

# *DE TESTIBUS TRACTATURI*: A LATE TWELFTH-CENTURY ITALIAN CANONISTIC TREATISE ON LEGAL PROCEDURE<sup>1</sup>

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In Memory of Dr. Linda Fowler-Magerl

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*Abstract:* *De testibus tractaturi*, an unedited late twelfth-century, southern Italian treatise, draws on both Gratian's *Decretum* and decretals of Pope Alexander III to consider question concerning witnesses. It may also be influenced to some degree by the *Summa* of Simon of Bisignano. There is no evidence of any reliance on civilian authors. In considering the *exceptio contra personam testis*, it raises the question of whether testimony given by a witness who later died before trial remained valid. This subject is rarely treated in the early canonistic *ordines iudiciorum*. The author's application of a letter of Alexander III to Bishop Roger of Worcester (JL 13162) to this question appears to be unusual, perhaps unique, and sheds light on how the early *ius commune* evaluated evidence.

*Keywords:* *De testibus tractaturi*, Gratian, Simon of Bisignano, Pope Alexander III

*Zusammenfassung:* Der uneditierte Traktat, *De testibus tractaturi*, wurde wahrscheinlich kurz vor 1200 in Süditalien verfasst. Auf Grund Gratian's Dekret und Dekretalen von Papst Alexander III, behandelt der anonyme Verfasser Fragen der *exceptio contra personam testis*. Man findet keinen deutlichen direkten Einfluss der zivilistischen Autoren im Traktat, aber unter den zeitgenössischen kanonistischen Werken lassen sich aber Ähnlichkeiten mit der *Summa* Simonis Bisignano vermuten. Besonders interessant ist die Behandlung der Frage ob die Zeugenaussage eines vor dem Prozess verstorbenen Zeugnisses gelten dürfte. Um die Frage zu lösen, wendet der Verfasser auch als Quelle einen Brief des Papsts Alexanders zu Bischof Roger of Worcester (JL 13162) an. Die Arbeitsweise des Kommentars ermöglicht uns also einen Blick in die Entwicklung des Prozessrechts im frühen *ius commune*.

*Stichworten:* *De testibus tractaturi*, Gratian, Simonis von Bisignano, Papst Alexander III

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*Since what was heard and seen by witnesses now dead often comes to take on the opposite meaning, it pleased many and wiser men to set down events in writing and thus to hand down to posterity the memory of their deeds. Accordingly, I, Peter, Bishop of Pamplona, though unworthy, called for this charter to be written and confirmed by my own hand<sup>2</sup>.*

This late eleventh-century Spanish charter treats a familiar subject in medieval law: the fixing of memory. For men die and their words either pass to silence or, often worse, survive to be twisted by others. The preservation and organization of legal memory would be essential to the development of the rational, if imperfectly realized, legal and administrative apparatus of the modern world<sup>3</sup>. Memory is the focus of the following, an examination of a previously-unstudied anonymous twelfth-century treatise on witnesses: Monte Cassino, Archivio dell'Abbazia, 396, fol. 82v-83r. I dedicate this to the memory of Dr. Linda Fowler-Magerl, whose fundamental work in the history of romano-canonical procedural law contributed so greatly to our understanding of the early *ius commune*<sup>4</sup>.

The appendix to this note presents a transcription from microfilm with an apparatus of material sources. While of uncertain provenance, though likely from southern Italy, the manuscript dates to around 1200, perhaps even a bit earlier<sup>5</sup>. The treatise may also be part of, or derived from, a larger work, given that the author moves to the treatment of the judge after his consideration of witnesses. What little scholarly attention this heterogenous manuscript has received has focused, not on our treatise but, instead, two other works, the first, a continuation of Huguccio's

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<sup>2</sup> DESJARDINS, G. A. (ed.), *Cartulaire de l'abbaye de Conques en Rouergue*, Paris 1879, p. 68, no. 72: "*Quoniam fuit auditum nec non et quam visum mortuis testibus res vertit in contrarium, placuit pluribus et sapientioribus ut res gestas litteris denotarent et sic suorum actuum memoriam posteris suis traderent. Quapropter ego Petrus, etsi indignus, Pamilonensium episcopus, hanc cartam rogavi scribi et propria manu firmavi*".

