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ROMAN COMEDY-IN-LAW

Expositors and translators of the lively Latin comedies of Plautus (250s ca.184 BC) are often too little informed of rules and terms of Roman Law. Sometimes this deficiency leaves readers or, in performance, audiences unaware of amusing irony and clever joking. They find a bland bit of dialogue or unremarkable circumstance where the playwright included, in plays loosely modeled after Greek ones, not only Roman references but Roman humor. Comparison of translations with the Latin behind them shows how much may be missed if one does not understand contemporary law pertaining (for example) to personal status and contract, some of it recently developed by the Praetores Urbani. Related texts show the richness of Plautus' legal jocular scripts.

Key words: Roman law. Roman comedy. Plautus. Stipulatio. Patria potestas.

1. INTRODUCTION

Nemo censetur ignorare legem is well known as a principle in Roman jurisprudence, “No one is deemed to be ignorant of a law”. Unfortunately such ignorance is common among translators and interpreters of Latin literary texts, with the result that much of importance is lost in translation.

This is true for every genre to some extent, up to the most sublime and majestic. Even the monumental *Aeneid* of Virgil is typically misunderstood at key points, especially when modern readers assess dealings between widower Aeneas and his would-be “wife” widow Dido, who wants him to be her *coniunx*, “husband”, by *coniugium*, “marriage” (as

does the Goddess of Marriage Juno), whereas he has intended no such relationship. By rules of the Roman institution *liberum matrimonium* they were never married! Aeneas loves and leaves her, as duty demands. Anachronistic censure of a deserting husband prompts a simplistic reading, since the “she says” is certainly more compelling to us today than the “he says” here. Well-read and perceptive, stylish and lively translators neither suggest in their versions nor acknowledge in their introductions or commentaries what, to a Roman reader, were obvious characteristics of such a personal relationship, and its legal non-consequence.

In Roman comedy not only do features of overall action and particular circumstance have important legal dimension, but also, where a comedy is comical, details of dialogue and of stage action literally play with rules and terms of Roman law.¹ Basic principles of two great divisions of *ius civile* are often involved, from “Law of Persons” constantly, at key moments from “Law of Things”. They are usually overlooked. This may be so in part because of our modern distaste for ancient social facts, for associated obsolete and (for us) immoral rules about slaves and women. Many today who admire ancient Roman achievements, among which law is invariably named, know little about it.

Roman comedies, *fabulae palliatae* or “plays in Greek attire”, had non-Roman models, mainly from Athenian New Comedy of the 4th and 3rd centuries. Romanization of selected Greek plays for performance before Latin-speaking audiences entailed not only translation, but also adaptation to the different social and legal milieu of Rome. Much alteration is not humorous *per se*, but merely makes what is going on accessible to culturally different, less sophisticated spectators. There is a broad consensus that, unless the dialogue explains an institution or specific rule as Greek, the socio-legal context is Roman. “A decision was made around the turn of the [20th] century that the law in Plautus is pure Roman law”.²

The first duty of modern expositors of Roman *comedy* is to make a new audience laugh. However, it is the nature of much comic humor, like humor in general, to be contextual. Context must be somehow described to audience who do not live it, and we “barbarians” of the 21st century certainly do not live a Roman life of circa 200 BC.

Some theorists of the risible postulate that laughter is provoked by mixture of [A] surprise and incongruity, which we appreciate from the

¹ A survey of legal aspects of Plautus’ comedies, as embodied in lively rhymed translations that the author provides, appeared in L. Estavan, “Roman Law in Plautus”, *Stanford Law Review* 5/1966, 873–909. An exemplary treatment in detail of how quite a list of diverse elements of Roman law are involved in a single play, *Aulularia* (Molière’s model for *L’Avare*), is B. Compton, “Roman Law [in Plautus]”, at <http://vroma.org/~plautus/lawcompton.html>.

² L. Estavan, 874.

standpoint of what we expect and know, with [B] a feeling of superiority over someone else, which delights and reassures us. Whenever we do not bring information enough to a joke, or do not feel that we belong to the world that it inhabits, it has little impact. We may nod, yes, and smile, agreeing that this or that could be funny in some formal sense, yet we do not laugh as heartily or sincerely as a first audience must have done. *Incongruous* and *alien* are not the same quality, any more than their respective effects – *laughter* and *puzzlement*.

Interpreters of comedy from “long ago and far away” have a difficult task indeed.

