

Book X.
Title II.

Concerning summoning fiscal debtors.
(De conveniendis fisci debitoribus.)

Bas. 56.5.4.

Headnote.

For jurisdiction in fiscal cases, see headnote C. 3.26. The ordinary judge was the *rationalis*, translated comptroller, in a preceding period called simply procurator. The fisc was also represented by the advocate of the fisc. C. 2.8.

10.2.1. Emperor Gordian to Saturninus and others.

You, having promised to indemnify the fisc, have just reasons to ask that the persons indebted to the fisc as principals should be summoned first, and that recourse be had to you, who bought things from them, only thereafter.

Note.

When a man made a contract with the fisc, a lien was thereby instantly created in favor of the fisc on all of his property, and he could, accordingly, sell none of it free from this lien. See C. 7.73; C. 8.14. The foregoing law provided that the purchasers of such property should not be disturbed until after the principal debtor had been sued, upon condition, however, apparently, that such purchasers agreed to indemnify the fisc - that is to say, pay the fisc, if the suit against the principal debtor should be unsuccessful. The fisc in such case was ordinarily required to sue the principal debtor first, even without such indemnity. D. 49.14.47. As to the order of suits against the principal and surety, see Nov. 4.

10.2.2. Emperors Valerian and Gallienus and Caesar Valerian to Patrophilus.

A right of action against you still subsists in favor of the fisc, though the money which you were obligated to pay was credited in the accounts, if the accountant (*tabularius*) did not countersign (*subnotare*) the receipt given you. Nevertheless it is just that the fisc be paid out of the property of the collector (*exactor*) if he is solvent, and can be summoned, and that demand be made of you only if that cannot be done.

Note.

Exactores.

The exactor mentioned in this law was the collector of taxes, and actually received them, and was the same person who is sometimes called *susceptor*, which literally means receiver. The terms were sometimes used indiscriminately, as in C. 10.72.8. Properly speaking, however, the *susceptor* was the receiver, the exactor, the person who urged the taxpayers to pay. Humbert, 2 Essai 271, note 519; Bury, 1 History Later Roman Empire 49, note 2; His, Domanen 56, note 3, says that the receiver (*susceptor*) probably had a permanent office in the cities or at stations of the public post, while the exactor probably traveled about from place to place, urging people to pay.

Tabularius.

This term was sometimes used for numerarius (C. 10.72.13), head-accountants in a province and in other places. In the foregoing law, the term was probably used for the clerk of the municipality who kept the tax list. Humbert, 2 Essai 38, and mentioned in C. 10.71.

The collector was required to issue a receipt, but in order to keep a check on him, and also to prevent collusion between the collector and the taxpayer, the latter was required to take the receipt to the city clerk who was required to register the receipt in a special book and also note it in the proper place on the tax list. Humbert, supra; C. Th. 11.1.2; Gothofredus on C. Th. 11.26.2. If that was done, the loss of the receipt did not matter, since payment could be proven by the books. C. 4.21.4; C. 10.30.2; C. 10.72.11. The term receipt appears at times as cautio, at other times as apocha, or securitas. See C. 10.22. The word "subnotare," used in the foregoing law, possibly included the countersignature of the receipt by the clerk.

10.2.3. Emperors Diocletian and Maximian to Januarius.

Since you say that you became associates and partners of Augurius and his son in collecting arrears of taxes, and that the collection entrusted to them covered only certain accounts, and that between him (them)¹ and the others who were appointed as collectors, no joint responsibility to make all of the collections existed, but that the duty of the work was divided, leaving each his separate portion of the undertaking, it is not inconsistent with law that the fisc be first indemnified from the property of those collectors who had been assigned to the collection as principals (and are in default), and if thereafter the whole debt is not satisfied, then that their sponsors² be summoned. Our comptroller (rationalis), therefore, must follow the order prescribed by law, obtain what he can from the collectors and their sponsors and then, if the whole debt is not satisfied, compel you to pay to the fisc the remainder due.

10.2.4. Emperors Valentinian, Valens and Gratian to Archelaus, Count of the Orient.

Those who are indebted to the fisc of Our Clemency, must, without delay, pay out of their property what they owe on their own account, saving to them, when they have done so, any claims which they believe they rightfully have against any person by reason of any contracts; so that they must know that they must sue such persons whom they claim to be so indebted to them in the courts according to law.

Given at Noviodunum July 5 (369).

¹ [Blume] The law has eum - he - but should have, as Cujacius rightly says, eos - them.

² [Blume] Sponsors - those who nominated or appointed them. See on this subject more particularly C. 11.34 and C. 11.36. The Roman law was drastic in holding all who were appointed to collect taxes responsible for the whole, though appointed only to collect a portion. The extent of the responsibility, however, depended somewhat on the facts, and it differed, depending upon whether the duty was joint or several - indivisible or otherwise. If the duty was divisible, that is to say, if each was assigned to collect only a definite portion, the liability was in the following order: principal debtor, nominator, associate. If the duty was indivisible, the order of liability was: principal debtor, associates, nominator.

C. Th. 10.16.2.

Note.

The fisc might pursue - garnish - a debtor of a debtor to the fisc (C. 4.15), but could not be compelled to do so. A debtor of the fisc could not say that someone else was indebted to him, and ask the fisc to sue the latter. A trader, for instance, was required to pay transit dues of one-eighth, on merchandise imported by him. C. 4.61. He could not evade the payment thereof by saying that he had sold the goods but that they were not yet paid for. See Gothofredus on C. Th. 10.16.2; also Nov. 128, c. 12.

10.2.5. Emperors Valens, Gratian and Valentinian to Fortunatianus, Count of the Crown Domain.

Among the papers of one whose property was confiscated (confiscati) a note book is said to have been found containing the names of debtors and persons who made contracts with him. 1. Since the debts, however, mentioned in the note book, were proved neither by witnesses, nor by acknowledgments in writing (cautionibus), we have deemed it unjust, that any person should made another his debtor by a simple notation of his own. 2. We, therefore, by this order, forbid that to be the occasion for a vexatious suit, the note book shall be rejected as worthless and no person whose name is mentioned therein shall be called on for payment. 3. We order that this shall be followed in other similar cases.³

Given at Hierapolis July 6 (377).

C. Th. 10.16.3.

³ [Blume] To the same effect see C. 4.19.6.