

Book II.
Title IV.

Concerning compromises.

Headnote.

Compromise. A compromise was a pact and was usually accompanied by a stipulation which made it enforceable. Unless so accompanied, it was probably not enforceable in classical law. Law 6 h.t. If one of the parties was enriched by delivery of property to him, and he failed to carry it out, he could be sued in an unjust enrichment action (condiction), for the return of what he received. See C. 4.5. The later law, however gave an action for the direct enforcement of the compromise, if one of the parties had carried it out by giving something to the other, or, as in law 6. h.t., had placed himself in an irrevocably worse position. It was then an innominate contract. C. 4.64 headnote. The enforcement action was at least in Justinian's time, and perhaps previously, called one in special terms (praescriptis verbis). See Beseler, 4 Beiträge 313, 35 Z.S.S. 335 ff. A pact of compromise could always be set up in defense. Law 28 h.t. A pact with an oath added was given special force by the emperors. Law 42. h.t.

2.4.1. Emperor Antoninus to Celerius.

Neither a pact or compromise made with part of the curators or guardians is of any help to the others in connection with the matters which they managed or should have managed separately or jointly. Since, therefore, you had three curators and you compromised with two of them, you are not forbidden to sue the third.
Given May 1 (211).

Note.

A pact not to sue, or compromise, did not ordinarily benefit anyone but the party with whom the pact was made. C. 2.3 24. This, of course, did not enable the former ward to recover more than was due him, and the amount received through the compromise was taken into consideration in determining the liability with the party with whom no compromise was made. Bas. 11.2.18 note.

2.4.2. The same emperor to Lutatia.

Since you state that you had entered into a compromise with your sister concerning the inheritance, and that on that account you promised that you owed her a certain sum of money, then, although there would have been no lawsuit¹ in regard to the inheritance, yet because the compromise was made in fear of litigation, the money is understood to have been promised legally. And if you, on this account, had paid it into the imperial exchequer² you could not recover it, and if you had not paid it, you could be rightly sued.

Promulgated August 11 (213).

2.4.3. Emperor Alexander to Tullia.

¹ [Blume] Quaestio—Bertolini, Transazione 43.

² Perhaps the successor of the sister. Rescript said to have been changed. Bas. 11.2.19 note.

Litigate with Geminianus, because his father, appointed as your curator, managed your business; and if he denies, before the judge, that he is liable in any action because a compromise and Aquilian stipulation were entered into, the judge, in view of the fact that the action is in equity (*bonae fidei*), will inquire concerning how much money the compromise was expressly made, and if it be proved that it was made for a less sum than the sum due on account of the administration of the curatorship, he will order him to pay the remainder because there was not included in the Aquilian stipulation as much of the obligation of the curatorship as the amount of money due.
Given August 12 (223).

Note.

An Aquilian stipulation was a novation, by stipulation, of a debt or debts, followed by a formal release of the debt or debts so novated. C. 8.43 headnote. Just. 3.29.2. This rescript is in apparent conflict with the next one. But there all debts were novated and released; in the instant case only certain ones or a certain amount of the debts. Debts not in contemplation of the parties were not so released, unless a special clause was added so as to include all debts whether thought of or not. Note Bas. 11.2.4. See 6 Z.S.S. 40; C. 31 h.t.; 7 Donellus 279. The action here referred to as equitable was the action on volunteer agency mentioned at C. 2.18. See 6 Z.S.S. 42.

2.4.4. The same emperor to Numidius.

When an action on the administration of a curator has been reduced to an Aquilian stipulation by a former ward who has reached legal age, and has been extinguished by formal release, there is no doubt that no other action lies except for fraud within the lawful time, and none even for fraud, if³ a special compromise has been made in that regard.

Promulgated March 6 (226).

2.4.5. The same emperor to a veteran.

Since you acknowledge that you compromised with the heir of your former guardian, (then), if you did so after reaching lawful age, you ask in vain to withdraw from the agreement. For though, as you state, no document was drawn up, still if the existence of the contract is shown by your acknowledgment, a writing, which customarily contains the proof of a transaction, is not necessary.⁴

Promulgated March 1 (227).

