

CICERO, *AD FAMILIARES* XIII, 26 AND 28:
EVIDENCE FOR *REVOCATIO* OR *REIECTIO ROMAE/ROMAM* ?*

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I

The two letters of recommendation, *Ad Familiares* XIII, 26 and 28, were addressed in 46 B.C. to Ser. Sulpicius Rufus, the foremost jurist of the day, and at the time the governor of Achaëa. They were written on behalf of Cicero's former quaestor, L. Mescinius Rufus,¹ in anticipation of legal difficulties in the succession of the latter to the inheritance left to him in Achaëa by his cousin(?) M. Mindius.²

Cicero's request, 'ut ... eos (i.e. Mescinius' opponents) ... Romam reieceris', backed, as he informed his correspondent, by a letter (*litterae quasi commendaticiae*) from the consul in Rome (*Fam.* XIII, 26, 3) has received the most contradictory and mutually exclusive interpretations. Whereas some see in it a perfect example of an appeal launched before trial,³ others firmly deny this,⁴ or reject the very existence of this form of appeal.⁵ In its stead a little-used right of Roman citizens in the provinces to request a remittal of their case to Rome is invoked.⁶ The alleged appeal or right is variously designated *revocatio Romae*,⁷ *revocatio Romam*,⁸ *reiectio Romae*⁹ or most recently, *reiectio Romam*.¹⁰

Further disagreement among scholars as to what the consul's letter could have contained creates even greater difficulties. For, whereas it is generally conceded that it would normally have rested with the governor, who was competent to try the case,¹¹ whether or not to grant the request to transfer it to the courts in Rome,¹² there are those who consider the consul's letter to have altered the situation completely. In other words, the letter represents a curtailment of the governor's freedom of action. According to Mommsen this letter contains 'in höflichen Formen einen Befehl der Regierung'.¹³ A. H. M. Jones believed that it contained a promise on the consul's part to grant *auxilium* upon an appeal from Mescinius.¹⁴ Against these views it has been asserted that though the governor was permitted to send to Rome cases in which Roman citizens were involved, nevertheless, since this was a free decision on his part, it did not limit his competence.^{14a} And in a stronger vein: 'no legal

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¹ Mescinius served as Cicero's quaestor in Cilicia in 51-50 B.C. until succeeded by C. Coelius Caldus; cf. *MRR* II, 242, 250. Opinions vary about Cicero's relations with Mescinius at the time; cf. L. A. Thompson, 'Cicero's Succession Problem in Cilicia', *AJP* 86 (1965), 375-86, esp. 381 f.; contra A. J. Marshall, 'The Lex Pompeia de provinciis (52 B.C.) and Cicero's Imperium in 51-50 B.C.: Constitutional Aspects', *ANRW* I. 1 (1972), 917 and nn. *Fam.* v, 19 (49 B.C.) and 21 (46 B.C.) as well as the letters under discussion suggest a renewed or newly developed intimacy: cf. Drumann-Groebe VI², 96.

² For *frater* as cousin cf. Tyrrell and Purser, *The Correspondence of M. Tullius Cicero* IV² (1918), 505, n.: 'frater patruelis'; cf. D. R. Shackleton Bailey, *Cicero: Epistulae ad Familiares* I (1977), 466, on *Fam.* v, 20 (No. 128)—brother, half brother or cousin. For Mindius see *Fam.* v, 20, 3, and cf. C. Nicolet, *L'ordre équestre* I (1966), 258-9; II (1974), No. 233.

³ A. H. M. Jones, 'Imperial and Senatorial Jurisdiction', *Studies in Roman Government and Law* (1960), 76-7.

⁴ cf. M. Kaser, *Das römische Zivilprozessrecht* (1966), 181, n. 10 (= *ZPR*): 'eine Vorentscheidung in der Sache selbst, gegen die appelliert würde, ist hier nicht vorausgesetzt'.

⁵ cf. P. Garnsey, 'The Lex Iulia and Appeal under the Empire', *JRS* 56 (1966), 167-8; 180 f.

⁶ Garnsey, op. cit. (n. 5), 182-3; cf. idem, 'The Criminal Jurisdiction of Governors', *JRS* 58 (1968), 56-7, and *Social Status and Legal Privilege in the Roman Empire* (1970), 263-4.

⁷ Jones, op. cit. (n. 3), 75.

⁸ A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (1901), 292, who, however, does not regard it as a right but as 'an outcome of customary law'.

⁹ Jones, op. cit. (n. 3), 76: '*revocatio* or *reiectio Romae*'.

¹⁰ Garnsey, 'The Criminal Jurisdiction of Governors', op. cit. (n. 6), 56; *Social Status and Legal Privilege* . . . , 76; 263-4.

¹¹ cf. *Dig.* I, 16, 7, 2 (Ulpian). As Mommsen points out (*Strafrecht*, 233), the fact that *praetor* was a generic term for provincial governors indicates that civil jurisdiction always belonged to them. For the evidence on the use of *praetor* as a generic term cf. *Staatsrecht* II³, 240, n. 5.

¹² Mommsen, *Staatsrecht* II³, 267-8 and n. 1 on 268; III, 748 and n. 5; 1214 and nn. 3 and 4; M. Wlassak, *Römische Prozessgesetze* II (1891), 256; *Der Judikationsbefehl der römischen Prozesse* (*S. Ber. Ak. Wien* 4, 1921), 95-6—to cite only those who mention the two letters explicitly.

¹³ *Staatsrecht* III, 1214, n. But it should be pointed out that Mommsen considers this an abuse.

¹⁴ op. cit. (n. 3), 76-7.

^{14a} Wlassak, op. cit. (n. 12) II, 256.

right to the change of court was possessed by the parties and *no compulsion could be placed on the governor*'.¹⁵ Moreover, the consul's letter is the very proof that this was so.¹⁶

II

In the face of such basic disagreement a re-examination of the entire case seems to be called for. An attempt is made here to free the discussion from the legalistic terms which have dominated it, and to re-consider the question in the light of the conventions which governed letters of recommendation.

In many respects Cicero's letters of recommendation are the best primary evidence we have for determining the minutiae of provincial government under the Republic, the day-to-day working of provincial administration and jurisdiction as well as certain prevailing attitudes and conventions of conduct. The value of these letters has long been recognized; but, as far as I am aware, no serious attempt has been made to use the evidence they provide for a re-evaluation of general theories about Roman provincial government.¹⁷ Instead it has become common practice to pluck certain phrases arbitrarily out of their context. In our particular case Cicero's request 'ut eos Romam reieceris' and his qualifying phrase 'non quae te aliquid iuberent' have been used as counters in larger games: the problem of appeal in the late Republic and early Principate; the consul's *imperium* vis-à-vis that of the proconsul; the control exercised by the central government over provincial governors; the legal position of Roman citizens in the provinces, etc.¹⁸ As a result the mood and import of these phrases, dependent as they are on the context in which they appear, has been falsified and distorted.

An analysis of *Fam.* XIII, 26 as a letter of recommendation obeying certain rules which govern the genre will precede the detailed examination of the theories outlined above which were offered as interpretations of certain crucial phrases in the letter. In view of their inadequacies, mainly the result of having ignored the context in which the phrases occur, a new interpretation, which takes into account the over-all character and bearing of letters of recommendation, will be put forward.

The actual request in the first of the two letters is preceded by an elaborate and lengthy preamble:

L. Mescinius ea mecum necessitudine coniunctus est, quod mihi quaestor fuit; sed hanc causam, quam ego, ut a maioribus accepi, semper gravem duxi, fecit virtute et humanitate sua iustioerem. Itaque eo sic utor ut nec familiarius ullo nec libentius. Is quamquam confidere videbatur te sua causa quae honeste posses libenter esse facturum, magnum esse tamen speravit apud te meas quoque litteras pondus habituras. Id cum ipse ita iudicabat tum pro familiari consuetudine saepe ex me audierat quam suavis esset inter nos et quanta coniunctio.

The themes of this preamble are familiar from other letters of recommendation:¹⁹ the excellent character of the recommended person;²⁰ his close ties with Cicero (whose quaestor he had been) sanctified and solemnized by tradition, which make it the latter's duty and pleasure to come to his aid;²¹ and finally, Cicero's known intimacy with Sulpicius, a pledge, under Roman notions of the duties entailed by friendship, that the request would

¹⁵ Greenidge, loc. cit. (n. 8).

¹⁶ Garnsey, 'The Criminal Jurisdiction of Governors', op. cit. (n. 6), 57.

¹⁷ Most of those addressed to provincial governors can be found in Book XIII of *Ad Familiares* (cf. L. Gurlitt, 'De M. Tulli Ciceronis Epistulis Earumque Pristina Collectione' (Diss. Götting. 1879), 14 f. for a plausible hypothesis that this collection was made in Cicero's own lifetime). But there are others elsewhere among Cicero's letters. Nicolet, op. cit. (n. 2) I (1966), 680, n. 5 comments on the absence of a special study and expresses the hope of providing one.

¹⁸ See below, p. 43 f.

¹⁹ For a brief survey of both the form of letters of

recommendation and their recurring themes cf. F. Lossman, *Cicero und Caesar im Jahre 54: Studien zur Theorie und Praxis der römischen Freundschaft* (*Hermes Einzelschrift* 17, 1962), 11-24. Some useful comments can be found in W. Kroll, *Die Kultur der ciceron. Zeit* I (1933), 60 f. and O. Plasberg, *Cicero in seinen Werken und Briefen. Das Erbe der Alten* XI (1926), 27 f.

²⁰ For other examples cf. *Fam.* XIII, 3; 10, 3; 13; 14, 1; 15, 1; 16, 2; 21, 1; 25; 30, 1. There are many others.

²¹ For the relationship between provincial quaestors and governors cf. L. A. Thompson, *Historia* 11 (1962), 339.

not go unheeded.²² Nevertheless, as will be shown below, the passage just quoted goes beyond the rules laid down by the *decorum* of writing in this genre.²³ This fact alone alerts us to the possibility that the request which follows might have been quite unprecedented and had no basis in law, customary or otherwise. This is not to say, however, that Cicero's request should necessarily be described as an attempt to override the law,²⁴ nor that it should be branded as an abuse of the prevailing system of provincial jurisdiction.²⁵

The introduction of the request itself seems at first to come with the phrase 'peto igitur', but this turns out to be a false scent. No specific request is enunciated; instead a lengthy, rambling sentence concludes with a vague and general appeal for aid: 'eius negotia . . . explices et expedias'. This is hardly a cause for surprise. A specific request is rarely if ever made in letters of recommendation, where a deliberate vagueness and lack of specification are the rule.²⁶ Often the recommender may not have a specific request in mind and may intend no more than a general recommendation.²⁷ However, it seems that it was one of the unwritten rules of the system not to spell out to the recipient the ways and means in which the latter's benevolence should express itself: the choice of methods and measures is left entirely to the recipient's discretion. Consequently, the very vagueness sustained by the use of conventional set-phrases and hackneyed expressions could be used by the recipient to reconcile the request with his own interests or to refuse without damaging his friendship with the recommender. It will be suggested below that in the present case Cicero had one specific request in mind. Moreover, in this instance he was not going to leave it to the governor's initiative and discretion to choose the measures to be used, but was going to outline the course of action to be taken. Cicero's predicament made it of paramount importance not to broach the subject without adequate preparation. He had to use all the tact, ingenuity and resourcefulness he could muster in order not to commit too vulgar a breach of the rules of *decorum*. The task facing him was of a most delicate nature, if Sulpicius' dignity and emotions were to be spared.²⁸ Hence he was taking his time, carefully preparing the ground, slowly progressing from the more general to the more specific.

In the sentence which follows this stage seems to have been reached. But on one interpretation, as we shall see, Cicero was again throwing us off the scent (26, 2):

Sic enim praescripsimus iis, quibus ea negotia mandavimus, ut omnibus rebus, quae in aliquam controversiam vocarentur, te arbitro et, quod commodo tuo fieri posset, te disceptatore uterentur.

²² See F. Schulz, *Principles of Roman Law* (1936), 233-4; and cf. *Fam.* XIII, 70; 'Quia non est obscura tua in me benevolentia sic fiat ut multi per me tibi velint commendari'; *Fam.* XIII, 71: 'Multos tibi commendem necesse est quoniam omnibus nota nostra necessitudo est tuaque erga me benevolentia'. As a matter of fact, the recommender would be guilty of *neglegentia* towards the recommended person if the request was not complied with: cf. *Fam.* XIII, 1, 5; 19, 3.

²³ The *decorum* observed in letters of recommendation deserves a special study. For some comments see L. Gurlitt, 'Die Briefe Ciceros an M. Brutus', *Philologus suppl.* IV (1884), 593f; Lossman, loc. cit. (n. 19). Cf. in general A. B. Miller, *Roman Etiquette of the Late Republic as revealed by the Correspondence of Cicero* (Univ. of Pennsylvania Thesis, 1914); E. S. Ramage, *Urbanitas: Ancient Sophistication and Refinement* (Univ. of Cincinnati Classical Studies III, 1973).

²⁴ So J. M. Kelly in a chapter entitled 'Improper Influences in Roman Litigation', *Roman Litigation* (1966), 69-84.

²⁵ We may ask, indeed, whether hard and fast rules regarding the legal status of Roman citizens in the provinces could have crystallized by this time into a system. It seems to me that everything we know suggests the contrary, but this is not the place to argue for this view.

²⁶ e.g. *Fam.* XIII, 13: 'Cui quibuscumque rebus

commodaveris'; 18, 2: 'quibuscumque officiis in Epiroticis reliquisque rebus Atticum obstrinxeris'; 22, 2: 'T. Manlium quam maxime, quibuscumque rebus honeste ac pro tua dignitate poteris, iuveris atque ornaveris'; 27, 3: 'quiquid habent negoti, des operam, quod commodo tuo fiat, ut te obtinente Achaia conficiant'; cf. also 23, 2; 31, 1; 32, 2; 35, 2; 63, 2; 66, 2; 67, 2; 79.

²⁷ As seems to be the case in *Fam.* XIII, 17 (M. Curius); 20 (Ascalpo); 22 (T. Manlius); 23 (L. Cossinius Anchialus); 25 (Hagesaretus of Larissa); 28a (The Lacedaemonii), to mention only those sent to Ser. Sulpicius Rufus.

²⁸ To spare the governor's *existimatio* a saving clause is often inserted, e.g.: 'quoad tibi aequum et rectum videbitur', *Fam.* XIII, 14, 2; 'quibuscumque rebus honeste ac pro tua dignitate poteris, iuveris atque ornaveris', 22, 2; 'commendo tibi hominem, sic ut tua fides et meus pudor postulat . . . quae aequa postulabit ut libente te impetret', 58; 'servabis, ut tua fides et dignitas postulat, edictum et institutum tuum', 59; cf. also *Fam.* XIII, 61; 63; 67; 69, 2; 70; 72, 2; 73, 2. An elaborate expansion of the saving clause to justify the custom of recommendation is found in Fronto, *Ad Am.* I, 1 (van den Hout, 164). On the importance of a man's *existimatio* cf. Z. Yavetz, 'Existimatio, Fama, and the Ides of March', *HSCP* 78 (1974), 35, esp. 41-2 on the governor's *existimatio*.

In view of what follows one wonders whether there is any need to point to a real distinction between *arbiter* and *disceptator*.²⁹ Admittedly, the insertion of the clause 'quod commodo tuo fieri posset' seems to suggest that some distinction is intended. However, even if the latter term denotes formal arbitration in a *controversia*,³⁰ the very next sentence shows that Sulpicius' formal arbitration was not going to be used: in the case of a *controversia* he was asked to refer the matter to Rome. Indeed, if one of the terms is interpreted as referring to formal arbitration, then it must be admitted that Cicero is clearly contradicting himself (or rather dissembling), requesting first that Sulpicius would arbitrate in the case of a controversy and then (see below) recanting by saying that in such a case the matter should go to Rome.

Of course one might object that only if the opponents proved to be 'difficiliores' should they be sent to Rome. Does 'difficiliores' mean in this case 'refusing to accept Sulpicius' arbitration'? Hardly so. 'Difficiliores' is followed by its own exegesis: 'ut rem sine *controversia* confici nolint'. If it came to litigation, the case should go to Rome.

The alternative of formal arbitration is therefore ruled out (if it was suggested, it was not meant to be taken seriously) but it may still be possible to construe the sentence quoted above as implying informal personal arbitration by virtue of the 'auctoritas' and 'consilium' vested in Sulpicius and referred to before in the same breath as his official powers, the 'ius' and 'potestas'.³¹ However, if this is the case we must postulate a distinction between the usage of *controversia* in this section and its usage in the following one: only in the latter case is it used as a technical term to denote litigation and court proceedings.

There is not enough evidence to decide between the two alternatives offered above. It may be suggested, however, that the first is the true one: although the literal meaning of Cicero's words is formal arbitration, he had no intention that it should take place. For, in the first place, it is hardly conceivable that two different meanings of *controversia* could appear in such close proximity, and in the same context. Secondly, it is more than probable that Cicero was sending up a smokescreen of politeness in order not to offend Sulpicius. However, whichever way the case is decided, the conclusion does not affect the main argument.

For, on both interpretations, with 'Illud praeterea' we have reached the crux of the letter, where specific measures are proposed. Cicero is treading warily, as the staccato rhythm of the sentence clearly demonstrates. Caution was due, presumably, to make up for the fact that he wished Sulpicius to surrender a case which the latter was competent to judge himself; but perhaps for other reasons as well, not least those dictated by the *decorum* of writing letters of recommendation:

Illud praeterea, si non alienum tua dignitate putabis esse, feceris mihi pergratum, si qui difficiliores erunt, ut rem sine controversia confici nolint, si eos, quoniam cum senatore res est, Romam reieceris.

Who were the potential litigants? Some assume that they were provincials.³² Yet, if one juxtaposes here the letter sent subsequently, it becomes extremely probable that the potential litigant was Mindius' widow, who had appropriated most of the inheritance (28, 2):

²⁹ So Tyrrell-Purser, loc. cit. (n. 2).

³⁰ As is implied in Shackleton Bailey's commentary ad loc., op. cit. (n. 2) II (1977), 447 (No. 292).

³¹ 'Peto igitur . . . ut eius negotia, quae sunt in Achaia ex eo quod heres est M. Mindio, fratri suo . . . explices et expedias cum iure et potestate, quam habes, tum etiam auctoritate et consilio tuo' (26, 2). For other instances of the juxtaposition of official powers and personal qualities see *Fam.* XIII, 42: 'vehementer opus est nobis et voluntatem et auctoritatem et imperium tuum accedere'; 6, 4: 'omne genus liberalitatis, quod et ab humanitate et potestate tua proficisci poterit'.

³² So Mommsen, *Staatsr.* III, 748 and n. 5;

1214, n. 3; Garnsey, *Social Status and Legal Privilege*, 195, and n. 3; 217, n. 1; 236, n. 6; M. I. Henderson, 'Potestas Regia', *JRS* 47 (1957), 83; Shackleton Bailey, op. cit. (n. 2) II, 448. Since these provincial claimants could not have been heirs, Mommsen *et. al.* must have assumed that they had claims on the estate. For such a case cf. *QF.* I, 2, 10-11: the city of Apollonis was instructed by Q. Cicero not to let the praetor designate, L. Flavius, come into the inheritance left to him in Asia by L. Octavius Naso, before the demands on it were met. But I doubt if this is the case here; see text above.

deinde, cum fere consistat hereditas in iis rebus, quas avertit Oppia, quae uxor Mindi fuit, adiuves inaeque rationem quem ad modum ea mulier Romam perducatur. Quod si putarit illa fore, ut opinio nostra est, negotium conficiemus.

The close verbal resemblance between the measures proffered here and those suggested for dealing with her (she should be threatened with being sent to Rome) suggests that 'si qui difficiliore' hints at this woman without explicitly naming her.

