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# CIL III, 4185: “quisquis {h}e(ris)” or “quisquis he(res)”?

Radek Černocho

## Abstract

This article deals with possible emendation of the text of CIL III, 4185 (alternatively CLE 578, ILCV 296, RIU I, 80, CLEPann 25, AE 1984, 722). The second part of this inscription consists of three hexametrical verses; the preserved text of the first one is: “QVISQVIS HE POST ME DM LARIS HVIVS ET ORTI”; this is usually interpreted as follows: “quisquis {h}e(ris) post me d(o)m(inus) laris et huius (h)orti”.

This article introduces an alternative emendation. Instead of hypercorrection “{h}” followed by emendated verb “e(ris)”, the written form “HE” is deemed correct and emendated as substantive “he(res)”. Thus, the wording is: “quisquis he(res) post me d(o)m(inus) laris et huius (h)orti”. When constructing this emendation, apart from philological argumentation, the legal meaning of the text and similarities with the wordings of the testaments of Dasumius and C. Longinus Castor are considered as well.

## Keywords

CIL III, 4185; epigraphy; law of succession; Roman law

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## Introduction

This article deals with possibilities of emendation of the inscription CIL III, 4185,<sup>1</sup> and particularly with one of its parts, abbreviated “HE”, which is usually interpreted as “{h}e(ris)”, while we suggest the reading “he(res)”. Apart from philological aspects, both the legal meaning of the text and the parallels with formulations in the testaments of Dasumius<sup>2</sup> and C. Longinus Castor<sup>3</sup> are considered as well in this article.

It is a sepulchral inscription, found in 1845 in Savaria, Pannonia superior (nowadays Szombathely, Hungary), it is located in Hungarian National Museum in Budapest nowadays. It was written in late 3<sup>rd</sup> or during the 4<sup>th</sup> century AD. Its height is 59,5 cm, width 100,5 cm, and thickness 5 cm; letter size on respective lines varies from 3,8 cm to 7 cm.<sup>4</sup>

### CIL III, 4185

The inscription consists of prosaic and metrical parts (dactylic hexameter).<sup>5</sup> The text is as follows:

FL DALMATIVS V P EX PRO[ ]  
 QVI VIXIT AN XL ET AVR IVLIA CONP DVLC  
 QVI VIXIT AN XXXV IDEOQVE HVNC TITVLVM  
 SCRIPSERVNT QVISQVIS HE POST ME DM LARIS HVIVS  
 ET ORTI VICINAS MIHI CARPE ROSAS MIHI LILIA PONE  
 [ ]NDEDAS Q VIRIDIS DABIT ORTVLVVS ISTA BEATVM  
 [ ] VOLVSSIVS ET SABATIA LIB POSVERVNT

Its interpretation (according to CIL) is:

*Fl(avius) Dalmatius v(ir) p(erfectissimus) ex prof(tect(ore)) / qui vixit an(nis) XL, et Aur(elia) Iulia conp(ar) dulc(issima) / qui vixit an(nis) XXXV, ideoque hunc titulum / scripserunt. Quisquis he(ris) post me d(o)m(inus) Laris huius / et orti, Vicinas mihi carpe rosas mihi lilia pone / [Ca]nded[a], q(ue) viridis dabit ortulus. I[t]a beatum! / ... Volussius et Sabatia lib(erti) posuerunt.*

English translation (my translation):

*Flavius Dalmatius, the most excellent man and former guard officer, who lived 40 years, and Aurelia Iulia, the sweetest companion, who lived 35 years, wrote this inscription: Whoever will be the owner of this house and garden after me, pluck the nearby roses for me and lay for me white lilies that will be grown in the green garden. So fortunate! Volusius and Sabatia, the freedmen, raised.*

The suggested interpretation of the 4<sup>th</sup> line is:

*/ scripserunt quisquis he(res) post me d(o)m(inus) Laris huius /*

Translation:

