

ON THE MEDIEVAL TRADITION OF JUSTINIAN'S NOVELLAE: AN INDEX TITULORUM AUTHENTICI IN NOVEM COLLATIONES DIGESTI

After the fundamental studies of the nineteenth century, especially in the works of Biener (1824), Savigny (1834), and Heimbach (1846)¹, modern scholarship has paid surprisingly little attention to the twelfth-century arrangement of the *Authenticum* in the Bolognese 'Vulgata' of Justinian's Novels, although it is this version that was incorporated in the 'Volumen (parvum)' of the medieval five-part manuscripts and the pre-modern editions of Justinian's Corpus.

Manuals that speak of 'versio vulgata' when they mean the *Authenticum* itself² only embroil matters, since the complete *Authenticum* was not used at all by the Glossators, once the nine *Collationes* had been put together. Schoell and Kroll in the standard bilingual edition (*Corpus Iuris* vol. III), do not even provide an index of the *tituli* of the 134 'constitutions' in the full *Authenticum*. They do indicate, it is true, in the body of their edition, the place in the *Collationes* for each of the constitutions that are there incorporated; but this will be of little avail, for lack of an appropriate index, to anyone who wants to verify a reference (*allegatio*) by one of the medieval glossators or commentators. And if the reader turns to Heimbach's cumbersome edition, he will only find that of its three indices³ (*Authenticum* set over against *Novellae*; *Collationes* against *Auth.*; *Nov.* against *Auth.*), the first does not indicate the *Collationes*, the second does not say what constitutions are missing there, and the third again bypasses the *Collationes* altogether⁴. The synoptic tables, finally, of Osenbrüggen (1840ff.) in

1 F. W. Biener, *Geschichte der Novellen Justinian's* (Berlin 1824) 243-91, esp. at pp. 271-85; F. C. von Savigny, *Geschichte des römischen Rechts im Mittelalter*, III (2nd ed. Heidelberg 1834) 490-504, esp. at pp. 501ff.; G. E. Heimbach (ed.), *Authenticum: Novellarum constitutionum Iustiniani versio vulgata* (2 vols. Lipsiae 1846-51; repr. Aalen 1974), I i-dcciii, esp. at pp.cccclxxvi-lxxxii.

2 P. Krüger, *Geschichte der Quellen und Litteratur des Römischen Rechts*, 2nd ed. (Binding's Handbuch 1.2; München-Leipzig 1912) 399-402; see p.402 n.21; L. Wenger, *Die Quellen des römischen Rechts* (Denkschriften Akad. Wien 2; Wien 1953) 670 n.198, 678. Even Biener had done so in the title of his excellent chapter on the 'altlateinische Novellensammlung (Liber authenticorum oder Versio Vulgata)' (p.243); not however Savigny, as Wenger claims.

3 Heimbach I dcciv-ix, dccxv-xxi.

4 There are other shortcomings: (1) in the first index one has to correct two misprints: *Auth.* 79 is *Nov.* 78 (not 76), and *Auth.* 120 is *Nov.* 127 (not 128); (2) in the same index his count of the

the third volume of the Kriegel-Hermann edition of the *Corpus Iuris* show which of the *Novellae* and of the 134 constitutions of the *Authenticum* are absent from the nine *Collationes*. But not only is this edition rarely at hand for quick consultation; its numbering also differs in part from the standard order of Schoell-Kroll⁵.

All these general shortcomings prompted me over forty years ago, during war-time, to publish for the use of my students an 'Index titulorum Authentici in novem collationes digesti' in the now defunct journal *Seminar*; it was later reprinted at the suggestion of Domenico Maffei in *Studi Senesi*⁶.

In her masterful *Indices Corporis Iuris Civilis iuxta vetustiores editiones cum criticis collatis*, Franca Sinatti d'Amico always indicates the *Collationes* for the lemmata of the *Authenticum* 'secundum vulgatam' and the numbers of the *Novellae* for the entries 'secundum criticam'⁷. But when she uses 'Coll. X, 1', 'Coll. X, 2', etc. for the constitutions that were omitted in the *Collationes*, this is misleading: the Vulgate text did not contain a tenth *collatio*, and what is printed with this title after the ninth in some early-modern editions is an artificial and variable compilation, including inter al. the Peace of Constance, the *Libri feudorum*, constitutions of the Emperor Frederick II, etc.⁸ Even with the Sinatti concordance at hand, the reader still would not be able to find short of counting the spurious references to 'Coll. X' what constitutions were excised by the compiler(s) of the Vulgate. (As for these compilers, Savigny made an educated guess at the 'Nachfolger' of Irnerius, or 'im äussersten Fall' Irnerius himself.⁹)

