A QUESTION OF INTERPOLATION IN D.9.2.27.17 AND CO.2.4

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Abstract

Comparing the texts D.9.2.27.17 and CO.2.4 with other sources, we can conclude that it is not possible to give a definite answer to the question – which of these two texts is altered or interpolated? Still, the solution from the Digest is more in line with other classical sources.

The most credible theory seems to be that both texts were subject to revision. In the original text, Ulpian probably would not allow a direct Aquilian lawsuit when a slave is injured so that his value is not permanently diminished, but for the expenses of medical care, he would allow a praetorian remedy based on the *actio legis Aquiliae*. In CO.2.4, the text is abbreviated so that the part in which Ulpian writes about the praetorian lawsuit is canceled, and only the part of the answer with the statement that an Aquilian lawsuit is not allowed remains. In this way, an impression is created that Ulpian did not allow any lawsuit. The text in the Digest, on the other hand, is simplified and summarized rather than abbreviated. It is retained only in the statement that an Aquilian lawsuit is allowed in this case, without making a difference between *actio directa* and *utilis causa*.

Still, an assumption remains and a definite interpretation cannot be made.

Keywords: Damage, *lex Aquilia*, Roman law, obligations, interpolations.

PITANJE INTERPOLACIJE U D.9.2.27.17 I CO.2.4

Sažetak

Na osnovu poređenja tekstova D.9.2.27.17 i CO.2.4, i na osnovu sadašnjeg stanja izvora, nije moguće sa sigurnošću utvrditi koji od dva teksta je izmenjen, a koji klasičan. Rešenje sadržano u Digestama više je u skladu sa drugim klasičnim tekstovima.

Najverodostojnije deluje teorija po kojoj su oba teksta bila predmet prerade. Ulpijan je najverovatnije negirao da se u situaciji kada je rob povređen od strane trećeg lica tako da njegova vrednost nije trajno umanjena, ali su učinjeni troškovi oko njegovog lečenja, gospodaru daje direktna akvilijanska tužba, ali je na kraju teksta dopuštao pretorsku tužbu. U izvoru CO.2.4, tekst je skraćen, čime je izostavljen deo u kome se dopušta primena pretorske tužbe te je ostao samo odgovor po kome se ne može dati (direktna) akvilijanska tužba. Tekst u Digestama je pojednostavljen i sažet, pa je ostao samo odgovor da se može dati akvilijanska tužba ne praveći razliku između direktne i pretorske. Ipak, rečeno ostaje u domenu pretpostavke, i konačno rešenje ovog problema nije moguće dati.

Ključne riječi: šteta, *lex Aquilia*, rimsko pravo, obligacije, interpolacije.

1. INTRODUCTION

D.9.2.27.17 ULPIANUS libro octavo decimo ad edictum *Rupisse eum utique accipiemus, qui vulneraverit, vel virgis vel loris vel pugnis cecidit, vel telo vel quo alio, ut scinderet alicui corpus, vel tumorem fecerit, sed ita demum, si damnum iniuria datum est: ceterum si nullo servum pretio viliorem deterioremve fecerit, Aquilia cessat iniuriarumque erit agendum dumtaxat: Aquilia enim eas ruptiones, quae damna dant, persequitur. ergo etsi pretio quidem non sit deterior servus factus, verum sumptus in salutem eius et sanitatem facti sunt, in haec mihi videri damnum datum: atque ideoque lege Aquilia agi posse.*

CO.2.4 SCRIBA: ULPIANUS LIBRO XVIIII AD EDICTUM SUB TITULO SI FATEBITUR INIURIA OCCISUM ESSE, SIMPLUM ET CUM DICERET: *1. Rupisse eum utique accipiemus, qui vulneraverit, vel virgis vel loris vel pugnis caedit, vel telo quove alio vis genere sciderit hominis corpus vel tumorem fecerit: sed ita demu, si damnum datum est.*

Ceterum si nullo servum pretio viliorem deterioremve fecerit, Aquilia cessat iniuriarumque erit agendum. Ergo et si pretio quidem non sit deterior factus servus, verum sumptus in salute eius et sanitatem facti sunt, in haec nec mihi videri damni Aquilia lege agi posse.

