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"Securus sit" inquit Aper "et Saleius Bassus et quisquis alius studium poeticae et carminum gloriam fovet cum causas agere non possit. [et] ego enim, quatenus arbitrum litis huius inveniri, non patiar Maternum societate plurium defendi, sed ipsum solum apud teos† arguam, quod natus ad eloquentiam virilem et oratoriam, qua parere simul et tueri amicitias, addiscere necessitudines, complecti provincias possit . . . ."

et del. Pithoeus plurimum codd.: corr. Pithoeus<sup>1</sup>

MATERNUS HAS JUST PROPOSED Secundus as judge in the hope of settling once and for all his long standing debate with Aper about the rival claims of oratory and poetry. Maternus wants Secundus to deliver a verdict on the question whether he ought to abandon the law courts or the Muses. The scrupulous Secundus, conscious of a conflict of interest, declines the office: since he is an intimate friend of the poet Saleius Bassus, that friendship predisposes him to judge sympathetically Maternus' preference for the solitary pleasures of Helicon. After disqualifying himself Secundus suggests that if poetry itself is under attack, he can think of no "more solvent guarantor" (*reum locupletiore* 5.2) than Saleius Bassus.<sup>2</sup>

<sup>1</sup>Quotation of text and apparatus taken from M. Winterbottom and R. M. Ogilvie (eds.), *Cornelii Taciti Opera Minora* (Oxford 1975). Pithoeus' deletion of *et* is confirmed both by usage and by sense: see A. Gudeman's German commentary on the *Dialogus*, *P. Cornelii Taciti Dialogus de Oratoribus* (Leipzig and Berlin 1914, repr. Amsterdam 1967) *ad loc.*

<sup>2</sup>*Reus locuples* is the legal technical phrase for a solvent guarantor who gives security for the financial obligations of another: see *TLL* (s.v. "locuples") 7.2, col. 1571 and *OLD* "reus" 5b and "locuples" 4. The technical phrase, apt in the legal sparring of fellow advocates, is employed in a figurative sense: Bassus is poetry's "solvent guarantor" in the sense that he can provide an authoritative defence of poetry because of his high reputation as a poet. M. Winterbottom's translation "credit-worthy defendant" (D. A. Russell and M. Winterbottom, *Ancient Literary Criticism* [Oxford 1972] 434) nicely preserves the financial metaphor in *locupletiore* but misrepresents with "defendant" Bassus' intended role as a "guarantor" who would have at his disposal the necessary resources to protect poetry when threatened by legal action. That Bassus is to be regarded as a co-defendant with Maternus is an unwarranted assumption based on Aper's statement in 5.4: *non patiar Maternum societate plurium defendi*. This means no more than that Bassus, as fellow-poet and poetry's guarantor, is a source of formidable outside support for the accused, Maternus. Moreover, it strikes me as very likely that Aper is ridiculing this reference to Bassus as a *reus locuples*, "solvent guarantor" in the literal sense, when he paints the unflattering picture of a poet who must go begging for an audience, and who engages in an activity that produces no tangible reward and is subsidized by the

At this point, where the text quoted above begins, Aper speaks up: Saleius Bassus may rest easy and likewise anyone else who practices poetry because he lacks the ability to plead cases in court; Maternus alone is the object of his ire. Thus he rejects Secundus' suggestion about Bassus' acting as guarantor. So much is clear. As to what Aper says next, scholars have waged a protracted war. Does Aper accept or reject Secundus' refusal?

The *communis opinio* now has it that Aper ignores Secundus' refusal because Aper, according to his own formulation of the charge against Maternus, is prosecuting not poets in general but the gifted advocate who has turned his back on the duties of his glorious calling.<sup>3</sup> Since Bassus will not be involved in the proceedings, Secundus need not feel compromised by his friendship with him. Hence the grounds for his refusal are invalid and the *quatenus*-clause must therefore contain a positive statement, namely that a judge has been found. This interpretation, however, does not accurately represent what the speakers say (where the text is sound) nor does it agree with the context as a whole.

