

A NEO-REALIST INTERPRETATION OF *PRO QUINCTIO*

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SUMMARY: 1.- Introduction; 2.- Roman success and failures; 2.1.- Expansion into Gallia; 2.2.- War with Jugurtha in Africa, rise of Marius and Sulla; 2.3.- Cimbrian war in Gaul; 2.4.- Social war in Italy; 2.5.- Mithridatic war in Asia and Greece, civil war in Italy; 3.- The political and socio-economic context; 4.- Facts of the case as disclosed by Cicero; 5.- Proceedings; 6.- Analysis; 6.1.- Neutral observation of the parties; 6.2.- Naevius' stratagem; 6.3.- Timeline; 6.4.- *Lex Valeria*: economic crises, money tight, land value drops; 6.5.- First appearance *in iure* by the parties; 6.6.- Alfenus' defence; 6.7.- Cicero's arguments; 6.8.- Untold facts; 6.9.- Old-fashioned good versus modern evil; 6.10.- Alternative interpretation; 7.- Conclusion.

ABSTRACT: This article continues the contextualisation of the *Pro Quinctio* case addressed in the *Festschrift für Johannes Michael Rainer*. The works of Platschek, Metzger and Rüfner are accepted as authoritative but a closer look at the Roman economy and the late republican economic and political crises, resulting from internal and external wars may lead to another narrative than Cicero's astute blame shifting and transformation of a court case into a morality play. The most striking example of which is found in the total silence on the *lex Valeria de aere alieno*. This essay attempts to sketch both the macro and micro political and economic circumstances, after which the facts and the ensuing proceedings shall be set out and interpreted.

Questo articolo prosegue la contestualizzazione del caso Pro Quinctio trattato nella Festschrift für Johannes Michael Rainer. I lavori di Platschek, Metzger e Rüfner sono considerati autorevoli, ma uno sguardo più attento all'economia romana e alle crisi economiche e politiche della tarda Repubblica, derivanti dalle guerre interne ed esterne, potrebbe portare a una narrazione diversa da quella di Cicerone, che con astuzia scaricò la colpa su altri e trasformò un caso giudiziario in una rappresentazione morale. L'esempio più lampante di ciò si riscontra nel silenzio totale sulla lex Valeria de aere alieno. Il presente saggio cerca di delineare le circostanze politico-economiche sia a livello macro che micro, per poi esporre e interpretare i fatti e il procedimento che ne è seguito.

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KEYWORDS: *Pro Quinctio*; Cicero; Roman economic history; Late Roman Republic; *Lex Valeria de aere alieno*; Roman civil procedure.

1.- Introduction

The recent publication by Harvard University Press of four early Ciceronian orations, edited and translated by Andrew R. Dyck¹, replaces the earlier edition in the Loeb Classical Library by John Freese of 1930². This offers an opportunity to compare the differing readings of the manuscripts³ and attempt a new interpretation of one of Cicero's first cases, the *Pro Quinctio*. Although recently Platschek⁴, Metzger⁵ and Rübner⁶ have dealt authoritatively with the procedural aspects of this case, contextualisation of the narrative may lead to different hypotheses than those which Cicero eloquently and persuasively leads his readers to believe. For example, the total silence on the *lex Valeria de aere alieno*, fresh approaches to the Roman economy and the late republican crises⁷, which were the result of internal and external wars, and a less partial description of the parties may draw attention to aspects which Cicero astutely obscured by blame shifting and turning a court case into a morality play. This essay shall attempt to sketch both the macro and micro political and economic circumstances, after which the facts and the ensuing proceedings shall be set out.

An analysis shall be undertaken in the light of the above and an up-to-date interpretation proposed. Naevius and Quinctius lived during turbulent times. Cicero mentions in 81 BC that Quinctius is an old man of sixty. This means that as an adult he had lived through the following Roman successes and failures and the concomitant transformations of the Roman world.

¹ A.R. DYCK, *Cicero Pro Quinctio Pro Roscio Amerino Pro Roscio Comoedo Pro Tullio De lege agraria*, London 2025.

² <https://www.attalus.org/cicero/quinctius.html>.

³ For example, T.E. KYNSEY, *M Tulli Ciceronis Pro P Quinctio*, Sydney 1971.

⁴ J. PLATSCHEK, *Studien zu Ciceros Rede für P Quinctius*, München 2005.

⁵ E. METZGER, *The current view of the extra-judicial vadimonium*, in ZSS RA 117 (2000), pp. 133-178.

⁶ T. RÜFNER, *Vadimonium und andere Prozessstipulationen*, in *Handbuch des römischen Privatrechts* eds Babusiaux (2023).

⁷ C.T. BARLOW, *The Roman government and the Roman economy, 92-80 BC*, in *American Journal of Philology* 101 (1980), pp. 202-219; N.K. RAUH, *Finance and estate sales in republican Rome*, in *Aevum* (1989), pp. 45-76; W.V. HARRIS, *A revisionist view of Roman money*, in *JRS* 96 (2006), pp. 1-24; A. COLLINS – J. WASH, *Debt deflationary crisis in the late Roman republic*, in *Ancient Society* 45 (2015), pp. 125-170.

2.- Roman success and failures

2.1.- Expansion into Gallia

Narbo Martius, presently Narbonne was established as a colony in 118 BC⁸, after Quintus Fabius Maximus and Domitius Ahenobarbus had vanquished the tribes of the Averni and the Allobroges during 121 and 120 BC⁹. The construction of the *Via Domitia* followed the foundation of the city. Roman colonists were offered free transport from Rome as well as land. Narbonne became the capital of the new province *Gallia Transalpina*, which had been established in 121 BC, and was later renamed *Gallia Narbonensis*.

During the Cimbrian war (113-101 BC)¹⁰ most of the fighting took place in this province.

2.2.- War with Jugurtha in Africa, rise of Marius and Sulla

Jugurtha's ascent to the throne of Numidia¹¹ decided Rome to intervene. After an inauspicious beginning of the war,¹² Metellus became the consul in charge of the campaign¹³, with Marius as his *legatus*¹⁴. The latter was elected consul for 107 BC and took the place of Metellus with Sulla as his *quaestor*¹⁵. Sulla managed to capture Jugurtha, which ended the war in 105 BC¹⁶.

2.3.- Cimbrian war in Gaul¹⁷

Meanwhile in Gaul the Romans under Caepio¹⁸ and Mallius¹⁹ had suffered a catastrophic defeat at Arausio at the hands of the Cimbri and Teutones²⁰. These Germanic tribes migrated from the present Denmark southwards and were joined by other tribes. The severe losses forced the Romans to make Marius consul in his absence and assign Gaul as his

⁸ Velleius Paterculus, *Historia Romana*, II 7 8 at <https://penelope.uchicago.edu/>; Eutropius, *Breviarium historiae Romanae*, IV 23 at https://www.tertullian.org/fathers/eutropius_breviarium_2_text.htm.

⁹ Paterculus II 10 2; Eutropius, IV 22.

¹⁰ Paterculus, II 8 3; Eutropius, IV 25, V 1 and 2.

¹¹ Eutropius IV 26; P.A. BRUNT, *Social conflicts in the Roman republic*, New York-London 1971, p. 96.

¹² 111-105 BC. Sallustius, *Bellum Jugurthinum*, <https://www.thelatinlibrary.com/sall.2.html>; Translation J.C. ROLFE, https://lexundria.com/sal_jug/; Eutropius, IV 26 and 27. Jugurtha had become king of Numidia (covering parts of Eastern Algeria, Tunisia and Libya) by assassination, war and bribery. His father-in-law was Bocchus, king of Mauretania.

¹³ 109 BC. Eutropius, IV 27; Paterculus, II 9. This author was very critical of Marius and accused him of scheming to replace Metellus, II 11.

¹⁴ The second in command, before the Marian reforms.

¹⁵ Paterculus II 12 1.

¹⁶ Sallustius, 102-114; Eutropius IV 27.

¹⁷ Eutropius, V 1 and 2.

¹⁸ Consul 106 BC, proconsul in *Gallia Transalpina* 105 BC.

¹⁹ Consul 105 BC, consul in charge of the campaign against the Cimbri and Teutones, the Ambrones and Tigurini (tribe from Switzerland).

²⁰ Eutropius, V 1 and 2. In the battle of Arausio, present-day Orange, the Roman armies were destroyed with enormous losses. Both commanders escaped but were exiled on their return in Rome.

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province²¹. Marius was consul from 104 until 100 BC during which time he increased and reorganised the army and as a result succeeded in annihilation of the German and Gallic invaders in 101 BC in the battles of Aquae Sextiae²² and Vercellae or the Raudian Plain²³.

After the elimination of these foreign threats a period of internal political strife commenced in Rome and eventually extended to the Italian peninsula.

2.4.- *Social war in Italy*²⁴

This war, the *bellum sociale* or war of the allies, was in reality a civil war, the causes whereof went far back, but the Gracchi²⁵ combined the various longstanding bones of contention into a political programme, which in spite of their deaths remained championed²⁶. Thus, the land question in Italy, the political position of the Italian allies of Rome and the conscription of Roman landowners and the resulting pauperisation of small farmers divided the Roman citizenry and condensed into a demand for Roman citizenship by the allies²⁷. The resulting coordinated armed uprising by a part of them²⁸ led to a 'civil' war which lasted several years²⁹ and caused great loss of lives and property on both sides³⁰.

2.5.- *Mithridatic war in Asia and Greece*³¹, *civil war in Italy*

Taking advantage of the war inside Italy, Mithridates, king of Pontus invaded the province of Asia and massacred the Roman inhabitants³². Thereafter his armies invaded Macedonia and Greece. Sulla was elected one of the consuls in 88 BC and was tasked to take the command in the East. However, a tribune of the people manipulated the popular assembly to revoke Sulla's command and appoint Marius instead. Sulla marched his army to Rome and had the instigators declared exiles and executed, Marius and his son managed to escape to Carthago³³.