2.4.6. The same emperor to the Pomponii.

Since you state that after the commencement of an action to declare a testament unjust your mother made a compromise with the opposing party, whereby she was to take part of the property and abandon the litigation, no rule of law permits that the complaint, once abandoned, may be renewed by you, who are heirs of the mother. 1. But if the agreement has not been performed, you may rightly sue the opposing party for your damage. For whether an action lies upon the stipulation, if a stipulation was added to the agreement, or if the obligation of words (stipulation) was omitted, then an “analogous” action, which sets forth the transaction in special terms (*praescriptis verbis*) is to be given.

³ [Blume] Nisi.

⁴ [Blume] As to the necessity of a writing see C. 2.3.17.

Promulgated January 6 (230).

Note.

In this case, since the mother was dead, the original action, or right of action, which she had, was held to be effectually abandoned without right of renewal. Hence she parted with an important right, making the compromise an innominate contract. It is probably that at the time of the date of this rescript, the only available remedy was on a stipulation for an action in special terms, including the reference to an analogous action, is an interpolation and represents later law. Pernice, 3 Labeo1, 91; Girard, Manuel 628, note 4; Beseler, 2 Beiträge 166; Ehrhardt, Justa Causa Trad. 68, note 30; 35 Z.S.S. 340. That appears from C. 2.3.7 and 10, of the years 213 and 227 respectively, in which in similar cases only an unjust enrichment action lay for the return of what was given, and not an action to enforce the pact.

2.4.7. Emperor Gordian to Licinius Timotheus, a veteran.

An agreement of compromise made by a person to whom you gave a mandate to bring a suit, not to settle it, does not prejudice your claim.⁵

2.4.8. The same emperor to Junius, a soldier.

If a dispute arises concerning a claim for past support, it may be compromised, but under no authority of law is a compromise concerning future support without the consent of the praetor or the president, deemed valid.

Promulgated December 19 (239).

Note.

The general rule stated here is also stated in the Digest and was enacted by Marcus Aurelius. The reason was that a person from alimentary provisions were made, should not be able for a small present advantage to compromise the provisions made for his future support. The praetor or president or other competent officer, when application to be permitted to compromise in such case was made to him, was compelled to examine into the situation of the parties in detail, otherwise even his consent was void. But if a substantial yearly pension or usufruct was left to a person in superior position, a compromise could be made without such consent. D. 2.15.8.

2.4.9. The same emperor to Agrippinus.

If, when a controversy was raised against you by a brother of your wife, a pact and stipulation was entered into between you, as you allege, concerning landed property which you acquired, to the effect that if your adversary would pay you ten gold pieces within a certain time, you would yield the landed property to him, or if he failed to do so, your right (thereto) should no longer be disputed, and the person who made this promise by stipulation failed to fulfill it, it follows that you, to whom the property belongs, should not be compelled to suffer any violence on his part, on which account, the president of the province will, when called upon, prohibit such violence, particularly since, although a real action would be available to the opposing party, it would be defeated through an effectual defense arising out of the pact aforesaid.

Promulgated April 8 (241).

⁵ [Blume] In slightly different form in Code Greg. 1.1.1. See C. 2.3.3 and 23, to the effect that an agent was required to have authority to make a pact for a principal.

2.4.10. Emperor Philippus to Apollophania.

Even now you dishonestly act contrary to the duty arising out of ties of blood, as well as that arising out of your agreement, in that you request the right to bring suit against the sons of your brother concerning their paternal succession and status. For there will be no end to litigation if we commence to lightly disregard compromises entered into in good faith.

Promulgated March 31 (244).

2.4.11. Emperors Valerian and Gallienus and Valerian, the most noble Caesar, to Gaianus, a soldier.

A compromise concerning a trust (the duty of which was) imposed upon you and your brother reciprocally, in case one of you should depart this life without children, is valid, since harmony among the brothers is maintained by removing the ugly wish of seeking the other's death.⁶ Nor can the pact in this case be rescinded, as though you were circumvented, since you agreed to it, and since you do not state that you are of that age when restitution of rights is customarily granted, and (even) if you were, you would not for the reason set forth be entitled to be restored to your former rights.

