

Book XI.
Title LIX. (LVIII)

Concerning deserted land and when sterile lands will be made a charge on fertile lands.
(De omni agro deserto et quadno steriles fertilibus imponuntur.)

11.59.1. Emperor Constantine to Caepetrinus.

Since the divine Aurelian our parent, ordered that the municipal senates should be held responsible for deserted lands and for farms which should have found no owners, whom we had directed to pay the customary tribute after three years' exemption, we, in preserving the tenor (of the rescript), direct that if it shall clearly appear that the municipal senates are not able to take over these possessions, the burden (taxes) against them shall be apportioned among the (remaining) lands and territories.

Note.

It was already noted at note to C. 11.58.7 that the government attempted to keep land from being deserted. The first general law concerning deserted lands was according to Herodian 2.4.12, enacted as early as 193 A.D. by Pertinax. He offered abandoned land in Italy and the provinces in perpetual ownership to anyone who would undertake to reclaim them; and as a reward for the trouble of clearing the fields, the cultivators were granted an exemption from the land tax for 10 years. Later laws were enacted similar in effect. C. Th. 7.20.3 and 8. A law was enacted by Constantine, as stated in the instant law, giving to persons who would occupy such deserted lands, exemption from taxes for three years. The curials had the disposition of this land, if in private ownership, as may be gathered from the instant law and law 3 and 14 of this title. If the curials did not object, such land was open to squatters. De Zulueta, De Patronciniis 60. If no one was found to cultivate the land, the curials were required to pay the taxes thereon, dividing it among the land holders and villages in the territory subject to the city. This shows that there was a joint, or corporate liability, for the whole of the taxes levied against a city, notwithstanding what is said in law 16 of this title and in C. 12.60.4. See note to C. 11.57.1. There was, in turn, a joint responsibility on the part of the villagers mentioned in C. 11.56.1. See De Zulueta, *supra* 69. The term *epibole* was applied to the liability of the owner or holder of fertile land to be charged with the ownership, and therefore with the taxes, of a proportion of waste land. De Zulueta, *supra* 68. The term *adjactio* was used as its equivalent. Gothofredus on C. Th. 10. 3. 4.

Clausing, The Roman Colonate 309, says in referring to this law: 'Far more important was the so-called *epibole* legislation, the most astonishing and arbitrary agrarian legislation in the world's history. The first law of which we have record was an edict of Aurelian (270-275 A.D.), which assigned all deserted lands within the territory of a municipality to the city senators, and, after an immunity of three years, made them responsible for the land tax from these estates. This proved to be a burden so heavy that many of the curials were unable to bear it and Constantine, a half century later, was forced to transfer the obligation of the ruined curials to the land-holders of the district.' The author is probably somewhat mistaken as to the order of Aurelian. He had evidently given no exemption for three years. That was first given by Constantine by a law enacted previous to the enactment of the instant law. The instant law confirmed that exemption and then added that the burden should be distributed among the landholders.

That this legislation was arbitrary, cannot be doubted. Traces there may be found earlier than the instant law. De Zulueta, supra 69. Institutions of that sort do not develop fully at one time, but are a matter of growth. And this legislation was closely interwoven with the emphyteutic (perpetual) lease and with the colonate. During the first two centuries, the emperors favored lessees with small holdings. At that time no one was compelled to continue on any land, since there were plenty of parties who voluntarily took over imperial land, as well as private land, for cultivation. But commencing with the third century, lands became sterile and waste. Society was in disorder. Voluntary lessees were not abundant. The government's expenses increased, while the income, by reason of the matters mentioned, decreased. The government, accordingly, was compelled to resort to leasing land to conductors, head-tenants, with ample capital to cultivate the land and sufficiently responsible to pay the taxes to the government. Hence resulted a great concentration of lands in the hands of a comparatively small number of men. See headnote C. 11.54. It seems to have been a fact that the emphyteutic lease was mainly for public barren and deserted lands - though not entirely so - (Rostovzew, Studien 390-396), and it was but natural that under these circumstances large tracts should have been given in the possession of a person willing to spend his capital in reclaiming the land. Despite this fact, however, the conditions were not entirely remedied, and the government resorted to the remarkable practice of the epibole, forcible annexation of waste or sterile land to fertile land, which, as noted in the laws of this title, applied when lands were leased or sold. But when a burden of that kind was imposed on the land-holders, they, in turn, sought relief by claiming their tenants with small holdings as serfs of the soil, and the system of binding farmers with small holdings to the soil spread over the whole empire. See Rostovzew, supra 397. The order of development may not have been entirely as here outlined. The several factors doubtless reacted one upon the other, finally developing into the system as we find it in the later years of the empire.