²¹ Sallustius, 114; Paterculus, II 12 3-6; Eutropius V 1.

²² Aix en Provence.

²³ Paterculus, II 12 5; Eutropius, *loc cit*; https://www.historyofwar.org/articles/battles_vercellae.html.

²⁴ Alternative names are the Italian war or the Marsic war.

²⁵ Paterculus, II 2, 3, 6, 7.

²⁶ Paterculus, II 6 sums up the programme of Gaius Gracchus and in II 13 and 14 the revival thereof by Marcus Livius Drusus.

²⁷ Eutropius, V 3; Paterculus, II 15; P.A. BRUNT, *Social conflicts*, cit., pp. 77-102.

²⁸ Paterculus, II 15-18; Eutropius, V 3.

²⁹ 91-87 BC.

³⁰ Paterculus, II 15 3 mentions over three hundred thousand losses.

³¹ Appian, *The Mithridatic wars* at <https://www.livius.org/sources/content/appian/appian-the-mithridatic-wars>.

³² Paterculus, II 18; Eutropius, V 4.

³³ Paterculus, II 18 4ff, II 19; Eutropius, V 4-9; P.A. BRUNT, *Social conflicts*, cit., 103f.

After Sulla's departure to Greece, Cinna and Marius took over the government and, in their turn, purged and proscribed their opponents³⁴. For several years the government was in dire financial circumstances as the result of the war in the East and preparations for civil war in Italy. Political and economic stability and booty only returned in 81 BC after the victories of Sulla in both wars.

3.- *The political and socio-economic context*

Simplified, the republican politics exemplified the struggle between the classes, *in casu* the optimates, patrician families who controlled the senate and were supported by the wealthy equestrian class, and the lower classes, plebeians who had their own constitutional assembly as well as their magistrates, the *tribuni plebis*, a powerful magistracy often filled by ambitious patricians such as the Gracchi³⁵. Successful generals often went into politics, so Marius and his younger second in command Sulla were no exception after their successes in the Jugurtine war, the Cimbrian invasion, and the Social war. Thus, Sulla elected as one of the consuls in 88 BC was allocated command in Asia but had to march his army -still in Italy to mop up the last resistance of the social war- to Rome where a tribune of the people had his command revoked and Marius appointed instead. Sulla had the instigators declared exiles and executed, Marius and his son managed to escape to Carthago³⁶.

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The ancient historians reflected mainly political and military affairs, usually in a moral philosophical vein. Thus, information about socio-economic affairs is difficult to obtain. Nevertheless, Brunt has sketched a plausible outline of the socio-economic development during the later Roman republic³⁹. Building on the studies of Brunt⁴⁰ and Crawford⁴¹ Barlow has attempted to estimate the economic costs of the Social war⁴². He shows how the

³⁴ Paternus, II 20 6, II 22.

³⁵ Paternus, II 2 1; ii 6 2.

³⁶ Paternus, II 19; P.A. BRUNT, *Social conflicts*, cit., 103ff.

³⁷ Paternus, II 20-28.

³⁸ Paternus, II 23, II 24-28; P.A. BRUNT, *Social conflicts*, cit., 106ff.

³⁹ *Ibid.*

⁴⁰ P.A. BRUNT, *Italian Manpower, 225 BC- AD 14*, Oxford 1971, pp. 426-445.

⁴¹ M. CRAWFORD, *Roman Republican coinage*, Cambridge 1974, pp. 634-695.

⁴² C.T. BARLOW, *The Roman government*, cit., pp. 202-219.

main expense of the government, the army increased from 6 legions in 92 BC, to 19 legions in 90 BC, 32 in 89 BC and 17 in 88 BC⁴³.

This is confirmed by the results of Crawford, who estimates that the Roman mint used 120 obverse dies in 92 BC, 677 in 91 BC, 2372 in 90 BC, 841 in 89 BC and 807 in 88 BC⁴⁴. As Polybius has informed that a legionary earned about 110 *denarii per annum*⁴⁵, the cost of army pay during 90-88 BC must have run into millions of *denarii*⁴⁶, while it should be kept in mind that army pay only represents a fraction of the cost of armies and civil war.

Moreover, taking advantage of this war inside Italy, Mithridates, king of Pontus invaded the province of Asia and massacred the Roman inhabitants. This ended the biggest revenues for Rome from the richest province⁴⁷. Thereafter his armies invaded Macedonia and Greece. Political discord concerning the command in Asia led to Sulla's march on Rome and resulted in political purges in the city and a change of government after his departure to the war. New purges and preparation for the inevitable civil war followed. Barlow rationalises that the Mithridatic invasion crashed the credit structure⁴⁸.

In consequence, it can be stated that the turbulent eighties were characterised by conscription, bloodshed, political instability, destruction, poverty, lawlessness and economic crises⁴⁹. Also, the invasion by the Cimbri and Teutones *et al.* into Gallia Transalpina and a decennium of war inside Italy with the concomitant loss of farmers, badly affected the value of land, the predominant form of security in antiquity⁵⁰.

The desperate financial situation of the Roman state is set out by Barlow who mentions that the government had soon depleted the reserves of coins, gold and silver in 91 BC and then turned to extraordinary reserves⁵¹. Thus, Sulla departed to Asia in 88 BC with 90

⁴³ Ivi, p. 204.

⁴⁴ An obverse die is the fixed lower die of a coining press, which produces the front side of the coin.

⁴⁵ Polybius, *The Histories*, VI 39. At https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Polybius/6*.html. Suetonius, *De vita Caesarum, Divus Julius*, 23 3 mentions that Caesar doubles their pay, at https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Suetonius/12Caesars/Julius*.html

⁴⁶ C.T. BARLOW, *The Roman government*, cit., 211f, where he refers to Verres accounts when quaestor to Carbo in 84 BC.

⁴⁷ Ivi, pp. 207 and 215.

⁴⁸ Ivi, p. 215: «First, those who had invested money in Asia could not repay their debts and were ruined; second, their creditors, unable to collect, could not repay their own debts, and so the effects of the crises rapidly spread. ... When the creditors foreclosed, they put more land on the market just when the supply of money was short. This ... caused land prices to drop swiftly. As the value of most collateral fell, more creditors foreclosed, and the collapse quickened».

⁴⁹ For the relevant aspects of the post-Keynesian economic theory explaining the economic crises in the late Roman republic, P. THOMAS, *Pro Quintio redux, Festschrift for Johannes Michael Rainer*; W. FABER – J. FILIP- FRÖSCHL – W. FLUME – R. MOSLER – K. SCHMOLLER (eds), Wien 2026, pp. 755-764.

⁵⁰ C.T. BARLOW, *Bankers, moneylenders and interest rates in the Roman republic*, North Carolina 1978, pp. 180 and 188.

⁵¹ C.T. BARLOW, *The Roman government*, cit., pp. 101, 202-219 at 205ff. He mentions the *sanctius aerarium*, a reserve treasure for wars against the Gauls, the sale of properties on the Capitoline, taxes from the Italian cities and the Roman temple treasures.

000 pounds of gold from the temple treasures in Rome⁵². Plutarch relates that he obtained financing in Greece in a similar way⁵³.

Consequently, the case between Naevius and Quinctius should be viewed, in this context. Brunt summarises this situation when he states that the loss of Asia, the most lucrative province in which the publicans had invested great sums aggravated the economic crisis caused by the civil war⁵⁴. The bloodletting resulting from the conflict between senate and Cinna and the concomitant proscriptions⁵⁵ were followed by the rule of Cinna. His colleague Valerius Flaccus⁵⁶ introduced the *lex Valeria de aere alieno* in 86 BC to save both public and private finances⁵⁷. However, it was the return of Sulla after his victories in the East and his successes in Italy, which made him in early 82 BC the master of Rome, after which he proscribed the opposition, reorganised the state and restored the economy⁵⁸.

⁵² Appian, *Mithridatic wars*, 5 22: When the consuls cast lots, the government of Asia and the Mithridatic war fell to [Lucius] Cornelius Sulla. As they had no money to defray his expenses, they voted to sell the treasures that king Numa Pompilius had set apart for sacrifices to the gods; so great was their want of means at that time and so great their ambition for the commonwealth. A part of these treasures, sold hastily, brought 90,000 pounds' weight of gold and this was all they had to spend on so great a war. Moreover, Sulla was detained a long time by the civil wars, as I have stated in my history of the same. at <https://www.livius.org/sources/content/appian/appian-the-mithridatic-wars/appian-the-mithridatic-wars-5#22>; <https://topostext.org/work/496>.

⁵³ Plutarch, *The life of Sulla*, 12 https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Lives/Sulla*.html.

⁵⁴ P.A. BRUNT, *Social conflicts*, cit., 103ff.

⁵⁵ A. BERGER, *Encyclopedic Dictionary of Roman law*, Philadelphia 1953, s v *Proscriptio* (in public law). 'Inscribing the name of a person upon a list of outlaws. Simultaneously, a reward was offered for his head.' Legalised by Sulla's *Lex Cornelia de proscriptione* of 82 BC, Marius and Cinna introduced this practise to eliminate unfair opponents. Sulla and the second Triumvirate made use of this political tool on an industrial scale. Appian, *Civil Wars*, I 95; Plutarch, *Life of Sulla*, 31; Cassius Dio, *Roman History*, 47 3 1 <https://topostext.org/work/219>; Appian I 88 describes the assassination of Scaevola in 82 BC; P.A. BRUNT, *Social conflicts*, cit., p. 105.

⁵⁶ Lucius Valerius Flaccus was suffect consul who completed the term of Marius in 86 BC. The Valerii Flacci were an important aristocratic family who supported Marius.

⁵⁷ C.T. BARLOW, *The Roman government*, cit., p. 216; A. COLLINS – J. WASH, *Debt*, cit. 151ff.

