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VERRES ON TRIAL FOR EXTORTION

EDWARD B. SPENCER.¹

Politics in Rome was an expensive occupation, and there was little if any opportunity for one to enrich himself in the minor offices. Only he who kept at it until he received an appointment in one of the provinces could hope to recover what his various candidacies and offices had cost him.

Whatever may be said of the efficiency and general benefits of Roman rule, the fact remains that provincial offices were regarded as opportunities for self-aggrandizement as well as positions of service. The various officers represented the authority of Rome and were instructed to develop their provinces and promote the interests of their people, but at the same time they understood that they were expected to return home rich. While there were many legitimate opportunities for trade and investment there were many more that were not legitimate but far more profitable.

The evils of the system were so great that complaints for extortion were constantly being presented and the state found it necessary to adopt some means to protect the people against the excessive greed of their officers. So it came about that the first permanent court established in Rome for a special class of cases was the one authorized by the Lex Calpurnia in the year 149 B. C. to consider charges of peculation in office. It was called the *Quaestio Perpetua de Pecuniis Repetundis*, a name which indicates that the immediate object of the prosecution was the recovery of that which had been lost.

Although individuals were generally the parties that suffered directly, yet the crime of extortion threatened in a most dangerous manner the interests of the state and was therefore held in law to be a *crimen publicum*.

We cannot be positively certain of the penalty fixed by the law for the *crimen repetundarum pecuniarum*. Probably the Lex Cornelia required the guilty one to restore two and a half times the amount stolen. The Lex Servilia did not require banishment, but we know that in 103 B. C. at least one man, P. Rutilius, was exiled for this offense.

The constitution of the Roman courts was subject to frequent changes, transferring the authority and responsibility from one class to another. When Sulla obtained the mastery in Rome he wrested the

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courts by means of the Lex Cornelia, 81 B. C., from the equites and placed them again in the control of the Senators.

In 70 B. C. there was great dissatisfaction because the senatorial order had allowed criminals of their own class to go unpunished. Cicero warned them that unless they rendered justice, a law would be passed depriving them of their seats as judges, and such a law, the Lex Aurelia, was passed the same year, requiring them to share their judicial privileges with the equities and the *tribuni aerarii*.

The president of this court was the (*praetor urbanus*). He was required by the Lex Servilia, which was the basis of the Lex Cornelia, at the beginning of his term to select 450 senators as judges and to inscribe their names on a tablet, *album iudicum*, and put it up in a public place.

After an indictment had been filed, the accuser and accused each chose 100 from this list. A party not of the senatorial order could challenge only three. But one of that rank could challenge more, probably twice as many. The number of judges was fixed, but is unknown to us. In several places Cicero mentions twelve. It could scarcely have been more than that number, because after mentioning the praetor and seven judges, he called them "almost the entire bench."

Possibly foreigners, *peregrini*, might conduct their own cases before this court, but it seems likely that individual *peregrini* and subject peoples were obliged to be represented by *patroni*, while kings and free peoples could appear through either *patroni* or *legati*.

A *peregrinus* prosecuting a Roman citizen for the *crimen repetundarum* and securing a conviction, was rewarded by citizenship.

The Lex Servilia directed that the praetor should select the prosecutor. In this respect the Lex Cornelia was probably changed to leave the decision with the judges.

The summer months were assigned to trials in which the provincials were interested. It was fortunate for them that their cases could be called before the September Kalends, for the rest of the year had little time left from games and festivals.

When one was accused he was obliged to give bail. If he went into voluntary exile before judgment was rendered, he had to pay the damages claimed and suffer banishment, *aquae et ignis interdictio*.

To insure secrecy and independence for the judges they were required to vote by ballot. Cicero boldly made the charge that when Hortensius was determined to know how the judges whom he had

bribed voted, he required them to use peculiar tablets, with which he provided them, instead of the legitimate ones.

After the judges reached a decision to sustain an accusation they proceeded to fix the penalty.