It is interesting to observe that the Glossators were not always certain which of Justinian's *Novelae* existed in Latin and which not. Accursius writes in the *Glossa ordinaria*, CJ 1.8.11 *vulg.* (= 1.5.21 Krüger), v. *angustetur*:¹⁰

... Sed hodie nulli Iudaeo permittitur ferre testimonium contra orthodoxum, nisi in curiali conditione, vt in auth. heret. vel in auth. vt heret. curiales § illud, vel in authen. de testi. haeticorum. Sed certè non inuenitur haec aut. inter authen. sed dicunt quidam reperiri in nouellis.

The first two references 'in auth(entico)' are somewhat suspect: (1) there is no const. 'Haeretici (-cos?)' in the *Authenticum*, and the const. 'De haeticis' in the *Epitome Juliani*, 102 (c. 364), does not contain anything on *curiales*; (2) the

Greek Novels agrees with that of the standard edition, but for the body of his own edition he uses a different count in the notes; (3) the long chapters of his prolegomena on the *Authenticum* in the Middle Ages (IV and V; nearly 300 pages) are too involved and unwieldy for consultation.

5 I have used the 4th edition, Lipsiae 1849), pp.ix, x.

6 *Seminar: An annual extraordinary number of The Jurist* [12 issues, 1943-54] 2 (1944) 82-89; *Studi Senesi* 75 (= 3rd series 12; 1963) 191-99.

7 *Ius Romanum medii aevi*, Subsidia I (3 parts in 5 vols.; Mediolani 1969-70).

8 Savigny III 520-26.

9 Ibid. 502.

10 I have used ed. Venet. 1581 p. 84a and kept its spelling.

const. *Auth.* 52 (Nov.45)¹¹, ‘Ut haeretici curiales et munia impleant...’ was not included in the Vulgate, and its ‘§ illud’ (= c.1) has nothing to say about the testimony of Jews against *curiales*. Both these *allegationes* may be later interpolations, but without a study of the manuscripts this cannot be ascertained. The third reference, however, deserves our attention, for it shows the limitations of Accursius’s erudition. Citing the const. ‘in authen. de testi(moniis) haeticorum’, obviously at second hand, he states that it is not found ‘inter authen(ticas)’ but that some say it can be found ‘in nouellis’. The ‘quidam’ refers to the *Summa Codicis* of Placentinus, 1.5:¹²

... Sed forte hodie (sicut in nouellis legitur) nullus haereticus in nullo casu, nisi ubi curialis reuocatur, contra catholicum admittitur. Porrò cum de Iudaeo nihil corrigatur, etiam contra catholicum pro testimonio (testamento *ed.*) contractuque admittitur.

When Placentinus writes, ‘hodie, sicut in nouellis legitur’, this is an implied reference to *Epitome Juliani* const. 41 (Nov.45) c.172 *De testimoniis haeticorum*,¹³

... Orthodoxis autem litigantibus ad testimonium nullus patet aditus; interdum autem etiam aduersus orthodoxum haeretici testimonium probabile est; quod contingit si orthodoxus in curialem condicionem trahatur: tunc enim haereticus aduersus eum recte testis producit, ut dicat se scire eum curialem esse, vel curiali patre genitum,

a reference which Accursius evidently did not understand. This proves that he was not familiar with the *Epitome*.

In the eleventh century, however, Ivo of Chartres had included the *Epitome* among the texts of Roman law he entered in his *Decretum*.¹⁴ By a strange coincidence, in *Decr.* 16.131 (*inscr.* ‘Constitutio 42 [*al.* 41] cap. 2’), the whole pericope after ‘patet aditus’ —whence also in *Pan.* 5.28 and in Gratian, *Decr.* C.2 q.7 c.26— is missing, just as in *Auth.* 52.1 (p.279 lin.6 Schoell-Kroll). But no manuscript has until now been recorded of *Nov.* 45 with a lacuna at this point

11 ed. Schoell-Kroll pp.277-79. F. Sinatti’s *Index titulorum* (Indices vol.1) lacks references to tit. ‘Ut haeretici curiales’ s.v. ‘haeretici’ and s.v. ‘Ut’; all her lemmata for the title of *Auth.* 52 are taken from the spurious ‘Coll.X.45’ of the Lyons 1567 edition of the *Volumen*. On the religious connotation of the term ‘curialis’ in early Rome see K. Latte, *Römische Religionsgeschichte* (Handbuch der Altertumswissenschaft 5.4; München 1960), 399.