⁵⁸ Appian, *Mithridatic wars*, 62f. Sulla imposed fines on the liberated cities: taxes of five years to be paid at once, together with the Roman cost of the war. The cities borrowed at high rates and mortgaged all public property. Pliny, *Historia naturalis*, 33 5 16 mentions that the gold which C. Marius the younger had taken from the shrines was fourteen thousand pounds of gold and six thousand pounds of silver, which Sulla returned to Rome together with fifteen thousand pounds of gold and one hundred and fifteen thousand pounds of silver bounty from his other victories. https://penelope.uchicago.edu/Thayer/L/Roman/Texts/Pliny_the_Elder/33*.html; <https://www.attalus.org/pliny/hn33a.html>.

4.- *Facts of the case as disclosed by Cicero*

Naevius and Gaius Quinctius had concluded a partnership for farming in Gallia Narbonensis⁵⁹. Naevius was married to a cousin of Gaius⁶⁰ and had made his money as an auctioneer in Rome⁶¹. This partnership lasted several years until dissolved by the death of Gaius. The latter left his estate to his middle-aged brother Publius⁶², who went to Gaul and lived on the communal farm together with Naevius for about a year. It must be assumed that Publius and Naevius had formed a new partnership, probably on the same terms and conditions as the extinct one, but the exact partnership agreements are nowhere explained. Cicero mentions that the farms were in common ownership⁶³. He also relates that the new partners frequently discussed the partnership, its accounts and the properties in Gallia, and accentuates the fact that Naevius never raised the matter of debts owed to him by his partners. However, other debts of Gaius' estate were discussed and when Publius advertised the sale of some private property in Narbonne⁶⁴ Naevius, his partner and ex-auctioneer, advised him against such sale, arguing that it was a bad time to sell⁶⁵. He offered to help Publius pay the debt to the moneylender in Rome⁶⁶ and both partners returned to Rome where Naevius helped Publius to arrange the matter with the moneylender, again promising to advance the money to pay. In consequence, Publius agreed on payment with the moneylender⁶⁷, but when asked to provide the money, Naevius refused unless the partnership affairs were settled. Publius had to arrange a postponement with his creditor and sent instructions for a sale in Gaul, where he indeed received a bad price⁶⁸.

⁵⁹ PQ 12: «Quinctius fecit, ... , societatem earum rerum quae in Gallia comparabantur. Erat ei pecuaria res ampla et rustica sane bene culta et fructuosa. ... postea quam nescioquid impendit et in commune contulit»; 79: «saltum vestrum Gallicanum. Cicero does not provide details on the farming, but his praise of Gaius Quinctius farming enterprise and the latter's need of finance may indicate intensive mixed farming, now known as convertible husbandry». Cf Geoffrey Kron, *A Companion to food in antiquity*, J Wilkins, R Nadeau (eds), Oxford Blackwell Wiley 2015, 160-172. This may be the subtext as Cicero refers several times to *saltus*, pastureland as well as to *rustica sane bene culta et fructuosa* (above).

⁶⁰ PQ 16.

⁶¹ PQ 11ff. Cicero denigrates Naevius career and implies that the latter fraudulently enriched himself from the partnership.

⁶² PQ 14.

⁶³ PQ 28: «de saltu agroque communi a servis communibus vi detriditur; 90: totum agrum qui communis est»; 85: «... dominum expulsum esse de praedio, domino a familia sua manus adlatas esse ante suos lares familiaris; 81: «dominus de suo fundo a sua familia deiceretur?».

⁶⁴ PQ 15.

⁶⁵ As explained by Barlow as well as Collins and Walsh that the shrinking money supply, high private debts and political uncertainty led to a deflation, which lowered the price of immovable property.

⁶⁶ PQ 16.

⁶⁷ PQ 17 and 18. Aquilius was involved as arbitrator, but Cicero does not mention why this was necessary. For the possible reasons.

⁶⁸ PQ 20.

Thereafter Quinctius asked Naevius to settle the partnership finances, but in mediation no agreement could be reached⁶⁹. Thus, the matter came before the *praetor* after many postponements affirmed by *vadimonia*⁷⁰.

In iure Naevius stated that he had arranged an auction in Gaul and had sold what he deemed fit so that the partnership did not owe him anything; he did not insist on further *vadimonia* nor would he provide one, but if Quinctius wished to sue him, he would not object⁷¹. Quinctius did not react but remained in Rome a month during which he postponed other court cases. He left for Gaul end of January 83 BC⁷². In the harbour of Volterra he met a friend of Naevius, who on arrival in Rome reported this meeting to the latter⁷³.

The next day Naevius assembled a meeting of friends at the office of a banker and made them sign an affidavit that Quinctius had not appeared on the date and place of his *vadimonium*⁷⁴. Naevius then appeared before the *praetor* and asked for *missio in possessionem* of the estate of Quinctius, which was granted. He had posters put up announcing the sale of the estate. This auction was stopped by Alfenus⁷⁵, who as Quinctius' agent had the notices pulled down, repossessed a seized slave of Quinctius and declared himself ready to defend an action⁷⁶.

Meanwhile Quinctius had arrived in Gaul but was chased from the farms by the communal slaves⁷⁷. He addressed Gaius Flaccus, the governor, but no information on the outcome of this step was given.

Quinctius returned to Rome, where a dispute between Naevius and Alfenus concerning the money that Quinctius allegedly owed Naevius, had already reached the *praetor*. After procedural haggling⁷⁸ Alfenus had provided a *vadimonium* that Quinctius would appear on a certain date⁷⁹. At his (Quinctius) appearance Naevius applied for security for the payment of the judgement in terms of the edict granting this where a defendant's estate

⁶⁹ PQ 20f.

⁷⁰ PQ 22: «Itaque ex eo tempore res esse in vadimonium coepit».

⁷¹ PQ 23: «Ait se auctionatum esse in Gallia; quod sibi videretur se vendidisse; curasse ne quid sibi societas deberet; se iam neque vadari amplius neque vadimonium promittere; si quid agere secum velit Quinctius, non recusare».

⁷² PQ 23f. and 57.

⁷³ PQ 24.

⁷⁴ PQ 25: «Quinctium non stetisse, et stetisse se».

⁷⁵ PQ 62; A rich equestrian, friend of both parties. A supporter of the *populares* and victim of Sulla's proscriptions.

⁷⁶ PQ 25: «iussit bona proscribe»; 27: Libellos Sex Alfenus, procurator P Quincti, familiaris et propinquus Sex Naevi, deicit, servulum unum quem iste prenderat abducit, denuntiat sese procuratorem esse».

⁷⁷ PQ 28: «Quinctius interea contra ius, consuetudinem, edicta praetorum de saltu agroque communi a servis communibus vi detruditur».

⁷⁸ PQ 29, 63-65.

⁷⁹ PQ 29: «ut Idibus Septembribus P Quinctium sisti Sex Alfenus promitteret».

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had been possessed for thirty days in terms of the edict⁸⁰. Quinctius refused and the *praetor* ordered a *sponsio* on this question. Thereafter Quinctius sued on the *sponsio*⁸¹.

5.- Proceedings

Cicero argued that after his mishap with the Scapula debt Quinctius asked Naevius to settle the partnership finances. However, in mediation no settlement could be agreed upon⁸² and the matter went to the *praetor*. Cicero did not name the instigator for this step but insinuates that Naevius was responsible for numerous postponements. Once *in iure* Naevius ambushed Quinctius with the statement that he had made arrangements in Gaul so that the partnership did not owe him anything. He, Naevius, did not demand further *vadimonia*, but neither would he provide one. If, however, Quinctius wished to sue him, he would accept *litis contestatio*⁸³. At this point Cicero stops abruptly and continues that Quinctius was in a hurry to go to Gaul. He nevertheless remained in Rome for a month during which time he postponed other court cases⁸⁴.

On the twentieth of February Naevius re-appeared before the *praetor* and asked for *missio in possessionem*⁸⁵ of the estate of Quinctius. He was armed with a sworn sealed and witnessed statement holding that Quinctius had not appeared for a *vadimonium*⁸⁶. Burrenus granted the *missio* and Naevius had the sale of the estate advertised⁸⁷.

Quinctius returned to Rome later during the year. In the meantime, Alfenus had furnished a *vadimonium* that Quinctius would appear on the thirteenth of September⁸⁸. Quinctius did appear on this date and one year and six months were spent on negotiations and postponements delaying actual procedural steps⁸⁹. At last *in iure* Naevius applies for security for the payment of the judgement in terms of the edict granting such security where a defendant's estate had been possessed for thirty days in terms of the edict⁹⁰. Quinctius

⁸⁰ PQ 30: «Dolabella denique praetore postulat ut sibi Quinctius iudicatum solvi satis det ex formula quod ab eo petat quoniam eius ex edicto praetoris bona dies XXX possessa sint».

⁸¹ PQ 32.

⁸² PQ 20f at 21: «Res convenire nullo modo poterat, propterea quod his mediocrem iacturam facere cupiebat, (22) mediocri praede contentus non erat; Kinsey, 79 interprets this in favour of Naevius».

⁸³ PQ 23: «Ait se auctionatum esse in Gallia; quod sibi videretur se vendidisse; curasse ne quid sibi societas deberet; se iam neque vadari amplius neque vadimonium promittere; si quid agere secum velit Quinctius, non recusare».

⁸⁴ PQ 23: «Hic, cum rem Gallicanam cuperet revisere, hominem in praesentia non vadatur. ... Deinde Romae dies fere Quinctius commoratur, cum ceteris quae habebat vadimonia differt».

⁸⁵ On 20 February; PQ 79: A d v Kalend intercalares.

⁸⁶ PQ 25: «testificatur iste P Quinctium non stetisse et se stetisse; tabulae maximae signis hominum nobilium consignantur».

⁸⁷ PQ 27: «Libellos Sex Alfenus, ... deicit».

