

# Return to the Wood in Roman Kent

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The remains of an incomplete Roman wax tablet dating from the reign of the Emperor Hadrian, which was discovered during an excavation in 1986 in London, have attracted scholarly attention for at least three reasons. First, it is according to Tomlin, who has discussed this text on more than one occasion ‘... the longest stilus tablet text to survive from Britain.’<sup>1</sup> In second place, the text, which seems to have been composed by a scribe, records some aspects of a legal transaction.<sup>2</sup> Finally, it mentions the names of three otherwise unknown Roman citizens from Kent who were somehow involved in the legal transaction.<sup>3</sup> Although informative, the context in which this text was produced remains unclear. The aim of this brief contribution is to survey the current range of scholarly interpretations of this text and to provide a possible alternative interpretation for this enigmatic document. For the purposes of this

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<sup>1</sup> TOMLIN 1996, 209. The text of this chapter may be found online at <http://www.trans-lex.org/108950>. (last accessed 21 October 2013). For a photo of the tablet, see <http://www.trans-lex.org/262120> (last accessed 21 October 2013). It currently resides in the Museum of London.

<sup>2</sup> For a discussion of the script and the likely composition of this text by a scribe, see TOMLIN 1996, 209-210.

<sup>3</sup> For a discussion of the names that are mentioned in this tablet, see KAKOSCHKE 2011, 269, 652. See also TOMLIN 1996, 214.

contribution, the reconstruction of the text in the Database Clauss-Slaby and Tomlin's translation of the text will be relied on:

Imp(eratore) Traiano [Had]ri[ano] Caesare Aug(usto) II Gn(aeo) / Fusco Salinatore co(n)  
s(ulibus) pr(idie) Idus Martias / cum ventum esset in rem praesentem / silvam Verlucionium  
arepennia de/cem quinque plus minus quod est in ci/vitate Cantiacorum pago DIBVSSV[---]  
/ [---]RABI[---]A(-) S adfinibus heredibus / et heredibus Caesenni Vitalis et via / vicinale  
quod se emisse diceret L(ucius) / Iulius Bellicus de T(ito) Valerio Silvino / l(denariis)  
quadraginta sicut emptione continetur / Lucius Bellicus testatus est se / [-----]<sup>4</sup>

In the consulship of the Emperor Trajan Hadrian Caesar Augustus for the second time, and Gnaeus Fuscus Salinator, on the day before the Ides of March [14 March 118].<sup>5</sup> Whereas, on arriving at the property in question, the wood Verlucionium, fifteen arepennia more or less, which is in the canton of the Cantiaci in Dibussu[ ] parish<sup>6</sup>, [ ], neighboured by the heirs [of... ] and the heirs of Caesennius Vitalis and the vicinal road<sup>7</sup>, Lucius Julius Bellicus said that he had bought it from Titus Valerius Silvinius for forty denarii, as is contained in the deed of purchase. Lucius Julius Bellicus attested that he [ ]<sup>8</sup>

Before embarking on a discussion of the text, a few remarks about its physical make-up are required. The tablet, most likely of silver fir wood, is rectangular with an indentation for wax.<sup>9</sup> The wax has not survived, but the scribal indentations in the wood have. It measures 14.5 by 11 cm and the holes made in the frame suggest that it was the first (inside) page of a longer document of which the rest has not survived.<sup>10</sup> It was found in a Roman-era refuse heap situated

<sup>4</sup> TOMLIN 1996, 211 for an account of his reconstruction of the text as well as 213 for a discussion of his reading of the text. According to the Epigraphic database Clauss-Slaby (<http://www.manfredclaus.de/gb/index.html>: last accessed 21 October 2013), the text may also be found in the following places: RIB-02-08, 02504, 29 Translex AE 1994, 01093 (where RIB refers to The Roman Inscriptions of Britain and AE to L'Année Épigraphique). Tomlin's reading of the text has been compared to the reconstruction in AE as well as in the Heidelberg Epigraphic Database. A reconstruction of the text together with Tomlin's drawing of it as well as photograph of it may be found in Burnham 1994, 302-304 as well as Plate XX (20) of this article. The photo been used as an additional comparator to corroborate the reading of the text.

