

Book VIII.
Title XXXIV.

Concerning pledge-agreements and abolishing strict foreclosure (commissaria lege) of pledges.
(De pactis pignorum et de commissoria lege in pignoribus rescindenda.)

Dig. 20.[?].¹

Headnote.

The lex commissaria was a condition that the pledge should be forfeited to the creditor if payment was not made within the time limited. Its effect was similar to that of strict foreclosure known to the common law. It was forbidden by law 3 hereof. See headnote (5) to C. 8.13. As to sales, see C. 4.54.1.

8.34.1. Emperor Alexander to Victorinus.

When a man has agreed that, unless he should pay the money loaned him within a certain time, he would turn the pledged property over to the creditors, he has not thereby made a contract of sale of the mortgaged property, but must be understood as only referring to the right which the creditor would (otherwise) have had in taking possession of the pledge. The creditor must, accordingly, sell the mortgaged property in accordance with the general law.

Promulgated October 15 (222).

8.34.2. Emperors Diocletian, Maximian and the Caesars to Dionysius.

If you had sold a farm and a third party started a dispute with the purchaser as to the ownership thereof, and you gave (to the purchaser), for protection against eviction, another farm under the name of a pledge or mortgage, as stated in the instruments of purchase, upon condition that if he to whom you had delivered the second farm should not be evicted from the farm which you sold him, you should have the second farm back, and a decision is thereupon given against the man who raised the dispute, perfectly protecting the purchaser, the president will, if the matter is in statu quo, order the agreement concerning the return of the pledged farm to be carried out.

Subscribed at Sirmium December 1 (293).

8.34.3. Emperor Constantine to the people.

Since, among other dangerous contracts, agreements for strict foreclosure of pledges have become increasingly harsh, we direct that such agreements shall be void and that the future shall not even have any recollection of them. 1. If a man, accordingly, is burdened by a contract of that kind, he may breathe more freely after the enactment of this law, which invalidates those of the present along with those of the past, and prohibits them in the future. But we order that creditors, while they must let loose of the property, may recover what they have given.

Given at Serdica January 31 (326).

¹ Question mark in original.

Note.

This law declared all contracts, made at the time of the execution of a pledge or mortgage, void, which provided that the mortgagee or pledgee should become the owner in case of default. It did not affect contracts made at the time of after default. The debtor could then sell the property to the creditor in satisfaction of the debt. C. 8.13.13; D. 13.7.24 pr; D. 46.3.44; Winscheid, Pand. § 238, note 3; Vangerow, Pand. § 383.