In spite of such stringent regulations as these governing its organization and practice, the court *De Pecuniis Repetundis* was not as efficient as it should have been. All that could be said of it was that occasionally it punished the wrongs which it could not prevent.

In the early part of the year 70 B. C. Romē must have felt the thrill of a very decided sensation when Verres returned home after his propraetorship in Sicily. He was not in himself a man of the type that would be welcomed in either social or political circles, but during his absence he had become enormously rich and that fact made him of course very interesting.

We do not know much about his family, but evidently he had bad blood in his veins and in his heart, for his father, C. Verres, was a man sufficiently weak or villainous, or both, to be in favor with Sulla, who made him a senator.

The name Verres, meaning "boar," was an unusual form in the language, and certainly did not suggest a family origin any too respectable.

Though we may be uncertain in regard to his name and ancestry, we have abundant proof of the most unfortunate fact that he was born, the date being 112 B. C.

By the time he was thirty he had joined his fortunes with those of the Democratic party, for he was a quaestor of Cn. Papirius Carbo in Cisalpine Gaul. He betrayed this consul and his public trust, and was rewarded for his infamy by Sulla, who gave him some land of those who had been proscribed at Benventum, and he probably used his influence in Verres' favor when the latter was threatened with prosecution for the monies he had embezzled.

Verres took an active part in Sulla's proscription.

In 80 B. C. he was in Asia as legatus of Dolabella, governor of Cilicia, and later became his proquaestor. These two congenial spirits united in plundering the province. Here it was that Verres acquired a fancy for fine art which afterwards led to most outrageous crimes. When Dolabella was tried on the charge of extortion, Verres turned state's evidence and gave the testimony which secured his conviction and exile.

It was probably the wealth that he stole in Cilicia that enabled

him to purchase the praetorship in 74 B. C. After the pretense of an election, he was designated by lot to be the *praetor urbanus*. And so it came to pass that Verres, noted only for his dishonesty, rapacity and infidelity, an ignoble noble, a thieving treasurer, a turncoat politician, a traitor to his friends, the slave of a mistress, became curator of the public buildings, the presiding magistrate within the city, the chief judge in equity and the guardian of orphans.

His administration of the office and its sacred trusts was such as might be expected. Official duties that should have received his personal attention were done or perhaps undone by his tools. Justice and injustice alike were to be bought from him or from his mistress, Chelidon.

After his city praetorship he obtained in 73 B. C. the object of his greatest desire, Sicily, Rome's most important and wealthiest province. Up to that time it had been governed more leniently than other provinces and had been favored in taxation. Even the Greek inhabitants were prosperous and considered that they had gained rather than lost by the Roman conquest. But great as was the accumulated wealth of the island, it was too small to satisfy the avarice of this robber.

He used every conceivable means for enriching himself at the expense of the inhabitants: He levied exorbitant taxes, disregarded contracts, plundered private dwellings and public temples. He possessed himself of their Grecian art treasures which the Sicilians regarded as their most precious possessions. No class escaped outrage and insult, not even those enjoying the Roman citizenship. One such was even scourged at Messana on an unproved charge—an inconceivable outrage.

Q. Arrius, who was to have succeeded him in the province, was detained in Italy by the uprising led by Spartacus and never entered upon the duties, or rather the opportunities of the propraetorship.

Not until the end of the third year of his misrule was Verres relieved by L. Caecilius Metellus, possibly a relative of his. These three years were diligently employed in extortion and plundering until he had collected at Messana, which had the unenviable distinction of being made his depot for plunder, a great part of the wealth of Sicily and many of the most valuable works of art. Neither the Punic war nor the two recent servile wars had been so ruinous to the island as the lawless oppression of this official and his friends.

But he had accomplished his purpose. When he returned to

Rome he carried back such a hoard of wealth that he could easily part with two-thirds of it to bribe his judges and still have enough left to enable him to live in luxury all the rest of his life.

His expectations of a prosecution were not disappointed. After his departure from the province all Sicily except Messina and Syracuse united in seeking satisfaction for the wrongs suffered. The Mamertines were so favorable that they even sent an embassy to Rome to praise the robber who had made their city his storehouse for plunder. Probably the Leontini sent no public delegation, but excepting these all Sicilians united in demanding the prosecution of Verrès.