Promulgated November 17 (255).

2.4.12. The same emperor to Primus.

The president of the province will determine whether a compromise between you and the administrators of your city was made concerning a doubtful suit, or whether, by currying favor (ambitiose) you have been released from a debt which unquestionably could be (was) owing.⁷ For in the former case, he will order the compromise to remain in effect; in the latter case he will not permit favoritism to prejudice the city.

Promulgated February 14 (259).

Note.

If a claim was not doubtful, to remit part of it would have been a mere gift, and the administrator of a city had no authority to make such gift. Private individuals were not forbidden to remit part of a debt. See C. 32 h.t.

2.4.13. Emperors Diocletian and Maximian to Procla.

The perpetual edict provides that compromises made on account of intimidation shall not be valid. Not every kind of fear, however, suffices to rescind settlements made by consent, but the fear must be proven to be such as is based on danger to life or torture of the body.

1. The nature of the principal matter (which was compromised) will not suffice to show violence or fraud, and if nothing of that kind can be proved, the disputes terminated by agreement should not be renewed.

Since you allege, however, that the person with whom you say you compromised is your slave, born of our female slave, therefore, if the allegations contained in your petition are true, another principle overturns the pact, for the law undoubtedly is that masters contracting with their slaves cannot be held to, or bound by, the agreement made. Given at Byzantium, April 2 (290).

⁶ [Blume] See C. 2.3. 16; C. 2.31.2. For restitution of rights of a minor, for good cause, see C. 2.21 and subsequent titles.

⁷ [Blume] See Bas. 11.2.29.

Note.

As to intimidation and fraud, see C. 2.19 and 20; C. 35 h.t. A slave was property. Headnote C. 3.41. Hence, an agreement made by a master with his slave was of the same effect as an agreement by the master with himself, and could not, accordingly, be valid. C. 7.16.36. Compare C. 7.16.8 where such pact for liberation, followed by payment of money, was held enforceable. See Beseler, 4 Beiträge 169. See also modification in C. 43 h.t.

2.4.14. The same emperors to Sopatra.

If your adversary attempts to bring action contrary to agreement, the principle of equity demands that after the money (given you in the transaction) is restored, the cause, if you, too, desire it, should be litigated anew.

Note.

After the matter was put in status quo, the parties could, if they wished, litigate the matter, though compromised. See law 17 and C. 40 h.t. Some actions, however, became extinct when compromised. C. 2.3.12 note.

2.4.15. The same emperors to Ponitus.

In order that you may receive a suitable response, send a copy of the pact. For then we shall know whether it was only a simple agreement, or whether it was accompanied by an Aquilian stipulation, followed by formal release; for if it appears that it was so accompanied, it will be plain that your opponent will have no claim to the inheritance or a real action for specific property.

Note.

It was a fundamental rule that no person was required to become defendant in an action in rem—he could simply suffer the claimant to be put in possession. C. 3.32 headnote. Hence such action was not originally subject of a compromise, as here. It appears to have been made so in later law, and the reference thereto is probably an interpolation. The original rescript may have referred to a compromise of an edictal action—one in personam. Wlassack, 42 Z.S.S. 418 ff.

2.4.16. The same emperors and the caesars to Caecillius.

Causes or suits, ended by legal compromises, must not be revived by an imperial rescript.

Subscribed March 9 (239).

2.4.17. The same emperors and caesars to Marcellus.

Since you allege that the woman against whom you petition compromised a suit, which she had with you, and that she failed to abide by her agreement after receiving the property which was agreed to be given her for the purpose of settling the dispute, and you ask that she should either abide by the pact or restore the property given her, you know that if you provided by stipulation that in case of violation of the compromise the property should be returned, while at the same time leaving the compromise in force, (then) if she was over the age of twenty-five ears, you have both a defense on the pact and a right of action for the property given. But if no such agreement by stipulation was

entered into you have the defense on the pact, but, having that protection, you do not also have the right to proclaim what you have given.
Promulgated June 9 (293).

Note.

