

Book III.  
Title X.

Concerning excessive (or premature) claims.  
(De plus petitionibus.)

Bas. 7.6.22.23. Inst. 4.6.

Headnote.

A demand by plaintiff against the defendant might take several forms: it might be excessive in amount or might be demanded prematurely, or at a different place than that specified in the contract. Under former law the demand of an amount greater than was due, under either of the forms mentioned, was fatal to plaintiff's claim, except in case of a minor or where restitution of rights was given by reason of a justifiable mistake. But commencing with Zeno, the law was liberalized. If the excessive claim related to time, the provisions of law 1 of this title governed; if it related to quantity, or assumed any other form, the plaintiff was condemned in a sum equivalent to three times any loss which the defendant sustained thereby. If the plaintiff demanded less than was due, he was, nevertheless, entitled to judgment for the actual amount found due. If the plaintiff demanded the wrong thing, he could, during the action, upon discovery of his mistake, amend his claim to conform to the facts. A concise statement of the law will be found in Inst. 4.6.33.35 — aside from the laws in this title. See also note C. 8.35.4.

3.10.1. Emperor Zeno (In Greek).

If a plaintiff, man or woman, commences an action before the time set for paying an obligation and thereby injures the defendant, he must wait for payment as long a time after the obligation is due as he dared to anticipate that time, and he must in the meantime lose his interest; nor shall he, after the lapse of such time, bring another action, till he has tendered to his adversary the latter's expenses of the former suit, which he caused through his wrong.

1. If guardians or curators, however, have dared to make greater or premature claims from debtors of their wards, that fact shall not injure the wards under their care, but the guardians and curators themselves shall pay the damage caused thereby.

2. But persons who demand inherited goods, or ask for an accounting by a guardian or curator, or bring action against persons under or of age concerning their acts as agents, or as successors of depositors being actions against depositors, shall not be mulcted in damages for excessive or premature demands, since they are justly excused on account of want of knowledge. The person who makes excessive or premature demands shall be punished as often as he is clearly shown to have sought unlawful gain.

3. But if anyone sued for less than is due him, the judge shall, without regard to that fact, give judgment for the true amount.  
(486 or 487.)

3.10.2. Emperor Justinian.

If a plaintiff damages the defendant by inserting in the summons a greater amount than is due, he shall pay three times the amount of the damages so caused to the defendant by his fault. The correct amount of claim must be understood to be the amount for which the judge gives judgment.

Note.

Fees were paid to the officer who served the summons in proportion to the amount demanded by the plaintiff. See C. 3.2. And a defendant would, in any event, be damaged in any claim of overclaim of plaintiff in the extra amount of fees which he would be compelled to pay.

3.10.3. Emperor Justinian to Johannes, Praetorian Prefect.

We hasten to eradicate cheating and decree that if anyone, through fraud and trickery has demanded (and received) a due bill for a greater amount than is due him, and has called the debtor into court, then, if he repents of his cheating before joinder of issues and acknowledges the true amount, he shall not be mulcted in damages; but if he joins issues, persists in his contentions and is convicted of claiming an excessive amount, he shall not only lose such excess, but the whole debt as well. Compromises, however, and second confessions (acknowledging the amount claimed) shall, whether made a matter of record or not, even in such case, be valid; for such duebills should not be contradicted.

Given at Constantinople October 18 (532).

Note.

Cujacius considers this law in vol. 6, 804. If the plaintiff sued for an amount stated in a due bill, and an excessive amount had been caused to be stated therein through fraud, the plaintiff was required to waive such excessive amount before joinder of issue, or he lost his whole claim. This was a punishment for fraud. If the amount, however, was confirmed by a later—second due bill—then the defendant could make no such claim. A second confession was considered binding on a party, except in a case of a woman who became surety for another. That subject is fully considered in C. 4.29, and particularly in law 22 thereof and in Novel 61 and 134, c. 8. See also C. 5.13.1.5. For the rule that a writing could not be varied by parol evidence, see C. 4.20.