

Book III.
Title XXVI.

Where fiscal causes or those pertaining to the imperial property or to men belonging thereto may be conducted.

(Ubi causae fiscals vel divinae domus hominumque ejus agantur.)

Bas. 7.5.93.

Headnote.

It may be well to briefly mention here the fact that there were two financial ministers at the head of the financial affairs of the empire, the Illustrious Count of the Imperial Exchequer and the Illustrious Count of the Crown Domain. The former was the head of the fisc, the general treasury of the empire. The latter was at the head of the department which had control of the imperial domains, including the lands of the crown let out on long-term or perpetual leases. These financial ministers had regional agents under them, generally of dioceses, called rationales, translated as comptrollers. The comptrollers, in turn, had procurators, agents, under them who ordinarily looked over the affairs of provinces, although there were procurators also who looked after certain particular imperial domains. The comptrollers of the fisc were the court of first instance in cases in which the fisc had a dispute with private persons, the advocate of the fisc representing the interests of the fisc and the case being heard with him present. C. 2.8.5; C. 2.36; C. 2.48.1; 3 Bethmann-Hollweg 77-78; see C. 10.2.3. There were exceptions. The ordinary judge, the governor of the province, heard disputes where the fisc claimed property as escheated, proscribed or vacant (3 Bethmann-Hollweg 78). Cases involving the interests of the fisc, as well as restitution of rights of minors were heard by the comptroller in conjunction with the ordinary judge. C. 2.36.2. Jurisdiction in matters connected with the collection of ordinary taxes was, generally, vested in the governors of provinces or other districts (Edict 13, c. 12), and probably also over exactions of taxes. The comptrollers of the Crown Domain were the courts of first instance in which the Crown Domain was a party and in some civil cases and trivial criminal cases in which tenants of the Imperial Domain were involved. Laws 6 and 7 of this title. Law 11 of this title makes special provision in regard to the tenants on the imperial domain in Cappadoica. Comptrollers (rationales) had formerly been called procurators, and it will be noticed in the first four laws of this title that no reference is made to rationales but to procurators. In the later, including Justinian's time, procurators of the fisc or the Crown Domain were under the comptrollers. Appeals from the comptrollers might be taken to the emperor, who generally delegated the hearing thereof to the financial ministers. See headnote C. 3.13; also C. 2.8; 3 Bethmann-Hollweg 67-79; 1 Karlowa 837-845; His, Domaenen 51, 113-114; Humbert, 2 Les Finances 142, et seq.

3.26.1. Emperors Severus and Antoninus to Dioscurus.

Who does not know that the question as to whether a death has been avenged by the heirs of the deceased cannot be investigated before our procurators, and that the property cannot be claimed as confiscated property for the fisc till the commission of the crime has been proven before the judge who has authority to inflict punishment on those convicted. However, if those accused of homicide have died, the cause may be tried (agendant) before the procurators.

Promulgated May 9 (197).

Note.

Bas. 7.5.93 states this law, so far as pertinent here, as follows: “If the heir of a man who came to his death by violence, enters on the inheritance before the death is avenged, the inheritance becomes that of the fisc...The property of the person killed is not confiscated until the murder is first proved before the magistrate who can also punish the guilty.” That it was incumbent on an heir, in a case like that mentioned, to avenge the murder before entering on the inheritance, in default of which he lost the inheritance, is fully stated in note C. 6.35.1. Before the fisc could make any claim, the murder was required to be established before the ordinary judge. It seems, however, under the foregoing law, that if the parties accused of the crime had died, then the fiscal officer could try the question as to whether or not the inheritance had been entered on by the heir before avenging the murder. That seems to be the meaning. The procurators referred to in the present title were the fiscal procurators, later called comptrollers (*rationalis*), or the procurators for imperial property. That property was divided into several distinct funds, as it were. The subject is considered in C. 11.62; C. 11.66 and 67, and other titles of that book. All such property belonged, theoretically at least, to the emperor. Most of the imperial domains were under the Count of the Crown Domain. The property in Cappadocia, the income of which was used for the imperial household, was under the Grand Chamberlain. The private property of the emperor was put under the Count of the Imperial Patrimony, according to a law of Anastasius C. 1.34.1.