⁸⁸ PQ 27: «si quid agere velit, paratum esse iudicio defendere»; 29: «Alfenus interea Romae cum isto gladiator vetulo cotidie pugnabat. ... Appellantur tribuni ... ita tum disceditur ut Idibus Septembribus P Quinctium sisti Sex Alfenus promitteret».

⁸⁹ PQ 30: «annum et sex menses nihil petit; quiescit; condicionibus hunc quoad potest producit».

⁹⁰ PQ 30. Platschek, 97-127. *Satisfactio iudicatum solvi*, a *cautio* in the form of a *sponsio* secured by sureties, who would be personally liable with their whole estate.

refuses and the *praetor* ordered a *sponsio* on this question⁹¹. Thereafter Quinctius sued on the *sponsio*: «*Si ex edicto praetoris bona P Quincti possessa non sunt*».

Accordingly, the present case concerns a prejudicial question and does not deal with the original dispute⁹². Cicero posits three arguments: There was no reason for the *missio in possessionem*⁹³; Quinctius' estate could not have been possessed in accordance with the edict⁹⁴, and the estate was never in the possession of Naevius⁹⁵. The latter was represented by Hortensius, the leading barrister at that time⁹⁶.

Platschek has researched the various manuscripts and discussed the different interpretations of the manuscripts in his in-depth analysis of all legal aspects. This article neither criticises nor adds to this seminal work but merely attempts to contextualise the case and explain the bizarre turn of events.

6.- Analysis

6.1.- Neutral observation of the parties

Against the background of the disastrous eighties which saw large scale proscriptions in the various wars, the actors in the *Quinctiana* are modest, inconspicuous persons. Information on Gaius Quinctius is non-existent. It is unclear whether he was older or younger than Publius, married, widowed or divorced, presumably without offspring. He settled in the second colony established outside Italy and became according to Cicero, a successful rancher, albeit with bad judgment of human character⁹⁷. At his death he owed a considerable debt in Rome. It is possible that he became a colonist for economic opportunities and that his properties were on the *ager publicus*⁹⁸. It is probable that he entered the partnership with Naevius to obtain finance for his agricultural business. At his death he owned and co-owned several properties in Gaul, owed a sizeable sum in Rome, and was still in partnership with Naevius. His brother Publius inherited both his assets and liabilities. Publius had a house and family in Rome, few friends and small means as well as debts in

⁹¹ PQ 30.

⁹² PQ 30: «*Recusabant qui aderant tum Quinctio; demonstrabant de re iudicium fieri oportere*»; also 44ff.

⁹³ PQ 36ff; 85f; Platschek, 127-146.

⁹⁴ PQ 36, 60-85, 86-89; J. PLATSCHEK, *Studien*, cit., pp. 147-266; T.E. KYNSEY, *M Tulli*, cit., pp. 151-196.

⁹⁵ PQ 36, 85, 89f. This part of the case has partly been lost and has been reconstructed based on excerpts from Iulius Severianus (15th century).

⁹⁶ T.E. KYNSEY, *M Tulli*, cit., pp. 52.

⁹⁷ PQ 11.

⁹⁸ The following questions could be asked, Cicero, *Pro Flacco*, 80: «*Illud quaero sintne ista censui censendo, habeant ius civile, sint necne sint Mancipi, subsignari apud aerarium aut apud censorem possint. In qua tribu denique ista praedia censuist? Commisisti, si tempus aliquod graves accidisset, ut ex isdem praediis et Apollonide et Romae imperatum esset tributum. [are those estates subject to the census, does *ius civile* apply, are they *res Mancipi* or not, can they be used as security at the treasury or the censor? Moreover, under what tribe did you enter those estates in the census? You are committed in the event of a crisis to be taxed on these same estates both at Apollonis and Rome]*».

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Rome⁹⁹. On inheriting he went to Gaul and stayed a year on the ranch with Naevius. The latter was a retired auctioneer and married to a cousin of the Quinctii¹⁰⁰. Cicero talks him down, describing him as the son of a freedman, with little or no education. As auctioneer he had made money and influential friends. Cicero calls him a town crier, but in the same breath complains about his powerful and influential friends, insinuating that he had changed sides politically¹⁰¹. It is impossible to ascertain the truth, but it can be noted that he was absent from Rome during part of the turbulent eighties.

6.2.- *Naevius' stratagem*

In short, Naevius was a wealthy and well-connected man. Having been a talented auctioneer¹⁰², he may have branched off into the financial side of auctions. It appears that on retirement he had become an investor, an appreciative synonym for moneylender. As such, his partnership with Quinctius can be viewed as a prototype of modern private equity. Although Cicero makes out that the deceased Quinctius had taken Naevius as a partner in a flourishing farming enterprise out of the goodness of his heart, the financial situation of the deceased Quinctius can be glimpsed by his debt in Rome to Scapula, a banker or moneylender, also deceased. It is proposed that Naevius' intentions were from the beginning to avoid the risks of moneylending, that is bankruptcy of his debtor as well as limitations on interest. Thus, he agreed to a considerable financial injection into the farming in the form of a partnership. Cicero mentioned common land and common slaves, so it may be assumed that Gaius Quinctius brought in the land, buildings, slaves, cattle, implements as a going concern, while Naevius provided an equivalent amount of money into their partnership. Naevius' long game was that after several years Quinctius would be indebted to him to the extent that his share of the partnership would be payment of the settlement of accounts.

It is doubtful whether the Quinctii or Naevius had any farming experience or expertise or interest in cattle breeding. They obviously operated on a larger scale than do-it-yourself subsistence farming and stayed on the farm far from Rome and Italy and the Social war and subsequent Marian and Sullan conflicts.

6.3.- *Timeline*

⁹⁹ PQ 2; Cicero felt necessary to mention that it took him a month to postpone litigation with other debtors; PQ 23.

¹⁰⁰ PQ 16: «Nam P Quinctii consobrinam habet in matrimonio Naevius et ex ea liberos».

¹⁰¹ PQ 11ff, 69f, 91ff.

¹⁰² A talented auctioneer uses his charisma and personality to create excitement, drive bidding and effortlessly command the attention of the crowd. Good auctioneers often also employ humour to engage with and put bidders at ease, and commonly have signature lines in their back pocket to get the bids flowing, <https://www.andersonandgarland.com/news-item/the-art-of-being-an-auctioneer/>. PQ 11: «Non quo ei deesset ingenium; nam neque parum facetus scurra Sex Naevius neque inhumanus praeco umquam est existimatus», A.R. DYCK, *Cicero*, cit., n. 12.

Three timeframes are relevant. First, some estimates which will place the origins of the dispute. Secondly, the information relative to legal proceedings in Rome. Thirdly, the thirty days period of possession in terms of the edict.

The case was heard by Aquilius near the end of 81 BC¹⁰³. The legal question had been formulated in terms of an order of the *praetor* Dolabella into ‘whether the estate of Quinctius had been possessed in terms of the edict.’ Thus, the original dispute must have reached Dolabella after the first day of January 81 BC. Prior to this order the parties had argued *in iure* before Dolabella on the question whether Quinctius had to provide security for payment in case of his condemnation. Cicero mentioned that Naevius had taken no steps for two years after Quinctius had returned from Gaul during 83 BC.

Quinctius had left Rome on the twenty-ninth of January 83 BC, after having spent a month arranging his affairs after the cancellation of the *in iure* proceedings by Naevius, which must have taken place during December 84 BC. It is common cause that those proceedings had been subject to many postponements and were the consequence of unsuccessful mediation between the parties. Taking the duration of their travel from Gallia Narbonensis to Rome and the settling of the debt with the Scapulae, it is probable that Quinctius and Naevius had set out for Rome during the spring of 84 BC.

Cicero was adamant that the protagonists had spent nearly one year together on the communal ranch near Narbonne, which situates the demise of Gaius Quinctius during early 85 or late 86 BC.

Indications concerning the duration of the partnership between Naevius and Gaius are lacking, but it is obvious that this was not a once-off partnership. The partners stayed on the farm and engaged in the cattle business, which makes an estimate of the date of the initial contract in the early nineties or late eighties BC a probability.

Cicero provides a few specific dates to harness his case:

The 29th of January 83 BC as Quinctius’ date of departure from Rome.

The 5th of February as the date Quinctius would have given his *vadimonium*.

The application to the *praetor* Burrienus was undated.

The order for *missio in possessionem* was granted on the 20th of February 83 BC.

Quinctius was evicted from the communal farm on the 23rd of February.

Cicero uses these dates to exemplify the perfidy of Naevius¹⁰⁴.

¹⁰³ Aquilius Gallus, a prominent jurist, praetor in 66 BC and credited with the introduction of the *exceptio* (and *actio*?) *doli*; J. PLATSCHEK, *Studien*, cit., p. 2.

¹⁰⁴ PQ 77ff. Inspired by Quintus Roscius, the actor, who was related by marriage to Publius Quinctius.

After ascertaining that Quinctius had left Rome on the 29th of January¹⁰⁵ Cicero mentions that Quinctius and Albius met in Volaterra Lucius Publicius, a friend of Naevius, who was on his way to Rome¹⁰⁶. After his arrival in Rome, Publicius told Naevius of this encounter. Cicero explicitly¹⁰⁷ or by implication argues¹⁰⁸ that this information materially altered the course of events¹⁰⁹. Naevius immediately sent his slaves round to collect his friends and went himself to gather his cronies from the auction halls for a meeting at a banker's office the next day¹¹⁰. Having formally stated on this occasion that Quinctius had not appeared for his *vadimonium*¹¹¹ he had a formal statement drawn up and witnessed by his assembled supporters¹¹². Thereafter he applied to the *praetor* for *missio in possessionem*¹¹³ in terms of the edict¹¹⁴. Cicero takes care to mention that this application was granted on the 20th of February¹¹⁵. This makes the 5th of February plausible as date of a missed *vadimonium* rather than as the date on which according to Cicero Naevius had said that Quinctius had given his *vadimonium*¹¹⁶.

