

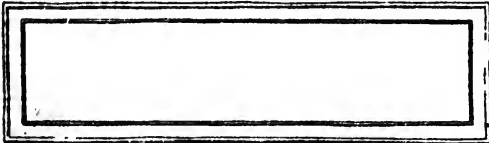
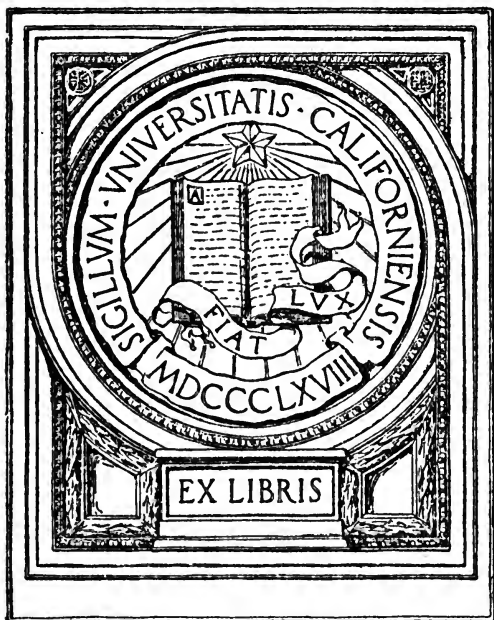


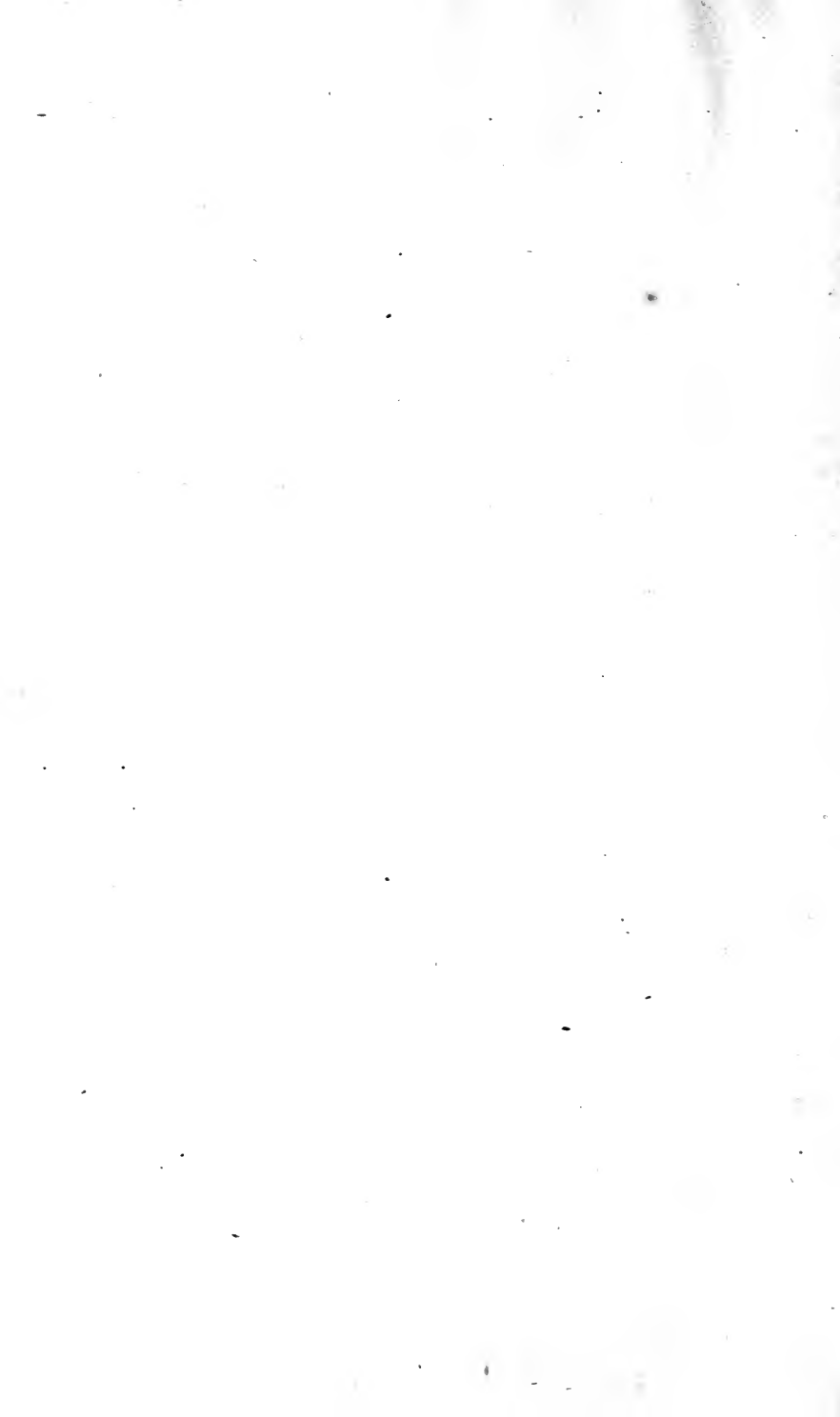
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ROMAN
ANTIQUITIES.

UNIVERSITY OF
CAMBRIDGE

BY J. D. FUSS,
PROFESSOR IN THE UNIVERSITY OF LIEGE.

TRANSLATED FROM THE LAST EDITION.



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TO VIND
ALIBONIA

Gift of
Mrs John B. Casserly

THE following work was begun and more than half translated by the Rev. A. W. STREET, M. A. of Pembroke College; but that gentleman being called suddenly away to fill a professorship in Bishop's College, Calcutta, the remainder of the work, as well as the care of seeing the whole through the press, devolved upon his brother, the Rev. B. STREET, B. A.

Oxford, March, 1840.

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THE AUTHOR'S PREFACE.

I AM aware that it is customary for those who compile works like the present, to set forth, as a matter of course, that circumstances had compelled them to write; indulging under this pretext their restless desire of publishing, they benefit neither their readers nor the cause of literature. Having but little self-confidence, and this being a work rather hastily compiled, I fear lest I myself should incur the same disgrace: let, then, those who use my work determine whether the following remarks do not entitle me to claim a valid excuse for publishing.

Having been appointed to deliver lectures on Roman antiquities in the University of Liege, and not having by me any academic papers and notes, (those convenient substitutes for learning, and sources of information to pompous ignorance,) and being disinclined to procure them as many do, and intending to use the Latin language, I compiled, with great labour, an entire and original series of lectures on Roman antiquities; but whilst reading them, perceived that unless I drew up a compendium of them, my hearers would for the most part derive no profit from them; I therefore resolved on preparing an abridgment of what I had collected, and introduce my lectures by a dictation from it. There was, besides, no publication that I could use for this

purpose, for, of the many which I had consulted, I followed but one, and that only partially, in the order of arrangement, and not one in other particulars; not from any conceited contempt for the views of others, but for reasons unnecessary to detail.

I might have abridged, for the purposes of dictating, some of the works already published: but though I willingly allow that a few of them are excellent of their kind, they were unsuited to my lectures; for unless I employed a work in Latin I should have had to translate one, a sacrifice of time to be compensated for only by my meeting with a work far superior to my own.

Some of those written in Latin I thought too voluminous, others too concise: as Burman's *Antiquitatum Romanarum Brevis Descriptio*, a mere catalogue of subjects, and not very valuable, and Heyne's *Antiquitas Romana, in usum lect. Acad. adumbrata*: Oberlin's *Tabulæ*, published by Reizius, together with his *Lectures*, are equally meagre.

In seeking a work that would afford not merely an outline of the subject, classification of matters, and catalogue of names, but also a concise explanation of them, sufficient for any one desirous of dipping into the subject, so as to facilitate a thorough examination of it, I found but one such, that of Nieupoort on Roman antiquities, which has passed through several editions, and is far superior to most, whether written in Latin or not; so far superior, indeed, to the work of Cellarius, in my opinion, that I wonder this latter should have been re-edited lately, rather than Nieupoort's. However, it is far from being perfect, and if published in

these days, would earn but a moderate name for its author¹. I was deterred from publishing a new edition of Nieupoort even, feeling how much better adapted to my own lectures a work of my own would be, of inferior merit even. It was therefore for my own use, and for the convenience of those who attended my lectures, that I wrote and now publish this work. If I succeed in promoting their studies, I shall think myself amply remunerated for my trouble: had I wished for other emolument or credit, I should have chosen any subject rather than that of Roman Antiquities.

Such were my reasons for writing this work, but at the outset I experienced some difficulty in deciding what subjects legitimately come under the title of Antiquities; the general acceptance of the word is by no means definite, and I find no precise limits assigned to the subject by any writer. Its limits must, in fact, depend very much on the space of time over which a writer proposes to extend his observations, and the class of readers, learners, or the learned themselves, for whom he is writing. Some writers propose excluding literature and the arts, accounts of idols, and of remarkable events connected with the city of Rome; others maintain that the constitution of the government, the laws, comitia, and magistrates only, are deserving

¹ The additions to Nieupoort's work suggested by learned men, and the improvements in it proposed by those who have written since Swartze published his criticisms on it, though not all to be admitted, should all be weighed by writers on this subject; moreover, the discovery of the Institutions of Caius, and other remains of ancient authors lately made, have opened to us new sources of information.

of notice, and scrupulously investigate the most unimportant particulars connected with them.

However, I determined to consider what was likely to prove serviceable to my hearers, rather than restrict myself within limits assigned by this or that writer: and whilst meeting the desires of the greater portion of my hearers, who were intended for the bar, still not neglecting customs, institutions, and practices, that have no connection with jurisprudence; considering that, however great the advantage of a knowledge of the Roman law must be to law students, a perfect understanding of the classics was indispensable to them and others; and to be attained only by an acquaintance with Roman antiquities generally.

As regards the particular period within which to limit my researches, I felt it most suitable to my object not to confine myself to the Republican era in treating of the Roman constitution, as the learned Beaufort has, or in treating of other subjects. And yet not to extend them to the times of the later Emperors, and render my work of an unwieldy length by detailing the decay of long-established institutions, and the endless innovations made upon them, or even by glancing at each. My plan, therefore, has been to dwell briefly on the era of the early Cæsars, still more briefly on the Emperors further removed from the days of the Commonwealth, and hardly to mention anything of later date. This method I was compelled to adopt by the nature of my work—I am far from thinking the times of the decay and fall of the Roman empire less important or less interesting than the palmy days of the

Republic. In treating of the arts and sciences of the Roman people, I have adhered to my general plan of admitting no discussions on theories, but have merely noticed the practice of them, and particulars which may not inaptly be termed Antiquities of Literature and Art, and are equally instructive and interesting. Whilst detailing the objects of antiquity in the city of Rome, I could not well omit a brief survey of the geography of the Roman empire.

Should any one be inclined to question the benefit of an acquaintance with antiquities, particularly as a branch of education, he may as fairly question the advantage of a knowledge of the history of the human race, and confine the advantages of history to narratives of battles, expeditions and triumphs, which many are inclined to do; for the pleasure derived by the mind from such narratives is as the gratification furnished by dramatic exhibitions, purchased without effort, and enjoyed without fatigue. The gratification, moreover, found by the learned and intellectual in literature, is not the same as that found by the generality of readers; the former seek in works of art and literature that ideal perfection, the perception of which the ancients thought raised the mind of man to a level with that of the gods: hence the history of the manners, institutions, and laws of a nation delights them even more than narratives of detached actions, as they look on both as emblems of the lives and destinies of individuals.

If these remarks apply universally, how truly must they apply in particular to the antiquities of Greece and Rome. For, not to mention the Greeks, who can deny

that the history of Rome is full of most striking and memorable events? Has anything existed more powerful or extensive than the Roman empire? has any nation left more stupendous memorials of ancient greatness? has any people exercised such an influence over existing institutions, and the destinies of the present generations of mankind?

These considerations must justify us in ranking the study of Roman antiquities among the pursuits most deserving of the attention of young men who aspire to high attainments: if any other reasons are required, they may be supplied by our considering that a knowledge of the antiquities of any country is now justly held to be the very foundation of the knowledge of its language, relieving the student from the trouble of wading through a mass of notes in search of explanations furnished him at once by a preliminary acquaintance with antiquities.

No one, however, will derive so much benefit from them as the law student, for a considerable portion of them treats of subjects tending directly and indirectly to elucidate laws and legal institutions. And the most eminent professors of jurisprudence have ever impressed on their scholars the necessity of studying the Roman law first and principally.

Having thus stated the most obvious advantages arising from the study of Roman antiquities, I shall proceed briefly to state the plan I have followed in treating the subject; the limits which I assigned to it I have already stated. I find that whilst one writer has begun by the mythology and idolatry of the Ro-

mans, another has placed first a description of the city, a third an account of the inhabitants of the empire; and this naturally enough, in a subject which presents no decided series of connected links. - I do not mean that it is of no consequence how the subjects are arranged, but certainly it is very difficult to decide on any particular principle of arrangement. I have adopted, with trifling variations, the method followed by Schaafe, in his *Encyclopædia der classichen Alterthumskunde*. Creuzer terms his method of arrangement *genetica*, and leaves its meaning to be explained in his lectures.

A consideration of some importance arises when we undertake to decide whether events and subjects of a totally different nature should not be collected into distinct periods, dating severally from great and eventful changes; this plan has been transferred from historical compositions to treatises on literature and art, and has been adopted by the justly celebrated Hugo, as well as others, in writing the history of jurisprudence. I approve highly of it in such subjects as these, but not in antiquities: still, although I found it unadvisable to follow the chronological order of events, I have taken due care not to mix up particulars pertaining to one period with others pertaining to a different one, and incur a share of the blame which Meierotto has cast upon many antiquaries, in the preface to his work, *Über Sitten und Lebensart der Römer* (On the Manners and Domestic Life of the Romans). It would be absurd and unjust for any one composing a work like the following, not to take notice of the opinions

entertained by other writers, yet those who have followed Sigonius, Gruchius, Spanheim, and others, who may be termed the fathers of antiquities, have neglected doing so, not even Heineccius nor the numerous writers who have misrepresented what they have taken from him. Greater credit for doing so is therefore due to the learned Beaufort, who has struck out for himself an original pathway through the mazes of Roman antiquities. I have consulted this writer and several others, in my endeavours to arrive at truth, or at the truest account attainable, waiving as much as possible all discussions and new and startling conjectures, as unfit for a synopsis; for I thought it preferable to allow old opinions to remain unaltered in my work, rather than to suggest new ones resting on no surer foundation. I therefore thought it better to reserve for my lectures the introduction of new theories, more particularly concerning the early form of the Roman government, a subject sufficiently perplexed and complicated before the suggestions of Niebuhr, which are the productions of a penetrating genius, but not always supported by sufficient arguments; although his system has found many admirers, it has also met with a powerful opponent in Wachsmuth, author of the *Æltere Geschichte des Römischen Staates*.

I have no apprehension of being blamed by the truly learned for excluding these new theories; there is a class of men who are of a most accommodating credulity, provided a new opinion is promulgated with assurance; they are also equally mutable in their opi-

nions, and their approbation or censure consequently can be but of little moment; it is generally minds of this class that gloat on the failure of others in explaining things totally unintelligible to themselves, such as they perceive to exist in Roman antiquities, in points on which the testimonies of the ancients and the opinions of the moderns are at issue. I wish these difficulties occurred only in unimportant particulars, as for instance, on what wood, stone, or metal the laws of the XII Tables were written, and what the expressions *pignora cedere* and *sarta tecta exigere* mean, for these may be left to the unprofitable researches of narrow minds, who may bequeath the investigation to their posterity, their solution being of no importance. There are, however, questions of greater importance on which ancient writers have left conflicting testimonies, and which modern writers are daily distorting into one sense or another; whence we may safely conclude that they are subjects which may be eternally discussed but never settled. Among these perhaps may be classed the order in which the centuriæ gave their votes at the comitia; (I have, in a note on section 163, stated my conviction that the opinion of Savigny on this subject is preferable to that of Schulze); as also the form of the edict of the prætor, remodelled by Salvius Julianus, by command of the emperor Hadrian, § 194, by which it is thought the power of introducing new regulations was taken from the prætor. Before the overwhelming authority of Hugo, this last opinion was universally held, but having examined the proofs he adduces in his History of Roman Law (*Geschichte des*

Röemischen Rechts), I still resolved to retain in this work the common opinion on the subject, as I only partially approve of his.

I think no one will disapprove of my having merely mentioned, not quoted, the passages of authors to which I have referred ; in doing so I have taken care to quote no passages but what I have examined, whether I use references furnished by other writers or discovered by myself, and also that the references should be accurately given. The selection of passages appropriate to the illustration of subjects, is as indispensable as it is tedious, and requires more than any other point an intimate acquaintance with the language. If all were persuaded of this, many who now heap blunder on blunder would be deterred from writing.

I have inserted in the section on literature (§ 409), a list of classical writers on Roman antiquities, particularly the ancients who have written in Latin; and contented myself with quoting only a few Greek writers, among which may be classed Laurentius Lydus, mentioned among writers on magistrates, § 183, of very questionable authority, but still worth referring to, as he is the only writer extant on the subject. All writers who have treated on the whole, or on parts of my subjects, I have noticed in a separate index, as it may not be uninteresting to readers to learn from the titles of works the extent of the field of research explored by writers on Roman antiquities. I have also given a copious index of words and subjects, which will add greatly to the value of the work in the hands of young learners.

ROMÆ ÆTERNÆ.

Ῥώμη, παῖς Ἄρεος, λαῶν μεγάλθυμος ἄνασσα,
Καὶ πείσασα νόμοις, οὐς ἐδάμασσε βία.
Ῥψίστας τ' ἀρετὰς, δεινούς τε τεκοῦσα τυράννους,
Θαῦμά τε γινομένη, θαῦμα πεσοῦσα βροτοῖς!
Σοὶ μὲν θεοί, κρατερῶν τ' ἀνδρῶν πέπτωκε τρόπαια,
Ἡ δέ σ' ἔκρυψ', αὐτὴ γαῖα λέγει, τίς ἔφυς·
Σὺν μεγάλην μικραῖσι θανεῖν σ' ἦν μοῖρα, θανούσης
Ἰχνεα δ' ἀθάνατος μυρὶ ἔσωσε βίος.

ROMAN ANTIQUITIES.

INTRODUCTION.

1. THE ancients denoted by the term Antiquity, either times, persons, or things far remote from their own times and generation, or the history of such times, persons, and things¹. The history of them they also simply called Antiquities, but more commonly restricted the signification of this word to mean the ancient condition, institutions, and customs of nations². The Greeks denoted both³ by *Ἀρχαιολογία*⁴, which moderns generally restrict to the history or description of ancient art, and its productions. The word antiquities is, however, now commonly applied to only that part of history which treats of the ancient condition of nations; and it is used equally of the nations of the old, and those of the new world, although it is most commonly applied to the Greeks and Romans: and as Greek and Roman literature is distinguished by the epithet of Classic, so some have wished to call Greek and Roman antiquities, Classical Antiquities.

1) Nepos in Att. 20: "Nullus dies tamen temere intercessit, quo non aliquid de antiquitate ab eo requireret;" Suet. Nero 38: "Et quicquid visendum atque memorabile ex antiquitate duraverat;" Tac. Ann. 4, 16: "Sicut Augustus quædam ex horrida illa antiquitate ad præsentem usum flexisset;" Cic. de Legg. 2, 11: "Antiquitas proxime accedit ad deos." Cf. Cic. de Fin. 1, 20, et Plin. H. N. 19, 4. 2) Cic. A. Q. 1, 2: "In ipsis antiquitatum præmiis" (speaking of a work by Varro); Gell. 5, 13: "Hujus moris observationisque multa sunt testimonia atque documenta in antiquitatibus perscripta." Cf. idem 11, 1, and 13, 12; Tac. Hist. 2, 4, and Plin. H. N. præf. 3) The one sense is found in the title of the work of Dionys. Halic. on Roman history, viz. *Ῥωμαϊκὴ Ἀρχαιολογία*.

For the other, see Plat. Hipp. Maj. ed. Bip. 286 : πάσης τῆς ἀρχαιολογίας ἥδιστα ἀκροῶνται. 4) As ἀρχαιολογία corresponds to *antiquitates*, so ἀρχαιόλογος answers to *antiquarius*, which means sometimes a writer on antiquities, sometimes a virtuoso. It is applied to conceited talkers on such subjects by Suet., Aug. 86 : “Cacozelos et antiquarios — pari fastidio sprevit,” and Juven. 6, 454 : “Ignotosque mihi tenet antiquaria versus.”

2. Taking, then, the word in its more current acceptation, I mean by Roman antiquities, an account of the government, religion, military, civil, and domestic affairs of the Romans, and of their public and private life : and my object will be, to give such an account of these as shall be drawn from well-authenticated sources, with due regard to differences of time and place, and with so much connection between the several parts of the whole as the subject may allow of. Each writer, having his own peculiar aim or view, divides his subject in his own way ; nor do all writers on the single subject of antiquities, comprise the same range of subjects, nor classify them in the same way, whether we look to the general outlines, or the minuter subdivisions of the subject.

3. In works of this kind, the object proposed may be either a mere historical account of antiquities, or a development of the advantages accruing to literature and art in general from the knowledge of them. A sketch has been given in my preface of the signal use of a knowledge of Roman antiquities in general ; and, in particular, for the right interpretation of the classics, and of the relics of ancient art ; and also of the especial advantage to be derived from the study of Roman jurisprudence.

4. The main sources of our knowledge of Roman antiquities are the records and remains of the Roman people, of whatever kind. These are divided by writers into *monumenta illiterata* and *monumenta literata* : the former meaning all relics of art, whether

buildings, altars, stones, statues, paintings, vases, gems, coins, or implements of war, husbandry, and domestic life, etc. Among the *monumenta literata* are to be reckoned not only the classic authors themselves, but also the ecclesiastical writers, inscriptions, the fasti, calendars, and so forth. There are very few works on antiquities by the ancients themselves, whether particular treatises, such as are the productions of Ovid, Frontinus, Vegetius, and Lydus; or more miscellaneous writings, such as those of Gellius, Macrobius, and Festus. Among those whose writings are not concerned directly with antiquities, the historians naturally rank first in importance; and chief among them must be those who have interwoven notices of institutions and customs with the main thread of history.

5. Modern writers on this subject (for a general account of whom see J. A. FABRICII *Bibliographia Antiquaria*, Hamburgi, 1760) may be divided into three classes: some give merely letter-press; others, only engravings of objects; others, again, combine the two modes of explanation. The works of the first are commonly entitled *Corpora*, bodies of antiquity, explaining things at great length; or *Compendia* or *Enchiridia*, abridgments and compendiums, these being shorter works for the use of lecturers and schools. The number of such books is now so increased, that only a few of the most valuable can here be noticed; and of the larger kind the best known is perhaps,—

ROSSINI *Antiquitatum Romanarum Corpus Absolutissimum, cum Notis Dempsteri*, Ultrajecti, 1710; Amstelodami, 1743, 4to. A very large and copious work, more adapted for the use of the teacher than of the learner.

Among lesser works are the following:—

J. H. NIEUPOORT *Rituum, qui olim apud Romanos obtinuerunt, succincta explicatio*. Trajecti ad Rhenum, 1712. A book which has passed through several editions, (Berolini, 1784;

Lugd. Bat. 1802,) and is deservedly praised: to which should be added, C. G. SCHWARZII *Observatt. ad Nieup. Compendium Antiqq. Rom.*, Altdorfii, 1757; and HAYMANN'S *Anmerkungen zu Nieupoorts Alterthümer*, Dresden, 1786.

H. KIPPINGII *Antiquitatum Romanarum libri quatuor*. Lugd. Bat. 1713.

CHRISTOPH. CELLARII *Compendium Antiquitatum Romanarum*. Repeatedly edited, and last, Zierizeæ, 1817, by G. L. MAHNE. WALCHIUS appended notes to the third edition, Halæ, 1774.

De Romana Republica, by P. J. CANTELIUS, fifth edition, Ultrajecti, 1707.

FRIDR. GRUNERI *Introductio in Antiquitates Romanas*. Jenæ, 1746 and 1782.

The following are works of small compass:—

PETRI BURMANNI *Antiquitatum Romanarum Brevis Descriptio*. Repeatedly edited, and with the notes of REIZIUS, Lipsiæ, 1809.

C. G. HEYNI *Antiquitas Romana, in primis juris Romani, in usum lectionum academicarum adumbrata*, Gottingæ, 1779.

Works on antiquities in the modern languages came into use after those written in the Latin tongue: very many have appeared in late times, especially in Germany; but the work of this kind most commonly used is that by

AL. ADAM, *Roman Antiquities*, London, 1791 and 1792. Edited in Germany by J. L. MEYER, (Erlangæ, 1818,) and in French, under the following title, *Antiquités Romaines, ou Tableau des Mœurs, Usages et Institutions des Romains; par ALEXANDRE ADAM*, Paris, 1818 and 1826. A most learned work.

La République Romaine, ou plan général de l'ancien gouvernement de Rome, par M. DE BEAUFORT, à la Haye, 1766, 2 vols. 4to.

MATERNUS VON CILANO *ausführl. Abhandlung der röm. Alterthümer*, published by Adler, Altona, 1774, 4 vols.

REIZ'S *Vorlesungen über die Römischen Alterthümer nach Oberlin's Tafeln*, Lipsiæ, 1796.

P. F. A. NITSCH *Beschreibung des häuslichen, wissenschaftl., sittlichen, gottesdienstl.—Zustandes der Römer*, third edition, Erfurt and Leipzig, 1807-11, 4 vols.

Handbuch der classischen Litteratur von J. J. ESCHENBURG, sixth edition, Berlin and Stettin, 1816.

Encyclopædie der classischen Alterthumskunde, von J. C. L. SCHAAF, second edition, Magdeburg, 1819, 2 vols.

Grundriss der Geschichte Erd-und Altherthumskunde, Litteratur und Kunst der Römer, by G. AL. RUPERTI, Gottingen, 1811.

FRIEDR. CREUZER'S *Abriss der Römischen Antiquitäten*. First published at Leipzig and Darmstadt, 1824, since which there has appeared a second edition.

The most important treatises on particular branches of antiquities are the following:—

Thesaurus Antiquitatum Romanarum, compiled by J. G. GRÆVIO, Ultrajecti, 1694-99, 12 vols. fol.; idem *Venetii*, 1730-40.

JO. POLENI *Supplementa utriusque Thesauri*, Venet. 1730-40, 5 vols. fol.

Novus Thesaurus Antiquitatum Romanarum, compiled by A. H. DE SALLENGRE, Hagæ Comitum, 1715-19; *Venetii*, 1735, 3 vols. fol.

Histoire de l'Académie des Inscriptions et Belles-lettres, avec les Mémoires de Littérature, etc. (Paris, dating from 1717.)

The dictionaries of Roman antiquities best known are the following:—

Lexicon Antiquitatum Romanarum, by SAM. PITISCO, Leowardiæ, 1713, 2 vols. fol.; *Venetii*, 1719, et Hagæ Comitum, 1737, 3 vols. fol.

Greek and Roman antiquities are combined in the *Neues Real-Schullexicon*, by C. P. Funke, Wien und Prag, 1815, 5 vols. Of the more early works of this kind, and combining the Greek and Roman antiquities, is the *Lexicon PETRI DANETII*.

Among the most celebrated works on ancient Roman jurisprudence is—

J. G. HEINECCII *Antiquitatum Romanarum Jurisprudentiam illustrantium syntagma*, (among the best editions is that of Argentorat. 1755, 2 vols. 8vo., and the best of all is by C. G. HAUBOLDII, Francofurti, 1822.)

Historia Juris Civilis Romani ac Germanici, by J. G. HEINECCIO. Repeatedly edited, and with the observations of J. D. RITTER, Lugd. Bat. 1748.

JO. AUGUST. BACCHII *Historia Jurisprudentia Romanæ*, fourth edition, Lipsiæ, 1782; sixth edition, A. C. STOCKMANN, Lipsiæ, 1807.

Lehrbuch der Geschichte des römischen Rechts bis auf Justinian, by HUGO; first edited at Berlin, 1822; since which there have been several new editions.

Thus much must suffice for the present on this point. An account of works on particular branches of this division of the subject will be found at the end of this work.

The other class of useful works on antiquities, comprises those on archæology (§ 1), or the description of the arts and monuments of the ancients. These are very numerous, only the following can be now mentioned:—

L'Antiquité expliquée et représentée en figures par BERN. DE MONTFAUCON, Paris, 1719-22, with supplement, also at Paris, 1724, 15 vols. fol.

Recueil d'Antiquités Egyptiennes, Etrusques, Grecques et Romaines, par M. LE CTE. DE CAYLUS, Paris, 1752-67, 7 vols. 4to.

Il Museo Capitolino, Roma, 1747-83, 4 vols. fol.

Museum Florentinum, cum Observatt. A. F. GORII, Florentiæ, 1731-42.

Il Museo Pio-Clementino descritto da ENNIO QUIRINO VISCONTI, Roma, 1782, 6 vols. fol.

Monumenti Antichi inediti, spiegati et illustrati da GIOV. WINKELMANN, Roma, 1767, 2 vols. fol.

Monumens antiques inédits, ou nouvellement expliqués par A. L. MILLIN, Paris, 1802, 2 vols. 4to.

Galerie du Musée Napoléon, publiée par FILHOL et rédigée par LAVALLEE, Paris.

Antiquités d'Herculanum, gravées par TH. PIROLI et publiées par F. et P. PIRANESI, frères, Paris, 1804-6, 6 vols. 4to.

Galerie Mythologique, par A. L. MILLIN, Paris, 1811, 2 vols.

Résumé complet d'Archéologie, par M. CHAMPOLLION-FIGEAC, Paris, 1825, 2 vols. 16mo.

Besides entire works, expressly on antiquities, the notes of the learned on the classical writers, as those of LIPSIUS on Tacitus, their excursus, and scattered remarks, afford important aids for this study: and great advantage would be derived from the compilation of a book of reference to such scattered pieces, which are dispersed over a great extent.

6. Most writers on Roman antiquities embrace in their works two distinct branches of them: the one giving a description of Rome itself, with its public works and monuments; the other treating of the condition, institutions, and manners of the Roman people: to the former is generally added a topographical account of the Roman empire, which I shall give very briefly in the sections immediately following. The antiquities of the city itself, however, ought, I think, neither to be wholly omitted, nor given at any length: for some knowledge of them is serviceable and entertaining to classical students, but a full and detailed account of them belongs to works written expressly on the subject, and will not enter into the plan of my book.

7. My work consists of two Parts, divided into chapters, which are subdivided into sections. Part the First gives an account of the government and

public affairs of the Romans; the Second treats of their private life. The First Part contains the following six chapters:—

- I. Of the different divisions of the subjects of the Roman empire, with their several conditions.
- II. Of the form of the government, and its administration.
- III. Of the laws, and the administration of justice.
- IV. Of the religion and public games.
- V. Of military affairs.
- VI. Of agriculture, commerce, manufactures, trades, money, weights and measures—and also of the revenue.

The Second Part of the work contains two chapters:—

- I. Of the character, genius, literature, and fine arts of the Romans.
- II. Of their manners and private life.

ROMAN ANTIQUITIES.

PRELIMINARY VIEW OF THE ROMAN EMPIRE.

8. THE Roman empire originated in a very small state, the territory of which was greatly extended by the first kings, but, as some assert, was considerably diminished by the terms of the treaty with Porsena¹. It afterwards progressively increased, slowly indeed at first, but more rapidly from the close of the fifth century from the foundation of the city, when, the whole of Italy being now comprised in it, it continued rapidly to extend itself, until, about the time of the Cæsars, it embraced all the parts of the three quarters of the world; around the Mediterranean, extending inland to the Rhine and the Danube northward, to the Euphrates eastward, to the Deserts of Libya on the south, to the Atlantic ocean on the west; and these limits were still further extended in some directions by the Cæsars. Augustus made an accurate division of the empire, which was altered by Adrian, and again by Constantine². The European portion of the Roman empire, at the time of its greatest extent, comprised then Spain, Gaul, Britain, Italy, the regions on this side the Danube, and those adjacent to the Ægean and Euxine, or Black sea.

1) Cf. Beaufort, Sur l'Incertitude de l'Hist. Rom. p. 2. c. 8; and Niebuhr, vol. i. p. 382-454. 2) Cf. Jos. Scal. Notit. Gall. init.

9. Hispania (called Iberia, from the river Iberus, (the *Ebro*), and Hesperia, from its western position) lay between the ocean and the Pyrenees, being divided from Africa by the fretum Gaditanum, or Herculeum. Its chief rivers were the Iberus, flowing into the Mediterranean, the Minius, Durius, Tagus, Anas (*Guadiana*), Bætis (*Guadalquivir*), into the Atlantic ocean; among its mountains were the Pyrenæi, Idubeda, Orospeđa, Marianus (*Sierra Morena*), its promontories Artabrum (Nerium, *Finisterra*), Barbarium (*de Espichel*), Sacrum (*S. Vincent*), Calpe (*Gibraltar*), over against Abylæ in Africa, Charidemi (*de Gates*), Scombraria (*de Palos*), Dianium (*Martin*), Aphrodisium (*de Creus*). The divisions of the country were, Hispania Citerior, or Tarraconensis, Lusitania and Bætica. Lusitania¹, bounded by the Durius and the Anas, comprised the Vettones, Lusitani, and Celtici, and contained the cities of Salamantica, Norba Cæsarea (*Alcantara*), Emerita Augusta (*Merida*), Pax Julia (*Beja*), Ebora, Lacobriga (*Lagos*), Olysippo (*Lisboa, Lisbon*), Scalabis, Conimbriga; Bætica, which lay between the Anas and Orospeđa, comprised the districts of Bæturia, the Turdetani, Turduli and Bastuli, and the cities Corduba, Hispalis (*Seville*), Malaca, Munda, Asta, Gades. Hispania Citerior comprised all the rest of the country, containing Celtiberia, among other districts. The tribes in the northern part were the Callaici, or Gallæci, Astures, Cantabri, and the Vascones; in the interior were the Celtiberi, Carpetani, Ilergetes; on the coasts of the Mediterranean lay the Indigetes, Cosetani, and others. The cities of Hispania Citerior were Barcino (*Barcelona*), Tarraco, Saguntum (*Murviedro*), Valentia, Carthago Nova, Lucentum (*Alicant*), Toletum, Mantua (*Madrid*), Bilbilis (*Baubola*), Cæsar Augusta or Salduba (*Saragossa*), Ilerda, Numantia, Pompelon, Juliobriga, Brigantium, Bracara Augusta (*Braga*), Asturica Au-

gusta (*Astorga*), Segovia. The Insulæ Baleares (major and minor) and the two Pityusæ, Ebusus and Ophiusa, were considered to belong to Spain.

1) Afterwards called Portugal, from Cale (*Porto*), a harbour of Gallicia.

10. Gaul was originally divided by the Romans into Cisalpina (also called Citerior and Subalpina), and Transalpina; the Cisalpina, however, was soon considered as part of Italy¹, its inhabitants being admitted to the rights of Roman citizens. The Transalpina contained, besides modern Gaul (*Francia*), the Helvetii, Belgæ, and Batavi. Its rivers were the Garumna, Liger (*Loire*), Sequana, and Scaldis, flowing into the ocean; the Rhodanus, which, after receiving the Arar (*Saône*), falls into the Mediterranean, the Mosella, which joined the Rhine, the latter forming the boundary between Gaul and Germany, and the Mosa, which after receiving an arm of the Rhine, called Vahalis, also falls into the ocean. Among the minor rivers were the Matrona, Isara or Osia (*Oise*), Sabis (*Sambre*), Druentia, and Meduana (*Mayenne*). Besides the Alps and the Pyrenees, it contained the mounts Jura, Vogesus, and Cebenna or Gebenna. Gallia Primaria contained, 1. Gallia Narbonensis (braccata, Provincia), between Gallia Cisalpina, Cebenna, and the Pyrenees, in which were the Allobroges, Volcæ, Salyes, and the cities Narbo, Tolosa, Nemausus (*Nîmes*), Massilia, and Vienna; 2. Gallia Aquitana, between the Pyrenees and the Liger, in which were the Aquitani, Santones, Pictones, Bituriges, Arverni, Cadurci, and Lemovices, with the cities Burdegala (*Bordeaux*), Mediolanum (*Saintes*), Limonum (*Poitiers*), Augustoritum (*Limoges*), Divona (*Cahors*), Climberrum (*Auch*); Gallia Lugdunensis (Celtica), between the Liger, the Sequana, and the Arar,

contained the Ædui, Lingones, Tricasses, Parisii, Senones Carnutes, Cenomani, Redones, and Veneti, with the cities Lugdunum, Augustodunum (Bibracte, *Autun*), Alesia (*Alise*, now a village), Divio (*Dijon*), Automatum (*Langres*), Augustobona (*Troyes*), Lutetia Parisiorum (*Paris*), Mediolanum (*Evreux*), Rotomagus (*Rouen*), Noviomagus (*Lizieux*), Antricum (*Chartres*), Genabum, Aureliani (*Orléans*), Cæsarodunum (near *Tours*), Juliomagus (*Angers*), Condate (*Rennes*), Dario-rigum. Gallia Belgica, bounded by Gallia Narbonensis, Lugdunensis, the Rhine, and the sea, comprised Helvetia, and at first also those regions within the Rhine, (among which was Batavia,) which subsequently were distinguished into Germania Superior and Germania Inferior. Among the nations it contained were the Morini, Atrebates, Ambiani, Suessones, Remi, Catalauni, Leuci, Mediomatrici, Treveri, Tungri (Eburones, Aduatici), Nervii, Menapii, Sequania, and Helvetii; among its cities were Solodurum (*Solothurn*), Aventicum, Turega (Turicum, *Zürch*), Constantia, Basilea, Vesontio (*Besançon*), Tullum, Divodurum (*Metz*), Virodunum, Augusta Suessionum (*Soissons*), Durocatalaunum (*Chalons-sur-Marne*), Durocortorum (*Rheims*), Argentoratum (*Strasbourg*), Moguntiacum (*Mayence*), Treveri (Augusta Treverorum), Confluentes (*Coblence*), Colonia Agrippina, Novesium (*Nuys*), Vetera Castra (*Santen*), Aduatuca (*Tungri*), Noviomagus (*Nimègue*), Trajectum (Ultrajectum), and Lugdunum (Batavorum, *Leyde*).

1) See Cellar. Geogr. Ant. 1. 2. c. 9. § 31.

11. Beyond Gaul the Roman empire extended to the islands still called Britannic. Of these England, Anglia (*Angli*), and a small portion of Scotland, added under the reign of Nero, were called Britannia Romana; the rest, Britannia Barbara, or Caledonia.

Among the rivers of Britannia Romana, were the Tamesis, Sabrina (*Severn*), Tina; and Glota (*Clyde*); among its nations, the Cantii, Belgæ, Dumnonii, Atrebates, Trinobantes, Coritani, Brigantes, Cornavii, Demetæ, Silures, and Dobuni; in the part of Scotland which the Romans possessed, lay the Damnii, Ottadini, and Selgovæ; among its cities were Darvernum (*Canterbury*), Sorbiodunum (*Salisbury*), Isca (*Exeter*), Londinium, Colonia (*Colchester*), Lindum (*Lincoln*), Alone (*Lancaster*), Eboracum (*York*), Deva (*Chester*, the station of the Legio XX. or Victrix), Clevum (*Gloucester*), and Alata Castra (*Edinburgh*). In Caledonia were the Caledonii and Picti. Hibernia (*Ierne*), with whose city Eblana (*Dublin*), the Romans were acquainted by trade, but not in the course of their wars, (cf. Tacit. Agric. 24,) was not included in the empire. Among the lesser islands they claimed Vectis (*Isle of Wight*), Mona (*Man*), the Cassiterides, Ebudes, and Orcades. Beyond Caledonia lay Thule, a fabulous island of which they knew not the situation.

12. Italy, otherwise called Saturnia, from Saturn, and Hesperia from its western position relative to Greece, and Ausonia or Ænotria, from its inhabitants, was considered, down to the time of Cæsar, to extend northwards only to the rivers Rubicon and Macra; after his time its confines were carried further north, and distinguished into Italia Superior, Italia Media, and Italia Inferior. The first was divided into Gallia Cisalpina (§ 10) or Togata, and Liguria. Gallia Cisalpina was divided into Gallia Cispadana and Transpadana, by the river Padus (Eridanus), which flows into the Adriatic. Of its other rivers, the Duria, Ticinus, Addua, and Mincius flow into the Padus from the north, the Tanarus and Trebia from the south, and the Athesis, Plavis, and Timavus, discharge themselves into the Adriatic. The lakes were the Benacus (*Lago di*

Guarda), *Larius* (*Lago di Como*), *Verbanus* (*Lago Maggiore*); among its mountains were the *Alpes Cottiaë*, *Graiaë*, and *Penninaë*; its nations were the *Taurini*, *Insubres*, *Cenomani*, *Senones*, and *Boii Lingones*; among its cities, which were mostly Roman colonies, *Tergeste*, *Aquileia*, *Patavium*, *Vicentia*, *Verona*, *Mantua*, *Cremona*, *Brixia*, *Mediolanum*, *Ticinum* (*Pavia*), *Augusta Taurinorum* (*Turin*), and *Vercellæ* lay beyond the *Padus*: *Ravenna*, *Felsina* (*Bononia*, *Bologna*), *Mutina*, *Parma*, and *Placentia* on this side the *Padus*. *Liguria* (*Ligures*), between the *Macra* and the *Varus*, contained the cities *Genua*, *Asta*, *Nicæa*, *Alba*, *Pompeia*, and *Liberna*.

13. The upper portion of the territory first called Italy, was called *Media* after the accession of *Gallia Cisalpina*, extending from the *Rubicon* and *Macra* to the *Silarum* and *Frento*; besides which rivers it contained the *Arno*, *Tiber* (*Albula*), *Anio* (*Teverone*), *Liris*, *Vulturnus*, *Aternus*, *Metaurum*, and *Tifernum*; the lakes *Volsinius*, *Trasimenus*, and *Regillus*, and the *Apennine* mountains. The western part of this division, washed by the *Etrurian sea* (*mare Tyrrhenum*, *Tuscum inferum*), contained *Etruria* (*Tuscia*, *Tyrrhenia*), *Latium*, and *Campania*; on the side of the *Adriatic* (*Adria*, *mare superum*, *Ionium*) lay *Umbria*, *Picenum*, the *Vestini*, *Marrucini*, and *Frentani*; in the centre were the *Sabini*, *Marsi*, *Peligni*, *Samnium*, and *Hirpini*. The *Arno* was the chief river of *Etruria*: among its cities, twelve of which were from the earliest times united in one confederacy, were, between the *Macra* and *Arno*, *Pistoria*, *Luca*, *Pisæ*, *Florentia*, *Fesulæ*; between the *Arno* and the *Tiber*, were *Herculis liburni Portus* (*Livourne*), *Volaterræ*, *Sena*, *Rusellæ*, *Cortona*, *Arretium*, *Clusium*, *Perusia*, *Vulsinii*, *Forum Aurelii*, *Tarquinius*, *Fescennia*, *Falerii*, *Cære*, and *Veii*. Among the rivers of *Latium* were the *Tiber*, *Anio*,

and Liris ; its nations were the Latini, Hernici, Æqui, Volsci, Rutuli, and Aurunci ; Latium was distinguished as New and Old : Old Latium, between Etruria and the Circeian promontory, contained Rome, Tibur, Gabii, Tusculum, Ostia, Præneste, Alba Longa (near the Alban lake), Aricia, Ardea, Lavinium, Velitæ, Suessa Pometia, Antium, and Forum Appii. In New Latium, between the Circeian promontory and the Liris, were Fundi, Tarracina (Anxur), Formiæ, Cajeta, Minturnæ, Privernum, Arpinum, and Aquinum. The Pomptine marshes, so called from Suessa Pometia, lay between the Ufens and Nymphæum.

14. Campania, extending from the Liris to the Silarum, contained also the river Volturnus, and the mountains Massicus, Falernus, and Vesuvius : it was also remarkable for the lakes Avernus and Lucrinus, the Acherusian marsh, and the Campi Phlegræi. Its two principal cities were Capua and Neapolis, besides which it contained Venafrum, Cales, Atella, Nola, Herculænum, Pompeii, Stabiæ, Liternum, Cumæ, Puteoli, Baiæ, Misenum, Surrentum, Salernum. In Umbria, between the Rubicon the Æsis and Nar, were the cities Ariminum, Pisaurum, Tifernum Tiberinum, Fulginium, Spoletium, Interamna, Ameria, Narnia, Mevania, Oriculum ; in Picenum (Picentes), lay Ancona, Asculum Picenum, Hadria ; among the Vestini, Pinna and Angulum ; among the Marrucini, Teate and Aternum ; among the Frentani, Ortona, Auxanum, Histonium, and Teanum ; among the Sabini, Fidenæ, Cures, Reate, and Amiternum ; among the Marsi, Marrubium ; among the Peligni, Corfinium and Sulmo ; in Samnium (Sabini, Samnites) Aufidena, Bovianum, Sæpinum, and Treventum ; among the Hirpini, Beneventum and Caudio.

15. Italia Inferior, extending from the rivers Silarus and Frento to the Sicilian sea, was called Magna Græ-

cia, from the number of the Greek colonies which had appropriated it almost entirely to themselves. In it were the rivers Silarus, Acheron, and Aufidus; the promontories Scyllæum, Leucopetra, Herculis, Salentinum, and others; on the east lay Apulia and Calabria, on the west Lucania and the Bruttii. Apulia, reaching from Frento to the Tarentine gulf, was divided by the river Aufidus into Daunia and Peucetia: it contained also the river Cerbalus, and the mount Garganum; in Daunia lay Arpi (the city of Diomede), Luceria, and Sipontum; in Peucetia were Venusia, Barium, and Cannæ. Above Apulia were the insulæ Diomedææ. Calabria (Japygia, Messapia), above the sinus Tarentinus, is by some considered part of Apulia; its inhabitants were the Calabri, and on the Iapygian promontory, the Salentini; its cities were Brundisium, Rudia, Tarentum, Callipolis. Lucania (Lucani), between the rivers Silarus and Laus, contained the cities Pæstum (Posidonia), Velia (Elia), Atinum, Buxentum, Thurii (Sybaris), Heraclea (Ciris), Metapontum; in Bruttium, between the Laus and the Straits of Sicily, lay the cities Pandosia, Consentia, Terina, Vibo, Valentia, Rhegium, Locri, Mamertum, Scylacium, and Croton.

16. At the extremity of Italy lay Sicily (Siculi, Sicani; Sicania, Trinacria, Triquetra), inhabited by numerous tribes, chiefly of Greek origin. In it were the rivers Onobola, Symethus, Himera, Acragas, Hypsa, Halæsus; the mountains Ætna, Heræi, Nebrodes, Cratas, Eryx; the promontories Pelorum, Pachynum, Lilybæum; its cities were, in the eastern part of the island, Messana, Catana, Leontini, Syracuse: in the southern lay Camarina, Gela, Agrigentum, Selinus, Lilybæum: in the northern, Drepanum, Eryx, Segesta, Panormus (*Palermo*), Himera: in the interior were Entella, Enna, Herbita, Hybla major, Menæ. Adjacent to Sicily were

the insulæ Æoliæ (Vulcaniæ), Ægates, and others; and, at a little distance, Melita (*Malta*). West of Etruria lay the island of Corsica, containing the mountain called Mons Aureus, the Promontorium Mariammum, and Pr. Sacrum (*capo Corso*), and the cities Mantini, Mariani, Aleria. Below Corsica lay Sardinia, the chief river of which was Thyrsus; its cities were Cornus, Caralis (*Cagliari*), Olbia. Adjacent to Etruria were the smaller islands of Ilva (*Elba*), and Planasia (*Pianosa*) close to this; on the coast of Campania were Capreæ and Ænaria, or Pithecusa; and at a short distance Pontia and Pandataria.

17. The regions on this side the Danube, which were added to the empire chiefly under Augustus, were Rhætia, Vindelicia, Noricum, Pannonia, Illyricum; to which some add Mœsia. Rhætia, which lay just beyond Gallia Transpadana, and east of the Helvetii, was a mountainous district (*Alpes Rhæticiæ*); its rivers were the Rhenus, Ænus, (Ænus, *Inn*), Ticinus, Athesis; it bordered on the lakes Verbanus and Larius (§ 12); its towns were Veldidena (*Wilten*), Æni Pons (*Inspruck*¹), Terioli (whence the modern name *Tyrol*), Curia, Tridentum, Belunum. Vindelicia, between the Danube, Ænus, Rhætia and the Helvetii, contained also the rivers Licus (*Lichus*, *Lech*) and Isargus (*Isère*); with the cities Augusta Vindelicorum (*Augsburg*), Brigantium (on the Lacus Acronius, *Lake of Constance*), Batava Castra (*Passau*), Regina Castra (Reginum, *Regensburg*), Isinisca (*Munich?*); Noricum, extending from the Danube to the Alpes Noricæ and the river Savus, contained among other rivers, the Anisus (*Ens*), Murus, and Dravus; the cities Boiodurum (*Instadt*), Lentia (*Linz*), Juvavia (*Salzburg*), Virunum (*Volkmark*). Pannonia, between the Savus and the Danube, reckoned among its streams, the Arrabo and the Dravus, among its mountains the Mons Cetus,

and among its inhabitants the Scordisci and Taurisci. It was divided into Pannonia Superior, containing Vin-dobona (*Vienna*), Arrabona (*Raab*), Sabaria, Aquæ (*Baden*), Nauportum (*Ober Laubach*), and Pannonia Inferior, in which were Bregetio, Acincum (*Buda, Ofen*), Sirmium, Mursa (*Essek*). Illyricum was a general name for several regions between the Danube and the Adriatic, but properly meant the maritime district between Histria and the rivers Savus and Drinus. The name, in its wider application, is said to have comprised Liburnia, Dalmatia, and Illyris Græca, which became part of Macedonia (§ 24.) Among its rivers were the Arsia, Titius, Naro; among its mountains Albius and Scardus. Liburnia had the towns Metulum, Flanona, Senia (*Zeng*), Scardona, Dalmatia, Tragurium, Salona, Epidaurus (*Ragusa Vecchia*), Rhizinium (*Risino*), Scodra, Olcinium (*Dulcigno*). To Illyrium belonged the islands Scardona, Corcyra Nigra (*Curzola*), Melita (*Meleda*). Concerning Mœsia, see § 24. The province of Dacia (§ 25), which lay beyond the Danube, was added to the empire by Trajan, but soon afterwards abandoned. Concerning Sarmatia, see § 25.

1) See Cellar. Geogr. Ant. 1. 2. c. 7. § 44.

18. The extensive interior of Germany, beyond the Danube and the Rhine, remained unknown to the Romans. With so much as touched upon the immediate frontiers of their territory they were rather better acquainted, but very little of it was added to their empire¹. Among the rivers of Germany they reckoned, besides the Rhine and the Danube, the Menus, Nicer, Luppia, Visurgis, Amisis, Sala, Albis, Viadrus (*Oder*), and Vistula; among its mountains, the Taunus, Abnoba, Asciburgius, Melibocus, Rhetico (*Siebengebirge*), and Sevo; among its forests, the Sylva Hercynia (*Harz*), Marciana or Nigra (*Schwarz-Wald*), Teuto-

burgensis, Cæsia, and Bacenis. They divided the whole into Germania Transrhenana (Magna or Barbara), and G. Meridionalis, the regions between the Albis and the Vistula, Germania trans Vistula, and G. Transmarina. In G. Transrhenana were the Frisi, chief town Amisia, the Marsi, Bructeri, Tencteri, Usipetes, Sicambri, Catti, chief town Mattium (*Marburg*), the Cherusci, Chamavi, and Tubantes. In G. Meridionalis were the Allemanni, Marcomanni, Narisii, Hermunduri, and Quadi; between the Albis and Vistula, were the Suevi, among whom were the Angli, Fosi, Teutones, Cimbri, Longobardi, Varini, Rugii, Semnones, Vandali, Gothones, Lygii, Æstii, and Venedi. To G. Transmarina belonged the inhabitants of the coasts and islands of the Sinus Codanus (the Baltic), the region itself comprising Scandinavia and Eningia (*Finnland*), and among the nations those called Sitones, Suiones, and Fenni.

1) Cf. Tac. Germ. § 29.

2) Cf. ib. § 44.

19. The regions around the Ægean and the Black sea (Pontus Euxinus) and belonging to the Roman empire were Achæa, the Greek islands, Macedonia, Thrace, Mœsia, and Dacia. The Roman province of Achæa comprised what is generally called Greece, to the exclusion, however, of Macedonia, extending from Macedonia to the Illyrian, Ægean, and Ionian seas, and divided into three parts, the Peloponnese, Central (Media), and Northern Greece. The first comprised the districts of Achæa, Argolis, Laconia, Messenia, Elis or Elea, and Arcadia, situated in the very heart of the peninsula. The chief river of Achæa, which formed the northern coast of the Peloponnese, was the Melas; and, among other lesser streams, was the Selinus. Achæa (Ionia, Ægialos) was subdivided into Achæa, properly so called, and which gave its name to the whole, Sicyonia, and Corinth. Achæa had twelve cities, among

them being Dyme, Patræ, Ægion, Ægira, and Pelene; Sicyon had the towns Sicyon and Phlius; Corinth contained the town so called, anciently named Ephyre, on the isthmus formed by the Corinthian and Saronic gulfs, with its citadel Acrocorinthus, the fount Pirene, and the harbours Lechæum and Cenchrææ. In Argolis, which was a peninsula stretching out between the Argolic and Saronic gulfs, were the rivers Inachus and Phryxus; the lake Lerne; the cities Argos, with its harbour Nauplia, Mycenæ, Epidaurus, and Hermione, besides the smaller but memorable towns of Lerna, Nemæa, Tiryns, and Trœzen. Cynuria, with its chief town Thyrea, is considered to have belonged to Argolis.

20. Laconia and Messenia were the southern regions of the Peloponnesus, and formed the Laconic and Messenian gulfs, the former lying between the promontories Tænarum and Malea. The Eurotas was the chief river of Laconia, which also contained two remarkable mounts; the one named Taygetus terminated in the promontory of Tænarum (*Cape Matapan*), the other in Malea. Lacedæmon, or Sparta, was the chief city of Laconia, which also contained Amyclæ, Therapnæ, Sellasia, Leuctrum, Tænarum (Cænepolis), Teuthrone, Gythium, Asopus, and Epidaurus Limera. There were also the two promontories called Achilleus and Psamathus. Messenia, which lay westward of Laconia, had the river Pamisus; the mountains Ægialeos and Temathea; the towns Messene, Ithome, and Thuria; and on the coast, Pheræ, Corone, Methone (*Modon*), and Pylos, over against which last lay the island of Sphacteria, and the islets called Cyparissæ. In Elis, which lay above Messenia, were the rivers Alpheus and Peneus, and the Larissus, which separated it from Achæa; the towns Elis, Cyllene, Pylos Eliaca, Pisa, on the Alpheus close to Olympia, and Pylos Tri-

phyliaca. The parts of the Peloponnesus now mentioned enclosed the central district of Arcadia, which had the rivers Alpheus, Erymanthos, and Stymphalos; the mountains Cyllene, Erymanthos, Mænalus, and Parrhasius; and had among its towns Mantinea (*Trapolizza*), Tegea, Megalopolis, Heræa, Psophis, and Orchomenos. Among the lesser towns were Stymphalos, Pallantium, Lycoa.

21. Central Greece, which was also properly called Hellas (*Ἑλλάς*), extended from Attica to Thesprotia, and comprised the regions of Attica, Megaris, Bœotia, Phocis, the two districts called Locris, Doris, Ætolia, and Acarnania.

Attica (*Actæa*, *Acte*, *ἀκτῆ*), bounded on the north by Bœotia, and on its other sides by the sea, contained the rivers Ilissus and Cephissus; the mounts Hymettus and Pentelicus; and the promontories of Sunium and Cynosura. Its capital was Athenæ (*Cecropia*), with its ports Pyræus, Phalereus and Munychia. Among its other towns were Eleusis, Sunium, Panormos, Marathon, Rhamnus, Decelia, and Phyle. The Megarid (*Megaris*), chief town Megara, joined Attica on the west. In Bœotia, north of Attica, were the rivers Asopus and Ismenus; the fountains of Dirce and Aganippe; the lake Copais; and mounts Helicon and Cythæron. Its capital was Thebæ; besides which were the cities Tanagra, Plataæ, Leuctra, Thespiæ, Lebadia, Chæronea, and Orchomenos. Phocis, west of Bœotia, contained the river Cephissus; mount Parnassus; and the cities Delphos, Crissa (*sinus Crissæus*), Cyrrha, Anticyra, and Elatea. East of Phocis, along the Euripus, lay the Locri Opuntii, chief town Opus, and the Epicnemidii; west were the Locri Ozolæ, chief towns Naupactus (*Lepanto*) and Amphissa. Above the Locri Ozolæ lay Doris (*Tetrapolis Dorica*), bounded by mount Cæta. West of the Locri Ozolæ was Ætolia, with its rivers

Achelous and Evenus; mount Aracynthus; and the cities Chalcis, Calydon, and Lysimachia. West of Ætolia lay Acarnania, between the river Achelous and the Sinus Ambracius, containing Argos, Amphiloichicum, Actium, and Anactorium, with the cities and promontories of Stratos, Metropolis, and Astacos. Leucadia, with its chief town Leuca, and promontory Leucate, originally belonged to Acarnania (§ 23.)

22. Northern Greece contained Thessaly and Epirus. Thessaly (Thessali; Æmonia, Pelasgia) included on the west the mountain range of Pindus; on the east, Olympus, Ossa, and Pelion; on the south, Cæta; and was divided by the Cambunian mountains from Macedonia. Among its rivers were the Apidanus, the Spercheios, and the still more celebrated Peneus, watering the vale of Tempe, between Olympus and Ossa. Thessaly was divided into Phthiotis, Magnesia, Pelasgiotis, Perrhæbia, and Hestæotis; inhabited respectively by the Thessali, Magnetes, Ænians, Dolopes, Perrhæbi, and Dryopes. Among its cities were Hypata, Melitæa, Pharsalus, Lamia, Thebæ, Pheræ, Demetrias, Larissa, Azorum, Ithome, Gomphi, and Tricca. Epirus, west of Thessaly, contained the river Thyamis, the Acheron, which after receiving the Cocytus fell into the Acherusian lake, and the Arethon, falling into the Ambracian gulf. It contained the Montes Ceraunii (Acroceraunia), and was divided into Molossis, Thesprotia, and Chaonia; its inhabitants being the Molossi and Chaones. On the coast lay the cities Ambracia, Nicopolis, and Buthroton; inland was Dodona.

23. To these three divisions of Greece are to be added the islands, situate some in the Ægean, some in the Ionian sea. Some of these, which were comprised by the Romans in one province, will be noticed below (§ 30), the rest were as follows: Eubœa (*Negroponte*) and Crete (*Candia*). Eubœa had the promontories

Caphareus and Artemisium; the towns Carystus, Eretria, and Chalcis. In Crete lay the mountains Ida, and Dicte (whence Idæi, Dictæi); the promontories Samonium, Corycium, and Psacum; the cities Cnossus, Cydonia, Gortyna, and Minoa. Among the smaller islands of the Ægean sea were those called the Cyclades, and the Sporades; the former comprised Delos, Paros, Naxos (Dia), Andros, Melos, Seriphos, Gyarus, and Ceos. For the Sporades see § 30: one of them, Amorgos, was considered part of Europe. Besides these were Samothrace, Thasos, Lemnos (with its towns Myrina and Hephæstia), Halonnesos and Scyros; and in the Saronic gulf Salamis and Ægina. In the Ionian sea lay Cephallenia, Leucadia (*S. Maura*), once a peninsula of Acarnania (§ 21), Corcyra (*Corfu*), adjacent to Epirus; and the smaller islands of Cythera, on the coast of Laconia, Zacynthus (*Zante*), on the coast of Elis, Ithaca (Dulichium?), between Cephallenia and Leucadia. There were also the islets called CENUSSÆ and SPHAGIÆ on the coast of Messenia, the Strophades below Zacynthus, the Echînades at the mouth of the Achelous.

24. Macedonia, lying above Thessaly, at the foot of the mountains Scardus and Hæmus, stretched westward from Thrace to Illyria, containing part of what had originally belonged to Thrace. By the addition of Illyris Græca (§ 17) the Ionian sea became its boundary, and it touched on the Ægean by the Singitic, Toronaic, and Thermaic gulfs. Among its rivers were the Nestus, the Strymon, and the Haliacmon, falling into the Ægean, with the Apsus and the Aous, falling into the Adriatic. Among its mountains were, besides the Scardus and Hæmus, Athos, Pangæus, and, on the south, the Cambunian range. It was subdivided into Pieria, Æmathia, Mygdonia, and Pæonia, so named from their respective inhabitants. Among its cities

were Pydna, Pella, Thessalonice (Therme), Potidæa, Olynthus, Chalcis, Stagira, Amphipolis, Philippi, and, on the western coast, Dyrrachium (originally Epidamnus, and now *Durazzo*) and Apollonia.

Thrace was bounded by Macedonia, mount Hæmus, the Euxine, the Propontis, and the Hellespont; being also washed in part of its extent by the Ægean. Its most noted mountains were Hæmus and Rhodope; its rivers, the Nestus, Panysus, and the Hebrus, into which several smaller streams fell; among its inhabitants were the Triballi, Bessi, Odrysæ, Cicones, and Bistones; Its chief city was Byzantium, afterwards called Constantinople; besides which were Apollonia and Halmydessus, on the coast of the Euxine; Sestos, Heraclea, Lysimachia, on the Propontis; Abdera, on the Ægean; Trajanopolis, Adrianopolis, Philippopolis, on the river Hebrus. Mœsia, which formed part of modern Servia, Bosnia, and Bulgaria, lay between the Danube and the mounts Scardus, and Hæmus, stretching down to the Euxine; it was divided by the river Ceber, or Ciabrus, into upper and lower. Dardania belonged to the upper portion. Its inhabitants comprised the Triballi, Scordisci, Scythæ, and Getæ, the two latter in the vicinity of the Euxine. In the upper portion lay the cities Singidunum (*Belgrade*), Viminicum, and Naissus; in the lower, Nicopolis, Odessus, Marcianopolis, Tomi, and Istropolis.

25. Dacia, which comprised what is now Transylvania, Walachia, Moldavia, and part of Hungary, extended from the Danube to the Carpathian mountains. It was added to the empire by Trajan, and from him called the province of Trajan. Among its rivers were the Tibiscus (*Teiss*), Aluta and Hierasus, or Poretus (*Pruth*), which fell into the Danube, and the Tyras, discharging itself into the Euxine. The Tibiscus received the waters of the Mariscus. Dacia was divided

into (Dacia) Alpestris, Ripensis, and Mediterranea; its inhabitants were the Anarti, Teurisci, Iassii, and Getæ. Among its cities were Tibiscum (*Temeswar*), Ulpianum or Claudiopolis, Napoca (*Clausenburg?*), Augusta Prætoria, Ulpia Trajana, Zeugma, Apulum or Alba Julia, Singidava (*Engedin*), and Petrodava (*Iassy*). Part of Dacia was considered to belong to the Sarmatian region.

Sarmatia was divided into Asiatic (§ 23) and European. The latter, lying between the Vistula and the Tanais (*Don*), had no defined boundary on the north, and became only partially known to the Romans in the course of their wars, being never subdued by them. It contained, among other rivers, the Tyras, Hypanis (*Bog*), and the Borysthenes; among its mountains were reckoned the Montes Budini, Hyperboræi, and Riphæi; its inhabitants comprised, among others, the following tribes, which were also occasionally considered part of the German nation, namely, the Venedi, Peucini, Bastarnæ, Geloni, Budini, Agathyrsi, Roxolani, and Iazyges. To European Sarmatia was attached the Chersonesus Taurica (*Crimea*), inhabited by the Tauri or Tauroscythæ, and by Greek settlers. In it was the promontory called Criumetopon, and the towns Taphræ, Eupatorium, Theodosia (*Caffa*), Panticapeum, and Cimmerium.

26. The Asiatic dominions of the Roman empire were comprised in Syria and Asia Minor. Armenia Major, which formed a barrier between the Romans and Parthians, is not to be reckoned a Roman province, nor are the regions above it, between the Euxine and Caspian seas. Beneath Syria lay Arabia, of which only a very small portion acknowledged the Roman power. At the frontiers of Syria and Armenia commenced the Parthian empire, stretching from the Euphrates to the Indus.

Under the head of Asia Minor were comprised, Asia Proconsularis, Pontus, Cilicia, and the so called Provincia Insularum. Asia Proconsularis, also called Asia Propria, was divided into Mysia Major and Minor, Troas, the Greek colonies, and Lydia, Caria, and Phrygia. In Mysia Major was the river Caicus; the promontory Gargara; the cities Pergamus, Pytane, Adramyttium, Thebe, Antandros, and Assos. In Mysia Minor were the rivers Granicus, Æsepus, and Rhyndacus; the mount Olympus; the tribes of the Mygdones and Doliones; the cities Lampsacus, Parium, Apollonia, and Miletopolis. In the Troad, near the Hellespont, were the rivers Simois and Scamander; the cities Ilium, Abydos, Troas Alexandria, Rhœteum, and Sigeum. The Greek colonies were Æolis, Ionia, and Doris, comprising the coast and the adjacent islands. In Æolia were Larissa, Cyme, Grynium, Elea, and on the island of Lesbos, Mitylene. In Ionia were the rivers Hermus, Caistrus, and Mæander; the mounts Mycale, Latmus, and Corycus; the cities Miletos, Priene, Magnesia, Ephesus, Colophon, Teos, Erythræ, Clazomenæ, Smyrna, which originally belonged to Æolis, and Phocæa; among the islands belonging to it were Samos and Chios. In Doris (Pentapolis), lay the cities Cnidus and Halicarnassus. In the island of Rhodes (§ 30) were the cities Ialysos, Camiros, Lindos, more ancient than the town called Rhodes. Lydia (Mæonia) had the same rivers as Ionia, with the Pactolus, falling into the Hermus. In it were the mounts Tmolus and Sipylus; the cities Thyatira, Apollonis, Hierocæsarea, Magnesia ad Sipylum, Sardes, Tmolus, Philadelphia, Metropolis. Caria lay below Ionia: in it was the river Calbis, and the cities Myndus, Iassus, Mylasa, Caunus, Alabanda, and Antiochia Mæandri, with Cnidus and Halicarnassus in Doris, which was part of Caria.

27. Phrygia Major lay east of Lydia; Phrygia Minor extended above Lydia to the Hellespont, comprising the district of Troas (§ 26). Phrygia Major (magna) was subdivided into several parts; as for instance, Salutaris, Epictetos, Catacecaumene (*κατακεκαυμένη*). It had the rivers Lycus, Mæandros, Marsyas, Sangarius; in Epictetus were the cities Dorilæum, Cotyæum, Nacolea; and in the other parts Cibyra, Laodicea ad Lycum, Colossæ, Hierapolis, Apamea (Celænæ), Juliopolis, Synnada, Docymæum, Peltæ, Lysias, Ancyra.

Pontus (Provincia Pontica), stretching along the southern shore of the Pontus Euxinus, contained Pontus, Bithynia, Paphlagonia; and inland, Cappadocia and Galatia. Pontus (Pontica, parva Cappadocia) reached from the Halys to Trapezus. It had among its rivers the Iris and the Thermodon; among its mountains, the Mons Amazonius; and was divided into the districts Themiscyra and Sidenæ. The Chalybes (Chaldæi), Tibareni, Philyres, and Macrones, were among its inhabitants; Ibera, Amisus, Ancon, Polemonion, Pharnacia (Cerasus), Trapezus (*Trébi-sond, Tarabosan*), Amasia, Sebastopolis, Beresa, Comana, and Neocæsarea, were its chief cities.

28. Cappadocia, beneath Pontica, became a Roman province in the time of Tiberius. Its rivers were the Halys, the Melas, the Sarus, and the Pyramus, the two last falling into the sea after traversing Cilicia. It contained the mountains Argæus, Antitaurus, and Amanus, and was divided into the regions of Morimena, Garsauritis, Commanena, Tyanitis, Cataonia, and Cilicia. It had the cities Diocæsarea, Nyssa, Mazaca (Cæsarea), Tyana; and in Armenia Minor, which is considered to have been part of Cappadocia, Melitene and Nicopolis. Bithynia (Bebrycia) had the rivers Sangarius, which received the waters of the Gallus, and the Bil-

læus, both falling into the Euxine; besides which were the Hylas and the Lycus. Its inhabitants were the Mariandyni, Thyni, and Caucones; on the coast lay the cities Myrlea (Apamea), Nicomedia, Drepanum, Chalcedon, Heraclea, and Tium; inland were Prusa, ad Olympum, Nicæa, Hadrianopolis, Bithynium (Claudiopolis). Paphlagonia, between Bithynia and Pontus, extending from the river Parthenius to the Halys, contained mount Olgasis; the promontories Carambis and Zephyrium; the cities Sinope, Harmene, Limotis, Amastris, and Cytorum, on the coast; Pompeiopolis, Germanicopolis, and Sangra, inland. Galatia (Gallo-Græcia, part of Phrygia Major) had the rivers Halys and Sangarius; the mountains Olympus and Dindymus; the Tectosages were among its inhabitants; Pessinus, Ancyra (*Angura*), Tavium, and Aspona, were its cities.

29. Under the name Cilicia were comprised Cilicia trans Taurum, Lycaonia, Pamphylia, Pisidia, Isauria, and Lycia. Cilicia trans Taurum was divided into Prima or Aspera (*τραχέια*), afterwards called Isauria, and into Cilicia Secunda or Campestris; its rivers were the Calycadnus, Cydnus, Pyramus, and the Pinarus; the mountains, Cragus, Taurus, and Amanus; on the coast lay the cities Issus, Soli (Pompeiopolis), Mallos, and Tarsus; inland were Anazarbus (Cæsarea), Epiphania, and Nicopolis. On the coast of Cilicia, *Trachea*, were Selinus, Anemurium, and Arsinoe. Lycaonia, between Phrygia and Cappadocia, contained the cities Iconium, Laodicea combusta, and Claudiopolis. The rivers of Pamphylia were Eurymedon and Cataractes; and in it lay mount Taurus; on or adjacent to its sea coast were the cities Olbia, Attalea, Perga, Aspendos, and Side. Pisidia, above Pamphylia, lay partly on Taurus; the Solymi were among its inhabitants; and Sagalassus, Cremna, Selga, and Termessus its cities. Isauria,

above Pisidia, contained Isaura (Isaurus), and Lystra, and Derbe, which however were also considered to belong to Lycaonia. Similar instances occur in which the same places are made to belong to different regions, owing to the uncertainty of the boundaries of the regions themselves. Lycia, between Caria and Pamphylia, had the rivers Xanthus and Limyrus; the mounts Cragus and Chimæra; the cities Telmessus, Patara (Arsinoe), Myra, and Olympus, on the coast; and Pinara inland.

30. Under Vespasian a province was made in addition to these three now mentioned, of the circumjacent islands: these included part of the Greek colonies in Asia Minor, and were as follows. In the Propontis were Cyzicus, in which was the mountain Dindymus, Proconnesus, and other very small islets; in the Ægean, Lesbos, with its cities Mytilene, Methymna, and Pyrrha; Chios, to which belonged the promontory Ariusium, chief town Chios; Samos, in which was mount Ampelus, and the cities Samos and Heræum; the Sporades, including Patmos, Cos, Icaria, and Syme; in the Carpathian sea, Carpathus, Rhodes (originally called Atabyria, Ophiusa, Trinacria), in which was mount Atabyrius, and the cities mentioned above (§ 26); in the Pamphylian (Ionian) sea was Cyprus, below Cilicia, in which were mount Olympus, the promontories Drepanum, Zephyrium, Dinaretum, and Pedalium: the towns on its coast were Paphos, Curium, Amathus, Citium, Arsinoe, Salamis, Aphrodisium, Lapathus, and Solæ, and in the interior, Chytrus, Trimitus, Idalium.

31. Syria, lying above Arabia, stretched eastward from the Mediterranean, in some places touching on, but in others parted from it. The part of it which lay west of the Euphrates was most properly called Syria, and comprised the divisions, Cœlesyria, Phœnicia, and

Palæstine. It had the rivers Orontes, Singas, Marsyas; the mounts Casius, Amanus, and Pierius; and was divided into Commagene, or Syria Euphratensis, east of Cilicia, containing the cities Samosata, Germanicia (Germanica Cæsarea), and Zeugma; Seleucis (Tetrapolis, Syria Seleucidica), on the coast of which lay Laodicea ad mare, Posidonium, Seleucia Pieria, Alexandria ad Issum, Antioch on the Orontes, the capital of Syria, Daphne, Apamea, Larissa, and Epiphania; Palmyrene (Syria Salutaris), in which was Palmyra (*Tadmor*); Chalcidice, chief town Chalcis, on the Belus; Cyrrhastica, in which were Cyrrhus, Hierapolis (Bambyce), and Beræa. The cities of Cœlesyria, so called from its situation between Libanus and Antilibanus, or Syrophœnicia, were Abila, Damascus, Gerra, Laodicea ad Libanum, and Heliopolis. Phœnicia (Canaan), formed the sea coast of Syria, extending from the Eleutherus to the Cherseus; among its streams were the Adonis and the Leontes; it contained the mountains Libanus and Antilibanus; the cities Ptolemais (Aco), Tyre (Sor, Tzor), Sidon (Zidon), Berythus, Byblus, Botrys, and Tripolis.

32. The chief river of Palæstine (Judæa, Canaan) was the Jordan, which formed a communication between the lake of Gennesareth and the lake Asphaltites, or Dead sea; among its lesser streams was the famed brook Kidron (Cedron); its mountains were Libanus, Carmel, Thabor, Gelboe, and Hermon. On this side Jordan lay Judæa, on the coast adjacent to which were Gaza, Ascalon, Joppa, Antipatris, Cæsarea. Inland lay Eleutheropolis, Hebron, Ephrata, Bethlehem, Hierichus (Jericho), Archelais, Emmaus (Nicolis), and Hierosolyma (*Ælia*), the capital of Judæa; Idumæa lay below Judæa, and contained Zoara and Elusa; Samaria lay above Judæa, having the cities Samaria (Sebaste), Iezrael, Sichem (Neapolis), and Bethoron;

Galilæa, above Samaria, contained Sepphoris (Diocæsarea), Capernaum, Tiberias, Endor, Nazareth, and Bethlehem. Beyond Jordan was the country of Moab, with its cities Moab (Aræopolis), Ammonitis, the country of Ammon, with its cities Ammon (Philadelphia); Gadarene, chief town Gdara; part of Arabia Deserta, with its town Bostra. Among the other cities beyond Jordan were Scythopolis and Callirrhoe.

Mesopotamia lay between the Euphrates and the Tigris; it contained, among other rivers, the Mygdonius and the Chaboras; among its mountains were Singaras and Masius; on the Euphrates lay the cities Nicephorium (Callinicum), Circesium, Anatho, and Cunaxa; on the Tigris, Cænæ and Apamea, besides Resaina (Rezin), Carræ (Charran), Edessa (Callirrhoe), Tela (Constantia), Singara, Nisibis, and Dara (Anastasiopolis).

33. Among the regions bordering on Mesopotamia, were, on the north, the two Armenias; on the south, Arabia; and on the west, the Parthian empire. Armenia Minor, it has been remarked (§ 28), was considered to form part of Cappadocia, and Armenia Major formed the barrier between the Roman and Parthian arms (§ 26). The rivers of this Armenia were the Euphrates, Tigris, Araxes, Phasis, Cyrus (*Kur*), and Teleboas; its mountains were Taurus and Niphates; among the districts into which it was divided were Sophene, Thasiane, and Caranitis; its cities were Artaxata, Tigranocerta, Amida, Arsamosata. Above Armenia lay Colchis (Lazica), Iberia, and Albania, which, on the north, touched the Asiatic Sarmatia. Colchis was on the Euxine, between the rivers Phasis and Corax; its inhabitants were the Lazi, Heniochi, and Sanni; its cities Æea, Phasis, Dioscurias, Dandari (Sebastopolis), and Pityus. Iberia, east of Colchis, was hemmed in by the Caucasus, and

contained the rivers Cyrus, Aragus, and Iberus, with the cities Zalissa and Harmozica. Albania, lying between Iberia and the Caspian sea, had the rivers Araxes, Casius, and Cyrus; the mountains called Ceraunii; the cities Cabalaca, Albana, and Camechia. Asiatic Sarmatia extended from the Palus Mæotis and the river Tanais, by which it was divided from Europe, to the Rham (*Volga*); it had, among other rivers, the Hypanis; and among its tribes were the Alani, Mæotæ, and Hamaxobii; its cities were Achilleum, Rhombites on the Tanais, Tanais, and Navaris. The Cimmerian Bosphorus divided it from the Chersonesus Taurica, which was mentioned in § 25.

Only a small portion of Arabia was subject to the Romans. The whole was divided into three regions: Arabia Deserta, Arabia Petræa, and Arabia Felix. Arabia Deserta was inhabited by the nomad Arabians, or Arabes Scenitæ; and among the cities of this region were Barathena, Sabe, Themma, Dapha, Thumata, and, on the Persian gulf, Ammæa and Gerra. Arabia Petræa contained the mounts Melanes and Sina, and was divided into Nabathæa and Idumæa, which we have spoken of as belonging to Palæstine, § 32. It contained, on the Ælanitic gulf, the cities Ælana, Eziongeber (Berenice), and Medeia ad Heroopoliten, a Phœnician settlement, besides Pharan, Madian, and Petra. Arabia Felix, which lay below Arabia Petræa, extended to the Red sea, or Arabian gulf; in it lay the mount Cassanites; and, among other cities, Leucæ Comæ, Iatrippa (*Medina*), Macoraba (*Mecca*), Mariaba (Saba), Muza, and Ocelis; it reckoned the Sabæans and Homeritæ among its inhabitants.

34. Of the regions of Asia beyond the Roman empire, from Mesopotamia to India, the more remote, like India itself, were known to the Romans only by report and commercial intercourse. As we proceed from the

frontiers we meet with the following, which formerly were comprised in the Persian empire, but afterwards acknowledged the Parthian sway: Babylonia and Chaldæa, between Mesopotamia and the Persian gulf, chief towns, Babylon, Sura, Apamea, Orchos, and Teredon. Assyria, beyond Mesopotamia, in which, besides the Tigris, were the rivers Lycus and Caprus, the mount Zagrus, and, among other districts, those of Adiabene, Chalonite, and the territory of the Garamæi; the cities Nineveh, Arbela, Gaugamela, Demetrias, Apollonia, Seleucia, and Ctesiphon. Persia (Persis), divided into Persis, in which were Persepolis and Aspadana (Ispahan); Súsiana and Elemais, containing Susa, Charax, and Elemais; Carmania, in which was Carmana; Gedrosia, chief towns, Ora and Arbis; Media Magna contained Ecbatana (Hamedan), Ragæ (Arsacia), and Tabas; Media Atropatene, inhabited by the Mardi, and Tapuri, lay towards the Caspian, and had the cities Gazæ, Cyropolis, and Praaspa; Hyrcania was east of the Caspian, and comprised the Dahæ; the Ochus was its chief river, Syrinx its chief town; in part of it, called Parthiene, lay Nisæa. Hyrcania touched the frontiers of Aria and Margiana; eastward of these was Bactriana, chief towns, Bactra and Arachosia; below which lay Gedrosia; these two last regions both touching on India. Above Bactria was Sogdiana, chief town, Maracanda. The Chorasmii, on the Caspian, just above the Barcani, and below Hyrcania, are said to have belonged to Sogdiana.

India was divided into India on this side the Ganges, and India beyond the Ganges. In the former were the rivers Indus, Jomanes, and Hydaspes; the mountains, Emodi, Imaus, and Taurus; the cities, Barygaza, Nyssa (Nagara), Taxila, Bucephala, Serinda, Palibothra, Colchis, and Comar. At the southern extremity of India on this side the Ganges, lay the island Tapro-

bana, or Salice, now called *Ceylon*. Beyond the Ganges was the Chersonesus Aurea (*Malacca*), and the island of the Iabadii (*Sumatra*). East of India the ancients placed the Sinæ; northward of it, the Seræ; westward of which last they said were the Scythians; whilst of the regions further northward and eastward they professed to know nothing. The Scythians were considered to be divided into those on this side the mount Imaus, and those beyond it; westward of the former were the Sarmatæ (§ 25), who were sometimes themselves included among the Scythians.

35. Africa contained Egypt, which however was by the ancients generally considered to belong to Asia, at least in part, Libya (Cyrenaica), Africa Propria, Numidia, and Mauritania. The chief river of Egypt was the Nile: of the arms and mouths of which the Pelusiac was the most eastern, the Canopic the most western, between which were five others, making together the famed seven mouths of the Nile. Among the lakes of Egypt were the lakes Mœris, Tennis, and Mareotis. It was divided into the Thebais, or Upper Egypt; the Heptanomis, and the Delta, or Lower Egypt. Upper Egypt contained the cities Syene, Apollinopolis Magna, Thebes (Diospolis Magna), Tentyra (*Denderah*), Abydus, Ptolemais, Panopolis (Chemmis), Antæopolis, and Lycopolis. In the Heptanomis were Antinoë (Besa), Hermopolis Magna, Cynopolis, Oxyrynchus, Heracleopolis, Aphroditopolis, and Memphis; to this division also pertained the Lesser Oasis and the Great Oasis, the latter lying far above the former. Lower Egypt, or the Delta, was divided into the Delta, properly so called, and a western and an eastern district. In the Delta lay, on the coast, Tanis, Diospolis, Paralus, Bolbitine (*Rosetta*), and, inland, Busiris, Sais, Naucratis, Hermopolis, Meletis. In the western part of Lower Egypt were Planthine, Momemphis, Apis, Nicopolis,

and Alexandria, off the harbour of which lay the island of Pharos; in the eastern division were Pelusium (*Damietta*), Casium, Rhinocorura, Bubastus, Heroopolis, and Arsinoe or Cleopatris, on the gulf of Heroopolis.

Libya lay between Egypt and the Syrtis Major. The tribes inhabiting it, reckoning westward from Egypt, were the Adrimachidæ, Ammonii, Marmaridæ, Nasamones, and Psylli; it was divided into the Nomus Libycus, Marmarica and Cyrenaica; the Nomus Libycus, or Libya Proper, contained the mountains Ogdamus and Aspis, and the cities Apis, Parætonium, and Mareotis, the two former on the coast, the last inland. Marmarica, over against Crete, had the mountains called Bascisi, the river Paliurus, and, according to D'Anville's map, the cities Gonia, Heracleum, and Hippo, on the coast, with Ammon and the Castra Alexandri, inland. Cyrenaica (*Propria*, or *Pentapolis*), extended from Marmarica to the Syrtis Major, opposite the Peloponnesus, and contained the city Cyrene, and the sea coast towns Berenice (or *Hesperis*), Arsinoe, Ptolemais, Apolinia, and Darnis.

36. Africa Proper was considered to consist of the regions between Cyrenaica, the river Tusca, and the Libyan desert. In it were the rivers Cyniphus, Triton, and Bagrada, the lake Zuchis, and the marshes called *Palus Tritonis* and *Palus Libyæ*. It was divided into Tripolis, or (*regio*) *Tripolitana*, *Zeugitana*, *Numidia*, and *Mauritania*. Tripolis, lying between the two Syrtes, contained the towns *Leptis Magna* and *Œa*; in *Zeugitana* were Hippo *Diarrhytos*, *Utica*, *Carthage*, *Tunes*, *Aspis*, and *Neapolis*. The towns of *Bizacium* were *Adrumetum*, *Leptis Minor*, *Thapsus*, *Sicca*, *Zama*, and *Tysdrus*. Adjacent to *Byzacium* was the island *Cerina*; and on the coast of *Tripolitana* the island *Meninx*. *Numidia* extended from the *regio Zeugitana* to the river *Ampsaga*; its inhabitants were the Mas-

syli; its cities, Hippo Regius, Cirta, Tibili, Tipasa, and Lambæsa. Mauritania was divided by Claudius into two provinces, Cæsariensis and Tingitana. Cæsariensis (or Massæsyliæ) was situated between the rivers Ampsaga and Maluas, being also watered by the Mulucha, Savus, and other streams; its inhabitants were the Massæsyli and Numidæ; on the coast lay the towns Igilgili, Saldæ, Cæsarea, Cartenna, and Siga; inland were Hippa, Auzea, Thubuna, and Sitifi. In Tingitana, or Mauritania Proper, now *Fetz* and *Morocco*, were the mounts Atlas, Abyla (now *Ceuta*), opposite to Calpe (*Gibraltar*), and Asinarium; it was inhabited by the Mauri (Maurusii); on the strait of Cadiz lay Tingis, on the Atlantic coast Zilis, Banasa, and Sala. Near the coast of Tingitana, in the Atlantic, lay the insulæ Purpuræ, identical perhaps with the Gorgades and Hesperides, one of which, called Cerne, is the modern *Madeira*; southward of these were the Fortunate Isles, among which were Ombrios, Capraria, and Canaria.

Above Numidia and Mauritania lay Gætulia. In the interior part of Africa were two rivers, named Cyniphus and Bagraða, distinct from the two of the same name already mentioned, also the Niger and the Gir; there were also the towns Nigira, Thabudis, Garama, and Gyra: and the nations called Garamantes, Nigritæ, and Æthiopes Hesperii. These being distinct from the Æthiopians beyond Egypt, between Libya and the Arabian gulf. These last had the rivers Nile, Astapus, and Astaboras; and were divided into the tribes of the Blemmyes, Sebridæ, and Nubæ; on the Nile they had the towns Napata, Premis Magna, Premis Parva, and Meroe; on the Astaboras, Eser and Auxuma; on the coast of the Arabian gulf were the Troglodytæ (regio Troglodytica), with the towns called Ptolemais ferarum, Sabæ, Adulis, and Berenice Epidires. Among the islands adjacent was one called Orine. Above Ethi-

opia was the cinnamon country; and on the Erythræan sea, the region called Azania, running out into the promontories Elephante and Aromata. Below the equinoctial line were Agizymba and the Anthropopagite Æthiopians.

ROME.

37. The history of the first origin of Rome, although dating from a period subsequent by several centuries to the fabulous age of Greece, is so interwoven with legends, that it seems a hopeless task to attempt to unravel truth from fiction. Even the ancients themselves, whose writings have come down to us, whilst they all alike adopt the obscure traditions preserved by other writers more ancient than themselves, are strangely at variance one with another. Modern authors, who can take their data only from these ancient writers, and are deprived of innumerable records and documents to which these had access, have succeeded, despite the ablest criticism, and utmost ingenuity of research, rather in showing that the truth is not to be found, than in finding it: and those among them deserve most praise who have abstained from idle, or, at the best, but specious speculations. Thus we are still in uncertainty as to who really was the first founder of Rome, the year of its foundation, the original name of the city itself, and who were its first inhabitants. The account commonly received, however, makes the founder of Rome to have been Romulus, the son of Sylvia, a Vestal, either alone or with his brother Remus. To them is ascribed the first origin of a city situated on the Palatine mount¹, which a constant tradition affirmed to have been the spot where Evander and his followers, emigrants from Arcadia, settled, and formed a town named Pallantium². Hence some have been of opinion that Ro-

mulus did not found a new city, but merely enlarged and strengthened this Pallantium. The story of Evander is indeed legendary (§ 308), and some have questioned whether he ever was in Latium at all; whilst others³ have set the whole down as a mere fiction of the Greeks, notwithstanding the numerous testimonies of the ancients to the fact, and such standing records of it as the Ara Evandi and the Porta Carmentalis, which induce me to think such utter rejection of the story to be rather presumptuous.

1) Cf. Ovid. *Trist.* 3, 1, 31. 2) Cf. Dionys. Hal. 1, 31; Liv. 1, 7; Virg. *Æn.* 8, 98, sqq.; 341, 359; Ovid. *Fast.* 1, 470, sqq. 3) As, for instance, Niebuhr, (vol. 1, p. 85,) and Wachsmuth, (*Ælt. Gesch. d. Röm. Staates*, p. 102.)

38. We have no reason to believe that the ancients themselves had any certainty concerning the exact time of the foundation of Rome¹, although the discrepancies between them concerning the year in which it took place are not very numerous. Modern writers assign it either to B. C. 752 or 754, the latter being the date given by Varro, the former that of Cato². Tradition asserted that the day of the foundation was the 21st of April³. The name Rome, if traced to a Greek origin, would mean *strength*, a title very appropriate to a city which became the queen of the earth by force of arms; and there is an ancient opinion that the Greek settlers on the Palatine hill, finding there a town called Valentia, translated that name to *Ῥώμη*, Rome⁴. The common derivation of the name from Romulus as its founder being once given up, it was to be expected that various explanations would be set forth⁵. Accordingly, some have said that Romulus took his name from the name of the city; others, that this was so called from Rumon, or Rumo, the primitive name of the Tiber⁶; others again, that the river and the country adjacent were so called from Ruma, a

teat or udder⁷, from the number of its flocks and herds, so that Rome must have meant the city of ruminant animals, or of sucklings: in which way also is explained the name *Ruminalis*, given to the fig-tree, beneath which the twins were said to have been found sucking the teats of the wolf⁸. Other fancies might be mentioned equally bold and absurd.

1) Cf. *Beauf. Sur l'Incertit. de l'Hist. Rom.* p. 2. c. 2. 2) The computation of Cato (or of Verrius Flaccus) assigns its foundation to the year 432 after the fall of Troy, whence Dionysius, i. 74, places it Olymp. vii. 1. i. e. B. C. 751-2. The Varronian date, restored by Petavius from Plutarch and Censorinus, is Olymp. vi. 3. See *Petav. Doctr. Temp. lib. IX. c. L. sqq.* The ancients who differ from Cato or Varro, differ from them only slightly. Of the latest writers on the subject, see Niebuhr, 1, p. 258, sqq., 281, sqq. 3) *Prop. 4, 4, 71*: "Urbi festus erat, dixere Palilia patres: Hic cepit primus mœnibus ire dies." Cf. *Scalig. ad Manilii*: "Hesperiam sua libra tenet, qua condita Roma." 4) *Solin., Polyh. c. 1*: "Sunt qui videri velint Romæ vocabulum ab Evandro primum datum, quum oppidum ibi offendisset," etc. Cf. *Fest. in Roman.* 5) Cf. *Cic. de Div. 1, 48*; *de Rep. 2, 7.* 6) Cf. *Serv. ad Æn. 8, 63. 90.* 7) Cf. *Aug. de Civit. Dei, 4, 11*; *7, 11*; *Wachsm. p. 129*; Cf. *Varro de R. R. 2, 11.* 8) Cf. *Ovid. Fast. 2, 411*: "Quæque vocatur Rumina nunc ficus, romula ficus erat."

39. Besides the common, or, as Creuzer calls it, the national name of Rome, another secret or mystic name is alluded to by the ancients¹; and moderns have imagined, perhaps without sufficient reason, a third, which they call the sacerdotal name². Some have conjectured that the mystic name, which it was unlawful for any one to utter, was *Valentia*, but Creuzer asserts it to have been *Eros*, or *Amor*; and the sacerdotal title he conceives to have been *Flora*, or *Anthusa*. Rome was, however, certainly called *Urbs Romulea*, in allusion to its founder; and sometimes simply *Urbs*³, the City, just as *Athens* was by way of distinction called τὸ ἄστυ. It had also other titles of distinction, frequently seen on coins, such as *Felix*, *Æterna*, *Victrix*, *Regina*, correspondent to which are the Greek expressions βασιλις, βασιλευσα πόλις. The same were

likewise applied to Constantinople, which was also not unfrequently styled another, or the Lesser Rome. Finally, Rome was styled a Goddess, and as such had temples, not only in the provinces, but within itself⁴.

1) Cf. Macrob. Saturn. 3, 9; Plin. H. N. 3, 5; Serv. ad Æn. 1, 277. 2) Cf. Creuz. Abriss d. röm. Antiqu. § 14. 3) Cf. Cæs. B. G. 1, 7; Hor. Epod. 9, 9. So also the expression "ad urbem esse," (§ 179.) 4) Cf. Tac. Ann. 4, 37. 56; Claud. de Laud. Stil. 2, 242; and Rutil. Itiner. v. 47.

40. Even the ancients were not agreed as to who were the first inhabitants of Rome, although the two most current opinions were, that they were either colonists from Alba Longa¹, or a medley horde of freebooters². Modern writers are as much at variance on this point as on any other whatever, some asserting Rome to have had a Celtic, some a Greek or Pelasgic, and others an Etrurian origin. The latter notion has found many supporters, and amongst them Niebuhr, who, however, has since altered his opinion³. One thing is however certain, namely, that Rome was at the first of so small extent as to be confined to the Palatine Mount, and this insignificance of its first original has given occasion to some of the sweetest productions of her poets⁴. It is said to have been in shape four-square⁵; and the ancient legend⁶ was, that its walls or circuit (circuitus) were marked out by Romulus with a plough drawn by an ox and a cow, agreeably to an ancient Etruscan rite⁵. Antiquarians inform us that the Romans always founded their colonies in that shape, and marked out the limits with the same ceremony⁷. A question has been started whether this earliest nucleus of Rome was what came afterwards to be called the *oppidum*⁸.

1) Cf. Cic. de Rep. 2, 2; Creuz. § 13. 2) Cf. Juven. 8, 272. 3) Creuzer, who, in his Antiquities, often dismisses a subject with a mere question, and even so is of great use to such as are in doubt,

inquires, when on this subject (§ 13), whether Rome was a colony from Cære, and its inhabitants thence called Quirites? or whether the Patricians only were so called, being a priestly caste, from Etruria (cf. Compend. § 185)? or whether the first citizens enrolled by Romulus were exclusively Etrurians? and again, whether Rome was of a Grecian origin, or Pelasgic? 4) See Ovid. *Fast.* 1, 197, sqq.; *Prop.* 1. 4. *eleg.* 1 and 4. 5) Hence the well known verse of Ennius: "Ecquis nunc curat Romæ regnare quadratæ?" Cf. *Solin.* c. 2; *Nard. R. vetus* 1, 2. 6) Cf. Ovid. *Fast.* 4, 819, sqq.; *Plut. Rom.* pag. 23; *Fest.* in *Rituales.* 7) Cf. *Nieb.* v. 1. p. 223. 8) Cf. *Liv.* 42, 20. 36.

41. Rome lay in Latium (§ 13), on the confines of Etruria and the Sabine territory, sixteen miles from the sea coast¹. Whether its site was chosen designedly, or fixed on at random, whether it was a fertile or a healthy spot, or otherwise, are points keenly disputed by the ancients, and variously determined by them². The river Tiber, which, rising in the Appenines, falls into the Tuscan sea at Ostia, flowed in a tortuous course through the city, forming an island in it; although only a very small portion of it, and that built long after the rest, stood on the right bank of the river. The hills contiguous to the Palatine Mount were successively added to the city by the kings, although the exact periods of each addition are not known. Servius enclosed all the seven within one rampart; hence the festival of the *Septimontium*³, and the epithet *Septicollis*, and the numerous allusions to this peculiarity of situation found in the poets⁴. The names of those hills are mostly of uncertain origin; they were the Palatine, Capitoline, Cœlian, Aventine, Esquiline, Viminalis, and Quirinal. The Palatine was also called *Palatium*, a corruption, as some think, of *Pallantium* (§ 37), which is reported to have been the name of a town on that hill, so called either after a town of Arcadia, or after Pallas, the son of Evander. Those who reject the tale of Evander's settlement, naturally adopt other explanations; among which we find one from

the bleating of flocks (*balare, balans*), and the other from the goddess Pales⁵. The Palatium was at all events the cradle of Rome, and on it stood the royal dwelling of the Cæsars⁶, from Augustus downwards, where now are the gardens of the Farnese. The imperial residence was called the Palatium, from the name of the hill, and to it moderns owe the word *Palace*.

1) See Plin. H. N. 3, 5. 2) Cf. Cic. de Republ. 2, 3, 6; Dionys. 8, 8; Creuz. § 16. 3) Cf. Varro, de L. L. 1. 5. p. 49; Plut. Q. R. 69; Fest. in Septimontio et Septimontium. 4) See Tib. 2, 5, 57; Ovid. Trist. 1, 4, 67, sqq.; Virg. Georg. 2, 534. 5) Cf. Fest. in Palatium; Varro de L. L. 1. 4. p. 16. Among other remarks he has the following: "Quod palantes cum Evandro venerunt, aut quod Palatini, qui et Aborigines, ex agro reatino, qui appellatur palatium, ibi consederunt. Sed hoc alii a Palatia, uxore Latini, putarunt. Eundem hunc locum a pecore dictum putant quidam. Itaque Nævius Balantium adpellat." 6) See Ros. l. 1. c. 4. paralip.

42. The Capitoline was divided from the Palatine by the Forum Romanum, and took its name from the Capitolium or temple of Jupiter, which the ancients said was so called from the incident of finding a human head when excavations were made for laying the foundations¹. The same hill was also called Saturnius, from Saturn; and Tarpeius, from the maid Tarpeia². It was considered to consist of four parts, the Tarpeium (Saxum), a rocky precipice on the side of the Tiber³; the Intermontium was the space between the two summits, one of which was called the Arx, the other the Capitolium, but in course of time Arx, or citadel, denoted both⁴.

The Cœlian hill lay eastward of the Palatine, and had its name from Cœle Vibenna, an Etruscan chieftain⁵; Tiberius called it Augustus⁶. It is now known as the Lateran, from the church dedicated to St. Lateranus, and from the ancient Roman *gens* of that name⁷. Distinct from the Mons Cœlius was the Cœliolus, or Lesser Cœlius⁸.

1) Cf. Varro de L. L. 4. p. 13; Arnob. adv. Gent. 1. 6. 2) See Prop. 1. 4. eleg. 4; Liv. 1, 11. 3) Cf. Plut. Rom. 17. 4) Cf. Creuz. § 19. 5) Cf. Varro, p. 14; Tac. Ann. 4, 64. 6) See Tac. ib. and Suet. Tib. 48. 7) Cf. Juven. Sat. 10, 17. 8) Cf. Mart. 12, 18. We find in Creuzer, § 20, that the addition of the Mons Cœlius to the city was ascribed to Romulus (Dionys. 2. p. 113), to Tullus Hostilius (Liv. 1, 30), to Ancus Martius (Strabo, 5. p. 358, p. 162; Cic. de Republ. 2, 18), and lastly, to Tarquinius Priscus (Tac. Ann. 4, 64. 65). From this discrepancy we may expect the same uncertainty respecting the addition of the other hills, and learn how difficult it is in matters of antiquarian research to arrive at the truth, even in cases in which it may be ascertained, and is worth ascertaining.

43. The Aventine, which lay between the M. Cœlius, the Tiber, and the M. Palatinus, is said to have been assigned by Ancus Martius as a residence for the conquered Latins. Creuzer considers that it is still doubtful whether it was enclosed within the original walls of Rome, or not comprised within the pomœrium till the time of Claudius¹. It was more originally known as the Mons Murcius, from the temple of Murcia², and the name Aventinus is variously derived, from one Aventinus a king of the Albani, from the birds (*aves*) of which it was the resort, from a stream called Avens, not to mention other proposed etymologies³. It was also called the Hill of Diana, from a temple to that goddess standing on it⁴. On it were also the famed cave of Cacus, and the altar of Evander. The Mons Esquilinus (Exq. Esquilæ) was the largest of the Roman hills, and situate between the Cœlian, Viminal, and Palatine mounts, bounding the original wall on the east, and added to the city, it is said, by Servius Tullius. Its name has been traced from the nightly guard *excubiæ*, said to have been posted there by Romulus, from the *quisquilæ*⁵ or rubbish commonly cast out there, and from the beech trees, *æsculi*, with which it was overgrown: the most probable, in my opinion, of all the etymologies proposed. It is in our days remarkable for churches and palaces. The Mons Viminalis,

between the Esquiline and Quirinal hills, is thought to have had its name from the osier (*viminæ*) which grew on it⁶, or from Jupiter Vimineus; but one would rather think that the god took his title from the hill. The Quirinal, which lay north of the Viminal hill, bounded the city walls on the east. It is said to have been so called from the Curetes, (settlers from Cures, a town of the Sabines), or from Quirinus (see § 286), whose temple stood on it, and from whom it was also called the Hill of Quirinus⁷. Other conjectural derivations have been proposed. It had also the more ancient titles of Agonius and Collinus. It is now called Monte Cavallo, from two antique statues of horses seen on it.

1) § 21. Cf. Cic. de Republ. 2, 18; Gell. 13, 14; Liv. 1, 33.
 2) Cf. Fest. in Murciæ. 3) See Varro, 4. p. 14; Serv. ad Æn. 7, 657. 4) See Mart. 12, 18, 3. 5) See Varro, de L. L. 4. p. 12 and 15. 6) Cf. Juven. 3, 71: "Esquilias dictumque petunt a vimine collem." Cf. Varro, p. 15. 7) Hor. Ep. 2, 2, 68: "Cubat hic in colle Quirini, hic extremo in Aventino."

44. The Collis Hortulorum, and the Vatican and Janiculum, which two last stood on the right bank of the Tiber, were added to the city, and enclosed with walls by the emperor Aurelian. The Collis Hortulorum, between the Quirinal hill and the walls raised by Aurelian, was so called from being the site of the gardens of Sallust; and afterwards was known as the Mons Pincius, from the Pincian family. The Vatican was divided by a dell from the Janiculum, which was bounded by the walls just alluded to, as forming the extreme limits of the city when at its greatest extent¹. Some say it was called Vaticanus from being the resort of soothsayers, *vates*, and the spot where they gave their predictions *vaticinia*; others imagine it to have its name from a deity called Vaticanus². It is now remarkable for the Vatican Library, and the cathedral of St. Peter. The Mons Janiculensis, standing over against the Ca-

pitoline hill³, commanded the highest parts of the city, with which it was connected by the Pons Subli-
cius. Creuzer, § 25, makes it a question whether it
was considered properly to form part of the city even
after it had been enclosed within the fortifications. It
seems scarcely to admit of a doubt but that it had its
name from Janus, § 287, but some have imagined other
derivations.

1) See Plin. H. N. 3, 5. 2) Cf. Gell. 16, 17; Fest. in Vati-
canus. 3) See Virg. Æn. 8, 355.

45. We have now spoken of Rome as the City of
Seven Hills (§ 41), enclosed with fortifications by Ser-
vius Tullius, and in the wider extent it attained under
Aurelian. Distinct from the walls themselves was the
pomœrium (*pone v. post murum*), which was often ex-
tended before the time of Aurelian without any change
in the walls themselves¹. Dionysius states that the
area enclosed by the Servian wall was nearly equal to
the area of Athens, but that the city itself extended in
a straggling way beyond it. The circuit of the pomœ-
rium was of course different from that of the walls, and
moderns are greatly divided concerning them. The
passages of Pliny mentioning thirteen miles as the cir-
cuit of the walls, and those of Pliny, which assert it to
have been fifty, have been variously altered on con-
jecture, to suit the various theories started².

It is impossible to ascertain the number of private
dwellings (*insulæ* and *domus*) contained within the city,
and even absurd to attempt to do it, unless it be re-
membered that it must have been different at different
times. Some writers have fixed on the number 48,000,
others have thought that calculation too high. In the
Description of Rome, by P. Victor, to be found in
Thes. Græv. vol. iii., we find the *insulæ* and *domus*
in each quarter enumerated separately; the sum total
of the former being set down at 46,602, and the latter

at 1780. Onuphrius Panvinius (*ibid.* p. 381) says the *insulæ* were 41,912 in number, and the *domus* 2117.

The number of inhabitants of Rome will be variously estimated, according as the slaves and foreigners are excluded or included. No certainty on the subject can be arrived at from what the ancients have left on record. Among modern writers, Lipsius³ calculates that the population amounted to four millions; Is. Vossius sets it at fourteen millions, calculating from the population of London and Paris⁴. Concerning the census of the population, cf. Beaufort, vol. i. p. 317.

1) Livy, 1, 44, speaking of Servius Tullius, says, "Aggere et fossis et muro circumdat urbem; ita pomerium profert. Pomerium, verbi vim solam intuentes, postmœrium interpretantur esse. Est autem magis circa murum locus; quem in condendis urbibus quondam Etrusci, qua murum ducturi erant, certis circa terminis inaugurato consecrabant, ut neque interiore parte ædificia mœnibus continuarentur, quæ nunc vulgo etiam conjungunt, et intrinsecus (extr.?) puri aliquid ab humano cultu pateret soli," etc. Cf. Festus in prosimurium, and Creuz. § 24. Concerning the extension of the pomerium, cf. Tac. Ann. 12, 23: "Et pomerium auxit Cæsar (Claudius), more prisco; quo iis, qui protulere imperium, etiam terminos urbis propagare datur. Nec tamen duces Romani, quanquam magnis nationibus subactis, usurpaverant, nisi L. Sylla et D. Augustus." 2) Cf. Creuz. § 26. 3) De Magnit. Rom. 1. 3. c. 3; and comp. the passage of Aristides there quoted; Richard, Description de l'Italie, vol. 5. pref., ridicules the number proposed by Vossius, as absurd. 4) Obs. de Ant. Romæ magnit. c. 1.

46. Romulus is said to have divided Rome into three parts, called tribes, concerning which see § 142. Servius Tullius made four divisions, still keeping the name tribe, viz. The Palatine, so called from the hill of that name; the Saburran, from the street called the Saburra; the Colline, from its comprising the Quirinal and Viminal hills; the Esquiline, from the Esquilæ. This arrangement continued till the time of Augustus, who divided the city into fourteen districts, or regions¹, named as follows:

I. Porta Capena; from the gate so called.

II. Cœlimontana; from the Mons Cœlius.

- III. Isis and Serapis, or Isis and Moneta ; from the temples of those deities.
- IV. Via Sacra, or Templum pacis.
- V. Esquilina ; from the Esquiliaë.
- VI. Alta Semita.
- VII. Via Lata.
- VIII. Forum Romanum.
- IX. Circus Flaminius.
- X. Palatium ; from the name of the hill.
- XI. Circus Maximus.
- XII. Piscina Publica.
- XIII. Aventinus ; from the name of the hill.
- XIV. Transtiberina.

The principal streets (*vici*) of Rome were above four hundred in number². The most noted among them were the Saburra³; the Vicus Camœnarum; V. Fabricii; V. Albus; V. Ursi Pileati; V. Lanarius; V. Unguentarius⁴; V. Tuscus⁵. They were also called *Viæ*, but that word, when applied to them, is not to be confounded with the other *Viæ*, highways, or roads leading to the city from distant places, and some of them passing right through it. For these, see § 48. The narrower streets were called *angiportus*; streets having no outlet at one end, (*culs de sac*), *fundulæ*. Over each region Augustus set two officers, called curators, and over each vicus twenty-four vicomagistri⁶. P. Victor and S. Rufus, in their descriptions of the city, mention two officers in each region, called *denuntiatores*, or informers⁷. Each vicus had its own chapels sacred to its peculiar deity.

1) Tac. Ann. 15, 40. 2) Cf. Suet. Aug. 30. 3) Juven. 3, 5: "Ego vel Prochyta præpono Suburræ." Mart. 12, 18, calls it "clamosa." 4) So called from the barbarous act of Tullia, recorded Liv. 1, 48. 5) Hor. Sat. 2, 3, 228: "Tusci turba impia vici." 6) See Suet. Aug. 30; cf. Liv. 34, 7. 7) Cf. Græv. Inscriptt. p. 250, 251.

47. An account of the remarkable places and objects

contained in Rome itself, may not unfitly be considered as a distinct branch of Roman antiquities. To it belongs a description of the city gates: these were thirty-seven in number in the time of Pliny the elder, but in the reign of Justinian there remained only fourteen¹. Antiquarians are not yet agreed whether the original square-shaped city had three or four². Their names, supposing them to have been four, are said to have been Romanula, Mugonia, Trigonía, and Carmentalis (from Carmenta, the mother of Evander)—not to mention other names. Among the thirty-seven of the time of the elder Pliny, most of which appear to have been named from the roads passing through them, were the P. Capena (also called Triumphalis), Cœlimontana, Esquilina, Tiburtina, Viminalis, Collina, Pinciana, Flumentana (Flaminia), Carmentalis, Triumphalis (distinct from the Capena), Janiculensis, Portuensis, and Trigenina. The sites of many of them can now only be conjectured.

The bridges were eight in number, but these are not now all in existence. To begin from the lowest, they stood as follows: the Sublicius, between the Aventine hill and the Janiculum, which was the most ancient of all, and had originally been formed of wooden rafters (*è sublicis*); the Palatinus (Senatorius), which was the first one came to on proceeding from the Forum towards the Janiculum; the Fabricius³ and Cestius, by which one crossed over into the island on one's way to the Janiculum; the Janiculensis; the Vaticanus (Triumphalis, Aurelius); the Ælius, leading to Adrian's mound; and the Milvius⁴, which lay without the city, beyond the Flaminian gate.

1) See Plin. 3, 5, 9; Procop. de Bello Goth. 1. p. 194. 2) Cf. Nard. R. Vet. I, 3. 3) Hor. Sat. 2, 3, 36: "A Fabricio non tristem ponte reverti." 4) This was also called the Æmilian bridge, Juven. 6, 32: "quum tibi vicinum se præbeat Æmilium pons."

48. The highroads had their names, some from the towns to which they led, others from the persons by whom they were constructed. Within the city they were paved with stone, outside it with gravel¹. Along them were placed stones inscribed with the distances from the most important places along their extent, thus M. P. XX. These were all reckoned from the Columna Milliaria (§ 50), within the city; and hence the expressions *ad primum*, *ad centesimum ab urbe lapidem*, and the like. In explanation of the construction of roads we meet with the words *statumen*, *rudus*, *nucleus*, *dorsum*: *statumen*, the foundation, or lowest layer; *rudus*, a composition of rubble, or gravel and lime, laid over the *statumen*; *nucleus*, the layer next under the surface; *dorsum*, the ridge, or raised part of the centre². The remains of Roman roads still to be seen, show that they were of wonderful firmness and consistency. Among the more celebrated were the Appia, the Tiburtina, and the Flaminia. Military roads formed a class apart.

The *Fora*, or public squares, were numerous, in proportion to the vast extent of the city. Some of them were places of resort for the despatch of public business, and most of these were adorned with porticoes. The most celebrated of all was the Forum Romanum, which is called by way of distinction the Forum simply. Next to it were the Forum Cæsaris (Julium) and the Forum Trajani. Some served for markets, as the F. Olitorium, where herbs were sold; F. Boarium, for oxen; F. Suarium, for swine; F. Piscarium, for fish; F. Pistorium, for bread.

There were also open spaces called *campi*, or fields, being covered with grass or turf, not paved, and serving as places of resort for amusement, sports, and exercises, military or others. Onuphrius says they were seventeen in number, Creuzer reckons them to have been

only eight. The most famed of these was the Campus Martius, called also the Campus simply⁵, as when we read of the contests of the Campus, the Venal Campus, etc.; it lay outside the Servian wall, reaching down to the Tiber (§ 161). Among the others were the C. Agrippæ, C. Viminalis, C. Cœlimontanus, C. Trigeminorum, C. Jovis, and C. Vulcani. There were also numerous sacred groves, either with or without adjacent temples. Such were the groves of Jupiter Viminalis, of Juno Lucina, of the Muses, of Venus Lubentina, of Egeria, of Mars, the Lucus Vaticanus, and Lucus Pœtilinus. Mention is also made of open places, *areæ*, in front of temples, with an altar for burning victims (§ 330); other *areæ* appear to have served for much the same purposes as the Campi⁶. There were the *areæ* of Apollo, Mercury, Vulcan, Gallus, the Area Sancta, and an *area* in the Campus Martius⁷: not to mention others.

1) Cf. Liv. 41, 32; Juven. 3, 270; Tib. 1, 7, 59. 2) See Champoll. Résumé d'Archéol. v. 1, p. 10. 3) Cf. Proc. de B. Goth. I.; Hor. Sat. 1, 5. 4) Ovid. Fast. 6, 478: "Area, quæ posito de bove nomen habet." Cf. Tac. Ann. 12, 24. 5) Cf. Hor. A. P. 162; Ep. 1, 7, 59. 6) Cf. Hor. Od. 1, 9, 18. 7) Cf. Pitiscus in Area.

49. The temples, *templa*, *ædes*, *ædicula*, *sacellum* (§ 330), were very numerous. Among the more celebrated were the Pantheon, or temple of all the gods; that of Apollo Palatinus; of Æsculapius, on the island formed by the Tiber; of Concord, *ædes Concordiæ*; of Honour and Virtue; of Janus; several dedicated to Jupiter, as that of J. Feretrius, that of J. Stator, and, by far the most famed of all, that of J. Optimus Maximus, or Capitolinus, otherwise called the Capitolium; also the temples of Juno Lucina, of Juno Regina, of Mars Ultor, of Mars Quirinus, of Peace, of the Sun, of Venus Genetrix, of Vesta.

The theatres (§ 350) were those of Pompey, of Marcel-

lus, of Balbus. The amphitheatres (ib.) were those of Statilius Taurus, and of Vespasian (the Colosseum). There were several circuses (§ 348): the most remarkable, as well as the most ancient of which, was the C. Maximus, otherwise called the Circus, by way of distinction: which, with the Forum and the Campus, were the three most famous spots in all Rome¹. There was also the Circus Flaminius, the C. Agonalis, the C. of Nero, and that of Caracalla, not to mention others. There were also places for the exhibition of mock sea-fights (§ 349); one constructed by Domitian, one by Nero, and others. There were also gymnasia, *ludi, palæstræ*. for military exercises, for wrestling, or for running, annexed to the public baths, and indeed to private houses. Attached to baths were also promenades, *xysti*, of trees or columns. The *odææ* were places where musicians and poets performed or recited their works.

The porticoes were either detached structures, or attached to public and even to private buildings. Such were the porticoes of Apollo², Isis, Freedom, Pompey³, and Agrippa; the Æmilian Portico, those of Livia, Faustina, and of the Argonauts, and the Porticus Margaritaria. The *basilicæ* were halls in which merchants met, and sometimes the senate, but they served especially as courts of justice; such were the Basilicæ Porcia, Julia, Ulpia, Argentaria, and others. The *curiæ* were buildings for the meetings of the Curia (§ 142); and served also for assemblies of the senate. The most noted of these, called the C. Hostilia, and simply the Curia, stood in the Forum; besides which were the C. Calabria, Pompeii, Julia, and many others.

1) Cf. Hor. Sat. 1, 6, 113: "Fallacem circum vespertinumque pererro sæpe forum." Cf. Juven. Sat. 3, 65. 2) See Prop. 2, 23. Cf. Ovid. Trist. 3, 1, 59. 3) Prop. 2, 23, 45: "Porticus aulæis nobilis attalicis."

50. Hot baths, *thermæ, balnea, balinea*, were very

numerous in Rome (§ 472); among them were those of Agrippa, Titus, Trajan, Diocletian, and Constantine. The aqueducts, *aquæductus* or *aquæ*, were the Aqua Virgo, A. Appia, A. Marcia, A. Julia, A. Claudia, the Anio Vetus and Anio Novus, and the Aqua Trajana. The water being conveyed by these aqueducts into reservoirs, *dividicula*, was thence distributed through the city by pipes, *calices*, *tubuli*, *fistulæ*, and collected in pools for the public use¹. There were also places called *nymphæa*, adorned with grottoes, stones, and playing waters, in honour of the Nymphs. The public sewers, *cloacæ*, some of which dated from the times of the kings, were of a construction so durable that they remain to the present day. The Cloaca Maxima is the most remarkable. The principal triumphal arches, *arcus*, were those of Titus, Septimius Severus, Gallienus, and Constantine. The chief columns, *cochlides*, were the Columna Rostrata (§ 426), the C. Milliaris, and those of Trajan, and Antoninus. There were also obelisks, remarkable for their size and hieroglyphics, brought from Egypt, and erected in the circuses (§ 348) and other public places. Among these were the Obeliscus Augustæus, the O. Cajanus, and the O. Sallustianus: for a fuller account see *Pitiscus*. There were also colossal statues, *colossi*, such as that of Nero, which Vespasian dedicated to the Sun. Among the tombs, *monumenta*, *sepulchra*, were the Mausoleum of Augustus, the Mound, *moles*, of Adrian (now the Castle of St. Angelo), and the Pyramid of Cæstius.

1) Cf. Hor. Sat. 1, 4, 37.

ROMAN ANTIQUITIES.

PART I.

CHAPTER THE FIRST.

OF THE SEVERAL CLASSES OF ROMAN SUBJECTS.

Of Slaves.

51. THE simplest division of the inhabitants of the Roman empire, was into slaves and freemen¹. The latter were either free-born, *liberi nati*, or *ingenui*, or freed, *liberati*, or *manumissi*. These, with respect to their former masters, were called *liberti*; in relation to other freemen, *libertini*; the latter designation continued to be applied to their children, although the relation indicated by the former, did not, I conceive, descend to them². Freemen enjoyed rights of various kinds, and slaves had none. The loss of freedom must evidently have arisen, in the first instance, from the right of the strongest, inasmuch as no man is by nature a slave to his fellow man³. The most ancient cause, however, of legal servitude, was capture in war; for the vanquished, being held by the law of nations to be the property of their victors, were accordingly enslaved by them to their own service, or sold into that of others. Hence slavery first arose from capture in war and the sale of captives (§ 100). The words *servus* and *mancipium* designated slaves so made:—*servus*, as having been preserved by the victor, *a victore servatus*, or

according to some etymologists, from the Greek root $\epsilon\rho\omega$, or $\epsilon\rho\acute{\upsilon}\omega$, to drag, or rescue from death; an etymology which is countenanced by the word *eritudo* (= *servitudo*), found in Festus⁴. The term *mancipium* is considered equivalent to *manu captum*⁵. The word *servus* has however been otherwise deduced from $\epsilon\lambda\rho\omega$ to bind, $\epsilon\lambda\rho\epsilon\pi\omicron\varsigma$, etc.; and learned authorities of the present day assert, that a slave was called *mancipium* as being *res Mancipi* (§ 97), or property acquired by mancipation.

1) Cf. Institt. 1, 3; Caj. Institt. 1, 3: "Summa itaque divisio de jure personarum hæc est, quod omnes homines aut liberi sunt, aut servi." 2) Cf. Suet. Claud. 24; Caj. Institt. 1, 10; Liv. 4, 3, 10, 8; Hor. Sat. 1, 6, 6; Heind. ad Hor. Sat. 1, 6, 79. 3) Institt. 1, 3, 2: "Servitus est, constitutio juris gentium, qua quis domino alieno contra naturam subjicitur." Cf. § 54, and Caji Institt. 1, 52. 4) Cf. Creuz. § 34. 5) See Don. ad Ter. Adelp. 2, 1, 28; Lyd. de Magg. 1, 11; Isid. Orig. 9, 4. 6) Cf. Cic. Parad. 5, 1: "Non enim ita dicunt eos (improbos) esse servos, ut Mancipia, quæ sunt dominorum facta nexu aut aliquo jure civili."

52. Independently however of capture in war, there were other causes of slavery among the Romans. It was consequent on servile birth, and also inflicted as a punishment; and again, there was a commerce in slaves. With respect to servile birth, it was to be expected that the children of slaves should belong to the owners of their parents: those born of a freeman and a female slave belonged to the class of their mother, such connection being altogether illegal, *extra connubium*¹. The union of free persons and slaves, or of slaves one with another, not being considered marriage, *matri-monium*, but cohabitation, *contubernium*; the woman who was a slave not being called *uxor*, but *contubernalis* (§ 82). Slaves by penalty, *servi pænæ*, were those who had been condemned to lose their freedom for having eluded the census² or military service, children sold by their fathers³, or persons devoted to servitude by the *Pater patratus*⁴ (§ 323), convicted thieves, in-

solvent debtors, *nexi*, (§ 72,) persons who hired their personal services⁵, children found and reared by slaves, criminals condemned to the mines or to be thrown to wild beasts.

1) Cic. Top. 4 ; Caj. Instit. 1, 67. 2) Cic. p. Cæc. 34: "Cum autem incensum vendit (populus), hoc judicat : cum is, qui in servitute justa fuerit, censu liberetur, eum, qui, cum liber esset, censeri noluerit, ipsum sibi libertatem adjudicasse." 3) Cf. Dionys. 2, 27. 4) Cf. Cic. l. c. 5) See Hugo, Gesch. d. Röm. R. ed. 6. § 190.

53. The traffic in slaves was carried to a greater height in Rome during its days of prosperity and luxury, than anywhere else¹; the market being furnished from all parts of the world, but chiefly from Greece and Asia, and men free by birth being kidnapped everywhere to supply it. To this trade belong the terms *venaliciaria*², the slave-trade; *venaliciarius*, or *mango*, the slave-dealer; *venalis*, *venalicii*³, *venalicium*, the person offered for sale; *venalicia familia*⁴. The mode of sale was as follows. The persons offered, *venales*, were exposed by the dealer, *mango*, on a platform, *castata*⁵, or stone⁶; whence the phrases *de castatâ*, *de lapide emti*. Those brought from beyond seas were exposed either by law or custom, with their feet whitened, *gypsatis pedibus*; those whom the vender would not warrant, wore a cap, *pileati*⁹; all others he was bound to warrant free from any serious fault, being obliged in particular to state to the buyer whether the slave had been a runaway. Otherwise he was compelled to take back, *recipere*¹⁰, as fraudulently sold, any faulty slave, *vitiosum*, whom the purchaser chose to return on his hands, *reddere* (= *redhibere*). A tablet containing a list of the good or bad qualities of each slave, was usually hung round his or her neck¹¹. Concerning the practice of exposing them stripped, and handling their bodies, see Sen. Ep. 80: Suet. Aug. 69¹²: Sen. Rhet.

Controv. I, 2; Juvenal mentions that their ears were pierced for rings, (Sat. I. 105).

1) See § 493. Cf. Creuz. § 35. 2) Pandd. 32, 1, 73. 3) Cic. Orat. 70. 4) Cf. Suet. Aug. 42; Pandd. 24, 1, 31. 5) Cf. Suet. de Gramm. 13; Pers. 6, 77; Mart. 6, 29; Tib. 2, 6, 21; "Regnum ipse tenet, quem sæpe coegit Barbara gypsatos ferre castasta pedes." 6) See Plaut. Bacch. 4, 7, 17; Cic. in Pis. 15. 7) Suet. et Cic. l. c. 8) Cf. Tib. l. c.; Ovid. Am. 1, 8, 64; Prop. 4, 5, 51, sqq.; Plin. 35, 17; Cic. ad Div. 7, 6; Juven. 1, 110: "Vincant divitiæ, sacro nec cedat honori, Nuper in hanc urbem pedibus qui venerat albis." Cf. ib. 7, 16: "Altera quos nudo traducit Gallia talo." 9) See Gell. 7, 4. 10) Cic. de Off. 3, 23: "In mancipio vendendo dicendane vitia, non ea (al. nec ne), quæ nisi dixeris, redhibeatur mancipium jure civili, sed hæc: mendacem esse, aleatorem, furacem, ebriosum." Cf. ib. 16, 17; Hor. Ep. 2, 2, 17, sqq.; Gell. 4, 2. 11) See Prop. et Gell. l. c. 12) "Conditiones quæsitæ per amicos (Augusti), qui matres familias et adultas ætate virgines denudarent, atque perspicerent, tanquam Thoranio mangone vendente."

54. Slaves were divided into public and private¹. Among the former were those hired by *mancipes* to tow boats, draw carriages, etc., *helciarii*; water-carriers, *aquarii*; those who worked in the mines, *metalla*, and quarries, *latumicæ*; and also some of the attendants on the magistrates even in the provinces, though not all (comp. § 217). Private slaves, of which there were immense numbers in Rome, were classed, according to their occupations, into city and rural slaves, *familia urbana*, *familia rustica*. We shall speak of their various occupations in §§ 494, 495; at present we have to treat of their condition, and the mode of their manumission. The Romans considered slaves not as persons, but as things, to be sold, given in pledge², and punished at the will of the owners: in the early times of the Republic they might even be put to death with impunity³. This rigour of the law was however so tempered by custom, and the clemency of their masters, that it is a question whether their lot was not more tolerable in the early ages of Rome, than during the height of its power; such is the opinion of Creuzer (§ 45.) The ca-

price of the owners was checked by law, under the Cæsars; as for instance, by the enactments of Antoninus Pius⁴, and finally by the influence of Christianity. The lot of different slaves under the same master also varied with the nature of their employments, and the degree of favour they severally enjoyed. The home-born slaves, *vernæ*, being brought up under the eye of their owner, and generally in a better manner than others, being even educated, if they displayed a docile disposition, and, if well disposed, liberally treated. Hence they were admitted to a certain degree of familiar intercourse, and, from the freedom permitted to them, came the expressions, *verniles joci*, *vernilia dicta*, *verniles blanditiæ*, *vernilitas*⁵. The rural slaves fared worst, working in fetters, and being confined in dungeons, *ergastula*, εἴργω or ἐργάζω, on returning from their daily task⁶.

1) Cf. Liv. 26, 47; Plin. Ep. 10, 30. 2) Pandd. 40, 5, 24. 3) Caj. Inst. 1, 52: "In potestate itaque sunt servi dominorum, quæ quidem potestas juris gentium est; nam apud omnes peræque gentes animadvertere possumus, dominis in servos vitæ necisque potestatem esse; et quodcumque per servum acquiritur, id domino acquiritur." Cf. Juven. 6, 219, 14, 18; Sen. de Ira, 2, 40; Ep. 47. 4) See Pandd. 1, 6. Cf. Suet. Claud. 25. 5) Mart. 1, 42: "Urbanus tibi, Cæcili, videris. Non es, crede mihi. Quid ergo? Verna es." Cf. Tac. Hist. 2, 59, 3, 32; Hor. Sat. 2, 6, 108; Sen. de Const. c. 11—"pueros quidem in hoc mercantur procaces, et eorum impudentiam acunt et sub magistro habent, qui probra meditate effundant," etc. Cf. idem Ep. 95. 6) Hence we read of husbandmen and labourers working in chains, Flor. 3, 19; Luc. 7, 402. Cf. Tib. 2, 6, 25; Plin. 18, 3.

55. The slighter offences of slaves were usually punished with the whip, *flagellum*, or a thong, *lorum*¹, whence the words *lorarii*, *loris cædentes*, designating those whose business it was to inflict the punishment, and the opprobrious epithets of *mastigia* and *verbero* applied to a slave who had suffered it. The punishment of the fork, *furca*, (whence *furcifer*²), is reckoned by antiquarians among the milder kinds. A severer

punishment was branding with certain marks, *stigmata*, which those who had suffered were called *litterati*, *inscripti*, *stigmatici*³. It was customary also to send slaves, by way of punishment, into the *ergastula*⁴, or to the mill, *pistrinum* (from *pinso*, Gr. *μύλων*), of which frequent mention occurs; in it they served as horses to turn the mill-stones⁵. We read also of slaves being publicly condemned to the mines, or to be thrown to wild beasts *bestiarii*⁶. Capital punishment was inflicted on them by crucifixion⁷. Slaves suspected of a crime were commonly examined by torture⁸; concerning which see § 277. The severity with which guilty slaves were treated may be understood from the circumstance, that if a master had been murdered by his slaves, *per insidias serviles*, the whole household were put to death indiscriminately⁹, a practice which prevailed even under the Cæsars. Flight from service was considered a grave offence¹⁰. The recovery of fugitives¹¹ was the employment of men called, from their occupation, *fugitavarii*¹².

1) Hor. Ep. 2, 2, 15: "Semel hic cessavit, et, ut fit, in scalis latuit, metuens pendentis habenæ." Cf. Ovid. Am. 1, 6, 19; Juven. 14, 19. For the custom of suspending them whilst beaten, with a weight attached to their feet, see Plaut. Asin. 2, 2, 23, and Aul. 4, 4, 16. 2) Cf. Plaut. Cas. 2, 6, 37; Persa 5, 2, 72; Liv. 1, 26; Suet. Nero, 49. 3) Cf. Juven. 14, 24: "Inscripta ergastula;" Plin. 18, 3, "Inscripti voltus;" Mart. 8, 75, 9; Prudent. Hymn. 10. v. 1079. 4) Cf. Juven. l. c. and 8, 180. 5) Cf. Ter. Andr. 1, 2, 28; Plaut. Asin. 1, 1, 16; Apul. Met. 8: "Ibi complurium jumentorum multivii circuitus intorquebant molas ambage varia," etc. The same writer, speaking of the baker's trade, says: "Di boni, quales hi homunculi, vibicibus livedinis totam cutem depicti, — sic tunicati, ut essent per pannulos manifesti, frontes litterati, et capillum semirasi, et pedes annulati. 6) Cf. Caj. 1, 13. 7) Cf. Hor. Sat. 1, 3, 80; Juven. 6, 219; Cic. Verr. 5, 64. 8) Cf. Tac. Ann. 14, 42; Beauf. v. 2, p. 157. 9) See Tac. Ann. 14, 43. 10) Cf. Apul. Metam. 6, 114. 11) Cf. Ter. Heaut. 4, 2, 11. 12) Flor. 3, 19; Varro de R. R. 3, 14; Cod. Theod. 10, 12, 1; Creuz. § 45.

56. Slaves were not admissible to the army¹, nor could their testimony be received in law²; they could

not make wills³, nor inherit anything, except through their master⁴; nor gain or hold property of any kind except with his consent. Whatever they so acquired remained still at his disposal; it was called their *peculium*⁵. They often employed their *peculium* to purchase their freedom, the price of which was sometimes agreed on beforehand between them and their owner⁶. It was customary for them to make presents to their master and his children⁷; themselves in turn receiving gifts from his clients⁸. For their maintenance they received a monthly allowance in corn and money, called *dimensum* and *menstruum*⁹; or it was given daily, and called *diarium*¹⁰.

1) See Liv. 22, 57, 24, 16; Plin. Ep. 10, 39. 2) Ter. Phorm. 2, 1, 59. 3) Cf. Plin. Ep. 8, 16. 4) See Hein. Antiqq. Rom. Synt. 2, 14, 1. Cf. Caj. 1, 52. 5) Pandd. 15, 1: De Peculio. Cf. Virg. Ecl. 1, 33; Hor. A. P. 330; Pandd. 32, 1, 79. 6) Cf. Sen. Ep. 80. 7) Cf. Ter. Phorm. 1, 1, 7. 8) Cf. Juven. 3, 188. 9) Cf. Donat. ad Ter. l. c.; Sen. Ep. 80. 10) Cf. Hor. Ep. 1, 14, 40; Mart. 11, 109, 3; Petron. 24.

57. The mode of liberating slaves, manumission, i. e. *e manu* or *e potestate missio*¹, requires particular notice. Antiquarians divide it into what Caius calls *justa*, complete, and *minus justa*, incomplete; whence also resulted *libertas justa* and *libertas minus justa*. The *minus justa* took place three ways, *per vindictam*, *per census*, *per testamentum*². Modern writers disagree widely concerning manumission *per vindictam*, of which we possess only scattered notices from ancient authors. According to Adams it was as follows: the master who intended to free a slave, declared before the prætor or consul, (if in the provinces, before the proconsul or pro-prætor, see § 244), “I will that this man be free after the custom or law of the Quirites:” *hunc hominem liberum esse volo more vel jure Quiritium*. If there were no reason to refuse the man his liberty, the magistrate then touched the head of the slave with a wand³,

saying, "I declare this man to be free after the manner of the Romans" (Quirites): *Aio hunc hominem liberum esse more Romanorum* (Quiritium). Thereupon a lictor, or the master, turned the slave once round, and struck him on the cheek with his hand, signifying thereby that he was at liberty to go whither he pleased: hence the expression *manumittere*, i. e. to let go out of hand.

1) Hence the word *manumissor*; Pandd. 27, 15, 3. 2) Cic. Top. 2: "Si neque censu, neque vindicta, nec testamento liber factus est, non est liber;" Caj. 1, 17: "In cujus persona tria hæc concurrunt, ut major sit annorum triginta, et ex jure Quiritium domini, et justa ac legitima manumissione liberetur, id est, vindicta aut censu aut testamento, is civis Romanus sit: sin vero aliquid eorum deerit, Latinus erit." 3) Hor. Sat. 2, 7, 75: "— quem ter vindicta quaterque Imposita haud unquam misera formidine privet."

58. Two instances in the note subjoined¹, will show how far other writers differ on this subject from Adams; the disagreement is such, that it will be better to forbear discussion of the order in which the particulars of the ceremony took place, contenting ourselves with knowing what they were. That freedom was bestowed by the *vindicta* in presence of a magistrate, is evident from the consent of the ancients themselves². Several passages show that the head of the slave was touched with a wand called *vindicta* or *festuca*; hence the phrase *vindictam imponere*³; from Pers. v. 175, we infer that the lictor applied it⁴. Creuzer shows, § 48, that, in later times, a stroke of the hand on the face was substituted for the touch of the wand. Festus, in v. *manumitti*, informs us, that the master of the servant touched his head or one of his limbs. Concerning the stroke or blow on the cheek, compare, besides other authorities, the line of Phædrus, II, 5, 25, *multo majoris alapæ mecum veneunt*; from which it would seem that it was given by the master, and Claudian, Hon. Cons. 4, 615, where it is said of the person

manumitted, *grato remeat securior ictu*. Persius 5, 75, furnishes an important authority concerning the turning the slave round, *una Quiritem vertigo facit*, whilst the words *verterit hunc dominus* seem to show that this also was done by the master⁵. Hermogenianus⁶ asserts that a fixed form of words was used by the master, but also informs us that it became customary, in course of time, for the lictor to pronounce them in his stead. Boethius states the same. It would appear, in short, that the original ceremony was so far altered, as to be wholly performed by the lictor only, in the presence of the magistrate, the master being perhaps bound just to touch the slave. Such is the opinion of Hermogenianus. Hence it is easy to understand how the same parts of the ceremony were not at all times performed by the same individuals.

1) Heinecc. Synt. I, 4, 5, vol. 1, p. 102: "Fiebat hæc manumissio coram Consule, Prætorè, Proconsule, adhibito lictore, qui, servo percusso, addebat verba: hunc hominem liberum esse volo. Quo facto in gyrum actus servus, inflicta alapa liber dimittebatur. Hinc Pers. Sat. 5, 75, de Dama servo, in gyrum acto: heu steriles," etc. On the contrary, Ruperti (Grund. d. Gesch.—der Röm. p. 483,) says that the master, appearing before the tribunal of the prætor, with the slave, whose head had been shorn, either laid his hand on his head, or took him by the hand, and, turning him thrice round, struck him on the cheek, pronouncing the words "hunc hominem liberum esse volo," and so let him go or manumitted him. Then the prætor touched the slave's head with a wand, called the *vindicta*, declaring him to be free by saying, "ajo te liberum more Quiritium," and finally struck his head with the wand. 2) See Plin. Ep. 7, 16. 3) Hor. l. c. Cf. Pers. Sat. 5, 88. 4) "Hic, hic, quem quærimus, hic est (homo liber.), Non in festuca, lictor quam jactat ineptus." 5) "Heu, steriles veri! quibus una Quiritem Vertigo facit. Hic Dama est non tressis agaso, vappa et lippus, et in tenui farragine mendax. Verterit hunc dominus, momento turbinis exit Marcus Dama." Sen., Ep. 8, speaking of the philosopher, says, "non differtur in diem, statim circumagitur." 6) Pandd. 40, 2, 23, ubi "Manumissio per lictores hodie, domino tacente, expediri solet, et verba solennia, licet non dicantur, ut dicta accipiuntur." Cf. Boeth. in Top. Cic. 2. See Briss. de Formulis, l. 8. p. 724.

59. It was believed among the Romans that the first slave freed by the *vindicta* was a man named Vindex,

or Vindicium, who discovered the conspiracy of the sons of Brutus. Some have derived the word *vindicta* from his name¹. The etymology adopted after others by Creuzer, § 48, seems the more probable, viz. from *vindicare in libertatem*²; and there are some, as Unterholzner, who refer the use of the *vindicta* in manumission of slaves to the formalities observed in the taking possession of property resigned by the actual possessor to a claimant (§ 99). Manumission *per censum* was more ancient than that by the *vindicta*, having been instituted, it is said, by Servius Tullius³. A slave was liberated by the census, when he was enrolled in the census (see § 52) on his master's authority⁴. Manumission *per testamentum* was when a slave was freed, agreeably to the laws of the XII Tables⁵, if his master in his will had declared him to be free. Those who had thus obtained freedom were called *orcini* and *Charonitæ*, their patron being in the other world⁶. If the heir manumitted a slave in compliance with a mere request of the testator, he became the patron of the freedman.

1) Liv. 2, 4, 5. Cf. Claud. Hon. Cons. 4, 613: "Deductum Vindice morem lex celebrat," etc. 2) Cf. Liv. 41, 9. 3) See Hein. Synt. 1, 4, 5. 4) Cic. de Orat. 1, 40: "Quid? de libertate, quo iudicium gravius esse nullum potest, nonne ex jure civili potest esse contentio, quum quaeritur, is, qui domini voluntate census sit, continuone, an, ubi lustrum conditum, liber sit?" Cf. Cic. p. Cæc. 34; Boeth. in Cic. Top. 2. 5) See Hein. Synt. 1, 4, 6. 6) Cf. Suet. Aug. 35; Institt. 2, 24; Ulp. Fragmm. 2, 8.

60. Among the *manumissiones justæ* is reckoned that which sometimes took place for the purpose of maintaining the hereditary *sacra* of a family, when the *vicesima*, *aurum vicesimarium* (§ 390), or twentieth part of the value of the slave, was paid down for the use of the state¹, and the manumitted slave was admitted to the *gentilia sacra* (§ 79) of his master: but there are other explanations proposed². Under the reign of

Constantine the Great³, manumissions took place in churches, the heathen ceremony being, according to some, still observed on the occasion⁴: according to Heineccius, Synt. 1, 4, 7, the slave was declared free, after a document, signed by the minister of the church, had been read by order of the master of the slave⁵. Lastly, we must reckon among the *manumissiones justæ*, if not in formalities, in effect certainly, those which took place by will of the emperor⁶, or on legal grounds, even against the owner's consent⁷.

1) Cf. Arr. Dissertt. Epictett. 2, 1, 26. 2) Cf. nott. Scalig. and Dacier. ad Festi "manumitti dicebantur" and "puri, probi."
 3) Cf. Cod. Theod. 4, 7. 4) Creuz. § 49, compares Suidam, t. 2, p. 370, and Serv. ad Æn. 8, 564. Cf. Hein. 1, 4, 7. 5) Cf. Sozom. Hist. Eccles. 1, 9; Cod. Just. 1, 13, 1. 6) Cf. Suet. Claud. 25. 7) See Hein. 1, 4, 9.

61. Incomplete manumission was bestowed in various ways. Of these, three were of more common occurrence than the rest, viz. *inter amicos*, when a master, in the presence of five friends, declared that he bestowed freedom on a slave; *per mensam s. convivium*¹, when the slave was invited to table by his master²; *per epistolam*, when the master, being absent from home, declared by letter that he made a slave free. Justinian³ says there were innumerable other ways by which a master could bestow freedom; among these he mentions the placing a *bullæ* round the neck of a young slave, or the habitually calling him "son." The purchase of freedom by a slave, without the performance of the legal ceremonies, was also among the incomplete kinds of manumissions. In cases of incomplete manumission it was not unusual to declare that the freedom, such as it was, should commence from a certain date, or that it should be bestowed only for a certain period, or under certain conditions, which limitations often occurred in manumission by will: persons thus freed were called *statu liberi*⁴.

1) See Hein. 1, 4, 8. 2) Cf. Sen. Ep. 47. 3) Cod. 7, 6: "De latina libertate tollenda." 4) Cf. Fest. in statu liber, and Pandd. tit. de statu liberis.

62. Slaves, when freed, used to shave¹ their heads (§ 288), and received from their masters, in token of their liberty², a cap, a white vest, and a ring³; they also assumed his 'nomen,' and sometimes also his 'prænomen' in addition to their own name⁴. It is certain that slaves were called, in the ancient times of the Republic, by their masters' prænomen, whence Marcipores, Lucipores, etc.⁵ Names were also given to slaves from various peculiarities, such as the place of their origin, as Davus, Geta, etc. Those born in their master's house were called *vernæ*, or *vernaculi*⁶, being, as it were, indigenous (*οἰκογενεῖς*). Slaves were also distinguished into *novitii*⁷ and *veteratores*⁸.

1) Cf. Plaut. Amphitr. 1, 1, 306. See Hein. 1, 4 and 5, 18. 2) Cf. Plaut. ib.; Pers. 5, 82; Liv. 30, 45, 45, 44 extr. Suet. Nero 57: "Tantumque gaudium publice præbuit (mors Neronis), ut plebs pileata tota urbe discurreret;" Sen. Ep. 47: "dicet nunc aliquis, me vocare ad pileum servos." 3) Concerning both these cf. Stuck. Antiqq. Convival. p. 362, and the passage there quoted from Tertull. De Resurrect. Carnis. 4) Cf. Pers. Sat. 5, 77; Juven. Sat. 5, 125. 5) See Plin. H. N. 33, 1; Quint. 1, 4, 162, ed. Capper. 6) Cf. Mart. 1, 50, 24, 3, 1, 6. 7) Cf. Ter. Eun. 3, 5, 33; Cic. in Pis. 1; Plaut. Capt. 3, 5, 60. 8) See Pandd. 21, 1, 65, § 2; Ter. Andr. 2, 6, 26.

63. There are many points of dispute concerning the results of manumission; thus much however is certain, that all who received the *justa manumissio* were not only thenceforth exempt from the power of their former master, and all servitude, but gained at once the rights of citizenship, which constituted complete liberty, *justa libertas*², although they were not therefore quite on a par with freeborn citizens³; hence we may understand the concession of the *jus ingenuorum*, made at various times to freedmen, and finally, by Justinian⁴, made common to all.

The incomplete manumission, not being recognised

by law, was so far from changing the civil condition of the slave, that he might be again compelled to servitude⁵; and although an appeal to the prætor was in some cases allowed, his interference did not, I believe, place them in the condition of free men⁶. At length, the *Lex Julia Norbana*, under the reign of Tiberius (A. U. C. 771), placed all who had received incomplete manumission on the footing of Latini (§ 120); the Latini being by the same law declared Latini Juniani. Persons who had received incomplete manumission were sometimes completely freed by the *vindicta*, or by the indulgence of the emperor⁷ (§ 70), and in other ways⁸.

1) Suet. Aug. 40. "Servos non contentus multis difficultatibus a libertate et multo pluribus a libertate justa removisse," etc. 2) See Hein. 1, 4 and 5, 10. Cf. Dionys. 4. 22; Cic. p. Corn. Balbo, 9: "Servos denique, quorum vis, fortuna et conditio infima est, bene de republica meritis, persæpe libertate, id est, civitate, publice donari videbamus." 3) Cf. Liv. 45, 14. See Creuz. § 51; Nieb. v. 1, p. 387, sqq. 4) See Cod. Just. 7, 5, 6. Cf. Gori, Columb. p. 80, 81. 5) Cf. Tac. Ann. 13, 26, 27. See Hugo, sixth edit. p. 313. 6) Caj. 1, 22, says they were called Latini Juniani, "Quia per legem juniam libertatem acceperunt, quum olim servi viderentur esse." 7) Cf. Plin. Ep. 7, 16. 8) See Ulp. Fragm. 3, 1, sqq.; Hein. 1, 4 and 5, 12.

64. The *Lex Junia Norbana*, by defining the condition of those who had received the incomplete manumission, a condition till then, we may easily conceive, uncertain and perplexed, appears to have diminished, rather than increased, the number of citizen freedmen. In order to obviate the evils threatened by the constant additions made to the lowest class of citizens by the existing system of manumission, the *Lex Ælia Sentia* (A. U. C. 757), and the *Lex Fusia Caninia* (A. U. C. 761?), passed by Augustus¹, who was no friend to freedom, least of all to the higher degrees of it, had forbidden, among other things, the admission of any to the rank of citizens before the age of thirty, except by the *vindicta*², in presence of the senate, and on just

grounds; and further, that no one insolvent, or under twenty years of age, should manumit his slaves. The same law forbade that slaves who had incurred severe punishments, such as branding for instance, should rise above the rank of *dedititii*³, and condemned ungrateful freedmen to the quarries⁴. The *Lex Fusia Caninia* also restricted the number who might be freed by will⁵. The attainment, however, of perfect freedom, and the rights of citizenship in general (§ 65), although thus restricted by Augustus, owing to various causes, became, under the later Cæsars, of very easy acquisition; until Justinian, by abolishing the *Latinitas Juniana*, made all the methods of incomplete manumission equivalent to the complete, at the same time rendering futile all other expedients for altering the civil condition of the slave⁶. He, however, preserved the rights of patronship (§ 140) to the master⁷. For the freedman, although a citizen, was inferior in some other respects to the freeborn man, and being made the client of the person from whom he had received his freedom, was bound by the usual laws of clientship. Moreover, freedom was often bestowed only on condition that certain services should still be performed⁸. The *Lex Ælia Sentia* provided legal redress against ungrateful freedmen⁹, and a law of Commodus¹⁰ consigned them anew to servitude for certain grave offences. On the other hand, the laws checked the injustice and caprice of the patron, depriving him of his rights as such if he neglected his duty to the client; as, for instance, if he omitted to supply his necessities when in want, or had freed him on hard conditions, or on such as contravened any existing law¹¹.

1) See Suet. Aug. 40. Cf. Hein. 1, 6, 3. 2) See Caj. 1, 18. Cf. Hein. 1, 6, 5 and 12. 3) See Hein. 1, 6, 4; Ulp. Fragm. 1, 11; Caj. 1, 13, 26: "Pessima itaque libertas eorum est, qui dedititorum numero sunt, nec ulla lege aut senatusconsulto aut constitutione principali aditus illis ad civitatem Romanam datur.

4) Hein. 1, 6, 9. 5) Cf. Hugo § 293; Bach. Hist. Jurispr. Rom. l. 3, c. 1, § 6; Hein. 1, 7, 2. 6) See Cod. 7, 6. 7) See Hein. 1, 4 and 5, 17, 3, 8, 1, sqq. 8) Cf. Gorii Columb. pag. 67. 9) See Hein. 1, 6, 9. 10) See l. 6. Digg. de agnosc. et alend. lib. Cf. Hein. l. c. Suetonius asserts (Claud. 25.) that freedmen of whom their patrons had cause to complain, were re-enslaved, but the Digests mention only one offence for which they might so be punished (Digg. lib. 5. de jure patron.), and it would appear from the debate in the senate recorded by Tacitus (Ann. 13, 26 and 27), that this mode of punishment was introduced at a later period. See Creuz. § 23. 11) See Hein. lib. 1. tit. 6.

THE RIGHTS OF CITIZENSHIP.

65. The civil capacities of freemen in the Roman empire were not the same to all, inasmuch as all were not Roman citizens, but enjoyed some more, some fewer privileges, according to the connection established between them and the Roman people by virtue of treaties, or in consideration of good services. We will begin the discussion of these distinctions by treating of the rights of citizenship in general: considering preposterous the method of those who pursue the inverse mode of inquiry, proceeding, namely, from the lower degrees to the highest; ascending from the parts to the whole, instead of descending from the whole to the parts.

When the territory of Rome was confined to a small extent, in its immediate vicinity, all who settled within its limits¹ became citizens by the fact of settling². The necessity of strengthening and augmenting the community induced it rather to force the rights of citizenship even on those who were unwilling to receive them, than refuse them when solicited. Hence, during the monarchical period, and in the earliest times of the Republic, we read of the removal of part, or even the whole, of conquered tribes to Rome, for the purpose of increasing its population³. In course of time, however, as the Roman name and power grew,

the rights of citizenship were granted wholly or in part, by way of reward or honour, in token of amity or in return for services, to states situated beyond the proper territory of Rome. Sometimes one particular right was conceded by way of privilege, as the right of intermarriage, *connubium*, granted only to the Campanians⁴. Hence arose various degrees, if not of citizenship, of rights, (whence the terms *plena civitas*, *optima civitas*, *optimo jure*, *optimâ lege civitas*, &c.,) and the distinction of municipal towns (§ 115). The practice, however, still continued of admitting to the perfect rights of citizenship, according to primitive practice, individuals who had rendered service, or were expected to be serviceable, to Roman interests⁵. This was sometimes done, even when the persons in question chose to remain in their native towns.

1) The common legend concerning the first inhabitants of the city is followed by Livy, 1, 8: "Ne vana urbis magnitudo esset, adjiciendæ multitudinis causa, — asylum aperit. Eo ex finitimis populis turba omnis sine discrimine, liber an servus esset, avida novarum rerum perfugit." The account of the incorporation of the Sabines is better authenticated. 2) Cf. Dionys. 2, 15; Liv. 1, 8. 3) Cf. Liv. 1, 29, 33, 6, 4, 26, 24; Tac. Ann. 11, 24. 4) Cf. Creuz. p. 244. 5) Tacitus (Ann. 11, 24) furnishes a remarkable passage on this point, but is obscured by several difficulties.

66. From these considerations, and from what has been said on the subject of manumission, we perceive that some were Roman citizens by birth: and these either *per connubium*, i. e. when both parents were free persons, or *extra connubium*, i. e. when the mother was free¹, but the father a slave; or by manumission, or by admission. The last mentioned were of two descriptions; those, namely, who were declared citizens by a decree of the people made expressly for the occasion, and those whom a magistrate admitted in compliance with decrees already existing². The attack made in later times on Rome by her Italian allies (A. U. C. 663),

called the Social War, had for its object the attainment of citizenship. By the *Lex Julia* and *Lex Plotia* it was first accorded to the Latins (§ 119); and shortly afterwards (A. U. C. 670) to all the rest, or at least to all who would receive it³ on the terms proposed (§ 116). Gallia Cisalpina (§ 10) next obtained the privilege, and, with it, the epithet *togata*. It was first bestowed on the Provincia Cispadana: the Provincia Transpadana⁴ received the boon from Julius Cæsar (A. U. C. 797). Although Augustus was somewhat sparing of this honour, it was profusely lavished by the succeeding emperors on nations beyond the confines of Italy; until at length Antoninus Caracalla declared it to belong to all freeborn subjects of the empire indiscriminately.

1) Cf. Ulp. fragm. 5, 8: "Connubio interveniente liberi semper patrem sequuntur, non interveniente connubio, matris conditioni accedunt," etc. Cf. Hugo, *Gesch. d. Röm. Rechts*, § 65 and 191; Schulze von den *Volksversamml. d. Römer*, p. 89; Creuz. p. 244.
 2) Cf. Cic. *Verr.* 1, 5, p. Balbo, 14. 3) Cf. Creuz. § 206, 219.
 4) See Dio. *Cass.* 41, 36. 5) See l. 17. de *St. hom.*; Hein. *Synt.*, App. 1, 1, 15, sqq.

67. It is, however, no easy task to distinguish accurately between the different ranks of Roman citizens, so as to state what rights constituted citizenship, or the absence of which excluded from it¹. Modern writers generally so elude the difficulty, as to leave the reader in doubt on the point, or increase his embarrassment by disputes about words². One single passage of Livy, however, viii. 14, to mention no others, puts it beyond question that there was a twofold division of citizens³; those, namely, possessing the right of suffrage, and those who possessed it not. Perhaps other distinctions may be drawn on this principle. I do not, however, see why those who had not this right should therefore have been excluded from all others, as for instance, from the rights of property and personal free-

dom, nor why those who had it should necessarily have had all others, as for instance the *jus imaginum*. It is a mere dispute about words, to insist on calling all citizens, who are found to have been so called from the circumstance of their enjoying one or more of the rights of citizenship. It is, however, still more difficult to ascertain wherein consisted the peculiar characteristic of Roman citizens in general, and their distinctions among themselves under the emperors, after Tiberius had completely abolished the *Comitia Tributa* (§ 228). For it is evident, from many passages, that citizens were then truly such without the *jus Quiritium*; and what this *jus Quiritium* itself may have been, has never yet, in my opinion, been clearly ascertained. Not to multiply instances on this point, let it suffice to refer to Tac. Ann. xi. 23, where we read that the chieftains of Gaul, who had previously obtained the rights of citizenship, were allowed access to public dignities in Rome itself⁴.

1) Cf. Maciejowski, Hist. Jur. Rom. p. 73, and Haubold (v. not. 6. ad § 70), who, upholding the opinion of Savigny, affirms that no one was reckoned a citizen who did not enjoy the rights of both *connubium* and *commercium*. 2) Cf., among other authorities, several passages in Car. Sigon. de Ant. Jure civium R. 3) "Lanuvinis (a. 417.) civitas data, sacraque sua reddita. — Aricini Nomentanique et Pedani, eodem jure, quo Lanuvini, in civitatem accepti. Tusculanis servata civitas, quam habebant. — interdictumque mari Antiati populo est, et civitas data. — Campanis Fundanisque et Formianis-civitas sine suffragio data." A passage certainly replete with obscurity even to the most learned. 4) Cf. id. Hist. 1, 8.

68. Antiquarians, appealing chiefly to certain passages in Cicero, lay it down as the fundamental principle of citizenship, that no one could lose it against his will, or, as they speak, except by his own act¹. They assert, accordingly, that it was not forfeited even by those who incurred the interdict of fire and water, until they had been admitted actual citizens of some other state², when it was lost on another principle, viz.

that the same individual could not be at one and the same time a citizen of Rome and of another state³. That there were, however, exceptions⁴ to this principle, is apparent⁵ from Corn. Nep. Att. 3. They also have recourse to a legal fiction⁶ for explanation of the instances in which individuals were deprived of citizenship by way of punishment, or for any other reason⁷. This they affirm to have been the case with persons who were detained prisoners of war by an enemy, those who were deprived of it expressly by way of punishment, or in lieu of some other penalty, by virtue of a public sentence⁸; those who incurred sentence of exile⁹, as well as the interdict from fire and water; or those who, according to the system invented by Augustus, were transported (*deportati*)¹⁰, their lot being, in this respect, among others, severer than that of the banished (*relegati*)¹¹. Persons who returned from captivity were readmitted as citizens¹² by the *jus postliminii*¹³; which is also spoken of in other cases: for instance, in that of slaves who returned from captivity to their masters. Whoever had been sold by his father, or by the people, or delivered up to the enemy by the Pater Patratus (§§ 52. 323), was debarred this right¹⁴.

1) See Hein. 1, 16, 10, and Append. 1, 73; Spanhem. Orbis Rom. 1, 1, 6. 2) For the contrary opinion see Caj. 1, 128. 3) Cf. Hein. App. 1, 72. 4) Cf. Hugo, § 191. 5) See Cic. p. Balbo, 11; p. Domo, 30; p. Cæc. 33. 35; p. Arch. 4. 5. and in other places. 6) See Hein. App. 73. 7) See Hein. 1, 16, 4, and App. 25. 8) Cf. Hugo, § 191. 9) Cf. Caj. Institt. 1, 8, and 90. 10) See Hein. 1, 16, 11. 11) Cf. Ovid. Trist. 2, 137, 5, 11, 21. 12) Caj. 1, 129: "Quod si ab hostibus captus fuerit parens, quamvis servus interim hostium fiat, pendet jus liberorum propter jus postliminii, quia hi, qui ab hostibus capti sunt, si reversi fuerint, omnia pristina jura recipiunt." Cf. Fest. l. c.; Gell. 7, 18. 13) For the etymology of the term, cf. Cic. Top. 8; Hein. Synt. 1, 16, 4: "Non ideo, quod captivus ex hostico ad limina vel fines imperii revertisset, ut ait Tribonianus" (Institt. 1, 12, 5): "Sed a limine, ædium parte. Reversi enim ex captivitate non per limen admittebantur in ædes, si jam diem eos obiisse nuntiatum fuerat, quia id mali ominis putabatur, sed post limen per tegulas et implu-

vium intro se ipsos demittebant, teste Plut. Q. R. 5." See the commentators on Fest. "Postliminium Receptus." 14) See Cic. de Orat. 1, 40.

69. The loss of the rights of citizenship, being considered civil death, was termed¹ *Romani capitis deminutio*²; from the same notion, slaves, foreigners, and even eldest sons, as not being independent during their fathers' lives, were said to be *capite destituti*. This *deminutio* was divided into *major*, *minor*, and *minima*: the first was ascribed to persons who lost their liberty as well as their citizenship, such as those who were passed over in the census, (*incensi*,) ungrateful freedmen, and criminals condemned to the mines, or to be thrown to wild beasts (§ 55); the *minor deminutio* included those who merely were excluded from citizenship; the *minima*³ referred to a change of condition, as in cases of adoption, or passing into the power of another⁴.

1) See Hein. 1, 16, 1, sqq.; Pandd. 4, 5, 1: "Capitis minutio est status permutatio." 2) Cf. Hor. Od. 3, 5, 42: "Ut capitis minor." 3) See Hein. 1, 16, 12. 4) Cf. Hugo § 67; Mackeld. Lehrb. des heut. Röm. Rechts, § 112.

70. The rights of citizenship are usually divided into public and private¹; that this may be understood as a real distinction, we must reckon the former to have been such as belonged to a citizen, as such, not by virtue of his private capacity as a father, husband, or master²: hence it is easy to see which were private. By the terms *jura Quiritium et civitatis*, or *jura civitatis*, the ancients appear to have sometimes designated the full and entire rights of perfect citizenship (§ 65), sometimes the possession of a part only of them. Hence, I apprehend, the discussions still pending among the learned respecting them are little likely to come to any satisfactory termination. Some, as Sigonius, Spanheim, Schulting, and Heineccius, are of opinion that the *jus Quiritium* was used only of private

rights; and the term *civitas*, when not employed to express perfect citizenship, denoted only, or chiefly, the possession of public rights. According to others, the *jus Quiritium* uniformly denotes full and perfect citizenship; so that the bestowal of this distinction raised to complete citizenship any who had previously enjoyed none of its privileges, or but few of them. There is then no cause for surprise that Creuzer (§ 203), after quoting the chief passages of ancient authorities on the point (viz. Sueton.³ Claud. 19; Ulp.⁴ Fragm. iii. § 2; Plin.⁵ Ep. x. 4 and 6), should conclude by proposing queries on the subject; or that Savigny⁶ should be thought by some to have failed in fully elucidating the difficulty. Some writers reckon fewer rights as public than others; what some enumerate among the public, others class among the private. There is the less reason to be surprised at this discrepancy, because it is not equally clear, in all cases, why they should be called rights at all; and, from what has been already stated, some, as, for instance, the *jus sacrorum* and the *jus connubii*, may be considered in some respects public, in others private. Not, however, to involve ourselves in over nice distinctions, we will place among the former, the rights of personal freedom, of tenure of property, of military service, liability to tributes and taxes, of suffrage, of honours, and sacred rites; among the latter, the having a *gens* (*gentilitas*), the rights of kin (*agnatio*), of inter-marriage (*connubium*), the power of fathers over children, the rights of masters, of making a will, of inheritance, and of guardianship.

1) Cf. Creuz. p. 240. 2) Cic. Agr. 2, 19: "Retinete istam possessionem gratiæ, libertatis, suffragiorum, dignitatis, urbis, fori, ludorum, festorum dierum, cæterorum omnium commodorum." Cf. Beauf. Rep. Rom. v. 2. p. 122; Sigon. de Ant. Jure civium Rom. l. 1. c. 6. init. 3) "Civi (constituit) vacationem legis Papiæ Poppææ, Latino jus Quiritium." 4) "Beneficio Principali Latinus civitatem Romanam accipit, si ab Imperatoribus jus Quiritium impetravit." 5) "Quare rogo, des ei civitatem Romanam; est

enim peregrinæ conditionis, manumissus a peregrina. — Idem rogo, des jus Quiritium libertis Antoniaæ Maximillæ, ornatissimæ feminæ, Heliæ et Antoniaæ Harmeridi. Quod a te, petente patrona, peto." Cf. Epist. 22. In Epist. 6, he also begs the rights of citizenship for the relatives of his physician's wives, and for their children likewise, "ita ut sint in patris potestate, utque iis in libertos servetur jus patronorum" (§ 64). After which he proceeds to solicit the *jus Quiritium* for certain freedmen, specifying that their patrons were agreeable thereto.

After thorough consideration of these and similar passages, I am inclined to adopt the following opinion: first, that the freedmen for whom Pliny solicits the *jus Quiritium* already possessed citizenship, but evidently not complete. Whether, however, they were *Latini Juniani*, admits of doubt; I am inclined to think they were not, on comparing the passage in Epist. 105, in which he begs the *jus Quiritium* for certain *Latini* (to wit, *Juniani*), not contenting himself with describing the parties for whom he interested himself as simple *liberti*. The foreigners, for whom Pliny likewise requests citizenship, wished, I consider, to obtain that which did not include the *jus Quiritium*; that kind, namely, which was already possessed by the *liberti* above mentioned, and which, it is evident, on the other hand, the *Latini* did not enjoy. I am furthermore of opinion, that imperfect citizenship was that which did not convey the *jus Quiritium*; and that this latter was never bestowed, except along with or after the boon of citizenship: whence it would follow that none possessed the *jus Quiritium*, except the complete citizen (the *optimâ lege civis*.) It seems, however, a hopeless task, to endeavour to ascertain, in such a manner as shall satisfy all the doubts of the learned, what each of these kinds of citizenship exactly was in itself, viz. complete citizenship, that which had not the *jus Quiritium*, and that which consisted only in this. For my part, I cannot comprehend to my satisfaction, why, in Pliny's time, freedmen should have attached such importance to the *jus Quiritium*, if, as Mart. Ernesti, and others after him, have thought, it comprehended the *jus militiæ*, from which, I believe, no freedman was at that time excluded; the *jus honorum*, very different then from what it had been in the free ages of the Republic, and the *jus suffragii*, which had long ceased to exist at all. Neither can I see how all private rights were included in the *jus Quiritium*, as asserted by Heineccius, when he says of it (Append. § 23), "ad ea, quæ juris sunt privati, pertinet." For, if so, we shall leave very little to citizens wanting this, nay, scarcely anything at all by which they could be distinguished from foreigners. 6) Savigny has treated this question in his two essays, über die Entstehung und Fortbild. der Latinitæt, etc., and über das Jus Italicum, and in his Geschichte des röm. Rechts im Mittelalter (vol. 1. c. 2. p. 22), in such a manner as to remove all the difficulties felt by Haubold, who, in his Epicrisis Syntagm. Heinecciani ad App. § 24, has adopted Savigny's theory, in the following terms: "Rem, paucis sic tene. Jus civitatis partim ad jus publicum, sed potissimum ad jus privatum spectavit. Nam hujus quidem sunt jus connubii et jus commercii; quibus qui carent, nullo modo in civium numero habentur. Illius

sunt jus suffragiorum in comitiis et jus honorum ; quibus qui gaudent, optimo jure cives vocantur ; ut tamen non minus civium loco sint, qui utraque juris publici prærogativa destituuntur ; licet negentur esse optimo jure cives."

OF THE RIGHTS CALLED PUBLIC.

71. Under the *jus libertatis* were comprised complete Roman citizenship, public freedom, and legal protection from the caprice of magistrates, or the cruelty of creditors. As regards citizenship, the liberty here meant, namely, that of Quirites, is not to be confounded with that enjoyed by foreigners, which was called liberty to distinguish their condition from that of slaves¹. The *libertas Quiritium*, as the liberty enjoyed by genuine Roman citizens was termed, could not be impaired or lost, except by the fault of the possessor ; and it was lost or forfeited in the same way as citizenship (§ 68), for which reason the legal fiction we before mentioned regarded both².

Public freedom (the *libera respublica*) was established on the abolition of the monarchy by Junius Brutus³, who prohibited the regal form of government by a tribunitian (?) law, which the citizens bound themselves by oath to maintain⁴ ; this enactment was shortly afterwards confirmed by the two laws of Valerius Publicola, the one decreeing death without trial (*sacer Diis Manibus, sacrum caput*) against whoever should aspire to sovereignty⁵, and the other⁶ granting to the *plebs* the right of appeal from the sentence of the magistrate, and securing the appellant from punishment, either by the scourge or by fine, except the people to whom he appealed also condemned him⁷. This law, as well as others intended to check the tyranny of the patricians, being artfully evaded by them, it was renewed first (A. U. C. 305) by Valerius Publicola and Horatius⁸, then (A. U. C. 453) by Valerius Corvus⁹,

and lastly (A. U. C. 557) by M. Porcius Leca¹⁰, who strengthened it by increasing the penalty against its infraction. But even this Porcian law, the existence of which is still attested by a coin¹¹, fell into neglect, and is supposed, from a passage in Gellius (10, 3), to have been last revived by Sempronius Gracchus. It would appear from Sallust¹², that it allowed the condemned parties to withdraw into exile; but, if so, must we not understand it to mean those who had been condemned by the magistrate in the first instance, not such as had been cast in their appeal from his sentence? To the *lex de provocatione* were soon added the so called *leges sacratæ*¹³, declaring the persons of the plebeian tribunes and ædiles¹⁴ to be sacred, that whoever insulted them should be guilty of high treason and held accursed¹⁵, and that those magistrates should be taken exclusively from the *plebs*. Under the same title was included the law of the XII Tables, *de capite civis nisi per maximum comitatum ne ferunto*, i. e. "let no capital sentence be passed, except by the *comitia centuriata*¹⁶." Subsequently (A. U. C. 631), came the law of C. Sempronius, that no capital case should be tried, except by order of the *populus*¹⁷.

1) Cf. Cic. P. Cæc. 33. 2) See Hein. App. 25. 3) Cf. Tac. Ann. 1, 1. 4) Cf. Dionys. 4, 85, 5, 1; Liv. 2, 1. 5) Cf. Dionys. 2, 10; Liv. 2, 8: "Latæ deinde leges, non solum quæ regni suspicione Consulem absolverent, sed quæ adeo in contrarium verterent, ut popularem etiam facerent, (inde cognomen factum Publicolæ est,) ante omnes de provocatione adversus magistratus ad populum (cf. 1, 26), sacrandoque cum bonis capite ejus, qui regni occupandi consilia iniisset. 6) See Hein. App. 27; Schulze Volksverss. d. Römer, p. 82. 7) See Dionys. 5, 19, p. 292; Liv. l. c. and 3, 55: "Ne quis ullum magistratum sine provocatione crearet, qui creasset, eum jus fasque esset occidi; neve ea cædes capitalis noxæ haberetur." Cf. id. 10, 9, and Plut. Publ. 11. 8) Liv. 3, 55. 9) Id. 10, 9. 10) Liv. 10, 9: "Causam renovandæ sæpius haud aliam fuisse reor, quam quod plus paucorum opes, quam libertas plebis, poterant. Porcia tamen lex sola pro tergo civium lata videtur; quod gravi pœna, si quis verberasset necassetve civem Romanum, sanxit. Valeria rex, quum eum, qui

provocasset, virgis cædi securique necari vetuisset, si quis adversus ea fecisset, nihil ultra, quam improbe factum, adjecit." 11) See Hein. App. 27. 12) B. C. 47. Cf. Cic. Cat. 1, 11, 4, 5; p. Rab. 44; Ver. 5, 63. 13) Cf. Cic. p. Domo 17. 14) Cf. Schulze p. 86. 15) See Liv. 3, 55. 16) Cf. Cic. de Legg. 3, 19; p. Sextio 13, 34. 17) Cf. Cic. p. Rab. perd. 4. See Beauf. v. 1. p. 123.

72. The above holds good of the liberty of the citizens, as guaranteed by law generally. With respect to debtors, and the checks placed on the severity of creditors, the following particulars are to be noted¹. An ancient custom, which, according to Dionysius (iv. 9), had been modified by Servius Tullius, was revived by one of the laws of the XII Tables, preserved² in Gellius xx. 1, whereby it was enacted, that a debtor, whose debt had been legally declared a just debt, unless he either discharged it within a set time³, or found good security for its payment⁴, was made over (*addictus*) to his creditor, who, if he pleased, thereupon conveying him to his house, kept him bound (*nexus*) in thongs or fetters, employing him in any servile work; the condemned debtor being maintained meanwhile at his own cost, if he pleased, or else at that of his creditor. The latter was, however, obliged to bring him into the *comitium* on three successive market-days, that there might be the chance of his release by some compassionate person. If, after the lapse of sixty days, the debt remained unpaid, such persons being brought forward for the third time, according to Gellius on the third market-day, lost citizenship, or were sent for sale beyond the Tiber⁶; if there were several creditors, they were allowed to divide him, *secare partes*⁷. Whether the *addicti* were slaves, was, I perceive, a matter of dispute among the ancients themselves; Heineccius shows that their condition differed widely from that of slaves: there certainly are more reasons than one for questioning that it was the same⁸. Such as were con-

veyed across the Tiber, and sold, evidently became slaves.

1) See Schulze p. 91. 2) See these in the third division of the fragments of the XII Tables in § 261. 3) See Hein. 3, 30, 4. 4) Cf. Dupont. Disquiss. in comment. Gaji p. 32. 5) Cf. Cic. p. Flacco 19 and 20; de Orat. 2, 63. 6) Cf. August. de Legg. c. 38; in Thes. Græv. v. 2. p. 298. 7) Lex. XII Tabb.: "Tertiis nundinis partes secanto. Si plus minusve secuerint, se fraude esto." In the law, as quoted by Gellius, the word supplied is not *corpus*, but *partes*; yet it may be made a question whether *partes* meant portions of the debtor's body or of his goods. Heineccius and others understand the latter: and indeed the other is too atrocious to be credited; whilst, as Heineccius remarks, a man's property was sometimes called *corpus*; and *sectio*, it is well known, was a term of sale; at all events, of sale by public auction. On the other hand, one would conclude that the *addictus* could not be in possession of any property, for if he were known to have any it must have already been made over to his creditor; for why should the property be withheld, when the person was already surrendered? Moreover, the ancients, and among them Cæcilius, quoted by Gellius 20, 1, plainly adopt the other sense. Quinctilian 3, 6, p. 180, makes no question of it: his words are, "Sunt enim quædam non laudabilia natura, sed jure concessa, ut in XII Tabb. debitoris corpus inter creditores dividi licuit, quam legem mos publicus repudiavit." The severity which might be used towards an *addictus* appears from Livy 2, 27, and still more from 8, 28, and it may not seem incredible that those who had been already capitally condemned, might be literally cut to pieces. Still, one would conclude, that although allowed, it was not practised. 8) See Hein. 3, 30, 2; Hugo § 62; Sigon. de Ant. Jure civ. Rom. l. 1. c. 6, and the passage there quoted from Quint. 7, 3, p. 434, ed. Capper; Quint. 3, 6, p. 165, also says, "Quæstio, an is, quem, dum addicta est, mater peperit, servus sit natus."

73. The *Lex Petillia Papiria*, which modified the extreme severity of the decemviral law, was occasioned (A. U. C. 428) by the cruelty and lust of an usurer. Livy, having narrated this occasion of it, adds, 8, 28, that the consuls were directed to propose an enactment, "that no one should be put in chains, or otherwise bound, except for criminal offences; and that only the property, not the persons, of debtors, should be at the mercy of their creditors." In which passage there is considerable ambiguity as to whether Livy believed that the creditor had till then been subject to bonds and

stripes only, or to being sold beyond the Tiber, and liable even to be cut to pieces. He, however, is positive concerning the fact that the *Lex Petillia Papiria* deprived creditors of the right of *nexus*, and of all power over the debtor's person; and that a sale of his effects was substituted for the *addictio*, or assignment of his person¹. So far this law resembled the *σεισάχθεια*, introduced by Solon at Athens, forbidding a creditor to seize the debtor's person². It would appear, however, that this law, by which Livy asserts that credit was much shaken, did not long remain in force: at all events, a passage in Sallust, Cat. 30, shows that it was not in force in the later times of the Republic³; and we have the positive testimony of Gellius⁴, that, under the Cæsars, the debtors were both made over to their creditors, and kept in bonds. Moreover, we find that the debts of the plebeians were the chief cause of their misery, and of all the civil turmoils which occurred after the expulsion of the kings, and were one of the greatest grievances of the latest ages of the Republic: so that various methods of relief, as by *novæ tabulæ*⁵, for instance, were devised, either of necessity or by the interested views of those who aimed at revolution⁶. Whether the measure denoted by the expression *novæ tabulæ* was an abolition of the interest due on the debts, or a cancelling of the whole or of a part of the principal, I cannot say. How much that measure, whatever it may have been, was dreaded by the creditors, is clear, as from other passages, so from a place in Cæsar, where he tells of the services he rendered the debtors⁷. Sallust informs us, that on one occasion copper was paid instead of silver⁸.

I have now briefly stated the several measures successively introduced for the protection of the liberty of the citizen: however commonly they were eluded or neglected, they yet had the effect of exalting and en-

suring respect to the name of Roman citizen, as well at Rome as in the remotest provinces of the empire, when it had attained its greatest extent; whence the expression so well known from Cicero, *Civis Romanus sum*⁹. Under the Cæsars the privileges it implied diminished daily, but did not become utterly extinct until a very late period¹⁰. The laws for the protection of the citizen were supported by the tribunitian power, which first arose to check the caprice of the patrician body, and afterwards proved the bulwark of the people against the senate.

1) Varro de L. L. 6. p. 82: "Liber, qui suas operas in servitute pro pecunia, quam debeat, (dat?) dum solveret, nexus vocatur, ut ab ære obærat. Hoc C. Popilio rogante Sylla dictatore (cf. Bach. Hist. Jurisprud. Rom. 2, 2, 20) sublato ne fieret, et omnes, qui bonam copiam jurarent, ne essent nexi, dissoluti." Cf. Tertull. Apol. advers. Gent. § 4. 2) Cf. Diod. Sic. 1, 79; Plut. Sol. 15. 3) "Neque cuiquam nostrum licuit more majorum lege uti, neque, amisso patrimonio, corpus liberum habere." Cf. Varro l. c. 4) Is, 20, 1: "Addici namque nunc et vinciri multos videmus; quia vinculorum pœnam deterrimi homines contemnunt. Dissectum esse antiquitus neminem equidem neque legi neque audivi." 5) For the meaning of this expression, cf. Liv. 32, 38. 6) See Hein. Synt. 3, 30, 6. 7) De B. C. 3, 1. Cf. Suet. Cæs. 42; Cic. Cat. 2, 8; Phil. 6, 4; Vell. 2, 23 and 68; Sen. de Benef. 1, 4. 8) Cat. 30. Cf. Vell. 2, 23: "Flaccus turpissimæ legis auctor, qui creditoribus quadrantem solvi jusserat." 9) See Verr. 5, 54. 57. 62. 10) Cf. Paul. Act. 22, 24; Euseb. Hist. Eccles. 5, 1. See Hein. App. 28; Roth. de Re Municip. p. 83.

75. Concerning the census, whether in the sense of a right or of an institution, I shall speak at length elsewhere, noting, for the present, only the following particulars. In conformity to a practice introduced by Servius Tullius, the names of the citizens, their wives, and their children, their condition of life and property, including the number of their slaves¹, were inserted in a public register, which, as well as the custom, was called the census. The particulars above mentioned were declared on oath by the citizens themselves, before the magistrate empowered to make the registration, or hold

the census. The division into classes and centuries (§ 144) depended on the amount of the property possessed. No one whose name was not registered was considered to be a citizen. Whoever was excluded or omitted (*incensus*) lost the rights of liberty, by ceasing to be a citizen (§ 52). The census used to be repeated every fifth year, though sometimes³ at longer intervals (§ 199). It appears from Livy that it was no difficult matter to get registered on false pretences, and that Latins who had fraudulently obtained insertion of their names, were struck out by means of a scrutiny, and compelled to return to their own cities⁴. One may easily believe that, until the right of citizenship had been extended to all Italy, only the inhabitants of Rome itself were registered; and as much may be gathered from various testimonies of the ancient writers⁵. Afterwards registers used to be sent to Rome⁶, certainly from the remoter cities, if not from those situated in the *ager Romanus* itself; although the public formalities of holding the census (*censús*, or *lustris*, *condendi*, § 145) were observed only within Rome. A distinction is moreover to be made between the *census lustralis* of the citizens, and that which was kept up after this was neglected⁷; another, again, differing from both of these, was introduced for the purpose of securing the collection of the tributes, and conducted by the Roman knights, called properly *provincialium censualis professio*, and sometimes simply *census*⁸; it would almost appear, that this was the only kind retained after the enactment⁹ made by Caracalla (§ 66). Hence the official names of *censitores*, *ducenarii*, *scribæ*, *chalcologi*, and others¹⁰, employed in collecting the taxes or tributes as rated in the census.

1) From *censere*, i. e. numerare, æstimare; whence *census*, meaning income, revenue, or fortune; as the *census equester*, *census senatorius*: and *ensor*, meaning appraiser, and thence called by the

Greeks, *τιμητής*. 2) See Dionys. 4, 22 ; Liv. 1, 42, sqq. ; Gell. 16, 10 ; Hein. 1, 16, 1 ; Hegewisch Röm. Finanzen p. 50. 3) Cf. Hein. App. 53. 4) 39, 3, 41, 8. 5) See Hein. App. 53 ; Paul. Manut. de Civit. Rom., in Thes. Græv. v. 1. p. 59. 6) Cf. Gell. 5, 19 ; Vell. 2, 15. 7) Cf. Plin. Ep. 10, 22. 8) Cf. Tac. Ann. 1, 31 and 33 ; Beauf. v. 2. p. 127. 9) See Hein. App. 53. 10) See Hein. ib. Cf. Hegew. p. 275, sqq.

76. The *jus militiæ* conferred the privilege of serving in the legions ; from which, however, such as were citizens by manumission were excluded, either by law or by custom, and also the sixth class of genuine citizens (§ 144), who served by compulsion, in cases of great emergency, and not of right¹. Service in the legions of the allies was less honourable, as was also service in the legions of the *classarii*, which were made up of citizens of the lowest rank and allies (§ 373). Marius was the first who formed his legions of citizens of all descriptions, indiscriminately enrolled², the military profession being in his time sunk from the high reputation in which it had been held in earlier times ; and very soon afterwards, the *jus militiæ* came to be common to all citizens alike³, and to the allies, without distinction. So that the Roman forces came to consist of a medley of citizens and foreigners, from all parts of the world⁴ ; and, as the empire declined, consisted chiefly of barbarians⁵, though slaves continued to be excluded to the very last⁶. Of the tributes, and other branches of the revenue, we shall treat in a separate chapter (§ 389) : some of these being paid by citizens, and others by foreigners resident in the empire, and the liabilities to them being different in the case of citizens from those of foreigners, there is some reason for reckoning them among the rights of citizenship, although some writers do not count them such.

1) Cf. Gell. 16, 10. 2) Cf. Sall. B. J. 82 ; Gell. l. c. 3) Cf. Herodianus 2, 2. 4) See Hein. App. 138. 5) Cf. Spanh. Orb. Rom. 2, 21 ; Amm. Marc. 26, 1 ; Claud. Eutr. 1, 58 ; Zosimus 4, 30, 31. 6) Cf. Plin. Ep. 10, 39.

77. By the *jus suffragii* Roman citizens participated in the government of the state, voting in the *comitia* (§ 147) on all matters of which the people was cognizant. This right was the most eminent of all, belonging exclusively to the most complete rank of citizenship, and forming the distinctive privilege of the *municipes* (§ 115). It was not essentially impaired even by Sylla, although he dealt with the *comitia* for the time according to his caprice; and Cæsar was the first who trespassed upon it, when, in his dictatorship, he took on himself to appoint the consuls and other magistrates¹. Augustus restored the right of their appointment to the people, but with some modifications (§ 228). Tiberius transferred it to the senate². It was restored, for a very short period, to the people by Caligula³. In the reign of Augustus, many laws were passed by the *comitia*; in that of Tiberius, only two, viz. the *Lex Junia Norbana* and the *Lex Visellia*; some few are mentioned after the time of Tiberius, but it is very doubtful whether they really were decrees of the people, and not rather of the senate⁴. The *jus honorum*, which is commonly reckoned next in importance to the *jus suffragii*, is considered to have consisted in eligibility to the offices of the priesthood and magistracy, which will be spoken of severally in another place. Nitschius has set down a third species, namely, the possession of *imperium*, without any special office (§ 245); which, however, would seem rather imaginary. Under the kings⁵, and for some time under the Republic, plebeians were excluded from both the priesthood and the magistracy; and, as they were also excluded from the senate, it seems rather strange that eligibility to that body should not be reckoned by writers on antiquities as part of the *jus honorum*. After the tribuneship and ædileship had been conceded to the Plebeians, and as the rivalry of the two orders in-

creased, the offices of the magistracy, till then peculiar to the Patricians, were all conceded to the *plebs*, except however the office of *interrex*. They obtained the consulship A. U. C. 387. The offices of the priesthood were in like manner thrown open to them, still, however, with a few exceptions, such as those of the *Rex sacrorum* and the *Flamines majores*⁶. Foreigners were naturally excluded from the *jus honorum*, especially in the times of the Republic.

1) See Suet. Cæs. 41. 2) Tac. Ann. 1, 15; Dio Cass. 58, 20. 3) Suet. Cal. 16. Cf. Dio Cass. 59, 9. 4) See Bach. l. 3. c. 1. § 1 and 17; Hugo § 299 and 300. Cf. Mackeldey § 35. As Bachius, in the passage referred to, denies that any *leges*, properly so called, were passed after the time of Tiberius, so we may reasonably conclude, that, under Augustus, the people did not enjoy its ancient liberty entire in the *comitia*, which were still allowed either for the election of magistrates, or for the enactment of laws. The state of public matters at the time surely authorises such a conclusion. (Cf. Dio Cass. 3, 3, 21.) It will not, however, be correct to maintain with Schulz, von d. Volksversamml. d. Römer, p. 173, that no laws at all were passed, or, as he speaks, imposed, by the people under Augustus; and I have here to acknowledge that I was wrong in asserting, as I did in the former editions of this work, that the *comitia* for enactment of laws were abolished by that Emperor: such an assertion is incorrect, if it be understood to mean that no laws were submitted to the people for their sanction, and passed by them; but if no more be understood by it, than that the people were no longer free to sanction or refuse them at their discretion, it will be found to be correct. 5) Cf. Dionys. 2, 9. 6) See Hein. App. 66. 7) See Hein. ib. and 69. Cf. Tac. Ann. 11, 24.

78. The *jus sacrorum* consisted in the participation in the worship of the gods, and religious rites in general. These were distinguished into *sacra publica*, and *sacra privata*¹: the former being such as were celebrated in the name and at the charge of the state², and common to all citizens; the latter were peculiar to houses or families, and so would rather fall under the head of private rights. Among the *sacra publica*, writers on antiquities note the *focus*, for sacrifices in the name of the whole state, which was in the charge of the Vestal Virgins; the *foci curiarum* (§ 132) in the

charge each of its own *curio*, and the *foci pagorum*, situated in the *ager Romanus*, adjacent to the city, having their peculiar priests, and serving for the celebration of the *paganalia*³ instituted by Servius Tullius (§ 143). As heathen rites lingered in the villages after they had been extinguished by Christianity in the larger towns, the remoteness or obscurity of the places affording the opportunity of their celebration with impunity, the name *pagan* came ultimately to denote a heathen.

1) Cf. Liv. 5, 52. 2) Hein. App. 70; Fest. in publica: "Publica sacra, quæ publico sumtu pro populo fiunt, quæque pro montibus, pagis, curiis, sacellis; at privata, quæ pro singulis hominibus, familiis, gentibus fiunt." 3) Cf. Varro de L. L. 5. p. 49.

79. With respect to the *sacra privata* it is certain that the *gentes* (§ 80), of which each *curia* (§ 142) is supposed, in the early times, to have comprised a certain number, had each certain sacred rites peculiar to itself, and therefore called *sacra gentilitia*: these were most scrupulously kept up¹, so that many families are stated to have maintained their own priests for the due celebration of them². A law of the XII Tables commanded that they should be observed for ever³; and they were accordingly bequeathed as goods, passing to a man's heirs and successors agreeably to the laws of succession and inheritance (§ 8): hence the proverb, *hereditas sine sacris*⁴. Among the *sacra privata* are to be placed the *lares* (§ 314), or household gods possessed by each citizen⁵. We learn from Livy⁶, that the adoption of foreign religions, whether by communities or individuals, was in the early times prohibited by law, although persons migrating from the *municipia* into Rome were allowed to retain their national rites⁷, as did also colonists from Rome. Yet foreign rites were brought in, by sanction of the senate, even before the corrupt age of the Republic; as, for instance, the worship of *Æsculapius*⁸, from Epidaurus,

and that of Cybele from Phrygia⁹. About the fall of the Republic, however, they were very commonly introduced; and under the Cæsars¹⁰ several were adopted from Egypt, as, for instance, the worship of Serapis, Anubis, and especially of Isis (§ 306); many observances were borrowed also from the Chaldæans and Jews; and eventually all the superstitions of the whole earth appear to have been concentrated in Rome¹¹.

1) Cf. Liv. 5, 46 and 52; Macrob. Sat. 1, 16. 2) See Hein. App. 70. 3) "Sacra privata perpetuo manento." See Hein. 1, 11, 1. 4) Plaut. Trin. 2, 4, 83; Capt. 4, 1, 8. 5) Hein. 1, 10, 4. 6) 4, 30: "Datum inde negotium Ædilibus, ut animadverterent, ne qui, nisi Romani dii, neu quo alio more, quam patrio, colerentur." Cf. idem 25, 1, 29, 16. 7) See Fest. in municipalia sacra. 8) Liv. 10, 47. 9) Liv. 29, 10 and 11. 10) Cf. Dio Cass. 40, 47, 42, 26; Cat. 10, 26; Mart. 12, 29. 11) See Hein. App. 70.

OF THE JURA PRIVATA.

80. The *jus gentilitatis* was enjoyed by virtue of belonging to a *gens*; those were considered *gentiles*, i. e. to belong to the same *gens*, who bore the same family name by virtue of descent, or adoption, or even manumission¹. In the earliest times this *jus* belonged only to the nobler families, i. e. to those Patricians whose common boast it was that they only had a *gens* (*gentem habere*), and both the nature of the thing and the testimony of the ancients prove this to have been the fact². In course of time, however, the *plebs* was admitted to participate in this right as in others, although the Patrician and the Plebeian *gentes* continued to be broadly distinct. Adopted persons participated in it as being placed on a par with lineal descendants; freedmen, inasmuch as they assumed their patron's name (§ 62); but these did not enjoy it in an equal de-

gree with the free born³. Persons of the same *gens*, being kindred on the male side, were called *agnati*; those who were kindred on the female side, *cognati*: but what the exact distinctions consequent on this difference of descent were, is still a very obscure point; notwithstanding the attempts to elucidate it made by Minguet⁴ after Holt and others. Neither is it satisfactorily cleared up by those who would say with Heineccius, that the *agnati* were kinsmen, not only of the same *gens*, but of the same family. It is inferred from a passage in Cicero (Top. 6), that none could claim to be *gentiles* but those who were descended from free born persons, and had not incurred any capital penalty, i. e. any penalty affecting their citizenship.

1) Fest.: "Gentilis dicitur et ex eodem genere ortus, et is, qui simili nomine adpellatur; ut ait Cincius: gentiles mihi sunt, qui meo nomine adpellantur:" cf. Hugo § 69. Heineccius 3, 2, 2, gives a different statement. Cic. Top. 6: "Gentiles sunt, qui inter se eodem sunt nomine. Non est satis. Qui ab ingenuis oriundi sunt. Ne id quidem satis. Quorum majorum nemo servitutum serviit. Abest etiam nunc. Qui capite non sunt deminuti. Hoc fortasse satis est; nil enim video Scævola pontificem ad hanc definitionem addidisse." 2) Liv. 10, 8: "Semper ista audita sunt eadem, penes vos auspicia esse, vos solos gentem habere, vos solos justum imperium domi militiæque." 3) Cf. Hugo § 69. 4) In his Dissert. de Hered. Legit.

81. Other rights possessed originally by the Patricians, to the exclusion of the Plebeian body, although connected with the *jus gentilitatis*, are not to be confounded with it¹. Simple admission to citizenship entitled any one to Plebeian rights; but those of the Patrician body, on the contrary, could not be obtained, at least during the flourishing times of the Republic, except by an express grant from the *populus*: afterwards they were bestowed by the Emperors, or by the Senate². A Patrician might pass by adoption from his own to a Plebeian *gens*, but there are good grounds for doubting whether the reverse might take place, or, at

least, whether such as were adopted from a Plebeian into a Patrician *gens*, gained equally the *jus gentilitatis* by the mere circumstance of their adoption³. Patricians sometimes descended to a Plebeian *gens*⁴ for the sake of obtaining the tribuneship (§ 206), as happened in the cases of Clodius and Dolabella. It is gathered from Suetonius⁵, that adoption was to take place in the *comitia curiata*. By a law of the XII Tables⁶ it was enacted, that the *sacra privata* and the goods of persons dying intestate, and without immediate heirs at law (§ 106), should pass to the nearest *agnatus*, in regular descent (*jus agnationis*), but if there were no *agnatus*, to the *gentiles*, to the exclusion of the *cognati*⁷. Hence the *hereditates gentiliticæ*, mentioned in Suetonius⁸. This *jus gentilitatis* lasted to the latest times of the Republic⁹, but had become obsolete in those of Ulpian¹⁰. The *jus agnationis* comprised the right to the guardianship of *agnati* (§ 112), besides the peculiar privilege of inheritance just now mentioned.

1) Cf. Hein. App. 32. But I question whether he be right herein. 2) Cf. *idem ib.* 3) Cf. Hein. 1, 11, 11; Cic. de Orat. 1, 38, 39; p. Domo 14; Manut. de Legg. Rom., in Thes. Græv. 2. p. 44; Sigon. de Nominibus Roman., *ib.* p. 992. 4) See Cic. p. Domo 13; Suet. Tib. 2; Dio Cass. 37, 51; Hein. 1, 11, 3. 5) Aug. 65. Cf. Gruch. de Comit. in Thes. Græv. v. 1. p. 805; Sigon. de Ant. Jure Civ. Rom. *ib.* p. 127. 6) See Hein. 3, 2, 7. 7) Ulp. Fragm. 26, 1: “— cautum est lege XII Tab. Ast si intestatus moritur, cui suus heres nec escit, agnatus proximus familiam habeto.” In which, as in most parts of the XII Tables, there is a great variety of readings. 8) Cæs. 41. 9) Cf. Cic. de Orat. 1, 38, 39; Suet. l. c. 10) See Hein. 3, 2, 7. Cf. Hugo § 69.

82. The several kinds of *connubium* or marriage between Roman citizens, with the rites peculiar to each kind, and the distinct privileges attached to each, will be stated under the head of domestic institutions (§ 476); for the present, I remark only what follows. *Connubium* could exist neither between slaves¹, nor between a slave and a free person, nor, except by legal

dispensation², between a foreigner and a citizen. During the Republic, the *populus* gave this dispensation, afterwards the Emperors⁴. It appears from a passage of Livy⁵, that, even before the enactment of the XII Tables, *connubium* could not take place between a free born man and a freedwoman; but the *Lex Papia Poppæa* allowed it by dispensation⁶, except in the case of senators and freedwomen, actresses, or other females of low rank and character, for whom it allowed none⁷. An ancient custom or law⁸, which forbade *connubium* between Patricians and Plebeians, was maintained by the XII Tables⁹, but was before long abolished by the *Lex Canuleia*¹⁰ (A. U. C. 309). Many are of opinion that *connubium* was confined to parties of the same *gens*, which seems probable¹¹, from the expressions "*e patribus enubere*" and "*gentis enuptio*"¹². Marriages not comprised under the *connubium* were called *concubitus*, *contubernii commercium*, or *concubinatus*¹³.

1) See Hein. App. 34. 2) See Liv. 38, 36. Cf. 43, 3. 3) Boeth. in Cic. Top. 4: "Connubium est matrimonium inter cives: inter civem autem et peregrinæ conditionis hominem aut servilis non est connubium, sed contubernium." Sen. de Benef. 4, 35: "Promisi tibi filiam in matrimonium, postea peregrinus apparuisti: non est mihi cum extraneo connubium. Eadem lex me defendit, quæ vetat." Caj. 1, 67: "Si civis Romanus Latinam aut peregrinam uxorem duxerit per ignorantiam, cum eam civem Romanam esse crederet, et filium procreaverit, hic non est in potestate, quia ne quidem civis Romanus est, sed aut Latinus aut peregrinus, id est, ejus conditionis, cujus et mater fuerit, quia non aliter filius ad patris conditionem accedit, quam si inter patrem et matrem ejus connubium sit." 4) Cf. Liv. 1. c.; Spanh. Orb. Rom. 2, 22; Hein. 1, 10, 16. 5) 39, 19. 6) See Hein. App. 36. 7) Ib. 35. Cf. 36, and Mack. § 229. 8) Cf. Cic. de Rep. 2, 37. 9) "Patribus cum plebe connubi jus nec esto." 10) See Liv. 4, 6. 11) Cf. Hugo § 83; Liv. 39, 19. 12) Liv. ib. and 10, 23. 13) See the passage of Boethius just quoted in § 82, and cf. Ulp. Fragm. 10, 3: "Neque peregrinus civem Romanam, neque civis Romanus peregrinam in potestate habere potest."

83. The *jus patrium*, or *patria potestas*, was the power which a father (not a mother) possessed over his

children, whether born in lawful wedlock, *connubium*, or adopted, extending also to all the offspring of such children. Children born out of lawful wedlock, *extra connubium*, who were called *spurii*, were subjected to this power by the process of *legitimatio*, which, it is said, was not devised till the time of Constantine¹. A daughter on her marriage, passed, together with the children she might have, into the power of her husband, or of the person in whose power her husband himself was. The *patria potestas* was very much the same over children with the power of a master over his slaves²; so that a father might not only sell his children, but even put them to death. This power of life and death was given to the father by a law ascribed to Romulus³, and adopted into the XII Tables, by which it was allowed him to expose⁵ his children as soon as born, with, however, certain exceptions. Numerous passages of ancient writers show how common the practice of exposing them was in the times of the Republic and under the Cæsars⁶. If the father intended that the child should be preserved and reared, he himself, or, in his absence, some one deputed to act for him, used to take it up from the ground, on which it was laid as soon as born, and place it in his bosom⁷; from which custom came the common acceptance of the words *tollere* and *sublatus*, the former used of the father, the latter of the child⁸.

1) See Hein. 1, 10, 23. 2) See Hein. 1, 9, 1. 3) See Dionys. 2, 15. Cf. Dirksen Kritik und Ausleg. d. Quellen d. röm. Rechts. pag. 303. 4) Cf. Cic. de Legg. 3, 8. 5) See Hein. 1, 9, 5. 6) Cf. Ter. Andr. 3, 1; Heaut. 4, 1; Suet. Aug. 65: "Ex nepte Julia post damnationem editum infantem agnosci alique vetuit." 7) Stat. Sylv. 5, 5: "Infantem linguaque simul salibusque protervum dilexi; meus ille, meus, tellure cadentem excepi, atque unctum genitali carmine fovi." 8) Cf. Juven. 9, 84; Hor. Sat. 2, 5, 45; Tac. Agric. 6.

84. It is certain that a father might sell his children, imprison, scourge, or punish them in any manner, how-

ever atrocious, even after they were grown up. Whether, however, he might put them to death at his own mere caprice, without proof of their guilt, or whether he might alone decide of this, has been questioned; but it would seem, from certain instances on record, that he might do either¹. For although the father generally on such occasions took the advice of his kinsmen², as natural justice and affection would seem of themselves to require, it will not therefore follow that he had not, legally, sole and absolute power of punishing them at his discretion. The cases alluded to show abundantly that this power of life and death remained with the father even for a long period under the Cæsars. Heineccius, 1, 9, 8, says it was first placed under restrictions by Trajan, who emancipated the son of a very cruel father. Afterwards we find it to have been customary for the parent to bring his child before the magistrates for any serious act of delinquency, the punishment being inflicted by them, though fixed by him; at the same time fathers were deprived of the power of renouncing obstinately disobedient children³. The power of life and death was thus gradually diminished, until it was utterly abolished by Constantine the Great, and was finally transferred entirely to the civil magistrate by an enactment of Valentinian⁴.

1) See § 89, and Gell. 5, 19; Cic. p. Domo 29; Liv. 2, 41; Dionys. 8, 79; Sen. de Clem. 1, 15: "Erixonem, Equitem Romanum, memoria nostra, quia filium suum flagellis occiderat, populus in Foro graphiis confodit. Vix illum Augusti Cæsaris autoritas infestis tam patrum quam filiorum manibus eripuit." Cf. Sall. Cat. 11: "Pro certo creditur, necato filio, vacuum domum scelestis nuptiis fecisse." 2) A remarkable instance is furnished by Seneca, l. c. 3) See l. 6. Cod. de Patr. Pot. Cf. Paul. Sent. Recept. 2, 24, with Schulting's note. 4) See Hein. 1, 9, 8.

85. As regards the possession of property, it is certain that children whilst in their father's power, could not acquire for themselves, but for their father; being

considered, like slaves, part and parcel of his goods¹, so that they might be disposed of by him, like slaves or cattle². Under Julius Cæsar, however, sons were first allowed to hold as their own³ whatever they had earned or obtained in military service, whether pay, or booty, or reward; and such property was thence named *peculium castrense*⁴. Afterwards, whatever had been honourably earned in any other profession was allowed them, under the same title⁵; Constantine the Great furthermore decreed that a father should have merely the interest of his wife's property, the principal remaining entailed on her offspring⁶; in course of time farther restrictions were imposed on him, and even his power to disinherit was confined within very narrow bounds⁷.

1) Dionys. 8, 79: 'Ρωμαίοις γὰρ οὐθὲν ἰδίων ἔστι κτῆμα ζώντων ἔτι τῶν πατέρων, ἀλλὰ καὶ τὰ χρήματα καὶ τὰ σώματα τῶν παιδῶν, ὃ τι βούλονται διατίθειν τοῖς πατράσιν ἀποδέδοται. Cf. Sen. de Benef. 7, 4; Arr. Dissertt. Epict. 2, 10. See Hein. 2, 9, 1. 2) See Ulp. Institt. de Nox. Act.; Hein. 1, 9, 10. 3) Cf. Caj. 2, 106. 4) Cf. Ulp. 1. 1. pr. de Test. Mil., and Juven. Sat. 16, 52, sqq. 5) See Hein. 2, 9, 2. Cf. Mackeldey Lehrb. des heut. röm. Rechts § 402. 6) L. 1. Cod. de Bon. Mat. 7) See Hein. 1, 9, 10.

86. With respect to the right of sale which a father possessed over his children, these were in a worse position than even slaves, in that they were released from his power only after a thrice repeated act of sale. Heineccius¹ thinks that this right was abolished by Diocletian; but Constantine so far restored it as to allow parents who were very poor to sell their infants instantly on their birth, though he shortly afterwards provided that there should be no absolute necessity of their so doing, by allowing them public relief. The *patria potestas*, otherwise lasting with life, ceased on the civil death (§ 68) of either party, and accordingly whenever either was in captivity. Moreover, a Vestal Virgin and the *Flamen Dialis* were exempt from it by virtue

of their office, even without emancipation; and so were also, under the Cæsars, persons who were raised to other dignities, as to the *Patriciate* for instance³. It is also inferred, from Livy ii. 41, that a magistrate was released from it, so long as he held his office. Finally, the *patria potestas* might end at the will of its possessor, by his emancipating his son, or by the adoption of the latter by another person, into whose power he then passed. We will now proceed to explain these two customs.

- 1) Hein. 1, 9, 9. 2) See Hein. 1, 12, 2; Paul. Sent. Recept. 2, 25, 2: "Pater ab hostibus captus desinit habere filios in potestate."
3) See Hein. 1, 12, 14, sq.

87. Emancipation, (*emancipare*), which was the ceremony by which children were released from the power of their father, and became independent citizens, was so called from the proceeding being the same with those used originally at the sale of any property whatever (*res mancipi*), which was called *mancipatio*. The following account of it is abridged from Heineccius¹. In the case of the sale of a son by his father, (which instance will serve for all such cases of sale,) the father appearing with him before an acting magistrate, attended by five Roman citizens of full age, and two other persons, the one called *libripens* and the other *antestatus*², used to sell the son to some other person present, who was called the *pater fiduciarius*, because the child was committed to his trust and good faith. Heineccius well observes that this party was not one and the same with the *antestatus*. The father, making over (*mancipans*) his son to this person, said "*mancipo tibi hunc filium, qui meus est.*" The other replied, "*hunc ego hominem ex jure Quiritium meum esse aio, isque mihi emtus est hoc ære hac æneaque libra,*" and so saying, struck the balance held by the *libripens* with the coin called a *sestertius*, and gave the same to the

father as the price of his son. The latter he had no sooner thus purchased, than he manumitted him by the *vindicta*³. But since it was considered that the son was not released from his father's power, until he had been thrice emancipated by him⁴, it was requisite that he should be again emancipated by his parent, on the same or on another day, and before the same or other witnesses⁵, and being thereupon again manumitted by the *pater fiduciarius*, he was a third time emancipated by his father. Being now wholly released from the control of the latter, if his *pater fiduciarius* should have manumitted him, he would have become his patron (§ 64); to obviate which, the father, when he emancipated him for the third time, used to declare to the *pater fiduciarius* that he did it on condition of his mancipating him back again⁶. Which being accordingly done, the father, manumitting him by the *vindicta* as though he had been a slave, retained from thenceforth the rights of patronship over him. It might, however, for various reasons, so happen, that, after the third emancipation by the father, the *pater fiduciarius* did not emancipate him back again, but himself manumitted him⁷, and this whether in the case of sons or daughters. Daughters and grandchildren were released from their father's control by a single act of emancipation; but these were also again emancipated by him to the father or grandfather, who thereupon manumitted them. In the case of grandchildren, the grandfather's act of emancipation did not involve that of his son, nor, vice versâ, did the emancipation of children by their father involve that of their grandfather⁸. Although the rite of emancipation, like other old formularies and solemnities in use during the times of the Republic, became unsuited to the laws and customs of later times, it was not abolished till the reign of Anastasius, who required merely a rescript or certificate

of emancipation from the emperor to be presented to the magistrate⁹. Justinian still further simplified the process, by ordering that the father should, before a magistrate, in the presence and with the assent of his son¹⁰, say the words, "*Hunc sui juris esse patior, mea que manu mitto*"¹¹." The rite, although thus changed, retained the original name of emancipation.

1) Hein. 1, 12, 6, sqq. 2) Cf. Prisc., ed. Putsch., p. 726 ; idem, p. 729 : "Impubes libripens esse non potest, neque antestari." 3) Cf. Hugo § 76. p. 94 and 95. 4) XII Tabb. : "Si pater filium ter venum davit, filius a patre liber esto." See Ulp. Fragm. 10 ; Caj. 1, 132 ; idem 135 : "Qui ex filio semel iterumve mancipato conceptus est, licet post tertiam mancipationem patris sui nascatur, tamen in avi potestate est, et ideo ab eo et emancipari et in adoptionem dari potest," etc. 5) See Paul. Recept. Sent. 2, 25, 2. 6) See Hein. 1, 12, 9, where the formula may be seen. Cf. Cic. de Off. 3, 15 ; ad Fam. 7, 12. 7) Cf. Caj. Institt. Epit. 1, 6. 8) See Caj. Digest. 1, 7, 28 ; idem Institt. 1, 133. 9) See l. 5. C. de Emanc. Lib. ; Hein. 1, 12, 12. 10) Paul. Sent. Recept. 2, 25, 5 : "Filius emancipari invitus non cogitur," i. e. unless it were an infant. Cf. Mackeldey § 261. 11) See l. ult. C. de Emanc. Lib. ; Hein. 1, 12, 13.

88. It remains for us to speak of adoption, by which Roman citizens legally took the children of others to be as their own¹. It is probable that this custom existed from the very infancy of Rome, certainly it was known before the enactment of the XII Tables. Hugo² doubts whether it were, however, of common occurrence at that period, but that it subsequently became most common is quite certain. The reason commonly assigned, both for its first institution, and for its subsequent frequency, was the preservation of the *sacra gentilitia* (§ 79), although it is said³, that even these were at times got rid of by one of those legal fictions so often resorted to for the removal of similar difficulties (§ 68). New motives were afterwards furnished by the penalties attached to childlessness, and the rewards offered to such as had a numerous progeny : both these were legally enacted by the *Lex Julia* and *Papia*

Poppæa (§ 391), although the practice of bestowing rewards on citizens who had large families arose in the free ages of the Republic⁴. Many obtained these rewards fraudulently, by adopting the children of others⁵ for the purpose, whence we hear in Tacitus, xv. 19, of a decree of the senate, that no feigned adoption, or adoption made for an interested purpose, should hold good in public matters. The wish to obtain the tribuneship is also mentioned as one reason for the prevalence of the practice (§ 81).

- 1) See Gell. 5, 19. 2) Hugo § 72. 3) See Hein. 1, 11, 1.
 4) See Hein. 1, 11, 2. Cf. August. de Legg., in Thes. Græv. v. 2.
 p. 227. 5) Hein. l. c.

89. There were three kinds of adoption, differing in the method of practising them, and in their effect at law. The adoption of a minor, or person not of power to act for himself, was termed simply, *adoptio*; that of a person legally entitled to act for himself, *arrogatio*; and to these adoptions between parties both living, *inter vivos*, was opposed the third species, viz. by will, *adoptio per testamentum*. In the case of a minor, he was thrice made over, *mancipatus*, by his father¹, with the observances usual in emancipating, and was twice discharged from the obligation by the person intending to adopt him; and after the third act of alienation on the part of his natural father, was by him reclaimed, and then finally delivered over by him to the party adopting him, who claimed and asserted his right before the prætor². In the case of a daughter or nephew, one act of alienation on the part of the natural father only was required, without any discharge (*manumissio*) on the part of the person adopting, though the remaining ceremonies were the same as in the case of a son. When the rite of emancipation was not requisite, the following simple method of adoption was practised in the case of a person entitled to act for himself: during

of the city, after that the people, the person adopting, and the person to be adopted, had been severally asked if they were willing the adoption should take place, and the act being sanctioned by the authority of the Pontifex Maximus, it took place³; from the custom of asking the people and the parties, comes the term *arrogatio*: a vestige of the ancient customs on these occasions was long kept up even under the Cæsars⁴, though often altogether neglected; at length, the very mention of the people's will being suppressed, the sanction of the emperor only was requisite, and the forms were disused, and, by an edict of Justinian, forbidden⁵. Gellius has preserved, V. 19, a remarkable form of *arrogatio*⁶. The pontifex is there stated to have inquired into the causes of the adoption, whether they were honourable and lawful, and to have taken care to provide that any private sacrifices of the house, *gens*, to which the persons about to be adopted belonged, should not be suffered to cease, and, moreover, that no religious duties should be violated by the act⁷: he also bound by oath the party to observe and perform the sacred rites peculiar to the house into which he was to be adopted; to which custom it seems must be referred the public *detestatio*, of such rites, made in the comitia, which Gellius mentions⁸. However, we need not suppose that the consent of every single citizen was asked, even when Rome was small; but that it was declared by the lictors, who were assembled in lieu of the curiæ, after that the privilege of sanctioning the adoption had been taken from the comitia Curiata (§ 154).

1) Suet. Aug. 64: "Caium et Lucium adoptavit domi, per assem et libram emptos a patre Agrippâ." See Hein. 1, 11, 15. 2) Caius 1, 134, says that they were either reinstated under their father's authority, or else became fully emancipated, *jure Mancipati*, but the loss of a part of the MS. prevents our learning from this author how those who were *jure Mancipati* were made over to the party adopting them. Consult Gell. 5, 19, who says nothing at all con-

cerning *remancipatio*, because, I suppose, it was superfluous to mention it; he is obscure even on the other particulars. Hugo § 72, suspects that a mere act of mancipation (*mancipatio*) or renunciation of rights, *cessio in jure*, sufficed. 3) See Caj. 1, 98, 99 (cf. Dirksen Versuche p. 220); Tac. Hist. 1, 15; Suet. Aug. 65: "Tertium nepotem Agrippam simulque privignum Tiberium adoptavit in foro lege curiata." Hence Caius (1, § 98) remarks that even adoption took place, "aut populi auctoritate aut imperio magistratus;" but in Pandd. I. 7, 2, "Principis auctoritas" is substituted. Cf. Schult. ad Ulp. Fragm. 8, 2. 4) See Hein. 1, 11, 13. 5) See Hein. 1, 11, 17. 6) "Velitis, jubeatis, ut L. Valerius L. Titio tam jure legeque filius siet, quam si ex eo patre matreque familias ejus natus esset, utique ei vitæ necisque potestas siet, ut pariendo filio est. Hoc ita, ut dixi, ita vos, Quirites, rogo." Cf. Cic. p. Domo 29. 7) See Cic. ib. 12 and 13. 8) Gell. 15, 27. Cf. 6, 12.

90. If we consider the peculiar effect of adoption, namely, its conferring the lawful rights of sons on the adopted, we shall conclude that the word has not been correctly applied in the term *adoptio per testamentum*. By it a person succeeded to a portion, at least, of the property of the deceased person so adopting him¹, on condition of his assuming his name; and some have supposed that the motive for introducing this species of adoption was, the desire of continuing the name. It certainly was an early practice among the Romans to appoint an inheritor to the family name, and we find heirs appointed under this condition by women who were by law excluded from adopting²; but I doubt whether those adopted under this condition were by law bound to bear the name³; and it is evident that persons adopted by will were not admitted by law to the same rights as sons, from several circumstances, particularly from our finding that this adoption was sometimes strengthened by an act of *arrogatio*⁴, as Heineccius remarks, in order that by the consent of the people they might be entitled to enjoy what they could not claim by virtue of such an adoption.

1) Cf. Hugo § 195. 2) See Hein. 1, 11, 18. 3) See Hein. ib. Cf. Suet. Tib. 6. Hugo § 195. 4) Cf. App. B. C. 3, 14 and 94; Suet. Tib. 15; Hugo § 195.

91. It is well ascertained that they who were adopted by the rite of *mancipatio*, and by *arrogatio*, were considered by the law as sons, and were admitted to bear the name, to form members of the family and house, *gens*, of their adoptive fathers, and to participate in their sacred things; but the practice of assuming the name was of a complicated nature. Some bore it with the addition of a *cognomen*, as Octavius Cæsar, who took that of Augustus; others, with the addition of the name of the house into which they were adopted, as Cornelius Scipio, who bore that of Æmilianus¹; and others again used and were called by their own or by their adoptive name indifferently². Concerning their becoming members of the *gens* (vid. § 81. 131.) into which they were adopted, there are many difficulties, on many accounts, both as regards patricians adopted by plebeians, and plebeians by patricians: this, at least, seems certain, that any one emancipated by his adoptive father, was restored to his own original house³. In either kind of adoption, however, the person adopted could be transferred to a new house⁴, i. e. the house of his adopter. One peculiarity in adoption by *arrogatio* was, that even those who were under the authority of the person so adopted, became subject to the authority of the adopter, together with the adopted⁵; but the children of a person adopted when a minor, very seldom partook of the obligations and privileges of their father's adoption, as Hugo remarks. Justinian altered the law and practice of adoption, granting paternal authority over the adopted to none but to those who adopted persons of inferior rank⁶.

1) Cf. Hugo § 72. 2) See Hein. 1, 11, 19. 3) Cf. Caj. 2, 136-7. 4) See Caj. 1, 105. 5) Caj. 1, 107. 6) See Hein. 2, 11, 20.

92. We select the following from many remarks applying to those who could adopt or be adopted.

Women could not adopt except by will, since even their own children were not under their authority. Concerning those who either had or were likely to have children, consult Gellius¹. Heineccius informs us that even those who had children were not excluded from the right of adopting², but could not obtain leave so to do on trivial grounds; and also that persons under the age of sixty were not permitted to adopt by *arrogatio*³. Caius abundantly proves that eunuchs might adopt⁴, and that it was a question whether a younger person could adopt an elder⁵. Neither wards nor women could be adopted by *arrogatio*, nor the deaf and dumb, who were forbidden even to adopt by such a method. Persons not arrived at years of discretion, Caius says, were sometimes adopted by *arrogatio* under certain conditions in later times, formerly not at all⁶. On the other hand, women, and persons of all ages, might be adopted by an act of *mancipatio*.

- 1) Gell. 5, 19. 2) Hein. 1, 11, 8. 3) Cf. Suet. Aug. 64.
4) Caj. 1, 103. 5) Ib. 1, 106. 6) Ib. 1, 102.

93. The right by which Roman citizens acquired and held property, was called *dominium*. This method of holding property was peculiar to the Romans, and was termed *dominium e jure quiritium* or *quiritarium*, and was superior to, and better in law, than the right by which foreigners and Roman citizens also could hold property¹. The method of acquiring property, and the nature of the property acquired, formed distinct considerations in respect of this right of possession, *jus domini*. In the first place, property was either tangible, such as goods, or intangible, such as certain privileges: and of tangible things, some were moveable, such as *ruta cæsa*² in estates, meaning moveable structures or fittings (and sometimes whatever is dug out of the ground or lopped off timber growing): others were immoveable or fixtures, such as the soil itself, or what-

ever naturally or artificially adheres to it, or by law is held to pertain to it. Caius³ classes among intangible things, inheritance, present use and profit, *ususfructus*, obligations, and the conditions or privileges attached to landed property⁴, *servitutes vel jura prædiorum*, such as *jus oneris ferendi*, the obligation of allowing a neighbour's house to rest against one's own; *tigni immittendi*, of allowing him to insert the extremities of his rafters; *stillicidii*, of carrying off the rain-water, etc. from one's own roof; *jus luminum*, the right of an unobstructed view, etc.; *cloacæ*, of constructing drains:—all which refer to property in town: the rights and obligations attached to property in the country, such as *jus viæ*, the right of way, including *jus itineris*, the right of a bridle-path, and *jus actus*, the right of a carriage-way: *jus aqueductus*, the right of constructing a water-course through a neighbouring property⁵. Some things also have been in later times termed *fungibiles*, being such as could be mutually substituted for one another, and exchanged by weight and measure⁶.

1) Caj. 2, 40: "Sequitur, ut admoneamus, apud peregrinos quidem unum esse dominium, ita, ut dominus quisque sit, aut dominus non intelligatur. Quo jure etiam populus Romanus olim utebatur: aut enim ex jure Quiritium unusquisque dominus erat, aut non intelligebatur dominus. Sed postea divisionem accepit dominium, ut alius possit esse ex jure Quiritium dominus, alius in bonis habere. Nam si tibi rem mancipi neque mancipavero, neque in jure cessero, sed tantum tradidero, in bonis quidem tuis ea res efficietur, ex jure Quiritium vero mea permanebit, donec tu eam possidendo usucapias." Cf. Caj. 1, 54. 2) Cic. de Orat. 2, 55: "Dicet, te, quum ædes venderes, ne in rutis quidem et cæsis solium tibi paternum recepisse." Cf. idem Top. 26; Ulp. Pandd. 19, 1, 17. 3) Cf. Cic. Top. 5. 4) Different opinions were long held as to the difference between landed property in town, and the same in the country. (See Vinn. ad Inst. 2, 3; Hein. 3, 3, 1.) The distinction between them arises from two causes; either from the consideration of the servitudes to which property was subject, with respect to which, any building wherever situated was termed *prædium urbanum*; and any pasture land, arable land, or property having no buildings erected on it, was termed *prædium rusticum*; the other distinction arose from the use made of any property, according to which (cf. Ulp. Pandd. 50, 16, 198) any buildings, and even open ground, such as gardens,

etc. were classed under the heads of *prædia urbana* or *rustica*, according to the uses to which they were put. Cf. Mackeldey, § 344; See Hein. 2, 3, 1. 5) See Hein. 3, 2, 2 and 9. 6) See Mühlenbr. Doctr. Pandd. part. gener. § 91; Cf. Pandd. 46, 5, 7.

94. Things were also distinguished into divine and human¹: things divine were subdivided into sacred things, *sacræ res*, and religious things, *religiøsæ*; and such were called divine, and said to be *divini juris*, because under the administration of the pontifex². Some things were also called holy, *res sanctæ*, being considered to be in a manner divine³. Sacred things, *res sacræ*, were such as were dedicated to the gods by public authority, as temples, altars, offerings⁴; for nothing could be made holy by private consecration⁵. By the rite of *exauguratio*, a thing once holy ceased to be so⁶. Caius states, religious things, *res religiøsæ*, to have been those, *quæ diis manibus* (D. M.) *relictæ*⁷; by which, I imagine, he means things bestowed on the shades of the departed, and therefore the places appropriated to interments and the tombs themselves⁸. Any one rendered a spot on his own ground religious by celebrating on it funeral rites of any member of his family⁹: the ancients themselves are not unanimous in deciding whether cenotaphs were religious things or not¹⁰. Any one struck by lightning, and the place where any one was so struck and buried, were considered sacred or religious; it was customary to build a wall round it, and offer an expiatory sacrifice of a sheep two years old, *bidens*¹¹.

1) See Caj. 2, 2. 2) See Hein. 2, 1, 3. 3) Caj. 2, 8: "Sanctæ quoque res, velut muri et portæ, quodammodo divini juris sunt." 4) Institt. 2, 1, 8. Cf. Caj. 2, 4. 5) Cf. Liv. 1, 55. 6) Cf. ib. § 7. 7) Caj. 2, 4. 8) Cf. Cic. de L. 2, 24. 9) Caj. 2, 6: "Religiøsimum vero nostra voluntate facimus mortuum inferentes in locum nostrum, si modo ejus mortui funus ad nos pertineat." 10) See Hein. 2, 1, 3. 11) Cf. Hor. A. P. 471; Pers. 2, 27.

95. Things divine, *divini juris*, being placed under the power and in the possession of the gods, could not

become private property¹: nor could any of them be sold, whence Heineccius² concludes that sepulchres could not be bought or sold³; and, without the permission of the pontifex, buildings could not be consecrated to the Dii Manes, nor consecrated edifices be restored when decayed: such buildings were also kept free from profane uses⁴: wherefore places once appropriated to sepulture, could not be reclaimed for other purposes; but the right of burying a body in them could be forfeited or transferred⁵. Holy things were termed *sanctæ*, from the fine or punishment, appointed to be paid, *sanctum a sancio*, by him who polluted them⁶: but some derive the word from *sagmina*, the bundles of herbs carried by the ambassadors of the Roman people⁷; the exact distinction between *res sanctæ*, *res sacræ*, and *res religiosæ*, is so little known, that some say *res sanctæ* were held to be both *sacræ* and *religiosæ*; others say they were reckoned to be neither⁸; and some suppose city gates to have been considered as among *res profanæ*, while Caius⁹ and others reckon them, as well as the walls, holy, *sanctæ*. The intrenchment, *vallum*, round the camp was considered hallowed, *sanctum*; and we may safely class the eagles of the legions and the busts of the emperors, used as standards, either among the *res sacræ* or *res sanctæ*. (Cf. § 367.)

1) Caj. 2, 9: "Quod autem divini juris est, id nullius in bonis est," etc. 2) Hein. 2, 1, 6. 3) Cf. Cic. l. c. 4) Cf. Plin. Ep. 10, 58. 59. 76. 5) See Hein. 2, 1, 6. 6) Cf. Fest. in sanctum. 7) Marcianus Digg. 1, 8, 8: "Sanctum autem dictum est a sagminibus. Sunt autem sagmina quædam herbæ, quas legati populi Romani ferre solent, ne quis eos violaret." 8) Cf. Fest. in sanctum et religiosum, Marc. Digg. i. 8, 8. 9) Cf. Digg. 1, 8, 8 and 9.

96. Human things were by lawyers divided into things belonging to no one in particular, and private property. To the first class belonged, not merely such things as by right are common to all men, such as the

sea and the sea beach, but also things common to all who were connected by the bond of citizenship, such as the streets of towns, public market-places, baths, and theatres. These latter things are by some termed universal, as belonging to all and not to one individual¹, and things common to the whole human kind they call common or public; while other writers term the latter common, and the former public². An inheritance, or any thing bequeathed, was reckoned among the *res nullius*, during the time granted to the heir for determining whether he would accept the legacy or not, called *tempus cretionis*³ (§ 107). For the same reason anything not subject to any dominion was termed *res nullius*.

1) Cf. Marc. 1. c. 2) See Hein. 2, 1, 13. 3) See Caj. 2, 9.

97. Private things, or the property of private persons, consisted of personal goods or of things possessed by quiritary right, *in dominio quiritario*: these were acquired in various ways; some natural, others peculiar to Roman custom, and were divided into *res Mancipi* and *res nec Mancipi*, from the term *Mancipatio*¹ or *Mancipium*, which we have already mentioned (§ 87). *Mancipatio* was the method by which a party present conveyed and made over property to another party also present before five Roman citizens as witnesses, including one called *libripens*, and a person called on to witness it, called *antestatus*². This custom of conveyancing seems to have been derived from the practice prevalent in times when the value of articles was paid for in bullion by weight. The formula in use was *Mancipo tibi hanc rem*, and the practice was for the buyer to strike a balance with a sestertius; hence the expression *per æs et libram vendere, librâ et ære mercari, nummo addicere*³. Little is known about the custom called *antestatio*, by which the *antestatus* was touched on the ear by him who took him to witness. Hugo remarks

(§ 94 and 348) that the practice is not mentioned before the time of the XII Tables. We find it stated, among other particulars, that moveables were not to be transferred, *mancipari*, unless actually on the spot, and no more in a lot than could be grasped with the hand; but immoveable property might be sold in any quantity and on any spot⁴.

1) *Mancipare* is so named from *mancipium*, quasi *manu capitione, mancipio tradere*. *Mancipare* is also used of other kinds of selling. *Manceps*, from the same derivation, is used for a buyer, redeemer, and for one who became surety. The word *nexum* or *nexus* is also applied to the practice of transferring property; and as the term implies an obligation on the parties concerned, it is not to be wondered at that we find these words used in the sense of *mancipatio*, as Cicero seems to have done in the sentence, "Aut traditio alteri nexu aut jure cessio." Top. 5. But he, as well as others, more frequently draws a distinction between the two, as when he says, "Multæ sunt domus jure nexi, jure mancipii," Harusp. 7; and "jure nexi et jure mancipii," ad Div. 7, 30. Moreover an obscure passage in Varro, de L. L. l. 6. p. 82, proves that the ancients themselves were not agreed on the exact meaning of the term *nexum*. On this passage of Varro, see Hein. 2, 1, 20. Hugo, § 94, says that the practice called *mancipium* in the XII Tables, was afterwards termed *nexu alienatio*, and by the lawyers *mancipatio* and *emancipatio*. 2) Cf. Ulp. Fragm. 19, 3. 3) Cf. Hor. Sat. 2, 5, 109. 4) Ulp. Fragm. 19, 6: "Res mobiles non nisi præsentibus mancipari possunt, et non plures quam quot capi possunt, immobiles autem etiam plures simul, et quæ diversis locis sunt, mancipari possunt:" the description of their situation being all that was required, according to Hugo § 94.

98. As for the distinction of things into *res mancipi* and *nec mancipi*, and the difference between them, the learned men of the day suppose former writers to have been mistaken in saying that, either *res mancipi* alone could be held *in dominio quiritorio*, or that *res nec mancipi* only could be so held or be reckoned as real property¹. But they, and especially Caius² and Ulpian³, determine that that mode of transfer which was sufficient in law to render *res nec mancipi* purchased by any one really his own *in dominio quiritorio*, was insufficient in the case of *res mancipi*: but every other method of holding and having property, excepting *in dominio quiritorio*, whether natural or peculiar to

Rome, was applicable to both these kinds of property. By this they mean, that if a thing purchased by one method of exchange became the purchaser's property, *in jure quiritario*, and purchased by another method, merely became his own as part of his goods, then both these methods of purchase and transfer had the same effect on things termed *nec Mancipi* as on things termed *res Mancipi*; with this exception, that *res nec Mancipi* could not be purchased by the custom of *mancipatio*⁴, which, Hugo supposes, was a regulation made posterior to the laws of the XII Tables⁵. The law commanded that the party who sold or made the transfer of his property, should make good his authority so to do, *evictionem præstare*⁶.

According to Ulpian⁷, the following things were reckoned *res Mancipi*; namely, farms on the soil of Italy, and in places beyond Italy which had been admitted to the privileges of Italian rights, *jus Italicum*; the rights of commerce (§ 123); the tenures, obligations, and conditions of leasehold property (§ 93); slaves; animals which were used for burden or draught, or for riding; and other things, of which some are not clearly ascertained. Concerning the nature of the things considered as *res Mancipi*, which caused them to be so called, see Hugo § 204.

1) Hugo § 205; Hein. 2, 1, 19. 2) Caj. 2, 18: "Magna autem differentia est Mancipi rerum et nec Mancipi; nam res nec Mancipi nuda traditione abalienari possunt (this is the common reading, but I do not know whether it be correct), si modo corporales sunt, et ob id recipiunt traditionem." Cf. the passage of Cælius given *supra*, § 93. 3) Ulp. 19, 3: "Mancipatio propria species alienationis est, et rerum Mancipi." 4) Cf. Ulp. 19, 3; Cic. Top. 10. 5) Cf. Hugo § 94. p. 126, and, for a different account, § 339. 6) Plaut. Pers. 4, 3, 55-62: "Ac suo periculo is emat, qui eam mercabitur; Mancipio neque promittet, neque quisquam dabit. Nihil mihi opus est litibus (cf. Hor. Ep. 2, 2, 17, sqq.), nisi Mancipio accipio, quid eo mihi opus est mercimonio?" Lucret. 3, 984: "Vitaque Mancupio nulli datur, omnibus usu." 7) Ulp. Fragm. 19, 1: "Omnes res aut Mancipi sunt aut nec Mancipi. Mancipi res sunt prædia in Italico solo, tam rustica, qualis est fundus, quam urbana, qualis domus; item jura prædiorum rusticorum, velut (this is the

conjectural reading of Hugo) *via, iter, actus, aquæductus*; item *servi, et quadrupedes, quæ dorso collove domantur, velut boves, muli, equi, asini. Cæteræ res nec Mancipi sunt (?)*. *Elephanti et cameli, quamvis collo dorsove domentur, nec Mancipi sunt, quoniam bestiarum numero sunt.*" The same writer says, *ib. § 4*, "*Mancipatio locum habet inter cives Romanos, et Latinos colonarios, Latinosque Junianos, eosque peregrinos, quibus commercium datum est.*" *Ib. § 5*: "*Commercium (est) emendi vendendique invicem jus.*"

99. The method by which any property was acquired¹, was either natural, that is to say, by the natural law of nations, or civil, that is, by the law of the state. Methods arising from the law of nations were *occupatio, accessio, and traditio*². *Occupatio* obtained when a person took possession of a thing in no one's possession (§ 96), *res nullius cedit occupanti*: whence the formula *in commune*, used when a person claimed the half of any thing found by another³. Things which naturally followed upon the possession of another thing, as fruit from an orchard, or increase from a flock, became the owner's property by the method termed *accessio*⁴. *Accessorium sequitur principale*. *Traditio*⁵, transfer, by the natural law of nations, differed from transfer by civil law, inasmuch as by it persons interchanged things by mutual consent without observing the customs of the law⁶, and this mode obtained in selling and buying goods, which became the purchaser's property provided the price of them had been paid.

Twelve instances are adduced by Heineccius⁷ in which *acquisitio civilis* obtained⁸, and conferred possession⁹: *hereditas, mancipatio, in jure cessio, usucapio, sub coronâ emptio, auctio, traditio, adjudicatio, lex, arrogatio, donatio*, and a mode to be mentioned hereafter instituted by a *senatusconsultum* of Claudius.

Of these, *mancipatio* (§ 97), *in jure cessio*, and *usucapio*, were peculiar to the rights of Roman citizens¹⁰. In the case of *cessio in jure*, the purchaser claimed his purchase, whether tangible or intangible¹¹, in these

words; *hanc ego rem ex jure quiritium meam esse aio* (§ 57 and 87); the owner of the property confirmed the sale either by his silent assent or by refusing to claim it when asked by the magistrate who ratified the sale, if he wished to do so¹². This practice prevailed also in the provinces; on account, however, of the inconvenience of the method, it was seldom used in the case of things validly transferable by *mancipatio*¹³.

1) Cf. Hugo § 115. 2) See Institt. 2, 1, 11. 3) Hein. 2, 1, 21. 4) Institt. 2, 1, 19. 5) Ib. § 40. Cf. Hugo § 121. 6) Ulp. 19, 7: "Traditio propria est alienatio rerum nec mancipi. Harum rerum dominia ipsa traditione adprehendimus, scilicet, si ex justa causa traditæ sunt nobis." Cf. Caj. 2, 65 and 66. 7) Hein. 2, 1, 22. 8) Cf. Varro de R. R. 2, 10. 9) Ulpian, 19, 2, terms the modes of acquiring the possession of any things, *mancipatio, traditio, usucapio, in jure cessio, adjudicatio, lex*. 10) Caj. 2, 63: "Mancipationis et in jure cessionis et usucapionis jus proprium est civium Romanorum. 11) Cf. Hugo § 97. 12) Caj. 2, 24. 13) Cf. Caj. 2, 25.

100. A quiritary title, *dominium ex jure quiritium*, to the possession of anything acquired by lawful means¹, either by transfer or purchase, was conferred by the possession of it uninterruptedly for a certain space of time, such possession being termed *usucapio*². A stranger could not thus become entitled to the property of a Roman citizen³. The laws of the XII Tables fixed the time in the case of moveables to be a year; in the case of farms and buildings, two years⁴. Conditions and exceptions to this arose out of the validity of the possessor's title, the nature of the property, and from other causes, both as regarded the persons who were competent, and the things that were capable of transfer by *usucapio*. These were gradually prescribed by laws, of which the earliest is found in the XII Tables, and provides that no stolen thing could be justly acquired by this mode⁵. Farms in the provinces, unless on lands enjoying the *jus Italicum*, were not subject to this custom⁶.

Captives, *mancipia*, taken in war, were formerly sold as slaves, with wreaths on their heads, according to the opinion of Cælius Sabinus and Cato⁷, and hence the term *sub coronâ venire*. Another opinion derives it from the circle, *corona*, of soldiers standing round during the sale; but Gellius does not approve of this explanation⁸.

Property was sold by auction⁹ publicly by permission of a magistrate, a spear being stuck into the ground, and a crier making proclamation of the sale¹⁰; hence the expression *sub hastâ venire*, and the term *hasta*¹¹ applied to the auction itself; also *voci præconis subjicere, ad hastam accedere, emptio ab hastâ*.

1) Cf. Caj. 2, 43. 2) Originally merely *usus* and *usus auctoritas* (see Hugo § 95. Cf. Cic. p. Cæc. 19; Top. 4.), afterwards *usucapio* from *usus* and *capio*; and hence *usu capio* is met with separately. 3) Cic. de Off. 1, 12: "Adversus hostem æterna auctoritas." 4) See Cic. p. Cæc. 19; Top. 4. Cf. Plin. Ep. 5, 6. 5) See Hein. 2, 1, 22; Caj. 2, 49; Gell. 17, 7. 6) Cf. Hein. 2, 6, 4; Hugo § 203. 7) Gell. 7, 4; Cf. Varro de R. R. 2, 10. 8) Instances of sales, *sub hastâ*, occur in Cæs. de B. G. 3, 16, where we read, "Omni senatu necato, reliquos sub corona vendidit," ap. Liv. 43, 4; Flor. 4, 12; Tac. Hist. 1, 68. 9) From the increase in the bidding perhaps (?). Cf. *auctor, auctoritas*. 10) Cf. Liv. 23, 38; Cic. de Off. 2, 8 and 23; Fest. in *hastæ*. 11) Cf. Cic. Phil. 2, 40, 4, 4; Corn. Nep. Att. 6.

101. *Traditio*¹, transfer, differing in a manner not clearly ascertained from the simple transfer by barter in the law of nations, gave a title and right of possession in things whether *nec Mancipi*, or moveable, or fixtures (§ 98); and accordingly from the nature of the things themselves, this mode had the force of acquisition either by natural or by civil right². The different kinds of this transfer were *traditio longâ manu*, when the thing transferred was laid down before its purchaser or deposited at his house, or *traditio brevi manu*, when it was handed over to another to whom the purchaser wished to give it³. By the act of *adjudicatio*⁴, a judge gave to coheirs the right of *dominium ex jure quiritium*

over their several portions of the inheritance, in certain courts of law; the same right and title was conferred by the law, *lege*, if any thing by law became the property of another⁵, as in the case of things escheated, which became the property of the treasury or of the emperor⁶, and such things as are termed by Ulpian *ereptitia*⁷,—a word of which the genuineness is questioned. The act of *arrogatio* conferred paternal authority, and the rights incident to it (§ 89). *Donatio*⁸, a natural method of transferring things, became an act of civil law by the *Lex Cincia*, if conducted in due form and by *mancipatio*⁹. The senatusconsultum of Claudius¹⁰ ordered that free-born women who had had intercourse with another person's slaves, should be, by a decree of the prætor, adjudged to the respective masters of such slaves.

1) See Hein. 2, 1, 26; Hugo § 92 and 207. 2) Cf. Hugo § 92.
 3) Cf. Mackeld. § 313. 4) Hein. 2, 1, 27. 5) Ib. 28. 6) Cf. Mühlenbr. part. spec. 1. 2. § 590. 7) Ulp. Fragm. 19, 17, where see note of Schulting. 8) Hein. 2, 7, 1. 9) Cf. Hein. 2, 7, 13. 10) Id. 1, 16, 8.

102. The rights and privileges of Roman citizens, especially those referring to their private life, are connected with the subject of Roman antiquities rather by the practices attending them, and by the usual practice of writers on the subject, than by any connection arising from the nature of the rights themselves; however, they cannot be fairly omitted altogether, especially in a work intended to prove of service to persons preparing for the study of Roman jurisprudence. We must not, however, in consulting the advantage of such persons, forget the distinctions between jurisprudence and our own subject: for if we waive those distinctions for the sake of jurisprudence, we may do so for the sake of any other science, and then it would be difficult to fix any bounds to the subject of Antiquities. I will

therefore premise that the subject of wills and inheritance, which furnish matter for several volumes of the Pandects, will here be condensed into a few pages.

103. The goods of Roman citizens and their rights, which were reckoned among their goods, were transferred by the last will and testament¹ of a person to those to whom he was by law justified in bequeathing them, or, in case of his dying intestate or leaving a will not legally valid, to those lawfully entitled to the succession². Two sorts of wills of the most ancient kind are recorded as customary among the Romans³: one species of will was notified to the public at the Comitia Calata, which were held for that purpose twice a year⁴, the consent of the people was asked, but it is not known what other customs were observed. Another kind was that made by a person on the eve of battle⁵, hence said to be *in procinctu*, the heir being mentioned in the hearing of a few citizens. To these may be added a third, said to be made *per æs et libram*, from the introduction of the practice of *mancipatio* into it: Caius informs us that formerly it was used only in a case of dangerous sudden sickness, but, after the introduction of the XII Tables, it came to be the only method prevalent, though its forms were somewhat altered⁶. Concerning it, Caius says⁷, that formerly the testator delivered over his property to an executor, at the same time declaring to him how he wished it to be distributed after his decease, *quid cuique post mortem suam dari vellet*; so far the executor resembled an heir: but, in the time of Caius, it was customary to appoint one person by will heir to the property, and to name another for form's sake as executor⁸: the custom of *mancipatio* was observed with its usual forms on such occasions, five adult Roman citizens being witnesses, and the person termed *libripens* being present, the *antestatus* is not mentioned by Caius; the act of *mancipatio*

having been performed, the testator, holding his will in his hand, said, *hæc, uti in his tabulis (cerise) scripta sunt, ita do, ita lego, ita testor : itaque vos, quirites, testimonium mihi perhibetote (præbitote)*. Thus the form consisted of two parts, the appointment of the executor (*familiæ emptor*) and the solemn declaration or confirmation of the will⁹. The *libripens* was reckoned as one of the witnesses¹⁰; these were required to be persons not in the power of the testator or executor, nor any one in whose power the executor was; relatives and slaves were altogether excluded from witnessing to such deeds. Caius informs us that by the statutes of the emperors¹¹, this troublesome form was not required in the case of soldiers¹²; hence they could make valid wills without the form of *mancipatio*, or the appointment of an executor, and without the requisite number of witnesses¹³.

1) Cf. Ulp. Frag. 20, 1. 2) Cf. Hugo § 105. 3) *A testando*; from bearing witness before the people to the will. Cf. Hugo § 105. 4) Cf. Caj. 2, 101; Hein. 2, 10. 11. 12, 2. 5) Cf. Gell. 15, 27. 6) Cf. Ulp. Frag. 20, 2; Hein. 2, 10. 11. 12. 13. 7) Cf. 2, 103. sqq. 8) Cf. Suet. Nero 4. 9) See Caj. 2, 104. 10) *Ib.* 107. 11) *Ib.* 109. 12) Cf. Hein. 2, 10. 11. 12. 3 and 16. 13) It is difficult to say which of the rites which we read of as being customary at making a will *in procinctu* in later times, were prevalent in the earliest times in which it was practised: Caius makes no mention of it. Cf. Vell. 2, 5; Cic. de N. D. 2, 3; de Orat. 1, 53; Hein. 2, 10. 11. 12, 3. Among the later rites observed by a person making his will *in procinctu*, were, arranging the cloak or toga in the method called *cinctus gabinus*, (cf. Serv. ad Æn. 7, 612.) placing a shield on the arm, and naming the heir in the hearing of three or four. The mode of making a military will and testament practised under the Cæsars, was quite distinct from this. See Hein. 2, 10. 11. 12, 16.

104. Lawyers, *jureconsulti*, were usually employed in drawing up a will, in order that everything in it might be in due form, and nothing inserted but what was lawful¹; however, it was not indispensably necessary to employ them. Sometimes the testator wrote the whole will, *holographus*², or added in his own

handwriting to the will written by a friend, slave, or freedman³, a declaration that he had dictated and revised it. Suetonius states that it was forbidden by a law passed in Nero's reign that any one writing a will under dictation, should enter into it any legacy left to himself⁴. Finally, the prætor examined⁵ the signatures and sealing of the will⁶; hence *obsignare* to seal up, *resignare* to open, applied to wills⁷. In wills, the Latin language only might be used⁸; but in deeds of trust, Greek or other languages might be employed⁹. It appears that they were written on tablets of wax, from their being called *ceræ* sometimes, and generally *tabulæ*¹⁰, and their parts *cera prima, ima, &c.*

1) Cf. Cic. de Orat. 2, 6; Suet. Nero 32; Hein. 2, 10. 11. 12, 8. 2) Cf. Isid. Orig. 5, 24. 3) He who wrote a will from another's dictation was called *testamentarius*. Cf. Ulp. D. 28, 5, 9, 3. Cicero applies the term to a forger of wills, de Off. 3, 18. See Brissot, de Form. vii. p. 587. 4) Nero. 17. Passages in the Pandects lead us to conclude that Suetonius is in error, and that it was forbidden under Claudius. 5) Cf. Cic. Verr. 1, 45; Suet. Tib. extr. 6) Cf. Hor. Ep. 1, 7, 9. 7) Cf. Caj. 2, 119 and 147; Hein. 2, 10. 11. 12, 7. 8) Cf. Ulp. Fragm. 25, 9. 9) Hein. § 10. 10) Hor. Sat. 2, 5, 51: "Qui testamentum tradet tibi cunq̄ue legendum, abnuere, et tabulas a te remove re memento, sic tamen ut limis rapias, quid prima secundo cera velit versu; solus multisne cohæres, veloci percurre oculo." Cf. Juven. 4, 19.

105. In order that a will should be valid, the first thing requisite was, that the testator should be entitled to make one: this right was called *testamenti factio*¹; for neither a foreigner nor a person degraded from his rank as citizen, *capite deminutus*, could make a will valid in Roman law: the law also prescribed different forms to be observed, particularly that requisite for naming the heir, viz. *N. hæres esto*, not merely *hæredem esse volo*². Many reasons are given why, even in early times, citizens, not their own masters, were prohibited from making wills; one being that until they could actually possess property, they necessarily never could make wills (§ 85). Women, who were excluded

from voting at the comitia and from serving in the army, were therefore formerly excluded from making wills; afterwards they were allowed to do so if they were *sui juris* and had the approbation of their guardian³. Minors, even not under tutelage, were not allowed to do so, for the same reasons which excluded women. Insane people, among others, were also excluded.

1) See Caj. 2, 114 and 145. 2) Ib. 117, 121. 3) See Ulp. Fragm. 20, 15; Caj. 2, 118; Cic. pro Cæc. 6; Hein. 2, 10. 11. 12, 19; and in Hauboldi Epicrisi p. 936. loc.; Cic. Top. 4; and Caj. 1, 115.

106. The law of the XII Tables, which enacted, *uti legassit, ita jus esto*, gave unlimited power to the father of a family in creating heirs; so much so, that a son not mentioned in the will, was thereby disinherited; and this custom was retained under the Republic, as we learn from Cicero¹. Afterwards the father was required by law either to disinherit by name a person under his power, or else to admit him as an heir. A will which excluded the immediate heirs from inheriting was styled *inofficiosum*, and an appeal against such a will was allowed to children disinherited by it². The act *abdicatio*, by which a person disowned his children, was different from the disinheriting them; Heineccius supposes it to have been gradually introduced from the Greeks, and though discountenanced by law, to have become prevalent³.

The inheritance⁴ of one dying intestate (whence the terms *hæres ab intestato* and *ab intestato succedere*) was, by the laws of the XII Tables, adjudged to his lawful heirs (§ 107); if there were none, then to his nearest of kin; and if none such could be found, to the members of the *gens* to which he belonged, his *gentiles* (§ 81). The edicts⁵ of the prætors, entitling children to succeed in their own right, either alone or conjointly with others, remedied the injustice of the ancient law⁶.

1) De Orat. 1, 38. 2) See Hein. 2, 10. 11. 12, 21 and 22.
 3) Hein. ib. § 23; Cf. Val. Max. 5, 8, 3 and 4; Mühlenbruch Doctr. Pandd. pars spec. l. 1. § 297: "Nec abdicare pater liberos potest, nec emancipare invitos." L. 6. C. de Patr. Pot., "Abdicatio, quæ Græco more ad alienandos liberos usurpabatur, et ἀποκήρυξις dicebatur, Romanis legibus non comprobatur." Cf. Dirksen. Versuche p. 62. sqq. 4) Caj. 3, 1. 5) See Caj. 3, 1-25. 6) Caj. 3, 25 sqq.

107. From the privilege of succeeding to an inheritance or waiving one's right to it, arose three distinct kinds of heirs, according as they were *necessarii*, *sui et necessarii*, or *extranei*¹. A slave appointed heir by will, receiving at the same time his liberty (an indispensable provision) (§ 59), was termed *hæres necessarius*. An heir was termed *suus*, from his inheriting what was justly his own and due², and *necessarius* also if under his father's authority, whether named his heir by him or not; the law ordered both to succeed to the inheritance. *Hæres extraneus* was a term applied to one not in the power of the testator at his death³; and hence children named heirs by their father may be considered *extranei*, if not under his power at his death. Persons overwhelmed by debts, frequently appointed a slave to be their heir, that the disgrace attendant on the sale of the property might fall on him, not on the family⁴; the prætor at the same time enabling the sons so to escape such humiliation by allowing them to waive their right to the inheritance⁵. *Hæredes extranei* were generally allowed by the law a stated time for determining whether they would accept the inheritance or not; this time was called *cretio*, i. e. *tempus quo cernerent*: hence the formula given by Caius 2. 165; *Hæres Titius esto, cernitoque in centum diebus, quibus scies poterisque; quod si non ita creveris, exhæres esto*; and the formula of the person accepting it, *quod me Publius Titius testamento suo hæredem instituit, eam hæreditatem adeo cernoque*. If the words *quibus scies* were omitted, the *cretio* was fixed for a certain number

of days. In case a person was appointed heir, *sine cretione*, the prætor interfered in behalf of the creditors, and fixed a certain period, within which, unless he claimed the estate, the goods were sold⁶.

- 1) See Caj. 2, 152. 2) Cf. Caj. 2, 157. 3) Caj. 2, 156.
4) Cf. Caj. 2, 154. 5) Ib. § 158. 6) Ib. § 167.

108. Besides the parties mentioned first in a will as the immediate heirs of the testator, others were appointed to succeed in their stead, should they be either unable or unwilling to act as executors or legatees¹. Persons so appointed were called heirs in the second or third, or inferior place². Foreigners, and the Latins among them, being by the Roman law disabled from making wills, were also debarred from inheriting; soldiers, however, might make bequests to either³, and the Latins might also succeed to an inheritance, and receive bequests, *ex fideicommisso*, on trust⁴. Under Augustus unmarried persons were excluded from inheriting anything, by the *Lex Julia* and the *Lex Papia Poppæa*, unless they happened to be the next of kin; married persons, however, whose marriages had proved unfruitful, were allowed to succeed to a small portion of the property bequeathed to them⁵. These regulations continued in force till the time of Constantine the Great. Finally, societies and corporate bodies, *universitates* (§ 96), were excluded from inheritance, although in this case concessions were gradually made, and particularly by permitting municipal towns to inherit the property of their own freedmen⁶.

- 1) Cf. Hor. Sat. 2, 5, 45, sqq.; Tac. Ann. 1, 8; Suet. Aug. 101; Claud. 6. 2) See ib. § 154. 3) Caj. § 110. 4) Ib. § 275.
5) Cf. ib. § 111; Hein. 2, 14, 2. 6) Hein. ib.

109. Whatever was bequeathed to other persons besides the heir at law, was called a legacy, *legatum*¹,

as being intrusted to the heir for another, and the party to whom such legacy was made was called the *legatarius*, legatee². In early times, and, as seems most probable, (cf. *uti legassit*,) it was allowed, and even sanctioned, by the XII Tables, to distribute an entire patrimony among legatees and freedmen, *totum patrimonium legatis atque libertatibus erogare*³. Subsequently, the *Lex Furia* fixed the amount of individual legacies; and the *Lex Voconia* (A. U. C. 585) enacted that no one should receive more than did the heir at law; finally, the *Lex Falcidia* (A. U. C. 714) decreed that he should have at least one fourth of the whole estate⁴.

1) A *legare*, i. e. *mandare*. Cf. XII Tabb. *uti legassit*, and Hein. 2, 23, 5. 2) The nature of the property bequeathed, and the form in which it was bequeathed, gave the legatee a right to sue for its recovery by different kinds of suits at law: we read of four modes of bequeathing, viz. *vindicatio*, *damnatio*, *præceptio*, *sinendi modus*. Property which the person bequeathing held by quiritary right (§ 93), could be bequeathed by *vindicatio*; property merely in his possession, even another's property, (Caius 2, § 102,) by *damnatio*. *Vindicatio* gave the legatee a right to bring an action against the property, in order to recover a legacy left to him, (ib. § 194); *damnatio* and *sinendi modus* gave him a right to bring an action against the person of the heir for the same purpose (ib. 204, 213.) 3) Caj. 2, 224. 4) See Hein. 2, 20-22, 18.

110. Bequests to the immediate heir were subject to different legal regulations from legacies, *fideicommissa*. The word *fideicommissum* itself shows that it meant something which it rested with the good faith of the heir at law to make over to the legatee, agreeably to the request of the testator¹ expressed in the body of his will, or appended in a codicil². The party to whom this request or direction was addressed was called the *hæres fiduciarius*, the party to whom the legacy was ordered to be given the *hæres fideicommissarius*. By means of bequest *per fideicommissum*, it was possible not only to leave to some persons things which it was not legal to leave to them, or more than they could

legally inherit, but even to make those heirs, in fact, who by law could not inherit at all³. The bestowal of such bequests depended indeed on the honour and good feeling of the legal heir, since he was not bound by law, but merely by regard for the wishes of the testator⁴; until, by the command of Augustus, an action at law was allowed against him if he refused to execute those wishes. Such actions came, at first, before the consuls, but afterwards⁵ the duty of attending to them was shared between them and the *prætores fideicommissarii* (§ 196). Thus the *hæres fiduciarius*, who, though he might have distributed the entire estate among others, still continued, in point of law, the heir, had sometimes, in fact, nothing but the burden and trouble of executorship. The natural consequence was a general reluctance to act as executor, to remedy which the *senatusconsultum Trebellianum*, made in Nero's reign (A. U. C. 814), transferred the duties of executorship to the *fideicommissarius*. Under Vespasian, another decree, the *senatusconsultum Pegasianum*, appointed a remuneration for those who undertook executorship, assigning a fourth of the whole inheritance to the *fiduciarius*, in imitation of the *Lex Falcidia*.

- 1) The formula is to be seen in Caj. 2, 250: "Cum igitur scripserimus: (LUCIUS) TITIUS HERES ESTO, POSSUMUS ADJICERE (sc. *testamento*): ROGO TE, LUCI TITI, PETOQUE A TE, UT, CUM PRIMUM POSSIS HEREDITATEM MEAM ADIRE, GAJO SEJO REDDAS, RESTITUAS. Concerning these formulæ of *fideicommissa*, see Hein. 2, 23-25, 2. 2) See Mackeldey Lehrb. des röm. Rechts § 505 and 532. 3) Cf. Caj. 2, 289. 4) Ulp. Fragm. 25, 1: "Fideicommissum est, quod non civilibus verbis, sed precativè relinquitur, nec ex rigore juris civilis proficiscitur, sed ex voluntate datur relinquentis. 5) See Hein. 2, 23-25, 4.

111. The directions which a Roman citizen left to his heirs were expressed in the codicils, *codicilli*¹. There is no doubt but that the custom of so directing things to be done by others always prevailed; but no legal necessity of executing such directions existed till the time of Augustus, the occasion and description of

whose enactments on the subject may be seen² in the *Institutiones*, lib. ii. tit. 25. As there might be heirs at law even where there was no will, so likewise there might be lawful codicils where there was no actual will, though generally they formed part of the will: the former were called *ab intestato codicilli*, the latter *codicilli testamentarii*. If referred to in the body of the will they were called confirmed codicils, *confirmati*; otherwise *non confirmati*. The testamentary stood or fell with the will, as part of it³; but the term *codicil* implied not only written dispositions, but even mere verbal directions given by the testator, provided that they were made, like a will, in the presence of five witnesses⁴. The last will and intention of a testator might be expressed as well by them as by a formal will; and Mackelvey⁵ has applied the word codicil to denote any intimation whatever of the testator's will, distinct from that: the difference lying not only in the absence of the solemnities and forms of the latter, but in the fact that they could neither give anything, nor debar from anything, except *verbis precativis*, by way of request, or *per fideicommissum*⁶, that is to say, the execution of them rested with the good feeling and honour of the heirs at law, and was precarious, not imperative. A will legally defective and invalid, even to the degree that nothing in it could amount strictly to a codicil, might be made equivalent to a codicil, if the testator expressly added that he intended it should be valid as a codicil if invalid as a will⁷.

1) From *codex*, a tablet, as *libellus* from *liber*. The word will be found in another sense in § 237. 2) Theophilus *Institt.* 2, 25: "Primus L. Lentulus hos invenit et in rempublicam induxit. Lentulus enim Romæ testatus scripsit heredem filiam suam et Augustum Principem et alios; dixitque in testamento sic: si quos posthac codicillos fecero, firmi sunt," etc. 3) See Mack. § 506. 4) lb. § 507. Hein. 2, 23-25, 15, is of a different opinion. Cf. Vinn. *Institt.* 2, 25. 5) Mack. § 505. 6) Still leaving to the *fiduciarius* at least the *quarta falcidiæ*, as it was called (§ 110). See Vinn. ad *Inst.* 2, 25, 2. 7) See Mack. § 508.

112. By the right of guardianship, a Roman citizen assigned a guardian, by his will, *testamentum*, or by a *codicillus confirmatus* (§ 111), to any child not of age, who by the father's death became his own master¹. The guardian so duly appointed was said to be *recte datus*, or *testamentarius*, and his office was called *tutela testamentaria*; if any one died without making such a provision, the guardianship passed by law to the next of kin to the party not of age², in which case he was called the guardian at law, *tutor legitimus*, and his office *tutela legitima*, which also denoted the duties of a patron, a *pater fiduciarius* (§ 87), and of the person³ who manumitted a woman emancipated to him by her *coemptionator* (see § 480). There was a third kind of guardianship, namely, when a magistrate, possessing the power of so doing, appointed a guardian, which was done if the testamentary or legal guardian died, or was in any way incapacitated or prevented from acting, and sometimes for other reasons. The guardian so appointed was called *tutor dativus*, and his office *tutela dativa*. Guardianship ceased, either legally, when the minor came of age⁴, or by the death of the ward or of the guardian, by loss of his rank as citizen on the part of the ward, or the loss of liberty or citizenship by the guardian; or it might terminate by virtue of a judicial sentence passed on the guardian, if he were suspected to be unfit for the office, or was otherwise disqualified. Guardianship might also be claimed legally, and if so obtained, the person obtaining it was called *tutor cessicus*, and his office *tutela cessitia*⁵. The guardianship of women was distinguished into *tutela pupillaris* and *tutela perpetua*⁶.

1) Mack. § 273. 2) Mack. § 275. 3) See Caj. 1, 114 and 115; Ulp. Fragm. 11, 5, in which cases the guardian was called *tutor fiduciarius*, Hugo p. 118. ed. 8. 4) Suet. Aug. 66: "Legata vel partes hereditatum, a quibuscunque parentibus relicta sibi, aut statim liberis eorum concedere, aut, si pupillari ætate es-

sent, die virilis togæ vel nuptiarum cum incremento restituere consueverat." 5) Ulp. Fragm. 11, 7. 6) Cf. Liv. 34, 2, 39, 19; Cic. pro Flacco 34 and 35; pro Murena 12. See Hein. 1, 13 etc., 16.

113. Enough has now been said concerning citizenship. Opposed to the citizen was the foreigner, *peregrinus*. Foreigners were originally called by the Romans *hostes*¹, either from a good feeling, which caused such persons to be all looked on as *hospites*, or guests, (which is the opinion of those who would trace *hospes* and *hostis* to the same root²), or from the directly reverse notion that all such were enemies, which would seem the more probable supposition, seeing what was the condition of foreigners under the Republic. That it was a hard one would appear from the fact of their repeated expulsion at the will of the magistrates³. Being excluded from the proper rank of *quirites*, they were debarred from whatever public or private rights were attached to it (§ 70), enjoying only those which were called, in contradistinction to these, *jura gentium*⁴, the rights of nations. Accordingly they enjoyed neither suffrage nor access to public office, nor were they, like the *quirites*, exempt from scourging and corporal punishment. They could not contract *connubium* with Roman citizens, neither did they possess the *patria potestas* as enjoyed by them, nor any part of the *dominium quiritarium*, such as the power obtained over person or thing by mancipation or *usucaptio* (§ 99). Neither had they the right of bequest: indeed a foreigner's goods, as Heineccius asserts⁵, devolved at his death, either to his patron, or, in default of him, to the public treasury. They were also subject to a peculiar jurisdiction (§ 190), and could not reside within the city but by public leave, (which might at any moment be revoked,) and under the patronage, as Heineccius thinks, of some citizen: moreover, they were forbidden to wear the *toga*⁶, and might not have a *prænomen*, being thus

kept distinct from the citizens even by their names⁷. Such as obtained citizenship assumed the name of the party to whom they were indebted for the privilege. So much in general concerning the condition of foreigners ; we shall treat more particularly of them lower down. Since, however, the allies, and among them the Latins, were called foreigners, a distinction is to be drawn between them as such, and all others, owing to the peculiar footing on which they severally stood with the Roman people. It is also to be observed, that the condition of foreigners generally was gradually ameliorated in the times of the Republic, and greatly improved under the Cæsars⁸, not to mention that individuals of the class were occasionally admitted to certain of the rights of genuine citizens, by favour of the people or senate, or by the indulgence of the Emperors⁹.

1) Cf. Cic. de Off. 1, 12. 2) Cf. Hugo § 64. 3) Cf. Cic. de Off. 3, 11 ; Brut. 28. See Hein. App. 136. 4) See Creuz. § 204. 5) Hein. App. 137. 6) Cf. Plin. Epist. 4, 11, 1. 32. Digg. de Jure Fisci. 7) Suct. Claud. 25 : "Peregrinæ conditionis homines vetuit usurpare Romana nomina, dumtaxat gentilitia." 8) Cf. Beauf. v. 2, p. 170. 9) See Hein. App. 34 and 138.

OF THE MUNICIPES, COLONI, SOCII, AND DEDITICII.

114. All *Municipes* were considered Roman citizens; of the *Coloni* some ranked as citizens, and others, with the *Socii* and *Dediticii*, as foreigners. Among the allies, *Socii*, however, the Latins formed a class apart, their condition being peculiar, and the *jus Italicum* being distinct from the *Latinitas*, or *jus Latii*. We will now proceed to detail the distinctions denoted by these several titles. It is a trite remark that two circumstances mainly contributed to raise the power of Rome from its small beginnings to the wonderful height to

which it ultimately attained: first, that owing to the stubborn spirit which would never conclude a peace except after victory, the Romans went on incorporating each nation of Italy in succession with their empire, either by conferring citizenship on them when conquered, or by making them allies by treaties; and, secondly, that by planting colonies of Roman citizens among the vanquished, Rome easily kept even her most distant allies in subjection. Hence there came to be three kinds of states in Italy, the *municipia*, the *coloniæ*, and the *civitates fœderatæ*; to which perhaps a fourth class may be added, under the name of *præfecturæ* (§ 126), inasmuch as these not only had this distinctive name, but were on a different footing from the other three¹.

1) Cf. Cic. pro Sext. 14.

115. The word *municipes*, being evidently derived from *munia*, offices or honours, and *capio*, shows of itself that it denoted nations to whom Rome had conceded some of the rights enjoyed by its own citizens; or the name may have implied, that whatever rights they enjoyed, were held by the gift of Rome: and I am inclined to prefer this idea of its import¹. These *municipes* did not all enjoy the same rights, but they were all Roman citizens, and herein differed from the *Latini*, whose connection with Rome was quite peculiar, and dated even from the time of the Kings. Just, however, as the title of citizen in some cases conferred the right of suffrage, and in others did not (§ 67), so was it with that of *municipes*, some having votes and others not²; and I find that the name was promiscuously given to all who received the name of citizen, but were not locally connected with Rome itself, i. e. dwelt neither in it nor in the neighbouring country called the *ager Romanus*. Hence the distinction between the

two kinds of *municipes* will prove a distinction between two kinds of citizenship, and consequently we need the less wonder at the mistakes of modern writers on this subject. Sigonius³, for instance, assigns to one class of *municipes* the *jus militiæ*, and Roth (p. 14) the mere honorary name of citizen⁴; both ascribing to the other class the full and entire rights of genuine citizenship, except that Sigonius considers them to have been deprived of the *jus domicili*, and Roth would limit their exercise of the right of suffrage to Rome itself, depriving them of it in their native towns. And indeed, with the exception perhaps of the privilege of holding office in Rome itself⁵, I do not see what was wanting to the full and perfect citizenship of the *municipes*, (seeing they had the right of suffrage,) except such privileges as were of necessity peculiar to persons resident in Rome itself; and even this can scarcely be considered a positive disadvantage in their case, inasmuch as they might obtain even these by fixing their abode there. Whereas I apprehend it to be absurd to restrict participation in the *comitia curiata*, the *sacra privata*, the right of patronship, admission to the senate, and other ancient fundamental rights, to the *optima civitas*, or mere resident in Rome, and in the *ager Romanus*.

1) Cf. Fest. in *Municeps* and *Municipium*. 2) The first *municipes* we hear of without the right of suffrage (A. U. C. 365) were the inhabitants of Cære in Etruria (see Gell. 16, 13. Cf. Liv. 5, 5; Strabo lib. 5, p. 220; Roth de Re Municipali p. 5); hence the expression *in Cæritum tabulas referre* (see § 198). Subsequently we meet with this class of *municipes* in the inhabitants of Campania, Fundi, Sinuessa, Formiæ, and many other places (Liv. viii. 14). 3) De Ant. Jure Italiæ 2, 7. 4) Cf. Paul. Manut. de Civit. Rom., Thes. Græv. v. 1, p. 48. 5) Cf. Tac. Ann. 11, 23.

116. There is no question but that some *municipes* enjoyed their own laws, and others adopted those of Rome. It is, however, much disputed¹ whether each of

these classes was at liberty to retain its own laws, or adopt those of Rome; or whether those who obtained the right of suffrage at Rome were of necessity bound to receive in consequence its laws and customs. I am of opinion that they were². Those who hold the contrary opinion adopt Gellius as their authority³. Such as obtained the citizenship with right of suffrage, and consequently, as I have said, adopted the laws of Rome, were said to become *fundi*; hence *fundus fieri legi, municipia fundana*, and the like. The *fundi*, being bound to Rome by the closest possible legal ties⁴, looked upon her as another and better country⁵; and there is no need to wonder that Milo should have been, at one and the same time, magistrate at Rome and in his native place⁶.

1) Cf. Spanh. Orb. Rom., Thes. Græv. v. 11, p. 36; Hein. App. 120; Roth. de Re Municip. p. 17. 2) Gell. 16, 13: "Municipes ergo sunt cives Romanis ex municipiis, legibus suis et suo jure utentes, muneris tantum honorarii cum populo Romano participes, a quo munere capessendo adpellati videntur, nullis aliis necessitatibus, neque ulla populi Romani lege adstricti, nisi in quam populus eorum fundus factus est." That Gellius is wrong may be thus shown from Livy, not to mention other authorities. That writer repeatedly makes mention of some state or other as retaining its own laws in preference to receiving the rights of Roman citizenship (cf. Cic. pro Balbo, 8); whence it must be correct to infer, that the adoption of Roman laws was a necessary condition for obtaining the boon of citizenship; nor is it probable that different kinds of citizenship were, in the first instance, offered, and still less that we are to understand, in this case, citizenship without suffrage, since it is, on the one hand, certain that the *municipes* did not all adopt the Roman laws, and, on the other, absurd to think that less privileges were bestowed on those who were to renounce their own customs, than on those who were to retain them. 3) Cf. Cic. pro Balbo, 8; Gell. 16, 13; Spanh. Orb. Rom. 1, 12; Hein. App. 88, and Hist. Jur. Rom. 1, 3, 79; Bach. Hist. Jurispr. Rom. 2, 2, 1, § 69. Dirksen has very recently attempted to show the meaning of *fieri fundus*; ad Tab. Heracl. p. 211, sqq.; and his opinion is approved by Maciejowski, Hist. Jur. Rom. p. 65. 4) Cf. Roth. 1, 5. 5) Cf. Cic. Agrar. 2, 32; Idem de Legg. 2, 1: "Hæc est mea et hujus fratris mei germana patria; hinc enim orti stirpe antiquissima; hic gens, hic majorum multa vestigia." 6) See Cic. pro Mil. 10.

117. The *municipes* possessing right of suffrage had

magistrates of their own choice¹, not sent from Rome; a free constitution, like Rome itself; and free institutions, jurisdiction being, of course, included². Accordingly, each municipal town had its college of decurions³, and its duumviri⁴; the former corresponding to the senate, the latter to the consuls at Rome. Persons eligible to the former office were called *curiales* (*ordo curialis*). The insignia and titles common in the sovereign city were eagerly imitated; and hence we find in the municipal towns *ædiles*, *quæstores*, and *defensores civitatis* (answering to the plebeian tribunes at Rome), *quinquennales* (corresponding to the censors), and others equivalent, either in effect or merely in name⁵, (as the dictators for instance,) to the offices common at Rome. There are many reasons for believing that the priesthood in these towns also was on a similar footing with that of Rome itself⁶. The splendour and example of the capital was also zealously copied in the public buildings and monuments of these places, so that we find in them a Campus Martius, an Arena, a Capitol, and so forth. In short, each municipal town endeavoured to make itself a little Rome, by imitating the metropolis of the empire in everything.

1) Cf. Hugo § 261. 2) Cf. Roth. p. 23. 3) From *decuria*, properly applied to a body of ten, and, in a more loose signification, to any section or body of men whatever (§ 269). Cf. Pomp. Pandd. 50, 16, 239, § 5. 4) Cf. Cic. Agr. 2, 34, in Pis. 11. 5) See Hein. App. 123. 6) Cf. Cic. pro Mil. 10, with the note of Asconius.

118. The rights of municipality were also conferred on individuals. After citizenship had been extended to all the inhabitants of Italy, the municipal, although thenceforth on the same footing with the other towns of Italy, retained their distinctive name¹ and peculiarities of government². Municipal towns do not occur beyond the limits of Italy until the time of the Cæsars³; but whether their inhabitants possessed perfect citizenship,

such as it then was, or resembled the *municipes* of earlier times without suffrage, it is difficult to decide, either generally, or in particular; but it may be conjectured⁴ from a passage of Tacitus that they could not hold office in Rome⁵. The governments of the municipal towns must necessarily have undergone some change, when the whole Republic, of which they were part, itself changed to an Empire. Roth informs us (p. 32) that their condition was first seriously affected by Constantine the Great. When, however, citizenship came to be coextensive with the empire, all towns, indiscriminately, were called *municipia*, in respect of the rights their citizens enjoyed as subjects of the empire, although the original *municipia* continued to retain some of their peculiar privileges⁶.

1) See Roth. p. 7. Gell. 16, 13: "Prænestinos autem refert (Hadrianus), maximo opere a Tiberio Imperatore petiisse orasseque, ut ex colonia in municipii statum redigerentur," etc. Cf. Roth. p. 26.
3) Cf. Plin. H. N. 3, 2, and Tac. Agric. 32. 4) Cf. Roth. p. 26.
5) Tac. Ann. 11, 23. 6) See Gell. 16, 13; Roth. p. 26.

119. Of the Colonies, we shall treat more largely elsewhere (§ 241), in this place stating merely their rights as part and parcel of the Roman Empire, and the distinctions resulting from the variety of those rights. They are commonly considered to have been of four kinds, Roman (composed, i. e. of Roman citizens), Latin, Italian, and military. I am inclined to believe, but do not venture positively to assert it, that the Roman colonies were so called from the first, not because they retained the rights of Roman citizenship, but because the persons composing them were chosen from among the Roman citizens, as those composing the Latin colonies were selected from among the Latins¹. Afterwards, when citizenship had been extended to all Italy, the colonists were either citizens or foreigners, or a mixture of both, and their settlements

were then distinguished as Roman or Latin, according as the rights allowed them were those of citizens of Rome, or merely those included in the *Latinitas*. By Italian colonies are generally understood those which were composed neither of citizens of Rome nor Latins, but yet of natives of Italy; none of these existed within Italy itself, and it seems now to be agreed upon by all writers² that those mentioned as existing in the provinces, had their name not because they consisted of natives of Italy, but because they enjoyed the *jus Italicum*, so that they might more correctly be called *coloniæ juris Italici*; at all events they were styled *Italicæ* only by reason of enjoying that right. Wherein the *jus Italicum* consisted will be explained presently (§ 123), so that nothing more need here be said of this class of the colonies.

1) Cf. Liv. 27, 9 and 10 (where we read of Latin colonies, the settlers in which were citizens of Rome), 39, 55, 29, 15; and Cic. p. Cæc. 33: "Certe, quæri hoc solere, me non præterit, quemadmodum, si civitas adimi non possit, in colonias Latinas sæpe nostri cives profecti sint? Aut sua voluntate, aut legis multa profecti sunt, quam multam si sufferre voluissent, tum manere in civitate potuissent." 2) See Hauboldi epicrisis ad Hein. Syntagm. App. § 129.

120. It appears indubitable that the *Coloniæ Romanæ* possessed the rights of Roman citizenship, and that the *Col. Latinæ* did not¹; but the question has been raised whether the citizenship of the former was complete, or whether it excluded suffrage, and eligibility to public offices in Rome. I consider the latter to be the more correct view². That it should have been so curtailed, is not wonderful, seeing that the colonists were generally persons of the poorest class, and consequently enjoying the right of suffrage in Rome itself in name rather than in fact. As regards the Latin colonies again, it is not likely that they should have enjoyed privileges superior to those they had pos-

essed in the cities from which they issued: whether they suffered any diminution, or what it was, are points which it is almost hopeless to attempt to decide: that colonies sent out by the provinces were called Latin, from enjoying the *jus Latii*, has already been remarked.

The colonies resembled the municipal towns with right of suffrage (§ 116), in that they received the laws of Rome, and differed from the allied states, in that they adopted also her form of government and public institutions generally³; so that, since the municipal towns very generally imitated these of their own accord, it was natural that the difference between them and the colonies should be very slight; and, in fact, the same names of magistrates and institutions generally are found in both.

1) Cf. Cic. l. c. 2) Cf. Dio Cass. 43, 39; Sigon. de Ant. Jure Ital. 2, 3, 3, 3; Paul. Manut. de Civ. Rom. (Thes. Græv. v. 1. p. 48); Spanh., Orb. Rom. 1, 9 and 10, 2, 19. (ib. vol. 11.); Hein. App. 106. sq.; Creuz. § 211. 3) Gell. 16, 13: "Coloniarum alia necessitudo est (quam municipiorum); non enim veniunt extrinsecus in civitatem, nec suis radicibus nituntur, sed ex civitatibus quasi propagatæ sunt, et jura institutaque omnia populi Romani, non sui arbitrii habent."

121. As far as I can ascertain, the military colonies differed as to their rights in no respect from the Roman colonies; and it will suffice to have named them here. But since we read of numerous colonies sent out by the provinces, of which many enjoyed either the *Latinitas* or the *jus Italicum*, I conjecture that there must have been a fourth kind of colonies distinct from any of the three divisions we have just made in respect of the rights enjoyed¹, and if so, several questions would arise respecting them, in particular how they differed from allied cities or *dediticii*. It also deserves to be considered whether the Latin colonies, as such, possessed lordship of the soil, the *solî dominium*, which I have said was part of the *jus Italicum*? However, although it

is certain that there were differences in respect of the rights they enjoyed between the *municipia*, the colonies, and the allied states, and between these last and their colonies, and that these differences continued to exist even to a late period under the Cæsars², yet it is neither possible to ascertain what these differences were, nor is the knowledge of such minutiae of great importance: it would not be of much help in the decision of more weighty points: it is sufficient for the student to be aware that there were these numerous differences.

1) Cf. Caj. 1, 79. 2) Cf. Hugo § 338.

122. Whatever inhabitants of Italy were not *municipes* or *coloni*, were distinguished, agreeably to the remark made in § 114, into *socii*, allies, or *civitates fœderatæ*, confederates¹. The several wars in which they were subdued, and the conditions imposed on them, may be seen in Sigonius². Among the allies in Italy were Tibur, Capua (afterwards made a præfecture), Neapolis, Tarentum, and many others.

The most ancient, however, of the allies, were the Latins, whose condition and terms of alliance were peculiar, and must presently be considered separately; but all the allies of Rome, alike, were subject to pay tribute and to furnish contingents of troops³. These allies were not only allowed to retain their own forms of government⁴, and the appointment of their own magistrates, but certain privileges, as, for instance, the *jus Italicum* (although I am inclined to question this) were granted to all; besides particular privileges to particular allies. After the extension of the citizenship to the whole of Italy, those who had hitherto been allies were put upon a par, in point of rights, with the other inhabitants of Italy, adopted the Roman laws⁵, and modelled their constitutions agreeably to them, so that their institutions became the same everywhere. In the provinces

the distinctions of *municipia*, colonies, and allies, continued, all who were not such being *dediticii*, of which there do not appear to have been any in Italy itself. The condition of allies in the provinces was, however, in many respects, and for many reasons, different from that of the allies in Italy, and they appear to have seldom differed from *dediticii* except in name: they are sometimes designated by the common title of provincial allies, *socii provinciales*.

1) Cf. Beauf. v. 2. p. 268.

2) De Ant. Jure Ital. 1, 8. sqq.

3) Cf. Liv. 27, 9 and 10.

4) Cf. Sigon. de Ant. J. It. 2, 10.

5) Cf. Hugo § 164.

123. As to the *jus Italicum*, there is no doubt but it was so called because it was granted to the Italian allies, but I doubt whether they all possessed it¹; and it is certain from ancient authorities² that it was also enjoyed by some states in the provinces. Savigny was the first to demonstrate, after the subject had been long fruitlessly discussed by Sigonius and his successors, that it was not a personal right, like that of Roman citizenship or that of *Latinitas*, but local, and attached to the soil; that is to say, that even Roman citizens did not enjoy it, as they did other rights, that of personal liberty or paternal authority for instance, wherever they might be, but only whilst resident in the state to which it had been granted. Savigny has also shown that it consisted in two things, viz. first, in lordship of the soil³, i. e. the soil might be the subject of *usucapio*, *in jure cessione*, *mancipatio* and *vindicatio*, and the quiritary lordship, *dominium ex jure quiritium* (§ 99); secondly, that the state possessing this right enjoyed free institutions, like the allied states in Italy, having its own *duumviri*, *quinquennales* and *ædiles*, especially with the right of jurisdiction (§ 117); to which must be added, that lordship of the soil implied, necessarily, exemption from *census*.

- 1) Cf. Creuz. § 263. 2) The *jus Italicum* is mentioned only in the following passages of ancient authors ; viz., Plin. H. N. 3, 3 and 21 ; Pandd. 50, 15 ; Cod. Theod. 14, 13 ; Cod. Just. 11, 20. 3) Cf. Hugo § 87.

124. At the same time with the *jus Italicum*, and even prior to its origin, or at all events before lordship of the soil came to be part of it, there existed a peculiar relationship between the Latins and the Romans, the former being admitted to an inferior kind of citizenship¹. The following particulars are to be noted respecting it. The Latins, who were distinguished from the other allies of Rome by the titles of *socii*, by way of eminence, *Latini socii*, *socii nominis Latini*, *socii nomenque Latinum*, &c.², were the inhabitants of Latium, allied by treaty with Rome, and admitted to certain privileges designated by the term *Latinitas* or *jus Latii*. The treaty³ on which this alliance was based, was originally concluded between the Albani and Romulus, but after the destruction of Alba Longa, the other inhabitants of Latium were admitted to it, and after repeated interruptions by the wars with them, it was renewed shortly after the expulsion of Tarquin on the terms on which it continued to subsist down to the social war⁴.

The rights thus conceded originally to the old Latins, were gradually allowed to their neighbours, and thence arose the distinction of *vetus Latium* and *novum Latium* (§ 13). In course of time, however, after the Latins and the rest of Italy had received the citizenship, the *Latinitas* was extended to many colonies and other states beyond the limits of Italy, and even to whole provinces⁵, — a practice which prevailed even under the Cæsars⁶. The *Lex Julia Norbana* bestowed it even on persons who had received partial (*non justa*) manumission (§ 63), but was abolished by Justinian.

1) See Savigny Ueb. die Entstehung und Fortbildung der Latinität. Cf. Creuz. p. 242 and 246. 2) Sigon. de A. J. It. 1, 2.

3) Cf. Hein. App. 76. sqq. 4) Cf. Dionys. 3, 54, 4, 49, 6, 95 ; Liv. 2, 22 ; Cic. pro Balbo 21. 5) Cf. Strab. 1. 4, p. 186 ; Ascon. in Cic. in Pis. p. 156. 6) Cf. Tac. Ann. 15, 23 ; Plin. 3, 3 ; Spart. Hadr. 21.

125. The question concerning the *jus Latii* will, however, be found still to present great difficulties if any one attempt to descend into particulars. Creuzer, § 202, refers us to his lectures for illustrations of the conclusions at which recent authors, including Niebuhr, have arrived. As regards public rights, Heineccius¹ has adduced instances proving that the Latins did not possess the freedom of *quirites*, at the least not in its full extent : he assigns to them the *jus militiæ* and the *jus honorum* in a limited degree ; and some he allows to have enjoyed the *jus suffragii* ; but shows that they might not serve as legionary troops, nor hold office in Rome itself, and that the *jus suffragii* was of a very precarious nature, since they were bound to leave the city whenever the consuls thought fit to order them to do so². Ulpian³ has clearly shown that the Latins did not enjoy the right of intermarriage, *jus connubii*, with citizens of Rome, and consequently that they could not exercise the *patria potestas* in the same way with them. It would appear from the same author, XX. 14, that the Latins did not possess the *jus testamenti* equally with the Romans, although in another passage the contrary seems to be admitted ; I mean XX. 8, where we read, " the *Latinus Junianus* may both purchase a *familia* and act as *testis* and *libripens*, since he may make a will ;" and, if so, we should infer that he might inherit of a Roman citizen⁴, as seems to be allowed⁵ by the same, XXII. 3. Savigny asserts that both the *jus testamenti* and the *jus hæreditatis* belonged to the Latins, but with exceptions.

1) App. 85. Cf. Sall. B. J. 69 ; Gell. 10, 3. 2) Cf. Cic. Brut. 26, pro Sext. 13. 3) Ulp. Fragm. 5, 4 : " Connubium habent cives Romani cum civibus Romanis ; cum Latinis autem et pre-

grinis ita, si concessum sit." 4) Cf. Ulp. 22, 1: "Heredes institui possunt, qui testamenti factionem cum testatore habent." 5) Latinus Junianus, "Siquidem mortis testatoris tempore, vel intra diem cretionis, civis Romanus sit, hæres esse potest. Quod si Latinus manserit, lege Junia capere hæreditatem prohibetur." Cf. Hein. App. 87.

126. That the Latins enjoyed the *jus commercii*, is evident from many testimonies of ancient authors¹. They, like all allies², were bound to furnish their contingent of auxiliaries; but it is probable that they paid less tribute than the other allies³. They were certainly on a par with them in being governed by their own magistrates, and having their own free institutions: neither were they bound any more than others to use the Roman laws and customs in matters not involving their allegiance to Rome, as in the disposal of their property, in contracts, or in judicial matters. If they preferred it, they might do so⁴, but gained no additional advantage thereby, unless having obtained full citizenship as well as adopted the Roman laws, they had become *fundi*, and so *municipes* instead of mere *Latini*. Latins in the provinces, either resident in other cities, or members of important colonies⁵, possessing the *jus Latii*, were entitled to the same degree of citizenship as all free-born subjects of the empire, being inferior to none but the *Latini Juniani* (§ 63). The Latins, who were thus, of all foreigners, nearest on a par with the citizens of Rome, yet not all equally so⁶, attained perfect citizenship in various ways: as, for instance, if a Latin, migrating to Rome, left at home a son and representative of his house⁷; or if he had accused and obtained, a sentence against, a Roman senator⁸; or if he had held high office in his native state; or, finally (§ 70), if the emperor chose to declare him citizen⁹.

1) See Ulp. 19, 4. Cf. Hein. App. 87; Creuz. § 203. Cic. pro Cæc. 35: "Deinde, quod Sylla ipse ita tulit de civitate, ut non sustulerit horum nexa atque hæreditates. Jubet enim eodem jure esse,

quo fuerint Ariminenses : quos quis ignorat duodecim coloniarum fuisse, et a populo Romano hæreditates capere potuisse?"—This passage is memorable, as being that from which, compared with Liv. 27, 9 and 10 ; 29, 15, some very learned men have ascribed the origin of the *Latinitus* (meaning, of course, certain particulars of it, otherwise the assertion is absurd) from the twelve (twenty-two?) colonies mentioned by Cicero. See, on this head, besides Savigny and Niebuhr (in the Addenda to v. 1. p. 371,) Creuzer § 203. 2) Cf. Liv. 29, 15. 3) Cf. Liv. 8, 8, and 38, 44. 4) Cf. Hein. App. 88. 5) See Creuz. § 202 ; Hugo § 338. 6) Cf. Creuz. p. 246. 7) Cf. Liv. 41, 8. 8) Cf. Cic. pro Balbo 24. 9) From the *municipia*, and all other towns or states in Italy, are to be distinguished the *præfecturæ*, and, in the rest of the Roman empire, the *fora* and *conciliabula* ; as also the *vici* and *castella*, mentioned in the Cisalpine laws (§ 426). Of these, the *præfecturæ* are commonly considered to have been nearly on the same footing with the *dediticii* (cf. Hein. Synt. App. 132) ; and justly too, if they were all in the situation of Capua (Liv. 26. 16) and other states, which we find to have been treated as severely as that was. But this cannot be the correct view ; because we find that the *præfecturæ* had the usual magistrates of *municipia* and colonies (see Creuz. § 212), such as *ædiles* and *prætors* (cf. Hor. Sat. 1. 5. 34), *decurions* (Suet. Cal. 23) ; and the members of these *præfecturæ* enjoyed municipal rights, which were not invaded even by the *Lex Julia de Civitate* (§ 66), and remained unchanged until the times of the Cæsars (cf. Creuz. § 212 ; Savigny Gesch. d. Röm. R. vol. 1. p. 39. sqq.). Hence the latest writers on the subject, some of them following Savigny, have asserted that the only difference between the *præfecturæ* and the *municipia* consisted in this, that the chief magistrate of the former, who was called *præfectus*, and from whom they were called *præfecturæ*, was annually appointed and sent from Rome, as Festus attests. Granting, however, that the condition of such states was very different from that of the *dediticii*, we may conclude that some were more favoured than others, from the mere fact that the *præfect* was, in some cases, appointed by the people of Rome, and in others nominated by the *prætor* : and I am in doubt, concerning this magistrate, the *præfect*, whether he supplied the place of the *duumviri*, or exercised jurisdiction, not so much over the city itself as over the whole district attached to it. Among the *præfecturæ* we find Arpinum, Capua, Casilinum, Cære, Cumæ, Formiæ, Fundi, Liternum, Suessula, and Vulturum (see Hein. l. c.). The origin of the names *fora* and *conciliabula*, appears from the words themselves ; concerning their political condition, see the conjectures of Niebuhr (v. 2. p. 394) : nothing has been hitherto ascertained respecting the *vici* and *castella*.

127. Of all persons in the Roman empire, those were in the worst condition who were called *dediticii* ; by which name were meant, the inhabitants of whatever conquered towns or districts had submitted uncondition-

ally, and were governed by magistrates sent from Rome. On this subject we shall speak further in the chapter on the government of the Roman provinces. That their condition was extremely bad, appears from the circumstance that the law, in order to prevent freedmen from obtaining anything beyond personal freedom by their manumission, declared them to be in the state of *dediticii* (§ 64).

CHAPTER THE SECOND.

ON THE CONSTITUTION OF THE REPUBLIC.

The Classification of Roman Citizens.

128. THE rise of the constitution of the Republic is as obscure as that of the City itself; the attempts made by moderns to elucidate either amid the discordant testimonies of the ancients, have hitherto proved alike unsuccessful. A knowledge of the manifold distinctions between the citizens themselves is, however, of great importance to a right understanding of the subject. Many writers have treated largely concerning them. After stating what they appear to have been, we shall proceed to investigate the several parts of the constitution.

The original division of the Roman people appears to have been fourfold, namely, into patricians, plebeians, and knights; into patrons and clients; into tribes and curies; into classes and centuries. The distinction intimated by the title *nobiles* (§ 132), and that of *optimates* and *populares*, which last arose from the effects of party spirit, are different from these four.

PATRICIANS, PLEBEIANS, KNIGHTS.

129. The origin of the distinction into Patricians, Plebeians, and Knights, whether derived, as Dionysius¹ conjectured, from Athens, or, according to others, from the Etruscans², whom the Romans followed in many other particulars³, was certainly coeval with the City; the ancients, however, give various accounts of the matter, which are variously interpreted by moderns⁴. The two most prevalent opinions, however, are these:

one, adopted from Dionysius, that Romulus separated the citizens who were eminent by birth and wealth from those who were more obscure, calling the latter plebeians⁵, the former patricians; though some think that in the time of Romulus these were called *patres*, and that the term patrician was applied to the descendants of these⁶. The other, and apparently the more correct opinion, is found in Livy (I. 8), who mentions no original distinction of ranks, but states that the members of the senate instituted by Romulus were called *patres*, and their descendants had thence derived the title *patricii*⁷. The etymology of the term is variously given according to the view adopted concerning the origin of the class it designated. Some derive it simply from *patres*, making it mean the descendants of the *patres*; others explain it by *patrem cientes*⁸, meaning that those who bore it were genuine citizens by birth; could quote the name of a citizen as their father.

1) Dionysius 2, 8. 2) It is still matter of controversy whether the Etrusci (Thusci, Tyrrheni) were of Lydian origin, according to Herodot. 1. 94, or whether the account given by that historian be a mere fable. See Dionys. 1, 27; Niebuhr vol. 1, p. 65; Wachsm. p. 82. 3) Cf. Niebuhr p. 95 and 181; Wachsm. pp. 134, 135; Liv. 1, 8. 4) See Dionys., Liv., and Plutarch's Life of Romulus. 5) Dionysius says they were so called as being *δημοτικοί*. There can be no question but the word *plebs* (whence *plebeius*) implies the notion of multitude; hence Voss derives it from *πλήθος*; others, in my opinion more correctly, from *πλεῦνες* or *πλέονες*, *the majority*. 6) If the text of Dionysius has come down to us correct, he contradicts himself, affirming both; the first in 2, 12 (cf. Liv. 10, 8), where he states that Romulus chose a hundred men, *ἐκ τῶν πατρικίων*; the second in 2, 8, where he approves of those who asserted the patricians to be the descendants of the *patres*. 7) Livy appears, however, in another place (10, 8) to adopt the second opinion of Dionysius, making Decius say, "Patricios primos esse factos, non de cælo demissos, sed qui *patrem ciere* possunt, id est, nihil ultra quam ingenuos." 8) Those, that is to say, who could name a free man as their father, and so show they were not of servile birth. Cf. Liv. 10, 8. 4, 3; Festus in *patricos*; and Dionys. 2, 8.

130. Those who agree with Dionysius in ascribing this distinction of ranks to Romulus, ought, if they would be consistent, to follow him in considering (II. 9)

certain duties to have been imposed on each ; on the patricians, namely, the maintenance of religion, and all sacred offices, the duties of the magistracy, the expounding of the laws and administration of justice, and the duties of government in conjunction with the king: the plebeians, on the other hand, being excluded from all these, must have devoted themselves solely to agriculture and trades¹. Both ranks were liable to military duty. At all events, if such were not actually the arrangement made by Romulus, it is found (with the exception that agriculture (§ 328) was not pursued by the plebeians exclusively) to have prevailed immediately after his time ; for it is certain that the first patricians, or those whose descendants were afterwards so called, could alone be elected to serve as magistrates, of which there were as yet but few, to the priesthood, or to the senate. These, however, and other privileges, at first peculiar to the patricians, were, with few exceptions, gradually thrown open to the plebeians after the expulsion of the kings ; as we shall have occasion to show in the proper places. It is not to be inferred that all patricians were senators ; the number of the latter was fixed, that of the former indeterminate : nor is the senate to be contrasted with the plebs in point of rank, but of authority and power. The patrician order was also called senatorial, because originally the senators were drawn exclusively from the patrician body². Those patricians who traced their descent from the senators whom Tarquinius Priscus drew from the plebeian body, were called “ *minorum gentium*”³; the descendants of the more ancient class of senators being “ *majorum gentium* :” it is, however, generally admitted that the posterity of those plebeians, who were incorporated with the senate by Brutus and Valerius Publicola, ranked as plebeians⁴.

1) Γεωργεῖν δὲ καὶ κτηνοτροφεῖν, καὶ τὰς χρηματοποιούς ἐργάζεσθαι τέχνας.

2) Gell. 10, 20 : “ In populo omnis pars civitatis,

omnesque ejus ordines continentur, plebs vero ea dicitur, in qua gentes civium patriciæ non insunt." 3) Herein, however, Tacitus, Ann. 11, 25, differs from other authorities, referring the *minores gentes* to those senators who were added by Brutus and Valerius. 4) Cf. Beauf. vol. 1. p. 104. sq.

131. Intermarriage of patricians with plebeians was originally forbidden by law (§ 82): after the repeal of the prohibition, the names of the families were still kept distinct, the wife being received into the *gens* of her husband. Owing, however, to a variety of causes, many names were common to both the patrician and plebeian orders: among these causes are reckoned, besides the accidental coincidence by which one and the same name may originally have belonged to different houses, *gentes*¹; first, the fact that a person, though his rank might be altered by his adoption into another house, still retained the name of his own (§ 91); concerning which point, however, some obscurity exists: secondly, the admission of one or more families of a plebeian house into the patrician order, the other families remaining plebeian, of which a notable instance is furnished by the case of the *gens Claudia*²: thirdly, this might occur when a person having obtained the rank of citizenship through the patronage of a patrician, assumed his name, as Cornelius Balbus took that of Cornelius Lentulus³, or from the custom that a freedman should bear that of his former master (§ 62). An ornament in form of a crescent, worn on the foot, was the distinctive badge of a patrician. The import of the badge has been variously explained; but the most common opinion is, that it denoted the original number of the senators, namely, one hundred, *C, centum*⁴. When an equality of civil rights had been established between the orders, the distinctions of houses, *gentes* (§ 80), and patrician nobility, still continued to exist, although, in the time of the Cæsars, they were retained only in a few families⁵. In fact, some things, which will be found noted in their proper places, con-

tinued at all times peculiar to the patrician order, just as the tribuneship was always confined to the plebeians. On the other hand, as, in the early times, those plebeians who were enrolled in the senate, either by Tarquinius Priscus or by the first consuls, became thereby patricians; so we learn from Tacitus⁶ and other authors, that one or more individuals, generally senators, were, from time to time, enrolled among the patricians. I question, however, whether persons thus promoted could gain, with their title, the same degree of respect which time had secured to the most ancient patrician houses. Constantine the Great, we may add, introduced a new kind of patriciate, by giving the title of patrician to all who had held curule offices, and admitting them to his privy council⁷.

1) Cf. Tac. Ann. 3, 48. 2) Cf. Tac. Ann. 11, 24. 3) See Nieupoort, 1, 4, 2. 4) See Plut. Quæst. Rom. 5) See Tac. Ann. 11, 25. 6) Ann. 11, 24, and 25. Cf. Jul. Capit. Marc. Anton. § 1.; Lamprid. Comm. 6; Æl. Spart. Did. Jul. 3. 7) Cf. Nitsch. v. 1. p. 219; Nieupoort. 6, 5, 4.

132. There was a kind of nobility distinct from the patrician, consequent on the discharge of curule offices, which entitled the persons who had held them to place statues of themselves in their halls¹: persons were called *nobiles* or *ignobiles* with respect to this right, the *jus imaginum*; and those who first gained it for their families were contemptuously termed *novi homines*². Half-length waxen models of these statues (busts, *προτομαί*) used to be carried before a corpse at a funeral (§ 486), in which ceremony some make the *jus imaginum* to have consisted; but at other times they were kept in closets, with portraits also, or merely the names of the individuals fastened to them by ribands³. Hence *stemma* and *stirps*, and the expressions *fumosæ imagines*, *homo multarum imaginum*, etc.

1) Cic. Verr. 5, 14, boasts of having obtained *togam prætextam, sellam curulem, jus imaginis ad memoriam posteritatemque pro-*

dendæ. 2) Cf. Cic. Cat. 1, 11; Sall. B. C. 27; Juven. Sat. 8, 237. 3) Cf. Plin. 35, 2; Sen. de Benef. 3, 28; Juven. Sat. 8. init.

133. The plebs stood in contradistinction to the patricians, the *populus* to the senate; whence arose the well-known expression, *senatus populusque Romanus*, though otherwise the *populus* comprised the senate¹. The plebs, considered with respect to the tribes (§ 143), was divided into *plebs urbana*, and *plebs rustica*. Originally the plebeians were, as we have said, excluded from the senate, magistracy, and priesthood. Modern writers are divided in their opinion as to whether they possessed a vote in public matters before the time of Servius Tullius, or whether he only increased, or, on the contrary, restricted their power. The liberty of the plebs, however, was first guaranteed by laws after the expulsion of the Tarquins (§ 71); and the institution of the tribunes following soon afterwards, added power to freedom. Hence arose incessant contests with the patrician order until almost an equality of rights was established. Nevertheless the condition of the plebeians, even during the best times of its freedom, is found to have been very wretched. The impoverishment of the plebs, and their consequent pecuniary obligations to the patricians, added to the severity of the laws against debtors (§ 72), were at once the chief cause of this misery, and a fruitful source of enmity against the patricians.

1) Cf. Gell. 10, 20.

134. The enormous rate of usury was another considerable cause of this extreme and general poverty; but chief of all was the gradual transfer of the entire landed property, private as well as public, into the hands of the patricians¹. One reason for the rise of this state of things, and for its progress even during the period when the plebs enjoyed its greatest power, may be found in the system of usury just alluded to, com-

bined with the custom which gave a prescriptive right to farms after two years' uninterrupted possession of them (§ 100); but the primary cause is to be found in the *jus nexûs*, which existed from the earliest times between the patricians and plebeians; on which, as well as on the ancient institutions of Rome in general, the penetration of Niebuhr has thrown so much new light². This alienation of all landed property from the plebs, gave occasion to the fierce and repeated contests concerning agrarian laws³. The first of the measures so called was proposed by the plebeian tribunes, C. Licinius and L. Sextius (A. U. C. 377). Livy tells us (VI. 35) it limited the possession of land to five hundred acres at the most. This law was first violated by Licinius himself⁴, and soon wholly eluded: after it had long lain neglected, Tiberius Gracchus revived it (A. U. C. 621), with this modification, viz., that, whilst five hundred acres was the maximum allowed to any individual, his sons might each hold two hundred and fifty, and enacting that a compensation should be made for whatever should be taken from proprietors for the purpose of reducing their possessions to this amount. It is difficult to decide⁵, from the chief testimonies of the ancients themselves on this subject, whether these laws of Licinius and Gracchus had respect to the tenure of public lands only, or of land in general, as some recent writers are inclined to think. Other agrarian laws, such as the Flaminian (A. U. C. 522), respecting the *ager Picenus*⁶ and the Flavian (A. U. C. 695), were different in kind from these two.

1) Cf. Vertot. Hist. des Révol. de la Rép. Rom. liv. 7. 2) Cf. Appian. de B. C. 1, 7; Nieb. v. 1. p. 116 and 450; v. 2. p. 350. 3) On these laws see, among other authors, Sigon. de A. J. It. 2, 2; Heyne Opusc. Acad. v. 4; Vertot. Hist. des Révol.—liv. 7-9; Nieb. v. 2. p. 349. sqq. 4) Liv. 7, 16. 5) To the passages of Livy and Appian, already referred to, add Plutarch in his *Life of Tiberius*, and *Lives of the Gracchi*, p. 827. I conceive that Livy must have known, better than any one now living, the condition, tenure, and so forth, of the *ager publicus*, and thought he should be,

and intended to be, understood by his readers. I deem, therefore, that he is speaking of land at large, and that there is consequently little reason why the passage of Appian should be emended to suit Niebuhr's notions (see Creuzer § 154). If Niebuhr's view be correct, I, for my part, do not see how the *Lex Sempronia* can have long defended the poor. For how much of the public land in Italy would have remained for them, if every rich man might have five hundred acres of it to his own personal share, and each of his sons hold two hundred and fifty acres more? 6) See Polyb. 2, 21; Cic. de Legg. 3, 9 and 20.

135. As the patrician order took its rise from the *patres* or senators created by Romulus, so the equestrian originated in the three centuries of knights appointed by the same king to act as his body-guard (§ 364), namely, the Rhamnenses¹, Tatienses or Titenses, and Luceres. He is said to have called them by the common name of *Celeres*, either from their tribune Celer, or as being employed whenever despatch was requisite². That these knights were selected from the most eminent citizens, and consequently patricians, although not known for certain, appears probable, from the circumstance of their having furnished their own horses. After each century of these *Celeres* had been increased to the number of three hundred³, Tarquinius Priscus added as many more, chosen, it is believed, from the plebs, still, however, retaining the original names of the centuries⁴. From that time there were one thousand eight hundred knights, and the Rhamnenses, Tatienses, and Luceres were divided into *primi* and *secundi*. When Servius Tullius altered the constitution of the army and public assemblies, he added twelve new centuries to these six⁵, ordering that they should all vote with the first *classis*, and assigning them horses at the public expense, whence arose the expression "equo publico merere⁶." We also find that after the expulsion of the kings the cavalry were selected from the descendants of these original knights, as also were the cohorts of cavalry attached to the legions, although the military service had then been placed on quite a different footing⁷.

1) *Ramnenses* (rh.) were also called *Rhamnes*, as in Prop. 4, 1, 31: "Hinc *Titians Ramnesque viri, Luceresque coloni.*" Cf. Hor. A. P. 341: "*Celsi prætereunt austera poemata Ramnes;*" where *Ramnes* stands for *Equites* in general. 2) See Fest. in *Celeres*, Plut. in Rom.; Ovid. *Fast.* 4, 837. 3) Or two hundred? Cf. Cic. *de Rep.* 2, 20. 4) See Liv. 1, 36. 5) Niebuhr, vol. 1. p. 264, suspects that Livy was wrong in asserting the addition of twelve centuries to the six, each of three hundred men at arms, existing at the death of *Tarquinius Priscus*. We may be allowed to doubt this. If Livy be right, he will be a good authority also for such as conceive that there existed from the first two ranks of knights; in one of which they find the origin of the equestrian order of aftertimes. Cf. Cic. *de Republ.* 2, 20 and 22. 6) See Liv. 1, 43; cf. 5, 7, and 10, 16. 7) Cf. Cic. *de Rep.* 2, 20; Polyb. 6, 18.

136. Thus, from the very commencement of the Roman state, we have a class or order of citizens acting as cavalry; and this class was progressively augmented, as the city increased in numbers and extent, by the incorporation, if not of the numerous descendants of the original knights, certainly by the occasional addition of new families: it was also composed of both¹ patricians and plebeians, a fixed amount of property being required as a qualification, which, I am inclined to believe, was the reason of its voting with the centuries of the first class (§ 144). This class, however, although eminent for its wealth, and by the honour of knighthood, which continued hereditary in some families for centuries², does not appear to have enjoyed any distinctive rights whereby it could form a middle estate between the senate and people; nor does it appear to have been distinguished from the plebs in any other way than that it acted in war as cavalry, not infantry³. But the case became very different after it had obtained the well-known privileges of the equestrian order, which was not until their name had become merely hereditary instead of indicative of their actual duty; that is to say, when the custom, by which the legionary cavalry was composed solely of them, had been repealed or had fallen into disuse. Although many are found even after

that time to have served on horse at the public expense, I believe it cannot be shown that such service was any longer compulsory⁴.

1) Cf. Creuz. § 88. 2) Cf. Nep. in Att. c. 1. 3) I have here attempted to hold a middle course between the statements of the ancients, which are sadly confused on this point, and the over-subtle distinctions of critics of our day. My account is general, and, as such, will, I trust, be found tolerably correct. The whole question concerning the Roman knights is, however, to this day, involved in obscurity. Niebuhr is among the latest writers who have adopted the new views on the subject. Cf. Creuzer. § 87. sqq. 4) Cf. Beauf. v. 1. p. 148 and 153.

137. The equestrian order, it is to be observed, was indebted for its privileges to its good fortune, and to its importance to those who, in order to defend the rights of the people against the encroachments of the senate, endeavoured to make it serve as a check upon the latter. With this view, it was natural for the tribunes of the people especially, to obtain of the people certain advantages and honours for the equestrian order, that the latter, being closely knit together in defence thereof, might prove the sturdier opponents of the senate, and champions of the popular interest. It was with no other view than this that C. Gracchus, A. U. C. 632, transferred the judicial power to the equestrian order¹: Sylla, indeed, restored it to the senate, but it was soon after shared between the two (§ 269). At the same time the knights began to form companies for farming the public revenues (§ 393), and were, in consequence, called *publicani* and *publicanorum ordo*; in which capacity they were looked upon with great respect². I do not, however, think that the knights were allowed to farm the revenues to the exclusion of all others, and it is certain that they did not all engage in such speculations³. That very many of them however did so is not to be wondered at, considering that they were mostly men of wealth, and at liberty to turn that wealth to

account in the way of business; whereas it was not only considered disgraceful for senators, but these were positively forbidden by law (§ 383) to engage in any lucrative pursuit. The insignia of honour peculiar to the knights, were a charger, furnished at the public expense⁴, the *angustus clavus*⁵, a golden ring, (whence the expression *annulo aureo donare*,⁶) and, what afterwards became their more peculiar distinction, a certain place in the theatre⁷, assigned to them by the *Lex Roscia*, A.U.C. 687. The expression *in quatuordecim (sc. sedilium ordinibus) sedere*, arose from this privilege⁸, which was afterwards allowed them at all public spectacles, as in the games of the circus⁹. It is uncertain when the golden ring and the *angustus clavus* were bestowed on the order. The allowance of a charger was originally made in consideration of their military services. Some are of opinion that even after these had ceased to be required, the charger continued to be granted them by the censor, agreeably to the ancient practice.

1) Cf. Beauf. p. 148; Plin. 33, 1: "Quod antea militares equi nomen dederant, hoc nunc pecuniæ iudices tribuunt;"—a very obscure expression. Sen. de Benef. 3, 7: "Judex ex turba selectorum, quem census in album et equestris hereditas misit." 2) Cic. ad Div. 13, 65: "Ex sociorum gratia, hominum amplissimorum, maximum fructum capies." Idem pro Planc., 9: "Flos enim Equitum Romanorum, ornamentum civitatis, firmamentum reipublicæ publicanorum ordine continetur." Cf. Cic. p. Rab. P. 1 and 2. 3) Cf. Cic. l. c. 4) Cf. Ovid. Trist. 4, 1, 71, and 2, 89 and 541; See Beauf. p. 153. sq. 5) Cf. Ovid. Trist. 4, 10, 35. 6) See Suet. Cæs. 33 and 39; Tac. Hist. 1, 13; Hor. Sat. 2, 7, 63; Juven. 11, 42. 7) See Liv. Epit. 1. 99. Cf. Hor. Ep. 1, 1, 62; Juven. 3, 159. Cf. Vell. 2, 32. 8) Suet. Cæs. 39, says of Laberius, a knight, "—Sessum in quatuordecim e scena per orchestram transiit." Plin. 33, 2: "Jus—in quatuordecim ordinibus sedendi." 9) Cf. Tac. Ann. 15, 32.

138. Thus, even in the time of the Gracchi, we find the equestrian order differing from what it originally had been, in that it was no longer bound to military service, enjoyed many advantages and honours, and

formed, as Pliny says, a third estate in the Republic, next in dignity to the senate, and, in the opinion of antiquarians, a seminary for it¹. Hence a degree of splendour was attached to the very idea of a knight, and *splendidus* became one of the titles of the order; besides which the knights had various distinctions among themselves. And this was very naturally so; for as the members of their order differed one from another in antiquity of descent and illustrious birth, even when the order was purely military, much greater were the differences after the change we have mentioned took place. Many, for instance, having gained admission to it only on the score of wealth, were not unreasonably held in a certain degree of contempt as upstarts by others in whose families the dignity was hereditary². The horsemen who served in the legions were totally distinct from either of these kinds of knights, and were in no way connected even with the new species of knights we have mentioned³.

1) Cf. Beauf. p. 148 and 150; Plin. 33, 2: "Judicium autem adpellatione separari eum ordinem primi omnium instituere Gracchi, discordi popularitate in contumeliam senatus; mox, ea debellata, auctoritas nominis, vario seditionum eventu, circa publicanos substitit, et aliquamdiu tertix vires publicani fuere. M. Cicero demum stabilivit equestre nomen in consulatu suo, ei senatum concilians, ex eo se ordine profectum celebrans (cf. Cic. ad Att. 1, 17.), ejusque vires peculiari popularitate quærens. Ab illo tempore plane hoc tertium corpus in republica factum est, cœpitque adjici senatui populoque Romano et equester ordo, qua de causa et nunc post populum scribitur, qui novissime cœptus est adjici." For other names of the knights, see § 364. 2) Cf. Ovid. Trist. 4, 10, 7; Am. 3, 8, 8, 3, 15, 5; Nep. Att. c. 1. 3) Cf. Beauf. p. 150.

139. We see then that, as in the case of the patrician, so in that of the equestrian order, some belonged to it by descent, others merely by admission; but a certain amount of property was indispensable in both cases. What the amount originally may have been is uncertain; it is natural, however, to conceive that it must have exceeded that of the first class (§ 144), or, at all

events, not have been less than it¹. Under the new system, it is known to have been four hundred sesteria²; which amount of property it was requisite, in the time of Tiberius, that not only the individual himself should possess, but that his father and grandfather before him should have owned³. It was not, however, the mere fact of possessing this property, nor of having other distinctions considered essential to a knight, that conferred the dignity; for none might be elected but such as boasted of all together. The selection of the knights, which at first was claimed by the kings, was afterwards vested in the censors, who examined into the qualifications of the knights as well as of the other citizens, and held a yearly review and lustration of the whole order. The ceremony of this review, which was continued after the order had been changed in the way described, was called *transvectio*⁴. On the ides of May, all the knights wearing garlands of olive, arrayed in the *trabea palmata*, and whatever military decorations they might have won, rode from the temple of Honour to the Capitol⁵: on their reaching which, it was the custom, every fifth year, for each knight, leading his horse, to stand before the censor as he sat in his curule chair (§ 185). If he was satisfied with the person, he bade him pass on⁶ (*traduc equum*); those whom he considered to be disreputable characters or knew to have impaired their estate below the requisite amount, he cashiered, commanding them to sell their horses⁷. A minor mark of censure called *impolitice nota* was inflicted on such as appeared with chargers in ill condition⁸. The knight whose name stood first on the censor's roll of the order was styled *Princeps Juventutis*: which title is found on coins, and, under the Emperors, was appropriated to the Cæsars, or heirs apparent to the throne. Some have asserted, indeed, that the title was first introduced by Augustus⁹. In the selection of knights, regard was

had to age and birth as well as to property. Augustus ordered that the requisite age should be eighteen years; what it was under the Republic is uncertain. With respect to birth, we have already said that both patricians and plebeians were admissible; under the Cæsars, even freedmen sometimes received the honour¹⁰.

1) Cf. Cic. de Rep. 2, 22. 2) See Plin. 33, 2; Juven. 1, 106; Hor. A. P. 382; Sen. de Benef. 3, 7. 3) Plin. l. c. 4) See Beauf. p. 152. Cf. Liv. 9 extr.; Suet. Cal. 16; Dionys. 6, 13, who traces the origin of the *transvectio* to the fight at the lake Regillum, and ascribes its institution to the Dioscuri, who, according to the legend, appeared fighting on the side of the Romans. 5) Cf. Dionys. l. c. 6) Cf. Cic. p. Cluent. 48. 7) *Vende equum*. See Gell. 4, 12; Liv. 45, 15: "Plures, quam a superioribus, et senatu emoti sunt, et equos vendere jussi." 8) Id. 4, 20. 9) Cf. Tac. Ann. 1, 3; Beauf. v. 1. p. 154. 10) Cf. Tac. Hist. 1, 13, 2, 57. See Weber on Juven. 7, 13. sqq.; Suet. Galba 14.

OF PATRONS AND CLIENTS.

140. THE division of the Roman people into Patrons and Clients, like most other of the earliest institutions of Rome, is commonly ascribed to Romulus. He, according to Dionysius¹, improving on the Thessalian and Athenian system, united the patricians and plebeians by a link of mutual kindness, calling the former Patrons, and the latter Clients, as being liegemen to the former², at the same time marking out their respective duties: the patrons were to answer for the clients (§ 271) in all cases of law³, and insure them from molestation in all matters, public and private; they were to defend them when absent, and even give them a preference over their own kinsmen⁴. Clients, on their part, were to show the greatest reverence and attachment to their patron, not sparing their means for relieving him from poverty, and for maintaining his rank.

1) Dionys. 2, 9. Cf. Cic. de Rep. 2, 9. 2) Cf. Serv. ad Æn. 6, 605; Lyd. 1, 20. 3) Cf. Hor. Ep. 1, 1, 103; Od. 3, 5, 53. 4) Gell. 5, 13.

141. This intimate connection, which, in the earliest ages of Rome was held most sacred¹, introduced, in course of time, the well-known duties of clients, by which they were bound to call their patron, *rex*², to attend his levees³, to escort him to the Forum and to the Campus Martius, and make little presents to himself, his children, or household⁴; with other similar attentions. The patron, in turn, used to give a daily dole, *sportula*, to attentive clients⁵, consisting of food, and sometimes money; occasionally he would invite them to his table (§ 464). The petty and insulting liberality displayed in the latter way, has been indignantly satirized by writers of the times⁶.

The clientship was hereditary; and it became a point of honour with the nobles to have as many clients as possible⁷. When, however, the rights of the plebs and the patricians had been equalized, this relationship became not so much a bond between the two orders as between humble individuals and their more powerful fellow citizens; nor was it any longer confined to citizens, but we find cities and entire provinces⁸ in the clientship of Roman families: the Bononienses, for instance, were clients of the Antonii⁹; the Siculi, of the Marcelli¹⁰; the Allobroges, of the Fabii¹¹; the Lacedæmonians, of the Claudii¹².

1) Lex XII Tabb.: "Patronus si clienti fraudem faxit, sacer esto." Cf. Virg. *Æn.* VI. 605. 2) Cf. Hor. Ep. 1, 7, 37: "Rexque paterque audisti coram;" and Ep. 1, 17, 43; Juven. 1, 135. 3) Mart. 4, 8: "Prima salutantes atque altera continet hora; exercet raucos tertia causidicos." Cf. Juven. 1, 126; Hor. Ep. 1, 7, 8; Epod. 2, 7; Virg. G. 2, 461. 4) Cf. Juven. 3, 186; Hor. Od. 2, 18, 17. 5) See Juven. 1, 94. sqq.; 3, 249. 6) Cf. Juven. Sat. 5; Sat. 1, 94, 3, 183; Carmen in Pis. v. 114. 7) Cf. Lyd. 1, 20. 8) See Nieup. 1, 4, 3. 9) Cf. Suet. Aug. 17. 10) Cf. Cic. Divin. § 1. 11) Cf. Juven. 8, 13; Sall. Cat. 37. 12) Suet. Tib. 6.

OF THE TRIBES AND CURIÆ.

142. That Rome (§ 46 and 135) was, in the earliest times, divided into the three tribes of the Rhamnenses, Tatienses, (Titienses or Tities,) and Luceres¹; each of these being subdivided into ten curiæ², is so unanimously asserted by the ancients, that, although we may doubt what is asserted of Romulus with respect to them, we cannot call the fact itself in question³. The origin of the most ancient of the three was naturally ascribed particularly to him. Livy has left us in uncertainty as to whether he believed the distinction of tribes to have been formed by Romulus, or not to have existed at all before the time of Servius: for, in I. 13, he mentions the *curiæ* of Romulus without mentioning tribes. In I. 43, he considers the Servian tribes to have been so called from the *tributum* they furnished⁴; and yet, in the same passage⁵, he derives the names of the centuries of knights from those of the tribes we have mentioned, and in X. 6, gives those same names as distinctive of the three ancient tribes. The truth most likely is, that each century being drawn from a distinct tribe, bore the name of that tribe, and that the institution of the tribes and centuries was simultaneous. The plan, however, of this division into tribes is obscure; and it may be asked whether they were locally distinct, each possessing a distinct quarter of the city⁶, and, again, whether the distinction applied only to genuine born citizens, or, indiscriminately, to all who bore the name of citizens; or, again, whether it did not rather depend on their residence in a particular district. That the division was, however, peculiar to the *populus*, seems most probable from the names of the tribes, and from other considerations. It is a generally received opinion⁷ that the Rhamnensian tribe, comprising the Romans, properly

so called, had its origin from Romulus; the Tatian, consisting of the Sabines, from Tattius; and the Luceres, comprising all other citizens, from a chieftain named Lucumon, or from a grove, *lucus*⁸, in which Romulus is reported to have opened an asylum⁹ for refugees, who came to settle in his dominions. Modern interpreters, however, think that their subtle conjectures are wonderfully borne out by Volumnius¹⁰, who makes those names to have been Tuscan¹¹. It is said that Romulus set over each tribe a tribune (*φύλαρχος*), and a curio over each curia¹². Livy and others assert that the names of the several curiæ were taken from those of the Sabine women forcibly seized by the Romans¹³.

1) Cf. Prop. 4, 1, 31. 2) Fest. says they were so called from *cura*; and so also, apparently, Varro, de L. L. p. 37; others prefer to derive the name from *κρῖα*. 3) See Dionys. 2, 7. 4) Cf. Ascon. ad Cic. Verr. 1, 5. 5) "Sex item alias centurias, tribus a Romulo institutis, sub iisdem, quibus inaugurate erant, nominibus fecit." 6) Cf. Onuphr. Panv. Thes. Græv. v. 3. p. 347. 7) Cf. Cic. de Rep. 2, 8. 8) See Onuphr. l. c., Liv. 1, 13: "Lucerum nominis et originis causa incerta est." 9) Liv. 1, 8. 10) Quoted by Varro de L. L. 4, 9. 11) See Niebuhr, v. 1. p. 225. This writer has persuaded himself that originally only one tribe, consisting of patricians, who were at the same time priests, was represented in the senate by a hundred of its members, and he argues that the name Luceres, shows that these were priests: that they should be so called ["Luceres, quasi *luger* (*luchen*, etc.,)" to look into futurity], he considers probable, from the circumstance that the patricians claimed as peculiar to themselves the right of prying into the future by consulting the auspices (see § 80 and cf. Nieb. p. 88). Why may we not, with as good reason, say the name meant liars, (*lügen*, to lie), as being men who deceived the plebs by this means,—a sense consistent enough with the practice of the diviners? Niebuhr, p. 227, conjectures, with yet greater boldness, that the *Titius* were so called quasi *tritius*, as being the third order or cast in the state; the letter *r*, he says, was, perhaps, elided by the Etruscans in the number *ter*, as well as in other known instances. 12) Dionys. 2, 7. 13) Liv. 1, 13. Cf. Cic. de Republ. 2, 8.

143. Servius Tullius, either preserving the ancient names of the tribes, or, as it would appear from Livy

(§ 142), giving them new ones, divided¹ the city into four regions, and the *ager Romanus*, as is generally thought, into sixteen (though some are now inclined to think the division was into twenty-six²), called the rustic tribes. Whether each of the city regions belonged originally to a distinct order or clan, is questioned by some³; it is, at all events, certain, that afterwards the inhabitants dwelt promiscuously in them. These regions of the city were named from local peculiarities (§ 46); the rustic⁴ were, most of them, named after the houses (§ 492), *gentes*, settled in them. The city districts, which were at the first inhabited by the more noble citizens, becoming crowded in course of time with the rabble of the forum⁵ and freedmen⁶, who were only at a late period (A. U. C. 584) confined to the Esquiline district, were considered less respectable, most of the wealthier men enrolling themselves in the rustic tribe in which their farms happened to lie⁷. In the year U. C. 512, we find the number of the tribes increased to thirty-five⁸, new ones having been added at various periods. Whether eight, or, as some think, ten others were added to these after the social war (§ 66), but existed only for a very short time, is one of the most difficult questions in the whole range of Roman Antiquities⁹. The number of the *curiæ*, however, suffered no variation, inasmuch as they, if not from the first, at all events from a very early period, comprised only such as lived within the walls, and were in no way connected with the Servian division of the tribes. In the rustic tribes, subdivisions are mentioned called *pagi* (whence *paganî*), which had each its own magistrate, an asylum, a tutelary deity, and festivals in its honour called *paganalia*¹⁰. Hence the term *pagan* came to be applied to idolaters. The *paganî* are sometimes spoken of in contradistinction to soldiers¹¹.

1) See Dionys. 4, 14.

2) Cf. Nieb. v. 1. p. 255; Beauf. In-

certit. p. 2, c. 6; Dionys. 4, 15. 3) Cf. Nieb. p. 237. 4) Beaufort places the following rustic tribes in the ager Romanus: Æmilia, Claudia, Crustumina, Cornelia, Fabia, Galeria, Horatia, Lemonia, Menenia, Papiria, Pollia, Papinia, Vejentina, Romilia, Sergia, Veturia, Voltinia; and the following out of the ager Romanus: Arniensis, Falerina, Mæcia, Ufentina, Poblilia, Pomptina, Sabatina, Scaptia, Stellatina, Tromentina, Aniensis, Quirina, Terentina, Velina;” the locality of them he considers uncertain. Respecting each tribe, separately, consult Onuphr. Panv. Civit. Rom.; Thes. Græv. vol. 1. p. 352. sqq. A short conspectus of them may be seen in Beaufort, vol. 1. p. 168. sqq., where he has given two tables of the city tribes, and two of the rustic; one of the latter exhibiting the tribes in the ager Romanus, and the other those which were out of it. 5) See Liv. 9, 46. 6) Id. Epit. 1. 20. 7) Cf. Plin. 18, 3. 8) This has been inferred from Liv. Epit. 1. 19, where it is stated that the Velina and Quirina were added to the existing tribes. Cf. Ascon. ad Cic. Verr. 1, 5; Cic. Agrar. 2, 7; Phil. 6, 5. and see Schulze Volksversamml. der Roemer, p. 40. sqq. 9) Accordingly Creuzer, § 70, has thought it doubtful whether any such addition was ever made. Those who maintain that it was, naturally refer to the names of tribes mentioned by the ancients, but which either cannot be referred at all, or on no sure grounds, to the original thirty-five. See the discussion on this subject in Onuphr. Panv. de Civ. Rom. c. 51. (Thes. Græv. v. 1. p. 377 sqq. Cf. Sigon. de Ant. Jure Italiæ, 3, 1. (ib. v. 2. p. 491. sqq.) 10) Cf. Dionys. 4, 15. 11) Cf. Juven. Sat. 16, 32; Suet. Galba, 19; Tac. Hist. 1, 53.

CLASSES AND CENTURIES.

144. Servius Tullius, the author of the division we have just been considering (§ 142), made another classification of the Roman citizens according to their census, i. e. property (§ 75), whereby each individual having stated on oath the amount of his property, six¹ Classes² were formed of the whole people, these classes being subdivided into centuries in the following manner³:

The census of the first class being fixed at one hundred thousand asses, *centum millia aris*⁴ or *assium* (§ 387), contained eighty centuries, viz., forty of seniors, and as many of juniors; to which were added twenty-two centuries of knights, and, according to Livy, two of artizans, *fabri*⁵, which Dionysius Halic. however reckons under the second class.

The census of the second was seventy-five thousand asses; its centuries were twenty in number, ten of seniors and ten of juniors.

The census of the third was fifty thousand asses; its centuries the same as those of the second.

The census of the fourth was twenty-five thousand asses; its centuries the same as those of the second and third⁶.

The census of the fifth was eleven thousand asses; it contained thirty centuries, fifteen of seniors, and as many of juniors. To these Livy added the *accensi*⁸, and the musicians whom Dionysius asserts to have belonged to the fourth⁹.

The sixth class comprised all whose property fell short of that of the fifth, and it formed only one century. This century was composed of those called *proletarii*¹⁰, as being men who merely furnished offspring to the state, and of the *capite censi*, so called as being merely polled as citizens, having no property, or from paying merely the personal tax(?). Both these were excluded from military rights, and were exempt, either both, or only the latter, from payment of taxes and contributions¹¹. No distinctive appellation is known to have belonged to the rest of the citizens composing this sixth class¹².

1) Some writers do not reckon a sixth class (cf. Liv. 3, 30); and Gellius, 7, 13, asserts that only the citizens of the first were called *classici*. Hence the expression *classic authors*, i. e. first rate (cf. Gell. 19, 8). 2) Dionys. Halic. l. c. asserts the etymology of the word to be *κλήσις* or *κλάσις*. Cf. *calata* and *nomenclator*. 3) See Dionys. 4, 15; Liv. 1, 43. 4) Dionysius (4, 16) states that the census of the first class was not less than one hundred minæ or ten thousand drachmæ, which are equivalent to as many denarii, i. e. one hundred thousand asses. Thus Livy, 1, 43, and Dionysius are agreed in their numbers; but in order that their calculation may also agree in value, either the mina must have been considered by Dionysius equivalent to one thousand asses, *librales*, such as were current in the time of Servius, or Livy must speak of the asses *semunciales* (§ 387), such as were current in his time. But it is not clear how the former can have been meant by

Dionysius ; and, on the other hand, one hundred thousand asses *se-munciales* were equivalent to $4166\frac{2}{3}$ asses *librales*,—a number which no one will believe to have been fixed on by Servius. Hence it follows that either Livy spoke of asses *librales*, or that he did not specify the same sum as Dionysius. The computation, however, of money by the comparison of a silver with a copper currency, is a difficult problem, the solution of which has been variously attempted. Niebuhr deserves in particular to be consulted on this subject (vol. 1. p. 268. sqq.). 5) Cf. Cic. de Rep. 2, 22. 6) Livy makes no mention of seniors and juniors in the fourth and fifth classes, but they are found in Dionysius. 7) Dionysius says the census of this class was exactly half that of the preceding. 8) Cf. Liv. 8, 8 and 10. 9) Livy calls them *cornicines* and *tibicines* (*tubicines* ?); Dionysius *σαλπιστάς*, and *τυμπανιστάς*, or *βυκανιστάς*. Cf. Cic. de Rep. 2, 22. 10) Cf. Gell. 16, 10; Cic. de Rep. 2, 22. 11) Cf. Gell. 16, 10; Dionys. 4, 18; Niebuhr, vol. 1. p. 267 and 280. 12) Niebuhr, observing this, was induced to think that all were called *proletarii* who were not *capite censi*. This, however, is inconsistent, as he himself saw, with the statement of Gellius, who says that the *capite censi* were those whose property did not exceed three hundred and seventy-five (or three hundred and eighty) asses, and the *proletarii*, those who possessed above that amount but less than one thousand five hundred. Cicero also is against him (de Rep. 2, 22), asserting all to have been *proletarii*, who either had not more than one thousand five hundred asses, or who were citizens only as being persons, (*aut omnino nihil in suum censum præter caput attulissent*;) and that they received their name from Servius Tullius, as being those of whom no contribution to the state was to be expected but that of their offspring (*ut ex iis quasi proles, id est quasi progenies civitatis expectari videretur*). That these *proletarii* were, at all events originally, exempt from tribute, whilst the wealthier members of the same class were not, appears evident from the distinction of the citizens with respect to the payment of tribute into *assidui* (i. e. *asses dantes*), or *locupletes*, and into *proletarii* opposed to them, as furnishing offspring, *prolem dantes*, and not money: this distinction has been confirmed by a new authority from Cicero. (Cf. Cic. l. c. and Gell. 16, 10; see also infr. § 261.) Here, then, we see a reason why the *proletarii* should have a distinctive name, but none why the richer portion of the class to which they belonged, coming under the general title of *assidui*, should have another. I am inclined, however, to think that the *capite censi* were originally the same with the *proletarii*, who, as they furnished nothing to the state, were supposed to have nothing, and so might reasonably be said to be citizens only by poll, *capite censi*. If I am right herein, we may infer, with some show of reason, from Gellius, that afterwards those who possessed from three hundred and seventy-five to one thousand five hundred asses, being rated by that property, paid some small contribution to the state, still retaining, however, the name of *proletarii*, that of *capite censi* becoming thenceforth peculiar to the still poorer portion of their class.

145. A contribution to the state was exacted from the citizens in proportion to the amount of property at which they were rated; it consisted in different sums which Servius Tullius ordered to be paid at the *festa paganalia* by every man, woman, of full age, and by all youths who had attained to puberty¹. The main object, however, which this wise monarch had in view when he devised this classification of his people, was to divide the popular power between the patricians and the plebeians, by introducing thus far an equality of rights, so, however, as to insure the preponderance to the wealthier portion of his subjects, devolving on them also the care of defending the state: the former he attained by mingling, it would seem, both orders in the classes; and the latter by imposing contributions on each class in proportion to its means, assigning also to each a fixed post² in the line of battle (then called *phalanx*, § 371), requiring them to arm themselves in a certain way, and fixing the number of votes each should have in the comitia. The distinction of juniors and seniors which existed down to the latest times in the tribes, (§ 163), had a military object. The juniors, all between the ages of seventeen and forty-seven, served abroad; the seniors, all above the age of forty-seven, stayed at home for the defence of the city³.

Servius, after holding the first census, purified, *lustravit* (§ 332), the people⁴ (in the Campus Martius?) by sacrificing a sow, a sheep, and a bull. Hence the sacrifice was called *suovetaurilia*⁵. This, passing into custom, the name *lustrum* was given to the sacrifice itself, to the census, and to the space of five years, which was the regular time for repeating the whole ceremony. Any period of years whatever was also sometimes called a *lustrum*⁶. The duty of performing the lustrum, *lustrum condendi*, or holding the census,

census agendi, renovandi, was transferred, in course of time, from the kings to the consuls, and finally to special magistrates, called censors (§ 197). Part of the ceremony consisted in prayers addressed to the gods by the censors who celebrated the lustrum, beseeching them to prosper and increase the state and fortunes of the Roman people. A shorter formulary is said to have been substituted by Scipio Africanus the younger, and to have been observed even after his time, in which he implored the gods to preserve the fortune and state of Rome for ever intact, seeing that it appeared to him already great enough⁷.

1) Dionys. 4, 15. 2) Cf. Dionys. 4, 16. sqq.; Liv. 8, 8 (§ 371.); Nieb. v. 1. p. 278. 3) See Dionys. 4, 16. 4) See Dionys. 4, 22. 5) Some prefer *solitaurilia*; cf. Hein. App. 54. 6) See Ovid. de P. 4, 6, 5; Fast. 3, 163; Mart. 4, 1, 7; Hor. C. Sæc. 67. 7) Cf. Val. Max. 4, 1, 10; Brisson. de Formulæ, lib. 1. p. 97.

ON THE GOVERNING POWER AND THE COMITIA.

146. Having seen how the citizens were divided into orders and classes, it remains for us to treat of the governing power, the magistrates, the colonies, and the administration of government in the provinces.

As long as the Republic continued free, the functions of government were discharged by the senate and people conjointly, although, in the course of time, many modifications were introduced. After the expulsion of the kings, the chief authority was transferred to the consuls presiding in the senate, which was, at first, composed solely of patricians, though the plebeians were afterwards admitted. Before the time of Servius Tullius, the people (at all events the plebs) possessed scarcely any influence (§ 133): the power

which was first bestowed on them by the institution of the *comitia centuriata*, or, at all events, was exceedingly augmented by that institution, went on increasing as freedom flourished, until an equality of rights between the two orders brought the government nearly to a democracy (§ 172). Eventually, civil wars raged under the leaders of factions in the state, and the Republic becoming by degrees inured to the sway of a few, finally submitted to the government of an Emperor¹. From this conflict for power waged between the senate and the plebs, arose the distinction of *optimates* and *populares*.

1) Cf. Tac. Ann. 1, 1.

147. The three kinds of *comitia* may be considered as corresponding in a certain degree to the degrees of power possessed by the people at three different periods: The *C. curiata*, which were the only kind known till the time of Servius Tullius, belong most properly to the times of monarchy; the *centuriata* which were next introduced, still excluded the commonalty from all participation in power, to which access was afterwards given them by the *Lex Valeria Horatia* (§ 170). The *comitia*¹ meant an assembly of people holden for the purpose of voting on matters of public interest. This was the particular in which they differed from all other assemblies, which accordingly never bore the name *comitia*, but were called *concilia*, *conciones*, or *consilia*, although these terms were also used of the *comitia*². The singular form of the word (*comitium*), properly denotes the part of the Forum Romanum in which the *comitia* were held³. Youths, and old men above the age of sixty years, were excluded from them on the ground of incapacity⁴; as also women⁵, municipals who had no vote (§ 115), and all who had been degraded⁶

to the rank of *ærarîi* (see § 198). Attendance was not compulsory on any⁷.

1) From *comire*, i. e. *coire*. Hence the terms *comitiare*, i. e. to offer sacrifice in the comitium, (see Varr., l. 5, p. 50, *quando rex comitiavit, fas*, Scal. ad Fest. *in quando.*), and *comitiis creare*; whence *comitiatus pro comitiis*, as *maximus comitiatus*, and *comitiati tribuni* (§ 366). 2) See Schulz. *Volksvers.* p. 143. 3) Cf. Liv. 1, 36, 22, 57, 24, 20; Suet. Dom. 8. 4) Varro *fragm. de Vita Pop. Rom.*: “Cum habebant sexaginta annos, tum denique erant a publicis negotiis liberi atque otiosi. Ideoque in proverbium quidam putant venisse, ut diceretur, sexagenarios de ponte dejici oportere, id est, quod suffragium non ferant, quod per pontem ferebatur. Hence senes depontani.” Cf. Fest. *in depontani* and *sexagenarios*; Cic. *pro Rosc. Am.* 35; Ovid. *Fast.* 5, 621–33. 5) Gell. 5, 19,—“cum fœminis nulla comitorum communio est.” Cf. Liv. 34, 2. 6) Cf. Gell. 16, 13. 7) Cf. Schulz. p. 186; Cic. *pro Sext.* 51.

148. The enactment of laws, and the election of priests and magistrates¹ (whence *comitia consularia, pratoria*, etc.), were left to the votes of the people. The laws enacted in the comitia had respect either to private or public rights: votes of war or peace, and decrees concerning accused persons on whose cases the people might be called to pronounce by their votes (§ 263), were distinct from these. Of the magistrates, however, the interrex, the *præfectus urbi*, the dictator, and his master of the horse, were independent of the votes of the people. The high-priest, *pontifex maximus* (§ 318), was always chosen by them, and the rest were originally elected by the members of their respective colleges; but the *lex Domitia*² subjected many (though not all) of these likewise to the public choice. The people were summoned to the comitia by a magistrate; the magistrate who so summoned them, laid before them the matter to be considered, and presided during the assembly³. A measure when proposed was said *ferri* or *rogari*, i. e. to be brought before the people or begged of them: if passed, it was said *preferri* or *juberi*: hence the terms *legis latio* and *legis lator*⁴, *ro-*

gatio, rogator, populum rogare, and others of the same kind which are of constant occurrence.

- 1) Cf. Dionys. 2, 14, 4, 20. 2) Cf. Cic. Agr. 2, 7, ad Brut. 5.
 3) Cf. Liv. 39, 15, 3, 24 and 63. 4) Cf. Cic. ad Att. 1, 14.

149. Before the existence of the *Leges Tabellariæ* (§ 165), the votes were given *vivâ voce* at elections, and probably in all matters on which the comitia were held. It was essential to the comitia of all three kinds that they should be holden between sunrise and sunset¹, and only on certain days, *dies comitiales*². It is reasonable to suppose that the matter on which the votes were to be taken was previously propounded to the people; that the magistrates³, and even private persons⁴ were allowed to recommend or oppose it; and also that notice of holding the comitia was given at a fixed time beforehand; indeed, the regular meetings of the comitia were called *stata*, to distinguish them from the extraordinary, *calata*; which latter name was, after a time, restricted to the comitia centuriata, and not applied even to all of that kind⁵. The proceedings of every description of comitia might be stopped by the interposition, *intercessio*, of the tribunes of the people, or of any magistrate of equal authority with the magistrate who had called them; also by auspices or the *cæli spectio*, of which we shall speak presently, and by the occurrence of an epileptic fit, *morbus comitalis*, befalling any person present⁶. The primary distinction between the several kinds of comitia arose from the threefold division of the people, and will presently be considered in each case separately⁷: at present it will suffice to notice the following particulars. The people were summoned to the comitia curiata by a lictor, to the centuriata by a trumpeter, *cornicen*⁸, which Schulze, resting his opinion on a passage of Dionysius, suspects either not to have been the custom in the earliest times, or not to have

been accurately noticed by later writers⁹; the *curiata* could be held only within, the *centuriata* only without, the *tributa* both within and without the *pomœrium*. The sanction of the senate, *senatus auctoritas*, and previous taking of the auspices, were essential to the validity of the *curiata* and *centuriata*; neither was necessary for the *tributa*, which were, in all respects, less solemn than the other two: laws approved by the two former were called *populi jussa*, by the latter *plebiscita*; both kinds were graven on brass, and laid up in the treasury, *œrarium*¹⁰. In the earliest times, ratification by the senate followed the resolution of the *comitia*, but afterwards that body was compelled to sanction the proceedings beforehand¹¹.

1) Cf. Cic. Cat. 3, 12. 2) Cf. Fest. in *comitiales dies*. 3) Cf. Liv. 38, 54. 4) Cf. Schulz. p. 245. sqq. 5) Gell. 15, 27: "In libro Lælii Felicis ad Q. Mucium primo scriptum est, Labeonem scribere, calata comitia esse, quæ pro collegio pontificum habentur, aut regis aut flaminum inaugurandorum causa — iisdem comitiis, quæ calata adpellari diximus, et sacrorum detestationes et testamenta fieri solebant." 6) See Fest. in *prohibere*; Gell. 19, 2. 7) Cf. Gell. 15, 27. 8) Cf. Dionys. 2, 8; Gell. 15, 27. 9) See Schulz. p. 85; Dionys. 4, 37, 4, 76, 5, 57. 10) Cf. P. Manut. de Legg. Rom., in Thes. Græv. v. 2. p. 113. 11) Cf. Dionys. 2, 14; Liv. 1, 17, 6, 42; Cic. Brut. 14.

150. It here becomes necessary to speak a little more in detail concerning the auspices just mentioned. For the purpose of ascertaining whether the gods were favourable to the holding of the *comitia*, the magistrate who was to preside at them, with the aid of an augur, took the auspices on the day on which they were to be held. This magistrate alone had the right of taking them, *jus speculationis*, and of declaring the result, *nuntiatio*¹. Whether, however, he was bound to declare the result through the augur, or whether the latter might declare the result alone, but not take the auspices by himself², is a question keenly debated³. The formulary of declaring the auspices to be propitious was, *silentium esse vide-*

*tur*⁴, of announcing that the comitia must be deferred (*obnuntiatio*), was *alio die*⁵. Although the augur took the auspices only when authorised to do so by the magistrate, he himself decided whether they were or were not favourable. I am inclined, however, to doubt whether it was always thus left to his discretion. But it is certain that the college of augurs might decide whether the comitia had been duly held or not⁶; and sometimes though consulted long after the transaction had taken place, they nullified the comitia, or declared that magistrates had been unduly appointed, *vitio creatos*; of the latter, repeated instances occur⁷. Those whose election was thus declared faulty, were obliged, either by law or by virtue of religious scruples⁸, to abdicate their office.

1) Cf. Schulz. p. 228. 2) Cic. Phil. 2, 32: "Nos (augures) nuntiationem solam habemus, at consulēs et reliqui magistratus etiā spectationem." On which Gruchius remarks (de Comit. Rom. l. 1. c. 4, in Thes. Græv. v. 1. p. 693), "Unde intelligi potest, penes magistratus fuisse auspicia, ita ut ne auguribus quidem fas esset consulere auspicia, nisi a magistratibus jussi essent." Schulze, p. 223, adopts the same opinion. Festus (in *spectio*), a passage which as Jos. Scaliger asserts, is very corrupt, differs from Cicero: "Quia omne jus sacrorum habent, auguribus spectio duntaxat, quorum consilio rem gererent magistratus, non, ut possent impedire nuntiando, quæ cum vidissent satis, spectio sine nuntiatione data est, ut ipsi auspicio rem gererent, non ut alios impedirent nuntiando." 3) Cf. Beauf. p. 200; Schulz. p. 223. 4) Cic. de Div. 2, 34: "Silentium dicitur in auspiciis, quod omni vitio caret." Among adverse omens, Pliny mentions, 8, 57, *soricis occentus*, and ib. 28, 2, *diræ*. 5) Cf. Cic. de Legg. 2, 12; Phil. 2, 33; Schulz. p. 228. 6) Cf. Schulze, p. 223; Liv. 8, 17 and 30; Cic. de Div. 2, 35. 7) Cf. Liv. 4, 7, 8, 15; Cic. de N. D. 2, 4; de Div. 2, 35. 8) Cf. Cic. l. c., and de Legg. 3, 4.

151. The auspices for comitia were taken from birds, *avium spectio*, and from tokens furnished by the sky, *cæli spectio*, namely, thunder, lightning, murmurings of the wind, or storms; the person taking them was said *servare*, or *auspicari, de cælo*¹. The auspices from birds were taken only for comitia, at which magistrates of a high order were to be elected, and these

date from the first origin of Rome²: those from the sky served to impede, dissolve³, and even annul⁴, *vitiare*, comitia for the election of inferior magistrates⁵, including the tribunes of the people⁶, (by a law expressly passed, it is not known at what period, but Schulze⁷ is of opinion, not till late), and for passing laws; provided the magistrate who had the right of taking them gave previous notice⁸ that he should do so on the day of the comitia; and even if he reported them falsely, it was necessary to obey him⁹. Accordingly the tribunes of the people might prevent the proceedings of other magistrates, and these in turn impede theirs by means of the *spectio de cælo*, for which very reason the auspices are praised by Cicero¹⁰; and it was on this account that the laws Ælia and Fusia, the distinction between which Schulze¹¹ cannot determine, were assailed and abrogated, for a time, at least¹², about the close of the seventh century of Rome.

1) Cf. Dio Cass. 38, 15. 2) Cf. Dionys. Hal. 2, 6; Liv. 6, 42. 3) Cf. Tac. Hist. 1, 18. 4) Cf. Cic. Phil. 2, 32; de Legg. 2, 12. 5) Cf. Schulz. p. 222 and 238. 6) Cf. Cic. ad Att. 1, 16, 4, 3. 7) Schulz. p. 236. 8) Cf. Cic. ad Att. 4, 3. 9) Cf. Cic. Phil. 2, 33. 10) In Pis. 4, post Red. in Sen. 5. 11) Schulze, p. 236. 12) Cf. Cic. ad Att. 2, 19; de Har. Resp. 27, in Vat. 6. sqq., where, § 9, he says, "Leges Ælia et Fusia etiam inter Syllana arma vixerunt." See Schulz. p. 238.

152. The major and minor auspices were so called, however, not from the difference of the rites themselves, but from the difference of rank between the magistrates by whom they were respectively taken; inasmuch as auspices taken by an inferior were superseded by those taken by a superior magistrate; hence the higher magistrates were said to possess the right of the greater, the inferior of the less auspices, *majora, aut minora habere*. It resulted that a superior magistrate might call the people away from comitia held by an inferior, and thence came the clause regularly inserted in the edicts issued by superior magistrates for holding comi-

tia, *ne quis magistratus minor de cælo servasse velit*¹. Owing also to this distinction between auspices, some magistrates were said to be elected by the same², others by different (Gell. loc. cit.) auspices; which expressions can only imply either diversity in the rites, or equality in the powers of the persons elected³. These auspices, whether they had their rise in superstition (§ 321), or were invented for the purpose of deceiving the people, were at first most scrupulously observed, but in Cicero's days they had sunk to an empty form⁴. It now remains for us to consider the manner of holding the several kinds of comitia, which is far better known in the case of the centuriata than of the tributa: as regards the curiata, we are, with the exception of a few particulars, left to mere conjecture.

- 1) Gell. 13, 15. 2) Cf. Liv. 3, 55. 3) Cf. Schulz. p. 232.
4) Cf. Dionys. 2, 6; Cic. de Legg. 2, 12; de Div. 2, 3. 34. 35.

OF THE COMITIA CURIATA.

153. In the comitia curiata, to which, as has been already (§ 149) stated, the people were summoned by a lictor, the votes were taken *curiatim*, i. e. each curia furnishing one vote, the matter to be decided having first been stated to them by the presiding magistrate, *rogatio*. The vote of the majority of individuals in each curia constituted the vote of that curia; the curia which first gave its vote was called *principium*¹. The majority of the votes of the curiæ decided the question². In the comitia curiata the votes of curiæ only were reckoned, which, if not from the very first, certainly after the extension of the Roman territory, comprised only such citizens as dwelt within the walls. Whether, however, the curiæ at first consisted exclusively of the patrician houses, *gentes*, or, as seems to me more probable³, contained also the plebeian; and

whether, in this case, the latter possessed an equal or only an inferior right of suffrage, or none at all, is a very doubtful question, and the most discordant opinions have been advanced on the entire subject of the power exercised by the plebeian body in the comitia curiata⁴.

1) Schulze conjectures that it was decided by lot which curia should first vote, from the circumstance that it was considered an ill omen when the curia Fautia was the *principium*, as recorded by Livy, 9, 38: "Atque ei (Papirio, dictatori) legem curiatam de imperio ferenti triste omen diem diffidit, quod Fautia curia fuit principium, duabus insignis cladibus, captæ urbis et Caudinæ pacis; quod utroque anno ejusdem curiæ fuerat principium. Macer Licinius tertia etiam clade, quæ ad Cremeram accepta est, abominandam eam curiam facit." It is easy to conceive that the order in which every curia voted was decided by lot, as well as which should vote first. 2) Cf. Beauf. v. 1. p. 177. 3) Cf. Liv. 9, 38; Wachsm. p. 207. 4) Schulze, p. 172, following Niebuhr (cf. Wachsm. p. 186), decides that the curiæ were composed exclusively of the patricians and their clients: Eichhorn, on the contrary (Weltgesch. v. 1. p. 573), is of opinion that, in the curiæ, the humblest citizens had equal rights of suffrage with the highest; but that, in course of time, the tribes took the place of the curiæ, consequent on which change was the total exclusion of patricians from the comitia tributa; Wachsmuth, however, p. 210, asserts that the patricians, owing to some privileges, always preponderated in the curiæ; an opinion with which Heeren coincides (Handb. d. Gesch. p. 418), by making the comitia centuriata to have been the origin of the Republican form of the government. Beaufort, on the other hand, (Disc. Prelim. pp. 15, 16) maintains that the constitution, as framed by Servius Tullius, favoured the superiority of the patricians and senate: herein following Livy l. 41. sqq. Such is the discrepancy between the opinions of these learned men on this important point: many instances of the same occur to every accurate student of Roman antiquities; I have dwelt upon this in particular in order to warn young students against seizing with too great avidity on novel opinions, with whomsoever they may originate.

154. As long as the comitia curiata were the only kind known, whatever was decided by popular suffrage (§ 148), must have been decided in them; and it is accordingly easy to believe what is asserted by ancient authorities, viz., that the creation of the magistrates, then few in number¹, and of the kings themselves², the enactment³ of laws (whence *leges curiatae*) and state

trials⁴, all rested with the comitia curiata. After the establishment of the C. centuriata, and finally, as freedom advanced, of the tributa, very little appears to have been left to the curiata, though they retained the appointment of the minor magistrates until A. U. C. 282, when this also was transferred to the tributa by the law of Volero (§ 169). Hence it resulted that the curiata, which would appear, for many reasons, to have become incompetent for the administration of public matters, were retained from reverential scruples⁵, as a solemn form of sanctioning the resolutions of the other two, which is the end they are known to have answered before the extinction of the Republic; the thirty lictors, by whom the curiæ originally were summoned, meeting as substitutes for the curiæ themselves and voting in their stead. Some will, perhaps, be inclined to prefer the opinion of Schulze, who is of opinion that, after the *curiæ* had lost their power of voting, they were represented by the augurs, always three in number, at the least, assisting the magistrate by whom the comitia were held. This opinion he rests on some passages in Cicero⁶.

1) Cf. Ros. Ant. Rom. p. 417. 2) Cf. Liv. 1, 17; Dionys. 2, 57. 3) Cf. P. Manut. de Legg. Rom.; in Thes. Græv. v. 2. p. 10, and August. de Legg., ib. p. 270. 4) Cf. Liv. 1, 26. 5) Cf. Cic. Agr. 2, 12. 6) Cic. ad Att. 8, 3, 4, 18; ad Div. 2, 7. See Schulze p. 306.

155. From the time, then, of the ascendancy of the other comitia, two kinds of laws, besides the ceremony of *arrogatio* (§ 89), are supposed to have belonged to the C. curiata; first, the ratification¹ of all matters whatever decided in the other comitia (a point, however, about which moderns are much divided in opinion), and in particular of their choice of magistrates²; and, secondly, the confirming of military authority, *de imperio* (§ 184), whether conferred on magistrates³, or, as I think, on private persons also⁴. Their authority in

this respect would appear, from a passage in Cicero, to have existed down to his time, though not without exceptions⁵. We have already mentioned in the proper place that the solemn renunciation of *sacra privata*, the *detestationes*, and wills, were executed in the C. curiata. The lex curiata repealing the exile of Camillus is remarkable, on account of the time at which it occurred⁶. Of the priests, the Flamines and the Curio Maximus were appointed in the C. curiata. Whether these also elected the Rex Sacrorum is doubtful⁷: respecting the vestal virgins, see § 325. The Pontifex Maximus presided at the appointment of the priests; on all other occasions, the king, and afterwards the superior patrician magistrates. The C. curiata were always held within the pomerium, and generally in the comitium (§ 147).

1) Cf. Beauf. p. 191; Schulze p. 286. sq. 2) Perhaps till the enactment of the Lex Horatia. Cf. Schulze p. 294. 3) Concerning the lex curiata, see the keen and protracted disputes of Sigonius and Gruchius, Thes. Græv. v. 1. p. 815—1004. Cf. Ern. Clav. Cic. v. *imperium*. 4) Cf. Ros. p. 476. 5) Cic. ad Div. 1, 9: "Appius in sermonibus antea dicitabat; postea dixit etiam in senatu palam, sese, si licitum esset, legem curiatam ferre, sortitutum esse cum collega provinciam, si curiata lex non esset, se paraturum cum collega, tibi que successurum, legemque curiatam consuli ferre opus esse, necesse non esse: se, quoniam ex senatusconsulto provinciam haberet, lege Cornelia imperium habiturum, quoad in urbem introisset." Cf. Cic. Agr. 2, 10 and 12; Phil. 5, 16; Liv. 2, 56, 3, 11 and 31. 6) See Liv. 5, 46. 7) See Schulze p. 330. 8) See Ros. p. 452.

OF THE COMITIA CENTURIATA.

156. In the comitia centuriata, instituted by Servius Tullius (§ 144), the people gave their votes by centuries, *centuriatim*, i. e. each century furnished one vote; the majority of votes decided the matter in hand. The occasions for holding these comitia appear to have been the same as those for the C. curiata, excepting, of

course, such matters as we have said were reserved for the latter exclusively: on many occasions both these comitia were held, and, afterwards, either indifferently. Of magistrates, the C. centuriata are found to have created the superior ordinary, *majores ordinarii*¹, viz., the consuls, prætors, and censors; as also decemviri², and the military tribunes with consular powers³. I find that it is disputed whether they also appointed the curule ædiles, quæstors, and extraordinary proconsuls (see § 245). Schulze⁴ maintains that these comitia appointed the two former, though not always, but that concerning the last there was no definite law⁵. Of the priests, they appointed only the Rex Sacrorum, but some deny that they named even him⁶.

1) Cf. Gell. 13, 15. 2) Liv. 3, 33. 3) Cf. Liv. 5, 52. I was wrong in arguing, in a former edition, that the contrary appeared from 4, 54 and 56. 4) Schulze p. 317. sq. 5) Ib. p. 329. 6) Cf. Schulze p. 330; Gell. 15, 27.

157. The title of laws, *leges*, belonged properly (§ 262) to the enactments of the comitia centuriata, *leges centuriatæ*, inasmuch as, receiving the sanction of the senate, they became the decrees of the whole people; those of the plebs alone were termed *plebiscita* (§ 170), differing from the former, as in name, so also, for a long time, in the extent to which they were binding. It would appear from those which remain on record that they were mostly concerning matters of the highest importance, and among them we find the *Lex Valeria, de provocatione*¹, and, at the very decline of freedom, the law recalling Cicero from exile. I apprehend, however, that no one will be able to make out accurately what laws, after the C. curiata had fallen into disuse, might be made by the C. centuriata alone, and what by the centuriata and tributa together; whether we take the time preceding the *Lex Horatia*

and *Hortensia* (§ 170), or that subsequent to it: nor is it, after all, of great importance. It may readily be conceived that, after the plebiscita had been placed on an equal footing with the leges, and the form of the comitia centuriata had also been changed to gratify the plebs (§ 163), it was no longer of great consequence to the populace or to the senate whether or not what had till then been peculiar either to the C. centuriata or the C. tributa were transacted by both or either indifferently. The crime of treason, *perduellio*, was the only case of public trial coming under the cognizance of the C. centuriata. The term properly applied to war raised against one's country, and accordingly included attempts at sovereign power, such as those of Spurius Cassius, Manlius Capitolinus, and Catiline, or any endeavour to overthrow the established form of government: by an extension of its meaning, however, it was made to comprehend any transaction which seriously threatened the rights of freedom of citizens²: the penalty was capital: by the laws of the XII Tables the trial of such cases had been reserved to the C. centuriata. In the later times of the Republic, it became customary to allow the accused to withdraw into voluntary exile without awaiting the result of the comitia (§ 71).

1) Cf. Cic. de Rep. 2, 31; Liv. 3, 55. 2) Cf. Liv. 1, 26, 26, 3; Cic. pro Mil. 14.

158. The right of voting in the C. centuriata belonged to all who possessed full rights of citizenship; that is to say, to all who were enrolled in the tribes, classes, and centuries, in whatever part of Italy they might reside¹. Some, however, believe that the patricians were at first excluded from the centuries, and some, as Niebuhr, followed herein by Schulze², exclude them altogether. These comitia were holden by the

superior magistrates, but not by every such magistrate concerning every subject indifferently. The consuls were the regular presidents, drawing lots or agreeing between themselves, *sorte vel comparatione*, which of them should do so³. If both consuls were prevented by military duty, one or other of them, by order of the senate, appointed a dictator to hold the comitia for the creation of the superior magistrates⁴. If it happened that there were no consuls, or that both had abdicated⁵, it was customary to take the auspices anew⁶ by an interrex⁷ as soon as one consul or both had been elected by the comitia. Prætors might not preside at comitia either for the election of consuls⁸ or prætors, that none might be concerned in the election of his equals in authority, which was allowed only to consuls and tribunes of the people⁹, nor an inferior in the appointment of a superior. We learn from Livy¹⁰ that a prætor might call on the people to elect extraordinary magistrates provided he was ordered so to do by the senate, and the consuls did not object; but Schulze¹¹ is of opinion that he might not propose laws. It is certain, however, that he presided at public trials¹², probably alone; and it was only by his authority that the tribunes carried capital cases before the C. centuriata¹³. Schulze affirms¹⁴ that originally the quæstors also presided at trials, and also that the censors convened the people by centuries for the purpose of lustration, but could not propose any matter to them for deliberation. According to the same writer, and he is no mean authority on the subject, we are to exclude also the tribunes of the people from the right of holding these comitia, although it is certain that they were concerned in matters considered to have belonged exclusively to these comitia. Touching the Rex Sacrificus, see § 155.

1) Cf. Cic. de Harusp. Resp. 6; Agrar. 2, 2; in Pis. 1; Q. Cic. de Pct. Cons. 8: "Omnes centurias multis et variis amicitiiis cura

ut confirmatas habeas;—postea totam Italiam fac ut in animo ac memoria tributim descriptam comprehensamque habeas; ne quod municipium, coloniam, præfecturam, locum denique Italiæ ne quem esse patiari, in quo non habeas firmamenti quod satis esse possit.”

2) Schulze, p. 59. 70. 309. 3) Cf. Liv. 35, 6. 4) Cf. Liv. 8, 23, 5) 6) Cf. Liv. 3, 55, 5, 31. Cf. Liv. 22, 35, 4, 7. 7) Cf. Liv. 8, 17 and 23. 8) Cf. Cic. ad Att. 9, 9. 9) Cf. Gell. 13, Schulze, p. 279. 10) Liv. 25, 7. 11) Schulze p. 328. 12) See Liv. 26, 3, 43, 16; Gell. 7, 9. 13) See Liv. 26, 3; Gell. l. c. 14) Schulze p. 329

159. The manner of holding the comitia centuriata was very remarkable. The matter to be submitted to them, under the sanction of the senate, was announced, unless any great emergency prevented such delay, on three market-days (§ 358), before the day on which they were to meet: this notice was given in an edict which also stated the day appointed. It was customary for the consuls to do this, not however necessarily in person, for, if absent on military duty or from any other cause, they might issue the edict from the place where they happened to be, or delegate the business to the prætors¹. The object of the notice clearly was to give all citizens the opportunity of attending, if they would, even from a great distance; and the parties interested availed themselves of the time to procure voters from remote municipal towns². Though the space of three weeks, *trinundinum*, twenty-seven days, was first made imperative by the *Lex Didia*, A. U. C. 655, it had long before been allowed by custom³, but had for that very reason been easily neglected even when there was no necessity for the neglect⁴. It was either the law or the custom that the intended measure, having been fixed up in a public place, should be openly read and recommended to the people by the proposer on each of the three market-days, when he requested their attendance, and used the influence of his friends to secure it. Hence the proposer of a law was called *auctor* or *suasor legis*, and was said, *suadere*

*concioni*⁵. In the case of public trials also, we find notice given of the accusation on three successive market-days (§ 275).

1) Cf. Gell. 13, 15; Macrob. Sat. 1, 16; Cic. pro Domo 17; Liv. 3, 35. 2) Cf. Q. Cic. de Pet. Cons. 8. 3) Cf. Schulz. p. 209. 4) Cf. Liv. 4, 24, 24, 7, 25, 2. 5) Cf. Liv. 38, 54, 34, 1.

160. Before the dawn of the day on which the comitia were to be held, the magistrate who was to preside, attended by an augur, took the auspices, which we have said was the exclusive privilege of superior magistrates; they were taken in the city: for an account of the rite itself, see § 320. The *spectio de cælo*, either was not necessary, or formed part of the auspices, and was implied in them¹. I am inclined to the former opinion; for I do not see how the *spectio de cælo* can have occasioned any bar to the comitia unless a magistrate, equal or superior in rank to him who was to hold them, made or announced his intention of making it, since, by the formulary which has come down to us (§ 152), inferior magistrates were prohibited from making it². The ceremony of pitching a tent for taking the auspices, *tabernaculum capere*, appears to have been peculiar to the comitia centuriata. This tent the magistrate pitched beyond the pomerium, in his capacity, I conclude, of *dux exercitûs*, or leader of the hosts of the people: whether he fixed it on the spot where he intended it to remain during the comitia, I cannot say. It was necessary for the validity of this ceremony that the auspices should have been taken just before he crossed the pomerium³.

1) Cf. Ernesti Clav. Cic. *Lex Ælia*. 2) Cf. Ant. August. de Legg. c. 12; Thes. Græv. vol. 2. p. 146. 3) Cf. Cic. de N. D. 2, 4; de Div. 1, 17; Ernesti Clav. Cic. in *tabernaculum* and *surgere*.

161. The auspices having been taken, the people were generally, if not always in early times, summoned to assemble by a trumpeter, *per cornicinem*¹, or by an

*accensus*²: at a later period this was done by the augur³. Having assembled, it would seem, in the forum, they were ordered by the magistrate to proceed to the comitia, i. e. to the spot where they were to be holden, using a fixed form, which the augur, who attended as his assistant throughout the proceeding⁴, recited before him. It was originally the custom for the people to march to the place in regular array under their several standards⁵, both for the sake of precaution, and because the division into centuries was a military⁶ one (§ 145). Afterwards, when the city was no longer liable to hostile alarms, and the constitution of the centuries had been altered, they met without arms, except a party which took post on the Janiculum⁷ after erecting a standard⁸ on its summit⁹,—a custom probably kept up from a sort of reverence for old usages. The military constitution of the *centuriæ* suggests the reason why the comitia centuriata could not be held within the city, namely, because no military command¹⁰ could be exercised in it (§ 185). Hence the Campus Martius, lying beyond the Servian walls, was, at an early period, consecrated for the purpose¹¹, being furnished with merely the necessary conveniences of an altar, inclosures, or booths, in which the votes were given, *septa*, the wooden passages into these, called *pontes*, a public villa¹², a tribunal and a tent, until Augustus adorned it with magnificent marble polling-places and porticoes.¹³ When Tiberius had altogether abolished the comitia, it was made a place for the meetings of merchants and the exhibition of games¹⁴.

1) Gell. 15, 27; Dionys. 2, 8, 4, 37. 2) Cf. Varro de L. L. 5, p. 62-3. 3) Ib. p. 63. 4) Cf. Varro de R. R. 3, 2: "Ibi (in villa publica) Appium Claudium, augurem, sedentem invenimus in subselliis, ut consuli, si quid usus poposcisset, esset præsto." 5) Cf. Gell. 15, 27. 6) Cf. Dionys. 4, 84. 7) That some took post on the Janiculum, is asserted by Dio Cass. 37, 27.

Livy and Macrobius mention the erection of a standard in the citadel; but I do not see how this term can be applied to the Janiculum. Cf. Schulz. p. 335. 8) Cf. Liv. 39, 15; Macrobi. Sat. 1, 16. 9) Cf. Gell. 15, 27. 10) Cf. Gell. 15, 27, *exercitum imperare*, and Liv. 39, 15. 11) Cf. Liv. 6, 20. 12) Varro de R. R. 3, 2. 13) Cf. Cic. ad Att. 4, 16; Dio Cass. 53, 23; Plin. H. N. 36, 5. 14) Cf. Sen. de Ira 2, 7; Suet. Cal. 18; Mart. 9, 60.

162. When the citizens had assembled in the campus, the magistrate opened the proceedings by sacrifice and prayers¹: this done, he stated to the people the matter about to be proposed to their consideration, notwithstanding the notice which had already been given of it: the other magistrates, who, as we have said, were permitted to support or oppose the measure, he now invited to do so, and also listened, if he saw fit, to the opinions of private persons². In comitia for the election of magistrates, it was customary for the president to recommend such of the candidates as he preferred³, and he might, for grave or plausible reasons, refuse to declare any one elected, when he was said, *nomen non accipere*⁴; sometimes, however, the will of the people prevailed over his refusal⁵. After the matter had been debated, the tribunes might stop further proceedings, *intercedere*⁶. This intercession of the tribunes put a stop not only to decrees of the senate, but to comitia of whatever kind (hence *moram* or *impedimenta facere, adferre*, etc.), and, in fact, a tribune might interrupt the proceedings of any magistrate, whilst he could himself be thwarted only by a colleague⁷. If neither the tribunes, nor the aspect of the heavens, *spectio*, which was attended to throughout the proceedings, occasioned any hindrance, the magistrate put the matter to the vote⁸ in a set form of words; for instance, “Si vobis videtur discedite (sc. in suam quisque centuriam,) Quirites;” or, “Velitis, jubeatis, ite in suffragium.” In early times the first of the six classes (§ 144) was first called up to give its votes, the eighteen

centuries of knights having precedence of its other centuries: so Livy I. 43. Then came, successively, the centuries of the second class, and the rest in order; but no more voted, it appears, than were requisite to decide the question⁹. Thus, if the first class was unanimous, it became unnecessary to take the votes of the others: it was very rare for the polling to proceed to the fourth, and it was hardly ever known to descend so low as the sixth, which, forming only one century, could add but one vote, and had but a nominal participation in the government.

1) Cf. Dionys. 10, 32; Liv. 39, 15. 2) Cf. Schulz. p. 245.
 3) Cf. Liv. 10, 22. 4) Cf. Liv. 39, 39; Cic. Brut. 14; Nieb. v. 2. p. 172. 5) Cf. Liv. 8, 15. 6) Cf. Liv. 27, 6. 7) Cf. Liv. 2, 44. 6, 35; Dionys. 8, 90. 8) Cf. Liv. 31, 7; Cic. pro D. 17. 9) See Liv. 1, 43; Dionys. 4, 20. A doubt may arise from Liv. 10, 13. Cf. also 24, 9. Cicero, de Rep. 2, 22, furnishes a new statement respecting the number of the votes of the first class.

163. This method of proceeding being found, as liberty advanced, to be too much in favour of the wealthier class, was so altered, (as Schulze¹ and others² conjecture, by a law of the XII Tables³), that recourse was had to lot to decide which century should first give its vote: the drawing lots for this purpose was called *sortitio prærogativa*⁴; but it would appear that the lot was, at the first introduction of this change, drawn among the centuries of the first class only, and that it was only afterwards that it was drawn among all⁵. The superstitious regard paid to the circumstance of obtaining the *prærogativa*, compensated, in a measure, for the little influence otherwise left to the lower classes, since most of the other centuries, if not all, usually voted according to the example of the first, thinking its vote, as Cicero says, to be an omen of the result of the comitia⁶. Still, however, a vast superiority of power remained with the centuries of the wealthier classes, until, in the sixth century of Rome, when the number

of the tribes had been increased to thirty-five⁷, the original division of the classes into centuries was changed: what the alteration was is, however, matter of conjecture, and the conclusions of Savigny and Schulze, who have thoroughly sifted the subject, would make one think it a hopeless question. According to Schulze, the people were called up to vote in the *comitia centuriata* by centuries, these being seventy in number, two in each of the thirty-five tribes, and each subdivided into five property classes. Savigny, on the other hand, says the votes were taken by classes, each class comprising seventy centuries, that is, two from each of the thirty-five tribes: by adding to these thirty-five centuries of knights and one composed solely of the poorest citizens, Savigny obtains a total of three hundred and thirty-six centuries. I adopt Savigny's opinion: to what extent and for what reasons, will be found in a note, which, perhaps, may be of use to any one who shall address himself to the task of removing the difficulties by which the subject is still beset⁸. The main thing to be ascertained is, what was the alteration in the mode of voting, owing to which the *comitia centuriata* came to be called, during the last two centuries of the Republic, the *comitia* of the people, and, to use Cicero's expression, of the multitude⁹. If any one be inclined to follow Savigny's view and mine, he must conclude that the difference between the *C. tributa* and the *C. centuriata*, as regards the power of the people against the senate, lay in three things, namely,—in the auspices, in the sanction of the senate, which was requisite for the *centuriata* but not for the *tributa*, and in the degree to which citizens of the lowest order participated in each: in the *centuriata*, forming but one century, they contributed but one vote; in the *tributa* they stood on the same footing with the rest of the citizens.

1) Schulze p. 311. 2) Gruchius and Sigonius are utterly at variance on this point. See Thes. Græv. v. 1. p. 847. 945. 964. 3) Cf. Liv. 5, 18. 4) Cf. Cic. Phil. 2, 33. 5) Schulze (p. 312) supposes this alteration was made when the tribes were considered as divided into centuries, especially as at first no name is given to the *centuria prærogativa* (Liv. 5, 18. 10, 22), since it was then considered as a part of the first class but not at that time of any tribe. On the other hand we find the name of the tribe given to the century (Liv. 24, 7); which passage refers to the year 537, after the completion of the thirty-five tribes. 6) Cic. ad Div. 2, 40; pro Planc. 20; Liv. 20, 7. 26, 22. 7) Cf. Liv. 1, 43. 8) Livy in many places very distinctly considers the centuries as subdivisions of the tribes (see 24, 7. 16, 6), where he names the centuries after the tribes from which they were taken. I infer from two passages principally, Liv. 43, 16; Cic. Phil. 2, 33, that the division into classes still remained, and that each consisted of a certain number of centuries, and that they proceeded in voting in the same order as before. We may also fairly infer from the same passages that the centuries called up to vote after the *prærogativa*, are said to be *primo vocatæ*, or *jure vocatæ*, Liv. 10, 22. 27, 6. Cf. 5. 18. How can we understand the expression *primo vocatæ*, unless it means those of the first class? or what was the right by which they were said to be *jure vocatæ*, but the right of the class? It is evident to any one who compares the two passages in Livy, that the *centuriæ jure vocatæ* were not the same as those *primo vocatæ*; for after all the centuries, *primo vocatæ*, had voted, it is clear that other centuries still remained who would have voted had the *comitia* not been broken off, 10, 22 (v. 80. 13): therefore all the centuries after the *prærogativa* were not termed *primo vocatæ*. But nothing forbids our inferring that all were said to be *jure vocatæ*, as they followed one another by their right according to the ancient order of the classes. Another passage favours this conclusion, 27, 6; where, according to my understanding of the passage, the meaning is, that all voted as the *centuria prærogativa* did, unless the tribunes of the people interfered. Asconius ad Verr. 1, 9, confirms this opinion; he says, "*Prærogativæ tribus sunt quæ primæ suffragium ferunt ante jure vocatas.*" Although Schulze quotes this passage, he nevertheless suspects, p. 340, that *primo vocatæ* mean the centuries of the knights, *jure vocatæ* of the infantry. So far all is clear, if I am not mistaken: since the centuries were still divided into junior and senior, the only remaining difficulty is to decide, how many centuries were there in a tribe, how many in a class, and what was the proportion the class bore to the tribe. The most important passage on the number of the centuries is, that of Livy 1, 43, which I think is quite correct, but astonishingly obscure. From which passage, if we conclude, as Schulze does, that there were two centuries, a senior and junior in every tribe, and, according to his conjecture, five classes in each century, we cannot understand how in the passage in Cicero, Phil. 2, 33, after that the *centuria prærogativa* had been reported, the first class was called up and reported: the passage is, "*Sortitio prærogativæ; quiescit; renunciatur, tacet: prima classis vocatur, renuntiatur.*" Now, since the expression *classis renuntiatur* means that the votes of the centuries in that class are reported, (Cf. Varro, R.

R. 3, 17,) the expression *prærogativa renuntiatur* can mean nothing else than that the votes of that century are reported ; and in this case it would be absurd that the votes of the class to which that century belonged should also be reported. And I cannot see at all what reason Schulze has for suggesting that by the term classes here are meant the senior and junior centuries, (p. 78). Wherefore it is evident that the classes were composed of centuries, and not the centuries of classes, from the passage in Livy 43, 16. (anno 584)—“ Cum e duodecim(?) centuriis equitum octo censorem condemnasset, multæque aliæ primæ classis —;” and thus when Cicero says *prima classis vocatur*, he means *centuriæ primæ classis vocantur*. There is no reason why we should adopt Schulze’s invention of centuries of the first and second rank, so termed not from the qualification of property, but from their ages, honours, or from some other cause : it seems much more advisable to adopt the explanation furnished by translating passages of evident authenticity and meaning, according to the usual acceptance of words, although we cannot make them correspond with some obscure and doubtful passages. Adopting this method in both the instances we have mentioned, we find, even in Cicero’s age, the distinction of classes, each consisting of a certain number of centuries, although not of the same number as in earlier times. Since, therefore, the same century was at once a part of a tribe and of a class, and since the only subdivisions of tribes that we can imagine must have consisted of the citizens registered in the tribes, it follows that in every tribe its members were divided into centuries according to their property, and thus that in every tribe there may have been one or more centuries of either of the five classes : and there are many reasons for supposing that even at that period there existed a century of the sixth class. And as, moreover, centuries were divided into senior and junior, it appears that in every tribe there was in every class one or more centuries of elder and younger citizens : it is most probable that there was but one, and thus the number of centuries in every tribe was ten. This is the opinion of the learned Savigny, who concludes, from Livy 1, 43, that the number of centuries in each class was double the number of the tribes, which then were thirty-five ; thus allotting to every class two centuries from every tribe, one of seniors, the other of juniors : and he is not staggered by the difficulty raised by some writers of supposing it credible that in the tribes of the city there should be found a sufficient number of citizens of the first class, to say nothing of the second and third classes, to compose these centuries (cf. § 143). On the other hand, Schulze deduces from the same passage of the historian that the centuries were in all seventy, and does not consider them as subdivisions of classes of citizens of different degrees of wealth, but supposes that each was divided into five classes, according to the property each member had : whence it follows that the votes of the century was composed of the votes of the five classes it contained ; and that Schulze reckons as many classes as Savigny does centuries, viz. three hundred and fifty ; except that Savigny adds to this number one century of poorer citizens and the centuries of the equites, which were at that time even called up to vote next after the *prærogativa*, and which Livy leads us to suppose were twelve in num-

ber (Liv. 43. 16), but which Savigny supposes were thirty-five; whence it follows that according to him the total number of centuries was three hundred and eighty-six. I have already said the passage in Livy on this point is extremely obscure; it is as follows: "Nec mirari oportet, hunc ordinem, qui nunc est post expletas quinque et triginta tribus, duplicato earum (sc. tribuum) numero, centuriis juniorum seniorumque, ad institutam a Servio Tullio summam non convenire". It would have been clear enough if after *earum* he had added *in classibus*; but as Livy was writing for Romans, they understood it without this, as they knew that the centuries were subdivisions of the classes. As to Schulze's concluding from the passage in Cicero that there were but two classes, I shall quote the sentence: "Ecce Dolabellæ comitorum dies, sortitio prærogativæ, quiescit; renunciatur, (sc. prærogativa), tacet; prima classis vocatur, renunciatur; deinde, ut assolet, suffragatum secunda classis vocatur." His conclusion might be correct if the text of the sentence after *assolet* could be relied on, but it is very variously read; for instance, *suffragium* instead of *suffragatum*; and it is not probable that Cicero should have introduced so otiose and rapid a sentence as *suffragatum secunda classis vocatur*, after such rapid and elliptical ones as those which precede it; I rather think they are the words of an annotator, and that Cicero said, *deinde, ut assolet, suffragia*, the word *fiunt* or *colliguntur* being understood as *in sortitio prærogativæ*. Finally, one passage in Livy supports Schulze's opinion, and rather strongly, I own; (Liv. 26, 22. Cf. Cic. in Vat. 16; in Rull. 2, 2 and 11). In this passage it is stated, that the *centuria juniorum*, being desired by the consul to reconsider their vote, *redire ad suffragia*, request that the *centuria seniorum* should be summoned; and the circumstances are such as to incline us to believe that all the younger portion wished to confer with all the elders of the tribe, rather than that one century of the juniors wished to confer with one century of the seniors of their own tribe and class. However, this could not appear absurd, nor could Livy be found fault with if he is here speaking of two centuries of a class both acquainted with the case, and intends us to understand that the two centuries formed one tribe. Scholars must decide for themselves; but let them well consider whether there is a sufficient reason for dividing centuries into five classes according to Schulze's opinion: for unless we infer from this that the vote of a century was decided by the votes of the five classes into which it was subdivided, it is difficult to say what the subdivision of the centuries means. But if every single class had the same weight, and contributed the same quota to the vote of the century to which it belonged, it follows, that the richer citizens, that is to say, the first and second class, though inferior in numbers, evidently, to the third and fourth classes, consisting of the poorer citizens, yet had equal weight with them; which we may suppose would ill suit the *comitia centuriata*, in which, according to the statements of Cicero and other ancient writers at that time, the populace were preponderant. 9) See Cic. pro Mur. 17 and 19; pro Sexto, 39.

164. There is no reason, however, for supposing that

any change took place in the order in which the classes were called to vote, since no preponderance could thereby have been given to the power of the lower orders. Accordingly, I shall take it for granted that, after the century to which the prerogative had fallen, the centuries of the first class, and of them first the centuries of knights¹, gave their votes: the other classes followed in order; the single vote of the lowest being taken after those of the fifth. Concerning the centuries which were first called upon, and the rule by which they were first called, see the note. In this way there remains no necessity for supposing that recourse was twice had to lots; once to decide the tribe, and again to decide the century of that tribe which should have the prerogative; for, on the hypothesis above advanced, the prerogative of the tribe followed, of course, on that of the century². For the ceremony of drawing the lot, consult Liv. XXIV. 7; Valer. Max. VI. 3; Cic. pro Corn. Fragm. 1. Whether the centuries of each class decided the order in which they should vote by lot, or were called up in what order the magistrate pleased, or according to a fixed rule, is not known. I find, however, that the centuries of knights had the precedence in the first class³. Let us proceed to other particulars in the manner of voting.

1) Cf. Liv. 43, 16. 2) Cf. Liv. 24, 7. 27, 6: "In priore loco Aniensis juniorum est centuria juniorum ex Aniensi tribu. Sic et in secundo Galeria juniorum non est tribus, sed centuria e tribu Galeria; quippe non tribus, sed una ejus centuria primum suffragium fert, neque tribus consulem dicere poterat, nisi omnes ejus centuriæ, in sua quæque classe, dicerent; hic autem una Galeriæ tribus centuria consulem dixerat, utque fieri solebat, jure vocatæ centuriæ eodem, quo prærogativa, inclinassent, ni tribuni se interposuissent" (see also Liv. 26, 22). 3) Cf. Liv. 43, 16.

165. Before the enactment of the *leges tabellariæ*¹, which gradually abolished the use of *vivâ voce* votes in the comitia, for whatever purpose holden, though ex-

pressions of feeling not unfrequently took place despite these enactments², it was the custom for each citizen to give his vote aloud to the *rogator*, or person who collected them in his century³; if he approved of the measure proposed, his reply was, *uti rogas*; if he disapproved, *antiquo*⁴. Afterwards it became customary to give in a tablet inscribed with the first letters of those words. In voting for the election of a magistrate, the voter pronounced the name of the person he preferred. It is a commonly-received opinion, that in trials three words were used to express the verdict, viz. *absolvo*, *condemno*, or *non liquet*: but I believe this is an erroneous notion; those who entertain it, resting on a passage of Cicero, which has nothing to do with the comitia (pro Mil. 6): for, since public trials, as we have said, were attended by the proposal of a law on the subject, there appears no reason why the mode of proceeding should have been different from that observed in the case of other laws; whilst, on the other hand, it is well known that in common public trials the same words were used as at the passing of a law. It is commonly believed that, at comitia for the election of a magistrate, as many tablets were given to each voter as there were candidates, each having the name of one of them. I prefer the opinion of Schulze (p. 265), that only one tablet was given to each voter, and returned by him, inscribed with the name of the person he favoured. The collectors of the votes, as Schulze (p. 261) has, apparently with good reason, concluded from several ancient testimonies, registered them all in a poll-book by pricks or dots: this was the custom, as well when the votes were given aloud as afterwards, and the collectors continued to be called *rogatores*⁵. The same author conjectures that the names of the several candidates were inscribed on a distinct tablet, and the several votes obtained by each marked against his name

by a dot, or by pricking a hole; hence, one would conclude, came the expression “*omne punctum ferre.*”

1) There is a remarkable passage concerning these in Cic. de Legg. 3, 16, four being there named, viz.: “*Gabinia*, de magistratibus mandandis, lata ab homine ignoto et sordido, *Cassia*, de populi judicio, a nobili homine, sed—dissentit a bonis, *Carbonis*, de jubendis legibus ac vetandis, seditiosi atque improbi civis, *Calia*, de judicio perduellionis;” the originator of which law, adds Cicero, “*doluit, quoad vixit, se, ut opprimeret Popilium, nocuisse reipublicæ.*” Concerning the use of the *leges tabellariæ*, see also Cic. pro Planc. 6; de Amic. 12. The use of tablets for votes was also introduced into the senate under the Cæsars; cf. Plin. Epp. 3, 20. 4, 25. 2) Cf. Cic. de Lege Agr. II, 2; pro Domo 43; in Pis. 1; de Legg. 3, 17. 3) Cf. Cic. de N. D. 2, 4. 4) Cf. Cic. ad Att. 1, 13 and 14; de Legg. 3, 17; Liv. 31, 6; Festus in *antiquare*. 5) Cf. Dionys. 7, 64; Cic. de N. D. 2, 4; de Divin. 2, 35; Liv. (but I am not sure that the passage is much to the purpose) 9, 46. 6) Cf. Hor. A. P. 343.

166. Each century, when called on to vote, used to pass into a place enclosed with rails, *cancelli*, and called *septa*, or *ovile*¹, entering it by a boarded² path, *pontes* (§ 147). Officers, called *diribitores*³, handed the tablet or tablets to each individual as he passed, which, as he quitted the ovile, he dropped into a box, *cista*, *cistella*, or *citella*, held by the rogator⁴. They were at liberty to stay if they pleased in the enclosure to deliberate which way they should vote, otherwise they passed through it at once. This having been done, the boxes were opened⁵ in the presence of their keepers, who were sometimes men of the first eminence⁶, and each vote being pricked down in the poll-book, the total vote of the century was found: if the numbers were equally divided, the vote was lost, except in a trial for treason, *perduellio*, when non-condemnation was taken as positive acquittal. The vote of the century having been proclaimed by a herald⁷, another century was called; and so on until all the votes, or so many as were requisite to decide the matter, being collected, the presiding magistrate declared that the law had passed, *accepta*

or *jussa*, or had been rejected, *antiquata*, or, if it was an election, declared in a stated form of words, who were the successful candidates: these were forthwith conducted to the capitol or to their homes⁸ by their friends. In trials, the accused, if acquitted, was instantly liberated; if condemned, as instantly punished⁹. The business of the comitia being ended, the people were dismissed in a fixed form of words; for instance, "Si vobis videtur, discedite, quirites¹⁰."

1) Liv. 26, 22. 2) Cf. the writer of the work, ad Herenn. 1, 12; Cic. de Legg. 3, 17; Dionys. 11, 51. 3) Cf. Cic. in Pis. 12. So called from *diribere*, i. e. *dividere*; whence also *diribere tabellas* (Cic. pro Corn. Fragm. 1. Cf. Varro de R. R. 3, 2). Among its derivatives, are *diribitio* (Cic. pro. Planc. 6), and *diribitorium*, a spot in the Campus Martius (Suet. Claud. 18; Plin. 16, 40. init.) Schulze, p. 268, observes, that *divisores* was more commonly used than *diribitores*; but there appear to have been two sorts of dividers or tellers in the comitia, unless we assume that the same persons served to distribute the tablets, and to assist the candidates who courted the voters by distributing money or other things among them. Cf. Cic. Verr. 1, 8, 3, 69; de Orat. 2, 63; de Harusp. Resp. 20; ad Att. 1, 16. 4) Cf. Liv. 26, 22; Schulze p. 268. 5) Plin. 33, 2, states, that the charge of these boxes was committed by Augustus to persons selected from the equestrian order: why they should be said to have been nine hundred in number I do not know. 6) Cf. Cic. in Pis. 5 and 15; de Lege Agr. 2, 10. 7) Cf. Varro de R. R. 3, 17; Cic. de Lege Agr. 2, 2. 8) Cf. Varro de R. R. 3, 2. 9) Cf. Liv. 6, 20. 10) Cf. Liv. 2, 56, 3, 11. Cf. Cic. Cat. 3, 12; Brisson. de Form. p. 132 and 191; Schulze p. 276.

167. We have already stated what incidents might interrupt the proceedings of comitia. The centuriata in particular were broken up if the standard on the Janiculum (§ 161) was removed¹. If the business was not finished in one day, whether by reason of nightfall or for any other cause, it might be resumed on the day following, or the people might even be called upon to reconsider their resolution of the day preceding with a view to some alteration, or even to its entire repeal². If the election of magistrates proved incomplete (in reference to which we find the phrases *non explere centurias*, *non conficere legitima suffragia*³), recourse was

had to various expedients. Supposing only one consul to have been elected, he might himself select his colleague from among the other candidates⁴: the same was at first the custom in the case of tribunes, but it was altered⁵. We have already (§ 158) suggested why prætors might not take the same course. It was peculiar to the censors that they must both be elected on the same day⁶. The *comitia centuriata*, and the others also, could be held only on certain days; hence called *dies comitiales*. Magistrates were created at various times of the year, but, with the exception of the censors, generally some months previous to the day on which they were to enter on their office: in the interval they were called *designati*, elect. From A. U. C. 601, the consuls entered on their office on the kalends of January; the day had previously been the ides of March; and in very early times it was different from either of these. The *comitia* for electing prætors took place on the same day with, or very shortly after, the appointment of the consuls.

1) Cf. Dio Cass. 37, 28. 2) Liv. 7, 17, 10, 9, 31, 6 and 7; Cic. post red. 4. 3) See Liv. 3, 64, 37, 47. 4) Cf. Liv. 37, 47. 5) Cf. Liv. 3, 64 and 65. 6) Cf. Liv. 9, 34.

THE COMITIA TRIBUTA.

168. The plan and method of conducting the *Comitia Tributa* was much more simple than that of the *Centuriata*; and some particulars respecting them having already been noticed, we shall be the more brief in treating of them in this place. In them the people gave their votes by tribes, *tributim*, i. e. each tribe (§ 142.) furnished one vote¹; the majority of such votes being decisive of the matter in hand. Their first origin appears to have been in a measure of violence, when

Coriolanus was condemned (A. U. C. 263) by the votes of the plebeians²; their legal institution³ dated from the laws of Volero, A. U. C. 282. Schulze maintains that for some time after that the plebeians alone enjoyed the right of vote⁴, and that the tribunes were forbidden to convene the patricians⁵: afterwards it is very evident that these took part in these comitia⁶, although their attendance was not compulsory, and they, in fact, seldom mingled with the plebeians, the disproportion between their numbers being so great; the circumstance of which disproportion would also seem to furnish reasons for doubting whether their exclusion was ever at any time the result of a legal compact between the orders⁷.

1) Cf. Dionys. 7, 64. 2) Cf. Dionys. 7, 59. 3) Cf. Liv. 2, 60. 4) Schulze p. 345. For he is convinced (p. 35. sq. and p. 345.) that the original constitution of the tribes, such as he himself admits it to have been, which excluded the patricians and their clients, was afterwards so altered, that all ranks and conditions were confounded in the tribes, and that thereby the patricians gained access to the comitia tributa. 5) Cf. Gell. 15, 27; Dionys. 7, 16; Liv. 2, 56. 6) Cf. Liv. 27, 21: "Actum de imperio Marcelli (a. 543.) in circo Flamini est, ingenti concursu plebis et omnium ordinum." 7) Cf. Gruchius in Thes. Græv. v. 1, p. 678; Liv. 27, 21.

169. For the occasions of calling the comitia tributa, compare the remarks in § 148 and 157; there were four of these common to them with all comitia, namely, the appointment of priests and magistrates, state trials, and the enactment of laws. The law of Volero assigned the election of the inferior magistrates to the C. tributa (§ 154). Among them were the tribunes of the people, and the plebeian ædiles; but whether all other inferior magistrates, or only some, and in the latter case which of them, were appointed by these comitia, appears impossible to be ascertained, and is a point of no great moment. We have already given (§ 154) Schulze's opinion with respect to the quæstors, curule ædiles, and proconsuls, of which three, one may prefer to reckon

the two former, as most writers have done, among the superior magistrates. That both might be appointed by either the *C. tributa* or *centuriata* may be inferred from the appropriate instances adduced by Schulze, p. 317, sqq. In order, however, to arrive at a correct conclusion respecting the proconsuls and provincial magistrates in general, those who became such in virtue of having held the offices of consul or prætor (§ 244), must be distinguished from the rest; with respect to whom, we shall not be very wrong in concluding the same as of the *quæstor* and *curule ædile*². It has been stated (§ 148) that the priests were, with some exceptions, appointed by the people; they were elected by seventeen tribes chosen by lot in *comitia*, nominally considered the *tributa*³. The instances of trial by these *comitia* which have come down to us⁴, seem to show that they took cognizance only of infringements of the rights of the plebeian body; in course of time, however, other causes came before them⁵, although they never exercised jurisdiction in capital cases.

- 1) Cf. Schulze p. 350. 2) Cf. Schulze p. 321. 3) Cf. Cic. de Lege Agr. 2, 7. 4) Cf. Liv. 3, 11 and 55. 4, 44.
5) Cf. Liv. 25, 3; Val. M. 6, 1, 7.

170. That the decrees of these *comitia*, *leges*, properly so called, should have had for their object not so much the enacting anything new as the counteracting of the decrees of the senate, is agreeable to what we know of the power first possessed by the tribunes of the people. In lapse of time, however, things were so altered that it is difficult to say what matters were not subject to the *comitia tributa*, unless it were trials for treason, and some few other things which continued to belong exclusively to the *C. curiata*. For the senate, as we learn from several passages in Livy¹, used to refer sometimes to the centuries, sometimes to the plebs, matters which it could not, or, at all events, did not,

usually claim as its own. Such matters the tribunes brought before the people only with the sanction of the senate, which, on the contrary, was not needed in cases which belonged by law to these comitia². The variety of matters belonging to the C. tributa, may be seen in the fact that we find among plebiscita laws relating to the division and possession of land, *leges agrariæ* (§ 134); concerning the method of voting, *tabellariæ* (§ 149); about corn, *frumentariæ*³; about war and peace⁴ (for these are commonly referred, after Gruchius⁵, to the C. tributa); concerning crimes⁶, military command⁷, and triumphs⁸. As regards the power of plebiscita, we have already observed that the lex Horatia, A. U. C. 306, ordered them to be binding on the whole people, which law was revived and enforced⁹ by the lex Publilia, A. U. C. 417, and the lex Hortensia, A. U. C. 468.

1) Liv. 4, 58. 6, 21. 7, 20. 8, 23. 39, 19. 2) Cf. Schulze p. 353. sq. 3) Cf. Cic. Brut. 62; Tuscul. 3, 20; pro Sext. 48. 4) See Liv. 33, 25. 5) Thes. Græv. v. 1. p. 649. 6) Cf. Liv. 7, 15. 7) Id. 8, 23. 8) Id. 26, 21. 9) See Plin. H. N. 16, 10; Gell. 15, 27.

171. At first, one of the tribunes of the people¹ presided at these comitia, being, probably, sometimes chosen for the occasion by lot from among his colleagues²; but more frequently any one of them who was pleased to call the assembly³, provided, if we will follow Schulze, that the measures he proposed to them had been previously approved by his colleagues⁴. In certain cases the plebeian ædiles might convene them⁵; but the power of the consuls in this particular would appear to depend on what has lately been remarked concerning the subjects brought before the tribes, and the sanction of the senate required or not required for their discussion⁶. It is conjectured⁷, from Livy and Cicero, that the consuls presided in the comitia for

electing augurs and high-priests, and the high-priests in those for the election of a Pontifex Maximus. Schulze, however, observes that such comitia are not strictly so reckoned as tributa, since they differed from these in the number of the tribes which voted⁸; and he is of the same opinion respecting all the comitia to which the consuls are said to have summoned the people by tribes. We have stated how these comitia might be held without the sanction of the senate: it is to be remarked also that although the auspices were not taken, the proceedings might be broken off by the *spectio de cælo*: thirdly, they were not attended by the solemnities of prayer and sacrifice. In the case of both the C. centuriata and the tributa, the notice on three previous market-days was required, deliberation on the measure was allowed, and both were subject to the interposition of the tribunes, the *tribunitia intercessio* (§ 162). Peculiar to these comitia was a regulation requiring that the matter proposed should be decided in the course of a single day⁹. With respect to the order of voting, it is recorded that the lot was twice resorted to, namely, to ascertain first the *prærogativa* or *principium*, and, next, the tribe in which the Latini (§ 125) should vote if they chose to do so¹⁰. It is natural to suppose that the other tribes also settled by lot the order in which they should vote¹¹. Concerning the polling booths, *septa*, and their entrances, *pontes*, the student should consult Cic. ad Att. I. 16; and, respecting the officers called *rogatores*, Cic. de N. D. I. 38. The vote of a tribe, like that of a century, was the result of the votes of the individuals composing it, *tribules*. Comitia tributa for the election of magistrates, like C. centuriata, for the same purpose, preceded by some months the day on which they were to enter on their office. That of the tribunes of the people commenced in the month of December, whether on the nones or not is much dis-

puted. The customary place for meetings of the *comitia tributa* was the *Comitium* in the *Forum*¹²; they were, however, sometimes held in other places, and, about the end of the Commonwealth, appear to have generally met in the *Campus Martius*, from which *Tiberius* is said to have transferred these *comitia* to the senate.¹³

- 1) Cf. Liv. 3, 54. 2) Cf. Liv. 3, 64. 3) Cf. Liv. 2, 56.
 4) Cf. Liv. 43, 16; Plut. T. Gracch. 11. 5) Cf. Liv. 3, 31.
 6) Cf. Schulze p. 359. 7) Liv. 25, 5; Cic. Ep. ad Brut. 5.
 8) Schulze p. 359. 9) Cf. Dionys. 9, 41. 10) Cf. Liv. 25, 3.
 11) Cf. Cic. de Lege Agr. 2, 9; Liv. l. c. 12) Cf. Varro de
 L. L. 4, p. 37; Liv. 22, 7; Suet. Cæs. 10. 13) Cf. Tac. Ann.
 1, 15.

172. The power of the people against the senate and the patricians, I consider to have been greater in the *comitia centuriata* than in the *curiata* (§ 146), and to have attained its greatest extent in the *comitia tributa* after the enactment of the *lex Horatia de plebiscitis*. Hence we read of the majesty of the people, which, however, continued to be controlled by the authority of the senate (§ 177), and checked by the force of superstition and custom.

OF THE SENATE.

173. The origin of the Senate¹ was coeval with that of the state itself (§ 129). The number of its members, which all agree to have been at its first institution by *Romulus*, one hundred, is asserted by some to have been doubled on the incorporation of the *Sabines* with the *Roman* people, and by others, to have, at all events, been then increased². *Livy* alone makes no mention of even an augmentation³. *Tarquinius Priscus*, being earnestly bent on extending the power of the crown at the expense of the senate and patricians⁴, added in the *comitia* a new century from the *plebs*, and doubled the

centuries of knights (§ 135). Afterwards, and certainly from the time of Brutus, the senate appears to have consisted of three hundred⁵ members, and to have so continued until the dictatorship of Sylla, who greatly increased it, though it is uncertain to what extent: Drusus had shortly before attempted the same thing, and Gracchus before him. It is inferred from a passage in Cicero⁶ that from Sylla's time the number was above four hundred. Cæsar and the triumviri disgraced it by the admission of a crowd of worthless persons⁷, thereby gaining for those so promoted the title of *orcini* (§ 59). Augustus, although he stripped it of all power, restored the semblance of its original constitution and dignity.

1) So called, like the *γερονσία* of the Greeks, because it was a council of aged men. Cf. Fest. in *senatores*. 2) Cf. Zamosc. de Sen. Rom. 1, 18; Thes. Græv. v. 1. p. 1100. 3) Liv. 1, 17. Cf. Prop. 4, 1, 14. 4) Cf. Liv. 1, 35. 5) Liv. 2, 1. 6) Cic. ad Att. 1, 13: "Homines ad XV Curioni, nullum senatusconsultum facienti, assenserunt: ex altera parte facile CCCC fuerunt. 7) See Suet. Aug. 35.

174. The election of the senators appears, from what has just been said, to have belonged at first to the kings, afterwards it rested with the consuls, burghers, or the *populus*¹, and then with the censors, either from the time of the first institution of that office, which is the opinion of Zamoscius, or, as I think more probable, not till some time later². In the election, regard was had to rank, birth, property, honour, and age. With respect to rank, in order to avoid useless discussion, we must not confound the occasional admission of some of the commons with a positive equalisation of rights between the commons and the senatorial order. Some consider that the senate was thrown open to the commons³ at the same time as the censorship, A. U. C. 335; others infer from Livy⁴, but, I apprehend, incorrectly⁵, that access to it was granted them before that time. It was natural that whatever commoners were admitted

to the senate should be selected chiefly from the knights; and hence has arisen the notion, prevalent among antiquaries, that the equestrian order was the seminary of the senate⁶. It can scarcely be necessary to remind the reader that, in the free ages of the Republic, freedmen were not admissible. I cannot believe that a property-qualification was originally required; at all events, not till after the institution of the censorship; and even in this case, I am at a loss to understand how, supposing it to have existed, there were found in the senate, even long after that institution, men remarkable for their poverty⁷. It is, however, certain that some such qualification did exist, even during the free ages, both for the equestrian and the senatorial order⁸. Suetonius asserts⁹ that it was raised by Augustus from eight hundred sestertia to one thousand two hundred. With respect to the honourable qualifications, those were chosen who had been magistrates of at least the inferior class¹⁰: it would appear that, in later times, at all events, it was by law all but indispensable that they should have been quæstors¹¹: and hence the requisite age for a senator is supposed to have been thirty, that for a quæstor (§ 184) being twenty-seven.

1) Cf. Fest. in *præteriti*. Liv. 2, 1. 4, 4; Cic. pro Sext. 65; Grun. Intro. in Ant. Rom. p. 104. 2) Cf. Zamosc. 1, 3, p. 1074; Manut. de Sen. R.; Liv. p. 1012. 3) See Liv. 4, 43 and 54. 4) Liv. 4, 15; cf. 5, 12. 5) The Lex Ovinia Tribunicia mentioned by Festus, in *præteriti senatores*, and ascribed to A. U. C. 402, is to be taken in connection with this subject. It enacted, "Ut censores ex omni ordine optimum quemque curiatim in senatum legerent." 6) Cf. Liv. 2, 1. 42, 61. 7) Cf. Plin., 4, proem.: "Posteris laxitas mundi et rerum amplitudo damno fuit, postquam senator censu legi cœptus, iudex fieri censu," etc. 8) Cf. Zamosc. 1, 10. 9) Aug. 41; cf. Dio Cass. 54, 17. 10) Cf. Liv. 5, 12, 20, 49. 11) Cf. Tac. Ann. 11, 22.

175. There is no reason, however, for supposing that every one possessing all the legal requisites was neces-

sarily to be chosen. Gellius, indeed¹, informs us that all who had borne curule offices were privileged to enter the senate, and might even vote (§ 176), but yet were not senators. Whether the quæstors enjoyed the same privilege, seems to me doubtful; and equally so is the case of the tribunes²; at all events the right was different when enjoyed during their time of office from what it became after they had discharged the same³. The censors not only elected new senators, but might remove the old if unworthy: the method of removal was, by omitting the person's name when the censor read over the roll of the senate at the lustrum. Among the reasons for removal⁴ were, a deficiency in the property-qualification, to which no disgrace was attached, *nota sine infamia*, a bad moral character, which also excluded from election, the infamy of having been cast in a state trial, sordid gains, and other such things. The person whose name stood first on the censor's roll was called *princeps senatus*, a title of dignity, not of power⁵; for which reason it was craftily chosen by Augustus with a show of modesty⁶.

1) Gell. 3, 18. 2) Cf. Zamosc. 1, 9. 3) Cf. Liv. 39, 42, 45, 15. 4) Hence are to be explained the marks or remarks, *notæ*, affixed to the names of those who were removed by the censors, and mentioned by Livy 39, 42: "Patrum memoria institutum fertur, ut censores motis senatu adscriberent notas." 5) See Liv. 27, 11. 6) Cf. Tac. Ann. 1, 1.

176. The senators, like the patricians, were divided into senators of the greater and of the lesser houses (§ 130). The title of *patres conscripti*, found in the formula by which the herald summoned the senate¹, *qui patres quive conscripti sint*, is said by some of the ancients to have distinguished those added by the first consuls; by others, to refer to the union of the Romans and Sabines². This distinction, if it ever really existed, was, in course of time, dropped, at least in addressing the senators, to whom the appellations *cives quirites* and

patres conscripti were equally styles of honour. Concerning the *senatores pedarii*, Gellius³ gives two opinions; one, which seems undeserving of notice, is, that they were so called because they might not repair to the senate in carriages; the other is, that being debarred from delivering their own opinion, they could merely assent to that of another by passing over to his side on a division⁴; such we may conclude those to have been who, as we just now stated, were privileged to enter the senate but yet were not senators, and who are referred to in the formulary for convening the senate, *senatores, quibusque in senatu sententiam dicere licet*⁵. The insignia of senators were the *latus clavus*, *tunica laticlavata*, distinguishing them from the knights who wore the *angustus clavus* (§ 137), and black shoes⁶ ornamented with a silver crescent⁷ (§ 131), whence the terms *lunata pellis* and *planta lunata*⁸. In the theatre and at all public spectacles, they, as well as the knights (cf. § 348), sat in a particular place, called the orchestra⁹.

1) See Liv. 2, 1. 2) Cf. Liv. 2, 1; Fest. in *conscripti*, Lydus de Magg. 1, 16. 3) Gell. 3, 18. 4) The verse of Laberius, "Caput sine lingua, pedaria sententia est," is understood to refer to this. 5) Gell. ib. 6) Cf. Hor. Sat. 1, 6, 27. 7) Cf. Juven. Sat. 7, 192. 8) Mart. 1, 50, 31. 2, 29, 7. 9) Cf. Suet. Cæs. 39; Aug. 44. *Orchestra* is sometimes equivalent to *senatus* (Cf. Juven. 3, 178).

177. Respecting the authority of the senate, we must bear in mind the remark made in § 146, that the power of the state was divided between the senate, the people, and the king. The king, presiding over the senate, retained in his own hands the management of religious matters, the regulation of morals, the exposition of the laws, and the supreme command in war¹: with the people, *populus*, rested the creation of magistrates, the management of state trials, and the ratification or rejection of decrees for war or peace proposed by the magistrates²: the authority of the senate in this par-

particular has been explained in speaking of the comitia. As the power of the people increased, that of the senate decreased; and, in fact, the Lex Horatia, revived by the Lex Hortensia (§ 170), appears to have left it nothing beyond the care of administering to, and executing the enactments of, the people, inasmuch as every new measure originated with the tribunes. The people never did, however, so far encroach on the senate as the law in theory allowed them to do (§ 229), and, in fact, in an empire so vast as the Roman was, many things were, of necessity, left to the discretion of the senate³.

1) Cf. Dionys. 2, 14; Creuz. § 133. 2) Cf. Polyb. 6, 14. 3) Hence it has been well remarked by Heeren (Handb. d. Gesch. p. 422), that although the people would seem to have been rendered omnipotent by the Lex Horatia, the history of Rome, like that of all free states, proves, by many instances, how rash it is to conclude that any law, because passed, obtains the full influence intended for it.

178. Hence it is that Polybius¹, when defining the duties and rights of the senate, assigns to it the control of the treasury, the punishment of public misdemeanors throughout Italy, the protection as well of individuals as of states, the sending embassies to foreign nations, and the granting audiences to such as were sent to Rome: all these things, as also military matters, and treaties, and alliances were, in his time, decided by the senate; generally without any reference to the people². Concerning the trials which came before the senate, see § 269. No wonder, then, that the senatorial dignity, having been highly esteemed in the Republic, should have been esteemed as the highest in the whole world after Rome had extended her dominion far and wide; we accordingly find that the senate was styled, *ordo amplissimus, maximus, or sanctissimus, sanctum consilium*, and so forth³. Under the Cæsars, the senate, although allowed to retain a great semblance of authority, depended, in reality, on the emperor⁴. Its empty insignia

of honour were left, and even some new ones added to compensate for its loss of power (§ 229). It continued to exist as a body, through a variety of changes, down to the days of Justinian, and expired only with the patrician order, when Rome fell a prey to the sword, the pestilence, and famine. With it, Niebuhr⁵ considers Rome to have also died, having fulfilled the period of twelve *sæcula*, or cycles of one hundred and ten years each, making one thousand three hundred and twenty years, which an ancient prophecy had fixed as the extent of its duration⁶.

1) Polyb. 6, 13. See Molitor.: *Responsio ad quæstionem* "con-scribatur historia senatus Romani," p. 102. sqq. in *Annal. Acad. Gandav.* a. 1823. 2) Cf. Cic. in *Vat.* 15: "Eripueras senatui provinciae decernendæ potestatem, imperatoris deligendi iudicium, ærarii dispensationem: quæ nunquam sibi populus Romanus adpetivit," etc. 3) Cf. Cic. *pro Dejot.* 3; *pro Domo* 28; *Horat. Od.* 4, 5, 3. 4) Cf. *Plin. Ep.* 8, 14. 5) See Niebuhr 1. p. 154. 6) Cf. *Censor. de D. N. c.* 17.

179. During the monarchy, the kings used to summon the senate by an edict, or by a herald¹, and presided at its deliberations, *senatum habebant*. In the times of the Republic, the consuls summoned it and presided: if they were absent, or otherwise prevented, recourse was had to the other superior magistrates², chiefly to the prætors: extraordinary magistrates, such as the dictator, the interrex, and the præfect of the city (§ 204), although, respecting the latter, doubts were entertained even by ancient writers³; the magister equitum would also appear not to have been wholly excluded from this privilege⁴. Of the inferior magistrates, none but the tribunes of the people possessed it, and they could exercise it even against the wish of the consuls⁵; but I am inclined to think that, for a long time, their power in this particular extended only to the making motions in the senate when convened and presided over by another, not to the convening of it themselves. The places appropriated to the delibera-

tions of the senate were the *curiæ* (§ 49), the most noted of which was the *curia Hostilia*, called, by way of distinction, the *curia*. The senate might, however, be held in any place duly consecrated by the augurs, and often sat in temples, chiefly in that dedicated to Concord⁶, which is also mentioned, with the temple of Bellona, as being one of the three *senacula* in which the senate gave audience⁷ to foreign embassies, and to generals in command who had repaired to the city (§ 375). With respect to the times of its assembling, the senate was said to be *legitimus* or *indictus*; *legitimus* when it met on certain fixed days, namely, on the kalends, nones, and ides, of every month, before the time of Augustus, and, from his time, on the kalends and ides only⁸. The *senatus indictus* might meet on any day whatever except the *dies comitiales*, either all, or, according to Nieuport and Zamoscus, those only on which the *comitia* actually took place⁹. It is inferred from Cicero that the whole month of February was devoted exclusively to giving audience to ambassadors¹⁰.

1) Cf. Tac. Ann. 2, 28; Cic. Phil. 1, 5; Liv. 3, 38. 2) Cf. Gell. 14, 7. 3) See Gell. 14, 7 and 8. 4) Cf. Zamosc. 2, 3. 5) Cf. Cic. ad Q. Fratr. 2, 1; de Orat. 3, 1. 6) Cf. Gell. 14, 7; Suet. Aug. 35; Sall. B. C. 47. 7) Cf. Fest. in *senacula*, in Liv. 31, 47. 33, 22 and 24. 8) Suet. Aug. 35. 9) See Zamosc. 2, 7; Cic. ad Q. Fratr. 2, 13. 10) Cic. ad Div. 1, 4; cf. Verr. 2, 31; Zamosc. 2, 7.

180. It was requisite that the senate, like the *comitia* (§ 149), should be holden between sunrise and sunset¹, nor might any new measure be proposed after the tenth hour². Its deliberations were preceded by observance of the auspices, and by a sacrifice in front of the *curia* in which it met³. Cic. ad Quint. Fratr. II. 1. furnishes a valuable account of the mode in which its deliberations were conducted⁴. The senators being assembled, and the subject for debate having been laid

before them⁵ by the magistrate presiding, or, sometimes, I believe, by any one else, the members gave their opinions; in doing which it was anciently the custom for the princeps senatus to speak first, if the comitia consularia for the year had not been held; if they had, the consuls elect spoke first. When this custom had fallen into disuse, some regard was still paid to the rank of the members; for instance, those who were only of prætorian dignity might not precede such as were of consular rank⁶. This regulation, however, and others similar to it, never rested, in my opinion, on any positive enactment; they were neglected by Julius Cæsar, and Augustus deemed it prudent to take the opinions quite indiscriminately⁷. A senator when called on for his opinion might, if he pleased, digress from the question, and speak of any other matter of public interest,—a practice denoted by the well-known expression, *diem dicendo eximere, consumere, tollere*⁸: it has already been remarked (§ 168) that a similar stratagem was employed in the comitia. If an opinion comprised several distinct points, the party giving it was desired to propose each in a distinct form, *dividere*⁹. With respect to the matters for deliberation, it was ruled that such as pertained to the gods should be discussed before all others¹⁰. A member might make a motion even without being called on to do so; or at least might request the president to call on him, though I doubt whether the latter was therefore bound to do it, especially if it was a tribune who applied to him¹¹. Livy asserts that the opinions were sometimes given upon oath¹².

1) Cic. Phil. 2, 10; ad Q. Fratr. 2, 13; Gell. 14, 7. 2) Cf. Sen. de Tranq. Animi extr. 3) Cic. ad Div. 10, 12; Suet. Cæs. 81; Gell. l. c. 4) Cf. also pro Mur. 30. 5) *Referre* and *relatio* were the stated expressions in this case, like *rogare sententiam* and *censere*. 6) Cf. Gell. 14, 7; Cic. Phil. 5, 16; ad Div. 10, 12; pro Red. in Sen. 7; Sall. Cat. 49 (50); Liv. 5, 20; Suet. Cæs. 11.

7) See Suet. Aug. 35. 8) Cf. Cic. ad Att. 1, 16. 4, 2; Verr. 2, 39; ad Q. Fratr. 2, 1; Gell. 4, 10. 9) Cf. Sen. de V. B. 3; Plin. Ep. 8, 14. 10) Gell. 14, 7. 11) Cf. Nieup. 1, 2, 6. 12) Liv. 26, 33, and elsewhere.

181. If the senate proved unanimous, its resolution, *senatusconsultum, decretum*, was ascertained by a division, *per discessionem*; if divided in its opinion, the vote of each member was taken separately and singly: so Varro, as quoted by Gellius¹. This account, however, is not quite clear; for we read in the same passage of Gellius that, according to Ateius Capito, no decree could be made without a division². The form of dividing the house is said to have been *qui hoc censetis, illuc transite; qui alia omnia, in hanc partem*³; and it seems reasonable to conclude that a division took place whenever there was any diversity of opinion, although it might not be, further, requisite to count the votes on each side, whilst it would still appear that the form was devised in order to facilitate such counting if necessary⁴: the circumstance that the *pedarii* (§ 176) could vote only with others, and consequently by means of an actual division alone, furnishes an additional reason for thinking that a division always took place when opinions were divided, for otherwise it would have been superfluous with respect to those who were entitled to speak, and also with respect to the *pedarii*, since they could only follow these*. The words in the formulary, *qui alia omnia*, are explained as an euphemism adopted for

* I am not confident of having fully ascertained the author's meaning in this part of the section. I conclude that he means to reject the idea of a division, when all were agreed, *aut per discessionem si consentiretur*, (see note 1.) as superfluous, and also to limit the counting of the votes to the cases when the division did not sufficiently show on which side the majority stood. It would, however, seem easy to reconcile the words of Varro and Capito by concluding that the form of a division, although not a division in reality, was observed in all cases alike, even when all were agreed, and solely *pro formá*. (*Translator.*)

avoiding the ill omen attaching to *qui non censetis*⁵: it may, however, be suggested, that the formula was not used except when, three or more opinions having been proposed, it became necessary first to ascertain which had the fewest adherents, that it might be entirely superseded and the rest alone considered*.

1) Gell. 14, 7. 2) Cf. Cic. Phil. 6, 1; ad Q. Fratr. 2, 1: "Ibatur in eam sententiam;" Sall. Cat. 51, "Senatus in Catonis sententiam discessit;" Cic. Phil. 3, 9, "Senatusconsultum de supplicatione per discessionem facit, quum id factum esset antea nunquam." Comp. also the S. C. § 220, on Vespasian's mode of governing, "Per relationem discessionemque." 3) Cf. Plin. Ep. 8, 14. 4) Cf. Vopiscus in Aurel. 20. 5) Cf. Fest. in *qui hoc*.

182. The division having taken place, the *senatusconsultum* was drawn up in writing, as briefly as might be, with mention of the originator of the measure. A certain number of members were requisite to form a quorum, without which no decree could be made; the number requisite was various at various times¹; but it does not appear that the question, whether a quorum were present, was made before the deliberations commenced; hence if a member wished to prevent a decree from passing, he would say, *numera senatum*, count the house². A fine was imposed on absentees without sufficient reason³, and a pledge of attendance might be exacted⁴: I imagine, also, that offenders against the discipline of the body, and any who failed in respect to the president, were finable. The expression, *cædere pignora*, is connected with the custom of exacting pledges of attendance; meaning, according to Zamoscius⁵, to sell what had been exacted: but this we may be allowed to doubt⁶. One legal impediment to the proceedings of the senate, as also to those of comitia;

* The author should have suggested the substitute for the words when these were not used: his conjecture in other respects appears ingenious, and deserving of attention. (*Translator.*)

lay in the veto of the tribunes of the people; these, at first, used to sit at the doors of the senate, and there received the announcement of the decree; but, in course of time, they were admitted to be present in the house itself. Other magistrates, provided they were of superior or, at least, equal rank to the president, might also impede a measure in the same way⁷. Any resolution of the senate made without the presence of a quorum, or attended by any other informality in the assembling of the house, or in its proceedings, or frustrated by the intercession of the tribunes, &c. was called⁸ *auctoritas perscripta*⁹. The *senatusconsulta* were, at first, committed to the custody of the plebeian *ædiles*, who laid them up in the temple of Ceres¹⁰; afterwards they were kept by the *quæstors*, and in the treasury, in a spot called the *tabularium*, together with the laws (§ 149), and other public documents¹¹. Suetonius (Cæs. 20) informs us that Julius Cæsar was the first who caused the transactions of the senate and people to be published daily; these were the *acta diurna*¹²; and also that Augustus prohibited the publication of those of the senate (Aug. 36). We have touched on the question whether the *senatusconsulta* had the force of laws in § 262 of this work. Besides the *senatusconsulta*, which have come down to us entire and undoubted, and others still extant either forged or of doubtful authority, the decree in Livy (XXXIX. 18.) respecting bacchanals, is reckoned as a *senatusconsultum*.

1) Cf. Liv. 39, 18; Cic. ad Q. Fratr. 2, 1; Dio Cass. 54. extr.
 2) Fest. in *numera*, cf. Cic. ad Att. 5, 4, ad Div. 8, 11 (the letter of Cælius). 3) Gell. 14, 7. 4) Liv. 43, 16: "Censores ad pignora capienda miserunt, multamque pro concione privato dixerunt;" Cic. Phil. 1, 5, "Coguntur enim non pignoribus (when it was a question of a public thanksgiving), sed eorum, quorum de honore agitur, gratia," etc. 5) Zamosc. 2, 4. 6) Cf. Cic. de Orat. 3, 1. 7) Cf. Gell. 14, 7. 8) Cf. Cic. ad Div. 8, 8 (epist. Cælii), de Orat. 3, 2; Dio Cass. 55, 3. 9) I prefer *per-*

scripta to *præscripta*, which other writers have adopted. 10) Liv. 3, 55. 11) Cf. Tac. Ann. 3, 57; Cic. pro Rab. 3; Liv. 43, 16. 12) Cf. Creuzer § 116, who has also connected with this subject the passage in Lydus (*de Magistr.* 3, 20).

OF THE MAGISTRATES.

183. The word *magistratus*¹ served, among the Romans, to denote both the persons who held public offices and the offices themselves; these were also called *honores*, and hence we read of *magistratus honorati*², and *jus honorarium* (§ 191). The question whether the Roman magistrates were at first priests, has long furnished matter of debate, and seems at the present day to be a peculiar favourite with some writers. I have thrown my own opinion respecting it into a note³. Of the magistrates, some were perpetual or regular, others appointed only on particular emergencies and for a season, and thence were distinguished as ordinary or extraordinary: some became *nobiles* (§ 132) by virtue of their office, the lowest of these being the curule *ædiles*⁴: on others, their office did not confer that distinction, and these were called non-curule, as the former were curule, from the curule chair, which was peculiar to the superior magistrates⁵, and is often seen on coins: with reference to this privilege, magistrates were called *majores* or *minores*, and this difference in rank affected the efficiency and validity of the auspices they observed (§ 152): another division was that of city or provincial magistrates, *urbani et provinciales*. Some possessed only civil powers, others united civil and military authority; persons vested only with the latter were not, strictly speaking, magistrates (§ 245). *Imperium* denoted, properly, military authority, and when ascribed to magistrates not possessing such, it was understood⁶ of their right of issuing edicts, of

summoning and seizing (whence *vocationem, prehensionem habere*, etc.). This power is said to have belonged more peculiarly to the præfects, who are said to have jurisdiction as well as imperium, the former consisting⁷ in their competency to issue decrees and assign judges for the trial of causes (§ 268). Among the other attributes of magisterial power, were the rights of holding assemblies, of proposing new measures, of taking the auspices by victims and by the sky, *spectio* (§ 151), and committing to prison⁸. The dictator alone excepted (§ 202), they were all liable to be called to account by the people.

1) So *magisterare*, from *magister*. Festus: "Magisterare regere et temperare est." 2) Cf. Cic. de Legg. 1, 11. 3) It has been remarked (§§ 130, 131) that originally the care of the state, and also of religious matters, rested with the patricians alone, who were not on terms even of intermarriage with the plebeians, and that the magistrates, priests, and senators, were chosen from their body alone. The rest of the citizens, we have seen (§ 136), were all plebeians, only a few of whom were distinguished from the rest by the right of military service on horseback. This may suffice us, and the lovers of novelties in history may be left to fancy a rigid division of the Romans into three (cf. Niebuhr vol. 1. p. 224 sqq. et alibi) or more classes, resembling the castes of the Egyptians, Indians, or others; distinct in race, and possessing each its exclusive right to certain offices. It is, however, requisite to venture an opinion on the conjecture, and even positive assertion (cf. Creuzer, §§ 83 and 128), which is closely connected with this notion, that the Roman magistrates were at first all priests. Setting Lydus aside, (for if ever an author were undeserving of credit, it is he,) my opinion is as follows:—Under the kings, the only magistrates known were the quæstors, the præfect of the city, and the interrex; unless, perhaps, the tribune of the Celeres (§§ 135 and 204) is to be added, whilst we hear of numerous colleges of priests from the time of Romulus, certainly from that of Numa; and no ancient author has styled the former priests or the latter magistrates. Of the kings themselves, some are said to have been foreigners; and it would have been strange indeed, if the patricians were an order of priests and magistrates, (cf. Creuz. § 128; Nieb. vol. i. p. 227,) that they should have sought from among foreigners men who were to be heads of both priesthood and magistracy, *sacerdo-magistrates*, if I may coin a word for the occasion. The magistrates which were added under the consuls evidently cannot have been priests in the time of the kings, and whilst on the one hand none of the ancients called them priests, on the other it is not easy

to see why, if they were so, new priestly offices should have been added to those they already held. I confess, however, that there always existed at Rome a close connection of civil and military with religious affairs, that it was most close in the earlier times, and that accordingly the same existed between the magistracy and religion: and if in this respect any one choose to call the magistrates priests, it is no novelty, but, in my judgment, quite correct. It will not, however, be allowable to conclude, that because the patricians alone are said to have had the auspices (§ 130), that their whole body, or at least the magistrates chosen from it, were therefore priests; for if this be granted, what will hinder our asserting the patricians to have all been priests even under the Cæsars? not to mention the various difficulties connected with the subject of the auspices.

4) Cf. Cic. de Legg. 3, 3. 5) Cf. Gell. 6, 9; Lyd. 1, 32. *Curule ebur*, Hor. Ep. 1, 6, 53. Cf. Ovid. de P. 4, 9, 27. 6) Cf. Cic. de Legg. 3, 3; Gell. 13, 12; Hein. Ant. Rom. Synt. 4, 6, 5. 7) Cf. Hein. ib. 4, 6, 6. 8) Cf. Creuz. § 131.

184. The right of making magistrates belonged to the people, and was finally taken from them by Tiberius. Between the time of their election and entrance on their duties, they were called *designati*, elect (§ 167): they swore to observe the established laws¹. The ordinary offices of the magistracy were held *seriatim*, none being eligible to a higher who had not held the lower offices², and a certain age was requisite for each step; hence the expression *anno suo*³ *consul*, &c. The *Lex Villia Annalis*, also called *comitialis* (A. U. C. 572), had reference to this particular, making a fixed regulation of what had apparently been hitherto the established custom⁴: from this law the house of its originator obtained the cognomen of *Annalis*⁵. It is thought that it made the legal age for the quæstorship to be twenty-seven years, though some say thirty-one; for the ædileship, thirty-seven; for the prætorship, forty; for the consulship, forty-three; since Cicero, who held each in succession, in the first year he was eligible, gained them at those ages. Both the order of the series, however, and the age, were sometimes dispensed with in the case of particular candidates, by a legal enactment for the purpose⁶. No one might hold two offices at the same

time⁷. Excepting the censorship, they were all annual. Candidates were so called from the white (*candida*) toga in which they appeared whilst canvassing for the office⁸. They gave in (*profiteri*) their names to the magistrate who was to preside, and when registered by him, or even some time before, they sought to obtain votes by requests, gifts, and in every possible way, although, by law, bribery and unfair dealing were forbidden; they were attended on this canvass by a person called *nomenclator*, from his telling them the names of the parties they met⁹. Connected with these customs are the words *ambire*, *ambitio*, *cretata ambitio*¹⁰, *ambitus*¹¹, *crimen* and *judicium ambitus* (§ 264), *prensare*, and *prensatio*¹².

- 1) Cf. Liv. 31, 50. 2) Cf. Cic. Phil. 11, 5; Liv. 32, 7.
 3) Cf. Cic. Agr. 2, 2. 4) Cf. Liv. 25, 2; Cic. Phil. 5, 17.
 5) See Liv. 40, 44. Cf. Ernesti clavis Cicer. in *lex annalis*.
 6) Cf. Liv. 40, 44; Cic. pro lege M. 21. 7) Cf. Liv. 7, 42. 39, 39.
 8) Cf. Liv. 4, 25. 9) Cf. Cic. ad Att. 4, 1; pro Mur. 36; Q. Cic. de Pet. Cons. 8; Sen. de Tranq. 12; and Ep. 19; Hor. Ep. 1, 6, 50. 10) Pers. 5, 177. 11) Cf. Lucan. 1, 179.
 12) Cf. Liv. 3, 35. 39, 41; Cic. pro Planc. 10; ad Att. 1, 1; Hor. Ep. 1, 6, 49. sqq.

185. The kings were the chief magistrates in the earliest times of Rome: and the word *rex* is thought to be connected with the German *reix* or *rhek*, and the affix *rix* found in Gaulish names. The Greeks called both the early kings and the emperors of Rome βασιλεῖς. Their power, of which we have spoken above (§ 177), was transferred nearly entire to the consuls. The retaining of the odious epithet of *royalty* in the case of the *rex sacrificus* (§ 323), appears to have been owing to reverence for religious offices. The insignia of royalty¹ appear to have been the *trabea*², a golden crown, an ivory sceptre, *sceptrum* or *scipio*, (surmounted by the figure of an eagle,) which was also allowed to generals at their triumph³, a curule chair, which, as

we have remarked, was retained by magistrates of the higher order, twelve lictors, each with a bundle of rods enclosing an axe⁴. Other marks of regal dignity were the *toga picta*⁵, and buskins, *cothurni*⁶, (though this latter I am disposed to question,) with the *laticlave*⁷, and the robe called the *prætecta*, from its purple fringe⁸. Of these insignia, some, as the *trabea* for instance⁹, are thought to have been copied from the Latin kings, and others from the Etruscans, from whom many things were borrowed even under the Republic, and whose ambassadors are reported by Dionysius to have conferred these on Tarquinius Priscus¹⁰. Besides the monarch himself, we have, under the kings, the tribune of the Celeres, (if he is to be called a magistrate,) the præfect of the city, the quæstors, and the extraordinary officer called the interrex. In the free ages of the Republic, the ordinary and superior magistrates were the consuls, prætors, censors, and curule ædiles; the superior and extraordinary, the interrex, dictator, magister equitum, præfect of the city, the decemviri appointed to frame a code of laws, and the military tribunes with consular powers; the inferior and ordinary were the tribunes of the people, the plebeian ædiles and quæstors; the inferior and extraordinary were very numerous.

1) Cf. Dionys. 3, 61; Lyd. de Magistr. 1, 7. 2) Cf. Liv. 1, 41. As regards the etymology of the word, it may be supposed to come from bars or stripes on the stuff, *quasi trabibus virgatam*. Cf. *clavatus*. From *trabea* is the epithet *trabeatus*, applied to *Quirinus*, Ovid. Fast. 1, 37, and to the knights, Tac. Ann. 3, 2. 3) Cf. Juven. Sat. 10, 43. 4) Cf. Liv. 1, 8; Lyd. 1, 32. Περιβόλαιον πορφυροῦν, ποικίλον, Dionys. 3, 61. 6) Cf. Lyd. 1, 32. 7) Cf. Dionysii, χιτῶνα πορφυροῦν, χρυσόσημον. 8) Cf. Plin. 9, 39. 9) Cf. Virg. Æn. 7, 187; Lyd. 1, 32. 10) Cf. Sall. B. Cat. 51; Liv. 1, 8; Flor. 1, 5.

CONCERNING THE SUPERIOR AND ORDINARY
MAGISTRATES.

Of the Consuls.

186. On the expulsion of Tarquinius Superbus, the power which till then had belonged to the sovereign, was vested, on the suggestion of Junius Brutus, in two annual magistrates chosen from among the patricians¹; eventually, i. e. from A. U. C. 387, one of them² was taken from the plebeian order (§ 205). Whether the name *consul* was taken from their consulting the senate, or from their consulting for the good of the commonwealth, or from their judicial power, was a matter of dispute even among the ancients themselves, which Quintilian has ridiculed³: ancient authors⁴ also report that they were at first called prætors (§ 190) and judges. The notion that they were so called from the secrecy of their councils, *a conditis consiliis*, appears a mystical refinement like that on the epithet *Consus*⁵ ascribed to Neptune (§ 284). The Greeks called them *ἄπαροι*, i. e. supreme magistrates. Servius Tullius is said to have intended to introduce a more popular form of government, by abolishing the monarchy⁶. The consular, resembling so nearly the regal power, the greater was the care taken that no consul should be left without a colleague⁷. Their insignia were nearly the same as those of the kings⁸, excepting always the crown, and also the sceptre, at least during the free ages of the Republic⁹. Under the Cæsars, the honour of the *trabea*, among other things, was either restored or first allowed them as some compensation for their diminished powers; and hence we find the *trabea* put for the consulship¹⁰, and meet with the terms *trabeata domus*¹¹, *trabeatæ fabulæ*¹², and so forth. They were also flattered by the privilege of decking the fasces with laurel, which before

had been restricted to triumphs¹³, and of being preceded by the axe, even within the city¹⁴. Another distinction granted to the consuls consisted in designating the year by their name,—a practice which continued as late as A. D. 541; whence the *fasti consulares* (§ 334). Valerius Publicola set the example of removing the axe from the fasces in the city, and of allowing them to be borne before each consul in turn¹⁵. It was customary for all to stand aside when the consul passed, and for persons on horseback to dismount; his attendant, *lictor*, chastised, or at least warned any who failed in this mark of respect¹⁶. The other magistrates rose when the consul appeared, and lowered their fasces to him, as inferiors before their superior¹⁷.

1) Cf. Liv. 2, 1. 2) Cf. Liv. 7, 17 and 24. 3) Varro de L. L. 1. 4. p. 22: Consul nominatus, quod consulere populum et senatum debet; nisi illinc potius, unde Actius ait in Bruto, "qui recte consulat, consul fiat." Cf. Cic. de Legg. 3, 3. Quint. 1, 6: "Pravis ingeniis ad foedissima usque ludibria dilabuntur: sitne consul a consulendo, an a judicando; nam et hoc consulere veteres adpellaverunt," etc. Cf. Liv. 3, 55. 4) Niebuhr (vol. 2. p. 118.) remarks that attention is due to an observation of Zonaras (vii. c. 19), stating that the consuls were not so called till after the fall of the decemviri; to which Niebuhr appends a conjecture of his own, that they may have had the name before the institution of the dictatorship. Cf. Dirksen Versuche zur Kritik des Röm. Rechts, p. 48. 5) Cf. Lyd. 1, 30; Creuz. § 151. 6) Liv. 1, 48. Cf. Beauf. Disc. Prélim. p. 16; Nieb. Röm. Gesch. v. 1. p. 288 and 290. 7) Cf. Liv. 2, 7; Plut. in Pomp. p. 648; Suet. Cæs. 26. 8) Liv. 2, 1. 9) Cf. Dionys. 3, 62, 4, 74; Vopisc. in Aurel. 13; Beauf. v. 1. p. 287. 10) Symm. Epist. 9, 112; Claud. in Ruf. 1, 243; in Eutrop. prolog. l. 2. v. 10. 11) Claud. de Cons. Mall. Theod. 336. 12) Suet. Gramm. 31. 13) Cf. Cic. de Divin. 1, 28; in Pis. 22. 14) Cf. Claud. in Eutrop. prolog. l. 2. v. 7. 15) Cf. Liv. 24, 9; Dionys. 5, 2 and 19, and the note of Grimm on the passage. 16) Liv. 24, 44: "Pater filio legatus ad Suessulam in castra venit. Quum obviam filius progrediretur, lictoresque reverentia majestatis ejus taciti anteirent, præter undecim fasces equo prævectus senex, ut consul animadvertere proximum licitorem jussit, et is, ut descenderet ex equo, inclamavit; tum demum desiliens, experiri, inquit, volui; fili, satin' scires, consulem te esse." Cf. Sen. Ep. 64. 17) Cf. Cic. in Pis. 12; Suet. Cæs. 78.

187. This power, however, although divided between two, seemed inconsistent with liberty, and was modified

immediately after the institution of the office, by Valerius Publicola, who lowered his fasces before the people¹, *populus*, and took from the consuls their power of life and death by introducing the law of appeal, *lex de provocatione*, or, perhaps, by merely reviving it from the neglect into which it had fallen under the kings, and which it was afterwards more than once requisite to renew (§ 71) after its repeated violation by consuls: in the last ages of the Republic, however, it seems to have been restricted to certain criminal cases². The consular power was, however, chiefly checked by those constant adversaries of the senate and consulship, the tribunes of the people. Still it continued to be considerable till the very downfall of liberty³, despite the various restrictions placed upon it; first, for instance, by the creation of censors, and then of prætors; and, on occasions of great public danger, it used to be made plenary and almost dictatorial by the well-known order of the senate, *videant* (or, *dent operam*), *consules ne quid respublica detrimenti capiat*⁴.

The following are to be reckoned among the ordinary attributes of consular power⁵. They had the greater auspices (§ 152), and, in war, the same authority as the kings used to possess⁶, being *ex officio* the ordinary rulers of the state; all generals were under them (§§ 247 and 366), from whom they chose their legates and military tribunes. They had authority to summon assemblies of the senate and the people, and to preside in both; they consulted the senate on whatever they deemed of importance to the Republic, might propose laws to the people, especially in the *comitia centuriata*, and were charged with executing the decrees of either the senate or the people; and all other magistrates, except the tribunes of the people, were under their orders⁷: the prætors were their chief deputies. Finally, the administration of the provinces rested with them as chiefs

of the senate, and they might dispose of the public money (§ 393) for the purposes of war, even without an order from the senate.

- 1) Liv. 2, 7; Cic. de Rep. 2, 31. 2) Cf. Cic. Phil. 1, 9.
 3) Cf. Schulze p. 102. 4) Sall. Cat. 25: "Ea potestas per senatum, more Romano, magistratui maxima permittitur: exercitum parare, bellum gerere, coercere, omnibus modis socios atque cives, domi, militiæque imperium atque iudicium summum habere. Aliiter, sine populi jussu, nulli earum rerum consuli jus est." Cf. Cæs. B. C. 1, 5. 5) Cf. Polyb. 6, 12. 6) Cf. Cic. de Legg. 3, 3.
 7) Cf. Cic. de Legg. 3, 7 and 16.

188. At home they held the imperium and the fasces alternately for a month at a time (§ 186), and sometimes for a different period, whence the expression, *cum fascibus esse*¹. In time of war, they generally both had command, the provinces being assigned to them either by the senate (though in later times it became more usual for them to settle this by lot²), or by agreement between themselves: hence the expressions, *provincias sortiri, parare, comparare*, and *sorte, or comparatione dividere*, etc. Towards the end of the Republic, however, they generally remained at home during their year of consulship, and afterwards went into the provinces with the title of proconsuls. Their office commenced (not to mention other times peculiar to the very earliest stage of the Republic³) on the ides of December⁴, afterwards on the ides of March, and finally on the kalends of January⁵: at their entrance on it they swore to observe the laws, proceeding in solemn procession to the capitol, *processus consularis*, and there offering a sacrifice⁶. Among other solemnities of the occasion observed by them were, observation of augury in the forum, a sacrifice in front of the curia, also the manumission of a slave (§ 59), by way of auspiciously commencing their duties⁷; at the close of their year they took an oath, on quitting office, that they had governed faithfully to the best of their ability⁸.

1) Cf. Cic. de Rep. 2, 31; Dionys. 5, 2; Suet. Cæs. 20.
 2) Cf. Liv. 4, 37. 3) Cf. Pitiscus. 4) Cf. Liv. 4, 37. 5) Cf.
 Cic. Phil. 2, 32. 6) Cf. Ovid. de P. 4, 4, 23, sqq. 7) Cf.
 Amm. Marc. 22, 7; Claud. Hon. C. 4, 613. 8) Cf. Cic. ad
 Div. 5, 2; with the notes of Manutius.

189. Under the Cæsars the power of the consulship became a mere shadow, although the honour continued to be above that of all other magistrates, and was increased by new paraphernalia (§ 186). Its dignity, nevertheless, decayed at the same time; for although there were never more than two at once, it became customary for several to enjoy it in the course of the same year, from which came the distinction of *consules ordinarii*, and *C. suffecti*¹, and some were even *honorarii*, honorary consuls, possessing the mere insignia and honours of the office²; from which custom we are to explain the *codicilli* or diplomas of consulship³, and *diptycha*⁴ *consularia* (§ 424). In lieu of the powers attached to the consulship under the Republic, new offices were assigned to it, such as assigning guardians to minors (§ 112), letting the public revenues, which had formerly been the business of the censors (§ 393), and presiding⁵ in the games of the circus (§ 348), which were generally given at their expense, and afforded them an opportunity of largess to the people⁶,—a circumstance which mainly induced Justinian to abolish the office altogether⁷, A. D. 541, which had till then survived in the eastern division of the empire.

1) Cf. Suet. Galba 6; Domit. 2; Tac. Hist. 1, 77; Dio Cass. 48, 35. 2) Cf. Suet. Cæs. 76; Tac. Hist. 1, 79. 3) Cf. Suet. Cal. 55; Cod. Theod. 6, 22, 1, and 6, 4, 23; Lyd. de Magistr. 3, 7. 4) Cf. Creuz. § 138. 5) Cf. Juven. 11, 193, sqq. 6) Cf. Lydus 2, 8. 7) Cf. Gibb. Hist. of the Fall, etc.

OF THE PRÆTORS.

190. The institution of the Prætorship, dating from A. U. C. 387, when the senate was thrown open to the

plebs, was an attempt on the part of the patricians to compensate for the loss of influence they suffered by that measure; their pretext was, that the consuls being almost always absent from the city, could not attend to the multiplicity of affairs which required their care, especially the administration of justice; the prætorship was thereupon instituted next in rank to the consulship¹, and with the same auspices (§ 152), as a substitute for it, especially in affairs of justice²; but this office was also soon shared by the plebeians³, viz. about A. U. C. 420. The name prætor, *quasi præ-itor*, from *præire*, denoted a leader generally, and, like the Greek *στρατηγός*, was applied to a variety of officers. Livy relates that the consul was at first called *prætor*, and the dictator, *prætor maximus*⁴. Among the derivatives of the word are *prætorium*, *prætoria cohors*, and others. A second was added, as is commonly⁵ thought, A. U. C. 510, for the adjudication of suits between foreigners, or between foreigners and citizens⁶, being thence called *prætor peregrinus*⁷; the other was styled *P. urbanus, major*, and *honoratus*⁸. There were subsequently six magistrates of this name, two of whom resided at Rome for the administration of justice, and the others went into the provinces; ultimately, however, these four presided at state trials in Rome (§ 264).

1) Cf. Lucan. 3, 106. 2) See Liv. 7, 1. 3) Liv. 8, 15.
 4) Liv. 3, 55. 7, 3; cf. Cic. de Legg. 3, 3. 5) Cf. Hugo Gesch. d. Röm. Rechts § 158. 6) Cf. Tac. Ann. 1, 15. 7) Cf. Hugo § 158 and 77. p. 273. 8) Cf. Ovid. Fast. 1, 52.

191. Every prætor, whether he was to act in the city or in the provinces (§ 251), issued an edict, on assuming office, stating the course he meant to pursue in the administration of justice. The right of so announcing by an edict, the plan they meant to pursue in matters pertaining to their office, was, as we should naturally

expect, common to many other magistrates, and the *jus pontificium* (§ 318) would induce the belief that the pontifical college also possessed it. Edicts were distinguished into occasional, *repentina*, and permanent, *perpetua*. The most memorable, by reason not only of their fragments, still extant in the Justinian code, but in point of Roman jurisprudence, were the *ædilita*, or those of the curule ædiles, and the still more important prætorian edicts, whether of the city or of the provincial prætors. Enactments originating with the ædiles or prætors are said to have been called *jura honoraria*, from the eminent rank of those magistrates¹.

1) Cf. *prætor honoratus*. See Pomponius Digg. 1, 2, § 10; Institt. 1, 2, § 7. But a different opinion is found in Papinianus Digg. 1, 1, 7; cf. Hein. Hist. Jur. R. et Germ. 1, 3, 61, and Ritter's note on the passage.

192. There is no perfect specimen extant of an annual prætorian edict; such fragments¹ as have been preserved in the Pandects or drawn from other sources², have been collected and illustrated by various hands, some of whom have endeavoured to frame from them a complete formulary³. From these fragments, it is very evident that the prætor on such occasions forbade some things, ordered others, declared in what matters and under what circumstances he would grant right of action, or decree possession, and announced a scale of fines and penalties⁴: hence the formularies, *vim fieri veto*; *actionem possessionem, judicium dabo*; *agendi potestatem faciam*; *actio in factum, in rem, in personam, in duplum, triplum*; *actio centum, ducentorum aureorum*; *ut, quanti ob eam rem æquum videbitur condemnentur*; and such like. See note 1, § 271. Hence we may conjecture how much of the laws by which causes were to be decided was quoted in the edicts, and also that they differed altogether from what we call a

code of laws⁵. Particulars respecting prosecutions have been given above, § 171, sqq⁶.

1) The Pandects furnish numerous fragments, and among them repeated instances of summaries of prætorian edicts, of which see one *De Sepulchro Violato* l. 3; *De Injuriis et Famosis Libellis* l. 7, and 15, 17, where we find various distinctions of libel (see Hein. *Syntagma*, 4, 4, 5. vol. 2. p. 206, sqq.); *De Servo Corrupto*, l. 1. (see Hein. *ib.* 4, 3, 9). In the *Institutes*, 1, 2, 7, we read concerning the edicts of the ædiles, "Proponerant et ædiles curules edictum de quibusdam causis, quod edictum juris honorarii portio est." Respecting the matters of which the ædiles took cognizance, cf. *Instit.* 4, 9, and l. 1, 38, 40, sqq.; *Digest.* de *Ædil. ed.* etc.; from which it would appear that they were mainly concerned with the purchase and sale of goods, cattle, and particularly of slaves (§ 53. Cf. Heindorf. ad *Hor. Sat.* 2, 3, 285), and with the destruction of wild beasts. Concerning the mode of proceeding before the ædiles, cf. Hein. *Synt.* 4, 9, 4. p. 287. Most of the matters which came before the ædiles, if not all of them, were comprised in the prætorian edicts, with which it is thought those of the ædiles were in course of time confounded. Cf. Hein. 4, 9, 3. Professor Warnkœnig has appended an arrangement made by Haubold of the extant portions of a prætorian edict to the book of Mackeldey, mentioned in § 261 of this work. 2) Cf. *Cic. pro Quint.* 27; *Verr.* 1, 45. 3) See Hauboldi *Instit.* J. R. Litter. t. 1. p. 331, sqq. 4) Cf. *Cic. pro Rosc. Com.* 8. 5) Cf. Hugo § 178. 6) As regards the arrangement of the matter in the city prætor's edict, Hasse (*Rhein. Mus.* 1. Jahrg. 1. Heft. p. 51) remarks, that in its first part, which related to prosecutions, it was arranged with reference to precedent, and that the same system is observed in the *Codex Justinianus*, and still more in the *Digests*.

193. The prætor had power in his edict to make additions to those of his predecessors, of altering what he thought fit in them, in short, of announcing resolutions entirely of his own devising¹. The clauses of an edict were accordingly distinguished as *nova*, entirely original, and *tralatitia*, or borrowed from his predecessors. Regard was of course paid to the circumstances of the times in these additions or modifications of former practice; and Papinianus² informs us that the *jus honorarium* of the prætors was admitted for the sake of remedying or supplying for the public convenience the defects of the *jus civile* with which it stood in contrast, inasmuch as it rested neither on public

enactments nor authority. For such a purpose, it was indispensable that the prætors should be allowed to deviate from written statutes, either directly or indirectly, and under the plea of adhering to ancient usages. It follows that the novelties or changes which they introduced, whether by means of new definitions, exceptions, re-enactments, legal fictions, or otherwise, are not necessarily to be imputed to evil intentions: several writers have maintained this against the opinion of Heineccius, and especially Ritter³. Still there can be no doubt but that the prætors might easily abuse their powers, though not always with impunity. One especial ground of complaint against them seems to have been alterations of their original edict in the course of their year of office⁴; as appears from a decree of the senate, A. U. C. 585, enacting, *uti prætores ex suis perpetuis edictis jus dicerent*⁵. I find, however, that Bachius⁶, and others before him, have pronounced this record to be spurious, though the same was enacted by the *Lex Cornelia*, a century afterwards⁷, and an important check was subsequently put on capricious alterations and interpretations by introducing in every edict the clause, *quod quisque juris in alterum statuit, ut ipse eodem jure utatur*: an addition which Bachius believes was first made in the Salvian edict⁸. It is, at all events, certain, that the *jus honorarium* came by degrees to be something definite and regular even in the free ages of the Republic, and that lawyers bestowed their pains on its interpretation and regulation; two of the most remarkable for their labours in this particular were Sulpicius and Ofilius, who lived in the time of J. Cæsar, and are both mentioned by Pomponius⁹.

1) Cf. Hugo § 178. 2) Pap. l. 7. § 1. de Just. et Jur. : "Juris civilis adjuvandi, vel supplendi vel corrigendi gratia propter utilitatem publicam." 3) See Hein. Syntagma l. 1. t. 2. § 24; also his

Hist. Jur. with notes by Ritter l. 1. c. 3. § 67-70. Cf. Hugo § 178 and 179, and Bach. Hist. Jurispr. Rom. lib. 2. c. 2. § 11, sqq. 4) Cf. Cic. Verr. 1, 41 and 45-46, 3, 7; Dio Cass. 36, 23. 5) See Hein. Hist. Jur. l. 1. c. 3. § 72. 6) Bach. l. 3. c. 2. § 6. 7) See Ascon. Ped. ad Cic. pro C. Corn.; Dio Cass. 36, 23. 8) Bach. l. 3. c. 2. § 7. 9) Pomp. Fr. 2. § 44. D. 1. 2: "Ante eum (Ofilium) Servius duos libros ad Brutum perquam brevissimos ad edictum subscriptos reliquit." Cf. Fr. 5. § 1. D. 14. 3.

194. The right of alteration and addition was not, however, absolutely taken from the prætors, although the accumulated precedents of years having at length rendered their edicts almost entirely *tralatitia*, obviated, in a very great degree, the necessity of either¹. By order, however, of Adrian, Salvius Julianus drew up a new form of prætorian edict², collecting in a brief summary, *compendium*³, the several heads of matter required by the times, with a few alterations and additions⁴, and, it would seem, blending the edict of the prætor peregrinus into one with that of the city prætor, with the ædile's edict added as an appendix⁵. This new edict was called at the time *perpetuum*, not as being intended for a permanent unalterable form, as most writers have supposed, but in the sense in which the word had originally been used, distinguishing the general edict for the whole year from those called forth by sudden emergencies⁶.

1) Cf. Plin. Ep. 5, 21. 2) Pomponius l. c. Edictum Prætoris primus diligenter composuit. Cf. Eutrop. 8, 9; Vict. de Cæs. 19; Cod. 4, 5, 10; Constit. de Confirm. Digg. § 18. 3) Cf. brevis tractatus Const. Dedit. § 18. 4) Cf. Digg. 37, 8, 3. 5) Cf. Mackeldey Lehrb. d. heut. röm. Rechts § 40; Hugo § 311. p. 518. 6) Cf. Hugo, § 177 and 311, who strenuously opposes the generally-received notion of a new edict, though there is little to favour his interpretation of some testimonies and rejection of others (§ 311); and, least of all, will he allow that the prætors were so bound to it as to be deprived of the power to make alterations in future (cf. Mack. § 40); and it seems doubtful whether this point can ever be settled. For my part I am inclined to believe that whatever changes might be made, could be made only by the emperor's discretion, since both on other grounds, and from what Hugo himself has said (§ 310), one would conclude that no alteration took place for some time both before and after the new edict of Salvius Julianus; nor is it easy to find any weighty reason for refusing to be-

lieve that the prætors were expressly deprived of power to alter what it had become customary for them not to meddle with, or only very seldom. Although there is no mention of it in what remains to us of the Institutes of Caius, I have no doubt but a new form of edict was drawn up; and if any one hesitate on the subject, I refer him especially to Mackeldey, § 40.

195. What more is to be said concerning the laws, civil rights, and trials, will be found in §§ 260, 261; at present something further must be added touching the prætors. It was customary for the prætor, after addressing the people from the rostra in the forum, to place his edict or formulary, which he drew up with the aid of lawyers, written on a tablet, *in albo*, in such a manner that it might be read from the ground, *ubi de plano recte legi posset*¹. This formula always commenced with the words *bonum factum*². It is said that the tribunal was reserved³ for the prætor in the administration of justice, a spear and sword being set up in it: the inferior magistrates gave judgment on benches, *in subselliis*. The tribunal⁴ was of sufficient size to accommodate (§ 267) the prætor's council, *consiliarii, iudices, assessores, decemviri*. Its shape and parts, namely, the *gradus, cancelli, cornua, suggestum*, and *subsellia*⁵, have been illustrated by Hommel⁶ in a dissertation expressly on the subject. Many matters of trifling import the prætor decided at home, or anywhere he pleased, even giving audience to people who met him in the street, whence the well-known expression, *de plano cognoscere*⁷. His judicial power was defined by the three words, *do, dico, addico*⁸: concerning his command, *imperium*, and jurisdiction, cf. § 79. The insignia of the prætor were the tribunal, just mentioned, a curule chair, the toga prætexta, and six lictors when he went out of the city; how many he had within it is uncertain⁹. He is said to have been appointed with the same auspices as the consuls (cf. § 152). Besides lictors, he was attended by scribes,

messengers, *accensi*, and criers. We distinguished above, the office of the prætor peregrinus from that of the city prætor; it has been matter of doubt whether the former was bound by the edict of the latter; but Hugo has shown that he issued one of his own¹⁰. A question has also been raised concerning edicts for the provinces; one may easily conceive that they were, to a certain extent, framed on the model of the city edict¹¹; but the assertion of some learned men that they were included in it, rests on conjecture rather than proof¹². We certainly have the testimony of Theophilus to the validity of the city edict in the provinces¹³, although his opinion is rather doubtful: the many peculiarities of provincial law will not allow the conclusion that edicts for the provinces were exactly the same with that issued for the city¹⁴. On this point it must be remembered that the question will be different according as it respects the free ages of the Republic, the time of the Cæsars, and the period when the citizenship had been extended to all free-born subjects of the empire (§ 66).

1) See Digg. 2. 1. fr. 7. 2) Cf. Plaut. Pœn. prol. 3) See Hein. Synt. 4, 6, 7. 4) Cf. Cic. in Vat. 14. 5) We gather from two passages of Horace that the *puteal Libonis*, also called simply the *puteal*, was close by the tribunal, and served as a rendezvous for usurers, (cf. Ov. R. A. 561, "qui puteal janumque timent celeresque calendas," and Cic. pro Sext. 8,) lawyers, and litigants of all kinds; Hor. Sat. 2, 6, 34, "Ante secundam, Roscius orabat, sibi adesses ad puteal cras;" Epist. 1, 19, 8, 2, "Forum, putealque Libonis mandabo siccis." This puteal, and others at Rome, as that of the augur Nævius, were so called from the low wall like the edge of a well, superstitiously raised round them, as being spots on which thunderbolts had fallen (§ 94). This puteal was called *P. Libonis* or *P. Scribonianum*, indifferently, from Scribonius Libo, whom Festus tells us (in v. *Scribonianum*) the senate commissioned to examine and expiate, *procurare*, a chapel which had been smitten by lightning. Hence we have the figure of an altar on the coins of Scribonius and Lepidus. The testimonies of the ancients concerning this *puteal Libonis* are, however, very obscure, contradictory, and apparently very corrupt. Porphyron, on Hor. Epist. 1, 19, 8, calls the puteal the prætor's seat, confounding it with the tribunal: Acro, on the other passage of Horace, says it was the spot where

usurers met ; but that some asserted it to have been the usual place for the prætor's tribunal. Wieland, on Hor. Epist. 1, 19, 8, says Salmasius first rightly solved the difficulty, and with him agrees Heindorf on Sat. 2, 6, 35. Hommel, although he says it stood outside the tribunal, asserts that the puteal was, so to speak, part of it, and with good reason ; adding also, though without adducing his authorities, that those whom the prætor put upon their oath, *quos prætor jurare cogebat*, laid their hand on the puteal, referring to it, or, at all events, to the altar on it, what I believe was a well-known ceremony in swearing (§ 332). 6) Cf. Hein. 4, 6, 7. 7) See Hein. ib. § 8. 8) Cf. Ovid. Fast. 1, 47 ; see Hein. 1, 2, 22. 9) Cf. Plaut. Epid. 1, 1, 26. 10) Hugo § 177. p. 273. 11) Cf. Nieup. 2, 4, 5. 12) Cf. Hugo § 311. p. 513. 518. 13) Institt. 1, 2, 7. 14) Cf. Cic. Verr. 1, 46, and Dirksen. Versuche zur Krit. und Ausleg. d. Quellen d. Rœm. Rechts, p. 147.

196. We have said that the other prætors were at first engaged in the provinces (see § 244), and afterwards conducted state trials at Rome (see § 263). New subjects of prosecution having arisen, Sylla increased their number ; shortly afterwards, under the triumviri, it amounted to more than sixty, but was reduced by Augustus to twelve or ten¹. It varied again after Augustus, as the empire declined, being limited to a very few. Claudius² appointed two, called *fidei commissarii* (§ 110), Nerva³ added another called *fiscalis*, and Marcus Aur. Antoninus another styled *tutelarîs* (§ 112). As regards jurisdiction, the prætorship existed only in name under the Cæsars ; the appeal from the decisions of the prætors, which had formerly lain to the people, being transferred, first to the emperor, then to the præfect of the prætorian guard, the præfect of the city, and governors of the provinces. We cannot doubt but that the authority of the prætor in framing his edict was likewise variously circumscribed : if not reduced to nothing by the new formula of Salvius Julianus, it certainly met that fate shortly afterwards. We meet with prætors at Constantinople also, where Constantine the Great appointed two⁵, and Justinian added another called *P. urbanus*⁶. The offices of the prætors, distinct

from their jurisdiction, were either taken from them or altered by the Cæsars, and have been treated of elsewhere. Concerning their care of the treasury, cf. Tac. Ann. 1, 75, 13 and 29; Hist. 4, 9.

1) Cf. Tac. Ann. 1, 14, 2, 36. 2) Claud. 1. 2. § 32. D. de Orig. Jur. 3) Ib. 4) Jul. Capit. M. Anton. c. 10. and l. 6. § 13. D. de Excus. Tut. 5) Cf. Lyd. 2, 30. 6) Lyd. 2, 29 and 30.

OF THE CENSORS.

197. In the times of the Republic the consuls at first held the census, and afterwards, about A. U. C. 310, two magistrates were appointed for the special purpose, and called Censors, from their office, *censere, numerare, aestimare*, of ascertaining the property individuals possessed, and so called *τιμηται* by the Greeks, their office being termed, for the same reason, *censura*¹. During the free ages of the Republic they were appointed every fifth year, at which interval, as was before said, the census was repeated; the interval was, however, sometimes longer; so long a tenure of office appearing inconsistent with freedom, their power, even then considerable, was restricted to a year and six months² by the *lex Æmilia*, after the second censorship; the duties of the censors, for the remainder of the lustrum, falling, as I am inclined to think, on the *ædiles* (§ 209), and subsequently on the *prætor*. At first, and indeed for a considerable time, (as late as A. U. C. 404.?) these magistrates were chosen from the patrician body, afterwards one from the patrician and the other from the plebeian; sometimes even both from the latter, but being generally of consular rank. The most dignified part of their office lay in their superintendence of the public morals and right of stigmatising,

notandi, persons of all ranks (hence *nota*, *animadversio*, *ignominia censoria*): it seems doubtful³ when they obtained this right; but if we follow Zamoscius, who rests his opinion on Liv. IV. 24, they had it from the first⁴. The right possessed by the censors of selecting fit persons for the equestrian order and senate, and expelling the unworthy, has been touched on in treating of those two orders.

1) Liv. 4, 8. 2) See Liv. 4, 24. 3) Cf. Liv. 4, 8. 4) Liv. 4, 8: "Idem hic annus censuræ initium fuit, rei a parva origine ortæ, quæ deinde tanto incremento aucta est, ut morum disciplinæque Romanæ penes eam regimen, senatus equitumque centuriæ, decoris dedecorisque discrimen sub ditioe ejus magistratus, publicorum jus privatorumque locorum, vectigalia populi Romani sub nutu atque arbitrio essent." Where we see what the censorian power was when at its height, not what it probably was immediately on its creation or shortly afterwards. Livy does not, however, mean to say it reached this height immediately after its small beginning, but in 4, 24, he introduces Mamercus Æmilius speaking of the censorship as an office of great authority, *magnum imperium*, and complaining that the citizens had to live for a great part of their lives under the same persons: what, then, are we to conclude but that Livy either hardly knew himself what he meant, or that the superintendence of the public morals and right of stigmatising was instituted on the latter occasion, i. e. ten years after the origin of the office?

198. This moral superintendence of the censors extended, however, only to the manners and customs of private life, not to what we properly call crimes. We find mentioned such particulars¹ as these:—expulsion from the senate; the depriving knights of their horses (§ 139); degradation from a higher tribe to a lower², as from a rustic to a city tribe (§ 143); the reducing citizens to the condition of *ærarîi*, or refusing to promote them from that class, i. e. allowing no right of citizenship but that of paying tribute³; the fining persons who refused to marry⁴; and putting others on the roll of *cærites*⁵. Those who were stigmatised might appeal to the people⁶, and the censors might stigmatise each other, or one prevent the other from stigmatising a third party⁷. Among other duties of the

censors, were the farming out the branches of the revenue (§ 393); the repairs of public buildings, *sarta tecta exigere*⁸; and the care of the geese in the capitol⁹. Concerning the censor's edict, cf. Nep. Cat. 2.

1) Cf. Val. Max. 2, 9. 2) Cf. Liv. 4, 24, 24, 43. 3) Cf. Liv. ib. and Ascon. in Cic. Divin. 4) Cf. the *ἀγαπίου* and *ὀψι-γαπίου δίκη* among the Greeks. Cf. Val. Max. 2, 9, 1; Fest. in *uxorium*, with Dacier's note. 5) Cf. Hor. Ep. 1, 6, 62; Gell. 16, 13. 6) Cf. Liv. 4, 24. 7) Cf. Cic. pro Cluent. 43, sqq. 8) Cic. Verr. 1, 40 and 50, sqq. 3, 7. 9) Cic. pro Rosc. Am. 20; Plin. 10, 22.

199. Under the emperors, the duties of the censorship were performed, some by other magistrates, and some by the emperors themselves¹, who, assuming to themselves the perpetual superintendence of the public morals, conferred by the senate on Augustus², every now and then held, either alone or with a colleague³, a lustrum and census, which even during the free ages of the Republic had not been always held at the stated period⁴. It was entirely neglected⁵ from the time of Vespasian's accession(?). Hence some writers reckon the censorship among the extraordinary offices of magistracy. The censors are said to have had the same insignia as consuls, excepting the lictors; but I am not sure whether this be correct: one peculiarity connected with the office was, that no one could hold it twice⁶,—a regulation which dated from A. U. C. 488: another was that, on the death of a censor, his colleague abdicated⁷; and another, that they entered on their office as soon as they were elected. The curule ædiles will be noticed below (§ 209) with the plebeian ædiles.

1) Cf. Dio Cass. 53, 17. 2) See Suet. Aug. 27. 3) See Suet. Aug. 27; Tib. 21; Tac. Hist. 1, 9; Vell. 2, 95, mentions the censorship of Plancus and Paullus, under Augustus. 4) Cf. Cic. in Pis. 5. 5) Cf. Treb. Poll. Valer. 6) Cf. Val. Max. 4, 1, 3; Liv. 24, 43. 7) Cf. Liv. ib. and 5, 31, 9, 34.

CONCERNING THE SUPERIOR AND EXTRAORDINARY MAGISTRATES.

Of the Interrex and the Dictator.

200. On the death of a king, one senator, or, if the authority of Livy¹ be preferred to that of Dionysius², *a decury*, ten senators, one of whom had the insignia of government and the lictors, managed the public affairs for five days³, on the expiration of which another decury (or another senator) succeeded to the office for the same time; and this rotation went on until the interregnum ended⁴. This custom was retained under the Republic, recourse being had to it when the auspices were to be renewed (§ 158), or if by any chance there were no chief magistrates, or none able to attend the comitia; on which occasions sometimes a dictator, sometimes an interrex, was created, being always a patrician, and chosen by the patricians⁵.

1) Liv. 1, 17. 2) Dionys. 2, 57. 3) Cf. Ovid. Fast. 3, 127; Grimm. ad Dionys. l. c.; Wachsmuth *Ælt. Gesch.* p. 141. 4) Cf. Wachsm. *ib.* 5) Cf. Liv. 6, 41.

201. The first creation of a dictator, which took place a few years after the expulsion of the kings¹, is stated to have been caused by the encroachment on the consular power made by the *Lex Valeria* (§ 71), and the imminent danger of the Republic, owing to a league of the nations of Latium, who were stirred up by Octavius Mamilius². The ancients are not agreed either concerning the year in which this first dictator was made, or concerning his name³. It is certain that the Latins had a magistrate with the same title⁴. This title has been variously interpreted: some say the dictator was so called merely from his appointment, *quasi dictum sive creatum*⁵; others, from his governing by means

of edicts or orders⁶. He was also called *magister populi*⁷. Livy attests⁸ that C. Marcius Mamerus was the first who was chosen dictator from the plebs (A. U. C. 399). Great public peril, (as, when a tyrannical usurpation was feared, or civil discord ran high, or foreign enemies pressed hard upon the state), as in the first instance, so afterwards, occasioned the appointment of dictators⁹. But we find that recourse was had to them for other reasons, as for holding¹⁰ comitia (§ 158), for prosecuting public legal inquiries¹¹, for celebrating festivals¹², and, once, for selecting senators¹³. The office has been celebrated for the superstitious observance of driving a nail into the wall of the temple of Jupiter, *clavum figere*, which some trace to the custom of keeping account of years by nails driven into a wall¹⁴; when it was first done with the idea of averting public calamities is uncertain, nor has it been proved that this could be done only by a dictator¹⁵.

- 1) Cf. Dionys. 5, 70; Liv. 2, 18 and 32. 2) *Iidem* ib.
 3) Cf. Liv. *ib.*; Dionys. 5, 72. Cic. de Rep. 2, 32, says that the first appointment of a dictator took place after the first ten consulships, and that the name of the first dictator was T. Larcus.
 4) See Liv. 1, 13; Cic. pro Mil. 10. 5) Cf. Varr. de L. L. 1. 4. p. 22. Cic. de Rep. 1, 40: "Dictator quidem ab eo adpellatur, quia dicitur, sed in nostris libris vides eum, Læli, magistrum populi adpellari." 6) Cf. Dionys. 5, 73; Suet. Cæs. 77. 7) See Fest. in *optima lex*. Cf. Cic. de Fin. 3, 22; de Legg. 3, 3; de Rep. 1, 40. 8) Livy, 7, 17. 9) Cf. Cic. de Legg. 3, 3.
 10) Liv. 8, 23. 11) Liv. 9, 26. 12) Liv. 8, 40. 13) Liv. 23, 22. 14) Liv. 7, 3. 15) See Liv. *ib.* and 8, 18.

202. The power of the dictator, from whose authority nothing was exempt¹, differed from a tyranny chiefly in the circumstance that it was conferred by the senate, and, at least at first, not without the consent of the people², being also limited in duration to the space of six months. The dictator's edicts were obeyed as if they were divine³: on his appointment, all the magistrates vacated office⁴ except the tribunes of the people,

and they, no doubt, were by law equally subject with all others to the dictator's power, inasmuch as this was instituted for the regulation of public matters⁵. At first, no appeal was allowed from the dictator's sentence, despite, I believe, the Lex Valeria, which, I have said, was one cause of the first creation of the office. Some have, however, been induced to think that an appeal was afterwards allowed, chiefly from a passage in Festus⁶, to which another has been added from Livy⁷, although little to the purpose, for settling the question⁸. Among other restrictions by which the power of the dictator was afterwards limited or checked, was the prohibition against waging war out of Italy; against using the public treasure without sanction from the senate; and, which seems a strange regulation, against appearing on horseback without leave first obtained from the people⁹: lastly, it is inferred from Livy VII. 4, but, I apprehend, wrongly, that after abdicating his office, the dictator might be called on to give an account of it to the people.

1) Cf. Polyb. 3, 87. 2) Cf. Dionys. 5, 70. 3) Liv. 6, 39, 8, 33 and 34. 4) Polyb. 3, 78. 5) Cf. Liv. 7, 3; Plut. Cam. 39; Creuz. § 162. 6) Fest. in *optima lex*. 7) Liv. 8, 33. 8) See the queries in Creuzer, § 162. 9) See Liv. 23, 14.

203. The following particulars are also to be remarked concerning the dictator:—his appointment took place by night, and in silence¹, not by the votes of the people, but by the senate², the auspices having first been taken by one of the consuls³. The appointment might take place without the city walls, but not beyond the *ager Romanus*⁴. Most of them laid down their office after only a few days' tenure, the business for which they had been appointed being completed: Camillus alone held it for a whole year⁵. Their insignia were the same as those of a consul, only the number of lictors was doubled. When the Republic was in the

last stage of its existence, the dictatorship was revived, after a long interval of disuse⁶, though rather in name than in its primitive form, by Corn. Sylla and Julius Cæsar, who were declared perpetual dictators.

1) Dionys. 10, 23 ; Liv. 8, 23. Cf. id. 9, 38 ; and Fest. in *sini-*
strum. See Creuz. § 161. p. 173. 2) Liv. 9, 38. Cf. 22, 8.
 3) Liv. 2, 30. 3, 26. 4) Cf. Liv. 27, 5. 5) Liv. 6, 1. 6) Cf.
 Vell. 2, 28.

OF THE MAGISTER EQUITUM AND THE PRÆFECTUS URBI.

204. The *magister equitum*, master of the horse, was named by the dictator¹, though sometimes appointed by the senate or people². It was his duty to command the horse and execute the dictator's orders. Hence his office resembled that of the *tribunus celerum* (§ 135) and the *præfectus prætorio* (§ 225) of a later period ; inasmuch as the former, commanding the royal guard, is said to have ranked next to the king himself³ ; and the latter, who commanded the imperial guard, next to the emperor⁴. The insignia of the *magister equitum* are said to have been the same with those of the *prætor*. The *præfectus urbi* (*urbis*), originally took the place of the king in his absence, and afterwards of the consuls in the celebration of the *Ferix Latinæ*, whence he was called *præf. feriarum Latinarum*⁵ ; and on other occasions, in after times, however, he was appointed solely for that festival ; and such continued the custom even under the Cæsars⁶. When Cæsar, in his dictatorship, happened to be absent, the city was intrusted to the keeping of six *præfects* with the *magister equitum*, and Augustus did the same throughout the civil wars⁷. Concerning the *præfectus urbi*, first appointed by Augustus, see § 223.

1. See Liv. 7, 28. 2) Cf. Liv. 7, 12 and 24. 3) Cf.
 Lyd. 1, 14. 4) Cf. Digg. lib. 1. t. 11 ; Lyd. l. c. 5) Cf.

Dio Cass. 41, 14 ; Vell. 3, 18. 6) See Tac. Ann. 6, 11 ; Gell. 14, 8. 7) Tac, 6, 11 ; Vell. 2, 88. See Creuz. § 165.

OF THE DECEMVIRI LEGIBUS SCRIBENDIS,
AND THE CONSULAR POWER OF
THE TRIBUNI MILITUM.

205. Towards the close of the third century of the city, the patricians and plebeians having been almost incessantly at variance since the expulsion of the kings, both parties came to the conviction that the state could no longer subsist without laws, which having received the sanction of the whole nation, should accurately define both public and private rights¹. Accordingly, after the Lex Terentilla had been passed (A. U. C. 293) by the tribune Terentius Arsa, ambassadors were sent by a decree of the senate to collect laws in Greece (A. U. C. 300), and on their return ten commissioners, *decemviri*, appointed for the purpose of framing a code of law, composed, what was called from its framers, the *Lex Decemviralis*, and from the arrangement of its contents, the Twelve Tables, *XII Tabulæ*². The whole government of the state was at the same time committed for one year to these commissioners, all other magistrates being compelled to resign office for the purpose. At the expiration of the year ten tables had been arranged, and as these appeared deficient in some respects, it was resolved that things should continue in the same state for another year, and nine new commissioners with one of the former board, Appius Clodius, were appointed. On the expiration of their term of office they had added two tables more³, and, having gradually altered their mild sway to little less than a tyranny, they refused to abdicate, and in the third year met with a fatal end, some by execution, others by exile⁴; the immediate occasion of which was the wicked proceeding of Appius against Virginia⁵.

From about A. U. C. 310, for nearly eighty years, whilst contention raged between the two orders on the question of admitting plebeians to the consulship, military tribunes, *tribuni militum*, with consular power, were appointed instead of consuls, though these were created at several intervals in that time, that is, whenever the senate happened to preponderate⁶; at last, A. U. C. 387, when there had now been no consuls for several years, the plebs gained their point so far, that one of the consuls should be chosen from their body. Although the *tribuni militum* supplanted the consuls against the will of the patricians, they were generally of that order. Their number⁷ varied from three to eight⁸.

1) Hugo rejects this, the commonly-received opinion, considering that the main cause is to be found in the dissensions of the tribunes and consuls. Mackeldey (§ 21), less studious of novelty, defends, and excellently explains the cause commonly assigned. 2) See Liv. 3, 9 and 32, sqq.; Dionys. lib. 10 and 11; Cic. de Rep. 2, 36.; cf. Lyd. 1, 34. 3) Cf. Cic. de Rep. 2, 37. 4) See Liv. 3, 58, and 4, 15, where he makes the dictator say they had been punished by loss of property, exile, and capitally, *bonis, exilio, capite mulctatos*. 5) A statue erected by public award, in the comitium to Hermodorus, an Ephesian, confirmed the belief of the ancients that the decemviri had been aided by him in composing the XII Tables. See, concerning him, Niebuhr, Rom. Hist. v. 2. p. 110, and Menag. ad Diog. Laert. 1. 9. c. 2, there quoted by Niebuhr, and approved. Pliny, speaking of this statue (34, 5), calls Hermodorus *legum quas decemviri scribebant interpretem*. Pomponius likewise writes of him (de Orig. Jur. lib. 2. § 4.): “Quarum (legum XII Tab.) ferendarum auctorem fuisse decemviris Hermodorum quendam Ephesium, exulantem in Italiâ, quidam retulerunt.” With which passage of Pomponius, Dirksen (Versuche zur Kritik, p. 211.), finds fault on two grounds; first, because that author uses the expression, *quidam retulerunt*, concerning a matter of fact proved by the existence of the statue; and, secondly, because he makes him to have been *auctor legum ferendarum*, instead of *interpretes*. And the words of Pomponius are, as is repeatedly the case in his work, De Origine Juris, those of a writer who seems scarcely to understand himself. However, I do not exactly understand, even from the passage of Pliny, what kind of assistance Hermodorus rendered to the decemviri. 6) See Liv. 4, 6. 7, sqq.; Dionys. 11, 60. 62, sqq.; Pompon. de Orig. Jur. Digg. lib. 1. t. 2. § 25; Lyd. de Magg. 1, 35 and 45. 7) Concerning their number, see the conjectures of Creuzer, § 170. 8) See Liv. 5, 1, where the reading, *octo*, is uncertain.

CONCERNING THE INFERIOR AND ORDINARY
MAGISTRATES.*Of the Tribuni Plebis.*

206. After the expulsion of the Tarquins the condition of the plebs grew worse than it had been; since the regal power (§ 186) being transferred to the consuls, the plebeians had scarcely any means of protection against the caprice of the dominant party, except the *lex de provocatione* (§ 71). Whilst they were excluded from the senate and all other posts of honour, poverty, and the debts it entailed, placed them daily more and more in the power of the patricians: these, abusing the severity of the laws against debtors (§ 72), drove the plebs to such a pitch of desperation that, (about A. U. C. 260), on the suggestion of one Sicinius, they withdrew¹ to the Mons Sacer, near the Anio²; leaving the city to the patricians, and, as some conjecture, their clients³. The patricians sending deputies from the city, effected a reconciliation by conceding to the plebs, among other things, an abolition of the debts of all who were unable to pay them, and the creation⁴ of magistrates from the plebs itself for the maintenance of its rights, whose persons should be held sacred and inviolable (§ 71). Two (?) were forthwith appointed on the mount itself, and called tribunes, either because, as some have conjectured, they were selected from the military tribunes, or, as I rather think, because they were set over the plebs as its chiefs⁵. Their number was soon increased to five⁶, and ultimately (A. U. C. 297) to ten⁷. At first they were chosen from the whole plebeian body indifferently, but in the seventh century of the city only plebeian senators were eligible, a regulation which must necessarily have been made after the *Lex Atinia*, ascribed to A. U. C. 624⁸, since that law, as we learn from Gellius⁹, declared the tribunes should be senators *ex officio*. The patricians were always ex-

cluded from the tribuneship (§ 181). The passage in Livy¹⁰ which implies the contrary is certainly of doubtful authority. Livy attests that persons whose fathers had held curule offices and were still alive were also excluded¹¹.

1) See Liv. 2, 23, sqq. and 2, 32; Dionys. lib. 6. 2) Several secessions (as they are called) of the plebs are recorded, and, among them, one to the Aventine Mount, on which Piso tells us the one now under consideration took place. Others say that both this and the secession during the tyranny of the decemviri (A. U. C. 305) were to the Mons Sacer. Of the secession in the time of the decemviri, Cicero says, de Rep. 2, 37: "Et primum Montem Sacrum, sicut erat in simili causa antea factum, deinde Aventinum armatos insedissee;" and ibid. 2, 33, speaking of the other;—"cum esset ex ære alieno commota civitas, plebs montem Sacrum prius, deinde Aventinum occupavit." 3) Cf. Nieb. v. 1. Schulze, p. 31. 4) Liv. 3, 55; Dionys. 6, 89. 5) Pomponius (de Orig. Jur. 20) thinks differently. The word *tribune*, to which the Greek word *δήμαρχος* corresponds, was applied like *præfectus* and *magister*, in various ways. Its most ancient application appears to have been to the leaders of the tribes and of the celeres. We also read of military tribunes, tribunes of the cohorts, and tribunes of the treasury. 6) Liv. 2, 58. 7) Liv. 3, 30. 8) See Bach. Hist. Jurispr. R. 1. 2. c. 2. § 52. 9) Gellius, 14, 8; cf. Suet. Aug. 10. 10) Liv. 3, 65; cf. Suet. l. c. 11) Liv. 30, 19.

207. The whole power of the tribunes lay, at first, in preventing the enactment of decrees of the senate against the plebs, which they did by simply pronouncing the word *veto*¹, or *intercedo*. From the latter came the expression *intercessio tribunitia*, denoting such a proceeding. It was not long, however, before they usurped the power of proposing laws, at least to the plebs (§ 168), and eventually assumed the command of the senate². At first they sat at the doors of the curia whilst the senate were deliberating within³, but they were afterwards declared senators *ex officio*, though there are some difficulties connected with this point (cf. § 175). They also administered justice, but it is not exactly known in what cases. In fine, the power of these tribunes, having no fixed limits, came at times very near to a tyranny, nor was there any other more effectual check upon it than dissensions between them which the senate used craftily to foment (cf. § 162). Sylla, in his dic-

tatorship, restricted the office to the simple *intercessio*, as at first practised: Pompey restored the powers of which it was thus shorn, and it continued to exercise them till the very downfall of the Republic, when Augustus found in the tribunitian power⁴ a specious pretence of just dominion. The office continued to exist in name till the decline of the Empire⁵: what the number of the tribunes was in those times is not known.

1) See Liv. 6, 35; Suet. Tib. 2. 2) Cf. Liv. 4, 26. 5, 9. 6, 32. 25, 3 and 4. 3) Cf. Val. M. 2, 2, 7. 4) Cf. Tac. Ann. 1, 2; Suet. Aug. 27. 5) Cf. Tac. Ann. 1, 77; cf. Nieup. sect. 2, c. 6. § 4.

208. Besides the first origin of the tribunes, and what has been stated respecting their power, now and in other parts of this work, I shall make the following remarks: The tribunes entered on their office in the month of December, in which month the first were made; concerning the day of taking office, see § 171. They had no insignia of magistracy, except the attendance of a messenger, *viator*, when they appeared abroad; they administered justice on the subsellia, not in the tribunal (§ 195), but they took the precedence of the other magistrates on the subsellia, having the foremost seats. Their person was so sacred that it was treason to assail it even in speech (§ 71), and their power is said to have been exempt from that of a dictator (cf. § 202): it extended however, only to a circuit of a mile around the city. The tribunes might not pass the night outside the city, nor be absent from it for more than one day at a time, except during the *Feriæ Latinæ*¹. The doors of their residence stood open even by night². As regards most of these regulations it is difficult to find sufficient proof either as to the time when they first were made or how far they were observed.

1) Cf. Dionys. 8, 87. 2) See Gel. 3, 2, 13, 12; Macrob. Sat. 1, 3.

OF THE PLEBEIAN AND OF THE CURULE ÆDILES.

209. The Ædiles (whence *ædilitas* and *ædilitius*) were so called¹, according to most of the ancients, from the circumstance that their office consisted partly in the care of public buildings, either in general², or only of the temples³. There were two plebeian and two curule ædiles. The former were appointed at the same time with the tribunes, to assist them⁴. They were always plebeians, and had no insignia of office, but were equally sacred in their persons with the tribunes⁵. The curule ædiles, so called from their curule chair, (besides which they wore the *prætecta* and had the *jus imaginum*, § 132⁶) were added (A. U. C. 387), on the occasion of some solemn games, in commemoration of the admission of plebeians to the consulship. The plebeian ædiles having refused to preside at these games, two patrician youths volunteered to officiate at them, on condition that for the future there should be two additional ædiles chosen from the patrician order⁷. The very next year, however, it was agreed that they should be appointed alternately from the plebs and the patricians, afterwards they were chosen indifferently from either⁸.

1) Pomponius, Fr. 2. § 21. de Orig. Jur. : " Ut essent, qui ædibus præessent, in quibus omnia scita plebs deferebat, duos ex plebe constituerunt, qui etiam ædiles adpellati sunt." Which does not agree with the opinion of other authors concerning their charge of the public buildings, from which they had their name of office. I think it can scarcely be doubted but that the passage is corrupt, and I wonder that Dirksen, when examining the credit due to Pomponius as a historian (Versuche zur Kritik — d. röm. Rechts, p. 207, sqq.), took no notice of it. 2) Cf. Fest. in *ædilis*. 3) Cf. Dionys. 6, 90. 4) Cf. Dionys. 6, 90. 5) See Liv. 3, 55. 6) Cf. Cic. Verr. 5, 14. 7) See Liv. 6, 42. 8) See Liv. 7, 1.

210. The duties of the ædiles, from these small beginnings, came to resemble those which in modern times

belong to police magistrates or inspectors¹. Among them was the care of the temples, roads, and public works in general, and an important part of their office was the celebration of the public games, the regulation of the supplies of corn², and the superintendence of the markets, whence Greek writers call them *ἀγορανόμοι*³. They were also largely concerned in the superintendence of the public morals⁴; in which respect it is difficult to distinguish their duties from those of the censors (§ 197). One thing is certain, that the duties of the two classes of *ædiles* were not all the same; and it is easy to conceive, that, as has been asserted, certain censorial powers, which were once given to the plebeian *ædiles*, were afterwards taken from them; and yet it seems very credible that since the power of the censors themselves was suspended for the greater part of the *lustrum*, some of their duties devolved upon the *ædiles*. It is certain that the most important games were managed by the *curule ædiles*⁵; whose office about the close of the Republic was very expensive⁶. The *ædileship* appears to have existed under the *Cæsars*, in name, down to the reign of Constantine the Great. Concerning the *ædilitian edict*, see § 192. Julius *Cæsar* appointed a new kind of *ædiles*, called *cereales*⁷, their duty being to superintend distributions of corn⁸. It is asserted that these were always patricians, but, I apprehend, on insufficient grounds⁹; there certainly is no evident reason why they should have been such.

1) See Dionys. 6, 90; Cic. Verr. 5, 14; de Legg. 3, 3. 2) See Cic. ib. 3) See Dionys. l. c.; Lyd. 1, 35; Cf. Juven. 10, 101; Pers. 1, 130; Plaut. Rud. 2, 3, 42. 4) Cf. Gell. 10, 6; Sen de Vita Beata 7. 5) Cf. Cic. de Legg. 3, 3. Idem Verr. 5, 14: "Nunc sum designatus *ædilis*. Habeo rationem, quid a populo Romano acceperim: mihi ludos sanctissimos maxima cum *cæremonia Cereri*, *Libero Liberæque* faciundos, mihi *Floram matrem populo plebique Romanæ ludorum celebritate placandam*, mihi ludos antiquissimos; qui *primi Romani sunt nominati*, maxima cum dignitate ac religione *Jovi, Junoni, Minervæ*, esse faciundos, mihi *sacrarum ædium procurationem*, mihi *totam urbem tuendam esse*

commissam. Ob earum rerum laborem et sollicitudinem fructus illos datos, antiquiorem in senatu sententiæ dicendæ locum, togam prætextam, sellam curulem, jus imaginis ad memoriam posteritatemque prodendæ. 6) Cf. Cic. pro Mur. 19, 20; Plin. 33, 3; Beauf. vol. 1. p. 355. 7) Cf. Lyd. 1, 48. 8) See Pomp. Digg. 1. 2, 2, § 32. 9) Cf. Nieup. sect. 2. c. 5. § 2.

OF THE QUÆSTORS.

211. Most ancient authors ascribe the origin of the quæstorship to the æra of the kings, and common report assigned it to Tullius Hostilius¹; Plutarch², on the contrary, refers its institution to Valerius Publicola, and Pomponius³ makes it to have been subsequent to the appointment of the plebeian tribunes. The first mention of them in Livy⁴ occurs under the year of Rome 269, so that we cannot gather from him the period of their first appointment. If we follow Tacitus and others in ascribing the power of appointing them to have belonged first to the kings, and then to the consuls, it will still remain uncertain when this power fell into the hands of the people, opinions being much divided on that point⁵. As to their number, however, it is agreed that originally there were two, and that two more were afterwards added⁶. It is also agreed on all hands, that from the time their number was thus augmented, two discharged their duties in Rome, and two attended the consuls on military service, whence the latter are called military or provincial (§ 249), and the former city quæstors. After the conquest of Italy four more were appointed⁷, one, as some authors think⁸, to each of the parts or provinces (§ 243) into which it was divided. Sylla⁹ increased the number to twenty, or perhaps *by* twenty. Cæsar¹⁰ made it forty, for the purpose of recruiting the numbers of the senate (§ 173); it was various at different times under the Cæsars. This office appears to have belonged exclusively and undisputedly to the patricians apparently till A. U. C.

334; but a few years afterwards plebeian quæstors were elected¹¹. This office was the first step towards the consulship¹², and led the way to a place in the senate (§ 174); it had, however, no insignia, unless, perhaps, as some have conjectured, the military quæstors were attended by lictors¹³. Gellius affirms that the quæstors had not the right of arrest¹⁴. Concerning their right of proposing measures to the people, see the same author and Dionysius¹⁵.

1) See Ulp. in Pandd. de Off. Quæst; cf. Dionys. 1, 5. p. 303; Tac. Ann. 11, 22: "Apud majores virtutis id (quæstura) præmium fuerat, cunctisque civium, si bonis artibus fiderent, licitum petere magistratus. Ac ne ætas quidem distinguebatur, quin prima juvenia consulatum ac dictaturas inirint. Sed quæstores regibus etiam tum imperantibus instituti sunt: quod lex curiata ostendit, a L. Bruto repetita. Mansitque consilibus potestas deligendi, donec eum quoque honorem populus mandaret. Creatique primum (sc. a populo) Valerius Potitus et Æmilius Mamercus, LXIII. anno post Tarquinius exactos, ut rem militarem comitarentur. Dein, gliscen-
tibus negotiis, duo additi, qui Romæ curarent (?). Mox duplicatus numerus, stipendiaria jam Italia, et accedentibus provinciarum vectigalibus. Post, lege Syllæ, viginti creati supplendo senatui, cui judicia tradiderat, etc." 2) Plutarch. in Public. p. 183.
3) Pomp. l. 2. § 22; Digg. de Orig. Jur. 4) Liv. 2, 41. 5) Cf. Ulpianus, and Tac. l. c. 6) About A. U. C. 335.? See Liv. 4, 43; Tac. l. c. 7) Cf. Tac. l. c. and Liv. Ep. lib. 15. 8) See Nieup. 2, 7, 1. 9) Tac. l. c; cf. Lyd. 1, 27. 10) See Dio Cass. 43, 47. 11) See Liv. 4, 43 and 54. 12) Cf. Cic. Phil. 11, 5. 13) Cf. Cic. pro Planc. 41. 14) Gell. 13, 12. 15) Dionys. 8, 77.

212. As regards the duties of the quæstorship, in the time of the Kings and the first times of the Republic, though it should be granted that they were rather assistants to the kings and consuls than magistrates of the people¹, it will not be easy to ascertain whether they were, at that early period, charged with collecting the public monies, and keepers of the treasury, or merely engaged in bringing malefactors to punishment²; I think that they most probably combined the two, and Varro's interpretation of their name comprises both³. The passage in Varro so weighs with me that I con-

clude they had their name rather from their duties as public prosecutors than as collectors of the revenue⁴; for even in later times, when their duty had been so altered as to consist chiefly in the custody and management of the revenues, their name was still applied to prosecutors⁵.

1) Cf. Creuz. § 156. 2) Cf. Liv. 2, 41. 3, 24 and 25; Cic. de Rep. 2, 35; Dionys. 1, 8. p. 544 and 546. Creuzer (§ 156) makes them to have been judges in capital offences, like the *quæstores parricidii*; a duty which Varro (see the next note) affirms to have been discharged by the *quæstors*, after the *triumviri capitales*; however these *triumviri* are not to be confounded with the *quæstores parricidii*. 3) Varro de L. L. l. 4. p. 22: "Quæstores, a quærendo, qui conquirerent publicas pecunias, et maleficia, quæ *triumviri capitales* nunc conquirunt; ab his postea, qui *quæstionum* judicia exercent, *quæsto* resdicti." 4) Cf. Fest. in *quæstores*; Pomp. de Orig. Jur. Digg. l. 1. t. 2. § 22. 5) Cf. Fest. in *quæstor*, *quæstor*, *quæstiones perpetuæ*, *quæstores parricidii*. (See § 133). Cf. Varro l. c.

213. It became, accordingly, thenceforth, the office of the city *quæstors*¹ to exact and collect the public revenue, to deposit it in the treasury, to make the necessary issues of public money, under the sanction of the senate, and keep an account of the receipt and expenditure. It was consequently their business to sell the booty made in war², and confiscated property³. Among their other duties was a species of jurisdiction but little known⁴, consisting in the entertainment and public maintenance of foreign ambassadors⁵, the custody of decrees of the senate (§ 182) and military standards (§ 367) deposited in the treasury, *ærarium*, which last they used to send to generals who were proceeding on expeditions⁶. It was also the custom for generals, when about to celebrate a triumph, to make oath before the *quæstors* that they had truly reported the number of the enemy slain⁷. I doubt whether the duty of holding the centumviral auctions which Augustus transferred to a board of ten, *decemviri*⁸, and which is said to have been the business of a *quæstor*, was peculiar to

the city quæstors. The quæstors had under them a great number of clerks, *scribæ*, and tribunes called *tribuni ærarii*⁹, from their office of paying the troops¹⁰. Passages of Cicero show that these tribunes were very numerous¹¹. I have observed, § 380, that the third decury of judges was composed of them (§ 269), and that they were held in high honour.

The provincial quæstors, also commonly called *pro-quæstores*¹², were charged with paying (§ 374) the troops when on service, and supplying them with corn; they also took care of the money which the soldiers deposited at their standards¹³, collected the taxes and contributions, whether of grain or of any other kind, and sold the spoils, duly reporting all to the city quæstors. They are also found to have exercised jurisdiction¹⁴ when deputed to them by the governors of provinces, sometimes acting entirely as their substitutes if they were absent.

1) There is a remarkable passage concerning their primary duties in Plut. Cat. Min. p. 766, sqq. 2) Cf. Dionys. 7, 63. 3) Cf. Gell. 13, 24. 4) Cf. Plut. Cat. Min. p. 766. 5) Cf. Plut. Quæst. Rom. 42; Val. M. 5, 1, 1. 6) See Liv. 3, 69, 7, 23. 7) See Val. M. 2, 8, 1. 8) Cf. Suet. Aug. 36; Creuz. § 157. 9) See Varro de L. L. 1. 4. p. 42. 10) The *æs militare*, see § 271, c; cf. Gell. 7, 10; Plaut. Aulul. 3, 5, 52. 11) Cic. Cat. 4, 7, pro Planc. 8. 12) Concerning the *pro quæstore* as deputy of the provincial quæstor, compare the ambiguous passages in Cic. Verr. 1, 15 and 36, which both others and myself have improperly applied to this point, Cic. Div. § 19. 13) Cf. Suet. Cæs. 7. 14) Cf. Cic. ad Div. 2, 15 and 18.

214. Under the emperors the quæstorship was not only suspended at times, as appears from Tacitus¹, but underwent several alterations², among which was the transfer of the care of the treasury³ to two prætors, made by Augustus; Claudius ordered that these prætors should remain three years in office⁴, and the charge of it appears not to have been restored to the quæstors from his time to that of Nero⁵. In the time of Augustus we first meet with a new kind of quæstors, but with

only a temporary office⁶, called *candidati*, I suppose as being aspirants to higher honours (see § 184), and also *quæstores principis*, from their office, which was to read the letters and messages of the emperor in the senate⁷. The dignity of this office increased with the increasing power of the emperors, being bestowed even on their sons and destined successors⁸. Lastly, we meet with quæstors of the palace, not unlike our chancellors⁹, though Creuzer¹⁰ questions whether this was a new or superior dignity¹¹. Different from all whom we have hitherto mentioned were the *quæstores parricidii* (§ 263). Lydus¹², from ignorance of his subject, has added another kind whom he calls *classici*.

1) Tac. Ann. 13, 29. 2) Tac. ib. 3) See Suet. Aug. 36 ; Dio Cass. 53, 2. 4) See Suet. Claud. 24. 5) Cf. Lips. Excurs. ad Tac. l. c. 6) Cf. Dio Cass. 54, 25 ; Suet. Aug. 35 ; Creuz. § 158. 7) See Ulp. de Off. Quæst. Digg. 1, 13 ; cf. Tac. Ann. 16, 27 ; Lyd. 1, 28. 8) Cf. Suet. Tit. 6. 9) Cf. Symm. Epistt. 1, 17. 10) Cruetz. § 138. 11) Cf. Lyd. 1, 28. 12) Lyd. 1, 27 ; see Creuz. § 158.

OF THE CURATORES, TRIUMVIRI, ETC.

§ 215. We have also to notice among the magistrates the *curatores* and *triumviri*, who were both either ordinary or extraordinary, and of several kinds. Most of the ordinary were first appointed under the Cæsars¹. Among the *curatores* were *C. viarum* (§ 48), having charge of the public roads, which in former times had belonged to the *ædiles*, at first to all four, though subsequently each *ædile* had had the care of one road². There were also *curatores riparum* (*alvei*), of the banks (or bed) of the river Tiber, *C. aquarum* of the aqueducts (§ 50). The *curatores kalendarii* were peculiar, and have been noticed in § 384 of this work. Among the *triumviri* were the *T. capitales*, also called simply *triumviri*³, having cognizance of offences committed by slaves, men of the lowest order, and foreigners, and charged with inflicting the punishments awarded by

other magistrates⁵; the *T. nocturni*, charged with the night police of the city⁶, which was transferred by Augustus to the *præfectus vigilum*; the *T. monetales*, of the mint, so called from their business, which consisted in minting the gold, silver, and copper currency, whence they are often indicated on coins and in inscriptions by the letters *a. a. a. f. f. i. e. auro, argento, are flando, feriundo*⁸; these are not to be confounded with the *T. numularii*⁹, whose office it was to test the coinage¹⁰.

1) Cf. Suet. Aug. 7; Onuphr. Panv. de Civ. Rom. c. 58. sq.
 2) Cf. Cic. ad Att. 1, 1. 3) Cf. Plaut. Amphitr. 1, 1, 3. 4) Cf. Plaut. Aul. 3, 2, 2. 5) Cf. Liv. 32, 26; Sall. Cat. 51; Val. M. 8, 4, 2. 6) See Digg. de Off. Præf. Vig.; c. Lyd. 1, 50.
 7) Cf. Cic. ad Att. 10, 11. 8) See Pomp. Digg. 1, 2, 30; cf. Dio Cass. 54, 26; Spanh. de Usu and Præst. Num. 2. p. 167; Eckh. Doctr. Numm. v. 5, p. 6. 9) See 1, 39, Digg. de Solut., et Donat. ad Ter. Eun. 3, 15, 18. 10) Among the inferior magistrates may also be classed the *decemviri stlitibus judicandis* (§ 267), and of præfects, those sent by the people into the præfectures of Italy, (note on 127). Dio Cassius, 54, 26, is the only sufficient authority for our supposing that these, who were four in number, were, together with the *decemviri*, *triumviri monetales*, *triumviri capitales*, and the six *curatores viarum*, collected into a body called *viginti sex viri*. (Cf. Fest. in *præfecturæ*.) According to the same author (Dio Cassius) this body was reduced under Augustus to twenty members, by the abolishment of these præfects and of two of the inspectors of highways, and it then also was composed of knights; hence the term *vigintiviratus* (Tac. Ann. 3, 29): appointments to this body were eagerly sought for by young men even of the emperors' families, as the first step to distinction. (See Dio 54, 26; cf. Tac. Ann. 3, 29; Æl. Spart. Did. Jul. 1; Masson, in his life of Ovid, on the verse "eque viris quondam pars tribus una fui;" Stieglitz, Archæol. Unterhalt. p. 42. Creuz. § 160).

216. Among the many other kinds of extraordinary magistrates we find mentioned the *præfecti* or *curatores*¹ *annonæ*, of the corn-market, (§ 209), who were made ordinary magistrates by Augustus²; also the *quinqueviri* or *triumviri mensarii* (§ 384), employed in arranging and settling the accounts of bankrupts³; *triumviri*, *quatuorviri*, and *decemviri* for planting colonies, *colonix deducendæ*, who were also called *agrarii* or *agris dandis*, from their office of assigning lands to the colonists⁴, they are mentioned on coins. There were

also *quinqueviri minuendis sumptibus*, for restricting the expenses of individuals; *duumviri ædibus dedicandis*, for dedicating temples⁶; *quinqueviri muris turribusque reficiendis*, for repairing the city walls and towers⁷; *duumviri navales*; *triumviri ædibus sacris reficiendis*, for repairing temples; *triumviri valetudinis*, officers of public health; the fact of the existence, however, of these depends, I perceive, on the interpretation of a coin belonging to the gens *Acilia*⁸. Besides these were many others.

1) Cf. Suet. Aug. 37. 2) Cf. Liv. 4, 12; Cic. ad Att. 4, 1; Dio Cass. 39, 9; Plin. Pan. 29, boasts of the abundance which prevailed under the reign of Trajan. 3) See Liv. 7, 21, 23, 21. 4) Cf. Liv. 3, 1, 8, 16, 34, 53, 39, 22. 5) See Liv. 9, 30; cf. 40, 18, 41, 1. 6) See Liv. 25, 7. 7) See Liv. ib. 8) See Reines. Synt. Inscriptt. Class. 1, n. 116; Eckhel Doctr. Numm. v. 5. p. 119; Spanh. de Usu et præstant. Numism. 2. p. 15; Creuz. Symbolik 2. p. 414-416, who, quoting the places here referred to, (Abriss der Röm. Antiqq. § 159,) also asks whether the existence of such officers can be proved from inscriptions.

MAGISTRATES' OFFICERS.

217. After enumerating the magistrates of the Republic, their attendants or officers must be mentioned: these, or at least many kinds of them, were styled *adparitores*, (whence *adparitio*)¹, from their being in attendance, *adparentes*, in order to perform the orders of the magistrates; and, in the provinces, *statores*², from their standing in readiness; however, they were all freemen, though of the lowest rank, unless we include public slaves under this head; frequently they were the freedmen of the magistrate³: a distinction must be made between these and others publicly appointed. Among the different classes of inferior officers were the clerks, *scribæ*⁴, divided into *decuries*⁵, and assigned by lot to particular magistrates⁶, from whose rank they derived their names, as *scriba consularis*, *prætorius*, *censorius*, etc.⁷; criers, *præcones*⁸, who performed duties

of different kinds, at the comitia, in the senate, and at other assemblies, at public sales (§ 100), and at funerals⁹; collectors, *coactores*¹⁰, also called *collectarii*, who collected money due for purchases at auctions¹¹, &c.; lictors¹², who waited on consuls, prætors, and on any who held command, carrying the fasces before them, and causing any they met to show them due respect¹³, to which the word *animadvertere* (§ 186) applies: they likewise executed sentence on the condemned, by beating or beheading them¹⁴.

1) Cf. Serv. ad Æn. 12, 851; Gell. 10, 3; Sigon. de Ant. Jure Civ. Rom. 2, 15; Creuz. § 174; concerning the word *adparitio*, Cic. ad Div. 13, 54; ad Quint. fr. 1, 1, 4; Ulp. Pandd. 4, 2, 23, 3. 2) Cf. Petron. Satyr. c. 120; Cic. ad Div. 2, 17; Ulp. Pandd. 4, 16, 10. 3) Cf. Sigon. l. c.; Cic. ad Quint. fr. 1, 1, 4. 4) Concerning their name and office, cf. Fest. in *scribas*, Cic. Verr. 3, 79. 5) See Schwarz ad Nieup. p. 190. 6) Cf. Cic. Cat. 4, 7. 7) Cf. Cic. Verr. 3, 80; Suet. Vesp. 3. 8) Cf. Hor. Sat. 1, 6, 86. 9) Cf. Varr. de L. L. 1.4. p.38. 10) Cf. Hor. l. c.; Cic. pro Cluent. 64. 11) Cf. Suet. Vesp. 1: "Coactiones argentarias factitavit;" and Pandd. 40, 7, 40. § 8: "Argentarius coactor quum pæne totam fortunam in nominibus haberet," etc. 12) On this word, see Gell. 12, 3, where he says that Tiro Tullius, Cicero's freedman, derives the word *lictor* from the cross belt, *limum vel licium*, with which they were girt; "licio enim transverso, quod limum appellatur, qui magistratibus præministrabant cingebantur." But Gellius prefers deriving it from their binding the hands and legs of those who were to be beaten, *lictor a ligando*, following the opinion of Valgius Rufus, which he quotes. Plutarch (Rom. 26. p. 34) derives the word from *ligare*, but also conjectures that they may have been called formerly *lictores quasi λειτουργοι* (ministri), and afterwards by inserting K. *lictores*. 13) Cf. Liv. 24, 44. and Suet. Cæs. 80, "Lictor animadverti jussit." 14) Cf. Liv. 1, 26.

218. Other officers were *viatores*, serjeants, such as those of the tribunes of the people (§ 208), of the censors¹ and of the consuls², named from their office of calling meetings, or from the word *via*, as some say³; *accensi*⁴, inferior officers who had different employments under magistrates⁵, and formerly appointed to call the hour⁶, mentioned likewise at funerals⁷, but different from the *accensi militares* (§ 144), who were appointed, under the emperors, to situations in public offices, and

constituted the *literata militia*, (§ 239): *nomenclatores*⁸, who waited on magistrates⁹, in order to give them the names of those they met, originally only employed by private individuals in that capacity (§ 184). Finally, among such attendants we may class the interpreters, who were employed in the senate, as may be supposed¹⁰, and generally in the provinces, so that they usually formed part of the suite of a provincial magistrate (§ 247). The office of public executioner was held degrading, as at present; he was forbidden the city¹¹, was of the lowest class, and employed in executing slaves (§ 55), and men of his own class; he was also, some say, the jailer of the prison, under the direction of the triumviri (§ 215)¹².

1) Liv. 39, 44. 2) Id. 8, 18. 3) Cf. Cic. Cat. Maj. 16.
 4) As being *adcensi*, or added to the magistrates? Varr. de L. L. p. 62, derives it from *accire*, to summon. Cf. Lyd. 1, 13, where see my note in Epist. ad Has. p. 16. 5) Cic. ad Quint. fr. 1, 1; Verr. 2, 10. 6) Varr. l. c. 7) Cf. Cic. de Legg. 2, 24, 61. 8) From *calare*, § 149. 9) Cf. Lyd. 3, 8. 10) Cf. Cic. de Fin. 5, 29. 11) See Cic. pro Rab. 4 and 5; Plaut. Pseud. 1, 3, 98; Tac. Ann. 2, 33. 12) Cf. Plaut. Rud. 3, 6, 19.

OF THE CHANGES IN THE CONSTITUTION OF THE REPUBLIC UNDER THE CÆSARS.

219. Having, in the preface to this work, stated my intention of touching on most points connected with the antiquities of Rome under the Cæsars, but treating largely of only a few of them, I consider that this is the proper place to note the chief alterations in the state of the Republic under the Cæsars, and to give as brief an account as possible of the imperial power, the new magistrates, and the offices and titles of dignity introduced into each division of the Empire, when the Roman sway was speeding to its fall. The Romans, corrupted by the wealth and manners of the nations they had subdued, began to turn their fury on each other. The

Republic, on emerging from the civil wars of Sylla, found itself too enfeebled to stand long, and was wholly extinguished in the second civil war. The dictatorship of Cæsar was succeeded by the still more tyrannical caprice of the triumvirate, and everything remained unsettled when Octavius was left alone in power, until the supreme government was decreed to him by the consent of the senate and people, A. U. C. 727.

220. Augustus finding himself thus in legal possession of the power which had till then been his only by right of arms, and being deterred by Mæcenas from his design, whether real or feigned, of restoring liberty to the Romans, adopted the advice of that crafty counsellor in regulating the government, by leaving them a semblance of freedom whilst the whole power of the state still remained in his hands¹. For although the senate and the comitia (§ 228) continued to exist, he gradually himself engrossed the chief rights of both, no less than the power of the principal offices of the magistracy². The sovereignty which he thus secured passed as an heirloom to the succeeding Cæsars, whether they were or were not partly or wholly secured to them by a certain law, commonly called *lex regia*, also *lex imperii* (cf. lib. 3. C. de Test.), and by Justinian (l. un. § 14. C. de Cad. toll.), *Augustum privilegium*. Such a law is mentioned in the Digests and Institutions³, and confirmed, in the opinion of some, by a monument containing it (§ 426), but Hugo⁴ considers it more probable that no such law ever existed⁵.

1) Cf. Dio Cass. lib. 52 and 53. 2) Tac. Ann. 1, 2; Dio Cass. 53, 17. 3) Cf. D. 1, 4, 1; Instt. 1, 2. § 6; cf. Tac. Hist. 1, 47, 2, 55, 4. 3. 4) See Hein. Synt. 1, 2, 62-7; ibiq. Haub. Epicrisin, et ejusd. Institt. J. R. Litter, p. 253; Hein. Hist. Jur. Rom. l. 1, § 169; Bach Hist. Jurispr. 1. 3, c. 1. § 3; Hugo § 277. p. 520-23 ed. 8. 5) Heineccius, Synt. 1, 2, 65: "Adparet, quæcunque sensim Augusto detulerat senatus, ea postea Tiberio, aliisque principibus fuisse decreta. Omnia ergo illa SCta non uno eodemque tempore facta, sæpiusque deinde repetita, simul sumta, lex IM-

PERII vocari consueverunt a jureconsultis, ut et LEX REGIA, exemplo, ut opinor, veterum Romanorum, qui, urbe vix nata, Romulo supremam potestatem concesserant LEGE REGIA, cujus meminit Livius" (34, 6); on which Haubold remarks in his Operis Heinemannianæ Epicrisis, p. 918: "Quæ auctor de lege regia, maxime § 65, scripsit, iis nunc patrocinari videtur Gaius l. § 5." The passage of Gaius is as follows: "Nec unquam dubitatum est, quin id (scilicet quod imperator decreto, vel edicto, vel epistola constituit) legis vim obtineat, quum ipse imperator per legem imperium accipiat." Haubold also adds, that all the difficulties which still beset the question have been accurately stated by Hugo (Gesch. d. Roem. R. p. 520-23, ed. 8). I apprehend that the dispute is only one of words, about the name of a thing concerning which the learned disputants are in fact agreed.

221. The offices, which, with the title of *princeps*¹, were accumulated to compose the imperial power of the Cæsars, appear to have been the *tribunitia potestas* and *potestas consularis*, the *imperium*, *proconsulatus*, *præfectura morum* and *pontificatus maximus*. These were either heaped at the first on Augustus, or assumed by him as he gradually found himself more firmly established on his throne. The consular power, or, at all events, the right of bringing before the senate whatever matters he pleased, and at any time, he received in perpetuity after having held the consulship for several years²: to the consuls themselves was left rather the execution of his decrees than any real authority of their own. This point is, however, involved in much obscurity. The tribunitian power, which Augustus, after the example of Julius Cæsar, assumed to himself in perpetuity³ from A. U. C. 731, invested the emperors with whatever powers had been ascribed to it under the Republic; by virtue of it they could call assemblies of the senate and people, and could lay matters before either; they received appeals from the decisions of magistrates, for rescinding the verdicts of judges, and putting a veto on decrees of the senate: accordingly, they, like the tribunes of the people, were accounted the defenders of the rights of the people, and considered sacred and inviolable in their

persons⁴. Hence the tribunitian power, as it constituted the main part of the imperial power, so it was considered as its chief support (cf. § 207); no wonder, then, that the æra of the Empire, on the coins and public monuments of the Cæsars, is commonly reckoned from its assumption by Augustus.

1) Cf. Tac. Ann. 1, 1; Suet. Cal. 22; Dio Cass. 57, 8. 2) Cf. Tac. Ann. 1, 2, 9; Dio Cass. 53, 32; Bach. l. 3. c. 1. § 6. 3) See Tac. Ann. 1, 2. 4) Cf. Dio Cass. 53, 17.

222. The title emperor, *imperator*¹, which was bestowed on J. Cæsar, signified the perpetual command of the whole military force of the state², just as it had in former times been vested in the kings or consuls, being the name of honour given to the most distinguished generals: there was this difference, however, that the imperium exercised by the Cæsars was, like the other offices they assumed, greater than it had been in the free ages of Rome, in that it included the power of life and death even within the city itself, and that of peace or war³, which latter had belonged to the whole (?) people (§ 170). This title was also bestowed on the emperors in another sense when assigned to them, as to successful commanders in former times, on account of eminent achievements in war; and this honorary distinction is commonly found on the coins of the Cæsars together with the titles of consul and tribune. The proconsulship claimed by the emperors over all provinces implied an authority over the acting governors, *rectores*, of those provinces⁴. The *præfectura morum*, which had been part of the censorship (§ 199), gave them entire control over the honours and rank of all the citizens, as it included the right of selecting senators, knights, and judges, with the whole corrective power, *animadversio*, of the censors⁵; finally, the *Pontificatus Maximus* gave them absolute authority in religious matters, and was no slight safeguard of their

sovereignty, both from the additional reverence which the people paid to them as being charged with such affairs, and from the way in which they could modify it so as to best suit their interests and plans⁶; hence not even the first Christian princes refused this title. The names Cæsar and Augustus were merely styles of honour. The latter intimated the sanctity of the person bearing it, and the veneration due to it, denoting, properly, something consecrated by augury⁷, the Greeks accordingly rendered it by *σεβαστός*. This title was decreed by the senate to Octavius⁸, that of Cæsar was adopted from J. Cæsar (§ 91). The name *princeps*, which was used also under the Republic, likewise denoted pre-eminence rather than power. The Greeks designated the emperors by the same word as the kings, calling them *βασιλεῖς*. As adulation advanced, they came to be commonly called *domini*⁹; a title which Augustus and Tiberius are well known to have disliked¹⁰, from its implying the correlative idea of servitude, and yet it was used, even in their times, by their courtiers, and persons attending their levees¹¹. The emperors used also to assume titles of their own choice, such as Felix, Pius, Victor, or one borrowed from nations whom they had conquered.

1) Cf. Suet. Cæs. 76; Tib. 26. 2) Cf. Dio Cass. 43, 44, 53, 17. 3) Cf. Dio Cass. 53, 17. 4) Cf. Dio Cass. 53, 32. 5) Dio Cass. 53, 17. 6) Cf. Dio Cass. ib. 7) Cf. Fest. in *augustus locus*, Suet. Aug. 7; Dio Cass. 53, 18; Creuz. § 187 and 189, who maintains that it comes from *augur*, not from *augeo*; both these etymologies are given by Festus and Suetonius. 8) Suet. Aug. 7. 9) Cf. Pliny's letters to Trajan, Lyd. de Magistr. 1, 6. 10) Suet. Aug. 53; Tib. 27; cf. Tac. Ann. 2, 87. 11) Cf. Ovid. Am. 3, 7. 11; Sen. Epist. 3; Mart. 1, 113, 5, 58; Briss. de Form. l. 8. p. 744.

223. It is sufficiently clear, from what has already been stated respecting the imperial power and the chief offices of the Republic generally, that these continued

to exist under the Cæsars in name rather than in effect¹. The powers being gone, it was natural that the offices themselves should be changed, and some were transferred wholly to the emperors (§ 189 and 199), and others supplanted by new offices of their creation. Of the latter, the *quæstores candidati*, the *prætor fideicommissarius*, the *prætor tutelaris*, and several inferior magistrates, have already been noticed (§§ 196. 214. 215. 216.), but the most remarkable of all were the *præfectus urbi* and the *præfectus prætorio*.

1) Cf. Tac. Ann. 1, 3.

224. Augustus appointed the *Præfectus Urbi* at the suggestion of *Mæcenas*¹, reviving the semblance of an office known under the Republic (§ 204), that less offence might be taken from his heaping on a new magistrate the offices of several, and chiefly of the *ædiles* and *prætors*, whose insignia he is thought to have had with the several duties enumerated by *Ulpian*². These included attention to complaints of slaves against their masters, and of patrons against their freedmen, the cognizance of crimes committed by trustees and guardians against their wards, the checking of fraudulent dealings among bankers (*argentarii*, see § 384), the inspection of the flesh-markets, and the maintenance of public tranquillity³: hence it was his business to maintain order at public spectacles, and he had at his disposal the city cohorts, and the *præfectus vigilum*⁴. The power of this magistrate extending, as it did, to a radius of one hundred miles from Rome, was such that he could sentence to banishment from Italy, and transportation to islands. This office was established in Constantinople as well as at Rome, and lasted to the latest times of the Eastern empire⁵.

1) Cf. Tac. Ann. 6, 11; Suet. Aug. 37; Dio Cass. 52, 21.
2) Pandd. de Off. Præf. Urb. 3) Cf. Tac. Ann. 6, 11; Juven.

4, 77; Dio Cass. 52, 21.

4) Cf. Pandd. de Off. Præf. Vig.

5) Cf. Lyd. 1, 34, 2, 6.

225. The Præfectus Prætorio, called by the Greeks *ὑπαρχος* and *ἐπαρχος*¹, (whence *præfectura prætorii*, Gr. *ἐπαρχότης*,) was also an office created by Augustus. This præfect had the command of the prætorium (§ 190) or prætorian cohort, also called simply the *prætoriani*, being picked² soldiers, whom the emperors selected for their body-guard after the manner of the kings and of generals (§ 204). At first there were two such præfects, under Tiberius only one³; but after his reign one or several at different periods⁴. The power of these præfects, which was at first but small⁵, and wholly of a military character⁶, afterwards increased to such a degree, when the power and safety of the Cæsars had come to depend almost entirely on the prætorian guard, that they became supreme over all other magistrates, and controlled affairs of the greatest importance, including the *aulica*⁷, or matters pertaining to the imperial household⁸ (§ 232, sqq.). They were constant attendants on the emperor's person, being ever at hand to execute his commands: in course of time they came also to be the chief judges in the empire, no appeal being allowed even to the emperor himself⁹; so that they may justly be described as all but partners in the empire¹⁰. The emblem of this great power was a sword given them by the emperor when he appointed them¹¹. Another of their insignia was, a four-wheeled chariot¹². Concerning their official title, see § 236. When Constantine the Great divided the Empire into four parts or præfectures, namely, that of the East, (P. *Orientis* or *per Orientem*,) that of Italy, that of Illyria, and that of Gaul, he set a præfect over each. Africa was included in the Pr. of Italy, and Spain and Britain in that of Gaul. These præfectures were divided into dioceses or vicarships, and these were subdivided

into provinces. Each diocese was under a vicarius, also called *exarchus*. The provinces were ruled by officers styled *proconsules*, *correctores*, or *præsides*. Hence the power which had originally been of a merely military nature, and then mixed, became purely civil, the military functions being transferred to *magistri militum*; and eventually¹³ the *præfects* retained little beyond the right of jurisdiction (§ 231).

1) Cf. Lyd. 2, 6. 2) Cf. Digg. de Off. Præf. Præt.; Dio Cass. 52, 24. 55, 10. 3) See Tac. Ann. 1, 24, 4, 1. 4) Cf. Tac. Ann. 14, 51. 5) Cf. Tac. Ann. 4, 2. 6) Was not this the case down to the reign of Adrian? Cf. Spart. Adr. 18. 7) Cf. Suet. Cal. 19. 8) Lydus, (2, 6.), as usual, is confused in his chronology; cf. Creuz. § 166. p. 182. 9) Cf. Capit. Anton. Phil. 11; Herod. 7, 6; Digg. tit. de Off. Præf. Præt. 10) Cf. Herodianus 5, 1; Vict. de Cæs. c. 9; Lyd. 2, 9. 11) Cf. Plin. Paneg. 67; Xiphil. in Trajano, Lyd. 2, 9 and 13. 12) Called *ἀπὸννη* by the Greeks; cf. Lyd. 2, 14. 3, 57; cf. *carruca*; Symm. 10, 40. 13) Cf. Lyd. 2, 10 and 11.

226. Most of the particulars which have been here collected concerning the alterations which the state experienced under the emperors, belong to the earlier times of the Cæsars; for towards the close of the third century of the Empire, matters became so altered that there is scarcely any subject in the whole range of Roman history so perplexed and difficult as the constitution of the Empire at that time: but as it is not my intention to treat of it, although I shall touch upon the new public dignities then introduced, (*infr.* § 230—240) it remains for me only to add a very few remarks concerning the altered condition of the comitia and senate, as compared with what it had been under the Republic. Whatever else may be judged worthy of notice, including the government of the provinces, I have preferred to introduce separately in the proper places.

In considering the power of the *populus* (§ 146 and 147) as contrasted with that of the senate, and distinct from

the plebs, care must be taken to distinguish the rights, in which it strictly consisted, from that influence which, whilst it depended on the form and fortunes of the comitia and on the caprice of the plebeian tribunes, varied greatly at different times, but is seen to have progressively increased down to the latest times of the Republic, when it was boundless. The Gracchi restored it after the second Punic war, when it had been rendered almost null by the preponderating interest of the nobility and the artifices of the senate; it then rose high, but, when at the highest, was humbled by Sylla in his dictatorship (§ 207), who deprived the populus of many of its rights, and left the tribunes merely the intercessio which had at first been allowed them. Cneius Pompey not long afterwards restored it completely, and what it was at the very close of the Republic may be gathered from a passage of Appian de B. C. IV. 92, where he makes Cassius speak as follows:

“ You who are of the people obey your generals, in time of war, as your masters, but, in peace, you in your turn enjoy as great authority over them. The senate indeed discusses the matters which are to be brought before you, lest you should be imposed upon, but in every case the ultimate decision rests with you; and it is by your comitia, whether of the tribes or centuries, that consuls, tribunes, and prætors are appointed: nay, further, you call to account, and sit in judgment on, all whom you may have advanced to honourable posts by your votes, and you decree either penalties or rewards according as we may have deserved blame or praise in the discharge of our functions: and you annually appoint tribunes of your own choice, to interrupt our proceedings if your interest seem to require it, &c.”

227. From the above passage of Appian are clearly seen the rights of the people and its supreme power in

the government of the state, which, as the sequel in Appian shows, was overthrown by Cæsar; we also see the relation subsisting between the people and the senate. But even then this power, though apparently greater than it had ever been, could scarcely be said to have a real existence, seeing how long the state had been accustomed to the control of individuals who flattered the people for the purpose of rising by its favour, and when once they had risen, set its decrees and those of the senate equally at nought. Among these, Cæsar, when he had made himself master of everything, at first kept up the show of comitia for sanctioning whatever it was his good pleasure to enact; following herein the example of Sylla; but afterwards he dispensed even with this ceremony, and arrogated to himself even the most ancient rights of the people, including the creation of magistrates, which although he shared at first with the senate and people (cf. Suet. Cæs. 41), he took entirely into his own hands towards the close of his life.

228. Nor was the condition of the comitia any better under the triumvirate. They assembled the people indeed, but not that it might freely vote concerning the matter in hand, merely that it might formally sanction what had been decided on by them, its masters¹. Augustus, however, whilst he ruled the state under the title of *princeps*, held a middle course² in the creation of magistrates³. He retained the comitia, but took good care that none should be appointed but his creatures, and sometimes even selected whom they should appoint⁴. Tiberius, finding the people accustomed to the yoke, showed them less regard, and transferred these slender relics of power to the senate⁵, and, whilst he reserved to himself exclusively the nomination of the consuls⁶, either proposed candidates for the other offices to the senate, or left them occasionally free

to choose whom they would. In mockery, as it were, of the ancient majesty of the people, he allowed those who had been elected to be introduced to it in assemblies in the Campus Martius; the superior magistrates were presented to the *comitia centuriata*, the inferior to the *comitia tributa*. In this semblance of the *comitia*, prayers having been first said, the choice which had been made was announced by one of the consuls, or by the emperor in person, or by a public crier⁷; it was still kept up in the time of Alexander Severus⁸. The power of the people, then, did in fact entirely cease to exist from the reign of Tiberius. As to the restoration of the *comitia* by Caligula, (whether under the form in which Augustus had allowed of them, or otherwise, is not clear,) it was of very short duration, Caligula himself returning to the plan followed by Tiberius⁹.

1) Cf. App. B. C. 3, 30 and 31. 2) Cf. Dio Cass. 52, 20 and 30, 56, 40; Suet. Aug. 56. 3) For the enactments of Augustus respecting the *comitia*, see § 77. 4) Cf. Dio. Cass. 53, 21. 5) Tac. Ann. 1, 15. 6) Cf. Dio Cass. 58. 20. 7) Cf. Plin. Paneg. 63 and 64. 8) Cf. Dio Cass. 58, 20. 9) Cf. Dio Cass. 59, 9 and 20; Suet. Cal. 16.

229. As regards the power of the senate we must make a distinction similar to that which was drawn in the case of the people. Many of its attributes, (some particulars, for instance, in the administration of the provinces,) were always left to it¹, the people either not attempting to meddle with them or failing in its attempts. Other parts of its power, on the contrary, it either successively lost in its contests with the plebs and *populus*, or retained only with limitations. Such was its influence in the *comitia*, which, from being at first so great as to allow the people only a shadow of power, was eventually so circumscribed as to retain itself the shadow, whilst the substance was transferred to the people.

The power, then, of the senate, like that of the people, constantly fluctuated; it was one thing under the kings, another at the commencement of the Republic, another at its close, and different again during the second Punic war². The Gracchi gave it a severe shock, but Sylla (§ 226) restored it, so as to make it almost aristocratical. During the civil wars it was set at nought³, and varied greatly; ultimately it sank with the freedom of the Republic; for Augustus, when emperor, treated the senate in the same manner as the superior offices of the magistracy; he retained the ancient name, but abolished the ancient authority; but as he was still anxious to appear to do nothing of importance without its authority, he restricted it in many ways, and contrived that its decrees should always be made according to his pleasure, inasmuch as he himself convened it by virtue of his consular (§ 221), and could check it by his tribunitian power, although he occasionally observed the formality of causing his private resolutions to be submitted to it by the nominal consuls⁴, and hence the senate came to be called the emperor's privy council, *consilium secretum principis*. This continued to be the condition of the senate under the succeeding Cæsars. Tiberius, indeed, transferred the election of magistrates to it from the comitia (§ 228), but added thereby very little to its authority, its choice being no more free than that of the people had been, whilst flattery made it prompt to obey his wishes⁵. The imperial power not being hereditary it was indeed conferred by the decree of the senate, the people having no longer a voice in public matters; but such decrees were hardly ever the result of a free choice⁶: for if the successor to the Empire was named during the emperor's lifetime, the senate obeyed the reigning emperor's will; if after his death, it generally submitted to the caprice of the prætorian soldiery (cf. § 225), and in the same

way did it decree divine honours to deceased emperors ; to the good, it decreed them with willing flattery, to the worst, under compulsion (§ 490). Nevertheless, the members of the senate were adorned with new names of honour (§ 236), just as we have seen in the case of the consuls, that it might the more clearly appear how the monarch was the sole fountain of all their honours ; and they were the more effectually bound to him by the circumstance that they were chosen by him, the emperors sometimes either furnishing the entire amount of the senatorial census, or making up any deficiency in the case of persons whom they pleased to promote to the senate⁷.

- 1) Cf. Cic. in Vat. § 15. 2) Cf. Polyb. 6, 14 ; Appianus l. c.
3) Cf. Cic. pro Sext. 10 ; Suet. Cæs. 22. 4) Cf. Tac. Ann. 13, 26.
5) Cf. Plin. Paneg. 75 and 76 ; Vopisc. Tac. 7. 6) Cf. Vop. l. c.
7) Cf. Tac. Ann. 2, 37 and 38.

CONCERNING THE DIGNITIES OF EACH DIVISION OF THE EMPIRE.

230. It remains for us to notice the dignities, or offices and styles of honour, which, as has been already said, were mostly introduced at a late period, and when the Roman Empire was fast decaying, and of which frequent mention is made by writers of that period, particularly in the *Novellæ* and *Codices* of Justinian and Theodosius, although the only complete list of them extant has come down to us in a small work entitled, *Notitia Dignitatum utriusque Imperii*, which has been abundantly and learnedly illustrated by Pancirollus (in *Thes. Græv.* vol. vii. p. 1309—2022). An addition has been furnished in our own times to this important record by the scanty and not very clear, although by no means contemptible contributions of Joannes Laurentius Lydus, in a small work, *de Magistratibus Romanorum Reipublicæ*. In a chapter devoted to the

subject of the assistants to the præfecti prætorio, - he has touched on many points connected with that subject; but it appears to me to be still involved in so many difficulties, that I shall reserve its full discussion for my course of lectures, and here set down only so much as will be sufficient to exempt me from the charge of merely giving a list of names.

231. I have stated (§ 225) that the Roman Empire was divided into four præfectures, and that the power of the prætorian præfects was changed when that division was made. Their military command and business at court¹ was taken from them, and their power thereby much diminished, but it still was considerable, and among other things they superintended the public posting department (§ 233) and manufactories, besides retaining their powers of jurisdiction, which I see some writers imagine to have been alone left to them². Of these they were deprived, in the East at all events, under the reign of Arcadius, but still controlled the expenses of magistrates and other charges³. The dates given in the Notitia agree very nearly with the above, and that work furnishes a list of the dignities in each part of the Empire after its division by Theodosius, but without explaining the duties belonging to each. I shall here quote from it a list of these dignities in the Eastern Empire, omitting those of the Western, for brevity's sake, as they correspond to these. See Thes. Græv. vol. vii. pp. 1336 and 1787.

Præfectus prætorio Orientis.

Præfectus prætorio Illyrici (§ 17).

Præfectus urbis Constantinopolitanæ (§ 224).

Magistri equitum et peditum in præsentibus duo; alii tres, equitum et peditum per Orientem, equitum et peditum per Thracias, equitum et peditum per Illyricum.

Præpositus sacri cubiculi.

Magister officiorum.

Quæstor (§ 214).

Comes sacrarum largitionum.

Comes rerum privatarum.

Comites domesticorum duo, equitum et peditum.

Primicerius sacri cubiculi.

Primicerius notariorum.

Castrensis sacri palatii.

Magistri scriniarum, to wit, memoriæ, epistolarum, libellorum Græcorum.

Proconsules duo, Asiæ, Achaiæ, (§ 19 and 26).

Comes Orientis.

Præfectus Augustalis.

Vicarii quatuor, Asianæ diæceseos, Ponticæ, Thraciarum, Macedoniæ.

Comites rei militaris duo, Ægypti, Isauriæ.

Duces per Ægyptum duo, Libyæ, Thebaidos; per Orientem sex (the names of the regions are given); *per Ponticam unus, Armeniæ; per Thracias duo, Mæsiæ secundæ, Scythiæ; per Illyricum duo, Daciæ ripensis, Mæsiæ primæ.*

Consulares quindecim: per Orientem quinque, Pælestina, Phænices, Syriæ, Ciliciæ, Cypri; per Asianam tres, Pamphylia, Hellesponti, Lydiæ; per Ponticam duo, Galatiæ, Bithyniæ; per Thracias duo, Europæ, Thraciæ; per Illyricum tres, Cretæ, Macedoniæ, Daciæ Mediterraneæ. Ægyptus autem (adds the *Notitia*) *consularem non habet.*

Præsides provinciarum quadraginta (the names of the provinces follow).

Correctores duo, Augustanicæ, Paphlagoniæ.

1) Cf. *Lyd.* 2, 10 and 11. 3, 40 and 41. 2) Cf. *Creuz.* p. 182.

3) See *Lyd.* l. c.

232. The dignities enumerated in the foregoing list were some civil, others military, and others were attached to the court, as is evident from their names; others again may be considered as of a mixed nature. We will briefly notice each in succession. Concerning

the præfectus prætorio and the Pr. urbis, we have already said as much as can be admitted in a mere sketch, such as I am now giving; and it has also been stated (§ 225) that the *magistri militum* were charged with the military powers which were taken from the prætorian præfects (See Pancir. Comment. p. 1408, sqq). Two of these *magistri* were called *præsentales* or *in præsentibus*, from their constant attendance at court in the emperor's presence, having the command of the forces which guarded the emperor's palace and person, and which were called, in like manner, *præsentibus*, or *præsentales* (Ib. p. 1411). These troops were, however, also sent into the provinces, to act under the *magistri militum* and enforce their measures. When thus on duty in the provinces they still retained their name and privileges (Ib. p. 1480).

The *præpositus sacri cubiculi* may be called lord of the bedchamber, being the immediate attendant on the emperor's person, in charge of his chamber and private correspondence; under him we find the *primicerius cubiculi cum decanis*, *castrensis cum primiceriis mensurarum*, *cellariorum*, *lampadariorum*, the *comes sacræ vestis*, groom of the stole, the *chartularii cubiculi*, the *decuriones silentiariorum*, chief ushers, etc. (Ib. p. 1491.)

233. The *magister officiorum*¹, was so called from his having the superintendence of all the inferior attendants at the palace², whether armed or not: the individuals composing any department formed what was called a *schola*. He had charge also of the bureaus for memorials, letters, and orders of admittance to audience of the emperor (§ 494); he took charge of petitions from subject nations, superintended the manufacture of arms, and the public posts³, by which persons might travel on public business by means of an order given for the purpose⁴: hence we find among the subordinates to this officer the *adjutores fabricarum*, the *curiosus* (inspector) *cursus publici præsentalis*, the *curiosi per provincias*, and

interpreters of different nations, etc. (Pancir. Comment. p. 1498). The *comites sacrarum largitionum* and *rerum privatarum*, were instituted by Constantine the Great. The former managed the taxes, tributes, and the budget of the revenue and expenditure of the empire, including the pay of the army and salaries of magistrates. His title was derived from the circumstance that whatever largesses or gifts⁵ the emperor might be pleased or forced to make (§ 395), and ultimately all salaries and stipends, were charged to the public treasury under the head of *largitiones*⁶. Under the *comes sacrarum largitionum* were the *comites largitionum* of the several *diœceses*, of which they managed the revenues; the *præfecti thesaurorum*, i. e. of the receipts of the revenue in each province, who, after furnishing what was wanted by the *com. sac. larg.*, paid over the balance to the governor of the province, who transferred it to the *arca largitionum*; also the *comites commerciorum, per Orientem, Mœsiam, etc.*, commissioners of trade; the *comes metallorum per Illyricum*; the *magistri linæ vestis*; the *procuratores baphiorum*, supervisors of dye-houses; *monetarum*, of coining; *linificiorum*, of linen manufactories; *bastagarum* (*α βαστάζω*), of the imperial carriages and vehicles. We also find under the *com. sac. larg.* the *primicerii* of several *scrinii*, bureaux, for instance, of the *scrinium canonum, tabulariorum, aureæ massæ*; *comes annularenensis*, keeper of the signet (?) and others⁷.

1) Cf. Lyd. 2, 23-26. 2) Cf. Hegewisch. Rœm. Finanz. p. 252. 3) The word *evectio* is to be explained by reference to this institution, for instance in the passage of Symmach. 4, 6,

"Evectiones impetrasse me gaudeo;" also the *veredarii*, from *veredo*, a horse or beast of burden (Cf. Lyd. 3, 61); also in Symm. 7, 14: "Cum veredarii deesset occasio, privato homini reddenda scripta commisi. 4) See Lyd. 2, 10, 3, 40 and 61. 5) Cf.

Tac. Ann. 1, 11. 6) Cf. Pancir. Comment. p. 1520. sqq.; Hegew. p. 349; Burm. de Vect. p. 115. 7) Pancir. p. 1527; Hegew. p. 350. sqq.

234. The *comes privatarum rerum* was keeper of the emperor's privy purse, formerly in the keeping of the *curator patrimonii*, and receiving the proceeds of the imperial lands, forests, pastures, etc¹. The Notitia (Pancir. p. 1557) places under the control of this officer others called the *rationales rerum privatarum*, accountants to the privy purse, the *præpositi gregum et stabulorum*, masters of the herds and studs, the *procuratores saltuum*, commissioners of woods and forests, and several *primicerii*, including the *primicerius* of the bureau of the emperor's private bounties.

The *primicerius sacri cubiculi* and the *prim. castrensis sacri palatii*, have been noticed in speaking of the *præpositus sacri cubiculi*. The *prim. castrensis* had the management of those departments of the imperial household not connected with the bedchamber, such as the bakers, butlers², and those servants who superintended the laying out of the table, called *mensores*; each department having its own *primicerius* or foreman, that word being derived from the circumstance that the person bearing it was placed first on the list³ of his department (*primus in ceris*, i. e. tabulis). The name *mensores*, which, according to Pancirollus⁴, denoted the footmen, &c., who laid out and waited on the imperial table, was originally a military term, and was given to them from a fancied analogy between their office and that of *castrorum mensores*, who marked out the limits of the camp, and set up and prepared the *prætorium*, or general's tent; the use of the term *castrensis* arose from a similar reference to military duties. The subordinates of the *pr. castrensis* were accordingly also called *castrensiანი* (See Pancir. p. 1570).

1) Cf. Burm. p. 116. 2) Cf. Burm. p. 36. 3) Cf. Lyd. 3, 2 and 4. 4) Panc. p. 1570; Hegew. p. 253, gives a different explanation.

235. The *magistri scriniorum* (Panc. p. 1581), secretaries, had their name from the desks, closets, and offices

in which the documents in their care were kept, both the documents and the places where they were deposited being called *scrinia*, and the persons employed about them *scriniarii*. There were four such *scrinia* or offices for four different branches of business; the *scrinium memoriæ*, memorial office, the persons employed in which were called *scriniarii memoriales*, and kept the *laterculum minus*, or lesser register. The *scrinium epistolarum*, foreign office, the persons employed in which were called *epistolares*, and attended to the foreign embassies, despatches, and petitions; the *scrinium libellorum* for documents and petitions; and the *scrinium epistolarum Græcarum*. The *primicerius notariorum* (ib. 1577) was chief of the officers or clerks, who registered in the *laterculum* (see § 237) the names of all who had received any dignity from the emperor, sending also to such persons docketts out of that register, which were their commissions (see § 237, and comp. § 189): from this occupation came their name², but they had also the honorary title of tribunes³.

Proconsuls had each the charge of only one province, the *præfectus Augustalis* and the *comes orientis* (Pancir. pp. 1617, 1621, and 1639) governed several; the dioceses were subdivided into several provinces, and were each under a *vicarius* (ib. p. 1619), so that the *pr. Augustalis*, the *comes orientis*, and the *vicarii* had under them several provincial *præfects*, some of these being consulars, other *præsides*, and two called *correctores* (Ib. pp. 1763, 1767, 1766, 1660). The *comites domesticorum equitum et peditum* (ib. p. 1565), commanded the household troops, the *comites rei militaris* and *duces* had at their disposal the forces of the several provinces, lists of which are given in the *Notitia*. (Ib. pp. 1683, 1693, 1697).

1) Cf. Sen. de M. Claud. extr. 2) The name *notarii* was also used to designate generally the amanuenses to magistrates

or clerks in offices (cf. Cod. Theod. l. 6. t. 10; Trebell. Poll. Claud. 14), or shorthand writers (cf. Quint. 7, 2, 24; Mart. 3, 32, 2; Plin. Epist. 3, 5, 15, 9, 36: the figures used by shorthand writers being called *siglae* (§ 271 i.) and also *notae* (cf. Cic. p. Mur. 11; Isid. Orig. 1, 21). The Greeks called such persons *ταχυγράφοι* (cf. Lyd. 3, 6, 9; Fuss. Epist. ad Has. p. 31), whether they used shorthand or not. 3) See Lyd. 3, 9.

236. Each of the dignities we have now enumerated had titles and insignia peculiar to itself; each its *præfecture*, as the *præfecti prætorio*, or *diæcesis*, as the *vicarii*, or one or more provinces, as the proconsuls, consulars, and *præsides*; each military dignity had forces at its own command, and each civil dignity its attendants or court (*cohors, cohortales* § 247). These are to be seen in the *Notitia*. The highest style of honour was *illustris (vir illustris)*, which all whom we have mentioned enjoyed down to the chief lord of the royal chamber, the *primicerius sacri cubiculi*. The next title, *spectabilis (spectabilitas)*, was applied to this officer and to all down to the consulars; the next title was *clarissimus (claritas)*, applied to the consulars, *correctores* and *præsides*. By these titles men of senatorial rank were distinguished (§ 178). Those of inferior rank were termed *perfectissimi*, as certain of the *præsides*; the lowest rank, as the *scriniarii principis*, secretaries to the emperor, were styled *egregii*. (See Pancir. Comment. c. 2. Thes. Græv. vol. VII. p. 1342. sqq.) Among other titles we meet with *gloriosissimus, eximietas*¹, *magnificentia, sublimitas, celsitudo, culmen*², (*ὑπεροχῆ*), generally given to the *præfecti prætorio*; *gravitas, perfectissimus, egregiatus*, and many others.

1) Cf. Symm. 10, 79.

2) Applied to the emperor himself by Symm. 18, 61.

237. Insignia of office were as various as the ranks and duties were; for instance, those of the *præfecti prætorio* and *præf. urbis* were the car, *carpentum* (§ 225), and burning tapers (see Thes. Græv. vol. VII.

p. 1396 and 1798): those of the *magistri militum* were shields, on which were depicted or emblazoned the symbols and emblems of the legions, cohorts, companies, *vexillationes*, and other divisions of the troops (ib. p. 1412). Those of the *castrensis sacri palatii* (§ 234) were tables set out with goblets and loaves (ib. 1570); many other ranks had other insignia, such as an abacus covered with a cloth, images of the emperors (see ib. 1389), figures of women symbolical of the provinces under the government of any particular magistrate (ib. p. 1621); or plans, *effigies*, of countries and cities (ib. 1683. 1755); some, such as the orderly-book of a square form, were common to all.

The insignia, together with an index of the different ranks, provinces, troops, and other particulars, were entered in registers known by the name of *latercula*, one of which, the *laterculum majus* (ib. 1578), in charge of the *primicerius notariorum*, contained the names, etc. of all the civil and military officers, (except the *limitanei* who commanded on the frontiers); the other, the *laterculum minus*, in charge of the quæstor (ib. 1518. 1689), contained the præfects, tribunes, and the overseers of the boundaries of camps (*præpositi castrorum limitum*). Magistrates and officers received their diplomas and letters-patent from the *præpositus laterculi*, together with their insignia of office; hence they were said to be appointed, *emitti*, from the great or small register (ib. 1574. 1689. Cf. Lyd. 3, 4, 7). Some, however, are to be excepted, who received their diplomas from the *scrinium epistolarum* (§ 235).

238. The military establishment comprised a great variety of corps; and we meet with many terms unknown in the ancient military service, and several which, though they might have been of ancient date, are first read of in later ages; such, for instance, as the troops which the *Notitia* (p. 1412) places at the disposal of the

magister militum, viz. *Vexillationes palatinæ* (guards of the palace) *quinque*: *equites promoti seniores, comites clibanarii* (§ 364), *comites sagittarii juniores, comites Taifali, equites Arcades*; *Vexillationes comitatenses* (the emperor's escort) *septem*: *equites cataphractarii Biturigenses, equites armigeri seniores Gallicani, equites quinto Dalmatæ, equites nono Dalmatæ, equites primi scutarii, equites promoti juniores, equites primi clibanarii Parthi*; *legiones Palatinæ sex*: *lancearii seniores, Joviani juniores, Herculiani seniores, Fortenses, Nervii, Mattiarii juniores*; *auxilia Palatina duodeviginti*, among them *Batavi seniores, braccati juniores, Salii, defensores, felices Honoriani*, etc. Other instances are, the regiments, *scholæ*, placed at the disposal (*sub dispositione*) of the magister officiorum (ib. p. 1498): *sc. scutariorum prima, sc. scutariorum secunda, sc. gentilium seniorum, sc. scutariorum sagittariorum, sc. scutariorum clibanariorum, sc. armaturarum juniorum*.

239. The staff and body of clerks (*officium*), which, I have already said, was attached to every officer and magistrate of rank, was originally composed of the soldiers constituting the general's body-guard, and borrowed in the civil service from the military service: to the *officium* are to be referred the *officiales*, orderlies; *cohors* (§ 225 and 247), *cohortales, adparitores, adparitio* (§ 217), *litterata militia τάξις, ταξιῶται*, etc. Lydus (III. 2, 3, 4, 22.) foolishly supposes the cornicularii (§ 375) to have been appointed in the very infancy of the state. However, all ranks had not an *officium*, nor had all the same establishment of clerks, for that of the general (the staff) must have been very different from that of the *castrensis sacri palatii* and the *comes largitionum*. But the following list, composing the office of a præfectus prætorio, (ib. p. 1339), which was similar to those of the præsides (ib. p. 1364), includes

all mentioned in any office, *officium*, viz. *princeps*, *cornicularius*, *adjutor*, (adjutant?), *commentariensis*, *ab actis*, *numerarii*, *subadjuvæ*, *cura epistolarum*, *regerendarius*, *exceptores*, *adjutores*, *singularii* (cf. Lyd. III. 7).

240. There were other officials, *officiales*, besides those which I have here mentioned, particularly the *agentes in rebus*¹, in the department of the *magistri officiorum*, attached to the administration of the public posting (Panc. 1503. 1512. Cf. Lyd. II. 10. III. 40). In the department of the *præfectus prætorio* there was but one *princeps* and one *cornicularius*, (brigadier?), etc. but several of other ranks, such as the *subadjuvæ*, etc.; Lydus² says there were two *primiscrinii*, two *commentarienses* and two *ab actis*.

But the number of the *excepti* (§ 235) was great; these were employed in writing from dictation or otherwise, and from this their employment were distinguished by the title of *litterati* from other officials³, such as the *singulares*, *ducenarii*, *centenarii*, who were not employed in writing: it is not surprising that both kinds were employed in the offices of the præfecture; the principal duty of which department was the administration of justice (§ 231). Some were employed on criminal and civil cases, some of which concerned the public revenue; others were employed in carrying out the sentences passed⁴, and this constitutes a marked distinction between their employments. The *adparitores litterati*, at least those of officers entitled *illustres* and *spectabiles* (cf. Pancir. p. 1365), obtained their appointment by diplomas (*codicilli*), on paying a fixed fee. They were allowed to rise⁵ through the different grades up to that of *cornicularius* or of *primiscrinii*, for which, I think, the Notitia employs a different term⁶: and having discharged this office, and laid aside the

belt of office, *cinguloposito**, they at length enjoyed, as the rewards of their long service⁷, considerable privileges and honours for the rest of their life⁸.

It would be impossible to describe briefly the several duties of each department of the *officia*, and my observations on a subject altogether omitted or barely glanced at by authors of more voluminous treatises on Roman antiquities have already grown to such a length as to preclude any further explanations. On some points I think Lydus will prove a surer guide than Pancirollus⁹ or Gutherius¹⁰.

1) Cf. Symm. 2, 62. 2) Cf. Lyd. 3, 4. 3) Cf. Lyd. 3, 7, who says they were called *συγγουλαριοι*, because allowed but one horse in travelling through the provinces. 4) Cf. Fuss. Ep. ad Has. p. 32 and 41. 5) Cf. Lyd. 3, 2, 67. 6) Cf. Fuss. Epist. p. 31. 7) Cf. Lyd. 3, 9. 8) Cf. Lyd. 3, 4, 25, 30. 9) Pan. p. 1364. sqq. 10) De Officiis Domus Augustæ, in Thes. Salengr. vol. 3. p. 285-624.

CONCERNING THE COLONIES.

241. Having now discussed all other matters relating to the state and administration of public affairs, it remains for me to treat of the colonies and provinces; but having already (§ 119) noticed the division of the former into Roman, Latin, and Italian colonies, and the peculiar rights and government of each, their origin, usefulness, and the customs incident on founding them must now be considered.

From the very infancy of the state the Romans followed the example of other nations in seizing on part or the whole of the lands of conquered enemies (§ 252)¹. Thus, when at first the neighbouring nations and afterwards the more remote had been subdued, settlers were sent from Rome into the lands taken from them, either

* It appears from Justinian, Cod. Lib. XII. Tit. 30, 2. that upon superannuation they retained the *cingulum* as a badge of distinction.

Note by Translator.

to inhabit a conquered a city in conjunction with the conquered, or to build a new²; whence a twofold advantage of great importance accrued to the state (§ 114). For by disseminating its citizens among conquered nations, or mingling both in the same city, the vanquished were deterred from rebelling³, and Rome itself was relieved from the dangerous surplus of its poorer classes⁴.

1) Cf. Liv. 2, 41. 2) Cf. Vell. 1. 14. 3) Cic. Agr. 2, 27: "Colonias sic idoneis in locis contra suspicionem periculi collocarunt, ut esse non oppida Italiae, sed propugnacula imperii videantur. 4) Cf. Beauf. v. 2. p. 236.

242. We find the following customs, besides others, observed in sending out and settling colonists. When, with the consent of the people, or even by the sole authority of the senate, as some writers say¹, it was thought fit to send out a colony, a law was passed, determining how many and what emigrants should be sent, and to what place (§ 119). Those who were to go fixed on a name for the intended settlement, but if their numbers were greater than that appointed by the law, those who were to go were selected by drawing lots.

These preliminaries having been performed, commissioners, *triumviri*, etc. (§ 216) were appointed at the *comitia tributa*, and under their guidance, the auspices having been taken, and the emigrants having undergone lustration (§ 332), they proceeded under a military standard to the appointed place². There the auspices were again taken, a sacrifice celebrated, and the lands to be apportioned to the settlers and the site of the town, if one was to be built, were marked out by a ploughshare (§ 40): hence the figures of an ox or a plough on the coins of colonies.

The military colonies were of another kind; the settlers in these were generally veteran soldiers located on

lands taken from the enemy, and at first even from Roman citizens, and bestowed³ on them at the conclusion of their service, as a reward for fidelity to their leader. This practice, so pernicious to the state, was introduced by Sylla; his example was followed by J. Cæsar, Augustus, and others. In later times such colonies served to occupy depopulated tracts⁴.

1) Cf. Beauf. p. 237. 2) Cf. Cic. de Divin. 1, 45; Agrar. 2, 12, 52; Phil. 2, 40. On military colonies, see Tac. Ann. 14, 27. 3) Cic. Cat. 2, 9: "Hi sunt homines ex iis coloniis, quas Fœsulis Sylla constituit,—qui se insperatis repentinisque pecuniis sumtuosius insolentiusque jactarunt. Hi dum ædificant tanquam beati; dum prædiis, lecticis, familiis magnis, conviviis apparatus delectantur, in tantum æs alienum inciderunt, ut, si salvi esse velint, Sylla sit iis ab inferis excitandus." Luc. 1, 333: "Quæ sedes erit emeritis? Quæ rura dabuntur?" On the practice under the Emperors, see Tac. Ann. 14, 31. 4) Cf. Tac. Ann. 14, 27.

CONCERNING THE PROVINCES AND THEIR GOVERNMENT.

243. Some derive the word *provincia* from *provincere*, others from *providere*. At first it was applied to the management of any war in Italy, and to the country in which the war was carried on; the term is also applied to any employment, but whether this is its primitive meaning, or a metaphorical application of the term, is uncertain. In later times it was applied, in accordance with its early meaning, to countries, particularly those beyond Italy, which were governed by magistrates sent from Rome, in the name of the Roman people¹.

For when a country had been brought in subjection to the Romans, the senate was accustomed to send five or ten commissioners² to draw up, in concert with the general commanding in the country, a plan for its future administration; hence *forma*, *formula provinciæ*, *in formam provinciæ redigere*³. This plan was not the

same for all countries, but was modified so as to suit the peculiar state of the conquered country: it was more favourable to some than to others, according to the will of the conquerors or the deserts of the vanquished⁴. We read of the *provincia Ostiensis, sc. aquaria, Calena, Calabria, Umbria*⁵, in Italy itself, and these were called *quæstorix*, because a *quæstor* presided over the levying of taxes in each (§ 211), but the word *provincia* is applied to them in another sense. The provinces of the Roman empire are enumerated in a former part of this work (§ 8—37); there is a remarkable passage in Velleius on their increasing magnitude⁶; Augustus had drawn up in one volume an account of their resources and wants, their forces, fleets, tributes and taxes, in fact an account of the empire, which is mentioned by Tacitus, and called by Suetonius, *rationarium et breviarium imperii*⁷. The last book of the history of Appian might have supplied the lamented loss of this work, as the preface (§ 15) indicates that it contained something similar; but it has also perished.

1) Cf. Fest. in *provincia* Isid. Orig. 14, 5. 2) Cf. § 251; Cic. Verr. 2, 13, and ad Att. 13, 6. 3) Cf. Vell. 2, 38. 4) Cf. Hein. Synt. App. § 100. 5) Cf. Suet. Claud. 24; Cic. in Vatin. 5. 6) Vell. 2, 38, sqq.; cf. Polyb. 3, 1. 6, 1; Appian. præf. § 1-6. 7) Tac. Ann. 1, 11; Suet. Aug. 28, et extr.; cf. Dio Cass. 56, 33.

244. Originally prætors were elected annually for governing the provinces, the first of which were Sardinia, Sicily, and then three provinces of Spain¹. One was appointed to each, and one or more were continued in their respective governments when there was a scarcity of successors (§ 190). When permanent courts of justice had been instituted, circ. A. U. C. 605, it was agreed that after prætors had discharged the duties of these at Rome, they should be sent into the provinces², in which they were styled sometimes prætors, sometimes proprætors³. Whether the prætor differed from

the proprætor, Creuzer (§ 176) and many before him have inquired. Not long after (A. U. C. 631) the *Lex Sempronia* for the distribution of the provinces, provided, that before the election of prætors and consuls, provinces were to be reserved for both, which they distributed among themselves by lot or by agreement; the consuls after their year of office, the prætors after discharging their duties at Rome, as before⁴. Towards the close of the republic, consuls, after holding their office for a year, stationary at Rome, proceeded into the provinces under the title of proconsuls; although the proconsulate of Cicero is a proof that this was not the case with all, and inclines us to believe that it depended on the state of affairs, not on any fixed law. Besides, we must remember the great discrepancy between ancient writers concerning the titles of governors of provinces and the manner of appointing them, either in pursuance of custom or by law⁵; so that it is easier to say what was done usually than what law was acted on in such cases⁶. Provinces were styled *consulares* or *prætoricæ*, from the rank of the governors appointed to them; the power of all governors was the same, but those were allotted to consuls generally, the administration of which offered a wider field for acquiring military or other glory⁷.

1) See Liv. 27, 36, 28, 12, 34, 55; Vell. 2, 38. 2) Cf. Bach. Hist. Jur. R. 2, 1, 4. 3) Cf. Cic. de Divin. 2, 36; de Prov. Cons. 7; Tac. Ann. 2, 66. 4) Cf. Cic. pro Domo. 9. 5) Cf. Cic. de L. A. in senatu § 8; de Prov. Consul. 2; Cæs. de B. C. 1, 6, "provinciæ privatis decernuntur, duæ consulares, reliquæ prætoricæ." 6) See Wieland., Cicero's Briefe, v. 1. p. 255. (ad Epist. ad Div. 5, 5.) and vol. 3. p. 24. sqq. 7) Cf. Beauf. vol. 2. p. 339.

245. Dionysius dates the origin of proconsuls, A. U. C. 275; Livy, either in the year 291 or 428; provided, in translating him, we avoid any doubts about the word he uses, and merely consider the meaning and usual acceptance of the terms. I have just now mentioned the ori-

gin of proprætors. By these terms were understood those officers who in the provinces acted as substitutes for consuls and prætors: and as the office of these magistrates was both military and civil, so were there distinct kinds of proprætors and proconsuls, such as those who remained in the provinces after the expiration of the year of their consulship, receiving a prolongation of their office, the earliest mention of which in Livy occurs lib. 8, 23²; others, such as Scipio Africanus³, who, having discharged the duties of an inferior office, were promoted to the command of armies with the title of proconsul, or were raised to it from a private station, or during their discharge of an inferior office, received a continuance of authority, and were honoured with the title. Both these methods apply to the proprætors⁴. Those also were styled proconsuls and proprætors, who having discharged the duties of the consulship or prætorship at Rome, were appointed to provinces (§ 244). Finally, those magistrates termed proconsuls under the Cæsars, on being sent to govern provinces, to which the senate had the right of nominating (*provincia senatoriæ*), were distinct from the proconsuls before mentioned, and the proconsulships of the emperors themselves are not to be confounded with any of them. Moreover, since the idea of civil power must always be included in the idea of a magistrate (§ 183), it follows that the question raised by the ancients as to whether proconsuls and proprætors were really magistrates, must be decided by classing among magistrates all proconsuls except those who held military offices only, being appointed to the command of armies⁵.

1) Dionys. lib. 9. p. 574; Liv. 3, 4, 8, 23. 2) Circa a 428; cf. 45, 17. 3) Liv. 26, 18. 4) Cf. Beauf. vol. 2, p. 338. 5) Cf. Beauf. vol. 2. p. 340.

246. The senate, whose will appointed the limits and the number of provinces and almost everything

connected with them, appointed also what provinces the prætors and what the consuls might divide among themselves¹, reserving merely to themselves, in accordance with the ancient custom of the city, a control of the actions of such governors, and to the people the approval or nomination of them. Therefore recourse was had to the *comitia* so often as an individual was appointed extraordinarily to an office, or the office of a person was continued to him on his appointment to a province²; in fact, whenever they wished to do any thing contrary to law or to common custom, or to dispense with the law (§ 184)³. Yet the senate had been accustomed to arrogate even this right to itself, often in opposition to the remonstrances of the tribunes of the people, until at length the affair was referred to the votes of the tribes. The magistrates of the provinces were elected by this method (§ 169), except the consuls and prætors, who were elected at the *comitia centuriata*, and by virtue of their office governed provinces. Power was given equally to all by the *lex curiata* (§ 155). After the *curiæ* had passed their law on the subject, the senate, by a decree, fixed the number of troops, the suite, number of aides-de-camp, *legati*, and the expense allowed the governor to support his dignity and that of the state; his horses, carriages, tents, and other paraphernalia, for the purpose *ornandæ provinciæ* (of giving eclat to his government) were provided by contract⁵. Some things were provided for him on his journey by public expense, but not, I think, at the expense of the public treasury⁶.

1) Cf. Polyb. 6, 15; Liv. 28, 45. 2) Cf. Liv. 26, 18. 3) Cf. Liv. 28, 40 and 45; Sall. Jug. 73 and 84, v. 69 and 81. 4) Cf. Cic. ad Att. 3, 24: "Neque enim unquam arbitrator ornatas esse provincias designatorum." Cf. *vasarium* ap. Cic. in Pis. 35. 5) Cf. Liv. 30, 17. 42; 1; Suet. Cæs. 18; Aug. 36; Cic. Verr. 4, 5; Gell. 15, 4. 6) Cf. Hor. Sat. 1. 4, 45: "Proxima Campano ponti quæ villula, tectum præbuit, et parochi quæ debent ligna salemque." See the note of Heind., and Burm. de Vectig. pop. Rom. c. 6. p. 93.

247. In the suite of the governor was the quæstor, chosen by the people, and holding his authority from their appointment; likewise *legati*, aides-de-camp, chosen by the governor¹ with the approbation of the senate, in number in proportion to the extent of the province or the urgency of the war; they held office at the discretion of the governor², and generally were men of the greatest respectability and highly honoured in the province, they even enjoyed the honour of having lictors³. Distinct from these were the *legati*, who bore this title by permission of the senate, and enjoyed its honours and emoluments without discharging its duties, and were therefore burdensome to provinces⁴. Such an office was called *legatio libera*, and also *votiva*, from its being undertaken, or supposed to be undertaken, for the purpose of discharging some vow in the province⁵.

The tribuni, commanders of the legionary cohorts (§ 366), were chosen from the *legati* of the highest rank; they were held in high honour⁶, and were selected partly by the people⁷, partly by the governor, who also had the sole nomination of the subaltern officers of the infantry and cavalry of the legion, and the principal commanders of the auxiliary troops. The præfects⁸ were also among the honourable portion of his retinue; secretaries, interpreters, *aruspices*, heralds, lictors, and a numerous train of attendants also of inferior rank accompanied him⁹. Very different from these were the usual associates of the governor, men admitted to his private councils and assisting him in his administration, or else allied by connexion; and noble youths who attended him for the purpose of studying the art of war and management of affairs; such persons composed what was usually called the *cohors prætorial*¹⁰. Concerning women who were forbidden,

under the Republic to form part of the retinue, see Tac. 3, 33 and 34; Juven. Sat. 8, 128; Lampr. Alex. 42.

1) Cf. Liv. 30, 33; Cic. pro L. M. 19; ad Att. 6, 6; Phil. 2, 20; Nep. Att. 6. 2) Cf. Cæs. B. C. 2, 17, 3, 31. 3) Cf. Dionys. 1, 11, p. 706; Liv. 29, 9. 4) Cf. Cic. Agr. 1, 3, 2, 17; de Legg. 3, 8. 5) Cf. Cic. ad Att. 15, 11 and 4, 2. The lex Julia is considered to have had reference to these nominal legations. See Bach. 2, 2, 92. 6) Cf. Cic. ad Att. 5, 21. 7) From about 391; cf. Liv. 7, 5, 9, 30. 8) Cf. Cic. Verr. 2, 10; Nep. Att. 6: "Miltorum consulum prætorumque præfecturas delatas sic accepit, ut neminem in provinciam sit secutus, honore fuerit contentus." 9) Cf. Cic. Verr. 2, 10, 11, ad Q. frat. 1, 1. 10) Cf. Horat; Ep. 1, 8, 2; Sat. 1, 7, 23; Cic. ad Att. 7, 2.

248. A magistrate about to proceed to his allotted government informed his predecessor of it, unless on bad terms with him, and at the same time requested his advice, and particularly leave to wait on him on his road to the province or when arrived there, in order that they might mutually communicate things of importance to either. And we can well understand that the extensive power of governors gave them the means of being of essential service to one another, especially to their successors when handing over the province to them; but frequently they were far from being obliging towards their successors¹.

The magistrate on the day of his departure, being accompanied by his friends and relatives, by the first men of the state, and by the people, proceeded to the capitol, and having there sacrificed to Jupiter, departed from the city with the same procession, preceded by licotrs², and clad in military uniform, *paludatus*. Having once left the city he could not re-enter it until he had laid down his power: therefore if anything remained to be transacted in the city, he waited in a suburb until all was completed³. Under the Cæsars the route of a governor proceeding to his government was strictly marked out, and even during the Republic

it was not left entirely to his discretion⁴. If he proceeded by sea, government or allied states furnished ships⁵. On his arrival in some chief city of his province he was received by an assembly of the principal men, commissioned by different districts to welcome him.

1) Cf. Val. Max. 9, 3, 7; Cic. ad Div. 3, 7. 2) Cf. 42, 49. 45, 39; Cic. Verr. 5, 13; Cæs. de B. C. 1, 6; Varro de L. L. 1. 6. p. 72. 3) Cf. Ascon. Ped. in Verr. 2, 6. 4) Cf. Cic. in Vat. 5. 5) Cf. Cic. ad Att. 5, 13. 6, 8; Verr. 5, 19.

249. A governor united both civil and military powers, and in the administration of both employed as deputies and assistants his legati, who, besides commanding the troops, executed, according to his directions, what he could not himself perform. Moreover, as the prætors at Rome did, when entering on office, (§ 191), so did he, either on his arrival or when on the road, publish a manifesto of the course of administration which he intended pursuing: for the administration of justice was the peculiar duty of the governor, and this he attended to in the principal towns, for a province was divided into districts, all under the same jurisdiction. In these towns he administered justice and settled all other matters; hence his arrival in any town occasioned a concourse of people, and the towns were called *conventus*¹, also *jurisdictio*² or *forum*, from the assizes held at them: hence the expressions *conventum*, *forum*, *indicere*, *agere*³, to fix and hold assizes. And if a war was in hand as usually happened on the verge of the territories of the empire, the summer was devoted to it, and the winter to the civil business⁴.

All that concerned the public revenue was administered, not by the governor but by his quæstor (§ 213); the latter also provided pay and provisions for the army, and enjoyed greater powers than the city

quæstors, being allowed lictors, and some suppose even a curule chair⁵: he was, besides, responsible for the discharge of his duties rather to the government than to the governor, and circumstances usually compelled him to be on terms of the closest intimacy with the latter⁶. If he died during his holding office the governor himself appointed a successor to him, called *proquæstor*; and if his own successor was prevented from relieving him at the appointed time, he left his administration in the charge of a vice-quæstor (§ 213). Under the quæstor were many inferior officers, *adparitores*, and numerous secretaries.

1) Cf. Juven. 8, 129. 2) Cf. Plin. H. N. 3, 1. 5, 28. 3) Cf. Cic. ad Att. 5, 21; Verr. 5, 11; Cæs. de B. G. 1, 54. 6, 44. 4) Beaufort, v. 2. p. 336. sqq. has given a learned account of the duties of a governor of a province, setting forth Cicero's upright and wise administration of his province, as it is to be gathered from his Epistles. 5) Cf. Beauf. v. 2. p. 349. 6) Cf. Cic. Verr. 1, 15; Divin. 18.

250. The law forbade the governor from passing the limits of his province during his continuance in office unless by permission of the senate or people¹: a year having elapsed, he was bound to leave the province within thirty days, unless, as frequently happened, he received a prolongation of office; on his departure he left copies of the account of his administration of affairs, in two cities, a third copy was deposited in the treasury at Rome². Not only was an account required of him, but also sometimes from the legati, and from any of the inferior officers on whom suspicion rested³. Examples of governors whose administration was distinguished by clemency and moderation were rare, and hence such governors were honoured by the affection of their subjects, and by far-fetched honours, even divine, such as altars, temples, and feast-days kept to their memory; hence the *fésta Marcellæa*, *Mucia*⁴: sometimes ambassadors were sent to Rome to express their satisfaction at

his administration. However, this, the natural act of real gratitude to the good, became afterwards a compulsory flattery exacted by the worst⁵. If a war had been successfully carried on by a governor, and a striking victory reported at Rome, a public thanksgiving (§ 331) was usually decreed : on his return to Rome a triumph was the highest honour that could await him ; and for the purpose of adding to its splendour, crowns of gold were usually presented to the governor by the province ; whence *aurum coronarium*⁶. This contribution was commuted for a regular tax under the Cæsars⁷.

Governors received no salaries⁸, being considered as magistrates ; however they were abundantly provided at the public expense with all things requisite for their journey⁹, and received from the province a contribution of corn, called *honorarium*¹⁰, or an equivalent in money¹¹ ; means of increasing their incomes lawfully were never wanting, as Cicero's administration of Cilicia, remarkable for its moderation and integrity, abundantly proves¹². The arbitrary incomes exacted by those who were considered as only moderately exorbitant, were immense¹³.

1) Cf. Cic. in Pis. 21. 2) Cf. Cic. ad Fam. 5, 20 ; in Pis. 25. See Bach. Hist. Jurispr. Rom. 1. 2. c. 2. § 84. 3) Cf. Liv. 38, 45. 4) Cic. Verr. 2, 21 and 63 ; ad Att. 5, 21 ; Val. Max. 8, 15, 6. 5) Cf. Cic. Verr. 2, 21 ; Fam. 3, 7. 9, 8, 6. 6) See Cic. Agr. 2, 4 ; in Pis. 37. 7) Cf. Dio Cass. 51, 21. See Pit. in *aurum coronarium*. 8) Cf. Hegew. Rœm. Finanz. p. 16. sq. 9) Cf. Dionys. Excerpt. Legatt. p. 746. 10) Cf. Cic. in Pis. 35. 11) Cf. Beauf. vol. 1. p. 428 ; vol. 2. p. 381. 12) Cf. Beauf. vol. 2. p. 363. 13) Cf. § 254 ; Cic. Verr. 5, 48.

251. As the condition of one province was preferable to that of another, from the nature of the laws imposed on either by the conquerors, or the rights left unimpaired to them, so the condition of some portions of their inhabitants was more advantageous than that of other portions, as the colonies contained cities to which the privileges of freedom or alliance with Rome had been granted, and under the Cæsars they contained

Roman colonies and corporate towns, *municipia*. The municipes were Roman citizens, and other inhabitants enjoyed civil rights which distinguished them from the other classes (§ 115, &c.). Besides the municipes, other citizens of Rome dwelt in numbers in the provinces, even during the Republic; many for the sake of their affairs, or for practising usury, and who frequently enriched themselves by becoming public creditors of large cities; besides numerous tax-gatherers, *publicani*, farmers of the taxes and holders of public lands: these were principally knights (§ 137); under them also was a numerous host of inferior clerks. All such, by abusing the privileges of Roman citizenship, became pernicious to the province if the governor overlooked their exactions, and dangerous enemies to himself if he strictly restrained it, on account of the influence of the equestrian order in the state³: he had no authority but that of all magistrates over Roman citizens, except over those who served in his army, and thus were subject to military discipline.

Similarly, cities in the enjoyment of privileges such as we have already mentioned, were in many cases exempted from obedience to the authority of the governor; any other inhabitants of the province were governed by him in accordance with the laws imposed on them when conquered (§ 243), and whatever other laws might afterwards be enacted for the government of all the provinces or of any one in particular⁴. In addition to such laws, an edict defined what particulars in the administration of justice were left to the will and impartial justice of the governor, and therefore might be differently ordered by different governors⁵: this, however, which should have been observed during the whole year of administration, was frequently disregarded by dishonest governors, as the edicts of the prætors at Rome sometimes were (§ 193): and hence by the disre-

gard of edicts and laws evinced by some governors, provinces which nominally enjoyed a lighter form of government, were in reality as much oppressed as those whose conditions of subjection were most severe.

1) See Dirksen Vers. zur Krit. und Ausleg. p. 144. sqq.
 2) Cic. Verr. 3, 6. 3) Cf. Vell. 2, 13; Liv. Ep. 1. 70. 4) There is a memorable passage in Cic. Verr. 2, 13, on this subject, in which we find explained, as follows, the laws imposed on the Sicilians after their subjection by Marcellus, and the alterations made by P. Rupilius in the government of that province, for the regulation of trials among them, and also on account of their privileges in that respect: "Siculi hoc jure sunt, ut, quod civis cum cive agat, domi certet suis legibus, quod Siculus cum Siculo non ejusdem civitatis, ut de eo prætor judices ex P. Rupilii decreto, quod is de decem legatorum sententia statuit, quam legem illi Rupiliam vocant, sortiatur; quod privatus a populo petit, aut populus a privato, senatus ex aliqua (alia?) civitate, qui judicet, datur, quum alternæ civitates rejectæ sunt; quod civis Romanus a Siculo petit, Siculus judex datur; quod Siculus a cive Romano, civis Romanus datur. Cæterarum rerum selecti judices civium Romanorum ex conventu proponi solent. Inter aratores et decumanos lege frumentaria, quam Hieronicam adpellant, judicia fiunt." Concerning these same Sicilians, in respect of their *agri vectigales*, see § 252; Cic. Verr. 3, 6. 5) Cf. Cic. ad Att. 6; Fam. 3, 8.

252. The tribute paid by different provinces varied in severity as the laws imposed on them did; on some it fell lighter, on others more onerously. Some contributions, as, for instance, the *vectigal agrorum* (§ 393), differed from the tribute: the nature of the *vectigal agrorum* was this; as I have already said, it was customary for the Romans to forfeit all or a part of the lands of the conquered (§ 241), from the earliest times; this practice was constantly enforced; and thus a large portion of the lands of Italy, for instance the whole *ager Campanus*¹, became the property of the Roman people; and a still greater portion of the provinces, comprehending, besides the landed property taken from individuals, the lands belonging to towns and the private landed property of the kings of conquered states. These confiscated lands were differently disposed of. At first a part of them was granted, as some

suppose, to the patricians³, a part to the lower orders for the purpose of alleviating their distress, or as a reward of victory granted to them at a small price, or as a gift; whence arose colonies in the more remote districts (§ 241): another portion was reserved for the state, and this practice was observed with the lands of provinces, though in a different degree in different cases.

I cannot certainly say whether the publicani actually took the leases of this land so forfeited to the state⁴, or whether they merely farmed the taxes on it, as it is evident they did in the case of other lands⁵; however, I believe they did both⁶. This land, then, was thus disposed of; a portion of it was restored to its owners⁷, still paying the tax formerly levied on it, generally a tenth of the produce: another portion was sold, under the condition of paying a perpetual fixed tax, in order to meet the wants of the treasury; and another portion divided among the poorer citizens, or settled by colonies of veteran soldiers and others⁸. These three kinds of lands, which are confounded with one another by later writers, were thus named: those of the first kind, *ager publicus*; those of the second description, perhaps most correctly, *ager decumanus*; those of the third, *ager vectigalis*.

1) Cf. Cic. Agr. 2, 31; ad Att. 2, 16; Vell. 2, 45; Hegewisch Rœm. Finanz. p. 67. 2) Cf. Cic. Agr. 1, 2, 19 and 30. 3) Did they or did they not enjoy only the *usus* of it? Cf. Nieb. v. 2. p. 363. 4) Cf. Nieb. v. 2. p. 351-2. 5) Cf. Cic. ad Att. 1, 17. 6) Cf. Nieb. v. 2. p. 353. sqq. 7) Cf. App. B. C. 1, 7. See a passage much to the purpose in Cic. Verr. 3, 6: "Inter Siciliam cæterasque provincias, iudices, in agrorum vectigalium ratione hoc interest, quod cæteris aut impositum vectigal est certum, quod stipendiarium dicitur, ut Hispanis et plerisque Pœnorum, quasi victoriæ præmium ac pœna belli; aut censoria locatio (§ 393) constituta, ut Asiæ lege Sempronia. Siciliæ civitates sic in amicitiam fidemque recepimus, ut eodem jure essent, quo fuissent, eadem conditione populo Romano parerent, qua suis antea paruissent. Perpaucæ Siciliæ civitates sunt bello a majoribus nostris subactæ: quarum ager quum esset publicus factus (cf. Verr. 5, 21, qui publicos agros arant, certum

est, quid ex lege censoria dare debeant.) tamen illis est redditus. Is ager a censoribus locari solet. Fœderatæ civitates duæ sunt, quarum decumæ venire non soleant, Mamertina et Taurominitana, quinque præterea sine fœdere immunes civitates ac liberæ, Centuripina, Halesina, Segestana, Halicyensis, Panormitana : præterea omnis ager Siciliae civitatum decumanus est ; itemque ante imperium populi Romani ipsorum Siculorum voluntate et institutis fuit, etc." Cf. also Verr. 5, 21. 8) To this head are to be referred the *agri decumates* of the age of the Cæsars (cf. Tac. Germ. 29.) and the passage of Paul. D. 21 2, 11. Cf. Mascou Gesch. d. Teutsch. 4, 9.

253. Another kind of tax was that levied on goods in harbour, either imported or exported, called *portorium*, being the hundredth part of their value, paid in the provinces even by Roman citizens¹, but abolished in Italy A. U. C. 693 (§ 390). This tax was in itself trivial, but was rendered burdensome by the fraudulent practices of the publicani². In addition to taxes, it is most certain that a tribute was levied on the inhabitants of provinces, and it was different in different provinces, (we are speaking now of the state of things under the Republic, not under the Cæsars), but it is impossible to say how it varied, and whether it was levied on property or was a poll tax on individuals also³. That species of tribute also which by law was appointed to be paid to the governor and to his court, was moderate, but very liable to be rendered burdensome : I shall make the following remarks on these imposts.

1) Cf. Cic. Verr. 2, 74. 2) Cf. Cic. ad Q. Fratr. 1, 1, 11.
3) Cf. Beauf. vol. 2. p. 333 : Cic. Verr. 3, 6.

254. With the exception of a few provinces severely dealt with, their condition in general seems to have been tolerably easy, and preferable to their state before subjection, when we consider the nature of their administration and the tribute imposed on them¹. But the impunity of guilt so easily purchased from Rome in her corrupt state, and the excessive powers granted to governors, rendered them tyrants, and their provinces the abodes of misery². Few of them were moderate and

bearable; so very few good, that such were honoured, as if sent from heaven (§ 250), by the inhabitants: and we must own that the difficulty of screening the inhabitants from the rapacity and haughtiness of the Roman citizens rendered a good governor highly estimable and honourable³. Cicero is an instance of an excellent governor; Verres, whose conduct his speeches make known to us, with others, notorious for their rapacity, cruelty, and crimes, as Piso and Dolabella, are examples of bad ones⁴: and many circumstances lead us to believe that the most part differed little in conduct and wickedness from them⁵. For we find that what has been laid to their charge was commonly practised by all, as for instance, administering the law recklessly without regard to the edict⁶, involving the rich in dangers, selling the life of the innocent man to his enemy, disregarding the privileges of allied towns, and numberless other practices of the kind: for, the law being once laid aside, no barrier to guilt, but the will of the governor remained.

1) Cf. § 252; Cic. Verr. 3, 6. 2) Cf. Tac. Ann. 1, 2: "Neque provinciæ illum rerum statum abnuebant, suspecto senatus populique imperio, ob certamina potentium, et avaritiam magistratum, invalido legum auxilio, quæ vi, ambitu, postremo pecunia turbabantur." 3) Cf. Cic. ad Att. 1, 15 and 17., likewise ad Q. Fratr. 1, 1, 11: "Atque hic tuæ voluntati ac diligentia difficultatem magnam adferunt publicani; quibus si adversamur, ordinem de nobis optime meritum, et per nos cum republica conjunctum, et a nobis et a republica dijungemus; sin autem omnibus in rebus obsequemur, funditus eos perire patiemur, quorum non modo salutem, sed etiam commodis consulere debemus." 4) Cf. Juven. Sat. 8, 98, sqq. 5) Cf. Sall. Jug. 36; Cic. Verr. 2, 32. 5, 48: "Quo confugient socii, quem implorabunt—si vos eos deseritis? Ad senatum devenient, qui de Verre supplicium sumat? Non est usitatum, non senatorium. Ad populum Romanum confugient? Facilis est causa populi. Leges enim sociorum causa jussisse, et vos ei legi custodes ac vindices præposuisse, dicet—non aurum, non vestem, non mancipia repetunt, non ornamenta, quæ ex urbibus fanisque erepta sunt. Metuunt homines imperiti, ne jam hæc populus Romanus concedat, etc. 6) Cf. Cic. ad Att. 6, 1; ad Div. 3, 8.

255. Hence they frequently imposed extraordinary

taxes, without the authority of the senate, and for some feigned urgent cause, appropriating, in the end, the amount to themselves¹; and compelling the inhabitants to pay in money the value of the corn to which they and their suite were legally entitled; and even fixing their own price on it, regardless of the decree of the senate on the subject². The same dishonest speculation was prevalent with regard to such things as according to treaty, the province was bound to furnish for the use of the state, either revenue, troops, or ships; by an abuse of their power, governors contrived to derive an iniquitous profit from these things, by exacting more than was due, by fixing the price of corn at an unfair height, or by taking bribes for remitting services not necessary; as for instance, when they received enormous sums for exempting towns from furnishing winter-quarters to the troops, and burdened other towns more severely for that purpose³. The very arrival of a governor⁴, and his expenses during his progresses through his government, were to be defrayed by those through whose lands he passed; some even were so unreasonable as to require contributions from towns that did not lie on their road⁵. A numerous retinue, who aped and shared his luxury and exactions with impunity, increased their burdens⁶; and, finally, of all the causes of distress incident to the inhabitants of a province, the most ruinous were, the conversions, *versuræ*, of the loans, furnished to them at an exorbitant rate of interest by Roman citizens, to enable them to pay their tribute⁷; they thus entangled themselves in difficulties irremediable.

1) Cf. Cic. pro Font. 5; in Pis. 36; ad Att. 5, 17. 2) Cf. Cic. Verr. 3, 81 and 82; in Pis. 35. 3) Cf. Cic. pro L. Man. 13; ad Att. 5, 21; Tac. Agric. 19. 4) Cf. Cic. pro L. Man. 5. 5) Cf. Cic. ad Att. 5, 21; pro L. Man. 22. 6) Cf. Cic. Verr. 2, 10; Juven. 8, 127. 7) Cf. Cic. ad Att. 5, 18, 20, 21, 6, 1; see Hegew Rœm. Finanz. p. 154, sqq.

256. The oppressed were allowed to indict their governors at Rome, by putting them on their trial for extortion, peculation, and treason (§ 196 and 264); but their appeal was generally fruitless; for the accused, rich and powerful, easily evaded laws intrinsically good; they were moreover judged by men either senators or of equestrian dignity, sometimes both (§ 269), who were inclined to deal partially with them, from being conscious themselves of the same crimes, or aiming at the government of provinces, and eager to follow their iniquitous example¹. But in the age of Cicero, which we are now particularly considering, we meet with few who were found guilty out of many accused, and most of them punished very leniently², for such was then the state of the Republic, that the maladministration of the provinces, (the primary cause of its decay,) like its other evils, admitted not of remedy. The overthrow of the Republic afforded them some relief³; for under the Cæsars the powers of the governors were curtailed, and their rapacity sometimes severely visited on themselves⁴: by some emperors the tributes were diminished, but by others augmented, so that at the close of the Empire, the condition of the provinces was more wretched than at the close of the Republic.

1) Cf. Cic. Verr. 1, 6, sqq. 2) Cic. de Off. 2, 21: "Nondum centum et decem anni sunt, quum de pecuniis repetundis a L. Pisonē lata lex est (cf. Cic. Ver. 2, 6, lege iudicioque sociali, et Bach. 1. 2. c. 3, § 46.) nulla antea quum fuisset. At vero postea tot leges, et proximæ quæque duriores, tot rei, tot damnati, tantum Italicum bellum propter iudiciorum metum excitatum, tanta, sublatis legibus et iudiciis, expilatio direptioque sociorum, ut imbecillitate aliorum, non nostra virtute valeamus." 3) Cf. Tac. Ann. 1, 2; Juven. 1, 47. 8, 91. 4) Cf. Tac. Ann. 13, 33.

257. In addition to what has been already said of the condition of the provinces, something remains to be said of the changes introduced under the Cæsars in their administration, beginning with Augustus, who, when he

perceived, at his elevation to supreme power, what a large share of the strength of the state lay in its provinces, divided them between himself and the senate, so as to render their management less onerous to both (a. 727): those which furnished the readiest revenue, were of suspected fidelity or lay exposed to the incursions of the enemy he took to himself, the rest he allowed the senate to manage¹. The latter were called *senatoriæ* or *populares*, the former *imperatoricæ* or *Cæsareæ*, and were divided into fourteen districts, as follows: Hispania, Tarraconensis, Lusitania, Galliæ (§ 10), the provinces on the Danube, Syria, Armenia minor, Mesopotamia, Cilicia, Ægyptus², and in later times others. The plan of Augustus was pursued by his successors, who, after his method, exchanged provinces sometimes with the senate², and sometimes claimed those of the senate as their own. Moreover, the senate and the emperor followed different plans of administration.

1) Suet. Aug. 47: "Provincias validiores, et quas annuis magistratum imperii regi, nec facile nec tutum erat, ipse suscepit, cæteras proconsulibus sortito permisit, et tamen nonnullas commutavit interdum, atque ex utroque genere plerasque sæpius adiit. Cf. Dio Cass. 53, 12; Strabo 1, 17. extr. 2) Creuz. § 178. 3) Cf. Tac. Ann. 1, 75.

258. The governors of the provinciæ imperatoriæ were selected by the emperor himself from the senate; they were styled *legati Augusti vel Cæsaris*, also *proprætore*s, though some say they were of consular dignity¹: at later periods they bore other titles, such as *legati*². Their power was both military and civil, and although depending on the will of the emperor, and limited in duration, was still very great, as they had the power of life and death over their soldiers, and therefore were authorized to wear a sword and the military uniform. Procuratores, who were sent by Augustus into smaller and newly conquered provinces, and were generally of equestrian

rank³, were inferior in dignity to the legati, but had equal authority in their respective provinces⁴; they are sometimes called *præsides*⁵. The administration of the province of Egypt was attended with some peculiarities; as its loyalty was suspected on several accounts, Augustus did not venture to intrust it to a governor of the senate's appointment, or perhaps superstition influenced his conduct⁶; but he appointed a Roman knight governor with the title of *præfect*, *præfectus Augustalis*, and likewise forbade any senator to enter the province without his permission⁷.

1) Cf. Creuz. § 180. 2) Cf. Suet. Tib. 41; Vesp. 4; Tac. Agric. 7. 3) Cf. Tac. Ann. 12, 60. 4) Ibid. 15, 44. 5) Cf. Suet. Tib. 41; Creuz. p. 220. 6) Cf. Trebell. Poll. in *Æmil.* 7) Cf. Tac. Ann. 2, 59; Hist. 1, 11.

259. The governors of the *provinciae senatoriæ* were chosen by lot by the senate from men of consular or prætorian dignity, and in either case were styled proconsuls; their command was limited to one year, and acting only in a civil capacity, they were not authorized to wear a sword and the military uniform; yet they were allowed lictors according to the ancient custom. Besides governors, procurators were sent into provinces of both descriptions by the emperors; they were first appointed by Augustus, but differed from the *præfecti Augustales* in their duties and rank; they were frequently freedmen, had charge of the taxes and revenues of the provinces, and no authority except over those who attempted to defraud the treasury². It is extremely difficult to draw a distinction between the two kinds of procurators, as many passages in writers prove that according to the will of the emperor, at one time greater, at another time fewer and lesser powers were intrusted to the same officers³. Quæstors also were sometimes sent into the provinces allotted to the senate⁴. Finally, the emperors, by virtue of their perpetual pro-

consulship (§ 245), exercised supreme authority over these provinces also and the army stationed in them: this rank was sometimes conferred by the senate on the heirs to the empire, but it is distinct from the authority conferred on certain men on extraordinary occasions over several provinces for a season⁵.

1) Cf. Creuz. p. 207. 2) Cf. Tac. Ann. 12, 60; Agric. 9 and 15. 3) See Creuz. § 184. 4) Cf. Dio Cass. 53, 14. (5 Cf. Tac. Ann. 2, 43. 15, 25.

CHAPTER THE THIRD.

LAWS, AND THE ADMINISTRATION OF JUSTICE.

Of Laws.

260. CITIES are either originally founded by settlers, or, though rarely, by men assembled by chance; the former generally preserve the laws and institutions of their mother city, the latter at first have no laws, or but few and uncertain ones: social life gradually introduces others, which, so long as they are observed habitually and exactly, are termed customs and manners, and prevail even after the introduction of written law, and during the mature condition of the city's constitution.

Thus originally the Romans had but very few and simple laws, some of which are said to have been enacted by Romulus himself¹, but whether they were not in force for some time as unwritten laws, let others say². The decisions of the kings, then the first magistrates and supreme judges, giving sentences in truth and equity, were thenceforth held as laws. They made their edicts public by inscribing them on tables, or published them by the voice of the crier³: hence they were said *manu gubernare*⁴, i. e. by their own power and will. Yet in matter of serious importance they decided after having taken the opinion of the senate or of the curiæ; hence the laws of the kings are called *curiata*. According to Dionysius these laws were almost abolished by Tarquinius Superbus, but after the expulsion of the kings, some of the most simple were

restored, and the consuls, like the kings, decided in many cases by their own judgment⁶.

1) See Dionys. 2, 25; cf. Dirksen. Versuche zur Kritik—d. Quell. d. Röm. Rechts, p. 261, sqq. 2) cf. Dionys. 10, 1; Pomp. l. 2, de Or. Jur.; Tac. Ann. 3, 26: "Nobis Romulus, ut libitum, imperitaverat. Dein Numa religionibus et divino jure populum devinxit. Repertaque quædam a Tullo et Anco; sed præcipuus Servius Tullius sanctorum legum fuit, queis etiam Reges obtemperarent. Pulso Tarquinio, adversum patrum factiones multa populus paravit tuendæ libertatis et firmandæ concordiæ, creatique Decemviri, et accitis, quæ usquam egregia, compositæ XII Tabulæ, finis æqui juris." 3) Cf. Liv. 1, 32 and 44; Cic. de Orat. 2, 12. 4) Pomp. l. c.: "Omnia manu a regibus gubernabantur;" cf. Tac. Agric. § 9. 5) Dionys. 4, 41, sqq. 6) Cf. Liv. 6, 1; Dionys. 4, 43; cf. Hein. Hist. J. R. § 15.

261. Thus originally the decrees of the kings and established customs were in lieu of laws among the Romans; until the laws of the Twelve Tables were introduced with the consent of all parties, consisting of the laws of Greek states combined with the ancient laws of Rome¹ (§ 205). Rome being then of small extent, the rights of individuals, the method to be pursued in governing the state, the power of the senate and of the magistrates, the authority of the people and of each of its ranks, were all defined in these XII Tables; and from them were derived all other laws of the Romans, the decrees of the people, *plebiscita*, and those of the senate, *senatus consulta*, as the city increased and its constitution became altered; the laws, moreover, were greatly augmented by the *jus honorarium* enjoyed by magistrates (see § 191). From these Tables also, as from the fountain head of Roman legislation², were derived many of the laws of Justinian.

It is believed that the Tables themselves were still extant in the time of Justinian³; fragments only have reached us, collected by late writers from the works of Cicero, Gellius, Festus, from the Pandects, the Institutions of Caius, and the remains of Ulpian's works; and many still labour in endeavouring to restore them to

their entire state: Jacob Gothfreid has acquired great celebrity in this pursuit, greater, indeed, than he deserves, according to some⁴; and this most ancient code, restored in parts, according to his ideas, is inserted in many works on Jurisprudence, such as in the *Historia Jur. Civ. Rom.*, of Heineccius, edited by Ritter, and Bach's *Historia Jurisp. Rom.*; it is also remarkable for its latinity⁵. His work having been strictly examined by learned men⁶, of whom the most eminent is Dirksen, we can at length judge how much Gothfreid indulged the natural bias of his inventive genius, and how much he has left to others still to perform. Dirksen deserves high commendation, both for his writings on the history and study of Roman Jurisprudence⁷, as well as for his work upon the XII Tables, in which he discusses their text and the commentaries on it⁸. Having at first intended to subjoin other tables to that of Gothfreid inserted in the second edition of this work, I afterwards preferred introducing the whole of the tables given in Dirksen's work⁹, and the whole of the more perfect remains collected from the *Institutions of Caius*, rather than to insert the conjectural text, retaining, however, for sake of example, the first table according to Gothfreid¹⁰.

1) This may safely be affirmed by one who pays more regard to the accounts given by ancient writers of the mission of these ambassadors into Greece, than to the suppositions or bare assertions of modern writers to the contrary. For instance, Macieowski, (*Hist. Jur. Rom.*, preface, p. 5.,) speaking of this mission into Greece says, that Livy and Dionysius Hal. have given a foolish and fabulous account of it; and p. 54, with respect to the passages in Cicero de Republicâ, 2, 36 and 37; and 3, 37, (though I have searched for this reference in vain,) he says, "Nullam mentionem legum e Græcia petitarum fieri." However, this seems to me an argument of little weight, considering what Cicero might have thought necessary to say in those passages. A passage in the same author, *De Oratore*, 1, 44, appears more conclusive; he makes Crassus exclaim, "Bibliothecas mehercule omnium philosophorum unus mihi videtur XII Tabularum libellus, SI QUIS LEGUM FONTES ET CAPITA VIDERIT, et auctoritatis pondere et utilitatis ubertate superare:" to which he adds the remark, that we may easily per-

ceive how superior the Romans were to the Greeks in wisdom, if the Roman laws be compared with those of Lycurgus, Draco, and Solon: every one must see that these remarks could not be applicable to any laws which Cicero might have believed were borrowed wholly or in part from the Greeks. Yet I cannot allow such authority to these and other passages of Cicero, in which he expresses himself sometimes in a contradictory manner, in determining the question, as to reject on their account the statements of Livy and Dionysius, who reported at least the current opinion on the subject, and certainly did not invent their accounts. Dionysius relates that deputies were chosen to collect laws from among the Greeks (*τοὺς παρ' Ἑλλήνων νόμους ληψόμενοι*), 10, 52; and that they returned from Athens and from the Grecian cities in Italy with laws (*φέροντες τοὺς νόμους*), 10, 54: and Livy says that these deputies were charged, "*inclytas leges Solonis describere et aliarum Græciæ civitatum instituta mores juraque noscere;*" with which statement compare Tacitus, *Ann.* 3, 26: "*— accitis, quæ usquam egregia, compositæ XII Tabulæ, finis æqui juris.*" Among recent writers, whose opinions are commonly highly thought of on such subjects, is Hugo, who (*Gesch. de Rœm. Rechts*, p. 64. ed. 8vo.) inclines us to suppose that such deputies were sent, and may even have travelled beyond Italy. What Dirksen's opinion is I have still to discover: but Niebuhr, *Rœm. Gesch.* v. 2. p. 67. (cf. Wachsmuth *æltère Gesch. d. Rœm. Staats.* p. 355), although he owns that it is credible that they were sent as far as Athens, yet thinks the statement suspicious, as Roman writers had a custom of loosely naming Athens as the scene of any occurrence in Greece, that was not well ascertained; and a proof of this careless inexactitude is to be found in facts detailed by them but refuted by chronology. It is certain that they who maintain that the deputation did not visit Athens, cannot account for finding something transferred thence into the XII Tables; and they who maintain that the story of the deputation is fabulous, give no reason for their containing traces of foreign laws and customs; although it would unavoidably follow that the decemviri admitted many foreign laws, even if we allow that the deputation was sent and returned with the laws of the Greek inhabitants of Italy or those of the Greeks of foreign parts; that they adopted but few, we might adduce many proofs, too voluminous to insert here, besides the remains of the Tables and the conciseness of the laws of the decemviri (cf. *Cic. de Orat.* 1, 44). Indeed, it is difficult to persuade oneself that the Romans, in other cases so notoriously tenacious of their ancient institutions, should have so readily thrown aside laws which, though not numerous, they had enjoyed for three centuries, and in the remains of the Tables are found laws, which the ancients inform us were introduced, some of them under the kings, some at the commencement of freedom. In the rest of the remains, I hardly think that many things are to be found which can indisputably be referred to the Greek laws, so that we may the more readily conclude that the greater part of the contents of the XII Tables consisted of national laws; and if we grant this, we must conclude, from the brevity and small number of the chapters, that little space was left for foreign laws. However, it is one thing to argue that they contained

few things foreign, and another thing to argue that they comprised nothing foreign (cf. Maciejowski, p. 5); for the statements of ancient writers forbid our doing so (cf. Dionys. 10, 57), and it would seem absurd to suppose that writers would not have contradicted it if an unfounded report. We may adduce a weighty argument in the fact that we have indisputable authority for stating that the decemviri were assisted in writing the laws by Hermodorus, an Ephesian; and if Greek laws are to be excluded from the Tables, we are at a loss to conceive of what use he was to the decemviri, either as interpreter, as Pliny states (§ 205), or otherwise, so that his services should be thought deserving of a public statue.

2) Cf. Liv. 3, 34; Cic. de Leg. 2, 23; de Orat. 1, 43 and 44.
3) Cf. Lyd. 1, 26. 4) See Maciejowski Hist. Jur. Rom. p. 55.
5) The first Table, with the paraphrase as found in Bach. l. 1. c. 2. § 11, will serve for an example.

TABULA I.

De In Ius Vocando.

	—————	—————	—————	Cai. lib. 1. ad leg. XII Tab. cuius pars prior huic primæ tab. responderet.
	—————	—————	—————	
	—————	—————	—————	
	—————	—————	—————	
I.	SIN * IVS VOCAT QVEAT: NIT * ANTESTAMINO: IGITVR, EM CAPITO. SI CALVITVR, PEDEMVE STRVIT, MANUM ENDO IACITO.			Cai. I. 18. 20. 22. in pr. ff. de in ius voc.
	SI MORBVS EVITASVE VITIVM ESCIT, QVIN * IVS VOCABIT IVMENTVM DATO: SI NOLET AR CERAM NE STERNITO.			* Id est, si in ius vocat, atque eat. Porphyrion ad lib. 1. Satyrrar. Hor. Sat. 9.
	SI ENSIET, qui ius vocatum vindicit mi Tito.			
	ASIDVO VINDEK ASIDVS ESTO: PROLE- TARIO, CVIQVI VOLET VINDEK ESTO. ENDO VIA REM * VTI PAICVNT, * ORATO.			* id est, ni it. Cai. l. 233. in pr. ff. de V. S. Gell. lib. 20. c. 1.
III. Cognitio Praetoris.	NITA * PAICVNT, IN COMITIO, AVT IN PORO AB ORTV ANTE MERIDIEM CAV- SAM CONSCITO, * CVM PERORANT AMBO PRAESENTES. *			* id. est, qui in Caius l. 22. § 1. ff. de in ius voc. * vbi.
	POST MERIDIEM PRAESENTI STLITEM ADICITO.			* RATO.
	SOL OCASVS SUPREMA TEMPESTAS ESTO.			* id est, ni ita: puta: vindice dato, vel pacto inito.

PARAPHRASE.

Si quis aliquem in jus vocat, vocatus statim sequitor.
 Si in jus vocatus non sequatur, qui vocabit testes ante adhibeto, et tum in jus vocatum sistere ei jus esto.
 Si et tum in jus vocatus moratur, frustretur, fugamve adornet, manum ei injicere jus esto.

Si imbecillitas, aut invalentia quædam, ætasve senilis impedimento sit, quo minus vocatus in jus sequatur, qui in jus vocabit vocato vectabulum, seu vehiculum, quod adjunctis pecoribus trahetur, dato : si nolet is, qui in jus vocabit, vocato petenti plaustrum undique tectum, munitumque sternere ne cogitor.

Si tamen sit aliquis, qui in jus vocatum, vel prensus defendat, dimittitor.

Ceterum locupleti vindex locuples esto : pauperi prolem tantum Reipub. sufficienti (§ 144) quilibet vindex esto.

Item si de re transactum fuerit inter vocantem, et vocatum, dum in jus venit, ita jus ratumque esto.

Si neque vindex aliquis sit, neque de re in via transactum fuerit, tum in comitio, aut in foro Prætor causam cognoscito, ante meridiem, cum ambo litigatores præsentis perorant.

Post meridiem, etiamsi unus tantum præsens sit, præsentis actionem dato, iudiciumque constituito.

Sole incidente supremus terminus iudiciorum esto, seu iudicia solvuntur. Ad solem proinde occasum Prætor jus reddito.

6) Cf. Hugo p. 69. ed. 8vo. ; Maciejowski l. c. : " Sed in iis, quæ effecit, potius ingenii subtilitas et acumen laudandum, quam argumentorum gravitati vel copiæ fidem habendam esse, duco." 7) Among which are to be noted *Versuche zur Kritik und Auslegung der Quellen des Römischen Rechts* (Leipzig, 1823). 8) *Uebersicht der bisherigen Versuche zur Kritik und Herstellung des Textes der Zwölf-Tafel-Fragmente* (Leipzig, 1824). 9) These are here subjoined, as edited by Warnkœnig, whose work was re-edited, with additions by M. L. Étienne, under the title, "*Introduction à l'étude du Droit romain, traduite, de l'Allemand de M. de Mackeldey. Mons. 1826.*"

10) SUMMARY OF THE SEVERAL REMAINS OF THE LAW OF THE XII TABLES, DRAWN UP BY DIRKSEN.*

TABULA I.

Fr. 1. (I. 1. 2. **) SI. IN. IVS. VOCAT. NI. IT. ANTESTATOR. IGI-
TVR. EM. CAPITO. (Porphyrus ad Horatium, Satyr. lib. 1.
Sat. 9. v. 65.

* I have given this summary as it stands in the work of Warnkœnig (see note 6, above); whether it is accurate I cannot say, not having Dirksen's work. I have corrected the Greek text, which was carelessly printed. It must not be supposed that Dirksen has introduced only unquestionable passages of the XII Tables; had he done so he must have omitted the greater part of what he has given, as great doubts exist in many instances both concerning the readings and the divisions. The words "Quum perorant ambo præsentis" are not quoted by Auct. ad Herenn. Note by Fuss.

** The numbers placed between parenthesis indicate the situation which Jacob Gothfreid assigned to the fragment in question in his restoration of the XII Tables. The passages not so numbered were not known to that author.

- Fr. 2. (I. 3.) SI. CALVITVR. PEDEMVE. STRVIT. MANUM. ENDOI-
ACITO. (Festus, v. *struere*.)
- Fr. 3. (I. 4.) SI. MORBUS. ÆVITASVE. VITIVM. ESCIT. QUI. IN.
IVS. VOCABIT. IVMENTVM. DATO. SI NOLET. AR CERAM. NE.
STERNITO. (A. Gellius, Noct. Attic. lib. 20. c. 1.)
- Fr. 4. (I. 6.) ASSIDVO. VINDEK. ASSIDVVS. ESTO. PROLETARIO.
QVOI. QVIS. VOLET. VINDEK. ESTO. (Id. lib. 16. c. 10.)
- Fr. 5. (IX. 2.) Itaque in XII. cautum est: "Ut idem juris
esset sanatus, quod fortibus," id est bonis et qui nun-
quam defecerant a populo Romano. (Festus, v. *Sanates*.)
- Fr. 6. (I. 7.) REM. VBI. PAGVNT. ORATO. (Auctor ad Heren-
nium, lib. 2, c. 13.)
- Fr. 7. (I. 8.) NI. PAGVNT. IN. COMITIO. AVT. IN. FORO. ANTE.
MERIDIEM. CAVSAM. CONIICITO. QVOM. PERORANT. AMBO.
PRÆSENTES. (Id. al. l., et Gellius, al. l. lib. 17. c. 2.)
- Fr. 8. (I. 9.) POST. MERIDIEM. PRÆSENTI. STLITEM. ADDICITO.
(Gellius, al. l.)
- Fr. 9. (I. 10.) SOL. OCCASVS. SVPREMA. TEMPESTAS. ESTO.
Gellius ib.)
- Fr. 10. (II. 1.)—VADES.—SVBVADES.—(Id. l. 16. c. 10.)

TABULA II.

- Fr. 1. Pœna autem sacramenti aut quingenaria erat aut quin-
quagenaria: (nam) de rebus mille æris plurisve quingentis
assibus, de minori (bus vero) quinquaginta assibus sa-
cramento contendeb (atur) nam (ita) *Lege XII Tabula-
rum* cautum erat. (Sed si de libertate) hominis (con-
troversia) erat, et si pretiosissimus homo esset, tamen
ut quinquaginta assibus sacramento contenderetur (cau-
tem erat).....favoris (causa, ne satisfactione onerarentur)
adsertores.....(Gaius, Institution. Lib. 4. § 14.)
- Fr. 2. (II. 2.)—MORBUS. SONTICVS.—STATVS. DIES. CVM.
HOSTE.—QVID. HORVM. FVIT. VNV. IVDICI. ARBITROVE.
REOVE. DIES. DIFFISUS. ESTO. (Gellius, lib. 20. c. 1. Cicero,
De Offic. lib. 1. c. 12. Festus, v. *reus*.)
- Fr. 3. (II. 3.) CVI. TESTIMONIVM. DEFVERIT. IS. TERTIIS. DIEBVS.
OB. PORTVM. OBVAGLATVM. ITO. (Festus, v. *portum*, et,
quam non indicat Dirksen, *vagulatio*.)
- Fr. 4. (II. 12.)—Nam et de furto pacisci Lex permittit. (Lib.
7. § 14. D. de Pact.)

TABULA III.

- Fr. 1. (III. 4.) AERIS. CONFESSI. REBVSQVE. IVRE. IVDICATIS.
TRIGINTA. DIES. IVSTI. SVNTO. (A. Gellius, lib. 20. c. 1.)
- Fr. 2. (III. 5.) POST. DEINDE. MANVS. INIJECTIO. ESTO. IN. IVS.
DVCITO. (Ibid.)
- Fr. 3. (III. 6.) NI. IVDICATVM. FACIT. AVT. QVIP. ENDO. EM.
IVRE. VINDICIT. SECVM. DVCITO. VINCITO. AVT. NERVO. AVT.
COMPEDIVS. QVINDECIM. PONDO. NE. MAIORE. AVT. SI VO-
LET. MINORE. VINCITOR. (Ibid.)

- Fr. 4. (III. 7.) SI VOLET. SVO. VIVITO. NI. SVO. VIVIT. QVI. EM. VINCTVM. HABEBIT. LIBRAS. FARRIS. ENDO. DIES. DATO. SI. VOLET. PLVS. DATO. (Ibid.)
- Fr. 5. (III. 8.) Erat autem jus interea paciscendi; ac nisi pacti forent, habebantur in vinculis dies sexaginta: inter eos dies trinis nundinis continuis ad prætorem in comitium producebantur, quantæque pecuniæ iudicati essent, prædicabatur. (Ibid.)
- Fr. 6. (III. 9.) Tertiis autem nundinis capite pœnas dabant, aut trans Tiberim peregre venum ibant.—Si plures forent quibus reus esset iudicatus, secare si vellent atque partiri corpus addicti sibi hominis, permiserunt.—TERTIIS. NUMDINIS. PARTIS. SECANTO. SI. PLVS. MINVSVE. SECVRVNT. SE. FRAVDE. ESTO. (Ibid.)
- Fr. 7. (III. 3.) ADVERSVS. HOSTEM. ÆTERNA. AVCTORITAS.—(Cicero, De Offic. lib. 1. c. 12.)

 TABULA IV.

- Fr. 1. (IV. 1.) Nam mihi quidem pestifera videtur (sc. tribunorum plebis potestas), quippe quæ in seditione et ad seditionem nata sit: cujus primum ortum si recordari volumus, inter arma civium et occupatis et obsessis urbis locis procreatum videmus. Deinde quum esset cito legatus, tanquam ex XII Tabulis insignis ad deformitatem puer, brevi tempore recreatus multoque tætrior et fœdior natus est. (Cicero, De Legib. lib. 3. c. 8.)
- Fr. 2. (IV. 2.) Ὅ δὲ τῶν Ῥωμαίων νομοθέτης (ὁ Ῥωμύλος) ἔπασαν, ὡς εἰπεῖν, ἔδωκεν ἐξουσίαν πατρὶ καθ' υἱοῦ, καὶ παρὰ πάντα τὸν τοῦ βίου χρόνον, ἐάν τε εἰργεῖν, ἐάν τε μαστιγοῦν, ἐάν τε δέσμιον ἐπὶ τῶν καθ' ἀγρὸν ἔργων κατέχειν, ἐάν τε ἀποκτινύνναι προαιρηῆται, καὶ τὰ πολιτικά πράττων ὁ παῖς ἤδη τυγχάνῃ, καὶ ἐν ἀρχαῖς ταῖς μεγίσταις ἐξεταζόμενος, καὶ διὰ τὴν εἰς τὰ κοινὰ φιλοτιμίαν ἐπαινούμενος.—καταλυθείσης δὲ τῆς μοναρχίας—(τοῦτον τὸν νόμον) δέκα ἄνδρες ἅμα τοῖς ἄλλοις ἀνέγραψαν νόμους, καὶ ἔστιν ἐν τῇ τετάρτῃ τῶν λεγομένων δώδεκα δέλτων, ἃς ἀνέθεσαν ἐν ἀγορᾷ. At Romanorum legislator [Romulus] omnem, ut ita dicam, potestatem in filium patri concessit, idque toto vitæ tempore: sive eum in carcerem conjicere, sive flagris cædere, sive vinctum ad rusticum opus detinere, sive occidere vellet; licet filius jam rempublicam administraret et inter summos magistratus censeretur, et propter suum studium in rempublicam laudaretur.—Sed sublato regno—Decemviri (eam legem) inter ceteras retulerunt, exstatque in XII. Tabularum, ut vocant, quarta, quas tunc in foro posuere (Dionysius Halicarnassæus, lib. 2. c. 26 et 27.)
- Fr. 3. (IV. 3.) SI. PATER. FILIVM. TER. VENVM. DVIT. FILIVS A. PATRE. LIBER. ESTO. (Ulpian. Fragm. tit. 10. § 1.)
- Fr. 4. (IV. 4.)—Quoniam Decemviri in decem mensibus gigni hominem, non in undecimo, scripsissent. (A. Gellius, lib. 3. c. 16.)

TABULA V.

- Fr. 1. Loquimur autem exceptis Virginibus Vestalibus, quas etiam veteres in honorem sacerdotii liberas (a tutela) esse voluerunt; itaque etiam Lege XII Tabularum cautum est. (Gaius, Institution. lib. 1. §. 144, 145.)
- Fr. 2. (Item.) Res mulieris, quæ in agnatarum tutela (erat, si) erant res mancipi, usucapi non poterant, præterquam si ab ipsa tutore (auctore) traditæ essent: id ita Lege XII Tabularum cautum erat. (Ibid. lib. 2. § 47.)
- Fr. 3. (V. 1.) VTI. LEGASSIT. SVPER. PECVNIA. TVTELAVE. SVÆ. REI. IVS. ESTO. (Ulpian, Fragm. tit. 11. § 14.)
- Fr. 4. (V. 2.) SI. INTESTATO. MORITUR. CVI. SVVS. HERES. NEC. SIT. ADGNATVS. PROXIMVS. FAMILIAM. HABETO. (Ibid. tit. 26. § 1.)
- Fr. 5. (V. 3.) SI. AGNATVS. NEC. ESCIT. GENTILIS. FAMILIAM. NANCITOR. (Collat. Legg. Mosaic. et Romanar. tit. 16. § 4.)
- Fr. 6. (V. 7.) Quibus testamento quidem tutor datus non sit, iis ex Lege XII. agnati sunt tutores, qui vocantur legitiimi. (Gaius, Institution. lib. 1. § 155.)
- Fr. 7. (V. 8.) SI. FVRIOSVS. EST. AGNATORVM. GENTILIVMQVE. IN. EO. PECVNIAQVE. EIVS. POTESTAS. ESTO.—AST. EI. CVSTOS. NEC. ESCIT. (Cicero, de Invent. Rhetor. lib. 2. c. 50. Festus, v. *nec.*)
- Fr. 8. (V. 4.) Civis Romani liberti hereditatem Lex XII Tabularum patrono defert, si intestato sine suo herede liberus decesserit.—Lex: “EX. EA. FAMILIA., inquit, IN. EAM. FAMILIAM.” (Ulpian., Fragm. tit. 29. § 1. L. 195. § 1. D. de Verbor. signif.)
- Fr. 9. (V. 5.) Ea, quæ in nominibus sunt, non recipiunt divisionem, cum ipso jure in portiones hereditarias ex Lege XII Tabularum divisa sint. (L. 6. C. Famil. erciscund.)
- Fr. 10. (V. 6.) Hæc actio (sc. familiæ erciscundæ) proficiscitur e Lege XII Tabularum (L. 1. pr. D. eod. tit.)

TABULA VI.

- Fr. 1. CVM. NEXVM. FACIET. MANCIPIVMQVE. VTI. LINGVA. NVNCVPASSIT. ITA. IVS. ESTO. (Festus, v. *nuncupata.*)
- Fr. 2. (VI. 2.) Nam cum ex XII Tabulis satis esset ea præstari, quæ essent lingua nuncupata, quæ qui infitatus esset dupli pœnam subiret; a jureconsultis etiam reticentiæ pœna est constituta. (Cicero, De Offic. l. 3. c. 16.)
- Fr. 3. (VI. 5.) Quod in re pari valet, valeat in hac, quæ par est, ut: “Quoniam usus auctoritas fundi biennium est, sit etiam ædium: at in Lege ædes non adpellantur, et sunt ceterarum rerum omnium, quarum annuus est usus.” (Cicero, Topic. c. 4.)
- Fr. 4. (VI. 6.) Usu in manum conveniebat, quæ anno continuo nupta perseverabat:—Itaque Lege XII Tabularum

cautum (*erat*), si qua nollet eo modo in manum mariti conveyere, ut quotannis trinoctio abesset, atque (*ita usum*) ejusque anni interrumpere. (Gaius, Institution. l. 1. § 111.)

- Fr. 5. (VI. 7.) SI. QVI. IN. IVRE. MANVM. CONSERVNT. (A. Gellius, lib. 20. c. 10.)
- Fr. 6. (VI. 8.) Initium fuisse secessionis dicitur Virginius quidam, qui cum animadvertisset Appium Claudium contra jus. quod ipse ex vetere jure in XII Tabulas transtulerat, vindicias filiæ suæ a se abdixisse, et secundum eum, qui in servitutem ab eo suppositus petierat, dixisse, captumque amore virginis omne fas ac nefas miscuisse. (L. 2. § 24. D. De Orig. Jur.)
- Fr. 7. (VI. 9.) TIGNVM. IVNCTVM. ÆDIBVS. VINÆQVE. ET. CONCAPET. NE. SOLVITO. (Festus, v. *tignum*.)
- Fr. 8. (VI. 10.) Quod providenter Lex XII Tabularum effecit, ne vel ædificia sub hæc prætexta diruantur, vel vinearum cultura turbetur; sed in eum, qui convictus est junxisse, in duplum dat actionem. (L. 1. pr. D. *de tigno juncto*.)
- Fr. 9. (VI. 11.) QVANDOQVE. SARPTA. DONEC. DEMPTA. ERVNT. (Festus, v. *sarpuntur*.)

TABULA VII.

- Fr. 1. (VIII. 1.) Nam ambitus circumitus: ab eoque XII Tabularum interpretes ambitum parietis circumitum esse describunt.—Lex etiam XII Tabularum argumento est, in qua duo pedes et semis *sestertius pes* vocatur. (Varro, de Ling. Lat. lib. 4. c. 4. et Volusius Mæcianus, *de asse et ejus partib.*)
- Fr. 2. (VIII. 3.) Sciendum est, in actione finium regundorum illud observandum esse, quod ad exemplum quodammodo ejus legis scriptum est, quam Athenis Solonem dicunt tulisse; nam illic ita est: 'Εάν τις αίμασίαν παρ' άλλοτρίω χωρίω ὀρυγῆ, τὸν ὄρον μὴ παραβαίνειν, εἰς τείχιον, πόδα ἀπολείπειν, εἰς δὲ οἶκημα, δύο πόδας. εἰς δὲ τάφον ἢ βοθρον ὀρύττει, ὅσον τὸ βάθος ἢ, τοσοῦτον ἀπολείπειν, εἰς δὲ φρέαρ, ὀργυιάς· ἐλαίαν δὲ καὶ συκὴν ἐννέα πόδας ἀπὸ τοῦ άλλοτρίου φυτεύειν, τὰ δὲ ἄλλα δένδρα πέντε πόδας. Si quis sepem ad alienum prædium fixerit infoderitque, terminum ne excedito: si maceriam, pedem relinquito: si vero domum, pedes duos: si sepulchrum aut scrobem foderit, quantum profunditatis habuerint, tantum spatii relinquito: si puteum, passus latitudinem: at vero oleam aut ficum ab alieno ad novem pedes plantato, ceteras arbores ad pedes quinque. (L. Fin. D. Finium Regund.)
- Fr. 3. (VIII. 6.)—HORTVS.—HEREDIVM.—TVGVRIVM.—(Plinius, Hist. Natur. lib. 19. c. 4. § 1.)
- Fr. 4 et 5. (VIII. 4, 5.) Ex hac autem, non rerum, sed verborum, discordia controversia nata est de finibus: in qua quoniam

- usucapionem XII Tabulæ intra quinque pedes esse noluerunt, depasci veterem possessionem academiæ ab hoc acuto homine non sinemus, nec Mamilia lege singuli, sed ex his tres arbitri fines regemus.—SI IVRGANT.—(Cicero, de Legib. l. 1. c. 21. et Nonius Marcellus, de Propriet. Sermon. c. 5. § 34.)
- Fr. 6. (VIII. 10.) Viæ latitudo ex Lege XII Tabularum in porrectum octo pedes habet; in anfractum, id est ubi flexum est, sedecim. (L. 8. D. de Servitutib. Præd. Rustic.)
- Fr. 7. (VIII. 11.) Si via sit immunita, jubet (Lex) qua velit agere jumentum. (Cicero, pro Cæcina. c. 19.)
- Fr. 8. (VIII. 9.) Si per publicum locum rivus aquæductus privato nocebit, erit actio privato ex Lege XII Tabularum, ut noxæ domino caveatur.—SI. AQUA. PLUVIA. NOCET.—(L. 5. D. Ne quid in Loco Public. et L. 21. D. de Statu-lib.)
- Fr. 9. (VIII. 7.) Quod ait prætor, et Lex XII Tabularum efficere voluit, ut quindecim pedes altius rami arboris circumcidantur; et hoc idcirco effectum est, ne umbra arboris vicino prædio noceret. L. 1. § 8. D. de Arborib. Cædend.)
- Fr. 10. (VIII. 8.) Cautum est præterea Lege XII Tabularum, ut glandem in alienum fundum procidentem liceret colligere. (Plinius, Histor. Natur. lib. 16. c. 5.)
- Fr. 11. (VI. 4.) Venditæ vero res et traditæ non aliter emptori adquiruntur, quam si is venditori pretium solverit, vel alio modo satisfecerit, veluti expromissore aut pignore dato. Quod cavetur quidem et Lege XII Tabularum, tamen recte dicitur, et jure gentium, id est jure naturali, id effici. (§ 41. Inst. de Rer. Divis.)
- Fr. 12. (VI. 3.) Sub hac conditione liber esse jussus, si decem millia heredi dederit, etsi ab herede abalienatus sit, emptori dando pecuniam ad libertatem perveniet: idque Lex XII Tabularum jubet. (Ulpian. Fragm. tit. 2. § 4.)

TABULA VIII.

- Fr. 1. (VII. 8. Nostræ contra XII Tabulæ cum perpauca res capite sanxissent, in his hanc quoque sancientiam putaverunt: " Si quis occentavisset, sive carmen condidisset, quod infamiam faceret flagitiumve alteri." Cicero, de Republ. lib. 4. apud Augustinum, de Civitate Dei, lib. 2. c. 9.)
- Fr. 2. (VII. 9.) SI. MEMBRVM. RVPIT. NI. CVM. EO. PACIT. TALIO. ESTO. (Festus, v. *talionis*.)
- Fr. 3. (VII. 10.) Propter os vero fractum aut collisum trecen-torum assium pœna erat (ex Lege XII Tabularum), velut si libero os fractum erat; at si servo, centum et quinquaginta. (Gaius, Institution. lib. 3. § 223.)

- Fr. 4. (VII. 7.) *SI. INIVRIAM. FAXIT. ALTERI. VIGINTI. QVINQUE. ÆRIS. PŒNÆ. SVNTO.* (A. Gellius, lib. 20. c. 1.)
- Fr. 5. (VII. 2.)—*RVPITIAS.*—*SARCITO.*—(Festus, v. *Rupitias.*)
- Fr. 6. (VII. 5.) Si quadrupes pauperiem fecisse dicetur, actio ex Lege XII Tabularum descendit; quæ lex voluit aut dari id, quod nocuit; id est id animal quod noxiam commisit, aut æstimationem noxiæ offerre. (L. 1. pr. D. Si Quadrup. Pauper.)
- Fr. 7. (VII. 5.) Si glans ex arbore tua in meum fundum cadat, eamque ego immisso pecore depascam, Aristo scribit non sibi occurrere legitimam actionem, qua experiri possim; nam neque ex Lege XII Tabularum de pastu pecoris, quia non in tuo pascitur, neque de pauperie, neque de damni injuriæ agi posse. (L. 14. § 3. D. de Præscr. Verb.)
- Fr. 8. (VII. 3.)—*QVI. FRVGES. EXCANTASSIT.*—*NEVE. ALIENAM. SEGETEM. PELLENERIS.*—(Plinius, Hist. Natur. lib. 28. c. 2. et Servius ad Virgiliti Eclog. VIII. v. 99.)
- Fr. 9. (VII. 4.) Frugem quidem aratro quæsitam furtim noctu pavisse ac secuisse puberi XII Tabulis capitale erat, suspensumque Cereri necari jubebant; gravius quam in homicidio convictum; impubem prætoris arbitrato verberari, noxiamque duplione decerni. (Plinius, Histor. Natur. lib. 18. c. 3.)
- Fr. 10. (VII. 6.) Qui ædes, acruumve frumenti juxta domum positum combusserit, vinctus verberatus igni necari jubetur; si modo sciens prudensque id commiserit: si vero casu, id est negligentia, aut noxiam sarcire jubetur, aut, si minus idoneus sit, levius castigatur. (L. 9. D. de Incend. Ruina, Naufrag.)
- Fr. 11. (II. 11.) Fuit et arborum cura legibus priscis, cautumque est XII Tabulis, ut qui injuria cecidisset alienas, lueret in singulas æris XXV. (Plinius, Hist. Natur. lib. 17. c. 1.)
- Fr. 12. (II. 4.) *SI. NOX. FVRTVM. FACTVM. SIT. SI. IM. OCCISIT. IVRE. CÆVS. ESTO.* (Macrobius, Saturnal. lib. 1. c. 4.)
- Fr. 13. (II. 8.) Furem interdium deprehensum non aliter occidere Lex XII Tabularum permisit, quam si telo se defendat. (L. 54. § 2. D. de Furt.)
- Fr. 14. (II. 5—7.) Ex ceteris autem manifestis furibus liberos verberari addicique jusserunt (sc. Decemviri) ei, cui factum furtum esset, si modo id luci fecissent, neque se telo defendissent: servos item furti manifesti prensos verberibus affici et e saxo præcipitari; sed pueros impuberes prætoris arbitrato verberari voluerunt, noxamque ab his factam sarciri. (A. Gellius, lib. 11. c. 18.)
- Fr. 15. (II. 9.) Concepti et oblatis (sc. furti) pœna ex Lege XII Tabularum tripli est.—Præcepit (Lex) ut, qui quærere velit, nudus quærat, linteo cinctus, lancem habens; qui si quid invenerit, jubet id Lex furtum manifestum esse. (Gaius, Instit. lib. 3. § 191, 192.)
- Fr. 16. (II. 10.) *SI. ADORAT. FVRTO. QVOD. NEC. MANIFESTVM.*

- escit.—Nec manifesti furti pœna per Legem XII Tabularum dupli irrogatur. (Festus, v. *nec et*, Gaius, Institution. lib. 3. § 190.)
- Fr. 17. (II. 13.) Furtivam (rem) Lex XII Tabularum usucapi prohibet. (Gaius, *ibid.* lib. 2. § 45.)
- Fr. 18. (III. 2.) Nam primo XII Tabulis sanctum; ne quis unciario fœnore amplius exerceret.—Majores nostri sic habuerunt, itaque in legibus posuerunt, furem dupli damnari, fœneratorem quadrupli. (Tacitus, *Annal.* lib. 6. c. 16. et Cato, de *Re Rust.* in *procœm.*)
- Fr. 19. (III. 1.) Ex causa depositi Lege XII Tabularum in duplum actio datur. (Paulus, *Rec. Sentent.* lib. 2. tit. 12. § 11.)
- Fr. 20. (VII. 16.) Sciendum est, suspecti crimen e Lege XII Tabularum descendere.—Sed si ipsi tutores rem pupilli furati sunt, videamus an ex actione, quæ proponitur ex Lege XII Tabularum adversus tutorem in duplum, singuli in solidum teneantur. (L. 1. § 2. D. de *Suspect. Tutor.* et l. 55. § 1. D. de *Admin. et Peric.*)
- Fr. 21. (VII. 17.) PATRONVS. SI. CLIENTI. FRAVDEM. FECERIT. SACER. ESTO. (Servius ad *Virgillii Æneid.* VI. v. 609.)
- Fr. 22. (VII. 11.) QVI. SE. SIERIT. TESTARIER. LIBRIPENSVE. FVERIT. NI. TESTIMONIUM. FARIATVR. IMPROBVS. INSTABILISQVE. ESTO. (A. Gellius, lib. 15. c. 13.)
- Fr. 23. (VII. 12.) An putas,—si non illa etiam ex XII Tabulis de testimoniis falsis pœna abolevisset, et si nunc quoque, ut antea, qui falsum testimonium dixisse convictus esset, e saxo Tarpeio dejiceretur, mentituros fuisse pro testimonio tam multos, quam videmus? (A. Gellius, lib. 20. c. 1.)
- Fr. 24. (VII. 13.) Homicidii pœna. (Plinius, *Histor. Natur.* lib. 18. c. 3.)
- Fr. 25. (VII. 14.) QVI. MALVM. CARMEN. INCANTASSAT.—MALVM. VENENVM. (Ibid. lib. 28. c. 2. et l. 236. pr. D. de *Verb. signif.*)
- Fr. 26. (IX. 6.) Primum XII Tabulis cautum esse cognoscimus, ne quis in urbe cœtus nocturnus agitaret. (Porcius *Latro Declamat.* in *Catilinam.* c. 19.)
- Fr. 27. (VIII. 2.) Sodales sunt, qui ejusdem collegii sunt.—His autem potestatem facit Lex, pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. (L. 4. D. de *Colleg. et Corporib.*)

 TABULA. IX.

- Fr. 1. (IX. 1.) Vetant XII Tabulæ leges privis hominibus irrogari. (Cicero, *pro Domo.* c. 17.)
- Fr. 2. (IX. 4.) Tum leges præclarissimæ de XII Tabulis translatae duæ: quarum—altera de capite civis rogari, nisi maximo comitiatu, vetat. (Idem de *Legibus*, lib. 3. c. 19.)
- Fr. 3. (IX. 3.) Dure autem scriptum esse in istis legibus (sc.

XII Tabularum) quid existimari potest? nisi duram esse legem putas, quæ judicem arbitrumve jure datum, qui ob rem dicendam pecuniam accepisse convictus est, capite punitur. (A. Gellius, lib. 20. c. 1.)

- Fr. 4. (IX. 5.) Quæstores constituebantur a populo, qui capitalibus rebus præessent: hi adpellabantur quæstores paricidii: quorum etiam meminit Lex XII Tabularum.—Ab omni judicio pœnaque provocari licere, judicant XII Tabulæ. (L. 2. § 23. D. de Orig. Jur. et Cicero, de Republ. lib. 2. c. 31. ed. Aug. Maio, Rom. 1822. 4to.)
- Fr. 5. (IX. 7.) Lex XII Tabularum jubet, eum qui hostem concitaverit, quive civem hosti tradiderit, capite puniri. (L. 3. pr. D. ad Leg. Jul. Majestat.)

TABULA X.

- Fr. 1. (X. 2.) HOMINEM. MORTVVM. IN. VRBE. NE. SEPELITO. NEVE. VRITO. (Cicero, de Legibus lib. 2. c. 23.)
- Fr. 2. (X. 4. 5.) HOC. PLVS. NE. FACITO.—ROGVV. ASCIA. NF. POLITO. (Ibid.)
- Fr. 3 et 4. (X. 6. 7.) Extenuato igitur sumptu, tribus riciniis et vinculis purpuræ, et decem tibicinibus, tollit (Lex XII Tabularum) etiam lamentationem: MVLIERES. GENAS. NE. RADVNTO. NEVE. LESSVM. FVNERIS. ERGO. HABENTO. (Ibid.)
- Fr. 5. (X. 8.) Cetera item funebria, quibus luctus augetur, XII. sustulerunt: HOMINI, inquit, MORTVO. NE. OSSA. LEGITO. QVO. POST. FVNVS. FACIAT. Excipit bellicam peregrinamque mortem. (Cicero, de Legibus, lib. 2. c. 24.)
- Fr. 6. (X. 9. 10.) Hæc præterea sunt in Legibus de unctura, quibus servilis unctura tollitur omnisque circumpotatio: quæ et recte tolluntur, neque tollerentur nisi fuissent. Ne sumtuosa respersio, ne longæ coronæ, nec acerræ prætereantur. (Ibid.)
- Fr. 7. (X. 11.) Inde illa XII Tabularum lex: QVI. CORONAM. PARIT. IPSE. PECVNIAVE. EIVS. VIRTVTIS. ERGO. DVITOR. EI. Quam servi equive meruissent, *pecunia partam* lege dici nemo dubitavit. Quis ergo honos? Ut ipsi mortuo parentibusque ejus, dum intus positus esset, forisve ferretur, sine fraude esset imposita. (Plinius, Histor. Nat. lib. 21. c. 3.)
- Fr. 8. (X. 12.) Ut uni plura fierent, lectique plures sternerentur, id quoque ne fieret Lege sanctum est. (Cicero, al. 1.)
- Fr. 9. (X. 13.) NEVE. AVRVM. ADDITO. QVOI. AVRO. DENTES. VINCTI. ESCVNT. AST. IM. CVM. ILLO. SEPELIRE. VREREVE. SE FRAVDE. ESTO. (Ibid.)
- Fr. 10. (X. 14.) Rogum bustumve novum vetat (Lex XII Tabularum) propius sexaginta pedes adjici ædes alienas invito domino. (Ibid.)
- Fr. 11. (X. 15.) Quod autem *forum* id est vestibulum sepulchri, *bustumve* usucapi vetat (sc. Lex XII Tabularum) tuetur jus sepulchrorum. (Ibid.)

TABULA XI.

- Fr. 1. (XI. 2.) Hoc ipsum, ne connubium *patribus cum plebe esset*, non decemviri tulerunt? (Livius. lib. 4. c. 4.)

TABULA XII.

- Fr. 1. (XII. 1.) Lege autem introducta est pignoris capio, velut Lege XII Tabularum adversus eum, qui hostiam emisset, nec pretium redderet; item adversus eum, qui mercedem non redderet pro eo jumento, quod quis ideo locasset, ut inde pecuniam acceptam in dapem, id est in sacrificium impenderet. (Gaius, Institution. lib. 4. § 28.)
- Fr. 2. (XII. 4.) Nam in Lege antiqua, si servus sciente domino furtum fecit, vel aliam noxam commisit, servi nomine actio est noxalis, nec dominus suo nomine tenetur.—SI. SERVVS. FVRTVM. FAXIT. NOXIAMVE. NOCVIT.—(L. 2. § 1. D. de Noxal. Action.)
- Fr. 3. (XII. 3.) SI. VINDICIAM. FALSAM. TVLIT.... SI. VELIT. IS.... TOR. ARBITROS. TRES. DATO. EORVM. ARBITRIO.... FRVCTVS. DVPLIONE. DAMNVN. DECIDITO. (Festus, v. *vindicæ*.)
- Fr. 4. (XII. 2.) Rem, de qua controversia est, prohibemur in sacrum dedicare; alioquin dupli pœnam patimur. (L. 3. D. de Litigios.)
- Fr. 5. (XI. 1.) In XII Tabulis legem esse, ut, quodcumque postremum populus jussisset, id jus ratumque esset. (Liv. l. 7. c. 17.)

262. Roman laws, therefore, were either those of the Twelve Tables, those enacted by magistrates in virtue of their office, *jure honorario*, those sanctioned by the practice of courts of law or the authority of counsellors, *prudentes*, and those contained in the decrees *constitutiones*, of emperors. The ancients sometimes include all these under the term *jus civile*; sometimes all except those enacted *jure honorario*, and sometimes the term is restricted to those sanctioned by the practice of the courts, *disputatio fori*, and by the authority of counsellors¹. Hence, in the *jus civile* of the Romans we may distinguish, law properly so called, *plebiscita*, *senatus consulta*, *disputationes fori*, *responsa prudentum*, *principum rescripta*, *constitutiones*.

Laws were enacted or sanctioned by the people at

the comitia curiata and centuriata, in the method which I have described (§ 159 and following paragraphs); *plebiscita* were made by the plebs, on the proposition of a magistrate of their own order. It is a question how far decrees of the senate (§ 177) are to be considered as sources of the civil law, and even whether they always were so considered during the freedom of the city. Bach and Hugo decidedly consider them as such². The law, *lex*, was binding on both ranks; *plebiscita* were binding only on the plebeians until the *Lex Horatia* (§ 170). Edicts were either urban or provincial; both kinds were liable to be issued on extraordinary occasions, *repentina*, *temporaria*, or at stated seasons, such as the annual edicts of the prætors; these latter were intended to have a permanent duration, the former merely for the occasion that produced them. The *disputatio fori* is mentioned by Pomponius³ alone among the ancients, in an obscure passage; some understand by it a rule decided on by a meeting of counsellors⁴, others rules laid down by precedents⁵. *Responsa prudentum*⁶ were, decisions given on questions proposed to counsellors, *jureconsulti*; *rescripta principum*, decisions given by the emperors in answer to questions for advice. *Constitutiones*, decrees, were either general, *edicta*, or particular, *mandata*, *decreta*, to which class may be referred *rescripta principum*⁷.

1) Cf. Mackeld. § 32. For the use of this term, see Cic. pro Cæc 2: "Ut non de improbitate s. Æbutii sed de jure civili iudicium fieri videretur;" cf. also Liv. 9, 46, "civile jus evulgavit." 2) See Bach. Hist. Jurispr. l. 2. c. 2. s. 2. § 1; Hugo Gesch. d. R. R. § 59 and 166. 3) Fr. 2. § 5. Digg. 1, 2. 4) Generally supposed to be held in the temple of Apollo, from the allusion contained in Hor. Sat. 1. 9, 78, and Juven. 1, 128: "Forum jurisque peritus Apollo." 5) Cf. Bach. ib. sect. 5. § 1. sqq.; Hein. Synt. 1, 2, 35; Mackeld. loc. cit. supposes that the term *disputatio fori* is equivalent to *plaidoyer*, special pleadings. Cf. Dirksen Versuche, p. 211. 6) Caj. Instit. 1, 7: "Responsa prudentum sunt sententiæ et opiniones eorum, quibus permissum est jura condere. Quorum omnium si in unum sententiæ concurrant, id, quod ita sentiunt, legis vim obtinet; si vero dissentiant, iudici licet, quam velit,

sententiam sequi, idque rescripto Divi Adriani significatur. 7) Cf. Mack. § 47.

TRIALS.

263. Under the title Administration of Justice, I shall include trials of public and private cases, judges, the method of suing at law, *legis actiones*, and punishments.

Trials were divided into *judicia privata*, lawsuits between individuals, and *publica*, state trials in criminal cases; though all crimes were not tried by public, *id est*, popular judgment, merely such as the law directed to be so tried, or crimes highly injurious to the safety of the state. Other offences were tried by magistrates in particular courts, *judiciis privatis*.

Trials by the people, *judicia publica* (§ 196), were originally held only on extraordinary occasions, on which the people, (as at the trial of Horatius, Liv. I. 26.), or the kings, afterwards the consuls, finally the people alone, sat in judgment, at the comitia curiata at first, then at the comitia centuriata or tributa, or assigned judges to try the matter, to which are to be referred the *quæstores parricidii*⁴, according to Pomponius⁵, mentioned even in the XII Tables. At the commencement of the seventh century (A. U. C.), cases constantly occurring, particular judges, *prætores*, were appointed to try particular cases, and trials were continually carried on: still, extraordinary cases were reserved for the judgment of the people. Hence the distinction of public trials into ordinary, those tried before prætors; and extraordinary, those tried by the whole people; but there is a great difference of opinion concerning this division of them⁶. Among the most memorable decisions of the people⁷ are those recorded in favour of Horatius under the kings, against Coriolanus during the Republic, against Spurius Cassius⁹, Camillus, Manlius Capitolinus, Claudius Pulcher¹⁰,

Scipio Africanus¹¹, C. Claudius and Titus Sempronius censors¹²; and after the introduction of permanent courts, *quæstiones perpetuæ*, L. Opimius¹³ and Cicero.

1) Cf. Cic. pro Cæc. 2. 2) A foolish reason is given, Institt. 4, 18: "Publica autem dicta sunt, quod cuivis ex populo executio (?) eorum plerumque datur." Upon which see the note of Vinnius. 3) See Institt. 4, 18, and l. 1. Digg. de Publ. Judic.; Hein. Synt. 4, 18, 1. sqq. 4) On this word cf. Fest.: "Parici quæstore adpellabantur, qui solebant creari causa rerum capitalium quærendarum; nam parricida non utique is, qui parentem occidisset, dicebatur, sed qualemcunque hominem." He adds that it was confirmed by a law of Numa, enacting, "Siquis hominem liberum dolo sciens morti duit, parricida esto." 5) Digg. 1, 2, 23. 6) Cf. Hein. 4, 18, 2. 7) Cf. Beauf. v. 2. p. 62. 8) Cf. Dionys. lib. 7; Liv. 2, 35. 9) Liv. 2, 41. 10) Liv. Ep. l. 19. 11) Liv. 38, 50. sqq. 12) Liv. 43, 16. 13) Liv. Ep. l. 61.

264. The principal cases tried by public trial were, charges of high treason, offences against the dignity of the Roman people, *crimen majestatis*, afterwards applied only to offences against the person of the emperor¹: of rebellion, *perduellio*; the crime of plotting against the state, or being suspected of so doing: also charges brought by provinces against their governors to recover money extorted, *repetundarum crimina*; charges of embezzlement of public money, *peculatus*; of bribery at elections, *ambitus* (§ 184); public and private assaults; murder, *parricidium*, according to the lex Pompeia³, that of a near relative or of a patron⁴; charges of poisoning; of assassination⁵; of forgery, whether falsification of a will or of public deeds, or coining of money, to which refers the lex Cornelia *de falsis*⁶; of kidnapping a man or slave, *plagium*, whence *plagiarius*⁷; finally, charges of adultery.

Originally, four courts were assigned for the trying of ordinary public cases, afterwards their number was increased, and also that of the prætors (§ 196); however, they were not each restricted to one particular class of cases; if necessary, the same prætor presided

at two, or one class was allotted to two prætors; a share of the cases, by order of the senate, was undertaken by the prætor peregrinus and prætor urbanus⁸.

1) Tac. Ann. 1, 72: "Nam legem majestatis reduxerat; cui nomen apud veteres idem, sed alia in iudicium veniebant: si quis prodicione exercitum, aut plebem seditionibus, denique male gesta republica majestatem populi minuisset." 2) Cf. Cic. pro Cæc. 2; Hein. 4, 18, 66. 3) See Paul. Sent. Rec. 5, 54. 4) See § 263. loc. Festi. 5) See Paul. Sent. Rec. 5, 23. 6) See Cic. Verr. 1, 42, where this law is called *testamentaria* and *numaria*; Hein. 4, 18, 63 and 64. 7) Ulp. Pandd. 21, 1. 17. § 7. It is used of literary theft; Mart. 1, 53, 9; "Impones plagiaro pudorem." 8) Cf. Beauf. vol. 2. p. 96, sqq.

265. Judges called *judices quæstionis*¹, and also *principes iudicum*, relieved the prætors from their overburdening duties: much obscurity attends the nature of their offices; some writers even confound them with the prætors and quæsitores² (§ 275): some even question whether they were magistrates³. However, this seems pretty well ascertained, namely, that they were elected by the votes of the people, and chiefly from men who had been ædiles⁴: we may imagine that there were two classes of them, as we find them deciding cases, sometimes by their own authority, sometimes under the direction of the prætor⁵; examining witnesses, allotting judges, and discharging duties inferior to those of the prætor, and frequently taking his place when absent or otherwise engaged.

Besides the *judex quæstionis*, there was at ordinary trials a bench of assistants, *assessores*, whose number was defined by law in every case, and by whose advice the prætor passed sentence. A trial was conducted with great ceremony; round the tribunal stood a numerous crowd of sergeants, *apparitores*⁶ (§ 195), secretaries, lictors, and lookers-on, interested for one party or the other⁷. The Forum and Campus Martius⁸ were the usual places for trying extraordinary public cases (§ 275), any forum for ordinary ones. The ac-

cused was styled *reus*; the accuser, *accusator*; and the action *accusatio*.

- 1) Cf. Suet. Cæs. 12; Cic. in Vat. 14; Beauf. v. 2. p. 97.
 2) See Hein. 4, 18, 15. 3) Cf. Beauf. p. 100. 4) Cf. Cic. pro Cluent. 29. 5) Cf. Cic. Verr. 1, 61. pro Cluent. 27, 29, 33, 54. 6) Cf. Cic. pro Cluent. 53. 7) Cf. Cic. ad Q. Fratr. 2, 3. 8) Cf. Liv. 6, 20.

266. At Rome a prætor urbanus or peregrinus (§ 190) presided at lawsuits or private cases, assisted by judges, though not in all cases (§ 196). In the provinces the governor presided at trials of public cases.

Private actions were those brought for theft, such as thefts by day, by night, evident theft, attempted, successful or frustrated, etc.; robbery and pillage, personal injury, or defamation, or libel; loss and damage; fraud or swindling, to which the *lex Aquilia de dolo malo* applies¹, etc. He who brought the action, the plaintiff, was properly termed *petitor*, the defendant *unde petitur*², the action brought *petitio*. The magistrate passed sentence either *de plano*, or from the bench, *tribunal* (§ 195).

- 1) Cf. Cic. de Off. 3, 14; de N. D. 3, 30. 2) Cf. Cic. ad Div. 7, 11; de Orat. 1, 37.

OF JUDGES.

267. I have already said that the kings were the supreme judges (§ 260): they either sat in judgment alone, or, when they thought fit, called to their assistance men chosen by themselves, or assigned them causes to try, most probably private cases: the very fact argues that these were selected from the senators always or generally¹. The consuls, magistrates invested with royal authority, undoubtedly followed the example of the kings; and the prætors, who were appointed their substitutes in private cases, afterwards chose judges to

try such cases as were in their province from among the senators, or at least from among the chief men of the city²; the number of citizens from among whom they might be selected not being then fixed by law, I suppose. Towards the end of the fifth century from the foundation of the city, we find decemviri appointed as assistants to the prætor in trying cases³; not, however, for all cases, but chiefly the most serious or complicated, such as were called *causæ cognitionis*. Soon after, about the year 520. U. C. the *judicium centumvirale* was instituted, consisting of one hundred and five men⁴, three from every tribe, without any distinction that we know of, on account of rank. A passage in Cicero distinctly proves that this court had cognizance only of private cases⁵; I suspect that I can perceive in certain passages that it tried public cases under the emperors⁶. Concerning their jurisdiction in private cases, consult Suet. Vespa. 10. and Plin. Ep. II. 14. VI. 33. After the time of Augustus, the centumviri were one hundred and eighty in number⁷, divided into four committees, whence the expression *judicium quadruplex*⁸. According to Bach this division took place before the time of the Cæsars. These committees, presided over by the decemviri, (§ 195) were assembled by the prætor, two or more together, according to the importance of the case¹⁰. Trials were held at a tribunal, with a spear set up near it¹¹, and frequently rendered of an imposing nature by the zeal of the pleaders and the concourse of spectators¹².

1) Cf. Dionys. 2, 29. 4, 25. 2) Cf. quod IX Tabulæ (p. 254.) faciunt: "Si judex arbiterve jure datus ob rem judicandam pecuniam accepit, capital esto." 3) L. 2. § 29. de Or. Jur.: "Deinde quum esset necessarius magistratus, qui hastæ præessent, decemviri in litibus judicandis sunt constituti." 4) See Fest. in *centumviralia judicia*. 5) Cic. de Orat. 1, 38: "Nam volitare in foro, hæere in jure ac prætorum tribunalibus, judicia privata magnarum rerum obire, in quibus sæpe non de facto, sed de æquitate ac jure certetur, jactare se in causis centumviralibus, in quibus

usucapionum, tutelarum, gentilitatum, agnationum, alluvionum, circumlunivium, nexorum, mancipiorum, parietum, luminum, stillidiorum, testamentorum ruptorum, ceterarumque rerum innumerabilium jura versentur, cum omnino, quid suum, quid alienum, quare denique civis, an peregrinus, servus, an liber quispiam sit, ignoret (-es ?), insignis est imprudentiæ (al. impudentiæ). 6) Cf. Plin. Ep. 1, 18. 5, 21 ; Quint. 12, 5, carmen in Pisonem v. 41 ; Stat. Sylv. 4, 4, 43. 7) Plin. 6, 33. 8) See Plin. 1. 18 ; Quint. 12, 5. 9) Bach, 2, 1, 29. 10) Cf. Plin. 1, 18. 5, 21. 11) Hence the court itself was called *hasta*, as, "Decem citat hasta virorum," Carmen in Pis. 1. c. : "Hunc miratur adhuc centum gravis hasta virorum." Mart. 7, 62, 7 : "Cessat centeni moderatrix judicis hasta." Stat. Sylv. 4, 4, 43 ; cf. Val. Max. 7, 8, 4 ; Suet. Aug. 36. 12) Cf. Plin. 6, 33.

268. In less important cases, such as those termed *stricti juris*¹, in which the question to be decided regarded a fact merely, not a right, or privilege, or question of law, decemvirs did not preside, and the prætor appointed either a judge from the list on his album, (one of those termed *selecti* (§ 270),) to try the case, or an umpire, and the case was then said to be one of equity, *bonæ fidei*²; or else he appointed commissioners, *recuperatores*; umpires, whose decisions were of more authority than that of the judges, were appointed only at the request of the parties³; the prætor gave the judges a written form of directions for their guidance (§ 273)⁴. It is difficult to say what cases were allotted to judges and commissioners respectively⁵; the opinions of the learned are divided on the subject⁶: perhaps the difference consisted in the commissioners always being more than one, which is well ascertained, and by some supposed to have constituted the distinction.

1) See Hein. 4, 6, 36. 2) See Hein. 4, 6, 39. 3) Cf. Fest. in *arbiter*; Cic. pro Rosc. com. 4 ; Sen. de Benef. 3, 7. 4) Cf. Sen. ib. 5) Cf. Cic. Verr. 3, 11 ; Gell. 21, 1. 6) Ever. Dupont (Disquiss. in comment. IV. Institut. Gaii, p. 118.) "Recuperatores dabantur, plures quidem—ubi statim statuendum erat, quantum præstandum esset, et eo sæpius, quod contra prætoris edictum aliquid factum fuisset. Veri simile est, hos non desumptos fuisse inter judices in albo designatos, sed inter cives quosunque, etc." The difficult nature of the subject is apparent from the doubt expressed by so learned a man.

269. It seems evident that originally judges were always selected from the senators, for trying public cases. After the appointment of permanent courts we see that this always was the case until about the year 630 from the foundation of the city, when C. Gracchus brought in a law by which public cases were tried before the equites (§ 137), the injustice of the senate's decisions having long been notorious; the venality of the equites caused them afterwards to be assigned to judges chosen from all classes¹ of citizens, including even the plebeians. From that time fifteen (query five) are said to have been chosen from each tribe as centumviri. Afterwards Sylla, when dictator, assigned these cases to the senate, and soon after they were finally assigned to the three ranks, senators, knights, and plebeians, by the *lex Aurelia* (a. 684), which added to the judges of the two former classes the *tribunii ærarii* from the plebeian class (§ 213); these were afterwards excluded by Cæsar² when dictator. It is uncertain what was abrogated from the *lex Aurelia*, by the *lex Pompeia* of Pompey the Great³. From this period we find the judges divided into senatorial, equestrian, and plebeian⁴. Augustus afterwards restored the plan altered by Julius Cæsar and M. Antony. He added a fourth *decuria* to their number, and Caligula⁵ a fifth (§ 270), confined to the trial of private cases; the nature and conduct of public cases was altogether changed under the emperors.

1) The *leges Serviliæ* apply to this, viz. that of Cœpio, by which judges were to be selected from both classes; that of Glaucia, appointing them to be chosen from the equites, the *lex Livia* of Drusus, directing their selection from the senators, and the *lex Plotia*, (anno 665, cf. *Bach. l. 2. c. 2. § 70*), directing their being selected from both classes. 2) According to Suetonius, *Cæs. 41*. 3) See *Bach. l. 2. c. 2. § 79 and 87*. 4) Cf. *Cic. Verr. 1. c. ult.*, pro *Cluent. 37. ad Att. 1, 16*; *ad Q. frat. 2, 6*; *Suet. Claud. 15*. 5) Cf. *Suet. Aug. 32*; *Calig. 16*.

270. The selection of judges in private as well as in

public cases belonged to the urban prætor¹, who entered on a list, *judicum album*, the names of those liable to act as judges for the year; he was sworn to choose none but the most worthy²; he classed them also into decuriæ, and assigned particular species of cases to each; the prætors appointed to preside at trials chose by lot from among these the number required by the law, the right of challenging those suspected of partiality was granted both to the plaintiff and defendant³; hence the expressions, *sortiri, iudices; rejectio; sub-sortiri; subsortitio*, etc. I know not whether by the *lex Aurelia* the prætor was deprived of the right of selecting the judges to try public cases; it left him at least the right of classing them, and allotting them their different departments.

Among the judges we meet with some termed *selecti*⁴, and this term I am inclined to apply to a portion only, not to all of those registered on the *album prætoris*, though a passage in Seneca and one in Cicero rather lead us to apply it to the whole list. Otherwise why should any be termed *select*, when it is well known that all were chosen by the prætor from among those qualified to be judges. Under the emperors, as we learn from Pliny⁵, the select judges were certainly different from the rest, as he divides them into three decuriæ, one of *tribuni ærarii*, another of select judges, another of other judges: none of these, I think, were of senatorial dignity: besides these, he says, that some "*etiā nunc nongentos esse vocatos ex omnibus selectos ad custodiendas cistas suffragiorum in comitiis*" (§ 166); by *ex omnibus* I think he means the three decuriæ just mentioned. This passage and all the others in that chapter on the equestrian order and the judges, though wonderfully obscure, still evidently make a distinction between the *selecti iudices* and others.

We have now seen how far rank was regarded in the selection of judges; and that those chosen from the plebeians were men of the greatest wealth. The smallest income that could qualify them was two hundred sestertia, requisite for election into the fourth *decuria* formed by Augustus (§ 269), as is imagined from their title *ducenarii*. The age requisite, first fixed when the equites composed the body of judges, was five and twenty, and till sixty; but Augustus appointed judges twenty years of age⁶. The office of a judge, though honourable, was burdensome and compulsory⁷, yet exemption and leave of absence were granted on various accounts⁸.

1) Cf. Hein. 4, 17, 2, and 4, 18, 16. For the practice in the times of the Cæsars, Gell. 14, 2. 2) Cf. Cic. pro Cluent. 43; Hor. Sat. 1, 4, 122. 3) Cf. Cic. Verr. 1, 6, 61; Hein. 4, 18, 23. 4) Ovid. Amor. 1, 10, 38; Trist. 2, 132; Sen. de Benef. 3, 7; Plin. 33, 2; Cic. Verr. 2, 13; Idem pro Cluent. 43: "Prætores urbani, qui jurati debent optimum quemque in selectos iudices referre, nunquam, sibi ad eam rem censoriam ignominiam impedimento esse oportere, duxerunt. 5) Plin. 33, 2. 6) Suet. Aug. 32, where for *tricesimo* some read *vicesimo*. 7) Suet. Aug. 32: "Vix concessit, ut singulis decuriis per vices annua vocatio esset." 8) Cf. Suet. Claud. 15, Plin. Ep. 10, 66; and the Chapters of the Digests, *de judiciis*; *de Vacat. et Excus. Mun.*; *de Mun. et Hon.*

ON THE METHOD OF PROCEEDING AT LAW.

271. In the earliest times, the patricians, more especially the Pontifices (§ 318), (being the only persons who had any knowledge of the law,) in accordance with the institutions of Romulus, assisted their clients with their advice, and explained to them the state of the law, *de jure respondebant*; the presence of the parties at law being then necessary, except in the case of a slave, a ward, or where the whole people was either plaintiff or defendant; and at that time every man pleaded his own cause (See Hein. iv. 10, 2. Dupont Disquis. p. 210). They therefore first introduced the legal modes of suing¹ comprehended under

the title ² *legis actiones*³; these forms and customs were adopted in other formal practices belonging to what Dupont terms *voluntaria jurisdictio* (Disquis. p. 10), such as deeds of *cessio in jure* (§ 90), *vindicta*, *emancipatio*, *adoptio*, *tutela cessitia* (§ 112). In respect to trials these forms have reference either to the bringing of the action, *in jus vocatio*, or else to the *rule, actio*, to be granted by the prætor, and to the things to be furnished or performed by the plaintiff (§ 266), defendant, or by both; partly also to the cognizance of the cause or action, and the appointment of the trial by the prætor. Moreover, of these set forms and acts some were applicable only to one species of action or lawsuit, others we may feel sure were applicable to all kinds. Caius mentions five distinct methods of bringing actions against any person: he says, "*Lege autem agebatur modis quinque: sacramento; per judicis postulationem; per conductionem; per manus injectionem; per pignoris capionem.*" These, then, were the different methods, *legis actiones*, observed in bringing an action and going to law with any one⁴.

1) Cf. Mackeld. § 33. 2) Caius 4, 11, says they are so termed either because before edicts were wont to be published by prætors they were *legibus proditæ*, or because *ipsarum legum verbis accommodatæ erant, et ideo immutabiles proinde atque leges observabantur.* 3) The use of the word *actio* is very frequent, and very variously applied in law writers. We must be careful not to confound the use of the term *actio*, in such expressions as *actionem petere* (*a prætore*,) *postulare*, meaning the *rule* applied for, or the leave to bring such and such actions applied for, with the prescribed method of proceeding at law; in this case the term *legis actiones* does not answer to the Latin term *procedura*. (Cf. Gell. 16, 10.) The *Institutiones Cæii*, discovered in our days, have greatly tended to elucidate these *legis actiones*; his work has been referred to with approbation in many places in this work: Dupont, in his learned commentary upon the subjects treated of by Caius, says, (p. 6.) "*Legis actiones sunt formæ solennes agendi in jure, legibus Romanorum antiquissimis proditæ, certisque verbis celebrandæ coram magistratu ab iis, qui ex lege aliqua jus suum persequuntur. In legis actionibus non solum continentur, uti vulgo existimant interpretes, verborum conceptiones, quibus actio exprimitur, sed ipsi*

actus solennes, diversi litis processus, per quos agitur ad iudicium seu instituendum seu exequendum auctoritate prætoris, apud quem erat et jurisdictio et imperium (v. § 183).—Legis actiones non spectant ea, quæ in iudicio, sed ea, quæ in jure ad litem cognoscendam coram prætore celebrantur.” 4) See Dupont. p. 14, sqq.

271^a. *Sacramentum* was so called from the deposit laid down by the litigants being destined, *sacrum*¹, to the treasury, to be expended in providing sacred things; for the sum deposited by the party who lost his cause was forfeited to the treasury; the party who gained his cause recovered his deposit². The law forbade procedure by this method in certain cases³; however, it was practised in actions against a person or against his property. The same kind of action brought by the method of *sponsio*, as we learn from Dupont, was different, for in an action brought *per sponsionem* the sum deposited was not fixed by law, and was forfeited not to the treasury, but to the party who gained the cause, whence the term *sponsio*, a wager. The object, however, of the practice in both cases was the same, viz. to prevent rash litigation. The practice of pleading rejoinders, *vindicicæ*⁴, belonged to the method of suing a person's property *per sacramentum*; this is a remarkable species of proceeding, and to it refer the expressions, *ex jure manum, v. manu consortum*, and *vindicatio* (see p. 280), which Dupont says mean the same thing. (p. 17.)

1) Varro de L. L. l. 4. p. 42; cf. Cic. de Rep. 2, 35. 2) The amount of the deposit, *sacramentum*, was, for things above the value of 1000 asses, 500 asses; for things under this value, 50 asses (Caius 4, 14). In the time of Caius the deposit required at a trial before the centumviri was 125 serti (Caius 4, 95). 3) Caius 4, 13. 4) In explanation of this, Caius says (4, 16): If the action at issue regarded property, then moveables and cattle, etc., *moventia*, which could be produced in court, were claimed by the parties in the following manner: the claimant held a staff, and then laid hold of the thing claimed, as for instance, a person, and said—“Hunc ego hominem ex jure quiritium meum esse aio secundum suam causam, sicut dixi, ecce tibi vindictam imposui;” and at the same time laid

the staff on the person. The opponent did and said likewise. When both had claimed, the prætor said : "Mittite ambo hominem ;" they then let go their hold ; and he who had first asserted his claim asked the other thus : "Postulo anne dicas quâ ex causâ vindicaveris ;" he answered....."Sicut vindictam imposui ;" then he who had first claimed said : "Quando tu injuriâ vindicasti, D. æris sacramento te provoco ;" the opponent also said, "Similiter ego te ;" or else they fixed the deposit at fifty asses. Certain other forms followed if it was a suit brought against an individual. Afterwards the prætor *secundum alterum eorum vindiciâ dicebat* ; that is to say, appointed for the mean time one as owner of the property disputed, and ordered him to give his opponent security for the property and its proceeds, *litis et vindiciarum* ; the prætor himself took securities for the sacramentum from both, because it was to be forfeited to the public. As for the rod or staff, *festuca*, which they used, it was intended to represent a spear, the symbol of lawful possession, for the Romans thought that what they had taken from an enemy (by the spear), they had the best right in possessing. Hence the spear set up before the courts of the centumviri.—17. If the property disputed was of such a nature that it could not without inconvenience be brought into the court, such as a pillar or a flock of cattle, a part only was produced, and that part was dealt with as though it had been the whole. Thus of a flock, one sheep or goat, or even a single lock of wool was produced in court ; of such things as a ship or a pillar a small portion was broken off. In like manner, if it was a farm or buildings, a clod from the land or a tile from the roof was produced to represent them. 5) See Gell. 20, 10 ; Cic. de Orat. 1, 10 ; pro Muræna 14.

271^b. *Judicis postulatio*, application for a judge to try the case, was hardly ever made until the action had been laid in some preliminary form, such as *per sacramentum* ; this is the opinion of Dupont, inasmuch as after the mutual compact of the parties, *æris sacramento*, a judge was required ; yet not always, for sometimes the prætor himself gave judgment, sometimes the defendant pleaded guilty ; and Dupont suspects that Caius classes *judicis postulatio* among the *legis actiones*, because though sometimes used, it was not always employed ; he seems not to have treated separately of it².

By the form *condictio*, in bringing an action against a person³, *actor adversario denuntiabat ut ad judicem capiendum die XXX adesset*⁴. So says Caius, 4, 18, who informs us that this species of action was introduced by the laws Silia and Calpurnia : by the first, in an action brought to recover a definite sum of money ;

by the latter, extended to the recovery of any defined and determinate property; and he says that we may well inquire, *quare desideratas it quum de eo, quod nobis dari oportet, potuerimus sacramento aut per iudicis postulationem agere*. But how it can be thought superfluous, if it is of a different nature from these modes of proceeding, I cannot well understand. For, omitting some other considerations which Dupont acutely brings forward, we may well suppose that a person would find it convenient to proceed by *condictio*, as the deposit of the *sacramentum* was not therein required.

1) Perhaps however the remark of Caius 4, 20: "sacramento aut per iudicis postulationem agere," authorises us in supposing that *condictio* could be proceeded by without them. 2) A lost portion of the MS. prevents our concluding on this point with certainty. 3) See Dupont, p. 26. 4) Caius adds that in his time no action brought against an individual was properly called *indictio*, if an action *qua intendimus, dari nobis oportere*; for that no claim or summons was made by this method.

271^c. Caius says that persons proceeded *per manus injectionem*¹, in cases in which the law directed, *ut ita ageretur, velut iudicati lege XII Tabularum*, and that the form prescribed was: *quod mihi iudicatus es sive damnatus es sertertium X millia, quæ dolo malo non solvisti, ob eam rem ego tibi sertertium X millia iudicati manus injicio*; and the person who said so, at the same time laid hold of some part of his adversary's body, and that it was not allowed, *iudicato manum sibi depellere et pro se lege agere*; but he was allowed to produce a person as surety, *qui pro se causam agere sit solitus*; he who could not produce such a person might be taken home by his accuser, and bound. Caius proceeds to say, that several subsequent laws allowed this method of bringing an action *ex aliis quibusdam causis, in quosdam*; among these the *lex Publilia* authorised its adoption against one who had not repaid within six months what was laid down by his surety;

and the *lex Furia* against him who had exacted *plus quam virilem partem a sponsore*. He also states² that the law allowed *quasdam actiones per manus injectionem, sed puram, i. e. non pro judicato, 4, 23, ex quibus*: he proceeds, *legibus cum agebatur, manum sibi depellere et pro se agere licuisse*.

Caius, 4, 26, says that the form of proceeding *per pignoris capionem*³, was in some cases sanctioned by law, and in others by military custom; for the soldier was allowed to take a bond or pledge from him who owed him his pay, *æs militare* (§ 213), if he did not pay it him, and also for the money due to him for purchasing a horse, *æs equestre*, or furnished him for providing oats, *æs hordiarium*. Actions which might, by law, be brought *per pignoris capionem*, were, according to Caius, actions against any one, *qui hostiam emisset, nec pretium redderet*, from the law of the XII Tables (p. 255); also against any one, *qui mercedem non redderet pro eo jumento, quod quis ideo locasset, ut inde pecuniam acceptam in dapem, i. e. in sacrificium impenderet*; besides an action introduced by a law, (*lex Plætoria*, Majus suggests,) which lay against those *qui aliqua lege vectigalia deberent*. Moreover, since the form *pignoris capio* might be practised out of a court of law, without the presence of the prætor, in the absence of the defendant, and if the plaintiff chose, even *nefasto die*, all which was directly contrary to the usual custom of all such proceedings, Caius, 4, 29, informs us that by some it was not classed among the *legis actiones*, but by the greater number it was classed among them, because the pledge was taken with a certain form of words in all cases in which it was allowed to be taken⁴.

1) See Dupont, p. 27, sqq. 2) Of these was the *lex Furia*, respecting wills, *adversus eum qui legatorum nomine, mortisve causa plus M*(so it is to be read, some say)*assibus cepisset*, and the *lex Marcia* against usurers, *ut, si usuras exegissent, de his reddendis per manus injectionem cum eis ageretur*. 3) See Dupont, p. 34. sqq.

4) To what I have extracted from Caius I may add the opinion of

Dupont, p. 35, that things taken as pledges, *per pignoris capionem*, were not to be sold immediately, but held as surety until the prætor should decide if it were rightly claimed or not. If the taking of the pledge was approved of by the prætor, if the debtor did not pay, after that certain forms for the alienation and forfeiture of the pledges had been observed, they were publicly sold by warrant of a magistrate. (Cf. Paul. Recept. Sent. 2, 5, 1.

271^d. The method of proceeding at law, which we have thus far explained, seems probably to have been in part introduced from the practices of an earlier age into the XII Tables, and then to have been added to by subsequent laws. But we must distinguish from this plan and method which comprises the *legis actiones*, properly so called, those *legis actiones*, or modes of suing, which at a later date were introduced by prætors, and are called by Dupont fictitious¹, because the existence or presence of parties was assumed in them in order to render them similar to the real²: these Caius separates from those which may be denominated real, since, though they were perfect in form, they were not equally efficient and universal³: for the prætors (§ 193), for the purpose of amending the law, not with the intention of corrupting it, as they are undeservedly charged by some moderns with doing, incorporated new edicts with their own, using the power intrusted to them by the people, so that when they departed from the actual letter of the law, they still preserved the forms sanctioned by antiquity. This, which is proved by many instances in Roman jurisprudence, is confirmed by what remains of Caius' commentary on fictitious suits at law; a part of his short remarks on the subject were illegible in the MS. The prætors acting similarly in the methods of suing at law, introduced new forms on the model of those in use in similar cases, or applied the modes of suing in use to cases different from those to which they were originally applied, without making any alterations in them; or else applied to the parties titles to which they had no right, so as to adapt the forms of law to their cases; for instance, styling a

person a foreigner who was not so⁵, a person not inheriting, an heir⁶, and similar fictitious and borrowed terms. And as the right or process of pleading differed from the form of the plea, *legis actio*, so in these fictitious pleas, the innovations of the prætors affected two different things, the method of proceeding, and the nature of the law; when, for instance, a plea which did not apply (as appointed by law originally) to a person was by verbal alteration made to apply to his case⁷.

(1) Dup. p. 51: "Fictitiæ actiones sunt ipsæ legis actiones, quas extendens prætor exprimebat formula fictitia ad casus novos et contrarios eorum, ex quibus directe competebant." Cf. Ulp. Fragm. 28, 12: "Hi, quibus ex successorio edicto bonorum possessio datur, —seu ipsi agant, seu cum his agatur, fictitiis actionibus opus est;" i. e. actions in which the existence of the heirs is feigned. Where see the note of Schulting. 2) See Caj. 4, 32, sqq. 3) See Dup. p. 2. sqq. 4) Cf. Dup. p. 52. 5) See Caj. 4, 37. 6) Ib. 34. 7) Cf. Dup. p. 56.

271^e. Caius clearly proves (4, 30) that these modes of suing, *legis actiones*, having fallen into disrepute through their exceeding subtleties and the minute accuracy required in wording them, and in describing actions in them, were abolished by the *lex Æbutia* and the two *leges Juliae*: he adds, *effectumque est, ut per concepta verba, id est, per formulas, litigaretur*; but that in two cases it was still allowed, *lege agere, viz. damni infecti, et si centumvirale iudicium*. It is much to be wished that Caius had informed us in this place how far the *lex Æbutia* abolished the *legis actiones*, and what the two Julian laws abrogated; also what forms were substituted by the former, what by the latter laws, and what forms which might have been in use before were still retained¹. Before the discovery of the *Institutiones* of Caius, a passage in Gellius² was the only instance in which the *lex Æbutia* was mentioned by the ancients; the date of this law is still uncertain; it is, however, generally referred to the year 520 U. C. The testimony of Caius must be considered

in understanding the passage in Gellius, in order to elicit its true meaning; for by itself it is of such a nature that it is not to be wondered at if translators have fallen into strange mistakes in rendering it³. We owe this at least to Caius, that his work places it beyond a doubt that the ancient forms of suing, *legis actiones*, were by that law abolished, with the exception which I have already stated.

1) Dupont explains this difficulty, p. 48, by supposing that he would have expressed himself more accurately thus: "Legem Æbutiam abrogasse legis actiones, et quædam de formulis statuissse;" that the *leges Juliæ* abolished "rationem agendi in judicio per formulas," introduced by the same laws, (p. 50 and 64) "accuratius tantum ordinasse." 2) Gell. 16, 10: "Quum proletarii, et assidui, et sanates, et vades, et subvades, et viginti quinque asses, et taliones, furtorumque quæstio cum lance et licio (v. p. 252.) evanuerint, omnisque illa XII Tabularum antiquitas, nisi in legis actionibus centumviralium causarum, lege Æbutia lata consopita sit," etc. 3) Cf. Bach. Hist. Jurispr. Rom. l. 2. c. 2. § 29; Dup. p. 49.

271^f. We find by Caius that in two cases only was it allowed henceforth to use *legis actiones* in suing, and (4, 31), that in a case *de damno infecto*, no one chose *lege agere, sed potius stipulatione, quæ in edicto proposita est, adversarium obligare*. However, we may be persuaded that Caius intended it to be understood that in both cases they were not merely optional, but imperative, if we compare his statement (4, 95), and other passages; and that in actions brought before the centumviri it was requisite to proceed *per legis actiones*. Dupont thus understands it as regards these trials at least¹, and adds, that as after the introduction of forms of pleading by the *leges Juliæ*, the most important cases were tried before the centumviri (§ 237), as Cicero informs us², *legis actiones* were most frequently practised in cases brought before them. We may therefore believe that these most ancient modes of suing, kept up in the courts of the centumviri, and existing even in the days of Caius, disappeared, together with the centum-

virī: but I shall not here inquire whether this took place before or after the abolition of the formulæ (introduced in their stead) under Constantine the Great; but I must observe that the *legis actiones* were long retained under the emperors on occasion of those customary acts which lay in the power and depended on the will of individuals (*voluntaria jurisdictio*³).

1) Dup. p. 50 and 51: 2) De Orat. 1, 38. 3) Dup. p. 51.

271^g. I have already mentioned that the *legis actiones* were introduced by the learned in the law at a time when the patricians only were acquainted with it; therefore plebeians who intended going to law before the magistrates, were obliged to have recourse to the patricians, and the more so, as great care was requisite lest they should do anything contrary to the prescribed forms and customs; a strict observance of which, according to Caius, 4, 30, was so requisite, *ut vel qui minimum errasset, litem perderet*¹.

There was also an additional reason why litigants could not dispense with the assistance of the patricians; for it is well known that the distinction of days in the *fasti* (§ 334 and 359) was very complex; whence we may remark that on the *dies fasti* it was lawful to plead, but not so on the days termed *nefasti*. An account of such days, therefore, was to be procured from the pontifices who drew up and kept the *fasti*; and since it was their interest and that of the patricians, to whom they belonged, to keep the plebeians from a knowledge of the *fasti*², they merely informed them, when consulted by them, of what was absolutely necessary for their guidance, while they concealed nothing from the patricians; superstition³, then all-powerful among the Romans, preventing even the tribunes from attempting to obtain a remedy for the injurious ignorance of the plebs. Even if this account seems incredible, or if we

could believe that the patricians practised no such injustice, yet nevertheless it is evident from what the ancients have said concerning the *fasti* and the promulgation of the *legis actiones*, that the plebs were kept in such a state of ignorance, and that they were accustomed to inquire of the patricians which the lawful days for suing were⁴.

1) For instance, this author, 4, 11, mentions one who when "de vitibus succisis ita egisset, ut in actione vites nominaret, responsum fuit, rem perdidisse, quia debuisset arbores nominare, eo, quod lex XII Tabularum, ex qua de vitibus succisis actio competeret, generaliter de arboribus succisis loqueretur." 2) Cf. Liv. 4, 3: "Non ad fastos, non ad commentarios Pontificum admittimur." 3) Cf., though not a very weighty authority, I own, Val. Max. 2, 5, 2: "Jus civile, per multa sæcula inter sacra cæremoniasque deorum immortalium abditum solisque pontificibus notum, Cn. Flavius—vulgavit." 4) Cf. Plin. 33, 1; Cic. pro Mur. 11. (see p. 323.)

271^h. According to the accounts of writers to whom it is difficult not to give credence, the patricians were dispossessed of their long self-appropriation of the knowledge of the law about A. U. C. 450, by a man of no little celebrity in the annals of Rome, though his character and conduct are variously described¹. This was Cn. Flavius, whom Cicero, in his defence of *Murena*² states, *fastos populo proposuisse, et ab ipsis cautis jurisconsultis scientiam eorum compilasse*, and in his treatise de *Oratore*³, *actiones exposuisse*; and also in his epistle to *Atticus*⁴, *fastos protulisse, actionesque composuisse*; but *Livy* (lib. 9, 46) informs us, *civile jus repositum in penetralibus pontificum evulgasse, fastosque⁵ circa forum in albo proposuisse, ut, quando lege agi posset, sciretur*. *Pomponius*⁶ gives another account, which I suppose he drew from other authorities; he says, *Appius Claudius quum composuisset (aliter proposuisset), et ad formam redegisset legis actiones*: and that Cn. Flavius, his scribe⁷, stole the book and (perhaps after adding something himself) published it to the people, and that it was called *Jus Civile Flavianum*. *Pliny* (33, 1)

agrees with Pomponius so far as to call Flavius the scribe of Appius Cæcus; however, he does not mention the *legis actiones*, and states that Flavius published the *dies fasti*, which Pomponius does not mention, and that he had copied them at the suggestion of Appius himself. Though the account varies in some particulars, we find Gellius and all others agreeing in the following statement, viz., that the father of Flavius was a freedman, and that having begun life as a magistrate's clerk, he attained to the rank of curule ædile: and hence, even if no one of the ancients confirmed our surmises, still we should be justified in concluding that he was odious to the patricians, and must have been a favourite of the common people⁸; and that no other reason is given for this than that he earned the favour of the people in an eminent degree by publishing an account of the *fasti* and the requisite legal forms of suing; the only variation in different accounts is, that some have mentioned both the *fasti* and the *legis actiones*⁹, others only one or the other¹⁰.

1) Cf. Liv. 9, 46; Plin. 33, 1. 2) Cic. pro Mur. 11: "Posset agi lege, necne, pauci quondam sciebant; fastos enim vulgo non habebant. Erant in magna potentia, qui consulebantur; a quibus etiam dies, tanquam a Chaldæis, petebantur. Inventus est scriba quidam Cn. Flavius, qui cornicum oculos confixerit, et singulis diebus ediscendos fastos populo proposuerit, et ab ipsis cautis jurisconsultis eorum scientiam compilarit. Itaque irati illi, quod sunt veriti, ne, dierum ratione pervulgata et cognita, sine sua opera lege posset agi, notas quasdam composuerunt, ut omnibus in rebus ipsi interessent." 3) Cic. de Orat. 1, 41: "Quia veteres illi, qui huic scientiæ præfuerunt, obtinendæ atque augendæ potentiæ suæ causa, pervulgari artem suam noluerunt. Deinde, posteaquam est editum, expositis a Cn. Flavio primum actionibus," etc. 4) Cic. ad Att. 6, 1: "De Cn. Flavio, ille vero ante decemvros non fuit: quippe qui ædilis curulis fuerit, qui magistratus multis annis post decemvros institutus est. Quid ergo profecit, quod protulit fastos? Occultatam putant quodam tempore istam tabulam, ut dies agendi peterent a paucis. Nec vero pauci sunt auctores, Cn. Flavium scribam fastos protulisse, actionesque composuisse; ne me hoc commentum putes." Id. ibid.: "Nam illud de Flavio et fastis si secus est, commune erratum est; et tu belle ἡπόρησας, et nos publicam prope opinionem secuti sumus." 5) It seems probable that

this is referred to by Val. Max. 2, 5, 2: "Fastos pæne toto foro exposuit." 6) Pomp. 2, 7; Digg. 1, 2. 7) Livy and Gellius also state that Flavius was first a clerk to the ædiles. 8) The passage in Pliny, 33, 1, is to the purpose, though we may make allowance for some fictions in his statement; speaking of rings, he says, "Additum Flavio" (who had been elected curule ædile by popular favour on account of his having divulged the *fasti*), "ut simul et tribunus plebis esset: quo facto tanta senatus indignatione exarsit, ut, annulos ab eo abjectos fuisse, in antiquissimis reperiatur annalibus." Cf. Val. Max. 9, 3, 3: "Quod Cn. Flavius Præturam adeptus erat, annulos aureos sibimetipsis et phaleras equis suis detractas abiecerunt." 9) Hugo, p. 338. ed. 8, remarks that Pomponius says nothing of the *fasti*, and others, not being lawyers, do not mention the *legis actiones*; forgetting, I suppose, that Livy, 9, 46, and Valerius Maximus, 2, 5, 2, have recorded that both the *fasti* and the *jus civile* were published; unless he means that by *jus civile* is here meant something different from the *legis actiones*, or that these two writers were lawyers. 10) When we take all this into consideration, we may well be astonished to find that the Roman writer who was best acquainted with the antiquities of his country, Pomponius Atticus, objected to Cicero's account of Flavius and the *fasti*, and that Cicero owned that his objections and doubts were not unreasonable, *et tu belle ἠπρόησας* (see supra, not. 4). Upon Atticus's stating his doubts of Flavius's having made public the *fasti*, Cicero says, without speaking of it as a certainty, "putant occultatam quodam tempore istam tabulam, ut dies agendi peterentur a paucis;" and that he had followed "publicam prope opinionem;" and therefore if the story of Flavius and the *fasti* was incorrect, "de Flavio et fastis si secus esset," it was a common mistake. Are we not justified in concluding that if later writers agree with Atticus and Cicero in questioning the account, their doubts are excusable? and of these Hugo (p. 330, ed. 8) and Dirksen (Versuche, p. 213) seem most deserving of notice. If any part of the account is of questionable authority, I am more inclined to doubt the statement concerning the *jus civile* than the *fasti*, concerning the divulging of the former by Flavius, although I am persuaded all the writers mean the same thing; Cicero says that he published the *actiones compositas*, or *expositas*, as he says in another passage; other writers the *jus civile*, and Pomponius alone says the *legis actiones*. Therefore in order to arrive at a most accurate idea of that mysterious knowledge and those secrets of the patricians divulged by Flavius, it is necessary for us to determine what part of the law is meant by the expressions, *jus civile*, or *actiones*, or *actiones legis*; whether the forms of suing contained in the XII Tables and in other laws, or the method of bringing an action legally, as Pomponius's words seem to imply, (*legis actiones*,) properly so called, or did the publication of Flavius include both? Now though I am inclined to believe that, besides the *Fasti*, Flavius made public a work on some part of the law, or composed one; yet I do not see why we should lay more stress on what Pomponius says than on the account given by others; and the contents of that book of Flavius are expressed in such vague and obscure terms by the ancients, that it

is not unreasonable to suppose that some have imagined both the *fasti* and the *actiones* to have been included in the work published by Flavius, and thus it happens that some have mentioned the *fasti*, some the *actiones*, and some both, as its contents. Among these are Hugo and Mackeldey, the former of whom (p. 332 ed. 8) says that there are two accounts given of Flavius which may perhaps be reconciled; for if the *jus Flavianum* be not the same thing as the Calendar of court days (p. 336), it can be nothing but a collection of *formulae* relating to *legis actiones*, or to law business (*rechtsgeschäfte*), to which the term *actio* is also applicable; but Mackeldey (§ 33) thinks it sufficient to say that Appius Claudius drew up a system or compendium of *formulae* and court days (*Gerichtstage*), and that this book was made public by Flavius.

271¹. The *fasti* having been thus published, and the knowledge of the patricians pirated and divulged, the learned in the law being incensed, and fearing lest all should be able to bring actions and plead without their assistance now that the series of days was published, as Cicero says, they invented certain ciphers, *notas quasdam*, that their aid might still be indispensable¹. I should suspect that this passage was not altogether correct, were it not evident that the speaker was indulging in a joke, and cajoling his hearers a little, *coronæ aliquid dantem*, as he confesses afterwards²; and in speaking of a circumstance variously narrated and not well ascertained, was not careful to speak very accurately or very clearly³. Hence this passage, both the subject and expressions of which are obscure, has furnished the more ready hold for interpreters, who have taken different views of it⁴: for instance, Bach⁵ says that the *notæ* were *novæ quædam formulæ*, in which the patricians wished to disguise and preserve the method of suing at law. These *formulae* may be proved to have had reference to other kinds of actions than those to which the *jus Flavianum* was adapted, from the words of Pomponius, *quia deerant quædam genera agendi*: according to Mackeldey (§ 33) they were additions and remarks (*Zusätze und Bemerkungen zu den altern Formeln*); but Hugo, p. 336, speaks of these

notæ as though he understood them to mean formulæ most difficult to be understood (*unvertändliche Formeln*). Moreover, Bach believes that they are egregiously mistaken who understand that Cicero meant by *notæ*, formulæ written in cipher; and Hugo (p. 338) states that the context forbids our understanding them, as Cujacius does, to mean a peculiar character in which deeds and law papers were written. Dupont⁶ differs both from these writers and others who understand the *notæ* to mean either new formulæ not written in cipher, or the original formulæ disguised in cipher, and says, *notæ sunt novæ formulæ legis actionum, subtilissimæ quidem per siglas (§ 235) expressæ, ita, ut pro singulis verbis, litteræ singulæ ponantur*⁷.

1) See the passage in Cicero's defence of Muræna, 11, quoted in § 271^b. 2) Cic. de Fin. 27: "Apud imperitos tunc illa dicta sunt; aliquid enim coronæ datum*." 3) Cf. Hugo, p. 330. § 181. 4) See Ernesti Clav. Cicer. in *nota*; Dupont, p. 42. 5) Hist. Jurispr. Rom. 2, 2, 5. 6) Dupont, p. 64, sqq. 7) Dropping any discussion about the *siglæ* (ciphers or initials), many other subjects of inquiry suggest themselves to any one who wishes to investigate this subject more closely; for instance, whether these new formulæ had reference to the contents of the Jus Flavianum, adapted to modes of suing already in practice, or introduced as additions on account of the introduction of new modes of suing; or whether the influence of the patricians over the plebs was still so great that the whole of the former methods of proceedings at law were suppressed, and new forms for a time came into use. Or were the arts and the chicanery so often laid to the charge of the patricians, then first exhibited in the composition of those secret ciphers, *notæ*, or at least principally in them? Dupont seems to favour this view of the case when he says, "Alias post Flavius fuisse legis actionum formulas, indeque, notis nondum compositis, patriciorum mysteria, circa legis actiones, præcipue fuisse in cognitione arcana dierum fastorum ac nefastorum, quibus publicatis demum;" (he proceeds to say,) "inventæ sunt ab illis notæ ut potestatem recuperent." Although when he says (p. 40) that whenever any wished to go to law, he was obliged to have recourse to the patricians, "ut quærentur formularum subtilissimarum conceptio et dierum fastorum nefastorumque cognitio," he seems to subvert the former statement; yet the latter sentence evidently refers

* Hence we may conclude that Cicero intended his hearers to understand *notæ* of writing in cipher, or at least to mystify them.

to a period anterior to the Jus Flavianum. However there is no end of conjecture where there is no possibility of knowing the true state of the case.

271^k. Whatever the real state of the case may be, it is at least certain that the opinion of Bach, (2, 2, 25) and others is erroneous, who suppose that those new formulæ were not made public until about A. U. C. 550, by the celebrated lawyer Ælius Sextus¹; who, according to Pomponius, composed new methods of bringing actions, and published a book on the subject called Jus Ælianum, soon after the publication of the Jus Flavianum, *augescente civitate, quia deerant quædam genera agendi*: for indeed there is no other authority but that of Pomponius among ancient writers, nor can his words be by any means applied to the newly-invented devices of the patricians; and unless we suppose that the account of such a scheme is a fiction, how can we believe that Titus Coruncanius, the first plebeian who was made pontifex² (about A. U. C. 500), could have also kept the plebs from the knowledge of them, since Pomponius³ affirms that he publicly practised as a lawyer at Rome⁴. Pomponius is the only writer from whom we can learn what the Jus Ælianum contained; but his account is such that we cannot ascertain from it whether it was merely an appendix to the Jus Flavianum, or contained all the modes of bringing actions; nor can we learn from him whether it treated merely of these modes or comprised other particulars; nor, finally, whether this work was the same as that mentioned by Pomponius (§ 38) under the title of *Tripertita*, by Ælius, so named from its containing three principal divisions, viz., the XII Tables, the interpretation of them, and the *legis actiones*⁵. Hugo (§ 153) and Mühlenburgh think it probable that the same work is meant; not so Bach. (2, 2, 5).

It ought not to be matter of surprise that the legal forms,

legis actiones, contained many things useless in practice; unfair even, and distasteful to the astuteness of the patricians, when the rustic simplicity of manners and dealings to which they were adapted, had disappeared; even if we could persuade ourselves that the patrician lawyers were as impartial towards the people and as prudent as we understand they were held to be unjust, deceitful, and cunning. Those who take a sober view of the subject, need not to be warned not to allow too much weight to the common-place quotations from the defence of Murena⁶, and others that I need not mention, since it is evident Cicero had no intention of stating his real conviction of a subject on which he was joking (see p. 326): for we cannot suppose that the person who extols, as Cicero does⁷, the XII Tables above all the works of all the philosophers, as the fountain head of Roman jurisprudence, is in earnest when he makes the learning of counsellors the butt of his jests. I have inserted his humorous remarks on the *legis actiones* as being remarkable, now that I am treating of them; and I have done so the more prolixly because the subject is obscure, and has received much new light from the recent discovery of the *Institutiones Cæii*. I shall now pass on to the *formulae*, which, as has already been remarked, were substituted for the *legis actiones*, in all cases except in actions *damni infecti**, and in cases tried before the centumviri; and in treating of them return to my usual conciseness.

- 1) It must also be remarked that we must not refer the *lex Æbutia*, which abolished *legis actiones* in all but unusual cases, to the year U. C. 520, and thus conclude that these mysterious *note* were not made public until then, when we may fairly suppose that the knowledge of them could be but of little importance to the people.
 2) See Liv. Epit. 1, 18. 3) Fr. 22. § 35. Digest. de Orig. Juris.

* “*Damnum infectum est, damnum nondum factum, quod futurum veremur.*” DIGEST. lib. XXXIX. Tit. 2, 2.

4) See Dup. p. 44. 5) Cf. Hugo, p. 326. 6) One of these I have already given (§ 271^b); the other is as follows, containing formulæ interspersed with Cicero's pleasantries, pro Mur. 12: "Cum hoc fieri bellissime posset: et fundus Sabinus meus est: imo meus: deinde iudicium: noluerunt. FUNDUS, inquit, QUI EST IN AGRO QUI SABINUS VOCATUR. Satis verbose. Cedo, quid postea? EUM EGO EX JURE QUIRITIUM MEUM ESSE AIO. Quid tum? INDE EGO TE (§ 271. a.) EX JURE MANU CONSERTUM VOCO.—UNDE TU ME, inquit, EX JURE MANU CONSERTUM VOCASTI, INDE IBI EGO TE REVOCO.—Iisdem ineptiis fucata sunt illa omnia, QUANDO EGO TE IN JURE CONSPICIO. Et hæc, SED ANNE TU DICIS, QVI CAUSA VINDICAVERIS. Quæ dum erant occulta, necessario ab eis, qui ea tenebant, petebantur: postea vero pervulgata, atque in manibus jactata et excussa, inanissima prudentiæ reperta sunt, fraudis autem et stultitiæ plena." 7) De Orat. 1, 44. See p. 242.

271¹. Caius (4, 30) explains *formulæ*, by *concepta verba*, and says, *effectum est ut per formulas, id est, per concepta verba litigaremus*. Formulæ, therefore, were customary statements, in prescribed terms, made on one side by the parties litigant, declaring what they claimed, demanded, and so forth¹; and, on the other side, by the magistrate, who appointed what judge should try the matter, and assigned, as it were, limits to the verdict and investigation of the judge²: and this distinction, mentioned by Caius, applies to four subdivisions, viz., *demonstratio*, a declaration of the matter disputed, *intentio*, the object of the plaintiff, what he claimed; these two apply to the litigants: to the magistrate's duty, *adjudicatio*, implying that the judge was to adjudge or give sentence for, as, for instance, in a case of apportioning an inheritance among co-heirs, *familiæ erciscundæ* (§ 101), and *condemnatio*, an instruction to the judge to give sentence against. Since there was an immense variety of cases, so there was an equal variety of formulæ adapted to them: for instance³, to mention a few;—some were adapted to cases *stricti juris**, others to those *bonæ fidei*, of equity⁴; some had reference to

* *Strictum jus dicitur ubi de facto non de jure quæritur*. Inst. Cod.

the law of the case, others to the facts and merits of it⁵; some also were adapted to cases brought by one person in another's name, or by a person in his own name. Caius has stated the distinctions between all these, and frequently inserts the particular formulæ applicable to the case in question⁶.

1) Dupont, p. 65, describing the nature of *formulæ* says, "Sunt verborum conceptiones secundum quas iudicium ordinatur a prætore, qui pro diversis casibus a litigantibus propositis, diverse definit singula actionum momenta, quibus iudices intelligant, quantum de re iudicandum sit." 2) Cf. Dup. p. 65 and 66; Cic. pro Rosc. Com. 8, "Sunt iura, sunt formulæ de omnibus rebus constitutæ, ne quis aut in genere injuriæ, aut ratione actionis errare possit. Expressæ sunt enim ex uniuscujusque damno, dolore, incommodo, calamitate, injuria publicæ a prætore formulæ, ad quas privata lis accommodatur." 3) Cf. Dup. 78. 4) Caius, 4, 61. 5) Caius, 4, 45, sqq. 6) The following will serve as examples of formulæ: the formula employed when one party challenged the other to plead *per sponsionem*: "Si homo, de quo agitur ex jure quiritium meus est, sestertios XXV nummos dare spondes?" 4, 96. The formula employed by the prætor when the amount claimed was uncertain: "Judex esto; quod Aulus Agerius Numidio Negidio incertum stipulatus est, cujus rei dies fuit, quicquid ob eam rem Numerium Negidium Aulo Agerio dare, facere oportet." 4, 136. The formula for appointing commissioners to investigate a case "recuperatores sunt: si paret, illum patronum ab illo liberto contra edictum illius prætoris in jus vocatum esse, recuperatores illum libertum illi patrono sestertium X millia condemnanto, si non paret, absolvunt." 4, 46. In cases when the question was, what was the law, not what were the facts, the formula was "judex esto; quod Aulus Agerius apud Numerium Negidium mensam argenteam deposuit, qua de re agitur, quicquid ob eam rem Num. Neg. Aulo Agerio dare, facere oportet, ex fide bonâ (cf. Val. Max. 8, 2, 2) ejus, id iudex Numerium Negidium Aulo Agerio condemnato. Si non paret, absolvo." 4, 43. The formula on the occasion of the plaintiff and defendant naming a *cognitor* (see § 272), 4, 83. On occasions of a proviso, *exceptio*, 4, 119: "Si in ea re nihil dolo malo Auli Agerii actum sit, neque fiat." When the prætor interposed his interdiction, 4, 139: "Ut nunc possidetis, quo minus ita possideatis, vim fieri veto." The formula of declaration, 4, 40: "Quod Aulus Agerius Numerio Negidio hominem vendidit:" of expressing a purpose or intention, 4, 41: "Si paret, Numerium Negidium Aulo Agerio sestertium X millia dare oportere:" a formula of adjudication, 4, 42: of condemnation, 4, 43: *in factum*, for trying the facts, not the law of a case, 4, 47.

271^m. The *legis actiones*, as well as the *formulæ*, consisted of prescribed forms of expression, with this difference, that the wording of the *legis actio* was ap-

plicable to all cases arising out of any law, whereas the *formulae*, as Dupont says, were adapted to some particular case, being more concise, brief, and explicit, everything superfluous and subtile being omitted in them. Thus the use of *formulae* removed the ceremonies and difficulties of bringing actions, and yet preserved the spirit and efficiency of the *legis actiones*; they in fact still obtained¹, at least *sponsio*, substituted for the *sacramentum*, and the *judicis postulatio*²: so that it is reasonable to infer that many of the prescribed terms of the *legis actio* were transferred into the *formulae*. To decide, however, what and how much of the terms and processes were preserved, and to draw an accurate distinction between both, so as to defy controversy on the subject, would baffle the most learned, and I shall not even attempt it; so that even since the acquisition of Caius's Institutions, I consider the question to be one of those that will never be elucidated. It is not to be wondered at if modern writers often confounded the one with the other, so long as the question depended merely on conjecture³, and thus referred the above-mentioned passages of Cicero (p. 323 and 329) and others to the *formulae*; but now I think every one must be convinced, since Caius's work has made us acquainted with both the modes of suing, that he intended to ridicule the *legis actiones*.

1) See Dup. p. 65. 2) May not the *manus injectio* be included? Dupont, however, thinks not. 3) Cf. Dup. p. 67.

271ⁿ. We might safely conclude, from a passage of Cicero's defence of the actor Roscius¹, that the *formulae* were drawn up by the prætor, and made by him for the common use of the citizens; but at length the fact is so perfectly settled by the discovery of Caius's work², that we know that *formulae* which Cicero says were published in the prætor's album, were so published, not separately, but in conjunction with the *actiones*³. Nor need we

be staggered in this belief by finding no mention of the formulæ in the actiones transferred into the code of Justinian from the prætor's edict; since they had nothing to do with the method of proceeding in law at that period, and therefore would have been superfluous: this is further confirmed by the fact of their not being met with in any part of the Justinian code⁴. Dupont observes that the prætors were accustomed to procure the formulæ to be drawn up by learned lawyers when composing their edicts⁵; and doubtless the judges (§ 273) as well as the prætors, were obliged to have recourse to those more skilled than themselves in the law, both for formulæ and for other information, unless a prætor thought it sufficient to copy into his own edict the formulæ contained in those of his predecessors. Concerning the extreme exactness requisite in the formulæ, and the risk incurred by litigants who failed in the requisite exactness, see Caius, 4, 53, sqq. As the *legis actiones* remained in use in cases tried before the centumviri until the latest times of the Empire, so did the formulæ in other cases, until abolished at length by Constantine the Great⁶, when the method of proceeding in private cases, to which they were adapted, was modified by the abolishment of that very ancient custom which gave to the magistrate the cognizance of a case and the appointment of a trial, and the holding of the trial and passing of sentence to a judge to be chosen by the prætor from among the citizens⁷. This method being abolished, and the duty both of bringing in a bill and trying the case arising out of it being given to the same person, that part of the formulæ which applied to the former method was necessarily abolished.

1) See note 2 on § 271. l. 2) Caj. 4, 46: "Cæteræ quoque formulæ, quæ sub titulo de in jus vocando propositæ sunt, in factum conceptæ sunt: velut adversus eum, qui, in jus vocatus, neque venerit, neque vindicem dederit, item contra eum, qui exemerit eum, qui in jus vocatur, et denique innumerabiles ejusmodi aliæ formulæ

in albo proponuntur.”

3) See Dup. p. 68.

4) Cf. Dup.

p. 69. 5) Dup. p. 69; where he urges the authority of Val.

Max. l. 8. c. 2. as applying to the question; he might do so correctly if the judge and not the prætor was the magistrate referred to.

6) Which is referred to by Justin. cod. 2. tit. 58: “Juris formulæ aucupatione syllabarum insidiantes cunctorum actibus radicibus amputentur.” Dupont p. 64: “Usque ad Constantini imperium duravere, sub quo, ordinaria cognitione sublata, et ipsæ sublatae sunt.”

7) Cf. Dup. p. 227.

272. We have already mentioned the compendium of laws called *Jus Ælianum*, so called from its compiler, Ælius, and the *Jus Flavianum* compiled by Flavius. The *Jus Papirianum*, compiled by Papirius the pontifex maximus, mentioned by Dionysius¹ and Pomponius², is of much earlier date; common opinion attributed to him the collection of the laws of the kings after their expulsion: but it is more credible that he merely composed a ritual of religious institutions³ illustrated by Granius Flaccus in a treatise *de Indigitamentis* (concerning the apotheosized), inscribed to Cæsar⁴. Moreover, Papirius lived in a time when patricians alone possessed a knowledge of the law (§ 271), and had even then long striven, though in vain, to debar the plebeians from a knowledge of it, being baffled in the attempt by Cn. Flavius, according to the vulgar belief (§ 271^b), or as soon as the rights of all classes had been equalized: of course, as soon as the knowledge was divulged it was publicly taught as a science, as by Coruncanus (§ 271^k), and afterwards illustrated by treatises, until it was competent, for any one who chose to do so, to assist litigants with advice and information. We then read of three kinds of counsel, *advocati*, counsel who were called in to assist by their advice and presence the parties litigant⁵; *patroni causarum*, *actores*, who pleaded before the bench, *tribunal*; and the *procuratores* and *cognitores*, a distinction between which is not easily made⁶: if we adopt Heineccius's opinion, *cognitores* were lawyers who undertook the defence of parties present

in court⁷, especially in case of disputed issue; *procuratores*, on the other hand, undertook the defence or cases of the absent⁸. For the sake of retaining old customs, the lawyers drew up a formula for giving the procurator the title to act as principal⁹ (*dominium litis*.)

1) Dion. 3, 36. 2) Fr. 2. § 2 and 7. de Orig. Jur. 3) Some have supposed that he composed five books of laws regarding religious ceremonies, and added a sixth containing the laws of the Kings, as an appendix, copyists having created confusion by writing *Sextus* as Papirius's surname, in the work of Pomponius: Dionysius informs us that his surname was not Sextus, so that the conjecture seems probable. 4) See Hugo § 56; Mackeldey § 19; and the note of Ritter on Hein. Hist. Jur. § 17. 5) Cf. Plin. 6, 33: "Ingens utrinque advocatio, et numerosa subsellia." 6) See Hein. Synt. 4, 10, 3; cf. Caj. 4, 82, sqq. 7) Cf. Hor. Sat. 2, 5, 37. 8) Caj. 4, 83: "Cognitor—in litem coram adversario substituitur." Ib. 84: "Procurator vero nullis certis verbis in litem constituitur; sed ex solo mandato, et absente et ignorante adversario, constituitur. Quin etiam sunt, qui putant, et eum procuratorem videri, cui non sit mandatum, si modo bona fide accedat ad negotium, et caveat, ratam rem dominum habiturum." 9) See Hein. ib. § 4; cf. Caj. l. c. and the formulæ there quoted.

273. The following are the particulars of the method of bringing an action against an individual, in private cases. In order that the action might be brought, the plaintiff summoned the defendant to appear to the law, provided the defendant was not in his own house at the time: if he refused to go before the prætor, or to appoint a surety⁶, *vindex*, the plaintiff might use force to compel him, first calling on some one to bear witness, (*antestatus* § 97); hence the expression, *obtorto collo in jus rapere*², which, according to Dupont, was restricted to peculiar cases³ (§ 274). When they came before the prætor, the plaintiff asked for leave to bring an action against the defendant, *actionem petebat*; a day was then fixed for trying the case, generally the third day after, and the plaintiff bound himself down to appear; to which the expressions, *vadem dare*, *vadimonium promittere*, *vadari aliquem*⁴, *vadimonium differre*⁵, refer.

On the day of trial⁶, the action having been laid in due terms, that is, by the proper *legis actio* or *formula*, various stipulations were entered into, such as making oath that the action was not brought out of malice, *calumniam, de calumnia jurare*⁷, and producing recognizances, to be forfeited if the action was proved to be vexatiously and frivolously brought⁸; it has generally been supposed that this last stipulation was made before the judge who tried the case. This having been done, the prætor, from the depositions of the litigants, carefully determined the species of trial adapted to the case, drawing up a statement of it, which, Dupont says⁹, was termed *contestatio litis*¹⁰, and, according to the nature of the case, appointed either a judge or an umpire, as I stated (§ 267 and 268), or commissioners, or else handed the case over to the court of centumviri. By the *lex Pinaria*, passed A. U. C. 623(?), he was bound to appoint a judge within thirty days. The judges who were required by law to swear to try the case justly¹¹, gave sentence according to the formula given to them by the prætor¹² (§ 268); if it were too doubtful a matter, they said that they could not decide, *sibi non liquere*¹³, and the trial was deferred to some other day: being generally unacquainted with the law, they usually associated with themselves some friends, conversant with it, in investigating the case¹⁴. Concerning umpires, commissioners, and the centumviri, see § 267 and 268. Any one who did not appear in court, unless unavoidably or for substantial reasons absent, was summoned by one or more proclamations, *edicta*; the third summons was peremptory, *peremptorium*; and if he did not then appear, his case was tried in his absence, and a verdict could be given even in his favour, though he did not appear¹⁵.

1) See the notes in § 271m. and the passage in Caius 4. 46.

2) Cf. Plaut. Pæn. 3, 5, 45; Horat. Sat. 1. 9, 75, sqq. 3) Cf.

XII Tabb. *de in jus vocando*. 4) Cf. Horat. Sat. 1, 9, 36, and 1, 1, 11; Varro de L. L. 5. p. 59; Cic. de Off. 3, 10; Auson. Idyll. 12. 5) Juven. 3, 213. 6) See Dup. 212. 7) Cf. Cic. ad Div. 8, 8; Liv. 33. 47; Pandd. 39, 2. 13, 3; cf. Gell. 14, 2. "*De calumnia damnari*." 8) Cf. Caj. 4, 171 and 183. 9) Heinemann differs from Dupont, and refers the *contestatio litis* to the *dominium litis* (§ 272). 10) Dupont 213, sqq. 11) Cf. Cic., pro Font. 9, 10. 12) See Hein. 4, 6, 41. 13) Cf. Gell. 14, 2: "Juravi mihi non liquere; atque ita iudicatu illo solutus sum." 14) Cf. Cic. Verr. 2, 29; Gell. 12, 13. 14, 2. 15) Dup. 223.

274. In the pleading of a cause before a judge, (for, as I have remarked, only one judge sat (§ 268) except in the case of commissioners being appointed, or the cause being tried in the court of the centumviri,) we must draw a distinction between the *collectio* and *peroratio causæ*; *collectio* being applied to the pleadings of counsel, and *peroratio* to the pleadings of the litigants or of their patrons; the latter were allowed a stated time, measured by the *clepsydra*¹; hence the expression, *ad clepsydram dicere, agere, plures clepsydras dare, aquam sustinere, aqua hæret; ἐφύδωρ*. The *clepsydra* was employed in trials many ages after². The *peroratio* being concluded, the witnesses having been heard, and the documents read, the judge gave sentence, which was left to the prætor to perform and execute, as in trials before commissioners and the court of the centumviri. The party who was cast was required to pay the amount of the verdict within thirty days; if he failed to do so he was liable to arrest, *manus injectio*. Caius³ informs us that this mode of proceeding, *per manus injectionem*, introduced by the XII Tables, in the case of a person condemned, was afterwards extended to some other cases (§ 271^c). Appeal to the people against the sentence of the prætor (§ 196) was allowed during the Republic, at least in public cases: under the Emperors, appeal to the præfectus prætorio was permitted in private cases also, as well as to the præfectus urbi and to the emperor himself⁴.

1) Cic. de Orat. 3, 34: "At hunc (Periclem) non clamator ali-

quis ad clepsydram latrare docuerat." Cf. Dial. de Orat. 38; Plin. Ep. 6, 2 :—"Invaluit consuetudo binas vel singulas clepsydras, interdum et dimidias et dandi et petendi." Cf. id. 4, 9. 2) Cf. Lyd. 2, 16. 3) See Dupont p. 27, 207, 224. 4) Cf. Suet. Aug. 33.

275. The following are a few particulars concerning public trials, i. e. trials by the whole people; they could not be held except by a *senatusconsultum* or at the request of a magistrate; the preliminary investigation of the case pertained to the people or to delegates. The accuser declared before the *rostra* whom he intended to accuse, and on what day, and at the same time indicted him, *diem reo dicebat*; the accused was committed to custody in the mean time¹, unless he found bail for his appearance: if he was charged with a capital offence, the bail required was termed *vas*, if the offence was fineable, *præs*². On the day mentioned in the indictment, the accused was cited by the crier³, to appear, and if he did not appear, or did not assign just cause for not appearing, he was condemned for contempt of the law and of the people; but the condemnation of the accused was frequently prevented for various reasons; for instance, if a tribune of the people interfered to stop the proceedings⁴, or if the assembly was put off on account of unfavourable auspices, or if interrupted by the appearance of any celestial phenomenon⁵. If the accused appeared and no lawful impediment existed, he was accused on three occasions, while he stood at the foot of the *rostra*, but not thrice on the same day, nor on three successive days⁶; the accusation, *rogatio*, was followed up by the depositions of witnesses and by documents, and was proposed to the consideration of the people,⁷ together with the fine or punishment proposed to be inflicted on him by the accuser, termed *pænæ, multæ irrogatio*, on three successive market-days, *per trinundinum*, (§ 159): on the third the charge was repeated by the accuser, and his

defence by the accused, and the matter was then left to the decision of the people: if it was a capital offence they voted by centuries; if a fineable offence, by tribes also, the comitia being held accordingly for the purpose⁷.

1) See Hein. 4, 8, 36. 2) Cf. Liv. 3, 13, 25, 4; Gell. 7, 19.
 3) Cf. Liv. 38, 51; Suet. Tib. 11. 4) Cf. Liv. 38, 60; Gell. 7, 19. 5) Cf. Liv. 40, 42. 6) See Cic. pro Domo 17. 7) Cf. Hein. 4, 18, 42, sqq.

276. Ordinary trials were necessarily similar in many respects to public trials, and private lawsuits. Any citizen might accuse another, but the crime of false accusation, *calumnia*, was punished by branding on the forehead¹, by the *lex Remmia* of uncertain date². If there were several prosecutors, an inquiry, called *divinatio*³, was instituted as to which should be chief prosecutor, *primarius*; the rest were styled *subscriptores*⁴. The chief prosecutor appeared on an appointed day, and having sworn that he was not influenced by malicious motives, *jurata calumnia*, brought his charge against the accused in a prescribed form⁵; if the accused pleaded guilty, or if his guilt was evident, he was condemned; if he denied the charge, the prosecutor requested the prætor to allow him to impeach him; hence *deferre nomen*, *delatio nominis*, *delator*: if this was allowed, the prosecutor served the accused with a copy of the indictment, signed by himself, or by another in his name, and at the same time made provision for the payment of the fine to which he himself was liable if he dropped the charge or did not prove it. The prætor then appointed a day for their re-appearance in court, generally the tenth day, but sometimes later; on the appointed day both were summoned by the crier. If the prosecutor failed to appear, the accused was acquitted, and the prosecutor held to be convicted. If both appeared, the judges were chosen by lot, though they might be challenged (§ 270), and sometimes they

were selected by the parties themselves. Being chosen, and having sworn to judge according to the law⁶, they took their seats. The prosecution consisted of two parts, viz. the production of the proofs and the summing up of them. The proofs, *argumenta*, were of three kinds; the statement of the charge, the witnesses, and the documents produced in corroboration or illustration of the case.

1) Cf. Cic. pro Rosc. Am. 20. 2) See Bach. l. 2. c. 2. s. 1. § ult.; Hein. 4, 16, 3. 3) Thus the speech of Cicero against Q. Cæcilius is entitled *divinatio*; cf. Cic. ad Q. Fratr. 3, 2: "Apud Catonem erat divinatio in Gabinium futura." Gellius accounts variously for the use of the term, 2, 4. 4) Cf. Cic. Divin. 15. 5) Hein. 4, 16. and 4, 18, 19. 6) Cf. Cic. Verr. 13.

277. Neither slaves nor persons who had incurred ignominious convictions, for libel for instance, could be admitted as witnesses, and from being precluded from giving evidence and making a will were termed *intestabiles*¹. In early times women were admitted to depose as witnesses, but afterwards were precluded from doing so². Freemen who deposed in favour of the accused could also be compelled to depose against him in support of a charge³. Evidence was given on oath, and there were prescribed formulæ both for putting questions and giving answers⁴. The law forbade producing any one to depose against a relative, or in his own favour⁵. By a law of the XII Tables a perjured witness was to be cast from the Tarpeian rock⁶, but this punishment was afterwards commuted for another⁷.

During the Republic, none but slaves could be put to the torture in order to elicit evidence, nor could this be done in any case affecting the life of their masters, with the exception of a very few, such as a charge of incest; this law was re-enacted by Adrian after it had been rendered null by Augustus⁸, who commanded that slaves who were to be put to the torture in an inquiry

affecting their master's life, should be sold⁹: nor could the slaves of one person be put to the torture in order to elicit evidence against another, except with the consent of their owners¹⁰. Terms applied to these practices are, *postulare, dare, ferre servos in questionem*. Among the instruments of torture, we read of *fidiculæ, tabularia, equuleus*¹¹, *podagra*¹², red hot plates of metal, etc.

After the accusation, came the defence of the accused by his friends and patrons, which sometimes lasted several days. The more desperate the case, the more earnestly and zealously did they in their pleadings strive to excite the compassion of the judges; persons were also produced to speak to his character, termed *laudatores*¹³; the accused party himself solicited the favour and mercy of his judges, both during the interval between his accusation and trial, as well as during the trial, by means of the intercessions of his friends, and by appearing in the garb of misery and mourning, *sordidatus*, to which the expression, *squalor reorum*¹⁴ applies, which he and generally his friends and relatives assumed on the day of trial; in fact, by all the arts calculated to move their pity. The defence having been concluded, which is expressed by the words *dixi, dixerunt*¹⁵, he was acquitted or condemned by the aggregate decisions of the judges, which they gave by inscribing severally¹⁶ on tablets¹⁷ the letter A, if they acquitted him, whence this letter was termed *salutaris*¹⁸; C, if they condemned him, termed *littera tristis*¹⁹; and N. L., i. e. *non liquet*, if they could not decide either way (§ 273 and 165).

1) Cf. Gell. 6, 7; Hor. Sat. 2, 3, 181; and see in the notes of Unterholzner, the meaning assigned to this word by Heindorf. *Intestabilis*, is applied generally to any bad character (as in the passage of Horace), by Gellius, 7, 18, and others. 2) Cf. Gell. 6, 7; Cic. Verr. 1, 57. 3) Cf. Quint. 5, 7; Plin. Ep. 5, 20. 6, 5; Hein. 4, 18, 26. 4) See Hein. ib. 5) Cf. Cic. Rosc. Am. 36. 6) Cf. Gell.

21, 1. 7) Paul. Sent. Rec. 5, 15 : " Aut in exilium aguntur, aut in insulam relegantur, aut curia submoventur." 8) An Tiberio ? cf. Tac. Ann. 2, 30, 3, 67. 9) Paul. Sent. Rec. 5, 16, 5 : " Servi in caput domini neque a præside, neque a procuratore, neque in pecuniarum, neque in capitalibus causis interrogari possunt (ib. § 7), qui servum ideo comparavit, ne in se torqueretur, restituto pretio, poterit interrogari." 10) Cf. Cic. pro Rosc. Am. 41 ; pro Cluent. 63. 11) Cf. Cic. pro Dej. 1. 12) Cf. Sen. Ep. 14 ; de Ira. 3, 19 ; Cic. Verr. 5, 63 ; Plaut. Asin. 3, 2, 4 ; Lucr. 3, 1029 ; 13) Cf. Cic. pro Balbo ; 18, ad Fam. 1, 9 ; Verr. 5, 22 : " In judiciis, qui decem laudatores dare non potest, honestius est ei nullum dare, quam illum quasi legitimum numerum consuetudinis non explere." 14) Cf. Liv. 2, 54. 15) Cf. Asc. ad Cic. act. 1. in Verr. extr. ; Hein. 4, 18, 31. 16) See Hein. 4, 18, 31. 17) Cf. Cic. pro Cluent. 28 ; Verr. 2, 32, "judicialis tabella," and Verr. 1, 13. 18) Cic. pro Mil. 6. 19) Cic. ib.

ON PUNISHMENTS.

278. Punishments¹ among the Romans varied with the times, and according to the rank of the condemned : the earliest penalty inflicted was fine or forfeiture, *multa* ; *noxæ, damnum*, damages, paid originally in cattle ; the accounts concerning it vary² : confinement in fetters, *nervi, manicæ, pedicæ, compedes*, publicly or otherwise ; incarceration, *carcer, robur* ; *custodia libera*³, mere confinement, *militaris*, confinement with a keeper to whom the culprit was chained : corporal punishment, inflicted by scourging with rods or sticks *talio*⁴ ; restitution, or compensation for injury which might be compounded for ; ignominy, for instance, loss of rank, *diminutio capitis* (§ 69) ; voluntary exile or banishment, interdiction of fire and water, transportation, the last introduced by the Cæsars ; condemnation to slavery ; capital punishment, such as casting from the Tarpeian rock⁵, being hanged, *infelix arbor*⁶, strangling, crucifying (§ 55), beheading ; and, in case of parricide, casting into the sea in a sack : concerning the public executioner, see § 218. Punishment sometimes affected even the memory of the culprit, when, for instance, his posterity were forbidden to bear his *prænomen*⁸, or

when his name was blotted out of the *fasti*⁹, or his bust forbidden to be exhibited at the funerals of his relatives¹⁰.

1) Cf. Cic. pro Rab. Perd. 4 and 5; Hein. 3, 18, 5. 2) Cicero de Rep. 2, 9, speaking of Romulus, says, "Multæ dictione ovium et boum—non vi et suppliciiis plebem coercuisse;" Gellius, 11, 1, states that the lowest penalty was one sheep, and the highest two sheep and thirty oxen; when it is endeavoured to prove that Dionysius, 10, 50, intended to say two sheep and thirty oxen, not thirty oxen and two sheep, as the MSS. have it. Besides, Dionysius says that formerly consuls only could inflict the penalty, but that by a law of Spurius Tarpeius and Aulus Terminus the consuls, any magistrates might inflict it, and that the highest fine was thirty sheep and two oxen: but Gellius says merely, concerning the *lex Ateria*, that by it a sheep was valued at ten *asses*, *denos æris*, and an ox at one hundred, which agrees with what Festus says on the word *multa*: the highest fine was three thousand and twenty *asses*, for an ox was valued at a hundred, and a sheep at ten *asses*; see also Festus in *ovibus*. To these authorities may be added Cicero, who says, de Rep. 2, 35, that the consuls Sp. Tarpeius and A. Aternius passed a most popular law (*rem sed lege legem*) concerning fines and forfeitures, *de mulctæ sacramento* (vid. § 271^a), about fifty-four years after the first appointment of consuls. We perceive that these three passages all refer, however they may otherwise differ, to the same consuls and to the law passed by them about A. U. C. 300, concerning the value of the fines inflicted. I shall leave others to discover in what particulars they differ (see Bach. 1, 2, 3, 2, 2, 9). Not long afterwards (A. U. C. 324), the *lex Papiria Julia* was passed concerning the amount of fines (see Liv. 4, 30), which Bach, supposes to have been principally a re-enactment of the *lex Ateria*. Cicero de Repub. 2, 35, says of this law: "Quod censores mulctis dicendis vim armentorum a privatis in publicum averterunt, levis æstimatio pecudum in mulcta lege C. Julii, P. Papirii, consulum, constituta est." 3) Cf. Liv. 1, 33, 38, 39. 4) Fest. in *talionis* (see p. 298): "Si membrum rupserit, ni cum eo pacit, talio esto;" cf. Gell. 20, 1. 5) Cf. Hor. Sat. 1, 6, 38. 6) Cf. Cic. pro Rab. Perd. 4; Liv. 1, 26. 7) Concerning which, see Paul. Sent. Rec. 5, 24, who says, "Ili etsi antea (to wit, by a law of the XII Tables) insuti culeo in mare præcipitabantur, hodie tamen vivi exuruntur, vel ad bestias dantur;" cf. Cic. pro Rosc. Am. 25; Suet. Aug. 33. The ancients give various lists of the animals which were enclosed with the parricide in a sack, a custom first introduced by the *lex Pompeia de parricidis*. See Juv. 3, 213, where he mentions an ape and a serpent; and Instit. 4, 18, 6, where a dog and a cock are also mentioned. 8) Cf. Liv. 6, 20. Tac. Ann. 2, 32, 3, 17. 9) Tac. *ibid.* 10) *Ib.* 2, 32, 3, extr.; See Nieup. 3, 2, 6, extr.

CHAPTER THE FOURTH.

CONCERNING THE IDOLATRY OF THE ROMANS.

279. The earliest form of idolatry, *religio*¹ at Rome, and what gods were worshipped, is a question involved in as great obscurity as the early form of its government: for we have not sufficient remains of art extant to illustrate the subject, and the accounts given by writers whose works have reached us differ, and also confound the more recent with the earlier superstitions and practices, without drawing any or a sufficient distinction between them, as is the case with their accounts of other customs and institutions. If we follow the accounts of Livy and Dionysius, the leading Roman historians, we must conclude, that from the days of Numa both the deities worshipped and the rites and worship prevalent, were the same nearly as those of several ages subsequent. But the learned are now agreed that Livy gave the common opinion of his times, rather than a critically correct account of the early practices of the city, and delineated them in a manner calculated to please the reader rather than to satisfy the critic; and the palpable endeavours of Dionysius to prove the origin of the Roman Republic and people themselves from the Greeks, weakens our confidence in him, however faithfully he may describe many things.

1) Touching the etymology of this word, see Cic. de N. D. 2, 28, who considers a man to have been called *religiosus*, as being one who diligently attended, *relegens*, the worship of the gods. Comp. also Gell. 4, 9. The current use of the word showed that it implied awe, anxiety, and scrupulous care.

280. For which reasons we cannot unreservedly re-

ceive the accounts of either, and the more so, because they frequently differ from each other, and from other writers who have treated of the same subject, such for instance as Varro and Plutarch, and particularly Ovid¹. We may comprise the results of many investigations in these few remarks, namely, that a person who examines the subject with scrupulous impartiality will find it most probable that the early idolatry of the Romans was utterly at variance with that of the Greeks, and was much more simple in its rites and superstitions than the idolatry of later ages: so that we shall wonder the less at those writers who have doubted whether they ever had temples and statues of idols²: whether we agree with Beaufort³ in assigning a Celtic origin, or some other to it. In this state Numa, who is commonly described as the founder of Roman superstitions, found it, and modelled it so as to humanize the ferocious tempers of his subjects, rather than entirely changed it⁴. The host of Grecian divinities were introduced still later, perhaps by Tarquinius Priscus, and the original objects of Roman worship were assimilated to or confounded with these; whilst new rites and superstitions were introduced by the Etruscans in particular. Thus the idolatry of the Romans was gradually assimilated to that of the Greeks, though certain vestiges, proofs of a different state of things before, still existed on monuments of art and in the pages of writers, as well as in the very names and worship of the most ancient divinities of the Romans, such as Consus, Janus, and others.

1) Cf. Beauf. vol. 1. p. 1. 2) August. de Civ. Dei 4, 31: "Dicit Varro, antiquos Romanos plus quam annos centum et septuaginta deos sine simulacro coluisse." 3) Beauf. pp. 5 and 15.
4) Idem p. 7 and 8.

281. Though it be so difficult to account for and explain these innovations, one thing is evident, that the new religion was intimately connected with the ge-

nius of the government, and made subservient to its policy ; and it seems most wonderful that superstitions so absurd, and deceits so palpable as those of which it consisted, should have so admirably served to this purpose for so many ages¹. The power of Rome had no support more efficacious than its system of public religion ; to add influence to which, because they considered it the cradle of valour and the bond of patriotism, although a law existed forbidding the introduction of foreign divinities (§ 79), yet even in later times, whenever it was considered good policy to allow it, little opposition was offered to the admission of idols worshipped in other countries.

Having made these observations on the religious system of the Romans, which are sufficient for my purpose, though the subject would furnish volumes, I shall observe the like brevity in treating of the names of their gods, their attributes, and the worship offered to them ; their priests and inferior attendants, also the places of worship, sacred instruments and rites, and finally, the festivals and public games of the Romans.

1) Cf. Liv. 5, 51, sqq.

CONCERNING THE GODS OF THE ROMANS.

282. I leave it to the learned to decide whether the early Romans worshipped several deities, or one only, under several titles, together with the nations among whom they grew up, as Beaufort imagines. One thing seems probable, namely, that the host of Grecian divinities was not introduced among them until some time had elapsed ; and besides those from Greece, the idols of Syria, Egypt, and some other Eastern people are found to have been worshipped at Rome, especially towards the close of the Republic and under the Cæsars. The Romans themselves added to the number greatly by deifying, on the most frivolous pretences, objects,

virtues, vices, diseases, faculties of the mind; and even fate and Rome itself (§ 39) had altars and temples. Hence arises a threefold classification of their idols; those of the aboriginal Romans, those borrowed from foreign mythologies, and the class of deified objects which we mentioned last.

The earliest divinities, which were not borrowed from the Greeks, but appear to have been worshipped by neighbouring nations as well as the Romans, were, as far as I can learn, Terminus, Consus, Dius Fidius, Quirinus, and Janus.

283. The institution of the worship of Terminus, as that of many other idols, is attributed to Numa; who commanded that any one who interfered with the boundaries of lands should be accursed¹, *sacer*; and appointed the Terminalia, festivals to be celebrated on the boundaries of fields. To encourage neighbourly feelings on these occasions, the productions of the soil, fruits, wine, and honey, were burnt on an altar of turf; a lamb or pig was sacrificed, and with its blood the statue of the idol, and the boundary stone or landmark were sprinkled. Garlands and cakes were also offered to him, with hymns in his praise². His most celebrated shrine was on the Capitoline hill: of which we are told that when it had been determined to erect a temple to Jupiter on the spot, and the gods whose shrines already stood there were asked whether they would give place to Jupiter, Terminus alone refused: therefore this altar was surrounded by a temple, and an aperture left in its roof, since Terminus was worshipped only in the open air: his refusal to remove was looked on as an omen of favourable import, portending the permanency of the boundaries of the empire, yet not opposing their advance³.

1) Cf. Plut. in Numa Dionys. 2, 74. 2) Cf. Ovid. Fast. 2, 641, sqq.; Tib. 1, 1, 15 (11): "Nam veneror, seu stipes habet de-

sertus in agris, seu vetus in trivio florea sarta lapis, etc." 3) Cf. Liv. I. 55; Ovid. v. 667, sqq; Lactant. de Falsa Relig. c. 20; Virg. Æn. 9, 448, "Capitoli immobile saxum."

284. The name Consus is usually derived from *con-dere* quasi *conserere*, as if he were the concealer of thoughts, and thus taken to be the god of inward counsels; but I fancy, rather from the similitude of the words than from any real foundation (§ 186). He is also confounded with Neptune as the creator of the horse and the earth-shaker (*σεισίχθων*), and is said to have been worshipped at subterranean altars, as being the inhabitant of the earth, or the concealer of secrets and counsels¹. Beaufort (vol. I. p. 20.) supposes him to be the first and only deity of the Sabines and Romans, worshipped under different titles at different places. *Consualia*, games in the circus, were celebrated in his honour².

1) See the note of Servius on Æn. 8, 636; Dionys. 2, 31; Festus in *Consualia*; Lyd. 1, 30. 2) Cf. Liv. 1, 9; Ovid. *Fast.* 3, 199.

285. *Dius Fidius*¹, whose earlier title was *Semo* or *Semo Sancus*, or *Sangus*², according to the meaning of his name, was the god of treaties and bargains, and under this name Numa is said to have established the worship of Faith, afterwards made a goddess³, though Cicero's opinion is different⁴. On the other hand, *Sancus* was an ancient idol of the Sabines⁵, whence he was called *heros Sabinus*, and classed among the idols of the country; though afterwards we find him confounded with the *Hercules* of the Greeks⁶, and this is confirmed by the usual oaths, (*me Dius Fidius, me Hercule*, and by their sacrificing to both by the way-side⁷.

1) Ζεύς πιστός. Cf. Dionys. l. 2. p. 113. l. 4. p. 257. 2) Cf. Ovid. *Fast.* 6, 213; Liv. 8, 20. 3) Cf. Liv. 1, 21; Dionys. l. 2. p. 134. 4) Cic. de N. D. 2, 23. 5) Ovid. v. 218; Lact. de F. Rel. 1, 15. 6) Cf. Prop. 4, 9, 71. 7) Cf. Fest., on the expression *propter viam*.

286. *Curis, quiris*, a lance¹, the root of the word *Qui-*

rinus, and also of *Cures*, the name of a town, and of *Quirites*, induces us to trace the worship of Quirinus to the Sabines, and to believe that they brought it with them to Rome. After the introduction of the idols of Greece, the lance, his emblem, caused him to be compared to Mars; and the Romans, ever after, worshipped two idols of the kind, the one called *Quirinus*, the guardian of the city and of its peace, the other called *Gradivus*, greedy of war and slaughter, whose temple stood beyond the city's boundaries, in order to avert his presence from the city². As Romulus, on his apotheosis, received the title of Quirinus³, his reputed father, it is not to be wondered at that the memory of this most ancient deity was gradually extinguished, the worship paid to him being transferred to the gods who shared his name.

1) Cf. Ovid. *Fast.* 2, 476, sqq. 2) Cf. Serv. ad *Æn.* 6, 860.
3) Lydus, 1, 5, proposes another etymology, deriving it from *κύριος*, Lord, as though it implied sovereignty; Cf. Ovid: "Sive suum Regi nomen posuere Quirites;" and Vos. *Etym.* in *quiritare*.

287. The etymology of the word Janus¹, and all concerning him, is involved in obscurity; but it is certain that the Greeks had no similar divinity², and many things lead us to suppose that he was the first divinity worshipped by the nations of Italy. Prayers or sacrifices began by his name³, and he was peculiarly styled the father⁴, and in the Salian verses the god of gods⁵. And as the beginning of all things was attributed to him, they styled him the creator of chaos and of the world⁶. In his right hand we see him carrying a sceptre⁷, as lord of the year and of the sky; in his left a key, as arbiter of peace and war, in fact of destiny: hence his temple at Rome stood open during war, and was closed during peace. The best reason assigned for his being represented with two faces, is, I fancy, that he was thereby portrayed as beholding all

things, that is to say, the past and the future⁹: his titles are Junonius, Consivius, Quirinus, Patulcius, Clusius or Clusivius, and others¹⁰. His sacrifices, as those of Vesta, were bloodless; he was propitiated by cakes, corn, and salt.

1) Derived from *cundo* by Cic. N. D. 2, 27. 2) Cf. Ovid. Fast. 1, 90. 3) Cf. Ovid. v. 172. 4) Cf. Hor. Ep. 1. 16, 59. 5) Cf. Macrob. Saturn. 1, 9; 6) Ovid. v. 103. 7) Ib. 99. 8) Cf. Virg. Æn. 7, 180. 9) Cf. Ovid. v. 114. 10) See Ovid and Macrob. 11) Ovid. v. 128.

288. The remark that I have made concerning the idols of the Romans already mentioned, namely, that they seem to have been the original divinities of the country, and not imported from Greece, applies to several others besides the divinities of the lowest order mentioned in § 312 and 313; to Carna, for instance, the goddess of hinges¹; Juturna², named after the spring of Juturna, the goddess of springs and of rivers, whose temple stood in the Campus Martius, whose festivals were called Juturnalia; Feronia, one of the most ancient of the Italian divinities, the wife of Anxur the chief idol of the Volscians, who is confounded with Jupiter as she is with Juno: she was particularly worshipped in the grove of Feronia, near Tarracina or Anxur³, where it is said that newly-made freedmen had their heads shorn⁴ (§ 62); Vacuna, *a vacando*, whose festivals, Vacunalia, were celebrated by countrymen at harvest-home⁵. The divinities which I intend mentioning hereafter, Pales, Flora, Pomona, Vertumnus, are also to be considered as original, and, as it were, native idols of Italy: some class even Vesta⁶, notwithstanding the Greek origin of her name (*ἑστία*, focus, ignis), among them; from the hearth being the emblem of social life, she was considered the guardian of houses, cities, and realms: the vulgar opinion was that her worship prevailed over the whole earth, and

was introduced into Italy from Troy by Æneas, and established at Rome by Numa⁷. The worship originally offered to her was of the simplest kind, and though Vesta was sometimes confounded with Ops, Cybele, and Tellus, it remained prevalent down to the times of the Empire's decay; the sacrifices offered to her were bloodless⁸. The Vestal Virgins (§ 325) kept up a perpetual fire on the altar in her temple, which was of a circular form, without any statue of the goddess⁹: but it was believed among the people that there was a statue of some idol in it to look at or to inquire for which was unlawful: some supposed the temple contained the gods of the Samothracians, or the Penates brought from Troy by Æneas¹⁰, others that it contained the Palladium¹¹; there were also other opinions¹². Vesta herself, unless we suppose the statues attributed to her to be inventions, was represented under the human form, with a veiled face, holding a torch or lamp, or else the palladium, sometimes with an altar and fire burning on it. Superstition mingled many additions with the original notion of the divinity, such as the story of Priapus's attempt to ravish her, when she was awakened by the braying of Silenus's ass¹³.

1) Ovid. *Fast.* 6, 101, sqq.; cf. *Aug. de Civ. Dei* 4, 8. 2) See *Virg. Æn.* 12, 138, sqq., with the note of Servius. 3) See *Liv.* 1, 30, 26, 11; *Dionys.* 2, 6; *Hor.* 1, 5, 24; *Virg. Æn.* 7, 800. 4) Cf. *Liv.* 22, 1; *Creuz.* § 52. 5) Cf. *Ovid. Fast.* 6, 307, "antiquæ sacra vacunæ;" *Hor. Epist.* 1, 10, 49. 6) Cf. *Ovid. Fast.* 2, 267 and 221; *Cic. de N. D.* 2, 67. 7) Cf. *Virg. Æn.* 2, 293, sqq. 8) Cf. *Juven. Sat.* 6, 386; *Prop.* 4, 1, 21. 9) Cf. *Ovid. v.* 281 and 295. 10) Cf. *Tac. Ann.* 15, 41. 11) Cf. *Luc.* 9, 993; *Herod.* 1, 14. 12) Cf. *Ovid.* 6, 439, sqq.; *Dionys.* 2, 66; *Cic. Phil.* 11, 10; *Luc. Phars.* 1, 196, 9, 990, sqq.; *Prop.* 4, 45. 13) *Ovid.* 6, 320, sqq., and comp. *Prop.* 4, 1, 21: "Vesta coronatis pauper gaudebat assellis."

289. I thought it consistent with my plan to be rather more particular in giving an account of the foregoing; the other divinities I must mention cursorily; stating, besides the distinction between each, some particulars

concerning a few, those especially which have reference to the subject of antiquities rather than those which refer to history and mythology.

The primary division of the idols of the Romans was into majores and minores, *dii majorum et minorum gentium*¹, as in the case of patricians (§ 130). There were twenty superior gods, called also *selecti*²; an immense number of inferior deities of several kinds, such as the personifications of virtues and faculties³; and the *indigetes*, or deified heroes, *rustici, plebei, marini, aquatiles, inferi, averrunci*, averters of evil, &c.

The principal of the superior deities were the *Dii Consententes*, (con-entes vel consentientes?), who assisted in the supreme council of Jupiter, whence the Greeks called them *πάρεδροι*. Their names are contained in this distich of Ennius:

Juno, Vesta, Minerva, Ceres, Diana, Venus, Mars,
Mercurius, Jovi⁴, Neptunus, Vulcanus, Apollo.

The other select gods were Saturnus, Janus, Tellus (Rhea), Orcus (Dis, Pluto), Liber (Bacchus), Sol, Luna, Genius.

1) Cf. Cic. Quæst. Tusc. 1, 13. 2) See Aug. de Civ. Dei. 7, 2, 3, 33. 3) Cic. de Legg. 2, 8. 4) This is a nominative case, and occurs again in Apul. Met 1. 4: "Quem tremit ipse Jovis," etc.

290. Jupiter¹, called also Jovis and Diespiter², was the first and greatest of the Roman as he was of the Grecian idols, being considered the father of gods and the king of men. Some say that his worship was introduced into Rome by Tarquinius Priscus, who built his principal temple on the Capitoline hill (§ 42), where he connected the smaller temples, *sacella*, of Jupiter, Juno, and Minerva; whence he was called Jupiter Capitolinus, and also Optimus Maximus. His other titles are innumerable, some of them the same as those given him by the Greeks; as Servator, Hospitalis, To-

nans, Fulminator, Pluvius and Imbricitor, Serenus; others bestowed on him by the Romans, as Elicius³, Stator, Feretrius⁴, Pistor⁵, and Latialis⁶. He was sometimes represented as a youth, and called Vejovis⁷; sometimes as a full grown man. His emblems were, the thunderbolt, the sceptre, the diadem, a throne, and a globe: the oak and the eagle, *Jovis ales, armiger*, were sacred to him.

1) Among the etymologies proposed is *juvans pater*; cf. Cic. de N. D. 2, 25; Gell. 5, 12. 2) That is, *dies* or *diei pater*, as some assert; cf. *dies, dius*, etc.; see Varr. de L. L. 4. p. 19. 3) See Ovid. Fast. 3, 323 Liv. 1, 20. 4) Cf. Liv. 1, 10 and 12; Prop. 4, 11, 1. 5) Ovid. 6, 350; Lact. 1, 20. 6) Cf. Lact. 1 21. 7) Cf. Ovid. 3, 430, sqq. and Gell. 5, 12.

291. Neptune¹, the brother of Jupiter, ruler of the sea, is first mentioned among the Roman divinities about the fourth century from the foundation of the city². I have already mentioned (§ 284) that he was confounded with Consus³. His titles were numerous, and the same as those given him by the Greeks. He is sometimes represented drawn in a large shell by sea-horses⁴, nereids, tritons, and dolphins around him; sometimes he is naked. In one hand he holds the trident, his emblem, with the other sometimes a dolphin. He is frequently accompanied by his wife Amphitrite, with a veil flying round and above her head. Blue⁵, the colour of the sea and of the sea-gods, is the colour of his eyes, and hence he is termed *cæruleus deus, frater, &c.*

1) Some suppose this name derived from *nubendo*, from the sea's covering the earth as the clouds cover the sky; Varro de L. L. 4. p. 20. Others from *nare*; see Cic. de N. D. 2, 26, 3, 24. 2) Cf. Liv. 5, 13. 3) Cf. Virg. Georg. 1, 12: 4) Cf. Virg. Æn. 1, 138; Ovid. Met. 2, 8, sqq. 5) Cic. de N. D. 1, 30.

292. Mars, also called Mavors¹, the son of Jupiter and Juno, was the idol most generally² and, as was commonly supposed, most anciently worshipped at Rome³, being the reputed father of Romulus and Remus by

his intercourse with Sylvia (Ilia), a vestal. But many assign a much later date to the origin of this story and the worship of this idol⁴. His titles were Quirinus and Gradivus, the distinction between which I have already stated (§ 286); Ultor⁵, Sylvanus⁶, Thracius, Enyalius, and others, principally Greek. He had several temples at Rome; one stated to have been erected beyond the city walls⁷. The Campus Martius was also dedicated to him (§ 48). Things sacred to him were fire, the vulture, the magpie, the wolf⁸, the cock, and the horse. He was represented at times naked, but more frequently clad in armour. His insignia were the helmet, shield, and spear, with the addition sometimes of trophies (*τροπαιοφόρος*). Bellona (*Enyo*) was the sister of Mars, and also a divinity delighting in war, and was worshipped at Rome, being represented with a scourge or whip in her hand⁹. Her priests were called *Bellonarii* (§ 328).

1) Mars seems a contraction of *Mavors*; some derive the word from *Ἄρης*; Varro says from *mares*, 4. p. 20; see the word *mamers* in that chapter. 2) Cf. Ovid. *Fast.* 3, 79. 3) Cf. Liv. 1, 20. 4) Among whom is A. G. Schlegel (v. Wachsm. *Ælt. Gesch.* p. 122.); he is convinced not only that there never was such a person as Romulus, but that the Romans had the simplicity to believe the Greek stories concerning his renown and birth; in fact that the name of Romulus was not known at Rome until about the middle or end of the fifth century of the city's existence. Cf. Nieb. v. 1. p. 149, sqq.; Beauf. v. 1. p. 22; also the same author, "Sur l'incertitude des cinq prem. siècles," etc. p. 2. c. 1. 5) Cf. Suet. Aug. 21 and 29; Cal. 24; Ovid. *Fast.* 5, 595. 6) Cato de Re Rust. 83. 7) Cf. Liv. 65, 7, 23. 8) Cf. Ovid. 3, 37 and 53; Hor. Od. 1. 17, 9. 9) Cf. Virg. *Æn.* 8, 703.

293. Vulcan, called by the Greeks *Ἡφαιστος*, and by the Romans, from his tempering iron, *Mulciber*¹, the son of Jupiter and Juno, the husband of Venus, the limping artificer (*ἀμφιγυήεις*), the god of smiths, is said to have had a temple even in the days of Romulus, by whom brazen chariots, *quadrigæ*², were dedicated to him: but Beaufort doubts (v. 1. p. 26) whether he

was worshipped at Rome before the time of Tarquinius Priscus. This king having burnt as an offering to him, *ex voto*, the arms of the conquered, his example was followed by succeeding conquerors; whence the spoils of war were sacred to him, and the lion also³. He is styled Lemnius, Ignipotens, etc.; his emblems the hammer and tongs, his forges were at Lemnos, his island, his cavern under Mount Etna, his workmen were the Cyclops.

1) The etymology of Vulcan is so doubtful, that many have traced it to Tubalcain, Genesis 4, 22. 2) Cf. Dionys. 2, 50 and 54. 3) Cf. Liv. 1, 37. 50, 6.

294. Mercury, (whose name seems evidently derived from *merx*, *mercis*,) by the Greeks *Ἑρμῆς*, the son of Jupiter and Maia, the messenger and herald of the gods, the god of learned men and merchants (§ 383), whence both are styled *Mercuriales*¹, also the patron of thieves, the inventor of the harp, *testudo*, the president of the palæstra, the guide of the departed to the lower regions²; he was early worshipped at Rome³, and had many temples there. The cock, the fig-tree, the tongues of victims, and dogs, were sacred to him; honey and milk were among things offered to him. Among his numerous titles were Caducifer, Atlantiades, Cyl-lenius. He was usually represented as a youth, with wings upon his heels, *talaria*; on his head a cap, *petasus*; in his hand a rod entwined by two serpents the *caduceus*: sometimes, though less frequently, he is represented under a shepherd's garb, with a club and pipe, and a ram in his arms.

1) Horat. Od. 2, 17, 29; Cic. ad Q. Frat., 2, 5. 2) Cf. Hor. Od. 1, 10. 3) Liv. 2, 27.

295. Apollo (*Sol*, *Phæbus*, *Hyperion*), the son of Jupiter and Latona, the emblem of the sun, a prophet, and the leader of the Muses, the inventor of the art of

shooting with the bow, and the god of poets, prophets, and physicians, whence these sciences were called *artēs Apollineæ*. Livy¹ mentions that as early as A. U. C. 324 a temple was vowed, and soon after dedicated to him at Rome; afterwards he had several, among which was that of the Palatine Apollo; he was one of the most popular divinities of the city, and was honoured by public games as early as A. U. C. 542². Among things sacred to Apollo, were the laurel, *Daphne*, the swan, the *cicada*, the wolf. His titles are almost numberless, such as Latous, from his mother's name; Delius, Cynthius, Clarius, Delphicus, Pythius, Actius, from the names of places: among his other titles are, Pæan, Arcitenens, Argyrotoxis, Tortor³. The statue of this idol represented a blooming youth with flowing hair (whence the expression *crinitus Apollo*⁴), his head either surrounded by rays, or crowned with laurel: his insignia were the lyre, the quiver, arrows, the *cortina*, and the *tripos*.

- 1) Liv. 4, 25 and 29. 2) Liv. 25, 12. 3) Cf. Suet. Aug. 70.
4) Virg. *Æn.* 9, 638.

296. I have already spoken of Vesta (§ 288). Juno, the "*Ἥρα*" of the Greeks, the daughter of Saturn, the wife of Jupiter, the queen of heaven¹ and of the gods, presided over marriage, and was peculiarly the idol of women², and by her they swore³. As I have said before (§ 290), she was associated with the Capitoline Jupiter at Rome. Having been evoked (see *evocatio* § 331) from Veii, where she was worshipped under the title of Queen⁴, she had a temple under this title on the Aventine hill⁵: afterwards she had several temples. Among the epithets⁶ applied to her we meet with *pronuba*, *domiduca*, *jugalis*⁷, *natalis*, *regina*⁸, *matrona*, *domina*, *Lucina*, *patulcia*, *fluonia*, *sospita*, *Moneta*, *Argiva*, *Samia*: to her the peacock, the goose, and the calends of

months were sacred: her statue represented a matron in a royal garb; her insignia were a diadem, a starry veil, a sceptre, a throne; her messenger was Iris.

1) Virg. *Æn.* 1, 46. 2) Cf. Plin. 2, 7; Sen. Ep. 110; Tib. 4, 6. 3) Cf. Tib. 3, 6. 48, 4. 13. 15; Juv. 2, 98. 4) Ovid. Am. 3. 12. 5) Cf. Liv. 5, 21 and 22. 6) See Kipping. *Antiqq. Rom.* p. 12, sqq. 7) Apul. Met. l. 2. p. 121: "Quam cunctus Oriens Zygiam veneratur, et omnis Occidens Lucinam." 8) Cf. Juv. 12, 3.

297. Ceres, the *Δημήτηρ* of the Greeks, the mother of the earth, the daughter of Saturn, the mother of Proserpine, the discoverer of corn and cultivation, the promoter of humanized life, and of laws and cities, and hence called *alma mater*², and goddess of bread and wheat, *Cereris munera*, etc. This goddess, who was worshipped even under Evander, if we believe Dionysius, appears to have had a temple at Rome first soon after the expulsion of the Kings (A. U. C. 258), in which Liber and Libera were worshipped together with her³: the epithets applied to her were, *alma*, *flava*, *spicifera*, *mammosa* (cf. Tellus and Cybele), *tædifera* from her carrying a torch when seeking for her daughter; *legifera* (*θεσμοφόρος*), *Eleusina*, from the mysteries of Eleusis (Eleusinia), and *Ennæa*: things sacred to Ceres were, all kinds of corn, the poppy, the sow⁴, and instruments of tillage. She was represented with a graceful form, crowned with ears of corn mixed with poppies or alone, carrying in her hand a torch or poppies, sometimes a cornucopiæ or sickle, or a headless spear: sometimes drawn by dragons in a car, sometimes accompanied by Bacchus.

1) Cf. Cic. de N. D. 2, 26. 2) Cf. Virg. *Georg.* 1, 47. 3) Cf. Dionys. 2. p. 26, 6. p. 354; Liv. 3, 55. 4) Virg. *Georg.* 1, 212; Ovid. *Fast.* 1, 349.

298. Minerva¹, sprung from the brain of Jupiter, the personification of Wisdom, blending the arts of peace

with warlike courage; as Pallas, the companion of heroes, the patroness of poetry, medicine², and all liberal arts; the inventress of knitting and of weaving³, the discoverer of the olive-tree, was associated with Jupiter and Juno in a temple on the Capitoline hill (§ 290), and afterwards honoured at Rome with many temples⁴, among which was one to her under the title of *Minerva Capta*⁵. Sacred to this goddess were, the owl, the olive, the raven, the cock, the serpent, gates of cities, spoils of war, and tools of artisans: among the numberless epithets applied to her we find, *custos* (*Polias*), *victrix*, *armipotens*, *virago*, *medica*, *musica*, *cæsia* (*γλαυκῶπις*), *Tritonia*, *Sunias*, etc. She was represented as a young woman armed with the lance and shield, *ægis*, and with a crested helmet, or one surmounted by an owl, a sphinx, or griffins: the dragon and olive, and a thunderbolt in her hand, were also her insignia. An image of *Minerva*, the *Palladium*, intimately connected with the fate of the city, supposed to have been received from heaven at Troy, and preserved in the temple of *Vesta* at Rome, according to common belief, as I mentioned (§ 288), was a remarkable object in the particulars of her worship.

1) Derived from *mens*, *monens*, etc. Cf. Cic. de N. D. 2, 26. 3, 24. 2) Cf. Ovid. Fast. 3, 827. 3) Ib. 817. Cf. Tib. 2, 1, 65. From the offices attributed to this divinity came the expressions, *pingui*, *crassa*, *invita*, *tenui Minerva*, *texta Minervæ*, etc. 4) See Pitiscus in *templum*. 5) Ovid. Fast. 3, 835, sqq.

299. *Venus*¹, the emblem of self-producing and self-renewing nature, the goddess of loves, the mother of *Cupid* (*Amor*, *ἔρως*), the wife of *Vulcan*, *Æneadum genitrix*², presiding over marriages, and the goddess of pleasures and of grace, *venus*, *veneres*, *venustas*: as in the case of other idols, several were worshipped under this title of different origin and with various attributes, such as *Dione*³. *Venus* had temples at Rome under

the titles of *Cluacina*⁴ and *Libitina*, the former built by Titus Tatius, the other by Servius Tullius; but Beaufort (v. I. p. 29) supposes she had no temple there before A. U. C. 458⁵. In later times they were numerous, such as that of *Venus Erycina*, of *Venus victrix*, of *Venus genitrix*; and from the time of Julius Cæsar she was one of the most popular of Roman idols. Sacred to Venus were, the sparrow, dove, swallow, swan, and the wagtail, *inyx*, the myrtle, rose and apple, and the month of April. Her titles were very numerous, such as Frutis(?), Verticordia, Cytherea, Cypria, Paphia, Amathusia, Erycina; and she was styled Domina, mater amorum, Myrtea, sometimes Barbata, Calva⁶. She was represented as drawn in a car by doves or pigeons, sometimes in a shell drawn by tritons or nereids, often with Mars, Anchises, Adonis, or Mercury. The most remarkable of her insignia were the apple, *eris*, and a key, arrow, bow, whip, and torch.

1) *Venio* has been suggested as the root of this word (cf. Cic. de N. D. 2, 27. 3, 24.) ἐννῶ, βαίνω. 2) Cf. Lucr. 1, 1. 3) Cf. Cic. ib. 3, 23. 4) Cf. Lactant. 1, 20. 5) Cf. Liv. 10, 31. 6) Cf. Lact. 1, 20.

300. Diana¹, the *Ἄρτεμις* of the Greeks, the daughter of Jupiter and Latona, the virgin sister of Apollo, of threefold power, *diva triformis*², Hecate on earth, Luna (Phœbe) in the sky, Proserpine in the shades below, presiding over childbirth under the title of Lucina, invoked by magicians and sorcerers (§ 316), the goddess of hunting, and accompanied by nymphs such as the Dryades and Oreades. Perhaps the first temple erected to her at Rome was that on mount Aventine, dedicated to her by Servius Tullius, resorted to by the people of Latium³ as well as by the Romans; she afterwards had several, such as that of Diana Aricina, near Aricia, to the rites connected with which the Rex Nemorensis was attached⁴; Livy, XL. 2, also mentions one to her

under the title of Luna. Her worship was associated with that of Apollo, and she was commonly included together with him and the principal deities of the city in prayers and sacrifices⁵. Among the objects sacred to her were, implements of the chase, dogs, and the horns and spoils of wild beasts, which were hung up to her on trees⁶. Among her titles were, *Latonia*, *nemorum virgo*, *jaculatrix* (ἐλαφηβόλος), *Trivia*, *Cynthia*, *Delia*, *Orthosia*, *Ephesia*, *Taurica*, *Aricina* (*Nemorensis*). She was represented as a young woman clad for hunting, a quiver on her back, a bow, an arrow, a dart or a torch in her hand: sometimes in a car drawn by oxen or stags, sometimes riding on a stag or ox. The Diana of the Ephesians was an idol of a distinct kind.

- 1) *Dia Jana*. Cf. Varro de R. R. 1, 37; Macrob. Saturn. 1, 9.
 2) Hor. Od. 3, 22. 3) Cf. Liv. 1, 45. 4) Cf. Suet. Cal. 35;
 Ovid. Fast. 3, 271. 5) Cf. Liv. 5, 13, 25, 12; Hor. Carm.
 Sæc. and Od. 1, 21. 6) Cf. Prop. 2, 15, 19.

301. I have already mentioned Janus as one of the *dii selecti* (§ 287). Tradition related that Saturn¹, the earliest god of agriculture worshipped in Italy, being banished heaven, was hospitably received by Janus, and dwelt on the hill afterwards called the Capitoline, and introduced the golden age into Italy whilst reigning there; whence the Saturnian reign, mountain, land, and city. In later times he was confounded with the Chronos of the Greeks, the son of the earth and the sky, and the personification of time. Though not admitted among the *dii consentes*, still he was held in peculiar reverence at Rome, and seems to have had a temple there, at least during the last years of the regal power². Gladiatorial shows were sacred to him as being a god of the lower regions (§ 350); his titles were, *falcifer*, *vitisator* (the vine planter³), and *sterculius*⁴ from his introducing the use of manure. He was represented as a hoary old man with a long beard, holding a scythe

(ἄρπη) in his hand, and sometimes his own children, whom he is devouring; he is also represented holding a serpent bent into a circle, the emblem of eternity.

1) Perhaps derived from *satio*, or *saturare*, etc. Cf. Fest. in *optima* and *saturno dies*; Cic. de N. D. 3, 24. 2) Cf. Liv. 2, 21; Macrob. Saturn. 1, 7, 8. 3) Cf. Virg. *Æn.* 7, 178. 4) Macrob. 1, 7.

302. Pluto, commonly called Hades by the Greeks, was also termed *Dis*, quasi *Dives*, which agrees with the origin of Pluto (πλοῦτος), and Orcus¹, the brother of Jupiter, the god of the departed, *inferorum*, to whom formerly human victims were offered, had a temple at Rome under the title of *Summanus*, dedicated to him during the war with Pyrrhus². The cypress, the narcissus, maiden's hair, *adiantus*, and the thighs of victims, were sacred to him: black animals were sacrificed to him³, such as black oxen and sheep. His title, *Summanus*, was given him as being *summus manium*; but Ovid questions whether this idol was the same as Pluto; he is also called the lord of the shades, *Jupiter Stygius*, *Vejovis*, *Februus* (§ 336), *Feralis*, *Quietalis*, *Soranus*⁴. We find him depicted as a stern and bearded old man on an ivory throne, or borne in a car; his crown was also of ebony, or of *adiantus*, or narcissus; Cerberus sits at his feet; in his hand he carries a sceptre or a key. He is associated with Proserpine the daughter of Ceres, whom he carried off, the queen of the shades, styled *Juno infera*, *profunda*, *Lucina*, *Averna*, *Hecate*, *Libera*, etc. The seeds of the pomegranate were sacred to her⁵, and also the bat; sows, and barren cows were sacrificed to her. The Fates, *Parcæ*⁶ (*Μοῖραι*), Clotho, Lachesis and Atropos, the weird sisters (*fatidicæ*⁷), one spinning the thread of mortal life, which the other draws out and the third severs⁸, were his ministering attendants; also the Furie (*Eumenides*, *Erinnyes*, *Diræ*), etc.

1) Cic. Verr. 4, 50. 2) Cf. Ovid. Fast. 6. 731. 3) Cf. Tib. 3, 5, 33. 4) Cf. Serv. ad Æn. 11, 785. 5) Cf. Ovid. Met. 5, 536. 6) Cf. Claud. R. P. 1. 55. 7) Cf. Virg. Ecl. 4, 45; Cat. 64, 305, sqq. 8) Cf. Cat. ib. 310, sqq.

303. Liber (*Bacchus, Læbasius*), the son of Jupiter (Dionysus) by Proserpine when considered as the god of mysteries, but otherwise by Semele, the inventor and god of wine, hence called *Bacchus, Bacchi munera*, the introducer of the cultivation of the grape, the personification of fostering nature and social happiness¹, the giver of gladness, the god of tragedy, and in fact of poets in general, had a temple at Rome shared by Ceres and Libera (§ 297), as well as others dedicated exclusively to him. The vine, implements for vintage, the ivy and the snake, both emblems of eternal youth, and the panther and tiger, emblems of irresistible power, were sacred to him; his most usual victim was a he-goat: among his endless titles may be mentioned *Thebanus*², as distinguished from the Indian and Assyrian Bacchus, *Bassareus, Bimater, Bromius, Lyæus, Eleleus, Euan (evöë), Iacchus, Lenæus (Λικνίτης³)*. He is also frequently termed *Pater*⁴, and, in accordance with this epithet, he is sometimes found under the form of a bearded old man⁵, though generally represented as a ruddy youth⁶ crowned with ivy, vine-tendrils and leaves, or with a *mitra* circlet, with gilt horns scarcely projecting, carrying the thyrsus, *thysiger*, or a club, a goat's or a panther's skin thrown upon his shoulders, and sometimes shod in the buskin; he is very generally represented in a car drawn by tigers, lions, lynxes, and particularly by panthers.

1) "Liber et Alma Ceres," Virg. Georg. 1, 7. 2) Ovid. Met. 4, 11. 3) Cf. Virg. Georg. 1, 166. 4) Cf. Hor. Od. 3, 3, 13. 5) See Macro. Satur. 1, 18. 6) Cf. Tib. 1, 4, 33.

304. Tellus (cf. τέλλω), the γαῖα of the Greeks, the earth, the wife of Uranus, the all-producing mother, and, confounded with Ops, Rhea and Cybele, had a

temple at Rome of great antiquity, *ædes Telluris*¹, and her peculiar worship was long kept up. A pig was offered to her².

Sol (cf. *σέλας* and *solus*), the "*Ἥλιος* of the Greeks, born of Hyperion and Thia, the father of Phæton and the Heliades, confounded also with Apollo, his particular worship being still kept up, had very ancient temples at Rome, and one shared with him by Luna. Heliogabalus introduced the worship of a Syrian idol of the sun, and he and Aurelian built new temples to him. Sol was called Titan, Hyperion, Mithras; his usual epithet was *aureus*; he was represented as a youth with a radiant crown on his head, in a four-horsed chariot, accompanied by the Hours; his harbinger was Aurora his sister.

Luna (cf. *lux* and *Lucina*), the *Σελήνη* of the Greeks, the sister of Sol, and possessing the attributes of Diana as Sol did of Apollo³: and although there were many temples appropriated to the worship of the idol of the moon at Rome⁴, her worship was transferred to Diana. She was represented with a sickle in her hand, and horns on her head; whence Horace's expression, *siderum regina bicornis*⁵, drawn by horses or stags yoked to her car. A male idol, *Lunus*, is also mentioned.

1) Cf. Liv. 2, 41; Cic. pro Dom. 38; Liv. 39.22. 2) Cf. Hor. Ep. 2, 1, 143. 3) Cf. Hor. Carm. Sæc. 4) Cf. Tac. Ann. 15, 41. 5) Ib. 35.

305. Genius (from *geno*, i. e. *gigno*), belonged to the mythology of the Romans rather than to that of the Greeks, considering him, as I do here, as the tutelary deity of every individual, born and dying with him, the sharer of his lot, and almost the individual's second self¹: it is thus the word is to be understood in the expressions *indulgere genio*, *placare*², *defraudare genium*³; *male, bene habere genium*; *genialis dies, lectus*, etc.: yet the dead even were supposed to have *genii*, to whom offerings were made⁴. Some consider that there were

two such spirits, *genius albus* and *ater*⁵; others, that the same was at one time termed *albus*, at another time *ater*, according as he was good or evil. Flowers, wine⁶, incense, cakes⁷, and sometimes victims⁸, were offered to him: his statue was placed among those of the *lares*, of whom some reckon him to have been one, and adorned with flowers and leaves: he was worshipped during the Saturnalia, and on birthdays particularly⁹. It was customary also to swear and to beseech by the genius of a person¹⁰. He is represented crowned with flowers, with or without wings, generally holding a serpent and a dish, often one or the other with a cornucopiæ; sometimes an altar near him. Even places had their respective genii, such as springs, cities, barns; in fact, the gods are described as having genii¹¹.

1) Cf. Hor. Ep. 2, 2, 187. 2) Cf. Hor. A. P. 210. 3) Cf. Ter. Phorm. 1, 1, 10. 4) Cf. Ovid. Fast. 2, 545. 5) Hor. Ep. 2, 2, 189. 6) Hor. Ep. 2, 1, 144. 7) Cf. Ovid. Am. 1, 8, 94. 8) Hor. Od. 3, 17. 14, 4. 11, 7. 9) See Censor. de Die Nat. c. 2; Ovid. Trist. 3. 13, 13, sqq.; cf. Pers. Sat. 2, 3. 10) Cf. Sen. Ep. 12; Suet. Cal. 27. 11) Cf. "Genius Priapi," Petron. 21.

306. Besides the *dii selecti*, the Romans had several idols not ranked among the superior divinities, nor yet to be classed among the inferior, and confounded severally with some one of the superior divinities. I have mentioned (§ 388), some of the original Italian idols as belonging to this class; of foreign idols, Cybele and the Egyptian idols worshipped in later times at Rome; Osiris, Serapis, Anubis, Harpocrates, whom I shall merely mention: Isis¹, also, worshipped with peculiar superstitious rites by women, even by the most abandoned; she was represented with horns on her head, sometimes with a globe suspended between them, with the lotus flower and other emblems, holding the *sistrum*² in her hand; they were also carried by her priests, who were termed *turba Pharia, linigera*.

But Cybele (*Κυβέλη* and *Κυβήβη*, cf. *κύβος*), was by the Greeks confounded with Rhea and Vesta, and by the Romans, consequently, with Ops and Tellus (§ 304), being considered the mother of the gods, of men, and of all living creatures, a personification of all-producing earth, and, consequently, from her producing men and agriculture, the promoter of civilization, and the guardian of cities³: she was worshipped at Rome from A. U. C. 547, the Sibylline books having advised it, and ambassadors having been despatched to king Attalus to seek a goddess whose type, a square stone, tradition reported to have fallen from the sky: she was received at the mouth of the Tiber with pomp, and the ship drawn into harbour by the chaste Claudia; and was worshipped at Rome, first in the temple of Victory, afterwards in temples dedicated to her, new festivals having been added to the primitive *opalìa*, called *Megalesia* and *Lavatio Matris deum*⁴. The titles of Cybele were *Magna Mater*, *Pasisthea*, *Idæa*, *Dindymene*, *Berecynthia*, *Bona Dea*; according as she was a distinct divinity or confounded with Cybele. She was represented as a matron with a veil over her countenance, symbolical of the secret operations of nature, and crowned with a circlet of towers, her peculiar emblem; holding in her right hand a sceptre, in her left a tambourine, *tympanum*, the symbol of the power of music over mankind, borne on a car over the globe, drawn by lions, or else seated on a lion; sometimes ears of corn are represented with her, and the sun on her right, the moon on her left hand.

1) Cf. Ovid. Am. 1, 8, 74; Prop. 2, 31; Tib. 1, 3, 23; Juven. 6, 489 and 526. 2) Cf. Ovid. Am. 3, 9, 33; Met. 9, 685, sqq.

3) Cf. Lucret. 2, 598, sqq. 4) Cf. Liv. 29, 2, sqq.; Ovid. Fast. 4, 257, sqq.

307. Among the *dii minores* were, the *divi novensiles*, which some explain as being newly-made gods,

some as nine gods, others as the Muses¹: also the *dii indigetes*, which Livy distinguishes from the *novensiles*²: by the term *indigetes*, in its widest sense, were understood the original and primitive idols of the Italians, but taken more exclusively to mean deified heroes, *semones*³: such the Romans considered Janus to be (§ 287), *Picus*, *Faunus*, *Æneas*, *Pater Indiges* and *Jupiter Indiges*⁴. Romulus was associated with them under the title of *Quirinus* (§ 286), as well as the emperors who were deified. Castor and Pollux, of Grecian divinities, belonged to this class, as well as Hercules and *Æsculapius*. Castor and Pollux, styled *Dioscuri*, *Tyn-daridæ*, *Gemini*, *Castores*, were the tutelary gods of sailors⁵, and of mankind in general. They were supposed to have come to the assistance of the Romans at the lake Regillus (§ 139), and in consequence were honoured with a temple at Rome⁶. It was customary to swear by both; hence the expressions *pol*, *ædepol*, *ecastor*, *mecastor*⁷. I have already said that Hercules was confounded with *Sancus* (§ 285). The origin of his worship at Rome, and the *Ara Maxima* appropriated to it⁸, are traced to the fable of his arrival in Latium, and his friendship with Evander (§ 37). He had many temples; in one of which he was associated with the Muses under the title of *Hercules Musagetes*⁹. By the advice of an oracle, during the raging of a pestilence, *Æsculapius* was sent for to Epidaurus and translated under the form of a serpent; he had a far-famed temple on the Tiberine island¹⁰.

1) Cf. Arnob. adv. Gent. l. 3; Varro de L. L. 4. p. 20. 2) Liv. 8, 9. 3) Cf. Cic. de Legg. 2, 8; Serv. ad Virg. Georg. 1, 498; Gell. 2, 16. 4) Cf. Liv. 1, 2; Tib. 2, 5, 44; Virg. Æn. 12, 794. 5) Cf. Hor. Od. 1, 12, 25, 4, 8, 31. 6) Cf. Liv. 2, 20, 9, 43; Cic. de N. D. 3, 5; Suet. Cal. 22. 7) Cf. Gell. 11, 6. 8) See Ovid. Fast. 1, 581; Prop. 4, 10. 9) Cf. Ovid. Fast. 6, 799; Suet. Aug. 29. 10) Cf. Liv. 29, 11; Ovid. Met. 15, 622, sqq.; Fast. 1, 289; Suet. Claud. 25.

308. The habitations, attributes, and offices of the other inferior divinities (§ 289), are such that it is impossible to draw a defined distinction between them and the superior divinities. Among the rustic divinities¹ are Pan, Faunus, Sylvanus, Terminus, Priapus, Vertumnus, Pomona, Pales, Flora, etc.

Pan* (cf. *πάων* and *πᾶν*), the Lupercus (query *lupos arcens*, cf. Lyceus), also called Inuus, born in Arcadia, and styled *Deus Arcadiæ*, *Tegeæus*, the god of shepherds, haunting mountains and pastures, (Lyceus, Mænalus,) fond of the pastoral reed² (§ 444), and of entrapping nymphs; in form combining that of man and beast, with a red face, horned head, cloven-footed, generally represented with a *syrinx*, or pandean pipe: he was one of the most celebrated of the idols of antiquity, and common tradition³ said that his worship was introduced into Latium by Evander, an Arcadian; the Lupercal and Lupercalia (§ 327) have reference to his worship. Honey and milk were offered to him. Faunus, an original divinity of Italy, resembles Pan; lambs and kids were sacrificed to him⁴. His name Faunus⁵, *a favendo*, seems to corroborate the story⁶ of his having received hospitality from Evander, i. e. the good man: Fauna⁷ was his wife, also called Fatua; her name may be derived from her giving oracles, *a fando*⁸, and thus agreeing in her name and office with Carmenta, the mother of Evander; the name of *Bona Dea* also corresponds to that of *Fauna*, who is feigned to have been the same as *Ops* (*Maia*, *Cybele*), and was called simply *Bona Dea*⁹, her secret name being suppressed. She

* The following beautiful lines might have furnished our author perhaps with the best illustration to this section.

“ Et genus agricolum late sentiscere, quum Pan—
Pinea semiferi capitis velamina quassans
Unco sæpe labro calamos percurrit hiantes,
Fistula sylvestrem ne cesset fundere inusum.”

Lucretius, IV.

was also called *Damia*¹⁰, whence *damium sacrificium* (qu. a *δήμιος*, *publicus*), and *damiatrix* (?). Her worship was of a mystical nature, and celebrated only by matrons (the vestal virgins presiding) in the house of the Pontifex Maximus or of the consuls or prætors, from which men were strictly excluded¹¹: learned men suspect, rather than prove, that they were the same as the mysteries of Ceres or Cybele¹². With Pan and Faunus the satyrs, *Satyri*, *Sylvani*, *Sileni*, are associated.

1) Cf. Virg. Georg. 1. init. 2) Cf. Tib. 2, 5, 27. 3) Cf. Ovid. Fast. 2, 279. 4) Cf. Hor. Od. 1, 4, 11. 1, 17. 3, 18. 5) Cf. Macrob. Saturn. 1, 12. 6) Cf. Wachsm. p. 103. 7) Cf. Lact. 1, 21. 8) Cf. Cruz. Symbol. v. 1. p. 51. 9) Cf. Macrob. 1. c. 10) See Fest. in *Damium*. 11) Cf. Cic. ad Att. 1, 12; pro Mil. 5; de Har. Resp. 17; Tib. 1, 7. 22, 3. 5, 7; Dio Cass. 37, 45. 12) Cf. Arnob. adv. Gent. 1. 5.

309. Sylvanus was also one of the original idols of Italy¹, and held in great honour; to him also being attributed the first advancement in rural social life; delighting in trees (*δενδροφόρος*²), the protector of boundaries, and of all agricultural interests, he is sometimes confounded with Faunus or Pan; sometimes considered as a distinct being, and often as corresponding to Mars Sylvanus. Men only (?) sacrificed to him, offering him grapes and wine, at other times a pig³. His presence and influence were fatal to women newly delivered; and to avert these, as soon as the child was born, three members of the household invoked Intercidona, Deverra, and Pilumnus, and walked thrice round the house; one struck the threshold with a hatchet, another thrust in the end of a pestle, the third swept it with a broom⁴. He was represented bearing a pruning-knife, a pine, or cypress-tree⁵.

1) Cf. Virg. Æn. 8, 600. 2) Cf. Virg. Geor. 1, 20. 3) Cf. Hor. Ep. 2, 1, 143; Epod. 2, 22; Juven. 6, 447. 4) See Aug. de Civ. D. 6, 9. 5) Cf. Virg. 1. c. and Pitiscus in Sylvanus.

310. Of *Terminus* I have already spoken (§ 283). *Priapus*, said by some to have been the son of *Mercury*, by others the son of *Bacchus*, was particularly worshipped at *Lampsacus*, whence *Priapeia*, *Ithyphallus*, *vitreus Priapus*, etc.; and was particularly the god of the country and of gardens¹. His statue was generally of wood, and represented him as a boy obese and misshapen, with a red face, and body usually stained with vermilion; sometimes he appears as a man with shaggy locks and a long beard. In his hand he carries a sickle, or club, or both, sometimes a cornucopiæ, or various fruits in his bosom, and on his head an ivy-wreath. His titles were, *custos*, or *tutor hortorum*, *Mutinus*², *Ithyphallus*, *Lampsacius*, *Hellespontiæcus*. Concerning the practice of sacrificing an ass to *Priapus* in consequence of his love adventures, see *Ovid*, *Fast.* I. 391, VI. 319.

1) Cf. *Hor.* *Sat.* 1, 8; *Virg.* *Georg.* 4, 111; *Catull.* 19 and 20; *Tib.* 1, 4, init. 2) Cf. *Lact.* 1, 20.

311. *Vertumnus*, so named from the revolving of the seasons, from turning the course of rivers, or from bartering and exchanging wares¹, was also an original Italian or perhaps Etruscan idol; he presided over the revolving seasons of the year, and agricultural operations depending on them, also over trafficking; in fact he was the emblem of ever-changing nature, and hence was supposed, as the *Proteus* of the Greeks, to have the power of assuming various forms. He had a temple at Rome in the vicus *Tuscus*². Considered as a rustic divinity he was represented naked from the waist upwards, with a garland of grass round his head, bearing fruit or a cornucopiæ in his hand; at other times, clad, the skin of a wild animal on his shoulders, a pruning-hook in his hand, and a wreath of ears of corn on his head. *Pomona*³, a nymph, was the wife of *Vertumnus*;

she took an interest in the cultivation of gardens and fruit trees: in order to gain her affections Vertumnus assumed the form of an old woman, and then suddenly resumed his real form. She was represented as carrying fruit in either hand and round her brows, clad or otherwise, leaning against a tree, with fruit hanging in a basket on a bough.

1) Cf. Prop. 4, 2, 10; Ovid. Fast. 6, 410. 2) Cf. Hor. Epist. 1, 20, 1. 3) Cf. Ovid. Met. 14, 623.

312. Pales (cf. *parere, palare, πάω*) was the god of shepherds (§ 38) and of fodder, and protected flocks from wild beasts and murrain¹; this idol is sometimes considered as a god, sometimes as a goddess, and confounded with Cybele and Vesta, when associated with the idea of all-producing nature personified. Flora, resembling the Chloris² of the Greeks, was the goddess of flowering corn and shrubs, and blossoming trees and vines³; Zephyrus gave her dominion over all flowers when he made her his wife: it is said that her worship was introduced into Rome by Tatius; the obscenity practised at her festivals, *ludi Florales, Floralia*, was extreme⁴: she was represented as a girl decked with flowers.

Among other idols of the country people, are mentioned Seja, Tutelina, Matura, Deus Sator, Insitor, Occator, Stercucius, Robigus, Messor. To this class also belong the nymphs of the mountains, Oreades; of woods, Napææ; besides Dryades, Hamadryades, and others.

1) Cf. Virg. Georg. 3, 1; Ovid. Fast. 4, 747; Tib. 1, 1, 16, 2, 5, 28. 2) Cf. Ovid. Fast. 5, 195. 3) Ib. 5, 212. 4) Cf. ib. 183 and 331.

313. The term *plebeian gods*, which we find applied to the rural idols, is applicable to the inferior divinities of the lowest class¹, such as Fornax (§ 336), Limentinus, Forculus (foriculus), Mephitis, Cloacina (?), Libitina²,

and Nænia, who were invoked at funerals; Pertunda³, Stimula, Levana⁴, as though *pueros levans* (see § 83), Cunina, who presided over cradles, Nundina (§ 483), Orbona, Laverna, the goddess of thieves⁵; and such as Deus Rediculus, Aius Locutius⁶, Vaticanus, and a thousand others, which, from their absurdity, furnished the early fathers of the church with laughing-stocks⁷. Among the sea-gods were Oceanus, Tethys, Neptune, Amphitrite, Glaucus, Nereus, Leucothea, and Palæmon, (Matuta, Portumnus): their attendants were the Nereids, and Tritons. Divinities supposed to preside over fountains, rivers, and lakes, were called Naiades. Some divinities were also called *inferi* (§ 302), from their habitations, in opposition to those termed *superi*; the particular worship of either differed in some respects: others, from their office of averting evil, *averrunci*, (*averruncantes*⁸), who were termed *ἀποτρόπαιοι* and *ἀλεξίκακοι*, by the Greeks; some, *nuptiales*, such as Jupiter, Juno, Venus, Diana; those invoked by women in labour⁹, *nixi*, (from *niti*, that is, *parere*¹⁰.) In the same rank we must class those presiding over roads, *viales*, *semitales*, and the *terminales*, etc. They were also distinguished as *geniales*, *genitales*, *natalitii*, *tributarii*, etc., for various other reasons. Finally, divinities were distinguished as either public or private; the former worshipped by the whole city or people, the latter only by families, houses (§ 79), or individuals. The Lares and Penates belong to both these classes.

1) See Arnob. l. 4. p. 130, sqq.

2) Cf. Hor. Od. 3, 30, 7.

3) Aug. de C. D. 6, 9; Arnob. l. 4. 4) Aug. de C. D. 4, 11.

5) Hor. Ep. 1, 16, 60. 6) Cf. Liv. 5, 50. 7) Cf. Aug. de C. D. 4, 16.

8) Cf. Cat. de R. R. c. 141; Varro de L. L. 6. p. 81; Liv. 8, 6.

9) Cf. Ovid. Met. 9, 294; Fest. in *nixi dii*.

10) Cf. Virg. Georg. 4, 199.

314. The Lares, according to one account, for there are several, were sprung from Mercury and Lara or La-

runda (λαλη)²; they were the especial guardians of private houses, hence they were called *patrii*³, *domestici*, and *familiares*; but some of these beings were also supposed to protect roads, fields, and cities, hence these were styled *viales*, *compitales*, *agri custodes*; we read of *Lares marini*, *rustici*, and *militares* also. Images of the Lares, representing them of a diminutive form, clad in dog skins, were ranged around the hearth, and thus were styled *genii focorum*, *dii laterani*⁴; *lar* is also used for the hearth and home, and *lararium* for the place where they were kept: the image of a dog, man's faithful companion, was associated with them. The Romans most sedulously honoured them, offering to them wine, incense, and flour, and portions of their meals upon plates⁵ on the calends of May and on festivals, decking them with wreaths of flowers, also offering the first fruits of the harvest, cakes and grapes, sometimes even a lamb, pig⁶, or calf.

1) Cf. Arnob. 1. 3. 2) Ovid. Fast. 1, 616. 5, 135 and 140; Lact. 1, 20. 3) Tib. 1, 10, 15. 4) Cf. Arnob. 1. 4. 5) Cf. Plant. Aulul. prol. v. 23; Cistell. 2, 1, 46, where they are called *di patellarii*; Tib. 1, 1, 37. 6) Cf. Tib. 1, 11, 25; Hor. Sat. 11, 3, 164.

315. The Penates are often confounded with the Lares, and so with the Genii (§ 305); they were named penates¹, as though *penitus*, i. e. *intus stantes*, being kept inside the house, or else from *penu*, victuals, according to some². They differed, however, from the lares, in being worshipped and kept only in the inmost chambers of houses and temples, and nowhere else, though they also were divided into domestic and public: antiquarians distinguish them also by supposing the lares to be of human, the penates of divine origin. Tradition stated that Æneas brought the penates of the Romans into Latium; but what idols these were was a question among the ancients: some supposed them to have been

Jupiter, Juno, and Minerva, to which others added Mercury and Vesta³. It is however certain that all families and cities had not the same penates, but different ones, and that among them were deified heroes. Many things in their worship were the same as in the worship of the lares, and *penates* as well as *lar* was commonly used for home. It is said that in early times infants were sacrificed to the penates: their statues, of various forms, made of wax, wood, or other materials, were kept⁴ in the inner hall, *impluvium*; hence they are styled *dii penetrales*⁵, and also *patrii*, the *γενέθλιοι* of the Greeks, and had other titles.

1) Cf. Virg. *Æn.* 8, 543. 2) Cf. Sen. *Œdip.* 265; Cic. de N. D. 2, 27. 3) Cf. Macrobian. Saturn. 3, 4. 4) Cf. Virg. *Æn.* 2, 512. 5) Sen. l. c.

316. Deified virtues, faculties, diseases, and others of the same genus, remain to be mentioned; these received the honour of temples in consequence of vows made, or on other very trivial occasions¹. Of this class mere Salus, Felicitas, Fortuna, Victoria (who was worshipped in many temples at Rome), Pietas, Libertas, Pax, Concordia, Fides, Spes, Volupia, Quies, Pavor and Pallor², Febris, Pudicitia, Bona Mens, Tempestas, Fortuna Virilis, Fortuna Muliebris. I have stated that Rome itself (§ 39) was worshipped in the city and in the provinces as an idol, so that we may the less wonder at this honour being conferred³ on the senate and on the emperors (§ 324).

I need not state that the idolatry of the Romans was pure superstition, without the slightest tinge of the knowledge of true religion. I have already mentioned the superstitious rites of Isis (§ 306) celebrated by women. Diana (§ 300) was in many respects the idol resorted to for assistance in cases of desperate love and unlawful desires, being invoked under the titles of Thessalis, Lamia⁴, by witches, *magæ*, *sagæ*, *venificæ*,

saganæ, in set forms, with potent spells; the influence of which, it was supposed, could be dispelled by the sound of brazen instruments; her presence was by these incantations supposed to be compelled, and she appeared accompanied by howling dogs. Thessaly was the original and most celebrated seat of this superstition⁵; hence also is to be derived the use of herbs and their juices, and other things in philtres for rousing love, compelling love, appeasing or averting it, and torturing a rival⁶; hence the expressions, *venena Thessala*, *Colchica*, *herbæ nocentes*; *cantus magicus*, *incantare*, *incantamentum*; *cantu deducere Lunam*; *iynx*, *rhombus*, etc. The belief in ghosts was connected with the magic art, and was very prevalent, they being supposed to haunt sepulchres, and to be under the control of incantations⁷. These spirits of the departed, called *umbræ*, *manes*, *lemures*, whence *lemuria* (§ 206), were worshipped with great reverence.

- 1) Cf. Cic. de Legg. 2, 11. 2) Cf. Liv. 1, 27; Lact. 1, 20.
 3) Cf. Tac. Ann. 14, 31. 4) Hor. A. P. 345. 5) See Apul. Met. 1. 2. init.; Luc. 6, 435. 6) Cf. Theocr. Idyll. 2; Virg. Ecl. 8, 64; Æn. 4, 487 and 509; Ovid. Met. 7, 174, sqq.; Am. 23, 1, 2; Tib. 1, 5, 11 and 1, 9, 17; Prop. 4, 5; Hor. Sat. 1, 8, 17; Epod. 5; Od. 1, 27, 21; Juven. 6, 610. 7) Cf. Hor. Sat. 1, 8, 27.

CONCERNING PRIESTS AND THE PRIESTHOOD.

317. The dignity of the Priesthood¹ pertained in the early ages of Rome exclusively to the patricians (§ 130), but afterwards, with the exception² of certain priesthoods, the plebeians were allowed to participate in it, and even then it was conferred on none but the most reputable citizens: yet I do not suppose that the priests at Rome, even in the infancy of the state, formed a distinct class, or a state within the state, as was the case among other nations, and as some of the most learned men have imagined to have been the case at Rome

(see § 103, and the notes). Originally all, with the exception of the Pontifex Maximus, were elected by their own colleges; afterwards the right of electing them was vested in the people (§ 148). They held their offices for life, unless convicted of some heinous offence. The Pontifex Max. consecrated those elected. A feast, called *cæna aditialis*³, celebrated the admittance of any person to the priesthood.

Antiquarians draw a distinction between the Roman and foreign priests, and between those appointed to the service of one idol in particular, and those who were attached to many or to all: their assistants must also not be confounded with the priests themselves. The flamines, the Vestal virgins, the Salii, the Luperci, and the Galli, were restricted to the service of one certain idol each; the pontifices, augurs, haruspices, the quindecimviri (commissioners for performing sacrifices), septemviri epulones, fratres arvales, fetiales, curiones, sodales Titii, and rex sacrorum, performed duties in the service of all idols.

1) From *sacer*, which some derive from *σῆκος*, *septum*, *fanum*.

2) Among which were the Salii, flamines and rex sacrorum. Cf. Cic. pro Domo. 14. 3) Cf. Plin. H. N. 10, 20; Sen. Ep. 95 and 123; Hor. Od. 2, 14 extr.

PRIESTS, NOT RESTRICTED TO THE SERVICE OF ANY ONE IDOL.

318. Numa¹ appointed the first Pontifices²: one only, I think, at first, and four afterwards, exclusively patricians³; as many more of plebeian rank were added A. U. C. 459; Sylla added seven more, and their number thus became fifteen. They were appointed to superintend the public service of the temples and the different priests, and to see that public sacred rites should be duly performed, and private rites kept up⁴:

they also drew up the *fasti* or calendar of days (§ 359) depending on the order of festivals⁵; they also heard cases connected with religion; hence the *jus pontificium*, or court of high priests⁶; their presence was also necessary at acts of *arrogatio* (§ 89), and *confarreatio* (§ 477). The Pontifex Max. was the president of the most honourable college of priests; he was elected by the votes of the people; and until A. U. C. 510, exclusively from the patricians. Pontifices were also distinguished into *majores* and *minores*, and by this latter appellation some suppose that the secretaries, *scribæ*, of the pontifices were distinguished; others, those added by Sylla.

The principal duties of the Pontifex Max. were the consecration of priests and the service of Vesta. Formerly he compiled the annals called *Annales Maximi* and *Annales Pontificum*⁷. In cases connected with religion, he gave sentence according to the verdict of the college, which had great authority, yet an appeal lay against it⁸. He retained his office during his lifetime, and inhabited the palace, *regia*, with the Rex Sacrificulus⁹. I have already mentioned that the emperors appropriated to themselves the dignities of this office (§ 222). Among other things, we are told that formerly he was not allowed to leave Italy¹⁰, and that the touch, perhaps even the sight of a dead body polluted him: the insignia of the pontifices were the prætexta and a pointed cap¹¹.

1) Some say they were called Pontifices from their building the Pons Sublicius (§ 47) or from their sacrificing (*facientes*) on it. Cf. Lyd. 2, 4; Dionys. l. 2. p. 132; Varro de L. L. 4. p. 22.
 2) Cf. Liv. 1, 20. 3) Cf. Liv. 10, 6. 4) Cf. Liv. 1, 20.
 5) Cf. Liv. 9, 46. 6) Cf. Tac. Ann. 1, 10. 7) Cf. Beauf. Incertit. p. 1. c. 4.
 8) Cf. Cic. de Legg. 2, 19, sqq.; Beauf. Rep. R. p. 36. 9) Cf. Suet. Cæs. 46. 10) Cf. Liv. 28, 38 and 44, and Ep. l. 59. 11) Called *galerus*, whence *galeritus*; or *apex*, or *tutulus*; whence *tutulatus*; Varro de L. L. 6. p. 73. See § 454.

319. The Romans who, after the manner of other nations, transacted no important public business without consulting their gods, inquired into their will by observing certain signs; which observation, as well as the right of observing, and the signs themselves, were termed *augurium*¹ and *auspicium*². And, as among the Greeks, a popular superstitious observance of auguries and omens, or of prodigies, phænomena, monsters, and casualties³ in private affairs prevailed, whence a distinction between public and private omens. The number of these was infinite, and the variety of interpretations of them great; omens were collected from animals, plants, water, and fire, etc., from the itching of the feet, the chattering of the teeth, the crackling of flames, from striking the foot against an object, from seeing a wolf, a vulture, an owl, and a thousand other occurrences⁴. In transacting public affairs, not only the augurs but also those in whom the execution of any duty lay (as it was fair that they should) had the right of taking the auspices, and therefore magistrates also enjoyed this privilege⁵. Thus the augurs took the auspices by order of such persons, but the augurs were themselves to decide whether the auspices were favourable or not, and whether duly observed or not (§ 150); if aught was done amiss, as for instance, when magistrates were inauspiciously elected, they reported it to the senate, even when they had not been consulted, in my opinion⁶. The college of augurs, instituted as it is said by Numa, consisted at first of three, then of nine, and at length of fifteen priests. Their chief was termed *augur maximus*, and likewise *magister collegii*. Their insignia are described as being the augur's cope, *læna*, his robe, olive-crown and cap; they held the lituus in their hands⁷.

The augurs were commonly consulted in affairs of importance; and for averting omens or appeasing the

gods they directed sacrifices and other rites to be performed: but their principal employment was during the holding of the comitia (§ 150). They jealously preserved, even during the last stages of liberty, their influence and authority in the state⁸, which was certainly adapted to, if not invented for, the strengthening of the power of the patricians. Hence the dignity of this priesthood was so great as to be sought for by men of the first rank.

1) From *avis* and *gerere* as if *avigerium*, as it is usually explained; cf. Serv. ad *Æn.* 5, 523; Fest. in *augur.* 2) From *avis* and *spicio* as if *avispicium*. 3) Cf. Cic. de Div. 1, 16. 4) Cf. Juv. 13, 62; Hor. Od. 3, 27; Tib. 1, 3; Liv. 21. ult. 22, 1. 5) Cf. Cic. de Div. 2, 36. 6) Cf. Cic. de N. D. 2, 4; de Divin. 2, 35. 7) Cf. Liv. 1, 18; Virg. *Æn.* 7, 187. 8) Cf. Cic. de Legg. 2, 13; de Divin. 1. 39; de N. D. 2, 3.

320. Public auguries were divided into three classes: those taken from the appearances of birds, observations taken from the state of the sky (§ 151), and from chickens, which last had reference only to war. Among the omens drawn from observing the sky, thunder and lightning were classed (§ 151). Birds whose song or voice afforded omens were called *oscines*, as though *obcinentes*; those whose flight afforded them were termed *præpetes* and *alites*. Among the oscines, the jay, the raven¹, the owl², with many others, were placed; and among the alites, the eagle, the kite, and the crow³. It appears, indeed, that some were considered both as oscines and alites, and I do not think that because the appearance of any bird was held fortunate or unlucky therefore its voice was held so likewise⁴; moreover, we learn from Cicero⁵, that some birds seen or heard on the right, others on the left, were held to confirm a prayer. Augurs were in the suite of commanders-in-chief, for the purpose of taking auspices from the consecrated chickens; hence they required an *auguraculum* and keepers of the chickens. (The *auguraculum* was a

moveable building from which the augur made his observations). If the chickens ate greedily, which was called *tripudium*⁶ *solistimum*⁷, it was held an omen favourable to fighting; if they did not eat, it was a bad omen. Soldiers also drew omens from electrical appearances on the points of their weapons⁸, of which little is known for certain: there were also omens styled *peremnia*⁹ observed when about to cross a river, *per amnem*.

The following was the manner of taking the auspices, whether from birds only, or also from the appearance of the sky. After midnight, the weather being fine, the augur having offered sacrifice and uttered prayers on some lofty place, for instance, on the tower of the Capitol, a place usually chosen for taking auspices¹⁰, veiling his head, after that he had with the lituus circumscribed a certain portion of the firmament¹¹, (which action is expressed by *templum capere*¹²), sitting with his face turned towards the south (east?), looked on the portion of the sky he had fixed on with the lituus, and watched for signs to appear in it¹³. Concerning these signs, it is generally believed that those on the left were lucky omens¹⁴, and those on the right unlucky. Who can be surprised that the private inspection of auguries differed from the public as regarded the favourable or unfavourable nature of the omens, and that in both many things were of doubtful import, and many others of disputed interpretation?

1) Cf. Hor. Od. 3, 27, 1 and 11; Phædr. 3, 18, 12. 2) Cf. Ovid. Met. 15, 791. 3) Cf. Phædr. loc. cit.; Virg. Ecl. 1, 18; Hor. 3, 27, 16. 4) Cf. Hor. ib. 16. 5) De Divin. 1, 39. 6) From *terripavium*, according to Cicero, from their food striking the earth; *terram paviente*, when it fell from their beaks; and *solistimum* seems to mean the same thing; see Fest. "solistimum—esse tripudium; quod avi excidit ex eo quod illa fert;" hence also *tripudium sonivium* is explained from the sound of the food falling; cf. Cic. ad Div. 6, 6; Serv. ad Æn. 5, 90; Fest. in *sonivio*. 7) Cf. Cic. de Divin. 2, 34; Plin. H. N. 10, 21. 8) Cf. Cic. de Div. 2, 36; de N. D. 2, 3. 9) Cf. Cic. de N. D. 2, 3; Fest. *peremne*.

10) Cf. Liv. 1, 18, "Deductus in arcem," and Cic. de Off. 3, 16, "in arce augurium acturi essent." 11) Cf. Cic. de Divin. 1, 17. 12) "Caperè tabernaculum" is a different thing (cf. § 160), as we learn from a note on Nieup., who confounded *templum* with *tabernaculum*. 13) Cf. Liv. 1, 18. 14) Cf. Nieup. s. 4. c. 2. § 3; cf. Ovid. Met. 15, 128; Cic. de Div. 1, 7.

321. The Haruspices (from *haruga*, *aruga*, i. e. *victima* and *spicio*¹), differed in their office from the augurs; the latter chiefly inferred from the omens whether the gods were favourable or not to any public undertaking: on the other hand, the haruspices foretold events from phænomena (*prodigia*, *portenta*, *monstra*), whence they were styled *prodigiatores*; they likewise prescribed and undertook to perform anything necessary for averting impending evils, whence the expression *prodigia procurare*². The *ars haruspicina*, or art of interpreting phænomena, was especially studied in the earliest times by the Etrurians; hence this superstitious practice was early introduced into Rome, and in later times not only were youths sent into Etruria to learn the art, but also soothsayers were sent for thence³.

Things which were looked on as *prodigia* were of many kinds, as we remarked concerning auguries and omens, celestial phænomena, and those connected with animals and plants, etc.; and hence they were expiated, *procurata*, in various ways⁴: to these belong the ceremony of building a circular wall, *puteal*, round spots struck by lightning, whence those who performed it were called *fulgura tores*, and those consecrated spots called *bidentalìa* (*bidental*)⁵. But the chief employment of the haruspices, and from which I think it is evident the titles *haruspices* and *extispices* are derived, lay in inspecting victims and interpreting any ominous appearances in them⁶; the terms *exta muta clara*, *arguta*, and the expression *hostia litat*⁷, etc., have reference to their duties.

The object of the offices of the haruspices and of

the augurs was the same, namely, to restrain and overawe the people by the influence of superstitious practices⁸; but the augurs, whose authority was of great weight, in affairs even of the highest importance, were held to be highly honourable, while the haruspices, who merely obeyed the commands of magistrates⁹, and who were mostly foreigners, and ministered to the private superstitious practices of the lower orders¹⁰, being men of a lower rank, were but little respected.

1) Cf. Donat. ad Ter. Phorm. 4, 4, 29. 2) Cf. Cic. de Divin. 1, 45. 2, 63; Varro de Leg. Lat. 6. p. 19; Suet. Aug. 29. 3) Cf. Tac. Ann. 11, 15. 4) Cf. Liv. 28, 11; Plin. H. N. 8, 45; Cic. de Divin. 1, 45. 2, 41; Juven. 2, 121. 13, 62. 5) Cf. Cic. de Divin. 2, 53; Juven. 6, 587; Plin. 2, 52 and 54; Pers. 2, 26; Luc. 1, 606. 6) Cf. Luc. 1, 617. 7) Cf. Ovid. Met. 15, 794. 8) Cf. Cic. de N. D. 1, 26. 9) Cf. Cic. de N. D. 2, 4. 10) Cf. Colum. 1, 8.

322. Concerning the Quindecimviri, we learn as follows: ¹ an old tradition existed, according to Lactantius, Priscus, and others, that Tarquinius Superbus purchased three volumes of the prophecies of the Erythrean Sibyl², in which the Romans believed that many things relating to the fortunes of their state were taught by revelation from the gods; hence these books were consulted on any emergency involving the city in fear or peril; we may learn from Cicero the opinions which the wiser part held on this point³.

These books were at first (A. U. C. 387) intrusted to the care of two officers⁴, afterwards to ten, and at last to fifteen: these examined the Sibylline prophecies, though not without the senate's directions, (doing so was termed *adire* or *inspicere*,) and they took care that whatever was in them directed for the safety of the state, generally sacrifices and public thanksgivings, should be duly performed⁵: from this their office, and from their number, they were called *decemviri* or *quindecimviri*, either with or without the addition of the

words *sacris faciundis*⁶: and as they presided at the annual games in honour of Apollo and Diana, and had the chief management of the secular games, they were also termed priests of Apollo⁷.

The Sibylline books, which were kept in a stone chest under the temple of Jupiter, having perished at the burning of the Capitol (A. U. C. 670), new volumes were composed from the Sibylline prophecies which were collected everywhere for this purpose; but as they contained both spurious and genuine prophecies, they were at various times corrected⁸. Of these, which were burnt by Stilico in the reign of Honorius⁹, some fragments are extant¹⁰, which, however, must not be confounded with the numerous remains of them to be found in Lactantius, *Instit. Div.*, which are forgeries¹¹.

Besides the methods already enumerated, as used by the Romans for inquiring into the will of the gods, we must mention the *sacræ sortes*, tablets inscribed with certain figures kept in the temples of Fortune at Præneste and Antium, *sortes Prænestinæ* and *Antiaticæ*, and publicly consulted, a practice found to exist among other nations¹². There is a remarkable passage in Cicero concerning the *sortes* of the Romans¹³.

1) See Dionys. Hal. 4, 62; Gell. 1, 19; Creuz. Symbol. v. 1. p. 191; Golbery on Tib. 2, 5, 19, and his essay on the Sibyls; Voss on Virg. Ecl. 4, 4—7. 2) Cf. Tib. 2, 5, 67. 3) Cic. de Divin. 2, 54.
 4) Cf. Liv. 5, 13; Dionys. l. c. 5) Cf. Liv. 5, 13. 7, 27. 10, 7.
 6) Gell. 1, 12; Tac. Ann. 6, 12. 7) Cf. Hor. Carmen. Sec. ad init. 8) Tac. l. c. 9) Cf. Rutil. Itin. 2, 51. 10) See Mitscherlich on Hor. C. S. 11) Cf. Burm. on Rutil. l. c.
 12) Cf. Tac. Germ. 10. 13) De Divinatione 2, 41; cf. Suet. Cal. 57.

323. The number of festivals at Rome continually increasing, Epulones were appointed to relieve the pontifices of a share of their labours in arranging the *epula Jovis*, from whence their name, about the year 556¹. These feasts were celebrated on the occurrence of the games of the people, *ludi plebei*, and at other times

during the year, Jupiter, Juno, and Minerva being considered as guests² (§ 290). The *epulones*, whose number at first was three, were afterwards seven, and their number was raised, as some think, by Sylla: hence the terms *epulones triumviri*, *septemviri*, and *septemvir*. Their rank was equally honourable with that of the highest orders of priests, and they as well as the pontifices wore the *prætexta*⁴.

The *Fratres Arvales*, whose origin is traced up to the very foundation of Rome⁵, had the management of the *ambarvalia*, an annual lustration of the fields (§ 145), which consisted in sacrificing a pregnant sow⁶ which had been driven thrice round the fields; and during the sacred rites they sung a song which may be ranked among the most ancient relics of the languages of Italy, on which see Apel's *Metrik*. vol. 2. p. 620, sqq., and other writers. The insignia of the *fratres arvales* were a chaplet of ears of corn, and a white fillet (§ 454)⁷. *Fetiales* or *Feciales* were heralds appointed by Numa, who, when the Romans had been injured by any people, advanced into their territory and demanded satisfaction, declaring war against those who refused it. The former act was termed *res repetere*⁸, and either act was named *clarigatio*⁹. The ceremony of the *clarigatio* in later times was performed in a field near the circus called *ager hostilis*¹⁰. The *fetiales* were consulted both concerning the *jus fetiale*¹¹ for declaring war in due form, and concerning the ceremonies of making alliances and the observance of them¹²; and from this their employment they were called *feciales*, i. e. *fœderales*, as it is supposed: on these occasions the *pater patratus* (head of the order?) swore to the articles, in the name of the whole people: he was styled *patratus*, from *patrare*, i. e. *facere*. They carried sacred herbs, *verbenæ*, *sagmina*, and when sent to form an alliance, a flint for striking the victim¹³.

The Curiones managed the sacred rites of their respective tribes (§ 142): the chief of them was styled *curio maximus*. The sodales Titii were appointed by Titus Tatius to manage the sacred rites of the Sabines; they are supposed to have been intrusted afterwards by Romulus with the direction of the worship paid to Titus Tatius¹⁴.

The Rex Sacrorum, Sacrificus, Sacrificulus, performed certain public sacrifices which formerly were performed by the kings¹⁵; the feast day, *fuga regis*, was also under his care (§ 336.)

- 1) See Liv. 33, 42; Cic. de Orat. 3, 19. 2) Kipping, pag. 250. 3) Liv. and Cic. l. c.; Gell. 1, 12; Plin. Ep. 2, 11; Tac. Ann. 3, 64. 4) Cf. Liv. l. c. 5) See Gell. 6, 7. 6) Cf. Virg. Georg. 1, 345; Tib. 2, 1, 1. 7) Cf. Gell. 6, 7. 8) Liv. 8, 14, *clarigatio* has another sense, *ransom*, "Ut ejus, qui cis Tiberim deprehensus esset, usque ad mille pondo clarigatio esset." 9) Cf. Liv. 1, 32, 4, 30; Cic. de Off. 1, 11, 3, 29; Dionys. Hal. 2, 72. 10) Cf. Ovid. Fast. 6, 205; Dio Cass. 71, 53. 11) Cf. Gell. 16, 4. 12) Cf. Liv. 36, 3; Cic. de Legg. 2, 9. 13) Cf. Liv. 1, 24, 30, 43. 14) Cf. Tac. Ann. 1, 54; Hist. 2, 95. 15) Cf. Liv. 2, 2; Dionys. 4, 74.

PRIESTS OF PARTICULAR GODS.

324. Among the priests whose duties were confined to one god in particular, the Flamines¹ were remarkable for this peculiarity, that they were named after the gods they severally served². The most ancient and chief were the Flamen Dialis, Martialis, and Quirinalis; among the inferior the Flamen Furinalis³, Pomonalis, Floralis, Portunnalis. The Flamen Dialis, whose dignity and privileges were the greatest, was also burdened with the most numerous ceremonies, some of them of a disagreeable nature⁴. He enjoyed the privileges of entering the senate, and of being preceded by a lictor, but he was interdicted spending a night out of the city, riding on a horse, taking an oath⁵, touching a corpse, raw meat, ivy, beans, and she-goats. The flaminia, his

wife, *uxor flaminica*⁶, was likewise bound to the observance of some ceremonies, since she acted as her husband's assistant in some of his duties; and on this account, should his wife die, he resigned his office. His particular office was to sacrifice to Jupiter. Augustus restored this priesthood, which had been disused from A. U. C. 600 to his time. The Cæsars, when deified, had their own flamines, a practice introduced by Augustus, or perhaps by Julius Cæsar⁷ (§ 307).

1) The ancients say that this word is derived from the thread, *filum*, with which their heads were bound; at first, *filamines*; then, from rapid utterance of the word, *flamines*. Cf. Varro de Legg. Lat. 4. p. 22; Fest. in *flamen*; cf. *lanigeri apices*; Æn. 8, 664, and Serv. in loco; also Ovid. Fast. 2, 21. 2) Cf. Cic. de Legg. 2, 8. 3) Cf. Varro 4, 15. 6, 3. 4) Cf. Gell. 10, 15; Liv. 5, 52. 5) Cf. Liv. 31, 50. 6) Ovid. 2, 27. 7) See Suet. Cæs. 76; Cic. Phil. 2, 43.

325. Numa appointed the Vestals¹, priestesses of Vesta, at Rome²; Servius Tullius increased their number to six: their chief was called *præses vestalis*, or *virgo maxima*³. The Pontifex Max., when a Vestal was to be elected, chose twenty girls of tender years, of faultless forms and good family. From among these one was chosen by lot at the comitia: this was called *capere*, and the Vestal was said to be *capta, amata*⁴. She who was chosen for the office of a Vestal was bound for thirty years and devoted to celibacy; at the expiration of this time they were allowed to quit the priestess's office, and also to marry.

Among the duties of the Vestals, the principal was to preserve the sacred fire⁵, *focus publicus*. If through their want of care it was suffered to go out, the Pontifex Max. chastised the guilty Vestal with a scourge⁶; the fire was rekindled after the goddess had been appeased by prayer, as it was annually on the calends of March⁷, by kindling a flame by the friction of two pieces of wood⁸, as practised by savage nations. The law or-

dered that she who should be convicted of losing her honour should be interred alive⁹ in the *campus sceleratus*, which Livy supposes to have derived its name from this crime¹⁰; he also states that the seducer was beaten to death by rods by the Pontifex Maximus¹¹. The Vestals claimed among their privileges, exemption from paternal authority (§ 86), to be preceded by a lictor, a private seat at the public shows¹², and the power of delivering from punishment any condemned malefactors they happened to meet, etc. Their dress and insignia were a white dress, a white fillet, and the *suffibulum*¹³.

1) Cf. Dionys. 2, 65, sqq.; Gell. 1, 12; Plut. in Numa. 2) Liv. 1, 20. 3) Suet. Dom.; see Kipp. p. 240. 4) Cf. Gell. 1, 12. 5) Cf. Cic. de Legg. 2, 8. 6) Liv. 28, 11: "Ignis in æde vestæ extinctus cæsaque flagro est Vestalis, cujus custodia noctis ejus fuerat, jussu P. Licinii, Pontificis." 7) Ovid. Fast. 3, 143. 8) Cf. Fast. in ignis, ibique not.; Dacier, Plin. Hist. N. 16, 40. 9) Liv. 8, 15, 22, 57; Juven. 4, 10. 10) Liv. 8, 15. 11) Ib. 22, 57. 12) Suet. Aug. 44. 13) Juven. 4, 9, "vittata sacerdos;" Prop. 4, 12, 53; Fest. in *suffibulum*; Varro de L. L. 5. p. 48.

326. The Salii, so called from *salire*, priests of Mars, were appointed at Rome by Numa on the occasion and for a commemoration of the falling of the *ancile*¹ or small shield from heaven, which, being looked on as a pledge of dominion, was preserved (in the temple of Vesta?), together with eleven others made by a certain Mamurius, after the exact pattern of the original one². On the calends of March, they carried these *ancilia* through the city, armed, and performing a particular dance, in which all imitated the movements of one, and singing to the sound of music; to which actions the terms, *arma movere, condere*, are to be applied, and the words *præsul, amtruare, redamtruare*³, *carmen saliare* (§ 409), *axamenta*⁴, *Mamurius*, refer. Feasts closed the procession of the dance, termed *dapes saliares*⁵. The Salian priests at first were twelve; to these as many more were added by Tullus Hostilius⁶. Afterwards, the

former, from their dwelling-place, were called Palatini, and the latter Collini: moreover they were distinguished by other names little known. The head of the order was named Magister Saliorum: there is a distinction also made between Præsul and Vates. They were chosen from among the patricians only, and it was required that both their fathers and mothers should be alive at the time⁷. The priesthood itself was considered most honourable⁸. They wore an embroidered tunic and pointed cap⁹.

- 1) Cf. Ovid. *Fast.* 3, 373; Dionys. 2, 71; Virg. *Æn.* 8, 664.
 2) Virg. *Æn.* 8, 285: "Tum Salii ad cantus, incensa altaria circum, Populeis adsunt evincti tempora ramis." 3) Cf. Fest. in *redentruare*, cum præsul ampiruavit,—ei referuntur invicem iidem motus." And the corrupt verse of Lucilius found in this author refers to this practice: this verse Scaliger reads thus: "Præsul ut amtruat, inde et vulgu' redamtruat olli." 4) See Ovid. 387, sqq.
 5) Cf. Hor. *Od.* 1, 37, 2. 6) Dionys. 3, 32. 7) Cf. Cic. *pro Domo* 14. 8) Cf. Juven. 2, 125. 9) Cf. *id.* 8, 207.

327. The Luperci, priests of Pan (§ 308), so called from the Lupercal, his cavern, in the Palatine mount, celebrated the Lupercalia on the 15th of February, naked¹, except that they wore a girdle of goat-skin; a wanton troop, roaming through the whole city, striking those they met with a thong, particularly women, who, supposing that they would thus more probably become mothers, offered themselves to their blows². Before the procession they sacrificed a she-goat to Pan, after the ceremony a dog to him³. Tradition says that this superstitious practice was introduced by Evander, an Arcadian⁴, from a custom of his native country, and preserved by Romulus; and the priests were divided by him into two classes, the Fabii and the Quintilii⁵. The priesthood, so greatly repugnant to our morals, was yet held honourable⁶. The Luperci Julii were instituted in honour of Julius Cæsar during his life⁷.

- 1) Cf. Virg. *Æn.* 8, 663: "Exultantes Salios nudosque Lupercos." Ovid, *Fast.* 2, 357 and 379. 2) Cf. Juven. 2, 142. 3) Cf.

- Ovid. Fast. 2, 361. 4) See Ovid. Fast. 2, 269, sqq.; Liv. 1, 5.
 5) Cf. Ovid. 375; Prop. 4, 1, 25. 6) Cf. Cic. Phil. 2, 34
 7) Cf. Suet. Cæs. 76.

328. The rites which we term enthusiastic, from *entheia*, phrensied, so wonderfully relished by the Greeks, began to be more numerous and more freely practised at Rome under the Cæsars; in former times they were either prohibited, as the Bacchanalia¹, or (their license being restrained, so far as seemed advantageous to the good of the state) were tolerated merely. Among these enthusiastic rites were those of Bellona, whom her priests, called *Bellonarii*, appeased with their own blood², tearing themselves with knives: but, above all, the rites of Cybele were celebrated in a remarkable manner; these were transferred, together with the priests, who were always Phrygians, to Rome from Phrygia, the most ancient seat of that superstition³ (§ 306). They were likewise called *Curetes* and *Idæi Dactyli*, names whose meanings are variously given, and likewise *Corybantes* (whence *κορυβάω*), though some distinguish between these and the rest; but the *Galli*, whence *Archigallus*, were so called from a river of Phrygia⁴, of which those who drank became phrensied so as to mutilate themselves, according to tradition, and they actually did so; to which the expressions *culter lapideus*, *testa Samia* refer⁵. The *Galli*, armed, with feigned fury, and blending the clashing of musical instruments with their wild songs, *galliambi*, wandered through the city, and carrying the statue of the goddess, celebrated the festival of Cybele⁶, and, after the manner of monks, collected money for the *Magna Mater*⁷. The *Cerealia* and rites of *Bona Dea* are to be classed among these mystic rites. We shall not mention the priests of every individual god, as being of less importance, such as the *Pinari* and *Potitii*⁸.

1) See Liv. 39, 9, 12, 41. 2) Cf. Tib. 1, 7, 49, sqq.; Juven. 4, 123, 6, 511; Luc. 1, 565; Lact. 1, 21. 3) Cf. Dionys. 2, 18.

- 4) Cf. Ovid. Fast. 4, 361. 5) Cf. Cat. 63, 5; Juven. 6, 513.
 6) Cf. Lucr. 2, 618; Ovid. Fast. 4, 181. 7) Ovid. ib. 350, and
 de P. 1, 1, 39. 8) Cf. Liv. 1, 7, 9, 29; Virg. Æn. 8, 268 and
 281.

ASSISTANTS AT SACRIFICES.

329. Among the assistants and attendants at sacrifices, we read of the *Victimarii*¹, who were different from the *victimarii* who sold victims; the *popæ* (*πέπτω*, *popina*), who struck the victim at the altar²; also the *popinari*³, who sold victims and baked cakes; the *cultrarii*, who cut the throat of the victim when struck⁴, or when it was to be sacrificed, with a knife; the *fictores*⁵, who moulded victims of wax, dough, and other substances, for the poorer sort of worshippers; the *æditui*, keepers of temples, often met with on coins, and by the Greeks called *νεωκόροι* and *ναοφύλακες*: the *tibicines*, *tubicines*, and *fidicines*, who blended music with the sacred rites⁶. The priests also employed the services of boys and girls, either their own children or free-born children, called *camillos* and *camillas*, whom they selected in their room⁷. The Flamen Dialis and the Vestal Virgins only had a lictor to precede them as a mark of dignity.

- 1) Cf. Liv. 40, 29; Val. M. 1, 1, 12. 2) Cf. Suet. Cal. 32. 3) Cf. Prop. 4, 3, 62. 4) Cf. Suet. l. c.; Ovid. Fast. 1, 347. 5) Cf. Cic. pro Domo 54. 6) Cf. Liv. 33, 42; Ovid. Fast. 6, 657, sqq. 7) Cf. Varro de L. L. 6. p. 71 and 72; Fest. in *flaminus*: Macrob. Saturn. 3, 8.

CONSECRATED VESSELS AND PLACES.

330. The word *sacrarium*¹ applies to a place dedicated to the worship of any idol: among such places were *fana* (from *fanus*, sacred, whence also comes *pro-*

fanus), *templa*², *delubra* (*diluo*), *ædes*; terms formerly distinguished from one another by being applied to places dedicated and consecrated by different rites³, although by writers these words have been used to express the same thing: nor is it easy to make a distinction⁴, except that in latter times *templa* was applied to buildings of greater dimensions than the *ædes* and *ædiculæ*. Besides buildings, groves also, *luci*, either adjoining sacred edifices or apart from them, are to be reckoned among things consecrated: and under this head are to be classed *sacraria* (called *sacellæ* or *ædiculæ*⁵), chapels dedicated to the private worship of the lares⁶ and penates (§ 314, 315.)

There was a profusion of temples at Rome: the different parts of such buildings were the *area*, or court; *favissæ*, crypts or cellars⁷; *vestibulum* and *porticus*, the porch; *prodomus* and *opisthodomus*, the front and rear; and within, *cella*, the chapel of the idol with his statue; and *ara* (*altaria*), the altar for libations and burning incense on (*suffitio*); *adytum* (*penetræle*), the sanctuary. In the court were usually several altars, generally made of marble, for sacrifices and for burning the victim on. Among the sacred vessels were *focus*, *thuribulum*, and *ucerra*, censers; *guttus*, the ewer; *patera*, the laver; *lanx*, the dish; *capis* (*capeduncula*, *capedo*), pitchers; *præfericulum*, the basin borne before the priest; *malleus*⁸ and *securis*, to strike the victim with; and *seces-pita*⁹, a long knife.

1) Cf. Cic. pro Mil. 31; Mart. 7, 72, 3; Liv. 39, 9 and 13.
 2) Templum is explained by old writers as a place "unde in omnem partem videri (templari, tueri) possit;" (see Fest. in *contemplari*; Varro de L. L. 6. p. 2.); and this explanation is strengthened by such expressions as *cæli templa*, *Parnasia*, *Acherusia templa*, and *templum capere* (§ 320), with others. 3) Cf. Beauf. v. 1. p. 54.
 4) Cf. Liv. 10, 37; Serv. ad Æn. 2, 225; Macrob. Sat. 3, 4.
 5) Cf. Cic. ad Div. 13, 2; Suet. Aug. 5. 6) Whence *lararium*, Lampr. Alex. Sev. 29 and 31. 7) Cf. Fest. in *favissæ*; Gell. 2, 10. 8) Cf. Ovid. Met. 2, 625; Suet. Cal. 32. 9) Cf. Suet. Tib. 35.

SACRED RITES.

331. We shall here mention, as sacred rites, prayers and vows, *consecratio*, *devotio*, *execratio*, *juramentum*, *lustratio*, *sacrificia*. Prayers *preces* were accompanied either by *adoratio* or *supplicatio* (*supplex*, *supplico*). *Adoratio* consisted in bowing the body, and kissing and extending the hand; *supplicatio*, in kneeling and embracing the statue of the god¹. We hear of matrons wiping the altars with their hair on occasions of public mourning². Horace³, Persius⁴, Juvenal⁵, Ovid⁶, and others, criticise and deride the folly and impious superstitions of the worshippers. It was customary for the appointed formula of prayers to be repeated by magistrates, the priest dictating the words; whence the terms *præire in verba*, *sacramentum*, and the like⁷.

Of public prayers, *supplicationes*, some were for imploring favours, others for offering thanksgivings; they were both performed sometimes with simple rites, at other times with great pomp. On these occasions were held the *epulæ sacræ*⁸; around tables, *pulvinaria*, covered with choice viands, were ranged the statues of the gods on couches, and of goddesses on chairs (*sellæ*); this was called *lectisternium* or *sellisternium*⁹, and these were either on ordinary or extraordinary occasions. Moreover, they were held not in temples only, but in private houses likewise, with the greatest solemnity and profusion. The management of the *lectisternia* from the year U. C. 557, was intrusted to the *epulones* (§ 323). Livy (XXII. 1.) mentions a *lectisternium* by senators¹⁰.

Evocatio was a peculiar form of prayer, by which the Romans besought the tutelary god of a hostile town to leave it and transfer himself to Rome.

1) Lucret. 5, 1197:—

“Nec pietas ulla est velatum sæpe videri
Vertier ad lapidem, atque omnes accedere ad aras,
Nec procumbere humi prostratum, et pandere palmas
Ante deum delubra, nec aras sanguine multo
Spargere quadrupedum, nec votis nectere vota.”

Cf. Plin. H. N. 28, 2; Liv. 26, 9; Suet. Vesp. 7; Vit. 2. 2) See Liv. 3, 7, 26, 9; cf. Apul. Met. 1. 6. p. 119. 3) Hor. Ep. 1, 16, 59. 4) Pers. 2, 6, 5, 179. 5) Juv. 6, 511, sqq. and 565. 6) Fast. 5, 675, sqq. 7) Cf. Cic. pro Domo 52; Plin. 28, 2; Liv. 42, 28. 8) Cf. Liv. 5, 13, 22, 1. 9) Cf. Hor. Od. 1, 37, 3; Prop. 4, 6, 1; Tac. Ann. 15, 44; Cic. Cat. 3, 10: “Quoniam ad omnia pulvinaria supplicatio decreta est, celebrate illos dies cum conjugibus et liberis vestris.” 10) Cf. Liv. 5, 21; Macrob. Saturn. 3, 9; Plin. H. N. 28, 2.

332. By vows, *vota*, usually joined to prayers, are meant promises made to the gods, on condition of their listening to the prayer, and thus rendering the person praying *voti compotem*. These vows were discharged either by words, or by the things promised, and frequently a description in words, or a painting of the peril and misfortunes of the person who implored the god's assistance and was saved, were suspended in the temples; these were called *tabulæ votivæ*¹. *Voti compos*, *voti reus*, *damnatus voti*², are among the forms of expression. This dedication of things and places to the honour of, and as it were giving them into the power of the gods, was called a consecration of them; and expressed by *dicare*, *dedicare*, *sacrare*, *consecrare*, etc. One species of it, which consisted in voluntarily sacrificing one's life to the Dii Manes was called *devotio*³, and thereby enemies also were devoted to destruction, and this was properly called *execratio*⁴. On the occasion of any one's clearing himself of perjury, he generally used an oath, *juramentum*, long held to be a most sacred obligation among the Romans⁵; in doing which the altar of the god by whom any one swore was laid hold of, whence *jurare aram*⁶, *tacta sacra*. Festus quotes the following form of swearing by Jupiter: *Si sciens fallo, tum me Diespiter salva urbe arceque, bonis*

ejiciat, ut ego hunc lapidem; hence the expression, *Jovem lapidem jurare*⁶; for others, see Livy, XXI. 45. XXII. 53. *Lustratio* consisted in sacrificing a victim which had been led round the object or place to be purified, with the intention both of appeasing and imploring the god, and was done either publicly or privately (§ 145): lustrations were those of the people, of the city⁹, of fields, *ambarvalia*, of villages, of an army, of a fleet, etc.

1) Tib. 1, 3, 27: "Nunc dea, nunc succurte mihi; nam posse mederi, picta docet templis multa tabella tuis." Cf. Cic. de N. D. 3, 37; Hor. Od. 1, 5, 13; Juven. 12, 27. In another place, "picta tempestas," id. 14, 300; 2) Cf. Virg. Æn. 5, 237; Macrob. 3, 2. 3) Liv. 5, 41. 7, 6. 8, 9. 10, 28. 4) Cf. Sall. Cat. 22; Liv. 26, 25; Tac. Ann. 4, 15. 5) Cf. Liv. 1, 21. 3, 20; Cic. de Off. 3, 30 and 31. 6) Cf. Juven. 3, 144. 7) Fest. in *lapidem*; cf. Polyb. 3, 25. 8) Cf. Cic. ad Div. 7, 1; Gell. 1, 21. 9) Cf. Tac. Ann. 13, 24; Hist. 1, 87.

333. Since the religion of the country had been blended with that of Greece it was to be expected that many of the sacrifices of the Romans should be the same as those of the Greeks. The common opinion, even of the ancients, was, that all sacrifices at first were bloodless¹: and this seems borne out by the common expressions applied to them, *θύω*, *thus*, *suffitus*, *odores*, *adolere*, etc. It is well known that different gifts and various kinds of victims were offered to different gods, according to their nature and power: and not only were peculiar animals reserved for particular gods, as the bull to Jupiter, the pig to Ceres, the he-goat to Bacchus, the cock to Æsculapius, the foal of an ass² to Vesta (§ 288); but also things of peculiar colours were held proper to different ranks of gods, as white things to the *superi*, black to the *inferi*³. There was the same variety in the kinds of things of which sacrifices consisted; thus among the Romans the usual victim was a pig⁴. So that there was an endless variety in these things, depending not only on times and national

customs, but also on places, and to be met with even in the manner of slaying the victim, and to be remarked in the custom of striking the victim with its head held up, if to the *superi*, and with its head depressed, if to the *inferi*. However, the following remarks apply to all sacrifices in general: He who was about to offer one⁵, clad according to custom in white⁶, sometimes also crowned with the leaves of the tree dedicated to the god he was worshipping, with clean hands, drew nigh to the altar. The *popa* (§ 329) led up the victim adorned with garlands, fillets⁸, and wreaths, sometimes with gilt horns, but always without blemish, select, and never having worked: when it stood at the altar, the priest bade the unhallowed stand back, *procul este profani*, and those present to refrain from speaking, or at least from ill-omened words, *favete linguis*⁹. Then followed the consecration of the victim: during prayers and libations, its forehead as well as the altar and knife, *secespita*, being sprinkled with salt and meal mixed, *mola, immolare*. Afterwards it was slain¹⁰, and they caught the blood that flowed from its neck, and with it sprinkled the altar¹¹; when it had been cut open, the *haruspex* examined it. Portions cut off, *prosecta, prosicia*¹², being cleansed, were laid upon the altars, and after a repetition of the libation and prayers, were burnt. The common use of sacred herbs, such as *verbena*¹³ is frequently mentioned, either for burning, or for decorating the altars¹⁴. On the use of the *tibia*, see Ovid. *Fast.* VI. 657; Suet. *Tib.* 70. The people having been dismissed, feasts closed the ceremony¹⁵.

1) Cf. Ovid. *Fast.* 1, 337; Porphyr. *de Abstin.* 2, 5; see Bos. *Antiq. Gr.* p. 1. c. 6; Creuz. *Symbolik* v. 1. p. 172. 2) Cf. *Lac-tant.* 1, 21. 3) Cf. *Lucr.* 3, 52; *Tib.* 3, 5, 33. 4) Cf. *Virg.* *Æn.* 8, 641. 5) The usual expressions are *sacrum* or *rem sacram facere*, or simply *facere* and *operari*, as *ἔρδειν* among the Greeks. Cf. *Virg. Georg.* 1, 339; *Tac. Ann.* 2, 14. 6) Cf. *Tib.* 2, 1, 13; *Pers.* 2, 40. 7) The difference between *victima* and *hostia* is thus stated, Ovid. *Fast.* 1, 335: "Victima, quæ dextra ce-

cidit victrice, vocatur, Hostibus amotis hostia nomen habet." 8) Cf. Virg. Georg. 3, 487. 9) Cf. Aristoph. Nub. v. 264; Cic. de N. D. 1, 45; Hor. Od. 3, 1; Ovid. Fast. 1, 71; Tib. 2, 1. 11, 2, 2, 1. 10) The primitive sense of this word seems to be preserved in the expressions *mactare honoribus, triumpho, infortunio*, etc., where it means to increase, as is proved by its derivation from *magis* and *augeo*; cf. Serv. ad Æn. 4, 57. 11) Cf. Lucret. 5, 1200; Ovid. Fast. 2, 655; Hor. Od. 4, 11, 6: "Ridet argento domus, ara, castis vincta verbenis, avet immolando spargier agno." 12) Cf. Juven. 10, 355. 13) Cf. Don. ad Ter. Andr. 4, 3, 11; Ovid. Fast. 1, 381. 14) Cf. Hor. Od. 1, 19. 13, 4. 11, 6; Terent and Ovid. l. c. 15) Cf. Ovid. Fast. 2, 657.

OF THE FESTIVALS.

334. Festivals, *festæ* or *feriæ*¹, were very numerous among the Romans, several sometimes occurring on the same day: they were either *stativa*², held on fixed days, such as the *Agonalia*, *Carmentalia*, *Faunalia*, *Lupercalia*, or else *conceptiva*, of ordinary occurrence, yet at uncertain periods, and therefore requiring to be appointed beforehand. The *imperativa* were distinct from both. The *nundinæ* (§ 358) must also be reckoned among the festivals. The *Feriæ Latinæ* (§ 204) and *Compitalia*³ are to be placed among the moveable, *conceptiva*; the *feriæ novendiales*⁴ among the *imperativa* or those appointed by the magistrates. The *fasti* (*fas, nefas, nefastus*), also called *calendaria* and *fasti calendares*, besides the *feriæ* or holidays (another method of distinguishing days, to be noticed § 359), contained the rising and setting of the principal constellations. The *fasti consulares*, named from the consulships, were of a different nature, and contained records of magistrates, consuls, dictators, *interreges*, and of public events; they are not to be confounded with the *annales Pontificum* (*annales maximi*); the *Pontifices* had from the earliest period the duty of composing both kinds of *fasti* (§ 271 and 318). Ovid, in his poem on the *Fasti*, has with exquisite skill treated of the *fasti* of the first

kind. Entire years and fragments of both are extant, which have often been published, and illustrated by commentators.

- 1) Perhaps derived from *victima ferienda*; cf. Festus in *feria*.
 2) Cf. Ovid. Fast. 2, 665. 3) Varro de L. L. 5. p. 50; cf. Gell. 10, 24; Plin. 36, 27. 4) Cf. Liv. 1, 31; Cic. ad Q. Fr. 3, 5.
 5) See Thes. Græv. vol. 8 and 11; Creuz. 7.

A CALENDAR OF THE FESTIVALS, ARRANGED
 ACCORDING TO THE ORDER OF THE
 MONTHS AND DAYS OF THE YEAR.

January.

335. 1. The first day of the year, which originally began in March. The festival of Janus (§ 287). Also the day on which the consuls entered on their offices, the consular procession, sacrifice in the Capitol. Cf. Ovid. Fast. I. 75; Tib. 3, 1, 3. Presents, new year's gifts, *strenæ*, were usually interchanged. The derivation of the word *strena* is variously explained, as is likewise the introduction of the practice. See Festus on *strena*; Symm. Epist. 10, 35. It is to be remarked that all calends of months were dedicated to Juno, all ides to Jupiter. Ovid. Fast. I. 55.

9. The *Agonalia* or *Agonia*, also dedicated to Janus; *agonium*, *agonia*, *circus agonalis*. Cf. Ovid. I. 331. V. 721; Fest. in *agonium*.

11. The *Carmentalia*, to the honour of the prophetic nymph Carmenta, the mother of Evander (§ 308). She had another festival on the 5th. Ovid. I. 617.

30. The *Festum Pacis*, instituted by Augustus.

31. The festival of the Penates. (§ 315.)

Also in this month the festival called the *feriæ Sementivæ*, on their sowing their lands, for obtaining an abundant harvest. Cf. Varro de L. L. V. p. 49: they were held in the fields. Ovid. I. 658; Varro de R. R. I. 2.

February.

336. 1. The festival of Juno Sospita, in commemoration of the dedication of her temple. Liv. X. 14. XXII. 1; Ovid. II. 55; on the same day, the *Lucaria*, (*lucus, asylum, Lupercal*). Ovid. II. 67.

5. Augustus named *Pater Patriæ*.

13. The *Faunalia*, dedicated to Faunus and to the rural deities (§ 308). Ovid. II. 193: also on the fifth of December. This was an unlucky day, *dies ater*, on account of its being the anniversary of the murder of the Fabii (ib. 195).

15. The *Lupercalia*, to Lycean Pan (§ 327).

17. The *Quirinalia*, in honour of Romulus (§ 286). Ovid. II. 475; also the *festum stultorum*, who celebrated the *Fornacalia*, in the evening (ib. 513).

It is uncertain on what day before the *Terminalia*, the *Feralia*, for appeasing the manes, were held (ib. 34 and 533, and V. 486). *Feralis* is derived from *ferendis epulis*; we read of *feralia munera, ferale tempus*, etc.

22. The banishment of the kings. Ovid. II. 685; cf. V. 728.

23. The *Terminalia*, to Terminus. Ovid. II. 50. (§ 283.)

In this month also were held the *Fornacalia*. Ovid. II. 519; Plin. XVIII. 2, in commemoration of the first bread baked; they were held on some day generally before the *Quirinalia*, and were dedicated to the goddess Fornax: also at the end of the month, which formerly was the end of the year, the *Februa* were held, when the city was lustrated. Ovid. II. 19. V. 423; see Festus on *Februarius*; Juven. II. 157. To these practices the following words refer, *februo*, (*purgo, lustrō*), *februatio, Februarius, Deus Februus*; Macrobian. I. 13.

March.

337. 1. In the time of Romulus the first day of the year. Ovid. III. 75 and 135: the festival of Mars, celebrated by the Salii (§ 326), unlucky for marriage until the ancilia were replaced in the temple (ib. 393). On the same day the *Matronalia*, also sacred to Mars (ib. 170 and 259).

6. The festival of Vesta (§ 288.) Ovid. III. 417). This was the day on which Augustus assumed the pontificate (ib. 19).

7. The festival of Vejovis (§ 290).

14. The *Equiria*, horse races to the honour of Mars: also held on the 27th February, and at other times. Ovid. II. 859. III. 519.

15. The festival of Anna Perenna¹. The anniversary also of the assassination of Julius Cæsar (ib. 697).

17. The *Liberalia*, to Liber, who has been confounded with Bacchus (§ 303). Ovid. ib. 513; these were very different from the Bacchanalia prohibited at Rome, A. U. C. 567. On these festivals the *toga libera* (§ 483) was given to children (ib. 771).

19 to the 23rd. *Quinquatria*, festivals of Minerva, so called from their lasting five days (ib. 809); on the last day was held the *Tubilustrium*, or lustration of the trumpets (ib. 849).

25. The *Hilaria*, not mentioned by Ovid, celebrated in honour of Cybele (§ 306). Macrob. I. 21; Lampr. Alex. Sev. 37; Vopisc. Aurel. 1. Some say these festivals were part of that of the *Lavatio Matris Deum*, which Ovid unites to the *Megalesia*. IV. 337.

1) Ovid. Fast. 3, 523 :

“ Idibus est Annæ festum geniale Perennæ,
 Haud procul a ripis, advena Tybri, tuis.
 Plebs venit, ac, virides passim disjecta per herbas,
 Potat, et accumbit cum pare quisque sua.
 Sub Jove pars durat ; pauci tentoria ponunt ;
 Sunt, quibus e ramis frondea facta casa est ;

Pars sibi pro rigidis calamos statuere columnis :
 Desuper extensas imposuere togas.
 Sole tamen vinoque calent, annosque precantur,
 Quot sumunt cyathos, ad numerumque bibunt.
 Invenies illic, qui Nestoris ebibat annos,
 Quæ sit per calices facta Sibylla suos.
 Illic et cantant, quidquid didicere theatris,
 Et jactant faciles ad sua verba manus :
 Et ducunt posito duras cratera choreas,
 Cultaque diffusis saltat amica comis.
 Cum redeunt, titubant, et sunt spectacula vulgi,
 Et fortunatos obvia turba vocat.
 Occurrit nuper (visa est mihi digna relatu)
 Pompa : senem potum pota trahebat anus."

April.

338. 1. A sacrifice to Venus, to whom the month was sacred, adorned with flowers and myrtle-leaves. Ovid. IV. 133. Incense was offered to Fortuna Virilis; milk and poppies to Venus Verticordia.

4. The *Megalesia*, or *Ludi Megalenses* (§306). Ovid. IV. 181; cf. Prud. Hymn. X. 155.

9. Games in honour of Ceres. Ovid. *ib.* 393.

15. The *Fordicidia*, instituted by Numa, Ovid. IV. 629. The word is formed from *forda*, a pregnant cow, from *ferendo*. On this day also the Vestalis Maxima burnt calves for cinders to purify the people with at the *Palilia* (*ib.* 637).

21. The anniversary of the foundation of Rome (§ 38). The *Palilia*, festival of Pales, the goddess of the country (§ 312). Ovid. IV. 721: Prop. IV. 1, 19.

23. The festival called *Vinalia*, on occasion of consecrated vineyards to Jupiter (Ovid. IV. 863.) On this day also harlots sacrificed to Venus (*ib.* 865).

25. The *Robigalia* sacred to the god or goddess of blight, *Robigo* (cf. Serv. ad Virg. Georg. 1, 151), for averting mildew, blights, etc. Ovid. IV. 905.

The *Cerealia*, mystical festivals of Ceres, celebrated by matrons, were, perhaps, held on the nineteenth. Cf. Liv. XXII. 56. XXX. 39; Cic. pro Balbo 24; Plaut. Aulul. II. 6, 5; Fest. in *Græca sacra*; Ovid. IV. 393.

May.

339. 1. A festival to the Lares, and the nocturnal mysteries of Bona Dea. § 328. Ovid. V. 129 and 148.

9. The *Lemuria* (to the *lemures*, ghosts, otherwise called *remures*, from the murder of Remus¹), held for appeasing the departed spirits of relatives. Ovid. V. 421 and 483.

12. Games to Mars (ib. 597).

15. A festival of Mercury, celebrated by men of business particularly. Ovid. V. 663. On this day the Vestal Virgins cast the *argei*, earthen figures of men, from the Pons Sublicius (cf. § 147) into the Tiber (ib. 621.)

23. A festival of Vulcan (§ 293), *Tubilustria*, Ovid. V. 725).

25. Commemoration of the consecration of the temple of Public Good Fortune (ib. 729).

June.

340. 1. A festival to the goddess Carnea (*dea carinis*). Ovid. VI. 101; also of Juno Moneta (ib. 183); and of Mars, beyond the walls (§ 292). Ovid. VI. 191; also a festival to Tempestas (ib. 193).

4. A festival to Bellona (§ 292). Ovid. VI. 201.

5. A festival to Deus Fidius (§ 285). Ovid VI. 213.

8. Games celebrated by fishermen (ib. 237). This day was likewise consecrated to Bona Mens (ib. 241).

10. The *Matralia* to Mater Matuta; a festival also to Fortuna Virilis, and to Concord. Ovid. VI. 479. 569. 637.

13. The lesser *Quinquatria*, in memory of the re-introduction of music into the city (ib. 651).

16. Fixed for clearing the litter and dung from the temple of Vesta (ib. 713).

19. A festival to Summanus (§ 302). Ovid. VI. 731.

24. A festival to Fortuna Fortis, celebrated by the lowest class of citizens.

30. A festival to Hercules and the Muses (§ 307). Ovid. VI. 799.

July.

341. 1. The usual day for changing residence, hiring and letting. Cic. ad Quint. Frat. II. 3; Suet. Tib. 35; Mart. XII. 32, 1.

5. The *Populifugia* Varro de L. L. V. p. 47; Macrob. III. 2; on the same day, perhaps, were held the *ludi Apollinares* Liv. XXV. 12. XXVII. 23; Macrob. I. 17.

7. A festival to Juno Caprotina, a sacrifice offered by women and maid-servants under a wild fig-tree *Nonæ Caprotinæ*; cf. Macrob. I. 11; Varro as before; Plut. Cam. 33.

14. The dedication of a temple to Fortuna Muliebris, see Dionys. VIII. 10; Liv. II. 40; Plut. Coriol.

15. The festival of Castor and Pollux. Inspection and procession of the equites (§ 139). cf. Dionys. Hal. VI. 13.

16. An unlucky day, the anniversary of the battle of Allia.

19. The *Lucaria*, celebrated in a grove (cf. Fest.; Macrob. I. 4. Varro explains it otherwise, deriving the word from *lux*). These feasts were repeated on the twenty-first.

23. The *Neptunalia* (§ 291). Cf. Varro de L. L. V. p. 48. Some place these in September.

25. The *Furinalia*, to the goddess Furina, of whom nothing is known. Cf. Varro as before; Cic. de Nat. D. III. 18.

August.

342. 1. Equestrian games to Mars. Suet. Claud. 4.

13. A festival of Diana. Cf. Mart. XII. 68.

17. The *Portumnalia*, to the god Portumnus. Cf. Varro as before.

18. The *Consualia*, to Consus (§ 284). On this day also the rape of the Sabines was commemorated.

19. *Vinalia*, sacred to Jupiter and Venus (?) Cf. Rosinus, lib. IV. c. XII.

23. The *Vulcanalia*, sacrifices to Vulcan, for averting fires. Cf. Varro as before; Colum. XI. 3; Plin. XVII. 27.

25. *Dies Opeconsiva*, dedicated to the goddess *Ops Consiva*. Cf. Macrob. III. 9; Fest. in *opima*.

September.

343. From the 4th to the 12th were held the *Ludi Magni* or *Romani*, in the *Circus Maximus*, in honour of Jupiter, Juno, and Minerva. See Liv. I. 35. XXVIII. 10. XXIII. 30. XXXI. 4; Cic. Verr. V. 14.

13. On this day the silver nail was driven into the temple wall (§ 201).

23. The birthday of Augustus. See Suet. Aug. 57.

27. The festival of *Venus Genitrix*.

30. The *Meditrinalia*, held on occasion of tasting the first juice of the grapes before the vintage. Some fix this feast on the 11th October. For the origin of the term, see Varro de *Lingua Latinâ*, V. p. 48.

October.

344. 12. The *Augustalia*, commemorative of the return of Augustus, on the pacification of the empire. Cf. Dio Cass. LIV. 10 and 34.

13. The *Fontinalia*, when springs of water were strewed with flowers. Cf. Varro as before.

15. A horse (October equus. See Festus) was sacrificed to Mars in the *Campus Martius*. Some fix this on the ides of December. Cf. Plut. Q. R. 97.

19. The *Armilustrum*, consecration of arms, a military festival, held in a place called *Armilustrum*. Cf. Varro as before; Festus in *Armilustrum*, and the note of Scaliger; Liv. XXVII. 37.

November.

345. 5. The *Neptunalia*, which perhaps were held on no fixed day (cf. 23 July).

7. The *Mundus* was opened. See Macrob. I. 16; Fest. in *Mundus* and *Mundum*; Plut. Rom. p. 23.

13. A feast or lectisternium to Jupiter (§ 331).

15. *Ludi Plebeiï*, held in the circus; they were celebrated at other times not regularly fixed.

18. The *Mercurialia*, celebrated as it is supposed, by persons in trade, but on the authority of a doubtful passage. They frequently occurred.

The *Brumalia* were celebrated in this month.

December.

346. 5. The *Faunalia*, festivals celebrated by rustics, in honour of Faunus (§ 308). Cf. Hor. Od. III. 18.

19. The *Saturnalia*, sacred to Saturn (§ 301). During several days, idleness and public amusements prevailed, presents were interchanged, among which we are told of tapers being given; slaves also feasted, and were waited on by their masters, in memory of the golden age of universal equality and freedom in the days of Saturn. See Liv. II. 21. XXX. 36; Suet. Cal. 17; Macrob. Saturn I. 7; Hor. Sat. II. 7, 4.

19. The *Opalia*, sacred to Ops or Rhea. See Macrob. I. 10.

21. The *Divalia* or *Angeronalia*. See Macrob. ib.

24. The *Ludi Juvenales* (cf. Suet. Nero. 11).

The *Agonalia* and *Consualia* recurred in this month, and also the *Compitalia*, sacred to the Lares of shops (§ 314), frequently celebrated.

CONCERNING PUBLIC GAMES.

347. Public games, *ludi*, were associated with several festivals, and were called *festa* themselves, and formed a considerable part of ancient idolatrous worship; some were ordinary, others on extraordinary occasions: the former were celebrated on the festivals as described above, and generally recurred at stated intervals, *ludi statim*¹. The *quinquennales* and *decennales*, frequently mentioned on coins, celebrated on the occasion of an emperor's completing his fifth or tenth year of government, may also be reckoned among them; as might the secular games, if the interval between their celebrations were not uniform, as the name implies: even under the Emperors they were not held at regular intervals², and during the republican era, we read of their being celebrated in times of public calamity, according to the directions of the Sibylline books³: formerly these games were celebrated during several days in honour of Dis and Proserpine, afterwards they were accompanied by sacrifices to several gods by day, and by watching all night, particularly in honour of Apollo and Diana (§ 322)⁴. Antiquarians distinguished the extraordinary games by their nature and purposes, etc.; such as the *votivi*⁵, *imperativi*, *funebres*, *lustrales*⁶, and others.

1) Cf. Tac. Ann. 14, 20. 2) Cf. Suet. Claud. 21; Herod. 3. 8; Ovid. Trist. l. 2. v. 25; Hor. C. S. v. 21. 3) Cf. Val. Max. 2, 4, 5. 4) Cf. Val. Max.; Herod.; Hor. l. c.; Zosim. l. 2. c. 5. 5) Cf. Suet. Aug. 43. 6) Cf. Tac. Ann. 16, 4.

348. These games may be divided also on another principle of distinction, into *ludi circenses*, *gladiatorii*, and *scenici*. The circenses were so called from the Circus, a building of great length but not of similar breadth, one or both of its extremities being circular; whence its name: along its length ran a level space

called *spina*, raised above the other part of its area, and adorned with obelisks, altars, chapels, *ædiculæ*, statues, and other objects having reference to the honour of gods and heroes, to whom, as for instance to the Sun, to Apollo, to Cybele, and to Castor and Pollux, the circus and the games were dedicated. At either extremity of the *spina* were the posts, *metæ*¹, round which the chariots and horses passed, and near the winning-post were the *ova*, wooden tallies of an oval shape. At the opposite end of the building stood the starting-posts *carceres*. Some suppose the beginning of the course to have been marked by a chalked line, *creta*, *calx*, drawn across and before the starting-post; others, more properly, as I think, suppose the end of the race-course to have been so pointed out². Around the circus ran a trench, *euripus*. The circus was formed by two or more rows of pillars, against the inner sides of which the seats of the spectators rested. *Mænianum* and *podium* were terms applied to particular places for spectators, whence the expression *ad podium spectare*³.

1) Cf. Hor. Od. 1, 1, 4; Stat. Sylv. 4, 7, 23. 2) Varro ap. Non. in *calx*: "Nemini fortuna currum a carcere intimo(?) missum inoffensum per æquor candidum ad calcem sinit;" cf. Cic. Tusc. 1, 8; Sen. Ep. 108. 3) Juven. 2, 147; cf. Plin. 37, 3; Suet. Nero, 12.

349. Horse races and races of chariots, *bigæ quadrigæ*¹, were among the *ludi circenses*²; the charioteers were distinguished by liveries of different colours, (the colour having some reference to the season of the year), and divided into troops or companies, *factiones*³. The conqueror's reward was a chaplet, *palma*⁴.

The *certamen gymnicum*, as among the Greeks, comprised five kinds of contests, *quinquertium* (πένταθλον), leaping, running, wrestling, boxing, and casting the quoit⁵. Combats also on foot and on

horseback, of which the *ludus Troja*⁶ was one kind; representations of hunting, combats of wild beasts⁷, either against each other or against men hired or condemned to it, called *bestiarii*, and *ad bestias damnati*: naval engagements, *naumachia*, in ponds excavated for the purpose, or on waters let on by aqueducts⁸ into the circus or into the *naumachia*, which were buildings of a circular shape. The competitors in the games of the circus were in some cases free-born, *ingenui*; in others, slaves and condemned malefactors.

- 1) Cf. Hor. Od. 1, 1. 3, 2. 16, 34. 2) Cf. Suet. Claud. 21.
 3) Cf. Suet. Dom. 7. 4) Cf. Horat. Od. 1, 1, 5. 5) Cf. Virg. Æn. 5, 286, sqq.
 6) Cf. Æn. 5, 545-603; Tac. Ann. 11, 11; Suet. Claud. 21. 7) Cf. Cic. ad Div. 7. 1; Tac. Hist. 2, 61.
 8) Cf. Suet. Tib. 72; Claud. 21; Dom. 4.

350. The gladiatorial shows, *gladiator*, from *gladio*, *gladiare*, called *ludi* and also *munera*¹, were of Etruscan origin, and at first were celebrated at funerals, and thence termed *bustuarii*²; afterwards as amusements, and sometimes at public, at other times at private expense³. Buildings called amphitheatres, *quasi circularis theatra*, were erected, peculiarly adapted for their exhibition.

The theatres of ancient Rome, intended for representing plays, were edifices generally of vast size, and of a semicircular form. The exterior circumference exhibited rows of pillars, row above row; the interior offered tiers of seats for the spectators, in widening from the lowest and innermost to the highest and outermost range, *tota, ima, media, summa, sedilia*. *Cavea* and *cunei* were terms applied to the seats. The diameter of the semicircle formed externally the front of the theatre, and on the inner side offered the stage, *scena* (*σκήνη*), *proscenium*⁴, *pulpitum*⁵, etc. The open space between the *scena* and the spectators was styled the orchestra (*ὄρχουμαι*) in the Greek theatre, being

reserved for the chorus and dancing. Concerning the Roman theatre, see § 176.

The construction of the amphitheatres was similar to that of the theatres in the fitting-up, except that they were circular, and that the exterior was of one unvaried plan of architecture, and the interior an unbroken circle of seats: they had no stage, *scena*, and the open central space was called the *arena*, reserved for the exhibitions, whence *arena* comes to be used for the whole amphitheatre and the gladiators themselves⁶, and hence the expressions *arenæ se dare*, *arenarii*, etc.

1) *Pacandis sc. manibus?* cf. Serv. ad *Æn.* 10, 519. 3, 67; Liv. ep. 1. 16; Suet. Tib. 7; Creuz. § 306. 2) Cic. in Pis. 9. 3) The usual expressions applied to this practice are, *edere munus* (Juven. 3, 34), *editio muneris*, (Symm. Ep. 10, 15. 2, 77), *munerarius*, *munerator*. 4) Cf. Vitruv. 5, 6; Suet. Nero 5; A. G. Schlegel Dram. Kunst. p. 1; Vorles. 3. 5) Cf. Vitruv. 5, 6 and 8; Hor. A. P. 215 and 279; Prop. 4, 1, 16; Ovid. A. A. 1, 104; Juv. 3, 174. 6) Cf. Mart. de Spect. 21, 2; Juven. 3, 34. 4, 100. 8, 206.

351. The gladiators were divided into companies, *cohortes*, *familiæ*¹, and were under a master, *lanista*², who instructed them in their various exercises. They were generally slaves, captives, or malefactors condemned to the occupation; free-born persons also were found amongst them, hired, or *auctorati*, i. e. bound by an agreement called *auctoramentum*. Terms applied to their exercises were, *exerceri ad palmam*, *batuere*³ (Suet. Cal. 32 and 54), to fence; *rudis* was the foil; *attolle*, *percute*, *cede*, *urgete*, etc. were terms of defence and attack. Their drilling, *tirocinium*, being completed, they put themselves at the disposal of the lanista, and swore that they would fight till death before the Roman people. Those who intended exhibiting shows of gladiators, purchased of the lanista pairs of them matched together, *composita*, *comparata*⁴. The gladiators were divided into numerous classes, according to the kinds of arms they used, or

manner of fighting, such as the *hoplomachi*⁷, *Thracæ*, *Samnites*⁸, *retiarii* (who fought with a pronged weapon, *fuscina*, and a net, against the *mirmillo* and *secutor*⁹), *laquearii*, *essedarii*¹⁰, *dimachæri* (who used two swords), *bestiarii*, *provocatores*, *catervarii*, *suppositii*, *tertiarii*, etc. We also hear of female gladiators, who were matched against dwarfs¹¹.

1) Cf. Cic. pro Sext. 4 ; Suet. Aug. 42. 2) Cf. Juven. 11. 8, 6, 216 ; Mart. 11, 67, 3 ; Cic. pro Rosc. Am. 6 and 40. 3) Hence in later times *batualia*, applied to the place of combat, and the French word *bataille*. 4) Cf. Hor. Sat. 1, 7, 20 ; Suet. Cal. 35. 5) Cf. Suet. ib. ; Mart. 8, 74. 6) Cf. Liv. 9, 40. 7) See Juven. 8, 200, sqq. ; Suet. Cal. 30 ; Val. Max. 1, 7, 8. 8) Suet. l. c. and Claud. 21. 9) Suet. Dom. 4.

352. Led into the arena with pomp, the gladiators began by skirmishing, *præludere*¹, showing off their skill with foils, *rudes* ; then, at a signal given by the trumpet, they commenced the combat with arms. The terms applied to the various chances of the fight were, on gaining an advantage over an adversary, *dejicere*, *movere de gradu*, *de statu* : on wounding one, *petere*, *ferire*, *punctim*, by a thrust, *cæsim*, by a stroke ; on parrying, *cavere*, *latus tegere* ; on yielding, *arma submittere*, etc. Gladiators obeyed the will of the spectators with astonishing resignation² ; the conquered gladiator either offered his throat to the sword, or, stretching out his hand, awaited the determination of the people, who either gave him his life or doomed him to die : the former was notified by an action termed *premere pollicem*, the latter by *vertere pollicem*³ : or they commanded him to receive back his weapon and renew the combat, and sometimes even ordered the conqueror to fight until he fell. When a respite was granted during the games, it was called *diludium*⁴. The dead were dragged by hooks through the *porta libitina* into a place called the *spoliarium*⁵. The *palma* was the reward of the victor, which was sometimes adorned by ribands, *lemnisci*⁶, whence *palma lemnis-*

*cata*⁷. The superannuated, or those who were discharged from the *ludus* or school, were presented with a foil, *rudis*⁸, and called *rudiarii*.

Gladiatorial shows, so wonderfully relished by the lower classes⁹, were approved of by men of judgment and better feelings, as schools for patient endurance and firmness of purpose, and thus useful in cultivating the use of arms and warlike courage. We, whose manners and feelings are so different from those of the Romans, think far otherwise of them. The gladiators themselves were looked on among the Romans as not less infamous and ruffianly than vile¹⁰; and thus it was a disgrace for any but men of the lowest class to be found among them¹¹.

1) Cf. Cic. de Orat. 2, 78; Sen. Ep. 7 and 117; Ovid. A. A. 3, 515 and 589; Virg. Æn. 5, 426, sqq. 2) Cic. Tusc. 2, 17: "Gladiatores, aut perditii homines aut barbari, quas plagas perferunt? Quomodo illi, qui bene instituti sunt, accipere plagam malunt, quam turpiter vitare? Quam sæpe adparet, nihil eos malle, quam vel domino satisfacere, vel populo? Mittunt etiam vulneribus confecti ad dominos, qui quærant, quid velint? Si satis his factum sit, se velle decumbere. Quis mediocris gladiator ingenuit? Quis vultum mutavit unquam. Quis, non modo stetit, verum etiam decubuit turpiter? Quis, quum decubisset, ferrum recipere jussus, collum contraxit?" Cf. Cic. pro Sext. 37 and 59; pro Mil. 34; Sen. Ep. 7. 3) Cf. Juven. 3, 36. 4) See Hor. Ep. 1, 19, 47. 5) Cf. Sen. Ep. 93; Lampr. Comm. 18 and 19. 6) Cf. Plin. 21, 3, 16, 4; Capitol. Verus, 5. 7) Cic. Rosc. Am. 35. 8) Cf. Cic. Phil. 2, 29; Hor. Ep. 1, 1, 2. 9) Cf. Cic. ad Div. 1, 1. 10) Cf. Cic. Tusc. 2, 17. 11) Cf. Cic. Tusc. 2, 17; Phil. 7, 6; Cat. 2, 4; Juven. 2, 143.

353. The origin of scenic representations¹ dates from A. U. C. 391. Actors having been sent for then from Etruria², in order to avert a pestilence, their dances to the sound of the pipe were imitated by the Roman youth, and interspersed with extemporaneous satirical dialogue in verse³. Satire, from *satura*, *Gallicè mélange*, followed and superseded this rude beginning, *descripto*, says Livy, *ad tibicinem cantu motuque congruente peracta*. Lucilius, termed the

father of satire, applied the word to a different kind of poem. Satire, *satira*, however, being abandoned to the players, *histriones*, a new kind was introduced, called afterwards *exodia*⁴, together with comedies, *atellanæ fabulæ*, borrowed from the Osci: the representation of these was not attempted by the *histriones*, who were debarred from the rights of citizenship, expelled from their tribe, and excluded from serving in the army⁵, while the actors of the *atellanæ*⁶ incurred none of these disgraces. Livius Andronicus is said to have first translated and acted at Rome the plays of the Greeks (*dramata*), A. U. C. 512⁷. He was followed by Nævius, Ennius, Atta, Plautus, Terentius, Afranius, Pacuvius, Accius⁸.

1) From *σκηνή*, which some derive from *σκία*, *umbra*. 2) *Ludius* and *ludio* are synonymous to *histrion*, so that we may doubt whether they are words of Latin origin from *ludo*, or whether these words are Tuscan as well as *histrion*. 3) See Liv. 7, 2; cf. Tac. Ann. 14, 21; Hor. Ep. 2, 1, 139. 4) Cf. Liv. 7, 2; Juven. 3, 175. 6, 71; Suet. Tib. 45; Dom. 10. 5) See Liv. 7, 2. 6) Cf. Tac. Ann. 4, 14. 7) Cf. Liv. ib. and Hor. Ep. 2, 1, 61. 8) Cf. Hor. ib. 56 and 79.

354. Tragedies and Comedies are distinguished into *togatæ* or *prætextatæ* and *palliatæ*; the former of Roman plot and subject, the latter of Greek subject¹: there were besides several kinds of comedy, viz. *Attellana*, *Tabernaria*, *Rhintonica*, *Planipedia*, etc.² In later times comedy and tragedy were neglected through the popularity of pantomimic plays, *nimi*, whence *pantomimi*³, the Romans⁴ finding more pleasure in the gratification of the ear and eye than in the productions of genius and art⁵. At the same period jugglers, *præstigiatores*, whose conjuring cups were called *acetabula*⁶, and their balls, *calculi*; tumblers, *petauristæ*, rope-dancers, buffoons, *moriones*⁷, etc.

It is well known⁸ that the ædiles used to buy plays from authors for the purpose of having them acted.

The method of reciting the verses, *canendi*, and the whole apparatus of stage ornaments and scenic decorations, besides other particulars of the acting, are not known. We learn from ancient writers that the recitation was regulated by the notes of the tibia⁹; the tibiæ were named, from the methods of using them, *dextræ, sinistræ, pares, impares*. Whether the whole play was thus recited, we may reasonably doubt; we may at least conclude that there were distinct kinds of modulation and recitation. Livy, 7, 2. relates, that the dumb show performed by one player was performed to the sound of the tibia, and the dialogue left to the other actor. Concerning the *mimus*, see § 305.

1) Cf. Hor. ib. 57 and A. P. 288. 2) Cf. Donati Fragm. de Com. et Trag.; Lydus de Magistr. 1, 40; Reuvens. collect. litteraria, p. 24, sqq. 3) Cf. Pignor. de Servis p. 184, and the following portions of an ancient epigram there quoted: "Tot linguæ, quot membra viro." 4) Cf. Ast. Grundr. d. Philol. p. 429. 5) Cf. Hor. Ep. 2, 1, 182, sqq. 6) Sen. Ep. 45: "Quomodo præstigiatorum acetabula et calculi, in quibus fallacia ipsa delectat." 7) Cf. Pignor. de Servis, p. 187, where representations of masks are given. 8) Cf. Ovid. Trist. 2, 207. 9) See Liv. 7, 2; Hor. A. P. 202-15; cf. Ovid. Fast. 6, 659.

355. The Romans borrowed from the Greeks the use of masks, *personæ*, (hence *personatus*¹), at the same time as they introduced plays from Greece². These covered the whole head, and therefore were fitted with hair, and moulded so as to suit the rank, age, temper, and spirit of the part³; so that comic and tragic masks must have been widely different⁴; though both had gaping mouths⁵, contrived so as artificially to increase the sound of the voice, whence the word *persona* (*personare*): it was also increased by sounding boards, *echeæ* (*ἤχέων*), which were placed under the seats⁶. Concerning the substances of which masks were made, consult Lucretius and Prudentius⁷. The dress of the tragic actor was the robe *syrma*⁸ or *palla*⁹; he wore the buskin, *cothurnus*; the comic actor's buskin was

called *soccus*: hence *soccus* is used to express comedy, comic dialogue, etc., and *cothurnus* tragedy, tragic language and style¹⁰.

The stage, as well as the whole theatre, was without roof. The spectators were screened from the sun and rain by awnings, *vela malis trabibusque intenta*¹¹. The theatre was likewise sprinkled with odours¹², *crocus*; *aulæum*, the curtain, called also *siparium*, (some say when applied to a comedy¹³,) was raised to hide the stage, and let down to show it¹⁴. Schlegel (*über dram. Kunst*, 3. *Vorles*) has attempted to explain some particulars concerning the fitting-up of the stage more clearly. Among the machinery we read of the *pegmata*¹⁵.

- 1) Hor. Sat. 1, 4, 56; Suet. Nero 21. 2) Cf. Hor. A. P. 278.
 3) See A. G. a Schleg. dram. Kunst 3. Vorles: cf. Cic. de Orat. 2, 46. 4) Cf. Phædr. 5, 7. 5) Cf. Juven. 3, 175. 6) See Vitruv. 1, 1, 5, 5; Schneid. Eclog. Phys. p. 175. 7) Cf. Luc. 4, 298; Prudent. adversus Symm. 2, 646. 8) Cf. Juven. 8, 229; Mart. 12, 96, 4. 9) Cf. Hor. A. P. 278; Ovid. Am. 2, 18, 15. 10) Cf. Hor. A. P. 80, 90, 280; Ep. 2, 1, 174; Virg. Ecl. 8, 10; Quint. 10, 2; Mart. 8, 3, 13. Hence also *cothurnatus*, Mart. 5, 5, 8; Ovid. Am. 2, 18, 18; Sen. Ep. 8, "Quam multa Publii, non exalceatis, sed cothurnatis dicenda sunt?" 11) Lucret. 3, 107. 4, 73; Prop. 4, 1, 15; Ovid. A. A. 1, 103. 12) Cf. Prop. and Ovid. l. c.; Hor. Ep. 2, 1, 79; Sen. Ep. 90. 13) Cf. Juven. 8, 186; Sen. de Tranq. 11. 14) See Ovid. Met. 3, 111; Hor. Ep. 2, 1, 189; cf. Virg. Georg. 3, 25. 15) See Sen. Ep. 88; Plin. 33, 3; Juven. 4, 122; Phædr. 5, 7, 6; Mart. 8, 33, 3.

ON THE METHOD OF DIVIDING THE YEAR, MONTHS, AND DAYS.

356. I shall conclude the last chapter concerning religious customs with a description of the measure of Time among the Romans, and of an account of the different days which were marked in the *Fasti*, as I said § 334.

The most ancient division of the year among the Romans was into ten months, containing three hundred

and four days¹: thus it coincided neither with the revolution of the earth round the sun, nor with ten revolutions of the moon. It would be difficult to say what number of such years it required to complete a cycle and bring the beginning of the solar year and of such a year to coincide². Numa divided the year into twelve lunar months, by introducing an intercalation, according to Livy, *loc. cit.*, so that on every four-and-twentieth year the days of the lunar coincided with those of the solar year. However, as the length of the solar year was not accurately determined, and as the Pontifices³, to whom the business of intercalating was intrusted, often intentionally, for various reasons, made the year longer or shorter than was right, and afterwards incorrectly compensated for so doing, the intercalation failed of its effect. Hence a continual confusion of seasons; to remedy which, J. Cæsar employed the mathematician Sosigenes⁴, and abolishing the lunar year, introduced a solar year of three hundred and sixty-five days and six hours: these supernumerary hours amounting in four years to a day, a day was added then by doubling the sixth of the calends of March; whence the day and the year in which it was inserted were called *bis-sextus*, *bissextilis*. The Gregorian correction now in use superseded the Julian in the sixteenth century.

1) See Cens. de D. N. c. 20; Macrob. Saturn. 1, 12-14; Liv. 1, 119; Ovid. Fast. 1, 27 and 44, 3, 120 and 151. 2) Cf. Censor. c. 18. Niebuhr. (Rœm. Gesch. v. 1. p. 192, etc. has investigated with singular ingenuity the intercalation and cycle of one hundred and ten years, by using which the ancient Italian nations insured greater accuracy in their calendar than was attained by the Julian method.

3) Cf. Cic. ad Div. 7, 2, Censorinus: "In mense potissimum Februario, inter Terminalia et Regifugium, intercalatum est, idque diu factum, priusquam sentiretur annos civiles aliquanto naturalibus esse majores. Quod delictum ut corrigeretur, Pontificibus datum est negotium, eorumque arbitrio intercalandi ratio permissa," etc.

4) Cf. Ovid. Fast. 3, 153, 155; Plin. 2, 18, 25. Suet. Cæs. 40: "Fastos correxit, jam pridem vitio Pontificum per intercalandi licentiam adeo turbatos, ut neque messium feriæ æstati, neque vindemiarum autumno competèrent."

357. March was the first month of the early Roman year¹; the fifth month after it was called Quinctilis; and in later times Julius: and the rest were named from the order in which they followed. Numa added January and February without altering the beginning of the year; so that February, the last month of the year in his calendar, became the second², when January was made the first month of the year. January was named after Janus, to whom it was sacred. February, from *februæ* (sacrifices for the manes of the dead): March, from Mars; April, sacred to Venus, some derive from the Greek ἀφρός (ἀφροδίτη), some from *aperio*, as opening the stores of vegetation, spring then beginning; *aprilis* for *aperilis*³. May, *Majus*, from *majores*, ancestors⁴. June, sacred to Juno, named after her, or, as some imagine, from *juvenis*, the month of youths⁵; July and August, as it is well known, were so called after Julius and Augustus Cæsar.

1) See Ovid. Fast. 3, 75-166.

2) See Ovid. Fast. 2, 49.

3) Ovid. 4, 61 and 87.

4) Ibid. 73.

5) Ovid. 6, 26 and 88.

358. The days of each month were divided into *calendæ*¹, *nonæ*, and *idus*². The calends were the first day, the nones were the seventh day of March, May, July, and October; in the other months they fell on the fifth: the ides fell on the fifteenth day of the former months, and on the thirteenth of the other months. The days between the calends and nones were reckoned from the nones following, between the nones and the ides from the ides, and after the ides from the calends of the month following, by anticipation; thus the 31st December was called *pridie calendarum* or *calendas Januariæ*; also *pridie nonas Januariæ*³ was the third of the month, not the second, because the day from which they reckoned was included in the number⁴. The *nundinæ*, every ninth day⁵, were devoted to rest from rural labours and civic duties, such as legislating, and

from traffic (§ 159). *Hebdomades*, weeks of days named after the sun and planets, according to the ancient custom of the Egyptians, were not in use until the time of the Cæsars⁶.

The civil day, consisting of twenty-four hours, was reckoned from midnight to midnight; the natural day of twelve hours, from sunrise to sunset, the first hour beginning at sunrise⁷. The usual terms for distinguishing the times of the day were, *jubar*, daybreak, *diluculum*, *mane*, *ad meridiem*, *meridies*, *de meridie*, *tempus occiduum*, *occasus solis*, *vesper*, *crepusculum*, *nox intempesta*⁸, *concubia*, *ad mediam*, *media*, *de media nocte gallicinium*, cockcrow, and *conticinium*⁹, from cockcrow to daybreak. The method of dividing time in camps was into four watches, *vigiliæ*¹⁰. Sundials were used (by travellers even) for marking the hours. Gnomon, the style of the sundial, was used for the whole dial, hence *gnomonicus*, *gnomonice* (*σκιάθρον*, *ἡλιοτρόπιον*¹¹), by which we may explain the obelisk in the Campus Martius¹². *Clepsydra*¹³, (from *ὕδωρ*, water), water-clocks, were of a different kind.

1) *Calendæ* (from *καλεῖν*), so named, because on that day the people were called by the Pontifex into the curia Calabra, and there informed of the holidays of the coming month. *Nonæ*, so named, being the ninth day before the ides. The nones, among the Etruscans, were the same as the *nundinæ* among the Romans, and the year was divided among them by nones, but not so among the Romans (cf. Macrob. 1, 15; Nieb. p. 195). *Idus* is derived from the Etruscan word *iduo*, to divide, from its dividing the month. See Macrob. loc. cit. 2) Cf. Macrob. 1, 12, sqq. 3) Both the words *dies* and *ante* were usually omitted in expressing the day of the month in the ablative case, as *tertio calendæ*. Another method much more common with Cicero and Livy (as Zumpt remarks), was thus, *ante diem tertium calendæ* (a. d. III. Cal.), *nonas*, *idus*; here *ante diem* is to be treated as a substantive, and the sentence, when the prepositions are supplied, will stand thus: *in ante diem IV calendæ*, *ex ante diem quintum idus*, etc. 4) See the Table following, which exhibits the days of the month throughout the whole year, taken from Brœder's grammar. 5) Cf. Varro de R. R. 2. præf.; Colum. præf. § 18; Macrob. 1, 16; Plin. 18, 3: "Nundinis urbem revisitabant, et ideo comitia nundinis haberi non lice-

bat, ne plebs rustica avocaretur." Cf. Virg. Mor. v. 79. 6) Cf. Dio Cass. 37, 18. *Hebdomada annorum*: Gell. 3, 10; *hebdomus quarta*; Gell. ib.; cf. Cic. ad Div. 16, 9. *Septimana*, whence *semaine*; Cod. Theod. XV. 5. 7) See Macrob. 1, 3. 8) Cf. Fest. in *intempestam*; Virg. Æn. 3, 587. 9) Cf. Censor. de D. N. 24; Macrob. 1, 3. 10) Cf. Liv. 5, 44, 7, 35; Cæs. de B. G. 1, 12. 11) Cf. Vitruv. 1, 6, 9, 8; Plin. 2, 72, 7, 34. 12) Concerning which see Plin. 35, 10. 13) Cf. Cic. de N. D. 2, 34; pro Quint. 18; Sen. Ep. 24; Lyd. 2, 16; Veget. de Re Mil. 3, 8.

A TABLE EXHIBITING THE METHOD OF RECKONING THE DAYS
THROUGHOUT THE YEAR AT ROME.

Days of our Months.	Febr. d. 28. An. biss. 29.	Jan. Aug. Dec. d. 31.	Apr., Jun., Sept. Nov., d. 30.	Mar., Mail, Jul., Oct., d. 31.
1	<i>Calendis.</i>	<i>Calendis.</i>	<i>Calendis.</i>	<i>Calendis.</i>
2	4 } ante	4 } ante	4 } ante	6 } ante
3	3 } Nonas.	3 } Nonas.	3 } Nonas.	5 } Nonas.
4	Pridie Nonas	Pridie Nonas.	Pridie Nonas.	4 } Nonas.
5	<i>Nonis.</i>	<i>Nonis.</i>	<i>Nonis.</i>	3 } Pridie Nonas.
6	8 } ante	8 } ante	8 } ante	8 } Nonis.
7	7 } Idus	7 } Idus.	7 } Idus.	7 } Idus.
8	6 } ante	6 } ante	6 } ante	6 } ante
9	5 } Idus	5 } Idus.	5 } Idus.	5 } Idus.
10	4 } ante	4 } ante	4 } ante	4 } ante
11	3 } Idus	3 } Idus.	3 } Idus.	3 } Idus.
12	Pridie Idus.	Pridie Idus.	Pridie Idus.	4 } Pridie Idus.
13	<i>Idibus.</i>	<i>Idibus.</i>	<i>Idibus.</i>	3 } <i>Idibus.</i>
14	16 } ante	19 } ante	18 } ante	17 } ante
15	15 } ante	18 } ante	17 } ante	16 } ante
16	14 } ante	17 } ante	16 } ante	15 } ante
17	13 } ante	16 } ante	15 } ante	14 } ante
18	12 } ante	15 } ante	14 } ante	13 } ante
19	11 } ante	14 } ante	13 } ante	12 } ante
20	10 } ante	13 } ante	12 } ante	11 } ante
21	9 } ante	12 } ante	11 } ante	10 } ante
22	8 } ante	11 } ante	10 } ante	9 } ante
23	7 } ante	10 } ante	9 } ante	8 } ante
24	6 } ante	9 } ante	8 } ante	7 } ante
25	5 } ante	8 } ante	7 } ante	6 } ante
26	4 } ante	7 } ante	6 } ante	5 } ante
27	3 } ante	6 } ante	5 } ante	4 } ante
28	Pridie Calendas Martias.	5 } ante	4 } ante	3 } ante
29	das Martias.	4 } ante	3 } ante	2 } ante
30		3 } ante	Pridie Cal.	Pridie Cal.
31		Pridie Cal. mensis seq.	mensis seq.	mensis seq.

359. The distinctions between days arising from motives of religion and superstition were as follows: *festi* were days dedicated to festivals and their celebration; *profesti*, days on which there were no festivals¹; *fasti*, on which the courts of law were open; *nefasti*, the contrary: *intercisi*, days partly *fasti* and partly *nefasti*²; *nundinales*, on which *nundinæ* were held (§ 358); hence *nundinarius* applied to *forum*, *epulæ*: *comitiales*, days on which the *comitia* were held³; *præliares*, on which it was lawful to fight; *atri*, days of public calamities, as the first day after the *calends*, *nones*, and *ides*; *religiosi*, days held to be unlucky for undertaking anything, and for sacrifices⁴.

1) Cf. Ovid. *Fast.* 1, 45, sqq.; *Macrob.* 1, 16. 2) Cf. Ovid. *Fast.* 1, 47; *Liv.* 1, 19. 3) Ovid. v. 53: "Est quoque, quo populum fas est includere septis." 4) Cf. *Gell.* 4, 9; *Virg. Georg.* 1, 276.

CHAPTER THE FIFTH.

MILITARY AFFAIRS.

360. Two arts were cultivated with the greatest zeal, and brought to the highest perfection by the Romans: law, the precepts of which are even now in practice, and war, by which they conquered the whole world, though their own beginnings were insignificant. At the time of Marius they were admirable both for their courage and discipline. Military service among them was held honourable, and was not voluntary. A law introduced by Servius Tullius excluded the poorest classes from service¹, and called on all, according to their means, to take on themselves, some, greater, and others, lesser duties in protecting their country (§ 144, 145). Recourse was seldom had to slaves (§ 66), or even to freedmen, except on great emergencies; players also were excluded from the honour of serving. The Romans never employed mercenary troops, but as the empire became more extensive, auxiliaries, consisting of soldiers of friendly nations, were added to the Roman legions (§ 122). On the decline of liberty and the corruption of ancient manners, when the richer classes began to shun the toil of warfare, Marius, at variance with the nobles, composed his army principally of the lowest classes: thus the privilege of serving was granted to all, and finally, towards the time of the extinction of liberty, the liability and duty of serving were removed from the Romans; lastly, under the Emperors the allies also were freed from it. Our further remarks on the subject of military affairs will be contained under the following titles.

1) Cf. Nieb. 1. p. 267.

ON LEVIES AND THE LENGTH OF SERVICE.

361. Levies were either extraordinary or ordinary. The ordinary levy of four legions was raised by the consuls elect¹; the people choosing four military tribunes: on these occasions the consuls elect published an edict and raised the standards upon the tower of the Capitol², thus summoning the young men to the Capitol or Campus Martius³. Those who presented themselves were said *nomen dare, respondere*⁴. The tribunes being distributed among the four legions, chose from a tribe taken by lot, four young men of equal ages and stature, one for each legion; the legions were in this manner completed, so as to be of equal numbers and strength⁵. A superstitious notion required that the names of those first selected should be words of good omen, such as *Victor, Salvius, Prosper*⁶. Those who neglected to offer themselves, *refractarii*, were compelled by the power of the consuls to do so by various means, either by stripes, infamy, or the loss of their property, sometimes even of their freedom⁷. Exemption from serving was granted on account of age and honourable distinctions⁸, and even as a reward⁹; in after times it was obtained by money and by substitutes; those also who laboured under bodily infirmity or ill health were exempted; and those who voluntarily disabled themselves, as for instance, by cutting off a thumb¹⁰, were in derision styled *murci*¹¹. Concerning levies under the Cæsars, when military affairs were on a totally different footing, see Vegetius I. 7.

1) Cf. Dionys. 9, 5. 2) Cf. Dionys. 8, 81; Cæs. B. C. 2, 20.
 3) Cf. Liv. 26, 31. 4) Cf. Liv. 42, 32; Gell. 16, 4. 5) Cf. Val. Max. 6, 3, 4. Among the customary expressions were, *legere, scribere, laterculum*, etc. 6) See Cic. de Divin. 1, 45. 7) Cf. Liv. 7, 4. 42, 34; Cic. pro Cæc. 34; Val. Max. l. c. 8) Cf. Liv. 42, 34, "Vacatio ab ætate, ab honore." 9) Cf. Cic. Phil. 5, 19.
 10) Cf. Suet. Aug. 24. 11) See Amm. Marc. 15, 12.

362. The enlisted legions confirmed by an oath, *sacramentum*, their fidelity to the state¹: one soldier being chosen in each, who dictated the form of words, expressed by *præire, in verba jurare; sacramento adigere, rogare*, etc. The equites were selected from persons of equestrian rank (see § 364). A legal levy differed from a tumultuary one, *delectus tumultuarius*, just as war differs from an insurrection², *tumultus*: men raised by such a levy were styled *conjurati*³, *subitarii milites, tumultuarii*, and raising them thus was termed *legiones subitarias scribere*⁴, etc.

During the Republic the length of service required of the infantry was sixteen years, of the cavalry ten years⁵: serving was called *stipendia facere, stipendia merere*, or merely *stipendia*. The period of service was from the age of seventeen till forty-seven. Those who had served their whole time were called *veterani, emeriti*; and if induced by rewards or entreaties, as frequently happened, to continue in the service, or summoned to serve again, they were called *evocati*⁶. The *vexillarii*, in the time of the Cæsars, differed from both these kinds; they were soldiers who were retained to serve in a less rigorous duty until finally discharged⁷.

The *legionarii*, Roman citizens, were strengthened by the addition of allied troops raised in accordance to treaty, by order of the consuls commanding, in their own states, and assembled at appointed places; they were under the command of the generals of the legions, but yet were kept distinct from them. Auxiliaries, consisting of foreign soldiers⁸, differed from the *socii*, or allies, but the words are frequently confounded.

1) Cf. Dionys. 11, 43; Cic. de Off. 1, 11; Liv. 7, 11. 32, 26.
 2) Cf. Cic. Phil. 8, 1; Liv. 34, 56. 3) Cf. Liv. 3, 4 and 30. 31, 2; Tac. Ann. 1, 56. 4) Cf. Liv. 22, 38. 45, 2. 5) Cf. Tac. Ann. 1, 17.
 6) Cf. Cæs. B. C. 1, 7 and 23; Suet. Aug. 56.
 7) Cf. Tac. Ann. I, 17. 8) Cf. Sall. B. Jug. 83; Tac. Hist. 1, 54.

OF THE CAVALRY, THE INFANTRY, AND
THEIR ARMS.

363. The strength of the Roman armies lay in their infantry, which was by Servius Tullius divided into the light and heavy armed; the former were called *expediti*, the latter at first composed the *phalanx*, but afterwards were divided into the *hastati*, *principes*, and *triarii*: whether they bore these names before the alteration of the *phalanx*, I know not.

The principal weapon of the *hastati* at first was the spear, *hasta*, afterwards the javelin, *pilum*¹: they served in the first rank. The *principes*, who at first served in the front rank, afterwards served in the second, still preserving their name. The *triarii* stood in the third rank; they were formerly called *pilani*², from their using the *pilum*: and for this reason the *hastati* and *principes* were called *antepilani*³.

Moreover, although the weapons of the Roman soldiers were different at different periods⁴, yet they appear on the whole to have been borrowed from those of the Greeks, rather than from those of other nations: their defensive arms were *galea* (*γαλῆ*) or *cassis* (*crista*, *juba*), the helmet; *thorax* or *lorica*⁵, the breastplate, of different kinds, *hamata*, *squamata*, *annulis conserta*, *dimidiata*, *pectoralis*; *cingulum* or *balteus*, the belt; *ocrea*⁶, greaves; *caligæ*, boots, whence *caligatus*⁷: *scutum*⁸, the shield, oblong (*θυπέος*), made of wood, covered with hide: *clypeus*, a round shield (*ἀσπίς*): offensive weapons were *gladius*, the sword; *pilum*, the javelin, made of wood, with a hooked head⁹: *hasta* (*spiculum hastile*) the spear.

The *jaculatores*¹⁰, javelin men; *sagittarii*, bowmen; and *funditores*, slingers¹¹, were the principal kinds of light armed infantry, who were called *velites*, *rorarii* (skirmishers), *accensi*, *ferentarii* (on which words, see

Festus¹²): under the Cæsars, they are found distinguished by numerous names and weapons¹³, among which, besides the sling and bow, are mentioned *parma*, a buckler, *cudo*, a leathern cap, *hasta velitaris*; the sword, *gladius*, was not introduced for some time¹⁴.

1) Cf. Polyb. 6, 23. 2) Cf. Ovid. Fast. 3, 129. 3) See a remarkable passage in Livy, 8, 8, and the remarks of Nieb. v. 2. p. 475. sqq. 4) Cf. Lyd. de Magistr. 1, 12. 5) Cf. Tac. Ann. 1, 64. 6) Cf. Liv. 9, 40; Veg. 1, 20. 7) Cf. Sen. de Brev. Vit. 17; de Benef. 5, 16; Juven. 3. 322. 8) See Caryoph. de veterum clypeis, p. 45. sqq. The projecting knob in the centre of the shield was termed *umbo*, and is used by writers for the whole shield; hence *umbone pulsare, se protegere; umbones jungere*. 9) Cf. Dionys. 10, 46; Sil. It. 13, 308; Flor. 1, 7. 10) Cf. Liv. 21, 21. 36, 16. 11) Cf. Cæs. B. G. 2, 7. 12) Cf. Liv. 8, 8. 26, 4; and Festus on these words. 13) Cf. Vegetius, and Lyd. 1, 46. 14) Cf. Liv. 8, 8.

364. The first cavalry among the Romans consisted of three *centuriæ*, formed by Romulus; Tarquinius Priscus increased their number, and Servius Tullius added them to the legions. Afterwards, this force consisted of those who were rewarded by the gift of a horse, at the public expense, and (after the expulsion of the kings) of the descendants of the ancient knights: they were sometimes called *flexumines*, and in later times, *trossuli*; either, as some say, from the name of a town taken by cavalry without the aid of infantry¹, or as others conjecture, as though *torosuli*²: at length this became a term of derision³.

When the equestrian order was instituted, cavalry soldiers began to be chosen promiscuously, and also to be separated from the legions (see § 136), and after the manner of foreign nations, to be distinguished into light and heavy armed, or otherwise, according to the various weapons they used: we may conclude that at first they all used the same weapons, namely, the spear and sword, and as defensive arms, the helmet, perhaps a light shield besides. The heavy armed cavalry afterwards were furnished with the sword, the lance, *contus*⁴, the

shield, the breastplate, and greaves, *ocreae*, hence called *loricati*, *cataphracti*, also *clibanarii*⁵, cuirassiers, from *clibanus*, a cuirass (§ 238). The light armed cavalry were called *sagittarii*, *Numidæ*, *Thracæ*, *Cretenses*, etc.

1) Fest. in *Trossuli*, and Plin. 33, 2. 2) Cf. Non. c. 1. n. 240.
 3) Cf. Varro ap. Non. ib.; Pers. 1, 82; Sen. Ep. 87. 4) Cf. Tac. Hist. 1, 44. 5) Cf. Liv. 35, 48. 37, 40; Prop. 3, 10, 12; Lampr. Alex. Sev. 56; Eutrop. 6. 7; Amm. Marc. 16, 10; Lyd. de Magistr. 1, 46, where they are termed *δλοσιδηροί*, *toti ferrei*.

OF THE LEGION.

365. The Legion¹ at first formed the whole of the Roman army, afterwards a part only, consisting of a definite number of soldiers: but the word is also applied to the troops of allies, and to any troops in general²: its complement was different at different times; at first four thousand, afterwards six thousand foot-soldiers, or an intermediate number. A squadron of horse properly consisted of three or four hundred³. Its composition was very different under Servius Tullius⁴ and during the Republic, and also after the reform made by Marius⁵. In his time the infantry were divided into ten cohorts, each cohort into three *manipuli*, regiments, and each *manipulus* into two *centuriæ*, (*ordines*), companies. The cavalry were divided into ten *turmæ*, regiments, corresponding to the number of *cohortes*, battalions of infantry; the *turma*, into three troops, *decuriæ*: thus there was one *decuria*, of cavalry for every *manipulus* of infantry. Allied troops, *socii*, were also so divided (§ 362), but were called cohorts, not legions. The cohorts which usually covered the flanks of the legions, *legionarii equites*, were called the wings, *alæ*. The legions, besides the number attached to each, had also titles given them on different accounts: from the places where they were stationed or where they had distinguished themselves, as *legio*

*Cannensis, Actiaca*⁶, *Hispaniensis, Pannonica*; from the nations whence they were raised (a custom introduced by Cæsar) (§ 238); from the names of emperors, as *legio Augusta, Claudiana*; from their tutelary god, as *Martia, Minerva*; from their fidelity or valour, as *legio pia, victrix*, etc., frequently found on coins. A legion was entitled *adjutrix*⁷ on other grounds. The number of the legions was augmented according to the demands of the state; the greatest number during the Republic was at the time of the second Punic war: the custom was that four only should be divided between both consuls, the Romans trusting to valour more than to numbers⁸. Concerning the era of the Cæsars, consult Dio Cassius LX. 20.

1) From *legere*. Cf. Varro de L. L. 4. p. 23; Veget. 2, 1; Lyd. 1, 46. 2) Cf. Hor. Sat. 1, 6, 4; Virg. Æn. 7, 681. 3) Cf. Liv. 6, 22. 7, 25. 8, 8, and elsewhere. 4) Cf. Liv. 8, 8; Nieb. v. 2. p. 475. 5) Cf. Lyd. 1, 16 and 46. 6) Tac. Ann. 1, 42. 7) See the Commentators on Tac. Hist. 2, 48; Lydus, 3, 3. 8) Cf. Liv. 8, 8. 26, 1.

THE DIFFERENT GRADES OF COMMANDERS.

366. Commanders in Chief, *Imperatores*¹ (§ 222), whose authority was properly called *imperium* (§ 183), were at first the kings, then supreme magistrates, such as consuls, prætors, dictators, who had the uncontrolled direction of the war² (*αὐτοκράτορες*), and the power of life and death over the soldiers: hence *judicia castrensia*³, courts martial. The commander in chief was assisted by *legati*⁴, often chosen by himself, but their number was fixed by the senate⁵ (§ 247 and 248). *Tribuni*⁶ (*χιλιάρχοι*) commanded the legions under the *legati*, and held office by turns; and it seems that there was always one tribune to each of the ten cohorts of the legions; for formerly there were but three, and then, according as the strength of the legion was increased, four, six, and lastly ten, agreeing with the number of the cohorts.

The Tribunes were at first chosen, by the commander in chief; but from the year U. C. 393, partly by the people and partly by him; the latter they called *Rufuli*, the former *comitali*⁷: their insignia was a dagger, *pugio*⁸, as that of the *præfecti prætorio* (marshals of the camp), and a golden ring; the chief also wore the *latus clavus*⁹. A centurion commanded every *centuria* or company, they were also called *ductores ordinum*, and by the Greeks *ἐκατόνταρχοι, ταξίλαρχοι, λοχαγοί*¹⁰. They carried a cane (*vitem*, a vine-stick) for punishing the soldiers, whence the expression *vite donari*, to be made centurion¹¹: they were of different ranks, the highest being called *primus pilanus*¹², the lowest *decimus hastatus*. The *primus pilanus*, who led the first rank of the *triarum*, was of equal dignity with the tribune. The *subcenturiones*, *signiferi* and *veixillarii*, standard-bearers, *decani* or *decuriones*, and other grades multiplied in the times of the Cæsars¹³, were under the centurions. Moreover, these were chosen by the centurions, the centurions by the tribunes; both with the approbation of the commander in chief¹⁴. He also chose the commanders of the legionary cavalry, and of the allies and auxiliaries, with the advice of the tribunes.

This progressive promotion among the common soldiers throughout the centuries and cohorts, and of the commanders of these divisions, which prevailed during the Republic, was continued under the Emperors, though the composition of the legion was altered, and the distinctions of rank and duty were far more numerous and important; and it was introduced into the offices and staffs of the *præfecti prætorio*, marshals of the camp, and of other magistrates, who formed what was termed *militia civilis* (see § 239-240).

1) Earlier forms of this word are *induperator*, *endoperator*.
 2) Suet. Aug. 21. 3) Cf. Tac. Agric. 9. 4) Cf. Liv. 10, 40
 5) Cf. Cæs. B. G. 1, 52; Tac. Ann. 4, 73, 15, 28. 6) Cf. Tac

Ann. 1, 44. 7) Cf. Liv. 7, 5, 44, 21 ; Fest. in *Rufuli*. 8) *Pa-razonium* ; cf. Aur. Vict. de Cæs. 13 ; Lyd. 2, 9 and 13 ; Mart. 14, 32. 9) Cf. Hor. Sat. 1, 6, 24 ; Cic. pro Cluent. 54 ; Suet. Dom. 10. 10) Cf. Nieup. s. 5. c. 2. § 2. 11) Cf. Juven. 8, 247. 14, 193 ; Tac. Ann. 1, 23. 12) *Primus pilus, primipilaris* ; cf. Suet. Cal. 35 ; Ovid. de P. 4, 7, 15 : "Tenditis ad primum per densa pericula pilum." Cf. Cæs. de B. G. 5, 44 ; "Centuriones, qui jam primis ordinibus appropinquant." Cf. ib. 6, 40. 13) Cf. Vegetius, and Lydus de Magg. 1, 46. 14) Cf. Luc. 6, 145 ; Veg. 2, 3 ; Tac. Ann. 1, 44.

STANDARDS, MUSICAL INSTRUMENTS, MILITARY DRESS, BAGGAGE (IMPEDIMENTA).

367. The Romans regarded their standards with the highest reverence ; at Rome they were preserved in the *ærarium* under the care of the *quæstors*, and in the camp in a consecrated place, as in a chapel, *sacrarium*¹. Their great importance may be inferred from the fact that the principal evolutions of the soldiers are expressed as if depending on them, as *conferre signa*, to attack, *movere*, to retreat, *convellere*, to (pluck them up and) advance, *convertere*, to wheel, *proferre*, to advance, etc. The principal standards of the legions were, formerly, figures of animals, as wolves, boars, minotaurs²; which even afterwards were not altogether disused³; subsequently an eagle of silver with expanded wings, which was used originally by the first company, *manipulus*, of the *triarii*, then in the first cohort⁴. The standard of the *manipulus*, or perhaps of the legion, anciently, was a handful of straw on a pole⁵, whence the name *manipulus* ; afterwards the statue or bust of some god on a spear, in later times that of the emperor, and a hand projecting upwards from a transverse bar on the top of a spear⁶. It is difficult to decide how the *vexilla*⁷ or *flammulæ*, pennons, whence *flammularii*⁸, differed in their use from the standards mentioned before, except that it seems determined that they belonged to subdivisions of the legions, not to the entire

legion, particularly among the allies and cavalry. From the *vexilla* were named the *vexillarii* (§ 362). *Laborum*⁹ was a singular kind of standard, ornamented with the figure of a cross worked on it¹⁰, introduced by Constantine¹¹ the Great, if Creuzerus is not mistaken (see Creuz. § 239); the word, which does not occur before his time, seems to favour this opinion.

1) Cf. Liv. 28, 27; Tac. Ann. 1, 39, 15, 29; Veg. 2, 6; and the note of Stewart; Suet. Cal. 14. cf. Creuz. § 237. 2) Cf. Plin. 10, 4; Veg. 3, 6; Creuz. § 237. 3) Concerning the standards in use under the emperors, cf. Zosim. 3, 19. 4) Cf. Veg. 2, 16; Creuz. l. c. 5) Cf. Ovid. Fast. 3, 117; Don. ad Ter. Eun. 4, 7, 6. 6) Cf. Herod. 2, 6. 7) Cf. Tac. Hist. 2, 89. 8) Cf. Veg. 2, 1, 3, 5; Lyd. 1, 8 and 46, 2, 19; Fuss. Epist. ad Has. p. 14. 9) λαβόρον, Sozom. 1, 4. 10) Cf. Prud. adv. Symm. 1, 487. 11) Cf. Stew. ad Veg. 3, 17.

368. Of musical instruments (§ 444), used either singly or together for giving signals for marching, attacking, or other movements, we read of the *tuba*, *buccina*, *cornua*, and the *lituus*, a bent horn, peculiar to the cavalry, all made of brass¹. *Classicus*, the trumpeter, called also *tubicen*, when employed at the comitia², and *classicum*, the call of the trumpet: terms employed were, *classicum canit*, *canitur*, the trumpet sounds; *classico convocare*, Liv. VII. 36; *classica pulsa*, sounded, Tib. I. 1, 4; *receptui canere*, to sound for a retreat, Liv. III. 22; Cæs. de Bello Gall. VII. 47; *buccina*, Cic. Verr. IV. 44; *buccina vigiliæ*, signal for relieving guard, or of the watch, Liv. VII. 35. XXIV. 15; Prop. IV. 4, 61: *æneatores*, Suet. Cæs. 12; Sen. Ep. 84.

The military dress (§ 451) worn above the tunic consisted of the *sagum*³ and *lacerna*, though neither were peculiarly confined to the military. The *sagum* was a coarse covering or cloak reaching to the knees, fastening over the shoulder by a clasp, *fibula*⁴; officers wore it of a purple colour and embroidered with gold. The *sagum* was worn in the city also on occasions of

imminent danger, being the badge and garb of war as the *toga* was of peace; whence *sagum sumere, in sagis civitas, ad saga ire*⁵. The lacerna differed in shape from the sagum, and being better adapted for keeping out cold, was principally used in winter. The military shoe was called *caliga* (§ 363).

The soldier carried, beside his arms, other instruments for use in battle or in encamping, a saw, a shovel, or pickaxe, *rutrum* (from *ruo*, being used *ad eruendum*), a hatchet, stakes, *valli*, etc., also flour for several days' consumption; the foot-soldiers were thus loaded with a great weight; hence the terms *miles impeditus, sub sarcinis*, etc.⁶.

The camp followers are described as consisting of *fabri*, smiths, *agasones*, grooms, *lixæ*, sutlers, *calones*, servants, who severally belonged to the baggage train, *impedimenta*, to the commissariat (*commeatus*), and packhorses or mules (*jumenta sarcinaria*), etc., also the *pullarii* (§ 32). There were many other such, mostly introduced under the Cæsars⁷, besides *speculatores*, scouts, *metatores*, quartermasters, *scribæ*, secretaries, *frumentarii*, commissaries.

1) Cf. Horat. Od. 1, 1. 23, 2. 1, 18; Ovid. Met. 1, 98; Fast. 3. 216; Luc. 1, 273. 2) Cf. Varro de L. L. 4, 16, 5 extr. 3) Cf. Cæs. de B. C. 1, 75. 4) Cf. Tac. Germ. 17, and Cluv. Germ. Ant. 1. 1. p. 136. 5) Cf. Cic. Phil. 14, 1. 8, 11; Vell. 2, 16. 6) Cic. T. D. 2, 16: "Scutum, gladium, galeam in onere nostri milites non plus numerant, quam humeros, lacertos, manus." Cf. Veg. 1, 19; Virg. Georg. 3, 346, sqq. 7) Cf. Vegetius, Lydus, and the Notitia Dignitatum utriusque Imperii.

CAMPS, FORTIFICATIONS, ORDER OF BATTLE, AND ATTACK OF TOWNS.

369. An army on its march always advanced in regular order, *composito agmine*¹, either in a square, *quadrato agmine*, the baggage being in the centre, or

else in line, *pilato agmine*, the baggage-train in the rear apart², usually spending the night in camp, fortified, whether it was intended to pass one or more days in the same place³. Camps were either *diurna* (*mansiones*), where a day only was spent, *stativa*, stationary camps, or else, from the season spent in them, *æstiva* and *hiberna*.

The names of many cities prove that they occupy the site, or at least are named after Roman camps⁴; the form of the camp was square⁵; a ditch encompassed it, usually twelve feet wide and nine deep, on the inner edge of which a dyke, *agger*, was raised, three or four feet high⁶, of earth heaped up against stakes, *valli*, whence it was called *vallum*. There was a gate on each of the four sides; that opposite the enemy was called *porta prætoria*, and the corresponding gate on the opposite side *decumana*⁷, or *quæstoria*; these two were styled *portæ primariæ*; but the gates on the right and left sides of the camp, *secundariæ*, or from their facing the principal street in the camp, *principia*⁸, *principales*⁹. This street, destined for the *tribunal*¹⁰, tribune's office, offices for holding courts, for the forum, and for holding the standards, was a hundred feet wide, and in former times divided the camp into an upper and lower part. In the upper part (§ 190) stood the *prætorium*¹¹, *quæstorium* (§ 213), and also the tents of the commanders of the allies, and other officers of inferior rank, together with the tents of the prætorian cohort, which, after the custom of the kings, were assigned to the generals as a body-guard, composed of a chosen troop of horse and foot: the lower part of the camp, which was intersected by the *via quintana*, was allotted to the tents of the rest of the army, and among them to the allies. In later times, the *prætorium* being situated between the *via primaria* and *quintana*, the camp was divided into three parts: it is thus described by almost all later writers: Polybius, 6, 27, sqq. and Hyginus, *de castra-*

metatione, among the ancients, furnish the most particular account of it. Antiquaries prove that *castra diurna* differed from the *stativa*, and *æstiva* from *hiberna* in many particulars¹². The names and parts, and the changes in them, furnish an endless subject of discussion¹³. Nieuport and others give a plan, with the dimensions and distinctions of the different parts.

1) From ago. Isid. Orig. 9, 3; cf. Serv. ad Æn. 1, 186. 12, 121; Hirt. de B. G. 1. 8, 8. 2) Cf. Polyb. 6, 40. 3) Cf. Liv. 44, 39. 4) Cf. Champollion-Figeac résumé d'Archéol. v. 1. p. 113. 5) Cf. Stew. ad Veg. 1, 23. 6) These are the dimensions stated by antiquarians; it is scarcely necessary to say that the accounts of writers often differ respecting them. Cf. Cæs. de B. G. 2, 5: "Castra in altitudinem pedum XII vallo fossaque duodeviginti pedum munire jubet." 7) Cf. Veg. 1, 23. 8) Cf. Liv. 7, 12. 28, 24; Tac. Hist. 1, 48. 9) Liv. 4, 19. 40, 27. 10) Liv. 28, 27. 11) Cf. Liv. 7, 12. 28, 27. 12) Cf. Creuz. § 247. 13) See Creuz. § 247, sqq.

370. The soldiers' tents consisted of boards, or were roofed with rushes or straw, according to circumstances, and in winter generally with skins; hence the expression *sub pellibus*¹, i. e. in winter-quarters. In each tent there lodged a party (*contubernium*,) or mess of ten soldiers under a *decanus*, corporal, whence *contubernales* (§ 247) means those lodging in the same tent. Between the tents and the *vallum*, a clear space two hundred feet wide was left, on which they mustered when called out. Two signals were given when they were to march, the first for packing up, the second for loading their baggage, etc., to which custom the expression, *vasa conclamare*² to give the signal for packing up, *vasa colligere*³; at the third signal the army marched⁴, preserving in their march the stations they held in the camp: whence a camp is termed *agmen considens*, and an army on march, *ambulans acies*⁵.

Soldiers in camp were exercised and kept employed in collecting wood and necessaries for forage, and in relieving and mounting guard: besides duties required

of them by the tribunes and other superior officers. Sentinels were called *stationarii*, and a guard mounted, *excubiæ, præsidia*; *tessera* or *libellus* was the billet on which the watch-word was inscribed, or the watch-word itself, *σύμβολον*⁶; *tesserarii*, they who had it; *procubitores*⁷, outposts; and *circuitoires*⁸, those who visited or relieved them. Besides these military duties, walking, feats of horsemanship, *decursio*. Veget. I. 9. III. 4. swimming, archery, throwing the javelin, leaping their horses, Veget. I. 18, furnished them amusement. Frequently also works of great magnitude were required, such as ditches, intrenchments, roads⁹, bridges, and the like; or remedies against idleness and ease were employed¹⁰. Exemption from such duties, the privilege of superior officers, was granted to common soldiers as a reward, and for various reasons: those exempted were called *immunes, beneficiarii*, to which *munifices* is opposed¹¹. We learn from Tacitus¹² that soldiers, in the time of the Cæsars, commonly purchased these immunities from the centurions. The severity of military discipline among the Romans was remarkable, and consistent with the dignity of the Roman name, which sprung from and depended on warlike courage, the great preserver of which is severity. Hence the unbounded power of the general over the soldiers, and the great reverence paid to his authority and dignity, the very freedom of a citizen not being valid in a camp. (§ 71.)

1) Cf. Cic. A. Q. 4, 2; Liv. 5, 2. 37, 39; Tac. Ann. 13, 35; Flor. 1, 12. 2) Cæs. de B. C. 3, 85; Liv. 21, 47. 22, 30. 3) Cæs. ib. 1, 66. 4) Cf. Jos. de B. Jud. 3, 6. 5) See Nieup. 5, 5, 6. 6) Cf. Polyb. 6, 33. 7) Cf. Veg. 3, 8; and the note of Stewart on it. 8) Veg. ib.; cf. Lyd. 1, 46. 9) Cf. Liv. 39, 2. 10) Cf. Tac. Ann. 1, 16 and 35. 11) Veg. 2, 7; cf. Fest. in *munem* and *beneficiarii*; Lyd. 1, 46. 12) Ann. 1, 17 and 35.

371. The general, before a battle, having, if necessary, taken the auspices (§ 320), (as he would not en-

gage if the omens were unpropitious¹, nor unless he had consulted the gods,) usually harangued the assembled army (styled on medals, *adlocutio*); after which the signal for the onset was given, and he augured well of the event from the eagerness of the soldiers, expressed by their words or by the clashing of their arms, or from their shout, *barritus*², as they rushed on the enemy; or augured ill from their desponding silence. The battle array, *acies*, formerly resembled a phalanx, and was similar to the form of the body of heavy armed infantry introduced by Servius Tullius (§ 363); afterwards, in the time of Camillus as it is thought, the plan was changed, and a line three deep formed of hastati in front, the principes (who at first were in front) in the second line, and behind them the triarii, all placed in companies, *manipuli*, a space being left between every two manipuli, so as to leave a direct way along which the front rank could retire behind the second, or both behind the third; and then it was said *res ad triarios rediit*³, or when both ranks fell into the spaces between the triarii and the ranks being thus closed up, the three in one withstood the enemy. On this consult a passage in Livy, VIII. 8.

These intervals between the manipuli also served for the advance and retreat of light troops acting as skirmishers, who retired behind the triarii whilst the legions were engaged: though we read of their being also mixed with their ranks⁴. The legionary cavalry and allies covered the flanks of the legions, and hence were called *alæ*, the wings (§ 365).

This, the usual disposition of the line, was called the *quincunæ*⁵, and was in use during the Punic wars, and then first perfected; afterwards, when the form of the legion was altered, together with the method of levying troops, the legion then being divided into cohorts, and the division into hastati, principes, and triarii⁶ being also disused.

Other orders of battle were *orbis*⁷, the circle; *cuneus*, a serried phalanx, sometimes wedge-shaped, with a narrow front; *caput porcinum*; the opposite to which was the *forfex*⁸, the lines diverging from an angle as the blades of shears; *testudo*, formed by the soldiers holding their shields over their heads, like scales on the tortoise⁹: *serra*¹⁰, a jagged line; *laterculum turris*¹¹, a solid column; and *globus*¹².

1) Cf. Liv. 7, 8. 2) Cf. Tac. Germ. 3, 2; Veg. 3, 18; Amm. Marc. 16, 30. 3) Liv. 8, 8: "Clypeis ante Romani usi sunt, deinde, postquam stipendiarii facti sunt, scuta pro clypeis fecere, et quod antea phalanges similes Macedonicis, hoc postea manipulatim structa acies cœpit esse: postremo in plures ordines instruebantur—Hastati omnium primi pugnam inibant. Si hastati profigere hostem non possent, pede presso eos retrocedentes in intervalla ordinum principes recipiebant. Tum principum pugna erat, hastati sequebantur. Triarii sub vexillis considerabant, sinistro crure porrecto, scuta innixa humeris, hastas surrecta cuspidē in terra fixas, haud secus quam vallo septa inhorreret acies, tenentes. Si apud principes quoque haud satis prospere esset pugnatum, a prima acie ad triarios sensim referebantur. Inde rem ad triarios redisse, quum laboratur, proverbio increbuit. Triarii consurgentes, ubi in intervalla ordinum suorum principes et hastatos recepissent, extemplo compressis ordinibus velut claudebant vias, unoque continente agmine, jam nulla spe post relicta, in hostem incidebant." Compare with this passage Vegetius 3, 14, where he describes the usual order of battle. 4) See Liv. 8, 8. 5) Cf. Cic. de Sen. 17; Varro de R. R. 1, 7; Colum. 3, 13. 6) Cf. Creuz. § 245-6. 7) Cf. Liv. 4, 28 and 39. 8) Cf. Veget. 3, 19; Gell. 10, 9. 9) Cf. Liv. 44, 9; Cæs. de B. G. 2, 4; Luc. 3, 474. 10) Cf. Fest. in *serra præliaris*; Veget. l. c. 11) Cf. Gell. l. c.; Veget. l. c. 12) Veget. l. c.

372. Celebrated sieges, descriptions of which have been left us, as that of Veii, Liv. V. 7 and 19; of Syracuse, Liv. XXIV, 33; of Ambracia, Liv. XXXVIII. 4; of Alesia, Cæs. de Bello Gall. VII. 68, sqq.; and of Marseilles, Cæs. de Bell. Civ. I. 34, sqq., show the method among the Romans of attacking towns, and what progress they made in the art.

First, the city was encircled by an intrenchment, which protected the besiegers against the sallies of the garrison: this is expressed by *corona cingere*, *obsidere*.

In the next place, they usually raised a broader wall of earth strengthened with wood, stones, and other materials, gradually bringing it nearer to the walls, and raising it up to, and even above them in elevation. From this wall they assaulted the town with various engines, *machinæ, poliorceticæ*¹, some of which were for casting darts against the garrison, *jaculatoriæ*, and others used only against the walls, *obsidionales*. Among the former² we read of the *ballista*³, *catapulta*⁴, *scorpio*⁵, with which the *onager* (Gr. *μονάγκων*) is confounded, by which were cast stones, darts, *falaricæ*, fiery darts, bundles of hemp and tow burning, *malleoli*, stakes, and other missiles. Among the *machinæ obsidionales* we find commonly mentioned towers of wood, often of immense height, which, by means of wheels and rollers, were moved up to the walls⁷; the *tolleno*, for raising soldiers in baskets to the battlements⁸; *sambucæ*, scaling ladders, *arietes*, battering rams; *falces, terebræ*, for piercing walls; *corvi*, grappling irons; *grues*, etc. When the nature of the soil admitted of it, the walls were undermined by subterraneous passages, *cuniculæ*⁹. To these may be added the various machines invented for protecting the besiegers, *testudo*¹⁰, *crates* (gabions), *vineæ, plutei*¹¹, covered ways or galleries. The besieged were no less ingenious in contrivances for casting huge stones, fire, boiling oil, and other things, whereby to wound, burn, or crush the enemy's soldiers and engines; nor less industrious in alarming them and destroying their works by sallies.

1) De Folard, in his commentary on Polybius, gives drawings of these engines, with explanations. There is a book by an unknown ancient author on this subject, entitled, *De rebus bellicis*. 2) Cf. Luc. 3, 465. 3) Cf. Liv. 21, 11; Cæs. de B. C. 2, 2; Tac. Hist. 4, 23; Veg. 4, 22; *ibiq.* Stew. 4) Cf. Cæs. de B. C. 2, 9; Liv. l. c. and 395; Vitruv. 10, 15; Stew. l. c. 5) Auct. B. Afric. 56; Liv. 26, 47 and 49; Stew. l. c. 6) Cf. Cæs. de B. G. 7, 25. 7) Cf. Cic. ad Div. 5, 4; Liv. 32, 17; Cæs. de B. C. 2, 8 and 9; Stew. ad Veg. 4, 17. 8) Cf. Liv. 24, 34, 38, 5; Stew. ad Veg. 4, 21.

- 9) Cf. Cæs. B. G. 7, 22; Liv. 38, 7; Vell. 2, 27; Zosim. 3, 22.
 10) Cf. Liv. 34, 29; Tac. Ann. 13, 39. 11) Cf. Cæs. de B. C. 2, 9; Veg. 4, 15; Liv. 34, 17; Luc. 3, 474.

NAVAL BATTLES.

373. On the occasion of their first naval engagement, which took place in the first Punic war, the Romans were inexperienced, and fought with ill-adapted ships¹, but they soon built larger and better, on the plan of the Carthaginians, and by their valour and usual industry in warlike affairs and the assistance of allies, particularly of the Rhodians, as well as from the experience they earned in their wars against the Carthaginians, the Illyrians, and against Antiochus, they so excelled in naval warfare that towards the close of the Republic, they held sway by sea as well as by land; for maintaining which a standing fleet as well as a standing army was kept up by them, and by the emperors afterwards.

The fleet consisted of triremes and quinqueremes, besides transports, *onerariæ*, and lighter vessels² called *actuariæ*, *liburnæ*³, *speculatoriæ*⁴, *celoces* and *tabellariæ*⁵ for carrying despatches. The triremes and quinqueremes were so named from the number of their tiers of oars⁶, also *naves constratæ*, from their number of decks, and *naves longæ*, from their length. The crews were composed generally of allies and the lowest orders, and were classed under the names of rowers or sailors, and marines, *classici* or *classarii*⁷. The *hortator* (*κελευστής*) or *pausarius*⁸ commanded the rowers; *gubernator*, or *navarchus*, the sailors. The commander of the ship was generally a tribune or centurion; the admiral of a fleet, a prætor or consul; and from his ship, *navis prætoria*⁹, requisite signals were made by pennons during the day, and lights at night.

The method of attack was more like that on land¹⁰ than it is among us¹¹. They endeavoured to sink the enemy's ship by means of the rostrum, (from which ships were styled *rostratæ*¹²;) one or more projecting iron-headed beams at the prow, or to burn them by engines that cast blazing darts, etc.; or what was still more customary, they grappled with them with hooks, (*corvus, harpago, ferrea manus*), and drew the ships together¹³; then, as they lay alongside, an engagement similar to a fight on land took place.

1) Cf. Sen. de Brev. Vitæ 13; Fest. in *caudicaria naves*, Polyb. 1, 20 and 21. 2) Cf. Gell. 10, 25. 3) Cf. Sen. Ep. 77.
 4) Cf. Liv. 30, 10. 5) Cf. Cæs. de B. C. 3, 9; Hor. Od. 1, 37, 30; Epod. 1, 1. 6) Antiquaries are generally of opinion that each tier of rowers occupied a separate tier of seats, running one above another along either side of the vessel (Consult Lucan 3, 530: "quater surgens exstructi remigis ordo"); and experience has proved in the case of a few constructed on this principle, that they can thus be impelled very swiftly: but we must despair of conceiving how the size of a vessel or the structure of the benches could admit of twenty or more tiers of oars, mentioned by writers, unless we suppose that several ranks of rowers sat side by side, so that one oar was pulled by several; so that if the ship was of more than four rows of oars, it was named after the number of ranks of rowers; as *εικοσήρης*, if of twenty; *τριακοστήρης*, if of thirty ranks. However, these terms sometimes apply, neither to the number of oars or ranks of oars, but to that of the rowers. Among other authors consult Polyb. 1, 20 and 26; Flor. 4, 11: "Quippe a senis in novenos remorum ordines, ad hoc turribus atque tabulatis allevatæ—Cæsaris naves a triremibus in senos, nec amplius ordines creverant." 7) Cf. Liv. 26, 48. 29, 35; Tac. Hist. 1, 36. 8) Cf. Sen. Ep. 56. 9) Cf. Liv. 29, 25. 45, 6. 10) Cf. Luc. 3, 524.
 11) Cf. Flor. 2, 2. 12) Cf. Liv. 30, 10. 13) Cf. Liv. ib.; Polyb. 1, 22; Flor. 2, 2.

SOLDIERS' PAY, REWARDS, TRIUMPHS, PUNISHMENTS.

374. At first the Roman citizen fought without pay, with arms found by himself, and therefore varying according to his means (§ 145), content with little food, and with the plunder to be expected from the war. However, it seems probable¹, though not strongly supported by the testimony of ancient writers, that a yearly

allowance of food, *annona*, even before the time of Servius Tullius², was furnished at the public expense to the soldier, particularly to the horse soldier. But by degrees they were exasperated by the unequal division of plunder, the length of war far from home, and the constantly recurring levies. Thus, during the siege of Veii (A. U. C. 349), the senate was compelled by necessity to grant pay, first to the infantry, and then to the cavalry³. It seems more difficult to prove that pay was given under the kings than that the *annona* was⁴. Polybius says that in his time a private foot soldier of the legion received two oboli a day, afterwards five, and under Julius Cæsar ten asses⁵: a centurion had twice as much, a cavalry soldier three times as much; but among all, part of this was deducted for his allowance of bread, clothes, and arms. For their food, *annona*, the Roman soldiers and their allies received vegetables, salt, smoked meat, but principally wheat, and in proportion to their pay; a legionary foot soldier about four bushels a month⁷: the allied troops were, however, clothed and paid (though not fed) by their own states. There were also some who, as a reward or favour, received more than the usual allowance: whence they were called *duplicarii* and *armaturæ duplares*, from a double share, *sesquiplares*⁸, etc. Even under the Cæsars the daily food of the soldiers was remarkably frugal⁹, so that no one can wonder that it was most frugal formerly, and Creuzer (§ 259) remarks that there were neither cooks nor any thing else of that kind in the army; and the like frugality existed as to their drink¹⁰. Moreover, as now it was the custom for the party, *contubernium* (§ 370), who lodged together to have a common mess; when they slept they lay on straw¹¹. In the time of Curius Dentatus¹², it would have been thought disgraceful for officers to have lived much more luxuriously than the soldiers; afterwards, when luxury had corrupted their

morals, many, for the sake of example, lived frugally and severely, especially those who endeavoured to reclaim them to the frugality and rigour of antiquity¹³.

1) Cf. Cic. de Rep. 2, 20; Liv. 1, 43. 2) Cf. Creuz. § 39 and 105. 3) Cf. Liv. 4, 59. 5, 7. 4) Cf. Creuz. l. c.; Nieb. v. 2. p. 218. 5) Cf. Suet. Aug. 49; Tac. Ann. 1, 17 and 26. 6) Cf. Tac. l. c.; Polyb. 6, 39. 7) Cf. Polyb. ib. 8) Cf. Varro de L. L. 4. p. 24; Veg. 2, 7; Lyd. 1, 46. 9) Cf. Hor. Od. 3, 2; Spart. Hadr. 10. 10) Cf. Spart. l. c. 11) Cf. Plin. H. N. 8, 38. 12) Cf. Hor. Od. 1, 12, 41. 13) Cf. Tac. Ann. 13, 35.

375. Among the honours and rewards bestowed on soldiers were exemption from public offices, and a portion of the spoils which were peculiarly called military spoils, *manubiæ*, an increase of pay (§ 374), an honourable discharge, with presents, a division of conquered lands among the *veterani* (§ 242); but the principal honourable distinctions were crowns¹, of which the civic crown consisted of oak leaves²; the *corona vallaris* or *castrensis*, ornamented with figures of the *valla* (stakes); the mural crown, adorned with battlements; the *rostrata*³, or naval crown with the *rostra* of ships; the *obsidionalis* of grass; the golden crown, presented to a general on the occasion of his triumph, called also *triumphalis*, and the *ovalis*, called so from *ovatio* (§ 376). The lesser rewards were headless spears, *hastæ puræ*⁴, and also horse trappings⁵ for the head or neck⁶, of metal, afterwards *armillæ*⁷, ornaments⁸, for the soldier himself, whence *armillatus*⁹; *torques*¹⁰, ornaments for the neck, whence *torquati*, *cornicula*, ornaments for the helmet¹¹. The highest honours of leaders consisted in their being saluted by the title of Imperator by the army (§ 222); public thanksgivings for their victories, celebrated at Rome (§ 331); the spoils of the vanquished, according to ancient custom¹², were affixed to their residences¹³; by which may be explained the sentence *rostra in domo Pompeii*¹⁴; but, of all honours, the greatest was

a triumph (*θρῆλαμβος*). Instituted by Romulus¹⁵, this honour was frequently conferred during the days of the Republic, yet it was granted only on occasion of a memorable victory and a law was passed defining the conditions, many having demanded a triumph for frivolous services; they were decreed by the senate; yet some generals, by appealing to the people, triumphed in spite of it¹⁶. When a general to whom a triumph had been decreed, or who was about to petition for one, drew near to Rome with his army¹⁷, according to custom he declared to the senate, who gave him audience in the temple of Bellona (§ 179), the services which on entering the city he was to confirm by oath before the quæstors, namely, that in a just war with enemies, the boundaries of the empire had been extended by him, and that in one fair engagement he had slain five thousand of the enemy, at least. Which being done, supreme power (§ 366) was given to the general about to triumph, for the day when he should enter the city. Concerning the laws that regulated triumphs, consult Valerius Max. II. 8, 1.

1) See Stew. ad Veg. 2, 7. 2) Cf. Tac. Ann. 2, 83. 3) Cf. Plin. 16, 4; Virg. Æn. 8, 684. 4) Cf. Polyb. 6, 39; Suet. Claud. 28. 5) Cf. Polyb. 6, 37; Gell. 2, 12. 6) Cf. Liv. 22, 52; Cic. Verr. 4, 12; Juven. 11, 102; Claud. de 4. Cons. Hon. 548. 7) Cf. Sil. 15, 255; Flor. 3, 10. 8) From *phalera* comes *phaleratus*, applied to horses, Liv. 30, 17; to mobs, Suet. Nero 30; to runners, Petron. 28; and to speeches, Ter. Phorm. 3, 2, 15. 9) Cf. Fest. and Lyd. 1, 46. 10) Cf. Veg. 2, 7. 11) Cf. Liv. 10, 44. 12) Cf. Virg. Æn. 5, 393. 13) Cf. Liv. 10, 7, "Quorum domos spoliis hostium affixis insignes inter alias feceritis." Cic. Phil. 2, 28; Plin. 35, 2. 14) Gell. 16, 5. 15) Cf. Liv. 1, 10. 16) Cf. Dionys. 11, 50. 17) Cf. Sall. Cat. 26.

376. The following is the order in which the triumphal procession moved (formerly starting from the porta Capena) from the Campus Martius, near which were the pons and porta triumphalis, through the principal streets, through the forum by the circus, all

gorgeously adorned up to the Capitol. Bands of music, followed by bulls to be sacrificed, then the spoils of the enemy, and plans or pictures of the conquered nations¹ and cities; then the captive leaders and other prisoners² preceding the conqueror, who was surrounded by his friends and relations³. The victorious army following the triumphant leader, crowned with laurel, closed the pomp, shouting 'Io Triumphe!' repeating also jokes⁴, and not even sparing their leader in their license⁵: he, clad in the triumphal dress, an embroidered toga, and a tunic embroidered with palm branches, *tunica palmata*⁶, crowned with laurel, carrying an ivory sceptre, in a burnished car, was drawn by four horses, usually white⁷: a slave standing behind him carried a golden crown⁸. On their arrival at the Capitol a sacrifice was offered to Jupiter, and a share of the spoils was dedicated to the gods. The ceremony terminated by feasts and public rejoicings⁹. A triumph on occasion of a naval victory was distinguished by the term *navalis*, and by different circumstances arising from its nature; Duillius was the first who enjoyed one, and to him a *columna rostrata* was raised (§ 426). Triumphal arches were so named from triumphs (§ 50). On the extinction of liberty, it was thought fit, for many reasons, that triumphs should be reserved for the emperors¹⁰, among whom the following enjoyed the honour down to the latest times of the empire, Augustus, Claudius, Trajan, Aurelian and others. In the room of a triumph, triumphal decorations¹¹ were granted to some¹². An ovation¹³ was an inferior kind of triumph. He who enjoyed the honour of one entered the city on foot or on horseback with the *prætecta* and a myrtle crown; instead of bulls he sacrificed a sheep, whence the word ovation from *ovis*: and some, to whom a triumph, justly due, was refused, triumphed at their

own expense on the Alban hill, proceeding in procession to the temple of Jupiter Latiaris¹⁴.

1) Cf. Vell. 2, 56. 2) Cf. Juven. 10, 45. 3) Cf. Vop. Aurel. 34 4) Cic. in Pis. 25 : " Quid tandem habet iste currus ? quid vinciti ante currum duces ? quid simulacra oppidorum ? quid aurum ? quid argentum ? quid legati in equis et tribuni ? quid clamor militum ? " 5) Cf. Suet. Cæs. 50 and 51. 6) Cf. Lyd. 2, 2. 7) Cf. Hor. Epod. 9, 21 ; Prop. 4, 1, 32. 8) Cf. Juven. 10, 39. 9) Cf. Liv. 1, 10, 34, 52, 45, 40. A representation of a triumph is given in an engraving in the Thes. Græv. v. 9, and has been copied from it into the works of Nieupoort, Cantelius, and others. Of descriptions of triumphs left us by the ancients, the most remarkable is that of Æmilius Paulus, by Plutarch. For others, see Appian Pun. 66 ; Jos. de B. Jud. 2, 17 ; Ovid. Trist. 4, 2, 53 ; de Ponto 2, 2, 21. 10) Dio Cassius 54, 11 and 24. 11) These paraphernalia, viz., the triumphant robe, the laurel crown, the ivory sceptre (Livy 30, 15), and other insignia, are by some antiquaries classed under the same head as the title of imperator, statues, sacrifices, and public thanksgivings granted to individuals, but not always accurately I suspect. 12) Cf. Vell. 2, 104 ; Suet. Tib. 9 ; Aug. 38 ; Claud. 24. 13) Cf. Gell. 5, 6 ; Flor. 3, 19. As to the state of things under the emperors, see Vell. 2, 196 : " Nero ovans triumphavit. " 14) Cf. Liv. 33, 22 and 23 ; cf. 26, 21.

377. Military punishments were different according to the nature and heinousness of the offence, and the age¹: slight punishments, (to which the expression *cen-sio hastaria*² refers, meaning the disgracing a soldier by depriving him of his spear,) were also inflicted by shortening his allowance of pay³, arms, food, such as bread and barley-meal⁴, or taking them away ; or by stripes, blows with a stick⁵, and other ignominious inflictions⁶ ; graver offences, such as treachery, or rebellion in individuals, were punished by death. In the case of whole cohorts revolting, they were punished by decimation, the death of every tenth or twentieth man, etc⁷. We find that prisoners of war were at the disposal of the conqueror, by the law of nations (§ 51). A disgrace sometimes inflicted on conquered enemies was causing them to pass under the yoke⁸.

We have already mentioned the time and duration of

service. Discharges were either *justæ* or *injustæ*, i. e. due, and deservedly earned, or compulsory: among the former are classed those granted on account of wounds received in the service, *causaria*, and those of a soldier who enlisted voluntarily for the sake of avoiding other public offices⁹; among the *injustæ*, were ignominious expulsion from the ranks¹⁰, and *missio gratiosa*¹¹, purchased by money or interest. Concerning the distinction between *missio* and *exauctoratio* (either cashiering or disbanding), introduced by the emperors, consult Tac. Ann. I. 36.

1) In Digg. 49, 16. 3, 1, distinctions are drawn between *castigatio*, *pecuniaria mulcta*, *munerum indictio*, *militiæ mutatio*, *gradus dejectio*, *ignominiosa missio*. 2) See Fest. in *censio* and *deprehensa*.

3) Cf. Fest. in *dirutum ære*. 4) Cf. Suet. Aug. 24; Plin. 18, 7.

5) Cf. Cic. Phil. 3, 6; Liv. 5, 6; Polyb. 6, 37; Tac. Ann. 3, 21.

6) See Creuz. § 265. 7) Cf. Liv. 2, 59; Capit. Macrin. 12; described by Polyb. 6, 36.

8) Cf. Cic. de Off. 3, 30; Liv. 3, 28. 9, 4 and 6 and 15. 10, 36.

9) Cf. Ulp. Digg. 3, 2. 2, 2; Macer Digg. 49, 16. 13, 2. 10) Cf. Liv. 43, 14.

11) Cf. Hirt. de B. A. 46 and 54.

CHAPTER THE SIXTH.

AGRICULTURE, TRADE, ARTS, COMMERCE, USURY, NAVIGATION, MONEY, WEIGHTS AND MEASURES, AND TAXES.

378. We have collected together in this the last chapter of the first section several subjects which could not conveniently have been placed under one head: as they appear on an accurate investigation to belong partly to public and partly to private life, we shall treat of both kinds together, as it is our intention to take a cursory survey of them; to treat of them as copiously as their importance deserves, would neither suit the plan of our work, nor does our time admit of it.

AGRICULTURE.

The ancient Romans lived not only almost but altogether by agriculture, as we may learn from their laws¹, as well as from the instances of such men as Quintus Cincinnatus, Atilius Serranus, and Atilius Régulus². But this pursuit, which was thought most agreeable, while morals were yet uncorrupted, and most worthy of the attention of noble men, fell into contempt when the unadorned farms of the ancients were supplanted by the sumptuous villas of men corrupted by riches, who sought in them a refuge from the turmoil of the city. Yet even then some were found so attached to agricultural pursuits, that they did not disdain the cultivation of their farms, and have in their

writings thoroughly treated of agriculture³. When the civil wars had consumed the children of the rural population, and drained the farms of their cultivators, when the soil of Italy was monopolized by a few proprietors and its soil cultivated by slaves only⁴, as was the case at the close of the Republic, the country was deserted, its inhabitants thronging into Rome and the large towns; for which evil the emperors in vain sought a remedy⁵. We have besides remarked elsewhere that a great part of the soil, not only in the provinces but also in Italy, was the property of the state (§ 252); whence there was to be found in the colonies a numerous tribe of citizens employed as farmers, ploughmen, and herds, who were engaged under contract by the knights who farmed these lands (§ 251).

1) Cf. F. Binkes "de agriculturæ præ mercatura apud Romanos favore," cap. 2. p. 44. Several of the names of Roman families are evidently derived from rural occupations, etc. (v. § 492), and may reasonably be supposed to confirm this opinion. 2) Cf. Colum. præf. Cic. pro Rosc. Am. 18; Hor. Od. 1, 12, 41. 3) Cf. Varro de R. R. præf. 4) Cf. Colum. 1, 7 and 8. 5) Cf. Suet. Aug. 42; Cæs. 42; Appian. B. C. 1, 7, sqq.; Beauf. vol. 2. p. 131. 6) Cf. Cic. Agr. 2, 31; Verr. 2, 3. pro Font. 1, 16.

379. The Romans usually sowed their fields every other year¹; of grains, they grew wheat, of which they had different species, *far* (*ador*, *far adorem*), and *siligo*², barley, oats, and flax. Among their leguminous plants were beans, peas, *cicer*, the kidney-bean, *phaselus*, and lentiles. Their tools, *arma*³, for cultivating their fields, were the spade, *ligo*; the rake or harrow, *rastrum*; the fork, *bidens*; the hoe, *sarculum* or *occa*, whence *occare*; and the plough, the parts of which were *temo* the beam, *stiva* the handle (also called *manicula*), *buris* the plough-tail, (as if *βόος οὐρά*), *vomer* the share, *dentale* the wood into which the share was fitted, *culter* the coulter or knife, *rulla* an instrument used for cleaning the *culter*; for threshing, *tri-*

bula and *traha* drays, *ventilabrum* and *vannus* winnowing machines⁵; *area* was the threshing floor; *horrea*, barns for storing corn.

When Rome was in its splendour, the luxury and skill shown in adorning private gardens were very great, and many celebrated gardens are mentioned by writers, as those of Lucullus, Ovid, and Sallust; and the cultivation of vegetables, *olus*, *olera*, and fruit trees, was no less attended to. The methods still in use of budding, *inoculatio*⁶, and grafting, *insitio*, were also then employed for improving the nature of fruits; and the method of cultivating vines and training them to trees⁷, (*ulmis adjungere, maritare populos*, Hor. Epod. II. 10.) was practised as at present. The cultivation of vineyards was at first limited, afterwards it became very prevalent.

1) Cf. Virg. G. 1. 71. 2) Cf. Colum. 2, 6; Plin. 18, 7; Juven. 6, 471. 3) Virg. G. 1, 160. 4) Cf. Colum. 2, 21, 4; Plin. 18, 30; Varro de R. R. 1, 52: "Id (tribulum) fit e tabula lapidibus aut ferro asperata: quæ imposito auriga, aut pondere grandi, trahitur jumentis junctis, ut discutiat e spica grana: aut ex assibus dentatis cum orbiculis, quod vocant plostellum pœnicum," etc. 5) Cf. Virg. G. 3, 133. 6) Cf. Colum. lib. de Cultu Hort; Pallad. lib. de Insit.; Virg. G. 2, 73: "Nec modus inserere atque oculos imponere simplex," etc. Ib. 69. "Inseritur vero et fœtu nucis arbutus horrida; et steriles platani malos gessere valentes; castaneæ fagus, ornusque incanuit albo flore pyri, glandemque sues fregere sub ulmis." 7) Cf. Virg. G. 1, 2; Juven. 8, 78; Hor. Ep. 1, 16, 3.

TRADES AND CRAFTS.

380. Manufactures and mechanical arts were held as dishonourable by the Romans, as agriculture was honourable; hence slaves, foreigners, or none but the lowest citizens practised them¹. However, there was a vast number of artisans, *opifices*, at Rome, as in all great cities abounding with a poor population, who, even under the kings, were divided into companies², *collegia*;

whence *collegiatus* one free of any company, as the company of smiths³, braziers, etc., even of flute-players *tibicinum*. These companies of artisans, forming clubs and unions, *sodalitia*, *conventicula*⁴ or *hetæriæ*, still found even in smaller cities, though in many places abolished and suppressed, had great power in disturbing the public peace at Rome, as the history of Marius and Saturninus shows⁵; their outrages were frequently restrained by law.

Collegia religiosa, such as the colleges of augurs, and political bodies⁶ or clubs, must be distinguished from the *collegia opificum*. Police officers, and the constables attached to magistrates (§ 217 and 493), were also men of the lowest orders, as was to be expected in a state where all servitude was dishonourable. We shall mention merchants hereafter; among them the most vile were slave-dealers, *mangones*; brokers, *cerdones*; publicans, *caupones*; and also *lenones*. We have already stated that actors were held in contempt, and gladiators as infamous (§ 352). The secretaries of the treasury, *tribuni ærarii*, were accounted honourable⁷; and other secretaries, *scribæ*⁸, collectors of taxes, *publicani*, etc., held a middle rank between men of the equestrian rank and private individuals without rank.

1) Cf. Dionys. 2, 28. 6, 53. 9, 25: Οὐδενὶ γὰρ ἐξῆν Ῥωμαίων οὔτε κάπηλον οὔτε χειροτέχνην βίον ἔχειν. 2) Cf. Flor. 1, 6: Cic. pro Sext. 14; in Pis. 4; pro Domo, 28; Sigon. de Ant. Jure Civ. Rom. 2, 12; Beauf. vol. 2. p. 133. 3) Cf. Wacht. Archæol. Num. p. 111. 4) Cic. l. c. 5) Cf. Cic. Post Red. in s. 13; A. Q. 4, 47; ad Q. Fr. 2, 3; Suet. Cæs. 42; Aug. 32; Plin. Ep. 10, 42 and 43 and 97. 6) Cf. Creuz. § 148. 7) Cf. Cic. Cat. 4, 7; pro Planc. 8. 8) Cf. Cic. pro Dej. 28; Cat. 4, 7: cf. Nep. Eum. 1.

381. The testimonies of ancient writers, as of Plautus, prove that trades and arts were as various and numerous in Rome as in any modern large city, and that tradesmen and artisans carried their respective trades

to as high a perfection; for instance, in dress and women's ornaments in particular, and in cookery; in fact, in all that ministered to the luxuries and enjoyments of life; and this is confirmed by the relics still in existence of ancient manufactures, and of the furniture of the richer classes. But to treat of each would be a vast undertaking, and not within the scope of my plan, though it may justly be expected of a writer on antiquities. Such a treatise, however, though it would exercise the ingenuity of a man even of great penetration, would contain many things of doubtful construction and little moment: and there are other subjects, of as difficult explanation, much worthier of attention, such as the manufacture of woollen articles, *lanificium* (*lanam facere*, i. e. *tractare*), which we must touch upon, as it is frequently mentioned in the poets; it was practised at Rome formerly, according to the custom of early nations, by women, and was the useful and honourable occupation of the daughters and female servants of matrons; it was afterwards scorned, and abandoned to captives and slaves¹.

1) Cf. Liv. 1, 57; Suet. Aug. 64 and 73; Ovid. Fast. 2, 741; Hor. Od. 3, 27, 64.

382. Wool¹ was prepared² for spinning by carding, *carminatio*, *carere lanam*, *linum*³; the portion that was assigned to women servants as a day's work was styled *pensum*⁴, and hence the expressions *pensum facere*, *carpere*, *trahere* or *devolvere*⁵. The instruments of the spinner⁶ were *colus*, the distaff, and *fusus*, the spindle, on which was wound the thread made; and the technical expressions applied to the employment, *fila ducere*, *stamina ducere*⁷, *trahere*⁸, *devolvere*, *torquere*, *fusum versare*. The instruments of weaving⁹: *jugum*, the beam, called also sometimes *tela*¹⁰; *arundo* (see the note); *radius*, the shuttle; and *pecten*, whose use will be

described¹¹. The *arundo* separated the threads, *licia*, which were fastened on the beam, into an upper and lower layer; a thread termed *subtemen* was then introduced between them by means of the shuttle¹²; when thus inserted, these transverse threads were compressed by the *pecten*, whose teeth were passed through the *licia*, or threads dependent from the beam. The shuttle then again introduced another thread between the two layers kept open by the insertion of the *arundo*. We learn distinctly from many passages in writers, that various kinds of weaving were practised in perfection among the nations of the East: we are not now inquiring what improvements the Romans introduced into the art. The art of weaving figures¹³ in the web, invented and brought to perfection in Asia¹⁴, differs from the common method, by which were made *aulæa*¹⁵, *pictæ vestes*. Cloths embroidered with the needle, *acu pictæ*¹⁶, are to be distinguished from the woven variegated cloths.

1) Ovid. Met. 6, 19 :

Sive rudem primos lanam glomerabat in orbes ;
Seu digitis subigebat opus, repetitaque longo
Vellera molliabat nebulas æquantia tractu ;
Sive levem tereti versabat pollice fustum.

2) Cf. Varro de L. L. 6. p. 75. 3) Cf. Plin. 9, 38. 19, 1. 4) Cf. Schneid. lex. in *ταλδοσιος*. 5) Cf. Virg. Æn. 8, 412. G. 1, 390. 4, 348 ; Tib. 2, 2, 9. 6) Cat. 64, 311,

Æternumque manus carpebant rite laborem.
Læva colum molli lana retinebat amictum :
Dextera tum leviter deducens fila supinis
Formabat digitis, tum prono in pollice torquens
Libratum tereti versabat turbine fustum ;
Atque ita decerpens æquabat semper opus dens,
Laneaque aridulis hærebant morsa labellis,
Quæ prius in lævi fuerant exstantia filo.
Ante pedes autem candentis mollia lanæ
Vellera virgati custodibant calathisci.

7) Cf. Tib. 1, 3, 85, 7, 84 (see 6, 78), 2, 1, 63 ; Ovid. Met. 4, 34, 6, 22. 8) Cf. Ovid. Met. 4, 36 ; Cat. 64, 313 (hence Hor. Ep. 1, 225 ; "tenui deducta poemata filo," and similar expressions) ; Tib. 1, 6, 78 : "ducit inops tremula stamina torta manu."

9) Ovid. Met. 6, 54,

Et gracili geminas intendunt stamine telas.
 Tela jugo juncta est, stamen secernit arundo ;
 Inseritur medium radiis subtemen acutis,
 Quod digiti expediunt, atque inter stamina ductum
 Percusso feriunt insecti pectine (?) dentes.

Lucret. 5, 1350 :

Nexilis ante fuit vestis, quam textile tegmen :
 Textile post ferrum est ; quia ferro tela parantur ;
 Nec ratione alia possunt tam lævia gigni
 Insilia (?), ac fusi, et radii, scapique sonantes.

10) See Ovid. Met. 6, 576 ; cf. Virg. G. 1, 285 ; Tib. 1, 6, 79 : "firmaque conductis adnectit licia telis : " cf. "stans tela," Ovid. Met. 4, 275 ; Fast. 3, 819 ; cf. Schneid. lex. in *ιστός*. 11) Cf. Ovid. Fast. 3, 820 : "rarum pectine denset opus." 12) See Ovid. Met. 6, 55. Voss seems not to have noticed this use of the *pecten*, at least he confounds in his note on Virg. Georg. 1, 294, the *pecten* with the *arundo* of Ovid. In fact, the only use of the *pecten* was to condense the web, *tela*, by striking the threads of the warp, *subtemen* ; and if this were the same as the *arundo*, we must understand two *pectines* in the description by Ovid, which would be absurd. The form and method of using the *arundo* I leave others to decide : yet I imagine that the *radii scapique sonantes* of Lucretius are nothing more than the *pecten*. Cf. Virg. Æn. 7, 14, and Georg. 1, 294 : "arguto percurrens pectine telas ;" and Tib. 2, 1, 66 ; "aplauso tela sonat latere," on which passage MSS. and commentators differ. From the passage of Lucretius, it seems that the thread rolled round the shuttle was inserted into the warp, *subtemen*, as practised now ; but this is not applicable to every kind of weaving, nor to many passages of authors. The passage in Virg. Georg. 1, 294, "arguto percurrens pectine telas," seems equivalent to, and borrowed from Homer's *ιστόν ἐποιομένη κερκίδι*, Od. 5, 62. Consult Schneider on *κερκίς*, who thinks it was the *pecten* and *radius* both, yet understands it to stand for *σπῆθη*. Od. 5, 62. Il. 22, 448. It is certain that *radio percurre* is not the same thing as *pectine percurre* ; and Ovid draws a distinction between them. Cf. Epigr. Antipatri ; Anthol. 6, 8, 15. Bosch's edit. vol. 3. p. 112. 13) Vida thus touches on this subject, Bomb. 1, 2 :

Quin etiam varios tenui subtegmine pingunt
 Nexilibus flores hederis, sylvasque virentes,
 Pomaque, graminaque, et cervos capreasque fugaces.

14) Cf. Ovid. Met. 6, 66, sqq. 15) Cf. Hom. Il. 3, 125 ; Eur. Ion. 1160 ; Prop. 2, 32, 12 ; Virg. G. 3, 25. 16) Cf. Ovid. Met. 6, 23 ; Cic. Tusc. Q. 5, 21.

COMMERCE, USURY, NAVIGATION.

383. The remarks which I made on manufactures will apply likewise to traffic ; in fact, the Roman taste and disposition, and the constitution of the Republic,

were adapted to the pursuits of war, and adverse to those of commerce. These are seldom found flourishing together; and nations who have distinguished themselves in both, in ancient times, are found to have employed mercenary troops, to which the Romans were very adverse. Therefore dealing and trafficking were on a narrow scale, and left to men of the lowest class¹. On the other hand, mercantile pursuits on a larger scale, *negotia*, whence *negotiatio*, *negotiatores*², although forbidden to senators and not held honourable, were not discreditable. Men of the rank of equites, towards the close of the Republic, generally practised them in the provinces, and were also the farmers of the taxes (§ 251), and contractors for public works, and also public bankers, *argentarii*. Merchants formed themselves into companies, *collegia* as well as artisans; hence the terms *mercuriales* and *capitolini*³.

1) Cf. Cic. Off. 1, 42; Cato. R. R. init.; Dionys. supra § 380.
 2) Cic. Verr. 2, 77. pro Planc. 26. 3) Cf. Cic. ad Q. Fr. 2, 5; Liv. 2, 27. 5, 50.

384. We collect from Livy that there were bankers, *argentarii*, at Rome in the time of the kings; they are also termed *mensarii*, from their desk, *mensa*, and were different from the *numularii* (§ 215), money-changers; the bankers' offices were called *tabernæ argentariæ*¹: for, a city frequented by strangers, and populous as it was, could not well be without men who changed foreign money, and this seems to have been their origin (§ 216)². Afterwards they came to lend money on interest³, whence the trade grew to be thought dishonourable⁴. Sales by auction also took place at their shops in the forum; and being employed in contracts between individuals, they acted as notaries do now⁵.

We have elsewhere (§ 134 and 399) adverted to the evils that sprung from usury, one of the earliest vices of the Romans, and the source of public and private cala-

mities. Beaufort vol. ii. p. 418, sqq., has briefly, but eloquently treated this important subject. Tacitus⁶ informs us that the rate of interest was formerly arbitrary, and very high. Beaufort thinks twelve per cent. *centesima sortis, capitis*, (of the principal) *per mensem*. Legal interest was afterwards fixed at one per cent. per annum, either by the laws of the XII Tables⁷, or, as Beaufort supposes⁸, by the Lex Duillia (A. U. C. 397). This was called *usura unciaria*, an ounce being paid monthly for every hundred *asses* (ounces at that time)⁹. This law was eluded by the fraudulent custom of creditors, who made over the principal to foreigners, substituting them as creditors for the loan: when this was discovered, lending on interest was altogether made illegal, A. U. C. 411. Thus the poor man's welfare was neglected; for being obliged to enter into conditions forbidden by the law, in order to raise money, when called on for payment he threw himself on the protection of the law which he had violated; hence arose endless lawsuits, and great difficulty in administering the law: at length, through neglect of it and the accumulation of debt, seditions, fomented and excited by the tribunes of the people, and finally, an abolishment of all debts, *tabulæ novæ*, a remedy more injurious than the evil itself, ensued (§ 73). The Romans, like the Greeks, were accustomed to reckon interest by the month⁹, and it was paid on the calends, as among the Greeks on the day of the new moon¹⁰. Hence usurers' books, *tabulæ* or *libri*, were called *calendaria*, containing the per centage of the money lent, and the creditors' names, together with an account of the principal, *sors vel caput*. These *calendaria* contained not only private accounts¹¹, but some, of course, the public debt. The *curatores calendarii*, whom we mentioned among inferior public officers (§ 215), undoubtedly were employed in the accounts of the public debt as well as the direction of loans on interest.

1) Cf. Liv. 26, 11. 2) Cf. 1, 35, 26, 11. 3) Cf. Hor. Sat. 2, 5, 69; *ibiq.* Heind.; Suet. Nero 5. 4) Cf. Cic. Off. 1, 42. 5) Cf. Quint. Inst. Orat. 11, 2. 6) Tac. Ann. 6, 16. 7) Tac. *ib.* 8) See Liv. 7, 16. 9) The technical expressions were *sors caput*, the principal; *fœnus, usura, merces*, interest; *pecuniam ponere, in fœnere ponere, collocare, occupare*, to lay out money at interest; *pecuniam relegere*, to gather in principal let out; *usura quadrantes*, four per cent.; *trientes*, three per cent.; *semisses*, one half per cent.; cf. Cic. ad Att. 4, 15; Pers. 5, 149. 10) Cf. Hor. Sat. 1, 3, 87, "miseræ calendæ;" and Ep. 2, 69, "omnem relegit Idibus pecuniam; quærit calendis ponere." 11) Sen. Ep. 87; "divitem illum putas—quia magnus calendarii liber volvitur:" *id.* Ep. 14, "dum de incremento cogitat, oblitus est usus, rationes accipit, forum conterit, calendarium versat, fit ex domino procurator;" cf. *id.* de Ben. 1, 2, 7, 10; Mart. 8, 44, 11, "centum explicentur paginæ calendarum." It occurs also in Digg., as in 26, 7, 39. § 8. loc. Papin., "pecuniam in calendarium pupilli convertit;" and 32, 64, loc. Africani, "certa prædia nepoti per fideicommissum dederat, excepto calendario."

385. Considering what has been said on commerce, we shall not wonder that the Romans took so little care in providing accommodation for shipping, and rendering their city as flourishing in commerce as it was powerful in arms; though the situation of Italy and of Rome itself ought to have incited them to it. The harbour of Ostia, constructed by Ancus Martius, was early provided for this purpose; he also allotted some forests for ship-building¹. Yet neither does this king, intent, like the rest, with the exception of Numa, on war, seem to have formed any plan for extending commerce. During the Republic and the continual wars with neighbouring states, we cannot suppose that greater attention was paid to it, yet some treaties entered into with the Carthaginians for the protection of commerce² prove that it was not altogether neglected; of these, the earliest dates from the first year after the expulsion of the kings³, and the latest, A. U. C. 473.

We have already distinguished (§ 373) merchant-vessels from ships of war by the name of *naves onerariæ*; they were deeper and fuller than ships of war, and generally were moved by sails, not by oars. We may

here mention the parts and fitting up of ships: *carina*, the keel; *statumina*, the floor or futtocks; *prora*, the stem; *puppis*, the stern; *alveus*, the hold; *sentina*, the well of the pump; *saburra*, the ballast; *tabulatum*, the deck; *aplustrium*⁴, the flag or streamer: the ship's sign, (*παράσημον*,) was carried on the stern, generally the figure of some god⁵ or animal (equivalent to the ship's name). The statue of the god⁶ or hero under whose auspices the ship sailed was placed at the head; other parts were *transtra*, benches; *scalmi*, (row locks?); together with oars; *rudentes*, cables; *funes*, ropes; *malus*, the mast; *antennæ*, the yards; *vela*, sails; *pes veli*, the rope at the corner of the sail, called the sheet; *clavus*, the rudder; *gubernaculum*, the helm or tiller; *anchora*, the anchor.

- 1) Cf. Dionys. Hal. 3, 44. 2) See Heyne Opusc. Acad. v. 3.
 3) Cf. Beauf. *sur l'Incert.* p. 1. c. 3. 4) Cf. Juven. 10, 136.
 5) Cf. Virg. *Æn.* 5, 116. 6) Cf. Ovid. *Heroid.* 16, 113; *Trist.*
 1, 3, 109.

COINS, WEIGHTS, AND MEASURES.

386. As elsewhere in early times, so in Italy, commerce was carried on by the barter of commodities, (whence the use of *mutare*, *ἀλαττειν*, for *vendere*¹,) or by taking in exchange bullion of their value²; whence the early pound weight and coin were the same, *as*; or by bartering goods for cattle, then the principal riches, whence the image of an ox came to be stamped on money, and the word *pecunia*³ itself to be so called from *pecus*, cattle, their standard of value⁴, as many suppose⁵.

The *as*, the first weight among the Romans, was divided into twelve ounces, *unciæ*, the ounce into eight drachms⁶, and each drachm into three scruples, *scrupulæ*; and the ounces in a pound were named and reckoned as follows: *uncia*, an ounce; two ounces, from

their being the sixth of an *as*, *sextans*; and for a similar reason three ounces were called *quadrans*; four ounces, *triens*; five, *quincunx*; six ounces, *semis* or *semissis*⁷; that is, *semi-as*, half an *as*; seven ounces, *septunx*; eight ounces, *bes*⁸; nine, *dodrans*; ten, *dextans* or *decunx*; eleven, *deunx* (*de uncia*): the third part of an ounce was called *duella*; the sixth, *sextula*; so that the *sextula*⁹ was the seventy-second part of the integral *as*. The *as* and its aliquot parts are applied to several purposes of calculation, and also to expressing the share of property bequeathed to a person: *as*, *hæres ex asse*, heir to the whole; *ex semisse*, to half; *ex semuncia*, heir to a twelfth; *ex dodrante*, to three fourths; *ex sextula*¹⁰, to a seventy-second part of the inheritance.

1) Cf. Virg. G. 3, 307. 2) *Hinc pendere, expendere, pro solvere, insumere*, etc. 3) Cf. Colum. l. 6. præf. 4) This is the opinion of Stieglitz (*Archæol. Unterhalt.*); yet we do not find the figure of an ox, but the head of Janus, on the earliest Roman coins. 5) The word *moneta* has a different origin, viz. from the temple of Juno Moneta (mint); there seems no reason to doubt that *numus* comes from *νόμος*, whence also comes *νόμισμα*, *numisma*. 6) These are Roman drachms; the Attic was larger; some say it was equivalent to six, others to somewhat between six and eight Roman ounces. Cf. B. Van Laar. *Dissert. Inaug. de Rom. Pond. et Mens.* p. 15, etc. 7) *Semis*, i. e. *semias*, half a pound; *sesqui*, one pound and a half, seems formed from *semisque as*, being understood. 8) Varro de L. Lat. 4. p. 41; “*bes ut olim des, dem, pro triente;*” *bes* being for *bis des*. But Scheller gives a different account of it. *Bes* might even be supposed to stand for *bis triens*. 9) Varro de L. L. 4. p. 40; Colum. 5, 1, 9. 10) Cf. Cic. ad Att. 7, 8. p. Cæc. extr.

387. The method of dividing the brass money¹ coined by Servius Tullius², (*as libralis*, *æs*, *æs grave*), was similar. This coin at first weighed a pound, but at the time of the first Punic war only two ounces; in the second Punic war, one ounce; and soon afterwards, only half an ounce. I find it stated that towards the close of the Republic³, the *as* and its subdivisions were no longer coined: its parts were the farthing, *quadrans*, *teruncius*⁴, and *triens*⁵, the third part of it. Of silver coins, the most common is the *sestertius*, that is, *semis*

tertius, three half *asses*; hence it is marked II S or LL S, in which the letter S stands for *semis*, half an *as*, and the double I or double L for two integral pounds, *libra*. The *quinarius* was double the *sestertius*, the *denarius* four times as much, equal to the *drachma* of the Greeks; afterwards it was worth sixteen *asses*⁶: this coin was also called *bigatus* or *quadrigatus*, from the *bigæ* or *quadrigæ* stamped on it. A foreign coin called *Victoriatus*, from its bearing the impress of Victory, was equal to the *quinarius*. The golden coin was the *aureus* (*χρῦσινος*, *χρυσοῦς*), which, after the introduction of the *semis* and *tremis*, was distinguished by the name *solidus*, weighing six scruples, and worth 100 *sestertii*⁷.

The Greeks calculated large sums by talents, each worth 60 *minæ*, or 6000 *drachmæ*; the Romans expressed such sums by *asses*, or rather by *sestertii* or *sestertia*, the *sestertium* (a weight) being equivalent to 1000 *sestertii*; however some suppose that in expressing ten hundred thousand *sestertii*, or a greater number, they omitted the word *hundred*, and used a numeral adjective with the word *sestertium*; for instance, *decies sestertium*, or X LLS, that is, ten hundred *sestertia*, or ten hundred thousand *sestertii*⁸; frequently the sum intended is doubtful, or at least difficult to determine, particularly when *sestertiis* or *sestertium* is used, it being impossible to distinguish whether *sestertii* or *sestertia* is used, as IIS C (Sallust. Cat. 25); sometimes the word *sestertius* or *sestertium* is omitted⁹.

1) Cf. Plin. 18, 3: "Særvius rex ovium boumque effigie primus æs signavit." 2) Cf. Liv. 4, 60, 5, 12. 3) Stieglitz states the last *asses* to have been coined in the time of Sextus Pompey: he also states that under the Cæsars, *denarii* mostly were coined, seldom *quinarii*, and no *sestertii*. 4) Quadrante lavari, "Hor. Sat." 1, 3, 137; Juven. 6, 447. 5) Liv. 22, 10; Juven. 3, 267. 6) Cf. Tac. Ann. 1, 17. 7) Leaden Roman pieces are also extant, on which cf. Plaut. Cas. 2, 3, 40; Most. 4, 2, 11; Trin. 4, 2, 120, and

Mart. 10, 74, 4; "centum merebor plumbeos die toto;" see Pignor de Serv. p. 248: Stieglitz says they were not coin, and discusses their use, mentioning several kinds of them. 8) "Sestertium millies (Cic. de Off. 3, 24), 100,000,000, septies millies (Cic. Phil. 12, 5), 700,000,000; bis et vicies millies sestertium (Tac. Hist. 1, 20), 2200,000,000; sestertium quadringentes ærario illatum est (Tac. Ann. 13, 31), 40,000,000; II S vicies: Cic. ad Att. 4, 2, in sestertio vicies (Nep. Att. 14), 2,000,000; Cæsar centies sestertio cœnavit (Sen. de Cons. 9), 10,000,000." The method of computing would be much simplified if it were agreed that *sestertium* stood for 100,000 sestertii, in sums exceeding 1,000,000 sestertii; and thus *viginti sestertia* might stand for *vicies sestertium*. Cf. Mart. 1, 104, "decies millia centum." 9) "Decies millia centum" (Mart. 1, 104) i. e. *sestertii*, which might have been elsewhere difficult to ascertain; "Tusculanam villam quingentis millibus" (sc. *æstimarunt*, Cic. ad Att. 4, 2); "quum lis ejus quater millibus æstimaretur," i. e. *numis* (Vell. 2, 8); "mullum sex millibus emit æquantem sane paribus sestertia libris" (Juven. 4, 15); "decies centena" (Hor. Sat. 1, 3, 15), i. e. *sestertia*; "quadringenta" (Juven. 1, 106); "sume tibi decies" (Hor. Sat. 2, 3, 237), i. e. *decies sestertium*, 1,000,000; "decies solidum" (ib. v. 240); "plenum vicies" (Mart. 1, 100); "millies" (ib.)

388. Measures borrowed from the length of parts of the body, were employed by the Romans, as by other people, for measures of length. The foot, *pes*, containing four palms, *palmae*, or twelve inches; *pollices*, or sixteen finger's breadths, *digiti*: it was, however, also called *as*, as being the integer, and divided into twelfths, *unciæ*. The cubit, a foot and a half; *passus*, a pace, five feet; one hundred and twenty-five paces one *stadium*, and eight *stadia* one mile¹, *milliarium*. We have already mentioned that on the roads, mile-stones were placed at this distance apart, called *milliarii* (§ 48). The acre, *jugerum*, was a superficial measure of one hundred and twenty feet in breadth and two hundred and forty in length, also divided as an integer, *as*, into its parts, as *sextula*, *jugeri*, *scrupulum jugeri*: half an acre was called *actus*².

Measures of liquids were the *amphora* or *quadrantal*, of the capacity of a cubic foot, and held two *urnæ*, or eight *congi*; the *congius* held six *sextarii*, the *sextarius* two *heminae*, or four *quartariae*, or eight *acetabula*,

or twelve *cyathi*³. The *modius*, bushel, was the most usual measure for dry goods, and held ninety-six *sextarii*, and was equivalent to the sixth of an attic *medimnus* of forty-eight *chaeniceæ*.

1) Cf. Colum. 5, 1.
Sat. 1, 1, 54.

2) Cf. Colum. l. c.

3) Cf. Hor.

OF THE REVENUE.

386. In the earliest times it appears that the public expenses at Rome were defrayed by a poll-tax, *tributum capitis* (cf. § 144, 145); any other revenue arose from the rent of public lands; but Servius Tullius introduced a property-tax¹, proportional to every one's income, *census*, though the poll-tax, I think, was also continued (§ 145). The tax on property varied according to the necessities of the state, and in cases of extreme need, recourse was had to extraordinary taxes, *temeraria*². In like manner, afterwards, allies and provinces; the former by the conditions of treaties, the latter by the will of the conquerors, paid tribute to the Roman people; some a poll-tax, others a property-tax, and some perhaps both³: but the taxes were remitted to Roman citizens from the time of the conquest of Macedonia, anno 586, to the consulship of Hirtius and Pansa⁴.

1) See Hegew. p. 49.

2) Cf. Liv. 26, 35 and 36; Fest. in *tributorum*.

3) Cf. Liv. 45, 29; Dionys. 3, 60, 4, 52; Tac. Ann. 13, 51: see Hegew. p. 66.

4) See Cic. de Off. 2, 22.

390. The revenue arising from duties, *vectigalia*, which the name leads us to suppose were levied only on imported goods, (*vecta* from *veho*), were far more productive than the former: the term *vectigal*, however, is applied to all kinds of public income, but seldom, or at least less properly, to the poll-tax and property-tax, *tributum capitis, ex censu*. The usual expressions ap-

plied to taxation are *vectigal imponere*, to lay a tax on; *vendere, locare*, to sell or let tolls; *redimere*, to farm them, etc. Among the ordinary taxes, gradually introduced as the empire extended itself, are mentioned taxes on public lands, comprising pastures, and woods adapted to grazing cattle, a tax called from the account-book in which it was entered *scriptura*¹; *portoria*, harbour-dues (derived either from *porto* or *portus*), levied in harbours, on the frontier, and at fords and bridges, to be paid in kind²; whence the terms *portorium maritimum, vini, pontis*³, etc. On the expulsion of the kings, this tax was diminished or abolished, but certainly restored⁴ afterwards; it was abolished in Italy, however, A. U. C. 693⁵, and partly restored by Julius Cæsar⁶; also duties on mines, principally collected in Spain, Illyria, Macedonia, and Africa⁷; and on salt⁸: the duty of one-twentieth of the value of enfranchised slaves⁹, called *aurum vicesimarium* (§ 60): besides the sums arising from money forfeited to sacred uses (§ 271^a), *sacramenta*; and those arising from fines¹⁰, and from the property of the proscribed, or property forfeited to the state on other accounts, and from the plunder of enemies, which in early times surpassed all other sources of income in amount. This was the state of the revenue during the Republic.

- 1) Cf. Burm. de Vectig. pop. Rom. c. 4. 2) See Burm. c. 5.
 3) Cf. Cic. pro Font. 5. in Pis. 36. 4) See Liv. 2, 9. 40, 51;
 Vel. 2, 6. 5) Cf. Dio Cass. 37, 51. 6) Suet. Cæs. 43.
 7) Cf. Liv. 45, 18; Plin. H. N. 33, 6. 8) Cf. Liv. 1, 33. 2, 9.
 9) Cf. Liv. 8, 16. 27, 10; Cic. ad Att. 11, 16. 10) Cf. Liv. 10,
 23. 31, 50.

391. New taxes were introduced or old ones reinforced by Augustus; such as an eighth or a fortieth¹ levied on goods imported into Italy or into Rome; a hundredth levied on goods exposed for sale in the forum or at auctions, a tax varying² according to the kind of things sold, and for other reasons; a twenty-

fifth part of the value of slaves sold³; a twentieth part of legacies when the legacy exceeded a certain sum, paid by the legatee, unless he was a son or grandson⁴: these taxes were the emperor's, and paid into his exchequer⁵ (*fiscus*), *res fisci est*. Juv. 4, 55. Augustus also enriched the public treasury, *ærarium*, by levying fines on bachelors, and confiscating any property bequeathed to them, or to which they were legal heirs⁶, to the public fund; and also allotted to the public service all property that became escheat by lack of heirs and legal owners (§ 101); by enacting the *lex Julia* and *Papia Poppæa*. Under the Cæsars, who succeeded him, the *fiscus* was increased by the shameful operation of the *lex Majestatis*, law of high-treason, by vexatious and numerous charges against the rich, and by confiscating property (§ 264). Many taxes also were imposed; among the most abominable, the *vectigal urinæ*. The most iniquitous taxes were those invented towards the decline of the empire; among which were the *chrysargyrum* or *lustralis collatio*, and particularly the *indictio*, which will be explained in the next paragraph.

1) Tac. Ann. 13, 51: "Manet tamen abolitio quadragesimæ quinquagesimæque, et quæ alia exactionibus illicitis nomina publicani invenerant." Cf. Plin. 6, 23. 12, 18; Burm. p. 62, sqq.; Hegew. p. 196. 2) Cf. Tac. Ann. 1, 78. 2, 42; Suet. Cal. 16; see Burm. p. 68, sqq. 3) Cf. Tac. Ann. 13, 31: "Remissum specie magis, quam vi; quia, quum venditor pendere juberetur, in partem pretii emtoribus accrescebat." 4) Dio Cass. 55, 24. 56, 28; cf. Plin. Ep. 7, 14; Paneg. 37; Burm. c. 11; Hegew. p. 199. 5) Concerning the *aurum coronarium*, see § 250. 6) See Dio Cass. 55, 15. 56, 1-10; Tac. Ann. 3, 25 and 28; Caj. 2, 111 and 144; Hor. C. S. 17.

392. The *indictio*, introduced, as it is thought, by Diocletian, was in full operation under Constantine, and was a tax on property, paid yearly: the value of all farms, cattle, and slaves, was assessed by *censitores*, assessors, as in the census under Servius Tullius, and this valuation was repeated every fifteenth year, and

the tax paid by every one every year according to that valuation. The total amount of all the property and capital in every province, the nominal worth of its inhabitants, was divided into portions, of which one was assigned to each of its principal divisions, and this portion subdivided and distributed among its subdivisions; these portions again among its towns, villages, and, finally, individual inhabitants, (*collatores*, subscribers), in proportion, however, to every one's property. The whole sum exacted of the entire province was thus made up by the shares contributed by each portion from the taxes levied on each individual: those employed in collecting it, etc. were called *tabularii*, *exactores*, *susceptores*, *ponderatores*, *mensores*, etc. The tribute itself was fixed by an edict of the emperor, issued in the autumn of every year; it was called *indictio*, from *indicare*; and this word thus came to be applied to a space of fifteen years, and is thus used in the Julian period¹.

The *lustralis collatio*, also called *canon aurarius*², and *auraria pensitatio*³, or simply *auraria*⁴, or distinguished by the Greek word *chrysargyrum*, was termed *lustralis*, from *lustrum*, though collected every fourth, not fifth year (§ 145); it was a tax on all who received wages or salary, *qui pecuniam in conversatione habebant*, including artisans and shopkeepers, excepting only those who earned their livelihood by the work of their hands, *qui manu vitam rimantur*; levied also on the wages of prostitution⁵.

1) See Hegew. p. 273, sqq. 2) Cod. Just. X. 47, 10. 3) Ib. XI. 61, 2. 4) Cod. Theod. XII. 6, 29. 5) See Zos. 2, 38; Euagr. 3, 40; Lyd. 3, 47; Burma. p. 206.

393. It was customary for the censors to let out to bidders¹ the ordinary taxes which we have before mentioned, on the calends of March every fifth year, the auction being held in the forum, *hasta in foro posita*²; to which custom *hastarium* is applied, and the

the censor's books were called *tabulæ* or *leges censoriæ*³; the privilege of farming them vested in the equestrian order (§ 137 and 251). They, therefore, divided into companies, collected them through their agents, *publicanorum magistri*, *scripturæ magistri*, *portus magistri*, called *portitores*, *operæ scripturarii*⁴, etc. paying a set price to the treasury, of the same amount as the total revenues were expected to furnish, and which was determined by the quæstors under the direction of the senate. The various internal and external causes of fluctuation in public affairs necessarily at times affected the treasury; and yet during the Republic, these embarrassments were more easily remedied than under the emperors, when the expenditure and taxes were immensely increased, the provinces exhausted, and the custom of purchasing peace of the barbarians, the little plunder, if any, from conquered nations, and the decay of patriotism, involved the treasury in continual embarrassments, the severest calamities of the empire.

The right of imposing taxes and the administration of the treasury (to which the *quæstores regum* belonged (§ 211), which may be said properly to have been appropriated to themselves by the kings, were afterwards altogether transferred to the decision of the senate⁵, and, under the emperors, the imposition of them and their appropriation were, for form sake, left to the senate. Yet a new treasury was founded by Augustus, to be confined to military expenses, the administration and appropriation of its funds depending on the will of the emperor, while the senate assigned the amount of funds paid into it: this, under the name of *ærarium fisci*, gradually came to be the private fund of the emperors, and at length, the former altogether disappearing, all the revenues of the state were appropriated to their private fund, *fiscus*, from *fiscello*, *fiscina*⁶, a bag or purse.

1) See Liv. 43, 16; Hegew. p. 93, sqq. 2) Cf. Ovid. de P. 4, 9, 45: "Nunc longi reditus hastæ supponere lustrî Cernet, et exacta cuncta locare fide." These remarks apply to the times of the emperors, when the consuls had been charged with the letting of them. 3) Cf. Cic. Verr. 1, 55. 3, 7. 4) Cf. Cic. Verr. 2, 70, sqq. 5) Cf. Polyb. 6, 13, 15 and 17; Liv. 45, 18. 6) Cf. Tac. Ann. 1, 37; Cic. Verr. 3, 85; ad Q. Fr. 3, 4.

394. We shall here add a few remarks concerning the public expenses, to the account of the taxes, as they mutually infer one another¹. These expenses were at first small, while the state was of small extent, and among the earliest and first must be placed those required for public works and the service of religion². We perceive that their idolatrous worship was of considerable splendour even while the resources of Rome were small, from the numerous temples dedicated, even under the kings, to a host of divinities, as well as from the institution of orders of priesthood, the frequent sacrifices, games (§ 331), and sumptuous feasts³. And, besides temples, buildings for various purposes, and public works (§ 50), were erected; among the more extensive of which were the fortifications of the Capitoline hill and the Capitol, the Circus Maximus, the stone walls of the city, the public sewers and aqueducts. Other expenses were those of war, which were but light, whilst the soldier found his own arms, and partly maintained himself, and the treasury furnished nothing but horses to the cavalry, and money or rather *annona* (§ 364 and 374), a yearly allowance of food, to the soldier; the sustenance of public slaves and of those who served the magistrates (§ 217), and of the citizens who filled offices of an inferior description. It may be questioned whether magistrates received salaries; but certainly the expenses incident on their offices were defrayed at the public charge: silver vessels⁴ were also provided at the public expense either for entertaining ambassadors at feasts, or else to be intrusted to magis-

trates for public use: finally, to omit others of less consequence, we may mention the distribution of corn purchased abroad in times of scarcity, and distributed gratis or at a reduced price to the poor⁵.

1) Concerning both these, consult a valuable work by D. H. Hegewisch; Versuch über die Römischen Finanzen; also the Grundzüge des Finanzwesens im Römischen Staat, by R. Bosse. Of earlier works, the most valuable is that of P. Burman; De Vectigalibus Populi Romani Dissertatio. 2) Cf. Liv. 1, 20. 3) Cf. Liv. 22, 10. 24, 43. 4) Cf. 33, 11. 5) Cf. Liv. 2, 34 and 52.

395. But one expense constantly recurring, and exceeding all others, was added to these lighter charges, when pay was given to the soldier; an expense which increased with the growth of the state, as others also did, necessarily, when we consider the stupendous wars, the magnificence of triumphs, and the number and splendour of the exhibitions of public games, which must have cost the treasury such great sums, as well as the celebration of feasts, the salaries of magistrates, and the almost innumerable public buildings and works of vast extent and great magnificence. But besides the pay of the army, which was raised even during the Republic, and still further increased by the emperors, we find two customs introduced when public morals were decaying, and carried to an enormous pitch under the emperors, the practice of making presents to the army, *donativa*¹, and largesses to the people (which sprung, however, from a good motive²), such as *largitio congiaria* and *frumentaria*³, public distributions of wine and corn, and treating them to games at a vast expense⁴; charges which the whole Roman empire could not defray. Equally ruinous were the expenses of the court (introduced by Diocletian), the numbers of officers, and the multiplication of ranks and offices (§ 232, etc.) unknown in ancient Rome, and even under the first emperors, and carried to its height under Constantine

the Great, so as to rival the pomp and luxury of Eastern monarchs⁵.

1) Cf. Tac. Hist. 1, 5; Dio Cass. 78, 36. 2) Cf. Liv. 2, 34 and 35; Dionys. 7, 1 and 21. 9, 25. 3) Cf. Tac. Ann. 1, 11. 3, 29; Dio Cass. 43, 21. 51, 21. 55, 10: 'Ο δὲ Αὔγουστος τὸ τῷ δήμῳ τοῦ σιτοδοτουμένου πλῆθος, ἀοριστον δὲν, ἐς εἴκοσι μυριάδας κατέκλεισε· καὶ ὡς γέ τινες λέγουσι, καθ' ἕνα ἐξήκοντα δράχμας ἔδωκε. Cf. id. 59, 2; Liv. 4, 12. 30, 26 and 38; Suet. Cæs. 41; Vop. Aurel. 35: "Fides historica frequentavit, Aurelianum eo tempore, quo proficiscebatur ad bellum Orientale, bilibres coronas populo promississe, si victor rediret, et, cum aureas populus speraret, neque Aurelianus aut posset aut vellet, coronas eum fecisse de panibus, qui nunc siliginei vocantur, et singulis quibusque donasse ita, ut siligineum suum quotidie toto ævo suo et unusquisque reciperet, et posteris suis dimitteret. Nam idem Aurelianus et porcinam carnem populo Romano distribuit, quæ hodieque dividitur." 4) Cf. Juven. 10, 80. 5) See Hegew. p. 249, sqq.

PART II.

CHAPTER THE FIRST.

396. In accordance with the plan of my treatise, I shall devote the first chapter of the second part to an account of the genius of the Romans, the cultivation of literature, and the state of the arts and sciences among them; and the second chapter to the manners and customs of their private life.

OF THE ROMAN DISPOSITION AND GENIUS.

We have seen (§ 15) that at the time when Rome is said to have been founded, Italy was divided among many nations of different origin, the southern part being mostly settled by Greek colonies. In all that regards civilization and refinement, the Greek colonists surpassed all the other inhabitants except the Etrurians, who, in the opinion of learned men, excelled even them¹. The first inhabitants of Rome, whether we suppose them, according to the common opinion, to have been composed of robbers and the refuse of society, or of a more reputable class, and civilized by the Etruscan laws² (§ 40), are proved to have long remained ignorant of the advantages of civilized life, unacquainted with letters and sciences, and barbarous in their habits and customs: and this is evident from their earliest written laws, those of the XII Tables, enacted with the consent of all ranks, which, though composed three

centuries after the building of the city, still contained many traces of early barbarity, such as the custom of selling an insolvent debtor, and the rigour of paternal authority. Those who follow Dionysius Halicarnasseus on this point, and imagine that even in the time of its founder the form of government was all but perfect, cannot be credited³.

1) Cf. Nieb. v. 1. p. 88, sqq. 2) Cf. Nieb. p. 80. 3) Cf. Cic. de Rep. 2, 10.

397. However, it is not to be questioned but that the religious institutions introduced by Numa, as well as the auguries and auspices, in use in the time of Romulus, had some influence in civilizing their manners. Succeeding kings, following the precepts of Numa, all contributed to adorn and enlarge the city; particularly Tarquinius Priscus and Servius Tullius. Yet even after the expulsion of the kings, the disposition of the Romans remained adverse to arts and literature; and it could not be otherwise with a people constantly at war with nations as poor and unpolished as themselves, if we except the Etrurians. But allied to this unpolished state of society, flourished those virtues of the ancient Romans which are so commonly admired, frugality, which poverty naturally taught, and simplicity in their manner of life and dress, as well as stern morality, which sprung from both: also warlike courage, necessary to people growing up among powerful enemies; stern discipline, unconquerable firmness of purpose, long endurance of hardships, skill in war, induced by constant practice; finally, reverence for their parents and the gods, a love of justice, and an all-surpassing attachment to their rising country.

398. Is it to be wondered at, if, with such virtues, the Roman state grew up rapidly? especially when a rare combination of favourable circumstances conspired to

favour the city. For as its insignificance and poverty, by rendering it contemptible, shielded it from its powerful neighbours, its bold daring overawed its equals; so wisely had the kings, of equal excellence in war and peace, strengthened it by their laws: for it happened to the Romans, for more than two hundred and forty years, during which they were governed by kings, never to have a king of inferior talents and virtues, if we except the recklessness of the last in treating his subjects. Their growing greatness was likewise accelerated by their being surrounded by poor and small but warlike states, whose conquest did not furnish riches sufficiently great to introduce luxury and corruption of morals among the conquerors. Hence their strength was unimpaired when they came to be matched against more powerful nations, to whom, though unequal in numbers, they were superior in courage, firmness, and patriotism: for the love of freedom, which glowed more ardently after their first bitter experience of tyranny, superseded and compensated for the supremacy of the kings, in checking lawlessness, and through it, though brought low at first by the power of Porsenna, they rapidly rallied and steadily rose higher, notwithstanding the opposition offered by conflicting parties; since, so long as their moral discipline was unimpaired, their internal dissensions sharpened rather than blunted their eager animosity against external foes; and when once the safety of their country, to them of all-surpassing interest, was threatened, they forgot their conflicting dissensions, and united against their enemies¹.

1) Cf. Flor. 1, 26: "Interque hæc omnia nullius acrior custos, quam libertatis fuit; nullaque in pretium ejus potuit largitione corrumpi," etc.

399. Thus the expulsion of the kings was succeeded by three centuries, ennobled by, and prolific of, instances of high moral and courageous conduct in men

whose names are even now celebrated ; Brutus, Valerius Publicola, Quintus Cincinnatus, the Decii, Manlius Torquatus, Camillus, Fabricius, Curius, Regulus and others¹. However, later writers, dazzled by the splendour of the deeds of that age, are less alive than they ought to be to its darker traits of character, such as the spirit and practice of usury, so opposite to their extolled frugality, ever one of the worst vices of the Romans, and most prevalent in the age that followed the expulsion of the kings, and then ruinous to the poorer classes, as it was afterwards to the provinces of the empire (§ 255). The notorious cruelty to which debtors were subjected, though allowed by law, and perhaps less revolting when we consider the unpolished manners of that age, increased the evils of usury ; though it would be unreasonable to expect in unrefined tempers and characters, feelings developed only by education and civilization, and to reproach the Romans for these inhuman practices ; for those who do, do not perceive that they are condemning things inseparable from the peculiar excellences of this people : but we may justly reproach them for their contempt of other nations, their insolence in victory, the pride of their triumphs, their inhumanity to the conquered (when it seemed advantageous to the state), the insatiable desire of conquest shown by the senate, and the haughtiness of the patricians, as well as their injustice towards the lower orders, whose requests were generally reasonable.

Some recent writers, considering these blots on the Roman character, have fallen into an opposite extreme in judging harshly even of their virtues, overlooking their excellences as others have overlooked their defects : for it would seem as if some writers of the present day have undertaken to exhibit not the Romans as they actually were, but as the worst of them have been described to be. If called on to decide, I should

on the whole be inclined to side with those who consider those ancient times as deserving of praise rather than of censure, and the Romans themselves, as on many accounts superior to the nations whom ancient history places in comparison with them².

1) Cf. Hor. Od. 1. 12; Flor. 1, 18.
lib. 1.

2) Cf. Dionys. Hal.

400. These centuries of glory were followed by centuries of triumph, and then by centuries of inward decay¹. Carthage, the rival of Rome, having been destroyed, and the empire extended over and through Greece into Asia; the riches of these plundered nations corrupted them the more easily, as they were the more unused to them; and towards the closing years of the Republic, little or nothing of ancient morals survived², in spite of laws (§ 466) introduced by the elder Cato, and some other men of similar character, who endeavoured to restrain luxury³, avarice, and venality, the most prominent vices of the age⁴, and by some who were alarmed at the inducements to a more civilized state of manners offered by literature and science (§ 417). In those times the principal men, enriched for the most part by the spoils and plunder of the provinces allotted to them, and as intent on making money as they formerly were on furthering the fortunes of their country, appear as contemptible for their effeminacy, luxury, gluttony, and pleasures, as they were formerly venerable for the contrary virtues; and as soon as poverty was stigmatized as dishonourable by the example of the luxury of those in whose hands the honours and power of the state were, patriotic attachment to their country could not long exist in the hearts of the poorer and humbler classes; nor any of the other praiseworthy characteristics of the Roman people, as soon as patriotism was extinguished, and accordingly the lower classes

are found to have become as degenerate and as far removed from their early worth as the upper classes, consisting of an idle multitude, the sweepings of the provinces, supported by the largesses of the magistrates, loungers in the forum⁵, ready for riots, and selling themselves to the leaders of factions, rivalling the great in their endeavours to overthrow liberty and the state⁶.

On this universal depravity of the Romans, many later authors have written copiously and well, though contemporary writers equally prove it⁷. The execrable era of the Cæsars succeeded the extinction of liberty, and is described in the pages of Suetonius, Tacitus, Juvenal, and Martial, as remarkable for dishonour and disgrace as the ancient days of Rome were for glory and honour.

1) Cf. Flor. 1, 1. 2, 19 and 22. 2) Cf. Cic. de Rep. 5, 1; Tacit. Ann. 1, 4. 3) See Gell. 2, 24; cf. Tac. Ann. 3, 52, sqq.
4) Cf. Flor. 3, 12, who is more verbose than usual in this instance.
5) Cf. Liv. 9, 46. 6) Cf. Tac. Hist. 2, 38. 7) Cf. the preface of Livy, and especially Sall. Bell. Cat. et Jug.; Cic. de Rep. 5; Flor. 1, 18 and 22. 3, 12.

OF THE CULTIVATION OF LITERATURE AMONG THE ROMANS.

401. The example of the Romans proves more clearly than any other the truth of the trite remark, that asperity of manners is connected with a contempt for arts and literature; and that the cultivation of the latter proves the destruction of the former. For the integrity of ancient morals was strictly preserved as long as they strove for liberty rather than for universal dominion, and whilst they still remained adverse to the pursuits of literature; but after the conquest of Greece and Asia, they imbibed from both a love for milder manners and the pleasures of luxury and riches, and from Greece in particular, their usual companions, arts and literature:

“Græcia capta ferum victorem cepit, et artes
Intulit agrèsti Latio¹”.

so that until the sixth century of its existence, literature was neglected at Rome, although it was making advances among other more polished nations, such as the Etrurians and Greeks: though early remains mentioned by writers, such as the *Chronicles of the Kings*, *Commentarii Regum*², *Annales Pontificum*, and the laws of the Twelve Tables (§ 261 and 318), forbid our saying that it was altogether unknown. Jurisprudence also was early and earnestly studied³, and there were a few poems and histories, besides the annals of the priests. But the earliest who distinguished himself in Latin literature was Q. Fabius Pictor, so late as the sixth century; other more ancient authors are mentioned, who, however, wrote in Greek.

1) In a leisure moment I paraphrased Horace's well-known lines thus: "Evehit ad summum, quod tentat, Græcia felix, victorem Romam musa secuta ferum." 2) Cf. Cic. pro C. Rab. 5. 3) Cf. Hein. Hist. J. R. § 112, sqq.

402. We may naturally infer, therefore, that the Latin language remained rude and unpolished till this time; and this is abundantly manifest from some fragments of the laws of the Twelve Tables, and other relics of the language in the songs of the *fratres arvales* (§ 323), the *carmen saliare* (§ 326), and the inscriptions on the *columna rostrata* (§ 426). Yet they prove that however rude and uncultivated the Latin of the early ages, it was the same language as that spoken in a later age.¹ Some attempt to draw a distinction between the Latin and the Roman languages; supposing the Latin to have been spoken between the Tiber and the Liris, and even at Rome² at first, and the Roman language to have been introduced into Rome soon after the expulsion of the kings³, yet that the Twelve Tables were written in Latin. However these arguments seem of little weight, and they hardly seem to have formed a distinct notion of what

they intend to prove: they also speak of dialects of the Latin, the rustic, the foreign, and the city dialects; and it is probable that what is found in all languages existed in the case of the Latin. But they confound dialects with corrupt modes of pronunciation, and strain to their purpose the passage in Cicero (*de Orat.* 2, 10—14).

1) It may have differed in other respects. See Polyb. 3, 22; cf. Hor. Ep. 2, 1, 86. 2) Cf. Ruperti Grundr. d. Gesch.—d. Römer. p. 800. 3) Why should we suppose it introduced, or whence? by the new inhabitants of Rome, or from a change in the whole language of Latium, or (which is just as likely) from the *fabula Atellana* (§ 353), introduced by the Oscî, in which alone any traces of the language of that nation, which utterly disappeared, were preserved at Rome: hence Strabo, lib. 5, τῶν μὲν γὰρ Ὀσκῶν ἐκλειπότων, ἡ διάλεκτος μένει παρὰ τοῖς Ῥωμαίοις, etc. Cf. W. Schlegel's Vorles. vol. 2. Vorles. 8. But who can tell us which we are to believe?

403. It were a hopeless undertaking to attempt to determine from what nation's language the Latin tongue is especially derived, and thus to decide its origin, since at the earliest times colonies from various nations were scattered throughout Italy (consult Niebuhr and Wachsmuth). Of those who settled in the southern part, were the Pelasgi, who spoke Greek, and who are supposed by some to have been the original inhabitants, and by others to have been the same as the Celts; and the Carthaginians colonised Sicily, while the descendants of the Gauls peopled the northern parts. By the frequent migrations and intermixture of so many nations, differing in language, as would naturally be expected, and as did occur, according to the testimony of history, there sprung a mixed language¹, especially in the central regions of Italy, and therefore in Latium, in which the Greek prevailed², being the language of the greater portion; just as we find to have been the case with respect to the Latin language in later times, which philologists abundantly demonstrated to have been derived from the Greek, and more particularly

from the Æolic dialect. Nor can I admit that either the Roman differed entirely at first from the Latin language³ of which they speak, or that either differed from the Greek in the roots of its words, and that they afterwards grew more similar; which it is certain that those who derive the Latin language from that of the Ausones, the most ancient nation of southern Italy, admit.

1) Cf. Lyd. de Magistr. 2, 13. 2) Lassen thinks only solitary words were borrowed by the Latin language from the Etruscan. (Beiträge Deutung d. Eugubin. and the Tables, in the Rhein. Mus. I. Jahrg., 3. H. 1833.) He also thinks that the Latin language was so closely allied to its sister languages (*verschwisterten*), that it is evident to any careful investigator, that they all owed their origin to one common source; yet that certain forms and roots exist which throw doubts on this common source. He might have used a better term than *verschwistert*. 3) Hugo Gesch. d. Röm. Rechts § 34. p. 38: "Die Römische Sprache war nicht einmal dem Nahmen nach von der Lateinischen verschieden."

404. Thus the Latin language, the words of which were derived principally from the Greek, having remained inharmonious and unpolished till the sixth century *ab urbe condita*, then borrowed from the Greeks, through the imitation of their writers, a more elegant construction, and a diction better adapted to polite literature: its state at this time is evident, from the fragments of Cato, Ennius, Lucilius, and other writers; from the plays of Plautus, and the still more polished diction of the comedies of Terence. Through two centuries the language was improved and enriched chiefly by poets and orators, afterwards by the more learned historians (consult Hor. Art. Poet. 56), at the same time corrected by the writings of grammarians, and at length, at the close of the republican era, reaching its highest point of perfection, though it was inferior in some respects to the Greek language, yet it seems to the best judges to have very nearly equalled it in excellence: and little regard should be paid to those who, as is

now customary, foolishly depreciate the Latin language that they may extol the Greek.

405. The remarks here made upon the language apply equally to the writers of the Romans, whom we find both the ancient and the Alexandrine Greek writers rivalled, not by a servile method of imitation, but by the powers of creative genius in many instances, and by the gifts of commanding intellect in the Latin historians particularly: and though the praise of invention is due in many cases to the Greeks, we are not on that account to depreciate the merits of those who equalled and sometimes surpassed the excellence of their models. The fragments of the Greek poets whom Catullus, Horace, and Propertius have imitated in lyric and elegiac compositions, do not furnish us with the same grounds of comparison as Homer offers to those who usually compare Virgil to him; and as for satire, it belongs exclusively to the Romans. Of orators, Cicero rivals Demosthenes: in history, Livy rivals Herodotus; and Tacitus and Sallust, Thucydides. For, with the exception of philosophy, which the Romans did not cultivate with the same enthusiasm nor success, we may safely declare that in every branch of literature they have left proofs of having aimed at that perfection which they admired in the Greeks. The usual division of Latin literature into its golden, silver, brazen, and iron ages, also into its infancy, childhood, manhood, and old age, is well known, and applies to the language itself as well as to its writers, as its purity and splendour declined with the decay of their genius.

Its golden age extends over the reign of Augustus, beginning at the time of Cicero, unless we include some earlier writers; the brazen age, from the third century of the Christian era to the taking of the city; the following was its iron age, to which some add an age of clay, extending from the extinction to the revival of letters.

406. The liberality of the chief men of the state in cherishing and honouring literature during the last years of the Republic, was equal to the ardour of the writers of that day in imitating the Greeks; in which employment many, like Cicero, sought either a relaxation from business or a refuge from adversity and the wearisomeness of public affairs. Hence learned men, grammarians, orators, philosophers, from all quarters, but particularly from Greece, crowded to Rome: and thus necessarily followed a common knowledge of the Greek language among the learned, and a diffusion of a taste for literature; but I doubt if it was ever diffused among the Romans as universally as among the Greeks, particularly the Athenians.

407. However, both the Greeks and Romans differed from us in not having any established faculties or professorships, nor did they endeavour to obtain public appointments by their learning, or practise teaching as a method of earning their livelihood, except the numerous tribe of grammarians, who acted as tutors in the families of the rich, or who publicly taught, and were called *literati*, or *litteratores*¹, and under the Cæsars, *professores*. These taught not only the rudiments of Greek and Latin, and elocution, but also the principles of poetry and declamation, the interpretation of the best authors, and those branches of the liberal arts which were held indispensable accomplishments of a well-born man: they were attended not only by boys and young men, but also by the most respectable men, and these teachers of eloquence and letters were generally held in high estimation. The first who taught at Rome is said to have been Crates Mallotes², an ambassador sent by king Attalus; Plotius was one of the most celebrated after him: their numbers so increased under the Cæsars, that, being compelled to leave Rome, they spread over the northern part of Italy, and public

schools, *ludi*, *pergule magistrales*³, were multiplied everywhere, so that gradually the literary institutions of the Greeks, such as contests of eloquence, and poetical compositions, public recitations⁴, disputes of the learned, and other practices of the kind, are found to have been introduced among the Romans, in imitation of the Greeks. The most celebrated public school in later times was the Athenæum, built by Adrian. A similar edifice in the Capitol is spoken of, and the temples were generally filled with classes of learners⁵.

1) Cf. Suet. de ill. Gramm. 4. 2) Suet. de ill. Gramm. 4 :—
 “Primus igitur, quantum opinamur, studium grammaticæ in urbem intulit Crates Mollotes, Aristarchi æqualis, qui plurimas ἀκροάσεις subinde fecit, assidueque disseruit; ac nostris exemplo fuit ad imitandum. Hactenus tamen imitati, ut carmina parum adhuc divulgata, vel defunctorum amicorum, vel si quorum aliorum probassent, diligentius retractarent, ac legendo commentandoque etiam cæteris nota facerent.” 3) Cf. Suet. Aug. 94; Juven. 11, 137. 4) Cf. Hor. Ep. 1, 19, 41; Plin. Ep. 1, 13; Juven. Sat. 1. init. 7, 39. 5) Cf. Heeren, Gesch. d. Stud. d. class. Litter. im Mittelalter, l. 1. § 16, sqq., ibiq. e Codice Theod., the regulations of the emperors respecting public seminaries.

408. The Romans also had public and private libraries; the first private library on record is that of Æmilius Paulus, A. U. C. 585. Afterwards Sylla brought the vast collection of Apellicon from Athens to Rome; Lucullus a still more valuable one from Asia; and a custom was gradually introduced of allotting a part of large mansions, generally on the eastern side, to a library. The first public library was formed by Asinius Pollio¹, in the vestibule of the Temple of Liberty; and soon afterwards Augustus presented to the public the celebrated Greek and Latin library of the Temple of the Palatine Apollo, and another preserved in the theatre of Marcellus². Several others are mentioned as being formed under the Cæsars, especially the Ulpian library, founded by Trajan, and the collection which Serenus Sammonicus left by will to the second Gordian³.

To what has been already said concerning the culti-

vation of literature, I intend now to add an account of its several departments, and the authors who have distinguished themselves in each ; afterwards giving a hasty sketch of the method and materials of writing, the shape and embellishments of volumes, the manuscripts, coins, and inscriptions of the Romans, subjects generally comprised under the title of literary archæology.

1) Cf. Plin. 7, 30. 35. 2 ; Hor. Sat. 1, 4, 21 ; Ovid. Trist. 3, 1, 71,
 2) Cf. Suet. Aug. 29 ; Cæs. 44 ; Hor. Ep. 1, 3, 16. 2, 1, 216 ; Ovid. Trist. 3, 1, 60 and 69. 3) See Heeren, Gesch. d. Stud. d. class. Litter., introduct. p. 15, sqq.

THE DIFFERENT DEPARTMENTS OF LITERATURE.

Poetry.

409. The earliest poetry of the Romans, as of the Greeks and other nations, according to the testimony of authors, was devoted to the service of religion, as the Carmen Saliare and Sibylline oracles, and contained the praises of gods and heroes¹: writers on poetry may suppose it to have belonged to the lyric or to the epic kinds, or to have constituted a species combining both. We may suppose with Fr. Ast² (Grundr. d. Philol. p. 414), that the Scolia were poems sung at feasts by the guests, to the sound of the flute³, in celebration of the virtues of their ancestors. In the sixth century of Rome many cultivated dramatic compositions⁴, in imitation of Livius Andronicus, who flourished A. U. C. 512⁵. Of these were Plautus and Terence; of the others, nothing, or fragments only, remain; but the tragedies of L. Anneus Seneca, who wrote in the times of the Cæsars, are still extant. Publius Syrus, whose sentences are still extant, acquired great celebrity for his *mimi*⁶, comedies of a particular kind, and D. Laberius likewise, fragments of whose compositions remain⁷.

The most ancient epic as well as sacred poems have perished^b. Ennius, who flourished in the sixth century of Rome, and wrote in various styles of composition, celebrated in an epic poem the actions of Scipio Africanus and the annals of Rome; of this poet fragments remain, but of the golden age of Rome, the writings of Virgil, the prince of Roman epic poets, alone are still preserved; of the silver age, the poems of Lucan, Valerius Flaccus, Silius Italicus, Statius; and of the brazen age of literature, the epic of Claudian, are also still preserved.

1) Cf. Cic. T. D. 1, 1 and 2; de Divin. 1, 40; Liv. 25, 12; Hor. Ep. 2, 1, 26. 2) Grundr. d. Philologie, p. 414. 3) See Cic. T. D. 1, 2. 4) Cf. Cic. Brut. 18. 5) Cf. Hor. Ep. 2, 1; Gell. 15, 24. 6) Cf. Ovid. Trist. 2, 497. 7) Cf. Macrob. Saturn. 2, 7; Hor. Sat. 1, 10, 6; Gell. 16, 7. 8) Niebuhr imagines that there existed in the earliest times, epic poems, from which Livy drew his account of the early centuries of Rome.

410. The didactic style of poetry was introduced after the drama and epic; specimens of it extant, are the poem of Lucretius (§ 417), the Georgics of Virgil, the Astronomicon of Manilius, the Cyngetica of Grattius Faliscus, and the poems of Olympius Nemesianus, in the third century, on the same subject, and on Bird Taking; also the poem of Serenus Sammonicus on maladies and their remedies, and other poems and fragments on medical subjects: the treatise of Terentianus Maurus on letters, syllables, feet, and metres, and portions of the works of Columella and Palladius (§ 419). In satire, Ennius, Pacuvius; and Lucilius¹, who is called the father of satire, and of whose works fragments remain, were by far anterior to Horace: Persius and Juvenal, and the satire of Sulpitia against Domitian, belong to the silver age. Horace, Ausonius, Ovid, and also the author of a peculiar species of poetical epistles called Heroids, imitated by Propertius, and partly attributed to Aulus Sabinus, furnish examples

of poetical epistles. Under the head of descriptive and narrative poems may be classed Catullus, Ovid, Statius, in parts, and some pieces of Petronius (§ 413), found in his *Satyricon*; and of a later age, Claudian: and the author of *Ætna*, a poem of the golden age, ascribed to Cornelius Severus, among others; and Rutilius, of the brazen age, the author of the *Itinerarium*. Horace is by far the first in lyric compositions, of which kind are some poems of Catullus and Statius, and the *Pervigilium Veneris*, improperly attributed to Catullus, belonging properly to Florus, the historian. Catullus and Ovid, Tibullus and Propertius, have left us examples of the elegiac style of the golden age of literature: the fragments generally attributed to Cornelius Gallus are thought to be forgeries. The *Eclogues* of Virgil, and those of Calpurnius and Nemesianus, both the latter of the brazen age, afford instances of the *Bucolic* species of poetry; Martial, and portions of Catullus, of Ausonius, and Claudian, of the *epigrammatic* style: Phædrus, and Avianus, an author of the brazen age, wrote fables, still extant. The *Disticha* of Dionysius Cato, of the silver age, are on moral subjects. The *Diræ in Battarum*, a poem of Valerius Cato, contemporary with Sylla, may be classed under the head of *Imprecatory Poems*, as well as the *Ibis* of Ovid. The poem addressed to Calpurnius Piso, commonly, but on slight grounds, attributed to Lucan, is an example of the *panegyric* style.

P. Burmann, and after him, Wernsdorf, augmented and published a collection of epigrams and other poems, among which are the *Catalecta* of Virgil, together with anonymous poems, some written in the days of pure *latinity*, but most of them specimens of its decaying and lowest stages, which had been before edited by Jos. Scaliger. Some writers have interspersed prose with verse, as Sidonius Apollinaris, and Boethius in his

Treatise de Consolatione Philosophiæ: these two writers, with Ausonius and Lactantius (§ 416), must be classed among Christian authors. Aurelius Prudentius, Claudius Marius Victor, Alcimus Avidus, Juvencius, Cœlius Sedulius, Arator, Venantius Fortunatus, Paulinus, and others, writers on christian subjects, have been edited together by Fabricius².

1) Cf. Hor. Sat. 1, 4, 6, 1, 10 and 2, 1, 62. 2) "Poetarum veterum ecclesiasticorum opera christiana." Basileæ, 1564.

HISTORY.

411. Fabulous traditions, *mythica*, and poetry, containing the praises of ancestors and their deeds, should not be confounded with history, which is likewise distinct from the bare records of daily events, whether *fasti* (§ 334) or *annales*, such as were kept at Rome, and from the annals in verse written by Nævius and Ennius: we have already said that the Pontifex Maximus had the charge of compiling the *annales* and *fasti* from the earliest times (§ 318). Fabius Pictor is the earliest writer to be classed among the Roman historians: he is commended by Livy and others. He was followed by Posthumius, Albinus, Cassius Hemina, C. Fannius, Calpurnius Piso, Vennonius, Volumnius, Claudius Quadrigarius, Valerius Antias, Cœlius Antipater, Cornelius Sisenna, and Porcius Cato, of whose *Origines* fragments are extant, which have been frequently published together with the remains of the rest. All those whose works remain are posterior to these writers, and the greater number have written of the whole history of Rome; some, the history of their own times; others, select portions. Of those who have treated of the whole Roman history, Livy has written in detail; Velleius Paterculus, Florus, Eutropius, and the author of the *Breviarium*, Sextus Rufus Festus, more concisely. Portions of the history

are contained in the *Bellum Jugurthinum* and *B. Catilinarium* of Sallust, in *Cæsar's Commentaries de Bello Gallico*, and *de B. Civili*, in the *Bellum Alexandrinum*, *Africanum*, and *B. Hispaniense* of Hirtius. The history of the *Cæsars* has been written by Tacitus, Aurelius Victor, Amnianus Marcellinus, and by those who have been styled writers of the Augustan history, namely, *Ælius Spartianus* (or *Ælius Lampridius*), *Julius Capitolinus*, *Trebellius Pollio*, *Flavius Vopiscus*, and *Vulcatius Gallicanus*. Suetonius has narrated the lives of the first ten *Cæsars*. There is an *Epitome of Universal History*, abridged by Justin, from that of *Trogus Pompeius*, and the *Lives of great Commanders* by *Cornelius Nepos*, which some still claim to be by *Æmilius Probus*. *Curtius Rufus*, who lived at an unascertained period, compiled an account of the actions of *Alexander the Great*, and Tacitus has left us a treatise *de Moribus Germanorum*: the same historian wrote the *Life of Agricola*, and thus is to be classed, as well as *Cornelius Nepos* and *Suetonius*, with those who have written the history of selected portions. A short treatise attributed to *Aurelius Victor* among others, contains a hasty notice of the illustrious men of Rome. The volumes of *Valerius Maximus*, *Dicta Factaque Memorabilia*, are of a distinct class. Lastly are to be considered as historical, the treatise falsely attributed to *Messala Corvinus*, intitled *De Augusti Progenie*; the work of *Aurelius Victor de Origine Gentis Romanæ*, the *Liber Memorialis* of *Ampelius*, and other productions as frivolous, of that age. I shall not notice any later writers on the subject.

ORATORS, WRITERS OF EPISTLES, AND OF NARRATIVES.

412. The form and constitution of the Roman Re-

public, the mutual bond of patronship and clientcy, and the nature of the comitia, clearly show how it happened that eloquence, particularly forensic, was held of such importance, even in the earliest days of freedom; however, the imitation and study of the Greek orators, as of other Greek models of composition, was introduced much later; and it seems that there were few, if any, teachers of eloquence at Rome before the Greek teachers of it: yet even these, whose sophistry offended the still upright principles of the time, were so little approved of that they were expelled the city A. U. C. 662¹. Of the orators of the age next following, who are known to us by name only, and by commendations bestowed on them, not by their writings, were Plotius Gallus, Otacilius Pilitus, a freedman, Sextus Clodius, etc.; forensic eloquence and popular declamation being then highly cultivated². Sulpicius, Cotta, and those whom he so highly extols in his work *De Oratore*, namely L. Crassus and M. Antonius, closely preceded the days of Cicero, who brought eloquence to its perfection, and was rivalled by Hortensius among his contemporaries. But, with the exception of the speeches of Cicero, nothing remains either of that age or of the age of pure latinity in the time of the Cæsars, unless we attribute (as is sometimes, though doubtfully, done) the *Declamations* to Quintilian, and include the *Panegyric on Trajan* of the younger Pliny: for the twelve *Panegyrics* which are still extant, among which are those by Claudius Mammertinus, the elder and younger, by Eumenius and Ausonius, are of the brazen age, to which Symmachus, fragments of whose writings were discovered by Majus, is to be referred.

1) See Suet. de Cl. Rhet. init.
toribus; Vell. 2, 9.

2) See Cicero de claris ora-

413. The Letters of Cicero, Seneca, and the younger Pliny, which have reached us, form a striking portion

of Roman literature ; the more valuable from the various subjects they introduce. The Epistles of Corn. Fronto, lately discovered together with other writings of the same author, are later than the age of Pliny ; those of Aur. Symmachus and Sidonius Apollinarius are of the brazen age. Of all species of literary composition this seems the least likely to be borrowed. The only remains of the erotic, or, as it is now called, romantic style, are the Metamorphoses of Apuleius ; this species of composition the Romans manifestly borrowed from the Greeks : to this class also may be referred the Satyricon, a poem, either by Petronius Arbiter, in the reign of Nero, or, as some say, by an author in the reign of Commodus.

RHETORICIANS, GRAMMARIANS, ANTIQUARIES, MYTHIC WRITERS.

414. We have already mentioned that the Latin language (whilst the study of Greek literature was flourishing at Rome) was cultivated by its native writers and grammarians, and have touched on the wide sense attached to the term *grammarian* (§ 407). The *rheto-res*, teachers of eloquence, were near akin to the *grammatici* in their employments, though a distinction is usually drawn between them. There was a great number of them in the city, and many have treated of grammar and eloquence in writings composed both in Greek and Latin, the remains of which, now extant, we shall mention.

Among rhetoricians, Cicero excels ; of whose writings the books *De Inventione*, *De Oratore*, *Orator* and others, come under this head. The author of the *Rhetorici*, addressed to Herennius, is supposed to have been contemporary with Cicero. Marcus Annæus Seneca is next in order of time, then Quintilian. Of

Seneca, his *Suasoriæ*, *Controversiæ*, and extracts from *Controversiæ*, still remain: Quintilian's noble work the *Institutiones Oratoricæ*, also belongs to this period.

Harley attributes the treatise *De Arte Dicendi* (which has been improperly given to Celsus) to Julius Severinus, a writer of the fifth century of the Christian era. The dialogue *De Causis Corruptæ Eloquentiæ*, which some claim as Quintilian's, others as Tacitus', is, from its subject, to be placed in this section. Maximus Victorinus' work entitled *Expositio in libros Ciceronis de Inventione*, belongs to the fourth century.

415. Among the writings of the grammarians we find commentaries on ancient authors, such as those of Asconius Pedianus on the Orations of Cicero; those of Acron and Porphyrio on Horace: in the brazen age, the writings of Ælius Donatus, the author of grammatical commentaries on various writers, particularly on Terence: those of Servius and Tiberius Donatus on Virgil. The Commentaries or Scholia of Macrobius on the *Somnium Scipionis* of Cicero, are also still extant. Of other grammarians' writings, part of the books of Varro de *Lingua Latina*, a writer of the golden age, still remain; also the *Ars Grammatica*, etc. of Rhemnius Fannius Palæmon, and two books of *Institutiones Grammaticæ*, said to be by Valerius Probus, writers who closely followed Varro; as did Verrius Flaccus, of whose treatise *De Verborum Significatione* there exists an abridgment, compiled in the fourth century by Pompeius Festus. The *Doctrina de Proprietate Sermonum*, of Nonius Marcellus; the treatise *De Oratione* by Diomedis, and his comments *De Partibus Orationis et Vario Poematum Genere*, as well as the *Institutiones Grammaticæ* of Charisius, and the *Commentarii Grammatici* of Priscian, a prolix work on the elements of the language, are likewise compositions of the brazen age of Roman literature.

Among antiquaries must be placed Aulus Gellius, of the second century, author of the *Noctes Atticæ*; Censorinus, of the third century, who wrote a work entitled *De Die Natali*; Macrobius, of the fifth century, whose commentary on the *Somnium Scipionis* and books of *Saturnalia* are also extant; works of extensive erudition, and of great use to those who study antiquity. To these we may add the work by Marcianus Capella, *De Septem Artibus Liberalibus*.

416. We cannot mention any writer who has recorded the earliest and original mythology of the inhabitants of Italy, for not one is extant or on record; but as the religion of the ancient Greeks was grafted on that of the Italians (§ 280), their *myths* must have differed but little; yet even the earlier writers on those of Greece have perished. Among those whose works are extant, are Julius Hyginus, the earliest, who was a grammarian of the age of Augustus, though critics doubt whether the books of *Fabulæ* and the *Poeticon Astronomicon* are not those of a later writer of that name. Planciades Fulgentius, the author of the *Mythologiæ*, and Luc-tatius or Lactantius Placidus, whose stories from the *Metamorphoses* of Ovid are still extant, both writers of the sixth century, are much later than the former. The treatise of the philosopher Albricus, *De Deorum Imaginibus*, is of the thirteenth century. We may here mention some Christian writers, Lactantius Firmianus, the author of *The Divinæ Institutiones*, and other works: seven books of Arnobius *adversus Gentes*, Firmicus Maternus, *De Errore Profanarum Religionum*, and the dialogue by Minucius Felix, a writer of the third century, entitled *Octavius*.

SCIENCES.

417. With the exception of jurisprudence, Sciences,

properly so called, were less ardently cultivated than the pursuits of literature, and yet on the decay of the latter, we find that they were attended to more than during the Republic. We shall include them all, together with the writers on them, in the following notice.

The study of philosophy is generally traced back to the Greek philosophers, who, being sent on embassies to Rome in the sixth century from its foundation, introduced their systems of philosophy, which had before been scarcely heard of at Rome¹. Carneades, one of them, a follower of the New Academy, who adorned his system of teaching by the arts of eloquence, is especially praised: however, through the endeavours of the elder Cato, they were sent back to Greece, being considered injurious to the morals, and dangerous to the state. They met with as unfavourable a reception afterwards, being again forbidden the city, together with the rhetoricians, although a taste for philosophical study had spread among some of the principal men, such as Scipio Africanus the younger², Lælius, Lucullus, and others, who, however, both during the Republic and under the Cæsars, rather reproduced Greek theories than invented new ones. The works of a very small number of these are extant, such as the poem of Lucretius *De Rerum Natura*, who explained the system of Epicurus. Cicero, a follower generally of the Old Academy, who has treated of many philosophical subjects, such as *De Natura Deorum*, *De Finibus Bonorum et Malorum*, *De Divinatione*, *De Legibus*, *De Officiis*, etc.: he also first moulded the Latin idiom to the forms of philosophical discussion. Of the era of the Cæsars, remain the works of L. A. Seneca, a stoic, *De Ira*, *De Clementia*, *De Providentia*, *De Beneficiis*, and others of the second century of the Christian era, as the treatises of L. Apuleius, *De Mundo*, *De Deo Socratis*,

De Habitudine Doctrinarum et Nativitate Platonis. Of Christian writers, we may mention here Arnobius, Lactantius, Firmianus; Augustinus later than they, and Boethius, who belongs to the sixth century (§ 410); portions of Martianus Capella may also be classed with the foregoing.

1) Cf. Cic. T. D. 1, 3: "Philosophia jacuit usque ad hanc ætatem, nec ullum habuit lumen litterarum Latinarum," etc. 2) Cf. Vell. 1, 13.

418. The Romans could not be ignorant of the importance of mathematical sciences¹; and though they did not despise them, yet considering them as useful solely in architecture and fortifications, they added nothing to the state in which they received the science from the Greeks; few studied Astronomy or Geography.

Among authors whose works have reached us, who have treated of mathematical subjects, not on pure mathematics, is Vitruvius Pollio, who flourished under Augustus, the author of a celebrated work *De Architectura*; a treatise *On Aqueducts*, by Julius Frontinus, of the first century of the Christian era, and a work on fortifications called *Strategemata*, by the same author: the *Institutiones Rei Militaris*, by Vegetius Renatus, and some treatises and fragments of other authors, such as *De Castrametatione* by Hyginus the grammarian, and *De Vocabulis Rei Militaris* by Modestus, belong to the brazen age of literature; as well as the works on agriculture by Siculus Flaccus, Aggenus Urbicus, and some small fragments of other writers on Land-surveying. Hyginus and Nigidius Figulus, of the age of Cicero, of whom fragments are extant, wrote on Astrology. The *Libri Matheseos* of Firmicus Maternus (§ 416) are on the same subject; and of poets, we may here mention Manilius. The most ancient geographical work extant of the Romans, is that of

Pomponius Mela, a writer of the first century, *De Situ Orbis*. A treatise by Vibius Sequestris, on the rivers, springs, and lakes, mentioned by the poets, is thought to have been written in the fourth century. Of writers mentioned by us elsewhere, Pliny the elder and Solinus may be noticed under this head also: and we may likewise include the *Notitia Dignitatum Utriusque Imperii* (§ 230), a kind of public calendar: Sextus Rufus and P. Victor's *Topographies of Rome*; a work on *Descriptive Geography* (*Cosmographia*), ascribed, though doubtfully, to Æthicus; also extracts from the *Cosmography of Julius Honorius*, and five books of an anonymous writer of Ravenna on *Geography*, supposed to be of the seventh century, beside the *Itineraria* (see *Cell. Geogr. Ant. l. I. c. 1.*), which contained either a topography of the Roman empire, or a notice of the principal places and stations on the highways of the empire: of the former kind is the *Tabula Peutingeriana*, of the emperor Severus; perhaps of the latter kind the *Itinerarium of Antoninus Augustus*, by a writer of a later but unascertained period. In conclusion, we may mention the work of *Cœlius Apicius, De Arte Coquinaria*, and a poem *De Ponderibus et Mensuris*, by *Rhemnius Palæmon*; however, these works are ascribed to these authors at random.

1) Cf. *Cic. T. D. 1, 2.*

419. The vast work of C. Pliny the elder, an encyclopædia compiled from a great variety of authors, and the principal work of any Roman writer on the subject of natural history, was abridged by Julius Solinus, in his work *Polyhistor*, or a collection of remarkable objects. Seven books by L. A. Seneca, *Naturalium Quæstionum*, belong to natural philosophy. We have before mentioned that the ancient Romans were very partial to

agriculture, and that many have written on it (§ 378); of these writings a treatise attributed, though not satisfactorily, to Cato, who lived in the sixth century of Rome; and a small work by Varro, who lived in the time of Cicero, *De Re Rustica*, are still extant. Columella was posterior to Varro, and the last of his books is a poem, *De Cultu Hortorum*. Palladius Rutilius also, who was later than Columella, composed his last book *De Insitione*, in verse. Among the poets, Virgil treated of agriculture in his *Georgics*.

420. Medicine was practised at Rome by Greeks principally, either slaves or freedmen, and in the later years of the Republic by free-born persons; the number and privileges of physicians increasing as the art rose in estimation, and finally it was not thought unworthy of study by the Romans themselves. The principal authors on the subject whose works have been preserved, are, Cornelius Celsus, who lived in the times of Augustus and Tiberius, of whose work on general science, eight books treating of medicine and surgery are extant. Antonius Musa, the freedman of Augustus, was contemporary with Celsus, and to him some fragments have been erroneously attributed. Scribonius Largus was a little later, the author of a treatise *De Compositionibus Medicamentorum*, and to him some have attributed a poem on medicine (see *Burm. Anthol.* vol. 2. p. 389), and the book of Vegetius Renuus *De Re Veterinaria*. Of the poets, Serenus Sammonicus may be mentioned in this place.

421. Though the Romans imitated and borrowed from the Greeks their knowledge of other sciences, without either perfecting or greatly improving what they received from them, yet in jurisprudence they far excelled them, without borrowing anything from them. Their eminent lawyers¹ are numerous, both in the earlier days of the Republic, and thence to

the latest times; there were several of the name of Mucius Scævola, Trebatius Testa, and Servius Sulpicius, lived in the days of Cicero; Alfenus Varus, Antistius Labeo, and Nerva. From the time of Tiberius they were divided into the Sabiniani and Proculiani; the former originated in Ateius Capito and Masurius Sabinus, the latter in Antistio Labeo and Sempronius Proculus². In the age of the latter Cæsars lived Æmilius Macer, Callistratus, Marcian, Hermogenian, Caius or Gaius, Paullus, Papinian, Modestinus, Ulpian, and many others, from whose writings the Pandects of Justinian were compiled; but few fragments of the others have come down to us, as of Caius, Paullus, and Ulpian; but the number has lately been increased by the discovery of the Institutions of Caius³. The latinity of these writers on law, has been often unjustly censured, but Hugo⁴ and other writers have judged it more candidly: in point of historical accuracy and antiquarian knowledge, Dirksen⁵ severely criticises some of them. Besides the writings of lawyers, several works may be classed under this head, on account of the subjects they treat of, as the work of Valerius Probus, *De Interpretandis Romanorum Litteris*; Frontinus, *De Agrorum Qualitate*, and his treatises *De Controversiis* and *De Coloniis*. The laws of the Romans, among them those of the XII Tables, *Senatus-Consulta*, edicts; a few of which are still extant: the institutions of some emperors, of which several remain, as fragments of the *Codex Hermogenianus* and *Gregorianus*, *Codex Theodosianus*, *Justinianus*, and the *Novellæ*, form another class of writings on Jurisprudence. Writers on law also furnish another class of such works by introducing into their subjects tables of customary business⁶.

1) See Pomp. de Or. J. § 35, sqq. 2) See Hugo, *Lehrb. d. Gesch. d. r. R.* p. 615 and 638. ed. 8; cf. Tac. *Ann.* 3, 75; Dirksen

sen, *Versuche*, p. 228 ; cf. Mackeldey § 42-44 ; Maciejowski *Hist. Jur. Rom.* p. 201 and 211. 3) See *Schultingii Jurispr. Vet. Antejust.* ; Heineccii, *Bachii*, *Hugonis Jur. Rom. historias.* 4) Hugo 609 ; cf. Maciejowski p. 141. 5) *Versuche*, p. 203-33. 6) See *Haub. Institt. J. R. litter. t. 1.* p. 270, 289.

THE ALPHABET, AND METHOD OF WRITING.

422. What the form of the earliest Latin letters was, whether the same as that of the Greek letters, or different, cannot be ascertained : it is, however, certain, that their number was smaller at first than afterwards, the letters F, G, H, V, X, Y and Z, being added to them at an unascertained period : of these, H was the sign of aspiration ; G was a new letter related to the early C ; X and Z (ξ ζ), as in the Greek alphabet, double consonants formed severally of CS and DS ; Y, a middle sound between U and T ; V, as some say, was used as a substitute for the vowels I and O, and for the digamma of the Greeks, whose power was expressed under a new form by F. Some say that R and Q were introduced either for expressing new sounds, or for the sake of combining R with S, and Q with C, and thus expressing a sound formerly effected by two letters¹. We may perceive from this that the orthography has greatly varied at different times ; and this is further confirmed by the inscriptions on coins and monuments even of the sixth century of the city's existence, by the addition of letters which afterwards came to be omitted, and from the omission of letters found at subsequent periods introduced into the same words, whence we may conclude that formerly those letters were not pronounced in these words : and what is very much the same thing, some consonants at the end of words, though never omitted in writing, were commonly not pronounced, which seems to have greatly affected the quantity of those syllables. The forms of the letters, as far as we may conclude from an inspection of the earliest

monuments and manuscripts extant, differed but little from the form of what are called capital letters now: I do not know whether they came to be modified so as to admit of being rapidly joined in writing in the middle ages of Rome, or earlier. The method of abbreviation, by which, even before Cicero's time², signs were substituted for syllables or for words of frequent recurrence, or even for expressing whole sentences, is different from the connection of letters adapted for writing, and to which were applied the terms, *notæ*, *siglæ* (§ 235), *alphabetum Tironianum*, *notæ Senecæ*, *notarii*, *ταχυγράφοι*³. A practice even more common was that of contracting words by writing only their initial or principal letters (§ 425).

1) Concerning the letters added to the alphabet by Claudius, but afterwards left out, see Tac. Ann. 11, 14, and the note by Lipsius. 2) Cf. Cic. ad Att. 11, 9; cf. Pignor. de Serv. p. 218: Gregorium de Scribendi genere διὰ σημείων § 3, sqq.; in Act. Societ. Lat. Jenens. v. 2. p. 106. 3) Cf. Sen. Ep. 90: "Quid verborum notas, quibus quamvis citata excipitur oratio, et celeritatem linguæ manus sequitur? Vilissimorum mancipiorum ista commenta sunt." Mart. 14, 208: "Currant verba licet, manus est velocior illis: Non dum lingua suum, dextra peregit opus."

MATERIALS FOR WRITING, INSTRUMENTS, BOOKS.

423. As for materials for writing, according to circumstances letters were, as now, engraved on stone, brass, and other metals, or on wood (*albo, tabulis*). Leaves¹, or the inner bark, *liber*, of certain trees, were formerly much used for private writings; afterwards, besides linen, (whence *libri lintei*²); the Egyptian papyrus³ (*βύβλος*, cyperus papyrus, Linn.), called also *charta Ægyptiaca* or *Niliaca*⁴; parchment, *membrana*, (*charta Pergamena*), and wooden slabs covered with wax, *tabulæ*, being more commodious for effacing what

had once been written on them⁵; they were also called *ceræ, pugillares*⁶. The use of paper made of cotton, *charta bombycina*, is of much later date; the species of paper we now use was introduced about the fourteenth century.

The instrument for writing with on so hard a material as wax and others was the *stylus* (λυφέϊον γραφέϊον, graphium, Ovid. Am. 1, 11, 23), having one end pointed for writing with, which is what is properly expressed by *scribere* and γράφειν; and the other extremity smooth and blunt for effacing and smoothing the wax, whence *litura*⁸. For painting letters, a brush or pencil was used, *penicillum*. On parchment or paper of any kind they wrote with a reed (δόναξ), generally an Egyptian or Gnidian reed⁹, with ink of a black colour, to which *sepia*¹⁰, from the cuttle-fish, is sometimes applied, also called *atramentum librarium*¹¹: for writing titles, red ink (*minium, rubrica*¹²) was used, and in the middle ages it was in general use for the capital letters, especially for ornamenting the first letter of a chapter, as well as other inks, and gold and silver, and also for adorning pages. A species of red ink called *encaustum*, whence *inchiostro* and *ink* are derived¹³, was reserved by the emperors of the Eastern empire for signing their edicts. It was a very ancient practice to polish parchments with pumice-stone, and prepare them with cedar-oil, in order to smooth their surfaces and preserve them from vermin¹⁴.

1) Cf. Virg. Æn. 3, 444. 2) Liv. 10. 43. 3) Sheets, *schedæ*, or slips, *philyræ*, of bark, were united by glue so as to form a broad leaf; on the art of making and preparing this paper, and on all concerning its use, qualities, etc. consult Pliny, 13, 12. Some of the finer sorts were named after the emperors or great personages, as *charta Augusta, Liviana*; a species of flattery still in practice: see Plin. ib. who, concerning the qualities of paper, says, "Præterea spectantur in chartis tenuitas, densitas, candor, lævor. Primum mutavit Claudius Cæsar-Nimia quippe Augustæ tenuitas tolerandis non sufficiebat calamis; ad hoc transmittens litteras lituræ metum

adferebat," etc. "Praelata omnibus Claudia : Augustæ in epistolis auctoritas : Liviana suam tenuit, cui nihil e prima erat, sed omnia e secunda." The commonest sort was called shop-paper, "emporetica, quæ, inutilis," says Pliny, "scribendo, involucris chartarum segestriunq; in mercibus usum præbet." (Of recent writers see, among others, Jos. Scaligeri Animadvv. in Melch. Guilandini Commentarium de Papyro. 4) See Theophr. Hist. Plant. 4, 9; Plin. 13.

11. 5) Quint. 10, 3: "Scribi optime ceris, in quibus facillima est ratio delendi, nisi forte visus infirmior membranarum potius usum exiget : quæ, ut juvant aciem, ita crebra relatione, quoad intinguuntur calami, morantur manum et cogitationis impetum frangunt."

6) Cf. Plin. Epist. 1, 6. 7) Concerning the materials for writing used in the twelfth century, there is a remarkable passage in Peter Venerabilis contra Judæos (ap. Duchesne Bibliotheca Clun. p. 1069-1070.), who says, "Cujusmodi librum—ex pellibus arietum, hircorum, vel vitulorum," or "Ex biblis, vel juncis orientalium paludum, aut ex rasuris veterum pannorum," etc. This passage Heeren quotes (Gesch. d. Stud. d. class. Litter.), and asserts that paper made of cotton was in common use in the west of Europe.

8) Cf. Hor. Sat. 1, 10, 27; A. P. 293; Cic. pro Arch. 5; Verr. 2, 76. 9) Cf. Plin. 13, 36. 10) Cf. Vitruv. 7, 10; Plin. 27, 7; Ovid. Am. 1, 12; cf. Stieglitz, Archæol. Unterhalt. p. 147. 11) Pers. 3, 12: "Tunc queritur, crassus calamo quod pendeat humor,

Nigra quod infusa vanescat sepia lymphæ."

12) Cf. Ovid. Trist. 1, 1, 7; Juven. 14, 192; Pers. 5, 90. 13) Cf. Cod. Just. 1, 23, 6. 14) Ovid. Trist. 1, 1:

"Nec te purpureo velent vaccinia fūco.

Non est conveniens luctibus ille color.

Nec titulus minio, nec cedro charta notetur :

Candida nec nigra cornua fronte geras.

Nec fragili geminæ poliantur pumice frontes ;

Hirsutus passis ut videre comis."

Cf. Cat. 1, 2, 22, 8; Tib. 3, 1, 10; Hor. A. P. 332; Pers. 1, 42, 3, 10.

424. The Roll¹ was the earliest form of books; it was formed by glueing several single sheets into one (see the note on *protocollum*²), which was rolled on a cylinder of wood, bone, or ivory, and tied round with a riband or string, *tænia* or *filum*; the extremities of the roller which projected were called *cornua*³, *umbilici*. *Pervenire, adducere ad umbilicum*⁴, to finish or complete a work, is taken from these terms. The title was frequently written on a roll of smaller size detached from the volume, which some say was the *pittacium*⁵: still the square form was not unusual in books, even from early times, the leaves being joined together with a

wire or leather straps, such as those called δέλτοι, *codices, codicilli, latercula* (§ 237). In these the pages were written on on both sides, and hence they were called by the Greeks *όπισθόγραφα*⁶: on the rolls, they wrote only on one side of the sheets⁷. The *diptycha, διπτυχα*, were tablets of a particular kind, consisting of two tablets only, whence the name, and frequently of value, being made of ivory, ornamented, and presented by magistrates when entering on office to their friends⁸: hence the terms *diptycha consularia, quæstoria* (§ 189). Scribes or secretaries were distinguished by various titles in Latin, *librarii, excerptores, notarii* (§ 235); and in Greek, *καλλιγράφοι, ταχυγράφοι, χρυσογράφοι*.

1) Cf. Ovid. l. c.; Tib. 3, 1 :

“Lutea sed niveum involvat membrana libellum,
Pumex et canas tondeat ante comas.
Summaque prætexat tenuis fastigia chartæ,
Indicet ut nomen littera facta tuum.
Atque inter geminas pingantur cornua frontes.”

2) *Protocollum*, the first sheet of the roll, and *ίσχατοκόλιον* the last. These words are derived from *κόλλα*, gluten; or, according to Scaliger, from *κῶλον*. (Animad. ad Guil. Comm. p. 50.) See the annotators on Cic. ad Att. 13. 25. On the word *macrocolla*, and on Martial:

“Lectis vix tibi paginis duabus
Spectas *ίσχατοκόλιον*, Severe;”

where some read *ίσχατοκόλλιον*. Also Mart. 4, 91. 4, “summam schedam,” meaning, the last sheet. 3) Cf. Ovid. et Tib. loc. citat. 4) Hor. Ep. 14, 8. Cf. Mart. 4, 91, 2: “Jam pervenimus usque ad umbilicos.” 5) Cf. Hugo, “De prima scribendi origine,” p. 356. 6) Cf. Plin. Ep. 3, 5, 17. 7) Cf. Juven. 1, 6. 8) Cf. Symm. Ep. 2, 80. 5, 54; Cod. Theod. 15, 9. 1 and 2.

INSCRIPTIONS.

425. The custom of affixing inscriptions on buildings, tombs, altars, statues, etc. was very prevalent among the Romans, and there are still extant a great number on stone and marble; the greater part of them have been published or explained by different authors, —Gruterus, Donius, Muratori, Marini, and others; especially the more remarkable inscriptions: they are

of great use in elucidating the ancient forms of the language and the style of such compositions, and of still greater use in illustrating customs, religious practices, and the mode of government. A knowledge of the language and of the mode of writing is requisite for interpreting these inscriptions, and for applying them to the purposes of criticism. The difficulties lie partly in the formation of the letters, and partly in the abbreviation of words (§ 422); having mastered which, we understand by single letters standing apart, either the surnames of magistrates and public men, or else common words and forms of conventional use; at other times, by supplying omitted letters, or by deciphering those which are combined, we overcome the other difficulties of the inscriptions; and on this subject there are several works of different authors. I shall, for the sake of examples, subjoin words and sentences usually expressed in inscriptions by their initial letters¹. Of single letters A stands for *ante*, *anno*, *absolvo* (§ 277), *Augustus*; A. A. stand for *Augusti*, and of surnames *Aulus*; B. for *bene*, *beatus*, *Balbus*; C. for *civis*, *conjux*, *cohors*, *centurio*, *condemno* (§ 277), *Caius*; D. for *decuria*, *domus*, *dedit*, *Decius*; A. P. *ædilitia potestas*; T. P. *tribunitia potestas*; A. S. S. *a sacris scriniis* (§ 235); D. D. *dono dedit*; AR. DD. *aram dedicavit*; C. C. S. *curatum communi sumtu*; C. F. *Caii filius*, or *carissima fœmina*; S. C. *senatusconsultum*; U. R. *uti rogas* (§ 165); A. L. F. *animo lubens fecit*; AN. V. P. M. *annos vixit plus minus*; C. V. P. V. D. D. *communi voluntate publice votum dono dederunt vel dedicaverunt*; D. S. P. F. C. *de sua pecunia faciendum curavit*; D. M. V. *diis manibus votum*, etc.

1) A brief list of these is given by Champollion-Figeac *Résumé d' Archéol.* v. 2. p. 143. Nieupoort gives a more comprehensive one in his work on *Rom. Antiq.*: *Appendix de notis Romanorum sive siglis maxime memorabilibus*. The word *sigla* must not be misunderstood here; *sigle* properly mean, short-hand notes.

426. Some inscriptions are remarkable for their age or language and writing only, others for the subject they contain; and therefore, if public inscriptions, they are of far more value than private ones, of which so many, especially sepulchral ones, are extant. Among the most ancient are the mutilated portion of the inscription on the base of the Columna Rostrata (A. U. C. 494), which was renewed under Tiberius¹, and discovered in 1565²; the *senatus-consultum* concerning the Bacchanalia (§ 328) A. U. C. 566, on a plate of brass, discovered in 1640; a less known inscription on Lucius Scipio, of the date 495 A. U. C., is anterior to this last. The monument at Ancyra, inscribed with the actions of Augustus, discovered in 1553, and the fragments of the *fasti Capitolini*, brazen plates formerly suspended in the Capitol, are far posterior in date to the foregoing (§ 334). To this kind of inscriptions also belong many relics, the preservation of which is owing to the custom among the ancients of engraving laws and decrees on tables of brass. Of these, entire decrees and fragments remain, such as the law *de civitate Gallis danda* at Lyons, discovered 1529: the *lex Galliæ Cisalpinæ*, A. U. C. 664, found in 1760; *lex miscella Heracleensis*, later than A. U. C. 664, discovered in 1732. Of the decrees of the emperor Vespasian two are extant, *de ædificiis negotiationis causa non diruendis*; the one found in the middle of the fourteenth century is of doubtful origin, and others, as the *tabula alimentaria* or *obligatio prædiorum* of Trajan, concerning which, consult Haubold's *Institt. J. R. Litter.* vol. I. p. 245; and Beck, *Grundriss der Archæol.* p. 110 and sqq.

1) Cf. Suet. Galba 23. 2) The inscription on the base of the column to Duillius begins thus, according to Ciacconio (see *Thes. Græv.* v. 4. p. 1807); "C. Bilios. M. F. Cos. advorsom. Cartacinienses. en Siceliad. rem. cerens. ecestanos. cocnatos. popli. Romani. artusumad. obsedeone, etc.;" but of this nothing but the letters A N O in the word *ecestanos* remains in the original inscription: whole words still legible are *castreis, exfociont, cepet, enque eodem, navebos marid consol primos, navales primos ornavet, etc.*

COINS.

427. The inscriptions on coins and medals must be distinguished from the foregoing; medals were generally of brass, and do not seem to have been all excluded from circulation; they are also on a larger scale than current coin, which is distinguished by the letters S. C., meaning that it was struck by order of the senate; these letters generally occur only on brass or copper money, seldom on gold and silver coin¹.

The science of Numismatics has been often treated of: we shall make the following remarks on it:

Of Roman coins, some are styled consular or family coins, under which are also classed those bearing no name of a family², and coins of the emperors: there is a continued series of the former from the date of the expulsion of the kings, and of the latter, from the great men who overthrew the Republic, Pompey the Great, Julius Cæsar, Antony, etc., to the last of the Cæsars³. The marks on coin (current money) denoted its value, thus: on the as, I, on the half as, S (semis); on smaller subdivisions of the as, little dots denote the number of uncizæ: on the sestertius, II. S. or H. S.; on the quinarius, V. or Q.; on the denarius X. On the coins of the Cæsars generally the year of the tribuneship, the same as that of their reign, is marked: on the obverse (*pars postica, aversa, adversa*) is the head of the emperor. On the consular coins the image of the founder of the family was stamped, as that of Numa on the coins of the family Calpurnia, and of Venus on those of the Julian family. On the earliest coins, on one side was the figure of the two-headed Janus, or of some animal; on the other side the rostra of ships, or a ship. Among other figures on coins are cars drawn by two or four horses, the goddess Rome, Augusta, Victory, triumphal processions; and buildings, such as the Capitol, Naumachiæ, the Circus, and other edifices,

besides emblematic representations of genii, virtues and of public prosperity; as of Peace, Health, Abundance. The variety of emblems is as endless as the variety of symbols, inscriptions, and marks, explanatory of the emblems. Coins were named, according to the figures on them, *victoriati*, *bigati*, *quadrigati*: and they were termed *serrati*, from their edges being milled; or *incrustati*, that is, plated, when they consisted of brass or copper gilt or silvered; also *contorniati*, when a rim of a different kind of metal surrounded them⁴.

1) Cf. Champollion-Figeac, Archéol. v. 2. p. 276. 2) See Millin, Introd. à l'étude de l'Archéol. p. 294. 3) Concerning which Champollion says: "Ces personnages, César excepté, n'ayant exercé aucune autorité légale, leurs médailles seraient aussi bien placées parmi celles des familles Romaines." 4) See Ernesti, Archæol. litter. p. 52; Stieglitz is of a different opinion, Archæol. Unterhalt. p. 50.

MANUSCRIPTS.

428. But a small portion, however, of the relics of ancient literature, is contained in inscriptions: manuscript copies of the works of ancient authors, by far the most precious monuments and remains of antiquity, have reached us, and their distribution over Europe created a new era in literature.

A great number of Greek and Latin manuscripts exist, though but a small portion of the whole of ancient literature is preserved to us; their value and usefulness, in many particulars, have not been impaired by the printing of the works they contain; and we still see instances of lost works and fragments of ancient authors being discovered in MSS., particularly in those called Palimpsesti; viz. those where the original writing has been written over; and many of the middle ages still are concealed in libraries, which deserve publication on many accounts.

As for the age of ancient MSS., whether Greek or Latin, it seems agreed that not only none are extant

in the writing of their respective authors, but also that none have been preserved written in the classical ages, except perhaps a very few, and of them great doubts are entertained. Few even are so early as the sixth century of the Christian era. The more ancient are distinguished by being written in capital letters, similar in shape to those found on ancient monuments and coins, though this is an uncertain test, as frequently a skilful modern imitator succeeds in copying exactly the more ancient handwriting. The introduction of stops and commas, the contraction of the diphthongs, the use of the dot over the letter I, which, as well as the use of accents in Greek, is of modern invention, besides the smaller and connected letters (§ 422), serve to point out a MS. of a later age. From the smaller and connected letters, the Gothic, Lombard, and French letters, and most modern texts, have been derived. The MSS. of the ninth and tenth centuries are in a clear and elegant style of penmanship; those of later date exhibit thicker letters, abbreviations, which afterwards became still more multiplied, besides letters of an extended form to fill up the lines, and flourishes, which increase the difficulty of deciphering them.

429. The most ancient Latin manuscripts from which the modern forms of printed letters have been borrowed, are the Florentine MS. Virgil, called the Codex Mediceus; the Vatican MS. Virgil, thought to be of the fifth century; the Vatican MS. Terence, in square capitals, adorned with pictures of the characters; and the Florentine MS. of the Pandects.

Having thus given an outline of the literature of the Romans, I intend to subjoin some notices of their arts, without attempting to treat of the theory or history of those arts; for the study of Antiquities seems to allow of my giving an account of both, without entering on the theory and history of either.

THE STATE OF THE ARTS AMONG THE
ROMANS.

430. The Romans, who were inferior to the Greeks in most branches of learning (§ 417) were still more backward in the arts, properly so called in their restricted sense, than in literature¹.

However, even in the times of the kings and the early days of the Republic, they constructed architectural buildings, such as the Capitol, the cloacæ and aqueducts, and we read of statues erected at that period to illustrious men; but they were indebted then, as in later times, to foreign nations, for their architects and artists, who were generally Etrurians or Campanians.

When the empire had extended itself, they continued their early practice, by abandoning the execution of works of art to Greek artists, and collected from Greece principally, but also from Syracuse, and from the plunder of Corinth by Mummius, from Macedonia², and from Asia, countless monuments of art for the embellishment of the city³, and latterly for that of private houses and villas; but they confined their love of the arts to the ostentatious exhibition of specimens, the fruits of their conquests, without cultivating the arts themselves.

However, the pride they took in thus adorning their city and houses, which rose to its highest pitch under the Cæsars, manifested itself in the decoration of temples, porches, triumphal arches, circi, and theatres with statues and pictures, the most perfect productions of the arts, and in the construction of public buildings, the wonders of architecture, whose ruins still attest their beauty and magnificence, the works of Grecian artists who flocked to Rome.

Architecture, painting, and modelling which comprises sculpture and the execution of medals, are among

the arts of which specimens are still in existence, and which will here be noticed : as well as music and musical compositions, which, although of a different class, must be mentioned here.

1) Cf. Cic. T. D. 1, 2. 2) Cf. Vell. 1, 11. 3) Cf. Cic. Verr. 4; Juven. 8, 102 :

—Cum Parrhasii tabulis signisque Myronis
Phidiacum vivebat ebur, nec non Polycleti
Multus ubique labor; raræ sine Mentore mensæ.
Inde Dolabella est, atque hinc Antonius, inde
Sacriligus Verres, referebant navibus altis
Occulta spolia et plures de pace triumphos.

431. Distinctions are to be drawn between sculpture, properly so called, and carving, *sculptura*; modelling, *plasticæ*, is also distinct from both, inasmuch as the materials on which it was employed were different. The materials used in modelling were wax, chalk, clay, gypsum, etc., and those who worked in it were called *plastæ, fictores, cerarii, statuarii*; the materials of the sculptor were harder¹, such as wood, stone, marble, and ivory; yet some apply the term sculptor exclusively to workers in wood, but we may well inquire on what authority², and what term they apply to the worker in marble or ivory. *Sculptura* is applied principally to working on gems, and in this case may be translated engraving or carving³. *Cælatura* is applied sometimes to works produced by the graving-tool, but more frequently, and with more propriety, to works *en relief*; *toreuticæ*⁴, generally to productions of the lathe, and the turner's art. Statuary, as the word itself proves, is applied to the formation of statues, not to bronze or brazen statues only, as some argue, though it does apply to them principally.

1) Γλυφικῆ, *glyptice*, from γλύφω, as well as γλυφεῖον, are connected by their etymology to this word; as are also γλάφω and *scalpro*; also γράφω and *scribo*. 2) Cf. Heind. ad Hor. Sat. 2, 3, 22.

3) Cf. Hor. Od. 3, 11, 51; Plin. 37, 1 and 10. 4) From *τόπος*, *τοπέω*, connected by meaning and derivation with *tero*; cf. "Evandri manibus tritum;" Hor. Sat. 1, 3, 91, and the note of Heindorf; cf. Schneid. Lex. in *τοπέω*.

432. As to the materials used for modelling¹, doubtless the softer kinds were first used, and some have attempted, but not convincingly, to trace the origin of the art to works moulded in clay, though very many ancient works of baked clay, *terra-cottas*, are still in existence. Gypsum (plaster of Paris) was first used for adorning apartments and walls of houses. Lysistratus, the brother of Lysippus, is said to have been the first to model the human form in gypsum from the face itself, and casts from statues², and also to have cast molten images of wax, which doubtless was early used by modellers; such were the statues of the noble at Rome (§ 132). The metals first used, whether in beaten or cast works³, were gold and silver, and the most commonly used was brass, whence *æs Deliacum*, *Corinthiacum*, *æra Myronis*; iron was not used till very long after.

Wood was undoubtedly the first material employed for statues and carving in general; of it were made the statues erected to the conquerors at the Olympic games: and it was usual to make the statues of gods of the peculiar tree dedicated to them. The most generally used woods are described as being that of the fig-tree, the cypress, cedar, maple, box, and ebony⁴. The use of marble and ivory, though of early date, was later than that of wood; they were employed during the golden age of sculpture in Greece even in colossal statues, such as that of Jupiter at Olympus, by Phidias. The most esteemed marbles⁵ and stones were, the Parian, the Pentelic, the Spartan, Phrygian, Carystian, Coralitic, Augustan, Tiberian marbles⁶, etc.; porphyry, alabaster⁷, granite, of which obelisks were made by the Egyptians, and basalt, frequently used by them and

by the Greeks. Many also suppose the most precious vessels of the ancients to have been made of stone, such as are called *murrhina* or *murrhæ*. Finally, glass was frequently and in early times used, especially in making vases embossed with figures.

1) Cf. Plin. 35, 12. 2) Plin. 35, 12: "Crevitque res in tantum, ut nulla signa statuæve sine argilla fierent." 3) Cf. Plin. 35, 12. 4) Cf. Juven. 8, 103: "Phidiacum vivebat ebur." 5) Some of which were adapted to works of sculpture, some for the embellishment of porticoes, palaces, baths. This is noticed in Stat. Sylv. 1, 5, 34: "Non huc admissæ Thasos, aut undosa Carystos. Mæret onyx, longe queriturque exclusus ophites. Sola nitet flavis Nomadum decisa metallis Purpura, etc.;" cf. ib. 1, 2, 148, 4, 2, 26. 6) See Excurs. 4. ad Ernestii Archæol. litt. edit. Martini. 7) Alabastron; see Schneid. Lex. ἀλάβαστρον, Plin. 37, 10. 8) Cf. Prop. 4, 5, 26, "Murrheaque in Parthis pocula cocta focis;" Plin. 33. præf. 37, 2; Juven. 6, 155; Mart. 10, 80, 1; Suet. Aug. 71. "E murrha bibere," Mart. 4, 86, 1.

433. The colossus of Rhodes, that of Nero at Rome, and of Jupiter at Olympus, were the largest statues of antiquity; there were, however, many colossi at Rome¹. Minute images were called *sigilla*. Iconicæ (*imagines, simulacra*), were busts or half lengths. Besides statues of persons on foot or on horseback there were some in chariots drawn by two or four horses, and clothed either with the toga or pallium, or naked, and sometimes with, sometimes without inscriptions. Statues of marble and wood also were frequently coloured all over, or else in parts only, as on the hair, and brazen statues were often gilt; eyes of silver or gems also were usually inserted. Hermæ were statues of a peculiar kind, and consisted of a head only on a square pedestal or trunk, or the head and shoulders, sometimes the arms also, and afterwards, as they say, the whole trunk to the legs. It was also usual to affix two or three faces, either of the same or different countenances, to one trunk; such were the *Hermathenæ*².

1) See Pit. in Col. 2) Cf. Cic. ad Att. 1, 4.

434. Embossed or projecting figures were called by the Romans *opera cœlata*, and most of those mentioned under this head were of metal: some even, notwithstanding the root of the word, maintain that figures of metal, either wrought, or cast in moulds, were properly styled *cœlata*; Heyne¹, with others, maintains that such only were called *toreumata*² by the Greeks. If metal figures only are to be called *cœlata*, we shall be at a loss what term to apply to figures of marble, glass³, wood, or gypsum: for there were various materials employed.

However, there were two kinds of such works; one, in which the figures projected from, or only adhered to, a plane or convex surface (*ἐκτυπα, περιφανῆ*), *in alto relievo*, another kind in which the figures projected slightly (*ἀνάγλυφα, πρόστυπα*), *in basso relievo*. These were much in use, particularly on buildings, triumphal arches, sepulchres, on lamps, arms, and vases. Drinking vessels were also thus ornamented. Of these specimens of ancient art, innumerable small ones, and not a few large ones, are preserved; some valuable from their great antiquity, others from the subjects they illustrate or the skill they exhibit, particularly those that decorate the column of Trajan.

1) Cf. Cic. Verr. 2, 52. 4, 18. It may, however, be doubted, whether carved metal be ever termed *toreuma*: for in Pliny's time the word *toreutice* was applied not only to raised and embossed, but also to carved or engraved figures, without reference to the material employed; this is evident from many passages: its meaning is uncertain in Mart. 4, 39, 4; and 10, 87, 16, "Phidiaci *toreuma cœli*." The potter's art is also called *toreuma* by the same writer, 4, 46, 16, and 14, 102, *toreuma rotæ*. 2) Antiq. Ausfietze, p. 2, p. 127; see Schneid. Lex. in *τορεῦμα*. 3) Cf. Hor. Sat. 1, 3, 91; Mart. 12, 70, 9.

435. Incised figures, (*intaglio*), are the contrary to embossed figures, but also come under the head of *cœlata* in the widest sense. It is natural to suppose that

they were very common, principally on glass, metals, and gems. Concerning these I shall make some concluding remarks, for as for medals I have already said enough.

Of gems, (antiques), some were carved with projecting figures, as those of *scarabæi*¹, numbers of which are still preserved (*gemmae, cœlatae, ectypæ, anaglyphicæ*, cameos); others with figures hollowed out of the gem, *diaglyphicæ*, as they are termed by writers on antiquities; of these the most common are the gems on signet rings², *gemma annularis, annulus impressorius, gemma uda*³, (see note), *σφραγίς, δακτύλιος*. Embossed carvings were better adapted for ornaments, and are found on vases, hence *vasa gemmata*, as well as on parts of dress, particularly women's dress; on belts, clasps, armlets, and fringes (*limbi*). Many ancient specimens attest the wonderful perfection to which Greek artists attained in engraving gems; and the Romans were very curious in collecting cases of rings, *dactyliothecæ*, many of which are mentioned as being at Rome; among these that which Pompey the Great took from Mithridates, and dedicated to Jupiter in the Capitol.

1) Millin, *Introd. à l'étude de l'Archéol.* p. 152, "On peut regarder la partie supérieure des scarabées qui est en relief, comme de véritables camées;" cf. Champollion, *Résumé d'Archéol.* v. 2. p. 11.
 2) The *Dactyliotheca* of Gortæus is a work on this subject. Almost all the gems or rings mentioned in it are engraved, not embossed.
 3) Ovid. *Am.* 2, 15, 16, "Neve tenax ceram siccaque gemma trahat, Humida formosæ tangam (*annulus*) prius ora puellæ;" also Trist. 5, 4, 5, "Nec, qua signabar (*epistola*), ad os est Ante, sed ad madidas gemma relata genas."
 4) *Gemma* is used also for a vase, as *gemma bibere* (Virg. *Georg.* 2, 506); *murrheus onyx*, Prop. 3, 8, 22.

436. An infinite variety of subjects is found in both kinds of gems, but the larger gems and the greatest variety of subjects are found on signets, on which were gems from the size of a pea to that of a palm¹. And in choosing precious stones connoisseurs paid regard not so

much to its value as to its other qualities, esteeming the art shown in engraving it above the material. Thus they preferred those which by their hardness received a more durable engraving²; and the transparent ones, such as the opal, chalcedony, chrysolite, emerald, beryl, and especially the onyx, cornelian, agate, and jasper; also on account of the beauty of the colours they reflected they wonderfully admired gems composed of minute layers (*onyches, sardonyles, etc.*) They even selected the minutest gems, which exhibited a multitude of figures, almost incredible on so confined a surface, accurately delineated, yet so as scarcely to be distinguished by the eye, whence some have argued that the artists who executed them could not but have used microscopes. This will be sufficient on the art of modelling, in which Phidias, Polycletus, Alcamenes, Agoracritus, Scopas, Praxiteles, Myro, Lysippus, and Mentor excelled³: these names may partly be classed under three divisions, as having wrought in three different progressive styles; first, the rude and unformed; then that of Phidias and Polycletus, noble and grand, yet retaining something of pristine harshness; lastly, the style of Lysippus, soft and beautiful: on which subject connoisseurs have written *ad satietatem*.

1) Consult Millin, *Introd. à l'étude de l'Archéol.* p. 201, where the sardonix of Tiberius is mentioned as the largest of all antiques; and p. 204, where they are spoken of as resembling pictures. 2) It may be doubted whether the ancients ever cut the diamond: Millin says that they did not, p. 113, adding that some counterfeits have been sold for antiques. 3) See *Plin.* 36, 5.

PAINTING¹.

437. The art of painting² is divided into drawing, *pictura linearis*, the *μονόγραμμος*³ of the Greeks, and painting the imitation of natural objects in their natural colours. Its origin is attributed to the circumstance of some one having traced with a pencil the shadow of the

object to be copied⁴. At first but one colour was applied to any figure⁵, *μονοχρώματα*⁶, and the most usual colour was vermilion, *minium*, *μυλτος*; gradually others were employed, but for a long period not more than four⁷, and they even simple and harsh; black, *atramentum*; red, *sinopis Pontica*; white, *melinum*; flesh colour, *sil*, a kind of red ochre: afterwards brighter colours were introduced, and hence ancient painting is divided into two epochs⁸. They mixed the colours either with water only or with other liquids, such as vinegar: the use of oil is of very recent date. It is also certain that the ancients employed wax in mixing their colours: it was either applied liquid with a brush, to which method the term *κηρόχυτον* is applied, or else it was burnt in, whence it was called *encaustum*, (*encausto pingere*)⁹, but the method in both cases is very imperfectly understood¹⁰. There was another method for encaustic painting, in which the outline of the figures was traced by a hot steel, and colour¹¹ applied into the hollows: to this practice *cestrum*, (*cestro pingere*, *κέστρωσις*) applies¹².

1) The following lines are translated by me, from the Greek of A. G. Schlegel, in his *Ars Græcorum*, which I consider worthy of perusal from the references they contain to the opinions and criticisms of the ancients, as well as the account of the principal artists and works of art in sculpture and painting:

Quum, paucis tabulas variante, colore nec Indo,
 Nec paries claro murice dives erat;
 Auroræ veluti lætum, Polygnote, severo
 Spargebas, motus nec procul atque venus.
 Nuda juvat Zeuxin lectis componere membris
 Corpora, dia quidem, mens tamen usque silet.
 Mollis in extremis, oculos fallentibus umbris
 Parrhasii circum forma rotunda trahit.
 Ingeniose, tegens, Timanthe, condita prodis!
 Tristia, Aristides, motaque corda refers.
 Sed nimium reverente manu perfecta veretur
 Linquere Protogenes; hunc teretesque magis
 Audacesque docet motus, cui gratia palmam
 Mirandos inter detulit artifices.
 O tua, ubi Macedo, qui fulmina vibrat, Apelle,
 Aut tibi quæ pictam junxit imago toro?
 Quæve mari subito elatam rorante capillo
 Demersit teneram sæva procella deam?

Scilicet ars, oculos specie quæ mulcet inani,
 Temporis illa ferat cuncta terentis onus!
 Non solida quoque materie monumenta sororis
 Rapta simul longa sunt simulacra die?
 Phidiaco licet illa ferox rueritque tremenda
 Vertice. pectoribus Gorgona, virgineam
 Sphinga gerens galea, mortalis nata parentis
 Busta subit Pallas non loca digna diis.
 Tum pretiosa legens juvenili plastica flore
 Poscebat : fastum vincere materiæ
 Ausa, giganteas elephanto auroque figuras
 Velabat : gemmæ, fulmina bina, micant
 Fronte sub augusta, metuendæ lumina divæ ;
 Sed terrestre brevi fert decus exitium.
 Multa quidem ambitiosa minus periere, vel ære
 Fusa, vel e Pariis marmora viva jugis.
 Non, tibi quæ normam doluit natura dedisse,
 Corporis harmoniam nunc, Polyclete, doces.
 Nec tua succenset Nemesis, Agoracrite, certans
 Alcamenis palmam quod Cytherea tulit.
 Nusquam Baccha Scopæ non Bacchi plena vagatur ;
 Nusquam spectantum corda Cupido petit
 Pulchre subridens jaculo, quo læsus et ipse
 Praxiteles Phrynæ finxit amore deum.
 Ecqua gregemque ducemque moratur vacca Myronis,
 Lysippive fremens surgit aenus equus?
 Equis adhuc, mollis quam circum spirat acanthus,
 Mentorea phiale Lesbica vina bibit?

- 2) Γραφικὴ from γράφω, whence γράφεις, *graphis*, applied also to the style and art of drawing, Phil. 35, 10; concerning which Parrhasius says, "alia multa graphidis vestigia exstant in tabulis ac membranis ejus."
 3) Cf. Jun. de Pict. Vet. 3, 2, 12. 4) Cf. Plin. 35, 3. 5) Cf. Stieglitz, Archæol. Unterhaltungen, p. 130–165, Malerfarben der Alten. 6) Cf. Plin. 33, 7, 35, 3, 8 and 9, ubi de Zeuxide, "pinxit et monochromata ex albo." 7) Plin. 35, 7, "Quatuor coloribus solis immortalia illa opera fecere, ex albis melino, ex silaceis Attico, ex rubris sinopide Pontica, ex nigris atramento, Apelles, Echion, Melanthus, Nicomachus, clarissimi pictores;" whereon Stieglitz remarks that Apelles and Nicomachus have been incorrectly classed among the more ancient artists; Cic. Brut. 18, "Similis in pictura est ratio, in qua Zeuxin et Polygnotum et Timanthen, et eorum, qui non sunt usi plusquam quatuor coloribus, formas et lineamenta laudamus" 8) Cf. Cic. de Orat. 3, 25; Orat. 50. 9) Cf. Plin. 35, 11, 36, 25. 10) Fr. Aug. Walter has attempted to illustrate this subject, in die wiederhergestellte Mahlerkunst der Alten. Berlin, 1820. p. 44, sqq.: he draws a distinction between *causis* and *encausis*, and concludes that the method referred to, consisted in moulding or casting (Einschmelzung), not in burning or branding, which must have destroyed the wax and figures; and that burning, cannot properly be understood of *caustica* and *encaustica*. 11) Stieglitz says no colour is met with in drawings called *cestrota*. 12) Cf. Plin. 11, 37, 35, 11.

438. The most common¹, perhaps the most ancient use of painting, was for adorning the walls and ceilings of apartments, which were sometimes varnished with a preparation of wax to protect the colours from the sun. Pictures of this kind were frequent in temples, on monuments, and in private apartments, as in those at Herculaneum. Paintings also were common on the earthen vessels, *terracottas*, of the Etruscans and Greeks, as is proved by the remains of such: they were less common on glass, or on marble; and in the time of Nero we hear of paintings on linen canvass². In the last place, I shall mention their paintings on panels, *tabulæ*, whence the terms *tabellæ* and *tabulæ*, applied to pictures: it is much to be regretted that none of these have reached us. Pictures on tapestry, *textiles*³, are different (§ 382), and are not to be confounded with these kinds of painting; also works in mosaic, such as pavements, were of a distinct kind (§ 462).

1) On which subject consult Stieglitz, p. 157, who says that, according to Böttiger, paintings were not on the walls themselves, but on wooden pannels (cf. Plin. 35. 10), and that by these the triumphs of the art were achieved; in later times the walls themselves were painted (*fresco*) when private individuals imitated public grandeur in ornamenting their apartments. 2) Cf. Plin. 35, 7. 3) Cf. Lucret. 2, 35; Cic. Verr. 4, 1.

439. Paintings or pictures were, moreover, distinguished by several names, such as *catagrapha* (profiles), *chorographica*, and *rhyparographa* representations of low subjects or commonplace objects¹. Distinctions also of a different kind arose from the various schools or styles of painting, such as the distinction between the Asiatic and Helladic styles, and afterwards between these and the Ionic, Sicyonic, and Attic styles. Pictures in a single colour, *monochromata*, which we before mentioned, were among the first attempts of the art: and yet this style was afterwards practised by the greatest painters². The more perfect state of the art

among the Greeks dates from the time of Polygnotus, who was followed by Apollodorus, Zeuxis, Parrhasius, Timanthes, Aristides, Protogenes, and Apelles, who brought the art to its greatest perfection. Works of no contemptible order³ at Rome proved the introduction of ancient paintings from the Etrurians or from Magna Græcia. It is commonly said that Mummius brought Greek paintings first from Corinth: after him the conquerors of Asia and Greece introduced numberless specimens of the art. Pliny says that in his time the art was in its last stage.

1) From ῥυπαρός, *sordidus*. Plin. 35, 10: "Tonstrinas sutrinasque pinxit et asellos et obsonia, ac similia, ob hoc cognominatus rhyparographos." 2) Cf. Plin. 35, 9. 3) Cf. Plin. 35, 4.

ARCHITECTURE.

440. Architecture degenerated at Rome later than Painting: this art, as well as Sculpture, was brought to perfection by the Greeks, whose scientific structures, together with those of the Egyptians, serve to record the earliest stages of the art in two different styles. Eastern nations imitated generally the imposing yet simple style of the Egyptians; the Grecian style, uniting beauty and elegance with simplicity, was adopted at Rome towards the close of the Republican era; at first in public, and afterwards in private edifices, which at length were more conspicuous for their internal than for their external decorations, though in the most flourishing state of the art in Greece, they were most simply constructed: but when the wealth of the whole earth had been heaped up at Rome, the luxury of individuals in building was as great as in other pursuits.

441. We have already mentioned detached buildings, circi, theatres, amphitheatres, temples, thermæ, and the houses of individuals. The palaces of great men

contained halls and porches, mentioned even by Homer, which were introduced into public edifices, partly for use, and partly for ornament: there were different kinds of porches, as double and treble porches, *miliaria*, (from their length); *basilica*, *regia* and *marmoreæ*. But the greatest distinctions in ancient architecture arose from the three orders of columns,—the Doric, Ionic, and Corinthian. The parts of a column were the base, *basis*, standing on the plinth, *stylobates*; on the base stood the shaft, *scapus*, and on it the capital, *capitulum*, and on the capital the *abacus*; the columns supported the *trabeatio*, which was divided into three parts, the architrave, *epistylum*, frieze, *zophorus*, and cornice, *corona*: the space between two columns was called *intercolumnium*. The Doric was the simplest and most ancient of the orders. The Ionic consisted of a more slender column and a capital adorned with volutes: the last introduced was the Corinthian, with a taller capital adorned with leaves in the manner of a basket, particularly acanthus-leaves¹. The Tuscan is also mentioned among the ancient orders of architecture, and resembled the Doric; the composite or Italian order, formed by a combination of the Ionic with the Corinthian, was introduced at a later period. *Parastata*, *parastaticæ*, pilasters or half-columns, and *antæ*², square pillars, are different from columns. Human figures also were used to supply the place of columns; those of men were called *Telamones* and *Atlantes*; those of women, usually dressed in the *stola*, *Caryatides*³.

1) See their different styles in Schlegel's *Ars Græcorum* :

“Simplice Dora gravis, mollis stat Iona voluto,
Fert Ephyres cinctum fronde columna caput.”

Note on § 437.

2) Vitruv. : “Trabes supra columnas et parastaticas et antas ponuntur.”

3) From *Cariæ*, a town of *Laconia*, the women of which were called *Caryatides*; cf. Vitruv. 1, 1.

MUSIC.

442. The word Music had a more extended signification among the Greeks than among the moderns; for it not only meant harmony, and instrumental and vocal music, but was also applied to sounds and motions regulated by the laws of harmony or versification, and thus applied to poetry, dancing, and mimic performances: hence the terms orchestric, scenic, and rhythmic music. Omitting, however, the theory of their music, as being foreign to the plan of my work, and using the word in its usual sense, I shall make the following remarks on the art. Writers attest the excessive love of music among the Greeks, its constant use in religious ceremonies, on the stage, and at feasts, and its astonishing and almost incredible effects on their feelings. It would be a most difficult question to decide between the contrary opinions eagerly maintained at present as to the nature of ancient music, and how it differed from the modern, and whether superior or inferior to it; though all seem to agree that the ancient was by far the more simple of the two. The use of music at Rome in war and in sacred rites, was prevalent at an early period, as we learn from unquestionable proofs (§ 144 and 329), though we need not agree with Dionysius Hal. I. 33, in supposing it to have been introduced into Latium by Evander the Arcadian, and refer its introduction either to the Etruscans, or to the inhabitants of Magna Græcia. In later times the music of the Greeks, together with their other arts and sciences, became prevalent at Rome, and from its insignificant beginnings, came to be highly cultivated. The Romans themselves neither despised it, nor yet cherished the art as the Greeks did; and it does not

appear that they practised it in the perfection in which it was introduced among them.

443. The musical systems of the Greeks prove that the art was long extremely simple among them. The most ancient system was that of the tetrachordon; Terpander is said to have introduced the heptachordon, and Pythagoras the octachordon. The system spoken of as being the most perfect, was introduced long after, and consisted of twenty-two notes. There were formerly three clefs, *modi* (*νόμος, ἀρμονίαι*); the highest or treble, *Lydius*; the tenor, *Phrygius*; and the lowest or bass, *Doricus*: when the system was improved, their number was increased¹. Many musical instruments of the Greeks are mentioned, partly invented by themselves and partly borrowed from foreign nations. Writers on antiquities have classed them under three heads, according as they were either wind instruments, chorded, or neither, such as the *tympanum* or tambourine, (from *τύπτω*,) whence *tympanizo*, *tympanista*, *tympanotriba*, the *crotalum* or castanet, whence *crotalistris*, and the *cymbalum*, whence *cymblista*, *cymbalis*, *cymbalistri*; which were all used in the sacred rites of Cybele² (§ 328). Of a similar species was the *sistrum* used by the Egyptians in the worship of Isis (§ 306), which consisted of a strip of metal bent into an oblong figure with transverse bars³. Playing on it was expressed by *sistra quatere*, *concutere*, and their sound is described by the epithets *crepitantia*⁴, *tinnula*, *garrula*, *multisona*, applied to *sistra*⁵. The *tintinnabula* were different, and differently used.

1) Cf. Plin. H. N. 7, 56. 2) Lucret. 2, 618: "Tympana tenta tonant palmis, et cymbala circum Concava, raucisonoque minantur cornua cantu, Et Phrygio stimulat numero cava tibia mentes."
 3) See Apul. Metam. l. 9; cf. Virg. Æn. 8, 696; Prop. 3, 11. v. 9, 43; Tib. 1, 3, 23. 4) Prop. l. c. "Romanamque tubam crepitanti pellere sistro."
 5) Mart. 14, 54: "Hæc quatit tenera garrula sistra manu."

444. Stringed instruments were the *lyra* and *cithara*, (whence guitar); the difference between these two instruments is not ascertained, nor is it known whether they differed only in shape; *barbitos* is frequently used for either: they had many strings. The parts of the *lyra* were *cornua* (πήχεις), *transtillum*, and *pons*¹; it was called also *chelys* (χηλυσ), or by the Latin term *testudo*². Instruments less frequently mentioned are the *trigonum* and *sambuca* or *psalterium*, of a triangular shape, and thus resembling the modern harp; also the *nablium*³, though it seldom occurs. The strings, *chordæ*, *nervi*, *fides*, *fila*, were struck by the fingers of the player, *fidicem*, or by a bow, *plectrum* or *pecten*, or by both means at once; hence we meet with the expressions *pellere*, *pulsare*, *ciere*, *sollicitare*, applied to *nervos*, *stamina*, *fila*, and *fidibus canere*, *fides Latinæ*, *Æoliæ*. Among wind instruments are mentioned organs, *hydraulica* (ὕδραυλις), which sounded by water driven into their tubes by means of air, of different kinds and uncertain description⁴. The more common wind instruments were *tibia*, (αὐλός), the flute, *fistula*, *tuba*, *buccina*, *cornua*, *lituus*. The use of the *tibia* (αὐλός), (§ 329 and 354), was very prevalent among the Romans and Greeks⁵, and from the the uses it was intended for, as well as from its shape⁶ and other reasons, there was a great variety of kinds: *tibia ossea*, *buxea*, etc.; *longa*, *recta*, *curva*, *cava*, *Phrygia* or *Idea*⁷, *Dorica*, *Lydia*; *tibiæ ludicræ*, *sacrificæ*, *præcentoriæ*, *nuptiales*, *dextræ*, *sinistræ*, *pares*, *impares*. Playing on it is termed *tibia canere*, *cantare*, *tibiam inflare*, *digitis pulsare*, etc. The most usual of the *fistulæ* was the shepherd's pipe, called by the Greeks, *syrinx*, and also δόναξ, and by the Latins, *calamus*, *arundo*, *avena*; several pipes were joined side by side, increasing in length from the shortest to the longest, as in Virgil's description of the Pandean reed:

“Est mihi disparibus septem compacta cicutis

Fistula⁸.”

1) Cf. Cic. N. D. 2, 59. 2) Cf. Hymn. Hom. in Merc. ; Hor. Od. 1, 10, 6, 3, 11, 3. 3) Cf. Ovid. Am. 3, 3, 27. 4) Cf. Petron. 36 ; Suet. Claud. 21 ; Nero, 41 and 54 ; Simpl. comm. ad Arist. Phys. 4, 8 ; Schneid. Ecl. Phys. p. 280. 5) Ovid. Fast. 6, 659, " Cantabat fanis, cantabat tibia ludis, Cantabat mœstis tibia funeribus ;" Quint. 1, 8, " Sed veterum quoque Romanorum epulis fides ac tibias adhibere moris fuit ;" cf. Flor. 2, 2. 6) Cf. Hor. A. P. 201 ; Ovid. Fast. 6, 697 ; Quint. 1, 11, 17. 7) Cf. Lucret. 2, 620. 8) Cf. Virg. Ecl. 2, 36, 3, 25 ; Tib. 2, 5, 32, — " calamus cera jungitur usque minor ;" Lucret. 4, 590, — " quum Pan—unco sæpe labro calamos percurrit hiantes ;" Ovid. Met. 13, 784.

445. The most usual use of the trumpet, *tuba*, called by the Greeks *σάλπιγξ*¹, was for proclamations, and for signals (*σημαίνειν*), and therefore was principally used in war (§ 368) ; hence the expressions *ante tubas*, *tuba pugnæ*, *belli* ; and as *avena*, the reed, was the symbol of, and the expression applied to more humble poetry, so *tuba* was applied to heroic poetry. The terms in use were *tuba canere*, *tuba signum dare*, *committere* : *tubæ clangor*, *cantus raucitas*, *fractus sonus*, *tuba floralis*, *tuba funerea*². The use of the *cornua* was also confined principally to war³, to the feasts of Cybele⁴, to funerals⁵ ; and is also used as *cornu pastorum*⁶. The use of the *buccina* (*βυκάνη*) in camps we have already mentioned (§ 368) ; it is doubted whether it was straight, or as I am inclined to think it was, always bent⁷. The *lituus* was used merely in war, and its use was distinct from that of the *tuba* and *buccina* : its name, taken from its resemblance to the lituus of the augurs (§ 319), proves it to have been of a bent form.

1) The *tuba* was straight ; see Ovid. Met. 1, 98. 2) Cf. Horat. Sat. 1, 6, 42 ; Prop. 2, 10, 20, " nec tuba sit fati vana querela mei." 3) Cf. Cic. pro Syll. 5 ; Hor. Od. 2, 1, 17 ; Virg. Æn. 7, 615 ; Tac. Ann. 1, 68 ; Stat. Theb. 8, 342. 4) Cf. Virg. 7, 513. 5) Cf. Lucret. 2, 619. 6) Cf. Hor. l. c. 7) Cf. Varro de R. R. 2, 4, 3, 13 ; Prop. 4, 10, 29, " pastoris buccina lenti," 4, 1, 13, " buccina cogeat priscos ad verba Quirites ;" Ovid. Met. 1, 335.

446. There was another species of musical perform-

ance, which we may call *mimica*, in use on the stage, either in unison with the voice of the player, *mimus*, or with his dumb show regulated by the recitation of another actor; to which *pantomimus* (*βαλλισμός*), refers: Roscius, Bathyllus, and Pylades, are mentioned as celebrated actors. To this division of musical performance also belong the dances of the ancients (ballets), either on the stage or at entertainments (§ 470). Of these, one was the martial dance *ἐνοπλος*, performed by armed men, such as the *Pyrrhicha*¹; another kind represented the actions of natural life, and may properly be called mimic, and the *comœdia planipedia*², acted by the *planipedes*³, seem to have partaken of its nature (§ 354), and also the species called *chironomia*⁴. Moreover, among the Greeks, dances were of numerous kinds, and distinguished by various names.

1) Cf. Plin. 7, 56; Suet. Cæs. 39; Nero 12, *Pyrrhicharii*; Ulpian. Pandd. 48, 19, 8. 2) Cf. Juven. 8, 191. 3) Cf. Lyd. 1, 40, who calls it *planipedaria*. 4) Cf. Juven. 5, 121; Quint. 1, 11; Sidon. Apoll. Ep. 4, 7.

PART II.

CHAPTER THE SECOND.

447. THE manners and customs of nations and cities depend partly on their public institutions and partly on their private dispositions : the first section of my work contained an account of the public institutions of Rome ; the manners and customs arising from their dispositions I have considered in the first chapter of my second section : I shall now cursorily treat of their dress, houses, food, and daily routine of life ; their amusements, marriages and divorces, the education of their children, funerals, names and families, and the offices and establishments of slaves.

DRESS.

448. In the early, sober, and frugal days of Rome, dress partook of the simplicity of their manners, and their clothes, like their kinds of food, were few, and not remarkable for ornament or colours ; they lived moreover in a climate that required little clothing. Thus we hear but of two sorts of habiliments, serving for either sex, and both made of wool, the *tunic* and the *toga* ; afterwards these were appropriated by the men, who even borrowed from the female costume several species of clothes, as the austerity of manners disappeared. Clothes of linen, which were the earliest among the Asiatics and Egyptians, and introduced from them into Greece, were not of frequent use at Rome until about the close of the Republic ; before that period they seem

to have been reserved for priests¹. The finest kind of linen was called *carbasus*², whence *carbaceus*, *carbasi-neus*, *carbasina*³, *carbasa navium*; also *byssus* and *syndon*, (*βύσσος*, *σιωδών*, *σιωδόνη*); but even the ancients themselves do not sufficiently distinguish between linen and cotton cloths, *xylina*⁴; for there were of both kinds, some cheap and common, others precious for their fineness of texture and dye⁵, and of common use among the richer classes⁶ at Rome under the Cæsars: at that period also silken articles, called *sericæ vestes*⁷, from *Σηρ*, the name of a nation; also called *bombycina*, from *bombyx*, the silkworm, and *metaxæ*⁸ or *mataxæ*, from the name of the raw material. Silks, *serica*⁹, are by some distinguished from *bombycina*, and sometimes confounded with *byssina* and *xylina*; *bombyx* and *bombycina* are sometimes also applied to cotton, *gossypium*¹⁰.

1) Cf. Plin. 19, 1. 2) Cf. Plin. ib.; Prop. 4, 11, 54. 3) Tib. 3, 2, 21. 4) Of *gossypium*, cotton, the tree that produces which was called *xylon*, and also *ἐπίβυλον*. 5) There is a striking passage on the colours of garments in Ovid. de A. A. 3, 169, sqq. 6) Cf. Mart. 2, 16. 3, 4. 19, 12. 7) Hence *holoserica*, applied to *stola*, *vestis*; Varro ap. Non. 14, 6; Vop. Aurel. 45; Tac. 10; Symm. Ep. 4, 8; cf. Lampr. Heliog. 26. 8) Ulp. Pandd. 39, 4, 16. § 7; Cod. Just. 11, 7, 10. 9) Cf. Prop. 4, 8, 23, 1, 14, 22: "variis serica textilibus;" Mart. 9, 38. 3, 11. 28, 11; Hor. Epod. 8, 15. 10) Plin. 19, 1: "Similemque barbatae nucis defert fructum, cujus ex interiore bombyce lanugo netur."

449. The toga, as *tegumentum*, from *togo*, called by the Greeks *τήβεννος*, consisted of an ample cloth, some say of a square form, others rounded at one side, or altogether round, but most probably of a form varying from a square to a circle¹, hung round the body, being fastened over the left shoulder, leaving the right arm free and covering the left shoulder and upper part of the left arm or the whole of it. This is the conclusion drawn by those who have studied statues clothed in the toga². However, there having arisen as sharp a controversy on the method of wearing³ the toga as on its

form, we may infer that both varied according to the fancy of the wearer and the time when worn. There have been some who, adopting the opinion broached by Oct. Ferrarius⁴ in opposition to Alb. Rubenius⁵, have concluded that the edges were sewn together from the bottom of the toga up as high as the breast, and thus that it was not unlike our present coats: but I doubt whether any but Crinitus⁶ ever supposed that it had sleeves, though many have questioned whether it was worn with a girdle or not. They who maintain that the toga was sewn up in front seem to have forgotten that it was worn in public, not indoors, and that it was rather a dress of ceremony than a working dress, and similar in use to the cloaks of the present day; and hence we need not wonder that it was so little worn in the country⁷.

1) Quint. 11, 3: "Ipsam togam rotundam esse, et apte cæsam velim," etc. 2) Cf. Thes. Græv. v. 6. p. 578, 620, 1019; cf. Quint. 11, 3; Tertull. de Pallio c. 5. 3) The terms following apply in either case, *injacere*, *amicire*, περιβάλλειν, περιβάλλαιον. 4) Thes. Græv. v. 6. p. 620, 690, sqq. 1050. 5) Ib. p. 1019, sqq. 6) See ib. p. 1015. 7) Cf. Juven. 3, 171.

450. It is certain that the toga was originally of woollen cloth, and differed according to the age, rank, and circumstances of individuals: thus we read of *toga crassa*¹, *pinguis*², *alba candida (cretata)*, (§ 277), *pulla atra, sordida, squalida* (§ 277), *virilis (pura, libera), prætexta*, whence *prætextatus*³, worn by youths and chief magistrates, *toga picta, palmata*⁴. The modes of wearing it are expressed by *restricta, fusa*⁵, *laxa, demissa; sinus*, a fold forming a sort of pouch; *umbo*⁶, *cinctus Gabinus*⁷. From the universal use of the toga the Romans were called *togati, gens togata*⁸, as the Greeks from their use of the pallium, were called *palliatii*⁹, and hence *fabula togata* (§ 354), *togatarius*, an actor of such, *Gallia togata*. As the sagum was the badge of war, so the toga was that of civic employments

and city life (§ 368); hence *togatus* is applied to civic magistrates, judges, patrons¹⁰, etc.: *clientes togati*, *togatuli*, and other similar expressions, bear a different meaning.

1) Hor. Sat. 1. 3, 15. 2) Cf. Suet. Aug. 82. 3) Cf. Juven. 2, extr. 4) Cf. Mart. 7, 1, 12. 5) Cf. Juven. 10, 38; Cic. Cat. 2, 10, —“manicatis et talaribus tunicis, velis amictos, non togis.” 6) Cf. Pers. 5, 33. 7) Cf. Virg. Æn. 7, 612; cf. *cinctutus, cinctuti, exerti, Cethegi*; Hor. A. P. 50, “Cinctutis non exaudita Cethegis;” Luc. 2, 543. 6, 794; Lyd. 1, 22. 8) Virg. Æn. 1, 282; cf. Hor. Od. 3, 5, 10, “togæ oblitus.” Suet. Aug. 40; “Ac, visa quondam pro concione pullatorum (?) turba, indignabundus et clamitans: En, ait, Romanos rerum dominos gentemque togatam, negotium Ædilibus dedit, ne quem posthac paterentur in Foro Circove, nisi positis lacernis, togatum consistere.” 9) Cf. Cic. Phil. 5, 5; Suet. Cæs. 48. 10) Cf. Cic. Cat. 3, 10; de Off. 1, 23.

451. Among the most frequently mentioned articles of Roman dress are the *læna*, *χλαίνα*, *pænula*, *φαινόλης*, *lacerna*, *lacernula*, whence *lacernatus*¹, *sagum*, *paludamentum*, *trabea*. We have already mentioned that the *trabea* was reserved for kings, knights, and augurs. The *sagum* was a military dress, and the *paludamentum* (§ 368, see *chlamys*.) peculiar to officers. The *læna* was adapted for keeping out cold, the *lacerna* and *pænula* for protection against rain²; and these were therefore used principally by travellers and soldiers, especially in winter³. The use of such garments at Rome was thought effeminate, and formerly was rare, but became more prevalent towards the end of the Republic; and under the Cæsars the *toga* had gradually fallen into contempt and was abandoned to the poorer classes, although I think that even then it continued to be the distinguishing and respectable dress of magistrates and lawyers⁴ in office. It is very difficult to draw distinctions between the *pænula* and *lacerna*, and between them and the *toga*. The *lacerna* is thought to have had a hood⁵, and the *læna* to have resembled the *lacerna*, but to have been of two kinds, single and double, one for winter, the other for summer; the

pænula⁶ longer, and, like the toga, is thought by some to have been sewed up from the skirt to the breast, whence we may conclude that the toga and pænula have sometimes been confounded by writers on antiquities.

1) Cf. Juven. 1, 62. 2) Cf. Cic. pro Mil. 20; Quint. 6, 3, 64 and 66; Juven. 5, 79. 3) Cf. Cic. Phil. 2, 30; Ovid. Fast. 2, 746; Prop. 4, 3, 18. 4) Cf. Juven. 2, 65. 5) Cf. Mart. 1, 99, 10; Juven. 6, 118; Hor. Sat. 2, 7, 55. 6) Cf. Pignor. de servis, p. 263.

452. However, the above-mentioned garments were not worn on the bare body; the inner garment of the Romans was the *tunica* (χιτών), whence *tunicula*, and *tunicatus*, white, and for men as well as for women, at first made of woollen cloth; it was worn girt round the waist, and reached to the knee¹: *discinctus*² and *succinctus*³ refer to the manner in which it was worn. It formed the only dress of the poor, whence the expression *tunicatus popellus*⁴; but the rich never went abroad without the toga over it, as it was unbecoming to do so. The *subucula* (shirt) worn under the tunic⁵ was the introduction of a later and more effeminate age. The form and ornaments of the tunic were various, such as *manicata*, the sleeved tunic, *pura*, unadorned, *talaris*, reaching to the heels: the *tunica laticlavica*⁶ was the badge of senators; the *angusticlavica*, that of knights (§ 137): it was worn by those who triumphed, *picta et palmata*. Concerning the meaning of the word *clavus*, which occurs in other instances, as *mappa laticlavica*⁷, various opinions are held by antiquaries⁸, but we cannot doubt that the terms arose from the figure of the *clavus* (a stud) on the dress⁹: a passage in Horace, Sat. I. 6, 28¹⁰, seems to prove that it was worn on the breast: we have many proofs that it was of a purple colour¹¹. The time when the clavus became the distinguishing badge of ranks is unascertained (§ 137). A passage in Livy, IX. 7¹², is to the purpose. Under the Cæsars the privi-

lege of wearing the *clavus* was granted to military tribunes¹³ and to the sons of senators, and the *laticlavus* to the superior knights. The Greeks termed a garment adorned with the *clavus*, *πλατύσημος*, *πλατυπόρφυρος*, *στενύσημος*, *μεσοπόρφυρος*, etc.

- 1) Hor. Sat. 1, 2, 25. 2) Ib. 2, 1, 73. 3) Cf. ib. 2, 6, 112.
 4) Hor. Ep. 1, 7, 65. 5) Cf. ib. 1, 1, 95; Suet. Aug. 82; Varro, ap. Nonium: "Postquam binas tunicas habere cœperunt, instituerunt vocare subuculam et indusium." 6) Cf. Lydus, 1, 17.
 7) Petron. 32; cf. Mart. 4, 46, 17. 8) Cf. Ruben. de Re Vest. l. 1. c. 1; Thes. Græv. v. 6. p. 934; et Ferrar. Anal. de Re Vest. c. 1; ib. p. 1946. 9) Cf. *trabea*, *trabeatus*, § 185. 10) "—ut quisque insanus medium impediit crus Pellibus, et latum demisit pectore clavum." 11) Cf. Plin. 33, 1; Ovid. Trist. 4, 10, 29; Juven. 1, 107. 12) "—lati clavi, annuli aurei positi," etc. This passage refers to A. U. C. 433. 13) Cf. Hor. Sat. 1, 6, 25.
 14) Cf. Ovid. Trist. 4, 10, 29 and 35.

453. Free-born youths wore the *prætecta* till the age of manhood; the *bullæ*¹ hanging from the neck upon the breast was the ornament of boys, which they consecrated to their domestic gods² when they assumed the *toga*: the children of the rich wore a *bullæ* of gold³, those of the poor merely a string of leather⁴. Coverings for the legs and thighs, *feminalia*, *tibialia*, were worn by the Romans only on occasion of sickness⁵: however, under the *Cæsars*, *braccæ*⁶, breeches, were introduced, being borrowed from foreign nations, but I suppose they were not very prevalent, and used at a late period⁷: *braccatus*, *braccata Gallia*, are terms met with.

- 1) Plin. 33, 1; Liv. 26, 36; Flor. 2, 6; Macrob. 1, 6; cf. Juven. 13, 33: "Senior bulla dignissime." 2) Cf. Prop. 4, 1, 131; Pers. 5, 31. 3) Prop. l. c.: "Mox ubi bulla rudi demissa est aurea collo, Matris et ante deos libera sumta toga." Cf. Lyd. 2, 3.
 4) Cf. Juven. 5, 165. 5) Cf. Hor. Sat. 1, 2, 25; Suet. Aug. 82; Quint. 11, 3. 6) Cf. Suet. Cæs. 80; Ovid. Trist. 5, 10, 34; Prop. 4, 11, 43; Tac. Hist. 2, 20. 7) Cf. Lampr. Al. Sev. 40.

454. The Romans seldom at any period wore a covering on the head, except the hood which formed part of their garments (§ 452), and the *mitra*, or woman's head-

dress: those which are mentioned are the *pileus*, *galerus*, *ápe*x, *petasus*¹. Of these the *petasus* (from *περάω*, *extendo*), from its having broad rims, was well adapted for keeping off the sun and rain, and therefore used by travellers². *Pileus*³ whence *pileatus*, and *galerus*⁴ whence *galeritus*⁵, were species of caps, as was also the *apex*. We have already stated that the *galerus* was worn by priests particularly, though others also used it⁶: the *apex*, taller and more pointed, was the mitre of the pontifices (§ 318): it was also worn by kings⁷, seldom if ever by others⁸. Coverings for the feet, *calcearia*, *calceoli*, *calceolarii*, were sandals, *sandalia*⁹, and *soleæ*¹⁰, *ὑπόδηματα*, a kind of which introduced from Gaul were called *Gallicæ*¹¹, viz. *soleæ*. *Mulli*, *campagi*¹², may be more properly classed as shoes; *perones*¹³, whence *peronatus*, were a kind of boots. The Greeks used *crepidæ*, slippers, and on the stage *socci* were used by comic, *cothurni*¹⁴ by tragic actors (§ 355). Other kinds were the wooden clogs of the poor, *lignei calcei*, the *sculponeæ*¹⁵ of countrymen, the *caligæ* of the military, and the black buskins of the senators, ornamented with the crescent, *lunula* (§ 176). Antiquaries say that men generally wore black, but sometimes red shoes, and women generally white. Under the Cæsars they were ornamented with gold, precious stones¹⁶, etc. Shoes were styled *repandi*¹⁷, from their shape, and *alutæ*¹⁸, when made of fine and soft leather; they were generally fastened on by thongs, *corrigiæ*, *ligulæ*, which are found on statues, crossed like network on the leg¹⁹. They were worn next to the foot, or else *fasciæ*, *pedulia*, *fasciæ pedules*²⁰, were wrapped round the foot, and, by the more effeminate, round the leg, hence *fascia cruralis*, *periscelis* (§ 453).

1) Cf. Cic. ad Div. 15, 17; Suet. Aug. 82. 2) Cf. Plaut. Amphitr. 1, 1, 287. 3) From *pilus*, *πίλος*, whence *πιλοφορεῖν*, *pileum gerere*; *villus* and *pellis* seem to have the same root. 4) From

galea, from its being made of skin. 5) Cf. Prop. 4, 1, 29, *galeritus Lucumo*; the lark from its resemblance to it is termed *galerita avis*; Plin. 11, 37. 6) Cf. Virg. Mor. 121; Suet. Nero. 26; Juven. 6, 120. 8, 208. 7) Cf. Hor. Od. 1, 34, 14; 3, 21, 22. 8) Cf. Cic. de Legg. 1, 1; Liv. 1, 34. 9) "Serva a sandaliis," in an inscription. 10) Cf. Gell. 13, 21; Prop. 2, 29, 40. 11) Cf. Cic. Phil. 2, 30; Gell. 12, 21. 12) Cf. Lydus 1, 17. 13) Cf. Lydus 1, 12. 14) Cf. Virg. Æn. 1, 337; Juven. 6, 505. 15) Cf. Cato de R. R. 59. 16) Cf. Plaut. Bacch. 2, 3, 97; Plin. 37, 2. 17) Cf. Cic. de N. D. 1, 29. 18) Cf. Lydus 1, 32; Juven. 7, 192; Ovid. A. A. 3, 271; Mart. 2, 29, 8. 19) Cf. Lyd. 1, 17; Virg. Æn. 1, 337. 20) Ulp. Pandd. 34, 2, 25; Lampr. Al. Sev. 40; Quint. 11, 3: "Fasciæ cretatæ," Cic. ad Att. 2, 3.

455. The early Romans¹ wore their beards and hair long, and thus *intonsus* or *barbatus* expresses an ancient, plain Roman. Pliny² mentions that the first barbers settled at Rome A. U. C. 454, so that it was not until late that they followed the example of the Greeks in shaving, *radere novacula*, and imitated them in the fashionable cut of the hair, in curling, and anointing it: terms applied to these customs are *tondere forcipe*, *calamistro inurere*³, etc.; *crines uncti*, *delibuti*, *madidi*, *odorati*, *myrrhei*; *nardus*, *nardi onyx*⁴, etc. Philosophers, even in the time of the Cæsars, allowed their beards to grow, as their Grecian prototypes did⁵.

1) Cf. Hor. Od. 2, 15, 11. 2) Plin. 7, 59. 3) Cf. Colum. pref. There is a remarkable passage in Seneca, de Brev. Vitæ 12. 4) Cf. Hor. Od. 1, 5, 2. 2, 3, 13. 2, 11, 14. 3, 29, 4. 4, 12, 16. Ovid. A. A. 2, 734. 5) Cf. Horat. Sat. 1, 3, 133. 2, 3, 16; A. P. 297.

456. I have already said that originally both sexes wore the toga and the tunic: among other articles of female apparel¹, we read of the *stola*, whence *stolata*, and termed *longa*², *manuleata*, generally highly ornamented; over the stola was thrown the *palla*³, termed *laxa*, *sinuosa*⁴; this latter garment was worn by players on the harp, actors, and others, and, it was supposed, by the gods⁵. It was thought indecent for a woman to appear abroad in the toga; hence *togata* means a

harlot⁶. For information on female attire, the Sabina of Bœttiger should particularly be consulted. We read of the *reticulum*⁷, a small net for the hair; *vitta*⁸, whence *vittata*; *mitra*, a circlet, *mitella*; the *strophium* or *fascia*, a scarf across the bosom⁹, common among the Asiatics, but thought disgraceful to a Roman¹⁰; *monilia*, necklaces; *inaures*, earrings, made of gold, gems, beads (*baccæ*), pearls¹¹, etc. Men wore the *monile* (*torques*, *catena*, *catella*), round the neck, and even earrings¹² under the Cæsars; they wore rings formerly almost exclusively¹³. I have already stated (§ 137) that knights, during the Republic, were distinguished by wearing golden rings, which senators also wore. The plebeians were satisfied at first with iron rings, which slaves were also allowed to wear; afterwards they wore silver ones. Permission to wear a golden ring was granted on very trivial grounds under the emperors¹⁴; at length all citizens, even freedmen, were allowed them¹⁵.

1) See Varro de L. L. 4, 32. 3) Cf. Hor. Sat. 1, 2, 99; Ovid. Fast. 6, 654. 3) One would think the word was still preserved in *faulle*, the name of a garment of the Belgian women. 4) Cf. Ovid. 3, 13, 26; Hor. Sat. 1, 2, 98. 5) Cf. Ovid. Fast. 2, 107; Tib. 1, 8, 46. 6) Cf. Hor. Sat. 1, 2, 63 and 82; Mart. 2, 39, 2. 7) Cf. Varr. de L. L. 4, 32; Juven. 2, 96; Petron. 67. 8) Which priests, victims, virgins, especially brides, and matrons wore; cf. Prop. 4, 3, 16, 4, 11, 33; Ovid. A. A. 3, 483. 9) Cf. Cic. de H. R. 21; pro Rab. Posth. 10; Lucr. 4, 1123; Virg. Æn. 4, 216. 10) Turpilius ap. Non.: —“inter tuniculam ac strophium quam collocarem (epistola);” Cat. 63, 65, “Non tereti strophio lactantes vincta papillas.” Ovid. A. A. 3, 274, “Inflatum circa fascia pectus eat.” 11) Cf. Sen. de Ben. 7, 9; Hor. Epod. 8, 14; Sat. 2, 3, 239; Cic. Verr. 4, 18; Bœtt. Sab. p. 2. p. 131. 12) Cf. Lamp. Al. Sev. 41. 13) Liv. 9, 7. 14) Cf. Plin. 33, 2; Herod. 3, 8; Pitiscus in *annulus*. 15) Cf. Just. Nov. 78.

457. The Romans distinguished their rings by names taken from their use, as we do, such as *annulus pronubus*, *signatorius*: the excessive luxury shown in the number worn, and the value of gems and costly engraved stones in them (§ 435), and the custom of wearing

lighter rings in summer and warmer in winter (whence the expression *annuli semestres*¹), are among the most absurd instances of Roman effeminacy. Paint, *fucus*, formed a principal part of the adorning of women, and was applied not only to the face², but also to dye the hair; in arranging which they took great pains³ (§ 495), but seldom wore wigs or false hair. Terms applied to the headdress and arrangement of the hair were *galericulus*⁴, *caliendrum*⁵, *tutulus*⁶, *suggestus comæ*⁷, *turritus vertex*⁸, etc. The colour most prized was flaxen or fair, *fulvus*, the usual colour of the hair of the Germans of those days⁹.

1) Cf. Juven. 7, 89: "Semestri vatum digitos circumligat auro." Idem 1, 26: "— quum verna Canopi Ventilet æstivum digitis sudantibus aurum, Nec sufferre queat majoris pondera gemmæ." 2) There is a remarkable passage to the purpose, Ovid. A. A. 3, 199. 3) Also Eleg. Am. 1, 14; cf. id. A. A. 3, 163; Juven. 6, 495; Prop. 2, 14, 25; Seren. Samm. de Medic. cap. 4. 4) Suet. Otho, 12; Mart. 14, 50. 5) Horat. Sat. 1, 8, 48. 6) Cf. Varro de L. L. 6, p. 73; Fest. in *tutulum*; Tertull. de Pall. 4. *A tutulo ornatrix*, on an inscription. 7) Stat. Sylv. 1, 2, 114. 8) Juven. 6, 495:

— altera lævum

Extendit, pectitque comas et volvit in orbem.
Est in consilio matrona, admotaque lanis,
Emerita quæ cessat acu: sententia prima
Hujus erit; post hanc ætate atque arte minores
Censebunt; tanquam famæ discrimen agatur
Aut animæ: tanti est quærendi cura decoris;
Tot premit ordinibus, tot adhuc compagibus altum
Ædificat caput.

9) Prop. 2, 14, 25: "Nunc etiam infectos demens imitare Britanos, Ludis et externo tincta nitore caput.—Turpis Romano Belgicus ore color."

OF PRIVATE HOUSES.

458. Until the time of the second Punic war, it appears that the houses of private persons at Rome were small, low, unadorned, and inconvenient. But from that period, and especially from the time of Sylla, great luxury was shown in the houses of the rich, particularly

in their country houses¹, by the number of apartments, some of which were adapted by their situation and structure to particular times of the day, as well as to particular seasons; by the baths, ball-courts, *xysta*, *gymnasia*, and fishponds, *vivaria*, as well as by the pictures, statues, carpets; by the costly furniture and profusion of gold and silver that contributed to their fitting-up. Rome, which after its destruction by fire by the Gauls had been reconstructed by individuals, who erected their residences wherever they thought proper², was so magnificently rebuilt after its partial burning by Nero, that it became the most beautiful city in the world³.

1) Vell. 2, 1: "Publicamque magnificentiam secuta privata luxuria est." 2) Cf. Liv. 5, 55. 6, 4; Tac. Ann. 15, 38:—"enormibus vicis, qualis vetus Roma fuit." 3) Cf. Tac. Ann. 15, 38 and 43; Suet. Nero, 16.

459. The houses of the Romans in early times were low, consisting generally of only one story, but under the Cæsars they were of very lofty construction¹. The parts of a house were the *vestibulum*; that portion between the body of the house and the street, left open, or else inclosed by a wall or piazza², *porticus*: *atrium*, the hall into which the street-door (*janua, fores, valvæ*) opened, and from which passages led to the principal apartments (consult Vitruv. VI. 8.), and was sometimes called *vestibulum*³, the two terms being synonymous⁴; it was generally crowded by the *clientes*. *Compluvium*, called also *impluvium, cavædium, cavum ædium, testudo* (Varro de L. L. IV. p. 38; Vitruv. VI. 4), was an inner hall, through which a passage led from the atrium into the *triclinium*, dining-room, opposite; it was surrounded by arcades, and connected buildings which contained different apartments, as *cubicula, balnea, cellæ, diætæ, dormitoria, tablinum*, etc. In the central space stood the penates⁵. This was the usual

distribution of the parts of houses. I shall make some further remarks on other particulars.

1) Cf. Hein. Synt. 2, 3, 7; Heubach Comment. de Politia Rom. § 17 and 45; Tac. l. c.; Juven. 3, 7. 2) Cf. Plaut. Most. 3, 2, 130; Gell. 16, 5; Juven. 1, 95, sqq., 7, 126. 3) Cf. Juven. l. c.; Liv. 5, 41. 4) They who place the vestibulum in the body of the house, evidently must place the atrium further in, and confound it with the inner hall or cavædium. Some also suppose the cavædium to have been a part of the atrium, others an open intermediate court, and others separate the peristylon from the cavædium in houses built on a more extensive plan than formerly. Stieglitz (Archæol. Unterhaltungen) supposes wings, to the right and left of the atrium, of which he makes the cavædium a part, and places the tablinum between these wings, and supposes it to have been formerly used as a museum, *archivum*, and afterwards as a supper-room. He also supposes the peristylon to have been introduced later than the atrium, and to have been an open court, longer than it was wide, and surrounded by a piazza, *porticus*, and distributes the different apartments round this cloister or piazza. But I think it must be concluded that the Roman houses were, like those of the present day, not all on the same plan, and that the names of their different parts were not always the same; so that only a vague notion can be obtained of the situation of their respective parts. 5) Cf. Virg. Æn. 2, 512, sqq.

460. *Fenestræ* (θύραι), apertures in the walls for admitting light, were closed by wooden shutters, nets, curtains, and other means; to which were applied the terms *fenestræ bifores*¹, *junctæ*², *reticulatæ*³. Panes of talc, *specularia*⁴, were introduced into windows in the times of the Cæsars; and we hear of glass panes found at Herculaneum. Windows were also covered with parchment, horn, and other materials. Parts about the gate, *fores*, were *limen*, *postes*, and *cardines*, the hinges; the door hung on the upper hinge, the lower hinge was inserted into the threshold: hence the expressions *cardinem vertere*, *movere*⁵, *cardo stridens*, etc. The doors were fastened by a bolt, *pessulus*, *πάσσαλος*, attached to the door itself, and by a lock, *sera*, sometimes also attached to it⁶, and differing little or not at all from the *pessulus*, and sometimes detached from the door: both were comprehended under the term *claustrum*: keys were used to both⁷, less com-

monly, we may suppose, to the *pessulus*, and not always to the *sera*. The term *claustrum* is also applied to the key: and the following expressions are met with: *occludere, pessulo firmare, pessulum obdere, injicere; subdita clavi reducere*, Apuleius in *Metam.*; *seram addere, ponere, demere, poste excutere*, etc.; *sera sua sponte delapsa*, Petronius; *claustra revellere, laxare, rumpere; armariis claustra et claves cedunt*, Ulpianus.

1) Ovid. de P. 3, 3, 5. 2) Horat. Od. 1, 25. 3) Varro de R. R. 3, 7. 4) Cf. Plin. 35, 22 and 23; Sen. de Prov. 4: "quem specularia semper ab adflatu vindicarunt." Cf. id. Ep. 90. 5) Cf. Horat. Od. 1, 25, 5. 6) Cf. Ovid. Am. 1, 6, 24: "Excute poste seram." 7) Cf. Tib. 1, 2, 18: "Seu reserat fixo dente puella fores," concerning keys; cf. Pignor. de servis, p. 214.

461. Neither the Greeks nor the Romans built chimnies¹ as we do for carrying off smoke, but it was allowed to escape through an aperture in the roof or by the doors and windows; thus we read of *fumosa atria*, containing the *fumosæ imagines* of ancestors (§ 132), as the smoke entered the atrium from all the chambers round it. They sought to diminish the inconvenience arising from smoke by a selection of proper fire-wood², and by other means, whilst habit and the little need of fire in so mild a climate, also tended to render it less troublesome. In later times the Romans paid great attention to warming their apartments, counteracting the cold by the situation and construction of them³. The word *caminus* is applied to any furnace, such as those used by smiths, and also to fire-places in rooms. For warming these they used charcoal, placing it alight on the pavement or in a pan, or on a stove⁴. A more refined method of heating was introduced under the Cæsars, and first of all in baths, by means of heat diffused⁵ through the apartments by tubes from chambers, *hypocausta*⁶, where fuel was kept constantly burning; the mouth of the tubes being closed or opened as necessary.

1) Cf. Vitr. 7, 3 and 4. 2) Cf. Hor. Od. 3, 7, 13; Sat. 1, 5, 80: —“lacrymoso non sine fumo, udos cum foliis ramos urente camino,” Virg. Æn. 7, 13. 3) Cf. Juven. 7, 182. 4) Cf. Hor. Od. 1, 9, 5; Sat. 1, 5, 80. 5) Stat. Sylv. 1, 5, 58: —“ubi languidus ignis inerrat Ædibus, et tenuem volvunt hypocausta vaporem.” Sen. Prov. 4: —“cujus cœnationes subditus et parietibus circumfusos calor temperavit.” 6) Cf. Cic. ad Q. Fr. 3, 1: “Vaporarium, ex quo ignis erumpit.”

462. The form of the roof of Roman houses differed with the form of the houses themselves. Flat and pitched roofs both were in use. *Fastigia*, parapets (*ἀερός*), were borrowed in private houses from those of temples¹. The flat surface of the roof sometimes resembled a garden, being covered with mould, in which shrubs and trees were planted, or they were placed in boxes on the roof². It is well known that the ceiling of apartments consisted of hollow and projecting³ parts, and hence had its name *laquear* or *lacunar*, from the resemblance of its mouldings to bays, *lacus*, and network, *laquei*. In the houses of the opulent it was adorned in the most exquisite style, and is therefore classed by writers among the instances of luxury: similar taste was shown in the decoration of pavements⁵, as we may learn even from the different styles of adorning them, as those called tessellated⁶, from *tessera* or *tessella*; those of tiles, *testacea*⁷, from *testa*; and the *lithostrota*⁸, or mosaic pavements, of which whole specimens and fragments, exhibiting wonderful skill, exist.

1) Cf. Cic. Phil. 2, 43; Suet. Cæs. 81; Flor. 4, 2, extr. 2) Cf. Tib. 3, 3, 15, “Nemora in domibus sacros imitantia lucos.” 3) Cf. Vitruv. 6, 2, ext.; Hor. Od. 2, 16, 11; Cic. Tusc. 5, 21. 4) Cf. Plin. 33, 3; Hor. Od. 2, 18, 1; Lucan. 10, 112; Sen. Ep. 90; Suet. Nero. 31. 5) Cf. Hor. Od. 2, 14, 27. 6) Cf. Sen. N. Q. 6, 31. 7) Cf. Suet. Cæs. 47. 8) Cf. Varr. R. R. 3, 1, “Cum enim villam haberes—pavimentis nobilibus lithostrotis spectandam.” Plin. 6, 25, “Pavimenta originem apud Græcos habent elaborata arte, picturæ ratione, donec lithostrota expulere eam;” cf. Capit. Gord. 32; cf. Champollion, Résumé d’Archéol. v. 1. p. 206.

FOOD AND DAILY ROUTINE OF LIFE.

463. The frugality¹ of the ancient Romans (§ 397) was as remarkable as the simplicity of their manners, and in these respects they seem to have resembled the Lacedemonians: they were long satisfied with meal and vegetables, such as pulse, *πόλτος*, whence *pulticula*, *pultarius*, etc., to which afterwards they added bread, seldom flesh, or only that of victims; such frugality, less astonishing among the poor, prevailed among their chief men likewise³: but on the disappearance of ancient manners, the luxuries of the table began to be eagerly indulged in⁴, borrowing several of its details from the Greeks and Asiatics. On this fertile subject, to which Creuzer has devoted thirty-two pages, we shall make the following remarks.

1) Cf. Beaufort. v. 2. p. 426, sqq. 2) Cf. Plin. 18, 8; Val. Max. 2, 5, 5; Ovid. Fast. 6, 170; Juven. 11, 77. 14, 171; Mart. 5, 79, 9. 3) Cf. Hor. Od. 1, 12, 40, sqq. 4) Cf. Plaut. Pseud. 2, 2; Meierotto Sitt. u. Lebensart der Rœm. p. 2. p. 111; Gell. 2, 24.

464. *Cæna*¹, the principal meal, was preceded by the *jentaculum*, *prandium*², *merenda*³, and was taken in summer about three o'clock, p. m.⁴ (§ 358), and in winter rather later, consisting of three courses, *mensæ*⁵ (to which *τράπεζα* refers), these were called *gustatio*, *caput cænæ*, and *mensa secunda*. *Gustatio*, *gustus*, *promulsis*⁶, *δέλπνοῦ προοίμιον*, included eggs, (whence the expression *ab ovo usque ad mala*⁷), *mulsum*, mead⁸, lettuce, pickles, *garum* and *muria*⁹, and other things to whet the appetite¹⁰; the word in another sense is taken for luncheon¹¹. The *caput cænæ*¹², as the name infers, was either the principal course, or the principal dish in the course. The *mensa secunda* or *cibi secundi* consisted

of sweetmeats¹³. Drinking bouts, *comissiones*, (*κῶμος*), protracted to a late hour¹⁴, followed the *cæna* when it was an entertainment given to friends. One of the guests, chosen by casting dice or drawing lots, presided over the drinking, whence *rex vini, regnum, imperium convivale*¹⁵. The terms *rex clientum* and *parasitorum*¹⁶ have a different meaning and application. He who treated his friends was said *præbere aquam*¹⁷, and uninvited guests brought by friends, were called *umbræ*¹⁸.

1) Some suspect the word *cæna* to be derived from *κοινός*, being the common meal of the family; words derived from it are *cænatio, cænaculum, cænatorius*. 2) Cf. Hor. Sat. 1, 6, 127. 3) How these meals differed, whether in the time at which they were taken, or on other accounts, I allow wiser men to explain, so as to leave no ambiguity on the subject. Festus derives *prandium* from the Greek, and adds, "nam meridianum cibum cœnam vocabant;" and suggests *πρωί*, Doricè *πρᾶν*, as the root. In the same writer we read, "Prandicula antiqui dicebant quæ nunc jentacula:" and he also adds the following remarks; "Cœna apud antiquos dicebatur quod nunc est prandium; vesperna, quæ nunc cœna appellatur:" and what Paulus quotes from Festus, "Scensas Sabini cœnas dicebant, quæ autem nunc prandia sunt, cœnas habebant, et pro cœnis vespernas appellabant." Thus formerly the *cæna* and the *vesperna* differed, and also the *prandiculum* which preceded the *cæna* differed from it, as the *jentaculum* did afterwards from the *prandium*: at length, when the *cæna* was substituted for the *vesperna*, the *prandium* took the place of the *cæna*. Concerning the *merenda*, see Isid. Orig. 20, 2, (and also 20, 3), —"quasi post meridiem edenda et proxima cœnæ." Paulus quotes Festus on the same word thus; "Quod scilicet media die caperetur." But a passage in Calpurnius, Ecl. 5, 60, seems to prove that the word was applied to a meal taken late in the day: "ubi declivi jam nona tepescere sole
Incipiet, seræque videbitur hora merendæ."

The note of Barthe on this passage confirms the opinion of Jos. Scaliger, who explains *merenda* as the food given to hired labourers when they left work in the evening. 4) Cf. Juven. 1, 49; Mart. 11, 53. 5) Cf. *ferculum*; Juven. 1, 94; Suet. Aug. 74; Hor. Sat. 2, 6, 104. 6) Cf. Cic. ad Div. 9, 16, "Neque est, quod in promulside spei ponas aliquid; quam totam sustulisti." 7) Cf. Hor. Sat. 1, 3, 6. 8) Cf. Hor. Sat. 2, 4, 26; Cic. Tusc. 3, 19; Plin. 22, 24. 9) Cf. Hor. Sat. 2, 4, 64. 10) Cf. Mart. 11, 32 and 53, "Prima tibi dabitur ventri lactuca movendo Utilis, et porris fila resecta suis," etc. 11) Cf. Plin. Ep. 3, 5, 6, 16; Suet. Aug. 76. 12) Cf. Cic. Tusc. 5, 34; Mart. 10, 31, "Mullus—cœnæ pompa caputque fuit." 13) Cf. Gell. 13, 11. 14) Cf. Cic. Cat. 2, 5; pro Cœl. 15; Suet. Vit. 13; Tit. 7; Pers. 5, 41; cf. *convivium*

tempestivum; Cic. pro Mur. 6; Cat. 1. 14. 15) Cf. Hor. Od. 1, 4, 18, 2, 7, 25. 16) Cf. Terent. Phorm. 2, 2, 24; Mart. 2, 18; Juvén. 1, 135. 5, 14. 17) Hor. Sat. 1, 4, 88. 18) Cf. Hor. Sat. 2, 4, 22, "Quas Mæcenas adduxerat umbras;" see Plut. l. 7; Symp. prob. 6; Stuck. Antiqq. Convival. 2, 6. p. 240.

465. We need not mention what the food of the poor was; to the researches of writers on such antiquarian subjects, I leave the task of discovering what the most favourite dish at any given time was; what the many, and what only the few relished; what dish of the second course was at the head, what at the foot of the table, and likewise in what part any dish was placed; they will pretend to know how many nuts were served to any guest. The testimony of Horace (Sat. 2, 4 and 8), of Seneca, Petronius, Juvenal, Martial, Suetonius, and other writers, justifies us in declaring that the luxury of a Roman table¹ equalled or surpassed the most elaborate cookery of the moderns in the variety, rarity, and high prices² of the dishes, in the number of attendants³, and in the degrading indulgences of the guests. Their custom of enabling the stomach to receive a fresh meal by means of emetics, may be noted as the extreme of gluttony⁴.

1) Cf. Juvén. 1, 94; Macrob. 2, 9. 2) Cf. Juvén. 11, 138, sqq.; Mart. 10, 31; Manil. 5, 370; Plin. 9, 17. 3) Sen. Ep. 95: "O dii boni, quantum hominum unus venter exercet!" 4) Cf. Sen. de Cons. 9; Suet. Vitell. 13.

466. It is not to be wondered at if the moderns agree with the ancients on some points of taste, and accordingly we find that the wild boar¹, so frequently mentioned by their writers, capons², thrushes³, pheasants⁴, and oysters⁵, were highly relished by them, as well as the legs of a hare, and the livers of geese⁶. Yet some meats highly extolled by ancients are now held in no repute: whether the art of feeding the animal or that of dressing him be lost; let critics say if night-ingales⁷, peacocks⁸, and cranes⁹ may not be mentioned

as instances: of fish¹⁰, I am certain many may. Those they praise highest are the turbot, *rhombus*¹¹; lamprey, *muræna*¹²; mullet, *mullus*¹³; char, *scarus*; and the sturgeon, *acipenser*¹⁴; laid on the table to the sound of the flute. Of shell-fish in request for the table, we read of oysters, besides *echini*, *murices*, and *pectines*, scallops¹⁵. Varro de Re Rust. 3, 14, and Pliny 9, 56, speak of snails fattened for the table. The Romans highly valued many kinds of quadrupeds as food, but nothing so highly as the udder, *sumen*¹⁶, and belly of a sow¹⁷.

- 1) Cf. Hor. Sat. 2, 3, 234. 8, 6; Juven. 1, 140: —“quanta est gula, quæ sibi totos ponit apros, animal propter convivia natum!”
 2) Cf. Ovid. Fast. 6, 178. 3) Hor. Ep. 1, 15, 40: “Quum sit obesò Nil melius turdo, Nil vulva pulchrius ampla.” 4) Cf. Mart. 13, 72. 5) Cf. Hor. 2, 4, 30; Juven. 4, 140. 6) Cf. Hor. Sat. 2, 4, 44, 8, 88 and 89. 7) Cf. Hor. Sat. 2, 3, 245. 8) Cf. Vatro de R. R. 3, 6; Plin. 10, 20; Ovid. Fast. 6, 177. 9) Ib. 176, and Hor. Sat. 2, 8, 87. 10) Cf. Meierotto, über Sitten u. Lebensart d. Römer, p. 2. p. 120, sqq.; Mart. 13, 79; and Ennuis as quoted by Apul. de Mag. p. 43, sqq. 11) Cf. Hor. Sat. 1, 2, 116; Juven. Sat. 4. 12) Hor. Sat. 2, 8, 42; “Effertur squillas inter muræna natantes.” 13) Juven. 4, 15: “Mullum sex millibus emit,” etc. Sen. N. Q. 3, 17, sq. 14) Cf. Macrob. Sat. 3, 16; Plin. 9, 17; Athen. 7, 12; Lyd. de Magistr. 3, 63; Mart. 13, 91: “Ad Palatinas acipensem mittite mensas: Ambrosias ornent munera rara dapes.” 15) Cf. Hor. Sat. 2, 4, 34; Lyd. 3, 62. 16) Cf. Pers. 1, 53; Mart. 13, 44. 17) Cf. Hor. Ep. 1, 15, 41; Mart. 13, 56.

467. We should imagine that they had different kinds of bread¹, and of different qualities, even though it were not on record: we meet with the terms *panis cibarius*, *secundus*², *candidus*, *vetus*, *nauticus*, *hordeaceus*, *siligineus*³. The Romans usually drank their wine diluted⁴; both the Greek wines, the Lesbian⁵ and Chian⁶ wines, which were most frequently drunk at Rome; and their native wines, Massicum, Falernum, Cæcubum, Calenum, celebrated by Horace, and the Setinum⁷: they also observed Grecian practices, as the usual terms applied to drinking and the names of the vessels prove; as *crater*, *cyathus*, *poculum*, *scyphus*;

and the expressions *cyathos, pocula miscere*⁸, *craterem, vina coronare*⁹; *ad cyathum stare*. The following terms were applied to the methods and circumstances of casking wine, keeping it or improving it; *cupa, doli-um, vinum doliare, diffusum*¹⁰, *cadus, testa, amphora, seria, lagena; cella vinaria*¹¹, *apotheca*¹²; *vinum pendens*¹³, *horreum*¹⁴. Water was used cooled by artificial means, *gelida*¹⁵, or warmed, *calda*¹⁶; to which *thermæ*¹⁷, *thermopolia*, refer¹⁸.

1) Juven. 5, 74: "Vin tu consuetis, audax conviva, canistris Im-
pleri, panisque tui novisse colorem?" 2) Hor. Ep. 2, 1, 123.

3) Juven. 5, 70. 4) Cf. Meier. p. 2. p. 123. 5) Prop. 1, 14.

6) Hor. Sat. 1, 10, 24; Od. 3, 19, 5. 7) Stat. Sylv. 2, 6, 90;

Juven. 10, 27; Mart. 6, 86. 8) Cf. Hor. Od. 1, 29, 7, 3, 19.

9) Virg. Georg. 2, 528; Æn. 1, 724; cf. Stat. Sylv. 3, 1, 76:
"Redimitaque vina abripiunt famuli."

10) Hor. Ep. 1, 5, 4:
"Vina bibes iterum Tauro diffusa." Cf. Heind. ad Hor. Sat. 2, 2,
58. 11) Plin. 14, 21. 12) Colum. 1, 6; cf. Heind. ad Hor.

Sat. 2, 5, 7. 13) Cf. Hor. Od. 3, 21, 7, 4, 12, 18. 14) Hor.
3, 28, 7. 15) Cf. Mart. 14, 116: "Spoletina bibis, vel Marsis

condita cellis: Quo tibi decoctæ nobile frigus aquæ?" Cf. Juven. 5,
50. There is a striking passage about cooling water with ice, Sen.

N. Q. 4, 13. 16) Juven. 5, 63. 17) Juven. 8, 168. 18) Con-
cerning the drinks which the ancients made from barley, corn, etc.

by fermentation, see Plin. 14, 22, 22, 25; Tac. Germ. 23; see Voss.
on Virg. Georg. 3, 380.

468. Several laws¹ termed sumptuary², and others, (perhaps the *censoriæ*), though it is not certain³, were enacted to moderate the expenses of the table (§ 400); as well as laws (for instance the *lex Oppia*, abrogated A. U. C. 577.) for restraining excessive dress and the use of gold and silver in women's apparel; Such was the *lex Orchia*, which limited the number of guests. *Fannia*⁴, enacted A. U. C. 593, the expenses of feasts on certain holidays, which the *lex Didia* and *Licinia* A. U. C. 657, revived and added to; and the *lex Cornelia* of Sylla the dictator re-enacted them when falling into neglect, though luxury crept in not-

withstanding, and in the days of Tiberius was added to the list of incurable vices.

Creuzer has mentioned § 269 the occasions of, and different kinds of festive entertainments: words applied to them are, *cænæ*, *dapes*, *epulæ sacrificales*, *Pontificum*, *Augurales*, *Saliares*; *natalitia*, *silicernium*, etc. The dining-room in the houses of the rich was called *cænatio*⁶, and also *cænaculum*⁷, a word afterwards applied to the upper rooms of houses, especially those of the poor⁸; couches, *lecti*, *pulvinaria*, were ranged round the three sides of the tables, which were usually square, I think, and to which are applied the terms *orbes*, *monopodia*⁹; *citrea mensa*¹⁰: of the couches¹¹, that on the left was called *summus*, in the middle, *medius*¹², and that on the right, *imus*; the seat in the centre, that of honour, was also called *consularis*.¹³ They borrowed from the Greeks the word *triclinium* (κλίνη), and applied it to the dining-room, table, and couches¹⁴: we read of *triclinia argentea*, *testudinea*, *strata*, *tricliniarchus tricliniarius*.

1) See Liv. 34, 1, sqq. 2) Cf. Macrob. 2, 13; Gell. 2, 24; see Meier. p. 2. p. 115, sqq. 3) Cf. Creuz. § 283. 4) Cf. Plin. 10, 50. 5) Tac. Ann. 3, 52, sqq. 6) Cf. Juven. 7, 183; Mart. 2, 59; where he mentions the mica, called *mica aurea* by P. Vict. and Sext. Ruf., which was a small banqueting hall of Domitian's. 7) Varro de L. L. 4. p. 39, says they called the room *ubi cænabant*, *cænaculum*, etc. 8) Cf. Hor. Ep. 1, 1, 91; Juven. 10, 18. 9) Cf. Heind. on Hor. Sat. 1, 3, 13; cf. Mart. 1, 137. 10) Cic. Verr. 4, 7. 11) Pers. 1, 53. 12) Cf. Hor. Sat. 1, 4, 86; Ep. 1. 18, 10. 13) See Salmas. on Solin. p. 886; Heind. on Hor. Sat. 2, 4, 20. 14) Cf. Cic. ad Att. 13, 52; Verr. 3, 25; Varro de R. R. 3, 13.

469. The plate and service of the table¹ corresponded to the magnificence of the *triclinium*, consisting of splendid goblets, *vasa gemmea*, *vitrea*, *crystallina*, *myrrhina* (§ 432), *Corinthia*, for drinking and other uses, of immense value on account of their workmanship or costly materials: the accounts of the ancients on this

subject are hardly credible. *Digitis concrepare*² applies to the custom of introducing the *lasanum*, *matella* or *scaphium* at table. Napkins, *mappæ*³, *gausape*⁴, were also used; and we read of spoons, *cochlearia*⁵, *lingulæ*, or *ligulæ*⁶; but they were seldom used at feasts, I think: the guests wore a peculiar dress⁷, *cœnatoria*⁸, scil. *vestimenta*, *synthesis*⁹; and we learn from Plautus Truc. II. 4, 16; Hor. Sat. II. 8, 77; Mart. II. 50, 3, that it was customary to leave their shoes, outside the room. The guests at a wine party sprinkled their hair with odours, *unguenta*, *odores* (§ 455), and were crowned with garlands of leaves and flowers¹⁰. It is generally thought, though it is not certain, that the Romans in the earliest times¹¹ universally reclined as the Greeks did at table¹², called *accubare*, *accumbere*, *decumbere*, *discumbere*¹³, etc. Women, however, sat, though the men reclined¹⁴ (cf. § 331).

1) See Creuz. § 277. 2) Cf. Petron. c. 27; Mart. 14, 119; Juven. 3, 108; Clem. Alex. Pædag. 2, 7; see Bœttig. Sabina p. 1. p. 40 and 44. 3) Mart. 7, 19, 12, 29. 4) Cf. Ovid. A. A. 2, 300; Hor. Sat. 2, 8, 11, ibiq. Heindorf. 5) Cf. Ovid. A. A. 3, 755; Mart. 14, 121. 6) Ib. 120; cf. Bœttig. p. 106. 7) Capitol. Maxim. jun. 4. 8) Mart. 10, 87, 12; Petr. c. 21, and Pompon. Pandd. 34, 2, 33: "Muliebribus cœnatoriis uti." 9) Mart. 5, 80, 2: "Undecies una surrexti, Zoile, cœna, Et mutata tibi est synthesis undecies." Cf. idem 14, 1, 1; Suet. Nero. 51. 10) Cf. Lucret. 3, 926. 5, 1398; Hor. Od. 2, 7, 23. 11) Cf. Serv. ad Æn. 7, 176. 12) Creuz. