

Book XI.
Title XXXXVIII. (XXXXVII)

Concerning unfree and free serfs.
(De agricolis censitis vel colonis.)

Headnote.

The colonus was a tenant farmer. Wherever mentioned in the Digest, he was free to do as he pleased and contracted for the land which he occupied and farmed. In the Theodosian and Justinian Codes, however, we find that he is bound to the soil, and in many cases, perhaps the great majority of them, he appears as unfree, called *adscripticius*, *censitus* and other like terms, the status of such a person not being unlike that of the slave. The term serf is used in translating colonus. Some of these serfs had much more freedom than those just mentioned, though they, too, were bound to the soil. They have been called free serfs. See fuller note at C. 11.48.19 and references there made.

The first reference we have in the Codes to the fact that serfs were bound to the soil is in C. Th. 11.17.1, dated in 322 A.D. Much has been written on the subject of their origin and great difference of opinion has existed. But there can be no question that legislation binding them to the soil, regulating their marriage and other relations is due to the fact that it subserved governmental purposes. We have already seen that curials were bound to their position (C. 10.32) and that many artisans and workers were bound to theirs (headnote C. 11.2). Agriculture declined commencing with the second century of the empire and legislation was enacted to stem the decline. Clausen on the Roman Colonate, 316, says: "To arrest this decline, to induce the cultivation of the fields by encouragement or by force, to prevent the exhausted soil from turning into a barren desert or a malarial marsh was the essential object of the *emphyteutic* (C. 4.66), and *epibole* (C. 11.59) legislation; and it was precisely the same cause which led to the adscription of the tenantry to the soil in the perpetual bonds of the colonate. At approximately the same time, as writers from the time of Carl Hegel pointed out, the industrial classes were similarly bound to the *collegia*."

The serf was a small tenant. He cultivated his own land. He was bound to the soil, so that not even the landlord, the proprietor of the land could oust him from it. He marketed the products of the farm himself. He paid a yearly rent. The taxes on the land were sometimes paid by him, sometimes by the proprietor, according to custom. The rent was ordinarily paid in kind, but, apparently, sometimes in cash. The amount of the rent was fixed by custom, and the proprietor could not raise it. See Clausen, *supra* 23, 24. The serf paid a poll tax, and the unfree serf, it seems, was assessed among the property of the proprietor, as a chattel, the same as slaves were assessed. Note C. 11.48.10. For other details, the within laws should be examined. An elaborate treatise on the origin of the serf is found in the work of Clausen already mentioned, one of the latest works on the subject. See also Frank, Economic History of Rome 496-500, and many other works given in Clausen's book. See Gelzer, Studien 69-77. For the connection of the colonate with the *emphyteutic* (perpetual) lease, and the *epibole*, waste-land too, and its growth by reason of the existence of the latter, see further note C. 11.59.1.

Some authors see the origin of the colonate in the tenantry of the large imperial domains which were scattered all over the empire. Inscriptions found in Africa show

quite clearly the conditions of the tenants on these domains there. A number of these inscriptions have been translated by Van Norstrand in 'The Imperial Domains of Africa Proconsularis.' One of these is that of Henschir Mettich which dates from the time of Hadrian and contains provisions based on the law Manciana, which prescribed the terms upon which tenants could hold lands on these domains. They paid rental in kind, varying from a fourth to a third of the various products. They also furnished certain services for the stewards: two days work a year at the plough, two days work at the harvest, and two days work for weeding. If permanent improvements were made, certain exemptions were given; thus if new vines were planted, no rent for them was payable for five harvests; if a new olive grove was planted, no rent was paid thereon for ten harvests.

These small tenants were ordinarily under the direct direction of head-tenants (conductores), who in the early years of the empire became lessees for a limited time, generally five years. But as farming became less profitable, leases were given for a longer time, ending with the emphyteutic lease, which was perpetual, provided certain conditions were complied with. See Clausing, supra 304-309. The colonus was a tenant for a small amount of land of a generally larger estate. See a good discussion on "The Imperial Domains and the Colonate" by Pelham, in "Essays on Roman History."

