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CUSTOMARY LAW CONCEPTIONS OF UKRAINIANS REGARDING 19th CENTURY LAND LAW (on the basis of legal cases concerning the "starozayimochni" [seized long time ago] in Slobozhanshchyna)

Institute of land ownership is one of the most difficult for research spheres of the customary law tradition. It is caused by the variety of land relations which dominated in Ukraine both in synchronous (spatial) and in diachronic (temporal) context. Researching customary land relations of the 19th century it is difficult to take into consideration the following factors: firstly – regional aspect, as in every region due to historical and social circumstances the original type of land relations was formed; secondly – chronological moment, as almost every decade had its specificity connected, in particular, with appearance of the new legal regulations which, on the one hand, could include historical type of land relations existing on the certain territory, but on the other – tried to level, to eliminate, to destroy them.

Slobozhanshchyna is extremely interesting region in many aspects, in particular, from the point of view of studying land relations and folk sense of justice in the field of land law. It was formed as a result of dynamic settling the wild field lands behind the Bilgorod defense line in 17th – 18th centuries both at the expense of the powerful migration wave of Ukrainians and with the participation of Russian service class. Unlike Russian colonization which had, as a rule, state nature, settling this territory by Ukrainians was mostly spontaneous, though they tried to secure legality of their stay by means of numerous patents which Ukrainians used to obtain by dint of corresponding appeals to reigning persons (petitions).

Classical features of Ukrainian customary colonization law were shown in settling Slobozhanshchyna by the Ukrainians. These features were elaborated during centuries at least since the time of so called "going-offs" of Lithuanian-Rus State. Before that it was used while settling Zaporizzha region as well as Hetmanshchyna (Poltava and Chernihiv regions). So in 17th – 18th centuries the folk sense of justice already had its clear scheme how exactly uninhabited territory must be settled and how the land property right is obtained. In that time documents the phrases "Cossack liberties", "Cossack freedoms", "Cherkasy customs" etc. appear. They can be considered to be folk legal terms marking the phenomenon of Ukrainian customary colonization or folk and colonization law. So, despite the fact that during settling Slobozhanshchyna right of ownership by seize (zayimka) was obtained by the Ukrainian settlers not for the first time, the terms "zayimochni" (those which are seized) and "starozayimochni" (those which were seized long time ago) were assigned in pre-revolution Russian official legal practice and science mostly to this region. In Ukrainian oral tradition and later on in historical science the territory of Slobidski regiments was called "zaimanshchyna" (seized lands). Another meaning of the term "zaimanshchyna" is juridical: "land ownership obtained by the right of first seizing of unoccupied land"[1]. In the pre-revolution literature under the name "zayimka" they meant "historical way of obtaining land property in the so-called Slobidski regiments which formed Kharkiv province. Zayimka became the main way of obtaining property in Slobidskyi region"[2].

So, the main peculiarity of the folk colonization law of Ukrainians was obtaining initial land property as a result of agricultural settling of freely seized land. We must emphasize at ones that the right for initial seizing ("zayimka") is not exclusively Ukrainian legal custom, it is typical actually almost to all colonization movements of agricultural nature. It was the way, for example, British people used to settle the wild territories of Australia and North America.

The aim of this research includes tracing the main features of folk sense of justice of the Ukrainians of Slobozhanshchyna in 19th century concerning "starozaimana" ("starozayimochna") (seized long time ago) property in land. The source basis for this research is the legal cases by the suits published in the number of editions of the 19th – beg. of 20th centuries, legislative acts, protocols of the meetings of state commissions with discussions, other documents including patents of 17th – 18th centuries[3], as well as manuscripts of Central State Historical Archive in Kyiv[4].

Question about starozaimani (starozayimochni) lands of Slobozhanshchyna has bicentennial history, during which there were culmination moments and periods of slack. These two hundred years can be relatively divided into three stages.

