

Book X.
Title XI.

Concerning informers.
(De delatoribus.)

Bas. 56.7.

Headnote.

The term "delatio" was applied primarily to information given to the fisc that certain property was claimable by it, but it is also applied to information given of criminal offenses. The law as to informers had a checkered career. Augustus encouraged them; so did Tiberius during his later life. Both gave them rewards. Nero reduced the rewards. Titus punished informers; Domitian encouraged them in his later reign. It was always considered dishonorable to act as such. Constantine's law punished them (C. Th. 10.10.1 and 2), though not in all cases. C. Th. 9.18.3; C. Th. 9.1.4. More tolerance toward them was manifested later and Sidonius, Ep. 5.7, wrote of them: "They are the wretches, as you yourself have heard me say upon the spot, whom Gaul endures with groans these many years, and who make the barbarians themselves seem merciful in comparison. They are the scoundrels whom even the formidable fear. They are the men whose peculiar province it seems to be to calumniate, to denounce, to intimidate and to plunder." And Ammianus Marcellinus (16.8.11) wrote: "Moreover those who had influence in the court, promoted the spread of these evils with the hope of joining to their estates the forfeited possessions of those who should be condemned and thus becoming rich by the ruin of their neighbors."

The statement last quoted shows one of the great reasons why informers continued to exist. If property was confiscated, they would petition the emperor to give it, or part of it, to them, so that we not alone find a number of enactments against informers, but also legislation against petitioning the emperor for property that had been confiscated. C. 10.12.

Some persons were forbidden to act as informers, either as to property claimable by the fisc or as to criminal offenses. C. 10.11.6; C. 10.11.7 and 8; C. 9.1. In some cases, however, as in treason, counterfeiting, highway robbery, practice of magic and in other matters affecting the public good, persons were encouraged to betray the guilty persons, and were even at times punished for not betraying them. C. 9.8.5.7; C. 9.18.9 pr; C. 9.24.1 and 2; C. 9.36.2; C. 9.39.2. In the early empire, some persons were forced to prosecute a crime in certain cases; that, at times, happened later, but Diocletian, by C. 3.71, enacted that no one should be compelled to prosecute a criminal case any more than a civil suit. See generally, Smith Dict. Gr. & R. Antiq., article "delator;" Geib, Gesch. d. R. Criminal Proc. 550, et seq; note C. 9.2.7; Buckland, Roman Law of Slavery 85; C. Th. 10.10.

10.10.1. Emperor Alexander to Bassus.

If a secret trust has been left to a person who is capable of taking it, denunciation thereof shall have no effect. For it is only forbidden to leave a secret trust to persons who cannot take it openly.

Promulgated April 19 (223).

Note.

A secret trust arose when a testator left certain property to someone, with the secret understanding that it should be turned over to someone else. Such trusts were in use at a time when many persons for one reason or another were unable to inherit any property under the law - celibates, for instance. But in Justinian's time, there were few persons who were unable to inherit property, lapses were abolished, and the making of secret trusts must have largely fallen into disuse. See C. 6.51. But the rule was still applicable to some extent, for there were certain persons who could not inherit, and could not, accordingly, take under a secret trust, namely: Non-Roman citizens, heretics and apostates, traitors and their sons, and to some extent their daughters; communities not approved of by the state. Widows could not inherit under a will. Mackeldy, Roman Law § 662; note C. 6.24.1; D. 28.5.6. 2; C. 1.5.4 and 5; C. 1.7.3; C. 9.8.5; C. 6.24. 8; C. 5.9.1. See also C. 10.13.1.

10.11.2. Emperor Gordian to Eutychemus.

That you have simply diligently prepared the cause brought by an informer, because of your official duty, nay, at the command of the procurator, and have not voluntarily assumed the function of an informer, is clearly shown by reading acts mentioned in your petition. 1. In order that nothing may on that account be attempted against you which is alien to the spirit (secta) of my times, will be the care of the president of the province.

Promulgated September 6 (238).

Note.

An informer was required to prove his case; if he did, he was rewarded; if he did not, he was punished and became infamous. Cujacius on this law. But a person who simply performed his duty in connection with such matters as an official was not an informer and no duty to prove the case was, therefore, upon him.