*wrote: whichever heir [who will become] the owner of this house [and garden] after me*

1 Apart from CIL, it was published also in CLE 578; ILCV 296; RIU I, 80; CLEPann 25; AE 1984, 722.

2 Test. Dasumi cited according to Girard (1913: pp. 798–801).

3 Diatheke Long. Kast. cited according to Girard (1913: pp. 802–805).

4 Mócsy & Szentlélek (1971: p. 117).

5 Combination of prose and verses is in case of sepulchral inscriptions common. Geist (1969: p. 20).

As other researchers explicitly or implicitly prefer the reading “{h}e(ris)”,<sup>6</sup> we will focus primarily on arguments supporting the reading “he(res)”.

## Epigraphy and aspiration

According to the database of abbreviations published in *L'Année Épigraphique* between 1888 and 1993,<sup>7</sup> the abbreviation “HE” is an attested way of abbreviating “he(res)”.<sup>8</sup> On the other hand, the same database does not provide<sup>9</sup> a single occurrence of using the abbreviation “E” for future form of “esse”.<sup>10</sup> Moreover, we deem quite unlikely that the typist would make such a mistake to write a single-letter-abbreviation hypercorrectly with two letters.

Apart from the considered form “he(res)”, there are four occurrences of words beginning with letter “h”. Two of them are correct forms (“hunc” and “huius”), other two are missing the aspiration: “(h)orti” and “(h)ortulus”.<sup>11</sup> On the other hand, there is no hypercorrect aspiration in the inscription, even though there are various expressions beginning with a vowel: “[...] ex [...] an(nis) [...] et Aur(elia) Iulia [...] an(nis) [...] ideoque [...] et [...] ista [...] et [...].” A question might arise, whether these expressions are not too common, thus preventing or seriously hindering the probability of *aspiratio vitiosa* – even though it does not seem to be used often, we can find such expression both in literary<sup>12</sup>

6 E.g. Adamik (1983: pp. 3–9), Geist (1969: p. 215), Güntert (1919: p. 172).

7 *Abbreviations in Latin Inscriptions*. Note: The database was inaccessible in the moment of publishing the article. The data retrieved from the database can be checked via another database: *A database of (Latin epigraphic) abbreviations by Trismegistos*. As the latter database is not based only on *L'Année Épigraphique*, the attested readings below would be more complex.

8 Other attested readings are: *h(ic) e(st)*, *He(tveticis)*, *He(mesenorum)*, *He(nculi)*, *he(redes)*, *He(suchus)*.

9 The same applies to another database *Computerized Historical Linguistic Database of Latin Inscriptions of the Imperial Age*.

*A database of (Latin epigraphic) abbreviations by Trismegistos* contains only six cases of using “E” for “erit”.

10 Attested readings are: *e(a)*, *e(am)*, *e(cclesiae)*, *E(Fastus)*, *e(ffigies)*, *e(gi)*, *e(go)*, *e(gregi)*, *e(gregiae)*, *e(gregii)*, *e(gregiis)*, *e(gregio)*, *e(gregium)*, *e(gregius)*, *e(is)*, *e(ius)*, *e(iusdem)*, *e(latus)*, *e(mentissimi)*, *E(merita)*, *E(meritae)*, *e(minentissimis)*, *e(minentissimo)*, *e(mit)*, *e(ndiotio)*, *e(ndotercisus)*, *E(nvicto)*, *e(o)*, *e(odem)*, *e(orum)*, *e(orumque)*, *e(pistolae)*, *e(pistulae)*, *e(ques)*, *e(quitata)*, *e(quitatae)*, *e(quitatam)*, *e(quite)*, *E(quites)*, *e(quiti)*, *e(quitum)*, *e(quo)*, *E(raviscorum)*, *e(st)*, *e(sto)*, *e(t)*, *E(utyches)*, *e(x)*, *E(xactum)*, *e(xemplo)*, *e(xemplum)*, *e(xterae)*, *e(xternum)*, *e(xterum)*. Note: “*e(st)*” was in the list twice, here we mentioned it only once.

