

Peira* 26.12: A fragment of Theophilus' *Index* of the *Digest*?

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1. Introduction

The so-called *Peira* is a well-known didactic collection of the verdicts and legal opinions of the judge Eustathios Rhomaios. It was composed in the late thirties or the very early forties of the eleventh century by an admirer and former assistant of Rhomaios. Although the bibliography concerning the *Peira* is without doubt imposing¹, there are still parts of this work that have not attracted the attention of scholars. Amongst them is certainly *Peira* 26.12. The aim of the present study is to offer a legal analysis of *Peira* 26.12 and investigate its origin and connection to other sources of law.

2. The passage in *Peira* 26.12

Peira 26.12 forms part of chapter 26 «On loans and the non-delivery of money and sums of money which are not owed» (Περὶ δανείου καὶ ἀναργυρίας καὶ περὶ ἀχρεωστήτων). The passage reads as follows:

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1. On the *Peira* see TROIANOS, *Die Quellen*, 239-243. Its text was edited by ZACHARIÄ VON LINGENTHAL, *Peira* while a new edition by D. SIMON is going to be published soon.

Peira 26.12: Βί. ιδ' τί. α' τί. τῶν διγ. α' βί. ιζ': Ὅτι δεκόκτωρ δεκόκτωρι οὐκ ἀντιτίθῃσι τὴν τοῦ στέλλιονος παραγραφὴν. ἔξε ταῦτα ὡς ἐν προβωρίᾳ. οἱ χρεοκόποι ἐπονειδιστόν τι πράγμα ἔστι, καὶ ἐὰν τις χρεωστῶν τις χρεοκοπήσῃ, εἴτα ἐτέρῳ δανείσας ἐλκύσῃ τοῦτον εἰς δίκην, ἀντιτίθῃσιν αὐτῷ ὁ χρεώστης παραγραφὴν ὡς χρεοκόπῳ, ἢ ἵνα μὴδὲν αὐτῷ δῶ, ἢ τοσοῦτον, ὅσον ἐκεῖνος τοῖς δανεισταῖς αὐτοῦ δέδωκεν. εἰ δὲ καὶ ὁ χρεώστης τυχὼν πρὸς ἐτέρους ἐχρεοκόπησεν, οὐ δύναται ἀντιθεῖναι παραγραφὴν· δεκόκτωρ γὰρ δεκόκτωρι οὐκ ἀντιτίθῃσι παραγραφὴν. ἐν τοῖσιν τῷ ιδ' βί. τῶν βασιλικῶν τί. α' κεφάλαιον φράζον οὕτως κεφ. ι' θε. ις'· « Ἐὰν ὁ ἐγγυητὴς ἐξ οἴκειου προσώπου παραλείποι παραγραφὴν, ἥτινι ὁ ἐναγόμενος οὐκ ἠδύνατο χρῆσασθαι, ἔχει τὴν περὶ ἐντολῆς ἀγωγὴν, εἴπερ οὐκ ἦν εὐπρεπὴς ἡ παραγραφὴ· εἰ δὲ παραγραφὴν, ἥτινι ὁ ἐναγόμενος ἠδύνατο χρῆσασθαι, παρέλιπεν ἐν εἰδήσει, καὶ οὕτε τὸν ἐναγόμενον δυνάμενος ὑπέμνησεν, ὥστε αὐτὸν ἰδίῳ ἢ τῷ τοῦ συνηγόρου ὀνόματι δικάσασθαι καὶ ἀντιθεῖναι τὴν παραγραφὴν, οὐκ ἔχει τὴν περὶ ἐντολῆς ἀγωγὴν». τυχὼν γὰρ Πέτρος ἐδάνεισε Παύλῳ, καὶ δέδωκεν ἐγγυητὴν Ἰωάννην. ἐὰν οὖν ὁ Ἰωάννης ἐναχθεῖς ποτε παρὰ τοῦ Πέτρου κατέβαλε, καὶ μέλλει κινήσῃ κατὰ τοῦ Παύλου τὴν μανδᾶτι, ἵνα λάβῃ ἅπερ δέδωκε, μὴ ἀντιθεῖς παραγραφὴν ἀρμόζουσιν ἀντιθεῖναι, ἄλλοτε μὲν ἐκβάλλεται παρὰ τοῦ Παύλου παραγραφῇ, ἄλλοτε δὲ οὐκ ἐκβάλλεται. εἰσὶ γὰρ ἀνεπιλήττοι παραγραφαί· οἷον ὁ δανειστὴς προσωπικὸν ἐποίει σύμφωνον πρὸς τὸν χρεώστην, ἵνα μὴ ἀπαιτήσῃ αὐτόν· τοῦτο οὖν ἐὰν παραλήπῃ ὁ ἐγγυητὴς, εἰ μὲν εἰδὼς παρέλιπε, καταδικάζεται καὶ οὐδὲν λαμβάνει· εἰ δ' ἄγνοῶν, λαμβάνει ὁ κατέβαλεν, αἰτιώμενος τὸν χρεώστην, διατὶ οὐκ εἶπεν αὐτῷ ἔχειν προσωπικὸν σύμφωνον. εἰ δὲ τῶν [οὐκ] ἐπαίνουμένων ἦν ἡ παραγραφὴ, πάλιν ὑποδιαρετέον. τυχὼν γὰρ καὶ ὁ δανείσας ἐχρεοκόπησεν εἰς τοὺς αὐτοῦ δανειστάς, ὁ δὲ Ἰωάννης ἐγγυησάμενος ἦν μὴ χρεοκοπήσας· καὶ εἰ τάχα ὁ μὲν δανείσας κινῶν κατὰ τοῦ δανεισαμένου ἐλάμβανε τὸ χρέος· οὐκ ἐδύνατο γὰρ ὁ δανεισάμενος παραγράφασθαι αὐτὸν ὡς χρεοκόπον, ἅτε καὶ αὐτὸς χρεοκόπος ὤν· ὅμως ἐγγυητὴς μὴ ὢν χρεοκόπος καὶ δυνάμενος ἐξ οἴκειου προσώπου ἀντιθεῖναι παραγραφὴν τῷ δανειστῇ, οὐκ ἐποίει τοῦτο, ἀλλὰ κατέβαλεν· εἰ γὰρ εἶπεν αὐτῷ ὁ δανεισάμενος, ὅτι ἐγὼ μὲν οὐκ ἐδυνάμην ἀντιθεῖναι παραγραφὴν τῷ δανειστῇ μου, ὡς καὶ αὐτὸς τῷ τοῦ χρεωκόπου ἁμαρτήματι ἐνεχόμενος, σὺ δὲ μετὰ προκαταρξίν κύριος τῆς δίκης γενόμενος καὶ μὴ ὢν χρεοκόπος, ἠδύνασο τοῦτο νόμινε ἥτοι ἰδίῳ ὀνόματι ἀντιθεῖναι τὴν

Peira 26.12: Book 14 title 1 [of the *Basilica*] title 1 of the *Digest* book 17: Concerning the fact that a bankrupt person cannot raise an objection of *stellionatus* against another bankrupt person. Learn the following as an introduction [to the subject]: Being bankrupt is indeed shameful and if someone becomes bankrupt while owing debts to others, and subsequently, having lent to someone else, he [the bankrupt person] drags him [the borrower] to court, his debtor can raise an objection against him, claiming that he [the creditor] has been bankrupted, so that the debtor will either give him nothing or so much as he [the creditor] had given to his own creditors. If, however, the debtor has also been declared bankrupt against others, then he cannot raise the objection because someone who has been bankrupted cannot raise the objection of bankruptcy against someone else who has [also] become bankrupt. Thus, in the fourteenth book of the *Basilica*, title 1 chapter 10, paragraph 16 is phrased as follows: *If a surety omits to raise an objection for a reason that is related to himself, which the principal debtor could not have used, then he can bring an action of mandate, if the objection was not, of course, appropriate. If, however, the surety omitted the objection, which the principal debtor could have employed, knowing about it as he did, and, despite the fact that the surety had the opportunity [to make it known], he did not make it known to the principal debtor, so that he himself or his advocate in his place could participate in the trial and oppose the objection, [in that case] the surety cannot bring an action of mandate.* For example, let us say a certain Peter has lent to a certain Paul, and a certain John has been provided as surety; if, therefore, John, after being sued by Peter, has paid and he is about to bringing an action of mandate against Paul, so that he [John] will receive [from Paul] what he has paid [to Peter] without having raised the objection [against Peter], which he [John] might have raised· then in some cases his action might be refuted by an objection by Paul and in others it might not be refuted, because there are unimpeachable [i.e. irrefutable] objections. For example, [let us say] the creditor personally agreed with the debtor that he [the creditor] would not bring an action against him and claim the debt. If, therefore, the surety neglected this [objection], and if he knowingly neglected it, then his action is rejected and he will not receive anything. If, however, he did not know about it, he receives what he paid, blaming the debtor because he did not tell him that he had a personal agreement. If, however, the objection was one that was not impeachable, a further distinction must be made. For example, let us say the creditor has declared bankruptcy against other creditors of his, while John, who was surety, has not declared bankruptcy. And let us say that the creditor, if he had brought an action against the principal debtor, would have received his debt; because it would not be possible for the principal debtor to raise the objection of bankruptcy against him [the creditor] because he himself had also been declared bankrupt. The surety, however, since he had not declared bankruptcy, although he could have raised the personal objection of bankruptcy against the creditor, nevertheless

