

Conclusions: The Certainty of the Formula, the Disadvantage of the Debtor

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URL:

http://localhost:8080/cameral_obligation/conclusions/

Citation (Chicago):

Fiori, Antonia. "Conclusions: The Certainty of the Formula, the Disadvantage of the Debtor." In *Essays on the Accademia Di San Luca: Year of Publication - 2023*, by Antonia Fiori and Laurie Nussdorfer. Washington, D.C.: Center for Advanced Study in the Visual Arts, 2023. http://localhost:8080/cameral_obligation/conclusions/.

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Conclusions: The Certainty of the Formula, the Disadvantage of the Debtor

Antonia Fiori

The great fortune of the cameral obligation was based on the fact that it allowed for a very swift execution, freeing the creditor not only from waiting for the conclusion of an ordinary process, that is the verification of the debt, but also from any delay deriving from the opposition that the debtor could have raised in the realization of an ordinary procedure of execution.

It was an entirely preferential execution, whose swiftness and efficiency, however, were completely to the disadvantage of the debtor. He swore to comply, making himself liable to perjury and pledging not only all his properties, present and future, but also the present and future properties of his heirs, his personal freedom. He even risked excommunication. He subjected himself to the jurisdiction of any judge and accepted that the executive mandate against him was issued immediately following a single summons. He renounced obstructing the execution not only with exceptions and appeals but also with any advantage foreseen by the law, and—except in the extremely rare case of acquittal—he could avoid execution only with fulfillment.

In assuming such a serious obligation, he was not always well informed of the responsibilities deriving therefrom; in their instruments, notaries habitually abbreviated the formula of the cameral obligation to the point of rendering it incomprehensible and unrecognizable for anyone who did not already know it. If Antonio Massa, in the 16th century, maintained that the cameral obligation was known to all, including women and peasants, in reality—and in time—the fact of taking for granted information regarding the gravity of

the obligations that had been entered upon became increasingly vexatious for the debtor.⁷² Beginning in the 18th century—by which time the cultural and judicial climate regarding the cameral obligation had changed dramatically—this aspect was often denounced and lamented by jurists: the notaries informed the parties, and particularly those assuming the obligations *in forma Camerae* “with the greatest circumspection.”⁷³

Considering that the notaries’ habit of radically abbreviating the formula—also in the numerous documents of the Accademia di San Luca that have been digitized and transcribed for this project—makes it difficult to recognize the cameral obligations and their content, it seems useful to provide some suggestions for identifying them.

Below are brief indications for recognizing the formula of the cameral obligation in the notarial instruments of the Accademia (and for facilitating research in the database of *The History of the Accademia di San Luca*):

1. the incipit of the formula is always *Pro quibus*;
2. the formula has the expression *in forma Camerae Apostolicae*, but often, for obligations in the *stylus modernus* (after 1570), the wording used is *in ampliori forma Camerae*: this would imply that, unless the parties have agreed otherwise, the obligation will be transferred to the heirs also *ex parte debitoris*;
3. for this reason, reference is made to *haeredes* and *bona*;

4. the formula is always abbreviated *cum clausulis solitis etc.*;
5. waivers (to appeals, exceptions) are indicated;
6. the consent to a single (*unica*) summons is indicated;
7. the formula closes with reference to an oath.

In other words, allowing for minor differences between one notary and another, the abbreviated formula was approximately as follows:

Pro quibus etc. se etc. heredes etc. bona omnia etc. in ampliori forma Camerae Apostolicae *cum clausulis solitis etc. citra etc. renuncians etc. obligavit ac mandatum etc. unica etc. et tactis iuravit Super quibus etc.*

In content, this abbreviation corresponds to the following formula of the *stylus modernus* of the cameral obligation, for which reference is normally made to the text published by Silvestro Zacchia in the *Lucubrationes ad Gallesium de obligatione Camerali, quibus praeter additiones eiusdem Authoris ... accesserunt aliae Lanfranchi Zacchiae I.U.D.* (Rome, 1647):⁷⁴

