

Book XI.
Title II.

Concerning public Seamen carrying public supplies.
(De naviculariis seu naucleris publicas species transportantibus.)

Headnote.

Guilds.

It was mentioned in headnote to C. 4.37 that the people of the empire came to be organized in guilds. Digest 3.4.1, which seems to completely ignore the actual situation in connection with guilds as it developed in the empire, states that guilds were permitted to be organized only pursuant to law, and it mentions that there were at Rome particular guilds "whose corporate charter has been established by senatorial decrees and imperial enactments, such as the guild of bakers and some others, also guilds of ship owners, and these last exist in the provinces as well." It also states that "it is only in very few kinds of cases that such corporate bodies are allowed; for example, the power of constituting a corporation is permitted to partners in government vectigalia, as well as in gold mines, silver mines and salt mines." The latter quotation refers evidently mainly to corporations of organized capitalists, and in that respect the law perhaps remained largely as it had been, except as necessarily modified by the universal organization of guilds. Guilds of artisans had long existed (2 Karlowa 59-69), but Alexander Severus seems to have given an impetus to their organization and legal recognition.

Lampridius in his life of that emperor, who reigned in the first half of the third century says as follows: "He also formed guilds of all the wine dealers, the green grocers, the boot-makers, and in short of all the trades, and he granted them advocates chosen from their own numbers and designated the judge to whose jurisdiction each should belong." And not alone were they legalized, but the tendency constantly was to make them hereditary, so that the son followed the trade or occupation of his father. This was but a part of the larger movement by which each man's station was fixed by his birth. Thus we have seen that curials and their sons were bound to their station. C. 10.32. And as we shall see later on in this book (C. 11.48), the small farmers nearly all became serfs, they and their children were bound to the soil and were not permitted to leave it. The reason lay mainly in the fact that the state could in this manner make better use of them. It was, for instance, in the interest of the state to have the taxes collected, and the curials were largely used for that purpose. The government did not want lands to lie idle, bringing in no taxes, and the farmer was accordingly bound to the soil.

Sons of members of official staffs were directed to follow the occupation of their fathers. C. 12.47. That was true also with sons of soldiers. Kuhn, Verf. d. R. R. 148; C. Th. 7.22.10; 8.4.4. Members of official staffs of governors of provinces were directed to be dragged back to the position which they deserted. C. 3.23.1 and note. Even the apparitors of the higher officials were, ordinarily, bound to their position. However as soldiers were entitled to be honorably discharged from service after a certain length of time, so members of official staffs whose service for the state was considered to be similar to that of the soldiers, were also entitled to an honorable discharge, giving the opportunity to some of the members of the official staffs of the higher officials the opportunity of serving in other and very important positions in the imperial service.

Kuhn, supra 161. The bonds that bound these men in the imperial service bound the minor officials in cities to theirs, as stated in C. 10.71.4

Many other persons aside from those already mentioned were engaged in services on behalf of the state, as noticed in a number of the titles of this book. That was true with public seamen, some metal miners, minters, fishermen of the purple fish, freight-haulers, weavers and dyers and makers of cloth, armorers, bakers, purveyors of wine, meat and other articles of food, firemen, and others, most of whom were bound to their hereditary occupation, intermarriage with a person of another guild or occupation being at times forbidden. Holmes, 1 Age of Justinian and Theodora 1925; Dill, Roman Society of the Last Century of the Western Empire 233; and see C. Th. 13.5.35; C. Th. 14.3.14.20 and 21; C. Th. 14.4.8 and other laws.

It was already stated in note to C. 11.1.1 that merchants, at least the small retail merchants in cities were organized in guilds, mainly, doubtless, for the purpose of making the collection of taxes and imposts levied upon them as a corporate liability, or causing the collection to be made through the heads of the guilds. The organization of the merchants in Constantinople appears clearly in Novels 43 and 59. It is not probable, however, that these merchants could not change their occupation, for the reason that they might not be able to make a success of their business, and membership in these guilds, accordingly, was probably not hereditary. At C. 10.66, and note, we find a number of artisans mentioned, all of whom were probably organized in guilds, and while membership therein may not have been compulsory or hereditary, the tendency, in view of the limited field of engaging in other occupations, probably was to make it so in fact. Even lawyers were organized in guilds. C. 2.7.17 and note. It is, accordingly, not far from true that a regular cast-system prevailed in the latter part of the empire.

Navularii.

2. The term *navicularius* seems to be used synonymously with *nauclerus*. Both words seem to have stood originally for ship owner. As used in this and several following titles, the words are used for a seaman who and whose property was subject to the service of the state in hauling public grain and other public supplies for the support of Rome or Constantinople and who were required to furnish the ships therefor and keep them in repair. In default of a better term, *navicularius* is translated as public seaman-plural public seamen, in order to denote the duty or liturgy to look after the transportation, on the sea, of public supplies in ships belonging to these seamen. They formed a corporation or guild. This service for the state had originally been performed by ship owners who were free men engaged in that service for profit. But in the later part of the empire the membership in these guilds and the duty to perform this service for the state became hereditary, just as in the case of *curiales*. If the number of men in the guilds decreased below that necessary, the praetorian prefect selected suitable men therefor from among other ranks. The property held by public seamen was subject to the burdens here mentioned. It could not be alienated, unless the new owner undertook to contribute his proportionate share of this burden, although the purchaser did not become a seaman himself. The annual expense was presumably fixed by the corporation, and distributed among the holders of land subject to this liturgy. C. Th. 13.5-9; 1 Karlowa 915; Kuhn 77-78.