11.48.1. Emperor Constantine to Aemilianus, Praetorian Prefect.

The farmers engaged in planting or harvesting, shall not be withdrawn from that work to perform extraordinary services, for providence requires that such work (of planting and harvesting) be done when the time is opportune.

Read at Rome May 9 (328).

C. Th. 11.16.4.

Note.

This law prohibited farmers from being called away from their work to perform any liturgy, such as conducting horses or other property along the highways and by-ways. See also C. 11.55.1 and C. 10.24.1. But see Kuhn 282. Whether this included services on the highways is not clear. See headnote C. 10.42. Not all tax payers were exempt from furnishing such services as here mentioned. Cujacius on C. 10.24.1, but the operation of the law is not at all clear. See Kuhn 282.

11.48.2. Emperor Constantine to Diocitius, Consulor of Aemilia.

If a person wants to sell or give away his land, he cannot, by private contact, reserve the right to transfer the serfs to other places. For persons who consider serfs to be useful, should either retain them together with the land, or leave them to be used to the advantage of others, if they despair of the profitableness of the land to themselves.

Given at Milan April 29 (357).

C. Th. 13.10.3.

Note.

This is one of the important laws regarding serfs. They were bound to the soil and could not leave it; but on the other hand the land-lord, their master, could not drive them from the land, and in case of sale of the land, they went with the land, and could not be separated therefrom.

11.48.3. Emperors Valentinian and Valens to Faventius, Vicar of Italy.

Whoever through our liberality, receives vagrant slaves from deserted lands, are liable for the whole assessment for taxes against the land from which the slaves appear to come. This applies also to those who have permitted slaves from such lands to come to their own possessions.

Given at Milan July 31 (365).

C. Th. 11.1.12.

Note.

The fisc could seize vagrant slaves, and these slaves could be asked for by private parties. But if these slaves came from deserted lands, the petitioners received them only upon condition that they would pay the total tax assessed against the lands from which the slaves came. That was true also in case of others who received slaves from deserted lands. The object is plain. The government wanted taxes from the lands, and hence did not want these lands to be deserted. That object was manifest also in binding the serf to the soil.

11.48.4. The same Emperors to Modestus, Praetorian Prefect.

The owners of land must, either personally or through agents, under stimulation of the tax-collector,¹ acknowledge the performance of duty on behalf of the serfs born on the land and inscribed in the assessment rolls thereof. 1. But we except from this law the serfs who are in possession of any small tract of land of their own and whose names are entered in the tax roll for these places on their own account; for it is proper that they, entrusted with their own little tract, should perform their duty as to the tax in kind (annonarias functiones) under the usual collector.

Given at Constantinople May 1 (366).

C. Th. 11.1.14.

Note.

This law has been the subject of much controversy. The first part of the law has been accepted as meaning that the owners of land were required to pay the poll tax for the serfs with the right to have recourse against the serfs themselves for repayment. See, for instance, Clausen, The Roman Colonate 26. On the other hand it is maintained that the law has nothing whatever to do with any poll tax or any other tax, but simply with liturgies in connection with the tax in kind (annona), the haulage, thereof, probably, to the proper place. Leo, Capitatic Plebiea, etc. 73 and note 212. Gelzer, Studien 74, interprets

¹ [Blume] 'recepta compulsionis sollicitudine.' This is the sentence which was accepted by Gothofredus and is still accepted by others as meaning that the proprietor had recourse for tribute paid by him against the tenants. Gelzer, Studien zur Byz. Verwaltung des Aegyptens 89, translates it 'unter Anregung des compulsor,' under stimulation on the part of the compulsor (tax-collector). As stated in headnote C. 10.32, large areas of land were withdrawn from the jurisdiction of cities. This was effected from time to time by the patrons (see C. 11.54), the later feudal barons, but they were thereupon made responsible for the collection of all the taxes, but had the assistance of tax officials. Gelzer, Studien 74, 79, 89. See C. 4.47.3 and C. 10.19.8, which required all patrons-feudal barons, to acknowledge the taxes due from property which they had under their protection.

the law as meaning that the proprietors collected the taxes due from the serfs and were responsible to the government therefor.

