

Book IX.
Title XXII.

As to the Cornelian law concerning falsification (forgery etc.).
(Ad legem Cornelianam de falsis.)

Bas. 60.41.36, et seq; Dig. 48.10.

Headnote.

The Cornelian law against falsification (broader than that of forgery merely), passed in the time of Sulla, severely punished many acts of falsification or forgery. Under that law were also prohibited counterfeiting of money, and for a man to write for a testator a provision for his own benefit in the testament written by him, or by his slave, or child in his power at his request or by his consent. The two subjects last mentioned are dealt with in the next two succeeding titles.

Falsification or forgery was generally punished by deportation and confiscation of all property, but death was visited upon slaves. Dig. 48.10.1.13. The citations herein are, unless otherwise stated, to Dig. 48.10. Under this law come the following, among others: Persons who fraudulently abstracted, concealed, forcibly took, cancelled, obliterated or substituted a will; or who wrote a false testament, or forged any other kind of document, or suborned another to do so; or who made a false seal, or conspired to forge testaments in favor of each other; or falsified any account or document not sealed. 1.4; 9.3; 16 pr; 16.2; 30 pr. So, too, a judge who falsified his records came within this law. 1.4.

Other, somewhat different, acts prohibited by this law were, among others, the following: To palm off a supposititious child; to open the testament of a living person - doubtless without the latter's consent; to betray an instrument entrusted to a man to the opponent of the depositor; for a guardian to enter into a contract with the fisc during his guardianship and while the minor was living, because in such case, the minor, having a first lien under the law on the guardian's property, the lien of the fisc, which it had in such case, would be junior to that of the minor; to predate a mortgage or pledge - doubtless in order that other creditors might not be defrauded; to state false facts and to falsify an edict in a petition to the judge; 1.4; 1.11; 28; 29; 30 pr. So too, a man who produced a document in court, but was not able to establish its genuineness, might be punished in the discretion of the judge. Where an advocate had recited - introduced in evidence - such a document, he was relegated for a period of ten years, and was held entitled to be reinstated in his position after the expiration of that time. 31; 13.1. A man who corrupted a judge was relegated for a time, but his property was not confiscated. 21. And it is stated that if a man falsely gave himself out as a soldier, or carried a false identification sign or a forged imperial passport, he was punished more severely than others. 27.2.

Perjury. It is stated in C. 4.1.2 that God is sufficient avenger of a false oath taken in the name of the Diety. See also C. 9.8.2. This has led to the statement that perjury was not a crime under the Roman law, but the statement is apt to mislead, for it has no reference to testimony given in court. Even a false oath taken outside of court at times carried a penalty. A person swearing falsely by the genius of the emperor was considered to offer an indignity to the emperor, and was to be beaten with rods. Dig. 12.2.13.4. And

if anyone swore falsely that property pledged was his, he was subject to temporary relegation, he being considered guilty of stellionate, swindling. Dig. 47.20.4. In fact an oath came to be considered of more and more importance, especially after the time of the Christian emperors, as will be noticed throughout the Code, especially in Justinian's legislation. See e.g. C 2.4.41. It is true, however, that the violation of an oath not taken in connection with any court proceeding never assumed the importance that we attribute to what we commonly consider perjury, and which is generally, under our laws, made a felony.

But false testimony given in a court proceeding was a grave crime under the Roman law and came under the law against falsification and forgery. The twelve tables (8.23) provided that "false witnesses shall be hurled from the Tarpeian rock." Later, whoever gave false testimony was punished the same as a forger, by deportation, which involved, generally, confiscation of all property. Coll. Mos. 8.2 and 3. Paul., Sent. 5.15.5; C. 4.20.13. So anyone who took money to procure false testimony or to denounce or refrain from denouncing another, or who conspired to accuse an innocent person, or who gave contradictory testimony - testifying, e.g. one way for one party and another way for another party - was guilty under the Cornelian law referred to in this title. Dig. 48.10.1.1-3; Dig. 48.10.27.1-2; Coll. Mos. 8.6. And we have already seen that a man who gave false testimony to convict a person of a capital crime was punished the same as a murderer under the Cornelian law against assassins and poisoners, the penalty of which was death for the common people and deportation for persons of rank. Dig. 48.8.16; Paul., Sent. 5.23.1.