10.11.3. The same to Calcilius.

No person who, when it was contended by officials that he was in possession of a farm or house of the fisc, shows that not he but another is in possession of such property, shall be tainted by the blot or disgrace (crimen) of an informer.

Promulgated June 30 (241).

Note.

The emperor Marcrinus had declared informers to be infamous, even though they proved their case. Greenidge, Infamia, citing Vit. Macrini 12. The foregoing rescript would seem to indicate that Gordian, as well as Justinian, who embodied it in his compilation, treated informers in the same manner. However, a man could not be considered as an informer if he was accused of having possession of imperial property, but alleged and proved that someone else had such possession.

10.11.4. Emperors Carinus and Numerianus to Candidus.

Out of diverse differences in statutes, has arisen the accepted opinion that persons who protect the interests of a city, shall not bear the odium of informers; for it is known to all that only those persons are detestable informers who inform the fisc.

Promulgated August 30 (284).

Note.

A distinction is here drawn between informers; those who informed cities, were not under the ban of the law; only those were under such ban who informed the fisc. While property belonging to cities was public property, it was distinct from property of the empire.

10.11.5. Emperor Constantine to the provincials.

We direct all judges to take care to inflict punishment upon those informers who inform against anyone without the advice of the advocate of the fisc; for the law is clear that if anyone's estate escheats to the fisc, it must, according to the statutes and the regular (recto) order of law, be claimed in an action prosecuted by the advocates of the fisc. 1. But because some persons do not cease to unjustly inform about lands legally possessed, we give an opportunity to all who consider themselves injured, to call the severity of the judges, with the sword drawn, down upon the informers.

Given at Constantinople March 22 (335).

C. Th. 10.10.3.

Note.

According to the foregoing law, informers of any matter relating to the fisc were required to give their information to the advocate of the fisc and could not act except in conjunction with them. If they violated the law, they could be punished by death - a penalty imposed upon informers by several laws in C. Th.10.10. Limitations as to the right to act as informers were provided by the three succeeding laws.

10.11.6. Emperors Gratian, Valentinian and Theodosius to Panhellenius, Consul of Lydia.

Except in cases of treason, we order the slave, who informs against his master, to be subjected to the severest of punishment, as an example of all betrayers, although he may prove his denunciation.¹

Given at Constantinople October 26 (382).

C. Th. 10.10.17.

10.11.7.

Neither a servant nor freeman shall be permitted to be an informer and no one need fear death or loss of property from that source. And if anyone informs against another that he has found a treasure or for some other reason, he shall, if he be a slave, be at once delivered to a death by fire, especially if he should inform against his master; if he be free, his goods shall be confiscated, he shall lose his citizenship and shall be banished from the soil of the Roman Empire.

Note.

All informers were suppressed in connection with any matters which involved the loss of life or property of anyone, unless, as stated in the next law, the information was given in connection with treason. The right to act as informers was, accordingly,

¹ [Blume] See C. 9.1.20.

exceedingly curtailed. It did not prevent anyone, as observed by 2 Cujacius 571, from giving information that property, for instance, an inheritance, had fallen to the fisc.

