

Book X.
Title I.

Concerning the rights of the fisc.
(De jure fisci.)

Bas. 56.2; D. 49.14.

Headnote.

Books 10 and 11 of the Code deal with the financial system of the Romans. A number of regulations therein contained which, on their face, seem purely economic, without reference to the finances of the government, were principally made because of their bearing on the fiscal system, as for instance the regulations relating to curials, serfs and guilds. The vectigal, including indirect taxes, is more fully considered in C. 4.61, and see headnote thereto as to the earlier system of farming out revenues. It is not the intention to go into details of the financial system at this place, but it may be well to give a general outline, leaving the details to be considered at other places. Many points are in doubt and dispute. A short, but valuable account is contained in Bury, 1 History of the Later Roman Empire 45-55.

1. The finances were not under the control of one man, but of several. Diocletian had separated the civil from the military department. He did not believe in conferring too much power upon any one man. And this rule was applied in connection with the finances, so that we find as the heads of the fiscal affairs three officials: (1) The praetorian prefect, who received the tax in kind (annona) and was paymaster of the army and of a number of officials; (2) the Count of the Imperial Exchequer (comes sacrarum largitionum), who received the land taxes payable in gold, aside¹ from the annona which had been converted into money payments, as well as other taxes hereinafter mentioned; (3) the Count of the Crown Domain, or, as it is often called, the private estate (res privata), who received the income from the public domain - leased from or worked directly under him, except from the so-called household lands, mentioned directly. The Count of the Imperial Exchequer and the Count of the Crown Domain have often been called the two Ministers of Finance of the Roman Empire, although, as a matter of fact, the praetorian prefect, in addition to being the general administrative head of civil affairs, was just as much a minister of finance. In addition to these three, a fourth official, the Grand Chamberlain, had control of the so-called household lands, including these of Cappadocia, which furnished the income for the imperial household, and he was, accordingly, more a private finance minister of the emperor than a minister of finance for the government. We have no definite knowledge of the relations of the three treasuries of the praetorian prefect, and the two ministers of finance. The praetorian prefect was, as already stated, the paymaster of the army, and doubtless of all of the officials except those of the two ministers of finance and possibly of the Grand Chamberlain; the Count of the Crown Domain probably paid all the officials in his department, and placed the surplus into the treasury of the Count of the Imperial Exchequer or made such surplus

¹ Blume underlined "aside" and put a question mark in the margin next to it.

available for the latter; the Count of the Imperial Exchequer probably paid all the officials in his department, and made the surplus, including that of the Count of the Crown Domain, available for the praetorian prefect. 1 Bury, supra, 52. Each of these officials had, of course, a large army of employees. See C. 1.26.32.33 and C. 3.26, and other places there mentioned.

2. Land Tax.

The most important source of revenue was the land tax which, particularly after Diocletian, consisted of the annona, the tax in kind, and the tax payable in gold, the ground-tax proper, or tribute. The tax in kind went to the treasury of the praetorian prefect, the tax in gold into the treasury of the Count of the Imperial Exchequer. The reason for this senseless division can only be accounted for by the fact that the emperor did not want to invest any one official with too much power, for both taxes were used to defray the expenses of the army and of the officials. There may have been, however, a sufficient reason therefor in the beginning. The main tax, after Diocletian, was the tax in kind. The currency was very much depreciated in that emperor's time, and hence the payments made to soldiers and officials came to be made in kind, consisting of grain, wine, salt, pork, meat and other supplies, each man receiving a certain number of rations - a ration being known as an annona. Later, however, when the currency was stabilized, payments of the tax in kind were frequently converted into money payments, called aederatio, except in certain places, as in Egypt and Africa, which were the granaries of Constantinople and Rome. Further details on this subject may be found at headnote C. 10.16. The ground-tax proper, or tribute, seems to have always been paid in money, excepting Egypt and Africa, and after Diocletian seems to have been small as compared with the annona, the tax in kind. The annual levy thereof seems to have been constant and invariable, whereas the annona, though doubtless of nearly the same amount each year, was, nevertheless, subject to variation annually, and was fixed by a levy each year. Both taxes were based on the same assessment and were entered on the same assessment roll. The tax in gold was not payable in all portions of the Empire. Some districts seem to have been exempt therefrom, due to the fact that they did not originally pay any tribute to Rome as other portions of the Empire did. The annona, however, was paid in every part of the Empire after the time of Diocletian, although Italy was previously exempt.

