

**ESSAYS ON THE LAW IN  
CICERO'S  
PRIVATE ORATIONS,  
APPENDIX TO VOL. II**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649439836

Essays on the Law in Cicero's Private Orations, Appendix to Vol. II by Henry John Roby

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Cover @ 2017

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**HENRY JOHN ROBY**

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The Author

## APPENDIX TO VOL. II.

Essays on the matters of law in Cicero's speeches in defence of

1. P. Quinctius
2. Q. Roscius (comoedus)
3. M. Tullius
4. A. Caecina

Also, Essay on Obligation by book-entry (*Litterarum obligatio*).

[N.B. Some references to the body of the book are necessarily left incomplete at present.]

*Errat vehementius, si quis in orationibus nostris, quas in iudicio habuimus, auctoritates nostras consignatas se habere arbitratur. Omnes enim illae causarum ac temporum sunt, non hominum ipsorum aut patronorum (Cic. Cluent. 50 § 139).*

Cicero might now say:

'Modern critics seem sometimes to regard my speeches as professorial lectures or as counsel's formal opinions, and treat the statements and arguments in them as expositions of established law, and a measure of my knowledge of it. I venture to remind them that an advocate has to deal, as best he may, with the particular case in the circumstances of the time. I am not freely uttering either my own opinions or those of my client: my speeches do not treat of law or politics disengaged from personal interests and particular occasions.'

*Mea autem ratio haec esse in dicendo solet, ut boni quod habeam id amplectar exornem, exaggerem, ibi commorer, ibi habitem, ibi haeream, a malo autem vitioque causae ita recedam non ut me defugere adpareat sed ut totum bono illo ornando et augendo dissimulatum obruatur.... Illud mihi pro meo jure sumo, ut molesto aut difficili argumento aut loco non nunquam omnino nihil respondeam. Confiteor me, si quae premit res vehementius, ita cedere solere, ut non modo non abjecto sed ne rejecto quidem scuto fugere videar, sed adhibere quandam in dicendo speciem atque pompam et pugnae similem fugam; consistere vero in meo praesidio sic, ut non fugiendi hostis sed capiendi loci causa cecisise videar (Cic. Orat. ii 72 §§ 292, 294).*

(This is put into the mouth of the orator Antonius but may well be applied to Cicero himself.)

## APPENDIX.

### 1. CICERO *pro Quinctio*<sup>1</sup>.

This speech was delivered in the year 673 U.C. = 81 B.C. when Sulla was dictator and Cicero twenty-five years of age (Gell. xv 28). The question really raised is the due execution of an order of the praetor arising out of a partnership dispute. Recent political disturbances are several times alluded to, Cicero's client having as alleged been assisted previously by the influence of the party opposed to Sulla, and his opponent having influential friends in Sulla's party.

The speech is not quite wholly preserved, and apparently one part of Cicero's argument is lost, but the substance is given in the summary at the close of the speech, and some small fragments of it in a late writer on Rhetoric, Julius Severianus § 15 (Halm's *Rhet. Script.*, p. 362) which have been in Baiter's and other recent editions inserted in § 85.

The facts, as given by Cicero, were as follows:

C. Quinctius, brother of Cicero's client P. Quinctius, had a considerable grazing farm (*pecuaria res*, § 12) in Gaul, apparently near Narbo Martius<sup>2</sup> (now Narbonne), well cultivated and profitable. He took into partnership in his Gallic business a friend, Sex. Naevius, by trade an auctioneer, but at the time or afterwards connected with the family by marrying a first cousin of Quinctius (§ 16). Cicero speaks in very disparaging terms both of Naevius' contribution to the partnership resources

<sup>1</sup> The principal essay on this speech is one of the three in Keller's admirable *Semestria* (1842). See also Frei *Der Rechtsstreit zwischen Q. und N.* (1852); Bethmann-Hollweg *Röm. Civ. Proc.* ii 783 sqq. (1865); Ostling *Abhandlung* (Oldenburg Progr. 1882); B. Kübler *ZRG.* xxvii p. 54 (1893). Comments on the speech are also given by De Caqueray *Passages de droit privé dans les œuvres de Cicéron* (1857); Gasquy *Cicéron Juriconsulte* (1887); E. Costa *Le orazioni di diritto privato di M. Tullio Cicero* (1899); Greenidge *Legal Procedure of Cicero's Time* App. 1 (1901).