The measure itself, 'ut . . . eos . . . Romam reieceris', is better dealt with in conjunction with what follows immediately after :

Quod quo minore dubitatione facere possis, litteras ad te a M. Lepido consule, non quae te aliquid iuberent (neque enim id tuae dignitatis esse arbitramur), sed quodam modo quasi commendaticias sumpsimus.

The legal and constitutional background to this request poses difficult problems which must be discussed before a new interpretation is offered.

III

A. H. M. Jones took the measure requested here to be :³³

a clue to the true nature of *Romae revocatio*. In asking for it a provincial litigant announced his intention of appealing from the proconsul to the consul at Rome, whose *imperium* extended to all provinces and was *maius* in relation to that of their proconsuls; for as Cicero remarks, 'omnes in consulis iure et imperio debent esse provinciae'. A reasonable proconsul would no doubt usually allow the litigant to go to Rome and make his appeal, but as it was not physically possible for him to make the actual appeal except after a long delay, a stubborn proconsul would ignore his request and proceed with the trial. A litigant could only make sure of securing a *revocatio Romae* by approaching the consul beforehand, as Mescinius did through Cicero's agency, and getting from him a letter in which he informed the proconsul that he would give his *auxilium* if an appeal were made to him, and ordered him in that case to remit the case to Rome.

Jones' reconstruction is based on several preconceptions : (1) that this is a case of an appeal ; (2) that an appeal could be launched before the judicial proceedings have started ; (3) that there was an appeal from the proconsul to the consul in Rome.

Garnsey, on the other hand, does not consider this a case of appeal. To him it is a special case of the *reiectio iudicii*, under which he subsumes not only cases of a rejection of a limited number of *iudices* and *recuperatores*, which was permitted under civil procedure and in *quaestiones*, but even a rejection of the form of trial laid down by the magistrate, and his *reiectio Romam* falls into this category.³⁴

Lintott criticizes Garnsey's model on two fronts. It is his view that an appeal was possible at any stage, at least theoretically, and therefore he maintains that Garnsey 'goes too far in limiting *provocatio* to appeals after sentence'. Secondly he asserts that 'although rejection of a limited number of *iudices* or *recuperatores* was permitted under civil procedure and in *quaestiones*, whether permanent or *ad hoc*, in the Republic as a right, rejection of the form of trial laid down by a magistrate in any respect, including his provisions for the selection of judges, seems to have needed backing from the tribunes, if it was to be effective.'³⁵

We know of only one other attempt in the late Republic to transfer a civil suit from the provinces to Rome. P. Scandilius, a Roman knight, challenged Q. Apronius to a *sponsio* : 'ni te (i.e. Verrem) Apronius socium in decumis esse dicat', and asked Verres for a *iudex* or *recuperatores*. On realizing that Verres was going to impose on him *recuperatores* from his own biased *cohors*, rather than from the *conventus* of *negotiatores*, Scandilius demanded

³³ op. cit. (n. 3), 76-7.

³⁴ 'The Lex Iulia . . .' op. cit. (n. 5), 122-3 ; 'The Criminal Jurisdiction . . .' op. cit. (n. 6), 56-7 ; *Social Status and Legal Privilege* 263-4.

³⁵ A. W. Lintott, 'Provocatio. From the Struggle of the Orders to the Principate', *ANRW* 1. 2 (1972), 264-5, and cf. 239, n. 68.

(‘postulat’) from the governor: ‘ut Romam rem reicias’. Verres refused: ‘negas te Romam reiecturum’.³⁶

These two instances, usually quoted together, constitute, it seems, the only evidence for the so-called right of Roman citizens in the provinces to ask for a remittal of their case to Rome, or to put it differently, for a choice between two Roman courts, that of the provincial governor and that of the praetor in Rome.³⁷

However, choice of courts was, as Garnsey seems to admit, a special privilege individually bestowed and not part and parcel of the possession of Roman citizenship.³⁸ The fact that it was also granted to *peregrini*³⁹ suggests that there was no necessary connection between citizenship and choice of court; the latter called for a special grant, and even then it was liable to certain restrictions. Asclepiades and the *socii* could use their privilege only to seek redress for debts incurred during their absence from Rome. Seleucus and his kin had recourse to choice of courts only *qua* defendants; the privilege did not constitute any derogation of the principle *actor sequitur forum rei*.⁴⁰

Another doubt supervenes: is the assumption that the two cases, namely that of Scandilius and that of Mescinius, are identical at all well grounded? It should be recalled that the request to send the matter to Rome took place at different stages in these two instances. Scandilius’ request came after the *sponsio* had been made and the parties had failed to agree on the judges. Verres, according to Scandilius, rejected any *iudex* from the province: ‘ex provincia Sicilia tota statuas (i.e. Verres) idoneum iudicem aut recuperatorem nullum posse reperiri’,⁴¹ and Scandilius refused to accept the *recuperatores* proposed by Verres. It was, therefore, during the *reiectio* stage, the challenge of the judges, that Scandilius asked that the case be sent to Rome; not as an ‘alternative *forum*’ but as the only one, since none that was not *iniquum* was available in the province. He was not exercising his right as a Roman citizen to have his case tried in Rome, but his right to have a just *iudex*. It is on this score that Cicero took Verres to task, and not for denying a Roman citizen his ‘natural’ right.

In Mescinius’ case we are at an earlier stage: the matter should be taken to Rome only if legal proceedings could not be avoided.⁴² Only here can we speak of a request for a change of venue proper. And, as was hinted before, Cicero’s manner and tone do not suggest that he was vindicating Mescinius’ right to be tried in Rome.

Nor does a survey of linguistic usage at the time (or even later) lend any support to the notion of *reiectio Romam* as an established legal right: the precise phrase occurs nowhere

³⁶ II *Verr.* 3, 135–40. On the procedure ‘sponsione provocare’ see now J. Crook, ‘*Sponsione Provocare*: Its Place in Roman Litigation’, *JRS* 66 (1976), 132–8; once the *sponsio* offered outside the court is accepted, normal legal proceedings take place in court.

³⁷ It is an entirely different matter to speak, as Wlassak and Mommsen do, *opp. cit.* (n. 12), of the right of the governor to surrender a case to Rome. It should be noted, though, that in *Strafrecht*, 234, Mommsen states that ‘es mag auch der beklagte Römer unter Umständen die gleiche Befugnis (i.e. to demand a trial in Rome) gehabt haben’. No evidence, however, is brought in support of this statement. Wlassak regards the two cases of ‘reicere Romam’ as one of the proofs that the praetor’s jurisdiction extended to the provinces (*Judikationsbefehl*, 85 f.).