¹⁰⁵ PQ 24: «Roma egreditur ante diem II kalend Februarias Quinctius Scipione et Norbano coss. Quaeso ut eum diem memoriae mandetis. L Albius Sex filius Quiriba, vir bonus et cum primis honestus, una profectus est».

57: «Discedens in memoriam redit Quinctius quo die Roma in Galliam profectus sit; ad ephemeridem revertitur: invenitur dies profectione pridie kal Febr», A.R. DYCK, *Cicero*, cit., 28f n. 39; J. PLATSCHEK, *Studien*, cit., 60f for different explanations on the different dates; T.E. KYNSEY, *M Tulli*, cit., 82f. PQ 58: «Profectus est una L Albius, homo cum primis honestus; dicet testimonium. Prosecuti sunt familiares et Albius et Quinctius; dicent hi quoque testimonium. Litterae P Quincti, testes tot quibus omnibus causa iustissima est cur scire potuerint, nulla cur mentiantur, cum adstipulatore tuo comparabantur».

¹⁰⁶ PQ 24: «Cum venissent ad Vada Volaterrana quae nominantur, vident per familiarem Naevi, qui ex Gallia pueros venalis isti adducebat, L Publicium», T.E. KYNSEY, *M Tulli*, cit., 83.

¹⁰⁷ In the Loeb 240 1930 edition of J.H. FREESE, VI 24 ends with: «Quod nisi ex Publicio narratum Naevio esset, non tam cito res in contentionem venisset», T.E. KYNSEY, *M Tulli*, cit., 83f on the different readings.

¹⁰⁸ PQ 25: «Quod ubi ex Publicio audivit».

¹⁰⁹ A.R. DYCK, *Cicero*, cit., p. 31 n. 46: «Cicero depicts the process leading to the issuance of the edict as “staged” by Naevius in response to word received from Publicius about Quinctius’ travel to Gaul. But Cicero was not privy to communications between Publicius and Naevius».

¹¹⁰ PQ 25: «pueros circum amicos dimittit, ipse suos necessarios ab atriis Liciniis et a faucibus macelli corrogat ut ad tabulam Sextiam sibi hora secunda postridie», A.R. DYCK, *Cicero*, cit., p. 30 n 43 interprets *ad tabulam Sextiam*, at the picture of Sextius; also J. PLATSCHEK, *Studien*, cit., pp. 65-70; T.E. KYNSEY, *M Tulli*, cit., 84f.

¹¹¹ *Ibid*: «Testificatur iste P Quinctium non stetisse, et stetisse se».

¹¹² *Ibid*: «tabulae maxime signis hominum nobilium consignantur, disceditur».

¹¹³ Seizure and taking possession of an estate for the purpose of *venditio bonorum*, auction of the estate. U. BABUSIAUX, *Römische Rechtsschichten*, in *Handbuch I* § 6, 114-192 at 158; J. PLATSCHEK, *Formularprozess: Verhandlung in iure*, in *Handbuch I* § 12, 372-412 at 379; C. WILLEMS, *Formularprozess: Vollstreckung*, *Handbuch I* § 14, 476- 491 at 482; T. RÜFNER, *Handbuch II* §75, 1972-1987 at 1980, 1983, 1986f.

¹¹⁴ PQ 25: «Postulat a Burrieno praetore Naevius ut ex edicto bona possidere liceat».

¹¹⁵ PQ 79: «Bona postulas ut ex edicto possidere liceat. Quo die? Te ipsum, Naevi, volo audire; volo inauditum facinus ipsius qui id commisit voce convince. Dic, Naevi, diem. Ante diem V Kalend intercalaris».

¹¹⁶ PQ 57: «Quaesivit a te, statim ut Romam rediit Quinctius quo die vadimonium istuc factum esse diceres. Respondisti statim: Nonis Februariis».

However, if Quinctius left Rome on 29 January, the travel from Rome to Volaterra would have taken at least seven days by carriage on the Via Aurelia or the Via Cassia or the Via Clodia as well as secondary roads near Volaterra. The distance would have been between 250 and 300 km. A horse or mule drawn carriage could make 40-50 km per day¹¹⁷. It being winter¹¹⁸, shorter days and inclement weather might have slowed them down. Thus, realistically Quinctius would have met Naevius' friend on 4 or 5 February. Considering that Publicius had to travel the same distance from Volterra to Rome before he could tell Naevius of the encounter, Cicero's argument against Naevius, namely that it was impossible to travel more than one thousand km, from Rome to the ranch in three days by his messenger to the farm manager near Narbonne applied both ways. Publicius' arrival in Rome and his message to Naevius could not have been before 12 or 13 February¹¹⁹. This would place the meeting at the banker's office on 13 or 14 February at the earliest. These dates are estimates on the basis of Orbis the Stanford Geospatial Network Model of the Roman Worlds and are similar to the calculation of Platschek¹²⁰.

The third timeline refers to the duration of the possession of Quinctius' estate by Naevius and the defence by Alfenus. The most notable point in this respect is the absence of dates in Cicero's narrative¹²¹.

The above does not answer the question why the fifth of February was introduced into the case. Cicero maintained that when challenged by Quinctius on his return in Rome about the so-called *vadimonium* and asked when this had been undertaken, Naevius had answered on the fifth of February. This point has been argued by Platschek, who has offered linguistic alternatives. Moreover, a *vadimonium* undertaken on the 5th is difficult to place in Cicero's argument that Naevius' actions were step by step part of a planned fraud. The introduction of the timeline appears an improvisation intended to guide Hortensius and Aquilius into Cicero's labyrinth away from question about what had happened exactly at the first appearance *in iure* before Burrenus? What sales had Naevius concluded in Gallia and how were the debts compensated? Had all common property been sold? Was the *lex Valeria* ever mentioned or applied?

¹¹⁷ Orbis The Stanford Geospatial Network Model of the Roman Worlds (at Orbis.stanford.edu) does not include Volaterra. Instead Pisae was chosen and adjustment made for the difference in distance.

¹¹⁸ This excluded sea travel. Plinius Secundus, *Naturalis Historia*, II, XLVII, 122 and 125; https://penelope.uchicago.edu/Thayer/L/Roman/Texts/Pliny_the_Elder/2*.html; J. ROUGE, *La navigation hivernale sous l'Empire romain*, in *Revue des Études Anciennes* 54 (1952), pp. 316-325; O. TAMMUZ, *Mare clausum? Sailing seasons in the Mediterranean in early antiquity*, in *Mediterranean historical review* 20 (2005), pp. 2, 145-162.

¹¹⁹ J. PLATSCHKE, *Studien*, cit., p. 76 estimates Publicius' arrival in Rome on 19 February or a few days earlier.

¹²⁰ T.E. KYNSEY, *M Tulli*, cit., 18, 3, 185.

¹²¹ Relative to Alfenus' defence see PQ 27, 61ff, 66ff; J. PLATSCHKE, *Studien*, cit., p. 230-263; A.R. DYCK, *Cicero*, cit., 68 n. 102, 72f nn. 108, 110.

6.4.- Lex Valeria: economic crises, money tight, land value drops

The Social war and the subsequent civil war(s) caused an economic recession¹²². Financial reactions to political and military uncertainty are similar throughout the ages, namely calling in of outstanding debts and hoarding of money, in other words liquidity preference¹²³. The fact that in antiquity land was virtually the only forms of security for debt aggravated the crisis as result of the drop in value of land¹²⁴.

The *lex Valeria* is a statute, which has largely been ignored on account of the short duration of her effectiveness. This desperate attempt to stabilise the economy by the Marians¹²⁵ appears to have been abolished by Sulla after he had taken power. This enactment reduced three quarters of all debts¹²⁶ and was in force during the dispute between Quinctius and Naevius and as such may provide the key to the behaviour of the parties. Although it is debated to which debts the statute applied, it stands to reason that all debts, the small debts of outstanding rentals of the flat dwellers in Rome, the large debts of the *publicani* as well as the debts of the Roman state, would have fallen within the ambit of this enactment. Thus, the *lex Valeria* would have benefitted Quinctius in the settlement of the partnership debts of his brother as well as any subsequent debts of himself towards Naevius.

In Cicero's narrative the assertion that during their year of cohabitation the new partners never discussed settling the accounts of the previous partnership¹²⁷, appears unreal. However, in court in Rome it would be Quintus' word against that of Naevius, as possible witnesses of their conversations would have been in Gallia. Nevertheless, it appears illogical that in the circumstances the finances of the previous partnership, the terms and conditions of the new partnership and avenues of intermediate settlement would not have been discussed. The only certainty is that no agreement on settlements could be reached. Naevius would not have been prepared to write off 75% of his claims against the Quinctii. His offer to help Publius in dealing with the Scapulae was clearly motivated by the desire to settle the partnership finances. The *lex Valeria* indicated the enormous percentage to be written off, but a concomitant decrease in the value of land is nowhere to be ascertained. It should be kept in mind that the newly established Gallia Narbonensis had suffered the invasion of the Cimbri and their allies and the *decennium* of their presence must have deflated the value of land in Gallia. After the relatively quiet nineties the Social war

¹²² A. COLLINS – J. WASH, *Debt*, cit.

¹²³ Ivi, 127- 153; P.A. BRUNT, *Social conflicts*, cit., p. 103.

¹²⁴ C.T. BARLOW, *The Roman government*, cit., 212f.

¹²⁵ Paternus, II 23 2: «In huius locum suffectus Valerius Flaccus, turpissimae legis auctor, qua creditoribus quadrantem solvi iusserat, cuius facti merita eum poena intra biennium consecuta est». Sallustius, *Bellum Catalinae* 33 2 https://penelope.uchicago.edu/Thayer/I/roman/texts/Sallust/Bellum_Catilineae*.html.

¹²⁶ Paternus, II 23 2: «creditoribus quadrantem solvi iusserat».