Secundus disqualifies himself on the ground that he is prejudiced in favor of one party involved in the dispute: "*ego vero*" inquit Secundus "*antequam me iudicem Aper recuset, faciam quod probi et modesti iudices solent, ut in iis cognitionibus excusent in quibus manifestum est alteram apud eos partem gratia praevalere.*" The *altera pars* in this case is of course poetry and Maternus. In Secundus' mind his friendship with and admiration for Bassus constitute a manifest prejudice in favor of Maternus *poeta*. And in fact his sympathy for Maternus *poeta* was already in evidence at the beginning of the *Dialogus*. When Secundus and Aper find Maternus reading over the play that on the previous day had offended people

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emperor's generosity (9.3-6). Aper's recognition of Bassus as a *reus locuples* in the metaphorical sense ("authoritative spokesman") is implicit in his move to block Bassus' participation in the dispute. In the legal manoeuvring preliminary to the first discussion Tacitus takes the reader through several abrupt turns in the dramatic action. First, Maternus proposes arbitration by a mutually acceptable arbiter (presumably he has in mind *arbiter ex compromisso*: see J. A. Crook, *Law and Life of Rome, 90 B.C.-A.D. 212* [Ithaca 1967] 78). This falls through when Secundus declines to act as judge. Secundus then suggests the possibility of a different procedure: if poetry stands accused, then Aper will receive satisfaction from poetry's guarantor Bassus. Finally Aper, who will have none of it, immediately undertakes a prosecution of Maternus on a charge of not doing what he was born to do.

<sup>3</sup>The argument has been repeated a number of times. For the most important discussions with bibliography see Ute Hass-von Reitzenstein, *Beiträge zur gattungsgeschichtlichen Interpretation des Dialogus de oratoribus* (diss., Köln 1970) 69-71 and Rudolf Güngerich, *Kommentar zum Dialogus des Tacitus* (Göttingen 1980) 17-18. In addition to Güngerich the following commentators agree that Aper accepts Secundus as judge: W. Peterson, *Cornelii Taciti Dialogus de Oratoribus* (Oxford 1893) 10; A. Michel, *P. Cornelii Taciti Dialogus de Oratoribus* (Paris 1962) 28; D. Bo, *Cornelii Taciti Dialogus de Oratoribus* (Turin 1974) 10.

in high places (3.1-2), it is Secundus who suggests hopefully that Maternus may be toning down the offensive parts of the play. Aper reacts quite differently: he immediately launches into a rebuke of Maternus for wasting his time with poetry (3.4). Because of his obvious sympathy toward Maternus *poeta* Secundus withdraws from the proceedings and suggests instead the authoritative pronouncements of a recognized poet, Bassus; a suggestion which replaces a prejudiced judge with a prejudiced poet.

Aper's response to this suggestion has been taken to imply that Secundus is free to act as judge because Bassus himself will not be involved in the controversy. If the rejection of Bassus is to be understood as a tacit acceptance of Secundus despite his misgivings, then the reader is forced to assume that Aper's words in 5.3 imply the following: Secundus' friendship with Bassus does not present an obstacle to his acting as judge because Bassus is just a poet and poets are not on trial; the case of Maternus is different, he has abandoned his responsibilities as an advocate in order to practice a lesser form of eloquence; therefore the reason for Secundus' refusal is invalid and he may act as judge though he will have no official function and will deliver no verdict. Apart from the need for a rather substantial implied meaning this interpretation has a number of weaknesses which I now want to consider.

(1) There is no valid reason for assuming that Secundus suddenly becomes an impartial judge when Aper says that Saleius Bassus may rest easy. If a judge declares himself prejudiced in favor of A because of his friendship with B, the fact that B will not be involved in the proceedings against A does not nullify the prejudice in favor of A. Secundus is fully aware of this when he says *alteram partem gratia praevalere*.