The interpolationist critique of the Roman legal sources, especially in its extreme form of the so-called "hunt on interpolations" that used to be popular, especially in the first half of the 20th century, seems to be out of fashion in the contemporary science of the Roman law. But, there is a situation where a researcher has no other option but to acknowledge the existence of an interpolation: when we are confronted with two different versions of the same text in the sources.

This is exactly the case with the sources that we are going to analyze in this paper. The first of the paragraphs cited above is from the Digest of Justinian, while the second one is preserved in the so-called *Comparison of the Laws of Moses and of the Roman Laws (Collatio legume Mosaicarum et Romanarum)*, a post-classical legal compilation also known as *Lex Dei* (in further reading: *Collatio*). Both of them are, obviously, variations of the same text from Ulpian's eighteenth book *on the Edict*.

In the first part of both versions, the meaning of the word *rumpere* (to inflict physical damage) has been examined, as well as its difference from the notion of *damnum* – material loss. Both are, separately, conditions for the use of the lawsuit for unlawful loss (*actio damni iniuriae*), i.e., the lawsuit based on the Aquilian law (*actio legis Aquiliae*). If the slave is physically injured, but his value is not permanently diminished, it is possible only to file a lawsuit for injury (*actio iniuriae*), but not for unlawful damage because no financial loss as a direct consequence of injury took place.

But, in the last part, the two versions differ regarding the answer to the question of the possibility of an action for unlawful loss in the situation when the value of the slave is not diminished, but the injury has caused a financial loss to the master in the form of the expenses for the medical cure of the slave. According to the version of the Digest, the master can claim compensation, whereas according to the version in *Collatio* he cannot.

Undoubtedly, at least one of the texts has been altered, whether by mistake of a scribe or intentionally. But is it one or both of them? And if one, which one?

2. OPINIONS IN LITERATURE

The question was examined in detail by modern authors a long time ago.[1] Three possible answers were offered:

- The text in the Digest has been interpolated;
- The text in *Collatio* has been interpolated;
- Both texts have been altered.

of the majority of authors claim that the text from the Digest was interpolated.[2] It is widely believed that a part of Ulpian's sentence, as found in *Collatio* (*in haec nec mihi videri damni Aquilia lege agi posse*), has been altered by the members of Tribonian's commission so that it sounds as: *in haec mihi videri damnum datum: atque ideoque lege Aquilia agi posse.* In that way, a solution contrary to the one proposed by Ulpian was created.[3]

The principal argument in favor of such an interpretation is also its main weakness: the fact that the practice of Justinian's compilers to alter the classical texts is widespread and well-known rendered the search for additional arguments superfluous. Besides, at least some of the authors who labeled the text in the Digest as interpolated had reasons not to be completely objective in their judgment, because the interpolation was an argument in favor of some of their theories.[4]

On the other hand, several authors defend the classicality of the legal solution from the Digest, if not the words of the text itself. Moreover, they sometimes do not have a completely objective position, because they use the text as cited in the Digest as proof of the theory that Roman classical law permitted an Aquilian lawsuit in the case of injury of a slave *Collatio*.[5]

[1] See an example in: Thayer, 93.
[2] Cursi, 118-119.
[3] Von Lübtow 127-129; Wittmann; Cannata; Valditara, 49; Behrends; Gerke, 97-100; Yaron, 14-15; Pringsheim, 7-8.
[4] For Behrends, this is a triumph of German interpolationist critique, because it shows clear evidence of the existence of interpolations. Behrends: *ibid*. For Gerke, the text in *Collatio* is an argument in favor of his theory that classical jurisprudents assessed damages only based on the value of the damaged or destroyed thing and that the principle *id quod interest* would be later introduced by the jurists of Justinian, by interpolations in classical texts. Gerke, *ibid.* For Yaron, the fact that the solution in *Collatio* differs from the Laws of Moses and other laws of the classical Middle East is proof for his theory that Ulpian did not have origins in that region as commonly thought, or at least that he did not show any influence of the Middle Eastern legal tradition. Yaron, *ibid*. Prinsheim favors this interpretation because it goes in favor of his theory that an Aquilian lawsuit *utilis causa* in the case of an injury of a free man did not exist in the classical law. Pringsheim, *ibid*. Similar in the case with Valditara, *ibid*.
[5] Hausmaninger, 31; Beinart: 77. Daube, 318.

