

Book II.
Title XXVIII (XXIX).

If (restitution of rights is demanded) against the sale of a pledge.

2.28.1. Emperors Diocletian and Maximianus to Sabina and others.

It has long been the rule that minors are aided also against the sale of pledges made by creditors, provided that they are greatly damaged. If you show, therefore, that when land was seized and sold as a pledge, you suffered great damage from such sale, the aid of restitution of rights will be granted you, especially since you affirm that you are still minors.

Given at Sirmium, November 22 (290).

Note.

If the pledge was given by the predecessor in interest, a sale could not be set aside (L. 2 h.t.), if otherwise legally made. Paul, Sent. 1.9.8. The instant rescript deals, according to some authorities with a sale made by the court—an involuntary pledge, and could not be set aside, except when the damage was great. And that rule seems sound. Savigny, 7 System 152, 157; 5 Donnellus 1121-1122. Other authorities maintain that the rescript deals with a sale by the mortgagee, and that the rule here stated applied to such sale. Dernburg, 2 Pfandrecht 238; Windscheid §117, note 6. D. 20.5.7.1 seems contrary to that. See also D. 4.4.9 pr. and 39 L.S.S. 60, note 6, and C. 2.50.6.

2.28.2. The same emperors and Caesars to Severa and Clementiana.

Your request whereby you demand¹ that the property which a creditor sold as property formerly pledged to him by your father,² should be restored on account of your age, is not based on reason. 1. That, too, is the law, if you become heir to an outsider. For if the creditor did not proceed honestly, sue him, rather, or your guardians or curators, who permitted the property to be sold.

Given at Sirmium April 19 (294).

¹ [Blume] Probably curators or guardians.

² Blume penciled a question mark in the margin adjacent to these lines. Scott's version is "A creditor of your father having sold certain property of the latter which had been pledged to him, you have no right to ask for the sale to be rescinded, and restitution made on account of your age." 6 [12] Scott 229 (as C. 2.29.2).