

Book IV.
Title XVII.

How far heirs can be sued for delicts of the deceased.
(Ex delictis defunctorum in quantum heredes convenientur.)

Bas. 24.7.8.

4.17.1. Emperors Diocletian and Maximian and the Caesars to Macedona.

The law is very absolute that if a person who was guilty of violence, extortion, or other offense, dies after joinder of issue, his successors are held liable for the whole sum due, otherwise only for that proportion which they inherit, so that they may not be enriched by the crime of another.

Given at Sirmium April 27 (294).

Note.

Inst. 4.12 pr. says: “Actions which lie against a man under either the civil or the praetorian law will not always lie against the heir, the rule being absolute that for delict—for instance, theft, robbery, outrage, or unlawful damage—no penal action can be brought against the heir. The heir of the person wronged, however, may bring these actions, except in outrage and similar cases, if any. Sometimes even an action on contract cannot be brought against the heir; this being the case where the testator has been guilty of fraud, and his heir has not profited thereby. If, however, a penal action, such as those we have mentioned, has been actually commenced by the original parties, it is transmitted to the heirs of each.” Generally speaking, all actions arising out of contract, and all actions involving the pursuit of property, whether arising out of contract or delict, were also available against the heir or heirs of a deceased person liable thereunder, while actions involving a penalty were not. Thus an action to recover property stolen, or the value thereof, was available against the heir of the thief, while the action for the penalty of theft was not. Whenever, however, even in penal actions, the stage of joinder of issue had been reached, there was not question of transmissibility of the action; from that moment, whatever its character, it bound and entitled the heirs of the defendant and plaintiff respectively in every case. See Moyle, note to Inst. 4.12; Cujacius on the Code 4.17.1.