9.22.1. Emperor Antoninus to Severinus.

If you accuse a woman, your opponent, of palming off a supposititious child, the case of such capital crime should not be delayed to the time when the child arrives at the age of puberty, as was already formerly ordered by myself and the Divine Severus, my father. For it is not likely that the accused woman, since she is in danger of her life, will not defend her cause in good faith.

Promulgated March 7 (212).

Note.

See also law 10 of this title and Dig. 48.10.19.1. The motive of palming off a supposititious child was, doubtless, in order that such child might have an inheritance, or might be supported by a man claimed to be the child's father. Such laws as the foregoing were made necessary by reason of divorces. Careful provision was made under the laws in order that the offspring of a marriage, born after the divorce, as well as the father and mother, might be protected. It was made the duty of a divorced wife to give notice to the husband within thirty days after the divorce that she was pregnant, if she was so in fact. If the husband did not deny his paternity, he was compelled to acknowledge and support the child thereafter born. The lack of giving such notice, or the denial of paternity at the time, did not, however, prevent proof of the actual facts. And if such notice was given, the man had the right to send watchers. Even more careful provisions were made in case the wife claimed that she was pregnant after the death of her husband, in order that no child might be palmed off as the offspring of the decedent, which was not in fact his. Dig. 25, titles 3 and 4.

9.22.2. Emperor Alexander to Valerius.

It has been clearly enough declared in a rescript of my divine parents, that, when the crime of forgery (falsi) is interposed by a debtor for the purpose of delay, he should nevertheless be compelled to pay, without interference with the prosecution of the crime. Promulgated May 5 (223).

Note.

According to notes to Bas. 60.41.37, this constitution refers to a situation where the issue of forgery is raised for the purpose of delay, after the case was nearly finished, and when judgment was about to be given. In such event, the debtor was required to pay -- if judgment was rendered against him -- without reference to the pendency of the criminal case. The subject is considered at C. 3.8.3.

9.22.3. The same Emperor to Maximus.

In order that those who use forged imperial rescripts may be visited with proper punishment, greater severity is demanded. But one who is deceived by another, frees himself, if he proves his innocence and produces the man from whom he received the rescript.

Promulgated December 29 (227).

9.22.4. The same Emperor to Cassius.

Although you received a legacy given to you under a will, which you say was gorged, and which was produced by your father's wife, your step mother, after she had suppressed the genuine will, you are not prevented, in case you were unaware of the crime at the time, to bring an accusation against her by meeting the usual requirements.¹

Promulgated December 22 (227).

9.22.5. The same Emperor to Petronius.

My creed does not permit you to bring an accusation of forgery or other capital crime against your mother. But this fact does not deprive you of any pecuniary gain. And if there is a doubt about the genuineness of a written document, under which your mother claims a trust, the truth may be investigated without fear of a criminal accusation. Promulgated August 30 (230).

9.22.6. Emperor Philip and Caesar Philip to Ulpian.

Whoever alleges a testament to be forged but does not prove it, will not get what the deceased left him.

Promulgated March 18 (245).

Note.

See note to C. 6.35.2.

9.22.7. Emperors Valerian and Gallien and Caesar Valerian to Heliodorus.

You say yourself that you suspected the genuineness of the documents as soon as your opponents produced them. Hence, after you made a compromise, it is too much to

¹ [Blume] Filing complaint and giving surety.

ask the governor of the province to permit you to claim as forged the documents in which you acquiesced.

Promulgated June 29 (258).

Note.

Compromise of Criminal Cases.