³⁸ ‘The Criminal Jurisdiction of Governors’, *op. cit.* (n. 6), 57, concurring with G. I. Luzzatto, *Epigrafia Giuridica Greca e Romana* (1942), 292 f., 317 f.; cf. L. Wegner, ‘Zum Problem “Reichsrecht und Volksrecht”’, *RIDA* 3 (*Mélanges F. de Vischer* 2, 1949), 542 f. for the controversy. F. de Martino, *Storia della costituzione romana* II² (1973), 385, L. Gallet, ‘Essai sur le sénatus-consulte “de Asclepiade sociisque”’, *RHDFE* 4^{86r} 16

(1937), 287, and V. Arangio-Ruiz, ‘Sul problema della doppia cittadinanza nella repubblica e nell’impero’, *Scritti giuridici in onore di F. Canelutti* (1950), 68, maintain that Roman citizens in the provinces always enjoyed a choice between local courts and Roman courts.

³⁹ Asclepiades of Clazomenae, Polystratus of Carystus, Meniscus of Miletus and their families received this privilege in 78 B.C.; see *S. C. de Asclepiade Sociisque* in Sherck, *RDGE*, No. 22, p. 127, ll. 17–20.

⁴⁰ See F. de Visscher, ‘Le Statut Juridique des nouveaux citoyens romains et l’inscription de Rhosos II’, *L’Antiquité Classique* 14 (1945), 44: ‘dans la mesure où il s’agirait d’obtenir réparation des torts qu’ils auraient subis par suite de leur absence’. A similar view is expressed by A. J. Marshall in ‘Friends of the Roman People’, *AJP* 89 (1968), 39, who claims against Gallet, *op. cit.* (n. 38), that the legal privilege of choice of court was not part and parcel of the status of *amicus p. R.*, *ibid.*, 50–1.

⁴¹ II *Verr.* 3, 138.

⁴² Even in the subsequent letter, *Fam.* XIII, 28, where a *cautio* is mentioned, we are still before the *litis contestatio* stage. See Kaser *ZPR* (1966), 209, and below, p. 47.

in either legal or non-legal sources.⁴³ In the two known instances from the late Republic a concrete phrase is used: 'Romam reicias' and 'Romam reieceris'.⁴⁴ There is no attestation of an 'action noun' to describe the idea of 'reicere ad/in aliquem locum'. We have here yet another instance of the fundamental importance of the distinction, established by Daube, between the use of 'action verbs' and the crystallization of the concept in the form of the corresponding noun.⁴⁵ The noun *reiectio* is applied to 'one sector of the verb', to use Daube's words, that of 'reicere aliquem' or 'aliquid', which conveys an entirely different idea. To make the *reiectio*-procedure include not only a challenge of a limited number of *iudices* but also a change of venue is an illegitimate extension of the term which distorts not only the legal situation (as Lintott rightly observed),⁴⁶ but linguistic usage as well.

Moreover, 'the power to launch a *reiectio Romam*' indicates 'a yet further evolution of the theory' and 'is secondary compared with the act itself'.⁴⁷ Two instances of a request to remit a case to Rome, which are not even identical, do not permit us to postulate the existence of the institution, let alone the right, of *reiectio Romam*.

If we cannot accept Garnsey's *reiectio Romam* as the key to the interpretation of Cicero's request on Mescinius' behalf, can we admit the original doctrine which he challenged, namely Jones' *revocatio Romae* as a case of appeal?

Unlike Garnsey's *reiectio Romam*, Jones' *revocatio Romae* is attested once in our sources. The Fragmentum Atestinum declares that it is not the purpose of the present law to allow a *Romae revocatio* of cases already instituted before the local magistrates, even when the sum of money involved exceeded the latter's competence.⁴⁸ However, as Kaser points out, the *revocatio Romae* does not presuppose a judgement given by a local magistrate, and therefore does not imply an appeal.⁴⁹ Moreover, as we learn from the Lex Rubria, the remittal of a case to Rome by means of *vadimonium Romam faciendum* is carried out through a judgement (*decretum*) of the local magistrate, who had the power to enforce it if the party concerned failed to enter into it.⁵⁰ In other words, *revocatio Romae*, if used here at all as a technical term (which may be doubted) was a procedural measure reflecting the division of powers between the central court in Rome and municipal courts in Italy, and was made probably in the interests of convenience of cases which went beyond the competence of the local magistrates.⁵¹ In any case, nowhere does the *revocatio Romae* procedure appear to be consequent upon an appeal launched by the litigant against the local magistrate's decision.

Finally, *revocatio Romae* in the sense in which it is used in the Fragmentum Atestinum and implied in the Lex Rubria is not pertinent in the case of provincial governors whose full competence in the sphere of civil jurisdiction has never been questioned.⁵²

But although *Fam. XIII, 26, 3* cannot serve as Jones' 'clue to the true nature of *revocatio Romae*', it may still be argued that it represents the right procedure for lodging an appeal against a provincial governor. On this view Mescinius secured in advance a promise of *auxilium* from the consul, which made a remittal of the case to Rome compulsory. An appeal to the consul in matters concerning civil jurisdiction was theoretically possible: our almost complete lack of evidence for consular intervention in civil jurisdiction in the Late Republic does not of itself prove that Mescinius was legally debarred from doing so.⁵³

⁴³ The noun *reiectio* is not attested at all in the *Vocabularium Iurisprudentiae Romanae*; its occurrences in Cicero's speeches (I *Verr.* I, 10; 16; II *Verr.*, 2, 41; *Planc.*, 36; *Sulla*, 92; 93; *Vatin.*, 28) and letters (*Att.* I, 16, 3) invariably refer to the challenging of *iudices* or *recuperatores*, never to a transfer of the case from one court to another.

⁴⁴ cf. also the concrete verbal expression used to convey the idea of remitting a case to a local court: 'ad leges suas reicere', II *Verr.* 2, 59; 60; 90.

⁴⁵ D. Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (1969), ch. I *passim.*, esp. 37.

⁴⁶ See n. 35 above.

⁴⁷ Daube, op. cit. (n. 45), 21 and 56.

⁴⁸ Riccobono, *FIRA*² I, 177, ll. 17-23: 'eius rei pequn[iaeve] quo magis privato Romae revocatio sit . . . ex h(ac) l(ege) n(ihilum) r(ogatur)'.

⁴⁹ Kaser, *ZPR*, 128, n. 43.

⁵⁰ *FIRA*² I, 174, ll. 23 f. If not actually a portion of the Lex Rubria, the fragment from Ateste is at least closely related to it. So M. W. Frederiksen, 'The Lex Rubria: Reconsiderations', *JRS* 54 (1964), 129. F. J. Bruna, *Lex Rubria* (1972), 308-25, puts the fragment earlier, but admits that it is part of the same legislation. See Mommsen, *Staatsr.* III, 817-18.

⁵¹ Frederiksen, op. cit. (n. 50), 132-3.

⁵² cf. G. Pugliese, *Il processo civile romano II: Il processo formulare* I (1963), 156-7, and above, n. 11.

