LEX MUNICIPALIS SALPENSANA

R. MAGISTRATES TO OBTAIN THE ROMAN CITIZENSHIP.

col. 1 XXI. All persons created duoviri, aediles, or quaestors in accordance with this law shall be Roman citizens,[1] on laying 1 down the magistracy at the end of the year,[2] together with their parents and wives, and children born in lawful wedlock, and subject to the patria potestas,[3] and in like manner grand- 2 sons and granddaughters being the children of a son, and 3 subject to the patria potestas,[4] always provided that no more 4 Roman citizens be created than the number of magistrates proper to be elected in accordance with this law.[5]

[1] This chapter has no doubt been preceded by detailed provisions as to the qualifications, &c., of the duovirate, aedileship, and quaestorship. For references to this privilege of Latin communities, see Introduction, p. 65. The *civitas* was ordinarily acquired through the lowest office, but there might be cases where a man, having held the lower post or posts only for part of a year, gained the *civitas* through the duovirate. Whether the quaestorship and aedileship were two distinct and necessary stages is uncertain and is not made clear by any inscriptions. There are, however, inscriptions from both Salpensa and Malaca in which men who have been *duoviri* belong to a Roman tribe, a decisive proof of citizenship.

[2] This would exclude those who have abdicated during their year, and the relations of those who have died. There can be little doubt that it would also exclude those *suffecti* or *subrogati*, who therefore had not held office for a complete year.

[3] Latin citizens, as possessed of *commercium*, would have and be subject to the *patria potestas*. See next chapter and Introduction, p. 65.

[4] This was the *minus* not the *majus Latium*, as appears from Studemund's restoration of Gaius, I. 96: 'Hujus autem juris duae species sunt nam aut majus est Latium aut minus. Majus est Latium cum et hi qui decuriones leguntur et ei qui honorem aliquem aut magistratum gerunt, civitatem Romanam consequuntur. Minus Latium est cum hi tantum qui magistratum aut honorem gerunt ad civitatem Romanam perveniunt.'

[5] On the ambiguity and probable meaning of this proviso, see

5 R. PERSONS OBTAINING THE ROMAN CITIZENSHIP TO REMAIN
6 IN THE LEGAL DOMINION, MARITAL CONTROL, AND PARENTAL POWER OF THE SAME PERSONS AS BEFORE.

XXII. All persons, male or female, obtaining the Roman
7 citizenship, in accordance with this law, or having obtained it
8 in accordance with an edict of the imperator Caesar Augustus
9 Vespasianus, or the imperator Titus Caesar Augustus, or the
10 imperator Caesar Augustus Domitianus,[6] father of his country,
11 shall be in the parental power or marital control or legal dominion[7] of that person, having been made a Roman citizen
12 by this law, to whom such dependence would be proper, if the said persons had not been transferred into the Roman citizenship; and the said persons shall have the same right of choosing

Introduction, p. 66. It seems that only six Roman citizens could be created in this way each year. In ordinary years only the two lowest magistrates would require it, the higher ones having already gained it through the lower posts. Two relations, therefore, of each might on an average acquire it too. We have an interesting example in C. I. L. II. 1286 of a young man who died a Roman citizen at the age of eighteen, and who must therefore have gained the *civitas* through his father's magistracy.

[6] This passage is important, as showing that the original grant of *Latinitas* had been by an edict of Vespasian, so confirming the statement of Pliny referred to in Introduction, p. 66, and also that this law must have been issued under Domitian, and before 84, since the cognomen of Germanicus is absent. Of course, the edicts referred to gave *Latinitas* with all its privileges, but the only one relevant here is that of gaining the *civitas* through a magistracy. The edict of Titus and that of Domitian simply confirmed that of Vespasian, since edicts, unlike laws, only lasted the life of the issuer.

[7] *In potestate manu mancipio*; the last was the most comprehensive term, and included the other two under it. A person was *in mancipio* to another, who was the possible object of a *mancipatio* or sale, whether genuine or fictitious. The implication of the chapter, of course, is that these relations of *mancipium*, *potestas*, &c., already existed among Latin citizens, a consequence obviously of their *commercium*. The legal point is stated by Gaius I. 93 and 95: 'Si peregrinus cum liberis civitate Romana donatus fuerit, non aliter filii in potestate ejus fiunt, quam si imperator eos in potestatem redegerit. . . . Alia causa est eorum qui Latini sunt et cum liberis suis ad civitatem Romanam perveniunt; nam horum in potestate fiunt liberi.'

a legal guardian,[8] which they would have, if they had been born of Roman citizens, and had not exchanged their citizen- 13 ship.

R. PERSONS OBTAINING THE ROMAN CITIZENSHIP TO RETAIN RIGHTS OVER FREEDMEN.

XXIII. In the case of all persons, male or female, obtaining 14 the Roman citizenship in accordance with this law, or having obtained it in accordance with an edict of the imperator 15 Caesar Vespasianus Augustus or the imperator Titus Caesar Vespasianus Augustus or the imperator Caesar Domitianus Augustus, there shall be the same rights and the same condi- 16 tions in respect to freedmen or freedwomen, whether their own 17 or their fathers', such freedmen and freedwomen not having come into the Roman citizenship, and likewise in respect to 18 the goods of the said freedmen and freedwomen, and to the services imposed in consideration of their freedom,[9] as would 19

[8] It was, of course, only by virtue of their *commercium* that the Roman law concerning *tutela* applied to *Latini*. That it did so apply appears from cap. 29, the persons referred to here being Roman citizens. It is, however, implied in the last words that they had had the same right in their previous status. There is nothing to show in the wording of the law that the *tutoris optio* has reference only to a small number of the persons dealt with in the beginning of the chapter. As a matter of fact, only widows, to whom their husbands had given the power by testament, possessed the right of choosing a guardian. See notes to cap. 29.

[9] Patrons had a right to the *obsequium* or *reverentia* of their *liberti*, which meant among other things that freedmen could not bring any action involving *infamia* against their patrons without special leave of the praetor. They also had a right to the labour of their freedmen, a stipulation on the subject, ratified by the oath of the freedman, being made on manumission. The legal phrase for this labour was 'operae officiales libertatis causa impositae'. The patron had also certain rights to the property of his freedmen. If the latter died intestate and without a *suus heres*, he could claim the whole estate. If a *suus heres* existed, he could still claim half, and if the freedman made a will, he was bound to leave half his estate to his patron. In the case of a freedwoman, he had still further rights, being her legal *tutor*.

have existed, if the said persons had not exchanged their citizenship.[10]

R. CONCERNING THE PRAEFECTUS OF THE IMPERATOR CAESAR DOMITIANUS AUGUSTUS.

20 XXIV. If the decuriones or conscripti[11] or the citizens of 21 the said municipium shall in the name of all the citizens of 22 the said municipium have offered the office of duovir to the imperator Caesar Domitianus Augustus,[12] father of his country,

[10] It was a legal principle that patron and freedmen must be citizens of the same community. This is expressed by Gaius III. 56. In the cases contemplated by this chapter, however, the patrons would be Roman citizens, and the freedmen Latins. The former, therefore, could only retain their rights over the latter by means of a legal fiction, which regarded them as still Latins, as, indeed, from the point of view of *origo*, they were. In the case of freedmen who were Roman citizens, this fiction would, of course, be inapplicable, which is, perhaps, the explanation of the otherwise apparently unnecessary words, 'not having come into the Roman citizenship.'

[11] Mommsen is no doubt right in holding that the part taken by the *decuriones* was simply the selection of the *legati* who were to offer the duovirate to the emperor. The *comitia* alone, at this period at any rate, could elect.

[12] The mention of Domitian alone and the omission of succeeding emperors is, of course, merely an oversight in the law. The rule seems to have been that up to the end of Tiberius's reign not only the princeps, but other members of the imperial family, might be elected in this way to the highest municipal magistracy. Perhaps in both cases, certainly in the latter, there was a colleague elected in the ordinary way out of the municipality. But Tiberius, perhaps disliking the frequency with which the sons of Germanicus were honoured in this way, seems, from the absence of such cases in inscriptions after his time, to have restricted the honour to the reigning emperor, or the destined successor, and then, if not before, no ordinary duovir could be elected as his colleague, and his praefectus, as we find to be the case in this law, acts during the year as if he were sole duovir. Instances of praefecti, representing both imperial princes and emperors, may be found in the index to Wilmanns, vol. ii, p. 666. Cf. Spartian Hadr. 19: 'per Latina oppida dictator et aedilis et duovir fuit.' No restriction is mentioned as to the persons who might represent the emperor. Presumably, however, they were

and if the imperator Domitianus Caesar Augustus, father of 23 his country, having accepted the said office, shall have commanded some person[13] to act as praefectus in his place; then 24 shall the said praefectus be invested with the same rights which he would have possessed, if it had been proper in accordance with this law for him to be created sole duovir with judicial powers, and if in accordance with this law he had 25 been so created sole duovir.