It is apparent that the latter part of the law deals with something in connection with the annona, perhaps liturgy in connection therewith, such as the hauling of it to the proper place. And this part of the law is plainly enacted as a contrast to the first part of the law, and it would, accordingly, seem clear that the first part does not relate to the poll tax, but either to the payment of a land tax or liturgy in connection therewith.

The latter part of the states that the serf holding a small tract of land should perform his duty "under" the collector. The version of Leo is, it would seem, perhaps, the correct one. He cites Zacharia.

11.48.5. The same Emperors to Oricus, President of Tripolis.

The owners of an estate, shall receive products of the soil as rent, and shall not ask for money, for which the rustics do not dare to wish, unless the custom on the estate demands that.

(366).

11.48.6. The same Emperors to Germanius, Praetorian Prefect of the Gauls.

The presidents presiding over provinces shall compel all fugitive serfs, (ascripticios, colonos, inquilinos) without distinction of sex, occupation, or station in life, to return to their former hearths, where they were taxed, brought up and born.

(366).

11.48.7. The same Emperors to Maximus, Praetorian Prefect.

As serfs born on an estate (originarios) may not be sold without the land, neither may rural slaves listed on the tax roll be sold. Nor can the law be made a plaything through fraud by delivering to the purchaser (of such slaves) as has often been done in connection with serfs, a small plot of ground (along with the slaves) and thereby destroy the tillage of the whole estate. 2. When the whole estate or a certain portion thereof is transferred to another, as many of the slaves and serfs (originarii) shall pass with it, as the former masters and possessors had in connection with it (but no more); and the buyer (who buys slaves separate from the land), will lost the purchase price, and the vendor, notwithstanding, has the right to reclaim such slaves together with their offspring. 3. If he fails to use the benefit of this law, and dies, silent in regard thereto, his heirs shall have the right of reclaiming them even against the heirs of the purchaser, and no limitation of time shall be a defense. For a person who buys anything contrary to the interdicts of law is not a possessor in good faith.

Note.

Rural slaves, like serfs, were bound to the soil and could not be separated from it. The reason lay in the fact that the government did not want lands to lie uncultivated. The slaves could be sold only in connection with the land. The law was attempted to be evaded by selling such slaves and just a small tract of land. This was declared unlawful and only the proper portion of slaves could be transferred with a tract sold. If the law was violated, that is to say the slaves sold separate from the land, the buyer lost the price, and further, the slaves could be recovered by the seller.

11.48.8. The same Emperors to Probus, Praetorian Prefect.

All fugitives who have a hiding place on the estate of another shall be recalled, and the taxes due to the fisc, shall be paid, with this limitation, however, namely, that if those, among whom they are found, knew them to be the fugitives of others, and employed them for their own benefit; that is to say, if the fugitives cultivated fields with fruits which was beneficial to the owners, or imposed other work on them for which the fugitives did not receive the reward due to their labor, then the tax which the public lost shall be demanded from such owners. 1. But if the fugitives conceal the fact that they belong to others, and have hired out to anyone, as of their own volition and as free men, or, if they have cultivated fields and have paid to the owners a part of the fruits, as rent for the ground, retaining the remainder as their own, or if they have received the reward due them for other work, then the amounts due to the fisc shall be collected from the fugitives themselves; for it is clear that here is a case of a private contract. 4. But if there are farmers, as happens, who are debtors to such men (serfs) by reason of one transaction or another, then the judge shall summon the parties before him and demand what is due from those liable therefor.²

Note.

By the terms of this law a harbinger of a fugitive serf was liable for the taxes which the treasury lost upon condition he knew the serf to be a fugitive or that he had not paid the latter. If he did not know the serf to be a fugitive, or if he had paid the latter, he was not liable.

A similar provision is made in C. 11.23.4. But in that law it is provided that if the harbinger learned that the serf was a fugitive and failed to return him, he should be liable for the land-tax and animal tax which the fisc lost. In this law the question of good faith played an important part. According to law 8 on the other hand, even though the harbinger of the serf knew him to be a fugitive, still if he paid the latter he was not liable for the tax there mentioned.