2. PLAUTUS THE ROMAN

It is not hard to adduce instances of under- or unperceived and therefore missed legal incongruity from the great comic writer T. Maccius Plautus (250s-ca. 184 BC). In English translations by the late E. F. Watling in the widely used Penguin paperback series, let us examine examples from three plays by Plautus that will be my principal texts for further treatment later: *Miles Gloriosus*, in which marriage-and-property are centrally important; *Mostellaria*, where other rules about ownership and family law are amusingly in play; and the author’s late masterpiece *Pseudolus*, where the vivacious humor gains from understanding status and contract law.³

2.1. *Mostellaria*: *Fides* of His Father?

In *Mostellaria*, “Ghost Story”, a son has turned his urban home into a party center while his father was abroad. To steer the suddenly returned old man Theopropides away from the scene of the debauchery a quick thinking slave—Tranio, the protagonist of Plautus’ farce—tells him that the place is haunted. Furthermore, in order to buy and free his slave-girlfriend the errant lad has also borrowed a significant sum of money from the nasty money-lender Misargyrides. Tranio tricks the old master into promising to repay it! (We treat the promise itself later.) The amount that the money-lender demands of him, Tranio hastily explains, is part down payment on a replacement dwelling. In fact, this is the next door neighbor Simo’s house, as Tranio, further improvising, leads Theopropides to believe:

³ E. F. Watling, translator, *Plautus: The Rope and Other Plays* (containing *Mostellaria*), Penguin Books, Harmondsworth 1964; and *Plautus: The Pot of Gold and Other Plays*, Penguin Books, Harmondsworth 1965. Both frequently reprinted. In fact, these versions, though perhaps more British than American in colloquialism, are otherwise quite praiseworthy, and still come across well nearly half a century after they first appeared.

Theopropides: Have you remembered yet? [scil., what house my son bought]

Tranio [aside] I wish he'd drop dead. . . .Yes, sir, of course I remember now ... this house next door is the one your son has bought.

Theopropides: Really? No joking?

Tranio [aside]: It'll be no joke if you don't give us the money – a good joke if you do.

The Latin reads this way:

TH. Quid igitur? iam commentu's?

TR. Di istum perduint— (immo istunc potius) de vicino hoc proximo tuos emit aedis filius.

TH. Bona fide?

TR. Siquidem tu argentum reddituru's, tum bona si redditurus non es, non emit bona. (*Most.* 667–672)

Law of *emptio-venditio*, “buying and selling” is an essential feature of the Roman context, but here also the fundamental legal-moral standard of *bona fides* comes in. The joke here is not about joking at all, as in the translation, but rather about the “good faith” of an enforceable promise to pay, however bad the ground: the money-lender himself is not party to a deception and money *is* owed in payment of a debt, never mind that Theopropides supposes his slave refers to an (entirely fictitious) purchase that, he thinks, he is supporting by the promised payment.

2.2. *Miles gloriosus*: tell it to the judge!

Miles Gloriosus, “Braggart Soldier”, is titled after one of its author's grandest blocking figures.⁴ Mercenary captain Pyrgopolynices of Ephesus has gotten possession of Philocomasium, girlfriend of Pleusicles of Athens. She was evidently poor but free. The soldier can lawfully *own* her *in Ephesus*, however, since she was captured, “fair and square”, by pirates at sea. Her lover Pleusicles has arrived and is staying with Periplectomenus, an old family friend who lives next door. Pleusicles' clever slave Palaestrio also came into the captain's possession and now serves in his household.

Sceledrus, another slave of the soldier, has seen the girl kissing her Athenian lover in the neighbor's courtyard, which she secretly enters through a hole in a party wall. Sceledrus is reluctantly persuaded, never quite convinced, that he only saw the girl's fictitious twin sister. Then he

⁴ Viz., persons who impede the happy union of lovers in a romantic comedy. The only ones of comparable roguish grandeur are the pimp Ballio, whom we shall soon meet, and Euclio in *Aulularia*, model for Molière's grand miser Harpagon.

sees Philocomasium in front of Periplectomenus' house. Although she claims to be the twin, he reverts to his initial (and correct) accusation. He seizes her, with Palaestrio looking on:

Philocomasium [struggling]: Are you going to let me go?

Sceledrus: No. You come quietly, or I'll drag you home by force whether you like it or not.

Philocomasium: My home is in Athens and so is my master.⁵ This house is where I am a guest. I don't know what home you are talking about; I don't know either of you and I've never seen you before.

Sceledrus: You can have the law on us then. I'm not letting you go, unless you promise on your honor you'll go back home – in there. [Indicating the Captain's house.]

