Artykuł został zdigitalizowany i opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.
The idea of Roman law that we have and that is often presented at university lectures has been based above all upon dogmatic sources. The output of jurisprudence, included in the Justinian's compilation, legal statutes and above all imperial constitutions preserved in different ways form our view on the legal environment of the ancient Romans. Alas it is the law as it should have been, as its creators wanted it to be, and not the one that actually functioned.

The everyday legal practice is shown by a relatively small part of fontes iuris cognoscendi. The documents that evidence it come mostly from Egypt. Done on papyrus, usually in Greek, they help us to reconstruct the legal customs that were used there. Everyday trade practice in other parts of the Empire would have been unknown if we did not have some epigraphic artefacts. An important part of them is constituted by the so called wax tablets (tabulae ceratae).

One of the most important finds of such tablets in the recent years was the discovery of the so called Tabellae Pompeianae Sulpiciorum. They were saved along much more famous relics thanks to the feral explosion of Vesuvius of 24th of August 79. The place of their survival was discovered in 1959 during

1 Confront above all: V. ARANGIO-RUIZ, Fontes Iuris Romani Antejustinianni III: Negotia, Florentiae 1969, passim — later quoted as: FIRA III.
2 Classification of the tablets as epigraphic, and not for instance papyrological material, is purely conventional. Cf. also R. PINTAUDI & P. J. SJPESTEIJN, Tavolette lignee e cerate da varie collezioni, Firenze 1989, passim.
3 All the dates in the paper are A.D.
construction works on grand curve of the highway Naples-Salerno more or less six hundred meters from *Porta Stabiana* of Pompeii. It was a curious building, called now *villa dei triclini* or *agro Murécine*. It was probably situated in a location previously identified as Pompeii sea harbour, presently rather a river harbour of the famous town. The excavations were conducted in haste, the building in its entirety has never been uncovered. The haste during the excavations gravely influenced the preservation of the tablets, not only did their state rapidly deteriorate but also they were not documented properly.

The first works on the tablets gave surprising results. First of all most of them were made in Puteoli and connected with this town. Secondly in the moment of explosion they were already "waste paper" (the youngest of the documents is dated for the year 62). Thirdly nearly all of them directly or indirectly concern Cai Sulpicii, as it seems, wealthy banker *familia* of freedmen.

The edition of the tablets did not have a lucky story either. 302 photographs of the tablets do not document of all them (they bear the following inventory numbers of the Soprintendenza Archeologica di Napoli: A 13510-13726 and A 14670-14754). The readings supplied by the first editors were less than satisfactory.

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5 The Sarno course as well as the course of the cost in Antiquity was different from the present. Cf. the results of geomorphological examinations and relevant charts in E. FUMARI (ed.), *Neapolis — progetto sistema per la valorizzazione integrale delle risorse ambientali e artistiche dell'area vesuviana II A: Nuovi contributi all'identificazione del litorale antico di Pompei* (Roma 1994) 245ff. *Ibidem* presentation of the hypothesis on river harbour in Pompeii; pp. 256-259 deal with data particulary connected to *agro Murécine*.

6 Not every tablet was duly photographed, no indication of connection between photos and the originals were made. They are, for example, differences in calculations how many tablets were discovered (S. AUGUSTI, *op. cit.* [n. 4] 43 gives figure of 200, which contradicts Elia's calculation of 300).

7 On Cai Sulpicii above all: G. CAMODECA, "Per una riedizione dell'archivio Puteolano dei Sulpicii. V. TP 61; TP 30; TP 65; TP Inv. 14370; TP 22,4; TP 21,4", *Puteoli* 9-10 (1985-1986) 18-24; *idem*, *L'archivio ...* (cit. n. 4) 23-34; WOLFF & CROOK, *Rechtsurkunden ...* (cit. n. 4) 14-15; GRÖSCHLER, *Die tabellae-Urkunden ...* (cit. n. 4) 57-66.

ve,9 U. Manthe as well as by John A. Crook and Joseph G. Wolf10 but above all by Giuseppe Camodeca.11 In the present article I shall use, if possible, the readings of G. Camodeca (Tabulae Pompeianae Sulpiorum, siglum TPSulp.) The third and fourth document is cited as edited by J. G. Wolf and J. A. Crook and therefore bears siglum TPN (= Tabulae Pompeianae Novae). The reading of the fifth document, is consistent with the editio princeps.

An interesting juridical problem seems to appear in the tables in question. In some of them the fact of slave’s concluding a stipulatio in a form of sponsio was documented. This action has occurred as inconsistent with G. 3. 93-94. And moreover it has appeared to many scholars as impossible from the dogmatic point of view.12 Let us firstly examine the said documents.

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9 L. BOVE, Documenti processuali dalla Tabulae Pompeianae di Murecine (Napoli 1979); IDEM, Documenti di operazioni finanziarie dall’archivio dei Sulpici (Napoli 1984).

10 WOLFF & CROOK, Rechtsurkunden ... (cit. n. 4).


12 All the Roman law manuals deal in general terms with the problem of sponsio and stipulatio. Cf., among others, F. SCHULZ, Classical Roman Law (Oxford 1951) 773-506; M. KAISER, Das römische Privatrecht 17 (München 1971) 538-543; IDEM, Das römische Privatrecht II (München 1975) 273-281. Much more detailed study one can find in: F. PASTORI, Appunti in tema di sponsio e stipulatio, Milano 1961, with bibliography. The only work that directly deals with sponsio servi and moreover has no doubts about its possibility is G. SCHEILLO, “Sulla stipulazione del servus e del filius familiae”, [in:] Studi in onore di Pietro Bonfante (Milano 1930), IV, 202-241
THE DOCUMENTS

The first four documents, executed by Caius Novius Eunus for Hesychus have met well-understood interest among the scholars because of their language — an interesting form of vulgar Latin used in Puteoli the 1st century AD.\(^\text{13}\)

**TPSulp. 51 = TPN 43 = TP 15**

* atramento, index, a triptic

18th (or 28th) June 37

Chirographum C(ai) Nov//ii Euni HS X mutuorum
Put(eolis) XIV k(alendas) Iul(ias) // Proculo et Nigrino co(n)s(ulibus)

**TPSulp. 51**

*graphio, scriptura interior*

\[
\text{Cn(eio) Acceronio Proculo C(aio) Petronio Pontio co(n)s(ulibus) XIV k(alendas) Iulia C(aius) Novius Eunus scripssi me accepisse \{ab\}}
\]

4 mutua ab Euno Ti(beri) Cessaris Augusti
luberto Primiano appssente per
Hessucus ser(vus) eius et debere ei sesterta
decem milia nummum que ei redam

8 cum petiæret et ea sesterta decem mi-
lia (q(uae)) s(upra) s(cripta) s(unt) p(roba) r(ecto d(ari) stipulatus
\{ets\} est Hessucus
Euni Ti(beri) Cessaris Augusti l(iberti) Primiani
ser(vus) spepo(n)di ego C(aius) Novius Eunus;

12 pro quem iis sesetris decem milibus
nummu dede ‘ei’ pignoris arabonis-

**TPSulp. 51**

*graphio, scriptura interior*

ve nomine tridici alexandrini modium
septe milia plus minus et ciceris faris
monocpi lentis in sacis ducentis modium

4 quator milia plus minus que ominia \{dic\}fateor.

\(^{13}\) J. N. ADAMS, "The Latinity of C. Novius Eunus", *ZPE* 82 (1990), 227-247. On the *mutua* of Ca-ius Novius Eunus see also: DOVE, *Documenti processuali* ... (cit. n. 9) 19-57; CAMODECA, *L’archivio* ... (cit. n. 4) 181-187; WOLF & CROOK, *Rechturkunden* ... (cit. n. 4), passim; these works however do not deal with problem of *sponsio* called for by Hesychus. Cf. also GRÖSCHLER, *Die tabellae-Urkunden* ... (cit. n. 4) 154 n. 26, who sees Hesychus’ *sponsio* as perfectly regular — the slave was acting as his master representative and therefore allowed to take part in a *sponsio*. 
possita habeo penus me in horeis Bassianis
puplicis Putolanorum que ab omni
vi periculo meo est. ⑧
8  Actum Putolis

TPSulp. 51
atramento, signatores

| C(ai) Novi          | ① Euni  |
| Q(uniti) Falerni    | ② [---] |
| C(ai) Sulpici      | ③ Fausti|
| C(ai) [ . . . . ]   | ④ [ . . . . ] |
| C(ai) Novii        | ⑤ Euni  |

TPSulp. 51
graphio, scriptura exterior

Cn(eio) Acerronio Proculo C(aio) Petronio Pontio Nigrino
co(n)sulibus
quartum(!) kalendas Iulias
C(aius) Novius Eunus scripsi me accepisse mutua ab Eueno
4  Ti(beri) Caesaris Augusti liberto Primiano apsente per
Hesychum servum eius et debere ei sestertium
decem millia nummum quae ei redam cum
petiet / et ea HS X m(illia) n(umnum) q(uae) s(upra) s(cripta)
s(unt) p(roba) r(ecte) d(ari) stipulatus est
8  Hesychus Eueni Ti(beri) Caesaris Augusti l(iberti) Primiano
servus spopondi ego C(aius) Novius Eunus / proque
iis sestertiiis decem m[illibus] nummum dedi
ei pignoris arrabo[n]se nomine tritici alexandri
12  [plus minus
modium septem millia et ciceris farris monocopi
lentis in saccis du[en]tis [mod]ium quattor millia p(lus) m(inus)
quae omnia reposita habeo penes me in horreis
16  Bassianis publicis Put[teo]lanorum quae ab omni vi
periculo meo esse fat[oor]. Act[tum] Puteolis.

I, II: the version written by Caius Novius Eunus bears many “errors” since
he did not know written Latin well enough. Many of the words were writ-
ten in their phonetic version which mirrors the spoken language of the 1st
cent. AD Puteoli. Since the “more standard” version of the document has
been preserved and is quoted as well there is no need to indicate the correct
spelling. I-II, 2 and I 2, 2 and III 5, 2 the differences in dates could be ex-
plained by a mistake made either by the scribe or Eunus. Considering the fact that the date XIV k. Iul. is mentioned twice we should accept the date of 18 rather than 28 of July. II, 3, 8 and II 4, 1-6 the circles represent the seals of the chirographant and the signatores.

Translation (based on scriptura exterior)

“During the consulship of Cneius Aceronius Proculus and Caius Petronius Pontius Nigrinus. On the fourth day before Calends of July (28th June 37). I, Caius Novius Eunus wrote that I had got a loan from being absent Euenus Primianus, freedman of Tiberius Caesar Augustus, through Hesuchus, his slave, and that I owe him ten thousand sestertii of money, which I shall give him back as he asks so. And these above said HS 10,000 of money shall be returned properly in good coin. Hesychus, slave of Euenus Primianus, freedman of Tiberius Caesar Augustus, has called for a stipulation for it. I, Caius Novius Eunus, have stipulated. And I have given him for these ten thousand sestertii by the virtue of pledge or advance pay about seven thousand modii of Alexandrine wheat and about four thousand modii of peas, spelt, monocopi (of some kind of corn?) and lentils in two hundred sacks, all of which I have stored at my disposal at the public Puteolan Bassian granary, and I declare as to them that they are (there) at my own risk. Done in Puteoli.”

By the above quoted document Caius Novius Eunus acknowledges having taken a loan from absent Euenus Primianus, through his slave Hesychus. We may assume that Hesychus was probably servus arcarius of Tiberius’ freedman and as such represented his owner in financial business. Acting through a slave, or rather through any dependent person was a regular trade practice. After the declaration its repayment is confirmed by a sponsio. The chirographant acknowledges as well having effectuated a datio pignoris. The pledge was made on wheat and cereals stored in public granaries. It is worth noticing that the pledgor takes all the risk resulting from the duty of not deteriorating the pledge. Such provision would be therefore different from the classic form of pignus, in which the pledgor is responsible for custodia. With this exception the schema of the act is identical with a well known loan pattern.

Content similar to TPSulp. 51 could be found in TPSulp. 52:

14 Its value is much higher than the loan value (probably twice as much).
15 Cf. CAMODECA, L’archivio ... (cit. n. 4) 165-198 (and in particular 171-176).
This tablet, similarly to TPSulp. 51 is written in Latin in its phonetic version.

TPSulp. 52 = TPN 44 = TP 16

atramento, index, a triptic

2nd July 37

Chirographum C(ai) No//vii Euni HS X // ob pignus tritici

TPSulp. 52

graphio, scriptura interior

C(ai) Cessare Germanico Aug(usto)
Claudio Germanico co(n)s(ulibus)
6

Hessco Eunni Ti(berio) Cessaris Augusti
l(iberto) Primiani ser(vo) (muta) et

nummu pret(er) alia HS X n(ummum)
que alio chirographo meo

et ebo et ea sestertia tra mili

nummu

8

q(uae) s(upra) s(cripta) s(unt) p(roba) r(ecte) (recete) dari

TPSulp. 52

graphio, scriptura interior

stipulatus ets Hessucus Euni
Ti(berio) Cessaris Augusti l(iberti) Primiani
ser(vus) spepo(n)i di ego C(aius) Novius Eunus

in qua ominis suma dedi ei

pignoris (nomine) trigidi alxadrini modi-
um septe mila quo est possit[um]
in horeis Bassianis puplicis Putola[nor(um)]

medis horeo duode[cimo] et sacos ducen[t-

os lenti s(ice)r(is . . ) + isi monopi
et faris in quibus sunt modium

quator mili qui sunt possiti in

vi p(e)riculo meo est fator. ☑

Actum Putolis.
quae; I 2, 10: debo = debeat; II 3, 1: ets = est; Euni = Eueni; II 3, 4 & 12: omin... = omni...; I, suma = summa; II 3, 5: tridigi alxadrini = tritici alexandrin; II 3, 6: quot = quod; II 3, 10: faris = farris; II 3, 12: horreis = horreis; II 3, 13: personal form est instead of infinitive esse, which would form with qu(a)e construction accusativus cum infinitivo dependent from fat(e)or; fact(e)or = fateor; Φ represents the chirographant's seal. II 3, 14: Putolis = Puteolensis; II, 4: omitted, some of the names of six witnesses could be read there.

Translation
(scriptura interior)

"During the consulship of Cneius Aceronius Proculus and Caius Petronius Pontius Nigrinus. On the fourth day before the Nonas of July (2nd July 37). I, Caius Novius Eunus wrote that I had got a loan from Hesychus slave of Euenus Primianus, freedman of Tiberius Caesar Augustus, and that I owe him three thousand sestertii of money as well as 10,000 HS of money, which I owe him by my other chirographum. An these above said three thousand sestertii of money shall be returned properly in good coin. Hesychus, slave of Euenus Primianus, freedman of Tiberius Caesar Augustus, has called for a stipulation for it. I, Caius Novius Eunus, have stipulated. And for all these sums I have given him by the virtue of pledge or advance-pay about seven thousand modii of alexandrine wheat which are stored at the public Puteolan Bassian granaries, in the twelfth granary and two hundred sacs of [...]issi, monocopi (of some kind of corn?) and spelt, which make four thousand modii. They have been stored in these granaries, and I declare as to them that they are (there) at my own risk. Done in Puteoli."

Similarly, as in the document five days earlier, Eunus acknowledges having received a loan from Hesychus, as well as that his debt to the slave amounts presently thirteen thousand sestertii. The previously granted pledge secures the new loan as well. The main difference between the two documents is that this time, if one can say so, Hesychus seems to act in his own name. Probably however, TPSulp. 51 alike, servus arcarius was acting within his peculium or as an institor, and the information about the absence of the master in the TPSulp. 51 would merely be a way of expressing it. Let us notice the Eunus declaration that he owns also the money previously taken directly to Hesychus, and not to his master. Again whole obligation is confirmed by a sponsio taken by Hesychus and given by the money-borrower.

16 Which makes not a much difference since, as we well know, everything owed to the slave is legally owed to the master. Cf. different explanation of me in this place by Wolff & Crook, Rechtsurkunden ... (cit. n. 4) 19.
There are three other documents from Hesychus-Eunus dossier, two of which are of a great concern to us. They are TPN 58 (TP 17) and TPN 59 (TP 18). The time passed and now we are in the year 38. The situation of Hesychus had changed — now he is a part of Caesar’s property.

TPN 58 = TP 17

graphio, scriptura interior, a diptic

Ser(vio) Assinio Celere Sex(to) Nonio co(n)s(ulibus)
IV K(alendas) Septemberes
C(aius) Novius [Eu]nus scripssi me
4 debere H[es]uco C(ai) Cessari[i]s Aug(usti)
Germ[anici se]r(vo) Eueniano
sestert[ios mile] centum trigina
numm[os] quos ab eo mutuos
8 su[p]ssi et [reddam] ipssi aut
C(aio) Sulipicio [Fausto] cum petiarit
eosque sestertiae mile cent(um)

TPN 58 tab. I, pag. 2
28th August 38

TPN 58 = TP 17

graphio, scriptura interior, a diptic

trigina nu[m]mos q(ui) s(upra) scripti) s(unt)
proba [ecte da]ri stipulatus
ets He[sucus C(ai) C]essaris August[i]
4 Germ[anici] ser(vus) Eueniano[s]
spepodi e[go C(aius) No]vius Eunus
Actum Puteolis "

I 2, 2: septemberes = septembres; I 2, 4 & II 3, 3: Hesuco = Hesycho; Cessaris = Caesaris; I 2, 6 & 10: mile = mille; I 2, 6: trigina = triginta; I 2, 8 su[p]ssi = sumpsi; ippsi = ipsi; I 2, 9 petiarit = petierit; II 3, 3: ets = est; II 3, 6: Puteolis = Puteolae; " represents the chirographant’s seal.

The third one, TPN 86 (TP 7) of 2nd of July 37 documents a locatio horrei by Hesychus. In this granary the wheat and cereals received by him as a pledge on the same day from the borrower (quod pignori accepit / hodie ab C. Novio Euno [sc.: Eueno]) were to be stored. TPN 86 witnesses the existence of, to use an anachronic term, kind of a concern run by different freedmen of some Caius Euenus. Cf. also, however errand considerations of D. Monteverdi, “Tab. Pomp. 7 e la funzione dello iussum domini”, Labeo 42 (1996), 345-366.

One may assume that he was handed over to Caligula as his former master, Euenus had died — an easily understood fact if we remember the privileged position in law of succession of the ex-master in case his freedman died. The Euenus’ claims were transferred, too.
Translation

"During the consulship of Servus Asinius Celer and Sextus Nonius, on the fourth day before the Calends of September (28th August 38). I, Caius Novius Euenus, have written that I owe to Hesychus, the Euenian slave of Caius Caesar Augustus Germanicus (Caligula) one thousand one hundred thirty sestertii of money that I had taken from him as loans and I shall give back either to him or to Caius Sulpicius Faustus, as he asks so. These above said thousand and one hundred thirty sestertii of money shall be returned properly in good coin. Hesychus, the Euenian slave of Caius Caesar Augustus Germanicus, has called for a stipulation for it. I, Caius Novius Eunus, have stipulated. Done in Puteoli."

As it seems more than a year after the loans mentioned in the *TPSulp.* 51-52 there are still some accounts between Hesychus and Eunus to be settled, namely 1300 HS. This document probably recalls a *novatio* of the former obligations (no new loans are mentioned) and Eunus states by it that he owns the said sum of money to Hesychus. The sum has to be returned either to the lender or to Caius Sulpicius Faustus\(^\text{19}\) as claimed. This is secured again by a *sponsio* called for by Hesychus and promised by Eunus.

Not a month later Hesychus and Eunus met again as it comes from *TPN* 59.

\[^{19}\text{One of the main characters that appear in the archive. See above, note 7. His being mentioned here may mean that he assisted Hesychus as a banker, and explains why the documents have come to the archive.}\]
me nont solum peiurio tene-
ri set etiam peone nomine
in de sigulos sestertios vigienos
nummo obligatum iri et
eos HS ICCL q(u) s(upra) s(cripti) s(unt) probos recte
dari stipulatus et Hessucus C(ai)
Cessaris Augusti ser(vus) s(e)popodi C(aius) Novi-
us Eunus
Actum in Colonia Iulia
Augusta Putoles

Cn(eio) Domitio Afro A(ulo) Didio Gallo co(n)sulibus
XVII k(alendas) O[c]tobres. C(aius) N[o]vius Eunus scripsi
me debere Hesycho C(ai) Caesaris Augusti Ger-
nici s[e]r(vo) [Eunio] sestertios mille ducentos
quinquaginta nummos reliquis ratione
omni putata quos ab eo mutuos accepi
quam summam iuratus promisi me a[u]:
ipsi Hesychio aut C(aio) Sulпicio Fausto redditu-
rum k(alendas) Novembris primis per Iovem Optu-
num Max(imum) et Numen Divi Aug(usti) et Geni-
um C(ai) Caesaris Augusti quod si ea die non
solvero me non solum peiurio teneri
sed etiam poenae nomine in dies sing(ulos)
HS XX numnos obligatum iri et eos HS MCCL
q(u) s(upra) s(cripti) s(unt) p(robos) r(ecte) d(ari) stipulatus est
Hesychus C(ai) Caesaris ser(vus)
s(e)popondi C(aius) Novius Eunuus. Act(um) Putoles.

I, II: again as the previously cited tablets the version written by Caius No-
vius Eunus bears many “errors”. Since the “more standard” version of
the document has been preserved and is quoted as well there is no need to in-
dicate the correct spelling. III 5, 9: Optu- = Opti-; III 5, 16: Eunuus = Eunus.

Translation
(scriptura exterior)

“During the consulship of Cneius Domitius Afrus and Aulus Didius Gallus.
On the 17th day before the Kalends of October (15th September 39). I, Caius
Novius Eunus, have written that I owe to Hesychus the Euenian slave of Caius Caesar Augustus Germanicus (Caligula) thousand two hundred fifty sestertii left after every calculation, which I have received from him as loans. Having sworn on Jupiter Optimus Maximus, Numen of Divine Augustus and Genius of Caius Caesar Augustus I promised that this sum should be returned either to Hesychus or to Caius Sulpicius Faustus before the Kalends of November (1st November). If I do not pay on this day I shall be not only held responsible for a perjury but also I shall be obliged to pay for each day 20 HS in virtue of a penalty. And these above said 1250 HS shall be returned properly in good coin. Caius Novius Eunus. Hesychus, slave of Caius Caesar Augustus, has called for a stipulation for it. I, Caius Novius Eunus, have stipulated. Done in Puteoli.”

Last security had not apparently proven to be sufficient and therefore this time Eunus not only obliged himself to repay the money owned after some further calculations but also took on himself possible criminal responsibility that could arise in case of perjury. Hesychus must have lost his temper, and being not a simple slave, but Caesar’s one, made Eunus swear the returning of the money on numen Augusti and Caligula’s Genius. The return of the money in the stipulated term was additionally secured by penal interest: 20 HS for each day of mora. Again whole obligation is secured by a stipulatio in a form of a sponsio, asked for by Hesychus and made by Eunus. Similarly to TPN 58 the money was owned jointly and severally to Caius Sulpicius Faustus.

The last document that documents a slave’s having taken part in a sponsio is TP 35.

TP 35
Scriptura interior, a diptic

2nd May 51

Ti(berio Claudio Caesare Augusto Germanico
Quinto Ser(vio) Cornelio Orfito co(n)s(ulibus)
VI no[n]as Maias
4 C(aius) Sulpicius Cinnamus scripsi me debere
Phosphori Ti(beri) Claudi Caesaris Augusti
servo Lipidiano sestertia
nonaginta quattor millia
8 nummum; eaque sestertia
nonaginta ‘quattor’ millia nummum
quae s(upra) s(ciripta) sunt idibus Iunis primis
prob[a] recte da[r]i stipulatus est
12 Phosp[h]orus Ti(beri) Cl[audi] C[aesar]is

20 Which would be quite a lot of money then: (20 HS: moreorless 5 denarii — which would be the value of about five modii of wheat).
One of the main characters of the Archive, Caius Sulpicius Faustus declared that he owned not a petty sum of 94,000 sestertii to Phosphorus, Claudius' slave, afterwards he obliged himself in a sponsio to repay the money before the 13th of June. Similarly to TPN 58 and 59 stipulatio appears here in a function of novatio, it does not deal with a particular obligation, most probably it summarises some debts between both parties in one. The SOL proves that the obligation was fulfilled/nullified and the document was annulled. Solutum proves that at least the persons who made the document, saw it as lawful and legally binding (if it was not so then why bother annulling it so it could be not used as a proof in court?).

POSSIBLE INTERPRETATIONS

It seems that the contradictions between the quoted tablets and information preserved in Cai Institutiones could be explained in a number of ways.

Firstly one has to remember that he deals with legal practice and not legal theory here. A slave might have used sponsio, at least the people who took part in these acts might have believed so. The stricte citizen character of sponsio
might have faded away in the real trade conditions.\textsuperscript{21} Alas, against such conclusion we have other tablets documenting legal activities concluded with a slave\textsuperscript{22} or a \textit{peregrinus}\textsuperscript{23} in which \textit{stipulatio} always is made in a form of a \textit{fideipromissio}.

One could consider as well uniqueness of the situations described in the documents. In each of them a slave is the passive party of the stipulation act, the one that calls for, or receives, the promise. However this consideration does not give a satisfactory solution to our problem because of at least two reasons. Firstly Gaius, as always interpreted, excludes every kind of participation of a non-Roman in a \textit{sponsio}. Secondly the notice about passivity of the slaves is most imprecise. They take part in a \textit{sponsio} effectuating \textit{interrogatio} (cf. G. 3. 92: “\textit{verbis obligatio fit ex interrogatione et responsione}”).

Another characteristic feature of all the \textit{negotii} described above is that the slaves taking part in them are not just ordinary slaves. Hesychus is at first an imperial freedman’s slave, later a slave of Caesar himself. Phosphorus is Claudioï’s slave. Thus their extraordinary status may have caused the fact that they both took part in a \textit{sponsio}, and not in a \textit{fideipromissio}.\textsuperscript{24}

Anyway, the fact of slaves’ participation in a \textit{sponsio} in the tablets from Murécine remains doubtless. It has, moreover its analogies in the Digest. First of all there is whole third title \textit{titulus 3 de stipulatione servorum} in the book 45. Some of the fragments transmitted there are worth analysing. There are, among others:

\begin{itemize}
\item \textit{D. 45.1.38.7 (Ulpianus, 49 ad Sab.): Haec quoque stipulatio: “possidere mihi licere spondes?” utilis est: quam stipulationem servus an possit utiliter in suam personam concipere, videamus. Sed quamvis civil iure servus non possideat, tamen ad possessionem naturalem hoc referendum est, et ideo dubitari non oportet, quin et servus recte ita stipuletur.}
\item \textit{D. 45.3.29 (Paulus, 72 ad ed.): Si communis servus sic stipulatus sit: “decem illi domino, eadem decem alteri dare spondes?”, dicemus duos reos esse stipulandi.}
\end{itemize}

\textsuperscript{21} Such explanation is even more likely if we remember of other “unorthodox” applications of Roman law that are to be found in the Sulpicii’s Archive, for example: possible contractual character of \textit{nomina arcaria} (TSulp. 60-65 as construed by \textsc{Camodeca}, \textit{L’archivio} ... [cit. n. 4] 199-235) and hybrid form of \textit{mutua} (so close to the \textit{kombinierter Vertrag} described for loans from Dacian tablets by M. \textsc{Käser}, “Mutuum und stipulatio”, [in:] \textit{Ausgewählte Schriften} II (Camerino 1976), 273 (= \textit{Erinnerungen für G. S. Maridakis}, I, 155); cf. also \textsc{Camodeca}, \textit{L’archivio} ... (cit. n. 4) 173.

\textsuperscript{22} Eg.: \textit{TPSulp. 56 (TP 26) — chirographum} of Niceros, slave of colons of Colonia Puteoli

\textsuperscript{23} As, for example, \textit{TPSulp. 4 (TP 70 + 139)}, Zenon’s \textit{vadimonium}.

\textsuperscript{24} Let us not forget that eventually a slave Hesychus made a freeman Eunus swear that he would repay his debts (TP 18, I,2 vv. 12-14).
D. 45.1.122.4 (Scaevola, 28 dig.): Agerius filius familias servo Publīi Maevīi stipulanti spopondit se daturum, quī quīd patrem suum Publio Maevio de-bere constitisset: quae situm est patre defuncto, antequam constitisset, quid quantumque deberet, an, si adversus heredem eius actum fuisset aliumve successorem et de debito constitisset, Agerius teneatur. Respondit, si condi-cio non exstitisset, stipulationem non commissam.

D. 45.2.12.1 (Venuleius, 2 stipul.): Si a Titio et pupillo sine tutoris auctoritate stipulatus fuero eadem decem, vel a servo, et quasi duos reos promittendi constitui, obligatum Titium solum Iulianus scribit, quamquam, si servus spoponderit, in actione de peculio eadem observari debent, ac si liber fuisset.

In none of the above quoted texts (as well as in none of the fragments listed in the footnote 25) the jurist has doubts that the verbal obligation taken by a slave in a form of sponsio is possible. The legal consequences of such obligations pro-voke however some doubts. The stipulatio in D. 45.1.122.4 is void not because of slave’s having taken part in it but because the condition remained unful-filled. Both Paulus and Ulpianus directly confirm the legality of sponsio servi. The latter adds that verbal obligation with a slave is contracted recte if only we assume that it dealt with allowing possesio naturalis to a slave (since a slave could not posses iure civili). From the jurist cited above only Iulianus solved the problem negatively in an opinion transferred by Venuleius. This point of view, however, met a dissent of the referring jurist who noticed that a slave could have been held liable for such obligations within his peculium.

There are no doubts that some of the legal institutions (as for instance cautio rem pupili salvam fore, made to a pupil’s slave by his tutor) not only recognised slave as being able to at least call for and receive formal promise but also re-quired it.

Even Gaius, though not directly seems to have known such possibility. Conclusion of this sort may be drawn from his consideration of validity of a warranty of an obligation invalid iure civili:

As well as of a novatio of such invalid agreement:

G. 3.176: “Praeterea novatione tollitur obligatio, veluti si quod tu mihi debeat, a Titio dari stipulatus sim: nam interventu novae personae nova nascitur obligatio et prima tollitur translata in posteriorem, adeo ut interdum, licet posterior stipulatio inutilis sit, tamen prima novationis iure tollatur, veluti si quod mihi debeat, a Titio post mortem eius vel a muliere pupillove sine tutore

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25 A slave’s taking part in sponsio is also directly documented in D. 7. 1. 24 (Paulus, 10 ad Sabinum), D. 45. 3. 9 (Ulpianus, 48 ad Sabinum); D. 45. 3. 10 (Iulianus, 53 digestorum); D. 45. 3. 18. 1 and D. 45. 3. 18. 3 (Papinianus, 27 questionum); D. 45. 3. 21 (Venuleius, 1 stipulationum), D. 45. 3. 37 (Pomponius, 3 ad Q. Mucium). Since these sources merely report such fact (expressively using “spondes?” in direct speech and the pair: spopondit, stipulatus est in reported speech) there is no need to quote them in full.

26 As well as of a novatio of such invalid agreement:
G. 3.118-119: [118] Sponsoris vero et fidepromissoris similis condicio est, fideiussoris valde dissimilis. [119] Nam illi quidem nullis obligationibus acceedere possunt nisi verborum, quamvis interdum ipse qui promiserit, non fuerit obligatus, velut si mulier aut pupillus sine tutoris auctoritate aut quilibet post mortem suam dari promiserit, aut illud quaeritur, si servus aut peregrinus spoponderit, an pro eo sponsor aut fideipromissor obligetur.

Moreover the jurist does not expressively exclude a possibility of efficiency of a warranty of a sponsio of a slave (and of a foreigner). His hesitation and leaving the question opened shows that the trade conditions made efficient such, formally and legally invalid, obligations. A direct confirmation of sponsio servi may also be found in a book on verbal obligation by the same jurist:

D. 45.1.141 pr. (Gaius 2 de verb. oblig.): Si servus aut filius familias ita stipulatus sit: “illum rem aut illam, utram ego velim?”, non pater dominusve, sed filius servusve destinare de alterutra debet.

Finally it seems important to call Ulpianus’ opinion who explains how one can contract a stipulatio being absent:

D. 45.1.1 pr. (Ulpianus 48 ad Sabinum): Stipulatio non potest confici nisi utroque loquente: et ideo neque mutus neque surdus neque infans stipulatioem contrahere possunt: nec absens quidem, quoniam exaudire invicem debent. Si quis igitur ex his vult stipulari, per servum praeident stipuletur, et adquiret ei ex stipulatu actionem. Item si quis obligari velit, iubeat et erit quod iussu obligatus

This fragment may be a key to the question provoked by the Sulpicii’s Tablets. One may assume that both Hesychus and Phosphorus could have been empowered (had got a iussum) by their masters to take part in a stipulatio.

auctore stipulatus fuero; quo casu rem amitto: nam et prior debitor liberatur, et posterior obligatio nulla est. Non idem iuris est, si a servo stipulatus fuero: nam tunc prior proinde adhuc obligatus tenetur, ac si postea a nullo stipulasu fuissem.”

Although Gaius’ point of view as to efficiency of a novation made by a slave through a sponsio is obviously negative the text cited evidences the fact that such sponsiones really took place.

27 Confront also the exegesis of G. 3.119 done by PASTORI, Appunti ... (cit. n. 12) 108 ff. and 114 ff. The author mostly explains why the jurist had no doubts as to validity of a warranty of a woman’s (pupil’s) obligatio sine tutoris auctoritate and of a promise postmortem and hesitated in case of a slave and a foreigner (the first three would create an obligation but inefficient — inutilis, while in the latter three cases there would be no obligation at all — non existens).

28 Sententiae Pauli, 5 („Non solum per nosmet ipso novamus quod nobis debitur, sed etiam per eos, per quos stipulari possumus, velut per filiam familias vel per servum iubendo vel ratum habendo. Procurator quoque noster ex iussu nostro receptum est ut novare possit”) and I. 3. 17 pr: “Servus ex persona domini ius stipulandi habet ...” express the same rule even more forcibly.
CONCLUSIONS

In the light of the data from *Tabulae Pompeianae Sulpiciorum* as well as of the opinions of jurisprudence it is doubtless that the legal practice recognised slave’s ability to take part in a *sponsio* and, moreover, that obligation contracted in such way was effective in everyday trade conditions. In Puteoli of 1st century A.D. such view might have arisen because of the mixed (Romans and non-Romans — Puteoli has always been one of the biggest ports on the west coast of Italy) character of legal relations there and thus overwhelming impact of *ius gentium* on *ius civile*. In each of the cases, documented in the Sulpicii’s Archive the high position of the slaves calling for and receiving *sponsio*, calls for accurate attention. Such position might have had influence on perceiving of *sponsio servi* as valid and effective.

Finally Gaius dissent for *sponsio servi* is to be found only in the Institutions and might be explained by the school character (and as such not including extraordinary situations) of his work. There is however, as it seems, much better solution.29

G. 3.93: *Sed haec quidem verborum obligatio DARI SPONDES? SPONDEO propria civium Romanorum est; ceterae vero iuris gentium sunt (...)*

Let us see that actually Gaius’ definition is not negative. He only says that *sponsio* is proper solely for citizens while all the other verbal contracts are open both to foreigners and to Romans. In this clear and exclusive division (Romans — non-Romans) there is no room left for slaves, who are neither citizens nor peregrins. Thus the jurist simply does not take them into consideration in the reported passus. We know perfectly well this certain Roman schizophrenia as to legal position of slaves. From one hand they are things, from the other their masters are responsible for them within *actiones noxales*, and since some certain time for their legal actions within *actiones adiectitiae qualitatis*. A slave is merely *instrumentum* of his master, alas, a tool that has *peculium* and that can create and bear legal effects for the master. Therefore one should not be astonished by a slave taking part in a *sponsio*.30

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29 I am indebted for this clue to my colleagues, Agnieszka KACPRZAK and Jerzy KRZYNÓWEK.

30 See also for backing such conclusion from the dogmatic point of view: SCHIERLIO, *Sulla stipulazione* ... (cit. n. 12), passim.