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C. Helvidius Priscus *arbiter ex compromisso*

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**Summary:** This article concerns the identity and role of the C. Helvidius Priscus who is named in CIL IX, 2827 as an *arbiter ex compromisso* in a boundary dispute. After examining the inscription itself, I proceed to examine the implications of the mechanism of *arbiter ex compromisso* in the Roman judicatory system, and the possibility of a high-ranking Roman serving in such a role. The seemingly discrepancy between a high-ranking Roman and the role of a land surveyor is resolved hereby by juxtaposing it twice: once with the precedent of high-ranking surveyors in the agrarian bill of Rullus; and secondly, by reading it in the context of *locatio conductio operis faciendi* contracts.

**Keywords:** Roman history, Roman law, Epigraphy

**Introduction**

CIL IX, 2827 is an inscription from Histonium, in the Italian region of Samnium and dated to the first century CE. It is one of two recorded instances of a boundary dispute to be settled by an *arbiter.*¹ It is a record of an adjudication (*sententia*) of C. Helvidius Priscus, who – as an *arbiter ex compromisso* – presided over a boundary dispute between a private property owner by the name of Tillius Sassius and the city of Histonium. It portrays adjudication that relied on skills and techniques, which belong in the field of professional land surveying. I would like to suggest that the adjudicator presiding – C. Helvidius Priscus – explained his conduct as an *arbiter ex compromisso* using language, skills, and reasoning which originated from and belonged to the discipline of land surveying, with the identity of the person presiding playing a reassuring role. In this respect, the role of C. Helvidius Priscus of CIL IX, 2827 shared common features with that of a land surveyor who was a party to a *locatio conductio operis faciendi*: he was commissioned to guaranty a reliable survey, either by himself or through the agency

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¹ The other example comprises of five documents from Puteoli: TPSulp. 35–39, see Camodeca 1999, 106–111. They bear record of a settlement of a private arbitration. See the summary at Crook 1967, 78 f.

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of unnamed others. Furthermore, the reliance on professional land surveying, and a distinguished person presiding the arbitration procedure has at least one important precedent, in the form of the agrarian law put forward by Rullus, as tribune of the plebs at 63 CE. CIL IX, 2827 therefore sheds light on the function of the *arbiter ex compromisso* as a land surveyor pundit in cases of boundary disputes; the pre-eminence of the discipline of land surveying in such cases, and the cryptic identity of the C. Helvidius Priscus of CIL IX, 2827.

The Inscription

The text – inscribed on stone, and mutilated at the end – was discovered in 1845 at Campomarino, on the sea coast in the territory of Histonium. It was later edited by various scholars in collections of Latin inscriptions, studies of Roman law, and administration. It also belongs in a wider group of inscriptions recording boundary disputes and their resolution. I offer the text and translation:

*C. Helvidius Priscus, arbiter ex compromisso inter Q. Tillium Eryllum procuratorem Tilli Sassi et M. Paquium Aulanium actorem municipi Histoniensium, utrisque praesentibus iuratus sententiam dixit in ea verba, q(uae) inf(ra) s(crita) s(unt):*  
*Cum libellus vetus ab actoribus Histoniensium prolatus sit, quem desideraverat Tillius Sasse exhiberi, et in eo scriptum fuerit eorum locorum, de quibus agitur, factam determinationem per Q. Coelium Gallum M. Iunio Silano L. Norbano Balbo cos. VIII k(alendas) Maias inter P. Vaccium Vitulum auctorem Histoniensium fundi Heriani ci et Titiam Flaccillam proauctorem Tillii Sassi fundi Vellani actum esse in re praesenti de controversia finium, ita ut ut uritisq(ue) dominis tum fundorum praeentibus Gallus terminaret, ut primum palum figeret a quercu pedes circa undecim, abesset autem palus a fossa – neque quot pedes scripti essent propter vetustatem libelli interrupti in ea parte, in qua numerus pedum scritus videtur fuisses – inter fossam autem palum iter communem esset, cuius propietas soli Vacci Vituli esset: ex eo palo e regione ad fraxinum palum fixum esse a Gallo et ab eo pale e regione ad supercilium ultimae lacus Serrani in partem sinisteri rem d(erectam) finem ab eodem Gallo*.
“C. Helvidius Priscus, arbiter ex compromisso between Q. Tillius Eryllus, the procurator of Tillius Sassius, and M. Paquius Aulanius, agent of the municipium of the Histonians, while both parties present gave his sentence using the following words, which are written below: Since the agents of the town of Histonium have produced the old document, (libellus) which Tillius Sassius requested should be put in evidence, and in it was written, in relation to those places which are at issue in this matter, the determination had been made by Quintus Coelius Gallus, on 25 April in the consulships of Marcus Junius Silanus and Lucius Norbanus Balbus between Publius Vaccius Vitulus, the immediate predecessor in title of the Histonians for the Herianic estate, and Titia Flacilla, an earlier predecessor in title of Tillius Sassus for the Vellan estate, made in the present dispute over the boundaries, so that in the presence of both the then owners of the lands Gallus should put an end to it in this way. First he should fix a peg (palus) about eleven feet from the oak tree (quercus) but the peg is missing from the ditch (fossa) – and it is not clear how many feet were written because of the age of the book which is faulty in that part in which the number of feet appears to have been written – but so that between the peg and the ditch there should be a common road, which should be the sole property of Vaccus Vitulus, from that peg in a line to the marked ash tree a peg was to be fixed by Gallus and from that peg in a line to the far bank of the pond of Senanus into the more left-hand side, the straight end by the said Gallus.”

