PART I.

CONDITION OF THE SLAVE.

CHAPTER I.

DEFINITION AND GENERAL CHARACTERISTICS.

THE Institutes tell us that all men are either slaves or free[1], and both liberty and slavery are defined by Justinian in terms borrowed from Florentinus. "Libertas," he tells us, "est naturalis facultas eius quod cuique facere libet nisi si quid vi aut iure prohibetur[2]." No one has defined liberty well: of this definition, which, literally understood, would make everyone free, the only thing to be said at present for our purpose is that it assumes a state of liberty to be "natural."

"Servitus," he says, "est constitutio iuris gentium qua quis dominio alieno contra naturam subicitur[3]." Upon this definition two remarks may be made[4].

i. Slavery is the only case in which, in the extant sources of Roman law, a conflict is declared to exist between the *Ius Gentium* and the *Ius Naturale*. It is of course inconsistent with that universal equality of man which Roman speculations on the Law of Nature assume[5], and we are repeatedly told that it is a part of the *Ius Gentium*, since it originates in war[6]. Captives, it is said, may be slain: to make them slaves is to save their lives; hence they are called *servi, ut servati*[7], and thus both names, *servus* and *mancipium*, are derived from capture in war[8].

[1] In. 1. 3. *pr.* [2] In. 1. 3. 1; D. 1. 1. 4. *pr.*; 1. 5. 4. *pr.*
[3] In. 1. 3. 2; D. 1. 5. 4. 1; D. 12. 6. 64.
[4] Girard, Manuel, Bk 2, Ch. I. gives an excellent account of these matters.
[5] See the texts cited in the previous notes. [6] In. 1. 5. *pr.*; D. 1. 1. 4; 1. 5. 4.
[7] 50. 16. 139. 1.
[8] 1. 5. 4. For the purpose of statement of the Roman view, the value of the historical, moral and etymological theories involved in these propositions is not material.

ii. The definition appears to regard subjection to a *dominus* as the essential fact in slavery. It is easy to shew that this conception of slavery is inaccurate, since Roman Law at various times recognised types of slaves without owners. Such were

(*a*) The slave abandoned by his owner. He was a *res nullius*. He could be acquired by *usucapio*, and freed by his new owner[1].

(*b*) *Servi Poenae*. Till Justinian's changes, convicts or some types of them were *servi*: they were strictly *sine domino*; neither *Populi* nor *Caesaris*[2].

(*c*) Slaves manumitted by their owner while some other person had a right in them[3].

(*d*) A freeman who allowed a usufruct of himself to be given by a fraudulent vendor to an innocent buyer. He was a *servus sine domino* while the usufruct lasted[4].

It would seem then that the distinguishing mark of slavery in Rome is something else, and modern writers have found it in right-lessness. A slave is a man without rights, i.e. without the power of setting the law in motion for his own protection[5]. It may be doubted whether this is any better, since, like the definition which it purports to replace, it does not exactly fit the facts. Indeed, it is still less exact. At the time when Florentinus wrote, Antoninus Pius had provided that slaves ill treated by their owner might lodge a complaint, and if this proved well founded, the magistrate must take certain protective steps[6]. So far as it goes, this is a right. *Servi publici Populi Romani* had very definite rights in relation to their *peculia*[7]. In fact this definition is not strictly true for any but *servi poenae*[8]. Nor does it serve, so far as our authorities go, to differentiate between slaves and alien enemies under arms. But even if it were true and distinctive, it would still be inadmissible, for it has a defect of the gravest kind. It looks at the institution from an entirely non-Roman point of view. The Roman law of slavery, as we know it, was developed by a succession of practical lawyers who were not great philosophers, and as the main purpose of our definition is to help in the elucidation of their writings, it seems unwise to base it on a highly abstract conception which they would hardly have understood and with which they certainly never worked[9]. Modern writers on jurisprudence usually make the conception of a right the basis of

