

Book VIII.
Title XV.

If another's property is pledged.
(Si aliena res pignori data sit.)

Bas. 25.4.

8.15.1. Emperors Severus and Antoninus to Carpus.

A procurator pledges a house without the owner's consent in vain. Yet if it is clear that the money of the creditor was expended on the owner's property, a defense (against the owner seeking to recover the pledge) is not to that extent ineffectual in favor of one who only wants his loan to be repaid.¹

Promulgated October 22 (194).

8.15.2. The same to Latina.

If you have proven to the president that the gardens involved in the litigation are yours, you may know that they could not be pledged to a creditor by another, unless you knew of that being done, and remained silent, in fraud of an innocent creditor.

Promulgated October 14 (205).

Note.

If property which was pledged or mortgaged did not belong to the owner, or if it was mortgaged previously without disclosing that fact, the mortgagor or pledgor was not only liable in a civil action for the damage (the action being called the counter action on a pledge) but he was also liable in a criminal or quasi criminal action for swindling (stellionatus). Ignorance was an excuse in the latter case, but not in the former. If the property mortgaged was of great value and the debt of the second mortgage was small, the foregoing did not apply, for the second creditor was not defrauded in such case. Property might be mortgaged as often as the mortgagor wished, without being liable to the foregoing actions, if he disclosed the facts. D. 13.7.16.1; D. 13.7.36.1; D. 20.1.15.2. An owner could permit another to mortgage his property, or ratify such act. D. 20.1.16.1.

8.15.3. Emperor Antoninus to Marcia.

A curator of a minor, over the age of puberty, or a guardian of a minor under the age of puberty, cannot pledge the movable property of the minor whose affairs he manages, unless he receives a loan for the benefit of such minor.

Promulgated January 27 (212).

Note.

See also law 7 of this title. The converse of this law is stated in D. 13.7.16 pr., namely that a guardian or curator might pledge the property of his ward, if loan was received on behalf of the ward. To the same effect see C. 4.53.1.

¹ [Blume] C. 4.26.7 note.

8.15.4. Emperor Alexander to Secundus.

Your son, who was in your power, could not, though he had been over twenty-five years of age, pledge your property without your consent.

Promulgated October 28 (223).

8.15.5. Emperors Diocletian and Maximian to Eutyclus.

When property which does not yet belong to a debtor is pledged by him and he subsequently acquires it as his own, it is clear that the ordinary action on the pledge does not lie, but equity requires that an action analogous to that on the pledge should be readily given him.

Promulgated May 20 (286).

8.15.6. The same Emperors and the Caesars to Zosimus.

A woman who, having given land to her sons, then pledges it to a creditor, subjects herself to a contrary action on the pledge², instead of causing injury to the owners, since even the Servian action³ shows that nothing can be held as pledged property which does not belong to the pledgor, and it is most certain that no one can pledge another's property without the owner's consent.

Subscribed at Philippopolis July 11 (293).

8.15.7. The same to Cornelia.

If a guardian borrowed money for his own benefit and pledged your slave, and you did not ratify the act after you became of age, property could not be subjected to a pledge.

8.15.8. Emperors Honorius and Theodosius to Johannes, Praetorian Prefect.

No one except a person who could legally do so, could create a lien. It is taught aloud by the law and the jurists, that a prejudice (lien) cannot be imposed on a man's possession, without the owner's consent, by a slave, procurator, serf, agent or chief lessee. Given at Ravenna July 15 (422).

² [Blume] The object of which was to enforce the duties owing by the debtor to the creditor. The latter would in such case simply recover his damages. See headnote C. 4.24.

³ [Blume] The actio quasi-Serviana or hypothecaria is meant here, given for following up pledged property.