⁵³ cf. Val. Max. VII, 7, 6 (77 B.C.) for consular interference with a praetor's decision. Mommsen (*Staatsr.* II³, 101) allows the consuls an *intercessio* against the praetor, by virtue of their *maior potestas*, although he denies that the consuls possessed civil jurisdiction after 366 B.C. But cf. Greenidge, op. cit. (n. 8), 28-9.

It might be suggested, therefore, that the consul could impose his authority by virtue of his right of *intercessio*.⁵⁴ The two passages which seem to exclude *intercessio* in the provinces might represent no more than 'a practical exemption of the provincial governor from this check'.⁵⁵ But, if the consul's *litterae quasi commendaticiae* represented an *intercessio*, then Cicero's protest 'non quae te aliquid iuberent' puts its author in the worst light possible: he is patently insincere and Sulpicius will realize this as soon as he reads the consul's letter. Thus Jones' attempt to detect behind our letter an *appellatio-auxilium* mechanism is incompatible with what is actually said about the nature of the consul's letter.

Garnsey, on the other hand, sees an entirely different causal connection between the request for remittal to Rome and the consul's letter; to him the latter is the ultimate proof that the governor was under no compulsion to transfer the case to Rome, that is, that his hands were not tied by an appeal: 'The request was backed by *commendaticiae litterae* from the consul, a manoeuvre which was surely superfluous if the governor was allowed no discretion in the matter'.⁵⁶

A letter of recommendation (*litterae commendaticiae*), as can be inferred from the present context, had no official status and, therefore, did not purport to achieve its aim by command but by request. A comparison of the present usage of the term with that occurring in an earlier letter addressed to Cicero's former colleague in the consulate, C. Antonius Hibrida, then (end of December, 62 B.C.) governor of Macedonia, confirms this impression and yields more information about the connotation of the term:⁵⁷

Etsi statueram nullas ad te litteras mittere nisi commendaticias (non quo eas intellegerem satis apud te valere, sed ne iis, qui me rogarent, aliquid de nostra coniunctione imminutum esse ostenderem), tamen, cum T. Pomponius, homo omnium meorum in te studiorum et officiorum maxime conscius, tui cupidus, nostri amantissimus, ad te proficisceretur, aliquid mihi scribendum putavi, praesertim cum aliter ipsi Pomponio satis facere non possum.

Cicero wrote letters of recommendation to Antonius not because he believed in their effectiveness, but in order to conjure up the atmosphere that the exchange of such letters evokes: a close relationship between two friends who are ready to do each other a good turn.

But it may be argued that the consul's letter was 'quasi commendaticiae' and that Cicero's qualifying phrase 'non quae te aliquid iuberent' still shows that 'a consul could issue commands to a proconsul by letter',⁵⁸ or 'might actually have done so in the case of a governor of less exalted status'.⁵⁹ Indeed Cicero's qualifying phrase has been used to prove that the consul held an *imperium* that was *maius* than that of the proconsul. Even those who contest the consul's superiority and dismiss the whole notion of *imperium maius* as a piece of antiquarianism and as 'trivial theorizing' seem to admit that the only natural implication of Cicero's phrase is that an order could have been issued from Rome. Thus, M. I. Henderson suggests that 'this hypothetical instruction need not have come from the consul *iure suo*, rather than from the Senate, whose instructions it was his normal duty to transmit'.⁶⁰ This is more or less a recasting of Mommsen's 'ein Befehl der Regierung'.⁶¹

Fortunately we do not have to take sides in the larger issue, namely, the implication which Cicero's phrase has for the question of the control exercised by the Roman government on provincial governors.⁶² Whichever way the matter is decided there does not seem

⁵⁴ But since the result of the *intercessio* was purely cassatory (cf. Greenidge, *op. cit.* (n. 8), 517-18; Kaser, *ZPR*, 125-6), it is hard to see how it could have helped Mescinius to transfer his case to Rome.

⁵⁵ Cicero, II *Verr.*, 2, 30; *QF.* I, 1, 22; Greenidge, *op. cit.* (n. 8), 289.

⁵⁶ 'The Criminal Jurisdiction of Governors', *op. cit.* (n. 6), 57.

⁵⁷ *Fam.* v, 5, 1. On the background see E. S. Gruen, 'The Trial of C. Antonius', *Latomus* (1973), 301.

⁵⁸ A. H. M. Jones, 'The Imperium of Augustus', *JRS* 41 (1951), 113, n. 7. Similarly V. Ehrenberg, who in 'Imperium Maius' in the Republic

AJP 74 (1953), 116, n. 8, describes the consul's letter as the 'imperium maius' of the consul taking 'the form of an advice rather than a command'.

⁵⁹ Shackleton Bailey, *op. cit.* (n. 2) II, 448 (No. 292).

⁶⁰ M. I. Henderson, *op. cit.* (n. 32), 83 f.

⁶¹ 'Die Regierung' clearly refers to the Senate. See *Staatsr.* III, 1211 f. for the Senate's supervisory role in the provinces. Moreover the post-Sullan consuls, according to Mommsen, lost all influence over the provinces (*Staatsr.* II³, 94 f; *Röm. Gesch.* II³, 354 f.).

⁶² cf., however, H. Last, 'Imperium Maius: A Note', *JRS* 37 (1947), 157, for a balanced view.

to be good reason why we should doubt Cicero's sincerity when he denies that the consul's letter is an order. On the other hand, because it was a letter from the consul and not from a *privatus* it would be hard to account for it simply as one of the unofficial interventions in provincial affairs (including jurisdiction) which fill the pages of Book XIII of the *Ad Familiares*, powerful though these may often have been.⁶³ It is this semi-official nature of the consul's letter that distinguishes it from other letters of recommendation and which is, as we shall see, one of the clues to its meaning.

Serious gaps in essential background information make the interpretation of the two letters, *Fam.* XIII, 26 and 28, difficult. Did Cicero really desire that the legal proceedings should be conducted in Rome? If he did, what were his reasons for insisting on it? Was his reluctance to leave litigation in Sulpicius' hands due to a personal distrust of Sulpicius the man, or was there a fundamental disadvantage in its being left in the province? In other words, was the provincial governor less competent to provide legal remedies than the praetor in Rome, in spite of all that we know to the contrary?

A different set of problems is provided by *Fam.* XIII, 28: might there have been a plurality of claims and not, as we have tacitly assumed so far, only one counter-claimant?