(2) Since the dismissal of Bassus does not obviate the issue of Secundus' prejudice, there is no indication that Secundus has been persuaded to overcome his scruples. As Baehrens pointed out, the reader is confronted with a jarring *non sequitur* if, after Secundus calls attention to his conflict of interest and withdraws in anticipation of Aper's objection, Aper himself then says nothing to quiet his misgivings, ignores his refusal and allows him to act as judge.<sup>4</sup> In addition to the illogical sequence, such behavior on Aper's part results in a glaring inconsistency: the characterization of Aper

<sup>4</sup>A. Baehrens (ed.), *Cornelii Taciti Dialogus de Oratoribus* (Leipzig 1881) 53. Gordon Williams (*Change and Decline: Roman Literature in the Early Empire* [Berkeley 1978] 28, n. 57), who follows Hass-von Reitzenstein (above, n. 3) in adopting a positive *quatenus*-clause, still feels uneasy about the absence of any direct response to Secundus' misgivings. He therefore suggests *securus sis* for *securus sit*. This conjecture, however, has the disadvantage of implying that Secundus belongs in the category of those who write poetry because they lack the ability to plead cases in court, which is manifestly not the case, for at 2.1 M. Aper and Iulius Secundus are described as *celeberrima tum ingenia fori nostri*.

as the brash, pragmatic advocate takes an odd turn in this magnanimous gesture of accepting a prejudiced judge. We would do better to take the hint from Secundus' *excusatio* that Aper is only too ready to confront an opponent before that opponent has a chance to seize the advantage with superior numbers.<sup>5</sup> Where R. Reitzenstein saw an Aper politely yielding to the claims of *humanitas* in allowing Secundus to judge the dispute,<sup>6</sup> I am inclined to see an Aper who aggressively puts into practice the dictum of Aquilius Regulus: *preme iugulum*.

(3) If Aper has in fact rejected Secundus' *excusatio*, it is strange that Aper himself takes complete control of the proceedings, compelling Maternus to stand alone without any outside support. The assertive *ego*,<sup>7</sup> the imperious *non patiar*, the aggressive *ipsum solum* and the accusatorial *quod natus ad eloquentiam* . . . all indicate that Aper himself is directing the course of the dispute. These are not the words of a man who wants to accommodate and reassure a prejudiced judge. If Secundus were in fact acting as a mutually acceptable *iudex*, then Aper would not be in a position to dictate procedure in this way and deny the defendant a source of potential support (*societate plurium*). Aper's purpose is clear, to put Maternus at the greatest possible disadvantage.<sup>8</sup> And Secundus has played right into his hands, first by voluntarily withdrawing from the proceedings, and then by proposing Bassus as poetry's guarantor, a move that Aper easily counters. With Secundus and Bassus out of the way Aper is free to take the offensive against Maternus, who is now isolated from potential supporters. Why would Aper fumble the advantage that he so aggressively appropriates for himself by accepting a judge who is sympathetic to the defendant?

<sup>5</sup>Cf. 5.4, "*non patiar Maternum societate plurium defendi*"; 16.4, "*non enim*," inquit Aper, "*inauditum et indefensum saeculum nostrum patiar hac vestra conspiratione damnari*."

<sup>6</sup>R. Reitzenstein, "Bemerkungen zu den kleinen Schriften des Tacitus," *Nachrichten von der Gesellschaft d. Wiss. zu Göttingen* (1914-15) 173-276, at 213-215 (= *Aufsätze zu Tacitus* [Darmstadt 1967] 57-59). Similarly C. Murgia feels that Aper's acceptance of Secundus' excuse would be a breach in social decorum ("*Loci Conclamati* in the Minor Works of Tacitus," *CSCA* 11 [1978] 159-178, at 173).

<sup>7</sup>As H. Drexler noted, *ego* in emphatic position at the beginning of the sentence loses its force if Aper then goes on to say that Secundus is the judge: "Bericht über Tacitus für die Jahre 1913-1927," *Burs. Jb.* 224 (1929) 257-461, 279 and "Zu Tacitus' *Dialogus* und *Sallust*," *Maia* 14 (1962) 3-25, at 14.