Philocomasium: Well, you're too strong for me, whoever you are. Very well, I'll promise, if you'll let me go, I'll go home as you tell me.

Sceledrus [releasing her]: There, then you're free.

Philocomasium: Thank you; now I'm free, and now I'll go.

[She pops back into Periplectomenus' house.]

Sceledrus: Trust a woman!

The Latin text:

PH. Mittis me an non mittis?

SC. Immo vi atque invitam ingratiis, nisi voluntate ibis, rapiam te domum.

PH. Hosticum hoc mihi domicilium est, Athenis domus est Atticis; ego istam domum neque moror neque vos qui homines sitis novi neque scio.

SC. Lege agito: te nusquam mittam, nisi das firmatam fidem, te huc, si omisero, intro ituram.

PH. Vi me cogis, quisquis es. do fidem, si omittis, isto me intro ituram quo iubes.

SC. Ecce omitto.

PH. At ego abeo missa.

SC. Muliebri fecit fide. (*M.G.* 449–456)

Fides is again involved, here in “give solemn assurance”; furthermore, the bitter jibe about woman's lack of “trust” comes nicely through in the English. However, there's another a joke of a kind that goes back to Aristophanes, centuries before, and abides today. It lies in the words *Lege agito*: “Go ahead and sue me!” or, closer to the conciseness of the

⁵ “Master” is wrong and not in the Latin. Philocomasium is poor and fatherless, and has been prostituted by her mother; but she is free as I understand lines 100–112 of this play, a delayed prologue spoken by Palaestrio.

script, “Sue me!” Watling’s translation: “You can have the law on us then” is neither accurate nor funny. It is especially funny because here a slave taunts another slave, neither of whom could have any standing in a Roman court.

Two American translations do better justice to the Latin, but still miss the incongruity. Poet Philip Roche proposes: “Take it to court, then”, while late great expositor of comedy Erich Segal has it right: “Go and sue me!”⁶

2.3. *Pseudolus*: Watch What You Promise!

The most brilliant of Plautine clever slaves gives his name to the play *Pseudolus*. Here the enemy is a spectacularly wicked slave owner-pimp, from whom the title character must somehow acquire a slave girl whom his young master loves. The shameless, super-confident trickster has warned both his old master Simo and the pimp Ballio that from one of them he is going to exact the girl’s purchase price, which a rich soldier had promised.

The captain’s orderly delivers the cash with a letter of instruction: Ballio is to turn the girl over to this representative. *Pseudolus*, however, claiming to be the pimp’s agent, intercepts the letter, then dresses up an accomplice as a soldier. *He* presents the letter and receives the girl from Ballio, who thinks the girl is safely on her way to the captain, with the payment soon to follow. So confident is he that he has defeated *Pseudolus*, that this conversation takes place:

Ballio: Congratulations, Simo! Come, give me the hand of a lucky man.

Simo: Why, what —

Ballio: It’s all over.

Simo: What’s all over?

Ballio: You have nothing more to fear.

Simo: Has *Pseudolus* been to see you?

Ballio: No.

Simo: Then what are you so joyful about?

Ballio: That money’s quite safe — the two thousand drachmas that *Pseudolus* wagered he’d get out of you — it’s safe and sound.

⁶ P. Roche, translator, *Three Plays by Plautus*, New American Library, New York 1968, 141; and E. Segal, translator, *Plautus: Four Comedies*, Oxford University Press, Oxford 1996, 24. Segal’s note (226 n 24) to this says, “though this sounds like modern slang, the phrase literally translates Plautus’ *lege agito*”. Even Segal, however, misses the *bona fides* humor at *Most.* 670, translating “I can’t believe it’s true!” (162). His book *Roman Laughter: The Comedy of Plautus*, Oxford University Press, Oxford and New York 1987² remains perhaps the best English study of the author.

Simo: Well, I hope it is, by Jove.

Ballio: You can touch me for two thousand if he gets possession of that girl today and hands her over to your son as he has undertaken to do. Go on, ask me to promise it; please do; I'm longing to promise it to you, to convince you that you're in the clear. I'll give you a woman too, if you like.

Simo: All right, on those terms I can't see that it can do me any harm to clinch your bargain. You'll give me two thousand.

Ballio: Two thousand I will give you.

Simo: I look like doing pretty well out of this ...

Plautus' actual, equally lively dialogue is the following in Latin:

BAL. O fortunate, cedo fortunatam manum,

SIM. Quid est?

BAL. Iam.

SIM. Quid iam?

BAL. Nihil est quod metuas.