There has been considerable controversy as to whether or not this law permits a compromise to be made in connection with the crime of falsification. The Greek annotators of this law took the position that such compromise might be made, and that, too, is stated in Bas. 11.2.35 and annotations. C. 2.4.18 is partially relied on. That constitution reads as follows: "It is not forbidden to compromise or make a simple agreement as to a prosecution (crimine) for a capital crime, except adultery, but it is not permitted to make a compromise in other cases of public prosecutions which do not carry the death penalty without danger of an accusation for falsification. (citra falsi accusationem)." In the Basilica "excepto" is found instead of "citra" so that the last sentence would read "except in the case of an accusation for falsification." And the position is taken that cases involving capital crime, except adultery, may be compromised, taking away any further right from the accuser to prosecute such a case, and that further a case of falsification may be compromised, but no other cases involving a public crime. There is no controversy on the point that cases involving capital punishment - that is, death - could be compromised. Dig. 48.21.1; D. 47.15.7. And it was permitted because it was believed that a man who bought off an accuser in order to save his life should be pardoned for doing so. It may be further noted that 2 Cujacius 528 thinks, apparently rightly, that falsification was originally punishable by death, but was made non-capital by later law. See laws 1, 5, 22, of this title. The interpretation, accordingly, placed by the Basilica and notes on C. 2.4.18, may be correct, and that the law meant to leave cases of falsification subject to compromise, and did not intend to prohibit that by making the crime non-capital. Whatever may be thought of this principle, it shows in any event a spirit of mercy amid the harshness of Roman punishment for crime. While such compromise deprived the accuser of presenting the case further, we have no statement in the legal sources to the effect that the crime might not be prosecuted by officials by virtue of their office. Nor do we find any statement to the contrary. Dig. 48.21.1 simply states that to corrupt an accuser in such a case shall not prejudice the defendant (for in other cases it did. Dig. 48.21.2), and this may imply that officials might prosecute, notwithstanding the corruption.

Donnellus, in his commentary on C. 2.4.18, in volume 7, pages 321-338, takes the position that a prosecution for falsification stood on the same footing as the prosecution for any other crime, not capital, and that the within constitution does not speak of a compromise of a prosecution, but simply of a compromise of a civil claim. He further holds that before the institution of a prosecution, a compromise might be made with the would-be accuser in any case; that is to say, it was permitted to pay the latter his damage, and that thereupon such person could no longer prosecute the case. He cites in support hereof Dig. 3.6.1.2, which states that "there is no prohibition of compromise, but only of vile acts of extortion." He further maintains that after the institution of a prosecution, any case involving the penalty of death, except adultery, could be compromised without danger to either party; that other criminal cases, too, might be compromised without danger to the accused, barring the accuser from further prosecution, but that in such case

the accuser was in danger of an accusation "falsi" - generally falsification, like forgery, but in this case construed by Donnellus to mean the penalty under the Turpillian law, treated in C. 9.45, that is to say, the penalty for abandoning a prosecution unlawfully. So Risch.

9.22.8. The same Emperors and Caesar to Marinus.

If you contend that the parties against whom you direct your petition forged the codicils, they cannot evade an accusation because they deny that they use them. To abstain from the use of a document is of advantage (only) to those who are not themselves the forgers, and who would be involved in peril only be use thereof. But persons who become enmeshed in the severity of the Cornelian law by themselves forging codicils, cannot evade an accusation by setting up such defense. Promulgated June 29 (259).

9.22.9. Emperors Carinus and Numerian to Messius.

If you show before the president of the province that you are the heir, on intestacy, of the deceased, who executed codicils, the regular course is for you, when you are put in possession (of the inheritance), to pay the trusts which were legally left, unless you plan to prove the codicils a forgery. 1. But if a criminal proceeding comes to an end, by an imperial pardon², the question may still be investigated and you may litigate the point of the genuineness of the writing in a civil action. Promulgated March 30 (284).

9.22.10. Emperor Diocletian and Maximian to Legitimus.

If you accuse your wife of your paternal uncle of palming off a supposititious child, prove that, after instituting a prosecution, before the rector of the province. Promulgated September 21 (285).

Note.

In this case the woman is accused of claiming a child as hers, when, it was alleged, the child was not hers; the accuser in this case claimed an inheritance which would go to such child, if genuine. That is the way the law is interpreted in Bas. 60.41.45, which reads: "If a man claims that his right to an inheritance is the better, because the child of his uncle is supposititious, he should prove that fact before the president of the province.

9.22.11. The same Emperors to Isidorus.

If a civil suit has been referred to referees (pedaneos iudices), the genuineness of a document may, civilly according to the response of the jurisconsult Paulus, be investigated in the proceeding before him.³ Promulgated June 22 (287).

² [Blume] The emperors would often grant general amnesty to criminals on the happening of some fortunate occurrence. Annotation, Bas. 60.41.44.

³ [Blume] See note C. 3.8.3.