11.59.2. The same Emperor.

If anyone has purchased any property of an emphyteuticary or the possessor of any patrimonial, that is to say, private, property, the richness of which balanced other property which was sterile, and of which the sinews, as it were, are cut when the former is severed from it, the purchaser must pay the tax on the sterile lands which remains in the hands of the seller.¹

Given December 6 (337).

C. Th. 11.1.4.

Note.

Here the tax called epibole is mentioned. A man could not sell the rich portion of his land which bore the brunt of the tax burden and thereby relieve the purchaser from also paying the taxes that had been due from the poor land.

11.59.3. Emperors Valentinian and Valens to Mamertinus, Praetorian Prefect.

¹ At the end of the manuscript volume, Blume wrote: "11.59.2—first sentence." The gist of Scott's version is the same. See 7 [15] Scott 217 (as C. 11.58.2).

Persons who have received deserted land under certain immunity (from taxes) shall not be permitted to obtain possession of the grant until they have made it certain by giving suitable sureties at the risk of the curials or by giving a lien on his lands which are entirely fertile, that the possession, taken by him, will not result in public detriment.²

Given May 26 (364).

C. Th. 5.13.14.

11.59.4. The same Emperors and Gratian to Crescens, Vicar of Africa.

Appointed heirs are responsible also for the fiscal burden resting upon infertile property; of if they think of renouncing the inheritance, they must renounce everything belonging to the same estate which they in any manner have received.

Given at Contionax July 11 (371).

C. Th. 11.1.17.

11.59.5. Emperors Valens, Gratian and Valentinian to Antonius, Praetorian Prefect.

Those who possess fertile property of a city must also take over deserted property, mixing them up; and if they are overburdened by the addition of that portion which they previously abandoned in disgust, they must turn it over to other curials who will take both kinds of lands upon condition that they will hold the deserted lands together with those that are cultivated and pay the taxes due; it is unjust that the latter lands should be held by a few and let the deserted lands be a burden upon the curials (municipes).

11.59.6. Emperors Gratian, Valentinian and Theodosius to Nebridius, Count of the Crown Domain.

Whenever a head-tenant (conductor) is found in possession of (fertile) property belonging to the public or to the temple, more infertile land must be joined thereto. If he thinks of refusing that, another occupant shall be found under the same condition, or if a voluntary lessee is not found, then the lands, joining the sterile with the fruitful, shall be returned to the ancient occupants, that is to say, the decurions or whoever they may be, proper surety being furnished.

Given at Constantinople January 18 (383).

C. Th. 10.3.4.

Note.

This law had reference to the leasing of public lands at auction. If the highest bidder did not want to take sterile land with the fertile, he could not lease any of it. If no voluntary bidder was found to take it upon the condition mentioned, then the land was directed to be returned to the curials or others - that is to say, it should be left in the hands of the party who had it before the auction. These lands, says Gothofredus, were, until disposed of otherwise, occupied by the decurions and members of guilds of the cities, to whom, in case there was no other bidder upon the conditions mentioned, it was returned. They, however, as everyone else, (law 3 of this title) were required to furnish a guaranty.

² [Blume] As to sureties of emphyteutic lessees, see C. 11.62.7.

