

Book VIII.  
Title XLV.<sup>1</sup>

That a creditor is no guarantor against eviction.  
(Creditorum evictionem non debere.)

8.45.1. Emperor Alexander to Publicius.

Since my procurator sold, as creditor, land pledged for debts due the fisc, no warranty against eviction exists, because a private creditor enjoys the same right unless a special warranty was given by him. But if the fisc thereafter succeeded to the rights of another creditor, it cannot raise and just controversy against the purchaser (at a sale formerly made by the fisc), whether its right, when it made the sale, was superior, or inferior (to that of other creditors), inasmuch as a creditor who makes a sale under a pledge thereby in any event guarantees that his right is superior to that of other creditors.<sup>2</sup> Promulgated October 18 (223).

8.45.2. Emperor Gordian to Sabinus.

If your father purchased farms from a (female) creditor at a sale under a pledge, and he was evicted therefrom, you have a lawful claim against the female creditor only<sup>3</sup> if, when she sold, she gave a warranty against eviction or sold the property to your father, whose heir you are, fraudulently, knowing that the title to the property was not without defect. For, while a sale of that kind does not entail a warranty against eviction on the part of a creditor who is ignorant of such defects, it does not, on the other hand, excuse a creditor who is guilty of fraud or deceit. Promulgated April 6 (240).

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<sup>1</sup> [Blume] Corrected 1/15/32.

<sup>2</sup> [Blume] A junior lien holder had no right to sell the property unless he paid the prior lien. C. 8.17.8.

<sup>3</sup> [Blume] Thought to be interpolated. Under this and the preceding rescript, a purchaser of pledged property, sold under a pledge had no recourse against the vendor thereof, if he was subsequently evicted from the property, his only remedy being the right to have the vendor assign the latter's action over against the pledgor. D. 21.2.38. In line with this rescript are D. 20.5.10 and 12.1; D. 21.2.38 and 68. All are thought to be interpolated, and that classical law was to the contrary. See Index Interp. 47 Z.S.S., 521. Haymann, 41 Z.S.S. 61, believes, however, that the parties were at liberty to make whatever contract they wished. The vendor was, in any event, liable if he failed to act in good faith, and, under law 1 h.t, if the pledgor had not given him the first lien.