

Book XII.
Title LX (LXI).

Concerning enforcement officers and collectors.
(De exsecutoribus et exactoribus.)

Bas. 51.17.53.

Headnote.

The term exsecutor meant literally an enforcement officer. It was at times used for the person who served judicial process -- for a process-server. But its meaning was broader and could be used for any of the apparitors of any of the offices who were delegated to perform some duty and included the imperial messengers. C. 12.19.12.1. The term exactor was ordinarily used to designate a tax collector.

12.60.1. Emperors Arcadius and Honorius to the provincials and proconsuls.

Lest a palatine official (of the Treasuries) may go into the different parts of the provinces as a tax collector, or an apparitor of illustrious officials roam around therein, or military terror cause fear therein, we ordain by this law, that the demands of the foregoing officials shall be directed to the rector of the province; they shall deal with, and do and complete their business through, him, while he pursues the tax payers and arranges and does everything at his peril.

Given at Milan June 15 (395).

C. Th. 8.8.6.

Note.

The palatine officials here mentioned were the underlings of the counts of the imperial exchequer and of the crown domain. The apparitors of illustrious officials here referred to as Gothofredus thinks, the underlings in the office of the praetorian prefect. All these officials had to do with the collection of public dues -- taxes or rent. That the officials sent from these offices into the province should deal only with the governor and not directly with the tax payers is stated in various other places of the Code. C. 10.19.7; C. 10.19.18; C. 12.37.11.

12.60.2. The same Emperors to Andromachus, Praetorian Prefect.

Whatever official from our palace goes into the provinces as exhorter, (compulsor) collector, or monitor in connection with any payment, or as bearer of an order, imperial messenger (agents in rebus), palatine official, or apparitor of the illustrious officers, shall assume only the authority which his mandate specially delegates to him; nor shall he presume to do anything enjoined upon another by right of collegueship, lest, while they share this (work) one for the other in turn, by the license of mutual duty, all will do what has been entrusted to specific persons.

Given at Milan July 14 (395).

12.60.3. Emperors Honorius and Theodosius to Palladius, Praetorian Prefect.

If any person has been sent from the office of the praetorian prefect, or from the office of the illustrious count of the imperial exchequer, or of the crown domain, or from

any other office, to demand payment of any tribute, he must, with the collected accounts, return to his superior within a year, show what he has done, what, at his instance, has been collected, what is in arrears, who is in arrears, or by whose fault and cause delinquency exists in that province. 1. But if he is found to have remained after the passing of a year, preying upon the vitals of this region like a vulture, he shall be deprived of his girdle and expelled from service and the primates of the same office shall pay a fine of ten pounds of gold. 2. If he refuses to return, he shall be bound with iron chains by agents of the official staff and sent in charge of the provincial officials, to an examination which must be made; nor shall he be permitted to defend or excuse himself by stating that he was entrusted with another transaction or duty; for we deprive them of the right to continue their exactions in the same province.

Given at Ravenna September 22 (416).

C. Th. 8.8.9

Note.

Each of the members of the official's staff was subject to the jurisdiction of his superior. C. 3.13.7 and note.

12.60.4. The same Emperors to Johannes, Praetorian Prefect.

The property of one person cannot be taken for the debts, public or private, of another.

Given at Ravenna July 11 (422).

C. Th. 8.8.10.

Note.

This subject is more fully considered at C. 11.57.

12.60.5. Emperors Theodosius and Valentinian to Volusianus, Praetorian Prefect.

If an enforcement officer (exsecutor) dares to do anything, by forbidden undertaking, contrary to our orders, the provincial moderator may seize him and send him, under attendance, to the court of Your Sublimity, and the provincial, even though he is shown to be liable (for a tax), may legally repel the rashness of an enforcement officer who undertakes the exaction contrary to our prohibition.

Given at Ravenna February 27 (429).

C. Th. 12.6.32.

Note.