R. CONCERNING THE RIGHTS OF A PRAEFECTUS LEFT IN CHARGE BY A DUOVIR.

XXV. Whichever of the duoviri, charged with the highest 26 jurisdiction in the said municipium, shall be the last after his 27 election to absent himself from the said municipium, and shall 28 have no expectation of returning thereto on the said day, and shall desire to leave in charge some person as praefectus[14] of 29

citizens of the place, and as they held office during the whole year, they probably gained the *civitas*, if they did not already possess it.

[13] It was possible, of course, for the emperor to allow the *decuriones* to appoint his *praefectus*. In this case he would be *praefectus imperatoris ex senatus consulto*. C. I. L. XIV. 2964.

[14] There were two cases in which extraordinary magistrates might be necessary. The ordinary magistrates might have been elected, but be prevented from performing their duties. Or the election might never have taken place at all. The present chapter deals with the first case, as indeed, under exceptional circumstances, does cap. 24. The provision to meet the case clearly goes back to the primitive Roman, and no doubt also Latin, constitution. In Rome the arrangement took the form of the appointment of a *praefectus urbi* by a consul who absented himself from the city for more than one day. It was a case of power delegated by the highest magistrate during his absence, and resumed by him on his return. Cf. Tac. Ann. VI. 11: 'profectis domo regibus ac mox magistratibus, ne urbs sine imperio foret, deligebatur qui jus redderet ac subitis mederetur.' The provisions of the present law undoubtedly throw light on what must have been the details in Rome. Each duovir had the complete imperium, and therefore when one was absent his colleague performed all the necessary duties. But if the second duovir intended to be absent for more than a day, he had to delegate his powers to a praefectus appointed by himself. The praefectus was only in office till one of the duoviri returned. There was, therefore, only one

30 the municipium, not less than thirty-five years of age, and
taken from the decuriones or conscripti,[15] he shall see that
31 such person take oath by Jupiter and by the divine Augustus
and the divine Claudius and the divine Vespasianus Augustus
and the divine Titus Augustus and by the genius of imperator

praefectus, and a duovir and a praefectus were never in office as colleagues at the same time. This arrangement, however, was modified when one of the imperial princes was elected duovir with an ordinary duovir for his colleague. In such cases it was, of course, not necessary for a praefectus to be appointed at all, unless the ordinary duovir absented himself. But as a matter of fact, the prince did appoint a praefectus, who therefore, contrary to the primitive custom, acted as the colleague of the duovir. This irregularity disappeared when the emperor alone could be a duovir, and his praefectus, as provided in cap. 24, was always without a colleague. In later times, when two co-rulers were the duoviri of a town, two praefecti are found representing them. See the index in Wilmanns, vol. ii. While the case of absent magistrates is fully dealt with in this law, the case of no duoviri having been elected is not mentioned in the extant portions. Originally, both in Rome and, as inscriptions show, in Latin towns the difficulty was met by the appointment of an *interrex*. But if this custom did not become obsolete, at any rate the alternative course became more common of appointing praefecti, who, however, from the nature of the case, were not representatives of another person. This arrangement did not affect Rome, though it may be worth while to notice the *praefecti pro praetoribus* appointed on one occasion during Caesar's absence (Suet. Caes. 76). But from about the beginning of the first century A.D. cases of this kind in the municipal towns were regulated by a Lex Petronia, in accordance with which, when no duoviri were elected, praefecti were appointed by the local senates or decuriones. I suggest that the mention of an interrex in Lex Col. Gen., cap. 130, if not an interpolation, may indicate that the Lex Petronia was not passed in 44 B.C. These praefecti, carefully to be distinguished from praefecti of a duovir or of an emperor, are constantly found in municipal inscriptions. They are always described as *praefecti j. d. e lege Petronia* or *decurionum decreto*.

[15] It does not seem that the consuls were bound by any such restrictions in appointing a *praefectus urbi*, or that any oath was required. The *praefectus urbi* of imperial times had, of course, to be a senator and a consular, but he had really nothing but the name in common with the earlier official.

Caesar Domitianus Augustus and by the dei Penates[16] that, 32
as long as he shall be praefectus, he will perform all such acts, 33
being capable of performance, within that time, as would pro- 34
perly by this law be incumbent on a duovir charged with the
highest jurisdiction, and will not knowingly and of wrongful
intent do aught contrary to the same; and when he shall have 35
so taken oath, the said duovir shall leave such person as prae-
fectus of the said municipium. To the person so left as prae- 36
fectus shall appertain, until either of the duoviri aforesaid
shall have returned to the municipium, the same rights in all
matters and the same power, which by this law are given to 37
the duoviri charged with the highest jurisdiction, excepting 38
always the right of appointing a praefectus[17] and the right
of obtaining the Roman citizenship.[18] And the said person,
as long as he remains praefectus, whenever he shall leave the 39
municipium, shall be absent not longer than one day.

R. CONCERNING THE OATH OF THE DUOVIRS, AEDILES, AND QUAESTORS. 40

XXVI. The duovirs now charged with the highest juris- 41
diction in the said municipium, likewise the aediles and 42
quaestors now holding office in the said municipium, each of 43

[16] We get this oath again in S. cap. 26 and in M. cap. 54. With its elaborate formula, including the deified emperors and the genius of the reigning emperor, it is no doubt the ὅρκος σεβάστειος of C. I. Gr. 1933, and the ὅρκος βασιλικός of Strabo, XII. p. 557. We get the old simple form of oath 'per Jovem et deos Penates' in the Lex Bantina, Bruns, p. 54, and also in Lex Col. Gen., cap. 81. In ordinary life the oath 'per genium Caesaris' was universal.

[17] Being a mere representative he could not himself delegate his power. The principle was so expressed: 'more majorum ita comparatum est ut is demum jurisdictionem mandare possit qui eam suo jure non alieno beneficio habet.' Mommsen believes that for a similar reason a praefectus could not hold the elections. If so, there must have been an interrex for the year after an emperor had been duovir.

[18] The reason was that a praefectus was not properly a magistrate, and had not held office for a whole year. As he had to be over thirty-five, and a *decurio*, the chances were that he had already gained the *civitas*.

them severally within the five days next following the issue of this law, and likewise the duovirs, aediles or quaestors who 44 shall afterwards be created in accordance with this law each 45 of them severally within the five days next following their 1 entrance upon the said magistracies, and before a meeting of col. 2 the decuriones or conscripti is held, shall take oath[19] in a public meeting, by Jupiter and by the divine Augustus and 2 the divine Claudius and the divine Vespasianus Augustus and by the divine Titus Augustus and by the genius of the 3 imperator Domitianus Augustus and by the dei Penates, that 4 they will rightly perform whatsoever they believe to be in accordance with this law and to the common interests of the 5 citizens of the municipium Flavium Salpensanum, and that they will not, knowingly and of wrongful intent, do aught contrary to this law or to the common interest of the citizens 6 of the said municipium, and that they will prevent others from so doing as far as they are able; and that they will neither 7 hold nor allow a meeting of the decuriones,[20] nor express any

[19] It appears that there were two separate oaths. One had to be taken after the election was completed, but before the *renuntiatio* (M. cap. 59). The present one has to be taken within five days of entering office, and before the first meeting of the decuriones is held. If the first oath was not taken, *renuntiatio* did not follow; if the second was neglected, a fine was inflicted. The oath was substantially a *jusjurandum in leges.* It is interesting to note that these provisions go back to the Romano-Latin constitution. The first oath is very definitely attested in Pliny, Paneg. 64, where it is clearly a survival of the old form of election. With regard to the second *jusjurandum in leges*, taken by magistrates within five days after entering office, it seems to have been the result in Rome of a clause usually inserted in laws, to the effect that present magistrates are to take oath to obey it within five days of its being passed, and future magistrates within five days of entering office. This is very explicitly stated in the Lex Bantina (Bruns, p. 54), and if there was anything unusual about the oath to his agrarian law required by Saturninus (App. I. 29), it was merely that not only magistrates but all senators were to take it. Naturally, instead of taking separate oaths to obey all these laws, magistrates took a general *jusjurandum in leges.* A reference to this oath is found in Lex Agr. vv. 41 and 42.

[20] This particular clause in the oath would only be taken by the duoviri, since neither aediles nor quaestors could summon the senate.

opinion[21] except such as in their judgement is consistent with this law and the common interest of the citizens of the said municipium. Any person failing to take such oath shall be 8 condemned to pay to the citizens of the said municipium 10,000 sesterces,[22] and in respect to the said money, the 9 right to take legal action, to sue and to prosecute,[23] shall 10 belong at will to every citizen of the said municipium, and 11 to any other person specified by this law.[24]

Habere and *dare senatum* are, of course, usual phrases. A case in which a duovir could be said *dare senatum* will be found in Lex Col. Gen., cap. 96.

[21] The Latin is *sententiam dicturum.* This would seem to imply that the magistrates during their year of office could give their vote in the senate. It is very unlikely, however, that the rule forbidding this in Rome would not be followed in the *municipia.* The duoviri, however, could, of course, introduce and speak on a motion, and this, no doubt, is all that is meant by the words.

[22] The fine for not taking the oath was also in accordance with Roman usage. Cf. App., loc. cit.; see Lex Bant. and Cic. pro Cluent. 33. 61.