A. Assessment.

The first step in the levy of these taxes was, naturally, the making up of the assessment rolls. A census was taken periodically; that is to say, property was listed and valued, not annually, but periodically. A certain amount of property was considered as making up a taxation-unit, consisting of a certain number of acres of land (jugum), or a certain number of cattle or slaves (capita). A property owner was, accordingly, assessed with a certain number of such taxation-units, and these units served as a basis for the ultimate levy of the tax. A number of officials were employed to take the census and provisions were made for the correction and equalization of the assessment, so as to arrive at a just and equal distribution of taxes. A more detailed description of this system will be found at headnote C. 11.58.

B. Levy of Tax.

An estimate of the required amount of taxes, that is to say, a budget, must naturally have been made from time to time, and was probably made every year. When

the total amount had been fixed, it was distributed among the various provinces. The tax in kind could not, of course, be levied uniformly over every portion of the Empire, since various products were raised in the different districts, and in raising this tax, that fact must have been considered, but the division of the Empire into small provinces made it possible to make a reasonably just calculation. The portion distributed to a province was, in turn, distributed, generally speaking, among the various city-communities, except, doubtless, that taxes due from imperial and other estates which lay outside of municipal districts, were first subtracted before the distribution among the city-states was made. The municipalities ordinarily consisted of the city proper and an outlying district, and constituted the backbone and administrative centers of the fiscal organization, each city being responsible for the total amount assessed against it. In other words, there was a fiscal solidarity and joint responsibility. The city authorities, in turn, distributed the total amount thus assessed against the city-territory among the property holders therein, including the villages, some of these villages being made responsible for a definite portion thereof. For further details, see note C. 10.17.2.

C. Collection of the tax.

There was, of course, an army of local tax collectors, generally, but not always, selected by the municipal authorities. The governors of the provinces were required to see that the local collectors did their duty. In addition to this, special agents were sent out from time to time to the provinces from the offices of the praetorian prefect and the count of the imperial exchequer to check up the collections made and urge the provincial governor and his staff to collect all arrears. These special agents were, in the alter times, forbidden to deal directly with the tax payers. See further on this subject note C. 10.19.9 and C. 10.30. 1 Bury, supra 49, thinks that an agent called compulsor (compeller), was the intermediary between the governor and the local collectors. While this is probably not true, the governor had undoubtedly some one directly under him who brought pressure to bear on the local collectors and the tax payers, and it is not unlikely that this was the receiver-general of the province mentioned in C. 10.72.13. The tax-collectors were required to issue a receipt to the taxpayers when taxes were paid, specifically describing the amounts and kinds paid. These receipts could be registered so as to afford security to the taxpayers. C. 10.22. Taxes could be paid, ordinarily, in three equal installments, commencing with September first of each year, which was the beginning of the tax year, or indiction, as it was called. C. 10.16.13 and note. The taxes, when collected, were required to be promptly paid and sent into the various treasuries. As much of the tax in kind collected in each province as was required for the soldiers stationed there, was handed over immediately to the military authorities; the rest was sent to the treasuries of the praetorian prefect. 1 Bury, supra, 51; C. 10.23.1 note; C. 10.72.7; C. 12.37.18. For distribution of supplies to soldiers, see C. 37.5 and 9, and notes.

While taxes were largely a burden on property, at the same time there was a personal responsibility, and in case of failure to pay, the tax payers might be arrested in order to bring pressure to bear on him. C. 10.19.2. The taxes on land were, of course, in addition, a lien on the land which could be enforced by selling the property for taxes, just as in modern times, the method of sale being duly regulated by law. C. 10.2 and 3.