<sup>2</sup> Cf. § 15. On Narbo see Cic. *Font.* § 13. The farm of Quinctius and Naevius was in the country of the *Sebagini* (§ 80), who are not known.

(§ 12) and of his character. He had some ability—at least as a buffoon; he was a man of some polish—for an auctioneer; but he was greedy and evidently thought the duty of a partner was to study his separate interests (§§ 11—13). The partnership lasted several years, C. Quinctius having occasional doubts of Naevius' honesty, and not being able always to get a satisfactory account of his proceedings, but there was no rupture. At a time when both partners were in Gaul, C. Quinctius died suddenly, leaving a will in which he made P. Quinctius his heir (§ 14).

P. Quinctius, not long after, went to Gaul and for about a year or more<sup>1</sup> lived in intimacy with Naevius, often discussing the partnership business and property in Gaul. Naevius, as Cicero says, never hinted at anything being due to him from the partnership or from Quinctius on any private account. Probably accounts were periodically taken of the expenses and profits of the business, the balance was divided, and there were no outstanding claims on this head. Cicero speaks as if Publius succeeded his brother in the partnership as well as in his private property. In strict law the partnership came to an end on the death of a partner (Dig. xvii 2 fr 40, 59 &c.), and all that remained would be to take final accounts and divide the property (*ib.* fr 34, fr 65 § 9). We hear nothing of any fresh contract being entered into with the brother; but Publius, being sole heir to Caius, would easily glide into partnership with Naevius (*ib.* fr 37). Repeated allusion is made to their being partners (cf. §§ 23, 25—28, 48, 52—54, 74); and though the term *socius* could be used of one who was only tenant in common (cf. § 52), Cicero uses it here mainly in the sense of one standing in a relation voluntarily formed by contract, and in virtue of which he was entitled to expect, and bound to perform, mutual friendly services.

P. Quinctius as heir to his brother had to discharge some debts at Rome, and in order to raise money for this purpose, gave notice of sale by auction at Narbo of some property in Gaul which was not held in partnership. Naevius dissuades him from this course, telling him that it was a bad time to sell, and that he himself had plenty of money at Rome, which he

<sup>1</sup> *Annus fere* § 15; *anno et sex mensibus* § 40.





would readily put at the disposal of his partner and kinsman. Quinctius accepts the offer, gives up his proposed sale, and returns to Rome, whither Nævius also proceeds at the same time (§§ 15, 16).

Among other debts of his brother's, one at least was pressing, due originally to P. Scapula and now to Scapula's children. The amount of the debt was ascertained from the documents, but the amount now to be paid was something different. *Propter aerariam rationem non satis erat in tabulis insperissee quantum deberetur, nisi ad Castoris quaerissee quantum solveretur* (§ 17). Castor's temple in the forum was the centre of the money-changers' and bankers' shops, and of the official testing and stamping of weights<sup>1</sup>. The present was a time of great disturbance in the money world from two special causes<sup>2</sup>, in addition to the civil wars. The first was the currency: the second the *lex Valeria*. M. Drusus, in 663 U.C. = 91 B.C. by a law authorized the mint to issue one plated *denarius* in every seven. The confusion caused was great: no one knew whether his money was good or bad. At length the praetors and tribunes during Cinna's rule, probably in 670 U.C. = 84 B.C., resolved on the replacement of the plated denars by silver. M. Marius Gratidianus stole a march on his colleagues, and at once announced the resolution from the *rostra*, gaining thereby credit with the people for its authorship (Cic. *Off.* iii 20 § 80; Plin. *N. H.* xxxiii 132, xxxiv 27). The denar was the ordinary coin used for payments, though the *sesterc* (one-fourth of the denar) was used for reckoning, as being the silver representative of the old *as* (Marquardt ii p. 16 sqq.). This state of the currency has been taken to be the meaning of the words *propter aerariam rationem*. Niebuhr (*Rhein. Mus. für Philolog.* for 1827, i 224) objected on two grounds; first that for this meaning *argentaria*, not *aeraria ratio*, would be the proper term; and secondly that the

<sup>1</sup> See Corp. Inscr. v 81194 and others referred to by B. Kübler l.c. pp. 77, 78.