[23] This is the first occurrence of this formula in these laws. We find it again in M. 58, 62, and 67. The case was an *actio popularis,* the object of which was to recover for the public treasury the amount of the fine. Originally, no doubt, this had been the duty of the magistrate, and in the Lex Bant. we accordingly have 'eam pequniam quei volet magistratus exigito'. The Lex Jul. Mun. provides that any person at will may make the claim: 'ejus pecuniae qui volet petitio esto'. The formula in the Lex Col. Gen., as we have seen, varies in the first three and the last Table, and though even in the simple form we have *petitio prosecutio,* the latter word may well have got in at the time of the Flavian redaction. See pp. 10 and 11. In this law we always have 'actio petitio persecutio', the three expressions indicating rather the increasing verbosity of Roman law than any real difference in procedure. What that procedure was is sufficiently indicated by the longer formula in the Lex Col. Gen., cap. 130 and foll.

[24] The words are: 'qui volet cuique per hanc legem licebit'. Mommsen takes the last words to be a limitation on 'qui volet', and to imply that certain persons were disallowed. It seems to me more likely that they refer partly to magistrates, who, as we know from Lex Col. Gen., cap. 95, could be the claimants in these cases, partly to persons specially interested. Cf. in another matter, M. 65, *ad fin.*:

R. CONCERNING THE INTERCESSIO OF THE DUOVIRS AND AEDILES AND QUAESTORS.

12 XXVII. As respecting the duovirs or aediles or quaestors
of the said municipium, there shall belong the right and
13 power of intercessio by the said duovirs, both against each
14 other, and in cases where some person shall appeal either
to one or both of them against an aedile or aediles, or against
15 a quaestor or quaestors;[25] the same right and power shall
also belong to the aediles, against one another[, and likewise
16 to the quaestors against one another];[26] such intercessio shall
be within the three days next following the date of appeal
17 and the possibility of such action; always provided that
18 nothing be done contrary to this law,[27] and that appeal be

'iique ad quos ea res pertinebit de is rebus agere easque res petere persequi recte possit.'

[25] The right of *intercessio* is another institution derived from the Romano-Latin constitution. We have it here in its primitive form, undisguised by the abnormal tribunician *intercessio*. The *par potestas* involved in the collegiate principle always made it possible for one member of a college to interpose his veto on the action of any or all of the rest. It was also the case that the holders of a *major potestas* could, if appealed to, interpose their veto on the holders of a *minor potestas*. What was peculiar about the tribunician *intercessio* was that the tribunes in this respect were regarded as a *par potestas* even with the consuls. The provision in this chapter, therefore, is quite in conformity with the maxim of Roman law that a magisterial act is only valid, 'ni par majorve potestas prohiberet.'

[26] The words in square brackets have fallen out from the text, but there can be no doubt that they are required. The aediles could not veto the action of quaestors, nor the quaestors that of the aediles, because they were not colleagues and had an *impar potestas*, while they obviously had no such right against the duoviri, who possessed a *major potestas*. That the aediles ranked first in dignity seems clear from the order in which they are always mentioned. It is quite possible, however, either that the two posts were alternative stages in the career, or, as Mommsen thinks, that it was a matter of indifference which was held first. This last point may follow from M. 54 (see note 15), where disqualified persons are not allowed to stand for the aedileship or quaestorship, whereas if the quaestorship always came first, the aedileship need not have been mentioned.

[27] Three limitations are here specified on the use of *intercessio*, two

made to none of the said magistrates more than once in the
same matter; nor shall any person, when intercessio has been
made, act contrary thereto.

R. CONCERNING THE MANUMISSION OF SLAVES BEFORE A DUOVIR. 19

XXVIII. In the case of any citizen of the municipium 20
Flavium Salpensanum, being possessed of Latin rights,[28]
manumitting one of his slaves, male or female, from servitude 21
to liberty[29] and ordering the said slave to be free man or 22
free woman[30] at the court of the duovirs[31] charged with the 23
highest jurisdiction in the said municipium, always provided
that no ward in law and no unmarried woman and no widow 24
shall manumit such person or order such person to be free
man or free woman[32] unless represented by a guardian, then 25
the person so manumitted and so ordered to be free shall be
a free man or a free woman, possessed of the best rights
whereby Latin freedmen are or shall be free persons,[33] pro- 26

particular and one general. It must take place not later than three days after the appeal is made. It cannot be employed more than once in the same matter, and it cannot be applied at all in certain cases evidently specified somewhere in the law. The first two points are not otherwise known, and may have been more necessary in municipal than in Roman life. With regard to cases where *intercessio* was not legally applicable, we have one instance in M. 58, where no *intercessio* is to stop the elections. We get instances of the same thing in Rome. See Lex Acil. v. 70, Lex Rubr. cap. 20, and cf. Cic. in Verr. I. 60. 155.

[28] These words prove three things; there were Latin citizens at Salpensa, but also clearly citizens who were not Latins, and therefore necessarily Roman citizens, and the manumissions made valid by this chapter are those effected only by citizens of Latin right.

[29] The phrase probably refers to *manumissio per vindictam*. See Introduction, p. 71.

[30] This, perhaps, refers to *manumissio censu*. See ibid.

[31] The plural is a slip of the engraver. The duoviri acted singly in judicial matters. The rubric has the correct wording.

[32] The incapacity of *pupilli* or women to manumit unless represented by a *tutor* is, of course, not peculiar to Latin towns, but based on the Roman law of *manumissio*.

[33] The persons so manumitted became Latin freedmen *optimo jure*,

27 vided that a person less than twenty years of age shall only
28 manumit when that number of the decuriones by which
29 decrees may lawfully be made [34] shall have approved just
cause of manumission.[35]

R. CONCERNING THE ASSIGNMENT OF A LEGAL GUARDIAN.

30 XXIX. As respecting persons, male or female, being citizens
31 of the municipium Flavium Salpensanum,[36] and not being

i.e. full Latin citizens of Salpensa, with only the disqualifications involved in the absence of *ingenuitas*, and these would be removed in the next generation. This, too, was strictly analogous to the practice of Roman law, according to which slaves manumitted by a Roman citizen became full Roman citizens. The case of those freedmen, who by the Lex Junia Norbana became *Latini Juniani*, need not be considered here. This was only an application of the general maxim 'municipem vel nativitas facit vel manumissio vel adoptio'. As explained in Introduction, p. 70, the citizens of a Latin community possessed the right *lege agere apud magistratum*, and could therefore among other things manumit their slaves before a duovir of their own *municipium*, instead of having to go before the proconsul. But it is clearly implied by the words 'qui civis Latinus erit', that the *municipes* who were Roman citizens would have to manumit before the proconsul. A Roman citizen, in fact, who was also a *municeps* of a Latin town, had a double *patria*, his own *municipium*, and the *communis patria* Rome, the latter alone deciding such questions as this. Whether, when a Roman *municeps* manumitted, his freedmen became Roman citizens or Latin, seems uncertain. If the latter, it would be on the analogy of the Lex Junia Norbana.

[34] We saw in the Lex Col. Gen. that the number of decuriones required varied on different occasions, but ultimately two-thirds came to be the *legitimus numerus*: 'Lege municipali cavetur ut ordo non aliter habeatur quam duabus partibus adhibitis.'

[35] This is clearly not a case when the decuriones pass a decree. They act merely as the *consilium* of the duovir. This provision is based on the Lex Aelia Sentia of A.D. 4. Gaius, I. 38: 'item eadem lege minori XX annorum domino non aliter manumittere permittitur, quam si vindicta apud consilium justa causa manumissionis adprobata fuerit.'

[36] For a general explanation of the contents and meaning of this chapter, see Introduction, p. 72 foll. It is tolerably clear that any *municeps*, whether a Roman or Latin citizen, could obtain a *tutor* under the provisions of this law, whereas the provisions of the preceding chapter affected Latin citizens only. *Incolae*, who were Roman

wards in law,[37] who have no legal guardian or one whose legal 32
existence is uncertain,[38] if the said persons shall have made
demand [39] of the duovirs, charged with the highest jurisdiction 33
in the said municipium, that they shall assign a guardian, at
the same time specifying the person whom they desire to be 34
so assigned,[40] then the magistrate, of whom such demand is
made, shall take cognizance of the case, acting on the views 35
of all his colleagues, whether one or more than one,[41] who

citizens, would have to approach the proconsul under the terms of the Lex Julia Titia. See Gaius, I. 185. *Incolae*, who were *peregrini*, could neither manumit a slave nor obtain a *tutor* in any way recognized by Roman law, though the *peregrinae civitates* may have had analogous arrangements of their own.

[37] *Pupilli* are only excluded here because they could not demand a *tutor* themselves, but only through some third person. In their case, too, as appears below, the duovir had to take a special course.

