

Book VIII.
Title XVIII.

Concerning those who take the place of prior creditors.
(Quit potiores in pignore habuntur.)

Bas. 25.4.13, et seq.

8.18.1. Emperors Severus and Antoninus to Marcellina.

Those whose money goes to a mortgage creditor do not always step into his shoes. This takes place only when a man subsequently loans money (to the debtor), under the agreement that he should have the same lien and should take the place of the original lienholder. 1. Since this was not done in your case - for it has been decided that you did not get the pledges - you uselessly think that you have the aid of our constitution appertaining to that matter.

Promulgated July 15 (209).

Note.

There were cases in which mortgage security (using that term also in case of pledge proper) of one debt could be transferred, either by operation of law or agreement, so as to be mortgage security for another debt or to protect another person:

1. The authorities seem to be agreed that a second, third or other subsequent mortgagee (or pledgee) had an absolute right to pay off the mortgagee or pledgee prior in right, and if he did so, he stepped into the shoes of the person prior in right without any assignment of the latter, but by operation of law. C. 8.17.1 and 5; C. 8.18.4; D. 20.5.5; D. 20.4.12.6; Winscheid § 233b, 4.

2. When a creditor had security from his debtor and thereafter made a novation of his debt whereby another debtor was substituted, the first debt fell, and with it the security, unless it was agreed with the first debtor that the security should continue for the novated debt; such agreement was valid. C. 8.26.1.

3. When a man bought property that was mortgaged and the money paid for the property was paid to mortgage-creditors for the purpose of releasing the property from the lien thereon, the purchaser of the property succeeded to the rights of the mortgage-creditor, so as to protect him against subsequent mortgagees. C. 8.18.3.

4. If a man advanced money to another, a debtor, in order to pay off the latter's creditor, and it was agreed between them that the person so advancing the money should have the same security as the first creditor had, such agreement was binding. C. 8.18.1; D. 20.4.12.8.

8.18.2. Emperor Antoninus to Felix.

Since you paid money to the fisc for your father who did not have you in his power (you having been emancipated), and you succeeded to the privileges of the fisc and occupy the position of the party to whom you paid the money, the creditors of your father who had a personal action against him or to whom he subsequently gave a lien, by contract (on the same property) could not, by selling your pledges without your knowledge, prejudice you in your rights. 1. Hence you may know that if anything was

paid by your managers while you were absent (for the redemption of the property), you may sue to recover it as for money paid, but not owing, and follow up your pledges.
Promulgated at Rome October 1 (216).

8.18.3. Emperor Alexander to Valens.

If prior creditors, who had a lien on land, were paid with your money, you buying such land, so that the price should go to these creditors, you succeeded to their rights, and you can protect yourself by a valid defense against those whose rights were inferior to the rights of the prior creditors.¹

Promulgated February 1 (224).

8.18.4. Emperors Diocletian and Maximian to Corpophorus.

If the municipality had a prior contract whereby the farm was pledged to it, you, as a subsequent creditor, have the right to offer to pay it its money in order to step into the shoes of the municipality.²

Promulgated May 18 (286).

¹ [Blume] D. 20.4.17.

² [Blume] See C. 11.30.2. It is probably assumed that the subsequent creditor had a lien.