SIM. Quid est? venitne homo ad te?

BAL. Non.

SIM. Quid est igitur boni?

BAL. Minae viginti sanae et salvae sunt tibi, hodie quas aps te est instipulatus Pseudolus.

SIM. Velim quidem hercle.

BAL. Roga me viginti minas, si ille hodie illa sit potitus muliere sive eam tuo gnato hodie, ut promisit, dabit, [roga opsecro hercle, gestio promittere.]⁷ omnibus modis tibi esse rem ut salvam scias; atque etiam habeto mulierem dono tibi.

SIM. Nullum periculumst, quod sciam, stipularier, ut concepisti verba: viginti minas dabit?

BAL. Dabuntur.

SIM. Hoc quidem actumst hau male. (Ps. 1065–1078)

These are the first occurrences of the Latin deponent verbs *instipulari* and *stipulari*, which are technical terminology for binding, enforceable verbal promise. “Stipulating” required a question and corresponding answer between authorized, competent parties.⁸ Variations from that re-

⁷ Some editors reject this line, as the square brackets indicate. However, Watling translates it rightly. It is too good a joke for an interpolator to have added and consistent with Plautus' play with the contract *verbis* elsewhere in the script.

⁸ See W. W. Buckland, revised by P. Stein, *A Text Book of Roman Law from Augustus to Justinian*, Cambridge University Press, Cambridge 1963³, 434–442. This is the chief authority for my understanding of Roman law, even two centuries before Augustus,

quirement can be comical, and we shall see some of these later. One is referred to here, looking back to a playful conversation between Simo and his own slave Pseudolus that Itreat later. The problem with the English version, here and in those other instances of stipulatory dialogue, is that the seriousness of such a promise is not conveyed, at least when, as here, all the requirements are satisfied. Even the conditional clause “if he gets”, etc., is realized, because Ballio has put the girl into the hands of an cohort of Pseudolus, and the young master Calidorus, Simo’s son, is already enjoying her company!⁹

3. PLAYING LAYWER

As already noted, Roman comedies had non-Roman models, mainly from Athenian New Comedy. Sometimes the Roman comedians who based their plays, however loosely, upon such “originals” had to explain the different customs and law of Athens or some other Hellenic or Hellenized state to their audience (for example, Athenian rules about kinsmen’s responsibilities toward an orphaned heiress, in the *Epidicus* of Plautus and the younger poet Terence’s *Phormio*).

Not every Roman, of course, knew all there was to know about Roman law (*ius*), Roman laws (*leges*), and equitable procedure (praetorian *edictum perpetuum*). A gentleman *patronus* who knew enough of it might well get caught up in tangled legal affairs of a dependent and perhaps miscreant *cliens*, as happens to Menaechmus of Epidamnus in Plautus’ “comedy of errors” play *Menaechmi* (571–595).¹⁰ Moreover, although jokes at the expense of lawyers, jurors, and the like are as old as Attic Old Comedy in the 5th century BC, one of the finest occurs in the aforementioned *Phormio* of Terence. It seems thoroughly un-Greek, through and through Roman: A father whose son has married during the old man’s absence abroad wants him to divorce his young wife and to marry someone else. (The hilarious Greek plot actually makes both one and the same girl—but that does not concern us here.) Normally the famous and potent Roman *patria potestas*—with a much weaker Athenian counterpart or

since it offer much on unfortunately undatable evolution of the law from the time of the XII Tables (mid 5th century BC) to the later Republic. The plays of Plautus might even be used, with caution, to give this or that innovation a rough *terminus ante quem*.

⁹ Lionel Casson’s non verse version gets it almost right. Ballio says, “let’s make it official”. Simo complies: “All right do you hereby agree to give me five thousand dollars on those terms?” Ballio answers, “I do hereby agree”. L. Casson, *Plautus: The Menaechmus Twins and Two Other Plays*, New York, W. W. Norton, 1961, 136–137.

¹⁰ L. Estavan, 907f, offers a couple of briefer examples, but surprisingly overlooks this amusingly angry complaint about an entire day wasted in the Forum. In Shakespeare’s *Comedy of Errors* Antiphilus of Ephesus has “some business in the town” and is later himself arrested; but there is no counterpart to Menaechmus’ plight.

without—would permit the father to compel both actions; however, a court had commanded the son to marry the girl because of Athenian rules about orphaned heiresses. The father summons to advise him, and on to stage for us to overhear, three *advocati* as legal counselors. They bear names of Greek philosophers from competing schools and give three different pieces of advice. “Sue to reverse the court decree!”, “You cannot sue to reverse the decree!”, “We need to deliberate further!” *Quot homines, tot sententiae*, grumbles the old man, no better off than before: “As many opinions as fellows”. The entire scene seems Terence’s invention, a rare bit of socio-legal satire to make an alien rule more (and laughably) Roman.

