

Book VIII.
Title XXII.

If any property is seized to enforce a judgment.
(Si in causa iudicati pignus captum sit.)

Bas. 25.7.16, et seq.

Headnote.

This title deals with a lien created by the seizure of property under execution. It is sometimes called a judicial lien, as distinguished from a praetorian lien, mentioned in the preceding title. Both, however, were created pursuant to an order of the judge. The strictly so-called praetorian lien put the creditor, or other party entitled thereto, in possession, and if given to a creditor, it inured to the benefit of all the creditors who wanted the same right. The lien here given was not given directly to the creditor; it was created by seizure of an officer of the court, as under executions pursuant to our laws, and inured to the benefit only of a particular judgment creditor. It was created, not pursuant to any edict of the praetor, as the strictly praetorian lien, dealt with in the preceding title, but through the extraordinary jurisdiction of the judge. Only the regular judge, not an arbitrator or petty judge, appointed by him to try a case, could carry the decision into effect. D. 42.1.15 pr; 9 Cujacius 1148. For a full discussion of seizure of property to satisfy creditors see headnote to C. 7.53, which particularly deals with that subject.

8.22.1. Emperor Antoninus to Gabinius.

It has often been stated by rescript that property may be seized, as a pledge, and sold, to enforce a judgment, by order of the judge who has jurisdiction, for the authority of the one ordering the seizure takes the place of a just obligation under a contract. Promulgated at Rome July 28 (213).

8.22.2. Emperor Alexander to Valerian.

When property is levied on by reason of a judgment, it is usually sold by the official staff of the judge who makes the order, not by the man who asks that the judgment be enforced.¹ 1. If there is no other purchaser, or if there is one, but he does not offer any satisfactory price, the judgment creditor whom the debtor fails to pay, may, when, according to an order, he is admitted to the bidding, buy from the official staff, the same as anyone else. Promulgated April 26 (223).

8.22.3. Emperor Gordian to Antizonus.

Property levied on, to enforce a judgment, by the authority of the president, is generally sold rather than seized to be held by right of ownership. But if no purchaser can be found through trickery of the judgment debtor, ownership of the property is usually assigned to the creditor by authority of the emperor.

¹ [Blume] The sale was usually made at the expiration of two months after seizure. See headnote C. 8.29.

Promulgated August 13 (239).

Note.

This law provided for a method by which in certain cases the property might be turned over to the creditor; but it was required to be in satisfaction of his debt.

D. 42.1.15.3. A similar provision, except as to taxing the property in satisfaction, is contained in C. 7.53.3. Such order could be made only by the emperor.

A rule along the same line existed in certain cases where property was pledged or mortgaged by contract. C. 8.33.1.2 and 3. But special provisions were made in case the property was worth more or less than the debt.