11 We do not expect these two expressions to refer to different premises – the diminutive “(h)ortulus” was most likely used due to the metrics. Moreover, there is a tendency to use diminutives in the texts dealing with death. Monzó Gallo (2015: p. 393).

Note: Due to the context, we do not consider the readings “*ortus*” and “*ortulus*” being correct.

12 *Apul. Met. VI, 3 uidet dona pretiosa [h]et lacinias auro litteratas ramis arborum postibus que suffixas [...]* (my emphasis).

*Apul. Apol. 71 Satis puto ex [h]istis posse cuius liquere | Pudentillam non meis carminibus ab obstinata uiduitate compulsam [...]* (my emphasis).

*Apul. Apol. 74 [...]et sane habet in [h]istis | quod sibi plaudat. [...]* (my emphasis).

If not stated otherwise, literary texts are cited according to: *Brepolis. Cross Database Searchtool* (2015).

and inscriptionary texts.<sup>13</sup> Thus, we can conclude that the inscription tends to omit the aspiration, not to add it hypercorrectly.

## Metrical and syntactical aspects

The second part of the inscription (from “scripserunt” to “Volussius”) consists of three dactylic hexameters:

*quisquis he(ris) post me d(o)m(inus) Laris huius / et (h)orti  
vicinas mihi carpe rosas mihi lilia pone /  
[ca]ndeda{s} q(uae) viridis dabit (h)ortulus ista beatum*

As we can see, the second hexameter is an absolutely correct one. In the third one, we can identify a mistake, as the third syllable in “[ca]ndeda{s}(!) q(uae)” is long by position (and by nature as well, if we consider the final “s” as an attempt to make an accusative feminine); even though we know that due to the meaning “lilia [...] [ca]ndeda{s}” the third syllable shall be a short one, thus corresponding to the hexameter. That is why we cannot absolutely rely on metrical correctness of these hexameters. Otherwise would the metrical form constitute a strong argument for the reading “{h}e(ris)” as its short first syllable corresponds to the hexameter, while “he(res)” with long first syllable does not. The reading “he(res)” might be justified by the tendency of weakening the emphasis in late Latin.<sup>14</sup> Even though it is more likely to shorten vowels in unstressed syllables, shortening of stressed vowel is attested as well.<sup>15</sup> In the case analysed, the classical “long e” changes to vulgar “closed e”.<sup>16</sup> Specifically the expression “heres” with first vowel short<sup>17</sup> is attested in Heptateuchos,<sup>18</sup> written by Cyprianus Gallus, who lived in the beginning of the 5<sup>th</sup> century – it was written mainly in dactylic hexameters, but there are some passages written in hendecasyllable,<sup>19</sup> sc. Phalaeceus.<sup>20</sup>

Another argument against the reading “he(res)” could be that the second person form of the imperatives “carpe [...] pone” fits into the sentence “quisquis {h}e(ris) [...] d(o)m(inus)

13 CIL XIII, 11153 *Idorina hex votis Nag(a)e domum [d]a[t]*. (my emphasis).

ILAlg II, 1, 3143 *D(is) M(anibus) s(acrum) / L(ucius) Pon(po)nius / Marcus / vixit {h}an(nos) / LXXV / h(ic) s(itus)*. (my emphasis).

ILAlg II, 3, 8040 *Agrii M(–), qu(i) / vix(it) h(annos) CX / fec(it) fil/i<D>us*. (my emphasis).

CIL III, 14503/1 *Io<v>(i) Opt(imo) M(aximo) D<o>l(i)c(h)eno e/x vot(o) Ael(ius) Silvanus / {h}et Leonides leg(ionis) sig(nifer) / [b]en(e) m<e>r(enti)*. (my emphasis).

