

Book X.
Title XIX.

Concerning the collection of tribute.
(De exactionibus tributorum.)

10.19.1. Emperor Constantine to Aelianus, Proconsul of Africa.

The ducenarii, centenarii or sexagenarii shall not summon any debtor to pay, until they have received the list of debtors from the tax accountant (tabulario) of the city. The collection must be made without any extortion.

Given at Trier November 1 (315).

C. Th. 11.7.1.

Note.

The decenarii and centenarii were, in the later empire, men of different rank among the agentes in rebus, imperial messengers, and at last used mainly in connection with public post. C. 12.20. But this order of officials had no sexagenarii mentioned in the foregoing law, and hence the officials mentioned in the foregoing law were probably men that had no connection with the imperial messengers above mentioned. Hirschfeld, Kleine Schriften 634, thinks that the officials here mentioned were under-officials of the comptrollers (rationales) of the imperial exchequer, who at that time seems to have had something to do with the collection of the taxes mentioned in this title. C. Th. 11.7.8. The different names indicated simply a difference in rank, originally derived from the difference in salaries. The imperial messengers - agentes in rebus - were a set of officials created under the Diocletian-Constantinian regime, and for a time, too, were to some extent used in connection with the collection of taxes. C. Th. 8.8.4 and 7; Hirschfeld, supra, 635. After these officials came into being, the names of ducenarii and centenarii were transferred to them, and ceased to be used in other connections.

The tabularius here mentioned kept the tax lists, and also the books of a city. That official is mentioned in C. 10.71, where a fuller account of him is given.

10.19.2. The same Emperor to the People.

No one needs to fear imprisonment by abusive or irate judges, or lashes with leaden balls or weights, or other punishments invented by the insolence of judges in connection with the payment of debts (taxes). The prison is for criminals, for law breakers. It is for the members of officials staffs who act contrary to this law -- with visitation of infamy upon their judges whose duty it is to restrain them, but fails to do so.¹

1. Persons who pay may go before the president with safety. If, of course, anyone has so lost his senses, that he misuses this indulgence to the extent of (by) contumacy, he shall be detained in free and open military custody, provided for the use of men. 2. If he persists in his obdurate wickedness, the collector shall seize his goods and all of his property, the duty to pay being (by the purchaser) taken over along with the ownership of

¹ [Blume] The text as to the official staffs and judges is involved, but as a whole is reasonably clear. Cujacius on this law, says that the meaning is, that the prison is for the members of the official staffs and judges who violate this law. That may be true. Gothofredus on this law, interprets it more in line with the translation here.

the property. Having given this opportunity, we believe that all will be more ready to pay what is demanded for the use of our army for the common welfare.

Given February 1 (320).

C. T. 11. 7. 3.

Note.

The indulgence granted by this law was, that delinquent taxpayers should not be imprisoned or physically punished, but should be guarded only by soldiers, whereas imprisonment was permitted in case of nonpayment of private debts. The subject as to imprisonment for debt is considered at greater length at headnote C. 7.53 (1).

Constantine believed that this method of treating taxpayers would bring better results in the payment of taxes.

It has already been noted in note C. 4.47.3 and note to C. 10.16.3 that a tax on property was an obligation resting on property. That this rule had its limitations is clearly perceived by the foregoing law, which permitted a delinquent tax payer to be taken into custody and kept in confinement until the tax was paid. See also next law of this title. It is probably that the arrest of such delinquents was resorted to mainly in connection with the non-payment of other than property taxes, and in other cases where the tax-officials were doubtful of the ultimate collection unless arrest were made. Inasmuch as all officials who had anything to do with the collection of taxes were made responsible for the full amount of the tax, it is reasonable to assume that in case of doubt they would resort to every means available to them in order to insure collection. Edict 13, relating to Egypt, shows that soldiers were constantly used to enforce collection and that persons who failed to pay their taxes were subject to arrest. See also other Novels to the same effect.

10.19.3. Emperor Constantine to Nemesianus, Count of the Sacred Largess.

Whenever anyone is a debtor of the Crown Domain, as well as of the fisc, he shall be arrested, and kept in custody by one of the official staffs (till he pays), and the person who arrested him, shall be responsible for the payment of the whole debt, and any (other person) who shall think of taking him and removing him (from the custody of the official), shall take upon himself the exaction of the whole sum.

Given at Nisibum May 12 (345).

C. Th. 11.7.5.

Note.

The German translation, referring to Gothofredus, gives the impression that the man referred to in the last sentence is the same man referred to in the preceding sentence. That is not likely. The man in the preceding sentence is the man of the official staff which first arrested the debtor; the man in the last sentence is the man who seized the debtor thereafter. Perez thinks that reference is made to the other official staff. That is probable.

