

Book VIII.
Title XXXIII.

Concerning the acquisition of ownership (of pledges).
(De jure domini impetrando.)

Bas. 25.7.57, et seq.

8.33.1. Emperor Alexander to Nicolaa.

Since you want to acquire the ownership of pledges by authority of the emperor, you should let us know the names of the debtors whom you claim to have defaulted in payment and signify whether you have complied with the usual requirements, and you may know, if the creditor has pledged all of his property to you, you cannot have the whole of it assigned to you in a lump.

Promulgated November 19 (229).

Note.

The right of the emperor to give the ownership of pledged property to a pledgee or mortgagee, if no purchaser could be found, was one of the peculiar provisions of the Roman law. The same provision applied where property was seized on execution and no purchaser could be found. See C. 8.22.3; C. 7.53.3, and headnote to C. 7.53. Laws 2 and 3 also refer to the same practice, and law 3 provides that where the ownership was set over, it became only a qualified ownership in the first instance, but became absolute after two years. The emperor would not, as stated in law 1 of this title, set over all of the property of a debtor if a lien had been given thereon, but he would assign only a specific portion, which would equal the debt. Reference to this practice in case of contractual liens is also made in D. 13.7.24 pr; D. 41.1.63.4; D. 27.9.5.3.

8.33.2. Emperor Gordian to Justa.

If a creditor asked from Our Serenity the right of ownership of a pledge, and he, after the rescript (to that effect), accepted interest from you for another year, he seems to have abandoned the right received from us.

Promulgated December 4 (238).

8.33.3. Emperor Justinian to Demosthenes, Praetorian Prefect.

An ancient rule, which was not at all observed in practice, should, we think, be entirely abolished, or rather corrected by a clearer remedy. In case a man wanted to acquire ownership of property pledged to him, the property was, according to the ancient rule, to be offered at public sale, and a year was give for the redemption of the property. We have seen no property offered at public sale, and have heard of no such offering except only through books. 1. We, therefore, ordain that whenever a man pledges his property to a creditor and the manner of sale is provided for in the agreement, the covenants as to time or other matters must be performed as agreed between the creditor and the debtor. But if no agreement was made, the lender, upon giving notice to the pledgor, or upon a judicial decision, may sell the property, two years after the giving of such notice, given in the presence of witnesses (attestatio), or after the rendition of such judicial decision. 2. But if there is no one who wants to buy the property, so that it

becomes necessary for the creditor to take possession thereof as owner, in such cases, the following rule shall be observed, namely: If the debtor is present, a notice (to pay) shall be sent him after the expiration of (the aforesaid period of) two years; if he is absent, the creditor must go before the provincial tribunal and inform the judge, so that the latter may hasten to find the debtor, fixing a definite time during which the latter may be informed by the apparitors what the creditor wants, and if the debtor is found, a definite time shall be fixed within which he may pay the money loaned to him and receive his pledge back. 3. If the debtor has not been found anywhere, the judge shall fix a time within which he may appear and pay the money and redeem his property from the pledge. 3a. But if he has not been found within the time fixed, or refuses to pay all of the money loaned, the creditor may apply to Our Imperial Highness and ask in his petition to be permitted to hold the property as owner, and may then receive the ownership of the property pursuant to an imperial order.¹ 3b. After such order has been made, the debtor shall, out of compassion, have two more years from the date of the (aforesaid) imperial order, in which to get his property back equitably, during which he may pay the creditor, now become owner, the debt with interest, together with the damages sustained by the creditor by his fault - the amount of which shall be stated by the creditor on oath - and recover his pledge. 3c. But when the period of two years has elapsed, the creditor and owner shall have the absolute, and now irrevocable, right thereto. 4. And if the property pledged is found to be of less value than the amount of the debt, the creditor retains his right as to the deficiency. 4a. If the value of the property equals the debt, the creditor has the unquestioned right to all of the property previously pledged. 4b. If, on the other hand, the property pledged is worth more than the amount of the debt, our law gives the debtor the unimpaired right to such excess: the creditors of the lender (now owner) have no claim thereon, but the rights thereto are preserved for other creditors of the debtor or for the debtor himself. 4c. And in order that this community-right (in the property) may not give rise to trouble, the creditor, that is, the owner, may pay such excess to the debtor, or the creditor of the debtor, he to be given (in turn) a proper guaranty (for his own protection). 5. And if the creditor, upon becoming owner of the property, prefers to sell it, he may do so, saving to the debtor any excess. 5a. If a question is raised as to the sale of the property for too low a price, the creditor must take an oath that he is guilty of no trickery or fraud, but that he sold the property for as much as it was possible to get for it; and he shall be compelled to account only for whatever amount of excess shall appear from his oath. If it appears from his oath that he received less than the debt, he shall still have an action for the deficiency. 6. As long as the property is in the possession of the creditor and owner, the value thereof, whether more or less than the debt, shall be a matter of judicial determination, and the amount fixed by the judge shall be considered the value thereof.

Given at Constantinople March 18 (530).

¹ [Blume] It will be noted that the same right existed where execution was issued and no purchaser could be found by fraud of debtor. C. 8.22.3, except that in that case the creditor had to receive the property in satisfaction.