It will be noted that the compromise could not be abandoned without the consent of both parties. Furthermore, if a penalty had been provided by stipulation, in case of violation of the compromise, this penalty could be collected and at the same time giving the right to defend by setting up the pact, so as to leave it in force. The remedy was cumulative. D. 2.15.13. D. 2.14.10.1 appears to dispute that—giving only an alternative remedy. Whether it was one or the other probably depended on expressed intention. See Risch, Vergleiche 170.

2.4.19. The same emperors to Valentinianus.

It is not forbidden to compromise or make a pact concerning a prosecution for a capital crime, except adultery; but it is not permitted to make a compromise in other cases of public crimes which do not carry the death penalty, except (citra) an accusation for forgery.

Given August 30 (293).

Note.

This sounds strange to us. But the Romans considered the pursuit of criminals more a matter of private than of public concern, though this attitude came to be much modified in later law. Some acts, like theft, were always considered as private delicts, though they also came to [be] considered as crimes. The 12 tables contained provisions for the compromise of acts criminal in character. The wergeld of the middle ages was based on the same principle. D. 48.21.1 states: “It has been decreed by the emperors that a man who corrupts his adversary in connection with capital crimes is not prejudiced...For they thought that whoever wanted to redeem his blood in any manner should be pardoned.” See 6 S.Z. 43; C. 9.22.7; 5 Gluck 91 translates the last clause as meaning “without (citra) fear of prosecution for falsification.” That is contrary to Bas. 11.2.35.

2.4.19. The same emperors and the caesars to Irenaeus.

The laws do not permit that a compromise made in good faith be rescinded under the pretext that some document was found thereafter. But if it is proved that our adversary extorted the settlement of the suit by purloining documents, either personally or through another, and if it is proved that the truth might have been shown by these documents, then if an action still remains, the defense set up by her by reason of the pact may be met by a replication of fraud, but if the action has already been consumed, you are able to bring an action for fraud only within the time fixed by law.

Given at Sirmium, September 18 (293).

Note.

As to actions for fraud, see C. 2.20. As to opening a judgment because new documents [are] found, see C. 7.56.4.

2.4.20. The same emperors and the caesars to Antistia.

It is with good reason the accepted opinion that compromises have the same force as adjudications, since nothing harmonizes with the good faith of men as much as to uphold agreements made by them. Nor does it suffice to rescind a pact, because it was

made, as you say, in the second hour of the night, since no particular time nullifies the consent of a sane mind over twenty-five years of age.
Subscribed September 28 (293).

2.4.21. The same emperors and caesars to Geminianus.

When it is stated in writing that the things which are agreed to be given or retained on account of a compromise are received by the person who was to receive them under the agreement, as though he were a purchaser, then, since fictitious transactions are regarded as void, payment of the fictitious price will be demanded in vain.
Given October 3 (293).

Note.

To illustrate this law: Suppose that a compromise was made, and one of the parties, as a result thereof, received land; but it was pretended that this land was sold to him and instruments of sale were executed. Thereafter the party who had delivered the land, relying upon this sham, claimed the purchase price of the land. It was held that fiction could not alter the true facts. C. 4.22.

2.4.22. The same emperors and caesars to Alexander.

If you entered into a compromise while you were of legal age, the (mere) assertion of fraud in presence of witnesses (contestatio) will not suffice to rescind the agreement.
Subscribed December 1 (293).

2.4.23. The same emperors and caesars to Tatianus.

The claim of the creditors of Archimidorus, whose heirs as you say, were parties other than you, cannot be good against you, if you were not obligated on his behalf. But this should have been investigated while the transaction was still unsettled. For now, after, as you say, the dispute has been settled by a compromise by reason of which you paid an agreed sum of money, you unjustly ask to be given an action to reclaim it under the pretense that it was money which you did not owe, since, if the agreement to pay had only been reduced to a stipulation (instead of you paying the money), you could not defend yourself by the claim that you promised money which you did not owe.
Given March 15 (294).