<sup>5</sup> A new governor, Q. Pompeius Falco, was appointed to the Roman province of Britain in the year 118. See BIRLEY 1953, 50. In 122 Falco was replaced by A. Platorius Nepos. On the governorship of Q. Pompeius Falco, see BIRLEY 2005, 114-118. It is assumed that the Emperor Hadrian visited the province of Britain in 122, see DE LA BÉDOYÈRE 2010, (pbk), 51, 87; BIRLEY 2005, 308.

<sup>6</sup> On the legal classification of cities and towns in Roman Britain, see HOBBS-JACKSON 2010, 102-103.

<sup>7</sup> This mode of describing the extent of a property with reference to neighbouring owners and geographical features is well known from Roman legal sources, see TOMLIN 1996, 214.

<sup>8</sup> TOMLIN 1996, 211. The tablet is also mentioned in passing by HOBBS-JACKSON 2010, 71-72.

<sup>9</sup> TOMLIN 1996, 209 for a discussion of the discovery and conservation of the tablet. And on the written culture of Roman Britain, see TOMLIN 2011, 133-152.

<sup>10</sup> *Idem*.

near the Walbrook, a stream that ran through Roman London and emptied out into the Thames.

The tablet contains the following information a) a date; b) an attestation that someone had arrived at a woodland; c) a description of the size and location of the woodland; d) references to the neighbouring owners and a specific geographic feature (the vicinal road); e) a reference to the sale of the woodland and finally, a partial reference to a formal attestation by the purchaser (a certain Lucius Julius Bellicus) in the sale. Owing to the legalistic language used in this tablet, scholars have generally assumed that this text must have been produced in a legal context, but what exactly this context was remains unclear. The interpretation of Tomlin<sup>11</sup>, who has studied this tablet in some detail, remains widely cited. This interpretation will be set out more fully below. More recently De La Bédoyère has suggested that '[the] document ... was probably a [record of a] case heard by the judicial legate'<sup>12</sup> while Korporowicz has ventured '... that originally it was a court protocol or similar judicial document'<sup>13</sup> which, in his view, was linked to Roman litigation over the ownership of the woodland pursuant to a sale. Since the text breaks off in the middle of the attestation of the purchaser of the woodland, it cannot be established with absolute certainty what this document was, but an assessment of the range of possibilities in light of our knowledge of Roman law may cast new light on this text.

Tomlin's reconstruction of and commentary on the text has led him to speculate that it likely refers to a record of a judicial inspection *in loco* of the woodland that is connected in some way to its prior sale. Such an interpretation is based on the passage *cum ventum esset* ... a legalistic phrase found in other Roman legal documents where it is used to indicate that an inspection of some sort had occurred.<sup>14</sup> The legal dispute arising from the prior sale of the woodland, which gave rise to the judicial inspection, may have occurred, according to Tomlin, in the context of one of the following two scenarios. It is possible (given the Celtic name of the woodland and the unit of measurement used to describe its dimensions) that it was a pre-existing 'sacred Celtic grove' which, after the creation of the province, had become *res publica*.<sup>15</sup> This property may have illegally come into the possession of individuals on account of a (void) sale, thus necessitating a judicial inspection to ascertain the status of

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<sup>11</sup> TOMLIN 1996, 213-214.

<sup>12</sup> DE LA BÉDOYÈRE 2010, 91.

<sup>13</sup> KORPOROWICZ 2012, 145.

<sup>14</sup> TOMLIN 1996, 213.

<sup>15</sup> TOMLIN 1996, 213.

the land. Alternatively, the woodland may have been private property, which at one time had been seized from a capitulated tribe, thereafter assigned to a certain Roman city and subsequently sold off to Romans.<sup>16</sup> Thus, the legal dispute may have arisen out of the sale (eg. over the measurements of the land sold or some such).