Pro quibus omnibus, et singulis praemissis tenendis, complendis et inviolabiliter observandis idem A. debitor se ipsum, suosque haeredes, ac successores quoscumque, ac bona sua, et suorum quaecunque tam praesentia, et futura tam mobilia quam immobilia, ubilibet existentia iura, actiones, et debitorum nomina in ampliori forma Camerae dicto B. praesenti, et acceptanti, et pro se, suisque haeredibus, et successoribus quibuscumque stipulanti, et recipienti obligavit et hypotecavit, nec non Curiae causarum Camerae Apostolicae eiusque Camerarii, Vicecamerarii, Auditoris, Viceauditoris, Regentis, Locumentenit, et Commissarii, ac omnium et singularum aliarum Curiarum Ecclesiasticarum, et secularium ubilibet constitutarum iurisdictionibus, coercionibus, compulsionibus, iuribus, rigoribus, stolis, et meris examinibus supposuit, et submisit, per quas curias, et earum quamlibet tam coniunctim, quam divisim, voluit, et expresse consensit se, ac suos haeredes, et successores praedictos posse realiter, ac personaliter cogi, compelli, astringi, excommunicari, aggravari, reaggravari, et ad brachium seculare deponi, arrestari, capi, incarcерari, et detineri uno et eodem tempore, vel diversis temporibus, et per diversorum temporum intervalla usque ad plenariam, et integrum praemissorum observationem, ac omnium et singulorum damnorum, expensarum, et interesse praemissorum occasione forsan faciendorum, et substinentorum integrum refectionem, et restitutionem, ita tamen quod executio unius Curiae executionem alterius non impedit, nec retardet, non obstante

iuris dispositione, quod ubi iudicium inceptum est, ibidem terminari debeat, et quod causarum continentiae non dividantur, et quod quis teneatur in ea actione, quam intentavit usque ad finem litis persisteret, et qualibet alia iuris, et facti exceptione in contrarium facente, non obstante, et quavis alia iuris, seu facti exceptione, quae posset alligari in contrarium facente, non obstante; ita quod una via electa non censeantur ullo modo alteri renunciatum. Insuper renunciavit omni et cuicunque exceptioni doli mali, vis, metus, fraudis, laesionis, et machinationis, non numeratae pecuniae, speique futurę receptionis, et numerationis praesentis contractus, non sic, ut praemittitur facti, celebrati, et initi, et aliter opus, vel minus suisque factum, vel dictum, quam recitatum, et e contra omnibusque aliis, et singulis exceptionibus, cavillationibus, et cautelis, quibus mediantibus contra praemissa, vel aliqua eorum d. A. debitor facere, dicere, venire, ac se tueri quoquomodo posset, et specialiter iure dicente generalem renunciationem, non valere, nisi praecesserit specialis, et expressa.

Renunciavit pariter idem A. debitori omni, et cuicunque appellationi, reclamationi, et recursui contra praemissa quomodolibet interponendis ac praesentis Instrumenti, et contentorum in eo vim, et effectum, ac executionem quomodocumque differentibus, retardantibus, seu impedientibus, nec non omnibus, et singulis legibus, et legum auxiliis, etiam quod essent speciali nota digna, quibus mediantibus se contra praemissa, vel eorum quolibet supra contenta et praemissa defendere, ac tueri, ac per quas praesentis Instrumenti vis, effectus, aut assecutio posset quomodolibet differri, vel retardari. Quinimo appellatione, reclamatione, et recursu huiusmodi, ut supra interponendis, ac introducendis, caeterisque omnibus exceptionibus non obstantibus hoc Instrumento, et omnia in eo contenta, in primis, et ante omnia debitum suum sortiatur effectum, ac debitae executioni penitus demandentur, ita et taliter quod appellatio huiusmodi, aliquę exceptions eidem A. quoad effectum suspensum minime suffragentur me Notaio tamquam publica, et autentica persona pro absentibus, ac omnibus, et singulis quorum interest, intererit, vel in futurum interesse poterit stipulante, et sic ad et super Sancta DEI Evangelia tactis scripturis in mei Notarii manibus sponte iuravit super quibus omnibus, et singulis praemissis peritum fuit a me Notaio unum, vel plura publica confici Instrumenta etc.

Appendix

Documents with cameral obligation in the database of *The History of the Accademia di San Luca, c. 1590–1635: Documents from the Archivio di Stato di Roma*.