[1] 41. 7. 8. [2] *Post*, Ch. XII.
[3] Fr. Dosith. 11; Ulp. 1. 19; C. 7. 15. 1. 2; *post*, Ch. XXV.
[4] 40. 12. 23. *pr.*; *post*, Ch. XVIII.
[5] Warnkoenig, Inst. Rom. Jur. priv. § 121; Moyle, *ad* Inst. 1. 3. 2; Accarias, Précis de Dr. Rom. I, p. 89.
[6] G. 1. 53; *post*, p. 37 where an earlier right of the same kind is mentioned.
[7] *Post*, Ch. XV.
[8] Other equivocal cases may be noted; 2. 4. 9; 5. 1. 53; 48. 10. 7.
[9] See however 50. 17. 32.

their arrangement of legal doctrines[1]. The Romans did not, though they were, of course, fully aware of the characteristic of a slave's position on which this definition rests. "Servile caput," says Paul, "nullum ius habet[2]." But they recognised another characteristic of the slave which was not less important. Over a wide range of law the slave was not only rightless, he was also dutiless. "In personam servilem nulla cadit obligatio[3]." Judgment against a slave was a nullity: it did not bind him or his master[4]. In the same spirit we are told that slavery is akin to death[5]. If a man be enslaved his debts cease to bind him, and his liability does not revive if he is manumitted[6]. The same thing is expressed in the saying that a slave is *pro nullo*[7]. All this is much better put in the Roman definition. The point which struck them, (and modern writers also do not fail to note it,) was that a slave was a *Res*, and, for the classical lawyers, the only human *Res*. This is the meaning of Florentinus' definition. *Dominus* and *dominium* are different words. The statement that slaves as such are subject to *dominium* does not imply that every slave is always owned[8]. Chattels are the subject of ownership: it is immaterial that a slave or other chattel is at the moment a *res nullius*[9].

From the fact that a slave is a *Res*, it is inferred, apparently as a necessary deduction[10], that he cannot be a person. Indeed the Roman slave did not possess the attributes which modern analysis regards as essential to personality. Of these, capacity for rights is one[11], and this the Roman slave had not, for though the shadowy rights already mentioned constitute one of several objections to the definition of slaves as "rightless men," it is true that rights could not in general vest in slaves. But many writers push the inference further, and lay it down that a slave was not regarded as a person by the Roman lawyers[12]. This view seems to rest on a misconception, not of the position of the slave, but of the meaning attached by the Roman lawyers to the word *persona*. Few legal terms retain their significance unchanged for ever, and this particular term certainly has not done so. All modern writers agree, it seems, in requiring capacity for right. The most recent philosophy seems indeed to go near divorcing the idea of personality from its human elements. For this is the effect of the theory which sees in the Corporation a real, and not a fictitious

[1] Hearn (Legal Duties and Rights) alone among recent English writers bases his scheme on Duties. But this is no better from the Roman point of view.
[2] 5. 3. 1. [3] 50. 17. 22. *pr.* [4] 5. 1. 44. 1.
[5] 50. 17. 209. Nov. 22. 9; G. 3. 101. [6] 44. 7. 30. [7] 28. 8. 1. *pr.*
[8] Justinian swept away nearly all the exceptional cases. C. 7. 15. 1. 2b; Nov. 22. 8; 22. 12.
[9] The objection, that slavery is an "absolute," not a "relative," status, is thus of no force against the Roman definition.
[10] Girard, Manuel, p. 92.
[11] Girard, *op. cit.* p. 90, "L'aptitude à être le sujet de droits et devoirs légaux."
[12] Girard, *loc. cit.*; Moyle, *op. cit.* Introd. to Bk 1; etc.

person[1]. If, now, we turn to the Roman texts, we find a very different conception. A large number of texts speak of slaves as persons[2]. There does not seem to be a single text in the whole Corpus Iuris Civilis, or in the Codex Theodosianus, or in the surviving classical legal literature which denies personality to a slave. It is clear that the Roman lawyers called a slave a person, and this means that, for them, "persona" meant human being[3].

