

Book IV.
Title XV.

When the fisc or private persons can sue the debtors of their debtor.
(Quando fiscus vel rivatus debitoris sui debitores exigere potest.)

Bas. 24.6.68.

4.15.1. Emperors Severus and Antoninus to Valerianus.

The property of a guardian who does not hold any of his ward's property can not be seized for a debt of the latter.

Promulgated May 22 (197).

4.15.2. Emperor Antoninus to Marcus.

If Valens, against whom you state you have a judgment, has nothing which, without investigation, came to be seized and sold, his debtors may be summoned and compelled to pay, by the authority of the president of the province.

Given April (205).

Note.

Ordinarily, as we have seen at several places, a creditor could sue no one except his own debtor, and could not, generally, sue his debtor's debtor. There were some exceptions to this rule, arising either out of contract or by reason of a judgment. An assignment might be made of an account or a lien given thereon, giving the assignee or lienee the right to sue on the account. A forced lien was created by seizure under judgment. C. 7.53.5. That proceeding was similar to our garnishment, and if the garnishee acknowledged the debt, he was forced to pay immediately upon his debt being due, or if he disputed the debt, the judgment creditor might be given the right of action against him—similar to the procedure in vogue with us. 7 Donellus 922. For a debt due the fisc, see C. 4.9.1. The foregoing law states that such levy upon an account should not be made unless it appeared that the judgment debtor had no other visible property. For levy under execution see, generally, headnote C. 7.53 (3). See also Buckland 551.

4.15.3. Emperor Gordian to Primianus.

If persons who, as you state, owe the debtors of the fisc, and do not deny the debt, it seems that you do not unjustly ask that they should be compelled to pay by the officials of the procurator. But if there is any dispute, you see yourself that that should not be done.

Promulgated January 27 (240).

Note.

The fisc had a lien on the property of its debtor. That lien was given by law. C. 8.14.1 note; C. 10.1. Having a lien, it was able to levy, so to speak, upon an account due its debtor, without obtaining judgment, just as a private debtor who had a lien by contract, had the right to do so. But a third person could not be compelled to pay if he denied the debt unless he was sued in the regular way and judgment was recovered against him. That has already been noted in the note to the previous law. Such suit could not be brought unless the principal debtor was unable to pay, as stated in the next law. See also headnote C. 7.53(3).

4.15.4. Emperors Diocletian and Maximian and the Caesars to Zosimus.

The law is plain, that those who are obligated to the debtors of the fisc should not be sued in an action of the fisc till it plainly appears that the principal debtors cannot pay. Subscribed April 20 (293).

4.15.5. The same Emperors and the Caesars to Nanidia.

A creditor cannot bring an action in the name of his debtor against the latter's debtor on account (debt) given in payment unless authorized to so sue has been given. But he may bring an analogous action in his own name.¹

¹ C. 4.10.1 note; C. 4.39.5 note; C. 6.37.18. See Steiner, Datio in Salutem 121.