Studien zu Ciceros Rede für P. Quinctius. By Johannes Platschek. Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte, 94. Munich: C. H. Beck, 2005. 300 pp. ISBN 3-406-53408-2

The speech for Publius Quinctius is the earliest of Cicero's surviving speeches, given in the year 81 BC. Briefly, Cicero was required to prove that his client had been the victim of a miscarriage of justice, that his goods had been unjustly seized (*missio*) on the spurious ground that he had made himself unavailable to the courts. The underlying dispute concerned a partnership, but Quinctius' opponent, Sextus Naevius, had decided for tactical reasons to pursue the side-issue of unavailability. He demanded that Quinctius provide security against an unfavorable judgment, such security being required from one who had had his goods seized as Quinctius had. Quinctius refused to give security and Cicero had the task of defending Quinctius' refusal: a side-issue to the side-issue. Thus Cicero found himself with the burden of proving several difficult propositions: that Naevius had no grounds to seek seizure of Quinctius' goods, that Naevius did not possess them according to the terms of the edict, and that he did not in fact possess them at all. To all appearances the lawsuit was "a dog": demanding for the advocate, but with little hope for victory. Cicero is a skilled advocate even in the face of a hopeless case, but where the facts are complex and the case is difficult for us to understand, we wish Cicero were not so skilled.

Platschek's work is an effort to describe the difficulties and resolve them, and is therefore very welcome. The only comparable work on this speech is Keller's from 1842, but for modern readers it is little more than a historical document. Platschek has read the literature exhaustively and answered the arguments even of scholars who wrote far in the past. In places he patiently and keenly criticizes arguments that do not deserve and probably never deserved such respectful treatment. The Puteoli tablets are a wonderful new source of evidence for the law used in the speech; Platschek has missed none of it. He uses the internal evidence with due attention to Cicero's habits of speech and the political realities of the day. One reservation: Platschek too often seeks the meaning of a word or phrase by gathering examples and then pressing overly strict conclusions on the reader. To be sure, when Cicero expresses himself cryptically we seek whatever help we can find, but dictionary definitions are not easy to create.

The first part of the book attempts to set out the facts, which is a difficult task since the events stretch out over two years and Cicero's habit is to telescope the events so that they seem to take less time (and perhaps make Quinctius appear less a recalcitrant litigant). The second half of the book discusses the law underlying Cicero's three-part argument, each part addressed to the edict or edicts under which his client's goods were possessed. The book, in fact, is written in such a way that one can consult either half separately. At the end there is a chronology of events, bibliography, and index of sources.

The central event in the speech is Quinctius' failure to appear following a formal promise to appear (*vadimonium*). This was the event which — apparently — led to the seizure of Quinctius' goods under the edict that punished absent litigants. The question is, on precisely what grounds was the seizure requested and ordered? Quinctius' failure to appear, on its own, seems to be a very poor reason for such a serious remedy. It seems such a poor reason because, in the opinion of many scholars (Platschek included), the promise to appear was voluntarily given. Moreover, the promise was not for an appearance in the court of a magistrate, but in an ordinary public place. Platschek accepts the thesis that I put forward some years ago (*ZSS* (RA), 117 (2000), 144 n.31; also *Litigation in Roman Law* (2005), 33–34), that Quinctius himself did not make the promise, but rather Alfenus his *procurator* did so. This would seem to make the seizure of Quinctius' goods even more unjust, but to Platschek this additional fact is helpful. He argues that Alfenus made the promise after a threat by Naevius: Naevius threatened to seize Quinctius' goods unless Alfenus promised that Quinctius would appear. The thrust of Platschek's argument is that Quinctius' *vadimonium desertum* was only the final event in Naevius' attempt to bring his lawsuit. "Um sein Rechtschutzbedürfnis glaubhaft zu machen, muss der Gläubiger dem Prätor darlegen, dass er diejenigen Möglichkeiten, den Schuldner vor Gericht zu bringen, ausgeschöpft hat, die sich ihm im konkreten Fall bieten." (138) Thus Naevius, on this argument, was accumulating grounds for the seizure of Quinctius' goods even before Alfenus promised Quinctius' appearance.

However, it seems from the tenor of the speech that a *vadimonium desertum* was indeed enough to obtain *missio* if a person were unscrupulous enough to seek it on this ground, and that Naevius therefore did have the law on his side. Cicero devotes much of his speech to the proposition that to seek *missio* in this way is not a proper, seemly, or gentlemanly way of doing things, and he therefore acknowledges that a *vadimonium deser-*

tum, under the law, is enough. Nor is *missio* disproportionate in this case. Contrary to Platschek and others, the *vadimonium* under discussion was not voluntary, but compelled by the *praetor* (see my *Litigation in Roman Law* (2005), 30–38, 163–66), and to fail to appear is to disobey the *praetor*. It is true that a *vadimonium desertum* could give rise to two remedies: *missio*, and an obligation to pay. But epigraphic evidence has revealed that there were two distinct parts to the *vadimonium*: the "promise to pay," which was entirely the parties' own affair, and created an obligation to pay, and the "promise to appear," which was ordered by the magistrate, and which could lead to the seizure of goods if the promisor did not keep his promise (and his opponent was ruthless enough to seek this remedy).

Platschek has undertaken to write about a speech that is enormously important to Roman civil procedure, but that has not received such a careful and exhaustive treatment for a very long time. To write on the *pro Quinctio* without consulting this book is not possible.

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