

Book VIII.
Title XXV.

Concerning the release of a pledge.
(De remissione pignoris.)

Bas. 25.3.11, etc.

Headnote.

A creditor who had a pledge or mortgage did not need to release it until the whole debt was paid. D. 20.1.19; C. 8.27. The present title deals with the release thereof by voluntary consent. This consent might be manifested in various ways, as by delivering the property held as a pledge back with intention to release the pledge (law 9); by releasing the debt and contract evidencing the right to the pledge (law 7 and C. 8.13.3), although, if the agreement to release the debt was invalid, it and the pledge or mortgage remained in force (law 5).

Payment of the debt released the pledge, of course. And for the purpose of getting the money to make such payment, the debtor always, (unless expressly forbidden - D. 20.5.7.2), had the right to sell the property himself and turn the money, or so much as was necessary, over to the creditor. D. 13.7.6; Nov. 112, c. 1, and note, attached to C. 8.36; a pledge was released also in case of a sale of the property under the pledge or mortgage, even though the debtor was not wholly released. D. 12.1.28; headnote (2) C. 8.27. So when the creditor became heir of the debtor, the pledge or mortgage was released by merger. D. 20.6.9 pr. So destruction of the property, of course, released the pledge or mortgage. But a mere change of it did not; if, for example, a house was removed, the ground was still subject to the lien (D. 20.1.29.2), or if uncultivated ground was, for instance, changed into a vineyard, the lien remained. D. 20.1.16.2. If raw material, however, was pledged or mortgaged, a structure made therewith was not subject to the lien, unless that was expressly agreed. D. 13.7.18.3. A right to recover pledged property was barred in 30, and in some cases, 40 years. C. 7.39.3.

8.25.1. Emperors Severus and Antoninus to Proculus.

If you shall prove to the president that you were manumitted (by the debtor) and lived in freedom with the knowledge of the woman to whom you are said to be pledge, the pledge will appear to have been released by the consent of the creditor, and it is certain that by reason thereof you were legally manumitted, and that you cannot be reclaimed into servitude by the heir of the creditor.
Promulgated April 20 (205).

Note.

Consent to the release of a pledge or mortgage, as shown by several laws in this title, and also by C. 8.13.23, was an effective release, even though there was no consideration whatever therefor. And such consent might be implied from conduct. Thus in this case the creditor knew that the mortgage slave was living in freedom, and did not object, and hence ratified the manumission; or, rather, it was implied, that the manumission was originally made with the consent of the creditor. Similar in principle are laws 2, 6, 8, of this title.

8.25.2. Emperor Antoninus to Maternus.

If you prove that you bought the farm and that possession thereof was delivered to you with the knowledge and consent of the woman who says that it was pledged to her by the vendor, you will have a good defense against her. For a pledge is contracted and released by (mere) consent.

Promulgated February 12 (208).

8.25.3. Emperor Alexander to Taurus.

If your debtor who pledged all of his property to you on account of a loan, subsequently made a contract with the city without your knowledge or consent, he did not thereby prejudice your rights.

Promulgated April 11 (227).

8.25.4. Emperor Gordian to Aquilinus.

Since you say that the property which you bought from a debtor and which had been pledged to another, was bought with the latter's knowledge who released his pledge, (then) since his pledge became void through his consent, unless a new agreement was entered into which again created a pledge, the property cannot be claimed as though the pledge still existed.

Promulgated April 21 (239).

Note.

A consent once given for the release of a lien could not be withdrawn, and hence a new agreement was necessary to again create such lien. See law 11 of this title.

8.25.5. The same to Asclepiades.

If the debt which you mention was released by an invalid pact, you are not forbidden to still demand it, and you may, in the usual manner, claim the property pledged.

Promulgated September 8 (241).

8.25.6. Emperors Diocletian and Maximian to Argius.

If at the time the land was sold the creditors who were notified by edict, and were present, and did not pursue their rights, they can be said to have lost their obligation of pledge.

Promulgated February 11 (286).

8.25.7. The same to Paulus.

If your uncle's female creditor, with an encumbrance on a farm, which was pledged by due bill, directed the (duebill) to be returned, it is clear that she also released the pledge.

Promulgated September 9 (287).

8.25.8. The same to Apollonius.

If when the fisc sold mortgaged property, the creditors stood by in silence, it is clear that they have lost their right of action which they had against the property; for a fiscal sale should not be easily overturned.

8.25.9. The same to Hermianus.

Since you state that you paid a debt drawing interest, for you father-in-law pursuant to his mandate, the president of the province will see to you indemnification by returning to you the money which you so paid, as well as the interest thereon (pursuant to suit against you father-in-law). 1. But if you delivered the slaves, received from the creditor, which had been given as a pledge, to your father-in-law, with the intention that the pledge should be released, such lien once extinguished cannot be revived. Promulgated October 1 (290).

Note.

In this case the son-in-law took up a debt which the father-in-law owed to a third party. The debt was secured by a pledge. This pledge was delivered back to the father-in-law with intention, on the part of the son-in-law, that it should be released. The result was that the pledge was released and was no longer incident to the debt which the son-in-law took up. The latter might, however, still sue the father-in-law for the debt itself and recover it, though he no longer could rely on the pledge.

8.25.10. The same and the Caesars to Quintilla.

If debtors alienate property, pledged or hypothecated to creditors, without the latter's consent, the existing lien is not released. Given December 1 (293).

Note.

The title to the property passed subject to all its incidents and the lien thereon accordingly still subsisted. C. 8.27.12; C. 8.13.15. A purchaser, accordingly, purchased, and a second mortgagee took his mortgage, at his peril. While we, accustomed to our registration laws, would consider the situation, as it existed under Roman law, perilous, commercial transactions were probably not near so numerous in the Roman Empire. The population was not nearly so migratory as in the United States. Some mortgages were doubtless registered, and on the whole purchases and second mortgages were probably nearly as safe as with us, or registration would have been made compulsory.

8.25.11. Emperor Justinian to Johannes, Praetorian Prefect.

We exercise our usual providential care in connection with pledges and hypothecations of property, on which some creditors have a lien, and which is subsequently sold or in some other manner transferred by the debtors with the consent of the creditor, and which thereafter, in some lawful manner, returns to the hands of the former owner. 1. The jurists had different opinions in such case, some of them saying that the right of the pledge was renewed on account of the inclusion therein of "future property" - a clause usually put in general hypothecations - others that the lien was entirely extinguished. 2. It appears best to us that when a creditor has once consented to an alienation of the pledged property, thus thinking little of his right, it is unbecoming for

him to claim the same property as pledged to him from the beginning or to disturb the holder thereof.

Given at Constantinople October 18 (532).

Note.

In D. 20.6.10, the former law is stated. See 44 Z.S.S. 55. Justinian's law can hardly be said to be an advancement in equity.