14 See Adamik (2014) and the literature cited there.

15 In the database *Computerized Historical Linguistic Database of Latin Inscriptions of the Imperial Age*, there were 112 occurrences of “*Correptio vocalium sine accentu*” and 31 occurrences of “*Correptio vocalium cum accentu in thesi*” (the day of the citation, the database contained total of 52 895 deviations from standard Latin forms).

16 Herman (1967: p. 39); Adams (2013: pp. 45 sqq.).

17 *Thesaurus linguae latinae* (2004: p. 2646).

18 Cypr. Gall. *Exod.* 542 *scandat p̄p̄etuis heres tropaeis* (my emphasis).

19 One of the passages ends by the verse 542. Buchberger & Kasper (1994: p. 1364).

20 Drexler (1993: p. 120).

[...] *carpe* [...] *pone*”, while “*quisquis he(res) [...] d(o)m(inus) [...] carpe [...] pone*” is syntactically incorrect. However, considering other mistakes in the inscription, one can easily assume that the inscription follows many times attested formulation “*heres esto*”, which might have been interpreted by mistake as a second person form, even though we know it is the third person form, as apparent from the plural “*heredes sunt*”.<sup>21</sup>

## Literary parallels

Tamás Adamik supports his reading “{h}e(ris)” by parallel with Martialis,<sup>22</sup> we can also quote Hilarius of Poitiers;<sup>23</sup> later Gesta Federici I. imperatoris<sup>24</sup> and Conradus Celtis<sup>25</sup> (the last two occurrences are even not dealing with context of succession). There are also formulations containing both “*heres*” and a form of “*esse*”, such as Persius;<sup>26</sup> later Polythecon<sup>27</sup> (in the latter, “*heres*” is a different person than the one addressed “*eris*”). But we can find also formulations supporting the reading “*he(res)*” – again, we can start with Martialis,<sup>28</sup> but we can also mention CIL XI, 6355;<sup>29</sup> later Thomas Seneca.<sup>30</sup> Thus, we can see that literary and inscriptionary parallels can support the reading “*he(res)*” as well. We also have to mention various salutations of travellers, such as CIL VI, 9437,<sup>31</sup> that have quite similar structure – address, imperative, required activity.

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- 21 D 28, 5, 60 (59), 2 Celsus 16 Dig. “*Titius heres esto: Seius et Maevius heredes sunt*”. *Verum est quod Proculo placet duos semisses esse, quorum alter coniunctim duobus datur.* (my emphasis).  
“Let Titius be my heir, and let Seius and Maevius also be my heirs.” It is true, as is held by Proculus, that the estate should be divided into two portions, one of which should be given to the two heirs who were appointed together.  
Translations of the Digests cited according to Scott (1932).
- 22 Adamik (1983: p. 6).  
Mart. X, 61, 3 *Quisquis eris nostri post me regnator agelli*, (my emphasis).
- 23 Hil. *Trin.* III, 20, 13 *Facti rationem, quisquis eris caelestium rerum scrutator, expone.* (my emphasis).
- 24 Gesta Fed. I. imp. 27, p. 16 [...] *Et tu, quisquis eris, cupiens audire libellum / Sis memor istorum, breviter que dixerit auctor. [...]* (my emphasis).
- 25 Conr. Celt. *Quattuor libri amorum* I, 1, 1, 16. *Et dixit: Phoebo nascere, quisquis eris!* (my emphasis).
- 26 Pers. 6, 41–42 *Tu ne bona incolumis minuas? – At tu, meus heres Quisquis eris, paulum a turba seductor audi:* (my emphasis).
- 27 Polythecon V, 406 *Gaude quisquis eris, ne post te gaudeat heres;* (my emphasis).
- 28 Mart. XI, 48, 3 *Heredem dominum que sui tumuli ve laris ve* (my emphasis).  
Mondin (2009: p. 455).
- 29 Adamik (1983: p. 5).  
CIL XI, 6355 *Stimetus L(uci) l(ibertus) Alexander / [se]xvir sibi vivus fecit / in hortulis suis / h(oc) m(onumentum) h(eredom) n(on) s(equetur)* (my emphasis).
- 30 Th. Sen. *Hist. Bon.* IV, 557 *Successit Laribus heres dominus que relictus.* (my emphasis).
- 31 CIL VI, 9437 [...] *quicumque es puero lacrimas effunde viator [...]*.