3. Miscellaneous Taxes.

There were other taxes, aside from the land tax, which went into the treasury of the Count of the Imperial Exchequer. Customs duties of twelve and one-half per cent of the value of the goods were levied. This subject is considered in C. 4.61. According to most of the authors, a poll tax was levied on the plebeians in the country, the amount of which is unknown. Note C. 11.48.10. On stated occasions, the so-called "coronary gold" was required to be paid, which was a present made to the emperor on stated occasions. C. 10.76.1. A tax, too, was collected, till the time of Anastasius, on merchants and traders, every fifth year, and seems to have been an occupation or income tax. This tax was abolished by Anastasius, who, however, seems to have substituted the "gold rate" for it, concerning which we know but little. C. 11.1.1 and note. Some income, also, was derived from the mines, most of which were controlled by the state. C. 11.7. Augustus had levied an inheritance tax of five per cent on certain inheritances, but it would seem that this tax, perhaps, had been abolished prior to the time of Justinian. Humbert, 1 Les Finances 372.

4. ?²

Taxes, however, were not the only means by which the government was maintained, and we should have no adequate conception of the Roman fiscal system during the later Empire, if we did not bear in mind the liturgies, consisting of furnished compulsory labor and material, and in some cases money in place thereof, to the state. The municipalities of the Empire constituted, as already stated, the administrative centers. Each city had a local senate or council. This council was responsible not only for collecting the taxes, but also to see that the highways were looked after; that the state-post was properly equipped. Members of these councils were required to devote their time and attention to these various duties without receiving any compensation therefor. Property owners were compelled to supply the state-post with horses, wagons and other means of transportation. Highways and bridges were required to be repaired, the burden falling on the local communities. These subjects are fully considered in the Code, and lengthy notes have been made thereon. See, e.g. headnote C. 10.32; headnote C. 10.42; headnote C. 10.46; C. 12.50. Certain members of the community were required to look after the shipping of supplies to the capitals of the nation; others to work in the mines; others to labor in the various state factories, including clothing and weapon-factories; others were enrolled for still different duties, the parties required to do so being organized in guilds. Details will be found in C. 11.1-29, and see particularly headnote to C. 11.2. In order to compel persons required to perform these duties, they were bound to their condition, and they transmitted their duty to their sons and sometimes their daughters as well. Thus curials could not abandon the city, and members of guilds could not desert their trade. For a similar reason the small tenants of lands were bound to the soil, becoming serfs whom we meet in reading the history of the middle ages. Headnote C. 11.48. The result was that the Empire was virtually organized into a caste system, each person being virtually bound to the condition to which he was born.

5. Imperial Domains.

² Question mark in original.

Another source of income of the government was from the public lands, the area of which was extensive. There were several classes thereof. It is not necessary, however, to mention them here, but they are considered at headnote to C. 11.62. Part of these were devoted to supply the imperial household with money and supplies, but the income from most of them went toward the support of the government in general. The former were under the control of the Grant Chamberlain, the latter under that of the Count of the Crown Domain. And in this connection must be born in mind the fact that many confiscations of property was made by the various emperors, that evil, of course, being greater under some than under others. In fact the Crown Domain (*res privata*) started with Septimius Severus and consisted of confiscated property. Lands that were deserted or became heirless, too, went to the state, and the method of incorporation thereof into the public domain is described in the laws. See C. 10.10. During part of the time, informers were encouraged, by giving them a reward, to give information to the government in regard to any property which the state had a right to seize under the laws. In later times, however, they were discouraged, and petitions for property, subject to confiscation or seizure were entirely suppressed or regulated. C. 10.11 and 12. The government did not retain all of its lands. Part of them were given away to friends of the emperors, though, in later times, subject to certain conditions. Part of them were leased, either for a limited time, or in perpetuity, subject to certain rents and taxes. These subjects are fully considered in C. 11.59-74.