This law, (though the last two sentences are obscure) too, shows that delinquent taxpayers could be arrested and kept in custody. In order to facilitate the collection of debts due to the government, whether owing to the Crown Domain or to the fisc, and to make it more certain that the whole debt should be collected, it was made the duty of the official who arrested the debtor to hold him until the whole debt was paid; in fact such

official was made responsible for the whole debt. This method avoided conflict between the officials of the fisc and those of the Crown Domain.

10.19.4. The same Emperor to Eustathius, Praetorian Prefect.

The agents and other holders of the Crown Domain must, by the authority of law, be compelled to pay the usual products (tax in kind), lest exemption of the Crown Domain burden the provincials.

Given March 9 (349) and promulgated at Rome.

C. Th. 11.7.6.

Note.

Imperial property taxable.

The subject of taxation of imperial land, including the Crown Domain, the private property of the emperor (*fundi patrimoniales*) and imperial land let out on perpetual lease (*emphyteutic land*), is considered fully by His, Domanen 106-113. He holds that all of such land was subject both to the tax in kind (*annona*), and the tribute. His conclusions as to the tribute is, to some extent at least, disputed by Kuhn, Verfassung d. R.R.; Karlowa 906, note, and others

It seems to be conceded that this land was subject to the *annona* - the tax in kind. That rule is supported by the foregoing law (C. 10.19.4); C. 11.74.3; C. 11.65.4 and 5; C. 10.17.1, and other laws.

That these lands were also subject to the payment of the tribute appears to be supported by C. 11.74.3; C. 10.17.1; C. 10.48.10; C. 11.69.2; C. 10.65.1 and 2, and others laws in the Theodosian Code. Lands of the Crown Domain had, however, formerly been tax free. C. Th. 11.1.1 and 36; His, Domanen 108.

These lands were, however, generally exempt from the so-called extraordinary and sordid burdens and liturgies, which were burdens aside from the taxes above mentioned, as for instance the baking of bread, the furnishing of recruits or horses etc. C. 10.48.10 and 15; C. 11.75.1; C. 11.65.2. By C. 11.75.4, however, it was provided that in place of recruits, *emphyteutic lands* should furnish money. By C. 12.38.2, it was provided that imperial lands should be subject to the burdens for baking biscuits. See also C. 10.19.8 as to taxes payable by imperial lands held under perpetual lease. See C. 10.48.10 and note.

10.19.5. Emperors Theodosius, Arcadius and Honorius to Rufinus, Praetorian Prefect.

The apparitors, who have been directed to use the power of their office in connection with the collections in gold, shall faithfully report and by notations note the amount of the taxes and the sums collected, so that the official staff may know from their report what has been collected and delivered, and so that the collector (*susceptor*), called away on a long journey, may not be absent from his curia and suffer damage to his own property.²

Given at Constantinople April 12 (393).

C. Th. 11.7.14.

² Blume penciled into the margin next to this law: "not exact."

Note.³

It will be noted that apparitors made collections of gold. Gothofredus seems to think that these were apparitors from the capital. The persons, however, sent from the capital could not, ordinarily, deal directly with taxpayers, though that is not altogether certain (note to law 9 of this title), while it is clear that the gold collected according to the instant law was collected directly from the taxpayers. Hence, the apparitors mentioned in the instant law were probably from the office of the governor who was responsible for the collection of all public taxes and dues. Law 6 of this title. These apparitors were required to keep account of the collections made, so that the municipal collectors (susceptores) did not need to attend to these collections and make any useless journeys. It is shown by law 7 of this title that apparitors of the governor, at times, at least, made collections, and in any event since the governor was fully responsible for the collection of taxes, he doubtless had the right to send out apparitors from his office for that purpose whenever he deemed that to be proper or necessary. See Cujacius on this law, who interprets it as here translated.

10.19.6. Emperors Arcadius and Honorius to Theodorus, Praetorian Prefect.

The rectors of the provinces must exert every effort in connection with fiscal debtors, that is in connection with the provisions-tax and other taxes, which belong to the treasury of the eminent prefecture, and as to those debts with which the office of the comptroller (rationalis) deals, and the necessity rests upon them to collect from those who wait for the exercise of his authority.

Given at Milan May 25 (398).

Note.

It has already been note, and it appears from this law, that the governor was responsible for the collection of all taxes and public dues. See also next law, and C. 1.40.10; C. 11.23.2; C. 12.39.1 (clothing tax).