The first one is "idyllic". Chronologically it can de defined by the time when the patents were granted to Slobidski military communities and to individuals (1669 – 1743)[5]. Ukrainian Cossacks settle the territory behind the Bilgorod line, partially spontaneously, partially in an organized way mostly arbitrarily seizing lands for ploughing up, as well as settling grounds (forests, hayfields etc.). The settling scheme was as follows: firstly Cossacks settle certain territory by the community and then apply with petitions to Moscow tsars containing requests to assign this land to them. And tsars after some time granted them patents for the whole community or individually. Other (less spread) variant: Cossacks settled lands previously defined by the Moscow authority. In both cases Moscow tsars gave them a permission to settle by the right of "zayimka" ("to seize zaimkas (pieces of land), apiaries and acquire all sorts of grounds"[6]) granting them right to own the land forever under their ancient "Cherkasy customs", as it was written in that time patents. They were also granted tax and trade tallage concessions. For that the Ukrainians had to do "military regiment service" in Cossack Slobidski regiments – of Sumy, Kharkiv, Okhtyrka, Izum etc. So, on this stage Moscow authority was interested in settling new lands and defending borders of Moscow State. That is why it was granting Ukrainian settlers the right to develop new lands, conduct pioneer agriculture as well as manage under their own customs.

The second stage – is cancellation of Cossack service, capitation and levying labour-tax on Cossacks and military inhabitants. Formally this stage can be started from the time of cessation of granting patents to Slobitski settlers. But actual offense on the rights of Slobidski Cossacks started during the reign of empress Katherine II, who having been interested in the situation in Slobidski regiments, issued Nominal Decree of 11 March 1763 concerning census of "Cherkasys" who resided in this territory. Later on General demarcation of Russia was carried out, proclaimed by Katherine II in her manifest of 19 September 1765[7], carried out in 1770 – 1790. Beginning from this time great quantity of imperial senate decrees, resolutions, instructions, laws, orders were issued. They firstly adopted, then cancelled, then explained, then expanded different regulations as to former military settlers of Slobozhanshchyna[8]. The main thing for that period is that starozayimochniks (those who seized the land long ago) were exempt from military service and transferred to the class of state peasants with levying on them state tax. Change of official status (or rather to say, names of their class) for the most part didn't influence the climate of relationship with the state. Though sometimes certain doubts and unrest among population of Slobozhanshchyna took place, especially in view of compulsory partial transition from individual way of land ownership to the communal, common one. Though in all documents those lands were mentioned as public, Ukrainian peasants of Slobozhanshchyna continued to manage in the land not under the law but under the custom, in particular, disposed of their (as to their opinion) land at their own discretion: sold, pawned it etc. That is why this stage can be called "dual law": de jure starozayimochni lands were considered public, de facto – they were in private property of peasants. After the reform of 1861 owners of starozayimochni lands (starozayimochnyks) were to make redemption for their land[9]. But they categorically refused to pay for "their own land". Exactly in that period the process of activization of folk sense of justice begins. It was connected with the comprehension of their customary-law heritage on the one hand, and with binding it together with new bourgeois realities and new legal terminology, in particular, with the concept of "private property in lands, on the other.

3. The last stage can be characterized as "culmination and upshot". It is connected with the exacerbation of the question of starozayimochni lands in 1880 – 1900s years. Peasants of Kharkiv province started bringing suits to the court about recognition after them of the ownership right of the lands seized by their direct ancestors in 17th – 18th centuries. Proving in the court their ownership right of their lands automatically meant avoiding the procedure of redemption of their own land. First steps were rather encouraging. Thus, Kharkiv Court Chamber awarded ownership of 15819 dessiatinas (1 dessiatina = approx. 2 3/4 acres) of starozayimochna land to the community of state peasants of the town of Okhtyrka. That decision was confirmed by the Senate[10] by the Decree of Civil Department of Appeal of Governmental Senate of 14 May 1880. It gave a ground for other peasant communities to bring similar suits against the Exchequer about awarding their land ownership, as well as about repayment of labour-rent paid by them for the whole period of time. The courts in 80s of 19th c. started answering to claims and awarding considerable amounts from the treasury for repayment of paid labour-rent and redemption payments. But after some time it was calculated in the Ministry of Finance that if all claims had been answered the treasury would have been obliged to repay about 50 million roubles[11]. So on 25 September 1883 it was declared by the Special Imperial Decree about suspension of cases concerning the suits about starozayimochni lands until the resolution of the question about those lands in legislative order[12]. As a result 272 cases were suspended (111 – Kharkiv Circuit Court, 28 – in Izium Circuit Court, 13 – in Sumy Circuit Court, 6 – in Kursk Circuit Court, 85 – in Kharkiv Court Chamber, 29 – in Civil Department of Appeal of Governmental Senate)[13]. After long study of the question in historical (history of settling Slobozhanshchyna) and legal (study of all statements and patents)

aspects final decision was made: starozayimochni lands are in ownership of the State Treasury, and peasants only have a right to possess them except for the situations when the patent was granted not to military community but to the individual with required mentioning patrimony rights in it.

