Book VII.
Title XLVII.

Concerning decisions which are given for indemnification of damages sustained.
(De sententiis quae pro eo quod interest proferentur.)

7.47.1. Emperor Justinian to Johannes, Praetorian Prefect.

Since the ancient doubts as to indemnification for damages sustained are innumerable, it has seemed best to us to confine such prolixity within as narrow confines as possible. 1. We, therefore, ordain that in all cases which involve a definite sum, or which are definite in their nature, like sales, leases and all contracts, no damage given shall exceed double the amount stated therein. Where the amount in uncertain, the judges who try the cases must use great care that the actual damage is recompensed, but must not permit it to become immoderate by trickeries or perversions, lest an unreasonable computation fall by its own weight. We know it to be consonant with good sense that the only penalty which should be demanded is one which is computed with proper moderation or fixed by law within definite limits. 2. This is applicable not only to damage proper, but to loss of profits as well, since the ancients also considered that in fixing the amount of indemnification. This constitution fixes bounds, according to what has been said, to the ancient immoderation.
Given at Constantinople September 1 (531).

Note.

Damage in the broad sense includes all loss to anyone arising from any source whatever. Thus the damage in a case of a promise to pay is the amount so promised. In case of a deposit or property loaned for accommodation, followed by the failure to return it, the damage consists, generally, of the value of the property. So damage may be inflicted by injury to our property or person, and this is sometimes termed positive damage, while loss of profits, for instance on a sale, is sometimes termed negative damage. D. 39.2.3; D. 48.8.2.11; Mackeldy § 370. Other portions of the Code deal with various subjects in connection with which damage may be inflicted, as well as with the measure of damages in such cases.

The present law deals with the measure of damages in cases where they were uncertain, and could not be measured by a definite standard. A man sells me, for instance, a farm, and I am evicted therefrom. I may have paid $5,000 for it, but at the time of eviction it may be worth $10,000, but no agreement as to the measure of damages has been fixed with the seller. Again, a man may have sold me some personal property, but has failed to deliver it. What is the measure of damages in such case? These and analogous classes of cases are the ones dealt with in the present law, and Justinian determined that the damages to be assessed in cases of this kind should not be unlimited, but should not exceed, for example - in the cases used as illustrations - twice the amount paid or agreed to be paid. See Moyle, Contract of Sale 126; Girard, 587; Wenger, Inst. 295; Bethmann-Hollweg, 3 C.P. 294.