Cicero opens the letter with an enthusiastic expression of gratitude to Sulpicius for all that the governor had promised and done for Mescinius through the latter's procurators. He then puts forward two requests which are hard to reconcile with the enthusiastic *actio gratiarum*, or with those made in *Fam.* XIII, 26. Firstly, Cicero asks that if 'security' has to be given to guarantee that the action would not be repeated by the *dominus* ('*amplius eo nomine non peti*'), then he, Cicero, should be made responsible ('*cures, ut satis detur fide mea*'). He clearly envisages here that legal proceedings might be conducted in the province by the procurators acting in Mescinius' name.⁶⁴ But in contradistinction to *Fam.* XIII, 26, 2-3, this time he raises no objections; he is not even disappointed with this turn of events, as one might have expected. But if he has reconciled himself to litigation in the province, he still seems not to have entirely given up his previous plan, to judge by his next request (28, 2):

deinde, cum fere consistat hereditas in iis rebus, quas avertit Oppia, quae uxor Mindi fuit, adiuves in easque rationem quem ad modum ea mulier Romam perducatur.

The two requests, notwithstanding the way in which they are put by Cicero, are alternative rather than complementary ways of action.

These problems must be stated, even though they cannot be solved. We simply do not possess all the necessary facts, and, therefore, cannot hope to grasp all the issues involved in the case. The elusive evidence contained in the letters accords well with the genre to which they belong; much is left unsaid or taken for granted.⁶⁵ Therefore, no further attempt will be made here to smooth over seemingly self-contradictory statements and irreconcilable pieces of evidence. But it may be stated once more that it is highly probable that it is precisely the question of bringing Mindius' widow (and other parties?) to Rome which is foreshadowed in *Fam.* XIII, 26, 3 by the phrase: '*si qui difficiliores erunt*'. Thus we may now proceed to offer a new interpretation of Cicero's request '*ut eos* (i.e. '*si qui difficiliores erunt*') *Romam reieceris*' and of the purpose of the consul's letter.

⁶³ See, for example, *Fam.* XIII, 41; 42; 56, where Cn. Pompeius Magnus' influence is brought to bear, and *Fam.* XIII, 50, where Cicero reminds the governor, M. Acilius, of the latter's obligation to him: the governor was indebted to Cicero for defending him twice successfully in capital trials, *Fam.* VII, 30, 3.

⁶⁴ See F. Guizzi, 'In tema di origini della *cautio de rato*', *Labeo* 7 (1961), 334-5; F. Casarola, *Actio, Petitio, Persecutio* (1965), 94 f.

⁶⁵ For reasons of *decorum* (see p. 41 above), or because the letter of recommendation does not constitute the only source of information available to the recipient. Here presumably, Mescinius' procurators will

supply the governor with information (*Fam.* XIII, 26, 2; 28, 1). Elsewhere we hear of an oral recommendation which preceded the written one (e.g.: *Fam.* VI, 8, 3; XIII, 3; 6, 1; 7, 1; 9, 1; 55, 1-2; 72, 1; 75, 1). It is sometimes attested that the letter was delivered by the recommended person's own hand (e.g.: *Fam.* XIII, 6a; VII, 30, 3; VI, 8, 3); we may safely assume that having been given a proper introduction, the recommended himself will go into further details. See *Dig.* XLI, 1, 65 pr. for the implication that a letter of recommendation becomes the legal property of the interested party.

The consul's letter was of a semi-official nature. To construe it, as both Mommsen and Jones do,⁶⁶ as a decree aiming to force Sulpicius' hand against his wishes, or regardless of his wishes, is a gross misapprehension of what is actually said and implied about its purpose. Instead, there is room for quite a different interpretation, namely that the consul's letter aimed to free Sulpicius' hand to force the recalcitrant opponents to go to Rome, to dispel any doubts he might have had about doing so (26, 3): 'Quod quo minore dubitatione facere possis, litteras ad te a M. Lepido consule . . . sumpsimus'. Cicero suspected that the governor's scruples might stand in his way, and the consul's letter was designed to mollify them. 'The most eminent living jurist' might well have entertained some doubt about the plaintiff's attempt to force the defendant to leave his (or her) *forum* and face a legal action in Rome. It may be suggested that it was precisely because Mescinius did not possess a right to demand a remittal of the case to Rome,⁶⁷ that both Cicero and the consul chose a 'diffident and delicate approach', to use Henderson's words.⁶⁸ Far from standing up for a so-called right possessed by his protégé, or by the régime, to demand a remittal to Rome, Cicero, as the whole drift of the letter shows, is at pains to deal with the difficulties arising from the absence of legal means to force the opponents to go to Rome; and, above all, to make it possible for Sulpicius to comply with Cicero's request without compromising his own dignity and integrity.⁶⁹ It is, therefore, at this crucial juncture, i.e. before specifying his request, that Cicero inserts the saving clause, familiar from other interventions in litigation: 'Illud praeterea, si non alienum tua dignitate putabis esse, feceris mihi pergratum'.

The consul's letter, on this interpretation, commits its writer to supporting Sulpicius' action. It also gives a semi-official sanction to Cicero's request. However, its semi-official nature, which is of crucial importance, is a double-edged weapon: its import and meaning might be misconstrued by Sulpicius, as they were by modern scholars, as an attempt to coerce him, perhaps by virtue of 'some vague and traditional control of the consul over the proconsuls'.⁷⁰ To forestall such suspicions, Cicero hastens to add: 'non quae te aliquid iuberent (neque enim id tuae dignitatis esse arbitramur), sed quodam modo quasi commendaticias . . .'; lest Sulpicius take offence, Cicero explains to which category the consul's letter belongs: 'quasi commendaticias', namely a letter between friends.

It is legitimate to inquire at this point whether a procedure existed which Sulpicius could follow if he were to comply with the request and send the defendant to Rome. The evidence is inconclusive, but it does suggest that the governor could have demanded that the defendant give a guarantee (*vadimonium*) to appear before the praetor in Rome. This is suggested by a document from the very province with which we are dealing, namely from Achaëa. However, unlike our case, it concerns a matter of criminal jurisdiction involving a non-citizen. Timotheus, found to be less guilty than the other two insurgents in Dyme, who have been put to death by the governor, is ordered by the latter (in 115 B.C.?) to

⁶⁶ Above, pp. 39, 43.

⁶⁷ In Cyprus and Sicily it was forbidden to 'evoke' provincials from their *forum*. See *Att.* v, 21, 6, where the prefect Q. Volusius is sent to Cyprus to administer justice to Roman citizens: 'nam evocari ex insula Cyprios non licet'; II *Verr.*, 3, 38: 'Iam vero illud non solum contra legem Hieronicam nec solum contra consuetudinem superiorum, sed etiam contra omnia iura Siculorum quae habent a senatu populoque Romano, ne quis extra suum forum vadimonium promittere cogatur'. We cannot take it for granted that the same judicial order prevailed in Achaëa, nor that provincials and Roman citizens were treated alike, but these two possibilities cannot be dismissed out of hand. The request to the governor of Asia to force Alabanda and Mylasa to send *ecclici* to Rome (*Fam.* XIII, 56,1) does not prove that a different rule held there; both were free cities (see Pliny, *NH* v, 108) and therefore outside the provincial governor's authority. Legal proceedings in which

free cities were involved were presumably to be conducted in Rome. (On judicial rights of free cities see R. Bernhardt, *Imperium und Eleutheria* (1971), 98 f.).

