

Book V.
Title LVIII.

Concerning a contrary suit (suit by guardian against ward).
(De contrario iudicio.)

Bas. 39.18; D. 27.4.

5.58.1. Emperors Severus and Antoninus to Strato.

If you have paid any money for your co-guardian against whom judgment was rendered, you have no right of action against the ward to assign to you the action against (such co-guardian), who was released (through payment made by you). But if you bought the demand (the judgment) you as procurator in your own behalf,¹ may sue the heirs of the judgment debtor.²

Promulgated February 23 (201).

5.58.2. Emperor Antoninus to Primitious.

If judgment was rendered in favor of the ward against you alone, but not account of your own wrong, and you, absent and undefended, acquiesced therein, you may, when you have satisfied the judgment, demand an assignment from your female ward of the right of action against your co-guardian, or you may bring an analogous action against them.³

Promulgated October 14 (212).

5.58.3. Emperors Diocletian and Maximian and the Caesars to Thesis.

If your father, who, as you state, managed the guardianship of his stepson, legally made a testament, appointed his ward as heir and died, since it is clear that a claim on account of the guardianship could not by confusion be extinguished thereby except as to the portion inherited, it is proper that you as heir of your father should, before a competent judge, render an account of the guardianship as to the remainder.

1. The judge will, according to equity, allow a set-off for what you say your father paid out in connection with his stepson's property, and if anything more is due, will give judgment for the remainder.

2. But if the stepson, knowing that more than was due was paid out in connection with his property, did not think it advisable to bring an action on the guardianship, you may sue him in a contrary action.

Subscribed December 15 (294).

Note.

¹ [Blume] For assignment of rights of action see C. 4.39. [In pencil above this, Blume wrote "inconsistent with law 2."]

² [Blume] For rights of one co-debtor against another, see C. 8.40.2 and note, and C. 8.40.11 and note.

³ [Blume] See C. 8.40.11 and note. [Following the preceding note, Blume penciled in "Utilis actis introd. [illegible] laws 1 & 2; D. 27.3.1.13." This is followed by another, wholly illegible citation.

A person who was appointed as procurator to sue, when the suit would be for the personal benefit of the procurator, he was procurator in his own behalf. Such authorization was the equivalent of our assignment of a right of action for the assignee's own benefit.