Book IV.
Title XI.

That actions can arise in favor of and against heirs.
(Ut actions et ab herede et contra heredom incipient.)

Bas. 24.3.19.

4.11.1. Emperor Justinian to Johannes.

Since antiquity rejected stipulations, legacies and other contracts to take effect after death, while we have permitted them for the common benefit of mankind, it was proper also to amend that rule in force in antiquity for humane reasons.

1. The ancients did not permit that rights of action in favor of or against heirs should be created by stipulations or other contracts to go into effect after death.

2. And in order not to retain any imperfection of this ancient rule, it is necessary for us to abolish the rule itself and it shall be permitted to create rights of actions and obligations to have effect only in favor of and against heirs, so that the scope of the wishes of the contracting parties may not be limited by any artificiality of words. Given at Constantinople October 18 (531).

Note.

Time. A few transactions, such as emancipation, appointment of a guardian, entrance on an inheritance, appointment of heir (except in case of a soldier) and acceptilation, the formal release, did not admit of any limitation as to time (C. 6.25 headnote); C. 6.21.8), but most transactions did. The provision as to time would ordinarily be to fix the beginning of the full effect of the transaction—for example providing for the time when a due bill or a legacy should be payable. The date might be definite, as on the first of January of the succeeding year, or might be indefinite, provided it was sure to come, as, for instance, death. If it was uncertain as to whether the time would come at all or not—e.g. a legacy payable on the marriage of A or on the death of A—the provision was a condition, and was not considered as relating to time. See headnote C. 6.25 and illustrations.

There was a limitation. During the classical period, it was not permitted to make a contract which by its terms was to be performed after the death of one of the contracting parties, or to give a legacy payable after death. On the same footing was a contract or legacy payable on the day before death, since that date could not be ascertained until after death. The reason of the rule was the repugnance to have an obligation commence with the person of the heir of another, either of the obligee or obligor. Gaius 2.232; Inst. 2.20.35; Gaius 3.100; Inst. 3.19.13. A contract was seemed to have been made for the benefit of the immediate parties; one to be fulfilled after death was virtually one in favor of an heir. See C. 4.25; 27; 35. A contract in favor of the contracting party and his heir was valid, however. D. 45.1.137.8. On the other hand, a contract to be performed when one of the parties was dying was valid since hat time was deemed to be he last moments of life. Gaius 3.100; C. 8.37.4; Inst. 3.19.15. And a legacy payable when the legatee was dying was valid and fixed a definite time; but a legacy payable when the heir, who was charged with paying it, was dying, while valid was conditional. Headnote C. 6.25; Gaius 2.232; Inst. 2.20.35. Justinian, by the instant law and by C. 8.37.11 abolished the limitation as to provisions made for a time after death.

Except in connection with usufruct and pledge (D. 20.6.6 pr.; D. 10.2.16.2), a right granted by a legal transaction could not, in early law, be limited by time; e.g. a legacy to be enjoyed till a certain date. But this limitation was also abolished later, except as to the appointment of an heir. Headnote C. 4.54.

On this topic in general see also C. 4.27.11 note and C. 8.37.11.