Those who offered arguments, usually ascribed the alteration of the text in *Collatio* to a scribal mistake.[6]

Kaser believes that both texts have been altered. According to this theory, Ulpian wouldn't allow a direct Aquilian lawsuit if a slave had not been permanently disabled by injury, but in further text, Ulpian said that for the costs of medical cure, an action *utilis causa* based on an Aquilian lawsuit could be used. The text of *Collatio* was abbreviated so that the mention of the action *utilis causa* was left out, making an impression that Ulpian would not allow any lawsuit. On the other hand, Justinian's compilers summarized the text to a mere conclusion that an Aquilian lawsuit could be used and left out the discussion about the character of the *actio* (*utilis* or *directa*), because this distinction was not significant during their time.[7]

3. THE CONTEXT AND THE COMPARATIVE ANALYSIS OF TWO TEXTS

The paragraph of the Digest that we are analyzing makes up part of the chapter *Ad legem Aquiliam* – D.9.2. The major part of this chapter consists of excerpts from Ulpian's XVIII book on the Edict: 104 out of 174 paragraphs. The logic of the title also seems to follow that of Ulpian's book on the Edict. So, the entire title of Digest 9.2 seems to be based on Ulpian's text, in which the excerpts from other jurisprudents were added, but following Ulpian's systematic.[8]

As Lawson noted, Ulpian mostly followed the flow of words in the *lex Aquilia*, explaining legal terms one by one and making digressions on various questions. The paragraph that is central to our research is part of a long fragment (27), which is divided into 35 paragraphs in modern editions, and it is a part of the discussion on the meaning of the word *ruperit* in the *lex Aquilia*. It indicates physical damage or injury as one of the conditions for bringing a lawsuit based on this law (27.13-24).[9]

In *Collatio*, Ulpian's text is used in a different context: in the chapter *De atroci iniuria* –

[6] Watson, 209-242; Cursi, 118-120.
[7] Kaser, 31. Against: Yaron, *ibid.*
[8] Lawson, 1; Rodger, 329-333.
[9] Lawson, 2; see also Hausmaninger, 9.

CO.2, which begins with words of Moses, from the Bible:

CO.2.1 Scriba: *Moyses dicit: § 1. Si autem contenderint duo viri et percusserit alter alterum lapide aut pugno et non fuerit mortuus, decubuerit autem in lectulo, § 2. et si surgens ambulaverit homo foris in baculo, sine crimine erit ille, qui eum percusserat praeter ac cessationis eius mercedem dabit et ei medico inpensas curationis.* (=*Exodus*, 21.18-19)

In *Collatio*, we also find the title from Ulpian's book, from which the text was taken over: *Si fatebitur iniuria occisum esse, simplum et cum diceret*. This title obviously refers to the first chapter of the *lex Aquilia*, i.e., the situation when someone illegally kills a slave or an animal belonging to another person,[10] and then admits it.

Let's compare now the content and the style of the two versions of Ulpian's text. Both of them begin with the distinction between physical damage and financial loss as two distinct conditions for responsibility based on *lex Aquilia*. Even if the slave was wounded and thus there are lesions (*ruptiones*), it doesn't mean necessarily that the master suffered any material loss (*damnum*). If the value of the slave is not diminished, only an *actio iniuriarum* could be brought.