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

Whoever has cultivated a waste (imperial) patrimonial estate and have made it fertile and fruitful, may, subject to the tax (rent) thereon, defend and hold it in perpetual and private ownership, as though a family-estate, acquired by succession from an ancestor. He may transmit it to his heirs, and no rescript or imperial annotation shall deprive him of the fruits of his labor. 1. Further more, those who occupy, or now think of selecting rich and fertile lands must pay the current (though no past) tribute for the waste portion. Likewise those who, as emphyteuticaries (perpetual lessees) hold lands not very fertile nor quite waste, must take on a just and proper amount of land that needs help, and must pay the legal tribute thereon after an exemption for two years. 2. And no one shall be hindered by reason of the fact that he holds any position of power from receiving and holding by right of permanent possession (*diacatochiaie vicem*) waste patrimonial land with the intention of paying its tribute and taxes, but he must take special care to first choose lands which are near (his own) and in the same district; if he finds no lands which are near (his own) and in the same locality then he may take lands further away, with (the various pieces) adjoining each other as near as possible and make his selections with moderation and equity, so that what is to the advantage of all, may be done by the approval of all.

Note.

It will be noticed that an exemption of two years' tribute was given for cultivating waste land belonging to the imperial, patrimonial estate, while an exemption of three years' tribute was, according to law 1 of this title, given in the case of privately owned, but abandoned, land.

The meaning of par. 2 of this law is not altogether clear. Cujacius interpreted it to mean that persons could be compelled to take on waste lands even though at a distance. That opinion appears also to be held by Clausen, The Roman Colonate 310, and Rostoczew, Studien 394. The latter says that *diacatochia* referred to forcible addition of waste to fertile lands. His, Domanen 86, note 2, however, says that the term merely signified permanent possession. It is hard to get any such meaning out of this law as stated by these authors. The translation herein is in accordance with Otto Schilling and Sintenis. It must be borne in mind in this connection that ordinarily no one was compelled to take over sterile land unless he had land that belonged, or had been a part of the same estate - had at one time belonged to the same men or had been assessed in one body. See law 12 of this title and Novels 166 and 168. The only exception seems to have been that mentioned in c. 14, Novel 17.

11.59.8. Emperors Valentinian, Theodosius and Arcadius to Tatianus, Prefect of the Orient.

Whoever for private and public gain cultivates fields, left deserted by a negligent owner,³ whether located at a distance or in the neighborhood, may know that he does so with our approval, with this limitation however, that if a new cultivator settles on vacant and deserted land, the former owner, may, if he wishes, repossess himself thereof within

³ Blume penciled a question mark into the margin here. Scott translated the relevant passage as: "Where anyone desires to cultivate fields abandoned by their owner..." 7 [15] Scott 219 (as C. 11.58.8).

a period of two years, first paying the expenses incurred on the place. But if he remains silent for two years he loses all right of possession and ownership.⁴

(388-392 A.D.)

C. Th. 5.15.12.

11.59.9. Emperors Theodosius, Arcadius and Honorius to Rufinus, Praetorian Prefect of the Orient.

Persons who have taken over patrimonial estates in private right, subject to taxes (canon) must, without exception, know that they have the choice, either to take and hold places whose fertility is small along with those that are fertile and fruitful, or, if they avoid⁵

the sterility of the former, to give up also the lands that are fruitful.

Given November 6 (394).

C. Th. 5.13.34.

11.59.10. Emperors Arcadius and Honorius to Eutychianus, Praetorian Prefect.

Persons who, through influence, have taken possession of farms which are rich and fertile, must, along with them, take over a proportionate part of the infertile lands belonging to the same property.

Given at Constantinople March 7 (398).

C. Th. 13.11.9.

11.59.11. The same Emperors to Hadrianus, Praetorian Prefect.

Owners of deserted lands must return within 6 months when recalled by edict. If they appear, they shall retain their property and be compelled to pay the tribute in arrears.

1. If, through absence, they acknowledge that they are not able to pay the tribute, and fail to appear, then persons who have taken possession of the property and promise a definite amount of tribute shall become owners of the property, and after payment thereof remain in undisturbed possession, nor shall it be taken from them by any surreptitiously obtained order. 2. And we have allowed them this, that tribute shall be demanded from them only from the time that they first occupied the places in question.⁶

Given August 27 (400).

11.59.12. Emperors Honorius and Theodosius to Selencus, Praetorian Prefect.

We ordain by this law that no possessor and no tax-paying property shall be responsible for the tax of another or for another's deserted land; nor shall they be burdened by reason of the barrenness (defectione) of land which are not shown to be a part of the same estate, so that the exaction of taxes may not be contaminated by any fraud or deceit.

Given at Ravenna January 31 (412).