6. ?³

Other subjects of importance are the total amount of the revenues and the total amount of the normal expenditures. On these subjects, however, we are left in the dark. In fact we do not know the amounts of any of the various principal items making up the income. Bury, 1 Hist. Later Roman Empire 53, conjectures that the tax in kind, valued in money, was probably to exceed 12½ million solidi, and that the total tax could not have been less than 50,000,000 solidi. Steinwenter, Studien 151, 159, estimates the amount to have been much smaller, figuring that the total income of the Empire under the Macedonian dynasty, at a time when the western portion of the empire was lost, did not reach the sum of 8 million solidi. The value of money, of course, was much greater then, perhaps five times as much as it is today. See Bury, Eastern Roman Empire 220.

10.1.1. Emperors Severus and Antoninus to Atticus and Severus.

If it is proven that the gift of the lands was made before your father became indebted to the accounts of the fisc, then the act not done in fraud of creditors will not be annulled.

Note.

If a man made a contract with the fisc, the latter had a general lien against all of his property. C. 8.14.2; C. 7.73.3. But the lien did not, as stated in the instant law, act retroactively, unless the previous transaction was entered into to defraud creditors.

The term "fisc" was properly applicable only to the general treasury of the Empire at the head of which was the Count of the Imperial Exchequer (*comes sacrarum largitionum*), but the term was also, at times, applied to other treasuries of the Empire,

³ Question mark in original.

and that is true when the rights of the "fisc" were under consideration, as will be noted for instance at law 9 of this title, and at C. 10.19.6. In other words, the rights extended to the fisc proper were extended also to any other treasury of the Empire. 2 Cujacius 555.

10.1.2. Emperor Gordian to Serenius.

The computation made by the accountants (tabulariis) cannot have the force of a judgment unless approved by order of the procurator.

Note.

The question here was whether or not the computation made by the accountants could be revised, and the law assumes that if that computation had been approved by the imperial procurator - the later comptroller - that it would have had the force of a judgment, and therefore would not have been subject to be reopened. It was decided that the computation, not having been thus approved, could be reopened. However, an error in calculation could be corrected even in a judgment, at least when that error was discernible from an examination of the records. Note C. 7.52.2. As to procurators and comptrollers, see headnote C. 3.26; as to accountants, see C. 10.71.

10.1.3.

If lands mortgaged to the fisc, are sold by the latter for less than their value, through the clear fraud of the purchaser, or through favoritism, my procurator, when an appeal is made to him, will order them restored to the (debtor) upon payment of the amount due.

Note.

For the principle here stated, see C. 4.44.16 and note; C. 4.46 and C. 10.3.

10.1.4. Emperors Diocletian and Maximian to Mucatraulus.

A definite rule was fixed concerning migrated colonists (metoicis) who, by order of the emperor, have been transferred to another town. For the lands, which they had prior to their transfer and which had not been sold by them, have been decreed to be the property of the fisc, unless our august majesty should decree otherwise by special order. Just as this has been wisely decided by the emperors, so, on the other hand, while upholding what has been beneficially decreed, it has not been ordered by any law, that they can in no event be heirs to their parents.

Note.

Metoici, were colonists who were transferred from one place to some other. The transfer could not be made except by order of the emperor. The property which they left behind upon their transfer became that of the fisc, unless a special order the contrary was made. The right of succession mentioned in the last part of this law referred, as stated by 2 Cujacius 556, to the right of succession of such emigrants to the property of their parents who did not migrate. For the Greek "metoici" see Smith's Greek and Roman Antiq.