Up to this point, the content of the two texts is identical. There are minor stylistic differences. In *Collatio*, we find *caedit* instead of *cecidit, sciderit* instead of *scinderet,* and *demu* instead of *demum*. But their meaning is not changed, and the fact that we have two versions of the same text is not put into question. In Digest, we find a sentence that is non-existent in *Collatio* (*Aquilia enim eas ruptiones, quae damna dant, persequitur*), but this sentence is purely explicative.

Nonetheless, the end of the text differs greatly. The two versions give different answers to the question – could *actio damni iniuriae* be brought if the injury of the slave did not make him permanently less valuable, but only incurred the costs of a medical cure for the master? The text in the Digest allows this (*in haec mihi videri damnum datum: atque ideoque lege Aquilia agi posse*), while the one in *Collatio* denies this possibility (*in haec nec mihi videri damni Aquilia lege agi posse*).

Based on the aforementioned, it seems that both texts could have been the product of

[10] D.9.2.2pr GAIUS libro septimo ad edictum provinciale: *...'ut qui servum servamve alienum alienamve quadrupedem vel pecudem iniuria occiderit, quanti id in eo anno plurimi fuit, tantum aes dare domino damnas esto'*

alteration of the original Ulpian's text.

The paragraph in the Digest has some stylistic flaws which could indicate an interpolation, or an abbreviation at least. Besides, there is an explicative sentence that is non-existent in *Collatio*.

But, there are motives to believe that the solution of the text of *Collatio* could be the product of alteration. The fact that a chapter of Ulpian's book is mentioned makes us believe that the compiler of *Collatio* did not use the original text, but some post-classical compilation. In addition, as is commonly known, the books of the classical jurisprudents were not often divided into chapters, but strangely the title of the chapter, as referred in *Collatio*, refers to the first chapter of the *lex Aquilia*, while it seems logical to be dedicated to the third chapter, because the slave is not killed but wounded.[11] Furthermore, in the Digest, Ulpian's text is part of a long fragment, while in *Collatio*, it is completely out of original context.

Furthermore, the text in *Collatio* has a lot of grammatical and stylistic errors, while the one in the Digest looks linguistically cleaner. *Demum* is more correct than *demu* in *Collatio*, *in salutem* looks more common than *in salute*, and the word order *deterior servus factus* looks more correct than *deterior factus servus*.

It seems that Tribonians's commission had original texts of Ulpian's book, while the author of *Collatio* had only a post-classical compilation or altered version of the book.

It is worth mentioning that *Collatio legum Mosaicarum et Romanarum* is a compilation made presumably by a Jew or a Christian, and that its purpose is probably to prove superiority of the Jewish law, by demonstrating that the principles of Roman law have already existed for centuries before Rome in the Laws of Moses.[12] Thus, the author of this compilation could have been more motivated to alter the text than Justinian's lawyers, when slavery was less economically important. The author of *Collatio* might have wanted to show that the roots of a heavy form of *iniuria* could be found in the Laws of Moses, or he even wanted to show that for purely formal reasons Roman jurists did not allow compensation for damages in a situation in which much older Jewish law would allow it.

[11] D.9.2.27.5 ULPIANUS libro octavo decimo ad edictum: *'Ceterarum rerum praeter hominem et pecudem occisos si quis alteri damnum faxit, quod usserit fregerit ruperit iniuria, quanti ea res erit in diebus triginta proximis, tantum aes domino dare damnas esto.'*

[12] On *Collatio* see: Schulz; Scherillo; Masi; Cervenca; De Francisci; De Dominicis; Lauria; Barone Adesi; Pugliese; Frakes.

