Willem Zwalve

Florus was a common soldier. We do not know where he was stationed, we do not know what rank he held and we do not know what befell him in his career. What saved him from total oblivion is the fact that in or about 212, he sent a petition to his commander in chief, the emperor Caracalla. The imperial ‘rescript’ in reply to that petition runs as follows:

If your brother, while a soldier, appointed you his heir, especially for property which he had at home, you cannot claim that which he left in the camp, even if he who was appointed heir of the same refuses to accept it. But those entitled to the estate become his heirs at law, provided no one has been substituted in the place of the said heir, and it is clearly proved that your brother did not consent that the castrensian property should go to you, for the will of a soldier in active service is observed as law.¹

Florus had run into considerable problems in winding up the estate of his brother, also a soldier, who had died somewhere in the vastness of the Empire. It concerned a problem frequently confronting relatives of deceased soldiers. Military men were literally privileged, that is to say that certain rules of law binding upon civilians did not apply to them. A military testament is a good example. Florus’s brother knew he had an option that was not open to civilians, i.e. to make two testaments. Ordinary civilians were (and are) only allowed to have one testament: a last will is a last will, so that every testament revokes all previous testamentary dispositions. That was not so with military men and there was some good sense in that privilege, as military men as a rule did not have one estate, but two. Why?

¹ Codex Justinianus 6.21.1: Frater tuus miles si te specialiter bonis quae in paganico habebat heredem fecit, bona quae in castris reliquit petere non potes, etiamsi is qui eorum heres institutus est adire ea noluerit: sed ab intestato succedentes vensunt, modo si in eius loco substitutus non est et liquido probatur fratem tuum castrensia bona ad te pertinere noluisse, nam voluntas militis expeditione occupat pro iure servatur (all English translations of Roman legal sources are based on Scott’s translations: The Civil Law, 17 volumes, Cincinnati 1932).
Roman soldiers served a very long tour of duty, at least twenty-five years, and all that time they were far away from home. For a long time, ‘home’, to them, had not meant their own home, where wife and children awaited the return of the veteran, because a soldier was not allowed to marry. It was only Septimius Severus who abolished this rule.² So, in Florus’s time, ‘home’, to a soldier, more often than not still meant his parental home. It was there that he had a vested interest, for on the demise of his parents a soldier shared in their inheritance with his brothers and sisters. It will not have been unusual among soldiers to invest some of their income at home, as Florus’s brother had clearly done. This part of a soldier’s estate was known as his *bona paganica*, his ‘civil estate’. The adjective ‘paganicus’ no doubt refers to the estate that was invested at home, in his village (*pagus*) of origin. Separate from this part of his estate, a soldier would accumulate a ‘military estate’ (*bona castrensia*) during his time of service. As I see it, it will, as a rule, have consisted of a substantial claim against the imperial *fiscus*. I cannot accept that soldiers were so incautious as to accept all their pay (*stipendium*), let alone the substantive occasional benefits (*donativa*) they were awarded, *in cash*. They will have allowed it to accumulate, just drawing small amounts in cash (*in aere minuto*) and only occasionally large sums to invest at home. We know a lot about the financial dealings of common Roman soldiers by the spectacular finds at Vindolanda. We hear about loans advanced to soldiers, which clearly are to be interpreted as advances to be set off against their claim against the *fiscus* at the expiration of their service. More often than not, the *bona castrensia* will have formed the bulk of the estate of a soldier, certainly so if it is borne in mind that it concerned his accumulated earnings. This explains the soldiers’ privilege of being allowed to make two separate wills, one concerning his *bona paganica* and another disposing of his *bona castrensia*. This is what Florus’s brother had done. In one will, he had named Florus as heir to his *bona paganica*, whereas in another he had named an anonymous person as heir to his *bona castrensia*. The problem was that the latter had renounced the inheritance and Florus’s relatives at home – no doubt his brothers and sisters, already passed over in favour of Florus in the will concerning the *bona paganica* – now claimed their share of the military estate. This is a claim not supported by the common law of Rome, for the estate of a deceased person could

² Herodian 3.8.4 and see M. Kaser, *Das römische Privatrecht I* (München 1971), 317.