10.1.5. A copy of the imperial (sacred) letters of Diocletian and Maximian to Flaccus.

It is forbidden to seize the property of a person whose property is thought to be subject to confiscation by the fisc (fisco locum fecisse), until a rescript is issued by us. And in order to provide against the invasion of apparitors of the comptrollers of the Crown Domain (Caesariani) by every means of foresight, we ordain that all interested parties may use force against those who come to seize the property of anyone who has fallen into the meshes of the law, so that, although officials shall dare to deviate from the tenor of the foregoing law, they may be prevented from doing damage by the resistance offered by private individuals themselves. For the party interested that his goods be not disturbed, when the officials want to take possession of it, is required to acquiesce in their taking it only when he has learned through our order that apparitors of the comptrollers of the Crown Domain (Caesariani) have come to take it, not pursuant to their arbitrary will, but because the vigor of the law has determined that to be done.

Note.

Caesariani were officials under the comptroller (rationalis) of the Crown Domain, who, among other things, took charge of property that fell to the Crown Domain. They were at times called Catholiciani. C. 9.49.9.3. Confiscated property and abandoned and heirless lands went to the Crown Domain (res privata), some of the movable property to the fisc proper. His, Domanen 33, 34. Caesariani were forbidden to take possession of property which they thought had fallen to the fisc, unless ordered by the emperor. Proceedings for the incorporation of such lands within the imperial domain are mentioned in C. 10. 10. 5 and C. 10. 11. 8. The term "locum facere or facisse" appears several times in the Code and is mentioned in connection with persons whose property was subject to confiscation. Gothofredus, notes to C. Th. 9.42.3. See C. 10.12.2; C. 11.33.2.;C. 12.60.5 authorized private individuals to resist any unlawful acts of collectors of taxes or other public dues.

10.1.6. Emperor Constantine to the provincials.

We direct that even just and (otherwise) well founded fiscal actions shall be barred (concremari) for the sole reason that they have not been commenced in proper time. Vexatious suits of private individuals shall be shut off at least by this example, whereby we direct even just fiscal suits to be barred.

Given May 30 (319).

C. Th. 10.1.3.

Note.

The limitation of action by the fisc here mentioned was probably intended to relate to actions by the fisc for the recovery by it of abandoned or heirless property, and, perhaps, confiscated property. An action of that kind was barred in four years. C. 7.37.1. Not all actions by the fisc were barred by time. See C. 7.38. See Gothofredus on C. Th. 10.1.3.

"Concremari" means "to be burned." Suits or rights of action could not, of course, be burned, and the term was doubtless intended to express the fact that "all documents giving rise to an action" should be burned, if the action was not brought in proper time. Gothofredus, supra.

10.1.7. The same Emperor.

Opportunity for defense must be given to persons disquieted by the fisc, and it is not just that their property be disturbed or an inventory thereof made, while the controversy is still pending. Whenever, therefore, a controversy arises through the fisc claiming the patrimony of any person, the property shall all remain in his possession during the investigation. Only if the outcome of the matter proves that it should be claimed, may it be pursued and an inquiry instituted as to the amount of the property and goods which is to be made through (an examination of) the slaves attached thereto, so that, if anything has been taken away, it, and in addition thereto a fine equal in amount to the value of the property fraudulently carried away, may be reclaimed. Of course if any apparitor of the comptroller of the Crown Domain (Caesarianus) becomes subject to such inquiry, he shall not enjoy the benefit of this constitution, since the customary fraud, with which the aforesaid persons insolently do everything, has deserved that an exception be made in their case.

Given December 31 (326) at Sirmium.

C. Th. 10. 1. 5.

Note.

The words of the law are somewhat involved, but the sense thereof, as a whole, is clear. It left the parties whose property was claimed by the fisc in possession thereof, until it was determined by judicial inquiry whether it belonged to the fisc or not. Until such determination, the possessor could not be disquieted, and no inventory thereof could be made thereof, since such inventory, as shown further on in this law, if made, was to be made through an examination of the slaves attached to the property (condicionales servos). If any of the property adjudged to belong to the fisc was stolen, a fine equal to the value of the property could be recovered from the wrong-doer, aside from the recovery of the property itself or the value thereof. The benefit of the law, leaving the possession of the property in the possessor until the determination of the suit for the recovery thereof, was not extended to the Caesariani, apparitors of the comptroller of the Crown Domain, mentioned in law 5 of this title, because they, through their usually fraudulent conduct, would have found ways and means to have gotten away with it before the determination of the suit. See Cujacius and Gothofredus on this law.

