

Book XI.  
Title LXVI. (LXV)

Concerning the lands of the Crown Domain and the woodland pastures (saltus) of the imperial house (domus divina).  
(De fundis rei private et saltibus divinae domus.)

Headnote.

His, supra 27, states that the domus divina mentioned in this title was part of the crown domain. He says that the term, as well as res dominica, is sometimes used to designate all of the imperial public domain; that, however, the term domus divina was also used in a narrower sense, namely, to designate the household lands mentioned in headnote C. 11. 62 (3). Others think that domus divina was the patrimony. Bury, 2 Hist. Later Roman Empire 355. In any event, the lands of the domus divina mentioned in this title were closely connected with the crown domain.

11.66.1. Emperors Constantius and Constans, an Edict to the Heliopolitani.

All persons may know that the property which they have bought, or buy, from the fisc, may not legally be reclaimed by us but will be firmly possessed by them and transmitted to their posterity with the right of perpetual ownership.

Given at Antioch February 12 (341).

C. Th. 5.14.1.

Note.

It will be noted that while the title deals with the crown domain and lands of the imperial house (domus divina), this law speaks of lands belonging to the fisc. This simply bears out what has already been stated that the term fisc was not infrequently used in connection with property of the crown domain.

11.66.2. Emperors Valentinian and Valens to Florianus, Count of the Crown Domain.

Persons who, on account of advantages to be deprived therefrom, wish to ask for lands of the Crown Domain, should go before the officials of Your Reverence and indicate in writing what they want, and they may feel assured that each estate will become the property of the new owner, subject only to the burden or the rule to which it is now subject and if he adds anything to it by careful and skillful outlay, the increase in the land tax (capitatio) or rent (canon), but the benefit thereof shall accrue solely to the owners and their heirs. 1. But if anyone fails to make the payments due in any year, he must, without grace, pay the arrears out of his other property. 2. And if it appears that subsequently any one has become unable to pay, and has not paid the rent as he should, then the property which he received from us, shall be transferred to some one else more able to pay and under the condition which we have fixed; but the new owner shall not be burdened by the arrears of the defaulter.

C. Th. 5.14.4.

Note.

It will be noted in this law that the rent could not be increased after the lessee had made his improvements. This principle is also stated in C. 11.59.17. This rent, as already included in taxes, so that we find the peculiar situation in the Roman Empire that

taxes could not be increased though the necessity of the government increased, a principle that, perhaps, was in actual practice, frequently evaded.

11.66.3. Emperors Gratian, Valentinian and Theodosius to Hesperius, Proconsul of Africa.

If a person who has in his own name received any property of the Crown Domain has transferred it, by perpetual right or by lease, to one who is unable to make the payments due our patrimony, remains perpetually liable to make them, on behalf of the person whom he chooses as his successor.

(about 376 A.D.)

Note.

We already saw at C. 4.47.3 and note, and C. 11.3.3, that transfers of real property could not be made at will, but that if the transferor was able to pay, and the transferee was poor, the vendor remained liable for the taxes. This shows, of course, that while land-taxes were primarily an obligation of the land, it was also a personal obligation, and this is clearly shown by the fact that taxes could be enforced by arrest of the tax payer.

C. 10.19.2.

11.66.4. The same Emperors to Nebridius, Count of the Crown Domain.

All the lands of the temples shall be in the charge and care of the comptrollers (rationales) of the Crown Domain, and shall, as always, be protected by them with particular care and the yearly payments collected by them.

382-384 A.D.

Note.

It may be gathered from C. 11.65.5 that the actual collection of rent on patrimonial and crown domain land, with which lands formerly belonging to heathen temples seems to have been closely connected, was in the hands of the provincial governor. If that is correct, and it is probably so, (His, 56-58 and headnote C. 11.62 (3)), then the instant law meant merely that the comptrollers had a general supervision over such collections, but that the primary responsibility did not rest upon them. It was the general policy of the law to make everyone responsible for the collection of taxes who was in any way connected therewith. That policy is apparent, for example, from Edict 13.

11.66.5. The same Emperors and Arcadius to Nebridius, Count of the Crown Domain.

The use of water, which serves the needs of our lands, is said to be usurped by many, and that this is done by the connivance or neglect of the procurators, so that the fertility of the fields is destroyed and they yield no return to the cultivators. 1. Since it is most unjust that a formerly productive patrimony should become arid, we direct, that without reference to any prescriptive rights, all waters shall be returned to their former channels.<sup>1</sup>

383-384.

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<sup>1</sup> [Blume] See note C. 11.63.1, and for the subject of irrigation, see C. 3.34.

11.66.6. Emperors Arcadius and Honorius to Vincentius, Praetorian Prefect of the Gauls.

If anyone without being questioned has served in a curia, burrough or other corporation for 30 years neither an imperial (res dominica) or a private claim shall be a ground to raise the point as to whether he is a serf, but he shall remain in the curia or corporation in which he is serving.<sup>2</sup>

Given at Milan June 29 (400).

C. Th. 12.19.2.

11.66.7. Emperors Theodosius and Valentinian to Eudoxius, Count of the Crown Domain.

No one shall buy property of the imperial domain (dominicæ possessionis) with exemption from rent (canone dempto). 1. And if anyone shall hereafter make such forbidden contract, we want him to lost the purchase price, return the lands, and turn over the fruits thereof, nor oppose to the exaction of the fruits, compensation for outlay or betterments, nor shall he flatter himself, as against us with the plea of prescription, except that of great length of time (40 years). 2. The palatine officials also, if such a contract has been made, or they aid a petition therefor, shall pay a fine of 50 pounds of gold into the private treasury (the crown domain) of Our Clemency. 3. No liberality of Our Clemency, no sanction shall be valid, which is against the interest of our crown domain, although it be an imperial notation or a pragmatic sanction, which, contrary to this prohibition, allows the regular rental to be sold, or remits the punishment of the palatine officials.<sup>3</sup>

Given at Constantinople May 20 (440).

Note.

The 'canon' here referred to probably, though we are not certain, contemplated not only rental, but the regular taxes as well. See notes C. 10.48.8; C. 11.59.17; C. 11.62.12; C. 11.66.2. Emperors had formerly given away lands free from rental and free from taxes (note C. 10.46.1). This law forbade grants free from 'canon,' which, of course, included rent. According to C. 11.69.2, grants of land were required to be subject to rent (canon) and tribute. It is likely that the lands mentioned in that law and the lands mentioned in the instant law were expected to be treated alike, and that the 'canon' in the instant law, accordingly, included rent as well as regular taxes.

According to C. 11.70.5, municipal lands which had been granted free from rent (civile canone) were, nevertheless, to pay such. A policy is manifested in these various laws that all lands should be placed on an equal footing, as nearly as possible. As already stated in note C. 10.48.8, taxes and rent on public lands were nearly amalgamated, and by restoring the payment of the 'canon' on the lands that had been free therefrom, they were placed on a footing similar to other lands which bore their burden due to the state or to cities.

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<sup>2</sup> [Blume] See C. 11.48.11, and note; C. 11.63.4, and C. 11.64.1. Serfs were bound to the soil and could be forcibly returned to the land, unless the claim was barred as here mentioned.

<sup>3</sup> [Blume] the officials in the office of the count of the crown domain.