Let us return to our three plays and their broader legal issues, with which Plautus and his audience have some fun.

3.1. *Miles Gloriosus*: ‘To Have and to Hold’?

In *Miles Gloriosus* the defeat of the military braggart depends upon his willingness to free and send away the Athenian girl he now owns—and with her, clever slave Palaestrio. He will do this in order to marry a beautiful married woman named Acroteleutium (in fact, an elegant prostitute) who supposedly adores him, and to take possession of the fine house next to his, said to be part of her dowry. (It actually belongs to her patron, old bachelor Periplectomenus who is helping Pleusicles to extricate his girl from the soldier’s ownership). The story given to Pyrgopolynices is that the beautiful woman has already ejected her husband, and awaits him in “her” house. There the neighbor will arrest him for trespass and, claiming to be Acroteleutium’s husband, for flagrant intention of adultery. The house is, of course, his; and if he and the prostitute wish for an hour or two to be married—they are! The soldier is threatened with a beating and, through some coarse word-play on *testes* and cognates (which refer to witnesses required for assorted legal transactions), with castration.

Roman law of civil marriage, *justum matrimonium*, developed to a point where a legitimate union existed from the moment the eligible man and woman wished to be husband and wife. It ended as soon as either ceased so to wish. (Whether a formal, witnessed “repudiation” was necessary is not clear.) Other, archaic, more binding forms of marriage gradually obsolesced, while this one proliferated. Known by the jurists as *liberum matrimonium*, this if anything understates the tenuousness of what can hardly be called “wedlock”! No rites, no witnesses were required for marrying; and for divorcing, no court decree.¹¹ There were, of

¹¹ L. Estavan, 883–888, in his long discussion of marriage, is better in his shrewd and generous selection of texts than in description of the institution itself—and more accurate on dowry (884–86) than on much else.

course, external signs—wedding celebrations, movement of one spouse, usually the bride, to the other’s home—and financial pacts, especially ones defining the wife’s dowry, assets of which a husband had full use but no share of ownership. These would show the world that a couple were indeed married. However, if each party was not in a father’s power but *sui juris*, their bare intention was sufficient. A number of Plautus’ plays include an implicit *repudium* or (if only threatened) the explicit rejection of a wife. In *Menaechmi*, for example, an unnamed wife hopes to break a marriage that her unnamed father tries to save (Act V, sc. ii)—and that her husband the local Menaechmus twin brusquely ends. For as he exits to live with his bother in their native Syracuse he puts up for auction, under the hammer of his brother’s newly manumitted freedman Messenio, all of his property, including even his wife “if any purchaser comes forward” (*Men.* 1160: *venibit uxor quoque etiam, si quis emptor venerit*). However, one may well wonder whether there isn’t a jest here about the archaic form of “*manus* marriage”, which certain upper-class families then still used, and in which the husband acquired his wife in full *dominium ex jure Quiritium* (citizen’s ownership) by a ritual purchase!

Divorce could be a serious matter. In the mythological comedy *Amphitruo* the title character correctly accuses his wife of adultery. (Subjectively she is innocent, having been seduced by the god Jupiter in Amphitruo’s guise, whereas objectively she is guilty—and pregnant with Hercules!) The outraged husband threatens much harsher punishment than quiet separation; indeed the play is at one point more melodramatic than comic. (Ordinary adultery on a wife’s part was no laughing matter in comedy Greek or Roman.)

In *Miles Gloriosus*, in contrast, as we have seen the intrigue resupposes that a wife might eject her husband from her dotal house and from her life. Here is how the *meretrix* Acroteleutium confirms her role in the planned deception of the soldier:

ACROTELEUTIUM. Nempe ut adsimulem me amore istius differri.

PALAESTRIO. Tenes.

ACR. Quasique istius causa amoris ex hoc matrimonio abierim, cupiens istius nuptiarum.

PAL. Omne ordine. nisi modo unum hoc: hasce esse aedis dicas dotalis tuas, hinc senem aps te abiisse, postquam feceris divortium: ne ille mox vereatur intro ire in alienam domum.

My translation:

Acroteleutium: Clearly I’m to pretend that I’m distraught with love for him?

Palaestrio: You’ve got it!