It must however be borne in mind that the word has more than one meaning. Its primary meaning is not the man, but the part he plays, and thus a number of texts, including many of those above cited, speak not of the man, but of the *persona* of the man. The distinction is not material, but it may have suggested a further distinction made in modern books. It is the usage of some writers to speak of two senses in which the word is used: one technical, in which it means "man capable of rights"; the other wide, in which it means simply "man[4]." But if the texts be examined on which this distinction is based, it will be found that, so far as Roman law is concerned, this means no more than that in some texts the topic in question is such that rights are necessarily contemplated, while in others this is not the case.

A doctrine which purports to be really Roman law must necessarily be somehow rested on the texts. It is desirable to note what sort of authority has been found for the view that a slave was not a person for the Roman lawyers. One group of texts may be shortly disposed of: they are the texts which say that a slave is *pro nullo*, and that slavery is akin to death[5]. These are, as they profess to be, mere analogies: they shew, indeed, that from some points of view a slave was of no legal importance, but to treat them as shewing that *persona* means someone of legal importance is a plain begging of the question. The others are more serious. There is a text in the Novellae of Theodosius[6], (not reproduced in Justinian's Code,) which explains the slave's incapacity to take part in legal procedure

[1] See Maitland, Political Theories of the Middle Age (Gierke), Introd. p. xxxiv.

[2] G. 1. 120; 1. 121; 3. 189; 4. 135. Vat. Fr. 75. 2, 75. 5, 82 (drawing legal inferences from his personality); C. Th. 14. 7. 2 (rejected by Mommsen); C. 4. 36. 1. *pr.*; C. 7. 32. 121; Inst. 1. 8. *pr.*; 3. 17. 2; 4. 4. 7 (all independent of each other and of Gaius); D. 7. 1. 6. 2; 7. 2. 1. 1; 9. 4. 29; 11. 1. 20. *pr.*; 30. 86. 2 (twice); 31. 82. 2; 39. 6. 23; 45. 3. 1. 4; 47. 10. 15. 44; 47. 10. 17. 3; 48. 19. 10. *pr.*; 48. 19. 16. 3; 50. 16. 2. 215; 50. 17. 22. *pr.* See also Bas. 44. 1. 11, and Sell, Noxalrecht, p. 28, n. 2.

[3] It would not be surprising if there were some looseness, since a slave, while on the one hand an important conscious agent is on the other hand a mere thing. But the practice is unvarying. It is commonly said that the personality of the slave was gradually recognised in the course of the Empire. What were recognised were the claims of humanity, cp. 21. 1. 35. To call it a recognition of personality (Pernice, Labeo, 1. pp. 113 *sqq.*, and many others) is to use the word personality in yet another sense, for it still remained substantially true that the slave was incapable of legal rights.

[4] See Brissonius, De Verb. Sign., sub v. *persona*.

[5] nn. 4, 5, 6 on p. 3.

[6] Nov. Theod. 17. 1. 2: *quasi nec personam habentes.*

by the fact that he has no *persona*. This seems weighty, as it draws legal consequences from the absence of a *persona*. But it must be noted that similar language is elsewhere used about young people without curators[1], and the true significance of these words is shewn by a text which observes that a slave is not a *persona qui in ius vocari potest*[2]. A text in the Vatican Fragments (also in the Digest[3]) says that a *servus hereditarius* cannot stipulate for a usufruct because *ususfructus sine persona constitui non potest*. This is nearer to classical authority, but in fact does not deny personality to a slave. That is immaterial: the usufruct could never vest in him. The point is that a *hereditas iacens* is not a *persona*, though, for certain purposes, *personae vicem sustinet*[4]. Thus in another text the same language is used on similar facts, but the case put is that of *filius vel servus*[5]. A text of Cassiodorus[6] has exactly the same significance[7]. There are however two texts of Theophilus[8] (reproducing and commenting on texts of the Institutes) in which a slave is definitely denied a *persona*. He explains the fact that a slave has only a derivative power of contracting or of being instituted heir by the fact that he has no *persona*. The reason is his own: it shews that in the sixth century the modern technical meaning was developing. But to read it into the earlier sources is to misinterpret them: *persona*, standing alone, did not mean *persona civilis*[9].

