

Book II.
Title XX (XXI).

Concerning fraud.

2.20.1. Emperors Severus and Antininus to Clementina.

If your surety bought pledges from your creditor, and you offer him the amount of the principal with interest, he will wisely restore to you the ownership of the pledges, together with the fruits which he received in good faith, lest, on account of broken faith, an action for fraud may be employed.

Given May 13 (203).

2.20.2. Emperor Antoninus to Agrippa.

Upon cause shown, an action for fraud (deceit) is promised if no other action lies.
Given November 5 (211).

Note.

As in C. 2.19.4, the investigation was for the purpose of determining whether another action would lie. Condemnation in an action for fraud made the defendant infamous. D. 3.2.8. Hence the action was not given too freely. Thus if a defense was open, which did not involve infamy, or if an action lay on a contract in connection with which fraud was committed, or if restitution of rights was available because of minority. D. 4.3.1; 7.

2.20.3. Emperor Gordian to Aquilinus.

The time during which, as you allege, you were engaged in affairs of the state, will not be computed against you in an action for fraud;¹ but the time fixed will commence to run against you from the day on which, liberated from your duties, you obtain, within the time fixed, opportunity to sue.

Promulgated August 13 (240).

2.20.4. Emperors Diocletian and Maximus and the Caesars to Menandra.

Since you state that it was agreed between you and the person who took your female slave to his bed that he would give you a male slave in her stead, you understand that if you manumitted her, or delivered her to him and he manumitted her, you have no power of revoking her freedom, but if the legal time has not yet passed, and he has broken his promise, you can only demand that an action for fraud be given you. If, however, you retained ownership of her, you can, by applying to the president of the province, recover her, together with her offspring, if no question as to her personal status is raised.²

Given April 29 (294) at Heraclea.

2.20.5. The same emperors and Caesars to Aphrodisia.

If, during the lifetime of your father, becoming your own mistress through emancipation, you inherited the property of your mother, and this property was managed

¹ [Blume] Mommsen's reading—i.e., will not be counted to determine the time in which an action for fraud should be brought. The man, doubtless, was away from home.

² [Blume] i.e., if she is not, in fact, free.

by your statutory guardian, your father, and your emancipator, but you thereafter entered into a compromise with him in good faith, you can see that if only a pact was entered into, your claim will be defeated by a defense (setting up the pact); and if a novation was made in a legal manner, and a formal release followed, no cause of action remains at all.

1. Of course, if you were damaged immoderately by the discharge, granted in due form by the novation and formal release, not an action for fraud, on account of the respect due your father, but an action on the facts (in factum) should be given you.

Given June 13 (293).

Note.

For novation by stipulation, followed by formal release, see C. 2.4.3. Condemnation in an action for fraud involved infamy. That result was not deemed desirable in certain cases, and hence, instead of an action for fraud, an action on the facts (in factum) only, in which all mention of fraud was avoided, could be brought. That was true in actions by children against parents; by a freedman against his patron; by a plebian against one of high rank. C. 5.12.1 and 2; C. 5.21.2; D. 4.3.11. See also C. 2.41.2. It may be noted here that the addressee was a Greek woman. Notwithstanding her emancipation, her father, the nearest agnatic relative, was still her guardian according to Roman law, and that law was here enforced, after Roman citizenship in 212 was extended over the empire against Greeks. See Taubenschlag, Vormundschaftliche Studien 79.

2.20.6. The same emperors and Caesars to Homnoda.

It is agreed that fraud must be proved by showing clear crafty devices.
Given December 1 (293).

2.20.7. The same emperors and Caesars to Sebastianus.

If you rejected the inheritance from your brother when you were more than twenty-five years of age, no further opportunity to accept if is left you. Of course, if it was done through the fraud of his wife, who had been substituted for you,³ you can employ an action for fraud against her.

Given April 16 (294).

2.20.8. Emperor Constantine to Symmachus, vicar.

We think it best that an action for fraud should be brought with the time counted not from the day that a man alleges he learned of the commission of fraud, nor within a judicial year, but rather within two uninterrupted calendar years, the time commencing to run from the day on which fraud is alleged to have been committed, whether the person who complains of having been the subject of fraud is absent or at home. Let all take notice, therefore, that no permission is given to commence an action for fraud after two years, nor, if commenced before, to finish it after the two years.

Given at Naesus July 25 (319).

Note.

Previously, the action was limited to a judicial year (C. 2.50.1 note), counted from the discovery of the fraud. Jors, R.R., §145; D. 44.7.35 pr. But this limitation did not apply in a suit against the heirs of the person who committed the fraud, against whom, however, recovery was limited to the amount by which they were enriched. D. 4.4.28.

³ [Blume] In case of non-acceptance. As to acceptance of an inheritance, see C. 2.24.1; C. 2.38.1.

Nor did the limitation apply when merely the pursuit of property was involved, which, after the limited time for an action for fraud, was a different action, and one merely on the facts. D. 44.7.35. Nor did the limitation apply when, as could be in the proper case, a defense, that fraud was committed was set up. D. 44.4.5.6.