4. COMPARISON WITH OTHER CLASSICAL TEXTS

The existence of physical damage (*ruptio*) is, strictly speaking, one of the conditions for an Aquilian lawsuit. If a material loss to another person was inflicted without material damage, a praetorian remedy based upon *actio legis Aquiliae* would be used (*utilis causa, in factum*). In the paragraphs that follow after D.9.2.27.1, Ulpian gives several examples when it is taken as if a loss was inflicted by material damage (*quasi rupto*):

§ 18. *Si quis vestimenta sciderit vel inquinaverit, Aquilia quasi ruperit tenetur.*

§ 19. *Sed et si quis milium vel frumentum meum effuderit in flumen, sufficit Aquiliae actio.*

§ 20. *Item si quis frumento harenam vel aliud quid immiscuit, ut difficilis separatio sit, quasi de corrupto agi poterit.*

Similarly, citing Pomponius, Ulpian resolves the following situation:

D.19.5.14.2 ULPIANUS libro quadragesimo primo ad Sabinum *Sed et si calicem argenteum quis alienum in profundum abiecerit damni dandi causa, non lucri faciendi, Pomponius libro septimo decimo ad Sabinum scripsit neque furti neque damni iniuriae actionem esse, in factum tamen agendum.*

A lost thing is not damaged, but an *actio in factum* will be granted for its loss. Other classical jurisprudents offer similar reasoning, like in the following text of epitomes from the works of Alfen, prepared by Paul:

D.19.5.23 ALFENUS libro tertio digestorum a Paulo epitomatorum *Duo secundum Tiberim cum ambularent, alter eorum ei, qui secum ambulabat, rogatus anulum ostendit, ut respiceret: illi excidit anulus et in Tiberim devolutus est. respondit posse agi cum eo in factum actione.*

Paul seems to accept this principle as well:

D.9.2.30.2 PAULUS libro vicensimo secundo ad edictum *Si quis alienum vinum vel frumentum consumpserit, non videtur damnum iniuria dare ideoque utilis danda est actio.*

In this case, the thing is not lost, but still one cannot say that it is destroyed or damaged, because it was used according to its principal purpose (eaten or drunk), so an *actio utilis causa* will be granted.[13]

All of the abovementioned texts are in contradiction with both the version given in the Digest because the Digest speaks about a direct lawsuit and not *utilis causa*, and the version given in *Collatio*, where no Aquilian lawsuit is granted at all.

But, the next fragment of Paul seems to be an argument in favor of the version given in the Digest:

D.9.2.45 PAULUS libro decimo ad Sabinum *Lege Aquilia agi potest et sanato vulnerato servo.*

This text is, understandably, a thorn in the flesh for the authors who believe that the text D.9.2.27.17 is interpolated and that the solution contained in CO.2.4, according to which no Aquilian lawsuit is granted in the case of a wound of the slave which does not render him permanently disabled, is a classical one. Gerke tried to save the situation, claiming that Paul's solution refers to the situation when the value of the slave is temporarily diminished because of injury, and not to the situation when the costs of medical care are required as a material loss (*damnum*) inflicted by injury. According to Gerke, the compilers of the Digest accepted Paul's opinion but interpreted him differently, and in that sense, they changed the text of Ulpian in D.9.2.27.1.[14]

Although interesting and well-reasoned, Gerke's theory has several flaws: there is no proof that Paul had the temporary diminished value of a slave in mind. In the text D.9.2.27.17, the problem discussed is the lack of a physical lesion (*rumpere*), not lack of financial loss (*damnum*), as a precondition for Aquilian responsibility. Last but not least, in other texts, Ulpian and other classical jurisprudents grant an Aquilian lawsuit *utilis causa* in the situation when the damage was not a consequence of a physical lesion.

But, the strongest proof in favor of the existence of a legal remedy by which the master could be given reimbursement of the expenses of medical care of the wounded slave in classical law is the following: if the nonfatally wounded slave dies because the master did not provide

[13] Lübtow, 185. Birks suggests that the element of *iniuria* is the one that misses the implementation of the law, which is an opinion that seems not to be commonly accepted. Birks.
[14] Gerke, 88-89.

him with proper care, no legal remedy for killing the slave would be granted against the perpetrator, only for the act of wounding:

D.9.2.30.4 PAULUS libro vicensimo secundo ad edictum *Si vulneratus fuerit servus non mortifere, neglegentia autem perierit, de vulnerato actio erit, non de occiso.*