Slavery has of course meant different things at different times and places[10]. In Rome it did not necessarily imply any difference of race or language. Any citizen might conceivably become a slave: almost any slave might become a citizen. Slaves were, it would seem, indistinguishable from freemen, except so far as some enactments of late date slightly restricted their liberty of dress[11]. The fact that all the civil degrees known to the law contained persons of the same speech, race, physical habit and language, caused a prominence of rules dealing with the results of errors of Status, such as would otherwise be unaccountable. Such are the rules as to *erroris causae probatio*[12], as to the freeman who lets himself be sold as a slave[13], as to error in status

[1] C. Th. 3. 17. 1; C. 5. 34. 11. [2] 2. 7. 3. *pr.* [3] 45. 3. 26; V. Fr. 55.
[4] 9. 2. 13. 2; In. 3. 17. *pr.*
[5] 36. 2. 9. It was only in case of legacy, not of stipulation, that the usufruct depended in any way on the life of the slave, *post*, Ch. VI. [6] Var. 6. 8. 2.
[7] 36. 1. 57. 1 (Papinian) may be understood as denying personality, but it is really of the same type: *rescripsit non esse repraesentandam hereditatis restitutionem quando persona non est cui restitui potest*. [8] *Ad* In. 2. 14. 2; 3. 17. *pr.*
[9] A correct decision on this matter is necessary before we can say what Gaius meant by *Ius quod ad personas pertinet*.
[10] Wallon, Histoire de l'Esclavage; Winter, Stellung der Sklaven bei d. Juden; Cobb, Slavery (in America).
[11] C. Th. 14. 10. 1; 14. 10. 4. As to the cautious abstention from such restrictions in earlier law, see Seneca, De Clementia, 1. 24; Lampridius, Alex. Severus, 27. 1.
[12] G. 1. 67–75; Ulp. 7. 4. [13] In. 1. 3. 4, *post*, Ch. XVIII.

of the witness of a will[1], and other well known cases[2]. There was also a rule that where a man, who afterwards turned out to be a slave, had given security *iudicatum solvi*, there was *restitutio in integrum*[3]. To the same cause are expressly set down the rules as to acquisition through a *liber homo bona fide serviens*[4], and the rule that the *bona-fide* sale of a freeman as a slave was valid, as a contract, *quia difficile potest dignosci liber homo a servo*[5]. The well-known rule that *error communis facit ius* had more striking illustrations than those already mentioned. Thus, though a slave could not validly be appointed to decide an arbitration[6], yet an arbitral decision by one apparently free was declared to be valid though he ultimately proved to be a slave[7]. And where a fugitive slave was appointed Praetor, his official acts were declared by Ulpian to be valid[8].

Slavery did not necessarily mean manual labour: the various services involved in the maintenance of an establishment in town or country were all rendered by troops of slaves, having their appropriate official names, derived from the nature of their service. It is not necessary to recite these names: numbers of them will be found in the texts dealing with the interpretation of legacies and contracts[9]. A broad distinction is repeatedly drawn between Urban and Rustic slaves, as it was customary to make legacies of the one or the other class generally, probably with other property. *Mancipia rustica* were, broadly, those engaged in the cultivation of land and other rural pursuits; *urbana* were those whom *paterfamilias circum se ipsius sui cultus causa habet*[10], elsewhere defined as *quae totius suppellectilis notitiam gerunt*[11]. The cook and the philosopher were alike urban, the land-agent (*villicus*) and the labourer were alike rustic. The distinction is founded partly on mode and place of maintenance, partly on nature of service, and partly on direct statement in the owner's register of slaves[12]. Indeed in the construction of legacies, as the testator's intention was the point to be determined, this register was conclusive where it was available[13]. Place of residence was not conclusive; *non loco sed usus genere dis-*

