

Book VIII.
Title XXIII.

If property pledged, is pledged in turn.
(Si pignus pignori datum sit.)

Bas. 25.7.19-20.

8.23.1. Emperor Gordian to Lamponis.

It has long been accepted as law that property which is pledged, may in turn be pledged by the creditor¹, and an analogous action is given to the subsequent creditor, and the man who represents the right protects him as long as he who gave the right remains obligated under the pledge. 1. But if you only pledged the usufruct of the property, and your pledgee, in turn, but without your consent, pledged the ownership of the property, the usufruct only of which was pledged to him, the second pledgee cannot deprive you of the ownership, which was not covered by the pledge, by a sale thereof. 2. If you, however, pledged the property itself and not the usufruct, and the second pledgee sells it before (you) the owner pays his debt, the sale cannot, as held by past emperors, be set aside upon paying the debt.

Promulgated September 13 (238).

8.23.2. Emperors Diocletian and Maximian to Gemellus.

If the creditor has not sold the property which was pledged to him by your parents, but he, in turn, pledged it to another, you may, upon discovery of the actual facts, and upon payment of the amount due to the creditor in connection therewith, recover the property through the intercession of the president of the province.

Promulgated December 20 (290).

Note.

The original pledgee could not transfer or give a sub-pledge of any greater rights that he had himself. The nature of the sub-pledge has been much disputed. It gave a right in the property, and probably at the same time a right in the amount due from the original debtor. Schmid, Cession 146; Cuq., Inst. 675; Vangerow, Pand. § 368.

The original debtor, accordingly, was compelled to protect the subpledgee to the extent of the amount which was due from him (Schmid, supra, 161), though he could, doubtless, pay to the original pledgee, if he did not know of the sub-pledge. This is in analogy of the pledge of an account mentioned in C. 8.16.4.

¹ [Blume] Inst. 8.2.1 says that this right to pledge a pledge "may seem to rest on the assent of the pledgor given at the inception of the contract, in which it was agreed that the pledgee should have a power of sale in default of repayment." The subpledge was good only as long as the first pledge. That is what is evidently meant in the beginning of this law. See note to law 2.