Places and Names

Histonium lay on the coast of the Adriatic, about five miles south of a headland called Punta della Penna. It was mentioned among towns of the Fren- tani.7 According to the Liber Coloniarum and other sources, it received settlers, most likely under Caesar who was searching for settlements for his veterans.8 However, Histonium remained a municipium, and did not become a colonia.9 Inscriptions and textual evidence, alongside archaeological remains, which include traces of a theatre, baths, and other public edifices, besides numerous mosaics, statues, and columns of granite or marble, all attest that Histonium flourished under the Principate. Moreover, it must have been a cultured enough town for a youth by the name of L. Valerius Pudens to have won the prize of Latin poetry in the contests held at Rome in the temple of Jupiter Capitolinus.10

The names mentioned in CIL IX, 2827 add little to our understanding of the background of the events recorded. C. Helvidius Priscus is first to be mentioned.

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7 Plin. Nat. 3.17.
8 Lib. Colon. 17–18; De Felice 1994, 24–32; Elliott 2004, 138.
9 Orell. Inscr. 2603, 4052.
10 CIL IX, 2860 = ILS, 5178. While it is true that this inscription is indicative mainly about Pudens, he should have been schooled in Histonium and encouraged to compete, which suggest that his merit was unlikely to have emerged ex nihilo.
This C. Helvidius Priscus could be the same person who was praetor in 70 CE and whose identical *tria nomina* are exhibited in Ann. Epig. 1929, 79(1), CIL XIV 2844 (PIR² H 59). According to Tac. Hist. 4.5.1 he originated from the Italian region of Carecina, not far from Histonium. If indeed it is the same Helvidius Priscus, he was unlikely to have been a surveyor by vocation. However, as an educated person who was well-versed in public administration there is nothing to suggest that he could not have been intimately acquainted with the methods of this profession. In fact, the Roman law of obligations allows the hiring of a surveyor – alongside other members of the *artes liberalis* – to perform a service with the *locator* assuming the risk for the successful execution of the task at hand. Under such a contract (*locatio conductio operis faciendi*) the *locator* can perform the work himself or supervise unnamed others. Similarly, C. Helvidius Priscus of CIL XI, 2827 could have been commissioned by the disputed parties to act as an *arbiter ex compromissio*, because they believed his appointment would secure professional surveying services while reserving judgement as to the identity of the acting surveyor(s) himself/themselves. Helvidius Priscus of CIL IX, 2827 could also have been the son of Helvidius Priscus the praetor of 70 CE or another family member bearing the same name, as the Helvidii Prisci originated from nearby Histonium, and the family’s reputation would have only augmented an act of arbitration of one of its members. A second name mentioned in CIL IX, 2827, and the only other name elsewhere attested – that of Q. Tillius Sassius – confirms that the act recorded in CIL IX, 2827 occurred approximately during the life of the Stoic philosopher and praetor of 70 CE, C. Helvidius Priscus, who was exiled and later executed during the reign of Vespasian. A person by the name of Q. Tillius Sassius is recorded as acting in place of the *flamen* in an inscription from 19 May, 87 CE. This Q. Tillius Sassius, known as *frater* Arvalis at least from 62–63 CE (CIL VI, 2046), and a *magister* of the *collegium* from 63 CE (CIL VI, 2043) died in 91 CE. The rarity of the name Sassius, and the *tria nomina* Q. Tillius Sassius with the name mentioned in CFA no. 55 col. II, lines 23–40 suggest it is the same person who acted as agent on behalf of Histonium. The resolution of Priscus itself rested on an earlier ruling of one Quintus Coelius Gallus, on 24 April, 19 CE. Though nothing is known of Quintus Coelius Gallus, his *modus operandi* of searching for evidence for the original boundary line was consistent with that of land surveyors.