3.26.2. The same Emperors to Arista.

We do not see why you want a case which is within the jurisdiction of our procurators taken before the proconsul. For when an investigation is made as to whether your father committed suicide on account of the fear of some punishment, and whether, therefore, his property should be confiscated to the fisc, the inquiry to be made relates no longer to the crime or to the punishment to be meted out to the deceased, but to his property.

Given September 20 (207).

Note.

If a man committed suicide, conscious of his guilt and in order to escape punishment, his property was, in some cases at least, confiscated by the fisc. This peculiar principle of Roman law is stated and considered in C. 9.50 and note to law 2 of that title. According to the foregoing law, the fiscal procurators or comptrollers had jurisdiction in that matter, since it involved simply the question as to whether the property belonged to the fisc or not.

3.26.3. Emperor Antoninus to Heliodorus.

Just as my procurator, who does not function in place of a president of a province, can¹ collect a penalty (already imposed) for abandoning an accusation, so he cannot himself, by his decision, adjudge that it should be imposed.
Given September 1 (215).

3.26.4. Emperor Alexander to Maxima.

Since you say that you bought a farm at a sale held by my procurator, you necessarily must pay the price thereof. 1. If you as plaintiff litigate with those to whom you say that you transferred it, at whose behest you bought it, my procurator will, if you choose to bring an action before his tribunal, adjudicate that you may be able to receive back the money which is due you for the purchase money and the interest payable (by you) to the fisc.²

Promulgated October 13 (233).

3.26.5. Emperor Constantine to Ursus.

The imperial comptrollers (rationales) must decide all fiscal causes, and all extortions (in connection therewith) must be forbidden.

Given February 3 (315).

3.26.6. The same Emperor to Italicus.

If anyone wants to bring an action against our chief tenant, he must report to the Illustrious Count of the Crown Domain, lest (through violation hereof) the good name of the judge and the welfare of his official staff may be endangered.

Given February 1 (343).

Note.

3 Bethmann-Hollweg 79 takes the position that tenants on the imperial domains of the crown estate could, in a civil suit, be sued only in the court of the comptroller (rationalis), while the ordinary judges had jurisdiction over them in criminal cases, as shown by law 8 of this title. 1 Karlowa 844-845 takes the position that while the tenants on the imperial domains in Cappadocia, which (until Justinian's change) were under the jurisdiction of the grand Chamberlain and his subordinate, the Count of Imperial Property (comes Domorum), and could not be sued in any other court, either in a criminal or civil case, according to law 11 of this title, that tenants on other imperial domains could all be sued in the ordinary courts, except only that, according to the foregoing law—law 6—the comptrollers of the Crown Domain were entitled to be notified, so that they could act as the protectors of the tenants, as indicated in law 8 of this title. This is also the opinion of His, Domaenen 114.

3.26.7. The same Emperor to Bulephorus, Fiscal Comptroller.

We have deemed it best to make Your Gravity the judge of the tenants (coloni) on our Crown Domain and patrimonial estates. The dukes and provosts of the boundaries

¹ [Blume] See C. 9.45 for penalties imposed for abandoning an accusation. “Can” in German translation is “cannot.” Scott also has “cannot.” See 6 [12] Scott 289.

² This reflects several additions penciled-in by Blume. He also left a question mark in the margin. Scott gives this as :”...so that you can recover the purchase-money due to you, and the interest owing to the Treasury may be paid.” 6 [12] Scott 289.

and of the forts and the rectors of provinces must refrain from summoning and citing them.

Given February 14 (349).

Note.

