

Book VIII.  
Title XIV.

In what matters an implied pledge is contracted.  
(De quibus causis pig nus tacite contrahitur.)

Bas. 25.2.65, et seq; Dig. 20.2.

Headnote.

There were other liens granted by operation of law, in addition to those mentioned in the law of this title, namely (in part):

1. To a husband on account of the dowry promised him. C. 5.13.1.
2. To a wife and her heirs and her father for the return of the dowry to her and for the prenuptial gift and her paraphernalia (special property) from time of entrance of marriage. C. 5.12.30; C. 5.3.19; C. 5.13.1; C. 5.14.11; Nov. 109, c. 1.
3. To children on the property of their father or mother for property which falls to them by reason of a second marriage by the former. C. 5.9.6 and 8; Nov. 22, c. 24; Nov. 98, cc. 1, 2. From date of receipt of property.
4. To minors over the property of their guardians or curators. C. 5.37.20; C. 5.35.2. If a mother was [illegible], her husband's property also was held at times. C. 8.14.6.
5. To children under power over the property of their father, as to property coming to them on the mother's side. C. 5.7.8; C. 6.61.6.4.
6. To legatees and cestuisque trust over the property of the deceased, in security for the payment of their legacy or trusts. C. 6.43.1 and 3; Nov. 108, c. 2.
7. To a person who would acquire a legacy in case of re-marriage of another. Nov. 22, c. 44.
8. To minors over property bought with their money. See note to C. 8.13.17.
9. To a person who advanced money to restore a building, not, however, for constructing an entirely new building. D. 20.2.1; D. 20.4.5; D. 20.4.6 and 7 pr; D. 13.7.21; D. 42.5.24.1. This was evidently a lien similar to our mechanic's lien.
10. To the church, on the property of tenants to secure annual payments due. Nov. 7.3.2.
11. A landlord of rural property had a lien on crops; a landlord of urban property had a lien on the personal property which the tenants put into the premises. C. 4.65.5; C. 8.14.5 and 7.
12. To the fisc - the imperial treasury. C. 4.46.1; C. 7.73.1 and 3; C. 8.14.1 and 2; C. 12.63.2.

The list of liens, including implied liens, was rather formidable, and this must in many cases have hurt the credit of persons whose property was subject to the liens.

8.14.1. Emperor Antoninus to Speratus.

All the property of persons assessed for taxation is bound by (an implied) pledge for the payment of the taxes.<sup>1</sup>

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<sup>1</sup> Blume penciled in here: "29 S.Z. 371."

Promulgated June 1 (213).

Note.

As to the rights of the fisc generally, see C. 7.73; C. 10.1; C. 4.46.1. The implied lien of the fisc was not superior if arising under a contract with the fisc made subsequent to the lien in favor of a private person. D. 20.4.8; C. 4 53.1.

8.14.2. The same to Proculus.

It is certain that the property of a man who enters into a contract with the fisc is bound by (an implied) pledge, although that is not specifically stated. Given February 24 (214).

8.14.3. Part of the rescript of the Emperor Alexander.

Although the produce of pledged land, even though that is not specifically stated, is considered as impliedly included in the pledge, nevertheless none of the jurists have held that lands which are purchased with the money derived from such produce are also included.

Promulgated October 15 (223).

Note.<sup>2</sup>

The lien of a landlord on rural property was not nearly so extensive as the lien of a landlord on urban property. In the former case, a landlord's lien extended only to the crops, and attached from the moment they were gathered. D. 20.2.7 pr. The lien mentioned in the next law was one by agreement.

8.14.4. Emperors Carus, Carinus and Numerian.

It is well known and established that the dowry of women who marry men who undergo the burden of the office of chief centurion<sup>3</sup>, is liable for (defaults in) that duty; but only in a certain order, and the risk applies to the patrimony of the woman only if all the property of the husband and his sponsors is exhausted and nothing is left.<sup>4</sup> Given August 9 (283).

8.14 5. Emperors Diocletian and Maximian and the Caesars to Corinthia.

If slaves were not among the property brought and moved on to a farm, which, it is agreed (when so brought) is subject to a lien, and it is shown that they have not been pledged specially, the rector of the province will order them to be restored. Nor can she (the owner of the land) delay their restitution on the pretext of unpaid rent, since, if the mistress of the farm can show that rent or anything else is due her, she should enforce payment thereof in the usual manner.

Subscribed January 21 (294).

Note.

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<sup>2</sup> Blume penciled in here: "C. 4.50.1 note."

<sup>3</sup> [Blume] Primipilares were officials whose duties it was to provide the army with provisions.

<sup>4</sup> [Blume] This law was probably repealed by implication by C. 8.17.12 giving wives a prior right.

The lien of a landlord of rural property was not so extensive as the lien of a landlord of urban property. In the former case, a landlord's lien extended only to the crops, and attached from the moment they were gathered. D. 20 2.7. A more extensive lien might, however, be given by agreement. See C. 4.65 and note.

8.14.6. Emperors Theodosius and Valentinian to Florentius, Praetorian Prefect.

If the mother, after undertaking the legal guardianship of her children, entered into a second marriage in violation of her oath, before causing another guardian to be appointed and paying him the amount due on account of her management of the guardianship, the property also of her husband is subject to a lien for the amount owing by reason of her past guardianship.<sup>5</sup>

Given at Constantinople July 10 (439).

8.14.7. Emperor Justinian to Johannes, Praetorian Prefect.

We ordain that the right of a landlord to a lien on property brought and moved by a lessee onto the leased premises (in a city), which are impliedly pledged to the owner for rent, shall exist not only in the old and the new Rome (Rome and Constantinople), and the territories thereof, but also in the provinces. We want that principle (praesumptio) to be enjoyed also by all our provincials.

Given October 18 (532).

Note.

This law refers to a landlord's lien in case of a lease on urban property. It was originally perhaps confined to Rome. But see D. 20.2.4 pr. It applied to all property brought onto the urban property, to be kept there. C. 4.65.5. D. 13.7.11.5; D. 20.2.2, 4 pr, 6, 7, and 9; Originally such right probably did not exist even in Rome, and a contract was necessary to create a lien. 2 Karlowa 1302.

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<sup>5</sup> [Blume] See also C. 5.35.2; C. 6.56.6.