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Sponsio servi

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SPONSIO SERVI

INTRODUCTORY QUESTIONS

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.¹ An important part of them is constituted by the so called wax tablets (*tabulae ceratae*).²

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 with much more famous relics thanks to the feral explosion of Vesuvius on 24th of August 79.³ The place of their survival was discovered in 1959 during

¹ Confront above all: V. ARANGIO-RUIZ, *Fontes Iuris Romani Antejustiniani 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. SJPPESTEIJN, *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,⁴ called now *villa dei triclini oragro Murécine*. It was probably situated in a location previously identified as Pompeii sea harbour, presently rather a river harbour of the famous town.⁵ 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 deteriorated but also they were not documented properly.⁶

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.⁷

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.⁸ This situation has been changed by the works of Lucio Bo-

⁴ On *villa dei triclini*: M. PAGANO, "L'edificio dell'agro Murécine a Pompei", *RAAN* 58 (1983), 325-361; the history of the excavation, with particular attention towards the problem of wax tablets is presented by: G. CAMODECA, *L'archivio puteolano dei Sulpicii* (Napoli 1992) I, 3-23; J. G. WOLFF & J. A. CROOK, *Rechtsurkunden in Vulgärlatein aus den Jahren 37-39 n. Chr.* (Heidelberg 1989) 9-14; and P. GRÖSCHLER, *Die tabellae-Urkunden aus den pompejanischen und herkulanensischen Urkundenfunden* (= *Freiburger Rechts-geschichtliche Abhandlungen*, Neue Folge, Bd. 26, Berlin 1997) 23-31; in all mentioned works one can find relevant bibliography and references to the excavation diary of G. CAMPO as well as to preliminary reports by O. ELIA and L. D'AMORE. Cf. also S. AUGUSTI, "Les tablettes de Pompéi témoignage importante de l'écriture antique" *Archeologia* 12 (1966).

⁵ The Sarno course as well as the course of the coast 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, 4: 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 particularly 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.

⁸ C. GIORDANO, "Su alcune tavolette cerate dell'agro Murecine", *RAAN* 41 (1966) 107ff.; F. SBORDONE & C. GIORDANO, "Dittico greco-latino dell'agro Murecine", *RAAN* 42 (1968) 195 ff.; C. GIORDANO, "Nuove tavolette cerate pompeiane", *RAAN* 45 (1970) 211ff.; *IDEM*, "Nuove tavolette

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 Sulpiciorum, 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.

cerate pompeiane", RAAN 46 (1971) 183ff.; F. SBORDONE, "Nuovo contributo alle tavolette cerate pompeiane", RAAN 46 (1971) 173ff.; IDEM, "Operazioni del mutuo del 48 d.C.", RAAN 47 (1972) 307ff.; C. GIORDANO, "Quarto contributo alle tavolette cerate pompeiane", RAAN 47 (1972) 311ff.; F. SBORDONE, "Preambolo per l'edizione critica delle tavolette cerate di Pompei", RAAN 51 (1976) 145ff.; IDEM, "Frustula Pompeiana", RAAN 53 (1978) 249ff. The unquestionable value of these publications are photographic reproduction of the tablets in question.

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).

¹¹ G. CAMODECA, "Per una riedizione dell'archivio puteolano dei Sulpicii. I. Le TP. 67 e 68; II. Nuovi documenti processuali", *Puteoli* 6 (1982) 3-53; IDEM, "Per una riedizione dell'archivio puteolano dei Sulpicii. III. *Emptiones con stipulatio duplae* (TP. 98; 57; 103); IV. I documenti vadimoniali (TPSulp. 1-21)", *Puteoli* 7/8 (1983-1984) 3-69; IDEM, "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), 3-40; IDEM, "Le 'emptiones' con 'stipulatio duplae' dell'archivio puteolano dei Sulpici (TP. 98; 57; 103)", *Labeo* 33 (1987) 24-47; IDEM, "Per una riedizione dell'archivio puteolano dei Sulpicii. V. Il dossier di Euplia di Milo e i nomina arcaria; VII. TP. 66", *Puteoli* 12-13 (1988-1989), 3-63; all the publications mentioned are illustrated by reproductions and apographs of the tablets in question. The results of G. CAMODECA'S works were put together in IDEM, *L'archivio ...* (cit. n. 4), *passim*. The newest data can be found in: IDEM, "Nuovi documenti dell'archivio Puteolano dei Sulpicii", *Studia et Documenta Historiae et Iuris* 61 (1995) 693-705. In short time a full edition of *Tabulae Pompeianae Sulpiciorum* expected to be published.