## Legal context

The legal context of the inscription can serve as a tool for its interpretation. Even though it is apparent that the sepulchral inscription cannot be analysed the same way as legal documents, the legal background of the case can help us consider, whether the suggested reading makes sense. Even though the inscription was made (“*scripserunt [...] posuerunt*”) by freedmen of the deceased, the relevant passage is written in the first person (“*post me*”), thus indicating that it expresses the wish of the deceased. The formulation “*post me d(o)m(inus)*” renders undisputedly that the deceased was the owner of the premises mentioned. The formulation “*quisquis {h}e(ris) post me d(o)m(inus) [...] carpe [...] pone*” expresses a wish that the future owner shall conduct specified activities. The context makes it clear that the legal title<sup>32</sup> for acquiring the ownership is a unilateral juridical act *mortis causa* (*testamentum, legatum, fideicommissum*).

It is beneficiary of a testament, who is denominated “*heres*” (heir). However, *testamentum* is a highly formal institute, while the inscription analysed of course does not fulfil its requirements.<sup>33</sup> The only way we could assume it is a valid testament (provided the inscription really expresses the will of the testator) is the military testament (*testamentum militis*), that was due almost without formal requirements.<sup>34</sup> It is, however, quite unlikely in this case, as only the ordinary soldiers were allowed to make a military testament valid even a year after their honourable discharge (*missio honesta*),<sup>35</sup> while the deceased was an officer (“*ex protectore*”).<sup>36</sup>

If we consider civil bequest (*legatum*), the beneficiary is denominated *legatarius*, which does not support our hypothesis, notwithstanding *legata* being as formal as *testamenta*. On the other hand, there are trusts (*fideicommissa*), which are absolutely informal and can be made in any way, written or oral. The beneficiary of trusts is denominated *fideicommissarius*; however, if the whole decedent’s estate is devised, the institute is called universal devise (*fideicommissum hereditatis*) and the beneficiary *heres fideicommissarius*.<sup>37</sup> As a result, it is very likely that the “*post me d(o)m(inus)*” is the heir (*heres*), either due to the *testamentum militis*, or, more likely, due to the *fideicommissum hereditatis*. The same conclusion can be traced in one of the German translations (“*Wer auch immer der Erbe ist nach mir der Herr dieses Gutes und der Gärten*”),<sup>38</sup> even though it reads the Latin text “*{h}e(ris)*”, not “*he(res)*”.

32 For ways of acquiring ownership see Plessis (2010: pp. 178 sqq.).

33 For formal requirements of testaments see Plessis (2010: pp. 217 sqq.).

34 Plessis (2010: p. 219).

35 For details concerning making a military testament see Meyer-Hermann (2012: pp. 125 sqq.), Salák (2016: pp. 145 sqq.).

36 *Protector Augusti* is an officer of higher rank (*officier supérieur*), member of the imperial guard (*gardes-de-corps de l'Empereur*). Desjardins (1873: p. 64). See also CLEPann (2007: p. 68) concerning the denomination of rank.