The law required that such a case must be presented for them by a Roman citizen, and the Sicilians would naturally have called for assistance upon their old patrons, the Scipios, Marcelli and Metelli. But they doubtless had reasons for expecting little real help from them. Indeed we have evidence that P. Scipio, Marcus and Lucius Metellus supported the cause of Verres.

The Sicilians passed by their old patrons, from whom they had every right to expect help, and appealed to Cicero, who under the propraetorship of Sextus Peducaeus five years before had been quaestor in the district of Lilybaeum and had thoroughly won their confidence by his honorable administration. He had quite likely been declared their state friend. On leaving them in 74 B. C. he had promised to aid them if they should ever need his assistance.

He was willing, and we can believe even anxious, to fulfill his promise. He could not but see that it would be an excellent opportunity to distinguish himself. He would be pleading the cause of evident justice. He would be on the side to win the good-will of the people, whose favor he desired as he was a candidate for election in a short time. He would furthermore have a chance to measure strength with Hortensius, who up to that time had been lord of the courts.

The case was so strong that if he should not succeed it would be plain to all that his failure was owing to the corruption of the court. If he should be successful, it would be a great triumph over the most powerful and violent opposition.

Though the Sicilians desired Cicero to undertake and conduct their case and he was willing, there was no certainty that he would be permitted to do so.

The Romans had no officer such as our State's Attorney, appointed to represent the people in the trial of those who were charged

with crimes against the state. Any citizen could bring an accusation and conduct the prosecution.

The praetor to whom the accusation was brought entered the name of the accused and set the date of the trial. But it sometimes happened that two or more persons demanded the privilege of conducting the same case.

The trial would be a foreordained farce if the defendant were allowed the undisputed privilege of appointing his own prosecutor. On the other hand, if the selection of the parties claiming injury were to be accepted without question, the interests of the state would often suffer from weak or selfish management.

It is reasonable to suppose that, when there was but one demanding the right of prosecution, he was fairly satisfactory to both accusers and accused, otherwise some one would have been induced to contest with him. But when two or more did appear, it was both wise and necessary that the state should decide which applicant should be recognized.

This was the first duty of the judges before whom the case was to be tried. One was to be appointed Prosecutor and the other dismissed, or the one might be appointed Chief Prosecutor and the other his associate. Even two or three might be appointed to this subordinate position.

Such a selection of the Prosecutor was called a *divinatio*, a name applied alike to the proceeding and to the speech employed in it.

Various explanations of the meaning and origin of the name have been offered. Some think that it is called *divinatio* for the reason that in this case the judges sit unsworn that they may inform themselves as they wish beforehand concerning each one. Others think it is because the affair is conducted without witnesses and documents and in the absence of these the judges follow arguments alone as if they were divining. One thought, "It is called a '*divinatio*' of the judges, inasmuch as the judge must divine, as it were, what decision it is right for him to render." "The terms accuser and accused are relative and neither can exist without the other. Nevertheless in this kind of a case, there is an accused but as yet no accuser. Because the accuser is not yet apparent a divination must show who he shall be."

Although there are frequent references to *divinationes* in history and literature, yet this speech is left to us as the only extant representative of its class.

Verres had anticipated that the Sicilians would make some effort to obtain satisfaction for their wrongs, but he felt secure in the support of the nobles and Hortensius, the most distinguished lawyer in Rome. Though he had the support of such friends and the influence of the enormous wealth in his possession, he was anxious that the able, bold, and tireless Cicero should not have charge of his prosecution.

Accordingly, as soon as the provincials presented their charge with Cicero as their representative, Verres had Quintus Caecilius Niger, an insignificant Sicilian enjoying Roman citizenship, come forward to demand the right of conducting the prosecution, in the place of Cicero or at least in conjunction with him. If this move should be successful it would give Verres practical charge of his own prosecution, and it is unnecessary to say what the result would have been.

