

This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1840 Excerpt: ...which gave a preference to certain persons and claims, independent of the order of time; and a constitution of Leo gave a priority to a pledge which was contracted by a public instrument (*instrumentum publice confectum*), or by a private instrument attested by three witnesses, over every other pledge which was to be proved by any other evidence. This law was intended to prevent fraudulent agreements by which a pledge would be antedated. Where there were several creditors, he who had the priority over all was entitled to sell and pay himself; the surplus, if any, belonged to the creditor who was next in order, and so on till the whole was exhausted. If a creditor who was posterior in order of time, wished to stand in the place of him who had the priority, he could do so by paying him his debt, and he then occupied (*successit*) the same place and had the same right as the prior creditor. This doctrine was founded on the assignable character of a pledge, for though the pledgee was not the owner of the thing, and could only sell it in the manner already mentioned, he could transfer his interest to an assignee, and could even transfer to a second pledger the *jus vendendi* when the second pledger was excluded from such right by special contract. (Dig., 20, tit. 3, s. 3.) When a subsequent creditor advanced a sum of money which was applied to the preservation of the thing pledged, for instance, for the purpose of repairing a ship, he had a priority over creditors of earlier date, on the ground of his having by his loan secured the thing. (Dig., 20, tit. 4, s. 5.) The same rule, perhaps somewhat more limited, prevails in our own law as to money lent on the security of a ship. As the pledger remained the owner of the thing pledged, he could of course sell it, but the p...

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