

Book VIII.
Title XXI.

Concerning liens given by the judge (praetor), and that the right of the judge to give possession shall also extend to rights of action in favor of debtors.
(De praetorio pignore et ut in actionibus etiam debitorum missio praetorii pignoris procedat.)

Bas. 25.7.14.15.

8.21.1. Emperor Justinian to Mena, Praetorian Prefect.

When judges deem proper to give any creditor a praetorian lien, we direct that they may decree it (by putting the creditor in possession) not only on movable, immovable and self-moving property, but also on rights of action belonging to the debtor. Given at Constantinople April 1 (529).

Note.

That a judge could give a man a lien by putting the latter in possession of property has already been mentioned in C. 8.17.2 and 4. See also C. 6.54 and headnote to C. 7.53 (2). In the first law of this title, it is provided that possession might also be given of an account, which, of course, could not be a physical possession as in cases of corporeal property. The judicial distraint was probably made by order of the judge, and a notice to the debtor not to pay the original creditor, as is done in modern garnishment proceedings. The order putting a party in possession was required to be made by a judge or plenary jurisdiction; it could not be made by a municipal magistrate. C. 2.1.4; D. 50.1.26. Buckland, R.L. 717. Before the enactment of law 1 of this title, no possession could, perhaps, be given of accounts, as of other property. 9 Cujacius 1147.

8.21.2. The same to Julianus, Praetorian Prefect.

In dispelling doubt in the ancient law, we have considered the two kinds of hypothecations - one which arises out of the agreements between persons, and one which is given by judges and is called a praetorian lien. 1. And since we find in connection with conventional pledges or hypothecations, that not only a creditor who has possession is given legal assistance (to enforce his rights), but also one who happens to lose the possession, either by his own fault or by fortuitous circumstances, we have deemed it right to also give a creditor the right of recovery in case of a praetorian lien, no matter how he may lose the possession, whether by his own fault or by fortuitous circumstances. 2. For though he ought to hold onto his lien, lest he suffer some loss, still we interpret the matter liberally, in order that a creditor may not be prejudiced, and give him the right of recovery.

Given at Constantinople August 1 (530).

Note.

This law states that liens might be created (1) by agreement, (2) by the praetor. The second method was by putting a man into possession for the purpose of conserving the property, or seizing the property as upon execution, as mentioned in the next title. See headnote to this title. There was a third lien, however, which has already been considered, namely a lien given by direct operation of law. C. 8.14. Prior to the

enactment of the present law, a praetorian lien - that is to say a lien given by the judge - was probably lost, where the man put into possession let the property get away from him. That rule was changed by this law. 9 Cujacius 1148.