2.4.24. The same emperors and caesars to Victorinus.

If it was agreed, forsooth, that, after receiving by reason of compromise, the amount mentioned in the document, nothing more was to be demanded, then, you perceive, your female adversary has a good defense. But if without settlement of the suit she has merely acknowledged that she ought to pay you a certain amount as all that was due from her, you are not forbidden to claim, not only the amount so stated, but also the remainder due.
Subscribed at Sirmium, April 1 (294).

2.4.25. The same emperors and caesars to Marcella and Cyrilla.

If, while more than twenty-five years of age, you made a compromise with your paternal or maternal uncle, or you released his debt to you, without any condition, as a gift, matters that have been closed cannot be reopened for the reason stated by you

(namely) that you did this for the purpose of obtaining his inheritance; that is, in the hope of a future succession, when in fact others became his heirs.⁸
Subscribed April 12 (294).

2.4.26. The same emperors and caesars to Dionysiada.

It is a well known rule of law that sons cannot be made slaves by a compromise made by their mother.⁹
Subscribed April 13 (294).

2.4.27. The same emperors and caesars to Cato.

It is clear that a person of sound mind, though ill in body, may rightfully enter into a compromise, and you should not, dishonestly, ask to have the agreement rescinded on the pretense of bodily ill-health.
Subscribed May 9 (294).

2.4.28. The same emperors and caesars to Sapparuta.

A compromise made must be performed, whether made (and entered) upon the records of the provincial rector or not, and whether in writing or not. But since you say that you agreed, though not in writing, and without a stipulation added in that matter, that you should receive something definite, then, although an action cannot arise from a pact, still, if in the pending action to reclaim the property concerning which the pact was made, the defense arising out of the pact is interposed, you may, by a replication of fraud or on the facts, compel your adversary to carry out his agreement.
Given July 5 (294).

Note.

In this case, a suit was compromised. The action was not lost in the same way as in law 6 h.t. Nor was the compromise carried out by one of the parties as in law 33 h.t. Hence old suit could be pressed, or if it had not been brought could be commenced, and the defendant was condemned, unless he was willing to comply with the compromise. If willing, that ended the suit. In other words, the compromise could be enforced indirectly, though not directly. Risch, Vergliche 152 note. Law 36 h.t. C. 2.3.21; C. 5.2.27. If an action was pending, and the compromise was made thereafter, a statement to that effect was doubtless generally or frequently filed in court, to protect the parties. The papyri are corroborative of this. Steinwenter in Festschrift f. Hanausek 46 ff.

2.4.29. The same emperors and caesars to Marcia.

The laws forbid that transactions closed by a general compromise shall be reopened on the pretext that specific things are subsequently found. But an error as to the ownership of a property which was, at the time of the compromise, in the possession of a person other than the compromising parties cannot hurt.
Subscribed Sept. 28 (294).

Note.

A general compromise was one including a universality, or genus, as, e.g. all property of an inheritance, or all debts of a curator as in law 3 h.t. Such compromise generally included everything. But if certain specific things e.g. of an inheritance were

⁸ [Blume] See C. 34 h.t. and note; C. 4.6.7.

⁹ [Blume] See note C. 4.43.2.

excusably unknown, as they would be, if in possession of a third party, they were not comprised in the compromise, since agreements required the consent of parties. Risch, Veglich 161 n. 7 Donellus 39.

2.4.30. The same to Antoninus.

To reopen a matter, closed by compromise, is, when you acknowledge that more deception was practiced by you than by those against whom you direct your petition, not alone difficult, nay it is even a matter of reproach for you.

2.4.31. The same to Proculus.

If a compromise was made concerning a definite matter, and it was therein stated that nothing further should be demanded, although it was not added “on account thereof,” still a cause of action concerning other matters is not affected.¹⁰

2.4.32. The same to Cyrillus.

It is not a matter of uncertain opinion that if a decision according to law is rendered after investigation and the execution of the decision is not suspended by formal appeal or restoration to former rights, a compromise concerning the matter adjudicated is entered into in vain. Hence, if you have not destroyed your right of action by an Aquilian stipulation followed by a formal release, the president of the province will take care that the adjudication will be given effect according to law.

Subscribed October 25 (294).

Note.