¹²⁷ PQ 37-42.

as well as the subsequent civil war between Sulla and the Marius and Cinna faction was fought in Italy, destroyed cities and cost hundreds of thousand lives. These losses were combined with the costs of the Mithridatic war to which the loss of income from taxes in the East should be added. The enormity of the economic costs of these turbulent years was reflected in the *Lex Valeria* as the accumulated war debt and the resulting deflation of the value of land in antiquity is uncontested¹²⁸.

An interesting question is whether the *lex Valeria* also remained unmentioned during the negotiations with the Scapulae? It is possible that the disputed passage «*Cum pecuniam C Quinctius P Scapulae debuisset, per te, C Aquili, decedit P Quinctius quid liberis eius dissolveret. Hoc eo per te agebatur quod propter aerarium rationem non satis erat in tabulis inspexisse quantum deberetur nisi ad Castoris quaesisses quantum solveretur*»¹²⁹ should be interpreted in the light of this statute¹³⁰.

Thus, the negotiations between Naevius and Quinctius were a balancing act between debt reduction and the diminished value of the land. It is impossible to say whether Quinctius, the economically weaker party who was short of money or Naevius the creditor who was loath to write of three quarters of his claim was responsible for the postponements. Cicero described the position as Quinctius wanted a moderate loss, while Naevius wanted more, is a curious way of describing the settling of debts.

6.5.- First appearance in iure by the parties

One event in this saga, which Cicero mentioned so fleetingly that it has received scant attention by commentators¹³¹, is the appearance of the parties before the unnamed *praetor* during December 84 BC.

¹²⁸ It may be argued that during the eighties the ravages of war bypassed Gaul and that the land prices had recovered compared to Italy.

¹²⁹ *Pro Quinctio* 17. Platschek, 33-39 states categorically that Cicero misrepresents this procedure and holds that not enough information is available to come to a conclusion, but that the intercession of Aquilius suggests that the parties could not agree. T.E. KYNSEY, *M Tulli*, cit., 73f mentions several suggestions without expressing an opinion.

¹³⁰ J.H. FREESE in his footnote 18 mentioned on the authority of Roby, *Roman Private Law* II, 456 that both B G Niebuhr, *Zur Erklärung und Berichtigung ciceronischer Stellen*, *RhM* 1 (1827), p. 225 and Mommsen believed that this passage refers to the *Lex Valeria*, but that other explanations also have been given. T.E. KYNSEY, *M Tulli*, cit., pp. 73-74 refers to this suggestion that the *lex Valeria* may have played a role. He does not refer to the author of this suggestion. He rejects this hypothesis and proffers the argument that the debt may have been incurred in foreign currency, which is also held by Dyck: the rate of exchange. Platschek, 34 informs that this solution goes back to Lambinus, *Opera M Tullii Ciceronis* II, Lutetiae 1565 and that Niebuhr and Mommsen opined in the following sources: B.G. NIEBUHR, *Zur Erklärung und Berichtigung ciceronischer Stellen*, in *RhM* 1 (1827), p. 225 and Th. MOMMSEN, *Römisches Staatsrecht* II 1, Leipzig 1887, p. 547.

¹³¹ J. PLATSCHKE, *Studien*, cit., 58f 'Letztes Treffen der Parteien' he interprets the event as an extrajudicial settlement, including termination of the partnership and co-ownership. He believes that this was accepted

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Cicero implies that Quinctius was anxious to get the matter settled. However, it remains unclear whether this referred to the determination of the amounts reciprocally owed, in other words settling of the accounts, or included the termination of the partnership and division of the common property. Also, Cicero implies that Quinctius took the initiative and that the numerous postponements were due to Naevius¹³². However, what happened during their episode *in iure* clarifies that Naevius had been the plaintiff and had instituted the *actio pro socio*.

In iure Naevius suddenly declared that he had solved matters. He had auctioned off in Gallia what he deemed appropriate with as result that Quinctius¹³³ did not owe him anything anymore. He viewed this as a final settlement (of the reciprocal claims or of the partnership?) and he indicated as such by stating that he did not want any further postponements, but if Quinctius wanted to continue with the *actio pro socio* against him he would not refuse *litiscontestatio*¹³⁴.

In fact, Naevius ambushed Quinctius with his proposed solution before the *praetor*. It is not clear which property he had sold in Gallia and for how much; nor how he had compensated the debts of both Quinctii against the proceeds of the sale(s). According to Cicero neither Quinctius nor his counsel reacted. Cicero justifies this lack of action with the excuse that Quinctius wanted to go to Gaul¹³⁵ and therefor did not ask for a *vadimonium*¹³⁶.

It is questionable what Naevius did exactly state. The juridical incorrect ‘*ne quid sibi societas deberet*’ may only have meant that the various outstanding bilateral debts had been compensated and settled. To interpret this as a settlement of the partnership affairs, in other words termination of the partnership, including division of the common property may be going too far¹³⁷.

However, *qui tacet, consentit*, but Cicero does not define Naevius’ proposal to which Quinctius had agreed.

Finally, Naevius had also stated that he did not require further *vadimonia*, nor would he provide a *vadimonium*, but if Quinctius wanted to continue with the *actio pro socio* he would be happy to conclude *litiscontestatio*.

by Quinctius. However, he concludes that this ending was only temporarily as Quinctius did not observe the agreement and left 30 days later for Gaul.

¹³² PQ 22: «Cum vadimonia saepe dilata essent ... venit ad vadimonium Naevius».

¹³³ PQ 23: «curasse ne quid sibi societas (sic) deberet». J. PLATSCHEK, *Studien*, cit., p. 58 n 219: «dass ihm die Gesellschaft nichts mehr schulde (translation), explains in his commentary on 58 that Naevius “erklärt” sich hinsichtlich seiner gesellschaftsrechtlichen Forderungen für befriedigt»; T.E. KYNSEY, *M Tulli*, cit.

¹³⁴ PQ 23: «non recusare»; J. PLATSCHEK, *Handbuch I* § 12, pp. 373-377.

¹³⁵ Ivi, 81f calls Cicero’s argument “a little lame”, he also draws attention to the fact that when Quinctius came back he “did nothing”.

¹³⁶ PQ 23: «Hic (i.e. Quinctius), ..., hominem in praesentia non vadatur».

¹³⁷ J. PLATSCHEK, *Studien*, cit., p. 58; T.E. KYNSEY, *M Tulli*, cit., p. 81.

Quinctius nor his counsel reacted. This brings us to the *praetor*, who must have been as confused as we are today on the question what had taken place before him; what had exactly been proposed, what had been accepted, whether the partnership had been dissolved and the common property divided? Since the parties had left without achieving *litiscontestatio*¹³⁸, it may well be possible that he ordered Quinctius who had not reacted to the proposal to give a *vadimonium* to appear at a certain date, certain time at a certain place to finalise the details of their agreement.

These above interpretations of the meeting before the *praetor* seem to be reflected in the subsequent behaviour of the parties and/or partners.

Quinctius was under the impression that the partnerships' debts had been settled; that he thus did not owe anything to Naevius anymore, but that the partnership continued. In consequence he was in a hurry to go to Gallia to see for himself what had been sold and what was left.

Naevius on the other hand, hoped that his bluff had paid off; that the partnership had been dissolved and that he now was sole owner of all remaining partnership assets. This would explain why Quinctius was chased from the property in Gaul as early as the 23rd February. After their appearance before the *praetor* Naevius had sent a message to the farm manager that the partnership had been dissolved and Quinctius was no longer co-owner. This leaves the mystery date 5 February. Cicero mentions that Naevius had stated '*neque vadari amplius neque vadimonium promittere*' which reflects the reciprocity of two *vadimonia*¹³⁹. Cicero mentions that '*hominem non vadatur*' which applies to Naevius, who subsequently left *sine vadimonio*. However, '*sine vadimonia disceditur*' which is usually interpreted as applying to both parties, could have applied to only one of them¹⁴⁰.

Another possibility could be that Quinctius had not passively accepted his exit from the partnership but had declared his desire to continue the case. In consequence, the *praetor* would have ordered the parties to promise *vadimonia* to continue the *actio pro socio* until *litiscontestatio* on another date.

The solution proposed by Platschek¹⁴¹ and Metzger¹⁴² that Alfenus would have promised a *vadimonium* appears unlikely, since Alfenus had not appeared on the fifth of February, nor on the twentieth of that month.

¹³⁸ T. RÜFNER, *Handbuch* II § 75, 1978: «Ferner konnte das *vadimonium* dem Beklagten durch den Gerichtsmagistrat auferlegt werden, wenn die Verhandlung *in iure* nicht bis zu *litis contestatio* durchgeführt werden konnte».

¹³⁹ PQ 23.

¹⁴⁰ T.E. KYNSEY, *M Tulli*, cit., 145f also expresses doubt.

¹⁴¹ At 84-89.

¹⁴² At 144 n 31.

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This leaves the possibility of a judicial *vadimonium* adjourning the matter since the proceedings *in iure* had not resulted in a *litiscontestatio* as the most probable solution¹⁴³.

6.6.- *Alfenus' defence*

Cicero argues that Alfenus had been left as Quinctius' agent¹⁴⁴ and as such had the notices advertising the sale of the seized estate torn down and a young slave caught by Naevius forcibly wrestled back¹⁴⁵, and subsequently declared that he was Quinctius' agent and that the latter's return should be awaited¹⁴⁶. When Naevius issues the *in ius vocatio* Alfenus accepted on behalf of Quinctius¹⁴⁷, Naevius demanded the required security¹⁴⁸, but Alfenus refused this¹⁴⁹. Although Cicero pretends that the wealthy equestrian did properly defend Quinctius, Platschek carefully analysed the situation and explains why Alfenus diverged and went to a tribune¹⁵⁰.