10.19.7. The same Emperors to Hadrianus, Praetorian Prefect.

The opinatores (special collectors of the military food supplies) who are sent with tax warrants, shall urge the judges and their staff to collect what is due within the space of a year. They shall have nothing to do with the land owner, for if the latter is in default, the collector, not a soldier, should urge him to pay. 1. The judges, accordingly, who permit the provincials to be turned over to these special collectors, shall be punished by a fine of twice the amount of the tax; and the apparitors of any office who turn the collection of taxes, which they should personally make, over to soldiers, will be punished by deportation; and the curials who think of delegating the collections, which they customarily make, to opinatores, shall suffer temporary exile. For the judge should keep advised of the delinquents, the accountants (tabularios) should faithfully report the names of the latter, and the apparitors and curials, preserving the custom of the region, should pursue the defaulting debtors; so that the opinatores may receive what is to be delivered to them and return to their station at the end of a year. 2. If they are delayed beyond a year, the judges and their staff shall, immediately, pay out of their own resources the

³ Blume penciled in here: "In law 1 - opinator deals only with governors, in law 10.23.2 – palatina deals only with governors."

amount due to the soldiers, reserving to them the right of reimbursement from the defaulters. 3. And if any complaint reaches us of holding the opinatores back, they (the judges and their staff) shall pay twice the amount due, and in that event the soldiers shall receive what is due them, and the remainder shall be paid to the fisc. 4. We also come to the aid of the judges and their staff in so far that they are authorized to exert their authority against contumacious debtors of every rank, and if payment is willfully delayed by them, they may pursue their agents, their procurators, together with their lands, and report their names to us.

Given at Milan July 13 (401).

C. Th. 11.7.16.

Note.

An opinator was a soldier, sent into a province in order to urge the governor and his staff to make collections of the military tax promptly. See note to C. 12.37.11. He was a special collector, who was forbidden to deal directly with the provincials, a principle also stated in C. 12.37.11, and a principle which was applied to other special collectors sent out from the capital. Law 18 of this title, and C. 12.60.1. See further note to law 9 of this title. In other words, the law required the ordinary local collectors to make the collections direct from the tax payers, although Justinian deviated from the rule, and at times authorized the employment of soldiers in order to enforce collection. Edict 13.

The foregoing law contains a drastic provision in so far as the governor and his staff were concerned, for they were absolutely responsible for the collection of the total amount of the taxes within a year, being compelled to make the deficiency good out of their own property, though leaving them recourse against the tax payers. It may well be doubted, in view of the frequent remission of taxes to communities that this provision was generally enforced; but in any event this liability must necessarily have led to cruel and harsh measures against the tax payers, moderated only by law 2 of this title, which forbade throwing delinquent tax payers into prison and treating them cruelly.

It must further be noted, that while the collection of taxes was ordinarily made by collectors appointed by the municipal authorities, that this was not universally true, but that collections were at times made by apparitors of the governor, depending upon the custom of the community. It will be remembered, as appears from law 5 of this title, that gold was at times collected by apparitors, though that was ordinarily done by municipal collectors (susceptores) as shown by C. 10.72.15.

10.19.8. Emperors Leo and Anthemius to Nicostratus, Praetorian Prefect.

If the imperial house (domus divina) or any other house of whatever rank or fortune, possesses farms outside of the territory of a metropolitan village (metrocomia), not for protection, but by right of purchase or other legal title, and fails to pay the contributions due to the city which the former owner paid, their possessions shall be confiscated, and shall be assigned to the curia of the city, in which the villages are located, so that we may provide in every way for the public good relative to the tribute. Given September 1 (465).

Note.

The foregoing law is to some extent peculiar. "Domus divina" probably referred to the Crown Domain. His, Domanen 27. "Any other house" probably referred to the

church, though, perhaps, not necessarily so. A "metrocomia" was a metropolitan village, having the same rank among villages which a metropolis had among cities. 2 Cujacius 590 on this law. As the name indicates, these villages were in the Eastern Empire.

Reference in the law was made to lands lying outside of the boundaries of such metropolitan villages. The reason for not including lands within these boundaries lay partially at least in the fact that transfer of land within them was forbidden except to the inhabitants thereof. C. 11.56.1. Cujacius refers to the fact that farmers within these metropolitan villages were exempt from a capitation tax, by which he evidently means the poll tax. But the bearing of that fact to explain the foregoing law is not easily perceivable. The law contemplated lands not held for protection. Lands were forbidden to be held for protection, by which is meant a holding of land by a person of power for the benefit of someone else, as under the feudal system. C. 11.54.