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11 This means that in such a contract the conductor will receive no *merces* unless the service is executed to an agreed-upon standard. For the notion of ‘liability’ and ‘risk’ see: Du Plessis 2002.
12 Zimmermann 1996, 393–397; Du Plesis 2012, 99 f.; Birks 2014, 98.
13 CFA no. 55, col. II, ll. 23–40. Cf. Syme 1980, 58 f.
The Institution of an *arbiter ex compromisso*

The *arbiter ex compromisso* was a judicial authority, combining a reliance on law, with the ease of extra-court process. An *arbiter ex compromisso* was selected by the parties themselves. The same parties also concluded a formal contract with the *arbiter*, known as *compromissum*, in which (i) the details of the dispute were drawn; (ii) the jurisdiction of the *arbiter* was defined; and (iii) a pledge to honour his ruling was made. Hence, although not an officer of the court, a choice not to abide by the *arbiter*’s decision gave the losing party an efficient means to secure its interest in the form of an action for a breach of a legal contract (i.e. the *compromissum*). This form of conflict resolution must have been common.\(^{14}\) A document from Herculaneum from the same period (68–69 CE) concerning a boundary dispute between two Roman citizens clearly states that the *arbiter ex compromisso* relied on the professional verdict of a surveyor.\(^{15}\) In other documents the language used suggests that the *arbiter ex compromisso* either appealed to professional surveyors, or acted as one himself.\(^{16}\) Inscriptions habitually record this function of an *arbiter ex compromisso*, and this activity of them must have been popular enough for Roman jurists to be conscious of the inclination to rely on *arbitri ex compromisso* in such disputes, even in cases where an appeal to the court was the only avenue available, as in the case of *infamia*.\(^{17}\) Moreover, although the selection of an *arbiter ex compromisso* was made *ad hoc*, the appearance of the epithet “*arbiter ex compromisso*” on tombstones suggests that either some persons were assigned to this post habitually, or that once having done so, it reflected positively on them throughout their lives.\(^{18}\) In cases of boundary disputes, the choice of an *arbiter ex compromisso* who was – in addition to being trusted and respected – capable of retracing old titles, measuring boundaries himself and comparing his measurements with written records must have been appealing. Papyrological evidence confirms that it was also common.\(^{19}\) These skills were those of the *agrimensor*.

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\(^{14}\) Bablitz 2016, 236; De Nardis 1994, 139–146; Roebuck – de Loynes de Fumichon 2004, chap. 4–5.

\(^{15}\) Tabulae Herculaneenses 79, p. 4, left side.

\(^{16}\) Tabulae Herculaneenses 78, 79, p. 1.

\(^{17}\) *Ex compromisso arbiter infamiam non facit, quia non per omnia sententia est* (Dig. 3.2.13.5). For inscriptions see: AE 1988, 0332; AE 1982, 0188 (B); AE 1984, 0218; AE 1973, 0144; AE 1988, 0332. For these five documents from Puteoli TPSulp. 35–39, see Camodeca 1999, 106–111.

\(^{18}\) Cf. AE 1977, 0390; IL III, 04247; IDR 3, 1, 157; fig. 125 (foto and drawings). Cf. CIL III, 01552; CIL III, 08001 (Tibiscum in modern Romania).