παραγραφὴν, καὶ οὐκ ἂν νῦν ζημίᾳ περιεβαλέεις [με]. εἰ ταῦτα ἀντιλέγει ὁ δανεισάμενος πρὸς τὸν ἐγγυητὴν, ἀντιτίθῃσιν αὐτῷ δικαιολογίαν προσήκουσαν, ὅτι οὐδὲν σε ἐξεβίασα· σὺ γὰρ δεκόκτωρ ὢν παραγράφασθαι τὸν δανειστήν σου οὐκ ἠδύνασο ὡς δεκόκτωρα, καὶ ἀπαιτηθῆναι ὡφεῖλες· ἐγὼ δὲ διὰ τὴν σὴν ὡφέλειαν ὑβρίζεις ἕτερον οὐκ ἠδυνάμην· καὶ συγγινώσκεται ταῦτα λέγων ὁ ἐγγυητής· καὶ ταῦτα λέγειν δύναται ὁ ἐγγυητής, ὅτε ἀμφοτέροι δεκόκτωρες ἦσαν ὁ τε δανειστής καὶ ὁ χρεώστης. εἰ δὲ ὁ μὲν δανείσας δεκόκτωρ ἦν, ὁ δὲ χρεώστης οὐκ ἦν δεκόκτωρ, καὶ ἠδύνατο ἀμέμπτως χρῆσασθαι τῇ παραγραφῇ, οὐκ ἀδιαστίκτως βοηθεῖται ἐγγυητής μὴ προβαλλόμενος ταύτην. ἐξ οἴκειο μὲν γὰρ προσώπου μὴ προβαλλόμενος ταύτην, συγγινώσκεται, ὡς καὶ ἀνωτέρω εἴρηται. ἐκ δὲ προσώπου χρεώστου ταύτην ἀντιθεῖναι, ἢ αἰδομένον ταύτην ποιῆσαι ὑπομνήσαι τὸν παρόντα χρεώστην, καὶ εἰπεῖν αὐτῷ· πάρελθε καὶ τὴν ἄσσημον παραγραφὴν ἀντίθες, ἐγὼ γὰρ αἰσχύνομαι ὑβρίζειν ἄνθρωπον δι' ὡφέλειαν σὴν. εἰ δὲ μὴ παρόντος τοῦ χρεώστου οὐκ ἦν εὐχερὲς αὐτῷ τοῦτο ποιεῖν, συγγινώσκεται. ταῦτα μὲν τὸ διγέσθον. σὺ δὲ ζῆται, πότε ὁ ἐγγυητής σοῦ νόμινε ἐνάγεται καὶ πότε οὐ, καὶ μετὰ τὴν νεαράν τὴν λέγουσαν, πρῶτον μὲν εὐθύνεσθαι τὸν πρωτότυπον καὶ οὕτως τὸν ἐγγυητὴν, καὶ ἀνέσχειτο ὁ ἐγγυητής μὲν προβαλεῖν τοῦτο ἀλλὰ κατέβαλε, καὶ φιλοπονῶν εὐρήσεις καὶ τὰς λύσεις. οὐ γὰρ ἐν ἐνὶ κεφαλαιῷ δεῖ πολλὰ περιπλέκειν. καὶ λέγει ταῦτα· ἐγὼ δὲ θαυμασίαν ἡγήμαι τὴν τ ο υ κ ν ρ ι λ ο υ περὶ λόγους δύναμιν. φράζει γὰρ οὗτος τὸ αὐτὸ κεφάλαιον. «εἰ ἄσσημον παραγραφὴν παραλείπει ὁ ἐγγυητής, εἰ μὲν ἐξ οἴκειο προσώπου, συγγινώσκεται· εἰ δὲ ἐκ προσώπου τοῦ ρέου, εἰδὼς καὶ δυνάμενος ὑπομνήσαι αὐτόν, ἵνα ἔλθῃ καὶ δικασθῇ, οὐ συγγινώσκεται».

did not do so but he paid. If the principal debtor had therefore said to him, 'I could not have raised the objection against my creditor since I myself was burdened with liability from the delict of bankruptcy; you, however, since you have become the principle of the suit [*dominus litis*] after the *litis contestatio* and since you were not bankrupt, could have raised the objection *tuo nomine*, that is, in your own name, and you would not have caused me harm now'; if the principal debtor had said these words to the surety, then he [i.e. the surety] could have raised the following appropriate counter-argument against him, namely that: 'I have not harmed you at all. Since you were bankrupt, you could not raise the objection of bankruptcy against your creditor and you were obliged to fulfil your obligation. I, however, could not harm someone else for your own benefit.' And the surety could justifiably say these words and he could speak so, because both of them, the creditor and the principal debtor, have declared bankruptcy. But if the creditor has declared bankruptcy and the principal debtor has not and he [the principal debtor] could have justifiably raised that objection [*exceptio stellionatus*], then in this case the surety, if he does not raise the objection, is not helped in any way. Because if he does not raise an objection for a reason relating to him personally, he is excused from doing so, as alia mentioned above. For a reason relating to the person of the principal debtor, the surety can raise the objection or, if he [the surety] is ashamed to do so, he can remind the present principal debtor of it and tell him: 'Come here and raise the objection that is not for praise because I am ashamed to harm someone for your own benefit.' And he [the surety] is excused if the principal debtor is not present and it was not easy for him [the surety] to do so. This is what is mentioned in the Pandects. But, you, examine when the surety is liable in his own name and when he is not, and subsequently [examine] the Novel that states that it is first the principal debtor who is liable and only then [follows] the surety, and when the surety held back the objection but paid and when you exam yourself, you will also find the answers. For we must not embrace many issues in one chapter. And this is what he says. I myself consider the power of Cyril's words remarkable. Because he formulates the same chapter as follows: *If the surety omits an indissinct objection if it relates to him in person, he is excused. If, however, it relates to the person of the defendant* [the principal debtor], *while he* [the surety] *is aware and has the opportunity to notify him* [the principal debtor] *to come and to undertake the trial, he is not excused*².

3. Commentary on *Peira* 26.12

Grammatically, the passage begins with an introductory subordinate clause (ὅτι δεκόκτωρ δεκόκτωρι οὐκ ἀντιτίθῃσι τὴν τοῦ στελλιονος παραγραφὴν) which has obviously been placed there by the anonymous compiler of the

2. A translation of the passage into Dutch is offered by De JONG, *Stephanus*, 105-106 albeit without any legal analysis.

*Peira*³; this introductory clause summarises the main part of the passage and functions as the topic sentence. After this introductory sentence, the *protheoria*⁴ begins with reference to the bankruptcy law and the right of the debtor either not to fulfil his obligations at all towards the person who has already become bankrupt (in fraud) or to fulfil them only to the extent that he (the person who has declared his bankruptcy) has fulfilled his own obligations towards his creditors. This is a defense available to the debtor when he is required to fulfill his obligations, which is known as *exceptio stellionatus*⁵. What happens, however, in the case where the debtor has also been declared bankrupt? In that case, we learn, he does not have the privilege of *exceptio stellionatus* at his disposal and he is obliged to fulfil his debt in full.

At this point the *protheoria*, which deals exclusively with bankruptcy law, ends and the fragment from the *Basilica* (Bas. 14.1.10.12), which is cited word for word, follows. This fragment introduces the law of suretyship and concerns the relationship between the surety and the principal debtor and in particular the surety's right to bring an action of mandate⁶ against the principal debtor after he has paid the principal debtor's debt. If the surety omits to raise his own (personal) objection against the creditor and he pays, he can bring an action against the principal debtor. If, however, during a trial initiated by the creditor, the surety omits to raise the objection on behalf of the principal debtor despite the fact that 1) he knew about it, and 2) he had the opportunity to notify the principal debtor of the trial so that he could participate in it and either raise the objection in person or get his lawyer to do so, then the action of mandate against the principal debtor can be refuted.

3. For this very common way of introducing a paragraph for the Byzantines of the eleventh century see OIKONOMIDES, *The "Peira"*, 180.

4. On the term *protheoria* as a well-known element of the antecessorial style that contrasts an introductory passage to an exegetical text from actual exegesis see SCHELTEMA, *Subseciva IV*, 93-94 [= *Opera Minora*, 120-121]; SCHELTEMA, *L'enseignement*, 25 n. 69 [= *Opera Minora*, 76]; THEOPHILI ANTECESSORIS, *Paraphrasis*, XII-XIII.

5. On the *stellionatus* in Roman law see GAROFALO, *La persecuzione*, even though without reference to D. 17.1.10.12 and the subject discussed in the present study. On the civil-law concept of fraud in Roman law see BISCOTTI, *Debtor's fraud*.

6. For the *actio mandati* and the right of the surety to bring it in its various forms against the principal debtor see DE JONG, *Εντολή (mandatum)*, 139, 144-147, 150-153, 194-195, 233-238, albeit without reference to the passage from the *Peira* 26.12 and the relevant *Basilica* scholia.

This is followed by an example which both sheds light on the above rule and also links the introduction (*protheoria*) on bankruptcy law with the law of *mandatum*. In this example, Peter is the creditor, Paul is the principal debtor and John is the surety. Peter and Paul have made «an agreement not to sue». The phrase is used to refer to an agreement in which a creditor promises the debtor not to enforce the debt (*pactum de non petendo*)⁷. However, John, despite knowing about the agreement, pays the creditor Peter when Peter brings an action against him; in this case Paul can reasonably refute the action of mandate against John.

The first part of this fictitious example does not really concern *stricto sensu* the fragment of the *Basilica* under discussion and is in fact an illustration of an irrefutable objection. The passage continues with a case of an impeachable *exceptio* which forms the core of the *Basilica* fragment under discussion and refers to the *exceptio stellionatus*. If, that is, both the creditor, Peter, and the principal debtor, Paul, have been bankrupt in fraud and the surety, John, (who is not bankrupt) omits to raise the *exceptio stellionatus* against the creditor, as he has every right to do, and pays the debt, he can correctly bring an *actio mandati* against the principal debtor, Paul, because he has in no way harmed the principal debtor, who could not raise a plea of *exceptio stellionatus* against the creditor himself since he himself was bankrupt.

In fact, the above constitutes an analysis of the first section of the *Basilica* fragment. It is followed by an analysis of the second section of the *Basilica* fragment. If the principal debtor was not bankrupt and was therefore entitled to raise a plea of *exceptio stellionatus* and the surety, when the creditor brings an action against him, does not notify the principal debtor to raise a plea of *exceptio stellionatus*, the principal debtor can rightfully refute the surety's claim if the latter brings an *actio mandati* against him. From the wording of this rule in the *Basilica*, it is clear that no right is given to the surety to oppose, himself, personal objections belonging to the principal debtor. On the other hand, however, he (the surety) receives the right to notify him (the principal debtor) and bring him to court so that the principal debtor can raise the plea himself or through his lawyer.

There follows a reference to the *Digest*, from which the *Basilica* provision derives (ταῦτα μὲν τὸ Δίγεςτον), and the reader (or the student?) is

7. KASER, *Das römische Privatrecht*, 642.

advised to examine when the surety is liable *suo nomine* through a more specific reference to the provisions of an unnamed Novel (it is actually Justinian's Novel 4), that regulates the liability of the surety. Since the regulations of this Novel in comparison to the here commented passage of the *Digest* are too general it seems that the reference to the Novel is made in order to direct the attention of the reader (or the student?) to the new piece of legislation that has occurred by the promulgation of the Novel. The *Peira* passage ends with a concluding sentence, accompanied by the author's admiration for Cyril because Cyril summarised all the previous material in just one sentence (εἰ ἄσημον παραγραφὴν παραλείπει ὁ ἐγγυητής, εἰ μὲν ἐξ οἰκείου προσώπου, συγγινώσκεται· εἰ δὲ ἐκ προσώπου τοῦ ῥέου, εἰδὼς καὶ δυνάμενος ὑπομνήσαι αὐτόν, ἵνα ἔλθῃ καὶ δικάσῃται, οὐ συγγινώσκεται)⁸.

