

Book VIII.
Title XLII.

Concerning payments and releases.
(De solutionibus et liberationibus.)

Bas. 26.5.109, et seq; Dig. 46.3.

8.42.1. Emperor Antoninus to Aristaeneta.

It is in the power of him who owes on several contracts to designate, at the time of making a payment, on which contract he makes it. If the debtor does not do so, the choice is that of the person who receives (the money). If neither of them expresses his wish, the amount paid shall be first applied on interest, and the remainder on the principal.¹

Promulgated June 4 (212).

8.42.2. Emperor Alexander to Bassa.

The law is certain that whenever the fisc succeeds (to the property) of both the creditor and debtor, although at different places (stationibus), the sureties are released. My procurators must follow this rule in your case.²

Subscribed June 1 (232).

8.42.3. Emperor Gordian to Apollonius.

If while the slave had full control of his special property (peculium) you received a loan from him, and you paid him before his peculium was taken from him, or before you knew of that fact, you are released.

Promulgated September 27 (238).

Note.

While theoretically all the property in the possession of the slave was the property of his master, in practice he had a peculium, special property, that he managed himself, and amounted, at times, to a great deal. See Buckland, Roman Law of Slavery 187, et seq. If he made a loan out of this fund, payment might be made to him. See laws 4 and 19 of this title.

8.42.4. The same to Rufina.

It makes no difference whether you paid a loan to the creditor personally or to his slave, with his consent.³ Nor can a discharged obligation regain vitality by reason of the fact that the creditor died before returning the documents evidencing the indebtedness.

Promulgated October 14 (238).

¹ [Blume] C. 4.32.21.

² [Blume] See note to C. 8.40.1.

³ [Blume] See law 19 of this title.

8.42.5. The same to Celsus.

You have no right of action against the creditor of another, because offering him the debt due him (from such other) you want him to transfer the obligation to you, since you do not suggest that you purchased the obligation from him, although when payment is made by a third party in the name of the debtor, the obligation is usually extinguished. Promulgated October 26 (238).

Note.

This law doubtless contemplates a voluntary payment on behalf of another. When payment was compulsory, and made for the purpose of protection of the interests of the payer, a different principle applied.

8.42.6. The same to Alexander.

If, between your father and those whom you stated to be debtors, no compromise of a doubtful debt was made and he received only part payment of a debt and acknowledged that he received the whole, and he gave no formal release for the remainder to those that were liable under a stipulation, and what he did was not done with the intention to make a gift, the right to claim the remainder of the debt remains in force. Promulgated February 11 (239).

Note.

A release made through an error of fact, and not as the result of a compromise, and not in the form of a formal receipt (*acceptilatio*), might be set aside, just as a stipulation, entered into through error was void. C. 8.40.15. In other words, a release had to have a cause. See C. 8.35.7; Frese, 18 *Z.S.S.* 264, 266. An *acceptilatio* was a formal receipt (see next title), and was valid though no money had actually been received. An *apocha* was a simple receipt which might be contradicted. D. 46.4.19.1. Frese in 18 *Z.S.S.* 259.

8.42.7. Emperors Philip and Caesar Philip to Antiochus.

It is clear that no interest can be claimed on a demand which is barred by reason of a set-off. Promulgated July 27 (244).

Note.

A set-off was equivalent to payment and hence barred interest on another claim to which it was a set-off from the time that the set-off existed. C. 4.31.4.

8.42.8. The same to Rufus.

Permission⁴ to be paid interest, which is annually payable at Rome, at some other place will not be granted, except for good cause, so that no bad example may be set. Promulgated May 11 (245).

Note.

It is stated in D. 13.4.9 that a man who promises in one place cannot be permitted to pay in another place, and that is undoubtedly the sense of the foregoing rescript. Good cause may, however, exist; for example, the place where payment was promised may be washed away or burned down or occupied by the enemy; so, doubtless, if the payment at

⁴ [Blume] For *promittere* read *permittere*.

another place would be advantageous to the creditor, this would be a just cause. The principle that applies to the debtor applies also to the creditor. 9 Donellus 1422.

8.42.9. Emperors Diocletian and Maximian to Cassius.

It is clear that a debt is discharged when the full amount thereof has been (tendered and) sealed (and deposited) in the usual manner. But a tender of the money is effectual in discharging the debt only when it is made at the place where payment is due. Promulgated May 11 (286).

Note.

To effect a discharge if the creditor refused to accept it was necessary to make a tender, and, if refused, to seal the tendered property and deposit it in a public place. As to what a proper place was, is stated in C. 4.32.19.

8.42.10. The same and the Caesars to Ambrosius.

It is clear that the heirs of a man, who, being over twenty-five years of age, lawfully gave slaves in payment, cannot reclaim them. Subscribed at Byzantium April 9 (293).

8.42.11. The same to Capitatina.

Since you state that, while you were less than twenty-five years of age, your husband collected sums of money from your debtors, as a part of the amount due you, but that you did not give your consent thereto, you could not be prejudiced thereby, unless you ratified the payments after becoming of age. Given at Heraclia April 27 (293).

8.42.12. The same to Eutyclus.

A debtor who pays someone else than his creditor, without the latter's consent, is not released from his obligation. But if he does so upon the latter's order or with his approval, he is released no less than if he had paid the creditor himself. Subscribed May 13 (293).