It was to prevent just such mismanagement of cases involving the public interests that the state reserved the right of the appointment of the prosecutor.

Since both Cicero and Caecilius appeared for the prosecution, it was necessary for the court first to hear and decide upon their claims. Each man was permitted to show why he should be selected rather than the other. The purpose of the *divinatio* was only the selection of the state's attorney. In this first process the merits of the indictment were not in any way to be considered.

Cicero was the first to speak, and presented an admirable plea, arranged as follows:

Introduction. Cicero's reasons for undertaking the case.

Argument

The wishes of the interested parties

The Sicilians desire Cicero and refuse Caecilius

Verres fears Cicero and desires Caecilius

Caecilius' unfitness

His lack of integrity

His lack of ability

His lack of motive

His having been Verres' quaestor

Conclusion.

He said:

"If any of you is surprised that I, who have defended many in past years, should now for the first time propose to conduct a prosecution, he will approve my course when he shall have learned my motives.

The Sicilians have been oppressed and have come to me and urged that I should undertake the case in which the fortunes of all are at stake. They have reminded me that when I was quaestor in Sicily I often promised them that if they should ever need my services I would not fail them. They say that the time has now come for me to defend not merely their interests but the lives and well-being of all.

I very much regretted being placed in such a position that I had either to disappoint those who sought my aid or to renounce my hitherto invariable policy and undertake a prosecution. I suggested that Caecilius would defend their interests, but they knew him too well.

Reluctantly, I was compelled by a conviction of duty to undertake the case, which, it seems, ought not so much be considered a prosecution of one as a defense of many.

If I were not under obligation to the Sicilians, I would pursue this course for the sake of the state, that so abandoned a man, one whose many crimes are known in the provinces and to all here at Rome, might be brought to account. What service better than this could be rendered the state and our allies?

There is much complaint among the people concerning the courts. The trouble would be remedied if able and worthy men would undertake the cause of the state and the laws.

If more than one person claims the right to bring an accusation, two questions must be considered: Whom do those who are said to be injured most desire? and, Whom does the one said to have done the injury least desire? I shall first consider the wish of those to whom the injury has been done and for whose sake this court has been called.

The Sicilians have been oppressed by Verres and have fled to me for assistance and desired me to assume the entire management of their case. There are illustrious men who are witnesses of this fact and who know that the Sicilians have often and urgently insisted on their request. And distinguished men from all the province, except two cities, are present here and beg you to approve their choice.

The law *de pecuniis repetundis* was enacted for the benefit of the allies. Who will deny that their wishes should be respected? They must plead by a representative. Who would thrust himself upon them against their will? Will you, Caecilius, defend those who prefer not to be defended rather than to be defended by you?

The Sicilians desire me, but Verres is making every effort to prevent my being appointed. There is nothing in me which he despises, nothing in you, Caecilius, which he fears. His noted defender supports you and opposes me, for he sees that if the conduct of prosecutions passes from weak and corrupt accusers to strong men of reputation, he will no longer be able to lord it over the courts. If you judges shall decide that I am to conduct the case, his whole line of defense must be changed. It will not be safe then to corrupt the court.

What ability have you, Caecilius? You do not so much as realize what a task it is to conduct a public case, nor the characteristics one must possess.

You are known only to the Sicilians and they suspect you. The prosecutor ought to be firm and true. You could not be if you wished. You would not dare to deal with Verres' crimes, for you were his partner in them. You know that I have evidence that would easily convince all that you were united in purpose but the plunder has not yet been divided. You ought to yield the prosecution to those who are not prevented by their own crimes from proving the crimes of another.

