

Book II.
Title XVII (XVIII).

Neither the fisc nor the state shall, for the purpose of support, act as procurator in a lawsuit (of a private person).

Headnote.

Just as the laws forbade dignitaries to extend their patronage to litigants by having rights of action assigned to them, so, too, the imperial exchequer and municipalities¹ were forbidden to do so, and their aid could not be procured by giving them a portion of such rights.

2.17.1. Emperor Gordian to Legitimus and others.

You demand, contrary to the rule of law, to be aided by the power of the state, under to pretenses of a sum which you own to it.
Promulgated January 6 (241).

Note.

In this case, the city² was asked to interfere evidently on the theory that payment to it would be made easier for the debtor if another creditor were defeated.

2.17.2. The same emperor to Tertullus.

Although you allege that you want to give half of the property or of the rights of action to the fisc so that you may be better protected by its power, the spirit of my times does not permit a gift of such suits. Arrange, therefore, to protect your rights, if any you have, in the usual manner, without (bringing) odium on the imperial exchequer.
Given August 8 (241).

2.17.3. Emperors Diocletian and Maximian and the Caesars to Amphion.

It is not agreeable to our times that, under the pretext of a debt, the fisc should act as procurator against private persons.
Given at Philippolis December 25 (293).

Note.

In this case there was, perhaps, a contract between private persons, containing the provision that if the contract were violated a penalty should be paid to the imperial exchequer. Mitteis, R.R.u.V.R. 526. Hence, the latter was asked to interfere under the pretext of enforcing such penalty. Provisions of that nature were common in Egyptian contracts, but were not recognized under the Roman law, since no stipulation could be made in favor of a third person. D. 4.8.42. But under late Byzantine law such penalties were collected by the State. Lingenthal, Geschichte d. Gr-Rm.R. 306 ff.

2.17.4. The same emperors and Caesars to Achilles.

¹ This probably should read "state," because Blume, in handwritten corrections, changed "city" in the title to state and did likewise in 2.17.1. Scott also uses "state," but the German translation uses municipality ("Stadtgemeinde").

² Again, it would seem that this should be read as "state" to coincide with Blume's later handwritten changes.

It is improper and contrary to the tranquility of our times to beg, in fraud of creditors, that the fisc incur odium (by acting as procurator). Render unto our imperial exchequer, therefore, what you owe, and if you are sued by another as though he were a creditor, and you deny that he paid you any money, you can, according to the laws, employ the defense that no money was paid you.
Given at Sirmium December 17 (294).