Acroteleutium: As if, for sake of this love, I've gotten out of my marriage, desiring to wed him?

Palaestrio: Everything exactly! Except only this: you should say that this house here is part of your dowry, that the old man parted with you after you effected a divorce, so that the soldier doesn't begin to fear entering another man's home.

In fact, as we have seen, a cruel ambush is planned for him inside. Like others of Plautus' plays, this one ends with mayhem enacted and even more threatened. Such sadism seems mostly, even entirely to be his own invention, more to Roman taste than Greek—or to ours. In any case, it depends on Roman legal language and laws. Before witnesses (*testes*) and to defend his endangered sex (*testes*), Pyrgopolyneices swears an enforceable oath not to attempt any action at law against those who have tricked him.¹² He will not try to recover the Philocomasium, or all the valuable clothing and jewelry he had bought for her, or the slave Palaestrio who he has freed and dismissed. He will take no action against those who gave him a thrashing.

3.2. *Mostellaria: cavebat emptor!*

(This buyer *did* beware!)

Roman rules about debt, about sale, and about lawful contractual capacity for either, come into play in *Mostellaria*. A son like Theopropides' Philolaches, who is evidently *in potestate patria* (as a Roman audience would infer), could neither stipulate nor make a valid contract incurring liability of any kind without his father's authorization. He might, on the other hand, acquire a right to another's payment, delivery, or performance under certain circumstances if his *negotium*, "act of business", was subsequently ratified by the father. The rule prevented an unscrupulous person from taking advantage of a naïve son's appetites, his gullibility, or merely his poor financial judgment. This would certainly apply to a major purchase of real estate. In the *Mostellaria* case, *bona fides* required that if a son incurred a potential obligation (here: remainder of the agreed purchase price of a house suspensively "bought" by a down payment), his father had to discharge it in order to benefit from the deal. A son, as appears to eager Theopropides, might have found a bargain to seize upon. Alternatively a father could walk away from the sale; and if he did, he could recover any down payment that his son had advanced. Under the circumstances in this play, he would still owe what he had unconditionally stipulated to the money-lender, but could recover that amount from his neighbor, vendor Simo, who supposedly received it. So he cannot

¹² This should be understood as a *pactum de non petendo*, both *in rem* and *in personam*; see W. W. Buckland, 573f.

lose—he thinks! In fact, he is bound by his debt *verbis*, and can rescind no actual sale to recover never-paid money. (For a happier ending, a rich friend of his son will discharge that debt for him. And he gets their *un*-haunted house back!)

3.3. *Pseudolus*: As Good As His Word!

Finally, we may look into variations on stipulation in the play *Pseudolus*.

Three questions in chronology of Roman law concern (1) how early other language than the prescribed archaic question-and-answer *sponde-sne*? *Spondeo* was recognized for enforceable verbal contract; (2) how early a timed condition could be inserted which, if it failed, voided the obligation; and even (3) how early *stipulatio* and the verb from which it derives were applied to this contract *verbis*.¹³ Plautus' *Pseudolus* suggests that the answer to all three is “by the 190s BC”. One also receives the impression that, although the probably slightly earlier *Mostellaria* is evidence for (1), playfulness here with (2) and (3) suggests this all may be fairly new. As elsewhere, Plautus's humor satirizes a novelty.¹⁴ The answer may well be “not long before 192 BC”, since there appears to be a running joke about the principle in this play.

We have already treated one late scene (1065–78) that leads to the dastard Ballio's comic catastrophe, when he realizes that he has lost the girl, owes Simo a great deal of money (and has to pay the soldier back!)-that on every front he has been defeated by his archenemy Pseudolus. However, no fewer than three earlier passages embody stipulatory phrasing: *Ps.* 112–120; 256–60; and 530–556.

PSEUDOLUS Servus. Satin est, si hanc hodie mulierem efficio tibi tua ut sit, aut si tibi do viginti minas?

CALIDORUS Adulescens. Satis, si futurumst.

PS. *Roga me viginti minas*, ut me effecturum tibi quod promisi scias. roga, opsecro hercle. gestio *promittere*.

CAL. *Dabisne argenti mi hodie viginti minas?*

PS. *Dabo*. molestus nunciam ne sis mihi. atque hoc, ne dictum tibi neges, dico prius: si neminem alium potero, tuom tangam patrem. (112–120)

¹³ On history and operation of stipulation see W. W. Buckland, loc. cit. A related problem, which I cannot address, is how early the term *sponsio* was applied more narrowly to promises by sureties/guarantors.