[38] See Gaius, I. 185. It is evident that the provisions of this chapter are to meet the cases which Gaius says were met in Rome by the Lex Atilia. In ordinary cases women and *impuberes* would have a *tutor* assigned by testament. Failing that, the nearest agnate would become *tutor* by the XII Tables. But if there was no testament and no agnate, or if the *tutor* appointed in either way was dead or *infamis*, then this law would come into effect. Or the *tutor* might be *incertus*, i.e. there might be some doubt as to his legal existence. The instance given by Gaius, I. 186, is that of a *tutor* captured in war, whose recovery of his *tutela* by the *jus postliminii* is uncertain. In such a case a fresh *tutor* would be appointed, who, however, would give place to the original *tutor* on his return.

[39] In spite of the general terms in which this is stated, this can only refer to women, widows or otherwise, who are bound to accept a *tutor* from the duovirs. This, of course, has no reference to the *jus tutoris optandi*, referred to in cap. 22, with which the duovir has nothing to do. In any case, the magistrate can do nothing till a *tutor* is demanded. Cf. Liv. XXXIX. 9: 'quia in nullius manu erat, tutore a tribunis et praetore petito.'

[40] A definite person had always to be demanded. The magistrate might, *causa cognita*, refuse to assign this person, but could substitute no other.

[41] The difficulty involved in a duovir having more than one colleague is only apparent. It appears from many inscriptions, see Wilmanns' Index, that in *municipia c. R.* there were two *quattuorviri jure dicundo* and two *quattuorviri aedilicia potestate*, which proves that, though one

are at the time present in the said municipium or within 36 the boundaries thereof, and, if they shall approve,[42] shall assign the guardian so specified. But if the person, male or 37 female, in whose name such demand is made,[43] is a ward in law, or if the magistrate, from whom such demand is made, 38 shall have no colleague, or no colleague within the boundaries of the said municipium,[44] then the said magistrate, from whom 39 such demand shall have been made, shall within the ten days 40 next following take cognizance of the case, and acting on a 41 decree of the decuriones, passed in the presence of not less than two-thirds of the said decuriones, shall assign the person 42 specified by the applicant as his legal guardian,[45] provided that thereby the right of tutelage be not withdrawn from 43 a legally constituted guardian.[46] The guardian so granted

pair of magistrates had a lower competence, both pairs were regarded as belonging to a common *collegium*. Even in Roman colonies, where, as in the Col. Gen., the highest magistrates were *duoviri*, these and the aediles are sometimes described as *quattuorviri*. See C. I. L. X. 800. The fact that at Rome the praetor was a *minor collega* of the consuls, is not a perfect parallel, because the praetorship was an offshoot of the consulship.

[42] This is clearly on the analogy of the Lex Atilia. By that law the praetor, when applied to, had to secure the approval of a majority of the tribunes. Gaius, I. 185. By this law the duovir applied to had to secure the approval of the other duovir and of the aediles, or of as many of them as possible.

[43] The law now deals with the case of *pupilli*, who were excluded from the earlier clause. In their case the demand has to be made by a third party, and the duovir has to consult the decuriones.

[44] This difficulty only occurred in the case of women, and necessitates in that case also a reference to the senate.

[45] The action of the *decuriones* is more formal than that mentioned in cap. 28, since a decree is passed in the presence of the *legitimus numerus*. There is nothing in the Lex Atilia, as described by Gaius, corresponding to this action of the *decuriones*.

[46] 'Quo ne ab justo tutore tutela abeat.' This is to allow for the possibility that a *justus tutor* may after all exist, in which case the *tutor* assigned by the magistrate would cease to act. The formula was probably taken from the Lex Atilia, and was misunderstood by the writer of the law, who wrote it: 'ne ab justo tutore tutela habeat.' It is merely equivalent to the general maxim: 'tutorem habenti tutor dari non potest.'

by this law to the said person, provided that thereby the right of tutelage be not withdrawn from a legally constituted guardian, shall be as lawfully appointed as though he were a Roman citizen,[47] and as though the nearest agnate, being a Roman citizen, had been made guardian.[48]

[47] Of course in certain cases he might be a Roman citizen, but the majority of applicants would be Latins.

[48] i. e. a *tutor legitimus* according to the XII Tables. See Bruns, p. 23.

LEX MUNICIPALIS MALACITANA

R. CONCERNING THE NOMINATION OF CANDIDATES.[1]

1 LI. If up to the day when the names of candidates should col. I properly be announced, either the name of no candidate shall be announced, or of fewer candidates than the number proper to be elected, or if out of those candidates, whose names shall have been announced, those whose candidature may properly 5 by this law be allowed[2] at the elections shall be fewer than the number proper to be elected, then the person responsible for conducting the elections shall post up, so that they may be read from level ground, the names of as many persons, qualified 10 by this law to stand for the said magistracy, as shall be required to make up that number proper to be elected by this law. Of the persons whose names are so posted up, each one shall, if he so desire, go before the magistrate who is to conduct the said elections, and nominate one person of his own condition;[3] 15 in like manner the persons nominated by the aforesaid shall, if

[1] On the contents of the chapters immediately preceding this, and following after S. 29, see Introd., p. 68. Fortunately the section concerned with the regulation of elections is complete with the exception of the chapters on the *professio* of candidates and their qualifications, and the latter can be safely gathered from what is extant. The presiding magistrate was the elder duovir, unless, as is possible, recourse was had to an *interrex* after years in which a *praefectus* of the emperor took the place of the *duoviri*.

[2] The qualifications required of candidates were: (1) a minimum age of twenty-five years, cap. 54; (2) free birth, ibid.; (3) the absence of any of those causes which by the Lex Jul. Mun. disqualified from membership in a municipal senate; (4) in the case of the duovirate at least, an interval of five years since a previous tenure of the office (ibid.). No particular census seems to have been required like the senatorial census at Rome, but the want of this was supplied in the case of the *duoviri* and quaestors by the necessity of giving *praedes praediaque* (cap. 60).

[3] i.e. qualified for the particular office, whether duovirate or aedileship or quaestorship.

they so desire, go before the same magistrate, and nominate each one person of his own condition; and the said magistrate, before whom such nomination shall be made, shall post up the 20 names of all the aforesaid persons, so that they shall be plainly read from level ground, and shall conduct the elections, in respect to all the said persons, in like manner as though, in accordance with the clause in this law, 'concerning candidature for office',[4] the names of such persons had been duly announced within the appointed day,[5] and as though they had of their 25 own accord stood for the said office in the first instance, and had never given up that intention.

R. CONCERNING THE HOLDING OF THE ELECTIONS.

LII. Of the present or future duovirs holding office in the 30 said municipium, the elder by birth,[6] or if some cause shall hinder him from holding the elections, the other duovir shall

[4] This, of course, refers to the lost chapters on the *professio* of candidates.

[5] In all probability a *trinundinum* had to elapse between the day on which *professio* had to be made and the day on which the *comitia* were held. This compulsory nomination of candidates, first by the magistrate and then by the persons nominated by him, is very significant. It indicates the tendency for municipal office to be looked upon as a burden rather than as an honour. In proportion as voluntary *professio* became less frequent, *nominatio* by the magistrate became more and more the rule, and this soon meant that election by the *comitia* became a mere formality. As the magistrates would consult the *decuriones* in making their nominations, it is natural enough to find that in the later jurists the right of election is virtually in the hands of senate and magistrates, a result reached of course also in Rome, but through different causes.

[6] This was very likely the arrangement in the old Romano-Latin constitution, though in course of time it became usual in Rome for one of the two consuls to be selected by lot. Just as in Rome the consuls presided over the elections of consuls, curule aediles, and quaestors, so the *duoviri* did in the *municipia*. Quite possibly the original mode of appointment was not popular election, but a magisterial creation. Even when election by the *comitia* was the rule, there remained a sort of apostolic succession in the presidency and nominating power of the consul, in whose hands the actual creation

hold the comitia, in accordance with this law for the elections or supplementary elections of the duovirs, likewise of the aediles, likewise of the quaestors. And he shall see that the votes are registered by means of tablets,[7] in such manner as is prescribed, in accordance with that distribution of the curies which has been set forth above.[8] And the persons so created shall remain in such office as they have obtained by the said votes for one year, or in the case of those elected in place of another, for the remaining portion of that year.[9]

R. IN WHICH CURIA RESIDENT ALIENS ARE TO VOTE.

LIII. Every person holding the comitia in the said municipium for the election of duovirs or aediles or quaestors shall out of the curies appoint one by lot, in which resident aliens, being Roman or Latin citizens, shall register their votes,[10] and for such persons the registration of votes shall be in that curia.

or *renuntiatio* always rested. It was, therefore, easy for Augustus and Tiberius, without any real breach of continuity, to make once more the magisterial *nominatio* the important factor.

[7] The votes were recorded on *tabellae,* as they were in Rome after the Lex Gabinia Tabellaria of 139 B.C.

[8] Unfortunately, the *curiarum distributio* here referred to is not extant. This division into *curiae* is no doubt one of the survivals from the old Romano-Latin constitution, and reflects the primitive period in Rome, before the centuries and local tribes were developed, and when the *comitia* were organized *curiatim.* That *curiae*—the number being apparently twenty-four—survived at Lanuvium, together with other characteristically Latin institutions, we happen to know (C. I. L. XIV. 2120). *Curiae* are also found in some of the African towns, which may well have had the *jus Latii.* See Lex Col. Gen., note 101 to cap. 101, from which it appears that in Caesar's colony the division of colonists was according to tribes.