<sup>3</sup> CLANCHY, M., *From Memory to Written Record: England 1066-1307*, London 2012<sup>3</sup>, also D'AVRAY, D., *Medieval Religious Rationalities: A Weberian Analysis*, Cambridge 2010 and *Rationalities in History. A Weberian Essay in Comparison*, Cambridge 2010.

<sup>4</sup> Among her many works, *Ordines iudicarii and libelli de ordine iudiciorum: From the Middle of the Twelfth to the End of the Fifteenth Century*, Turnhout 1994 and *Ordo iudiciorum vel ordo iudicarius. Begriff und Literaturgattung*. Frankfurt am Main 1984.

<sup>5</sup> INGUANEZ, M. (ed.), *Codicum casinensium manuscriptorum catalogus*, Monte Cassino 1915, pp. 262-263.

*summa*, the so-called *Summa Cassinensis*<sup>6</sup>; the second is the *Questiones Cassinienses*<sup>7</sup>. The latter work was connected, if not directly, to the civilian Bassianus, a student of Placentinus who later became an influential teacher at Bologna and then, after 1187, in England<sup>8</sup>.

*De testibus* proceeds according to the *Exceptio contra personam testis*, the exception raised against the qualifications and or admissibility of an opposing party's witnesses made after their introduction (*productio*) and before their reception (*receptio*) by the judge<sup>9</sup>. It begins by connecting accusation with the ability to testify and emphasizes how clerics and laymen are prevented, save under specific circumstances, of accusing one another<sup>10</sup>. The author discusses various faults, for example, infamy, that disqualify testimony. In a list of such exclusions, there is no "fourth" reason given, which makes one wonder if there was some sort of scribal error. The list also does not raise any unusual points. In addition to infamy, the rejection of the *ignoti* and those themselves accused of a crime, as well as the need for the *publicatio* of the witnesses called, are also found in

<sup>6</sup> Most recently PENNINGTON, K. and MÜLLER, W., *The Decretists: The Italian School*, in HARTMANN, W. AND PENNINGTON, K., *The History of Medieval Canon Law in the Classical Period. From Gratian to the Decretals of Pope Gregory IX*, Washington 2008, pp. 152-153.

<sup>7</sup> By both KUTTNER, S. and FRANSEN, G., on which see <http://legalhistorysources.com/1140a-z.htm> accessed on 13 January 2017.

<sup>8</sup> BASSIANUS, J., «Libellus de ordine iudiciorum», in *Bibliotheca iuridica medii aevi* 2.211-48, TAMASSIA, G. & PALMIERI, G. P. (eds.), Bologna 1913<sup>2</sup>; rp. Turin 1962. Among various studies, MAYALI, L., «Johannes Bassianus—Nachfolger des Vacarius in England?», in *Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Romanistische Abteilung* 89 (1982), pp. 317-325 and DONAHUE JR, C., «Bassianus, that is to say Bazianus? Bazianus and Johannes Bassianus on Marriage», in *Rivista internazionale di diritto comune* 14 (2003), pp. 41-82. For his possible influence on Anglo-Norman *ordines iudiciorum*, see most recently BRASINGTON, B., *Order in the Court. Medieval Procedural Treatises in Translation*, Leiden 2016, in particular chapter 5.

<sup>9</sup> On the *exceptiones contra personas testium* in the late twelfth-century canonistic procedure, in general, MAUSEN, Y., *Veritatis adiutor. La procédure du témoignage dans le droit savant et la pratique française (xii<sup>e</sup>-xiv<sup>e</sup> siècles)*, Milan 2006, pp. 387-580 and, more specifically, LITEWSKI, W., *Der römisch-kanonische Zivilprozess nach den älteren ordines iudicarii*, 2 vols. Krakow 1999, 2.383, p. 409. Useful for comparison is the (likely) contemporary treatise, *Tractaturi de iudiciis*, ed. GROSS, C., in *Incerti auctoris ordo iudiciorum, pars summae legum et tractatus de praescriptione*, Innsbruck 1870, pp. 117-119.

