

Book IX.
Title XXXIV.

Concerning the crime of stellionate (swindling).
(De crimine stellionatus.)

Bas. 60.30; Dig. 47.20.

Headnote.

Webster's International Dictionary defines stellionate as any fraud not distinguished by a more specific name; especially a sale of the same property to different persons, or the sale of something as one's own which belongs to another. The definition is borne out by the Code and Digest. What fraud was in civil case, that stellionate was in criminal case, if not covered by some other law. Several illustrations of the crime are contained in the laws in the Code. Several others are mentioned in the Digest. 47.20. See also Dig. 48.10.21 and 32.1. A man who fraudulently substituted goods, disposed of or spoiled pledged property, plotted against another, embezzled goods, swore falsely that he was the owner of property pledge, falsely pretended to be able to procure for another a position of honor, or fraudulently allowed himself to be sold as a slave, or otherwise imposed on another, was guilty of stellionate. The crime was not a public crime, nor was the action thereon a civil action. It was one of the special (called extraordinary crimes), which were dealt with by special, or what was called extraordinary, penalty. Plebeians might be sentenced to do metal work. Persons in any position of honor might be temporarily relegated or deprived of their position. Dig. 47.20; Von Bar, Hist. Cont. Crim. L. 40. For civil actions for fraud see C. 2.20 and headnote.

9.34.1. Emperor Alexander to Alexander.

You acknowledge it to be dishonest and criminal to have pledged the same things to several persons, concealing the fact, in connection with the later obligation, that these things are pledged to others. But you will consult your safety if you destroy the cause for instituting an accusation by paying them all.
Promulgated February 9 (231).

9.34.2. Emperor Gordian to Valens.

If your father made you a present and, when you were emancipated, transferred ownership to you by delivering the property, but thereafter pledged some of the same property to a creditor of his choosing, without your consent, as if it were his own, he did not thereby injure your right. And will, not unjustly, be prosecuted for the crime of stellionate if he knowingly pledged to a creditor property not his own, without your consent, as if it were his own.
Promulgated December 31 (239).

9.34.3. The same Emperor to Hadrianus.

An accusation for swindling is not considered a public prosecution.¹
Promulgated April 13 (242).

9.34.4. Emperor Philip to Euprepetis.

To take advantage of the ignorance of a creditor by pledging or mortgaging property to him which had already been pledged to others, is not usually done without peril. For such frauds demand a summary prosecution, and it has often been stated in rescripts that stellionate is to be most severely punished. 1. Hence, whether the debtor attempts to take advantage of your ignorance, or whether, after your lien has been legally perfected, he, by the help of an accomplice in the fraud - pretending that the latter is a prior creditor - attempts to turn your loss to his secret gain, you may go before the judge having jurisdiction over him, who, mindful of his oath, will give his decision according to law.

Promulgated May 10 (244).

¹ [Blume] An action for stellionate is neither a public prosecution nor a private action.
Dig. 47.20.1.