4. Origin of the *Peira* 26.12.

After a general analysis of the content of this passage, it is worth investigating its origin and literary identity, as well as its possible relationship to the *Basilica*. As can be seen at first glance, this passage from the *Peira* is very similar to two scholia on the provision laid down in the text of the *Basilica*, namely in Bas. 14.1.10.12, which are transmitted in the edition of Groningen in the manuscripts P (Paris. Gr. 1352) and Ca (Coislinianus 152) respectively⁹. Before we turn our attention to the scholia, however, the provision in the *Basilica* text deserves some attention. It reads:

Bas. 14.1.10.12 (BT 742/14-19): Ἐὰν ὁ ἐγγυητής ἐξ οἰκείου προσώπου παραλίπη παραγραφὴν, ἥτινι ὁ ἐναγόμενος οὐκ ἠδύνατο χρῆσασθαι, ἔχει τὴν περὶ ἐντολῆς ἀγωγὴν, εἰπερ οὐκ ἦν εὐπρεπὴς ἡ παραγραφὴ· εἰ δὲ παραγραφὴν, ἥτινι ὁ ἐναγόμενος ἠδύνατο χρῆσασθαι, παρέλιπεν ἐν εἰδήσει καὶ οὔτε τὸν ἐναγόμενον δυνάμενος ὑπέμνησεν ὥστε αὐτὸν ἰδίῳ ἢ τῶ τῶν προκουρατῶρων ὀνόματι ἐναχθῆναι, οὐκ ἔχει τὴν περὶ ἐντολῆς ἀγωγὴν.	Bas. 14.1.10.12 (BT 742/14-19): If a surety omits to raise an objection for a reason that is related to himself, which the principal debtor could not have used, then he can bring an action of mandate, if the objection was not, of course, appropriate. If, however, the surety omitted the objection, which the principal debtor could have employed, knowing about it as he did, and, despite the fact that the surety had the opportunity [to make it known], he did not make it known to the principal debtor, so that he himself or his advocates in his place could participate in the trial, [in that case] the surety cannot bring an action of mandate.
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8. On Cyril and his work see SCHELTEMA, *Das Kommentarverbot*, 308-315 [= *Opera Minora*, 404-412].

9. On the two manuscripts, that they transmit the *Basilica* scholia see BURGMANN-FÖGEN-SCHMINCK-SIMON, *Repertorium*, 195, 230 and more recently DE JONG, *Εντολή (Mandatum)*, 19-23.

The underlying passage of the *Digest* reads:

D. 17.1.10.12: Generaliter Iulianus ait, si fideiussor ex sua persona omiserit exceptionem, qua reus uti non potuit, si quidem minus honestam, habere eum mandati actionem: quod si eam, qua reus uti potuit, si sciens id fecit, non habiturum mandati actionem, si modo habuit facultatem rei conveniendi desiderandique, ut ipse suscipere potius iudicium vel suo vel procuratorio nomine.	D. 17.1.10.12: Julian holds that as a general rule, if a verbal guarantor fails [to plead] a defense which was personal to him and which the personal debtor could not have used, [then] if the defense was not an honorable one, he will have the action on mandate. However, if the defense was one which the principal debtor could have used and he [the guarantor] did this knowingly, he will not have the action on mandate, provided that he had the power to call on the principal debtor and to require him to defend the suit in his place, either in his own name or in that of a procurator ¹⁰ .
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The above quoted provision from the *Basilica* text, as preserved in *Peira* 26.12, is more accurate and more correct than its counterpart in the *Basilica* text itself: δικάσασθαι καὶ ἀντιθεῖναι τὴν παραγραφὴν instead of ἐναχθῆναι and τοῦ συνηγόρου which stands for *procuratorio* instead of τῶν προκουρατώρων. The reference to Julian is preserved in the scholion of the Parisinus manuscript: Καὶ γενικῶς ὁ Ἰουλιανὸς φησιν (*Generaliter Iulianus ait*).

If we now turn our attention to the two *Basilica* scholia commenting on the text of Bas. 14.1.10.12, then a comparison between the text of *Peira* 26.12 and that of the two scholia from the *Basilica* reveals a similarity – at least to a certain extent – in terms of expression. Moreover, a comparison of the two *Basilica* scholia (in P and Ca) between themselves justifies the conclusion that we are in actual fact undoubtedly dealing with one and the same text¹¹. The text of the scholion transmitted by Ca can be found in Schol. ad Bas. 722/28-723/23, that handed down by P in Schol. ad Bas. 821/13-822/10. Instead of quoting both scholia, however, I restrict myself to pointing out the main differences between the version in Ca and that in P in a small *apparatus criticus* at the end of the right hand column.

10. WATSON, *The Digest*, 25.

11. It was the editors of the Groningen edition of the *Basilica* who first indicated the close connection between these two scholia. See also DE JONG, Ἐντολή (*Mandatum*), 23 n. 43, 237 n. 63.

Peira 26.12

“Ὅτι δεκόκτωρ δεκόκτωρι οὐκ ἀντιτίθῃσι τὴν τοῦ στελλίουος παραγραφὴν. ἔχε ταῦτα ὡς ἐν προθεωρίᾳ. οἱ χρεοκόποι ἐπονειδιστόν τι πράγμα ἐστὶ, καὶ ἐάν τις χρεωστὴν τισι χρεοκοπήσῃ, εἴτα ἐτέρῳ δανείσας ἐλκύσῃ τοῦτον εἰς δίκην, ἀντιτίθῃσιν αὐτῷ ὁ χρεώστης παραγραφὴν ὡς χρεοκόπῳ, ἢ ἵνα μὴδὲν αὐτῷ δῶ, ἢ τοσοῦτον, ὅσον ἐκεῖνος τοῖς δανεισταῖς αὐτοῦ δέδωκεν. εἰ δὲ καὶ ὁ χρεώστης τυχὸν πρὸς ἐτέρους ἐχρεοκόπησεν, οὐ δύναται ἀντιθεῖναι παραγραφὴν· δεκόκτωρ γὰρ δεκόκτωρι οὐκ ἀντιτίθῃσι παραγραφὴν. ἐν τοίνυν τῷ ιδ' βι. τῶν βασιλικῶν τί. α' κεφάλαιον φράζον οὕτως κεφ. ι' θε. ις'· «Ἐάν ὁ ἐγγυητὴς ἐξ οἰκείου προσώπου παραλείποι παραγραφὴν, ἥτινι ὁ ἐναγόμενος οὐκ ἡδύνατο χρῆσασθαι, ἔχει τὴν περὶ ἐντολῆς ἀγωγὴν, εἴπερ οὐκ ἦν ἐμπρηγὴς ἢ παραγραφῇ· εἰ δὲ παραγραφὴν, ἥτινι ὁ ἐναγόμενος ἡδύνατο χρῆσασθαι, παρέλιπεν ἐν εἰδήσει, καὶ οὕτε τὸν ἐναγόμενον δυνάμενος ὑπέμνησεν, ὥστε αὐτὸν ἰδίῳ ἢ τῷ τοῦ συνηγόρου ὀνόματι δικάσασθαι καὶ ἀντιθεῖναι τὴν παραγραφὴν, οὐκ ἔχει τὴν περὶ ἐντολῆς ἀγωγὴν». Τυχὸν γὰρ Πέτρος ἐδάνεισε Παύλῳ, καὶ δέδωκεν ἐγγυητὴν Ἰωάννην, ἐάν οὖν ὁ Ἰωάννης ἐναχθεῖς ποτε παρὰ τοῦ Πέτρου κατέβαλε, καὶ μέλλει κινήσει κατὰ τοῦ Παύλου τὴν μανδάτι, ἵνα λάβῃ ἅπερ δέδωκε, μὴ ἀντιθεῖς παραγραφὴν ἀρμόζουσαν ἀντιθεῖναι, ἄλλοτε μὲν ἐκβάλλεται παρὰ τοῦ Παύλου παραγραφῇ, ἄλλοτε δὲ οὐκ ἐκβάλλεται. Εἰσὶ γὰρ ἀνεπιλήπτοι παραγραφαί· οἷον ὁ δανειστής προσωπικὸν ἐποίει σύμφωνον πρὸς τὸν χρεώστην, ἵνα μὴ ἀπαιτήσῃ αὐτόν· τοῦτο οὖν ἐάν παραλίπῃ ὁ ἐγγυητὴς, εἰ μὲν εἰδὼς παρέλιπε, καταδικάζεται καὶ οὐδὲν λαμβάνει· εἰ δ' ἀγνοῶν, λαμβάνει ὁ κατέβαλεν, αἰτιώμενος τὸν χρεώστην, διατὶ οὐκ εἶπεν αὐτῷ ἔχειν προσωπικὸν σύμφωνον. Εἰ δὲ τῶν [οὐκ] ἐπαινουμένων ἦν ἡ παραγραφὴ, πάλιν ὑποδιαίρετέον. τυχὸν γὰρ καὶ ὁ δανείσας ἐχρεοκόπησεν εἰς τοὺς αὐτοῦ δανειστάς, ὁ δὲ Ἰωάννης ἐγγυησάμενος ἦν μὴ χρεοκοπήσας· καὶ εἰ τάχα ὁ μὲν δανείσας κινῶν κατὰ τοῦ δανεισαμένου ἐλάμβανε τὸ χρέος· οὐκ ἐδύνατο γὰρ ὁ δανεισάμενος παραγράφασθαι αὐτόν ὡς χρεοκόπον, ἅτε καὶ αὐτὸς χρεοκόπος ὦν· ὁμῶς ἐγγυητὴς μὴ ὦν χρεοκόπος καὶ δυνάμενος ἐξ οἰκείου προσώπου ἀντιθεῖναι παραγραφὴν τῷ δανειστῇ, οὐκ ἐποίει τοῦτο, ἀλλὰ κατέβαλεν· εἰ γὰρ εἶπεν αὐτῷ ὁ δανεισάμενος, ὅτι ἐγὼ μὲν οὐκ ἐδυνάμην ἀντιθεῖναι παραγραφὴν τῷ δανειστῇ μου, ὡς καὶ αὐτὸς τῷ τοῦ χρεοκόπου ἀμαρτήματι ἐνεχόμενος, σὺ δὲ μετὰ προκαταρξίν κύριος τῆς δίκης γενόμενος καὶ μὴ ὦν χρεοκόπος, ἡδύνασσο τοῦο νόμιμε ἥτοι ἰδίῳ ὀνόματι ἀντιθεῖναι τὴν παραγραφὴν, καὶ οὐκ ἂν νῦν ζημία περιεβαλέης [με]· εἰ ταῦτα ἀντιλέγει ὁ δανεισάμενος πρὸς τὸν ἐγγυητὴν, ἀντιτίθῃσιν αὐτῷ δικαιολογίαν προσήκουσαν, ὅτι οὐδὲν σε ἐξεβίασα· σὺ γὰρ δεκόκτωρ ὦν παραγράφασθαι τὸν δανειστήν σου οὐκ ἡδύνασσο ὡς δεκόκτωρα, καὶ ἀπαιτηθῆναι ὡφεῖλες· ἐγὼ δὲ διὰ τὴν σὴν ὡφέλειαν ὑβρίξιν ἕτερον οὐκ ἡδυνάμην· καὶ συγγινώσκειται ταῦτα λέγων ὁ ἐγγυητὴς· καὶ ταῦτα λέγειν δύναται ὁ ἐγγυητὴς, ὅτε ἀμφοτέροι δεκόκτωρες ἦσαν ὅτε δανειστής καὶ ὁ χρεώστης. Εἰ δὲ ὁ μὲν δανείσας δεκόκτωρ ἦν, ὁ δὲ χρεώστης οὐκ ἦν δεκόκτωρ, καὶ ἡδύνατο ἀέμπτως χρῆσασθαι τῇ παραγραφῇ, οὐκ ἀδιαστικῶς βοηθεῖται ἐγγυητὴς μὴ προβαλλόμενος ταύτην. ἐξ οἰκείου μὲν γὰρ προσώπου μὴ προβαλλόμενος ταύτην, συγγινώσκειται, ὡς καὶ ἀνωτέρω εἴρηται. ἐκ δὲ προσώπου χρεώστου ταύτην ἀντιθεῖναι, ἢ αἰδοῦμενον ταύτην ποιῆσαι ὑπομῆσαι τὸν παρόντα χρεώστην, καὶ εἰπεῖν αὐτῷ· παρέλθε καὶ τὴν ἄσμιον παραγραφὴν ἀντίθε, ἐγὼ γὰρ αἰσχύνομαι ὑβρίξιν