10.1.8. Emperors Valentinian and Valens to Gracontius, Vicar of Africa.

Persons who become involved in infamous frauds of embezzlers of fiscal property through contracts which are criminal and disadvantageous to the fisc, are subject to fourfold restoration.

Given at Hadrumetum November 17 (365).

C. Th. 10.1.10.

Note.

The instant law dealt, not with embezzlers of public property - that is to say officials - but with outside parties who made contracts with them, as for instance parties who received a loan from such officials out of public money. The penalty in such case was fourfold - the restoration of the property received, plus three times the value thereof. C. 10.6.1; C. 10.7.1. Double penalty - restoration plus the value of the property - was imposed in case the property had not yet been incorporated with that of the fisc, as noted in law 7 of this title, and to the same effect is D. 49.14.45.13 and 46.1.

10.1.9. Emperors Honorius and Theodosius to Patricius, Count of the Crown Domain.

We direct that the order of Your Sublimity, that receivers of taxes (susceptores) shall be appointed at the peril of the procurators of the Crown Domain (rei dominicae), shall remain effective so that all unlawful solicitation ceasing all enactments as well as approved ancient customs in relation to furnishing fodder and supplies to the troops (familia), shall remain inviolate. The matters concerning the police-prefect (irenarchus) and the army-paymaster (optio) shall be observed according to ancient custom.

Given at Constantinople December 30 (420).

C. Th. 10.1.17.

Note.

An optio was a commissary or paymaster of a troop of soldiers, called erogator in C. 12.37.16. See also C. 12. 37. 5, note; Drake, in 1 Univ. of Michigan Studies 321, and index to this work of names of officials. An irenarch was a sort of prefect of police with jurisdiction particularly over the country district surrounding a municipality and specially known in the Orient. C. 10.77 and note. A susceptor was generally a receiver of taxes or payments due to the government either in money or kind, who at times also served as keeper of a magazine of military supplies, mentioned also at C. 12.37.9. The optio, paymaster, was the party who demanded the pay for the troops from him, where he served in that capacity. The subject relating to the susceptor is considered more specially in C. 10.71. A "familia," while at times employed as a term relating to children or slaves or both, was also used as designating a portion of the troops connected with the army. C. Th. 7.4.31; C. 12.38.1. 6 Pauly-Wissown 1983. But they were distinct from the regular soldiers, as well as the servants of the army (calones) who looked after the baggage.

Just what the foregoing law (C. 10.1.9) meant in all of its parts is, as Gothofredus says, a pure conjecture. It was addressed to the Count of the Crown Domain, who ordinarily had nothing to do with the army, and payment to the army was, ordinarily, under the direction of the praetorian prefect. The irenarch was a peace officer, and had nothing to do with the army, while, on the other hand, the paymaster of the army had nothing to do with the peace officers. It is possible that "familia," as here mentioned, related to soldiers, assigned as assistants to the irenarch, and stationed on the borders of the East.

10.1.10. The same Emperors to Polladius, Praetorian Prefect.

We order that the property of those deceased persons who, during their lifetime are said to have polluted their conscience by various crimes, shall in no manner belong to and be sold by the fisc unless it appears that they were convicted after public accusation.

Given at Ravenna July 8 (421).

C. Th. 10.10.30.

Note.

A crime became extinct with death. C. 9.6. Where a person committed suicide in fear of punishment, his property could be confiscated. C. 9.50.2.

10.1.11.

Every fiscal cause shall be finished within six months after joinder of issue, unless it happens, perchance, that it is necessary to bring persons or documents, still in the provinces, to the imperial city, or if the persons summoned themselves gave the cause of the delay⁴, as not being prepared.

⁴ [Blume] See note to C. 3.1.13, as to time of finishing cases.