While this interpretation of the text cannot be ruled out, it does run on slender legs. The use of the phrase *cum ventum esset* ... is not conclusive proof that a judicial inspection had occurred and, as Tomlin has admitted, it cannot be gleaned from the text who had visited the woodland.<sup>17</sup> Furthermore, even though it is known that the court of the provincial governor (in the case of Britain an Imperial Legate) moved around in the province, too little is known about the court system in Britain to establish if and how frequently a court of this kind made judicial inspections *in loco*.<sup>18</sup> Furthermore, little can be inferred from the references to the prior sale and the inference that the name of the woodland referred to a 'sacred Celtic grove' seems rather romantic. A similar objection may be raised against the interpretation assigned to this text by De La Bédoyère. A judicial legate was only appointed from time to time when the Imperial legate did not have spare capacity to deal with courts and jurisdiction. Nothing is known about the appointment of a judicial legate in or around 118.<sup>19</sup> This then leaves Korporowicz's interpretation that the text is somehow related to a 'court protocol' or something similar.

It is perhaps best to start the analysis of this tablet with that part of the text over which there is more clarity. The tablet records that a woodland of a certain size and location had been sold by Titus Valerius Silvinus to Lucius Julius Bellicus for the price of 40 *denarii*. We are also informed that the sale was recorded in a deed of purchase as was the custom with most sales of land in the Roman Empire. Investigations into the names of the parties to the sale have not yielded any results. Kakoschke's exhaustive study of the personal names in Roman Britain has not revealed anything more in relation to these two individuals other than the suggestion that L. Julius Bellicus was most

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<sup>16</sup> Idem.

<sup>17</sup> TOMLIN 1996, 213.

<sup>18</sup> On the status of Britain as an Imperial (as opposed to senatorial) province and its governor (an Imperial Legate), see DE LA BÉDOYÈRE 2010, 83. It has been suggested that by the time when this tablet was written, London had become the capital of the province where the Governor resided (DE LA BÉDOYÈRE 2010, 84; HOBBS-JACKSON 2010, 105, 106). BIRLEY 2005, 11-12, on the other hand argues for greater caution. While it can be said with some certainty that the Imperial Procurator in charge of the collection of taxes resided in London by this date, it cannot be assumed that it was necessarily the provincial capital or that the governor resided there.

<sup>19</sup> DE LA BÉDOYÈRE 2010, 88; KORPOROWICZ 2012, 137-138.

likely of Romano-Celtic origin.<sup>20</sup> We assume, given the (triple) names of the individuals, that they were Roman citizens. Given the absence of any reference to a *stipulatio* and the dating of the text in light of modern knowledge about the Roman law of contracts, it seems reasonable to assume that the sale of a woodland contracted between two Roman citizens would have been done using the consensual contract of sale, *emptio venditio*. With that said and when compared to other written examples, it seems unlikely that the tablet in question is the actual record of the sale. Rather, the text in question seems to mention the sale as the *causa* for whatever reason it was drafted.

There is nothing in the tablet to suggest that the status of the parties was a factor in the dispute arising from the sale so this may be safely discounted. Furthermore, an issue over the status of one of the contracting parties would not have necessitated an inspection *in loco*. More problematic, however, is the object of sale. As Tomlin has shown, two variations are possible. Either the parties had (deliberately or mistakenly) bought and sold property that was public land and therefore could not be sold or the woodland was in fact private property, but some other aspect of the sale had given rise to the legal controversy.<sup>21</sup> If the former, then the sale was void. Buckland expresses it as follows:

A sale of what was not *in commercio*, a freeman or a *res sacra* or *religiosa*, was void, ... . [I]n classical law there seems to have been only an *actio in factum* for the innocent buyer of *res religiosa* [D.11.7.8.1], while another text, perhaps altered by Justinian, tells us that an innocent purchaser of *res sacra religiosa* or *publica* has an *actio ex empto* for his *interesse*, though “*emptio non teneat*.” [D.18.1.62.1, Cp. Inst.3.23.5]<sup>22</sup>

Given this context, it may well be that the tablet was drawn up in the context of a judicial inspection into the status of the land to determine whether the *actio ex empto* could be brought by L. Julius Bellicus for his *id quod interest* on account of the void sale. But even this does not necessitate an inspection *in loco*. Although there is considerable debate over the extent to which land-surveying took place in Roman Britain, since the archaeological evidence is slight, it must be assumed that it did occur (albeit not comprehensively) and where it took place, records of public property were kept both in the provincial capital and in Rome and could therefore have been consulted.<sup>23</sup> The only

<sup>20</sup> KAKOSCHKE 2011, 269.