Schol. ad Bas. 722/28 – 723/23

ἔχε ταῦτα ὡς ἐν προθεωρίᾳ. Ἐάν τις χρεοκοπήσῃ πρὸς τοὺς οἰκείους κρεδύτορας ἦγουν δανειστάς, κινουμένη αὐτῷ κατὰ τῶν ἰδίων χρεωστῶν ἀντιτεθήσεται ἢ τῆς στελλίουος¹ παραγραφῇ, καὶ τοσοῦτον μέρος χρέους ἀπολήψεται ἀπὸ² τοῦ δεβίτωρος, ὅσον μέρος αὐτὸς τῶν ἐποφειλομένων τῷ ἰδίῳ κρεδύτορι δέδωκε. <Δεκόκτωρ δὲ> δεκόκτορι ἦγουν χρεοκόπος³ τὴν τοῦ στελλίουος ἥτοι τὴν τοῦ κακούργου οὐκ ἀντιθήσει παραγραφὴν. Ὅρα λοιπὸν τὸ ζητούμενον. Πρῶτος δανεισάμενος παρὰ Τιτίου Σεκοῦνδου δέδωκεν ἐγγυητὴν. Ὁ ἐγγυητὴς ἀντιθεῖναι παραγραφὴν δυνάμενος ἐναγόμενος ταύτην οὐκ ἀντέθηκε⁴ παραγραφὴν, ἥτινι ὁ βέος οὐκ ἡδύνατο κεχερῆσθαι (τί γάρ, ὅτι ὁ Τιτίος δεκόκτωρ ἦν καὶ ἡδύνατο τὴν στελλιονάτου⁵ αὐτῷ παραγραφὴν ἀντιθεῖναι, ὁ δὲ Πρίμος οὐκ ἡδύνατο· τυχὸν γὰρ καὶ αὐτὸς δεκόκτωρ ἦν;) κινήσει τὴν μανδάτι κατὰ τοῦ Πρίμου· οὐ γάρ τις ἐγκαλέσει αὐτῷ ταύτην οὐκ ἀντιθέντι τὴν παραγραφὴν, ἥτις ἐφύβριστος εἶναι νομίζεται. Ὁ γὰρ νόμος εἰ καὶ μισεῖ τὸν δεκόκτορα, ἀλλ' οὐκ ἐπαινεῖ τὸν δι' οἰκείον κέρδος ἀποκεχερῆμενον τῷ κατὰ τοῦ ἐνάγοντος μίσει τοῦ νόμου. Εἰ δὲ ὁ <νέστα> ἦν ἡ παραγραφὴ ἦγουν εὐσχήμων καὶ ὡφέλιμος (τυχὸν γὰρ ἦν αὐτῷ περσονάλιον γενόμενον πᾶκτον) ἀποσπωπῆσας ταῦτα οὐ κτάται τὴν μανδάτι, εἴγε τοιαύτῃ ἦν ἡ παραγραφὴ, ἥτινι καὶ ὁ βέος ἡδύνατο κεχερῆσθαι. Εἰ δὲ τις ἦν τῶν οὐκ ἐπαινουμένων (οἷον ἡ τῆς σταλλίουος, κἂν γὰρ οὐδέτερος αὐτῶν, οἷον Πρίμος καὶ Σεκοῦνδος, ἔτυχε δεκοκτορεύσας) εἰ μὲν ἀγνοῶν ὁ φιδεύσις παρήκε τὴν παραγραφὴν, βοηθεῖται· εἰ δὲ ἡπίστατος, οὐκ ἔχει τὴν μανδάτι· μόνον εἰ παρήκε γνώριμον τοῦτο ποιῆσαι τῷ Πρίμῳ καίτοι ἔχων εὐχέρειαν τοῦ περιτυχεῖν αὐτῷ καὶ εἰπεῖν, ὥστε παραγενόμενον τὸν Πρίμον αὐτὸν ὑποδέξασθαι τὸ δικαστήριον καὶ ἀντιθεῖναι τὴν τῆς σταλλίουος παραγραφὴν, ἢ σουονόμενε ἐναγόμενον, ἐν ᾧ οὕτω ἦν προκαταρχεῖσα ἢ κατὰ τοῦ ἐγγυητοῦ ἀγωγῇ, ἢ προκουρατοριονόμενε ἀρχείσεως ἡδὴ τῆς κατὰ τοῦ ἐγγυητοῦ δίκης. Εἰ δὲ τοῦ Πρίμου ἀπόντος ἔσθ' ὅτε δυσχερὲς γέγονε τῷ ἐγγυητῇ πρᾶξι τὰ εἰρημένα, δίδεται ἡ μανδάτι κατὰ τοῦ Πρίμου· οὐδὲ γὰρ ἐγκαλέσει τῷ Σεκοῦνδῳ, τίνας ἐνεκα παραγραφὴν ἐφύβριστον οὐκ ἀντέθηκεν. 1 στελλίουος] στελλιονάτου Ρ 2 ἀπολήψεται ἀπὸ] λήψεται παρὰ Ρ 3 χρεοκόπος - ἀντιθήσει] χρεοκόπῳ τὴν

ἀνθρωπον δι' ὠφέλειαν σὴν. εἰ δὲ μὴ παρόντος τοῦ χρεώστου οὐκ ἦν εὐχερὲς αὐτῷ τοῦτο ποιεῖν, συγγινώσκεται. ταῦτα μὲν τὸ διγέστον. σὺ δὲ ζῆτει, πότε ὁ ἐγγυητὴς τοῦο νόμινε ἐνάγεται καὶ πότε οὐ, καὶ μετὰ τὴν νεαρὰν τὴν λέγουσαν, πρῶτον μὲν εὐθύνησθαι τὸν πρωτότυπον καὶ οὕτως τὸν ἐγγυητὴν, καὶ ἀνέσχαιτο ὁ ἐγγυητὴς μὲν προβαλεῖν τοῦτο ἀλλὰ κατέβαλε, καὶ φιλοπονῶν εὐρήσεις καὶ τὰς λύσεις. οὐ γὰρ ἐν ἐνὶ κεφάλαιῳ δεῖ πολλὰ περιπλέκειν. καὶ λέγει ταῦτα· ἐγὼ δὲ θαυμασίαν ἤγγικαι τὴν τοῦ Κυρίλλου περὶ λόγους δύναμιν. φράζει γὰρ οὗτος τὸ αὐτὸ κεφάλαιον. «εἰ ἄσημον παραγραφὴν παραλείπει ὁ ἐγγυητὴς, εἰ μὲν ἐξ οἰκείου προσώπου, συγγινώσκεται· εἰ δὲ ἐκ προσώπου τοῦ βέου, εἰδὼς καὶ δυνάμενος ὑπομῆσαι αὐτόν, ἵνα ἔλθῃ καὶ δικάσῃται, οὐ συγγινώσκεται».	στελλιονάτου ἤγουν τὴν τοῦ κακούργου οὐκ ἀντιτίθησι P 4 post ἀντέθηκε] Ζητοῦμεν, εἰ καταδικασθεὶς δύναται κινεῖν τὴν μανδᾶτην. Καὶ γενικῶς ὁ Ἰουλιανὸς φησιν· εἰ μὲν ὁ ἐγγυητὴς οὐκ ἀντέθηκε add. P; See also Bas. ad Schol. 723, 2 cr.ap. 5 στελλιονάτους] σταλλιονός P
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5. The source of the *Peira* 26.12

After identifying the literary background of *Peira* 26.12 – the fact that it is a *Basilica* scholion¹² –, the next step is to make an attempt to date it and to find out whether it belongs to the old or the new *Basilica* scholia and, therefore, whether the text can be attributed to an *antecessor* or to a *Basilica* scholiast. The reference to the *Digest* (ταῦτα μὲν τὸ Δίγεστον) appears to imply the origin of the scholion, namely that it is a scholion commenting on D. 17.1.10.12, on which the *Basilica* provision is based¹³. This conclusion is confirmed by a number of archaic linguistic features such as the use of Latin technical terms that are typical for the sixth century, and that appear in the variants of the scholion preserved in the two *Basilica* manuscripts (δεκόκτωρ, φιδεῖύσω, σοῦο νόμινε, προκουρατόριο νόμινε)¹⁴, as well as by the reference to Julian in the version of the scholion transmitted in cod. Paris. gr. 1352. The same goes for the exhellenised Latin names Πρίμος, Σεκοῦνδος and Τίτιος, which in the *Peira* passage have been replaced by the names Πέτρος, Παῦλος and Ἰωάννης. Moreover, the second person singular (σὺ δὲ ζῆτει, καὶ φιλοπονῶν εὐρήσεις) proves the didactic tone, typical of the antecessorian technique and, as far as the date is concerned, the reference to Justinian's Novel 4 offers in any case a safe *terminus post quem*¹⁵. The concluding sentence is, furthermore,

12. For the relationship between the *Basilica* and the *Peira* see the outstanding article by STOLTE, *The Peira*, which has not yet been published.

13. The reference to the *Basilica* in the passage from the *Peira* evidently constitutes a later substitution for the reference to the corresponding passage in the *Digest*.