[1] In. 2. 10. 7.
[2] The person *de statu suo incertus* (Ulp. 20. 11, etc.); institution of *servus alienus* as a freeman (the case of Parthenius), *post*, Ch. VI.; position of child of *ancilla* supposed to be free, *post*, Ch. XXVII. There are other cases in the title *De iure dotium*, e.g. 23. 3. 59. 2.
[3] 2. 8. 8. 2. [4] 45. 3. 34.
[5] 18. 1. 4. 5. 6; 34. 2. 70. As often, the rule was severer in stipulation. Here the agreement was void for impossibility, 44. 7. 1. 9; 45. 1. 83. 5. 103. In 18. 2. 14. 3 we are told that sale to *servus alienus* thought free was valid, while one to my own slave was in any case void, *post*, Ch. XXIX.
[6] 4. 8. 9. *pr.* [7] C. 7. 45. 2. *Post*, p. 84.
[8] 1. 14. 3. This extreme view may be peculiar to Ulpian. Cp. Dio Cassius, 48. 34. In England analogous cases have needed express legislation. See e.g. 51 & 52 Vict. c. 28.
[9] 32. 61; 33. 7. 8. 12 *sqq.*; P. 3. 6. 35 *sqq.*; Wallon, *op. cit.* Bk 2, Ch. III.; Blair, Slavery in Rome, 131. [10] 32. 60. 1.
[11] C. 5. 37. 22. 2. [12] 32. 99. *pr.*; 33. 7. 27. 1. [13] 50. 16. 166.

tinguuntur[1]. Residence might be temporary: a child put out to nurse in the country was not on that account rustic[2]. Even nature of service was not conclusive. Some forms of service were equivocal, e.g. those of *venatores* and *aucupes*[3], *agasones* or *muliones*[4], or even *dispensatores*, who, if they were managing town properties were urban, but if they were in charge of a farm were rustic, differing little from *villici*[5].

For many of their employments special skill and training were necessary, and a slave so trained (*arte praeditus*) acquired, of course, an added value, especially if he had several *artificia*[6]. In some texts a distinction is drawn, in this connexion, between *officium* and *artificium*[7]. The language of Marcian suggests, as do other applications of the word, that an *officium* was an occupation having reference to the person or personal enjoyments of the *dominus*[8]. The distinction is not prominent and was probably of no legal importance, except in the construction of legacies and the like.

Work of the most responsible kinds was left in the hands of slaves. Among the more important functions may be mentioned those of *negotiator*, *librarius*, *medicus*, *actor*, *dispensator*, *villicus*, *paedagogus*, *actuarius*[9]. They managed businesses of all kinds[10]. We find a slave carrying on the trade of a banker without express orders[11]. A slave rents a farm and cultivates it as tenant, not as a mere steward[12]. Aulus Gellius[13] gives a list of philosophers who were slaves among the Greeks and Romans. Broadly, it may be said that in private life there was scarcely an occupation in which a slave might not be employed: almost any industry in which freemen are now engaged might be carried on in Rome by slaves. It must however be remembered that all this is not true in the greater part of the Republican period. In that period the evidence shews that slaves were relatively few and unimportant[14]. And in the decline of the Empire there was a tendency to exclude slaves from responsible classes of employment, and to leave these in the hands of freemen[15].

It is obvious that slaves so differently endowed would differ greatly in value. It is improbable that the increase in number involved any

[1] 33. 7. 12; 33. 10. 12, etc. [2] 50. 16. 210. [3] 32. 99. 1; P. 3. 6. 71.
[4] 32. 60. 1. 99. 2; P. 3. 6. 72. [5] 50. 16. 166.
[6] 32. 65. 2; C. 5. 37. 22. Teaching slaves *artes* was among *utiles impensae* for the purpose of *Dos*. 25. 1. 6.
[7] 32. 65. 1; 40. 4. 24; 50. 15. 4. 5; etc.
[8] 32. 65. 1. See Brissonius, De Verb. Sign., sub v. *officium*.
[9] 9. 2. 22; 32. 64; 38. 1. 25; *h. t.* 49; 40. 5. 41. 6; 40. 7. 1. 21. *pr.*; 40. 12. 44. 2; P. 3. 6. 70; G. 1. 19, 39, etc.
[10] 14. 3. 5. 7. See Marquardt, Vie privée des Romains, i. Ch. IV.
[11] 2. 13. 4. 3. [12] 33. 7. 12. 3. 20. 1. Cp. 33. 7. 18. 4.
[13] Noct. Att. 2. 18. For further reff. see Girard, Manuel, 93 *sqq*.
[14] For further details as to the number of slaves at different epochs and as to their varied and independent employments, see Wallon, *op. cit.* ii. Ch. III.; Sell, Noxalrecht, pp. 129 *sqq*.; Friedlaender, Sittengesch. ii. 228 (ed. 7); Voigt, Röm. R. G. 1. 118 *sqq*.; Marquardt, *loc. cit.*; Blair, State of Slavery among the Romans, Ch. VI. [15] *Post*, Ch. XIV.