Although Cicero describes Alfenus' actions as a homogenous defence, tearing down the notice, violently repossessing, declaring himself ready to defend the action, having a document made up to this effect¹⁵¹, a timeframe is not proffered. It is questionable whether the wrestling back of a young slave qualified as defending an absent debtor. Assuming the ripping down of the notice¹⁵² and the wrestling back of the slave took place within thirty days of the praetorian order, Naevius' *in ius vocatio*, which was obeyed by Alfenus as Cicero does not omit to tell us, never resulted in *litiscontestatio*, but via a detour at the tribune in a *vadimonium* for 13 September¹⁵³. In consequence, it remains an open question whether Aquilius would accept Alfenus' actions as a coherent defence instituted early

¹⁴³ This is implied in Metzger, 147f, 178; E. METZGER, *Formularprozess: Verfahrenseinleitung*, *Handbuch I* § 11, 350-371 at 368f. Also T. RÜFNER, *Handbuch* § 75 1978ff, but the latter expresses doubt regarding the *Pro Quinctio vadimonia* on 1981f.

¹⁴⁴ PQ 27: «Alfenus, procurator P Quincti. ... denuntiat sese procuratorem esse». Whether Alfenus had been specially appointed by way of mandate by Quinctius before leaving Rome, or if he acted on his own initiative to protect Quinctius' interest, *negotiorum gestio*, Cicero leaves to our imagination.

¹⁴⁵ PQ 27: «Libellos ... Alfenus deicit, servulum unum quem iste prenderat abducit»; also, PQ 61.

¹⁴⁶ PQ 27: «denuntiat sese procuratorem esse, istum aequum esse famae fortunisque P Quincti consulere et adventum eius expectare»; also, PQ 61.

¹⁴⁷ PQ 61: «In ius vocas; sequitur. Iudicium postulas; non recusat».

¹⁴⁸ PQ 29: «Postulat ut procurator iudicatum solvi satis daret». T.E. KYNSEY, *M Tulli*, cit., p. 93; J. PLATSCHEK, *Studien*, cit., p. 93 and 253f explains that Cicero's "Iniuria postulabas" at 63 does not correctly describe the legal position.

¹⁴⁹ PQ 29 and 63. Arguing that it is unfair that agent should give security where principal would not. A.R. DYCK, *Cicero*, cit., p. 35 n 53; T.E. KYNSEY, *M Tulli*, cit., 92f; J. PLATSCHEK, *Studien*, cit., 253f.

¹⁵⁰ J. PLATSCHEK, *Studien*, cit., p. 258.

¹⁵¹ PQ 66: «Alfenus, ut omnes intellegi possent iudicio defendi Quinctium, ne qua subesse posset aliena aut ipsius officio aut huius existimatione suspicio, viros bonos complures advocat»; 67: «Eius rei conditionisque tabellas obsignaverunt viri boni complures». T.E. KYNSEY, *M Tulli*, cit., 162f.

¹⁵² J. PLATSCHEK, *Studien*, cit., pp. 233-236 discusses *libellos deicere* and cites Seneca (*Ben* 4 12 2) where *deicere* is described as part of a juridical act, since a *sponsio* was a necessary component that went hand in hand with the *deicio*. Moreover, Seneca addresses the consequences.

¹⁵³ J. PLATSCHEK, *Studien*, cit., pp. 233-263 for a detailed analysis of this episode; T.E. KYNSEY, *M Tulli*, cit., 157ff.

enough to interrupt the thirty days¹⁵⁴. Moreover, Alfenus' behaviour indicates that he was not prepared to risk liability for Quinctius' debts¹⁵⁵.

6.7.- Cicero's arguments

The seminal work of Platschek analyses this aspect of the case in depth and presents *multiplines interpretationes*.

In the present context it can be reiterated that to argue years later about the justification of a praetorian order, which was not opposed or contested directly afterwards, at first glance appears pointless. To deny that Quinctius owed money to Naevius when on several occasions during the years it had been tacitly acknowledged that this was indeed the case and to raise the argument that the estate had not been possessed while the farm in Gaul apparently was still in the hands of Naevius¹⁵⁶ was hardly convincing.

However, Cicero's interpretation of *ex edicto possidere* was the only possible avenue open to Cicero, the jurist. Ignoring the thirty days requirement and making little of the question whether possession of the whole estate was necessary¹⁵⁷, he brilliantly introduced a novel interpretation of *ex edicto* allowing him to extend the scope of the legal question¹⁵⁸. Cicero held that *ex edicto*¹⁵⁹ did not refer to the specific order of Burrenus granting *missio in possessionem* to Naevius¹⁶⁰ but related to the general passages in the praetorian edict published at the beginning of the year which dealt with possession¹⁶¹. Cicero cited the legal question as contained in the *formula* «*Si ex edicto praetoris bona P Quincti possessa non sunt*» and returned to the praetorian edict as published on the *album* on the forum. < *Qui ex edicto meo in possessionem venerint, eos ita videtur in possessione esse oportere quod ibidem recte custodire poterunt, id ibidem custodiant; quod non poterunt, id auferre et abducere licebit. Dominum invitum detrudere non placet*» This

¹⁵⁴ T.E. KYNSEY, *M Tulli*, cit. 91ff is rather critical of Alfenus and Brutus; also 161f.

¹⁵⁵ J. PLATSCHEK, *Studien*, cit., p. 255.

¹⁵⁶ PQ 98 implies that this was the case. T.E. KYNSEY, *M Tulli*, cit., pp. 90, 202 and 211f also opines that Quinctius was not restored to the societal property.

¹⁵⁷ PQ 85. A.R. DYCK, *Cicero*, cit., p. 95 and 95 n 134 cites four excerpts into this *lacuna*, derived from Iulius Severianus (mid 15th century). Also PQ 86, 89f. T.E. KYNSEY, *M Tulli*, cit., 163f.

¹⁵⁸ PQ 60: «Attende nunc ex edicto praetoris bona P Quincti possidere nullo modo potuisses. [Tractat edictum] Qui fraudationis causa latitabit; Cui heres non extabit; Qui exili causa solum verterit»; 84: «Opinor ex edicto. Sponsio quae in verba facta est?». T.E. KYNSEY, *M Tulli*, cit., p. 152 describes Recita edictum in 60 following the Clark text. Dyck replaces this with [Tractat edictum] following Platschek, J. PLATSCHEK, *Studien*, cit., p. 157 n 528.

¹⁵⁹ PQ 25, 48, 60, 83f.

¹⁶⁰ Cicero contradicts his own statement in PQ 30: «Iubet (Dolabella) P Quinctium sponsionem cum Sex Naevio facere si bona sua ex edicto P Burreni praetoris dies XXX possessa non essent». T.E. KYNSEY, *M Tulli*, cit., p. 97 explains that *edicto P Burrieni* is the *edictum perpetuum* specifically attributed to Burrienus, since it was issued afresh by him at the beginning of his year in office. This argument is hardly convincing. A.R. DYCK, *Cicero*, cit., 36f ignores the question.

¹⁶¹ PQ 84.

interpretation has been a *controversium* in the world of romanists¹⁶² and has been fully analysed and described by Platschek in one hundred and eighteen pages¹⁶³. It suffices to mention here that Cicero's genius came to the fore in his artful synthesis of black letter lawyering and equity.

Another sign of artful lawyering combined with rhetorical excellence is the way Cicero leads the attention of Aquilus and his assessors and future readers away from certain aspects of the case, which brings the intentional untold facts into the discussion.

6.8.- *Untold facts*

Platschek's acumen observed that Dolabella had given Cicero an advantage since as plaintiff he could lead the conversation before the judge¹⁶⁴.

Thus, Cicero astutely left his audience in the dark on several points. What were the essentialia of the *societas* contract? Why were the financials not discussed during their cohabitation in Gaul? Was Naevius domiciled in Gaul and how long? Why did Publius stay a year at the farm while he had a wife and children in Rome? Why did Aquilius, a prominent jurist have to calculate the amount due to the Scapulae? Who issued the first *in ius vocatio*? What exactly was discussed *in iure* and what happened there? What financial arrangements made by Naevius did Quinctius find in Gaul? Did Quinctius still have private property in Gaul? What did the governor order? Why did Quinctius at his return in Rome not summons Naevius? Did Naevius keep possession of the farm(s) in Gaul? What made Alfenus refuse to provide security? Why did Cicero obfuscate the fact that both securities refused by Alfenus and Quinctius required securisation by sureties? The farms and other property in Gaul were provincial land and what title did the Quinctii have? Were there taxes payable and if so, who paid these? Who did the farm manager account to? When Naevius summonsed Quinctius the second time, which action did he use?

However, Cicero devoted ample attention and time to the question of the demand for and granting of security by Quinctius¹⁶⁵. Inserting a bit of "us versus them" against the nobility¹⁶⁶ he emphasised the so-called procedural disadvantages of having to plead first in a

¹⁶² And philologists. A.R. DYCK, *Cicero*, cit., p. 31 n 46: «The praetor could issue and "order for possession" (*missio in possessionem*) on the presumption that Quinctius had committed one of the offences listed in the edict». Cicero depicts the process leading to the issuance of the edict as "staged" by Naevius; T.E. KYNSEY, *M Tulli*, cit., 193 ff.

¹⁶³ Ivi, 147- 265.

¹⁶⁴ Ivi, 95, 119-127; A.R. DYCK, *Cicero*, cit., 36 n 57.

¹⁶⁵ PQ 30-36.

¹⁶⁶ PQ 30: «Decernit quam aequum nihil dico, unum hoc dico: novum, et hoc ipsum tacuisse mallet, quoniam utrumque quivis intelligere potuisset; 31: Dolabella, quem ad modum solent homines nobiles seu recte seu perperam facere coeperunt (ita in utroque excellent ut nemo nostro loco natus adsequi possit), iniuriam facere fortissimo perseverat: aut satis datre aut sponsionem iubet facere, et interea recusants nostros advocatos acerrime submoveri».

case in which *infamia* was at stake and appealing to the fairness and incorruptibility of the judge¹⁶⁷.