12 ed Mogunt. 1536 p.11. The parallels between Accursius and Placentinus were first pointed out by W. Pakter, *Medieval canon law and the Jews* (Münchener Universitätsschriften / Jurist. Fakultät, Abhandl. zur rechtswiss. Grundlagenforschung 68; Ebelsbach 1988) 186f., who also proposed the emendation ‘testimonio’, but regrettably did not discuss the *allegationes* of the gloss, which he therefore misinterpreted, p.187.

13 *Iuliani Epitome latina Novellarum Iustiniani* ed. G. Haenel (Lipsiae 1873; repr. Osnabrück 1965) p. 71.

14 See Savigny, *Geschichte* II (2nd ed. 1834) 494-96; P. Fournier, ‘Les collections canoniques attribuées a Yves de Chartres, II’ (*ex* 1877), *Mélanges de droit canonique* ed. Th. Kölzer (Aalen 1983) I 542-43; P. Fournier - G. Le Bras, *Histoire des collections canoniques en Occident* (Paris 1931-32) II 78.

(ἐδίδαξας· συνημμένους αὐτοῖς, p.279 lines 5-8), nor of the *Epitome* without the lines 'interdum autem' *rell.*¹⁵

The foregoing pages are the result of my readings since I wrote the *Index titulorum*. It may be helpful to republish this *Index*, slightly revised, but without repeating here the introductory remarks of the original paper.

INDEX TITULORUM

	Auth. Coll.	Nov.
de administratoribus	7,6	95
de administrantibus officiis in sacris apellationibus	3,7	20
de aequalitate dotis &c.	7,8	97
de alienatione et emphyteusi &c.	9,3	120
de appellationibus	8,2	93
de apellationibus et intra quae tempora &c.	4,2	23
apud quos oporteat causas dicere monachos &c.	6,7	79
de armis	6,13	85
de collatoribus et aliis capitulis	9,14	128
de consanguineis et uterinis fratribus	6,12	84
constitutio quae dignitatibus et episcopatu &c.	6,9	81
constitutionem quae ex adscriptio &c.	5,7	54
de consulibus	4,3	105
de defensoribus civitatum	3,2	15
de deposito et denuntiationibus inquilinorum &c.	6,14	88
de duobus reis promittendi	7,9	99
de ecclesiasticis titulis	9,6	131
de ecclesiasticarum rerum immobilium alienatione &c.	5,1	46
de episcopis <i>cf.</i> de sanctissimis episcopis		
de executoribus &c.	7,7	96
de exhibendis et introducendis reis &c.	5,6	53
factae novae constitutiones - <i>cf.</i> ut factae novae const.		
de fide instrumentorum— <i>cf.</i> de instrumentorum cautela et fide &c.		
de fideiussoribus et mandatoribus &c.	1,4	4
de filiis ane dotalia instrumenta natis	3,6	19

15 See Schoell-Kroll, *app. crit.* ad loc.; Haenel, *Variae lectiones* p.193*. In the notes to c.172 at the bottom of the text (p.71), Haenel entered the *Authenticum*, Placentinus, Ivo *Decr.*, *Pan.*, and Gratian as *testimonia*, but failed to record the omission of half the chapter in *Auth.* 52.1 and the canonists. (Gratian C.2 q.7 c.26 is not a *palea* as Friedberg and loc. maintains).