<sup>10</sup> This is treated by other, contemporary commentaries, for example the Anglo-Norman *Summa de multiplici iuris divisione* and the *Argumenta contra clericum*. On these works and their manuscripts, <http://legalhistorysources.com/1140a-z.htm> accessed on 12 January 2017.

contemporary *ordines iudiciorum*<sup>11</sup>. This list, while not remarkable, would certainly have been useful for both study and use. We also note the reference to the story of Susanna and the Elders, again a subject frequently treated by contemporary canonists<sup>12</sup>. This first part thus generally agrees with other legal commentators concerning the qualifications of witnesses, save that our author relies solely on canonistic authors<sup>13</sup>.

As to sources, *De testibus* draws on both Gratian's *Decretum* and decretals of Pope Alexander III. Given the latter, we can assume the work was composed around the 1180s or slightly later. When comparing the treatise with contemporary canonistic thought, it seems closest to the *Summa* of Simon of Bisignano:

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<sup>11</sup> LITEWSKI, *Der römisch-kanonische Zivilprozess*, p. 386, n. 439 and p. 407.

<sup>12</sup> For example the Anglo-Norman *Ordo iudiciorum*, the *Ordo Bambergensis*, edited as *Der Ordo iudiciarius des Codex Bambergensis P I 11*, VON SCHULTE, J. F. (ed.), Vienna 1872, pp. 289-325. on which see also BRASINGTON, B., *Order in the Court*, pp. 245-246.

<sup>13</sup> For an example of a twelfth-century ecclesiastical *ordo iudiciorum* only citing civil law texts to outline the qualifications of witnesses, see the PSEUDO-ULPIANUS, *De edendo*, an Anglo-Norman procedural work likely dating to the 1160s. There are two editions, *Incerti auctoris ordo iudiciorum*, HAENEL, G. (ed.), Leipzig 1838 and an earlier, version based on only one manuscript, Liège, Bibliothèque de l'université 168, 1v-18r, *Ordo iudiciorum cum glossa sub finem Saeculi XIII e Codice Trevirensi*, WARNKÖNIG, L. A. (ed.), Gent 1833. For the section concerning witnesses, BRASINGTON, B., *Order in the Court*, pp. 153-155. The *Ordo* cites various passages from Dig. 22.5.

Gratian: C. 2 q. 7 c. 52	De testibus	Summa Simonis <sup>14</sup>
<p>Nisi inreprehensibiles in maiorum accusatione non recipiantur. Item Yginus Papa. [epist. I.]</p> <p>Criminationes maiorum natu per alios non fiant, nisi per ipsos, qui crimina intendunt, si tamen ipsi digni et inreprehensibiles aparuerint, et actis publicis docuerint omni suspicione carere et inimicitia, et inreprehensibilem fidem habere ac conuersionem ducere</p>	<p>Inquiere quippe debet utrum possit eum capere in aliquo predictorum uerborum quod si non poterit reprehendere, recipiet eos, quod si dubitauerit in aliquo uel in aliquibus esse reprehendendos faciet iurare tamquam qui accusaretur de crimine se &lt;nunc&gt; esse criminosis ut ii q. iiii criminationes</p>	<p><i>Criminationes</i> usque <i>docuerint</i>. Hinc collige accusantem posse probare testibus uel sacramento se omni carere infamia. Quod forte de suspectis uel de ignotis uerum esse potest, ut ex littera sequenti cuique licet aduertere. Si uero quis uoluerit crimen in aduersarium in modum exceptionis obicere et retorquere non cogitur onus inscriptionis subire, ut in Extra. C. In exceptionibus. (Collectio Cantabrigiensis, 44; cf. Friedberg, <i>Canonessammlungen</i>, 15)</p>