diminution in exchange value of individual similarly qualified slaves, for it was accompanied by a great increase in quantity of other forms of convertible wealth. Changes in economic conditions and repeated alterations in the intrinsic value of coins called by a particular name, make the task of tracing the changes in value of slaves too difficult to be attempted here. It is clear however that they were of considerable value. In A.D. 139 a female child of six years of age was sold for 205 *denarii*[1]. This seems a high price, and the presence in the contract note of the unexplained expression, "sportellaria empta," leads Mommsen[2] to suppose that she was thrown in, "sportulae causa," in the purchase of her mother. But the price seems too low for this. In general, in classical times, the prices for ordinary slaves seem to have varied from 200 to 600 *denarii*[3]. These are ordinary commercial prices. Of course, for slaves with special gifts, very much higher prices might be given, and occasional enormous prices are recorded by the classical writers[4]. The prices in Justinian's time seem a little, but not much, higher. Two enactments of his fix judicial valuations, one for application in case of dispute where there is a joint legacy of *Optio Servi*, the other for the case of manumission of common slaves[5], and they are almost identical. The prices range from 10 *solidi* for ordinary children to 70 for slaves with special skill who were also eunuchs. From another enactment of his it appears that 15 *solidi* was a rather high price[6]. Other prices are recorded in the Digest[7], ranging from 2 to 100 *solidi*. But these are of little use: nearly all are imaginary cases, and even if we can regard them as rough approximations to value, we cannot tell whether the figures are of the age of Justinian or were in the original text. Another indication of price is contained in the fact that 20 *solidi* was taken as about the mean value of a slave by legislation of the classical age[8].

It may be well to make some mention of the more important terms which are used as equivalent to *servus*, or to describe particular classes of slaves, in the sources. *Servus* appears to be used generally, without reference to the point of view from which the man is regarded. *Mancipium* is usually confined to cases in which the slave is regarded as a chattel. Thus it is common in such titles as that on the Aedilician Edict[9], but not in such as that on the *Actio de peculio*[10]. *Ancilla* is

[1] Bruns, Fontes i. 289.
[2] C. I. L. 3. 937.
[3] See the documents in Bruns, *op. cit.* 288. 29, 315—317, 325. See also Girard, Textes, 806 *sqq*. For the manumission of an adult woman 2200 *drachmae* were paid in Egypt in A.D. 221. Girard, *op. cit.* Append.
[4] Marquardt, Vie privée, i. Ch. IV.
[5] C. 6. 43. 3; 7. 7. 1.
[6] C. 6. 47. 6.
[7] See for some of them, Marquardt, *loc. cit.*
[8] For these and other details as to the price of slaves at various times, see Wallon, *op. cit.* Bk 2, Ch. IV.; Sell, Noxalrecht, 147.
[9] D. 21. 1. E.g., *h. t.* 51. *pr. mancipium vitiosum...servus emat.*
[10] 15. 1.