So the conflict was settled not in favour of Slobozhanshchyna peasants. Their rights were not recognized to be of private property nature. In the conflict between the official law and custom the stronger won, that is to say – authority. The situation is rather standard and does not cause a surprise. We are interested in the other moment: how folk legal conceptions about seizing (customary seizing law) show (though through the mediation of the barristers and ardent advocates of peasants) during the trials and wide discussions in state departments and sittings of the court.

The main and the most substantial proofs of the rights of Cossacks of Slobozhanshchyna to starozayimochni lands ownership were as follows:

1. lands settled by the first military settlers of Slobozhanshchyna ("Cherkasy") did not belong to anybody; that was a "wild field", that is to say from the legal point of view it is absolutely natural to consider this situation as jus primae occupationis – right of the first seize;

2. free settling "no man's" lands and right to freely manage in them "under own Cherkasy customs" was sanctioned by the Russian State by great quantity of tsar patents; it proves that "chercasy customs" were customs of law in legal sense;

3. during two hundred years irrespective of what name and status bore that land and its owners, Ukrainians of Slobozhanshchyna managed in it under the custom as in own land. Evidence of that is that the land was descended, sold, pawned etc.

Naturally the state (especially in the person of the Exchequer) not only wasn't interested in answering the claims and repayment of compensation for the accurately paid during many years labour-rents, but simply couldn't do it. That was the reason why the denial of the Cossacks rights to land became the matter of principle, where they even didn't manage without historical and legal falsifications[14]. By the way for the Russian law, at least beginning from the 15th century, seizing of the land, even no man's, is not enough to obtain ownership of it[15]. That partly explains the aggression of some officials in the question of starozayimochni lands.

Now let us consider each proof in detail. Thus, as to the first one there was wide discussion on historical subject, which is worth several dissertations by the quantity of documents and quotations of historical literature engaged. One of the arguments from the side of authorities was that the land settled by the inhabitants of regiments of Slobozhanshchyna in 17th – 18th centuries was not no man's but was territory of Moscow State forming border region of Bilgorod Department. The Governmental Senate defended the view that the land behind the Bilgorod line (that is to say actual that time border of Russia) belonged to Moscow State giving number of rather far-fetched proofs, in particular, that there some time ago existed sites of Ancient Rus settlements (in fact sites of Ancient Rus host campaigns of that time), and that Russian guards patrolled it. These and other "proofs" were totally demolished with wide engagement of documents[16] by the peasant barristers. Those documents convince that "settling Slobidska Ukraine... took place in a way of free seizing wild lands by the Cossacks..."[17], and that the lands situated to the South from the Bilgorod line "didn't belong in that time to Moscow State but were the site of Tatar hordes roaming, what is proved by the Tatar names of many sites of ancient settlements of that terrain and that, being at last taken from Tatars and settled by Maloros (Ukrainian) Cossacks absolutely independently, this territory became part of Moscow state only since the time of voluntary taking out Moscow tsars citizenship by the Cossacks of Slobozhanshchyna"[18].

This question is worth more detailed study, as it is connected with very important customary sphere, namely difference of concepts about "own space" among agricultural and nomad peoples.

Territory, which in the future formed Slobidska Ukraine, was nothing else than wild field, which if even belonged to anybody so only to Nogai hordes roaming here regularly. Here we face the problem of conflict between customary conceptions about "own territory" among agricultural and nomad peoples. For the farmers the land is no-man's if it is not tilled. So, claims of nomads to the wild field were not considered to be worth attention. In fact whole history of formation of territory of Ukraine – is slow but irrevocable advance to the nomad lands.