Like *De testibus*, Simon's *Summa* addresses whether, in raising an exception against the opponent's witnesses, a litigant opened himself to an accusation. There is also no evidence of any dependence on any civilian jurist, which would be hard to discover anyway because of the canonistic nature of the treatise. I have checked the procedural treatise of Bassianus and there is no sign of any influence on our work. Among the Bolognese decretists I have been able to compare with our treatise, for example Rolandus, Rufinus, and

<sup>14</sup> *Summa in decretum Simonis Bisinianensis*, AIMONE, P. V. (ed.), Vatican City 2014, accessed formerly at <http://web.colby.edu/canonlaw/2009/09/24/decretum-decretists/> and now available at [http://www.unifr.ch/cdc/assets/files/summa\\_simonis\\_BAND\\_I%2014%2010%202007.pdf](http://www.unifr.ch/cdc/assets/files/summa_simonis_BAND_I%2014%2010%202007.pdf) accessed on 30 September 2016.

Johannes Faventinus, focus on the question of when inferiors may accuse superiors)<sup>15</sup>.

#### THE QUESTION OF THE DEAD WITNESS

*One man in making excuses for a witness that the emperor had summoned from one of the provinces, said that he could not appear, but for a long time would give no reason; at last, after a long series of questions, he said: "He's dead; I think the excuse is a lawful one"<sup>16</sup>.*

One place where *De testibus* may offer an unusual perspective is its reflection on the status of testimony given by witnesses who subsequently died. To my knowledge, no procedural work—either canonistic or civilian-- prior to the *Ordo iudiciarius* of Ricardus Anglicus (dating to the 1190s) takes up this subject<sup>17</sup>. To our author, it depends on when the witness died. If this occurred before the declaration of the sentence, his testimony would be valid provided—and again this is not found in the contemporary *ordines* as far as I know-- it had also been published and sealed with the seal of the ordinary judge. Such “*private instruments*” became fixed, public, and validated only after the seal, a subject that had been treated already by the *Codex* 4.19.5<sup>18</sup>. Civil law commentators such as Bassianus noted this as well<sup>19</sup>. As we see, the *De testibus*, however, chose to cite the canon law, specifically a decretal of Pope Alexander III to Bishop Roger of

<sup>15</sup> I have been able to consult the *summae* of ROLANDUS, RUFINUS, JOHANNES FAVENTINUS, and HUGUCCIO. The same appears to hold true for northern decretists, for example the Anglo-Norman *Summa Lipsiensis*.

<sup>16</sup> Translation from Suetonius, *Life of Claudius*:

[http://penelope.uchicago.edu/Thayer/e/roman/texts/suetonius/12caesars/claudius\\*.html](http://penelope.uchicago.edu/Thayer/e/roman/texts/suetonius/12caesars/claudius*.html) accessed on 11 October 2016.

<sup>17</sup> LITEWSKI, *Der römisch-kanonische Zivilprozess*, p. 403: “*Nach allgemeiner Meinung durfte man testes zu weiteren capitula nicht zulassen, es an Zeugen hinsichtlich des ersten capitulum mangelte. Nach Martinus war das möglich, wenn die ersten Zeugen verstorben waren*” and n. 727, citing the procedural work *Quod autem nullus*. On Martinus here, see ZULUETA, F. & STEIN, P., *The Teaching of Roman Law in England around 1200*, London 1990, pp. 42-43 and, for classical jurisprudence, Institutes 2.14.

<sup>18</sup> Cod. 4.19.5: “*Instrumenta domestica seu privata testatio seu adnotatio, si non aliis quoque adminiculis adiuventur, ad probationem sola non sufficient*”.

<sup>19</sup> BASSIANUS, *Libellus de ordine iudiciorum*, §420-421.

Worcester from 1167, (JL 13162)<sup>20</sup>. Unlike our treatise, this decretal is well-known to scholars, for example James Brundage<sup>21</sup>, who notes its importance in establishing the “*presumption*” of authenticity when records have been sealed by a notary. Such consideration for the authenticity of witnesses’ statements reflects a concern, particularly by canonists, that evidence be valid. To give but one, contemporary, example, the *Practica legum* of William of Longchamp, bishop of Ely, spends a great deal of time discussing the authentication of papal rescripts. Alexander’s decretal made its way also into the secular law. But it, like the remainder of the other works I have examined, never brings up the example of the dead witness.

The treatise’s concern with time and validity when it comes to evidence is of interest. It reflects an important feature of the developing procedural law of the late twelfth century. Both canonists and civilians became more and more sensitive to time, for example making a distinction between continuous and elapsed time<sup>22</sup>. Drawing upon Alexander’s letter and applying it, perhaps uniquely, to the question of valid testimony when a witness has died, *De testibus* is unusual. One simply does not see such questions about time and the validity of witnesses’ depositions raised earlier in the century. A few decades earlier, witnesses had given their testimony in the presence of judges; nothing was written down<sup>23</sup>. What survives was oral, remembered, certainly not authenticated speech fixed on the spot by a

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<sup>20</sup> The passage in our treatise reads *Scripta vero authentica, si testes inscripti decesserint, nisi forte per manum publicam facta fuerint, ita, quod appareant publica, aut authenticum sigillum habuerint, per quod possint probari, non videntur nobis alicuius firmitatis robur habere*. On this decretal, BRUNDAGE, J., *The Medieval Origins of the Legal Profession. Canonists, Civilians, and Courts*, Chicago and London 2008, p. 213 and n. 156, also 398, n. 92 and 439, n. 102 on contemporary notarial practice, also CHENEY, M., *Roger, Bishop of Worcester 1164-1179: An English Bishop in the Age of Becket*, Oxford 1981, p. 364; CHENEY, C. R., *Notaries Public in England in the Thirteenth and Fourteenth Centuries*, Oxford 1972, pp. 5-6.

<sup>21</sup> BRUNDAGE, *Medieval Origins*, pp. 212-213.

<sup>22</sup> MAYALI, L., *Law and Time in Medieval Jurisprudence*, in HELMHOLZ, R. H., et al., *Grundlagen des Rechts. Festschrift für Peter Landau*, Paderborn 2000, p. 618.

<sup>23</sup> For an earlier example from France concerning a disputed burial where the judges evaluated the witnesses’ persons and admissability, BRASINGTON, B., *Disputing the Dead: Litigation over Sepultura in the Diocese of Limoges in the Early 12<sup>th</sup> Century*, in ANDERSEN, P. et al., *Law and Disputing in the Middle Ages. Proceedings of the Ninth Carlsberg Academy Conference on Medieval Legal History*, Copenhagen 2013, pp. 41-54.

text. Evidence had always been in a present which, as Laurent Mayali has observed, is always “open”, and incapable of definition. In the charters and acta of the early twelfth century, the past, when it was referenced, which would naturally occur frequently given the nature of testimony itself, was almost always vague. We either encounter general references to events “*in the time of*” or, increasingly in the twelfth century, durations given in round numbers, for example thirty or forty years. These may very well have been times evoked to suggest, whether true or not, a claim to prescription<sup>24</sup>. In sum, time and testimony had been, as Michael Clanchy puts it, “*remembered truth*”<sup>25</sup>. With Alexander’s decretal and its inclusion in *De testibus*, things are different. Testimony need not be an observed performance given in the present; it was no longer tied to the witness standing before the judge. Provided it was validated by authority, it was preserved and valid. The judge no longer necessarily had to “hear” the testimony; he did not have to “see” the witness. It was fixed in time, validated time.

Our treatise illustrates Michael Clanchy’s observation on how documents ...*changed the significance of bearing witness by hearing and seeing legal procedures, because written evidence could be heard by reading aloud or seen by inspecting the document*<sup>26</sup>. Perhaps additional research will encounter other, contemporary treatises who took up as well the challenge of “*dead witnesses*” and their testimonies; until then, however, *De testibus tractaturi* stands alone, a sign both of the sophistication of romano-canonical procedural law and increasing reliance on the written record.

*De testibus tractaturi* is just one of many similar unedited legal tracts from the late twelfth century which deserve closer attention. It combines both theoretical

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<sup>24</sup> HELMHOLZ, R. H., «The Creation of a Canon Law of Prescription», in *Prescriptive Formality and Normative Rationality in Modern Legal Systems*, Festschrift for ROBERT, S. (ed.) KRAWIETZ, W. et al., Berlin 1994, pp. 265-283. Arguing on the basis of some twelfth-century English episcopal acta that prescription might sometimes be inferred, BRASINGTON, B., *Order in the Court*, pp. 120-121.

<sup>25</sup> CLANCHY, *From Memory to Written Record*, p. 296.

<sup>26</sup> CLANCHY, *From Memory to Written Record*, p. 255, but also p. 263 noting that oral testimony continued to be preferred; noting Richardus Anglicus in this regard, MAUSEN, *Veritatis adiutor*, p. 737.



and practical concerns. Granted, there is still much of the ancient civilian procedure, though to a far lesser degree than earlier in the century, that was likely not very practical to the reader, assuming there was one. However, by the time of *De testibus* there seems to be far less preservation of the antique law for its own sake—for example, references to augustal prefects and praetors—and more treatment of issues that could likely come up in litigation<sup>27</sup>. Tension between the older law and newer procedural contexts would remain—that is true of any legal system—but what the reader learned from our treatise likely not only appealed to the jurisperit, but also the jurist. For both, whether in study or court, were concerned with the validity of testimony. In its own, modest way, *De testibus tractaturi* thus considered a topic of vital interest to both the medieval and later law<sup>28</sup>.

*Summula De testibus tractaturi* (Monte Cassino, Babbazia 396, fol. 82v-83r)

<D>e testibus tractaturi que sint ille persone que ad testimonium admittantur et que non et quominus debeant recipi < > et quod sit iudicis officium uideamus. Notandum est quod clericus remouetur ab accusatione laicorum, ita laicus remouetur ab accusatione clericorum, ut infra c. ii q. vii sicut sacerdotes<sup>29</sup>, nisi suam uel suorum in iniuriam persequentur et tunc < > ad accusationem non tamen ad testimonium ut in quodam <alex.> cap. cuius tale est in < > quamuis simus<sup>30</sup>. Accusent ergo laici laicos et clerici clericos nisi reprehendatur de <quo>

<sup>27</sup> Compare, for example, Bulgarus' letter to the papal chancellor, Haimeric, which dates from the 1130s, on which see BRASINGTON, B., *Order in the Court*, pp. 101-102.

<sup>28</sup> On the origins of rationality and bureaucratic routine in the period, see, for example, D'AVRAY, n. 3 above. However, on the need to study medieval law in its context in order to avoid applying a teleological assumption of progress and improvement, AUSTIN, G. *How Old Was the Old Law: Talking About Change in the History of Medieval Church Law*, in *Bulletin of Medieval Canon Law*. NS. 32 (2015), pp. 1-18.

<sup>29</sup> C. 2 q. 7 c. 6.

<sup>30</sup> JL 14156. The decretal enjoyed a wide reception from Comp. I to the *Liber Extra*, X 1.3.3. Issued at Venice in 1177, it could serve as a *terminus post quem* for our treatise. See also HOLZMANN, W., *Decretales ineditae saeculi. From the Papers of the Late Walther Holtzmann*, CHODOROW, S. & DUGGAN, C. (ed. and rev.by), Vatican City 1982, number 761.

istorum impedimentorum per que canonice a testimonio excludantur que si non ista odium damnationis affectio personarum conditio calumpnie suspitio parentum <prelatio> criminis essentia testium inopia et eorum infamia de primo membro, in causa <> q. imprimis<sup>31</sup>; de secundo c. iii q. v accusatores<sup>32</sup> et c. uel testes<sup>33</sup>; de tercio c. iii q. v. illi<sup>34</sup>; de quinto c. iii q. v de accusatoribus<sup>35</sup>; de sexto iii q. v constituimus<sup>36</sup>; de septimo c. ii q. i in primis<sup>37</sup>; de octaua vi q. i infames<sup>38</sup>. Uidimus que persone sint recipiende ad testimonium et que non sequitur quomodo et quando et quod sit iudicis officium quominus ad examinationem iudicis spectat examinare testes et adeo ex necessitate quod nisi fuerint examinati eciam si data fuerit <sententia> nullius momenti erit ut c. ii q. i c. imprimis<sup>39</sup>. Inquire quippe debet utrum possit eum capere in aliquo predictorum uerborum quod si non poterit reprehendere recipiet eos quod si dubitauerint in aliquo uel in aliquibus esse reprehendendos faciet eos iurare tamquam qui accusaretur de crimine se <nunc> esse criminosis ut ii q. vii criminationes<sup>40</sup>. Item inquireret utrum fuerint et <> an noti si fuerint ignoti repellat eos ut c. ii q. u si mala in fine<sup>41</sup> sin autem non sequitur quando ante publicationem testium seu ante renuntiationem eorumdem ut in quodam <capitulo> Alex. In quod sic incipit robert debet<sup>42</sup> uerum publicationem uel renuntiationem non poterint produci nisi noua emergerint capitula super quibus post sententiam et ante sententiam potuerint produci et non de his que dicta sunt, ut ex quodam alex. de capitulo habetur cuius inicum tale est fraternitatis tue<sup>43</sup> hactenus uerum si predicti testes decesserint reduci uoluerat? iurare debent

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<sup>31</sup> C. 2 q. 1 c. 7

<sup>32</sup> Compare C. 3 q. 5 c. 2.

<sup>33</sup> Compare C. 3 q. 5 c. C 3 q. 5 c. 12.

<sup>34</sup> Possibly C. 3 q. 5 c. 14.

<sup>35</sup> C. 3 q. 5 c. 3.

<sup>36</sup> C. 3 q. 5 c. 9.

<sup>37</sup> C. 2 q. i.

<sup>38</sup> *De-infames add in marg.*<sup>pc</sup> See C. 6 q. 1 c. 17.

<sup>39</sup> C. 2 q. 1 c. 7

<sup>40</sup> C. 2 q. 7 c. 52.

<sup>41</sup> C. 2 q. 5 c. 16.

<sup>42</sup> I Comp. 2.13.18, (Compare X 2.20.18).

<sup>43</sup> X 2.20.17:

tanquam de nouo ut in eodem capitulo habetur<sup>44</sup> quid si ipsi testes decesserint ante sentencie recitationem ualebunt eorum dicta uel non § non nisi fuerint publicata uel sigillo ordinarii iudicis inpressa ut in quodam alex. c. cuius est tale inicium meminimus<sup>45</sup>. Sequitur iudicis officium. Ad iudicis officium spectat ut si crederint testes falsum iurare utrum ex dictis eorum possit sententiam condemnationis proferre quod minime sententiam uero absolutionis secure poterint pronuntiare ut ar. iii. q.vii postulamus<sup>46</sup> et c. iiii q. ii §i ab eo loco non ergo ad unam usque iter aliam<sup>47</sup>. Istud eciam spectat ad iudicis officium inquirere de temporis diversitate et loci que si intercesserint licet sint plures non erunt recipiendi ut in iii c. viiii c. nihilominus et hoc eciam constat ex eo quod legitur de susanna debet eciam inquirere ei aliquid ex se adicit totam testimonium fidem partis mendatio decolorat ut c. e. c. xvii pura<sup>48</sup>.

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<sup>44</sup> Compare X 3.39.8.

<sup>45</sup> Actually, to Bishop Roger of Worcester, JL 13162; II Comp. 2.15.2, X 2.22. HOLZMANN also assigned it a designation of 649§1.

<sup>46</sup> Possibly C. 4 q. 2/3 c. 3 §1.

<sup>47</sup> C. 3 q. 9 c. 16.

<sup>48</sup> C. 3 q. 7 c. 17.