

Book VIII.
Title XLIII.

Concerning formal releases.
(De acceptilationibus.)

Inst. 3.29.2; Bas. 26.6.24; Dig. 46.6.

Headnote.

An acceptilation was a formal release, and, like a stipulation, was essentially verbal; it was a release, in other words, by stipulation. It was substantially in this form: The debtor asked, "What I have promised you, do you regard as received?" and the creditor answered, "I do." This was a formal release of a debt evidenced by a stipulation.

But only a stipulation might thus be released. The latter, in its essence, was by words, and the Romans held that such contract might be released by words. But if the original contract was not by stipulation, then it could not be released by stipulation – acceptilatio. In other words, only a contract of words could be released by a contract of words. To get around this difficulty, a debt not contracted by stipulation was first novated by first putting or including it in, or evidencing it by, a stipulation - a novation could only be made by stipulation - and then releasing this stipulation. The form was invented by one Aquilius, and after him is called Aquilian stipulation, which consisted of a novation of a debt and a formal release, and was to the following effect: The creditor asked the debtor: "For whatever claim, now or hereafter, I have against you, do you, Gaius, promise to pay such and such value fixed thereon?" The debtor answered: "I do." Thereupon the debtor asked the creditor: "Whatever I have undertaken for you this day by the Aquilian stipulation, do you regard as having received in full?" Whereupon the creditor answered: "I have it and account it received." Inst. 3.29.2.

When such formal release was given, the debt was discharged and was a safer release than a simple receipt (apocha), which, as shown by the laws of the previous title, might be contradicted. See note to C. 8.42.6. If an obligation was divisible, it might be released in part. Thus if the debtor asked of the creditor: "Of the ten gold pieces I promised to pay you, do you admit five as received?" And if the creditor answered: "I do," there was an effectual formal release. If the claim, however, was indivisible, a formal release was void, unless it covered the whole claim. Thus a servitude in a city or country was indivisible. And a release of part of this servitude was void. D. 46.4.13.1.

8.43.1. Emperor Antoninus to Apronius.

I have already written you that the question whether your sister released her debtor, with the consent of her guardian, by a formal release in the customary form, may be tried before the judge. Hence if the (former) debtor perseveres in reclaiming the money which he paid, you may use the proper defense.

Promulgated February 11 (212).

Note.

In this case the sister, a minor, was the creditor, who died, leaving her brother as her heir. The debtor of the sister demanded the money back which he had paid in payment of the debt, upon the ground that the sister's release was not valid. But the

rescript says that if she gave a formal release, with the consent of her guardian, her act is valid and that, accordingly, the debtor, being lawfully released, cannot reclaim the money, which, had not valid release been given, he might have recovered as having been paid without consideration or on any just ground. 9 Donellus 1445.

8.43.2. Emperors Diocletian and Maximian and the Caesars to Clarus.

If a novation was made with the purpose of making a gift, and you gave a formal release, every avenue for bringing a suit is destroyed.

Subscribed December 27 (293).

8.43.3. The same to Demetria.

If an existing obligation is by agreement reduced to an Aquilian stipulation, and a formal release was given, every avenue for bringing an action is closed, and the right thereto cannot in any manner be restored.

Subscribed November 27 (294).