<sup>8</sup>C. John, "Zum *Dialogus* des Tacitus," *Korrespondenzblatt für die Gelehrten- und Realschulen Württembergs* 33 (1886) 347-358, at 347-349 and in his commentary, *P. Cornelius Tacitus, Dialogus de Oratoribus* (Berlin 1899) 70. John's interpretation, with its negative *quatenus*-clause, was adopted by A. Gudeman in the English edition of his commentary, *P. Cornelii Taciti Dialogus de Oratoribus* (Boston 1894) 86, where there is a convenient summary of John's argument; the German edition (above, n. 1) is less helpful on this point.

(4) Secundus' prejudice requires explanation as a dramatic device in the *Dialogus*. Why was the issue ever raised and why the elaborate refusal (*quod probi et modesti iudices solent*, 5.1), if only to be tacitly ignored by Aper and forgotten by the reader. Surely there must be a dramatic purpose behind Secundus' refusal.

For the preliminary discussion about oratory and poetry Secundus has a dual dramatic function. Maternus' appointment of Secundus as judge serves the important dramatic purpose of providing the opportunity for what will apparently be yet another confrontation, for the reader's benefit, in the Maternus-Aper controversy.<sup>9</sup> But this episode takes a different turn. Although the presence of Secundus as a potential judge motivates the debate between Aper and Maternus, it is important to remember that they do not repeat their long-standing quarrel about poetry as Maternus originally intended. Instead, in the aftermath of Secundus' declining to act as judge, Aper gives a new theme to the controversy via a very personal accusation against Maternus. Secundus' *excusatio* thus fulfills the dramatic function of motivating the second stage of the debate: by excluding Secundus from any formal role in the controversy it allows Aper to change the question at issue and in so doing to change what Maternus treated as a debate (the choice between poetry and oratory, 4.2) into an accusatorial procedure (Maternus is guilty of not doing what he was born to do, 5.4).<sup>10</sup> If Aper allows Secundus to act as judge, the change of procedure is inexplicable

<sup>9</sup>K. Keyssner, "Betrachtungen zum *Dialogus* als Kunstwerk und Bekenntnis," *Würzburger Studien* 9 (1936) 94-116, at 103 [= Tacitus, ed. V. Pöschl (Darmstadt 1969) 325-348, at 334] and Hass-von Reitzenstein (above, n. 3) 70. I do not, however, agree with their conclusion that because the presence of Secundus provides motivation (only an initial motivation, in my view) for the debate, Aper must accept him as judge, for otherwise the debate could not go forward.

<sup>10</sup>Hass-von Reitzenstein first raised the important question of the dramatic function of Secundus' refusal ([above, n. 3] 70). She sees it as a device that gives a new direction to Aper's speech: i.e., in order to accommodate Secundus' scruple about his prejudice Aper decides that he will not attack poets as he had done on former occasions but will narrow the scope of his attack to Maternus *poeta*. In my judgment there are two weaknesses in this interpretation. First, as I have argued above, Aper's words and manner are not intended to accommodate Secundus as judge but rather to cut Maternus off from outside support; in fact, with the formal announcement of a personal accusation Maternus is now put in jeopardy. Surely Aper's highly personal charge against Maternus cannot be regarded as a favor done out of consideration for Secundus' misgivings. Second, the changed focus of the mock trial destroys the original purpose for which Secundus was appointed. Hass-von Reitzenstein (70) also objects that it would be a strange procedure to make a fuss about Secundus *iudex* and then drop him when Maternus and Aper could just as well have conducted their debate, as they had on previous occasions (4.1), without a judge. The answer to this lies in the realization that after Secundus *iudex* has served as a catalyst for precipitating a resumption of the debate and after his *excusatio* has motivated Aper's new accusation against Maternus, Secundus himself is no longer needed for the progress of the debate.