6.9.- *Old-fashioned good versus modern evil*

Cicero the orator turned the case into a morality play¹⁶⁸. His subtext is the battle between fraudulent greed and honest naivety. Naevius is depicted as the wealthy, influential and powerful *nouveau riche* living a luxurious debauched life¹⁶⁹ and Quinctius as the resourceless rural victim of his own simplicity and old-fashioned honesty¹⁷⁰. Their whole relationship had been a devilish ploy manipulated by Naevius to obtain the estate of Quinctius as well as his *capitis deminutio*¹⁷¹.

The old-fashioned harsh do-it-yourself law of debt collecting¹⁷² is contrasted to a more equitable dispensation, based on good faith, decency, ties of partnership and family¹⁷³, in fact the old *ius civile* versus the developing praetorian law, a paradox in Cicero's old versus modern.

6.10.- *Alternative interpretation*

Cicero's defence alternated between two narratives. First, a well-planned fraud but on the other hand the instant improvisation by Naevius. On hearing of the encounter between his friend Publicius and Quinctius in Volaterra he acted the following day. However, in both lines of reasoning, the question arises why the 5th of February was a crucial date? Cicero pleaded that Naevius had answered that this was the date on which the *vadimonium* had been promised. That a *vadimonium* would be given on the same day on which the appearance in terms of it was promised is absurd. However, an affidavit had been drafted, signed and witnessed that an appearance before 20 February had been promised and missed. One hypothesis could be that Naevius had indicated this date as the date to appear rather than the date on which the *vadimonium* had been provided, and that Cicero misconstrued the exact meaning of the date¹⁷⁴.

¹⁶⁷ PQ 33: «Cum maiores ita constituerint ut qui pro capite diceret, is posterior loco causam dicere intelligis».

¹⁶⁸ C.J. BANNON, *Self-help and social status in Cicero's Pro Quinctio*, in *Ancient Society* 30 (2000), pp. 71-94.

¹⁶⁹ PQ 11, 13f, 19, 26, 55f.

¹⁷⁰ PPQ 2, 59.

¹⁷¹ PQ 43-47.

¹⁷² PQ 50: «Ergo hercule cuius bona ex edicto possidentur, huius omnis fama et existimatio cum bonis simul possidetur; de quo libelli in celeberrimis locis proponuntur, ... , de quo homine praeconis vox praedicat et pretium conficit, huic acerbissimum vivo videntique funus indicitur, ... 51: Itaque maiores nostri raro id accidere voluerint, praetores ut considerate fieret comparaverunt». C.J. BANNON, *Self-help*, cit.

¹⁷³ PQ 48: «ex officio ratione atque ex omnium consuetudine rem ipsam et factum simul sex Naevi considerare»; Cicero sets this out in 48ff.

¹⁷⁴ J. PLATSCHEK, *Studien*, cit., 79f.

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Cicero referred to the fact that he had been called to take over the defence of Quintius during the proceedings. He praised his predecessor and told that he had been deeply involved in the matter and had often appeared in court in this connexion. It should be kept in mind that this barrister had been taking so long in court that Hortensius had applied to the *praetor* for limitations in time¹⁷⁵. This makes Quintius a likely suspect for the multiple postponements.

Since the court appearance under discussion dealt only with a preliminary matter, it is obvious that Cicero endeavoured to expand the case beyond its reasonable limits.

A neo-realist, post-modern, neo-capitalist interpretation would place Quintius as a medium size rancher in financial trouble. The real question was to what extent did good faith in the contract of partnership, the ties of family as well as human decency count in the settlement of bad debts during the last century of the Roman republic? It is generally accepted that both the Roman law of procedure and of debt collection relied on private initiative and were antiquated and harsh. Opposed to this the *Lex Valeria* has been described as a populist enactment, but to depict the moneylenders as a homogenous group of rich patricians and equestrians, who could take a loss is oversimplifying¹⁷⁶. Quintius and Naevius were neither rich patricians or equestrians, nor urban or rural poor and the *Quinctiana* shows how the average man attempted to navigate between crashing property values, lack of ready money and the threat of bankruptcy.

The insinuations against both Burrenus¹⁷⁷ and Dolabella¹⁷⁸ are of interest as it makes the abstract *praetor* of Roman law more human, but the fact that Burrenus granted *missio in possessionem* based on *prima facie* evidence of a sealed witnessed sworn statement can hardly be classified as incompetence or partiality. Platschek has pointed out that Dolabella's decision was neither of the above and in fact favoured Quintius despite Cicero's rhetorical complaints. Moreover, the case before Aquilius was not the correct forum to contest both decisions.

In consequence, a cynical interpretation would place both Quintii as indebted persons with cash flow problems and Naevius as an astute moneylender/ investor. The *lex Valeria* hampered the settlement of the partnership financials in Gaul and subsequently in Rome with the result that Naevius brought the matter before the *praetor*. Here he proposed a

¹⁷⁵ PQ 33f; T.E. KYNSEY, *M Tulli*, cit., p. 54.

¹⁷⁶ C.T. BARLOW, *The Roman government*, cit., p. 216: «Moneylenders suffered a paper loss, but in reality, they probably lost little. With the *lex Valeria* they now had a chance to recover at least part of their capital. If they foreclosed, they still received the same property as before. Furthermore, when they collected on their loans, they received the deflated currency of 86, not the currency of 89 or 88: in real value they may have lost almost nothing». A. COLLINS – J. WASH, *Debt*, cit., 152f rely on C.T. BARLOW, *The Roman government*, cit., p. 216 and cite this passage in n 110.

¹⁷⁷ PQ 69: «Burreni qui iniuriam decernebat; 71: cui (Quinctius) neque magistratus adhuc aequus inventus est»; also 98.

¹⁷⁸ PQ 9 and 30f.

compromise, the content of which remains unclear. Whether Quinctius had in fact promised a *vadimonium*, or if this was fabricated by Naevius is another mystery. However, the argument of Metzger that this *vadimonium* was judicial, read together with R fner ‘s reminder that the *praetor* could order a *vadimonium* if *litis contestatio* had not been reached¹⁷⁹ raises the possibility of a judicial *vadimonium* ordered by the unknown *praetor* at the first appearance of the parties to a probability. Why Quinctius left Rome remains another enigma. When their mutual friend Alfenus had been proscribed by Sulla did “the partners” buy his estate¹⁸⁰? On the other hand it has become clear that Alfenus’ defence of Quinctius was more *pro forma* and did not really qualify. The *lex Valeria* was the primary cause of Naevius’ omission to sell Quinctius’ estate and the long delays in the procedure, while the uncertain political¹⁸¹ and economic situation was another contributing factor. The result was repeated negotiations for a settlement. Quinctius’ bankruptcy would have been financially disadvantageous to Naevius and the same applies to the other creditors of both Quinctii, which explains the inaction of these creditors only fleetingly mentioned by Cicero¹⁸².

7.- Conclusion

This article attempts to link abstract macro-economic theories developed by historians dealing with the economy of antiquity with a concrete case. Cicero’s first published case has drawn much attention, but commentators have followed Cicero’s lead as he cleverly ushered his audience through a maze of multiple partnerships, court appearances, mediation and delays against a background of civil war and economic crises placing his signs subtly and omitting or misrepresenting other facts. This places the case clearly in the adversarial system of civil procedure of Roman law with judicial unpreparedness, court focused oral procedure, where the parties have determined the legal question and the passive judge often limits himself to a choice between the propositions offered by the respective counsels. We don’t know the decision of Aquilius¹⁸³, but irrespective of the outcome, this case has shown the insides of Roman law, the daily practices, political environment and the economic consequences of political instability. Cicero melodramatically concentrated upon the menace of *capitis diminutio* to Quinctius, cleverly omitting that both debtors and creditors faced this threat as a series of bankruptcies would collapse the house of cards of the Roman world of finance and punish them all with the ultimate disgrace of

¹⁷⁹ T. R FNER, *Handbuch* II § 75, 1978.

¹⁸⁰ J. PLATSCHEK, *Studien*, cit., 263f; T.E. KYNSEY, *M Tulli*, cit., 177f.

¹⁸¹ PQ 68ff.

¹⁸² PQ 73ff.

¹⁸³ Bannon is convinced that Quinctius lost; also Kinsey, 3ff and Platschek, 8f. However, M. NISARD, *Oeuvres de Cic ron*, II *Discours*, Paris 1840, p. 2 was of the opinion that Cicero had been victorious, which conclusion he based on Aulus Gellius, *Noctes Atticae*, XV 28.

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*infamia*¹⁸⁴. Moreover, the persistent belief that Cicero was an orator with scanty knowledge of the law, albeit our primary source of republican law, may be boosted in some circles by his “confusing” the different meaning of edict, instead of admiring his intelligent black letter lawyering regarding *ex edicto*.

This article is indebted to the publication of Collins and Walsh on the economic crises in the late Roman republic but does not follow all their conclusions. It is argued here that the *Quintiana* indicates that this economic crisis did not end in 86 BC but lasted nearly the entire eighties until the victory of Sulla. Secondly, their optimistic belief that the *lex Valeria* saved the financial system from collapse is hard to share. Economics shows itself to be a far from perfect science and as such was unknown to the Romans. Barlow’s argument¹⁸⁵ that creditors who lost 75% of their outstanding debt suffered a paper loss but lost almost nothing in real values does not convince and apparently Naevius was also sceptical and did not want to put this theory to the test.

Finally, the suggestion that Dyck’s edition would harmonise the diverging manuscripts appears to have been overoptimistic, but the inclusion of the seminal work by Platschek is a welcome addition.

The essay attempts to combine the diverse paradigm of philology, history, economy and law in order to interpret an individual case in a holistic manner.

¹⁸⁴ C. WILLEMS, Verlust der Ehrenstellung (*infamia*), *Handbuch* I § 28, pp. 731- 740; F.S. MEISSEL, *Handbuch* II § 81, 2318f.

¹⁸⁵ At 216.