

Book XI.
Title LXXI. (LXX)

Concerning the letting of city or fiscal or temple estates or those belonging to the Crown Domain or imperial property (res dominica).
(De locatione praediorum civilium vel fiscalium sive templorum sive rei private vel dominicae.)

11.71.1. Emperors Gratian, Valentinian and Theodosius to Florus, Praetorian Prefect.

A clear direction was given by our divine parent that lands belonging to the Crown Domain should be delivered over to hereditary tenants (perpetuariis) at the peril of the officer and his subordinates leasing them. For nothing will be wanting to the plenitude of devotion, if the apparitors of the count of the Crown Domain assign the lands to suitable persons, and if fiscal loss is guarded against by suitable surety. If either or both of these things are neglected, the rentals not paid by reason thereof, must be made good out of the property of the officials.

380-383 A.D.

Note.

A perpetuarius was a hereditary tenant just as the emphyteuticary. His rights were not, however, quite so large. His, Domanen 91-94. By the time of Justinian, however, no distinction existed between the two.

It was not lawful to lease or grant public land without security. C. 11.59.3 and C. 11.62.7. If it was granted without it, the grant was valid (C. 11.62.11), but the officials who made such grant were responsible for the rent, according to the instant law. See His, Domanen 85.

11.71.2. The same Emperors to Nebridrius, Count of the Crown Domain.

The lands of cities shall not be taken, even pursuant to an imperial rescript (if, perchance some one has surreptitiously obtained one), from those who hold them under a lease¹, since permission to make a higher bid (when they are leased) is, according to ancient law, granted but once.

382-384 A.D.

Note.

This and the succeeding laws of this title deal mainly with letting public lands, including lands of cities. It was shown at C. 10.3.4 that property offered for sale by the fisc were offered at auction, but that the highest bidder to whom the property was struck off did not necessarily become the owner, if some one else bid a higher price within a certain time. And at C. 11.32.1 it was shown that this rule did not apply to municipal property, but that the person who bought it at auction became the owner.

It may be that the rule first above mentioned applied mainly to fiscal lands which were not part of the public lands contemplated in other laws. In any event the provisions, taken as a whole, do not seem to show any consistency, except in this: that is public land had once passed into the hands of a private person under perpetual right, it could not be taken from him, unless, of course, in default of the contract annexed to the grant.

¹ [Blume] reject "nec" with Cujas.

The instant law seems to state the rule of C. 10.3.4 as applicable even to municipal lands, namely, that there could be a second bid - apparently after the land had been struck off to some one. The following law shows that lands were auctioned off, and was struck off to the highest bidder, though by law 4 of this title, a former possessor bid had the right to take the land if he was willing to meet the bid of another. According to C. 11.70.4, the successful bidder at the first sale became the grantee, and no second sale could take it away from him. According to C. 11.66.2, no auction of public lands there mentioned was necessary, for it could be granted by the count of the crown domain (or his apparitors) by allowing the petition presented for such lands. There was, accordingly, no absolute uniformity. We may, perhaps, say that sale or lease by auction was the rule, particularly as to some classes of lands, and that in some cases a second sale was possible, but that this was not, in practice, ordinarily followed. Nothing more definite seems to be able to be gathered from the various laws relating to public lands. These laws are to some extent discussed by His, Domanen 90 and 92.

11.71.3. Emperors Arcadius and Honorius to Hadrianus, Praetorian Prefect.

All places and estates of a city, after full notice has first been given, and after the amount of rental to be paid has been raised so high by the successive bids of the bidders, that it cannot be raised beyond that point or be increased by another bid shall be let to hereditary tenants.

400-405 A.D.

11.71.4. The same Emperors to Minervius, Count of the Imperial Exchequer.

It is in accordance with equity that former possessors of public lands should have preference over new lessees, if they come up to an increased bid made by others.

11.71.5. Emperors Theodosius and Valentinian to Volusianus, Praetorian Prefect.

When lands of our house shall be, or already have been, once let to any person in perpetuity either by our direct or by the authority of the illustrious Count of the Crown Domain, they should not be let to another hereditary tenant. 1. For we plainly direct by this edict, that possession shall never be taken from a hereditary tenant, although the emperor has given it to another either pursuant to a petition or spontaneously, and either by an (imperial) notation or a pragmatic sanction. 2. And if the illustrious count, perchance, acquiesces in such imperial notation or sanction, when relied upon, against a hereditary tenant, he shall be compelled to pay into the funds of the fisc a hundred pounds of gold, and the palace officials (under him) shall pay another 100 pounds. 3. Nor shall any such order, after it is produced, be of any validity, nor shall the place be let to another, although the bid therefor is greatly increased. 4. The hereditary tenant may, therefore, feel himself perpetually safe by reason of the force of a public contract, and he may rest assured that the property cannot be taken either from him, his posterity or from those who at some time may receive it either by succession, gift, sale or in any other manner. 5. Of course, since the imperial bounty is not to be entirely excluded, the emperor, if he wishes it, may give property of the imperial patrimony to a person already possessing it by perpetual right, whether he himself has received it or whether he has succeeded to the title of another. For in such case he releases him from his rental (ponsionem), and a bounty which makes an owner out of a possessor in perpetuity,

injures no one else. 6. And, of course, if a person has leased property from the illustrious Count of the Crown Domain, not in perpetual right, but for a limited time, no obstacle exists to imperial bounty, to transfer by gift, if he desires, to another the property, which the former has leased for a definite time. 7. If a higher bid is made by another for property leased to a person for a limited time the latter shall have the option to pay the increased bid and retain the property. 8. But if he has once received this property in perpetual right, he shall have the protection of perpetual safety above mentioned.

Note.

A rather remarkable provision of this law permitted a lease of public land for a limited time to be ousted from the land, if some one else bid more for the lease, unless the first lessee was willing to meet the bid. This must have made leases for a limited time of somewhat precarious nature. See His, supra 90. Leases of that character were, probably, not numerous, for the policy was to make emphyteutic leases - leases in perpetuity. Law 3 of this title, and see His, supra.