[9] In such cases, as we have seen above, there would be no claim allowed to the Roman citizenship.

[10] It is quite clear that among the *incolae* were included persons of Latin right, whose *patria* was some other Latin town, Roman citizens, living away from their own communities, and *peregrini.* Only the two first classes, however, possessed the privilege specified in this chapter. The privilege is one of the most interesting survivals from the period of the old Romano-Latin league, when resident Latins in Rome, and resident Romans in any of the Latin towns belonging to

R. CONCERNING THOSE WHOSE CANDIDATURE IS PROPERLY ACCEPTED AT THE COMITIA.[11]

LIV. The person responsible for holding the elections shall first cause the duovirs charged with the highest jurisdiction to be appointed from that category of free-born persons,[12] already specified and set forth in this law; then in like manner and without delay he shall cause aediles and in like manner quaestors to be elected from that category of free-born persons already specified and set forth in this law; provided that he accept the candidature of no person at the comitia, in the case of candidates for the duovirate, who is less than twenty-five years of age,[13] or who has held that office within five years;[14]

the league, possessed under certain conditions the right of voting in the respective *comitia.* This right was naturally extended to the newer Latin communities or Latin colonies founded after 268 B.C. on the model of Ariminum, and indeed came to be practically limited to them, since the older Latin communities acquired the Roman *civitas.* It is in the light of this relationship to Rome that the term *municipium* appears entirely appropriate to Latin communities, a term, the correctness of which is proved not only by these two laws, but by the Lex Agr. v. 31. Whether the term *municipia fundana* is especially used for these Latin communities, as Mommsen was once inclined to hold, is more doubtful. See my last note to the Lex Jul. Mun., in Six Roman Laws. For the custom in Rome of selecting a tribe by lot for the resident Latins to vote in, see Livy XXV. 3, 'tribuni populum submoverunt sitellaque adlata est, ut sortirentur ubi Latini suffragium ferrent.' Appian, too (I. 23), speaks of the other Italians as distinct from the Latins, as those οἷς οὐκ ἐξῆν ψῆφον ἐν ταῖς Ῥωμαίων χειροτονίαις φέρειν.

[11] The qualifications for office are all clearly enough implied in this chapter, but they were evidently more explicitly set forth in the missing portion of the law.

[12] On the exceptional exemption from this qualification in the case of some of Caesar's colonies, and the reason for it, see Lex Col. Gen., note 116. The rule here laid down was that of the Lex Visellia.

[13] I have always suspected this number. If twenty-five years was the minimum for the two lower posts, the minimum for the duovirate must surely have been thirty. It is worth noting that a *praefectus* left in charge by a *duovir* had to be thirty-five (S. cap. 25).

[14] This was like the rule established in Rome by Sulla, that a ten years' interval was required between two consulships. The rule was

in the case of candidates for the aedileship or the quaestorship he shall accept no person who is less than twenty-five years of age, or who is liable to any of those impediments whereby, if he were a Roman citizen, he could not lawfully become a member of the decuriones or conscripti.[15]

R. CONCERNING THE REGISTRATION OF VOTES.

LV. The person holding the comitia in accordance with this law shall summon the citizens to register their votes according to their curies, calling all the curies to the vote by a single summons,[16] in such manner that the said curies, each in a separate voting booth, may register their votes by means of tablets. He shall likewise see that three of the citizens of

unnecessary for the lower posts, which were only held with a view to the duovirate.

[15] There is much in this passage to suggest that the *cursus honorum* might begin either with the aedileship or the quaestorship. In the first place, the common minimum of age favours this view. In the second place, if the quaestorship was always held first, it would have been enough to specify that office as debarred by the impediments mentioned below. The duovirate is logically omitted, and the insertion of the aedileship is only logical if it was a parallel and not a superior post. The impediments, which would have debarred a Roman citizen from being a member of the *decuriones* are of course those specified in the Lex Jul. Mun. vv. 108 foll. It is to be noted that previous military service is not included among the qualifications for office, as it was in the Lex Jul. Mun. vv. 89 foll.

[16] The resemblance is very striking between the provisions here laid down and the arrangements for voting in Rome in the *comitia tributa*, arrangements based upon the forms observed in the more primitive assembly of the curies. The chief point is that neither the *curiae* here, nor the tribes at Rome, voted in succession, as the centuries did in the *comitia centuriata*, but simultaneously, each in the space separately marked off for it. This is expressed here very clearly by the words *uno vocatu*. Quite as explicitly, Dionysius (VII. 59) states that the people were called together by the tribunes, *μία κλήσει κατὰ φυλάς*, and he describes the tribunes also as *χωρία τῆς ἀγορᾶς περισχοινάζοντες ἐν οἷς αἱ φυλαὶ ἔμελλον στήσεσθαι*. The tribes in Rome, therefore, and the *curiae* at Malaca all voted at the same time, each in the space set apart for it. The actual voting was *per tabellam*, as it had been in Rome since the Lex Gabinia Tabellaria, of 139 B.C.

the said municipium are placed at the voting box of each curia,[17] not themselves belonging to that curia, with intent to guard and count the votes, and that before performing such duty, each of the said three citizens shall take oath that he will deal with the counting of the votes and make report thereon with all good faith.[18] Furthermore, he shall not hinder candidates for an office from placing each one guard at every several voting box.[19] And the said guards, both those placed by the person holding the comitia and those placed by canditates for office, shall each register his vote in that curia, at whose voting box he shall be placed as guard, and the votes of the said guards shall be as lawful and valid as if each had registered his vote in his own curia.

R. ON THE COURSE TO BE TAKEN IN THE CASE OF EQUALITY OF VOTES.

LVI. Of the candidates who shall have secured more votes than others in any curia, the person holding the said comitia

[17] There can be very little doubt that the very precise arrangements with regard to the *custodes tabularum* and the *diribitores*, counters of votes, may be taken as throwing valuable light on the arrangements of the Roman *comitia*. The reason why these *custodes* are not to vote in their own *curiae* is obviously that they cannot leave the voting box at which they are placed.

[18] Only the *custodes* appointed by the *duovir* have to take the oath, and apparently they alone had the duty of counting (*diribere*) the votes. Probably the term *diribitores* was confined to them. The *custodes* appointed by the candidate are referred to by Cicero, de pet. cons. 2, 8, 'Ad tabulam quos poneret non habebat.'

[19] When the votes had been recorded in all the *curiae*, and counted by the official *diribitores*, the lists (*tabulae*) containing the numbers for each *curia* were brought to the *duovir* to be checked by him. He then announced the names of the two candidates in each *curia* who had received the greatest number of votes, and returned them (*renuntiavit*) as chosen by that *curia*. There was, therefore, a preliminary *renuntiatio* for each *curia*, distinct from the final and conclusive *renuntiatio* of the two ultimately elected. Probably there was the same double *renuntiatio* in Rome, but there is no direct evidence for it, unless Livy IX. 46 can be so regarded, 'cum fieri se pro tribu aedilem videret.'

30 shall return that candidate who has more votes than the rest, as elected and created by that curia, and then the next in order, until the number proper to be elected is made up. If in any curia two or more candidates shall have secured the same 35 number of votes, he shall prefer a married man or one with the rights of a married man[20] to an unmarried man without children and without the rights of married men, a man with children to a man without children, and a man with more chil- 40 dren to a man with fewer children, and shall return the former as having a majority of votes.[21] In such matter, two children lost after the ceremony of naming, or one boy or girl lost after puberty or marriageable age, shall be counted as equivalent to 45 one surviving child. If two or more candidates shall have secured the same number of votes, and shall possess the same claims, he shall subject their names to the lot, and shall return that person before the rest, whose name is first drawn by the lot.

R. CONCERNING THE ORDER OF THE CURIES BY LOT, AND CONCERNING THOSE CANDIDATES WHO HAVE AN EQUAL NUMBER OF CURIES.

50 LVII. The person holding the comitia in accordance with this law shall, when the voting lists of all the curies have been brought in, subject the names of the curies to the lot,[22] and draw

[20] In case of equality of votes, a married man or one ranking as a married man was preferred to an unmarried man. A man *in numero maritorum*, a phrase taken from the *Lex de maritandis ordinibus*, was either one who had become a widower after the age of sixty, according to the Lex Papia Poppaea, Ulp. XVI. 1, or possibly a soldier, to whom Claudius gave τὰ τῶν γεγαμηκότων δικαιώματα (Dio Cass. LX. 24).

[21] So, according to the Lex Papia Poppaea, married persons had certain privileges, 'si filium filiamve communem habeant, aut quattuordecim annorum filium aut duodecim filiam amiserint, vel si duos trimos vel tres post nonum diem amiserint' (Ulp. XVI. 1).