\(^{19}\) P. Oxf. 6 (350 CE); P. Brem. 13 (114/115 CE, Hermopolis?); P. Ryl. II 87 (III CE, Hérakleopolis), verso; P. Cair. Isid. 3 = SB V 7669 = ChLA XLI 1199 (299 CE, Karanis); CPR XVIIa 22 = P. Cair. Preis. 8 = WChr 240 (321 CE, Hermopolis); P. Brem. 12 = SB I 4521 (113–120 CE, Hermopolis).
The agrimensores

Roman land surveyors were a recognized and a well-reputed professional group since the mid-Republic, if not earlier. They surveyed land for the government, local communities, as well as private individuals. At certain times their activity focused on the foundation of new colonies, or the augmentation of existing settlements. They were also involved in some of the practicalities of the settlement of Roman veterans. In addition, agrimensores were often asked to settle boundary disputes. Settling such disputes is often discussed in the “Writings of the Roman Land Surveyors”. Land surveyors were expected to be familiar with the law and its implications. Moreover, as in the case of CIL IX, 2827, the land surveyor was expected to be able to trace old titles, alongside, relevant edicts, letters, and other supporting documents. In fact, this seems to be what Quintus Coelius Gallus – whose ruling and modus operandi formed the foundation to Priscus’ decision – did. For he presented an old book that held a record of determinatio made at an earlier adjudication concerning the same properties. Surveyors took an active part in the application of the actio finium regundorum. This actio, which opened the tenth book of the “Digest” and relied on the authorities of Paul, Ulpian, Gaius, Modestinus, Julian, and Papian, referred to any boundary dispute between individuals. It set forth the legal mechanism of boundary regulation during the High Empire and beyond. According to Hyginus, surveyors could interpret laws relevant to their work and bring boundary dispute into a conclusion. In fact, Aggenus Urbicus, a late antique Roman agrimensor, whose work is included among the “Writings of the Roman Land Surveyors”, pointed out that surveyors could be appointed as arbitri. In the case of CIL IX, 2827, Q. Tillius

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20 Campbell 2000, xlvii. For broader survey see: De Nardis 1994, who also covers earlier literature; Moatti 1993; Cuomo 2007, 103–130 discusses the technical aspect of professional land surveying; some of the legal aspects of their work are discussed in the volume Möller – Knobloch 2013.
21 Campbell 2000 liv.
22 For their role as mediators in boundary disputes see: Campbell 2005; Elliot 2004; Maganzani 2007; Maganzani 2012; Morris 2016.
23 Urbicus, De Controversiis Agrorum, p. 20, ll. 22–31 (ed. Campbell).
24 Hyginus, De Condiciones Agrorum, p. 87 f., ll. 22–29 (ed. Campbell).
25 Elliott 2004, 102 traced professional land surveyor’s vocabulary in the first person decision of Priscus.
26 Dig. 10.1; De Nardis 1994, chap. 4.
27 Dig. 10.1.
28 Hyginus, De Condiciones Agrorum, p. 91–101 (ed. Campbell).
29 Urbicus, De Controversiis Agrorum, p. 30, ll. 17–19 (ed. Campbell). See also Dig. 4.8.44.
Eryllus, the procurator of Tillius Sassius, and M. Paquius Aulanius, agent of Histonium expected their arbiter ex compromisso, whom they themselves appointed, to have the actual skills to bring this dispute into conclusion. The ruling of the arbiter relied on methods and vocabulary which belonged in the province of professional land surveying.

The Role of the finitores in Rullus’ Agrarian Bill

The identity of C. Helvidius Priscus who was named as arbiter ex compromisso in CIL IX, 2827 poses some difficulties. The name C. Helvidius Priscus, the date of the publication of CIL IX, 2827, and its provenance of Histonium all point towards the C. Helvidius Priscus whose career and tragic end under Vespasian was recorded by Tacitus. However, it is unlikely that such a distinguished figure was also an active land surveyor, as members of this profession were of humbler social status. However, this problem could be resolved by suggesting that the C. Helvidius Priscus of CIL IX, 2827 was assisted by some unnamed professional surveyor(s) whose work he supervised and commandeered and whose discipline was necessary in such disputes, much like land surveyors do in contracts which modern scholars catalogue under locatio conductio operis. Such a modus operandi was not uncommon. Roman courts habitually relied on professionals to resolve factual disputes if professional expertise was required. Priscus therefore offered both professional judgement in addition to the authority his social status granted.

