

Book II.
Title I.

Exhibiting the cause of action (accounts, documents).

Headnote.

The instant title deals with one of the first steps in an ordinary civil suit. In classical law, there was no petition or complaint filed. The proceedings in court, upon the appearance of the parties, were oral, resulting in an instruction (formula) issued to the trier of facts (C. 2.57), and, to let the defendant know (edere) before such appearance—probably at the time when the plaintiff called defendant to court, or when the latter agreed to appear—what formula he intended to ask of the court—that is to say, what action he intended to carry on against the defendant; and he was further required to furnish the defendant with a copy of any accounts or documents upon which he intended to reply in the case. D. 2.13.1 and 3. This formula might be changed when the parties appeared in court. (C. 1.3 headnote.)

The manner of commencing actions gradually changed, becoming in time similar to that in vogue with us in many states, namely, be written complaint (D. 5.2.7; C. Th. 4.14.1.1) followed by semi-official or official citation of defendant into court. See C. 2.2 headnote. Under Justinian, and similarly for about a century before his time, there was the so-called libellary procedure. Under it the plaintiff filed a written petition (libellus conventionis) in court, signed by himself or a notary, accompanied by any accounts and documents which he intended to use. Unless the action was one of those that were not permitted, the court (magistrate) directed the defendant to be summoned, and a citation, doubtless generally consisting of a copy of the order, together with a copy of the complaint, was thereupon served on him. Nov. 112, cc. 2-3; C. 1.3.36.2; C. 1.12.6.1 and 3; C. 10.11.8.4; C. 12.25.4 pr. 1; C. 12.35.18 pr. The complaint was required to contain a short statement of the cause of action, and for a time at least, of the kind of action brought. Cons. 5.7.6.2. The particulars thereof were presented orally at the time of joinder of issues. C. 3.9.1. The plaintiff was also compelled, under Justinian, to furnish a bond for the diligent prosecution of his case. Nov. 96 pr; Nov. 112 c. 2. See also C. 1.3 headnote and C. 2.2 headnote. This proceeding did not apply to unimportant cases, in which the trial was summary. C. 2.2.4.

Instead of by filing a complaint in court (with the magistrate), it might be brought by addressing a supplication to the emperor. For that, see C. 1.19 headnote. See generally, Buckland, Textbook 626-631, 657-661; Hunter, Roman Law 967 ff; Girard, Manual 1059 ff; Wenger, Zivilprozess 90 ff, 259 ff; 1 Bethmann-Hollweg, Civilprozess 105 ff; 2 Bethmann-Hollweg 223 ff; Wlassack, Provincialprozess; Steinwenter in Festschrift für Hanausek 36-46; Wenger in Festschrift für Hanausek 12-13; Samter, Nichtförmliches Gerichtsverfahren 96 ff; Schott, Gewähren der Rechtschutzes 37 ff.

2.1.1. Emperor Pious Antonius to Manilius.

See to it yourself in what manner you may prove that the money which you say you have deposited is due you. For what you ask (namely), that your female adversary should exhibit her accounts to you, is customarily, upon (proper) ground, a matter belonging to the province of the (trial) judge.

Promulgated September 28 (155)

Note.

This rescript shows that a defendant could be compelled to exhibit accounts only under exceptional circumstances. As a rule, he was required neither to exhibit accounts or documents in his possession. C. 1.4 and 8 headnote. See C. 4.20.7. In that respect a lawsuit was regarded as a private quarrel. There were exceptions. Bankers, guardians, agents could be compelled to exhibit their accounts with plaintiff when sued, and in fact bankers were compelled to do so, though the suit was against another. D. 2.13.4 pr. If documents were owned by plaintiff, he could, of course, sue the party in whose possession they were, and have them exhibited. C. 3.42. And Justinian provided that, with limitations, a person might be compelled to exhibit documents which were necessary in a lawsuit between others. C. 4.21.22.

2.1.2. Emperors Severus and Antoninus to Faustus.

He, before whom a suit is tried, will order public records, criminal as well as civil, to be exhibited (for inspection) for the purpose of discovering the truth.
Promulgated July 7 (194).

2.1.3. The same emperors to Valens.

The form of action exhibited (to defendant) shows the kind of action intended to be tried, and may be amended or changed, according as the authority of the perpetual edict permits, or the sense of justice of the judge decrees.
Given August 30 (202).

Note.

The form of action in classical law, under the formulary procedure, was represented by the formula, or instruction, issued to the referee (trial judge)—see C. 2.57—and in Justinian law by the petition filed in court. Both might be amended after being exhibited to or served on defendant, which was done before the praetor or other magistrate before joinder of issues. The right of amendment was liberal under the Justinian law. Plaintiff might, for instance, in the first place claim a slave by the name of Stichus, and amend by claiming Eros; or he might in the first place claim under a will and amend by claiming under a stipulation. Inst. 4.6.35.

2.1.4. Emperor Antoninus to Epaproditus.

Those who want to sue (accusare) should have proof, since neither law nor equity permit that power be given of inspecting the documents of others; for if the plaintiff fails to prove his case, the defendant, though he shows nothing, will prevail.
Promulgated March 11 (212).

2.1.5. Emperor Alexander to Valentiniana.

It is nothing new for a defendant who is sued for money, may demand the production of the accounts of his creditor, so that the truth may prevail.
Promulgated March 9 (223).

2.1.6. The same emperor to Uranius.

It is a just request of the person, who is sued, though in the name of the public, that it be shown by the public accounts produced how much has been paid in his name.¹ Promulgate November 16 (223).

2.1.7. The same emperor to Valens.

The procurator of the Crown Domain will order, according to custom, that opportunity to be given to copy the documents which you say relate to matters in common between you say related to matters in common between you and the imperial exchequer; and if it should be required at any time that some portion of these documents be produced, in order to determine the validity of your claim before some other judge, he will, upon demand of the person sued, direct that to be done.²

2.1.8. The same emperor to Florus.

What was said in the rescripts of the divine Antoninus, my father, and in my rescript³ accords with the rules of law and equity. Nor are they (the rescripts) repugnant to or inconsistent with each other because it makes a great deal of difference, whether a defendant asks that accounts, by which he contends he can prepare his defense be produced—as the very equity of the matter at all events suggests—by one who sues for something and who can be defeated in his claim by the defense of fraud, or whether the plaintiff wants accounts exhibited by one from whom something is demanded, since in such case a claim ought not to be founded on documents of the person sued. Promulgated October 1 (225).

¹ [Blume] C. 4.21.4.

² [Blume] See Nov. 119 c. 3.

³ [Blume] See law 5 h.t.