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. KASER, *Das römische Privatrecht I*² (München 1971) 538-543; IDEM, *Das römische Privatrecht II*² (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. SCHERILLO, "Sulla stipulazione del *servus* e del *filius familias*", [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.¹³

TPSulp. 51 = TPN 43 = TP 15
atramento, index, a triptic

tabb. I-II (backside)
 18th (or 28th) June 37

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

TPSulp. 51
graphio, scriptura interior

tab. I, pag. 2

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) Cessarar Augusti
 luberto Primiano apssente per

Hessucus ser(vus) eius et debere ei sesterta
 decem milia nummu que ei redam

8 cum petiaeret et ea sesterta decem mi-
 lia <q(uae)> s(upra) s(cripta) s(unt) p(roba) r(ecte) d(ari) stipulatus
 {ets} est Hessucus

Euni Ti(beri) Cessarar 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

tab. II, pag. 3

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

4 quator milia plus minus que omnia {dico}fateor.

¹³ J. N. ADAMS, "The Latinity of C. Novius Eunus", ZPE 82 (1990), 227-247. On the *mutua* of Caius Novius Eunus see also: BOVE, *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 omini
 vi periculo meo est. ①

8 Actum Putohis

TPSulp. 51

atramento, signatores

tab. II, pag. 4

C(ai) Novi	① Euni
Q(uniti) [F]alerni	② [- - -]
C(ai) Sulpici	③ Fausti
4 C(ai) [.]	④ [.]
[.]	⑤ Helv[_ _ _]
C(ai) Novii	① Euni

TPSulp. 51

graphio, scriptura exterior

tab. III, pag. 5

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 apsenste per
 Hesychum servum eius et debere ei sestertium
 decem millia nummum quae ei redam cum
 petieret / et ea HS \bar{X} m(illia) n(ummum) q(uae) s(upra) s(crupta)
 s(unt) p(roba) r(ecte) d(ari) stipulatus est
 8 Hesychus Eueni Ti(beri) Caesaris Augusti l(ibert) Primiano
 servus sponpondi ego C(aius) Novius Eunus / proque
 iis sestertiis decem m[ill]ibus nummum dedi
 ei pignoris arrabo[n]isve nomine tritici alexandrini
 12 [plu]s minus
 modium septem millia et ciceris farris monocopi
 lentis in saccis duc[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[eor]. 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 written 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 Euenus. 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 Euenus wrote that I had got a loan from being absent Euenus Primianus, freedman of Tiberius Caesar Augustus, through Hesychus, 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 Euenus, 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 Euenus 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.¹⁴ 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.¹⁵

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).

TPSulp. 52 = TPN 44 = TP 16
 atramento, index, a triptic

tabb. I-II (back side)
 2nd July 37

Chirographum C(ai) No//vii Euni HS ∞ ∞ ∞ mutuor(um)
 praeter alia HS \bar{X} // ob pignus tritici

TPSulp. 52
 graphio, scriptura interior

tab. I, pag. 2

- C(aio) Cessare Germanico Aug(usto)
 Ti(berio) Claudio Germanico co(n)s(ulibus)
 VI nonas Iulias C(aius) Novius Eunus
- 4 scripssi me accepisse muta ab
 Hessco Eunni Ti(beri) Cessarar Augusti
 l(iberto) Primiani ser(vo) {muta} et
 debere ei sestertia tra milia
- 8 nummu pret(er) alia HS \bar{X} n(ummum)
 que alio chirographo meo
 eidem debo et ea sestertia
 tra milia {num}nummu
- 12 q(uae) s(upra) s(cripta) s(unt) p(roba) r(ecte) {recete} dari

TPSulp. 52
 graphio, scriptura interior

tab. II, pag. 3

- stipulatus ets Hessucus Euni
 Ti(beri) Cessarar Augusti l(iberti) Primiani
 ser(vus) spepo(n)di ego C(aius) Novius Eunus
- 4 in qua ominis suma dedi ei
 pignoris (nomine) trigidi alxadrini modi-
 um septe mila quot est possit[um]
 in horeis Bassianis puplicis Putola[nor(um)]
- 8 medis horeo duode[cim] et sacos ducen[t-]
 os lentis [c]ic[r]is . . .] + issi monocopi
 et faris in quibus sunt modium
 quator milia qui sunt possiti in
- 12 isdem horeis que ominia ab omni
 vi p(e)riculo meo est fator. ①
 Actum Putolis.