	Auth. Coll.	Nov.
haec constitutio innovat constitutionem &c.	8,7	111
haec constitutio interpretatur priorem &c.	6,4	76
de heredibus ab intestato venientibus &c.	9,1	118
de heredibus et falcidia &c.	1,1	1
de his (<i>al. iis</i>) qui ingrediuntur ad appellationem	5,11	49
de immensis donationibus &c.	7,3	92
in medio litis non fieri sacras formas &c.	8,11	113
de incestis et nefariis nuptiis	2,6	12
de instrumentorum cautela et fide &c.	6,3	73
de interdictis collegiis haereticorum	9,12	132
de iudicibus et ut nullatenus &c.	6,10	82
de iureiurando a moriente praestito &c.	5,2	48
iusiurandum quod praestatur ab his &c.	2,3	8(J)
de lenonibus	3,1	14
de litigiosis et de decima parte litis &c.	8,8	112
de mandatis principum	3,4	17
de mensura ordinandorum clericorum	3,3	16
de monachis	1,5	5
de nauticis usuris (<i>distinguas a tit. de us. naut.</i>)	8,6	110
neque virum quod ex dote est &c.	8,1	98
de non alienandis aut permutandis ecclesiasticis rebus &c.	2,1	7
de non eligendo secundo nubentes mulieres &c.	1,2	2
de novi operis nuntiatione &c.	5,15	63
nulli iudicum— <i>cf. ut nulli iudicum</i>		
nullum credentem agricolae &c.	4,5	34
de nuptiis	4,1	22
de privilegiis dotis haereticis mulieribus &c.	8,5	109
de quaestore	6,8	80
quibus modis naturales efficiuntur sui &c.	7,1	89
quibus modis naturales filii efficiantur legitimi &c.	6,1	74
quomodo oporteat eiscopos &c.	1,6	6
de raptis mulieribus &c.	9,13	143
		= 150
de referendariis sacri palatii	2,5	10
de reis promittendi— <i>cf. de duobus reis prom.</i>		
de restitutione fideicommissi &c.	9,8	159

	Auth. Coll.	Nov.
de restitutionibus	8,4	108
de restitutionibus et ea quae parit &c.	4,6	39
de sanctissimis episcopis &c.	9,15	123
scenicas non solum si fideiussores &c.	5,4	51
de tabellionibus &c.	4,7	44
de tempore non solutae pecuniae super dote	7,10	100
de testamentis imperfectis &c.	8,3	107
de testibus	7,2	90
de triente et semisse &c.	3,5	18
de usuris nauticis (<i>distinguas a tit. de naut. us.</i>)	9,11	106
ut ab illustribus et qui super eam &c.	5,18	71
ut clerici apud proprios episcopos &c.	6,11	83
ut clerici qui recedunt &c.	5,10	57
ut cum de appellatione cognoscitur &c.	8,12	115
ut de cetero commutationes ecclesiasticarum rerum &c.	5,8	55
ut defuncti seu funera eorum &c.	5,13	60
ut determinatus sit numerus clericorum &c.	1,3	3
ut differenes iudices audire &c.	9,10	86
ut divinae iussiones &c.	8,10	114
ut ea quae vocantur insinuativa &c.	5,9	56
ut ecclesia Romana centum annorum gaudeat praescriptione	2,4	9
ut exactione instante dotis &c.	7,5	91
ut factae novae constitutiones &c.	5,16	66
ut fratrum filii succedant pariter &c.	9,7	127
ut hi (<i>al. ii</i>) qui obligatas se habere &c.	6,2	72
ut immobilia anenuptialis donationis &c.	5,14	61
ut in privatis domibus sacra mysteria non fiant	5,12	58
ut iudices non expectent sacras iussiones &c.	9,4	125
ut iudices sine quoquo suffragio fiant	2,2	8
ut liberti de cetero aureo non indigeant (<i>al. egeant</i>) &c.	6,6	78
ut liceat matri et aviae &c.	8,13	117
ut litigantes iurent in exordio	9,5	124
ut neque miles neque foederatus &c.	8,9	116
ut non fiant pignorationes pro aliis &c.	5,5	52
ut non luxurientur contra naturam &c.	6,5	77
ut nulli iudicum liceat &c.	9,9	134
ut nullus fabricet oratorii domos &c.	5,17	67
ut nullus mutuans agricolae &c.	4,4	33
ut omnes oboediant iudicibus provinciarum &c.	5,20	69
ut ordinariae praefecturae &c.	5,19	70

	Auth. Coll.	Nov.
ut praeponatur nomen imperatoris &c.	5,3	47
ut sine prohibitione matres debitorices &c.	7,4	94
ut sponsalicia largitas &c.	9,2	119