<sup>2</sup> The reduction of the coined *as* to one half of its former weight by the *lex Papiria* in 665 U.C. = 89 B.C. had no important effect, as it was only token money (Marquardt ii p. 18).

difficulty of determining the number of denars to be paid (*quid ad denarium solveretur*), could not have been great or of a nature to require the services of a jurist like Aquilius. He explains the words by a reference to the *lex Valeria* proposed by L. Valerius Flaccus, successor to Cinna in the consulate 668 U.C. = 86 B.C., which reduced all debts to one-fourth of their amount (*creditoribus quadrantem solvi jussurat*, Vell. ii 23) or, as Manlius is made by Sallust (*Catil.* 33) to express it, *propter magnitudinem aeris alieni argentum aere solutum est*. Cicero in the fragmentary commencement of the speech *pro Fonteio* apparently speaks of all debts being paid on this ratio for some time, presumably until Sulla abrogated the law. Mommsen takes the same view (*Röm. Münze*, p. 383). *Aeraria ratio* would thus be in fact the substitution in the reckoning of a bronze *quadrans* for a silver sesterce (a sesterce, representing the *as*, being a regular symbol for a whole). Mommsen puts it as the substitution in calculation of the reduced *as* ( $= \frac{1}{4}$  denar) for the libral *as* which was represented by the silver sesterce ( $= \frac{1}{2}$  denar). The difficulty in calculation spoken of by Cicero, would arise, as Niebuhr supposes, from the law applying only to debts at the date of the enactment, and not to any interest accruing since or to any new debts, so that the account between the Scapulae and Quinctius would not be all on the same footing.

The notion that the difficulty arose in the exchange of foreign coins is found in several expositors, but there seems no way for foreign money to come in. Narbo was a Roman colony and had Roman money; and Naevius was expected to provide the money at Rome. The debt was contracted at Rome as likely as anywhere else. Besides Aquilius was hardly an expert in money-changing.

In these circumstances the great lawyer C. Aquilius who was a friend<sup>1</sup> of the Scapulae was called in by both parties to decide how many *denarii* should be paid to settle the debt (*quid ad denarium solveretur*, i.e. what debt should be discharged

<sup>1</sup> Kübler (l.c. p. 78) refers to Plin. *N. H.* vii 183 *Obiit P. Quinctius Scapula cum apud Aquilium Gallum cenaret.*

for each denar). He does so: the amount neither of debt nor of denars is given us. But the whole arrangement was made with the knowledge and approval of Naevius, who frequently repeated his promise to find the money for Quinctius, whenever he asked him. Quinctius accordingly had no hesitation in making a binding engagement<sup>1</sup> with the Scapulae to pay them on some near fixed day, and applies to Naevius to find him the money. Naevius thinking that now he had Quinctius on the hip and could make his own terms, replies, that before he provides a penny, he must have a complete settlement of all partnership matters and accounts, and know that there will be no dispute with Quinctius about them in future. Quinctius replies that that matter can wait, but the money is wanted at once, and reminds Naevius of his promises, but in vain. Quinctius being bound to keep his word under a penalty of an additional 50 per cent. (Gai. iv 117) was in a fix. He gets the Scapulae to allow him a few days and sends at once to Gaul to carry out the sale of which he had given notice before. The time was unfavourable, and he was not present, so that the sale was a bad one; and he settles with the Scapulae on worse terms than he had previously arranged. The other creditors of his brother's estate do not appear to have pressed him, and he was now free to turn his attention to the partnership affairs (§§ 17—20).

He at once takes the initiative and formally calls upon Naevius (*appellat ultro Naevium*, § 20) to get the matters arranged with the least trouble. Naevius appoints a friend M. Trebellius as his representative: Quinctius appoints Sex. Alfenus, a connexion of both parties, who indeed had been brought up at Naevius' house, to act for him. Naevius was too exacting: a friendly arrangement could not be made, and the business had to come before the courts. Several appointments for appearance in court were made and adjourned. Eventually Naevius appeared, but said he had sold by auction in Gaul what he thought fit, and had taken care to satisfy

<sup>1</sup> *Constituit Scapulis se daturum*, i.e. he promised payment of a definite ascertained amount on a certain day (see p. , D. xiii 5).