A compromise was to settle doubtful matters. Hence, unless by a stipulation, a compromise of a judgment that was final was, ordinarily not valid. D. 12.6.23.1; Code Greg. 2.11.4. If not final, as when an appeal was pending or still possible (D. 2.15.7 pr) or when it was doubtful whether an adjudication had been made (D. 2.15.11), it was permissible. That did not forbid a remittitur, since that was a gift. Paul. Sent. 1.1.5.

2.4.33 (34). The same emperors to Euchrysius.

If in place of the farm which you claimed, it was agreed by a compromise that you should receive some other land within fixed boundaries, free of encumbrance, and you were not at that time under the age of twenty-five years, then, though it is proved later that the land was encumbered or partly belonged to another, the laws forbid the reopening of a lawsuit which was settled. 1. Of course you can sue before the governor of the province on a stipulation, if one was added to the agreement to make it binding, or if no stipulation, if one was added to the agreement to make it binding, or if no stipulation intervened, you may sue in an action in set terms given you by the civil law (praescriptis verbis). 2. But if the identical property in your possession on account of the dispute of which a compromise of the suit was made, is recovered by the imperial exchequer or some other party, you cannot claim anything.

Subscribed November 9 (294).

Note.

The foregoing rescript is obscure. The latter part states a proposition different from that stated in the first portion of the law. The purport of the first part of the law is this: Euchrysius claimed a farm; a compromise was made, leaving the farm to the

¹⁰ [Blume] See C. 3 h.t note.

adversary, Euchrysius receiving some other land which was subsequently claimed in part by another, or on which there was a lien. These adverse claims did not nullify the compromise, but Euchrysius had a right of action to indemnify him on account thereof. See C. 28 h.t. note.

The latter part reverses the situation. Euchrysius received in the compromise the farm which he claimed and gave in return for it some other land. He was put in possession of the farm which he had claimed in the first place. This is apparent from the language of the law, for he is said to have been in possession of the land which formed the subject of the compromise. Hence he must have received it as a result of the compromise. Now this farm was subsequently recovered from him by the imperial exchequer or some private person. But that fact gave him no claim against his original adversary to whom he gave some land. See 7 Donellus 375. Risch, Vergleiche 150 n.

2.4.34 (33). The same to Ptolemais.

Since you state that you either by way of a gift or compromise knowingly remitted the debt due you from your brother on account of his management as guardian, and (since) no fraud is perpetrated on one acting voluntarily, you complain of fraud in vain, nor is anyone bound the promise of his own inheritance (to another), to carry out what he agreed to do.

Promulgated November 6 (294).

Note.

In this case the brother evidently promised his sister that he would make her his heir. But promises of that kind were not valid. C. 2.3.15; C. 2.3.30 note.

2.4.35. The same to Ammonius.

The statements of the demandant shows that it is dishonest when he asks that a compromise, carried out by the transfer of ownership or by giving or destroying an action¹¹ should be rescinded on the pretense of fear, when it is shown that it was, in fact, made even in the presence of friends.

Given at Nicomedia, November 23 (294).

2.4.36. The same to Achilleus.

If, when over twenty-five years of age, you compromised with free men, then, though it is proven that the things agreed to be given you have not yet been delivered, and the persons sued do not offer them, (still) the equity of a defense (that the compromise was made) is available, so that nothing more can be demanded of the defendants.

Given Dec. 8 (294).

Note.

The rule mentioned at law 28 h.t. and at C. 2.3.21 applied. Risch, Vergleiche 153 n., 209 n.

2.4.37. The same to Basilissa.

¹¹ [Blume] By promising something, an ultimate right of action was given; by promising not to sue, a right of action was destroyed.

It is agreed that when promises, made by reason of a compromise, are not carried out, the penalty mentioned in the added stipulation, to be paid in case the agreement should be violated, may be demanded.¹²
Given December 21 (294).

2.4.38. The same to Theodotianus.

No compromise is made when nothing is given, retained or promised.
Given December 25 (294).

Note.