[22] The lists containing the names of the two candidates elected by each *curia* are brought in to the presiding magistrate, and are then publicly proclaimed in an order decided by lot. There was, of course, no sort of prerogative vote, as in the *comitia centuriata* at Rome, since all the curies voted together. The Roman laws in the *praescriptio* specify the tribe *quae principium fuit*, and to this the *curia* coming out first in the *sortitio* corresponded.

out one by one the names of the several curies by lot, and as the name of each curia is drawn, he shall order those candidates elected by the said curia to be declared in the order in which the 55 several candidates shall have secured a majority of the curies;[23] he shall, after they have in accordance with this law taken oath and given security for public money,[24] return the same as appointed and created, until the number of magistrates proper to be created by this law is made up. If two or more per- 60 sons shall have the same number of curies, he shall take the same course concerning such persons, as has already been set forth concerning those who obtained an equal number of votes, and shall return the several candidates in order of 65 election by the same method.

R. NO HINDRANCE TO BE OFFERED TO THE HOLDING OF THE COMITIA.

LVIII. No person shall use his intercessio[25] or perform any other act to prevent the comitia from being held and completed in accordance with this law in the said municipium.[26]

[23] Every candidate to be elected required an absolute majority of the curies, i.e. he had to be elected by eighteen out of thirty-five, or by eleven out of twenty. It was probably not necessary for a candidate to be returned first, but first or second by the requisite number of curies. This requirement of a majority of tribes probably explains the obscure passage of Appian I. 21, on which see Strachan-Davidson's note, p. 23.

[24] On the oath see cap. 59, on the sureties cap. 60.

[25] Only the younger *duovir* could use such *intercessio*, since aediles and quaestors had a *minor potestas*. This is one of the legal limitations on the right of *intercessio* referred to in S., cap. 27. Cf. Lex Rubr. cap. 20: 'neve quis magistratus neve pro magistratu . . . intercedito neve quid aliud facito quo minus de ea re ita judicium detur.'

[26] Mommsen believes that this prohibition of all interference with elections rested upon a S. C. by which the *Lex Julia de ambitu* was made applicable to the municipalities. At any rate, in speaking of this law, Modestinus says: 'haec lex in urbe hodie cessat, quia ad curam principis magistratuum creatio pertinet, non ad populi favorem. Quod si in municipio contra hanc legem magistratum aut sacerdotium quis petierit, per senatus consultum centum aureis cum infamia punitur.' The amount of the fine agrees with this law, and a

70 Any person knowingly and of wrongful intent acting contrary to this shall for every such act be condemned to pay 10,000 sesterces to the citizens of the municipium Flavium
1 Malacitanum, and in respect to the said money, the right to col. 3 take legal action, to sue and to prosecute, shall belong to every
5 citizen of the said municipium, and to any other person specified by this law.

R. CONCERNING THE OATH TO BE TAKEN BY THOSE OBTAINING A MAJORITY OF THE CURIES.

LIX. As each of the candidates for the duovirate or aedileship
10 or quaestorship shall have obtained a majority of the curies, the person holding the said comitia shall, before returning the candidate as appointed and created, administer an oath openly in public, by Jupiter and by the divine Augustus and the divine Claudius and the divine Vespasianus
15 Augustus and the divine Titus Augustus and by the genius of the imperator Caesar Domitianus Augustus and by the dei Penates, that he will perform all acts required by this law, and that knowingly and of wrongful intent he neither
20 has performed nor will perform any act contrary to the same.[27]

R. CANDIDATES FOR THE DUOVIRATE OR QUAESTORSHIP TO GIVE SECURITY FOR THE PUBLIC MONEY OF THE CITIZENS.

LX. As respecting persons in the said municipium, who are
25 candidates for the duovirate or quaestorship, or who, owing to fewer than the proper number of names having been announced, are put into the position of having votes registered in their

person incurring it as *publico judicio condemnatus* would be so far *infamis* as to be incapable, according to the Lex Jul. Mun., of holding any office.

[27] On the two oaths to be taken by magistrates, the present one before *renuntiatio*, the second within five days after entering office, see note on S., cap. 26, n. 19. The first oath is naturally more general in character. There is no need for a fine in case of refusal to take it, as the candidate would in that case not be returned.

behalf in accordance with this law, each of the said persons on the day when the comitia are held shall, before the votes are 30 registered, at the discretion of the person holding the comitia, furnish sureties[28] to the corporate body of citizens that the public money, handled by him in the course of his magistracy, shall be secured to the said citizens. If in such matter the 35 guarantee of the said sureties shall appear insufficient, the candidate shall, at the discretion of the aforesaid person, make registration of securities, and the said person shall without prejudice and in all good faith accept sureties and securities from the same until the guarantee is sufficient. If any of the persons, for whom votes may be properly registered at the elections of 40 duovirs or quaestors, shall be the cause whereby insufficient security is furnished, then the person holding the comitia shall not accept the candidature of such person.

[28] A similar *cautio* is required from candidates for the quattuorvirate by the Lex Tarent. vv. 14 and 15. In that case, however, the security was taken after the voting, but before the *renuntiatio*. Here it comes before the voting itself, and therefore is required from all the candidates, not only from the successful ones. I am inclined to explain in this way the fact that at first only *praedes* are required, and these are only called upon to make registration of *praedia*, 'si de ea re is praedibus minus cautum esse videbitur.' This probably means that, while all candidates had to furnish *praedes*, *subsignatio* was only required in the case of those about to be actually returned. On the whole subject of the *cautio praedibus praediisque* see Introd., p. 77 foll., and notes to caps. 63 to 65. At Tarentum both the *duoviri jure dicundo* and the aediles had to provide sureties. Here the aediles are omitted, and only candidates for the duovirate and quaestorship are mentioned. Whether, when there were no quaestors, as at Tarentum and the *colonia Genetiva*, the aediles had some pecuniary responsibility, is not clear. At any rate here the aediles have none. The quaestors have the ordinary handling of current expenditure, and the *duoviri* alone made grants for all purposes out of the treasury. So Mommsen explains Ulpian's definition of what is *gestum in republica*, 'pecuniam publicam tractare aut erogare decernere.' The limitations of the aediles, even in connexion with the fines imposed by them, come out in cap. 66.

R. CONCERNING THE CO-OPTATION OF A PATRONUS.[29]

45 LXI. No person shall co-opt a patronus with public duties to the citizens of the municipium Flavium Malacitanum, or make offer of such position, except after a decree of a majority of the decuriones, such decree being passed when not less than two-thirds shall be present, and shall have declared their 50 opinion on oath by means of voting tablets. Any person, in contravention of this, co-opting a patronus with public duties to the citizens of the municipium Flavium Malacitanum, or making offer of such position, shall be condemned to pay 10,000 sesterces to the common fund of the citizens 55 of the municipium Flavium Malacitanum; and no person, who is contrary to this law co-opted as patronus, or to whom offer of such position is made, shall thereby rank as patronus of the citizens of the municipium Flavium Malacitanum.

R. NO PERSON TO PULL DOWN BUILDINGS EXCEPT WITH A VIEW TO RESTORATION.[30]

60 LXII. No person within the town belonging to the municipium Flavium Malacitanum, or in the area of buildings

[29] For the *patroni* see notes on Lex Col. Gen., cap. 97. The *patronatus* has clearly lost its primitive character here, and the *patroni* are influential persons, able to benefit the *municipium*. The wording of the first sentence is a little ambiguous, and seems to imply that a magistrate might in some way co-opt a *patronus* prior to a decree of the *decuriones*. This led Mommsen to suggest that the co-option of *patroni*, like that of patricians in Rome, belonged to the *comitia curiata*, and that the co-option of the magistrate was really his proposal of a person to the *comitia*, and that the *decuriones* only ratified the act of the *comitia*.

The Lex Col. Gen., however, shows that adoption by the senate had long since been the rule, and the distinction between *adoptari* and *cooptari* is best explained as suggested in the former note. In both laws the *decuriones* vote *per tabellam*, and here also on oath.

[30] It is interesting to compare this clause with the two corresponding clauses in the Lex Tarent., cap. 4, and the Lex Col. Gen., cap. 75. All three absolutely prohibit the demolition of any private building within the town or suburb, for any reason except its immediate reconstruction, unless permission is given by a decree of the *decuriones*. While two of the laws, however, demand only the

adjoining the said municipium, shall unroof or pull down or cause to be demolished any building except by resolution of 65 the decuriones or conscripti, passed when a majority of the same are present, unless he shall intend to restore the said building within the next year. Any person acting in contravention of this shall be condemned to pay to the citizens of the municipium Flavium Malacitanum a sum of money equivalent to the value of the said building; and in respect to the 70 said money, the right to take legal action, to sue or to prosecute, shall belong to every citizen of the said municipium and to any other person specified by this law. 1

col. 4 R. CONCERNING THE PUBLICATION AND INSERTION IN THE MUNICIPAL ACCOUNTS OF LEASE CONTRACTS AND THE CONDITION OF LEASE CONTRACTS.