Leo, Capitatio Plebeia, etc., 114-125, discusses these laws at length and concludes that the tax mentioned in law 8 was not the same tax as that mentioned in law 23; that the former law contemplated the tax assessed against the serf himself, the latter law the tax assessed against the proprietor of the land which the fugitive had left, and he states that while the proprietor was theoretically liable for the taxes assessed against him, in practice it was paid by the serf.

11.48.9. Emperors Gratian, Valentinian and Theodosius to the people.

Special exemptions given from land or capitation tax entered upon the public registers and the archives of the cities and the provinces without approval, shall be void, and the recipients of such favor must perform their duty as formerly.

Given at Milan March 5 (383).

C. Th. 13.10.8.

Note.

The intention was to abolish all special exemptions. The text as it stands is obscure, and Godefroy has reconstructed it as follows: *Immunitates vero specialiter*

² [Blume] These farmers, owing debts to these serfs, could, in other words, be garnished to insure the payment of the tax due to the fisc.

datae jugationis vel capitationis libris publicis et civitatum vel provinciarum encautariis sine probatione aliqua factae, penes fruenter irritae, in functionem pristinam redeant. See Sintennis.

11.48.10. The same Emperors and Arcadius to Cynegius, Praetorian Prefect.

Although formerly the standard for the tax-unit (*capitis norma*) was fixed, one for each man, and one for two women, it has now been fixed one for two and three men and one for each four women. Wherefore Your Sublimity will order such a beneficial and moderated assessment to be entered in the tax lists in the cities of Comana, and Ariarathia of the second Armenia, and the cities of the Amasia of Helenopontus and of Diocaesarea of the second Cappadocia.

Given March 27 (386).

C. Th. 13.11.2.

Note.

Poll Tax.

It is agreed by most of the authorities that a poll tax, or head tax was paid by a portion of the population of the empire, the amount not being large and yet in the aggregate an important item. It rested mainly on the plebeians in the country, the plebeians in the cities being exempt. C. 11.49.1. It was paid, according to Leo, Capitatio Plebeia u.d. Capitatio Humana 44, by those who paid no property tax and by those who paid little property tax, the dividing line being unknown. Certain persons were exempt: soldiers, veterans and some part or all of their family; teachers of painting and their family; widows and nuns; the clergy and their family, and some others.

The name for the tax according to the generally accepted doctrine was *capitatio plebeia* or *capitatio humana*, the terms being considered to have been interchangeable. Among other laws thought to refer to the poll tax is the instant law - C. 11.48.10. An assault upon that doctrine was made by Leo, in his work above mentioned, published in 1900, in which he maintains that the name of the poll-tax was *capitatio plebeia*, and was an entirely different tax from the *capitatio humana*, and that the latter was a property tax just as a tax on slaves, the subject of the tax being the unfree serfs - serfs *adscripti* or *censiti*, and inscribed in the assessment rolls of the owners or masters and taxed at a certain amount just as slaves and animals were taxed at a certain amount. He maintains that though the unfree serf was regarded as property for the purpose of this tax, he was considered free in so far as being required to also pay a poll tax. Page 100. Only the unfree in the country were assessed under *capitatio humana*, with the exception made in Thrace in C. 11.52.1. Pages 85, 86, 138, 139, 155, 156. That serfs were divided into free and unfree appears from C. 11.48.19 and 23. See also headnote C. 11.58 where the assessment of property is discussed, and C. 11.52.1 and note, and C. 11.53.1 and note.

Bury does not seem to agree with the view above expressed, and says on the subject (1 Hist. L. R. E. 48): "Besides the large proprietors there were also small peasants who owned and cultivated their own land, and were distinguished from the serfs on the great estates by the name of plebeians. The tax which they paid was known as the *capitatio plebeia*. The meaning of the term has been much debated, but there seems little doubt that it is simply the land tax, assessed on the free peasant proprietors on the same principles as it was assessed on large estates." And in a note he says: "The *capitatio humana* - another term which has caused much discussion - was probably (in the fifth

century) a tax on slaves, paid by the owners, like the *capitatio animalium* which is usually associated with it in the laws."