D.9.2.52pr ALFENUS libro secundo digestorum *Si ex plagis servus mortuus esset neque id medici inscienta aut domini neglegentia accidisset, recte de iniuria occiso eo agitur.*

This solution is a logical consequence of the well-known principle of Roman law – the damage inflicted through one's own fault is not considered damage at all:

D.50.17.203 POMPONIUS libro octavo ad Quintum Mucium *Quod quis ex culpa sua damnum sentit, non intellegitur damnum sentire.*

Taking into consideration that the master must provide medical care for the wounded slave to avoid more damage, it would be absolutely absurd if the classical jurisprudents did not find any legal remedy for the master to ask for reimbursement of expenses.

Besides, Ulpian allows a legal remedy based upon *actio legis Aquiliae* even in the situation when a free man is injured (D.9.2.13pr, D.9.2.5.3 D.19.2.13.4 PSI XIV. 1449. *recto* II. 1-9). Why wouldn't he then allow the same in the case of the wounded slave? Especially if we take into consideration that there is one more reason not to grant an Aquilian lawsuit in the case of wounding of a free man: according to the third chapter of the *lex Aquilia*, the lawsuit is specifically against the owner or the master (*ero, domino*), and a free man has no ownership on his own body:

D.9.2.13pr ULPIANUS libro octavo decimo ad edictum *Liber homo suo nomine utilem Aquiliae habet actionem: directam enim non habet, quoniam dominus membrorum suorum nemo videtur. fugitivi autem nomine dominus habet.*[15]

[15] This text seems to be about a case of injury of a free man *sui iuris*, because he is bringing a lawsuit *suo nomine*. Some experts believe that the text is interpolated, and doubt that classical law allowed a lawsuit in the case of an injury of a free man. Wittmann, for example, believes that the original text discusses injury of a *homo liber bona fide serviens* (Wittmann, 75-82), while De Robertis believes the same for the text D.9.2.38 (De Robertis, 193-194). The use of the Aquilian lawsuit for an injury of a *homo liber bona fide serviens* is not, however, confirmed in any other text. It is more probable that the text D.9.2.11.8 addresses a *possessor* whom a slave served in good faith, and not a *homo liber bona fide serviens* (Albanese, 307): D.9.2.11.8 ULPIANUS libro octavo decimo ad edictum *Sed si servus bona fide alicui serviat, an ei competit Aquiliae actio? et magis in factum actio erit danda*.

It is worth mentioning that in the case of the injury of a free person, the *alieni iuris* assessment of damages is based upon lost earnings, and costs of medical care:

D.9.2.7pr ULPIANUS libro octavo decimo ad edictum *Qua actione patrem consecuturum ait, quod minus ex operis filii sui propter vitiatum oculum sit habiturus, et impendia, quae pro eius curatione fecerit.*

Similarly, Ulpian calculates the damages in the case of the injury caused by throwing objects from a window (*actio de effusis et de iectis* – D.9.3.1.5), as well as Gaius (D.9.3.7), who applies the same principle in the case of an injury inflicted by an animal (D.9.1.3).

5. CONCLUSIONS FOR A POSSIBLE NEW INTERPRETATION OF THE SOURCES

As it could be concluded from the previously discussed arguments, the overconfidence with which the solution contained in the version of Ulpian's text cited in the Digest is sometimes entirely marked as the fruit of the work of Justinian commission, while the solution contained in *Collatio* as completely classical, is exaggerated. It is quite certain that the solution in *Collatio*, which shows that an injury of a slave without a consequential permanent diminishment of his value but requiring medical care does not grant an Aquilian lawsuit, is not in accordance with other sources. The text in the Digest may have been altered, but it does not necessarily mean that its principal meaning has been changed. It is possible that the specification of the lawsuit as *in factum* or *utilis causa* was left over: but not even that is sure to be the case because classical jurisprudents themselves did not use this terminology coherently.

Thus, the solution from the Digest is most probably a classical one, while the one from *Collatio* could be the consequence of a scribal error or intentional alteration, whether by the author of this compilation itself or by the author of the postclassical compilation cited by him.

The most credible seems to be the third theory, most famously proposed by Kaser, according to whom none of the two texts was interpolated by inserting words non-existent in Ulpian's text. Ulpian probably first said that an Aquilian lawsuit (direct one) cannot be given as cited in *Collatio* (*Ergo et si pretio quidem non sit deterior factus servus, verum sumptus in salute eius et sanitatem facti sunt, in haec nec mihi videri damni Aquilia lege agi posse.*). This

is probably followed by an explanation of why a direct lawsuit cannot be given, and the statement that a praetorian remedy based on an Aquilian lawsuit is to be given (for example *Aquilia enim eas ruptiones, quae damna dant, persequitur. Atque ideoque in factum agendum.*).

The text in *Collatio* is abbreviated in such a way that it cancels the last part, and thus creates an impression that Ulpian would not allow any legal remedy at all. The abbreviation was probably the consequence of the fact that the discussion about the exact character of an Aquilian lawsuit had no importance in the context in which the text was used. Namely, in *Collatio*, this text was used merely as an illustration in the context of the discussion about *iniuria*, and the *actio legis Aquiliae* was of secondary importance. The abbreviation could have been created earlier though, by a compiler of unknown compilation used by the author of *Collatio*, in which the text was not part of the title of the first chapter of the *lex Aquilia*, nor the third, as would be more logical.

The text in the Digest was probably altered as well but differently. Paragraph D.9.2.27.17 was simplified by canceling the discussion about the question, of whether a direct lawsuit can be brought, or an *actio utilis causa* should be given because there is no permanent physical damage (*ruptio*). Since the distinction between *actio directa* and *utilis causa* in their time was no more important, Justinian's compilers simplified the text and retained just the statement that an Aquilian lawsuit is allowed, without going into further details.

Still, it cannot be called interpolation in the proper sense, i.e., the insertion of words that did not exist in the original text. Let us make a comparison with another example of the two versions of the same Ulpian's text from the XVIII book on the Edict:

D.9.2.27.12 ULPIANUS libro octavo decimo ad edictum *Si, cum apes meae ad tuas advolassent, tu eas exusseris, legis Aquiliae actionem competere Celsus ait.*

CO.12.7.10 ULP. 18 ED. *Item Celsus libro XXVII digestorum scribit: Si, cum apes meae ad tuas advolassent, tu eas exusseris, quosdam negare conpetere legis Aquiliae actionem, inter quos et Proculum, quasi apes domini mei non fuerint. Sed id falsum esse Celsus ait, cum apes revenire soleant et fructui mihi sint. Sed Proculus eo movetur, quod nec mansuetae nec ita clausae fuerint. Ipse autem Celsus ait nihil inter has et columbas interesse, quae, si manum refugiunt, domi tamen fugiunt.*

Here, we can be absolutely sure that the version from *Collatio* is close to the original, while the one from the Digest is altered, but we cannot properly call it interpolated, because it was not an insertion of new material to the original text, but rather an abbreviation and summarizing of the original. A refined and well-argued discussion between Celsus and Proculus left only a brief statement of Celsus: an Aquilian lawsuit can take place. The abbreviating and summarizing were necessary to condense almost 2000 books of the classical jurisprudents to 50 volumes of the Digest.[16]

And this is most probably what happened with Ulpian's text about the wounded slave. But, of course, it is only an assumption – the definite and certain interpretation is impossible to be given.

6. LITERATURE

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D.9.2.11.8

D.9.2.13pr

D.9.2.27.1

D.9.2.27.12

D.9.2.27.17

D.9.2.27.5

D.9.2.2pr

D.9.2.30.2

D.9.2.30.4

D.9.2.45

D.9.2.52pr

D.9.2.7pr

D.9.3.1.5

D.9.3.7