the usual term for an adult female slave, though *mulier* is of course found, and *serva* more rarely[1]. Children are called *puer* and *puella*. *Puer*, for an adult, though it is common in general literature, is found only occasionally in the legal texts[2]. *Puella* seems never to be used there without the implication of youth. A *verna* is a slave born and reared in the house of his master, and occupies a somewhat privileged position, but in law his position is not different from that of any other slave. A *novicius*[3] is an untrained slave, as opposed to a *veterator*, an experienced hand, or, more exactly, a man trained for a particular function. The edict of the Aediles contained a provision that a *veterator* was not to be sold as a *novicius*, the point apparently being that, at least for certain purchasers, a man not trained to a particular kind of work was more valuable, as being more readily trained to the work for which the purchaser wanted him. The provision seems to be mentioned only twice[4]: the surviving contract notes shew that it was not necessary to state which he was; indeed, in none of them is the slave's employment mentioned. It was a secondary provision of the edict[5]; in fact it seems to have been found necessary to declare that the statement that a man was untrained was a warranty, because, while it was plain that to sell, as a trained man, one who was untrained, was a fraud, it was not so obvious that any material wrong was done in the converse case.

The morality of slaves is not within our scope. It is clear on the literary tradition that they had notoriously a bad reputation. The special legislation which we shall have to notice will sufficiently shew the state of things at Rome. But we need not go into details to prove for Rome what is likely to be a concomitant of all slavery[6].

[1] E.g. P. 2. 24. 1; D. 11. 3. 1. *pr.* (the words of the Edict); 23. 3. 39; 48. 5. 6. *pr.* *Homo* is of course common. *Famulus* is rare in legal texts.

[2] E.g. 32. 81. *pr.*; 50. 16. 204.

[3] Brissonius, *op. cit.* sub v. *Novicius*.

[4] 21. 1. 37; *h. t.* 65. 2. The latter text tells us that a liberal education did not necessarily make him a *veterator*. *Post*, p. 57. *Veteranus* in 39. 4. 16. 3 seems not to mean quite the same thing. For the purpose of *professio* (*post*, p. 38) *novicius* is one who has served for less than a year.

[5] Lenel, E. Perp., p. 443.

[6] See for instance, Wallon, *op. cit.* Bk 2, Ch. VII.; Winter, Stellung der Sklaven bei der Juden, pp. 59—61. Cobb, Slavery, pp. 49—52, takes a different view, as to negro slavery. He is a determined apologist of the "peculiar institution" in America. He says at the beginning of his introduction, "No organized government has been so barbarous as not to introduce it," (i.e. Slavery,) "among its customs."

CHAPTER II.

THE SLAVE AS *RES*.

THIS aspect of the Slave was necessarily prominent in the Law. He was the one human being who could be owned. There were men in many inferior positions which look almost like slavery: there were the *nexus*, the *auctoratus*, the *addictus*, and others. But none of these was, like the slave, a *Res*. *Potestatis verbo plura significantur: in persona magistratuum imperium...in persona servi dominium*[1]. The slave is a chattel, frequently paired off with money as a *res*[2]. Not only is he a chattel: he is treated constantly in the sources as the typical chattel. The Digest contains a vast number of texts which speak of the slave, but would be equally significant if they spoke of any other subject of property. With these we are not concerned: to discuss them would be to deal with the whole law of property, but we are to consider only those respects in which a slave as a chattel is distinguished in law from other chattels[3]. From their importance follows the natural result that the rules relating to slaves are stated with great fulness, a fulness also in part due to the complexity of the law affecting them. This special complexity arises mainly from five causes. (i) Their issue were neither *fructus* nor accessories, though they shared in the qualities of both. (ii) They were capable of having *fructus* of kinds not conceivable in connexion with other *res*, i.e. gifts and earnings. (iii) The fact that they were human forced upon the Romans of the Empire some merciful modifications of the ordinary rules of sale. (iv) They had mental and moral qualities, a fact which produced several special rules. (v) There existed in regard to them a special kind of *interitus rei*, i.e. Manumission[4].

Slaves were *res mancipi* and it does not appear that there was in their case any question of maturity or taming such as divided the schools, in relation to cattle, upon the point as to the moment at

[1] 50. 16. 215. [2] See 18. 1. 1. 1; C. 4. 5. 10; 4. 38. 6, 7; 4. 46. 3; 8. 53. 1.
[3] As to the right of preemption in the case of a new-born slave (C. Th. 5. 10. 1) see *post*, Ch. XVIII.
[4] The special rules as to possession of slaves are considered, *post*, Ch. XII.