Book IV.
Title XVI.

Concerning personal actions in favor of or against the heirs of an inheritance.
(De actionibus hereditatiis.)

Headnote.

The laws of this title would best be read in connection with the laws dealing with inheritances in book 6 of the Code, particularly in connection with headnote C. 6.30 and C. 6.30.22 and notes.

4.16.1. Emperor Gordian to Hermoroses.

You should claim the money, which you say your mother owed you, from her heirs, your coheirs, in proper proportion.[1] And so, too, you may pursue property which was pledged to you on account of the debt.
Promulgated February 19 (241).

4.16.2. Emperor Decius to Telemacha.

That heirs should pay the debts of the estate in proportion to the property inherited by them, apples even to the debt owing the fisc (when it takes the place of an heir),[2] unless a pledge or mortgage had been given for the debt, for in such event the possessor of the property so obligated must be sued.
Promulgated October 19 (249).

4.16.3. Emperors Diocletian and Maximian and the Caesars to Maxima.

Sue the heir of your former husband for the return of the dowry; for you ask in vain for a personal action against the debtors of the estate.
Promulgated April 18 (293).

Note.

The heirs represented the decedent and the inheritance, and they only were liable to be sued for the debts. The debtor of the estate could not be called on to do so, and as law 7 of this title says, legatees could not be called on to do so. The dowry which was due to be returned to the wife upon the death of her husband was a debt. She also, however, under the later law, had a lien which she was able to enforce against anyone having possession of the property subject thereto. See C. 5.12.

4.16.4. The same Emperors and the Caesars to Crispus.

It is clear that payment to creditors cannot be deferred under the pretext of the fact that the heir, the debtor liable to pay the debts of the inheritance, is a minor under the age of puberty. Hence, since you say that you are the minor's guardian, you must try and satisfy the creditors on behalf of your ward.
Given at Sirmium November 22 (293).

4.16.5. The same Emperors and the Caesars to Julius.

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[1] [Blume] See note to law 5 of this title.
[2] Blume placed a question mark in the adjacent margin.

It is anomalous request that your debt due from an inheritance should first be paid, and that we should order an investigation thereafter whether such inheritance belongs to you. For since it plainly appears that you received the inheritance from your father-in-law, there is no doubt that you debt is extinguished by merger.
Given at Sirmium March 4 (294).

Note.

In this case there was evidently a demand on the son-in-law to make a payment of a debt or legacy. He had had a claim against his father-in-law and wanted that paid first, but the rescript says that inasmuch as he was the heir, his debt became merged with the inheritance. When a creditor became sole heir of the debtor, there was a merger, and the debt was extinguished, because a person cannot be debtor of himself. This was true, however, only with some limitations. If a person was appointed to only a certain portion of the inheritance—which would be an undivided one—the debt was not merged, except only in the proportion in which he was appointed as heir. Laws 1 and 6 of this title. D. 6.50.14; C. 8.44.2; C. 7.72.7. The other heirs would still collectively be indebted to him in the proportion in which they inherited. Thus if he was appointed heir to one-third, the debt would be merged only to that extent and he could recover two-thirds of the debt from the other heirs, provided, however, that the inheritance was not left him in extinguishment of debt; for in that case his acceptance extinguished the debt. C. 6.24.6. Where that was the case, he was entitled to pay himself paying any legatees. C. 7.72.1.

The doctrine of merger lost some of its force by the permission of making an inventory, provided by Justinian in C. 6.30.22. Prior to that time an heir, after accepting, was liable for all the debts of an inheritance, whether the property which he received was sufficient for that purpose or not. After he was permitted to make an inventory, the making thereof relieved him from responsibility beyond the amount of the property of the estate, and he could pay his own debt along with the others. And if there was no more than sufficient to pay the debts, and the portion to which he was entitled under the Falcidian law, the legatees, generally, got nothing.

4.16.6. The same Emperors and the Caesars to Domnus.

If the adult woman (over twelve but less than twenty-five years) whose curator you are, is heir of one-third of the property of her paternal uncle, whom you state to have been her guardian, and she is not forbidden (by the will) to make any demand, she may claim two-thirds of her debt from her coheirs, because the debt is not merged beyond the proportion which she inherits. Now, to ask that the testament be rescinded is against the interests of your ward, since the coheirs, in entering upon the inheritance, are also under obligation to pay the debts, and if they are not solvent, she can demand separation of the property, and thus suffer no damage.
Given December 1 (294).

Note.

This law states the principle already stated in the note to the previous law that where a person was creditor of the deceased, and was appointed as heir for a portion of the inheritance, the debt was merged only in that proportion, unless the inheritance was given in payment of the debt—if, as here stated, the heir was not forbidden to sue for the debt.

If, as here stated, the coheirs were insolvent, but the property which they inherited was solvent, a separation of property could be demanded, so as not to mingle the property of the estate with that of the heir. This principle is fully stated in note to C. 7.72.2.

4.16.7. The same Emperors and the Caesars to Apolaustus.

It is agreed that creditors of a decedent's estate have no personal action against legatees, since the law of the twelve tables makes it plain that in such case the heirs are liable.[3]

Given at Nicomedia December 8 (294).

[3] [Blume] See law 3 of this title and note.