11.2.1. Emperor Constantius and Caesar Julian to Alybrius, City Prefect.

No violence shall be committed on the public seamen carrying food supplies delivered to them for shipment, nor shall they suffer any extortion or any kind of damage, but shall enjoy perfect security in coming and going. A fine of 10 pounds of gold is fixed for those who attempt to disturb them.

Given at Rome June 1 (357).

C. Th. 13.5.9.

Note.

The guild of public seamen in the service of the state were subject to the liturgy peculiar to their calling and not to others. D. 50.6.6.3. Extortions from them also were forbidden.

11.2.2. Emperors Arcadius and Honorius to Eusebius, Praetorian Prefect.

We have learned that public seamen are using for their private transactions the supplies received by them for shipment. We direct, therefore, that they must deliver the supplies received by them within a year, taking receipts, showing the date of receipt, which, in turn, they must deliver within another year to the parties who furnished the supplies.

Given at Milan December 23 (396).

C. Th. 13.5.26.

Note.

Ammianus Marcellinus 28.1.17, relates: When Hymetius, a man of eminent character was Proconsul of Africa, and the Carthaginians were in extreme distress for want of food, he supplied them with grain out of the granaries destined for Rome, and shortly afterwards when there was a fine harvest, he fully replaced what had been so taken. In the meantime the price had gone down and the grain replaced was worth only one-third of what had been taken. Hymetius, accordingly acting as an honest man sent the profits thus made to the imperial treasury. Valentinian, the Emperor, suspected that Hymetius had not sent as much money as he should have sent and confiscated a portion of his property. This affair led to others which finally resulted in the banishment of Hymetius. Honesty apparently did not pay, and from the enactment of the instant law, it is clear that others did not do as Hymetius did, but trafficked in the grain belonging to the government for their own profit --- for the grain hauled by these shipowners was property belonging to the state. It took considerable time in those days to haul grain long distances.

11.2.3 (5). The same Emperors to Flavianus, City Prefect.

Persons who rob public seamen, must make reimbursements out of their own property, and in order that their audacity may not increase in the future, we ordain that whoever commits such robbery, shall be subject to a fourfold penalty.

Promulgated at Rome January 22 (400).

C. Th. 13.5.29.

Note.

Gothofredus, in commenting on C. Th. 13.5.29, thinks that this law was intended to punish officials who were guilty of extortion from the members of the guild of public seamen. It reads, however, as though applicable to all alike. The former penalty had

apparently been simple restoration. By the instant law fourfold restoration, as Gothofredus thinks, was directed. This made the penalty the same as in ordinary robberies. C. 9.33.

11.2.4 (6). Emperors Honorius and Theodosius to Anthemius, Praetorian Prefect.

As the guild of public seamen in the provinces of the Orient was lacking in ships and the members went into the bays of the islands under the pretense of finding ships, and since, after the season of navigation the displeasure of the governors would be without effect on the shipping, Your Highness, did right in having the Augustal prefect and the president of the island induce the chiefs of the fleets of Alexandria and Carpathia and some other shipowners of the same profession to take the grain supply, ordinarily carried to the imperial city by the oriental public seamen from the stored supply of the city of Alexandria, into their care and transport it to the warehouses of the August City, receiving their small compensation from the great amount of tribute paid in,¹ or from what is called philikon, or from what, upon examination, you think best.

Given January 19 (409).

C. Th. 13.5.32.

Note.

Reference here is made to the hauling of the grain from Egypt to Constantinople in order to supply the latter city. The guild of public seamen in the provinces of the Orient had done the hauling; but pretending that they had no ships, they went off to find them. The praetorian prefect saw that they would not return in time. So he caused other shipowners to do the hauling, remunerating them from the tribute or from the so-called philikon, or friendly contribution, the source of which is unknown. That seamen who hauled the public grain, and whose services for the state was a liturgy, nevertheless received remuneration is attested by C. Th. 13.5.7. Edict 13 also, of Justinian, provided for freight-money to be paid to the seamen hauling grain from Egypt to Constantinople and a special tax was levied upon the Egyptians for that purpose.

11.2.5 (7). The same Emperors to Anthemius, Praetorian Prefect.

A person receiving fiscal supplies for transportation who fails to take the direct route, but follows the circuitous shores and diverts and sells them, shall be punished with death.

Given at Constantinople July 19 (409).

C. Th. 13.5.33.

11.2.6 (8). The same Emperors to Faustinus, Praetorian Prefect.

Judges (Governors) who permit loaded ships to lie in the ports of their diocese, when the wind blows favorably, under the pretext of winter, shall, together with the

¹ [Blume] "tributariae pensationis immunitate" Cujacius in commenting on this law, thinks that the shipowners, as compensation, received immunity from taxes. Gothofredus would change 'immunitate' to read 'immanitate,' holding that the remuneration was to be made from the tribute. In view of what has been said above, the opinion of Gothofredus seems to be the correct one.

curials (municipes) and the members of the guilds of the place, be punished by confiscation of their property. The public seamen, moreover, shall suffer banishment, if it appears that they have committed any fraud.

Given at Ravenna August 15 (410).

C. Th. 13.5.34.

Note.

The seas were ordinarily closed to navigation - at least so far as the duties of the guild of ship owners toward the state were concerned - between the first of October of each year and the first of April. C. 11.6.13.3. But the instant law was originally introduced on account of famine in Rome, resulting from the siege of the Visigoths in 410 A.D. Hence the ordinary rule was abrogated, and the ship owners hauling public grain were enjoined to sail during the winter if the winds were favorable. See Gothofredus on this law.

Municipes means citizens; but in the later empire, decurions were specially known as such. Kuhn 254. They and the guilds in the cities constituted the principal population, aside from the dregs of the people, and they were accordingly charged with the enforcement of the rule laid down in the instant law.