TABULA COMPARATIONIS AUTHENTICUM INTER (ADIECTIS NUMERIS CONSTITUTIONUM IN CORPORE INTEGRO) ET NOVELLAS

Coll.	Const.	Nov.	Coll.	Const.	Nov.
1, 1	(1)	1	--	(30)	30
2	(2)	2	--	(31)	31
3	(3)	3	---	(32)	102
4	(4)	4		(33)	103
5	(5)	5	4, 3	(34)	105
6	(6)	6	4	(35)	33
			5	(36)	34
2, 1	(7)	7	--	(37)	35
2	(8)	8	--	(38)	36
3	(8J)	8J	---	(39)	37
4	(9)	9	--	(40)	38
5	(10)	10	6	(41)	39
---	(11)	11	---	(42)	40
6	(12)	12	-	(43)	42
---	(13)	13	---	(44)	43
			7	(45)	44
3, 1	(14)	14			
2	(15)	15	5, 1	(46)	46
3	(16)	16	2	(47)	48
4	(17)	17	3	(48)	47
5	(18)	18	---	(49)	50
6	(19)	19	4	(50)	51
7	(20)	20	5, 5	(51)	52
---	(21)	21	---	(52)	45
			6	(53)	53
4, 1	(22)	22	7	(54)	54
2	(23)	23	8	(55)	55
---	(24)	24	9	(56)	56
---	(25)	25	10	(57)	57
---	(26)	26	11	(58)	49
---	(27)	27	12	(59)	58
---	(28)	28	---	(60)	59
---	(29)	29	13	(61)	60

Coll.	Const.	Nov.	Coll.	Const.	Nov.
14	(62)	61	8, 1	(99)	98
—	(63)	75 (= 104)	2	(100)	93
—	(64)	62	—	(101)	101
—	(65)	64	8, 3	(102)	107
15	(66)	63	4	(103)	108
—	(67)	65	5	(104)	109
16	(68)	66	6	(105)	110
17	(69)	67	7	(106)	111
—	(70)	68	8	(107)	112
18	(71)	71	9	(108)	116
19	(72)	70	10	(109)	114
20	(73)	69	11	(110)	113
			12	(111)	115
6, 1	(74)	74	13	(112)	114
2	(75)	72			
6, 3	(76)	73	9, 1	(113)	118
4	(77)	76	2	(114)	119
5	(78)	77	3	(115)	120
6	(79)	78	4	(116)	125
7	(80)	79	5	(117)	124
8	(81)	80	—	(118)	130
9	(82)	81	6	(119)	131
10	(83)	82	7	(120)	127
11	(84)	83	—	(121)	Ed. VIII
12	(85)	84	—	(122)	129
13	(86)	85	—	(123)	145
—	(87)	87	—	(124)	146
14	(88)	88	—	(125)	147
			9, 8	(126)	159
7, 1	(89)	89	9	(127)	134
2	(90)	90	10	(128)	86
3	(91)	92	11	(129)	104
4	(92)	94	12	(130)	132
5	(93)	91	—	(131)	133
6	(94)	95	13	(131)	133
7	(95)	96	13	(132)	143 (= 150)
8	(96)	97	14	(133)	128
9	(97)	99	15	(134)	123
10	(98)	100			

Unde e CXXXIV constitutionibus Authentici XXXVII non esse receptas in collationes vulgatae recensiois facile vides, scil. 11. 13. 21. 24-33. 37-40. 42-

44. 49. 52. 60. 63-65. 67. 70. 87. 101. 118. 121-125. 131. Quae manent XCVII in titulos XCVIII sunt distributae collationum, ubi (Coll. 2, 3) Iusiurandum const. 8 adnexum proprio titulo auctum esse perspicimus.

TABULA ALTERA

Nov.	Const.	Coll.	Nov.	Const.	Coll.
1	(1)	1,1	38	(40)	—
2	(2)	1,2	39	(41)	4,6
3	(3)	1,3	40	(42)	—
4	(4)	1,4	* 41	(—)	—
5	(5)	1,5	42	(43)	—
6	(6)	1,6	43	(44)	—
7	(7)	2,1	44	(45)	4,7
8	(8)	2,2	45	(52)	—
8 Edictum	(8E)	2,2	46	(46)	5,1
8 Notitia	(8N)	2,2	47	(48)	5,3
8 Iusiur.	(8J)	2,3	48	(47)	5,2
* 9	(9)	2,4	49	(58)	5,11
10	(10)	2,5	50	(49)	—
* 11	(11)	—	51	(50)	5,4
12	(12)	2,6	52	(51)	5,5
13	(13)	—	53	(53)	5,6
14	(14)	3,1	54	(54)	5,7
15	(15)	3,2	55	(55)	5,8
16	(16)	3,3	56	(56)	5,9
* 17	(17)	3,4	57	(57)	5,10
18	(18)	3,5	58	(59)	5,12
19	(19)	3,6	59	(60)	—
20	(20)	3,7	60	(61)	5,13
21	(21)	—	61	(62)	5,14
22	(22)	4,1	* 62	(64)	—
* 23	(23)	4,2	63	(66)	5,15
24	(24)	—	64	(65)	—
25	(25)	—	* 65	(67)	—
26	(26)	—	66	(68)	5,16
27	(27)	—	67	(69)	5,17
28	(28)	—	68	(70)	—
29	(29)	—	69	(73)	5,20
30	(30)	—	70	(72)	5,19
31	(31)	—	71	(71)	5,18
32	(—)	—	72	(75)	6,2
* 33	(35)	4,4	73	(76)	6,3
* 34	(36)	4,5	74	(74)	6,1
* 35	(37)	—	* 75 = 104	(63)	—
* 36	(38)	—	76	(77)	6,4
* 37	(39)	—	77	(78)	6,5