¹⁴ For Plautus' satirical reference to datable political events and approximately dated legislation see C.H. Buck, Jr., *A Chronology of the Plays of Plautus*, Baltimore, Johns Hopkins Press, 1940. Some. However, of his speculations are probably untenable. W. B. Sedgwick, “Plautine Chronology”, *American Journal of Philology* 70/1949, 376–383, adds to and amends some of Buck's findings, which in turn had amended some of Sedgwick's.

Translation:

Pseudolus: Is it enough if I bring it about that this girl today is yours, or if I give you twenty minae?

Calidorus: Enough, if it will happen.

Pseudolus: Ask me for twenty minae, so you know that I'll bring about what I've promised you.

Calidorus: Will you give me twenty minae today?

Pseudolus: I will give it. Don't bother me anymore about it. And so you don't say I didn't tell you, I'm telling you in advance: if I can't touch anyone else for it, I'll do so to your father.

Here the humor is in a quasi-stipulation¹⁵ between two persons, a slave and a son "in power", neither of whom may obligate the other to any such payment. That Pseudolus's master = Calidorus' father is an alternative target—and the eventual one, though only Ballio actually loses money – adds to the slave's insouciance and effrontery.

In a subsequent long scene we meet the shameless pimp. Here is part:

CALIDORUS. Dedi dum fuit.

BALLIO. Leno. *Non peto quod dedisti.*

CAL. Dabo quando erit.

BAL. Ducito quando habebis.

CAL. Eheu, quam ego malis perdidit modis quod tibi detuli et quod dedi.

BAL. Mortua verba re nunc facis; stultus es, *rem actam agis.* (256–260)

Translation:

Calidorus: I gave when there was money

Ballio: I'm not asking for what you have given.

Calidorus: I will give when there is some.

Ballio: You take her when you have it.

Calidorus: Alas, how badly I've lost what I promised you and gave you.

Ballio: The business is over and done, and you're wasting words. You are a fool, you're opening a shut case.

Besides the language of promising and giving, in which Ballio duly avoids making Calidorus' empty promise into a stipulation by not asking for any specified thing or amount of cash, in this exchange smug Ballio gives the young man a brief lesson in law, i.e., likening his decision to sell and deliver Phoenicium elsewhere to the finality of a *res acta*.

¹⁵ Indicated in italic, as will be other technical legal language or its approximation in Latin quoted further below.

Later we overhear this:

PS. Effectum hoc hodie reddam utrumque ad vesperum.

SIMO SENEX. Siquidem istaec opera, ut praedicas, perfeceris, virtute regi Agathocli antecesseris. sed si non faxis, numquid causaest, ilico quin te in pistrinum condam?

PS. Non unum in diem [modo], verum hercle in omnis, quantumst; sed si effecero, *dabin mi argentum, quod dem lenoni, ilico, tua voluntate?*

CALLIPHO SENEX. Ius bonum orat Pseudolus; *dabo* inque.

SIM. At enim scin quid mihi in mentem venit? quid si hisce inter se consenserunt, Callipho, aut *de compecto* faciunt consutis dolis, qui me argento intervertant?

PS. Quis me audacior sit, si istuc facinus audeam? immo sic, Simo: si *sumus compecti* seu consilium umquam iniimus [de istac re] aut si de ea re umquam inter nos convenimus, [quasi in libro cum scribuntur calamo litterae] stilis me totum usque ulmeis conscribito.

SIM. Indice ludos nunciam, quando lubet.

PS. Da in hunc diem operam, Callipho, quaeso mihi, ne quo te ad aliud occupes negotium.

CAL. Quin rus ut irem iam heri mecum statueram.

PS. At nunc disturba quas statuisti machinas.

CAL. Nunc non abire certum est istac gratia; lubidost ludos tuos spectare, Pseudole. *et si hunc videbo non dare argentum tibi, quod dixit, potius quam id non fiat, ego dabo.*

SIM. *Non demutabo.*

PS. Namque edepol, *si non dabis, clamore magno et multo flagitare.*
(530–556)

Translation:

Pseudolus: I shall complete both things [= obtaining your son's girl for him and getting the money from you] by evening.

Simo: If you do accomplish these things as you predict, you will exceed King Agathocles in prowess: but if you don't do it, there's no reason, is there, why I shouldn't consign you straight to the mill?

Pseudolus: No just for one day, but for as many days as I have. But if I do accomplish it, will you give me promptly, voluntarily, the money to give to the pimp?

Callipho (Simo's neighbor): He's making a just request. Say "I will give it".