By the way some historical sources show that Ukrainian Cossacks respected customary law of their Southern neighbours, in particular, their conceptions about "own space". Under the testimony of the author of "History of Rusy", "Sirko was an amazing man of rare character as to courage, energy and all military success; and with sufficient quantity of troops could easily become Tamerlan or Chingizkhan, that is to say great conqueror. But he was Zaporozhets as well, that is to say kind of fool or insane. Once Hetman Samoilovych wrote to him reproaching that in Zaporizzha steppes some aulas of Tatars roam. He writing back to him that it is done by the leave of the Host of Zaporizzha because Tatars have poor harvest of grass and for that reason he benefits from them by the reciprocity..."[19]

Tsar patents testify, in particular, the fact of the first Slobozhanshchyna settlements in the territory of regular

nomad Tatar sites. Those patents permit Cossacks to settle "along the Belgorod line in wild steppes on Tatar lands where Crimean and Nagai hordes roamed..."[20], "behind the Vorskla river, in the Crimean land, in the Tatar way, in the wild field..."[21], "from Crimean and Nagai land, in the wild steppes along Severnyi Donets and Oskol rivers in Tatar fords and crossings"[22]. It is often mentioned in patents that Cossacks (Cherkasy) settled Tatar sakmas[23]. Meaning of the word "sakma" under Yavornytskyi is tracks of numerous cavalries[24]. This territory was permanently controlled by the Nogai Tatars. It is natural that Ukrainian guards patrolled wild steppes as well. So the fact that Russian guards patrolled the wild steppe territories does not mean belonging of this land to Russian exchequer.

Examining the second evidence certainly we can recognize that people's Ukrainian and state Moscow colonization of the wild field, roaming sites of Nogai and Crimean hordes took place simultaneously. Having escaped behind the borders of Polish State Cossacks needed a protectorate. So there is nothing strange in their taking out citizenship of Moscow State, but under the conditions of preserving their land rights and own way of life. By the way in the deed of 17 March 1654 concerning accession of Mala Russia and Ukraine to Russia, Moscow tsars undertook obligation to preserve after the Mala Russia Cossacks their land ownership in inviolable integrity[25]. And both sides were interested in it.

This agreement was in force during settling Slobozhanshchyna and formation of Regiments of Slobozhanshchyna as well. So in Tsar Patent to Sumy Colonel Kondratyev Tsar granted Cossacks "irrevocable favour and all their Cherkasy's inalienable customary freedoms"[26]. Similar promises are also generously granted in other patents. In particular, V.Gurov cites following expressions that Cossacks were granted land "for eternal residence", it is permitted to "settle by themselves", "own under the Cherkasy customs". It this context classical legal custom is before us. "Legal custom – custom, sanctioned by the state and thus transformed into the source of law. Custom is sanctioned by the state in the process of judicial of administrative activity by official prescription in legal acts of the possibility to use the legal custom for regulation of certain social relations or "tacit consent" of authority to the fact of application of the legal custom in certain legal relationships or inclusion of customary law into the legislative acts – customary law codes"[27].

Folk sense of justice of Ukrainian peasants in 19th c. included the moment of necessary sanctioning their ancient customs by the state.

Since the Roman times there has been a concept of jus primae occupationis (the right of the first seize) in the law. Almost always it envisaged to certain extent the sanction of the state. Ukrainian legal tradition was not an exception. So, settlement of Cossacks along the Dniper up to the rapids was sanctioned by the King of Poland Sygizmund I. Rights, freedoms and privileges were confirmed to Cossacks by Stefan Batorii as well. As the law and state control in ancient times were not yet so perfect to take under control all incidents of settling no man's lands, to a considerable extent people's colonization was spontaneous. Only from time to time it referred to general statements of authorities or abstract permission of magnate.

In the code "The norms, under which Mala Russia people go to law" (which unfortunately never entered into force, but is a good illustration of that time real legal situation) in the chapter IV "About freedoms and liberties of Mala Russia" in point 3 of article 3 "About seizing arable and other lands" it is stated: "Ктоби себе какие грунта и угодия нажил, а оние прежде никакого владельца не имели, или би кто на пустую землю пришел и тую землю распахивал, либо чем расчищал или занял, також кому би таковая земля через договор и уступку либо по жребию или другим каким-либо правильным образом во владение достался и оною землею либо лемом владел би и владеть безспорно, таковия недвижимия имения имеют бить того, собственния, как бы куплення. (If the one obtains the land, that did not belong to anybody beforehand, he will own this land indisputably as is he had bought it.)[28]". This provision is taken from the Lithuanian Charter (chapter III) "About Freedoms of Nobles"[29]. They are as well present in the Magdeburg Law and Saxon Mirror.