9.22.12. The same Emperors and Caesars to Primus.

A complaint of forgery is not barred by any defense of lapse of time, except that of twenty years, just like most of the other crimes.

Subscribed at Viminacium August 8 (293).

9.22.13. The same Emperors and Caesars to Marcus.

Whoever forges a document which purports to be written by another, stating that he (the other) was present and received his property back, when in fact he was absent, does not deprive the party, who had knowledge thereof, of any right, but exposes the forger to the risk of a criminal accusation.

Promulgated at Sirmium December 27 (293).

9.22.14. The same Emperors and Caesars to Gentiana.

It is generally known that a man who conceals or does away with a testament commits the crime of falsification.

Subscribed at Sirmium December 30 (293).

9.22.15. The same Emperors and Caesars to Rufus.

If a creditor in collusion with his debtor sold you land, he committed falsification. He did you no injury, but rather laid himself liable to a criminal complaint.

Subscribed January 20 (294).

Note.

The law is obscure and is evidently lacking in some particulars. Bas. 60.41.49 has it as follows: "If a creditor in collusion with his debtor makes it appear that he is a prior creditor, and sells property, he does not injure the purchaser, but makes himself liable for forgery." In the annotations, Theodosius states that in such event (other) creditors are not prejudiced in their liens. And in another note it is stated that the injury to the purchaser must be understood as meaning that the purchaser is not liable for falsification. These explanations are not altogether satisfactory to clear up the point that the purchaser is not injured.

9.22.16. The same Emperors and Caesars to Fortunatus.

One claiming that a testament is not genuine has a two-fold method of litigation. Hence, although you cannot prosecute a criminal action by a procurator⁴, you are not forbidden to have the genuineness of the testament investigated in a civil proceeding, since a defendant, thus summoned, may not only rightly be accused in the customary manner by another, but also by him who has carried on a civil action.

Subscribed February 6 (294) at Sirmium.

9.22.17. The same Emperors and Caesars to Menelous.

As a forged testament or codicil cannot become valid by lapse of time, so one which is genuine and legal, cannot become void. If you, accordingly, complain of the crime (of forgery), either by public accusation or by civil suit, the rector of the province

⁴ [Blume] C. 9.2.15 provides that a criminal action cannot be carried on by procurator.

will order the production of persons who should be examined⁵, if he has been moved thereto by other disclosures.⁶

Subscribed at Sirmium, February 11 (294).

9.22.18. The same Emperors and Caesars to Maximus.

Rightful possession cannot begin in forgery. Hence you may institute a prosecution against those who, as you say, are contending with you about the ownership of the farm.

Subscribed March 5 (294).

Note.

Bas. 60.41.53, states this law as follows: "No one can gain (rightful) possession by forgery. One may, therefore, accuse the persons who claim to be owners, of forgery, saying that they attempted to become owners of property under forged documents.

9.22.19. The same Emperors and Caesars to Cosmis.

Even though the matter concerned you, you should have carefully deliberated not to institute a dishonest accusation, contending that the document which you had subscribed was a forgery. But since women are not permitted to bring an accusation of forgery in another's cause, and you state that you previously gave this same land to another, your demand to bring an accusation is not in accordance with law.

Subscribed March 8 (294).

Note.

Bas. 60.41.54 explains this law thus: "A person subscribing an instrument cannot claim that it is forged. But it is clear that a woman cannot bring a prosecution, except in a matter affecting her or hers."

9.22.20. The same Emperors and Caesars to Rufinus.

A copy of a petition (given to the opposite party), copied without exactness through an error, does not delay the investigation by the appointed referee, since persons who execute a false writing are not subjected to prosecution unless they do so fraudulently.

Subscribed October 22 (294) at Dorostolium.

Note.

Ordinarily a criminal suit took precedence over a civil action. But here no occasion for a criminal suit existed.

9.22.21. Emperor Constantine to Maecilius Hilarianus, Corrector of Lucania and Brittain.

If a decurion has written down a testament or codicil or last wish of a dying person, or has been occupied in writing public or private documents, and a question of the genuineness thereof arises, the honor of the decurionate shall be disregarded and he shall be examined under torture, if the cause demands it. 1. But if he is implicated in

⁵ [Blume] Reference is doubtless made to examination under torture.