because Secundus was originally charged with deciding Maternus' fate as poet and advocate, not his guilt as a shirker of professional duty. The change cannot be interpreted as a move to accommodate Secundus' misgivings about favoring Maternus in the dispute because, as long as Maternus' career as a poet is at issue, Secundus by his own admission is predisposed to judge in favor of the poet; he is no less biased as a judge after Aper's announcement of the charge against Maternus than after Maternus' original proposal in 4.2. Thus the change in the nature of the controversy and Aper's bold usurpation of the direction of the controversy make the office of *iudex*, as originally conceived by Maternus, useless.<sup>11</sup>

It is not fair to say that although Secundus does act as judge, he is unable to deliver a verdict because he is interrupted by the arrival of Messala (14.1).<sup>12</sup> In fact at 14.1–2 Tacitus provides the perfect opportunity for Secundus *iudex* to deliver his verdict: both Aper and Maternus have argued their cases and Messala's opening question about his untimely arrival is the cue for Secundus to summarize the debate briefly and declare the winner. He does the former but not the latter—an outcome which leaves the reader asking why Secundus *iudex* does not discharge the office to which he was appointed. Clearly this is a dramatic loose-end for which there is no satisfactory explanation. On the other hand, the absence of a judge explains the absence of a verdict. Thus the dramatic device of Secundus' *excusatio* avoids the unnecessary complication of pronouncing a final verdict on the very personal charge brought by Aper against Maternus.<sup>13</sup>

<sup>11</sup>*Iudex* (4.2, 5.1) and *arbiter* (5.4) are basically synonymous terms: see Crook (above, n. 2) 78.

<sup>12</sup>This has been a staple argument for those who want a positive *quatenus*-clause (Hass-von Reitzenstein [above, n. 3] 101–106) but it ignores the dramatic structure of the *Dialogus*. Gudeman justly remarks, "the author of the *Dialogus* would have proved himself a very clumsy artist indeed, had he set all of this machinery at work [i.e., mock trial with Secundus as judge] only to abandon it, for Secundus does not appear in the capacity of judge at all. The little introductory episode is, however, highly appropriate for bringing the attitude of the interlocutors into bold relief, and this was doubtless Tacitus' intention" ("Critical Notes on the *Dialogus* of Tacitus," *AJP* 12 [1891] 326–347, at 329, n. 1). Keyssner ([above, n. 9] 103 [= *Tacitus* 334]) begs the question of dramatic structure by contending that some scholars take Secundus' role as *iudex* too seriously when they look for a verdict at the end of the first pair of speeches. But clearly Tacitus sets up the expectation of a trial scene with the legal forms and language employed by the speakers and that expectation is brought to an end not by the happy fellowship of the interlocutors but by Secundus' refusal to act as judge. Moreover it should be noted that both Aper and Maternus speak in earnest: *quae cum dixisset Aper acrius, ut solebat, et intento ore* (11.1); *vixdum finierat Maternus, concitatus et velut instinctus* (14.1).

<sup>13</sup>The parallels adduced by Hass-von Reitzenstein ([above, n. 3] 101–106) to illustrate the "Schiedsrichter topos" (the appointment of a judge who has no real function in the course of a dialogue) have nothing at all to do with *Dialogus* 5.4 where the potential judge

(5) In Silver Age Latin *quatenus* with the indicative is regularly used to acknowledge a circumstance as obvious, from the speaker's point of view, and as a factor motivating the assertion made in the main clause.<sup>14</sup> It combines circumstantial and causal notions, "in as much as," "seeing that": it does not introduce an objective cause as does *quod*. Quite often, as in the following example, a *quatenus*-clause will express a negative circumstance in view of which the subject has recourse to what is perceived as the alternative possibility: *quatenus veritati et innocentiae meae nusquam locus est, deos immortales testor* ... (Tac. Ann. 3.16.3).<sup>15</sup> Given the context of *Dialogus* 5.4, the only obvious circumstance which forms some causal connection with Aper's assertion *ego ... non patiar* is Secundus' refusal to be the judge.<sup>16</sup>

admits that he is prejudiced and refuses the office and where the mock trial is integral to the dramatic structure of the dialogue. The parallels from Cicero (*Fin.* 2.119, 3.6; *Nat. d.* 1.17) contain neither the slightest pretense of a trial nor a dramatically significant controversy about a prejudiced judge: at *Fin.* 2.119 Cicero's last-minute suggestion that Triarius come to some verdict and Torquatus' rejection of him as prejudiced (*iniquum*), as well as his attempt to enlist the help of Siro and Philodemus, are manoeuvres designed to show that the discussion has come to an end without any definitive conclusion; at *Fin.* 3.6 Brutus, who is merely the dedicatee of the work, is invited to decide a dispute; and at *Nat. d.* 1.17 Cicero simply says that he will be an impartial listener. The other passages adduced have no contextual relevance to the dramatic function of Secundus' prejudice in the *Dialogus*.

<sup>14</sup>On the history of *quatenus* see E. Wölfflin, "Quatenus," *Archiv für lateinische Lexicographie* 5 (1888) 399-414, esp. 404-407.

<sup>15</sup>For additional examples see H. Drexler, "Zu Tacitus' *Dialogus*" ([above, n. 7] 13-14). Tacitus uses *quatenus* again at *Dial.* 19.1 but the sentence is corrupt. Even so, the connection between the *quatenus*-clause and the main clause is similar to that of Ann. 3.16.3: the negative circumstance that *antiquorum admiratores* censure Cassius Severus as marking a turn for the worse in the history of oratory motivates Aper to defend the opposite point of view that Cassius Severus saw the necessity of adapting oratorical style to the changed expectations of new audiences. The Teubner editors, E. Koestermann (Leipzig 1964<sup>2</sup>) and H. Heubner (Stuttgart 1983), are, I think, mistaken in adopting Andressen's supplement <*ego Cassium Severum*> which incorporates the relative clauses *quem ... faciunt, quem ... dicendi* via into the main clause. These relative clauses belong in the *quatenus*-clause because they explain *hunc velut terminum*.

<sup>16</sup>It is important to note here that according to the sequence of thought in 5.3-4 the *enim*-clause gives the reason for Aper's statement "*Securus sit ...*": Saleius Bassus may rest easy and the reason is that Aper will not allow Maternus to be defended by a partnership of poets. The *quatenus*-clause, on the other hand, gives the reason/circumstance for Aper's statement "*non patiar ... defendi*": seeing that a judge cannot be found for this contest, Aper will not allow Maternus to be defended by a partnership of poets. Although the logical relationship between "*Securus sit ...*" and "*ego enim ...*" has long been correctly understood, the logical relationship between "*non patiar ... defendi*" and the *quatenus*-clause has been virtually ignored. Defenders of a positive *quatenus*-clause must explain the causal/circumstantial connection between it and *non patiar ... defendi*: seeing that a judge has been found for this dispute Aper will not allow Maternus to be defended by a partnership of poets. How does the presence of a judge who admits that he favors the defendant's case motivate Aper's decision to prosecute Maternus alone?

The *quatenus*-clause and the main clause stand in the same relation as in the example quoted above: the existence of a negative circumstance (no judge) induces the subject to adopt what seems to be the alternative (usurping control of the proceedings to put Maternus at the greatest possible disadvantage). In the opposite circumstance, i.e., if a judge could be found, Maternus would not be in a position to dictate terms as he does, since a judge would not allow a defendant to be debarred from sources of support. The failure to find a judge among the interlocutors themselves is not the root cause of Aper's attack: that lay in his violent disapproval of Maternus' writing poetry. It is, rather, a circumstance affecting the manner of Aper's attack, a one-on-one encounter with the defendant on a charge of dereliction of moral duty. To suppose that the *quatenus*-clause is positive and is a tacit rejection of Secundus' *excusatio* is to burden the simple clause with more meaning than it is designed to bear. Aper cannot state as obvious the opposite of what Secundus has just said. The *quatenus*-clause must therefore be negative: "seeing that there is no judge for this dispute," to give the general sense.