LXIII. It shall be the duty of every duovir charged with 5 the highest jurisdiction to lease out the public revenues and taxes, or any other business proper to be leased out[31] in the corporate name of the citizens of the said municipium. And

intention to rebuild, the Lex Col. Gen. orders sureties to be given to that effect, and the present law specifies the space of one year within which it is to be done. In all three cases the penalty is a sum of money equivalent to the value of the building. This may possibly imply that the State would rebuild at the expense of the owner of the building, but the provision in the Lex Tarentina that only half the money goes to the *aerarium* is hardly consistent with this. More probably the party forfeits the value of the house, and has to rebuild as well. The two SS. CC. of A.D. 44 and 56 are very interesting, and should be read in connexion with this clause (see Bruns, p. 200). But the object in their case is only to prohibit the demolition of houses, when a building is bought or sold by speculators with a view of making profit out of the demolition. The second S. C. is occasioned by an application for permission to demolish some ruinous buildings in the territory of Mutina. If we are to take the Lex Tarent. as typical of the charters of Italian *municipia*, we should have to assume that within the towns themselves the local senates were competent in the matter, but that from the country districts appeal could be made to the Senate in Rome—an interesting sidelight on the senatorial authority over Italy involved in the so-called dyarchy.

[31] The matters proper to be leased out would include not only the collection of *vectigalia*, but the construction or repair of public buildings. See e.g. the Lex parieti faciendo Puteolana, Bruns, 374.

the lease contracts so made, the conditions so imposed,[32] the amount for which each matter is leased, the sureties accepted, 10 the securities submitted, registered and pledged,[33] and the vouchers of such securities approved,[34] he shall cause to be entered in the corporate accounts[35] of the citizens of the said municipium, and he shall have the same posted up during 15 the remainder of his magistracy, so that they may be read from level ground, in whatever place the decuriones or conscripti may determine.

R. CONCERNING THE LEGAL OBLIGATION OF THE SURETIES, SECURITIES, AND VOUCHERS.

20 LXIV. All persons within the municipium Flavium Malacitanum who are or shall be made sureties to the corporate body of the citizens[36] of the said municipium, and all securities which are or shall be accepted, and all persons who are or shall 25 be made vouchers of such securities, all the aforesaid persons and all the properties of the said persons, both those possessed

[32] For these *locationes* and the *leges dictae*, as concluded by the censors in Rome with the *publicani*, see Lex Agr. v. 85, &c.

[33] *Subdita subsignata obligata.* On the whole question of the *praedes* and *praedia*, and the meaning of the *praediorum subsignatio* by the *praedes*, see Introduction, p. 77 and foll. Cf. Lex Agr. vv. 73 and 84.

[34] The *cognitores* were persons called in to certify that the particulars about the *praedia* contained in the *subsignatio* were correct, and that the estates really belonged to the *praedes*. Their functions and responsibilities are only known from these chapters.

[35] This entering of the names in the public books marked the fact that the persons and properties were under obligation to the State. They only became *soluti* or *liberati* when their names were erased.

[36] Other evidence is given in the Introduction (loc. cit.) that *praedes* were always sureties offered to the State and accepted by a magistrate. They never occur in private suits. This is the explanation suggested by Mommsen of the fact that the form of security known as *cautio praedibus praediisque* is unnoticed in the writing of the jurists. In proportion as the *fiscus* took the place of the *aerarium*, suits between the treasury and individuals were treated on the lines of private law, since it had been a principle from the first that the princeps, 'si quando cum privatis disceptaret', had recourse to 'forum et jus'. Tac. Ann. IV. 6.

by them at the date of their becoming sureties or vouchers, and those accruing subsequent to the date[37] of their first obligation, so far as the said persons are not or shall not be freed or exempted, or are not or shall not be freed or exempted, by dishonest means, and so far as properties of the said persons 30 are not or shall not be freed or exempted, or are not or shall not be freed and exempted by dishonest means,[38] shall be legally pledged to the corporate body of the citizens of the said municipium, in like manner as though the said persons and 35 the said properties were pledged to the Roman people, if the said sureties and vouchers had been made, and the said securities had been submitted, registered, and pledged before the officials in Rome, who preside over the aerarium.[39] And as 40 respecting the said sureties and the said securities and the said vouchers, if any portion of the said properties, for which

[37] Property acquired subsequent to the original obligation could not have been *subsignatum*, since the *subsignatio* was an integral part of the *locatio*. Nevertheless, it appears that all the property of the persons concerned was *obligatum* in a general sense, unless specially exempted.

[38] The properties, and therefore the persons in respect of them, would be *soluta* or *soluti*, either because the duovir thought it unnecessary to include them in the obligation, or because he had erased them from the public books, owing to some payment having been made or for some other reason. On the other hand, persons might become *soluti*, and their properties *soluta*, by dishonest means, *dolo malo*, if they had failed to disclose to the duovir portions of their property, which he would have included, if he had known of them. For the word *soluti* used in this sense, see Lex Agr. vv. 46 and 100. Cicero criticizes the agrarian proposal of Rullus because it virtually abolished the distinction between *praedia soluta* and *obligata* in respect to lands assigned by Sulla. De Leg. Agr. III. 9.

[39] At this period they would be the two *praefecti aerarii Saturni*. Tac. Ann. XIII. 29. Owing to the silence of the jurists explained above, we know little of the *jus praediatorium* in Roman law. But the explicit statement that these provisions, both with regard to the acceptance of *praedes* and the *subsignatio* of *praedia* and the responsibility of *cognitores*, are taken directly from Roman procedure, gives these chapters an exceptional importance. The same is, of course, true of the provisions below for the sale of the persons and properties pledged.

they were made vouchers, shall be other than as specified,[40] provided always that the said persons and properties are not and shall not be freed and exempted, or that they are not and shall not be freed and exempted by dishonest means, 45 then shall the duovirs, charged with the highest jurisdiction, either both in concert or one by himself, in accordance with a decree of the decuriones or conscripti, passed when not less than two-thirds are present,[41] possess the right and power to sell the said properties, and to impose conditions for such 50 sale; provided that they impose the same conditions for the sale of the said things as would properly be imposed in accordance with the law concerning sureties[42] by the officials presiding over the aerarium at Rome, for the sale of sureties 55 and securities, or if no purchaser be found under the said law concerning sureties, that they shall impose the conditions proper for a sale on clear terms;[43] and also provided that

[40] The *cognitores* were only responsible in so far as their certificate was false or misleading. Unless the sale of their property was penal, we must assume that their responsibility was measured by the amount of loss to the *municipium* caused by their false report.

[41] The necessity for this decree of the *decuriones* proves, perhaps more clearly than anything else, that the whole affair was a matter of administration rather than of strict jurisdiction. It, in fact, belonged to the administration of the public chest, of which the *duoviri* were the executive officers, and the senate the directing body.

[42] Evidently the sale under the Roman Lex Praediatoria involved conditions which were irksome or unfavourable to the purchaser. Possibly the right of redemption was reserved to the original owners, but this is only conjecture.

[43] A sale *in vacuum* must mean a sale on clear terms, as distinguished from the restriction imposed by the *lex praediatoria*. It is not a recognized phrase in Roman law, but it is alluded to in a passage of Suetonius, Claud. 9. Claudius in his earlier years became so involved in his financial affairs owing to a heavy entrance fee for a priesthood, 'ut cum obligatam aerario fidem liberare non posset, in vacuum lege praediatoria venalis penderit sub edicto praefectorum.' In other words, he became a *praes* for his own debt to the *aerarium*, and was finally sold up under the harsher conditions of the *venditio in vacuum*. *Lege praediatoria* is, of course, used here in the general sense in which both kinds of sale would fall under it.

the conditions include the production, liquidation, and payment of the money in the forum of the municipium Flavium Malacitanum.[44] All conditions so imposed shall be lawful and valid.

R. JUDGEMENT TO BE PRONOUNCED IN ACCORDANCE WITH THE CONDITIONS OF THE SALE OF SURETIES AND SECURITIES. 60

LXV. In the case of sureties, securities, and vouchers having been sold in accordance with this law by the duovirs of the municipium Flavium Malacitanum, all persons charged with 65 jurisdiction, to whose court application shall be made on the said matter, shall in such wise adjudicate and give judgement,[45] that the persons, who have bought up the said sureties, vouchers, and securities, together with their sureties, partners,[46] heirs, and others to whom the said matter shall appertain, may be able lawfully to take legal action, and to claim and 70 prosecute[47] for the said properties.

R. CONCERNING A FINE TO BE IMPOSED.

col. 5 LXVI. As respecting fines imposed by duovirs[48] or a 1

[44] The purchaser had to pay ready money, and would therefore have no need of *praedes*.

[45] With the completion of the sale the administrative part of the *duoviri* is over, and the matter now passes into the sphere of their civil jurisdiction. The purchaser applies to the court of one of the *duoviri* or of the *praefectus*, if both are absent, in order to be put in possession of the lands he has bought.

[46] Mommsen considers that this clause fills a gap in our knowledge of the law of partnership, but the matter is too technical to be dealt with here. See Juristische Schriften, vol. i, p. 369 foll.

[47] The judicial magistrates are to afford every facility to all the parties directly or indirectly concerned in the sale to take the necessary *actio*, *petitio*, or *persecutio*.