The law shows that some lands of the Crown Domain at least were subject to the jurisdiction of the adjoining city. Under the Roman system, cities were ordinarily city-states, that is to say, a certain amount of adjoining territory was ordinarily subject to the jurisdiction of the city. Church lands were evidently situated similarly, although they enjoyed a certain amount of privileges, as shown by C. 1.2.5 and 6. The subject of control of cities over the imperial lands is discussed by His, supra, 114, et seq. That these lands were subject to contributions to the cities, or burdens laid upon them for the benefit of the city or for the benefit of the imperial administration, is clear from the law, but they were generally exempt from extraordinary or sordid burdens. Note C. 10.19.4.

The law further provided that if the burdens ordinarily borne by these lands should be refused, the lands should be confiscated, and assigned to the city, to be managed by it. It is hard to believe that lands belonging to and managed by the Crown Domain were intended to be included. Reference was probably intended to be made to imperial lands sold or transferred to private individuals on long term leases - imperial emphyteutic lands - and to lands held by other parties. See also note C. 4.47.3; and headnote C. 11.54.

10.19.9. Emperor Anastasius to Anthemius, Praetorian Prefect.

Lest the multitude of those who collect taxes damage the tax payers as well as the fisc, only one delinquent tax collector (canonicarius) from the proper bureau, shall be sent into each province by the proper bureau. 1. A special delinquent tax collector - exhorter - (compulsor) shall not be sent till the fixed term and a month in addition has elapsed; after that time a compulsor - exhorter - shall be sent, the president and his staff, and the canonicarius being fined according to the amount of money not collected, and according to the measure of negligence, so that the same compulsor shall demand both the arrears as well as the fine. 2. The compulsor shall only deal with the president, his staff, and the canonicarius, and shall receive a salary, depending for amount on the province from which taxes are due and its distance. This salary shall be defrayed by the president, his staff, and the canonicarius, since they were the cause that the compulsor was sent. 3. No other compulsor shall, in any manner, be sent, nor anyone else after sending the compulsor. Should the prefects, however, deem it necessary that someone else should be sent after sending the compulsor, the foregoing provisions shall apply, that is, his salary shall be paid by the persons who are the cause of his being sent, namely the president of the province, his staff, the canonicarius and the compulsor. 4. For the salary

assigned to the canonicarius shall suffice for all the collectors, sent after he was, and no greater amount shall be demanded from the corporations of the cities or the taxpayers, although several collectors are sent, so that all who were sent and failed to collect the tax, may each be punished. 5. Whatever tax-warrants (delegationes) are issued shall be sent to the canonicarius, so that they may be attended to by him, and the salary assigned to him shall not be increased by reason thereof. No one shall receive the fees called endomatica, but the very name thereof shall be abolished. If these orders are in any way neglected, a fine of fifty pounds of gold shall be assessed both against the staff of the prefects as well as against the presidents of the provinces and their staffs and against all other public officials.

July 21 (496).

Note.

Officials charged with collection of taxes.

The governor of the province was responsible for the collection of taxes (Note law 6 of this title), just as he was responsible for the collection of rents due from the public domain, except where responsibility was specially placed on others. His, Domanen 56; Nov. 134, c. 2. He did not, of course, do the collecting himself; that was left to subordinates. Ordinarily, as would seem to be true from the laws in C. 10.72, the collections were made by municipal officers called susceptores (receivers), who, perhaps, had others (exactores, see note C. 10.2.2) to help them. It is clear, however, that the apparitors, members of the official staff, of a governor, collected the taxes at times. Law 7, and note law 5 of this title. See also C. 10.20.1, and note C. 10.72.8. Whether it was done by one set of officers or the other seems to have depended on the custom of the locality. See 1 Karlowa 907. This was not always so. Anastasius, despairing of the efficiency of the local officers, supplanted them by special collectors, called vindices, probably appointed by the praetorian prefect, and who were under the direct control of the central government. 3 Evagrius 42, says: "He also took the levying of the imposts out of the hands of the councils of the respective cities and appointed what are called vindices. *** The result was that the revenue fell off to a great extent, and the local dignitaries sunk into abeyance." In any event, the system was not continued, except that we meet with the vindex in a few places in the law. Bury, 1 Hist. Later Roman Empire 442, et seq. See Edict 13; Nov. 38 pr; Nov. 128, cc. 5 and 8; Nov. 134, c. 2.