Nov.	Const.	Coll.	Nov.	Const.	Coll.
78	(79)	6,6	125	(116)	9,4
79	(80)	6,7	126	(—)	—
80	(81)	6,8	127	(120)	9,7
81	(82)	6,9	*128	(133)	9,14
82	(83)	6,10	129	(122)	—
83	(84)	6,11	130	(118)	—
84	(85)	6,12	131	(119)	9,6
85	(86)	6,13	132	(130)	9,12
86	(128)	9,10	133	(131)	—
87	(87)	—	134	(127)	9,9
88	(88)	6,14	135	(—)	—
89	(89)	7,1	136	(—)	—
90	(90)	7,2	137	(—)	—
91	(93)	7,5	138	(—)	—
92	(91)	7,3	139	(—)	—
93	(100)	8,2	140	(—)	—
94	(92)	7,4	141	(—)	—
95	(94)	7,6	142	(—)	—
96	(95)	7,7	*143 = 150	(132)	9,13
97	(96)	7,8	144	(—)	—
98	(99)	8,1	145	(123)	—
99	(97)	7,9	146	(124)	—
100	(98)	7,10	147	(125)	—
101	(101)	—	148	(—)	—
102	(32)	—	149	(—)	—
103	(33)	—	*150 = 143	cf. (132)	cf. 9,13
*104 = 75	cf. (63)	—	151	(—)	—
105	(34)	4,3	152	(—)	—
106	(129)	9,11	153	(—)	—
107	(102)	8,3	154	(—)	—
108	(103)	8,4	155	(—)	—
109	(104)	8,5	156	(—)	—
110	(105)	8,6	157	(—)	—
*111	(106)	8,7	158	(—)	—
112	(107)	8,8	159	(126)	9,8
113	(110)	8,11	160	(—)	—
*114	(109)	8,10	161	(—)	—
115	(111)	8,12	162	(—)	—
116	(108)	8,9	163	(—)	—
117	(112)	8,13	164	(—)	—
118	(113)	9,1	165	(—)	—
119	(114)	9,2	166	(—)	—
120	(115)	9,3	167	(—)	—
121	(—)	—	168	(—)	—
122	(—)	—			
123	(134)	9,15	Edict. VIII	(121)	
124	(117)	9,5			

Asterisco in hac tabula signatae sunt Novellae quas latine promulgavit ipse Iustinianus. Animadvertas autem Authenticum unam continere constitutionem, scil. 121 [= Edict. VIII], quae non extat in corpore CLXVIII Novellarum. At vero Nov.32 nihil aliud est nisi constitutionis latinae Nov.34 (Auth. const.36) versio graeca, dum Nov.75 (Auth. const.63) iteratur in Nov.104, sicut et Nov.143 (Auth. const.132) in Nov.150. Demum Nov.41 deperdita est, cuius argumentum latinum praebet Iuliani Epitome in const.38, graecum vero dant Epitomae tam Theodori (const.41) quam Athanasii (4,12), cum Novellarum nonnulli codices graeci hoc in loco perperam inserant exemplar Nov.50. Quae si omnia perpendis, e corpore Novellarum quod hodie habemus non iam XXXV sed XXXI tantum constitutiones in Authentico dices desiderari, scil. (demptis Nov. 32. 41. 104. 150) Nov. 121-122. 126. 135-142. 144. 148-149. 151-158. 160-168, in collationibus autem LXVII, scil, praeter illas etiam Nov. 11. 13. 21. 24-31. 35-38. 40. 42-43. 45. 50. 59. 62. 64-65. 68. 75. 87. 101-103. 129-130. 133. 145-147.

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