

Book IX.
Title XXXIX.

Concerning those who have hidden highway robbers or persons accused of other crimes.
(De his qui latrones vel in aliis criminibus reos occultaverint.)

Bas. 60.27; Dig. 47.16.

9.39.1. Emperors Valentinian, Valens and Gratian to Simplicius, Vicar.

Whoever associates himself with a person accused of a crime, with which he had nothing to do, may, by hiding him, expect equal punishment as the persons accused. And whoever knowingly harbors highway robbers or neglects to bring them to court, shall be punished in the discretion of the judge, and, according to the rank of the person, by corporal punishment or by the loss of property.

Promulgated at Rome March 23 (374).

C. Th. 9.29.1.

9.39.2. Emperor Marcian to Palladius, Praetorian Prefect.¹

If any highway robbers or persons guilty of other crimes live or hide on a man's property, the owner thereof, if he is present, or the procurators, if the owner is absent, or the overseers of the property, shall deliver them up voluntarily, and if they knowingly fail to do so, they shall be summoned by the official staff to deliver those who are wanted to the provincial judge, in order that, upon examination by the judge, they may be accused according to law, and delivered over, after proof, to proper punishment. If the owners, procurators or overseers of the property delay in producing them, all civil power shall be directed by the rector of the province toward arresting them. 1. If, on account of the multitude of those who are on the land, it appears, perchance, that the civil authority is not sufficiently powerful, and the foolhardy persons above mentioned lay their hands on the enforcement officers (executors), or otherwise refuse obedience, the judge of the province, mindful of his own danger, may demand assistance from the devoted tribune or chiefs of the soldiers who are in the place, so that the accused may be seized by the military forces, without damage to or injury of anyone, and may be subjected to the authority of law, and, upon conviction, suffer proper punishment. The judge must not be unaware that if he asks for military assistance against innocent persons or for any cause other than examination of highway robbers or other criminals, or permits the provincials to be afflicted with damage, he will be severely punished in the discretion of Your Highness. 1a. So if the tribunes also, or chiefs of the troops who are in the place, refuse to furnish military aid, when requested by a letter of the judge, or if wrongs are inflicted by these soldiers upon the provincials, they will be responsible for the damages and

¹ In the inside back cover of the manuscript, Blume noted the use of the future perfect in the Code. Of this law he wrote: "C. 9.39.3—good example; the term 'if' itself implies future, at least most of the time. The translation presents the text intelligently.' Latin itself not consistent. See for instance C. 9.40.1—intenantur. I gave it up after C. 9.39.2. In most instance[s] fut. per. ind. [future perfect indicative] can be translated by shall or has—with verb or even the present.

injuries, and will be severely punished in the discretion of the illustrious masters of the soldiery. 2. The owners also of the land, or their procurators or overseers, will not remain unpunished, if they are present and knowingly fail to deliver up the guilty or, admonished, delay in producing them; for the owner of the property will be deprived of his ownership, and the procurator or overseers will be sent into perpetual exile. If the procurators, or owner or overseers of the property are sure that they are unable to overpower the multitude of rustics², and make that known to the provincial judge, the rector will direct military aid to be given them through the tribune or chiefs of the troops, if he sees that the civil authority is not sufficient. 3. But if after production of those who are accused, it appears plainly that they are innocent and have committed no crime, the accusers shall be compelled to suffer the punishment which is to be visited upon malicious accusers. For it is not a good example to pursue a robber in a way that endangers the innocent.

Given at Constantinople December 21 (451).

Note.

The provisions of this law indicate the prevalence of highway robbery in the Empire, and the extraordinary means that had to be resorted to in order to suppress it. In the western portion of the Empire brigandage was so prevalent that a number of laws were enacted, contained in C. Th. 9.30, forbidding the use of horses, with some exceptions. These laws are left out of the Justinian Code, but this is no indication that highway robbery was not to a great extent in existence in the Eastern Roman Empire. The law here annotated indicates that the bailiffs of the great estates were often in league with brigands, whose spoils they shared, and to whom they gave facilities for concealment. Dill, Roman Society, last century, 241. In 391 a law was enacted giving everyone the right to resist, even by killing, nocturnal invaders, which doubtless was at least in part aimed at highway robbers. C. 3.27.1. And full power to crush these criminals is given by C. 3.27.2, enacted in 403, which classes deserters from the army with highway robbers, and which indicates that the country districts were infested by men who had deserted from the standards, and who in hiding from the officers of the law betook themselves to plunder for support. Dill, supra, 242. As an illustration of the extent of brigandage, we are told that the devastation of the Isaurian brigands was so great that the principal concern of the Government from 404-4-7 was the suppression of them. Bury, 1 Hist. Later Roman Empire 159. The frequent invasions of the barbarians, the heavy taxation in the Empire, the onerous burdens laid upon decurions, leading many to seek freedom therefrom, undoubtedly greatly contributed from time to time to the band of men making their living by robbery.

² [Blume] Accomplices of the criminals.