

Victoria, McPherson Library, Fragm.Lat.3
Acc. 2006-023
Fragment of Azo of Bologna's
France(?) XIII¹

This work was completed by a University of Victoria undergraduate student as part of

postdates the fifteenth century. Acquired by Herman Mulder of Belgium in 1994 from Antiquariaat Hermione of the Netherlands. Purchased by Erik Kwakkel from Mulder for the University of Victoria in 2006.

Textual Remarks

The (likely produced between 1208 and 1210) was the best known work of the influential glossator Azo of Bologna (d. ca. 1230). Azo and his fellow Bolognese glossators analyzed and interpreted the , the sixth-century Roman emperor Justinian's canonical compilation of Roman law. Azo's work continued to be widely read and cited until the sixteenth century, although there have been no modern editions of his work beyond a 1966 reprint of a 1578 edition and (1895), which does not include *Fragm.Lat.3*'s passages. Azo's summarized the Code, Justinian's compilation of his predecessor's constitutions, one of the four texts that make up the

Throughout *Fragm.Lat.3* are citations to the Code, and well as the Digest and the Institutes, two other texts in the . These heavily abbreviated citations follow medieval convention: the particular text is indicated, then the rubric of a title, then the or number of that title's divisions and, if applicable, its subdivisions. Medieval citations do not note which book of a text is being cited. Modern citations of the list the text's initial, then the book, title, division and subdivision by numbers. Because the made its way to western Europe piecemeal over the course of the twelfth century, the medieval vulgate versions are somewhat incomplete and divide themselves into five parts that do not line up with the four parts of modern editions. For this reason, the 's numerical divisions sometimes differ between the medieval vulgate version that Azo is citing and modern editions. In the notes that follow this transcription below, I have inserted modern citations to the and indicated in parentheses when their numbers differ from those of the medieval vulgate.

TRANSCRIPTION

[fol. 1v a83-24]

a83 ¶ S(ed) si custodia

b1 se int(er)fec(er)it. (ue)l p(re)cipitau(er)ieh

- b12** (et) l(ege). i. in p(r)in(cipio). nisi in ca(s)u q(ua)n(do) seuerior e(st) inpo(s)ita pe(n)a. vt. I(nfra). d(e)
- b13** pe(n)is. [lege] Si vindicari. ¶ Si aut(em) crim(en) graue n(on) sit admissum
- b14** pot(est) acc(us)atus tradi custodiend(us) (ue)l militi (ue)l sibi. (ue)l sid(e)uisso(r)ib(us) h(oc)
- b15** aut(em) p(ro)co(n)sul estimat p(ro) q(u)alitate criminis. (ue)l p(ro)p(ter) hono(r)em. (ue)l p(ro)p(ter) a(m)
- b16** plissimas facu[[l]]tate. (ue)l p(ro) innocentia p(eri)o(n)e. (ue)l p(ro) dig(n)itate eius
- b17** qui acc(us)atur. vt. ff. e(odem). l(ege). i. ¶ da(m)pnatur aut(em) sid(e)iussor i(n)-
- b18** q(u)a(n)titate(m) c(er)tam. si ea(m) p(ro)misit. (ue)l si n(on) sit c(er)ta q(u)a(n)titas p(ro)missa
- b19** ip(s)e p(re)tor estimabit q(u)a(n)titate(m) nisi co(n)suetudo sup(er) q(u)a(n)tita-
- b20** te sit inducta t(un)c eni(m) s(er)uabit iudex. ¶ It(em) (et) extraodi(n)ari-
- b21** am pe(n)am inpo(n)it sideiusso(r)i. si dolo n(on) exhib(e)at reum. vt.
- b22** ff. e(odem). l(ege). si quis reum. S(ed) (et) dominus p(ro) suo s(er)uo acc(us)ato pot(est) si-
- b23** d(e)iub(er)e. (et) an(te)q(u)a(m) recipiatur in ui(n)cula. (et) p(ost)ea. n(is)i post lo(n)gu(m) t(em)p(u)s h(oc) d(e)-
- b24** sida(re)t dominus fac(er)e. vt. ff. e(odem). l(ege). si s(er)uus.

[fol. 1v b24-33]

- b24** **de p(ri)uati carcerib(us)**
- b25** **D**iximus S(upra). d(e) pu(bli)cis carcerib(us) os(er)ua(n)dis Nu(n)c audiam(us)
- b26** d(e) p(r)iuatis carcerib(us) inhi(b)endis. Est quid(em) nemini lic(et) p(r)iuat(um)
- b27** carc(er)em h(ab)ere. (ue)l ex(er)c(er)e pot(est) q(u)am mag(ist)atui. quid (er)go si c(ontra) h(oc) factu(m) fu-
- b28** erit. (ue)l quid si iudices qui se(m)p(er) debent e(ss)e in speculo n(on) ui(n)dica-
- b29** ue(r)int. (ue)l quid si offitior(um) p(r)imates n(on) intimaue(r)int. c(er)te ta(n)q(u)a(m)
- b30** imp(er)i(al)is maiestatis uiolato(r)es. ultimo supplitio p(er)cellentur
- b31** Nam (et) illud c(er)tum e(st) eos qui p(r)iuatum cerc(er)em ex(er)cue(r)int.
- b32** vt pote crim(en) maiestatis co(m)mitt(e)ntes ultimo subiugan-
- b33** dos e(ss)e supplitio. vt. I(nfra). e(odem). l(ege). una.