<sup>21</sup> For an account of the legal status of land in Britain after the Roman conquest, see MATTINGLY 2007, 353-355, 359.

<sup>22</sup> BUCKLAND 1963, 483. Textual references in footnotes to Buckland given in square brackets. On this topic see most recently GENOVESE 2007, 87-147.

<sup>23</sup> MATTINGLY 2007, 361.

possible scenario under which this could have given rise to some sort of investigation *in loco* would have been to ascertain whether the public property as recorded in the provincial records matched the location and dimensions of the woodland in question. But even this does not necessarily presuppose an inspection *in loco* in the presence of the judge and the parties.

Following the second scenario proposed by Tomlin, namely that the woodland was private property, it may be assumed that some aspect of the sale gave rise to the legal controversy. Korporowicz speculates:

The use of the word *testatus* indicates that Bellicus was attesting the concluded contract. It can be assumed that Bellicus was a plaintiff and summoned Silvinus upon *rei vindicatio* or *actio negatoria* – the two petitory actions that were available to the owner. It is likely also that Bellicus used the *actio empti* which applied when the object of sale was not rendered to the buyer. In all those possibilities Bellicus's testimony was demanded according to the well-known Roman rule *ei incumbit probatio qui dicit, non qui negat*.<sup>24</sup>

According to this interpretation, the nature of the legal dispute based on the sale could have been one of two things, namely either that the woodland had not been delivered legally to the purchaser following the sale or that the parties were disputing the existence of a servitude over the woodland which the purchaser sought to deny the existence of using the *actio negatoria*. Much like Tomlin's suggestion regarding the 'sacred Celtic grove', Korporowicz's interpretation is based on slender evidence. All that can really be said with any degree of certainty is that the tablet mentions a sale and an incomplete attestation by the purchaser. How exactly the sale relates to the rest of the tablet cannot be ascertained. Two further problems with Korporowicz's analysis emerge. First, there is the issue of the type of land. Britain was an Imperial province governed by an Imperial Legate as representative of the Roman Emperor. As such, it was not legally possible for Roman citizens to obtain full Roman ownership (*dominium*) of provincial land (unless a special dispensation of 'italic soil' had been granted). According to classical Roman law, such property could only be held under a form of possession that was protected in law. Thus, a *rei vindicatio* would not strictly have been available to L. Julius Bellicus since it was available only to the Quiritary owner, i.e. someone who had full Roman ownership. Buckland again:

The *dominium* of this was in Caesar or the *populus* according as it was in an imperial or a senatorial province. The exploitation was largely in private hands under arrangements with the authority concerned, of which the most important is the system of *agri tributarii*, in imperial provinces, and *stipendiarii*, in others, both permanent holdings at a fixed rent. The

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<sup>24</sup> KORPOROWICZ 2012, 145.

holders were practically owners, but as they were not *domini* formal methods of transfer were not applicable. The holdings were, however, transferable informally. A holder who lost possession could not recover by the action appropriate to the recovery of Italic land, *vindicatio*, since this involved an assertion of *dominium*. We are not fully informed as to the nature of his remedy. We know that he had a modified *vindicatio* as early as Trajan, but we can only guess at its form. Probably his action instead of *dominium* asserted a right “*habere frui possidere licere*,” which is found as the technical description of his right.<sup>25</sup>

Thus even if Korporowicz’s assertion about the grounds for the legal dispute are correct, the action brought by L. Julius Bellicus could not have been the standard *rei vindicatio*, but had to be its provincial variant. Servitudes could be created over provincial land, provided it was not *res sacra* or *religiosa*, thus litigation in terms of the *actio negatoria* remains a possibility, as does litigation in terms of the *actio empti*, but since the text breaks off at this point it is impossible to reach any conclusion on the matter.

