

Book VII.
Title LXXV.

Concerning recovery of property fraudulently alienated.
(De revocandis his quae per fraudem alienata sunt.)

Dig. 42.8; Bas. 9.8.26 et seq.

Headnote.¹

Fraudulent conveyances.

As under our common law, so under the Roman law, conveyances made or acts done in fraud of creditors might be set aside, in an action (Pauliana) which was deemed to be one in tort. [An interdict (fraudularium) had also formerly been granted, but this was, by the compilers of the Digest, consolidated with the action. Girard 445 note 1. The Institutes also have the right of restitution of rights. Inst. 4.6.6; see note C. 2.21 (5). The rule here mentioned applied where there was fraud, to the actual detriment of creditors (D. 50.17.79; D. 42.8.10.1) in: sales or gifts of property, or sales for less than it was worth; release of pledges or debts; preferences to certain creditors; contracts of debt; failure to defend a suit; failure to sue a debtor; failure to do what should be done - in fact generally in any act and sometimes failure to act, which resulted in fraud to creditors. D. 42.8.1-5 D. 42.8.6,11,8. If a man knew he had creditors and sold all of his property, he was deemed to have the fraudulent intent necessary in this connection. D. 42.8.17. 1. But there was not deemed to be any fraud in care of mere failure to acquire; e.g. in case of non-acceptance of an inheritance or legacy. D. 42.8.6.2 and 4. Some acts, too, were not considered fraudulent, such as emancipating a son that he might accept an inheritance at his pleasure. D. 42.6.3. So, too, a man might freely accept a debt that was due him, from his debtor, if done without taking possession of the debtor's property; but if the creditor accepted payment before it was done, or took possession of property in order to enforce the debt - not doing so as a lien-holder - all parties had the right to share in the property. D. 42.8.6.7; D. 42.8.10.12; and see D. 42.5.6.2; C. 7.72.10. A purchaser of property who had no knowledge of any fraud could not be sued (D. 42.8.6.8; D. 42.8.10.4), even though the price was small. D. 42.5.8.1. And that was true also as to an innocent purchaser of a fraudulent grantee, leaving the latter liable, however. D. 42.8.9. The object of the action to set such conveyances or acts aside was to restore the former situation; any property fraudulently conveyed was required to be restored with all its produce and increment, less the necessary expenses. D. 42.8.10.20-23; D. 42.8.25.4. If suit, however, was brought after a year (judicial), recovery could be had only to the extent that the grantee was enriched. D. 42.8.10.24. Judgment for damages could be avoided by all fraudulent grantees, by delivering up what they had received. D. 42.8.10.20. It lay by and against the heirs of the parties respectively, but against heirs only to the extent that they were enriched. D. 42.8.10.25. It was brought on behalf of creditors by a curator who had been appointed as the custodian of the property of the debtor, or an individual creditor, but had to exist only after he or they had been put in

¹ Blume penciled in several additions to this typed headnote, and it is not clear where he intended that these insertions should be placed. I have set them off in brackets.

possession of the property of the debtor as a bankrupt. D. 42.8.1 pr; D. 42.8.10.1; Buckland 591; Girard 449; Windscheid § 463, 5. In other words insolvency of the grantor had to exist. The judicial year above mentioned counted from the time that the fraudulent conveyance had been made, or fraudulent act had taken place. D. 42.8.1 pr; D. 42.8.6.14; D. 42.8.10.18. All the creditors were benefited by the proceeding. Girard 449. Special legislation was enacted in favor of bankers by Edict 7, c. 7, against those who put property in another's name.

7.75.1. Emperor Antoninus to Caesia.

If an heir, after accepting an inheritance, transfers part of its property to another in payment (of his own debt), he remains obligated to the creditors (of the inheritance). If he did so in fraud of your right, and you pursued his property in the customary actions, but got trouble for your pains, you may recover the property which is shown to have been so fraudulently transferred.

Promulgated October 14 (213).

Note.

If an inheritance was solvent, but an heir insolvent, the creditors of the inheritance - of the decedent - had a right to have the property belonging to the decedent's estate separated from the individual property of the heir, so as to appropriate the former to their claims to the exclusion of the individual creditors of the heir. D. 42.6.1.1; Hunter 718.

7.75.2. Emperor Alexander to Symphoriana.

If you abstained from accepting your father's inheritance, the creditors cannot sue you because of the property given you as a dowry, if they are not shown to have a lien thereon, unless it is proven that the property of the deceased is insufficient to pay the debts, and that the dowry was given in fraud of creditors.

Promulgated July 22 (232).

7.75.3. Emperors Diocletian and Maximian to Acyndinus.

If you refrained from accepting your father's inheritance and none of his property was signed over to you as a gift in fraud of creditors, the president of the province will not permit you to be sued by his private creditors.

Promulgated June 22 (290).

7.75.4. The same and the Caesars to Epagathus.

The law is well known that sons of a debtor who inherit his property have no right to claim that their father alienated property in fraud of creditors.

Subscribed April 22 (293).

7.75.5. The same to Crescentinus.

It is not an unknown law that the interests of creditors are consulted as against one, who, condemned, fails to pay within the legal time and is undefended, and possessing property, sells it, and (the interests of creditors is consulted) through an action on the facts as against a purchaser (of the property sold) who bought it knowing the fraud, and as against one who possesses (the property, under a title or gift), without knowledge (of the fraud).

Subscribed October 23 (293).

Note.

Bas. 9.8.30 states this law as follows: "If a debtor who was summoned is condemned, and he afterwards sold property in fraud of his creditors to one who knew of the fraud, or, gave property to another, whether the latter knew of the fraud or not, such property may, without question, be reclaimed by the creditors." A person who received property as a gift could not hold it against creditors, if the gift was fraudulent as to such creditors, whether he knew of the fraud or not. D. 42.8.6.11.

7.75.6. The same to Menandra.

If (deceived by your debtor) you released a preceding-obligation in solemn form, an action against the defrauder lies, according to the perpetual edict, only within a year, for so much as he can pay, or by fraud ceased to be able to pay (vel dolo malo fecit quo minus possit).

Note.

Bas. 9.8.31 states this law as follows: "If a creditor, deceived by his debtor, released a right of action against him, he may sue him within a year for what he is able to pay or by fraud ceased to be able to pay." This corresponds with the translation here made of the foregoing law. Other explanations, however, are given to it. See 12 Cujacius Obs. 15; note to this law in Otto, Schilling and Sentennis.