If a claim was compromised, but nothing was given, retained or promised—in other words, if there was no consideration, it was ineffective as such. But a man might make a pact not to sue, and it needed no consideration, if there was an intention to give up such claim gratuitously, i.e. make a gift of the claim. Law 25 h.t. C.6.31.3; D. 2.15.1. In C. 6.31.3, this rescript repeated.

2.4.39. The same Marciana.

Although a person who makes a compromise immediately repents thereof, the compromise cannot be rescinded and the suit renewed; and whoever persuaded you that a compromise could be avoided within a certain time, made a false statement.
Given at Sirmium, December 28 (294).

2.40.40. Emperors Gratian, Valentinian and Theodosius to Eutronius, Praetorian Prefect.

When a pact or compromise not to demand payment is in writing and legal strength is added thereto through the binding effect of an Aquilian stipulation and formal release¹³ either the transaction made according to law must be carried out or, if the adversary prefers, and is willing to reopen the matter, the penalty provided must be paid and what was proved to have been given on account of the compromise must be returned before trial of the action.

2.4.41. Emperors Arcadius and Honorius to Rufinus, Praetorian Prefect.

If anyone over 25 years of age should, contrary to pacts or compromises, entered into without compulsion, freely and voluntarily, think of repudiating them by appeal to a judge, supplicating the emperor or by simply failing to perform his promises, which were confirmed by invoking the name of the omnipotent God as guarantor,¹⁴ he shall not only be branded by infamy, but shall also be deprived of his right of action, pay the penalty which is proved to have been inserted in the pact and lose all right to the property in question, as well as all advantages obtained through the pact or compromise. All these shall belong, as gain, to those who have preserved inviolate the provisions of the pact. 1. We likewise order that they shall be deemed worthy of the loss or gain respectively,

¹² [Blume] See C. 17 h.t. and note.

¹³ [Blume] For the Aquilian stipulation, see h. 3, h.t. note. A compromise might be abandoned by consent of both parties. But the parties had to be put in status quo. Law 14 h.t.; L. 17 h.t. And if a penalty had been agreed on by stipulation, that penalty, too, had to be paid. “And formal release” not in C. Th. 2.9.2, from which this is taken.

¹⁴ Blume underlined “guarantor” in pencil, and wrote above it “witness?”

provided for by this law, who use our name in their agreements and swear that the safety of the emperors is a guaranty of the pacts entered into.¹⁵

Given at Constantinople, October 11 (395).

2.4.42. Emperors Leo and Anthemius to Erythrius, Praetorian Prefect.

If pacts or compromises have been made because of forged documents, although an oath is added, still they must be reopened, although the spuriousness of the documents is revealed in a civil, rather those in a civil proceeding, unless, perchance, a controversy that has arisen concerning that which is said to be forged is also settled and put to rest;¹⁶ provided, however, that if the compromises made relate to several clauses or subjects, that cause only or that part thereof shall be reopened which is shown to have been agreed upon by reason of a forged document; all other subjects shall remain untouched.

Given at Constantinople, July 1 (472).

2.4.43. Emperor Anastasius to Thoma, praetorian prefect of Illyria.

We order that comprises hereafter to be made or already made, in all suits already commenced and pending, or hereafter commenced concerning the status of slaves or serfs, shall, unless they happen to be invalid for another reason recognized by law, be valid, and provisions thereof shall not be void simply because they have been made concerning the status of slaves or serfs.

Given November 17 (500).

Note.

Ordinarily the status of slavery or freedom was not an object of compromise. L. 13, L. 26 h.t. But the instant rescript apparently modified that rule. See C. 7.14.8 note. See Risch, Vergliche 71 n.

Buckland, Slavery 658, in discussing the subject, states in reference to the instant law: "The practical outcome of the enactment of Anastasius seems to be that a compromise would not be valid, to the extent of preventing the owner from claiming the man as a slave, or in the converse case, of preventing the man from claiming liberty against the defendant or claimant, but not beyond."

¹⁵ [Blume] See also C. 2.271 and C. 2.43.3.4. The instant law was evidently modified by the next one, relating to compromises made because of the existence of spurious documents.

¹⁶ [Blume] The last clause is at end of rescript, but properly belongs here. See 5 Gluck 24.