8.42.13. The same to Philotimus.

If you did not release a man indebted to you on his mandate⁵ by a formal release after a novation was made by stipulation, but you simply falsely wrote that you had received the debt arising out of this transaction - the obligation could not be extinguished by the fiction of truth. Subscribed May 26 (293).

Note.

The Basilica 26.5.121, in stating this law, says: "A man liable in an action on a mandate, if not released by stipulation and formal release, is not discharged, though the creditor states that he has received the debt." Doubtless the case contemplated is release by error, or some other reason which did not in fact release the debt. See laws 6, 21 and 23 of this title to a similar effect.

⁵ [Blume] Authorizing payment of money.

8.42.14. The same to Cuta.

An acknowledgment of the payment of a debt in a written document is better proof of what has been done than if the duebill of the money received, had been returned. Subscribed July 11 (293).

8.42.15. The same to Quarteo.

If, as you allege, the duebill was returned to you debtor without your consent, your rights are not diminished. And if you therefore, prove by whatever legal proof you can, the judge will justly order him (the debtor), who was not released by any such act, to pay the debt.⁶

Subscribed August 28 (293).

8.42.16. The same to Charidemus.

The rules of law do not permit that your creditor, from whom you received a loan, should be compelled to receive in payment, without his consent, a demand which you have against your debtor.⁷

Subscribed October 18 (293).

8.42.17. The same to Cassius.

It is clear law that an acquired obligation may be released by payment by someone on behalf of a debtor, as well as by property instead of money, received by consent of the creditor, in payment.

Subscribed at Sirmium December 1 (293).

8.42.18. The same to Aphabius.

Inquiry into the truth is not excluded by reason of the fact that, as you state, the duebills which your procurator executed were returned to him and were turned over to you by his heir, with a notation of the procurator thereon that nothing was due thereon to the creditors, since the creditors may have been paid, not with your money but with that of your procurator, whom you authorized to carry on the transaction.

Subscribed February 13 (294).

Note.

In this case a procurator, or agent, of a principal, borrowed money on behalf of the principal. Later the duebills executed thereon were returned, marked paid, and then turned over to the principal. This, the foregoing law says, is no proof of the fact that the principal paid the debt. It might have been paid by the procurator, and if so, nothing prevents the heirs of the procurator from recovering the amount so paid from the principal. 9 Donellus 1441.

8.42.19. The same to Diogenis.

If a managing-slave was entrusted with the charge to loan as well as to collect money, and you paid him, on behalf of his mistress, the money which you had borrowed

⁶ [Blume] A voluntary, intentional surrender would have been a gift, thus extinguishing the debt. C. 8.27.7.

⁷ [Blume] See note to C. 8.41.6; Nov. 4, c. 3.

(from him), the document (evidencing the debt), now become valueless, cannot injure you. But a debtor cannot release himself from action by the master if he pays a slave in any other case (i.e. where the slave does not have the authority to collect).⁸

Subscribed October 11 (294).

8.42.20. The same to Eucratidis.

If it was agreed that a creditor was to have a loan made by him paid by work of a certain slave (of the debtor), and this work was done as agreed, the terms of the pact providing for the restoration of the slave must be performed.

Subscribed at Hadrianopolis October 28 (294).

8.42.21. The same to Rufus.

It makes a great deal of difference whether you stated (in writing) that you received the amount mentioned in the document, in the expectation of the future payment thereof, or whether it was agreed that, upon receipt of a less sum, the amount mentioned in the writing should be stated to have been received. For in the former case the claim for payment of the amount still due remains in force, but in the latter case the transaction, closed by a compromise, cannot be reopened.

Subscribed December 3 (294).

Note.

An agreement by a creditor to accept a less sum than due was valid. See headnote C. 2.3 under "causa." If a statement in writing was, accordingly, made pursuant to such agreement, no further sum could be recovered, though the receipt stated the receipt of a greater sum than was received. If there was no such agreement, the simple statement, which was not in the form of a formal receipt (acceptilatio), that a certain amount of money had been received, did not bar recovery of the amount actually due, if the statement was made by error, or in the hope of future payment, or as law 23 of this title says, by reason of an order on a third person which was not paid. See laws 6, 13 and 23 of this title.

8.42.22. The same to Gratus.

It makes no difference whether your duebill was cancelled or not, if you prove that payment of the debt was once made to the party who had the right to demand it.⁹

Subscribed December 9 (294).

8.42.23. The same to Vadius.

If you gave a receipt to Auxano, stating that you received his indebtedness to you from Aristo, (and you did so) in view of an order on Aristo which he had given you, for the payment of the money to you, nothing prevents you from still demanding the money

⁸ [Blume] See laws 3 and 4 of this title as to payment to a slave. Payment extinguished the debt, whether the evidence thereof was surrendered or not. See laws 14 and 15 and 22 of this title.

⁹ [Blume] See law 19 of this title.

from him, if the order is not complied with, since the claim remains in force in such case.¹⁰

Subscribed at Nicomedia December 18 (294).

8.42.24. The same to Rufinus.

Since you acknowledge that you gave a farm to Evandrus, according to agreement, in payment of a loan, you do not justly ask that his industry or good fortune (in selling the farm for a higher price) should accrue to your benefit and not his. You would not have asked the contrary, if he had sold for a less price.

Subscribed at Nicomedia December 26 (294).

8.42.25. The same to Antellianus.

A man who alleges payment, has the burden of proof. He may sue to recover a duebill, if he can sustain that burden.

Subscribed at Nicomedia December 30 (294).

¹⁰ [Blume] See laws 6, 13 and 21 of this title.