On those facts interesting correlation between official codified law and folk sense of justice can be traced. In the time of settling Slobozhanshchyna provision about seizing (free enter into possession) though was associated in folk sense of justice with ancient custom but in the same time it appeared in official legislation. Despite Lithuanian Charter deals with gentry, it concerns Cossack class as well, as Batorii equalized it in rights with nobles of Rus. By the way perception of provisions of Lithuanian Charter (despite it was created according to the best European standards of European law) as own ancients customs is non-unique case in the history of Ukrainian legal culture.

The third proof of the private ownership rights to seized before lands (but not the right to possess or right of users) of Ukrainian Slobozhanxhchyna peasants during trials of the second half of 19th c. was actual implementation during two centuries of the right to freely dispose of their lands.

So as to the community of sloboda (kind of village) Yamna of Volnovska Volost of Bogodykhivskyi Povit of Kharkiv Province, the case of which was considered in Kharkiv Circuit Court in September 1881, juror attorney Fedir Plevako informed the judges that despite peasants officially had only the right of users of land, in fact "during 18th and first half of 19th c. inhabitants of Yamna were alienating their lands under the purchase deeds, and

the fact that the alienation took place even after 1788 is clear firstly from the fact that instead of 7425 dessiatinas 1506 square sazhen (1 sazhen = 2 meters 13 sm.) in the year of 1871 in possession of peasants of Yamna were already only 6081,7 dessiatinas. And secondly from the fact that inside peasant lands appeared, as it is clear from the plan, many private estates not belonging to the category of peasants' and not being included into cadastre"[30]. The peasants of this sloboda possessed land individually with succession up to 23 March 1841, when they were forced to go over to the communal land ownership.

In the other legal case – by the suit of the community of peasants of the village Cherkasko-Lozova in October – November 1882 – it was mentioned that military inhabitants owned their land "not according to the quantity of souls in each community (society) but by families and inherently. That is to say those lands were divided into lots according to the quantity of families in each community, and such form of ownership constitutes one of the features to consider the lands starozayimochni"[31]. Though later on under the pressure of administration Ukrainian peasants of Slobozhanshchyna were forced to depart from that form of ownership and go over to communal land ownership. Some communities succeeded to preserve the original type of ownership, among them is the community of the village Cherkasko-Lozova. Other documents show the same way of actual ownership by state peasants (former military settlers) as well. In particular in the extract year from the register about the way of ownership in the village Cherkasko-Lozova of Kharkiv district of Derkachivska Volost of 1859 it was indicated that the peasants own adjoining the house lands unequalizingly, arable lands – by starozayimkas (according to the law of the first seizing) unequalizingly, hayfields – by starozayimkas[32].

About actual individual and inherent (but not public) ownership of starozaimani lands it was also spoken during hearings of the case concerning the suit of the community of sloboda Liubotyna of Valkivskyi povit (district). Attorney citizens Borodskyi and Pustovoitov informed, that peasants owned the land unequalizingly by the quantity of souls ("society" – commune) but by families and inherently[33].

In discussion about starozayimochni lands Russian officials used the fact that only small quantity of patents of 17 – 18th centuries was given to concrete people with specification that for certain services they were granted patrimonial ownership of land. But they said, as in the documents of 17th – 18th centuries patrimonial right of Ukrainian peasants – first Slobozhanshchyna settlers – was not indicated precisely, their ownership should have been considered as placed (pomisnyi), that is to say not giving the right to dispose of land (to alienate, to sell, to hand down). It was not taken into account that for Cossacks the term "under Cherkasy customs" which was necessarily mentioned in patents exactly meant individual and hereditary land ownership. In the 18th c. Cossacks did not attach importance to the peculiarities of wording in tsar documents, in particular to distinction of purely Russian legal terms "placed" and "patrimonial" right. The fact of recognition by tsar of their right to settle and manage under their customs was enough for them. It was abstractness and generality of the provisions of patents of 17th – 18th c. that was used after one and a half – two centuries by the officials to refuse, skillfully manipulating historical facts and legal terminology, in recognition of ownership of the lands of descendants of the first Slobozhanshchyna settlers. It was done absolutely not taking into consideration that perfect legal terminology and entirely concrete provisions about private property did not exist yet in 17th – 18th c.

