

Book VIII.
Title XXVI.

A pledge may be held also for an unsecured debt.
(Etiam ob chirographariam pecuniam pignus teneri.)

Bas. 25.8.16.

8.26.1. Emperor Gordian to Justus.

A pledge is lost, if, by a novation of the debt, you transferred the obligation to pay to another, and it was not agreed that the lien on the property should remain. 1. But if an agreement was made between you and the new owner of the property who took upon himself the obligation to pay, that the same farm should be pledged to you, you may, though you secured judgment in a personal action, still pursue the property pledged. 2. And if you were put in possession, you are not compelled to give it up on the plea of fraud, unless also the money due you without security is repaid or offered to you. For you rightly contend that debtors who only return the money for which the pledge was given ought not to be heard unless they also pay the money received on a simple loan. 3. This does not apply to a subsequent creditor; for it is not necessary for him to pay an unsecured debt to a prior lienholder.
Promulgated March 15 (239).

Note.

This law contains various subjects:

1. If a voluntary novation was made of the debt, the original debt was released, and hence the lien was also extinguished, unless kept in effect by express agreement. The case supposed is as follows: A, debtor of B and owner of property pledged to the latter, sold the land to C and the agreement was made that C should be held for the debt. Here was a new debtor, and in order to keep the lien alive, an agreement to that effect was required to be made with C. See also D. 20.4.3 pr.

2. A judgment, too, constituted a novation, but this was involuntary, and did not release the lien. See to the same effect C. 8.13.8.

3. Not only was the property bound for the debt expressly secured thereby, but it was also bound, in case the property was delivered into the possession of the creditor, for an unsecured debt, as against a demand made by the debtor. "Chirographaria pecunia" means an unsecured debt - a debt evidenced merely by a duebill without security.