act could not be prosecuted under all of these laws, but only under one of them. If, however, the same act constituted both incest as well as adultery, a man guilty thereof might be prosecuted for both crimes. D. 48.18.5. So if a man had been acquitted of murder, he could, nevertheless, be prosecuted for highway robbery committed at the time and based upon the same act upon which the charge of murder was based. Mommsen says that if the act fell under ethically different criminal categories, more than one accusation was permissible, otherwise not. Strafrecht 889, 890. He admits, however, that the application of this distinction was not easy. As to trying and deciding several crimes, or criminal and civil suits, at the same time, see C. 3.8.3 and note; C. 9.2.9 and note.