37 Sandars (2007: p. 255).

38 Cited according to Weber-Hiden. There are also German translations not containing the term “*der Erbe*”, e.g. Geist (1969: p. 215) translates the verse in question as follows: “*Wer du auch bist nach mir der herr dieses Hauses und Gartens.*”

Subsequently, a question might occur, why the word “whoever” (“*quisquis*”) is used, while mere “who” (“*quis*”) could seem sufficient. May be, it was because of the metrics. But it can be because of the effectiveness of the provision as well. The testator can appoint the heir or legatee under specific condition (*sub condicione*) or *sub modo*, he can impose the beneficiary to give a thing to another person or to conduct a specified activity (*legatum, fideicommissum*). In order to secure the most appropriate fulfilment of his will, he can also appoint substitutes for situations when the intended beneficiary does not accept the heritage or the bequest (in specific cases, a substitution applies even if the intended beneficiary accepts it: *substitutio pupillaris, quasi pupillaris, fideicommissaria*).<sup>39</sup> In such cases, it needs to be analysed, whether the restrictions are valid only for the first beneficiary intended, or even for his substitutes. The latter is made by the pronoun “*quisquis*”.<sup>40</sup> Then, the usual formulation is “*quisquis mihi heres erit*”,<sup>41</sup> as attested three times<sup>42</sup> in Testament of Dasumius<sup>43</sup> in connection with imperative (unlike in the inscrip-

39 Kaser (1971: pp. 688 sqq.).

40 Cf. D 35, 2, 1, 13 Paulus I.S. ad l. falcid. *Id, quod ex substitutione coheredis ad coheredem pervenit, proficit legatariis: is enim similis est heres ex parte pure, ex parte sub condicione heredi instituto. Sed ea, quae ab eo legata sunt, si omiserit hereditatem, non augebuntur, scilicet si ab eo nominatim data sunt, non “quisquis mihi heres erit”.* (my emphasis).

The share obtained by an heir through the substitution of his co-heir will benefit the legatee, for, in this instance, the heir resembles one who has been appointed absolutely for one part of the estate, and conditionally for another. Where, however, he refuses to accept the estate, the legacies with which he is charged will not increase by accrual; for instance, where they are bequeathed specifically, and not in general terms, as to “Whomever shall be my heir.”

41 The expression “*quisquis mihi*” in connection with “*heres erit*” (eventually in plural “*heredes erunt*” or with other words inserted between the two expressions) can be found in the following 33 fragments of the Digests: D 28, 5, 21 pr. Pomponius 1 ad sab.; D 28, 6, 3 Modestinus 1 diff.; D 28, 6, 8 pr. Ulpianus 4 ad sab.; D 28, 6, 8, 1 Ulpianus 4 ad sab.; D 28, 6, 10 pr. Ulpianus 4 ad sab.; D 28, 6, 31 pr. Iulianus I.S. de ambig.; D 29, 4, 22, 1 Iulianus 31 Dig.; D 29, 4, 22, 2 Iulianus 31 Dig.; D 29, 7, 3 pr. Iulianus 39 Dig.; D 29, 7, 14, 1 Scaevola 8 quaest.; D 30, 3 Ulpianus 4 ad sab.; D 30, 4, 1 Ulpianus 5 ad sab.; D 30, 81, 4 Iulianus 32 Dig.; D 30, 81, 4 Iulianus 32 Dig.; D 30, 104 pr. Iulianus 1 ad urs. ferocem.; D 30, 104, 3 Iulianus 1 ad urs. ferocem.; D 30, 104, 5 Iulianus 1 ad urs. ferocem.; D 30, 123 pr. Marcellus I.S. resp.; D 31, 88, 3 Scaevola 3 resp.; D 31, 88, 10 Scaevola 3 resp.; D 31, 88, 11 Scaevola 3 resp.; D 32, 95 Maecenas 2 fideic.; D 32, 98 Paulus I.S. de forma testamenti.; D 33, 1, 20, 1 Scaevola 18 Dig.; D 34, 2, 8 Paulus 9 ad plaut.; D 34, 2, 16 Scaevola 18 Dig.; D 35, 1, 36 pr. Marcellus I.S. resp.; D 35, 2, 1, 13 Paulus I.S. ad l. falcid. (its text cited above); twice in D 36, 1, 28, 2 Iulianus 40 Dig.; D 36, 1, 57, 3 Papinianus 20 quaest.; D 40, 7, 40, 8 Scaevola 24 Dig.; D 50, 16, 70 Paulus 73 ad ed.; D 50, 16, 116 Iavolenus 7 epist.; D 50, 16, 227, 1 Paulus 2 manual. The same or very similar formulations are attested in inscriptions, too:

CIL VI, 12064 *Dis Man(ibus) / Antoniae Phyllidi coni(ugi) / carissimae bene merenti / P(ublius) Geminius {A}Eetion fecit / sibi et suis libertis libertabus/que posterisque eorum et / quisquis mihi heres erit.* (my emphasis).  
CIL VI, 14027 *Dioga pater fecit sibi et suis / quos in titulo co(n)iecit b(ene) m(erenti) / dis Manibus / Caesoniae Atalant(a)e / vixit annis XXX / Ti(berius) Claudius Dioga / matri piissimae fecit et / Ti(berio) Iulio Diogae patri / et suis / et posterisque suorum / Ti(berius) Iulius Dioga fecit sibi et suis et / Claudiae Saturninae contubernali suae / sic tamen quod in tabellis scriptum est ita uti / quisque mi heres erit / h(oc) m(onumentum) ne liceat abal(i)enare ei.* (my emphasis).

42 Test. Dasumi 15–16 [...] *quisquis mihi heres | | erit dare damnas esto* [...].

Test. Dasumi 56 [...] *quisquis mihi heres erit dato* [...].

Test. Dasumi 125 [...] *quisquis mihi heres erit, do lego damnasque esto dare* [...].

43 Testament of Dasumius was made in 108 AD. His author might be the same one as in case of *Senatusconsultum Dasumianum*. Girard (1913: pp. 798–801).



tion analysed, it is future imperative). In Greek<sup>44</sup> Testament of Longinus Castor, there is the construction “Ὅς ἐάν” instead of mere “Ὅς”,<sup>45</sup> thus it corresponds to the difference between Latin “*quisquis*” and “*quis*”. In the Testament of Dasumius again, we can even find the precise expression “*quisquis heres*”,<sup>46</sup> even though it is still followed by form of the verb “*esse*”.<sup>47</sup> On the other hand, the expression “*quisquis eris*” is neither to be found in the abovementioned testaments, nor in the Digests. If we interpret the expression “*quisquis*” in a less juridical way, it could be understood as an intention that not only the immediate successor of the deceased, but also the future successors shall lay the lilies – such interpretation is not in conflict with the theory of *fideicommissum*.

The absence of the finite verb “*{h}e(ri)s*” might be an argument against the reading “*he(res)*”. However, the forms of the verb “*esse*” tend to be omitted from the text, especially if they can be inferred from the context.<sup>48</sup> If we read “*he(res)*”, the timeframe remains undoubtful. Apart from “*post me*”, the term “*he(res)*” is heading to the future as well as “*{h}e(ri)s*”, because neither heritage nor heirs can exist until the testator dies.<sup>49</sup>

Another issue connected with the reading “*he(res)*” might be the superfluity of using two nouns “*he(res) post me d(o)m(inus)*”. If we look closer at the both expressions “*he(res)*” and “*d(o)m(inus)*”, we can see that either expression has its own meaning. The general aim is to determine a person “*quisquis he(res) post me d(o)m(inus) Laris huius / et (h)orti*” who will conduct the wish: “*vicinas mihi carpe rosas*<sup>50</sup> *mihi lilia pone / [ca]ndeda[s] q(uae) viridis dabit (h)ortulus ista beatum*”.<sup>51</sup> The “*quisquis he(res)*” imposes a duty on the heir notwithstanding whether he was the first intended beneficiary (*institutus*) or the substitute (*substitutus*). “*Post me*” has the same meaning as “*mihi*” attested in the testaments and the Digests, but

Note: There were various *senatusconsulta* to enforce liberation set forth in a *fideicommissum* (*fideicommissaria libertas*): *Rubrianum*, *Dasumianum*, *Articuleianum*, *Iuncanum*, *Vitrasianum*. *Senatusconsultum Dasumianum* was the one introducing simplified procedure in case of absention *ex iusta causa*. See Kaser (1971: p. 255).