This tablet, similarly to TPSulp. 51 is written in Latin in its phonetic version.
 I 2, 2: Cessare = Caesare; I 2, 4: muta = mutua; I 2, 5: Hessco = Hesycho;
 Eunni = Eueni; I 2, 6 & 11: nummu = nummum; I 2, 7 & 11: tra = tria; I 2, 7
 & 11 & II 3, 11: milia = millia; I 2, 8: preter = praeter; I 2, 9 i II 3, 12: que =

quae; I 2, 10: debo = debeo; II 3, 1: ets = est; Euni = Eueni; II 3, 4 & 12: omin ... = omni ...; suma = summa; II 3, 5: tridigi alxadrini = tritici alexandrini; II 3, 6: quot = quod; II 3, 10: faris = farris; II 3, 12: horeis = 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; fator = fateor; ⊙ represents the chirographant's seal. II 3, 14: Putolis = Puteolis; II, 4: omitted, some of the names of six witnesses could be read there.

Translation
(*scriptura interior*)

"During the consulship of Cneius Acronius 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 peas, lentils, [...]jissi, *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.¹⁶ 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).¹⁷ The time passed and now we are in the year 38. The situation of Hesychus had been changed — now he is a part of Caesar's property.¹⁸

TPN 58 = TP 17

tab. I, pag. 2

graphio, scriptura interior, a diptic

28th August 38

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

sesterti[os mile] centum trigina

numm[os] quos ab eo mutuos

8 su[p]ssi et [reddam] ipssi aut

C(aio) Sulipicio [Fausto] cum petiarit

eosque sestertios mile cent(um)

TPN 58

tab. II, pag. 3

graphio, scriptura interior, a diptic

trigina nu[m]mos q(ui) s(upra) s(cripti) s(unt)

proba r[ecte da]ri stipulatus

ets He[sucus] C(ai) C[essaris] August[i]

4 Germ[anic]i ser(vus) Euenianu[s]

spepodi e[go] C(aius) No]vius Eunus

Actum Putolis ①

I 2, 2: septemberes = septembres; I 2, 4 & II 3, 3: Hesuco = Hesychus; Cessaris = Caesaris; I 2, 6 & 10: mile = mille; I 2, 6: trigina = triginta; I 2, 8 su[p]ssi = sumpsi; ipssi = ipsi; I 2, 9 petiarit = petierit; II 3, 3: ets = est; II 3, 6: Putolis = Puteolis; ① represents the chirographant's seal.

¹⁷ 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 anachronistic 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.

¹⁸ 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 Faustus¹⁹ 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.

TPN 59 = *TP* 18

graphio, scriptura interior, a triptic

tab. I, pag. 2

15th September 38

Cn(eio) Domitio Afro A(ulo) Didio [G]al[i]o co(n)s(ulibus)

XVII k(alendas) [O]ct[o]beres

C(aius) Novius Eunus scripssi me debere

4 Hesuco C(ai) Cessarisi Augusti Germanic(i)

ser(vo) Eueniano stertertios mile

ducentos quiquaginta nummos

rel[i]quos rat[i]one omni putata

8 quos ab eo mutos accepi quem

suma iuratus promissi me

aut ipssi Hesuco aut C(aio) Sulpicio

Fausto redturum k(alendis) noembrib[u]s

12 primis per Iobe Optumm Maxu-

mu et Nume Dibi Augusti et

Genium C(ai) Cessarisi Augusti

quotsi ea die non solvero

¹⁹ 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.

TPN 59 tab. II, pag. 3
graphio, scriptura interior, a triptic

me nont solum peiurio tene-
 ri set etiam peone nomine
 in de sigulos sestertios vigienos
 4 nummo obligatum iri et
 eos HS ĪCCL q(ui) s(upra) s(cripti) s(unt) probos recte
 dari stipulatus et Hessucus C(ai)
 Cessarī Augusti ser(vus) spepodi C(aius) Novi-
 8 us Eunus
 Actum in Colonia Iulia
 Augusta Putolis

TPN 59 tab. III, pag. 5
graphio scriptura exterior, a triptic

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 Hesychō C(ai) Caesaris Augusti Germa-
 4 nici s[e]r(vo) [Euenia]no sestertios mille ducentos
 quinquaginta nummos reliquos ratione
 omni putata quos ab eo mutuos accepi
 quam summam iuratus promisi me a[u]t
 8 ipsi Hesychō aut C(aio) Sulpicio Fausto redditu-
 rum k(alendis) Novembribus primis per Iovem Optu-
 mum Max(imum) et Numen Divi Aug(usti) et Geni-
 um C(ai) Caesaris Augusti quod si ea die non
 12 solvero me non solum peiurio teneri
 sed etiam poenae nomine in dies sing(ulos)
 HS XX nummos obligatum iri et eos HS MCCL
 q(ui) s(upra) s(cripti) s(unt) p(robas) r(ecte) d(ari) stipulatus est
 Hesychus C(ai) Caesaris ser(vus)
 16 spopondi C(aius) Novius Eunuus. Act(um) Puteolis.