Thus, though starozaimani lands of former Slobidski regiments since the times of Katherine II de-jure were considered public, but in fact, as the data collected by the II Department of His Imperial Majesty Chancellery in the year of 1854 testify, during one and a half centuries peasants used them not under the placed right but under the right of full private property. Military settlers (it was exactly the name of the class of former Cossacks) retained the lands with transition to another rank. They could as well retain old zayimkas and go over to the new unoccupied lands, to sell them not only to their people, that is to say peasants, belonging to the same class, but to outsiders, to give to their daughters as dowry, to pawn, to bequeath it etc[34]. That is to say those legal operations were committed, which were not natural for state peasants.

Resuming, it is necessary to establish a fact that in Slobidska Ukraine among the descendants of Slobozhanshchyna Cossacks (they originally had the name of "military settlers", later on – after general demarcation – "state peasants") there were original land law relations based, on the contrary to the official law, on the custom. Mentioned above group of Ukrainian peasants inhabited so-called "starozaimani" ("starozayimochni") lands. Their ancestors took possession of them in 17th – 18th c. under the right of seizing ("first seizing", jus primae occupationis). Among the descendants of those people ("starozayimochnyks") during two centuries in fact customary legal norms of land disposal were preserved: the land was sold, bequeathed, pawned, given to their daughters as dowry etc. They retained ownership of that land even with their transition to the other social status or rank. That was absolutely at variance with the official law regulations, in particular with the Provision about state peasants. By this mentioned above group of Ukrainian peasants differed from the other kinds of Slobozhanshchyna owners (individual farmstead holders and landlords, on the one hand, – mainly Russian servicemen of different ranks and their descendants, and serf peasants (both Ukrainians and Russians), which after the 1861 reform were included into the class of state peasants as well).

19th century was characterized by special stirring up in juridical sphere, activization of codification work, working out single juridical terminology. This process was accompanied by wide discussions both in scientific circles and state departments. Second half of 19th c. is characterized by considerable increase of sense of justice in the highest circles of that time society. Due to activization of work of the barristers this process roused as well people's sense of justice of Slobozhanshchyna peasants reviving in the memory events of bicentenary remoteness, when their ancestors had been settling wild field lands according to the right of the first seizing. Having studied the materials related to the trials dedicated to the suits of Slobozhanshchyna village communities, the conclusion about conservatism of people's sense of justice can be made. Until there was no threat of violation of the custom, the "starozayimochnyks" were completely satisfied with the life in the situation of dual law: de jure they managed in the state's land but de facto – in their own. But in the extreme situation – when they had to redeem their own land, – historical memory and sense of justice, in particular in people's consideration of succession, are livened up.

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[1] Юридична енциклопедія. – Т. 2. – Київ, 1999. – С. 467. Старозаимочныя земли. Решения Харьковского окружного суда, по искам крестьянских обществ к Харьковской казенной палате о старозаимочных землях, с приложением жалованных Слободским полкам грамот и других документов. Издание Николая Чижевского. – Харьков, 1883. – С. 16.

[2] Старозаимочныя земли. Решения Харьковского окружного суда, по искам крестьянских обществ к Харьковской казенной палате о старозаимочных землях, с приложением жалованных Слободским полкам грамот и других документов. Издание Николая Чижевского. – Харьков. 1883. – С. 16.

[3] All these materials were issued in 19th с. See: Сборник решений, состязательных бумаг, грамот, указов и других документов, относящихся к вопросу о старозаимочном землевладении в местности бывшей Слободской Украйны (Материалы к истории старозаимочного землевладения, извлеченные из так называемых старозаимочных процессов, производящихся в судебных учреждениях Харьковского округа). Составил В.В.Гуров при участии Е.К.Бродского. – Харьков, 1884; О старозаимочном землевладении из местности бывших слободских полков: Свод материалов по изданию закона 17 мая 1899 г. Издание Министерства юстиции. – С.Петербург. – 1904; Старозаимочныя земли. Решения Харьковского окружного суда, по искам крестьянских обществ к Харьковской казенной палате о старозаимочных землях, с приложением жалованных Слободским полкам грамот и других документов. Издание Николая Чижевского. – Харьков, 1883; Историко-статистическое описание Харьковской епархии. Отделение I. Краткий обзор епархии и монастыри: Издание в пользу Харьковского духовного училища девиц. – Харьков, 1859.