Caecilius, do you think you ought to despise ability, training and practice, the elements without which the indictment cannot in any way be sustained? Do you think you are qualified to conduct so important a case? If you were favored by nature and had studied from boyhood, if you had learned your Greek at Athens instead of Lilybaeum and your Latin at Rome instead of in Sicily, it would still be a great thing to be able to manage such a case. I do not claim to possess all the necessary qualifications, but I have at least diligently sought them. But if I who have done nothing else all my life, have not been able to acquire them how far off ought you to think yourself from those things of which you have never even thought? With all my practice, I still tremble at the thought of speaking. You have no fear and make no preparation. You think you will do yourself credit if you are able to get off some old speech of somebody else. I think you would be unable to prove your case if nobody opposed you. You do not even think of what a sharp man you would have to meet. I imagine I see how Hortensius will dodge you and drive you about. In what distress you will be! There is danger that he will defeat you not only by words but by gestures and acting.

If in answering me today you are able to depart one word from

the speech your teacher has given you, I will believe that you are capable for the work.

Enough! One may say, "Suppose he has no ability. He comes prepared with experienced and skillful associates." He who is leader in the case ought himself to be the best qualified. Appuleius, the first assistant, is a man in age but a tyro in experience. Alienus is real strong and experienced in bawling. I do not know whom he will have for third assistant.

He says, "Appoint me as a guard over Cicero." If I should admit him to my papers how many guards would I need not only to keep him from divulging their contents but even from removing the documents themselves?

Caecilius, you see how many qualifications you lack, and how many characteristics you possess that a criminal would desire to have in his accuser. Do you insist that Verres has done you an injury? It would not be likely that he would injure all other inhabitants of Sicily and make an exception of you alone. The other Sicilians have found an avenger of their wrongs. If you judge that the right of prosecuting ought to be given to him to whom Verres has done the greatest wrong, which has the stronger claim, you whom Verres has offended or the province of Sicily which he has ruined? I suppose you will say, "the province." Then yield to it in the prosecution.

If you say that you have been offended by Verres, I admit it, but if you complain that you have suffered an injury, I deny it, and defend him. Concerning the supposed wrong, no one of us ought to be a more severe judge than ourself. You were afterwards reconciled and on intimate terms with him, so in again bringing up your former enmity you are faithless either to him or to the Sicilians.

Perhaps you base your claim to the appointment on the grounds that you were his quaestor. If you had suffered very many injuries from your praetor you would merit more praise by bearing than by avenging them.

That you have been his quaestor is sufficient reason why you should not be accepted now, for this is the tradition of our ancestors, that the praetor ought to occupy the position of a father to his quaestor. You could not accuse your praetor without impiety. Almost never has a quaestor sought to prosecute his praetor without being rejected. The precedents are against such a course.

The most illustrious men of our state in its best days considered nothing more noble than to protect their friends and clients and sub-

jects and strangers. Nothing ever disturbs evil men more than the renewal of this custom at long intervals. They fear that the laws and courts may be administered by honorable and able men instead of by weak youths and informers. This is the very remedy for the condition of the republic, weakened and almost given up in despair.

Caecilius has no reputation and no promise. He has nothing to lose by failure. I have much at stake. Therefore it is for you, judges, to select the one you think will best be able to manage this important case with fidelity, diligence, judgment and authority. Beware lest the Roman people think you do not desire a vigorous prosecution."

This speech is one of such excellence that it is difficult to realize that it is one of Cicero's very earliest, there being only five that precede it. It is so perfect in its logical presentation of the facts and arguments, so artistic in arrangement and so completely satisfying in spirit and style that it has been considered one of the finest extant specimens of Roman oratory. It certainly illustrates in an admirable way the rule of which Cicero reminded Caecilius, that "if an orator wishes to accomplish anything, he must see to it that men not only hear him but that they listen to him gladly.

It produced the desired effect. The court approved of the choice of the Sicilians and Cicero was allowed to prosecute Verres. Caecilius was not permitted to be even an associate in the case, as he was anxious to be if he could not have sole charge.

This was the immediate result of the *divinatio*, but it was only the first in a chain of events, no part of which can be omitted in giving the historical bearings of this speech and the others more directly against Verres.

After being recognized as prosecutor, Cicero was granted by the praetor a stay of proceedings for 110 days to give him time to collect evidence and prepare his case. Nothing could have pleased Verres better unless it had been a still longer adjournment.

