

M. CAELIUS RUFUS AND PAUSANIAS

An interesting phrase in a letter of Caelius to Cicero in 51 BC, especially relevant to the standing of injured *socii* or their non-Roman representatives in the *quaestio de repetundis* at this time, has been frequently misinterpreted by commentators on Cicero.¹ Caelius is telling Cicero of the outcome of the condemnation of C. Claudius Pulcher after his governorship of Asia and the effect this had on an associate of Claudius, M. Servilius.

Haec quoque magna nunc contentio forum tenet: M. Servilius postquam, ut coeperat, omnibus in rebus turbarat nec quod non venderet quicquam (MS quocquam, ?quoipiam) reliquerat² maximeque nobis traditus erat invidia (MS maximae . . . invidiae), neque Laterensis praetor *postulante Pausania nobis patronis*, quo ea pecunia pervenisset, recipere voluit, Q. Pilius necessarius Attici nostri de repetundis eum postulavit. (*Fam.* 8.8.2.)

Although Iuventius Laterensis, the praetor, had originally refused to allow an investigation into the charge that Servilius had received some of C. Claudius' ill-gotten gains, in the new case introduced by Pilius the condemnation of Servilius was eagerly predicted. This induced Appius Claudius Minor, the son of C. Claudius, to give evidence to the praetor that he had given Servilius a bribe out of his father's money in order to undertake a prosecution *praevaricationis causa*—i.e. a collusive accusation intended to fail and save the defendant who could not normally be indicted twice on the same charge (*lex repetundarum*, *CIL* I², 583, 56). In consequence, the praetor brought once more the question of Servilius' liability as a receiver under the clause, *quo ea pecunia pervenerit*, before the jury and the result was a tied vote.³

The latest commentator on the Latin passage in question, D. R. Shackleton Bailey (Cicero, *Epistulae ad familiares*, I, p. 399) writes, 'The charge was brought by one Pausanias, probably representing the provincials and Caelius appeared for the defence' (whether he thinks Caelius did so in the later proceedings he does not say), and he adds below (p. 400 n. 4) 'Constans understands that Caelius was prosecuting (cf. 3 *saucius Pilio tradetur*), but *postulante Pausania nobis patronis* makes Pausanias the prosecutor and prosecutors did not have *patroni*.'

¹ Exceptions are C. F. Hermann, *De causa Serviliana* (Gottingae, 1853), p. 11; C. F. W. Mueller, edition, critical note ad loc.; L. A. Constans in Constans-Bayet, *Cicéron Correspondance*, iv, p. 57. I am grateful to Professor W. S. Watt for references to these and help on a number of linguistic points.

² I cannot consider here all the textual and translation problems raised by this sentence. I would translate '... had caused trouble everywhere and had left nothing alone without trying to sell it'. *Quocquam* taken with *reliquerat* yields little sense; taken with *venderet* it is not even Latin (Madvig, *Cic. de Finibus*³, 807, n. 1).

Quicquam (Lambinus) taken with *reliquerat* gives sense, and so does *quoipiam* (Wesenberg, *Emendationes alterae*, 20) taken with *venderet*—'had left nothing without trying to sell it to someone'. I suspect that Servilius had been with C. Claudius in his province and had not only offered his services to him as a collusive accuser (see below) but had tried to sell his services to both sides as a witness.

³ Both language and the logic of the affair rule out an attempt to prosecute Servilius for *praevaricatio* (as in *lex rep.* 75=82). Claudius had in fact been condemned, nor had Servilius conducted the prosecution.

Shackleton Bailey's point rests in part on the ambiguity of the English word 'prosecutor'. In fact under the *lex repetundarum* the man who performed *nominis delatio* was granted *patroni*, if he asked (lines 9 ff.). Later, when *divinatio* was introduced, the man who was chosen to represent the provincials in a suit and himself performed the *nominis delatio* might still be called 'patronus' (cf. Cic. *Div. Caec.* 65). Nor does it follow from *postulante Pausania* that Pausanias actually conducted the case or performed the original *postulatio*. The sentence must be understood in the context of the *litis aestimatio*, the point which the trial had reached. Here the plaintiff, whether he was representing himself alone or others, was important, even though he had not conducted the main prosecution, since it was to him that the money would be repaid (cf. *lex. rep.* 60 and 63). Pausanias was surely a *legatus* of the injured people of Asia.⁴ As such he would have been at the side of the prosecutor appointed by *divinatio* throughout the case. We may compare the help given to Cicero by Sthenius of Thermae (*Verr.* 2.2.82) and contrast Cicero's denunciations of the Greeks from Temnos, such as Heraclides and Lysanias, who helped Iuventius Laterensis in 59 BC against Flaccus (*Flacc.* 22; 42 ff.).

Thus the arguments used against Constans collapse, and we can give full weight to those which suggest that Caelius had been prosecuting C. Claudius on Pausanias' behalf:-

1. The parallelism between *nobis traditus erat* (§ 2) and *saucius Pilio tradetur* (§ 3) noted by the earlier commentators, which suggests that Servilius was Caelius' victim.
2. Caelius' obvious glee at the difficulty Servilius was in, which is hard to understand, if Servilius had endangered Caelius' own client.
3. The obscurity of the expression *postulante Pausania nobis patronis*, if Caelius was in fact on the opposite side to Pausanias.
4. The fact that if Caelius had been acting for C. Claudius, he no longer had any standing in the court since his client had been convicted and all his available property seized. The only way Caelius might still appear as a defence counsel was for Servilius and that, given the tone of the letter, is impossible.
5. The improbability that a provincial, who does not seem to have been a Roman citizen, would have been granted the right to prosecute by *divinatio*. I assume that this was theoretically possible under the *lex Iulia* of 59 BC, as it had been earlier under Glaucia's law.⁵ Nevertheless, it would be without parallel.

In fact this passage illustrates the extent to which provincials were involved in *repetundae* cases in the Ciceronian period and the limitations and frustrations which they encountered.

University of Aberdeen

ANDREW LINTOTT

⁴ Possibly, but far from certainly, the Pausanias of Alabanda in *Fam.* 13.64.1.

⁵ I follow A. N. Sherwin-White, *JRS* 62 (1972), 96-7, in believing that Cicero in *Balb.* 54 does not imply that Latins were the only non-citizens allowed to prosecute in the *repetundae* court after the *lex Servilia* of Caepio. Positive evidence,

however, that the *socii* were allowed to prosecute depends on the identification of the *lex Tarentina* (R. Bartoccini, *Epigraphica* 9, 1947, 3 ff.) with Glaucia's law and the presumption that it largely reproduces the clauses of the earlier Gracchan *lex repetundarum* regarding privileges for successful prosecutors.