

Book X.  
Title III.

Concerning the validity and legal effect of fiscal auctions and increased offers made.  
(De fide et jure hastae fiscalis et de adiectionibus.)

Bas. 56.6.

10.3.1. Emperor Antoninus to Agortia.

Bring before my procurator, to whose jurisdiction your demand belongs, the matter mentioned in your petition. If you prove to him that the property was sold without the authority of the procurator or of a person who had the right to sell, that no auction was held and that the usual requirements were not observed, then if you pay what you owe by reason of the judgment, the sale, made in bad faith, will be rescinded and you will receive back, with its usufructs, the property which the purchaser received or should have received.

Promulgated January 7.

Note.

That a sale by the fisc was required to be honestly conducted and under certain regulations, is stated in a number of laws in the Code. See C. 10.1.3; C. 4.44.16, and C. 4.46; C. 2.36. The procurator of the fisc here mentioned was doubtless the same person who in a subsequent period (the rescript was issued in 213 A.D.) was called *rationalis*, generally translated as comptroller, and who had procurators under him. See headnote C. 3.26.

10.3.2. Emperor Gordian to Heracleon.

Two reasons support your demand: because, as you suggest, your property was sold by the official staff without the customary requirements of an auction, and because you say that your opponent,<sup>1</sup> on account of the low price, by reason of the smallness of your debt, trumped up a sale, made through favoritism, in fraud of you and to the advantage<sup>2</sup> of my accounts. Hence, contest these illegal proceedings, to keep the fisc free from loss<sup>3</sup> as well as to act for your own advantage.

Promulgated (240).

10.3.3. The same Emperor to Crispus.

Although documents of purchase are not extant, still if your wife in any manner proves her ownership of the house, which, you say, was acquired in her name from the fisc, and that the price was paid by, and dominion transferred to, her, my procurator will not permit the fisc to raise any useless investigation at the instance of her mother.<sup>4</sup>

Promulgated October 28 (239).

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<sup>1</sup> [Blume] One of the officers.

<sup>2</sup> [Blume] Cujacius holds that this should be read "disadvantageous."

<sup>3</sup> [Blume] i.e. by paying the debt due.

<sup>4</sup> [Blume] Whose property was sold to the daughter.

#### 10.3.4. Emperors Diocletian and Maximian to Marcellina.

Since you say that you will make a higher bid, go before our comptroller (rationalis) and if the time, fixed by law in connection with fiscal auctions, permits, he will, according to law, permit you to offer the greater amount.  
Promulgated January 13 (290) at Sirmium.

Note.

When the fisc sold property and someone else later offered more, the first sale was nugatory and the property was sold to the later and highest bidder. There was evidently a definitely fixed time within which that might be done. That the rule existed is shown by this law and D. 49.14.50 and C. 11.32.1. Where the city, however, sold property and accepted a bid, the property could not thereafter be sold to someone else who offered more. C. 11.32.1. The principle was not, however, universal and did not apply to patrimonial land or lands formerly belonging to the heathen temples. C. 11.62.3; C. 11.70.4. See a fuller note on this subject at C. 11.71.2.

#### 10.3.5. Emperors Valentinian, Valens and Gratian to Viventius, Praetorian Prefect of the Gauls.

All property to be sold by auction, for arrears of spendthrifts (prodigorum)<sup>5</sup> in taxes payable in food supplies or for other fiscal debts, payable in any kind of property, shall be sold by authority of the fisc, so that the property adjudged to anyone by the fisc at customary auction, shall belong to the purchase in perpetual ownership. 1. No one is required to obey a rescript granted at any time to the effect that a sale made by the fisc may be nullified, since even minors of all ages are deprived of the right to reclaim any of their property sold to purchasers for fiscal debts.

Given at Trier November 3 (369).

C. Th. 10.17.1.

Note.

If property of a minor was sold by the fisc for fiscal debts, the minor was required to be represented, otherwise the minor could restitution of rights. C. 4.46.3 and note; C. 2.36. As to persons of age, restitution of rights might formerly be granted them within five years, but by a constitution of Zeno, this right was abolished and the only recourse was against the fisc within a period of four years. C. 7.37.2, and note. Probably a respite of two months was given, and if the debtor did not then pay, the sale was made. C. Th. 11.9.1; C. 10.21.1, note C. 4.46.3.

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<sup>5</sup> [Blume] Gothofredus, following Cujacius, construes "prodigorum" - prodiga - to refer to food supplies, eatables. That would, however, create tautology. Bas. 56.6.5, in giving the synopsis of this rescript, says: "If the fisc sells the property of a 'decedent' by auction" etc. Vat. fr. 37, in dealing with this same rescript, speaks of the sale of any property for arrears in the payment of the annona (tax payable in food supplies), or in the payment of other fiscal debts by reason of the luxurious living of "worthless people" and "spendthrifts." Within the meaning of the foregoing rescript, anyone who failed to pay his taxes was probably considered a "spendthrift."

10.3.6. The same Emperors to Felix, Count of the Sacred Largess.

Any person who purchases property of fiscal debtors upon public offer and sale by the fisc, shall be liable only for the price of the property which he bought at the auction, duly held. We protect them, so that they are not subject to suit on the part of anyone for an additional sum on account of fiscal arrears.<sup>6</sup>

Given at Marcianapolis March 9 (370).

C. Th. 10.17.2.

10.3.7. Emperor Zeno to Dominicus.

When the goods of exiled persons are sold, the Count of the Crown Domain, the corps of palatine officials, and the advocate of the fisc may buy some of the property and no one can attack the transaction.<sup>7</sup>

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<sup>6</sup> [Blume] The intention of the constitution was that a purchaser at such sale should only be liable for the price bid by him for goods bought and for nothing more. See to the same effect C. 10.5.1.

<sup>7</sup> [Blume] See C. 4.44.18 and note.