In sum, immediate context, consistency in characterization, consistency in dramatic structure, and usage require that Aper accept as valid Secundus' reason for refusing to act as judge.<sup>17</sup>

At this point it must be admitted that although the sense can be reconstructed, the chances of restoring the actual wording of the text are slim. It is, however, worthwhile to consider a probable and economical solution. Constantin John's conjecture *quatenus arbiter . . . inveniri <non potuit>* supplies the necessary negative and provides a mechanism for the corruption: haplography of *non potuit* before *non patiar*: *arbiter* was attracted into the accusative under the influence of *patiar* after *non potuit* fell out of the text.<sup>18</sup> I think that John's conjecture is right with the exception of *potuit* which puts the *quatenus*-clause in the wrong time frame. The present *potest* is preferable because in addition to stating the present circumstance that a judge cannot be found Aper is also making a point about the nature of the case: there is no one among those present or anywhere else competent

<sup>17</sup>The conjectural emendations made by H. Merklin ("*Tacitus, Dialogus* 5,4," *Hermes* 95 [1967] 500-504) and J. Christes ("*Tacitus, Dialogus* 5,4: Ein neuer Heilungsversuch," *Hermes* 107 [1979] 371-379), both of whom accept a positive *quatenus*-clause, are undermined by a failure to consider the dramatic significance of Secundus' refusal, by the assumption that the debate cannot proceed without a judge, and by an interpretation of the *quatenus*-clause according to which the possibility that Secundus will be the judge is left open.

<sup>18</sup>John (above, n. 8). In his commentary, however, John suggested *quatenus arbitrum . . . inveniri non licuit*. Apparently he felt that one alteration of the text was preferable to two.



to judge a case in which the defendant stands accused of not doing what he was born to do.<sup>19</sup>

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<sup>19</sup>For the corrupt *apud* †*eos*† almost every personal pronoun that Latin has to offer has been inserted after *apud* without successful result (Hass-von Reitzenstein [above, n. 3] 71-73). Aper is the plaintiff, Maternus the defendant, Secundus is compromised by his friendship with Bassus. It is obvious that Aper is not referring to any individual interlocutor or to the interlocutors as a group. No one is competent to judge the dispute. Given the nature of the complaint, Maternus has failed to live up to the responsibilities imposed by his oratorical *ingenium*, and given Aper's statement that a judge cannot be found, I follow J. Müller in interpreting the transmitted text as *apud* <*d*>*eos*. (Müller's conjecture is known to me only from the German edition of Gudeman's commentary [above, n. 1, 210]). Gudeman condemned it as mere palaeographical juggling but it is no more so than the universally accepted *apud* *avidos* at Tac. *Hist.* 3.41.2.) Who better to sit in judgment of Maternus' dereliction of the orator's duty than the immortal gods who first gave humans the gift of *eloquentia* (cf. Quintilian 1.10.7; 12.11.30)? Aper himself speaks of *ipsa eloquentia, cuius numen et caelestis vis* . . . , and Maternus' words at 12.4 where he describes the honor due poets, *nec ullis aut gloria maior aut augustior honor primum apud deos*, may be a pointed reference to the sympathies of the immortal judges before whose tribunal he stands accused. It may also be possible that Aper has in mind the *ingrati actio*, an action for ingratitude to a benefactor, which, as Seneca observes, is left to the gods to judge, *ad iudices deos* (*Ben.* 3.6.2); see S. F. Bonner, *Declamation in the Late Republic and Early Empire* (Liverpool 1949) 87-88. Maternus has failed to live up to the responsibilities imposed by his oratorical ability and must answer to the gods for it.