14. On the Greek language with Latin termini technici from the class room of the *antecessores* see VANDER WAL, *Die Schreibweise*, 38-45; BURGMANN, *Λέξεις Ρωμαϊκαί*, 61-79; TROIANOS, *Ἡ ἐλληνικὴ νομικὴ γλῶσσα*, 27-42; DE JONG, *Εντολή (Mandatum)*, 259-263.

15. For Justinian's Novel 4, issued on March 16, 535 see BRIGUGLIO, *Fideiussoribus*, 1-11 with extensive bibliography.

undoubtedly a reference to a *summa* of the aforementioned fragment from the *Digest* by Cyril¹⁶, for which the author of the scholion that is transmitted in the *Peira* does not conceal his admiration¹⁷. Here we are evidently dealing with a fragment of an *index*, that is a commentary that reproduces the contents of a *Digest* text in an exegetical and didactic manner. The *indices* could be extensive but they could also have the form of a short summary¹⁸.

After the conclusion regarding the literary identity of *Peira* 26.12 and the determination of its date – namely, that it belongs to the so-called “old” scholia¹⁹ and derives from an antecessor of the 6th century – it remains for us to attempt an attribution of the scholion to one of these antecessors. According to the editor of the *Peira*, the core of this scholion goes back to the antecessor Stephanus, whose name fills the lacuna of the manuscript: Ταῦτα λέγει < ὁ Στέφανος >²⁰. Moreover, according to SCHELTEMA, who in reversal of his previous opinion in one of his most recent articles follows the criterion proposed by ZACHARIÄ VON LINGENTHAL²¹, the expression ἔχε ταῦτα ὡς ἐν προθεωρίᾳ is typical for Theophilus’ teaching²². We know, moreover, that

16. A view also shared by the editor of the *Peira*, 117: ‘Cyrilli summa hodie non habetur’. On the *summa* of Cyril that was written before 542/543 see SCHELTEMA, *Das Kommentarverbot*, *supra*, n. 8.

17. See *supra*, 188.

18. On the *index* as part of the *antecessorial* teaching and its form see SCHELTEMA, *Das Kommentarverbot*, 325 [= *Opera Minora*, 422-423].

19. On the *Basilica scholia* in general and especially on the criteria of the distinction between «older» and «younger» ones see VAN BOCHOVE, *The Basilica*, 543-546; STOLTE, *Praefatio*, 263-265.

20. ZACHARIÄ VON LINGENTHAL, *Peira*, 117: «Addendum videtur ὁ στέφανος. Nimirum quae praecedunt ex iudice Stephani hausta sunt, quem habes inter scholia Basil. I.I.». That this reasoning is incorrect see below n. 22. On Stephanus see DE JONG, *Stephanus*, *passim*.

21. See the appendix following the main text of the present study.

22. SCHELTEMA, *Rez. zu P.E. Pieler, Rechtsliteratur*, 273 [= *Opera minora*, 476]: «Die Θεοφίλου überschriebenen Fragmente des Digestenindex weisen zwar keine Protheorien auf, aber es finden sich im 17. und in der zweiten Hälfte des 23. Digestenbuches zahlreiche Protheorien, die mit der in der Institutionenparaphrase üblichen Formel ἔχε ταῦτα ὡς ἐν προθεωρίᾳ anfangen und nach meiner heutigen Ansicht von Theophilus stammen (ich widerrufe also ebenfalls meine in *Antécresseurs*, S. 25 Anm. 69 gemachten Bahauptungen). Es handelt sich um BS 722/28, 788/33, 796/1, 484/29, 486/6, 1998/19, 2061/13, 2063/20, 2065/29, 2066/21, 2073/22, 2079/20, 2082/8, 2150/3. Die in der Nähe namenlos überlieferten Indexfragmente werden in Heimbachs *Manuale* dem Stephanus zugeschrieben, sind aber zum grossen Teil von Theophilus». On the *index* of Theophilus see SCHELTEMA, *Korreferat zu P. Zepos*, 35-36 [= *Opera Minora*, 338-339]; SCHELTEMA,

in his own *index* – written most probably between March 536 and 544²³ – Stephanus mentions often besides Theophilus²⁴ also Cyril²⁵, who had written, as stated above, his *summa* before 542/543²⁶. Thus, it is most probably Stephanus who reproduces the fragment of Theophilus' *index* corresponding to D. 17.1.10.12 (that in *Peira* 26.12 has been replaced by its equivalent in the *Basilica* text). At the end Stephanus adds his own commentary with its reference to Novel 4 which had been issued in the meantime and expresses his admiration for the relevant passage of the *summa* from Cyril.

Appendix

The appendix consists of two tables. The first table below attempts to give an overview of the preserved fragments of the *antecessor* Theophilus' *index* of the *Digest*, a part of which constitutes in our view the core of *Peira* 26.12, in accordance with the criteria proposed by ZACHARIÄ and SCHELTEMA in his later opinion. For how tricky this endeavour might be, is sufficiently shown by the fact that the term *protheoria* or its derivatives and similar expressions (e.g. Ταῦτα μαθὼν - ἐλθὲ ἐπὶ τὸ προκείμενον)²⁷ use, besides Theophilus, sporadically Isidoros²⁸,

L'enseignement, 30-31 [= *Opera Minora*, 80]. On Theophilus and his teaching see also THEOPHILI ANTECESSORIS, *Paraphrasis*, xxi-xxii.

23. On Stephanus and his teaching of the *Digest* most probably at the Law school in Berytus see SCHELTEMA, *Subseciva XIV. Chronologisches*, 255-257 [= *Opera Minora*, 145-147]; DE JONG, *Stephanus*, 1-18.

24. That the *index* of Stephanus was based on the *index* of Theophilus has been stressed by ZACHARIÄ VON LINGENTHAL, *Aus und zu den Quellen*, 274: «So wird es denn als höchst wahrscheinlich anzusehen sein, dass der Digestenindex des Theophilus für des Stephanus Index die Grundlage gebildet habe»; DE JONG, *Stephanus*, 6, 162-165.

25. Stephanus describes Cyril as ἡρωῶς; he even may have been Stephanus' διδάσκαλος. On the relationship between Stephanus and Cyril see SCHELTEMA, *L'enseignement*, 5 n. 22 [= *Opera Minora*, 62 n. 22]; DE JONG, *Stephanus*, 11-12.

26. On the *summa* of Cyril see *supra* n.8.

27. With the term προθεωρία (*protheory*), is meant a piece of theory given in advance by the antecessores into their *index* that would help the student to better comprehend the material under discussion. These *protheories* can be easily recognised because of their standard formulas; for example they have as a beginning line «keep the following in mind in advance» (ἔχε ταῦτα ὡς ἐν προθεωρίᾳ or προθεώρησον) and as an ending line «now that we have considered this beforehand, look at the present text» (ἐπειδὴ σοι ταῦτα προτεθεώρηται, ὅρα λοιπὸν τὸ προκείμενον or ἐλθὲ ἐπὶ τὸ προκείμενον) or similar expressions.

28. Schol. ad Bas. 1328/11-26. On Isidoros and his *index* see SCHELTEMA, *L'enseignement*, 29-30 [= *Opera Minora*, 79-80] with reference to this particular scholion that has come down to us without heading.

Stephanus²⁹ but also ‘younger’ *Basilica* scholiasts such as Hagiothodorites³⁰ and more regularly the unknown compiler of the *Ecloga Basilicorum*, which is a selection of text fragments from the first ten *Basilica* books accompanied by a commentary dated around the year 1142³¹. The table does not aim to provide an exhaustive list of all fragments of Theophilus’ *index*, I am firmly convinced that a comprehensive study that will compare passages from the Theophilus’ Greek Paraphrase of Justinian’s *Institutes* with relevant scholia from the *Basilica* will reveal more formal characteristics of Theophilus’ method of working and consequently also of the extent parts of his *index* of the *Digest*³².

The second table below attempts to make a list of the fragments with similar expressions as to Theophilus’ *index* that have come down to us without heading but they can be attributed to Stephanus based on the criteria suggested by ZACHARIÄ³³. The possibility

29. Schol. ad Bas. 743/22-26 (Εἶπον σοι προθεωρῶν τὸ παρὸν θέμα), 1510/21-1511/16 (Εἶπον γὰρ σοι καὶ προθεωρῶν), 1568/31-1571/11 (Προθεώρησον - Μάθε σαφέστερον). On Stephanus and these scholia see DE JONG, *Stephanus*, 372, 380, 386. She, however, being unaware of the relevant previous bibliography believes – incorrectly in my opinion – that the scholia ad *Basilica* 722/28-723/23 (DE JONG, *Stephanus*, xiii, 371), 788/33-789/20 (374), 796/1-20 (374), 821/13 - 822/10 (375), 2003/20-24 (389), 2063/20-2064/4 (389) could be attributed to Stephanus.

30. Schol. ad Bas. 3086/25-31, 3186/9-24, 3292/22-3293/4 who uses the term προθεώρησον and in general follows the teaching methods of the *antecessores*. See PENNA, *Hagiotheodorites*, 416 and n. 57, 420. One should also add the scholium ad Bas. 3202/23-3203/11 which is not mentioned by Penna.

31. On the use of older material deriving from the time of the *antecessores* in the *Ecloga Basilicorum* see BURGMANN, *Ecloga Basilicorum*, xiv and PENNA, *A Witness*, 153-154. The standard formulas of protheory that are used by the unknown compiler of the *Ecloga Basilicorum* are the following: Ἰσθι/Μάθε/Γίνωσκε ὡς ἐν προθεωρίᾳ – Ταῦτα μαθὼν, ὅρα (τὸ ζητούμενον/ τὸ προκείμενον): *Ecloga Basilicorum* 23^{11,20}, 44^{1,19}, 47^{8,15,22}, 66⁴, 67¹, 73^{16,28}, 74^{13,25}, 96¹⁶, 109¹⁰, 133^{2,13}, 151^{10,13}, 353^{8,12}. Προθεώρησον / Ταῦτα προθεωρήσας ἐπὶ τὴν τοῦ παρόντος κεφαλαίου διδασκαλίαν ἔλθε: *Ecloga Basilicorum*, 497^{26,27}. Γίνωσκε (ταῦτα) ὡς ἐν προθεωρίᾳ / Ταῦτα προθεωρήσας ἔλθε ἐπὶ τὸν προκείμενον τοῦ παρόντος κεφαλαίου θεματισμόν/ Τοῦτο οὖν γινώσκων μάθε: *Ecloga Basilicorum* 479¹⁴, 490^{9,14-15}, 531^{16,18} (Κανονικῶς καὶ γενικῶς / Καθολικῶς) γίνωσκε καθόλου/ὡς ἐν κανόνι/ταῦτα./ Ἰσθι - Ταῦτα μαθὼν / Τοῦτο γοῦν εἰδὼς / Καὶ τοῦτο γινώσκων ἔλθε ἐπὶ / ὅρα τὸ προκείμενον / τὸ ζήτημα: : *Ecloga Basilicorum* 46²⁰, 69^{6,26}, 120^{3,34}, 246¹⁸⁻²⁷, 253¹¹⁻¹³, 253²⁷⁻²⁸, 263^{13,20}, 268¹⁰, 271¹³⁻¹⁴, 273^{1,13}, 274²⁶, 276²⁶-277¹, 280⁹⁻¹⁴, 307⁸⁻⁹, 310¹⁶, 359¹⁸⁻²⁶, 360¹⁸⁻²³, 401⁹⁻¹⁰, 409^{10,12}, 411¹⁷, 428^{17,20}, 434⁴, 435²³-436¹, 436¹⁸⁻²⁶, 445⁴⁻⁸, 445²²⁻²⁶, 451²⁶⁻²⁹. As it is obvious from the above references the author of the *Ecloga Basilicorum* makes extensive use of *protheories* and in this sense he imitates Theophilus and Stephanus. The use of *protheories* by Hagiotheodorites seems on the contrary rather restricted.