The *rationalis summae rei*—comptroller of the fisc, was under the jurisdiction of the count of the Imperial Exchequer. 1 Karlowa 838, 839. Probably the Comptroller of the Crown Domain was meant in this law, as it would be strange that the Comptroller of the Fisc should have anything to do with matters that came properly under the jurisdiction of the officials connected with the Crown Domain. This view is sustained by Bas. 7. 5. 96.

The law is broad enough so as to give the impression that the comptroller had jurisdiction over tenants (*coloni*) in all matters. What the law probably meant was that such jurisdiction extended over civil cases and trifling criminal matters arising among the tenants themselves. Otherwise it would be inconsistent with what was said in note to the previous law. This is the position taken by His, Domaenen, 114. “*Domes nostrae*” seems to refer to crown lands and private property of the emperor. His, Domaenen, supra p. 21. But see 1Karlowa 842 who maintains that it referred only to the private property of the emperor.

It is not unlikely that, as held by Clausen, The Roman Colonate, 283, 284, the origin of special judicial jurisdiction in the case of tenants on the Imperial Domain is to be sought in the fact that during the time that tenants were not yet bound to the soil, attempts were made to hold them on the land by giving them certain rights and privileges which would make their condition a favored one. For that purpose, he says, the emperor Antoninus provided that they should receive special police protection from the imperial procurators (D. 1.19.3.1), and that they were allowed to bring their disputes directly before these procurators, thus relieving them of the tedious process of the ordinary courts of law. (D. 43.8.2.4.) For the same reason, they were relieved from municipal taxes and municipal burdens. (D. 50.1.38.1; D. 50.6.6.11.)

3.26.8. The same Emperor to Taurus, Praetorian Prefect.

When it is alleged that a serf (*colonus*) or slave of the Crown Domain has violated any public regulation, he should be forced to go before the tribunal of the rector of the province, and the matter between him and his accuser must be tried in the presence of our comptroller (*rationalis*) or procurator of our house (*domus nostrae*), and if the crime is proven, punishment shall be inflicted.

Given at Sirmium March 3 (358).

3.26.9. Emperors Valentinian and Valens to Philippus, Vicar.

Everybody may rely on this: that if anyone has been wronged at the hands of an agent (*actore*) of our Crown Domain, or a procurator (of the imperial patrimony), he need not hesitate to complain of his insults or depredations to Your Sincerity or to the rector of the province, and he may fearlessly ask for a decision involving public punishment. We ordain and proclaim that if it is clearly proven that (such agent or procurator) has dared to use such insolence toward a provincial, he shall be publicly burned alive.

Given at Heracles July 5 (365).

C. Th. 10.4.1.

3.26.10. Emperors Gratian, Valentinian and Theodosius to Polemius, Praetorian Prefect.

No member of the official staff of the comptroller (*rationalis*) who acts as collector or keeps the records should be forced to go before another tribunal, unless he is, perchance, accused of a capital crime according to law.
Given April 29 (385).

Note.

This rescript gave certain fiscal officers the privilege of being sued only in the court, the head of which was the count of the Imperial Exchequer. The same rule doubtless also applied to the procurators, etc. connected with the crown lands. See C. 3.13.7.

3.26.11. Emperors Theodosius and Valentinian to Artaxes, Grand Chamberlain.

We ordain by this law that if a tenant (*colonus aut inquilinus*) or slave of our estates sues or is sued in a criminal or civil case, no one may ask that the trial should be had before any tribunal other than that of Your Highness, and that of the worshipful Count of the Imperial Household (*comes domorum*), and no objection to the venue shall in any manner be entertained.

Given April 9 (442).

Note.

The tenants here referred to were those on the imperial lands in Cappadocia. The privilege here given them was absolute, and greater than that of the tenants on the other imperial domains. See note to law 6 of this title. The revenue from the lands referred to went toward the support of the imperial court. See 1 Karlowa 845.