⁶ [Blume] If a sufficient showing of the forgery is shown by other evidence, so as to warrant the production of such witnesses. Bas. 60.41.52.

such act, he does not immediately cease to be a decurion; he remains a decurion in so far as his municipal duties require, but he cannot use the honor of the decurionate as against the acts done by him in order that the truth may be uncovered. 2. And a man who previously was a notary (tabellio) and subsequently becomes a decurion, will not, by reason of this dignity, be able to elude examination under torture concerning a document which he previously wrote, since the genuineness of the document should, if the situation demands it, be proven by the author himself.

Given January 30 (316).

C. Th. 9. 19. 1.

Note.

Ordinarily a decurion was not subject to torture as will more fully appear in title 41. But he was not exempt therefrom under the circumstances stated in the constitution.

9.22.22. The same Emperor to Maximus, City Prefect.

Whenever an examination of forgery should happen to be made, it shall be made thoroughly, by logical deductions, witnesses, comparison (collatione) or writings and other footprints of the truth. 1. Nor shall the whole burden of the trial or the proof fall on the accuser alone⁷, but the judge shall stand between both disputants. He shall not indicate by any expression how he feels, but he shall give attention just as in a case which is (merely) referred (to some judge) to be reported back (to the emperor) and where he has merely the duty of listening.⁸ What he thinks shall be stated in his final decision. 2. The criminal proceeding is confined within certain, but reasonable, limits of time, which must not be overstepped by either litigant, such period taking its beginning when the accusation is answered before the judge.⁹ Capital punishment shall be inflicted on the forger, if the magnitude of the crime demands it; otherwise deportation.

Promulgated in the Forum of Trajan March 25 (320).

C. Th. 9.19.2.

9.22.23. Emperors Valens, Gratian and Valentinian to Maximus, Praetorian Prefect.

If a writing is produced before a judge concerning which a dispute arises, we give permission to the litigant who doubts the genuineness of the document to declare whether he will litigate that question in a criminal or in a civil proceeding. 1. If, seeking revenge, he commences an accusation of forgery, the crime shall be investigated after the civil action is terminated by decision; so that if anyone wants to claim any testaments, due-bills, certificates, private or public accounts, agreements, letters, last wishes, gifts, sales or anything else that is brought forward, as false¹⁰, he shall have the right of bringing a criminal accusation. 2. The trial of a civil proceeding between the two contesting parties

⁷ [Blume] e.g. Where a man produces a document, he must, as stated in law 24 of this title, prove its genuineness in the first place and it then devolves on the accuser to prove it forged. Annotation, Bas. 60.41.56.

⁸ [Blume] Frequently, says Gothofredus, the emperors referred a case to some judge for the purpose of hearing the case and then report it, together with the records, to the emperor, without deciding it. In such case the judge had merely the duty of listening.

⁹ [Blume] As to time when prosecution must be finished, see C. 9.44.

¹⁰ [Blume] Insimulare with Gothofredus, instead of instituere.

shall be conducted more gently (than a criminal case) since the judge, trying the case, may punish the false allegations of the plaintiff and the proven crimes of the defendants by competent legal penalties.

Promulgated at Rome April 16 (376).

C. Th. 9.19.4.

Note.

Notwithstanding the fact that a crime was involved in a case, the judge must deal equitably between the parties, so far as their civil rights were concerned. If, however, the accusation was false, he might further punish the accuser for malicious prosecution. If the accused was guilty, he might assess the penalty against him (Gothofredus). It would seem that this could be done without a separate trial for the crime, but in connection with the civil suit. C. 3.8.3 and note. It may, however be said, that the word "quaestio" here used was generally employed in connection with criminal trials, indicating that the penalty for the crime should be inflicted only after a separate trial. In any event, it would seem that this course was, at least, permissible. C. 4.19.24.

9.22.24. Emperors Valentinian, Theodosius and Arcadius to Proculus, City Prefect.

We give permission that inquiry concerning a codicil or other document produced may be made in a civil or criminal proceeding, as the accuser (claiming it to be forged) may elect. The burden of proof of the genuineness of the document shall in the first place be on the party who produces the writing; thereafter the burden shall shift to the party who insists upon being ready to prove it forged.

Given at Milan January 23 (389).

C. Th. 4.4.2.