The analyses of this tablet by both Tomlin and Korporowicz presuppose, on account of the legalistic language used, that the context in which this text was drafted is somehow related to an existing lawsuit. This requires greater nuance. The relationship between legalistic language as visible in the text and the legal process is not necessarily a direct one. There are at least two other possibilities which may account for its drafting. Both relate to the activities of Roman land-surveyors. The first possibility, raised by Mattingly, is that it relates to the payment of taxes on land.<sup>26</sup> Provincial land was subject to various taxes.<sup>27</sup> Some of these taxes were based on landholding and thus could only be collected once the land in the province had been properly surveyed and recorded. Land-surveyors were involved in creating provincial records of different types of land (and the different classifications of land determined whether they were subjected to taxation).<sup>28</sup> Provincial records, usually engraved in bronze, were kept where the Imperial Procurator in charge of collecting taxes resided (in this case London).<sup>29</sup> This may also account for the location where this tablet was found. If it was merely ‘field notes’ by a land-surveyor that were incorporated into the official provincial records engraved in bronze, it could be discarded once the tablet was no longer useful.<sup>30</sup>

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<sup>25</sup> BUCKLAND 1963, 190.

<sup>26</sup> MATTINGLY 2007, 361.

<sup>27</sup> For an account of the various forms of tax levied in Roman Britain, see DE LA BÉDOYÈRE 2010, 91, 94-97.

<sup>28</sup> DILKE 1971, 112-113; MATTINGLY 2007, 360, 495.

<sup>29</sup> MATTINGLY 2007, 360.

<sup>30</sup> The extent of land-surveying in Roman Britain remains problematic, see DILKE 1971, 188-192.

Alternatively, it may well be that this tablet was created in the context of a Roman lawsuit, but in an indirect way. It is well known that land-surveyors fulfilled an important function in the context of Roman litigation concerning boundaries and, more generally, disputes over ownership of land.<sup>31</sup> They could either be instructed by the court to produce a report on the dimensions of the land or by one or both of the parties to the dispute in order to prove their assertion.<sup>32</sup> Since no example of a surveyor's report used in the context of a Roman lawsuit has, to my knowledge, survived, it cannot be proven with complete certainty. Some decrees by Roman Provincial Officials endorsing rulings made in relation to boundary disputes between communities have been preserved in various inscriptions, most notably from around the time of Hadrian, but these do not yield any results when compared to the tablet in question.<sup>33</sup> This is not altogether surprising since these are records of official decrees assigning land to one or the other community as a result of the settlement of a boundary dispute, rather than a surveyor's report used in a court case between individuals as evidence.

Two further pieces of evidence support my contention that this tablet is connected to the activities of a land-surveyor. The first piece of evidence is archaeological. Among the instruments discovered in the workshop of the land-surveyor Verus in Pompeii, there are wooden tablets with wax surfaces which were used to make 'field notes' before being transferred onto other materials for official purposes.<sup>34</sup> Of course these tablets were used for many different purposes in the Roman world, but their use can therefore be brought in connection with land-surveyors. Furthermore, the robust nature of these tablets would have made them much more useful for the making of 'field notes' than other forms of writing material. The location where this tablet was discovered, in a Roman-era refuse dump, also provides circumstantial evidence that this document was perhaps a set of notes that were later discarded either when the information had been transferred onto other material and/or the wax had become unusable. The second piece of evidence relates to the content of the tablet. While the two issues mentioned (the arrival at the woodland and its prior sale) are linked, they do have a slightly disjointed feel and would lend credence to these being 'field notes' to be organised later into a more comprehensive document.

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<sup>31</sup> DILKE 1971, 105.

<sup>32</sup> *Idem.*

<sup>33</sup> For a discussion of these inscriptions, see CUOMO 2007, 103-130.

<sup>34</sup> DILKE 1971, 73.



So what does all this amount to? Until more of this tablet is discovered or others are found that are sufficiently similar to admit comparison, speculation as to its nature and context will continue. All of the scholarly interpretations outlined above are plausible, though some seem more likely than others. While records of *negotia* are frustrating to work with owing to their inevitable incompleteness and lack of context, sources such as these are vitally important for our understanding of Roman law in the Roman province of Britain. For what they reveal, even in fragmented form, is the considerable pace with which Roman Britain became a Roman province. In our never-ending quest to uncover the relationships between law and society in the Roman world, texts such as these are vital. But insights into law and society cannot be achieved by one group of scholars alone. Texts such as these make clear that greater collaboration between lawyers and historians are necessary.

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