44 Testament of Longinus Castor is a preserved Greek text, which is a translation of original Latin testament. Keenan (1994: p. 101). It was made in Egypt 189 AD. Girard (1913: p. 803).

45 Diatheke Long. Kast. I, 13–14 [...] Ὅς ἐάν μου κλη[[ρον]όμος γέ[νη]ται, ὑπεύθυνος ἔστω δῶναι [...]. Translation: *Quisquis mihi he|res erit, damnas esto dare*.

46 Test. Dasumi 116 [...] *quisquis heres heredesve ... mihi erit eruntve, eum eosque rogo [...]*.

47 Such formulation is attested in 4 fragments of the Digests: D 28, 2, 3, 2 Ulpianus 1 ad sab.; twice in D 28, 6, 31 pr. Iulianus I.S. de ambig. (in the same fragment, we can find “*quisquis mihi*” as well); D 31, 61 pr. Ulpianus 18 ad l. iul. et pap.; D 32, 40, 1 Scaevola 21 Dig.

48 Cf. Cic. Att. XIII, 22, 4 [...] *ego ut constitui adero, atque utinam tu quoque eodem die!* [...].

NB: the omitted “*sis*” is not only subjunctive, but it is even a different person than “*adero*”.

49 D 29, 2, 19 Paulus 59 ad ed. *Qui hereditatem adire vel bonorum possessionem petere volet, certus esse debet defunctum esse testatorem*. (my emphasis).

Where anyone desires to enter upon an estate, or to claim praetorian possession of the same, he must be certain that the testator is dead.

50 Providing roses or other things of similar nature is quite common in sepulchral inscriptions, see e.g. CIL V, 4017; CIL V, 4448; CIL XI, 127.

51 The motif of flower garden could be also explained as an attempt to make contrast with sombre Underworld. For more see Güntert (1919: p. 172).

Some researchers state that the motif of flowers indicates Christianity: see e.g. Ciampoltrini (1991: p. 47); some contest it: see Adamik (1983: pp. 3–9).

it also expresses the future. Finally, “*d(o)m(inus) Laris huius / et (h)orti*” sets forth, which heir is ought to conduct the activity required, provided there are more heirs (co-heirs). The rule is that all the heirs are obliged to fulfil any activity imposed conjointly, unless stated otherwise, i.e. the testator can specify which heir is obliged to conduct the specific activity. Having considered this, “*quisquis he(res) [...] post me d(o)m(inus) Laris huius / et (h)orti*” means: my (co-)heir, who receives the premises, no matter if *institutus* or *substitutus*.

## Conclusion

When considering an appropriate way – “{h}e(ris)” or “he(res)” – of emending the inscription CIL III, 4185, there are various aspects to be considered. From the juridical point of view, “he(res)” may be more precise as the expression “*d(o)m(inus)*” can be interpreted as specifying which co-heir will be burdened, while the meaning of the missing verb can be easily inferred. From the epigraphic point of view, “he(res)” is more likely because of the manner how the abbreviations “HE” and “E” are usually dealt with. The way the inscriptions uses aspiration supports the reading “he(res)” as well. On the other hand, the metrical rules prefer the reading “{h}e(ris)”, even though “he(res)” can be with some problems tolerated, too. Finally, the literary and inscriptionary parallels can support the both readings.

We may conclude that the suggested reading “he(res)” seems to fit better into the inscription; nonetheless, the traditional reading “{h}e(ris)” cannot be excluded. Considering the very close meaning (at least from the layman’s point of view, when the heir – *heres* – is the one who will be – *eris* – the owner) and the quite similar spelling of both words, it might be a sort of *contaminatio* of both meaning and spelling.

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