C. Th. 11.1.31.

⁴ [Blume] Read note C. 11.58.7.

⁵ Blume penciled in "avoid" above his typed "fear" without striking the latter. Scott has "reject." See 7 [15] Scott 219 (as C. 11.58.9).

⁶ [Blume] Read note C. 11.58.7.

Note.

This law makes it clear, as also appears from other laws, that forcible addition of sterile to fertile lands did not apply generally and promiscuously, but was limited to lands belonging to the same estate - land that had at one time belonged to one and the same party, as more fully appears from Novel 166. Private lands could not, for that purpose, be ordinarily confused with public lands. Thus by C. 1.34.2, Anastasius forbade the forcible addition of private lands to patrimonial land. This was to give security to the lessees of the patrimonial land. The converse of this rule also applied. For by C. 11.62.9, it was provided that if a man bought patrimonial land, it should have nothing further in common with the patrimonial estate, and that doubtless referred to the epibole. If, on the other hand, a man received patrimonial land by gift, then it might be equalized with the remaining patrimonial land - part of the same estate. See further, His, Domanen 85-86.

11.59.13. The same Emperors to Probus.

Let the agents and owners of all lands be summoned. If the texts are shown to have been lessened by their fault it is certain that ownership must be changed. Given at Constantinople June 11 (414).

Note.

Cujacius takes this law to refer to deserted lands, which were taken away from the owners and set over to others by equalizers, as mentioned in C. 11.58.7. If the law, however, referred to other lands, it could be sold at what we may call tax-sale.

11.59.14. The same Emperors to Aurelianus, Praetorian Prefect.

Fields and possessions, which the curials in any manner, after registering their wishes on the provincial records, have abandoned or have permitted others to occupy shall firmly remain in the control of those who cultivate them and pay the taxes thereon, and the curials shall have no power of recovering them.

Given December 3 (415).

C. Th. 11.24.6.5.

11.59.15. The same Emperors to Sebastius, Count of the First Order.

If anyone as a result of equalization has received deserted lands which are subject to shipping-liturgy, and which remain deserted to the present time, it is proper that it should be exempt from all other tax-obligation, and the fertile land (*gravis sors*) is not bound for shipping-liturgy on behalf of the deserted land, since it is itself exempt from other burdens.

Given at Ravenna March 14 (417).

C. Th. 6.2.24.

Note.

The law is, as stated by Otto, Schilling and Sintenis, very obscure, but has been elucidated by Gothofredus. It related to the liturgy imposed on public seamen - shipping-liturgy, mentioned in C. 11.2. The meaning is that if deserted lands subject to this liturgy was forcibly added to fertile lands, no amalgamation took place, but the relative burdens on each remained as previously.

11.59.16 (17). Emperors Theodosius and Valentinian to Celer, Proconsul of Africa.

We order that no curial shall be responsible for the tax against another's land, but only for that against his own property.

Given at Ravenna April 27 (429).

C. Th. 12.1.186.

11.59.17 (16.) The same Emperors to Hermocrates, Praetorian Prefect of the Orient.

If any person has, by the authority of our majesty taken over sterile lands belonging to the (imperial) patrimonial estates under promise of payment of a definite tribute, we want him to firmly hold such land upon payment only of such tribute, which our majesty as prescribed to be paid each year; and no re-assessment, addition or innovation shall be made. For it would be absurd that persons who, upon our request, have with difficulty and by exhausting their resources improved sterile and impoverished lands should be deceived and subjected to unexpected burdens, and that this should be demanded of them through fraud, as it were; for if they had foreseen that, they would not have been willing to take the land over or even to cultivate it.

Given at Constantinople November 20 (444).

C. Th. 26.1.4.

Note.

This law clearly shows that the 'canon-rent' or tax, whichever it is called - was definitely fixed for all time on deserted lands granted to anyone upon promise to pay such 'canon,' and could not be increased. The same rule is stated in C. 11.66.2. The subject of what imperial lands which were leased were required to pay is fully discussed at note to C. 10.48.8, and C. 11.62.12, where it is stated that probably the amount fixed was higher than the ordinary tax and included both taxes as well as rent. See Clausen, The Roman Colonate 307, speaking of the emphyteutic lands.