As affairs then stood the praetor urbanus, president of the court, was Manius Acilius Glabrio, a man of integrity and therefore one to be feared and hated by Verres. The next year he was to be succeeded in office and power by M. Caecilius Metellus; and his brother, Q. Caecilius Metellus Creticus, together with Hortensius, Verres' attorney at this time, would be consuls. Verres had good reasons for being confident that with these three fast friends holding the three highest offices of power, his indictment would be dismissed or at least the prosecution would be caused to fail. Consequently he did not wish nor intend that the case should be settled that year.

Therefore after Cicero had obtained 110 days in which to prepare his case, Verres put forward a false prosecutor to occupy the attention of the court. This man claimed the right to demand satisfaction for wrongs committed by somebody in Achaea, but who he was and whom he was to prosecute is uncertain.

The manifest purpose of this move was to have another case called before Cicero could begin his suit, so that the prosecution that Verres feared could not be taken up before a disposition should be made of the first one. To this end the false prosecutor asked and obtained 108 days for the preparation of his case. This would permit him to enter court before Cicero's 110 days expired.

So long a delay would in itself be very encouraging to Verres. It would then be late in the year and the few remaining months were crowded with games and festivals during which the courts could not be held.

The games vowed by Pompey for the fortunate conclusion of the war against Sertorius were to occupy the last half of the month of August. They were to be followed by the *Ludi Romani*, Sept. 4-13, and the *Ludi Romani in Circo*, Sept. 16-19. The *Ludi Victoriae* of five days' duration were to begin Oct. 27, and the *Ludi Plebeii* would last from Nov. 4 to 17.

So it will be readily seen that a little quibbling and delay might throw the case over until the first of the next year when Verres' friends would be in full power and the case would be taken up anew, only to acquit him.

Cicero anticipated the move. With his cousin Lucius, who was his associate, he hastened to Sicily. He traversed the entire length of the island and with the greatest diligence collected a crushing weight of documentary evidence and returned to Rome in about fifty days fully prepared for the prosecution and accompanied by many witnesses.

The false prosecutor on the Achaean charge had not gone as far as Brundisium. The way was open for Cicero to begin his case. Having all confidence in the uprightness of Glabrio, the praetor urbanus, and having been fortunate in drawing and challenging the jury, Cicero saw that he had a favorable opportunity and was determined not to let the criminal escape his grasp. On the fifth of August the court sat in the temple of Castor, a building the very sight of which would have made Verres weak had he been capable of feeling shame for wrongs committed.

Curiosity and interest surrounded the court by a great crowd that thronged the porticos of the temple, the colonnades, the forum, and the housetops overlooking the scene. The people were there, and so were the senators and knights, deeply interested in the result of the trial because of the effect it would have on the new law which was being agitated at that time. Witnesses alone formed a great crowd, for many came from Sicily, from Greece and Asia and the islands of the Mediterranean. Every region that had been cursed by Verres' blighting presence had its representative in that determined multitude of ruined merchants, scourged Romans, impoverished orphans, and widowed wives.

It was a great and important trial.

One villain was held to account for boundless, countless injuries.

The senatorial order was indicted for its corrupt administration of the courts.

The Roman system of provincial government and through it Rome herself was on trial that day. Cicero saw and knew the flood of the tide. He seized the opportunity and pressed the case with wonderful vigor.

He opened the trial with a short and effective statement of the case. His points were well supported by documents and witnesses.

At first Hortensius attempted to oppose the overwhelming tide of Cicero's masterly presentation of the case, but soon, seeing the inevitable result, he gave up all resistance, no longer making use even of his right to cross-examine the witnesses.

Nine days were allowed the prosecution for presenting its case and examining the witnesses. By the end of the third, Verres had fled to Marseilles, where he lived in luxury until he fell by the proscription of Antony in 43 B. C.

He was convicted, ordered to make restitution, and exiled.

At least the policy of integrity was once more recognized by Rome's corrupt politicians and demagogues. Cicero was henceforth acknowledged to be the leading orator of the city.