[4] See: Central Historical State Archive in Kyiv: F. 1072 "Производство Харьковской судебной палаты по первому гражданскому департаменту", F. 1856 "Старобельский уездный суд" О старозаимочном крестьянском землевладении. – С. 43.

[5] О старозаимочном крестьянском землевладении. – С. 43; Грамота 1 сентября 1705 г. Сумскому полковнику Кондратьеву. – Старозаимочные земли. – С. 116 – 117.

[6] Грамота 1 сентября 1705 г. Сумскому полковнику Кондратьеву. – Старозаимочные земли. – С. 116 – 117. First demarcation instruction of Elisabeth I of 15 May 1754 is not taken into account as it was not implemented. See: О старозаимочном землевладении. – С. 265.

[7] First demarcation instruction of Elisabeth I of 15 May 1754 is not taken into account as it was not implemented. See: О старозаимочном землевладении. – С. 265. The texts are contained in collection: О старозаимочном землевладении... – С. 573 – 578.

[8] The texts are contained in collection: О старозаимочном землевладении... – С. 573 – 578.

[9] By the decision of State Council (Государственный Совет) "state labour rent is transformed from the 1 January 1887 into redeem payments". Cited after: О старозаимочном землевладении... – С. 26.

[10] Materials of the case see: Старозаимочные земли... – С. 37 – 38.

[11] Леонтьев А.А. Крестьянское право: Систематическое изложение особенностей законодательства о крестьянах. – С.Петербург. – 1909. – С. 232.

[12] О старозаимочном крестьянском землевладении. – С. 3 – 4.

[13] Ibid. – С. 4.

[14] See in particular: "Сборник судебных решений...", where absolutely falsified provisions about the history of settling Slobozhanshchyna are revealed.

[15] See: Неволин. История Российского гражданского законодательства. Т. IV. – С. 3, comment 2.

[16] Сборник судебных решений... – С. 66 – 146.

[17] Ibid. – С. 113.

[18] Ibid. – С. 113 – 114.

[19] Кониский Г. Історія Русов или Малой России. – Москва, 1846 (reprinted edition. – Київ., 1991). – С. 226.

[20] Грамота 1 сентября 1705 г. Сумскому полковнику Кондратьеву... – С. 116

[21] Выпись из дела Поместного Приказа по челобитью 26 февраля 1686 г., о наделениях Яменских Черкас землею. – Старозаимочные земли... – С. 92.

[22] Грамота 17 февраля 1682 г. – Сборник судебных решений... – С. 137.
[23] Историко-статистическое описание Харьковской епархии. Отделение I. Краткий обзор епархии и монастыри. Отделение III. – Харьков. – 1862. – С. 407.
[24] Д.Яворницький.
[25] ПСЗ. – Т. 1. – № 119.
[26] Грамота 1 сентября 1705 г. Сумскому полковнику Кондратьеву... – С. 116.
[27] Усенко І.Б. Звичай правовий // Юридична енциклопедія – Т.2. – Київ, 1999. – С. 568.
[28] Права, за якими судиться… – С. 48.
[29] Ibid. – Табл. № 1. – С. XVII.
[30] Старозаимочные земли… – С. 3 – 4.
[31] Ibid. – P. 22.
[32] Гуров. – С. 676.
[33] Старозаимочные… – С. 64.
[34] Ibid. – С. 34.

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ЗВИЧАЄВО-ПРАВОВІ УЯВЛЕННЯ УКРАЇНЦІВ ЩОДО ЗЕМЕЛЬНОГО ПРАВА У XIX СТОЛІТТІ (за матеріалами судових справ щодо старозаїмочних земель Слобожанщини)

У статті на основі архівних матеріалів простежено основні етапи правових уявлень українців Слобожанщини щодо власності на так звані старозаймані (старозаїмочні) землі. Акцент зроблений на XIX ст., коли в ході судових розглядів виникла широка дискусія щодо того, чи мають українці-слобожани право власності на землю, чи лише право володіння і користування. XIX ст. цікаве ще й тим, що в цей час у селянській правосвідомості ожили давні уявлення, пов'язані з українським осадним звичаєвим правом, а також переконання, що вільнозаймані землі, оброблені з цілини, зеселені "з кореню" є приватною власністю нащадків козаків Слобідських полків.