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William Warwick Buckland

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THE ROMAN LAW OF SLAVERY

THE CONDITION OF THE SLAVE IN PRIVATE
LAW FROM AUGUSTUS TO JUSTINIAN

BY

W. W. BUCKLAND, M.A.

OF THE INNER TEMPLE, BARRISTER-AT-LAW,
FELLOW AND TUTOR OF GONVILLE AND CAIUS COLLEGE, CAMBRIDGE

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PREFACE

THE following chapters are an attempt to state, in systematic form, the most characteristic part of the most characteristic intellectual product of Rome. There is scarcely a problem which can present itself, in any branch of the law, the solution of which may not be affected by the fact that one of the parties to the transaction is a slave, and, outside the region of procedure, there are few branches of the law in which the slave does not prominently appear. Yet, important as the subject is, for the light it might be expected to throw on legal conceptions, there does not exist, so far as I know, any book which aims at stating the principles of the Roman Law of slavery as a whole. Wallon's well-known book covers so much ground that it cannot treat this subject with fulness, and indeed it is clear that his interest is not mainly in the law of the matter. The same is true of Blair's somewhat antiquated but still readable little book.

But though there exists no general account, there is a large amount of valuable literature, mostly foreign. Much of this I have been unable to see, but without the help of continental writers, chiefly German, I could not possibly have written this book. Indeed there are branches of the subject in which my chapters are little more than compilation. I have endeavoured to acknowledge my indebtedness in footnotes, but in some cases more than this is required. It is perhaps otiose to speak of Mommsen, Karlowa, Pernice among those we have lost, or of Gradenwitz, Krüger, Lenel among the living, for to these all students of the Roman Law owe a heavy debt, but I must mention here my special obligations to Erman, Girard, Mandry, Salkowski and Sell, whose valuable monographs on branches of the Law of Slavery have been of the greatest possible service. Where it has been necessary to touch on

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subjects not directly connected with Slavery I have made free use of Girard's "Manuel" and Roby's "Roman Private Law." I greatly regret that the second edition of Lenel's "Edictum Perpetuum" and the first volume of Mitteis' "Römisches Privatrecht" appeared too late to be utilised except in the later chapters of the book.

In dealing with the many problems of detail which have presented themselves, I have, of course, here and there, had occasion to differ from views expressed by one or other of these writers, whose authority is so much greater than my own. I have done so with extreme diffidence, mindful of a certain couplet which speaks of

"What Tully wrote and what Justinian,
And what was Pufendorf's opinion."

I have not dealt, except incidentally, with early law or with the law affecting *libertini*. The book is already too large, and only the severest compression has kept it within its present limits. To have included these topics would have made it unmanageable. It was my original intention not to deal with matter of procedure, but at an early stage I found this to be impracticable, and I fear that the only result of that intention is perfunctory treatment of very difficult questions.

Technical terms, necessarily of very frequent occurrence in a book of this kind, I have usually left in the original Latin, but I have not thought it necessary to be at any great pains to secure consistency in this matter. In one case, that of the terms *Iussum* and *Iussus*, I have felt great difficulty. I was not able to satisfy myself from the texts as to whether the difference of form did or did not express a difference of meaning. In order to avoid appearing to accept either view on the matter I have used only the form *Iussum*, but I am not sure that in so doing I may not seem to have implied an opinion on the very question I desired not to raise.

I have attempted no bibliography: for this purpose a list confined to books and articles dealing, *ex professo*, with slave law would be misleadingly incomplete, but anything more comprehensive could be little less than a bibliography of Roman Law in general. I have accordingly cited only such books as I have been able to use, with a very few clearly indicated exceptions.

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To Mr H. J. Roby of St John's College, to Mr Henry Bond of Trinity Hall, to Mr P. Giles of Emmanuel College, and to Mr J. B. Moyle of New College, Oxford, I am much indebted for many valuable suggestions and criticisms. I desire to express my sincere thanks to the Syndics of the Cambridge University Press for their liberality in undertaking the publication of the book, to Mr R. T. Wright and Mr A. R. Waller, the Secretaries of the Syndicate, for their unfailing kindness, and to the Staff of the Press for the care which they have bestowed on the production of the book.

This book, begun at the suggestion of a beloved and revered Scholar, now dead, had, so long as he lived, his constant encouragement. I hope to be excused for quoting and applying to him some words which he wrote of another distinguished teacher: "What encouragement was like when it came from him his pupils are now sorrowfully remembering."

W. W. B.

September 2nd, 1908.

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ERRATA ET ADDENDA

- p. 7, n. 4. *For* 32. 60. 1. 99. 2 *read* 32. 60. 1, 99. 2.
- p. 9, n. 6. *For* der Juden *read* den Juden.
- p. 12, n. 4. *For* 5. 1. 20 *read* 6. 1. 20.
- p. 18, n. 9. *For* xxiv. *read* xiv.
- „ n. 10. *Add* In. 1. 20. 10.
- p. 32, n. 3. *For* *op. cit.* *read* Inst. Jurid.
- p. 68, n. 9. *Add* See also D. 8. 4. 13.
- p. 100, n. 4. *Add* But see Naber, *Mélanges Gerardin*, 467.
- p. 108, n. 5. *For* 9. 4. 3. 3 *read* 9. 4. 4. 3.
- p. 129, n. 7. *For* P. 2. 31. 37 *read* P. 2. 31, 37.
- p. 130, n. 13. *Add* See also *post*, pp. 338, 666.
- p. 156, n. 3. *For* 44. 3, 46. 3 *read* 44. 3 ; 46. 3.
- p. 215, l. 16. *For* *sponsis* *read* *sponsio*.
- p. 248, n. 7. *For* mere *read* is mere.
- p. 291, n. 8. *Add* See on the whole subject, Marchand, *Du Captif Romain*.
- p. 318, n. 1. *For* Mommsen *read* Mommsen, *Staatsr.* (3) 2. 2. 998 sqq.
Add See, however, now, as to the relations and nomenclature of all these funds, Mitteis, *Röm. Privatr.*, 1. 849 sqq.
- p. 322, n. 5. *For* Mommsen *read* Mommsen, *Staatsr.* (3) 2. 2. 1000 sqq.
- p. 324, n. 3. *For* Mommsen *read* Mommsen, *Staatsr.* (3) 2. 2. 836.
- p. 354, n. 10. *For* Eisele, *Z. S. S.* 7. *read* Appleton, H. Interpolations, 65.
- p. 403, n. 2. *For* congruent *read* congruunt.
- p. 422, n. 6. *Add* A study of this institution by Bonfante, *Mélanges Fadda*, was not available when this chapter was printed.

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LIST OF PRINCIPAL ABBREVIATIONS

In. = Institutiones Iustiniani.

D. = Digesta „

C. = Codex „

N. = Novellae „

Numeral references with no initial letter are to the Digest.

C. Th. = Codex Theodosianus.

G. = Gai institutiones.

U. or Ulp. = Ulpiani Regulae.

P. = Pauli Sententiae.

Fr. D. or Fr. Dos. = Fragmenta Dositheiana.

Fr. V. or Fr. Vat. = „ Vaticana.

Coll. = Mosaicarum et Romanarum legum collatio.

Citations of the Corpus Iuris Civilis are from the stereotyped edition of Krüger, Mommsen, Schoell and Kroll.

Citations of the Codex Theodosianus are from Mommsen's edition.

Citations of earlier juristic writings are from the Collectio librorum iuris anteiustiniani.

Z.S.S. = Zeitschrift der Savigny Stiftung für Rechtsgeschichte.

N.R.H. = Nouvelle Revue Historique de Droit français et étranger.