32. As for example a certain predilection for similar expressions that we encounter in the Greek Paraphrase of the *Institutes* such as Στίχος ὁ οἰκέτης (THEOPHILI ANTECESSORIS, *Paraphrasis*, 986).

33. It should be noted here that DE JONG, *Stephanus*, does not think possible that most of

that some of these scholia might be part of the Theophilus' *index* or the other way round can not be ruled out.

A special study may be devoted to the question whether or not the term *protheoria* and its derivatives are used by the other *antecessores* /scholiasts in the same way as by Theophilus in his Greek Paraphrase and in his *index* of the *Digest*. From the data of the table it is quite obvious that the commentary of Theophilus on the *Digest* covers books from 1 to 23, a finding that appears to confirm to a great extent the observations of the last editors of the Greek Paraphrase of the *Institutes* with regard to Theophilus' teaching and his life: «There is no trace of Theophilus in the constitution *Cordi* of November 16, 534, which ordered the revision of the Justinian Code. This may indicate that he had died that year, as has been said above. In this context it is noteworthy that we have many fragments of his commentary on the *Digest partes Prota* (books 1-4) and *De rebus* (books 12-19), but no more than two on *De iudiciis* (books 5-11). More precisely, his last fragment that is connected with *De rebus* is the only one on D. 17,2 – if it is. It may not be too bold to imagine that Theophilus in 533-534 taught the *Institutes* and the *Prota* as a first-year's course, combining this with a second-year's course about *De rebus* in accordance with the curriculum prescribed in the constitution *Omnem* §§ 2 and 3, but stopping for whatever reason at D. 17,1 or D. 17,2. He then vanishes from the scene altogether. The most probable explanation of this disappearance would indeed be his death in or shortly after 534»³⁴. One final remark should be made regarding Theophilus' commentary on book 23 of the *Digest*. In the second year of their curriculum, the students had to study in addition to the second «pars» of the *Digest* dealing with the law of procedure (D. 5-11, pars *De iudiciis*) or the third 'pars' containing the law of things (D. 12-19, pars *De rebus*), four *libri singulares* («four works in one book each»). One of these four *libri singulares*, which dealt with a particular subject, was D. 23 dealing with engagement, marriage and dowries³⁵.

In the Tables the following *Basilica* manuscripts³⁶ will be cited in an abbreviated form:

Ca: Paris, Bibliothèque Nationale, Coislinianus gr. 152.

F: Florence, Biblioteca Medicea Laurenziana, Laurentianus LXXX, 11.

P: Paris, Bibliothèque Nationale, Paris gr. 1352.

Pa: Paris, Bibliothèque Nationale, Paris gr. 1348.

Pb: Paris, Bibliothèque Nationale, Paris gr. 1345.

Pe: Paris, Bibliothèque Nationale, Paris gr. 1350.

V: Leiden, Universiteitsbibliotheek, Vossianus gr. Fol. 19.

Π: apographum, in quo Zachariä von Lingenthal codicem resc. Berolinensem fol. 28, nunc Krakoviensis 28/266 resc., descripsit.

these scholia might derive from Stephanus.

34. THEOPHILI ANTECESSORIS, *Paraphrasis*, XXXII.

35. On the curriculum see SCHELTEMA., *L'enseignement*, 7-16 [= *Opera Minora*, 64-70]; On the division of the *Digest* into *partes* see VAN BOCHOVE, *Tenth Century Constantinople*, 87-96.

36. On the contents of the manuscripts and their date see STOLTE, *Praefatio*, 251-255 with further bibliography.

Table 1
Digest Index of Theophilus

	<i>Digest</i>	<i>Sources</i>	<i>Expressions</i>	<i>Bibliography</i>
1.	D. 1.8.6	Sch. ad THEOPHILI ANTECESSORIS, <i>Paraphrasis</i> , 2.1.8, FERRINI, <i>Scolii</i> , 168	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80].
2.	D. 2.14.4 pr.	Schol. ad Bas. 340/ 2-4 (P)	Reference to Theophilus by name [Φιλόξενος].	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80].
3.	D. 3.2.4 pr.	Sch. ad THEOPHILI ANTECESSORIS, <i>Paraphrasis</i> , 2.18.1; FERRINI, <i>Scolii</i> , 188	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80].
4.	D. 3.3.75	Schol. ad Bas. 14 0/12-17 (V)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80]; DE JONG, <i>Stephanus</i> , 366
5.	D. 3.5.5	Schol. ad Bas. 1021/12-13 (II)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80].
6.	D. 5.3.57	Schol. ad Bas. 2567/26- 2568/24 (Pb) [Schol. ad Bas. 2568/26] (Pb)	Πρίμος, Σεκουῖνδος. [Reference to Theophilus by name.]	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80]; THEOPHILI ANTECESSORIS, <i>Paraphrasis</i> , xxii n. 46.
7.	D. 6.2.11	Schol. ad Bas. 897/20-21 (II)	Reference to Theophilus by name. [Στέφανος]	DE JONG, <i>Stephanus</i> , 163 n. 497; THEOPHILI ANTECESSORIS, <i>Paraphrasis</i> , xxii n. 46.
8.	D. 7.1.48 § 1. 49	Schol. ad Bas. 949/14-21 (II)	Πρίμος, Σεκουῖνδος, Τέρτιος, Κουάρτος.	
9.	D. 7.1.60	Schol. ad Bas. 952/10-27 (II)	Πρίμος, Σεκουῖνδος.	
10.	D. 7.2.1	Schol. ad Bas. 967/4-30 (II)	Πρίμος, Σεκουῖνδος.	
11.	D. 7.2.1	Schol. ad Bas. 968/11 -969/12 (II)	Πρίμος, Σεκουῖνδος.	
12.	D. 7.2.1 § 4.2.3 pr.	Schol. ad Bas. 969/17 -970/17 (II)	Πρίμος, Σεκουῖνδος.	

13.	D. 12.1.9 pr.	Schol. ad Bas. 1512/9-20 (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80].
14.	D. 12.1.25	Schol. ad Bas. 1551/6-8 (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 30 [= <i>Opera Minora</i> , 80].
15.	D. 12.1.31 §1	Schol. ad Bas. 1555/31 -1556/ 11 (Pa)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
16.	D. 12.1.31 §1	Schol. ad Bas. 1558/28 -1559/35? ³⁷ (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
17.	D. 12.1.35	Schol. ad Bas. 1562/18-19 (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
18.	D. 12.1.40	Schol. ad Bas. 1574/1-3 (Pa)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
19.	D. 12.1.42	Schol. ad Bas. 1582/21-27? (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
20.	D. 12.2.9 § 2	Schol. ad Bas. 1419/18-23 (Pa)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
21.	D. 12.2.9 § 4	Schol. ad Bas. 1421/13-15 (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
22.	D. 12.2.11 § 1	Schol. ad Bas. 1427/1-3 (Pa)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
23.	D. 12.2.28 § 8	Schol. ad Bas. 1449/16-17 (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
24.	D. 12.2.28 § 9	Schol. ad Bas. 1450/21-26 (Pa)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31[= <i>Opera Minora</i> , 80].
25.	D. 12.2.30 § 2	Schol. ad Bas. 1453/16-21? (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31[= <i>Opera Minora</i> , 80].
26.	D. 12.2.32	Schol. ad Bas. 1458/19-22? (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].

37. I use the question mark when it is not clear to me on what line of the Basilica edited text ends the reference to the commentary of Theophilus.

27.	D. 12.3.4 pr.	Schol. ad Bas. 1485/27-28 (Pa)	Reference to Theophilus by name [Στέφανος].	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
28.	D. 12.3.4	Schol. ad Bas. 1487/22-25 (Pa)	Reference to Theophilus by name.	DE JONG, <i>Stephanus</i> , 163 n. 497.
29.	[D. 13.1.10 pr.]	Schol. ad Bas. 3314/6-8 (Pe)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80]; It is most probably a reference to THEOPHILI ANTECESSORIS, <i>Paraphrasis</i> , 4.1.
30.	D. 14.4.5 § 1	Schol. ad Bas. 1082/29-1083/5? (Π)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
31.	D. 17.1.10 § 12	Schol. ad Bas. 722/28 -723/23 (Ca) = Schol. ad Bas. 821/13 - 822/10 (P) <i>Peira</i> 26.12 part.	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ὅρα λοιπὸν τὸ ζητούμενον – Πρίμος, Σεκοῦνδος– Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E.</i> <i>Pieler, Rechtsliteratur</i> , 273 [= <i>Opera</i> <i>minora</i> , 476].
32.	D. 17.1.12 § 14	Schol. ad Bas. 736/15-19 (Ca)	Πρίμος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
33.	D. 17.1.22 pr.	Schol. ad Bas. 742/26-34 (Ca)	Mention of the name of Theophilus in the heading.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
34.	D. 17.1.22 § 8	Schol. ad Bas. 742/2-6 (Ca)	Πρίμος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
35.	D. 17.1.22 § 9	Schol. ad Bas. 743/1-10 (Ca)	Mention of the name of Theophilus in the head- ing – Πρίμος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
36.	D. 17.1.22 § 10	Schol. ad Bas. 743/27-30 (Ca)	Mention of the name of Theophilus in the heading.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
37.	D. 17.1.22 § 11	Schol. ad Bas. 744/7-19 (Ca)	Mention of the name of Theophilus in the heading.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
38.	D. 17.1.22	Schol. ad Bas. 745/4-22 (Ca)	Πρίμος.	