In the headnote to C. 3.2 the subject of enforcement officers -- executores -- is considered. But those officers were connected with proceedings in court, while the enforcement officers mentioned here were officers connected with the collection of taxes or other public dues, and is but a general term for collectors of taxes or other public dues. The principle that tax payers could resist unlawful acts of public officials is also stated in C. 10.1.5.

12.60.6. Emperor Zeno to Arcadius, Praetorian Prefect.

We ordain that a person who by order of Your Highness or at the desire of the accountants (numerarii) or head-collectors (tractatores) or by order of those who for the time being carry on the administration of Your high office, are in any manner charged with the collection of public money, shall not be permitted to undertake any other matter,

until he has, upon his return, rendered a full account of the matter (first) enjoined upon him. 1. If it shall happen, however, that in the province to which a man goes for the purpose of executing a public transaction, another matter, too, needs attention, it is not forbidden to charge one and the same officer who goes from this imperial city to execute two transactions, but no more; he must not take charge of any further transaction till he has reported on the others. 2. Officers (exsecutores) who shall permit themselves to undertake not only a second transaction, or two at the same time, but also a third transaction (contrary hereto), shall not only lost the girdle of their office and their goods, but shall also suffer perpetual exile. 3. The same punishment is to be feared by the receiver of taxes and his assistants, in whose charge is the matter which is violated. About 485-486.

12.60.7. (Synopsis in Greek).

Whoever executes an imperial command or an order of a magistrate, must first show it to the president, so that he may determine that it is no forgery, was not surreptitiously obtained and is not contrary to law. 1. That may be done by means of or without writing, in the presence, forsooth, of the divine scriptures, all land owners who are present participating therein with him. 2. If he finds it (the order) proper, the president shall give his assistance; but if he finds it forged, or contrary to law, he must not execute it, but refer it to the emperor through an official or to the magistrate, from whom the matter originated, requiring the enforcement officer meanwhile to give proper surety, and the persons against whom the demand is made (by the officer sent), a personal surety without expense. For the enforcement officer (exsecutor) must indemnify the latter, if it is found that he summoned him without just cause. 3. If this is not done, the person summoned may resist execution. For the president, to whom the order is directed and similarly anyone else to whom it may be directed, must cause the enforcement officer to give suitable surety. 4. But though anyone can repel the exaction, yet when the president has received knowledge thereof, he must call the enforcement officer away, and cause the man from whom a demand is made to give a personal bond and report the matter. 5. And if the president or his staff, or the person to whom the order is directed, shall neglect this, he shall, during his office, or thereafter, indemnify the person summoned out of his own property. 6. The constitution makes exception in cases of persons who are liable for taxes. 7. But if the presidents, corrupted by money, fail to make investigation, with the holy scripture before them, or are guilty of connivance, they shall be punished by a fine, shall be removed from office, and stand in peril of their safety. 8. Moreover every law which is to be registered (in the provinces), must first be shown to the (praetorian) prefect; and the person who carries it into the province shall receive six solidi, the president shall hasten to cause the laws to be made public by edicts issued to all the cities subject to them, without any fees being paid either to the president, defender or messenger. 9. If any person receives any fee, he must pay back the two fold thereof, and if he is the president, he loses his office; if he occupies another administrative position, he shall be removed therefrom. (No date or consul).

Note.

The foregoing law evidently related to enforcement officers, process-servers, who acted in connection with suits in court. Its aim seems to have been to forbid any such

officer from summoning a defendant in another province until the order for the summons had been laid before the governor of the province, who was required to determine its genuineness. Whether reference was intended to be made to both civil as well as criminal cases is not altogether clear. The statement that a defendant could resist 'execution' would seem to indicate that reference was intended to be made at least mainly to criminal cases. A defendant, however, even in a civil case could be arrested unless he gave bond. C. 3.2.4 and note; note C. 2.2.4. But suit against him could not ordinarily be brought in another province. There were exceptions, however. The subject of venue is considered in C. 3.13, et seq. As to fees for carrying public communications into the provinces, see C. 12.63.2 and C. 3.2.2 and note. The law that an officer sent into another province should first make his credentials known was made applicable to all matters by Nov. 128, c. 10.