11.48.11. Emperors Arcadius and Honorius to the people.

We direct that the serfs born on an estate, shall be excused by no privileges, by no rank, and by no authority of the tax roll,³ but stripped of everything which they have at some time elicited through favor, they shall be returned to their master and estate.

Note.

C. 16, of the pragmatic sanction of Justinian, of the year 554 A.D. (Appendix VII), states as follows: "C. 16. We direct that slaves and serfs, who happen to be detained by another, shall, together with the offspring of the meantime, be returned to their masters." See also C. 11.63.4; C. 11.64; C. 11.68. But thirty years' standing as a curial barred the question as to whether a man was a serf. C. 11.66.6.

11.48.12. The same Emperor to Florentius.

We want slaves and serfs (*tributarios vel inquilinos*) to remain with their owners. And if everyone is deterred by fear of damage and ejects anyone unknown to him, slaves will have no desire to flee; for no one will desert his master when he knows that there is no place for him to hide. 1. Hence everyone shall, at the risk of falling foul of these provisions either receive only a person who is known to him to be free-born and eject everyone who (merely) pretends to be free. 2. If any of the above mentioned fugitives shall, therefore, be found with any other person, such person detaining him shall, we direct, pay twelve pounds of silver into the fisc; and not alone deliver to the owner this fugitive but also another person of equal value in addition.

Note.

According to this law, everyone received a fugitive slave and serf at his peril. That the rigor of this law was relaxed at least as to serfs is apparent from C. 11.48.23.4. See also C. 11.52.1 and C. 11.53.1.

Just in what way the *inquilini* differed from the *coloni* has always puzzled commentators on the Roman Code. Originally *inquilinus* meant the tenant of a city dwelling just as a *colonus* referred to a tenant of a farm. But in the Codes the word *inquilinus* like *colonus* was used to designate an agricultural serf-tenant. Clausen, The Roman Colonate 195. Their condition, says the next law, appears to be almost the same. See also C. 11.53.1. And it is apparent that they were also considered much the same as slaves.

11.48.13. The same Emperors to Vincentius, Praetorian Prefect.

We direct that children of *inquilini* or *coloni*, whose condition, in so far as reclaiming them to the status of their origin is concerned, is almost the same, though there is a difference in the name, shall, whether both parents or neither parent are inscribed in the census roll, follow the status of the condition of the father. This, too, is to be observed, that, if the owner of two estates transfers serfs from one of the estates which is well provided with labor, to the other estate which is not, and these estates thereafter become, in any manner, the property of different owners, the transfer shall not

³ [Blume] In case they should be enrolled as free men.

be disturbed, but the owner of the estate from which serfs were transferred must (also) restore their male offspring to the other estate.
Given June 29 (400).

Note.

See note to previous law on *inquilini* and *coloni*. The instant law determined to what estate the children should belong - to what farm they should be attached, and states that the children should belong to the land to which the father belonged. See also Novels 156 and 157, according to one of which the children were divided, but according to the other of which the children belonged to the farm to which the father belonged. The law states that it should make no difference whether both parents or neither parent were inscribed in the census roll - that is to say, whether they were free serfs or not.

11.48.14. The same Emperors to Vincentius, Praetorian Prefect of the Gauls.

If serfs (*coloni*), in the possession of a person in good faith flee to others and attempt to escape from their condition, they must, by swift assistance, first be restored to the possession in good faith, and the question as to their birth and ownership must be litigated thereafter.

Given at Milan July 12 (400).

C. Th. 4.23.1.

Note.

If a man claimed to be free, but was in possession of another as a serf, and he fled, he was to be first returned into the possession of the proprietor before the question of the actual status could be litigated. See C. 8.1.3 and note.

11.48.15. Emperors Honorius and Theodosius to Probus.

A collector of taxes (*exactor*) must not take any serfs into his possession on account of any debt due to the fisc; for serfs must remain attached to the soil and must not even for a moment of time be removed therefrom.

Note.

The serfs could not be taken in charge because of taxes due from the proprietors. It was different, however, so far as their own taxes were concerned. 2 Cujacius 726 on this law.

