

J. Bradford CHURCHILL

***Sponsio quae in verba facta est?* Two lost speeches and the formula of the Roman legal wager**

This paper argues that the titles of two speeches, one each by Cicero and the elder Cato, can only be properly elucidated by reference to the formula of the *sponsio*, a legal wager over the truth or falsehood of some disputed or crucial claim. Two parties disagreeing over the truth of a certain claim wagered a sum and appealed to a third party to adjudicate, and the loser was bound by the decision. This process came to be used in legal disputes as a way of “cutting to the chase,” settling certain disputes quickly so as to establish the validity of the main action. The evidence we have indicates clearly that the formula for these latter judicial wagers framed the disputed fact as the protasis to a conditional expression of which the apodosis was a question: “If X happened, do you promise to pay Y amount?” When wagers were used by prominent politicians against each other in personal attack or defense, the apodosis was a statement: “If X did not happen, I promise to pay Y amount.”

With all that in mind, the titles of the two speeches in question are easy to explain. Until now, Cicero’s *Si eum P. Clodius legibus interrogasset* and Cato’s *Si se M. Caelius tribunus plebis appellasset* have been taken to mean that these speeches represent what each would have said if the stated action had taken place, or something along those lines. They are better regarded as *sponsio* speeches. Cicero would have lost his wager “if P. Clodius had questioned him under oath” and Cato “if M. Caelius, tribune of the plebs, had called him.” What is known of the content and context of both speeches supports this interpretation. Correcting for the sequence of tenses in the citations and variations in choice of pronoun, I propose that we reconstruct the original titles: *Si se P. Clodius legibus interrogavit* and *Si se M. Caelius tribunus plebis appellavit*. Cicero probably never offered the wager, and if he did it was almost certainly not accepted (since Clodius could not have won). It is only somewhat more probable that Cato did deliver his speech.