[fol. 1v b33-51]

- b33** **Si reus (ue)l acusator mort(us)**
- b34** **C**epto criminali iudicio. sepe moritur **fuerit. R(ubrica).**
- b35** acc(us)ator (et) reus q(ua)n(do)que (etiam) moritur alt(er)ut(er) eor(um). (et) id(e)o quid iuris
- b36** sit si h(oc) co(n)tigat uideamus. ¶ Et c(er)te si acc(us)ator solus deces-
- b37** s(er)it acc(us)atio cepta expirat. nec enim hrdes acc(us)ator(um) cogun-
- b38** tur exeq(ui) crimina. vt. ff. d(e) acc(us)ationibus. l(ege). diui. veru(m) ab alio reus
- b39** pot(er)it acc(us)ari. ¶ Si u(er)o d(e)cess(er)it acc(us)atus. o(mn)is criminatio e(st)
- b40** exti(n)cta nisi in c(r)imine lese ma(iestatis). (et) repetundarum (et) a-
- b41** posta\ta\tus (et) h(er)eseos. vt. ff. d(e) acc(us)ationibus. l(ege). ex iuditor(um). (et) s(upra). d(e) apo-
- b42** sta(tis). l(ege). apostataru(m). ¶ h(oc) si acc(us)atus n(at)uralit(er) moriatur pen-
- b43** dente c(aus)a p(r)incipali. secus si co(n)sciuerit si(bi) morte(m) post lit(em). (contra) (ue)l
- b44** postq(u)a(m) fu(er)it in scel(er)e dep(re)h(ens)i. t(un)c eni(m) h(er)edib(us) bo(n)a sunt
- b45** auferenda. Est eni(m) durius seip(su)m occid(er)e q(u)a(m) p(r)incip(e)m tru-

- b46** cidare. vt. ff. d(e) bo(nis). e(orum). qui. an(te). s(e)n(tentiam). mor(tem). si(bi) consiuerunt.
b47 l. iii. (et) I(nfra). e(odem). l(ege). d(e)fu(n)ctis. ¶ Si aut(em) pe(n)dente ap(pellatione).
 moria-
b48 tur ac(cu)tatus. id(em) e(st) q(u)a(n)tu(m) ad crim(en) s(ed) q(u)a(n)tum ad bo(n)a si
 quid(em) fu-
b49 e(r)int ade(m)pta exp(re)ssim p(er)fitienda e(r)it appell(ati)o. si aut(em) fu-
b50 e(r)int ade(m)pta tacite. extincta c(aus)a p(r)incipali in crimine
b51 extiguitur q(uesti)o bo(n)orum. vt. I(nfra). e(odem). l(ege). vlt(ima).

[fol. 1v b51-62]

b51 **Si quis i(m)perator**

b52 **Supra** d(e) ac(cu)tatio(n)ib(us) in g(e)n(er)e diximis. (N)u(n)c aut(em) **maledixerit.**
R(ubrica)

- b53** pon(it) p(er) spe(cies). (et) ita incip(it) a maximo crimine lese ma(iestatis) q(ue)
b54 offenditur q(ua)n(doque) facto de quo dicitur. I(nfra). t(itulo). p(ro)x(imo). (et) q(ua)n(doque)
 dicto.
b55 in quo u(er)satur hui(us) tituli tenor. (et) c(er)te si quis inp(er)atore(m) di-
b56 x(re)it p(er)fidu(m) atroce(m) ruffu(m) (ue)l quid simile p(ro)fudit si ex leui-
b57 tate p(ro)cessit. co(n)te(m)pne(n)d(us) e(st) lubricum eni(m) lingue. ad pe(n)am
b58 facile trahi n(on) d(e)b(et). vt. ff. ad. l(egem). iul(iam). mage(statis). l(ege). famose. si-
b59 ex insania furoris (ue)l rabie uini. mis(er)atio(n)e dig(n)issimu(s)
b60 si aut(em) ex d(e)lib(er)atio(n)e remitt(e)nd(us). (it)toautri/id est transmittendus) dume(n) ad
 p(r)in-
b61 cipe(m). (et) ip(s)e p(er)pend(et) ex q(u)alitate p(ers)o(n)arium utru(m) crim(en)
 p(re)t(er)mit-
b62 ti an exqu(i)ri (et) puniri d(e)b(e)at.

[fol. 1v b62-83]

b62 **ad l(egem). iulia(m) maiestis. R(ubrica).**

b63 **O**

b78 m(en) p(er)duellio(n)is. i(d). hostile. vt ex p(re)d(i)c(t)is pat(et). (et) d(icitu)r. ff. e(odem). l(ege). i.

b79