11.48.16. The same Emperors to Palladius, Praetorian Prefect.

If a woman is shown to have been born a serf (*originaria*) and has married a free man, living in a city or in any other place, her offspring will, according to the ancient constitution, be recalled (to the land from which she came).

Given at Ravenna June 26 (419).

Note.

The offspring of a female slave followed the condition of the mother. It was the same with the offspring of a female serf and a free man. See C. 11.68.4; C. 11.48.21.

11.48.17. The same Emperors to Johanus, Praetorian Prefect.

That no prejudice can arise to a possession, through a serf, without the consent or knowledge of the master, is well established by law and by the authority of the statutes.

Given at Ravenna July 15 (422).

C. Th. 2. 30. 2.

Note.

No serf or slave could alienate or hypothecate property in prejudice of the owner.
C. 8.15.8.

11.48.18. Emperors Theodosius and Valentinian to Bassus, Praetorian Prefect.

We permit no serf to be admitted to any office, however humble, and we do not allow persons inscribed in the census roll to become apparitors of the master of soldiers,⁴ herein looking after the rights of owners as well as the public decency.

11.48.19. Emperor Anastasius. (in Greek).

Some farmers are not free (adscripticii - listed in the census roll), whose property belongs to the masters; others become serfs in the course of 30 years, but they, with their children remain free; they, too, however, are compelled to cultivate the soil and pay tribute; for this is for the interest of both the owner and the farmers.⁵

Note.⁶

Free and unfree serfs.⁷

It is clear from this law that there was a difference in the condition of serfs. Some were adscripticii, to say, e.g. in C. 11.50.2, censibus adscripti, listed in the census roll. Some were not, as mentioned in the instant law, in C. 11.48.23.1 and several of the Novels, particularly Novel 162, c. 2. This difference is at times overlooked and not mentioned by authors who have written on the coloni-serf in general. The term colonus indicated originally simply a tenant-farmer. There were some free farmers left in the later empire, but by remaining on another's farm for thirty years, he became bound to the soil, though he remained otherwise free, and though such freedom was of a rather limited character. He had a right to sell his own property, if he had any, whereas an unfree serf did not. C. 11.52.2; Leo, supra 106 and note 283. Novel 162, c. 2, distinctly shows that the term colonus, standing by itself, meant a free serf, though bound to the soil. If he had land enough of his own, he was not bound to another's land. The meaning of censibus adscripti and the difference between free and unfree serfs is discussed by Leo, supra 97-112. See also M. Gelzer, Studien 70.

11.48.20. Emperor Justinian to Demosthenes, Praetorian Prefect.

To end litigation speedily, we ordain, that whenever serfs, of whatever condition, bring a suit against the owner of the land, raising the question as to whether he is the owner or not - we speak of those who have no sufficient protection which arises from the lapse of a long time, or from delivery and acceptance of rent during a lengthy and protracted period; for in the latter cases the serfs cannot dispute the landlord's claim, for the prescription arising from long time and from many continuous deliveries of rentals bars the claims of the serfs - the rule, we direct, to be followed as to payment of rentals or

⁴ [Blume] The last provision also found at C. 12.54.3.

⁵ [Blume] See C. 11. 48.23.1.

⁶ Blume penciled in here: "See Clausing, Roman Colonate 18, 99, 111; see C. 11.69.1; C. 11.52.1; C. 11.53.1."

⁷ Here Blume added: "See 9 Z.S.S. 261, 278."