[48] Every magistrate charged with jurisdiction had the right of imposing fines in all matters within his competence. 'Multam dicere potest cui jurisdictio data est.' In some cases, of course, the fine was fixed by law, in others the magistrate had a discretionary power. In the latter case the maximum fine at Rome was half a person's property, and there was, no doubt, some similar limitation in the municipal towns.

praefectus, and likewise fines imposed by aediles, the imposition of which the said aediles, together or singly, shall have notified before the duovir, the duovir[49] charged with the highest jurisdiction shall order the same to be entered in the corporate 5 accounts of the citizens of the said municipium.[50] If the person on whom such fine is imposed, or another person in his name, shall demand that the matter be referred to the 10 decuriones or conscripti, the judgement shall lie with the decuriones or conscripti.[51] And all fines not adjudged to be

[49] That the aediles had jurisdiction we know from the Lex Col. Gen., cap. 94. Here, however, their fines are only sanctioned when they are formally notified to a *duovir*, and by him entered in the public books. At Rome, at any rate in earlier times, the aediles had an independent right of fining, subject, of course, to the *intercessio* of the consuls. Mommsen also cites inscriptions from the provinces, proving that the aediles at one time had the right of exacting their own fines, and even disposing of the money. C. I. L. VIII. 972, and C. I. L. XII. 1377. Cf. too the fact noticed under cap. 60, that at Tarentum the aediles as well as the *duoviri* have to furnish sureties for public money handled by them. It would seem, however, that a change was made under the empire, and probably the limitations on the aedilician power, contained in this chapter, were by this time general. It is worth noting that the fining power of the aediles in Rome was limited under Nero. See Tac. Ann. XIII. 28: 'cohibita artius et aedilium potestas, statutumque quantum curules quantum plebei pignoris caperent vel poenae inrogarent.'

[50] The duty of entering a fine in the public accounts and of exacting it seems to have belonged to the same official. In Rome under the empire these officials were the quaestors or praefects of the *aerarium*, as we see from Ann. XIII. 28: 'neve multam ab iis (the tribunes) dictam quaestores aerarii in publicas tabulas ante quattuor menses referrent; medio temporis contra dicere liceret, deque eo consules statuerent.' Presumably aedilician fines would be subject to the same restrictions, and so the consuls are *mutatis mutandis* in a similar position to that of the *duoviri* in this chapter.

[51] This right of appeal in the case of fines from the magistrates to the *decuriones* is interesting and important. There is no other distinct evidence for it, but it is in complete analogy with Roman institutions. At Rome, in republican times, there was an appeal to the *comitia*. Cf. Cic. de Leg. III. 3. 6: 'magistratus nec oboedientem et noxium civem multa vinculis verberibus coherceto, ni par majorve potestas populusve prohibessit.' Under the empire the same right of *provocatio* still existed, but it was now to the emperor and not to the people, and all Roman citizens, whether in Italy or the provinces, retained this right. In the case of Latin communities, it had no doubt been part of the old Romano-Latin constitution that there should be an appeal from the local magistrates to the local *comitia*. But under the empire it is certain, from the silence of all municipal documents, that all jurisdiction was taken from the *comitia* both in Rome and in the municipalities. As the right of *provocatio* to the emperor only belonged to Roman citizens, all that could be done for Latins was to transfer appeals from the *comitia* to the *decuriones*. Whether this appeal to the *decuriones* applied to the criminal jurisdiction of the *duoviri* generally, as well as to fines, is uncertain. Mommsen supposes that it did, but there is no evidence. On the whole, it is perhaps safer to suggest that this provision was intended to meet the temptation to enrich the public treasury by disproportionate fines. That there was a tendency in the air to put some check on the right of fining is clear from the passage of Tacitus already cited, where an appeal is allowed from the tribunes to the consuls.

unjust by the decuriones or conscripti, shall be exacted by the duovirs[52] and paid into the common fund of the citizens of the said municipium.

R. CONCERNING THE CORPORATE MONEY OF THE CITIZENS AND 15 THE PUBLIC ACCOUNTS OF THE SAME.

LXVII. Any person, into whose hands corporate money of the citizens of the said municipium shall have come, or his heir or any person to whom such matter shall appertain, shall, within the thirty days next following the date of such 20 money coming into his hands, repay the said money into the common fund of the citizens of the said municipium. Also, any person, having administered or handled the corporate accounts of any public business of the citizens of the said municipium, or his heir or any person to whom such matter shall appertain, shall within the thirty days next 25 following the completion of such accounts or such business, on such days as shall be fixed for meetings of the decuriones or conscripti, produce and render the said accounts to the de- 30

[52] In the case of offences for which there was a statutably fixed fine, judication was effected by means of an *actio popularis*, but discretionary fines were exacted by the ordinary *coercitio* of the *duoviri*.

curiones or conscripti,[53] or to any person charged with the duty of receiving and auditing the said accounts by a decree of the
35 decuriones or conscripti, such decree being passed when not less than two-thirds of the same are present. Any person, being the cause whereby the said money shall not be so exacted
40 or repaid, or whereby the said accounts shall not be so rendered, or his heir or any person to whom the matter in question shall appertain, shall be condemned to pay to the citizens of the said municipium twice the value of the matter involved, and in respect to the said money belonging to the citizens of the
45 municipium Flavium Malacitanum, the right to take legal action, to sue or to prosecute, shall belong to every citizen of the said municipium, or to any other person specified by this law.

50 R. CONCERNING THE APPOINTMENT OF PATRONI FOR THE CASE, WHEN THE ACCOUNTS ARE RENDERED.

LXVIII. When the accounts are so rendered, the duovir, summoning the decuriones or conscripti, shall propose to the same the persons who are to conduct the public cause;
55 and the said decuriones or conscripti, by means of voting tablets and under oath,[54] shall make decree on the said matter, at a time when not less than two-thirds are present; to the effect
60 that three persons,[55] elected by a majority by means of voting

[53] With this chapter is to be compared Lex Tarent. II. 21 to 25, and Lex Col. Gen. 80. In all cases the persons handling public money or undertaking public business are responsible to the senate or *decuriones*. According to the Lex Tarent., however, the senate passes a special decree on each occasion, and account has to be rendered within ten days after the decree. By the Lex Col. Gen. a margin of 150 days is allowed after the completion of the business. The regulations at Malaca are more stringent, both as regards the time allowed and the persons held responsible. This may be the result of a century's experience.

[54] The only other occasion mentioned in these laws, where the *decuriones* decree by voting tablets and on oath, is in connexion with the co-option of *patroni* in cap. 61.

[55] There seem to be three possibilities in connexion with the rendering of accounts. Where the matter is simple and there is no suspicion of peculation, the *decuriones* may themselves settle the

tablets, shall conduct the public cause. And the persons so elected shall demand from the decuriones or conscripti an interval in which to take cognizance of the case, and prepare their legal action, and after the expiry of the time so given, they shall without prejudice conduct the case.

R. CONCERNING A COURT IN RESPECT OF CORPORATE MONEY. 65

LXIX. In respect to claims made by the citizens of the municipium Flavium Malacitanum against any person being a citizen or resident alien within the said municipium, or in respect to any legal action with such person, where the sum concerned is more than 1,000 sesterces, but less than the amount requiring adjudication and the assignment of a 69 court on the part of the proconsul,[56] in such matter, the duovir

matter, and pass a decree to the effect that the accounts are satisfactory. On the other hand, where the matter is complicated or doubtful, the *decuriones* are to appoint a commission of three persons, called in the rubric 'patroni', and standing in the position of *actores municipii*. It was, however, still a matter of administration, and there was no question so far of an actual judicial process. The terms *patroni causae*, *rem agere*, *causam cognoscere*, and even *actionem ordinare*, are to be taken in a general and not in a strictly technical sense. A certain interval is allowed the commissioners in which to go into the matter, and then they have to make their report to the *decuriones*. If they are prepared to report that the accounts are satisfactory, the matter is again concluded, and the person is discharged of his responsibility by decree of the senate. But if their report is unfavourable, the third course has to be adopted, to which the fragment of cap. 69 refers.

[56] In the event of an adverse report from the commissioners, application had to be made to the judicial court of the *duovir*, who decided the case in the usual way by the assignment of *judices*. Small amounts, under one thousand sesterces, were apparently exacted in some more summary way. Where, however, the amount in question was above a certain maximum, the case had to be reserved for the proconsul of the province. This is important information with respect to the jurisdiction of Latin towns, but unfortunately it leaves several questions unanswered. In the first place, the maximum is not given. It may have been the fifteen thousand sesterces of the Lex Rubria. But a far more important question remains. Did this maximum apply, as in the Lex Rubria, to all civil suits between

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or praefectus, charged with the highest jurisdiction in the said municipium, to whose tribunal application shall be made in the said matter, shall adjudicate and grant a court. . . . . .

individuals, or only to cases where public money was concerned? We have no evidence to decide the point, but I am somewhat inclined to take the latter view, and to regard the restriction as one of the first steps in the gradual encroachment of the central government upon the financial independence of the municipalities, which culminated in the appointment of *curatores* by the emperor. It seems to me that the establishment by the Lex Rubria of the fifteen thousand sesterces limit for civil cases was one of the consequences of the Lex Roscia, distinguishing Latin from Roman communities. Rightly viewed, the provision was not so much a restriction upon the community as an advantage for its inhabitants.