39.	D. 17.1.23-25	Schol. ad Bas. 747/17-22 (Ca)	Mention of the name of Theophilus in the heading.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
40.	D. 17.1.26 § 2	Schol. ad Bas. 748/12-17 (Ca)	Mention of the name of Theophilus in the heading.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
41.	D. 17.1.26 § 3	Schol. ad Bas. 748/25-30 (Ca)	Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262.
42.	D. 17.1.26 § 6	Schol. ad Bas. 749/9-17 (Ca)	Mention of the name of Theophilus in the heading.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
43.	D. 17.1.27 § 5	Schol. ad Bas. 755/13-14 (Ca)	Mention of the name of Theophilus in the heading.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
44.	D. 17.1.29	Schol. ad Bas. 761/9-21 (Ca)	Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262.
45.	D. 17.1.29 § 2	Schol. ad Bas. 763/29-764/5 (Ca)	Πρίμος, Τίτιος.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262.
46.	D. 17.1.29 § 6	Schol. ad Bas. 764/10-20 (Ca)	Πρίμος.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262.
47.	D. 17.1.34 pr.	Schol. ad Bas. 772/6-8 (Ca), 1523/1-3 (Pa)	Reference to Theophilus by name [Ἐνάντιος]. Reference to Theophilus by name [Ἐναντιοφανῆς].	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
48.	D. 17.1.34 pr.	Schol. ad Bas. 1535/30- 1536/2 (Pa)	Reference to Theophilus by name.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
49.	D. 17.1.47 pr.	Schol. ad Bas. 777/2-9 (Ca)	Πρίμος.	
50.	D. 17.1.47 § 1	Schol. ad Bas. 777/11-19 (Ca)	Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262.
51.	D. 17.1.48 § 2	Schol. ad Bas. 779/23-25 (Ca)	Reference to Theophilus by name [Τοῦ Ἐναντιοφανοῦς].	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 263; SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].

52.	D. 17.1.49	Schol. ad Bas. 781/4-18 (Ca)	Πρίμος, Σεκούνδος, Τίτιος, Στίχος, Μέβιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
53.	D. 17.1.50	Schol. ad Bas. 782/15-23 (Ca)	Πρίμος, Σεκούνδος, Τίτιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
54.	D. 17.1.52	Schol. ad Bas. 784/22-31 (Ca)	Πρίμος, Τίτιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
55.	D. 17.1.53	Schol. ad Bas. 785/18-30 (Ca)	Πρίμος, Σεκούνδος, Τέρτιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
56.	D. 17.1.56 pr.	Schol. ad Bas. 788/33-789/20 (Ca)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ἐπειδὴ σοι ταῦτα προτεθεώρηται, ὄρα λοιπὸν τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
57.	D. 17.1.58 § 1	Schol. ad Bas. 794/1-26 (Ca)	Πρίμος, Τίτιος, Σέιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
58.	D. 17.1.59 § 1	Schol. ad Bas. 796/1-20 (Ca)	ὡς ἐν προθεωρίᾳ ἔχε ταῦτα – Ἐπειδὴ σοι ταῦτα προτεθεώρηται, ὄρα λοιπὸν <τὸ προκείμενον> – Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
59.	D. 17.1.59 § 2	Schol. ad Bas. 797/5-8 (Ca)	Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
60.	D. 17.1.59 § 4	Schol. ad Bas. 797/21- 24 (Ca)	Πρίμος, Σεκούνδος, Τέρτιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
61.	D. 17.1.59 § 6	Schol. ad Bas. 799/6-12 (Ca)	Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
62.	D. 17.1.59	Schol. ad Bas. 800/7-10 (Ca)	Πρίμος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
63.	D. 17.1.60	Schol. ad Bas. 801/6-8 (Ca)	Πρίμος, Σεκούνδος.	
64.	D. 17.2.52	Schol. ad Bas. 479/10-30 (Ca)	Πρίμος, Σεκούνδος, Τέρτιος.	

65.	D. 17.2.52	Schol. ad Bas. 484/29-485/13 (Ca)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ἐπειδὴ σοὶ ταῦτα προτεθεώρηται, ὄρα λοιπὸν τὸ προκείμενον.	SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
66.	D. 17.2.52	Schol. ad Bas. 486/6-34 (Ca)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Τοῦτο εἰδὼς ὄρα λοιπὸν τὸ προκείμενον.	SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
67.	D. 17.2.52	Schol. ad Bas. 487/21-27 (Ca)	Πρίμος, Σεκοῦνδος.	
68.	D. 17.2.60	Schol. ad Bas. 498/6-21 (Ca)	Πρίμος.	
69.	D. 17.2.63	Schol. ad Bas. 499/31-501/3 (Ca)	Πρίμος.	
70.	D. 17.2.63	Schol. ad Bas. 503/27-504/12 (Ca)	Πρίμος, Σεκοῦνδος, Τέρτιος.	
71.	D. 17.2.63	Schol. ad Bas. 506/21-507/8 (Ca)	Πρίμος, Σεκοῦνδος, Τέρτιος.	
72.	D. 17.2.63	Schol. ad Bas. 507/19-508/19 (Ca)	Πρίμος, Σεκοῦνδος.	
73.	D. 17.2.63	Schol. ad Bas. 509/2-3 (Ca)	Reference to Theophilus by name.	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80]; THEOPHILI ANTECESSORIS, <i>Paraphrasis</i> , xxii, n. 47: «Although BS 509/2 seems to refer to Theophilus commentary on D. 17.2.63, it might be a reference to his Paraphrase of Inst. 3,25,7».
74.	D. 17.2.65	Schol. ad Bas. 517/12-22 (Ca)	Πρίμος.	
75.	D. 17.2.67	Schol. ad Bas. 518/13-25 (Ca)	Πρίμος, Σεκοῦνδος, Τέρτιος, Κονάρτος.	
76.	D. 17.2.69	Schol. ad Bas. 522/2-14 (Ca)	Πρίμος, Σεκοῦνδος, Τέρτιος.	
77.	D. 17.2.71	Schol. ad Bas. 522/31-523/23 (Ca)	Πρίμος, Σεκοῦνδος.	

78.	D. 17.2.76	Schol. ad Bas. 526/18-527/7 (Ca)	Πρίμος.	
79.	D. 17.2.83	Schol. ad Bas. 530/27-531/12 (Ca)	Πρίμος.	
80.	D. 23.2.14 § 3	Schol. ad Bas. 1848/23-34 (F Pa)	ἡδέως τοίνυν ἐμάνθανον.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262.
81.	D. 23.3.12	Schol. ad Bas. 1998/19-34 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ταῦτα εἰδῶς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
82.	D. 23.3.17 [reference D. 13.6.18 pr.]	Schol. ad Bas. 2003/20-24 (F Pa) [Schol. ad Bas. 621/24-27] (Ca)	[Reference to Theophilus by name.]	SCHELTEMA, <i>L'enseignement</i> , 31 [= <i>Opera Minora</i> , 80].
83.	D. 23.3.69 § 2	Schol. ad Bas. 2061/13-2062/11 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ἐπεὶ οὖν τοῦτο μεμάθηκας, ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
84.	D. 23.3.69 § 4	Schol. ad Bas. 2063/20-2064/4 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ταῦτα εἰδῶς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
85.	D. 23.3.69 § 6	Schol. ad Bas. 2065/29-2066/4 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Τοῦτο εἰδῶς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].
86.	D. 23.3.69 § 7	Schol. ad Bas. 2066/21-33 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Τοῦτο εἰδῶς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENTHAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E. Pieler, Rechtsliteratur</i> , 273 [= <i>Opera minora</i> , 476].

87.	D. 23.3.76	Schol. ad Bas. 2073/22-2074/11 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ταῦτα εἰδῶς ἔλθῃ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E.</i> <i>Pieler, Rechtsliteratur</i> , 273 [= <i>Opera</i> <i>minora</i> , 476].
88.	D. 23.3.78 § 4	Schol. ad Bas. 2079/20-2080/29 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Τοῦτο εἰδῶς ἔλθῃ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E.</i> <i>Pieler, Rechtsliteratur</i> , 273 [= <i>Opera</i> <i>minora</i> , 476].
89.	D. 23.3.79	Schol. ad Bas. 2082/8-15 (F Pa)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Ταῦτα εἰδῶς ἔλθῃ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E.</i> <i>Pieler, Rechtsliteratur</i> , 273 [= <i>Opera</i> <i>minora</i> , 476].
90.	D. 23.5.13	Schol. ad Bas. 2146/22-32 (F)	Ἡδέως τοίνυν ἐμάνθανον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262.
91.	D. 23.5.16	Schol. ad Bas. 2150/3-18 (F)	Ἔχε ταῦτα ὡς ἐν προθεωρίᾳ – Τοῦτο εἰδῶς ἔλθῃ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 262; SCHELTEMA, <i>Rez. zu P.E.</i> <i>Pieler, Rechtsliteratur</i> , 273 [= <i>Opera</i> <i>minora</i> , 476].

Table 2
Fragments of Stephanus' Index with similar expressions as to Theophilus' Index

	<i>Digest</i>	<i>Sources</i>	<i>Expressions</i>	<i>Bibliography</i>
1.	D. 2.14.7 § 5	Schol. ad Bas. 187/2-192/2 (Ca)	Προθεωρία – Σαφηνίσω δέ σοι διὰ θεματισμοῦ – προθεωρίας.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264; DE JONG, <i>Stephanus</i> , 367.
2.	D. 2.14.7 § 14	Schol. ad Bas. 202/11- 203/25 (Ca)	Προθεώρησον - Ἐπεὶ οὖν τοῦτο ἔγνωσ, ἔλθε (sic) ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264; DE JONG, <i>Stephanus</i> , 367.
3.	D. 2.14.46	Schol. ad Bas. 294/32- 295/25 (Ca)	Προθεώρησον – Τοῦτο εἰδῶς, ἔλθε (sic) ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
4.	D. 3.2.20	Schol. ad Bas. 1309/29- 1310/7 (Pa)	Ταῦτα εἰδῶς ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
5.	D. 3.3.5	Schol. ad Bas. 97/10-23 (V)	Προθεώρημα – (ἔλθῃ γὰρ ἐπὶ τὸ προκείμενον).	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264; DE JONG, <i>Stephanus</i> , 365.