public taxes shall be (as follows), that, if serfs, such as we have mentioned above, shall furnish a suitable surety for the whole sum which is paid by them, to the effect that all rentals will be paid without delay if the owner prevails in the cause, and such surety is taken for a period of three years, and is renewed at the expiration of that time, the serfs shall not be disturbed by the owners concerning any rentals. 1. If, the serfs, however, do not want to or cannot do this, then the rental shall be annually collected by the staff of the judge (governor) at the times when they were customarily paid to the owners, and shall be deposited in a church that is to say, in the depositary (cimeliarchio) of the district in which the land is situated, or if the local church is not suitable for receiving money, then in the metropolitan church, there to remain in security, and after complete determination of the cause to be paid either to the owner or to be returned to the serfs. 2. But if rental is not paid in gold, but in kind, either in whole or in part, the products to be paid as rental in the meantime shall be sold by the staff of the judge and the price deposited in the manner above set forth. 3. Having determined these matters concerning rents, let us pass to the question of public taxes. If the serfs should customarily pay them, that method shall be continued, without thereby prejudicing the owners, since they were not accustomed to pay them, while the serfs were silent and raised no objection. 3a. If it was the usage, however, for the owner to receive the total amount, and from it pay part of it into the public treasury, retaining part of it for his own benefit, then if a surety is given by the serfs, he shall pay to the owner, without prejudice to the lawsuit, the sum required for taxes, so that the same may be paid by the owner; creating no disadvantage thereby for the serf. For the owner shall be content with the surety, as far as the rent is concerned. 4. If, however, no surety is given and the rental is sequestered, and the money is deposited, the judge shall take enough of the money to pay the public taxes, and the owner shall accept that arrangement since he will receive the public receipts as though he paid himself. The remainder, consisting of pure rental, shall be placed in safety and await the determination of the suit. 5. No prejudice shall arise either to the serfs or to the owner from such suretyship, sequestration or payment of public taxes; but the whole matter shall remain in abeyance, until a judicial decision, embracing the whole matter, makes the situation clear and shows who is the owner, to whom the public quittances shall in the future be delivered, and who is thereafter entitled to the income.

Given October 30 (529).

Note.

This law clearly shows that the taxes assessed against the proprietor of a place were at times paid by him, at times by the serf. See Leo, supra 113, 114, 120, 127.

11.48.21. The same Emperor to the Senate.

In order that whenever any child is born to an unfree female serf (adscripticia) and to a slave, or to an unfree male serf and a female slave, there may be no longer any doubt what its status is, or which condition is the worse, that of serfdom or slavery, we ordain, that the provisions made in former laws concerning the offspring born of an unfree female serf and a free man, shall remain in force, and such offspring shall be serfs. 1. Moreover, if a child is the offspring of a male slave and an unfree female serf, or a female slave and an unfree male serf, it shall follow the condition of its mother, whether slave or serf, which has heretofore been the case only in relation to free women and slaves. For what is the difference between slave and serf, when both are in the power of the master,

who may manumit the slave with his peculium (special property), and get rid of the serf with the land (by a transfer thereof)?

Note.

According to this law there was little difference between *adscripticii* (*censiti*) - unfree serfs and slaves. Hence, as maintained by Leo, both were taxed as chattels. The children of a marriage between such serf and slave followed the condition of the mother.

11.48.22. The same Emperor to Julianus, Praetorian Prefect.

Since we know that under our law no one can be injured as to his status either by confession or by any writing, unless corroborated by other means, we ordain that no lease or other writing shall suffice for that purpose, nor make anyone an unfree serf, but such writing must be corroborated by other means, as by testing in the public tax roll or by some other legal means. 1. For it is better that in difficulties of this kind the condition be proven from several sources rather than to let confessions or writing alone reduce the status of men who perhaps are free. 2. But if there is a writing, and this is followed by a confession or admission, provided this is free and voluntary, as for instance, if a lease or other document is subscribed by him, and he afterwards declares on the records that he is free (*colonus*) or unfree (*adscripticium*) serf, then as a result of both acknowledgments, namely, that of the writing and that of the confession or admission, he must be considered to be such as he acknowledges in writing and as he has deposed on the records. 3. This question, too, has without good reason, been raised: Where a son of a free serf (*colonus*) has mingled in free society through a period of 30 years or 40 years or perhaps longer, while his father was living and performed the work of farming, and the master of the land did not demand his presence because his needs were met by the father, whether after the death of the father or after the latter has become perhaps worn out and not fit to perform farm work, the son is released from the duties as serf by reason of long enjoyment of freedom and because he did not for many years cultivate the fields and perform the work of a serf - when (at the same time) the master cannot be considered negligent, since he received all that was due him through the father. 4. In all such cases, it appears harsh to us that the master should be prejudiced by the absence of serfs who born in the country, afterwards absented themselves and performed their farm work either through their father, brother or blood-relative. For since, in a measure he was represented on the estate by his relatives, he seems to have been neither absent nor at liberty. 5. Let the master's right, therefore, remain undisturbed, and as long as any ancestor, posterity or blood relative remains on the farm, he himself shall be considered as having lived there. Given at Constantinople (531).

Note.

While this law related mainly to unfree serfs (*adscripticii*, *censiti*), it is apparent that the rule therein announced was intended also to apply to the ordinary serf, the *colonus*.

11.48.23. The same Emperor to Johannes, Praetorian Prefect.

Since it is unjust that an estate which had serfs attached to it in the beginning should in some manner be deprived of its members, and that its serfs, living on other estates, should (thereby) damage its owner, we direct that just as no one is freed from his curial condition by lapse of time, so no one bound to the soil shall claim liberty by reason

of the lapse of years, however many have gone by, or by reason of the length of time that he may have been engaged in other business, but shall remain a serf, bound to the land. And if he conceals himself or attempts to steal away, he shall, according to the precedent set for slaves, be considered as committing theft of himself by his trickery, and he shall, together with his offspring, though procreated on other soil, be bound to his fate and subject to the poll tax, without being able to be released therefrom. 1. Since, moreover, the Anastasian law wants (free) men who have lived in a condition of serfdom for 30 years, to remain free, without right, however, of leaving the place and going to another, and the question has arisen in this connection whether their children also, of either sex, though they have not been on the estate or in the village for 30 years, should be considered serfs, or whether that should be true only with the progenitor who has been bound to such condition for 30 years; we ordain that the children of such serfs shall indeed be perpetually free according to the aforesaid law, and shall not be subject to any worse condition, but they shall have no right to leave the estate and go to another, but shall always be bound to the soil which their father has once undertaken to cultivate. 2. The owners of estates, however, to which such serfs are annexed must inflict no innovation or violence on them. And if the proprietors are proven guilty thereof, the moderator of the province, in which anything of that kind has been done, shall take charge of the matter and see to it that the serfs are recompensed for any injury done them and that the former custom as to payment of rent, is observed without right on the part of the serfs even in such case to leave the estate on which they are living. 3. And this shall apply to the serfs as well as their offspring of either sex and of any age; the offspring born on an estate shall remain thereon in the same manner and under the same conditions, under which we have ordered the progenitors to remain on the estates of others. 4. (2). No one, moreover, shall knowingly and intentionally, receive the serf (*adscripticius vel colonus*) of another into his protection. If he has received him in good faith, but afterwards discovers that he belongs to another, he shall, when asked to do so by the owner of the serf or of the land, either personally or by agent, restore the serf together with all the special property (*peculium*) and all offspring; and if he neglects to do so, the eminent praefecture and the president of the province shall compel him to pay the public tribute, whether land tax or animal tax, due from the serf, during the time that the latter remains with him, and he shall also be compelled to restore the serf according to the ancient constitutions, under the penalty therein provided.⁸ (531-534).

11.48.24. The same Emperor to Hermogenes, Master of the Offices.

If any unfree male serf, with whatever intention or by whatever fraud, with or without the knowledge of the master, has married or shall hereafter marry any free woman, such woman together with the offspring is born from the union of a free husband and a wife who is an unfree serf, the offspring follows the condition of the mother and not of the father. 1. But lest the unfree serfs may think that such act remains unpunished - for it is greatly to be feared that serfs may gradually decrease in number as a result of constant deliberate marriages with free women - we ordain that if any such act is perpetrated by an unfree serf, the owner shall have power, either personally or by

⁸ [Blume] See note to law 8 of this title as to taxes.

assistance of the president of the province to chastise him by a moderate punishment and to take him away from the woman. If he fails to do this his damage will be due to his own sloth.

Note.

See laws 16 and 21 of this title and further legislation in the Novels hereto appended. By Novel 22, c. 17, in 536 A.D., marriage between an unfree male serf and a free woman was forbidden.