The resolution of boundary disputes by land surveyors of noble decent is not without precedent. Perhaps the most compelling parallel is the agrarian bill put forward by Servilius Rullus at 63 CE. In his proposal, Rullus wished to redistribute Roman land. The mechanism he envisaged was a commission of ten (decemviri) who enjoyed extensive authority, and were assisted by professional finitores of equestrian decent. For the purpose of identifying the C. Helvidius Priscus of CIL IX, 2827 the juxtaposition with Rullus’ mechanism points further towards Helvidius Priscus who was celebrated by Tacitus and Vespasian’s opponent.

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30 See for example the role of physicians in cases of suspicious acts of violence, deaths, and disputed maternity or paternity for reaching a verdict; Amundsen – Ferngern 1978; Israelowich 2014; Mithoff 2008.

31 I follow Nicolet et al. identifying the finitores with argimensores; cf. Nicolet 1970, 96, with n. 3.

32 Tac. Hist. 4.5; Tac. Dial. 5; Dio Cass. 56.12; 57.13; Suet. Vesp. 15; Plin. Ep. 7.19.
We learn from Cicero’s first consular speech of Rullus’ proposition. According to Cicero, Rullus pushed for an extensive agrarian reform. After rebuking Rullus’ law for the voting system it proposed, the extensive power it bestowed upon the decemviri, and its regal character, Cicero discussed the contents of the law and its mechanism of execution. The decemviri were to survey all Roman territories, record misappropriation of public land and impose revenues where needs be. For this purpose, they were equipped with an extensive support staff, which included a wide array of professionals. Rullus’ agrarian bill furnished the decemviri with clerks, secretaries, heralds, architects, and two hundred surveyors from the equestrian order, as well as twenty attendants and domestic staff.

Deinde ornat apparitoribus, scribis, librariis, praeconibus, architectis, praeterea mulis, tabernaculis, centunculis, supellectili; sumptum haurit ex aerario, suppeditat a sociis; finitores ex equestri loco ducentos, vicenos singulorum stipatores corporis constituit, eosdem ministros et satellites potestatis.

This support staff included two categories of personnel: the surveyors and the architects should conduct reliable surveys, while the apparitores (scribae, librarii, praecones) would later record, tax, and sell all ager publicus erroneously sequestered. With the assistance of these professionals, the decemviri had the right to collect revenues and commandeer all ager publicus treated as private. Moreover, for a period of five years the decemviri will be allowed to claim magisterial office; they have the right to buy all private land at a price they themselves set; they could establish colonies, restore old ones in Italy and outside it. They were entitled to visit any of the provinces or stay at Rome. They could confiscate land of free people, and even sell kingdoms. The decemvirs even enjoyed military and judicial prowess. They were able to set aside the verdicts of the criminal courts and delegate a quaestor. In order to make these executive decisions they were allowed to appoint and dispatch a land surveyor. Upon return, they were authorized to sanction the surveyor’s report: finitorem mittant, ratum sit quod finitor uni illi a quo missus erit renuntiaverit. Claude Nicolet probed Rullus’ demand that all finitores will be ex equestri loco. Having confirmed that for Cicero the expres-

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33 Cic. Leg. Agr. 2.11.
34 Cic. Leg. Agr. 2.14–15.
35 Cic. Leg. Agr. 2.11.
36 For the importance of public land, its use and distribution see: Rosellar 2010.
37 Cic. Leg. Agr. 2.32, 45, 53.
38 For the apparitores in general see: Purcell 1983; Jones 1949.
39 Cic. Leg. Agr. 2.33.
40 Cic. Leg. Agr. 2.34.
41 Nicolet 1970.
sion *ex equestri loco* explicitly designated those born into the equestrian order, Nicolet looked into Rullus’ agenda in posing this demand. He concluded that *finitores* [*ex equesti loco*] would have enjoyed particular juridical and professional authority because they were both *ex equestri loco*, and qualified *finitores*.\(^{42}\) We know that during the imperial period, surveyors enjoyed some judicial prowess.\(^{43}\) For Frontinus, the jurisdiction of surveyors was a topic to elaborate upon, not to confirm.\(^ {44}\) The high tier of *agrimensores* could have received their orders from the provincial governors himself.\(^ {45}\) It appears from the agrarian bill of Rullus that this was also the case during the late Republic. Returning to the protagonist of CIL IX, 2827, it is now possible to circumvent the alleged discrepancy between the professional language of Helvidius Priscus who acted as an *arbiter* [*ex compromisso*] and the distinguished social standing of C. Helvidius Priscus who confronted Vespasian. Boundary disputes required professional land surveys, which would have been either undertaken or merely commissioned by an *arbiter*. In turn, the *arbiter* must have either surveyed the disputed boundary himself, or at least had to be able to understand the technical language of the survey and use its conclusions for his ruling. There is no reason to reject the simplest solution as to the identity of the *arbiter* of CIL IX, 2827, particularly with the precedent of a large number of *finitores* of high social standing which were already in existence during Cicero’s consulate.

\(^{42}\) “Ainsi le doute n’est pas permis: *equester locus*, en 63 av. J.-C., est un peu différent de *equester ordo*”; Nicolet 1970, 80.

\(^{43}\) For their *iudicatio* see Ulp. *Libro Sexto Opinionum*: *Ad officium de finibus cognoscentis pertinet mensores mittere et per eos dirimere ipsam finium quaestionem, ut aequum est, si ita res exigit, oculisque suis subiectis locis*; Dig. 10.1.8.

\(^{44}\) Frontin. *De controversiis agrorum: *difficillimus autem locus hie est, quod mensori iudicandum est; sed nec minus ille exacius, quod est advocatio praestanda: prudentiam tamen eandem artifices habere debent qui iudicaturi sunt et qui aduocationes sunt praestituri. in iudicando autem mensorem bonum uium etius turn agere decet, neque ulla ambitione aut sordibus moueri, seruaare opinionem et acti et moribus [...]*: totum autem hoc iudicandi officium et hominem et artificem exigit egregium; (p. 34 f. ed. Lachmann).

\(^ {45}\) Dig. 10.1.8; CIL. X, 8038 = FIRA, 72, p. 419 (letter to Vespasian): *De controversia finium, quam ha[bit]is cum Marianis, pendent[is] ex [] is agris, quos a procuratore meo / Publilio Memoriale emistis, ut / finiret Claudius Clemens procurat[r]or meus, scripsi ei et mensorem / misi. []*; CIL. III, 586 = ILS, 5947 a, 1. 7: *adhibito a me Iulio Victore euacato Augusti mensore. De Nardis 1994, 259. For the distinction between professional *agrimensores* and their technical staff see: Mommsen et al. 1852, 320; Dig. 11.6.1–5. Members of the upper tier were referred to as *professores*, or even *auctores*. Later they were even entitled *viri perfectissimi*. Nicolet 1970, 97 f., with n. 1.
Conclusion

The dispute between Tillius Sassius and the city of Histonium revolved around a boundary line. For its resolution the parties decided to appoint C. Helvidius Priscus as an *arbiter ex compromisso*. His *modus operandi* included a consultation of an old title (*libellus*) and re-marking the boundary line, using sign-posts, which were habitually used by land surveyors, such as fixed pegs (*palus*), trees (in this case oak trees, *quercus*) and ditches (*fossa*). These skills (i.e. consulting an old title; comparing a written document with the landscape itself; drawing a new boundary in a reliable fashion) belong in the jurisdiction of the land surveyors, as the corpus of writings by Roman *agrimensores* so clearly manifests. The decision of the parties to appoint an *arbiter ex compromisso* suggested that they wished to avoid the formalities of the court, while maintaining the law as the measure by which they wished to bring their dispute to a conclusion. As the verdict of C. Helvidius Priscus was binding, his selection suggests that the parties believed he incorporated both the *gravitas* and the technical ability to preside over this matter. As the agrarian law of Rullus demonstrates, this was not the first instance of employing surveyors of noble descent. The nature of the dispute; the means Helvidius Priscus had taken; and parallel testimonies either in the “Writings of the Roman Land Surveyors”, as well as in inscriptions and papyri suggest that he approached the matter from the point of view of an *agrimensor*. CIL IX, 2827 should therefore be read as an example of an appointment of an *arbiter ex compromisso* who was either well versed enough in the discipline of land surveying, or at least pretend to appear so. This is indicative of the growing professionalism of Roman judicatory during the High Empire.

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