In addition to these regular local collectors, we find officials sent into the provinces by the central government, as noted in laws 7 and 9 of this title and in C. 12.60; and see C. 11.74.2. Originally, these men had doubtless served as actual collectors, that is to say, as persons who dealt with the tax payers and exacted the taxes from them. They did this, partially at least, pursuant to law (C. Th. 11.7.18), but in some cases, perhaps, assumed the authority. In any event, laws were enacted to prohibit them from doing so. By an enactment of 395 A.D., all palatine officials, meaning doubtless officials from the office of the Count of the Crown Domain and from the office of the Count of the Imperial Exchequer, and officials from the office of the Praetorian Prefect were forbidden to have any dealing with the taxpayers. The rule was applied in 401 A.D., to the special tax collector of military supplies. C. 10.19.7; and C. 12.37.11. During the same year, every palatine official was forbidden to have anything to do with taxpayers and the governor was directed to attend to that himself. C. 1.40.10. And in 408, the same law was

repeated as to officials form the office of the Count of the Crown Domain and the Count of the Imperial Exchequer. C. 10. 23.2.

By reason of these laws, it has been assumed by writers that none of these officials, including the *canonicarius* mentioned in law 9 of this title, had any right to deal with the tax payers. 1 Karlowa 907; Humbert, 2 Essai 12; His, Domanen 57. That such was the law for a time is true, but whether that remained the law without qualification admits at least of doubt. It will be noted in law 9 of this title that the *compulsor* was forbidden to deal with the taxpayers, but that prohibition was not applied, at least directly, to the *canonicarius*. Again, notices of tax levies (*delegationes*, *ektagai*) were directed to be sent to the latter, which would seem to indicate that he was in direct charge thereof. Further, the *compulsor* was sent at his peril and that of the other officials mentioned in the law, indicating, though, perhaps, not necessarily so, that he was in position to force collections. Some light on this subject is thrown by two chapters of Novel 128. In c. 5, the *canonicarius* was included among the persons who were responsible for the collection and transmission of taxes. c. 10 provides that those who were sent into the provinces should not begin to make collection of taxes until they had filed their credentials. If they were sent into the provinces merely for the purpose or urging the governors and their staff to make collection, the filing of their credentials could hardly have been considered of importance. Further, it seems clear from c. 11, Edict 13, that *scriniarii*, who, according to Cujacius on Novel 128, were the same as *canonicarii*, were engaged in the collection of taxes and apparently dealt directly with the taxpayers. See also Novel 134, c. 2.

The *endomata* mentioned in law 9 of this title were fees paid by taxpayers to tax-officials for favors in connection with the collection of taxes. Cujacius on that law.

It will be noted that the *canonicarius* received certain compensation which was required to be defrayed by the taxpayers of the district to which he was sent.

The present law was modified by Novel 128, c. 6, which provided that no *compulsor* should be sent into the province, but that if the *canonicarius* should prove to be inefficient, he should be supplanted by another. The modification, of course, was only in the name; the result was the same.

The subject of receivers of taxes is further dealt with in C. 10.72, and other agents in connection with taxation at C. 12.60, and also C. 10.71.

M. Gelzer has summarized, in his Studien at 61, his conclusions as to the method of collection of taxes - mainly in Egypt - in the third century, acknowledging that many points are obscure, about as follows: The emperor issued his annual levy - *delegatio* - to the vicars and governor. The latter, in turn, divided the levy among the cities, i.e. gave their orders to an *exactor* of the city, who was at the head of the system of the collection of taxes in the municipality and its territory. This *exactor* communicated the order to the municipal council. He decided cases involving disputes as to taxes, and he divided the taxes among the taxpayers of the city and the country districts (*pagi*). He was primarily responsible for the collection. The actual collection was done by the receivers of taxes, partly elected by the *curiales*, partly by tenants. The latter had other officials under them, the *praetores* and *exactores*, and the officials of villages (see C. 11.56.1 and note). The tax districts in the country were under the superintendents of the country districts (*praepositi pagorum*), whose superior was the *exactor* of the city. The tax collectors

delivered the collections to treasuries or magazines, and the military tax (annona) to the troops and officials.

Independent villages (metrocomiae) were under the direct supervision of their officials. The villages were jointly responsible for the whole amount of the tax levied against the property thereof, and were under the general control of the officials of the city to the territory of which they belonged. C. 11.56.1 and note.

10.19.10. The same Emperor. (Synopsis in Greek.)

The constitution treats of cohortalini⁴ and (other) apparitors who have fled; in what manner public tribute (paid to them) is to be demanded from them; it forbids taxes to be paid to them, except while they function as public officials; for it wants that no payment shall be made to them in any manner by the taxpayers while they are fugitives or in hiding.

Given March 31 (498).

⁴ [Blume] The apparitors of the governor of a province were known as cohortalini or cohortales, originally a military term, meaning members of a cohort. The apparitors here mentioned were members of the official staff of an officer of higher rank than the governor.