6.	D. 3.5.5	Schol. ad Bas. 1020/6-21 (II)	Πρίμος ³⁸ .	
7.	D. 3.5.31	Schol. ad Bas. 1034/16-30 (II)	Τούτο εἰδὼς ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
8.	D. 3.5.32	Schol. ad Bas. 1035/6-15 (II)	Προθεώρησον – Τούτο εἰδὼς ὅρα...	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
9.	D. 3.5.34	Schol. ad Bas. 1036/18-1037/24 (II)	Προθεώρησον – Τούτο εἰδὼς ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
10.	D. 3.5.34	Schol. ad Bas. 1038/1-37 (II)	Προθεώρησον – Τούτο εἰδὼς ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
11.	D. 5.2.1	Schol. ad Bas. 2291/4-2293/10 (Pb)	Ταῦτα (...) μαθὼν ἔλθε (sic) ἐπὶ τὸ προκείμενον.	
12.	D. 5.2.6	Schol. ad Bas. 2296/22-2300/25 (Pb)	Προθεώρησον – Μάθε καὶ τοῦτο – Ταῦτα εἰδὼς ἔλθε ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
13.	D. 5.2.8 § 6	Schol. ad Bas. 2308/4-14 (Pb)	Προθεώρησον – Ἐλθε γάρ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
14.	D. 5.2.8 § 10	Schol. ad Bas. 2311/22-2312/31 (Pb)	Προθεώρησον – Ἐπει οὖν τοῦτο ἐγνώσ, ἔλθε ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
15.	D. 5.2.8 § 15	Schol. ad Bas. 2314/12-23 (Pb)	Προθεώρησον – Τούτο εἰδὼς ἔλθε ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
16.	D. 5.2.11	Schol. ad Bas. 2317/12-27 (Pb)	Προθεώρησον – Τούτο εἰδὼς ἔλθε ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
17.	D. 5.2.19	Schol. ad Bas. 2320/29-2322/12 (Pb)	Προθεώρησον – Τούτο γνούς ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.

38. SCHELTEMA, *L'enseignement*, 26 [= *Opera Minora*, 77] has convincingly argued that the names of Πρίμος, Σεκοῦνδος are not used exclusively by Theophilus: «Il convient de mentionner ici le point de vue de Zachariae selon lequel une partie des fragments ne devrait pas être attribuée à Stephanos, mais à Theophilos. Ces fragments seraient différents en ce sens que dans les θεματισμοί ne figurent pas les noms de Μαέβιος, Τίτιος etc., mais Πρίμος, Σεκοῦνδος, Τέρτιος etc. Je ne crois pas que ce point de vue soit juste; c'est que les noms en question ne figurent pas en groupes nettement séparés et parmi le peu de fragments de l' Index commençant par Στεφάνου il y a au moins un où se trouvent Πρίμος et Σεκοῦνδος (BS 1519-13)».

18.	D. 5.2.20	Schol. ad Bas. 2322/21- 2323/27 (Pb)	Προθεώρησον – Τούτο γνούς ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
19.	D. 5.2.21	Schol. ad Bas. 2324/12-23 (Pb)	Πρίμος, Σεκοῦνδος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
20.	D. 5.3.4	Schol. ad Bas. 2497/2-13 (Pb)	Τούτο οὖν εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
21.	D. 5.3.5 § 1	Schol. ad Bas. 2497/28- 2498/20 (Pb)	Τούτο εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
22.	D. 5.3.5 § 2	BS 2499/3-20 (Pb)	Προθεώρησον – Ταῦτα εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον – Πρίμος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
23.	D. 5.3.7	Schol. ad Bas. 2501/23 - 2504/35 (Pb)	Μικρὰ δὲ σοι τοῦ φάκτου προθεωρήσω – Ταῦτα εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264; DE JONG, <i>Stephanus</i> , 391.
24.	D. 5.3.12 fin. 13	Schol. ad Bas. 2511/9 - 2512/20 (Pb)	Σεκοῦνδος. – Μάθε τοίνυν ἐντελέστερον.	
25.	D. 5.3.16 § 6	Schol. ad Bas. 2521/3-21 (Pb)	Προθεώρησον – Τούτο εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
26.	D. 5.3.20 § 5	Schol. ad Bas. 2530/3-17 (Pb)	Προθεώρησον – Τούτο εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 264.
27.	D. 5.3.46	Schol. ad Bas. 2561/19-27 (Pb)	Προθεώρησον – Τούτο εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
28.	D. 5.3.48	Schol. ad Bas. 2562/2-11 (Pb)	Ἔγνωσ ἐν τοῖς προλαβοῦσι – (ἐλθὲ γὰρ ἐπὶ τὸ προκείμενον).	
29.	D. 5.3.50 § 1	Schol. ad Bas. 2563/28-2564/18 (Pb)	Προθεώρησον – Τούτο εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
30.	D. 5.3.51	Schol. ad Bas. 2564/23- 2565/21 (Pb)	Προθεώρησον – Μάθε καὶ τοῦτο (μᾶλλον δὲ οἶδας) – Ταῦτα εἰδώς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
31.	D. 6.1.1 § 3	Schol. ad Bas. 839/20-29 (II)	Προθεώρησον – Τοῦτο εἰδώς] ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
32.	D. 6.1.10	Schol. ad Bas. 846/28- 847/8 (II)	Προθεώρησον – Τούτο [εἰδώς] ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.

33.	D. 6.1.17 § 1	Schol. ad Bas. 853/29- 854/38 (II)	Μάθε - (ἐλθὲ γὰρ ἐπὶ τὸ προκείμενον).	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
34.	D. 6.1.27 § 4	Schol. ad Bas. 861/21- 862/5 (II)	Ταῦτα εἰδὼς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
35.	D. 6.2.12 § 3	Schol. ad Bas. 900/11-34 (II)	Καὶ οὕτως ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
36.	D. 7.1.12 § 5	Schol. ad Bas. 927/16- 929/28 (II)	Μικρὰ δέ σοι προθεωρήσω τοῦ θέματος – Τοῦτο γνοὺς ᾄρα...	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
37.	D. 7.1.33 § 1	Schol. ad Bas. 945/1-14 (II)	Προθεώρησον – Μάθε καὶ τοῦτο.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
38.	D. 7.1.42	Schol. ad Bas. 946/19-25 (II)	Προθεώρησον – Τοῦτο εἰδὼς ᾄρα τὸ προκείμενον – Πρίμος τις...	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
39.	D. 7.1.42 § 1	Schol. ad Bas. 946/29 -947/24 (II)	Προθεώρησον – Τοῦτο εἰδὼς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
40.	D. 7.1.62	Schol. ad Bas. 953/8 -954/12 (II)	Τοῦτο εἰδὼς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
41.	D. 7.2.3 § 2	Schol. ad Bas. 970/19 -971/35 (II)	Σαφηνίζέσθω δὲ τὸ εἰρημένον ὀλίγα προθεωρούντων ἡμῶν – Ταῦτα εἰδὼς ᾄρα τὸ προκείμενον – Πρίμος, Σκεοῦνδος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
42.	D. 7.4.16	Schol. ad Bas. 983/11-23 (II)	Πρίμος, Μαέβιος.	
43.	D. 7.5.8	Schol. ad Bas. 989/13 -990/9 (II)	Προθεώρησον – Ταῦτα γνοὺς εἰς τὸ προκείμενον ἐλθὲ – Πρίμος, Σκεοῦνδος, Τέρτιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
44.	D. 7.5.10	Schol. ad Bas. 990/17-20 (II)	Σκεοῦνδος.	
45.	D. 7.6.1	Schol. ad Bas. 992/4 -15 (II)	Τοῦτο εἰδὼς ᾄρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
46.	D. 14.3.5	Schol. ad Bas. 1075/9-17 (P)	Πρίμος, Σκεοῦνδος.	

47.	D. 16.3.5	Schol. ad Bas. 684/3-6 (P)	Πρίμος, Σεκούνδος, Τίτιος.	
48.	D. 19.2.11 § 2	Schol. ad Bas. 1175/11-33 (Pa)	[ἵνα] ἐλθωμεν ἐπὶ τὸ προκείμενον – Πρίμος, Τίτιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
49.	D. 22.1.3 § 2	Schol. ad Bas. 1633/3-35 (Pa)	Προθεώρησον – Τοῦτο εἰδὼς ὅρα τὸ προκείμενον – Ἄλλ’ ἐπειδὴ σοι ταῦτα προτεθεώρηται, ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
50.	D. 22.1.11	Schol. ad Bas. 1650/7-1651/4 (Pa)	Πρίμος, Σεκούνδος, Τέρτιος, Κουάρτος.	
51.	D. 22.1.14	Schol. ad Bas. 1655/5-27 (Pa)	Πρίμος.	
52.	D. 22.1.25	Schol. ad Bas. 1669/19-1670/10 (Pa)	Σεκούνδος.	
53.	D. 22.3.3	Schol. ad Bas. 1328/11-26 (Pa)	Τοῦτο εἰδὼς ὅρα τὸ προκείμενον – Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
54.	D. 22.3.6	Schol. ad Bas. 1331/20-1332/6 (Pa)	Προθεώρησον – Τοῦτο εἰδὼς ὅρα τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
55.	D. 23.2.34 § 1	Schol. ad Bas. 1820/31-1821/11 (F Pa)	Προθεώρησον – Ἐπει οὖν ταῦτα μεμάθηκας, ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265; DE JONG, <i>Stephanus</i> , 388.
56.	D. 23.2.60	Schol. ad Bas. 1858/13-1859/6 (F Pa)	Προθεώρησον – Τοῦτο εἰδὼς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
57.	D. 23.2.67 § 3	Schol. ad Bas. 1830/16-1831/9 (F Pa)	Ἐπει οὖν τοῦτο μεμάθηκας, ἐλθὲ ἐπὶ τὸ προκείμενον – Πρίμος, Τίτιος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
58.	D. 23.3.5 § 1	Schol. ad Bas. 1985/6-23 (F Pa)	Προθεώρησον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265; DE JONG, <i>Stephanus</i> , 388.
59.	D. 23.3.5 § 8	Schol. ad Bas. 1988/24-35 (F Pa)	Προθεώρησον – Τοῦτο εἰδὼς ἐλθὲ ἐπὶ τὸ προκείμενον – Πρίμος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
60.	D. 23.3.5 § 9	Schol. ad Bas. 1989/10-29 (F Pa)	Προθεώρησον – Τοῦτο εἰδὼς ἐλθὲ ἐπὶ τὸ προκείμενον – Πρίμος, Σεκούνδος.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.

61.	D. 23.3.7 § 3	Schol. ad Bas. 1992/24-1995/10 (F Pa)	Προθεώρησον – Τοῦτο εἰδῶς ἐλθὲ ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.
62.	D. 23.4.26 § 2	Schol. ad Bas. 2124/6- 12 (F)	Ἐλθὲ οὖν ἐπὶ τὸ προκείμενον.	ZACHARIÄ von LINGENT- HAL, <i>Aus und zu den Quellen</i> , 265.

Abstract: The aim of the present study is to offer a legal analysis of the *Peira* 26.12. It is argued that is in fact a fragment of Stephanus' *index* which was based on Theophilus' *index*.

Keywords: Byzantine law, bankruptcy, suretyship, Theophilus, Stephanus.

Fonti: *Peira*, *Basilica*.

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