⁶⁸ *op. cit.* (n. 32), 83.

⁶⁹ In other words, the consul's letter was intended to take care of Sulpicius' concern for his *existimatio*, on which see above, n. 28. The list of saving clauses quoted and referred to there makes it abundantly clear that the governor's reputation rested entirely on his *iustitia*, *fides*, *aequitas* and preservation of what is *ius*, *honestum* and *rectum*. Cf. also Cicero's exhortation to his brother Quintus when the latter was governor of Asia: 'Qua re sint haec fundamenta dignitatis tuae: tua primum integritas et continentia' (*Ad Qu. Fratr.* I, 1, 18), and a little further: 'qua re sit summa in ius dicendo severitas, dum modo ea ne varietur gratia sed conservetur aequabilis' (*ibid.*, 20).

⁷⁰ So R. Syme, *The Roman Revolution* (1939), 330.

proceed (or be taken) to Rome. The governor has made him swear (ὀρκίσιος) to appear before the peregrine praetor by a certain date, and not to return home until . . . (here the text breaks off).⁷¹

The procedure existed then, but did it apply also in civil cases, when the party concerned was a Roman citizen, as Mescinius' opponents probably were, and to a defendant as well? We simply do not know, but Cicero's tone, as suggested above, does imply that it was irregular, and, if the present interpretation is followed, the consul's letter was intended to anticipate any reluctance on Sulpicius' part to act irregularly.

The consul's letter may have served an additional purpose, namely of intimidating Mescinius' opponents. And if it is right to suggest high social status for the potential opponents—i.e. if 'difficiliores' in *Fam.* XIII, 26, 3 is a reference to Mindius' widow, Oppia—the governor might have found the consul's support quite useful.⁷²

Confirmation of this conjecture can be found in the subsequent letter, *Fam.* XIII, 28, 2, where Cicero suggests that if Oppia is induced to believe that she could be taken to Rome, then the matter could be settled, probably out of court (*sine controversia*), as Cicero desired in the first place:

ineasque rationem quem ad modum ea mulier Romam perducatur. Quod si putarit illa fore, ut opinio nostra est, negotium conficiemus.

The modified request lends itself to two interpretations. Perhaps Cicero despaired of bringing about a remittal to Rome. From Cicero's protestations of gratitude (*Fam.* XIII, 28, 1) it appears that Sulpicius politely insisted on offering his good services, and thus, one can assume, had graciously turned down Cicero's request. This may be the reason for the absence of any reference to the consul's letter in *Fam.* XIII, 28. However, Cicero was still at pains to bring about a quick solution, and this, he believed, depended on the woman believing that she *could* be sent to Rome. For this, too, the governor's co-operation was needed; ⁷³ he might not have wished to use his wide discretionary powers irregularly, but the *vadimonium* procedure did exist, and people could envisage being sent to Rome by the governor. Sulpicius, as Cicero implies, need do no more than pretend to be contemplating sending the woman to Rome; this will be sufficient to conclude the matter: 'negotium conficiemus'. Or, according to the second interpretation, Cicero had *never* really intended to drag the woman to Rome, but merely to use the possibility as a threat which would induce her to settle out of court. The words 'Quod si putarit illa fore . . . negotium conficiemus' support the latter reading. In the light of these two interpretations the purpose of the consul's letter in *Fam.* XIII, 26, 3 can be seen as follows: either it was meant to lead directly to Sulpicius' sending the woman to Rome, or, it could increase the pressure on Oppia to settle out of court. There is a third possibility, albeit less likely, that by 'pulling rank' the letter might have hoodwinked the woman, who may not have known her rights,⁷⁴ into believing that she had no choice but to go to Rome. However, on all readings of the situation, the consul's letter in *Fam.* XIII, 26, 3 should be seen as part of the stratagem which Cicero had to enter into in the absence of regular legal devices.

⁷¹ Sherck, *RDGE*, No. 43 (= *Syll.*³ 684), ll. 23–7: Τιμόθεον δὲ Νικία τὸν μετὰ τοῦ Σώσου/ [γεγονότα νομογράφου, ἐπεὶ ἔλασσον ἐράνετο ἡδίκηκώς, ἐ/[κέλευσα] προάγειν εἰς Πρώμην ὀρκίσιος, ἐφ' [ὧ]ι τῆι νομηγίαι τοῦ ἐν/[άτου μηνός] ἔστα[ι] ἔκει καὶ ἐφανίσιας τ[ὶ] ἔπι τῶν ξένων στρατη/[γῶ]ι τὸ δόξ[ισ]αν, [μὴ] πρότερον ἐπά[ν]εισ[ι]ν εἰς οἶκον, ἐά[ν] μὴ ΑΥ For the date see Broughton, *MRR* II, 644. Lewis-Reinhold, *Roman Civilization* I, (1951), No. 127, translate προάγειν as 'to proceed'; taken as transitive, it is the equivalent of *perducatur* in *Fam.* XIII, 28, 2.

⁷² M. Mindius was a knight (above, n. 2). His wife could have belonged to a senatorial family; cf. Nicolet, *op. cit.* (n. 2), I, 258. *Fam.* XIII, 72 provides us with impressive evidence for the influence that a woman of high social standing could have brought to

bear on the governor. Caerellia, Cicero's friend, seems to have procured the passage of a S. C. in favour of the heirs to the property of the *negotiator* C. Vennonius in Asia. Little doubt is left about its purpose: 'Equidem existimo habere te magnam facultatem . . . ex eo s. c., quod in heredes C. Vennonii factum est Caerelliae commodandi' (*ibid.*, 72, 2). It may be noted in passing that the S.C., like the consul's letter, was not intended to force the governor's hand, but rather to stimulate action where a governor might otherwise have been reluctant to use his powers, even those in his discretion.

⁷³ cf. Cicero's emphasis on the freedom enjoyed by the provincial magistrates as compared with those in Rome, *Ad Qu. frat.* I, 1, 22.

⁷⁴ See above, pp. 44 and 48 and nn. 40 and 67.

To conclude, it is suggested that these letters do not demonstrate that Roman citizens, even senators,⁷⁵ possessed a legal right to demand a remittal of their case from the provinces to Rome. Instead what we see is how Cicero and Mescinius simply resorted to the use of influence and semi-official pressure to secure their objective. The consul's letter was designed to ensure the success of the trick as well as to make sure of Sulpicius' co-operation, which was indispensable for it. As for the woman, she might well have walked into the trap, just as some modern scholars were to do.

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⁷⁵ The 'quoniam cum senatore res est' (*Fam.* XIII, 26, 3) appeals to Sulpicius' feeling of solidarity,

but it does not imply a right possessed by Mescinius to demand a remittal to Rome.