Simo: But do you know what's just occurred to me? What if they all have plotted together, Callipho, or are acting by agreement with carefully devised trickery to separate me from the money?

Pseudolus: Who would be more daring than I than I if I should dare such a misdeed! Rather, Simo, if we have made a plot, have entered into a secret plan, or have conferred in any way on this business, have me “written” all over with “pens” of elm branches.

Simo: Start your game, whenever you like.

Pseudolus: Please give me your support, Callipho, this one day, so no other business takes you elsewhere.

Callipho: Yesterday I had decided to go to my country estate today...

Pseudolus: Just cancel the plans you carefully decided!

Callipho: Then it’s resolved that I won’t go anywhere for your sake. In fact, I’ve a great desire to be entertained by your game. And if I see that he’s not paying you the money he has said he would, I will pay it.

Simo: I won’t refuse.

Pseudolus: Indeed, by gosh, if you do not pay, you will hear a big and loud public outcry.

Much is going on here. “Old man” Callipho, Simo’s neighbor and fellow citizen who is not otherwise involved in the action, is likely added here by Plautus. A conditional promise is guaranteed. The entire scene is comical because Callipho is present to witness what would ordinarily be a *de jure* unenforceable contract between a master and his brash slave; moreover, the amused *senex* even plays co-promissor/sponsor to the stipulation that Pseudolus cajoles from wary Simo. A lawyer, of course, might find formal defects in the language; but do these matter under the circumstances? The slave is *de facto* obligating the master, who later in the play acknowledges an *obligatio naturalis* and *bona fides* debt and pays up—with Ballio’s money—to avoid the *flagitium* or public dunning with which Pseudolus threatens him. (The twenty minae may well go to pay Calidorus’ debts; however, Simo has not lost an obol, and his son has gotten a pricy concubine for free!)

4. CONCLUDING REMARKS

Space does not permit close examination of other rules concerning slaves. However, Lawrence Estavan’s article does fair justice to them—literally.¹⁶ In fact, he shows how a comic effect depends up the rules for

¹⁶ L. Estavan, 874–879, although he is in error about a *patronus*’ right of life and death over a freedman. A duly freed ex slave was a Roman citizen, and could not be put to death by anyone without a magistrate’s authority and after appeal to the people.

Unfortunately the book length study of R. Stewart, *Plautus and Roman Slavery*, Malden, Massachusetts and Oxford, Wiley Blackwell 2012, appeared too late for me to make use of it. That author carefully surveys much of what has been gathered about law

manumission as they (do not) apply in *Menaechmi*, where one twin Menaechmus gratefully “frees” the other twin’s slave Messenio, who, to the former’s astonishment, has claimed to be his (and therefore his to free).

Nevertheless, I may sound a final note of freedom. In *Miles Gloriosus*, as we saw, Pyrgopolynices frees Palaestrio who, under local and international law, is his property. This would not free such a slave from his Athenian master, however, when they both return to Athens, as they will do; under Roman law, on the other hand, Palaestrio could be “vindicated for freedom”, when, as we might expect, the grateful girl Philocomasium holds his master and her lover Pleusicles to a *bona fides* ratification at home—not at Athens but in Plautus’ virtual Rome. In fact, the star of the show Palaestrio must exit wearing a freedom cap on a second mask that no longer has a slave’s long hair. Would Pleusicles dare to tear it off at home? And buy him a hairy wig?! If all this occurs to *us*, construing circumstances twenty two centuries later, it must have been so much the more obvious to spectators who included ex-slaves and likely (beside their masters!) slaves way back then. And amusing.

Those audiences had plenty to laugh at, and we can try to understand what that was. Humor in any comedy is alive, or once lived. What we soberly dissect today from centuries or millennia ago may either be dead at the outset or die under our knife. Complete revival is impossible. On the other hand, partial resuscitation should be achievable, with understanding, imagination, and indeed readiness to laugh. Some of the understanding must come from Roman Law.

of slaves, her Introduction and Chapters 1 on “Human Property” (21–47) and 4 on “Release from Slavery” (117–155). On the whole, this study contributes more to social history and sociology than literary appreciation, though her final Chapter 5, “The Problem of Action”, adduces much slave humor (some of it rather brutal), treats trickster slaves, and touches further upon slaves’ legal disability and vulnerability but not any the comical play with current law. Stipulation is referred to only in two footnotes (pp. 24 n.12 and 176 n.68), and where Plautus’ Roman addition to a Greek model is at issue, not his humor; discussion of law of sale is limited to sale *of slaves*.