10.11.8. Synopsis in Greek.

No fiscal advocate shall be permitted to say that he has been informed that someone detains fiscal property, and lay snares for others on account of such secret information, but the informer shall be present so that his character may be judged. 1. And no son shall inform against his father or mother, or a freedman against his patron to have their property confiscated, nor shall any person be heard who has suffered exile, or has been condemned for malicious accusation or has been beaten by a magistrate with a cudgel, or any other person forbidden by law. 2. A slave, moreover, who accuses his master either of a public crime or of any other matter, shall be killed in the very act of announcing his accusation, although he reports the truth against his master. 3. But if the corps (schola) of palace officials reports anyone - for it only may and must bring forward informations - or someone else permitted to do so by law, then the patron of the fisc shall take note of the informer. 4. And if the person informed against is in the imperial city, he shall be summoned by order of the Count of the Crown Domain, and shall pay no greater amount than four (gold) coins to the whole corps of palatines, and the then chief (primicerius) thereof and to the advocates of the fisc for the summons and the appointment of a procurator. 4a. But he shall, in connection with each investigation, pay the expense fixed by law for the aforesaid trial, both for the investigation itself as well as for drawing up of the records. 4b. And if he is not guilty, he shall be absolved from the accusation; but if it appears that he is guilty, he shall not only deliver the things which he is known to have, or satisfy the debt which he owes, but he shall also pay double the expense which the fisc incurred because he defended the action without just cause. 5. If information is given only that certain property belongs to the fisc, but it is uncertain as to who possesses it, then, if it is within the imperial city or its territory, and it is immovable property, the corps of palace officials shall not affix placards thereto, nor take it into possession, but the Count of the Crown Domain shall post edicts in conspicuous places in the imperial city and at the place where the property is located, by which he shall order all who want to claim the property to come before his court within thirty days, and contest their rights, paying the aforesaid expense, whether the possessor himself desires to maintain his claim, or whether, in his absence, his friend, slave or freedman (wants to do so). And in this matter, too, all the provisions as to the custody of the property shall be observed. 5a. But if neither the person who raises the contest, nor the procurator of the possessor, nor the custodian of the property, shall appear within thirty days, and that is made to appear from the records, the fisc shall take possession, without prejudice, however, to the legal pleas which the owner of the property has in reference thereto. 5b. If the things reported are movable or self-moving, no one shall rashly take even them into his possession, but the possessor thereof shall be investigated, and he, upon being summoned, may contest the matter at the expense and under the conditions aforesaid. 5c. Inquiry into the matter shall be made by every legal means and prescribed method, written or unwritten, including (examinations of) witnesses who are able to know the truth; and the person summoned, may know, that if convicted, not only the expenses of litigation will be exacted from him, but also the things unlawfully possessed by him and their value. 6. These general provisions having been enacted concerning public property,

the constitution subjoins a special provision concerning goods confiscated on account of treason, stating that the person who gives information concerning this, shall not be known as an informer but shall be gladly received, and if he makes a malicious accusation, he shall be punished the same as other informers, but if he proves his information, he shall not alone be free from punishment, but shall also receive the eighth part of the goods of which he brought information. 7. If the goods possessed by the reported persons, or all their property is worth less than fifty pounds of gold, they shall give surety for the amount of the appraisal; but if they exceed fifty pounds in value, they shall give surety to the extent of the fifty pounds and their promise under oath for the remaining property, adding to their promise under oath, that they or their procurators will be present in and not desert the court of the Count of the Crown Domain. 7a. But if after having given their promise under oath, they shall be absent after being cited three times, an interval of ten days elapsing between each call, and three edicts have been issued against them, and they, or their procurators or defenders shall not even then appear, the imperial fisc shall take possession of the goods, reserving a defense, however, to those that are absent. 8. If the goods informed against are located in the province and the president of the province, either on his own motion or upon command of the Count of the Crown Domain makes investigation, nothing shall be done confusedly or violently, and the expenses of litigation shall be only a third of those paid in the imperial city. 9. Whoever, moreover, gives information either to the Count of the Crown Domain or to the corps of the palace officials or to the honorable advocates of the fisc or the honorable president of the provinces, may know that if, persevering in the suit, he shall be proven a malicious accuser, or if he desists from the accusation and hides, he shall, if he disdains a pecuniary punishment, on account of the smallness of his property, be subjected to lashes and to perpetual banishment; but if he belongs to the imperial-service or has an honorable position or possesses ample property, he shall lose both his position and property, and will be forbidden to reside either in the imperial city or in the province. 10. This law shall be obeyed by the Count of the Crown Domain and by the corps (schola) under his command; and a fine of fifty pounds of gold for each offense will be demanded from the person who violates it. 11. If any provision thereof is neglected in the province, thirty pounds of gold will be demanded for each offense, both from the presidents of the respective provinces, and from the staff under their command. 12. And lest anyone escape this fine, persons who have been injured, are permitted to inform against those who violate the law and accuse them with impunity before the sacred emperor or the glorious master (of offices), so that the emperor, advised by the latter, may entrust the exaction of the fines to him.²

² [Blume] See note C. 10.10.5.