Book VII.
Title XL.

Concerning annulment of one year's prescription of an Italian contract, and concerning the various days of grace, defenses, prescriptions and interruptions.
(De annali exceptione Italici contractus tollenda et de diversis temporibus et exceptionibus et praescriptionibus et interruptionibus earum.)

Dig. 44.3; Bas. 50.15.

7.40.1. Emperor Justinian to Julianus, Praetorian Prefect.

So many disputes have arisen in trials as to the one year's prescription which arises out of the Italian contracts, that it is difficult to enumerate them and impossible to explain them. 1. In the first place the rule is involved in much technicality and difficulty, since many things must concur in order that it may apply. 1a. Next, some interpret that period of a year so broadly, that it may be extended to ten years; others think that it should be fixed at not to exceed five years. The decisions of judges in computing the time has often varied even in our own times, so that this defense has not been able to easily show its effect in litigation. 1b. So, since there are other sufficient defenses as to limitation of actions or prescription, we do not want our subjects to be enmeshed in difficulties of that kind. The defense of one year's prescription shall, accordingly, be no longer in force, and other legal defenses (as to limitation of actions) or prescriptions shall apply to actions - namely those limiting them to ten, twenty, thirty or forty years, or less time. 1c. Besides, since nothing forbids to amend the laws relating thereto which are doubtful, by clear and succinct provisions, we order that all personal actions, which may be brought, according to the verbose interpretation of some men, after the expiration of thirty years, shall be limited to the period of thirty years, unless that period is interrupted by one of the legal methods set forth in ancient laws and in statutes enacted by us. The limitation of forty years shall apply only to hypothecary actions. 1d. So no one must interpret that an action for dividing an inheritance, for partition of property, for fixing boundaries, an action on partnership, theft, robbery or any other personal action has a longer life than thirty years; but it ceases to have life when the period mentioned, after it has accrued and comes into existence, has expired and is not brought to life again to be finished after the stated time, according to idle prattle, as, for instance, has been stated in connection with actions of theft. 1e. An exception is made where actions, though personal, are brought and proceedings in court have been commenced and the parties become inactive thereafter. In such case, not thirty but forty years creates a bar, from the time that the parties brought the last action which they abandoned, as provided in a law recently promulgated.[1] 2. Since it had been provided by former laws that prescription against house-sons (i.e. sons unemancipated), as to maternal property, runs only from the time that they were released from paternal power, but this provision was not specially made as to other property which they cannot get (into their own control), so, in order that this law may not seem to be imperfect, we ordain by this plain provision that no prescription shall run against unemancipated sons in any case when they have property,

[1] [Blume] C. 7.39.9.

not acquired by them for the benefit of their father, except as from the time that they can bring an action, that is to say, after they have been liberated from the power of their father or other person in whose power they were. For should they be held responsible for not doing a thing, which they could not do by reason of an impediment of law, though they wanted to do it?[2]
Given at Constantinople March 18 (530).

7.40.2. The same to Johannes, Praetorian Prefect.

In order that we may more perfectly look after the interests of all, and that adversaries may not harm anyone by reason of the absence, influence or infancy, but that there may be a difference between those who are negligent and those that are vigilant, we ordain as follows: If a man, who detains property owned by, or pledged to, another, happens to be absent, and the owner or pledgee of the property wants to claim it, but is unable to do so because the person who detains it is absent, or labors under infancy or insanity without having a guardian or curator, or is very influential, such owner or pledgee may go before the president, or lay a petition before him and make this a matter of complaint within the prescriptive period and thus interrupt it. And this shall suffice for a complete interruption. But if he cannot, in any manner, go before the president, he shall at least go to the bishop of the place or the defender of the city, and make his desire known in writing. If the president or bishop or defender are absent, he may make a public protest where the possessor has his domicil, in writing, witnessed by notaries (tabularii), or by three other witnesses, if the city has no notaries; and this shall suffice for interrupting the prescriptive period, either of three years, of a long time (ten or twenty years), or of thirty or forty years. 2. All other provisions made concerning prescription of a long time (of ten or twenty years) and prescription of thirty and forty years shall remain in force, whether made by the ancient founders of the laws or by Our Majesty.
Given at Constantinople October 18 (531).

7.40.3. The same to the same.

If a plaintiff to whom a defendant was liable on many causes of action, and particularly in similar sums, claimed in the summons the sum involved in one of these causes of action without expressing the cause, it was debated among the ancients, whether he should be considered to have brought action on all of the causes, or the oldest one, or on none, since his intention appeared uncertain. And we find that such dispute frequently arose in trials, especially in connection with the interruption of the prescription of a long time (of ten or twenty years). If, for instance, a personal action was commenced, and no mention was made of a hypothecary action, some thought that the personal action was extended by the interruption but that the hypothecary action became barred by silence. 2. And if anyone stated generally that the defendant was liable to him, other doubts arose, (namely) as to whether all actions available to him should be considered as embraced in the statement, or whether all should be held to expire (during the prescriptive time), as though he had been silent as to all of them, the uncertain statement in his petition being of no benefit to him. 3. We, therefore, ordain that such

[2] [Blume] The control of the property was, while they were unemancipated (house-sons), in the party who had them in his power.

confusion shall no longer have any place in the courts, but whoever cites anyone liable to him into court, and sends him the complaint of suit, though he has not mentioned a general cause of action, or has stated only a specific one, or has brought only a personal or a hypothecary action, he shall nevertheless be considered to have commenced an action as to every right which he has, and to have interrupted the prescriptive period, (Poste 556) since odious defenses should be set up only against men who are negligent and contemptuous of their rights.
Given at Constantinople October 18 (531).