I, II: again as the previously cited tablets the version written by Caius Novius 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 indicate 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 owed 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*.²⁰ 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

tab I, 2

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(cripta) sunt idibus Iunis primis
 prob[a] recte da[r]i stipulatus est
 12 Phosp[h]orus Ti(beri) Cla[udi] C[ae]saris

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).

TP 35

tab II, 3

scriptura interior — a reconstruction

[Augusti servus Lepidianus spondit C(aius) Sulpicius Cinnamus.
Actum Puteolis?].

I 2: Big SOL(utum) is written all over the tablet which means that the obligation was fulfilled and the document therefore annulled. II 3: reconstructed on the basis of other examples of such documents in the Sulpicii's Archive.

Translation

"During the consulship of Tiberius Claudius Caesar Augustus Germanicus and Quintus Servius Cornelius Orfitus, on the fifth day before the Nonas of May (2nd May 51). I, Caius Sulpicius Faustus have written that I owe Phosporus, the Lipidian slave of Tiberius Claudius Caesar Augustus ninety four thousand *sestertii* of money. And these above said ninety four thousand *sestertii* of money shall be returned properly in good coin before the Ides of June (13th June 51). Phosporus, [the Lipidian slave] of Tiberius Claudius Caesar [Augustus] has called for a stipulation for it. [I, Caius Sulpicius Faustus, have stipulated. Done in Puteoli?]"

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.²¹ Alas, against such conclusion we have other tablets documenting legal activities concluded with a slave²² or a *peregrinus*,²³ in which *stipulatio* always is made in a form of a *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 *sponsio*. Secondly the notice about passivity of the slaves is most imprecise. They take part in a *sponsio* effectuating *interrogatio* (cf. G. 3. 92: "verbis obligatio fit ex interrogazione et responsione").

Another characteristic feature of all the *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 Claudius' slave. Thus their extraordinary status may have caused the fact that they both took part in a *sponsio*, and not in a *fideipromissio*.²⁴

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

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 civili iure servus non possideat, tamen ad possessionem naturalem hoc referendum est, et ideo dubitari non oportet, quin et servus recte ita stipuletur.

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.

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 *nomina arcaria* (TSulp. 60-65 as construed by CAMODECA, *L'archivio* ... [cit. n. 4] 199-235) and hybrid form of *mutua* (so close to the *kombinierter Vertrag* described for loans from Dacian tablets by M. KASER, "Mutuum und stipulatio", [in:] *Ausgewählte Schriften* II (Camerino 1976), 273 (= *Eranion für G. S. Maridakis*, I, 155); cf. also CAMODECA, *L'archivio* ... (cit. n. 4) 173.

²² Eg.: TPSulp. 56 (TP 26) — *chirographum* of Niceros, slave of colons of Colonia Puteoli

²³ As, for example, TPSulp. 4 (TP 70 + 139), Zenon's *vadimonium*.

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 Publici Maevii stipulanti sponpondit se daturum, quidquid patrem suum Publico Maevio debere constitisset: quaesitum 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 condicio 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 sponponderit, in actione de peculio eadem observari debent, ac si liber fuisset.²⁵

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 provoke 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 unfulfilled. 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 *possessio naturalis* to a slave (since a slave could not possess *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 required 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*:²⁶

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: *sponpondit, 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. 3.176: "Praeterea novatione tollitur obligatio, veluti si quod tu mihi debeas, 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 debes, a Titio post mortem eius vel a muliere pupillo sine tutore

G. 3.118-119: [118] Sponsoris vero et fidepromissoris similis condicio est, fideiussoris valde dissimilis. [119] Nam illi quidem nullis obligationibus accedere 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 expressly 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.²⁷ 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: "illam 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 stipulationem contrahere possunt: nec absens quidem, quoniam exaudire invicem debent. Si quis igitur ex his vult stipulari, per servum praesentem stipuletur, et adquiret ei ex stipulatu actionem. Item si quis obligari velit, iubeat et erit quod iussu obligatus

This fragment may be a key²⁸ 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 stipulatus fuisset."

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 ipsos novamus quod nobis debetur, 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 *Institutiones* 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 propriam 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 KRZYŃÓWEK.

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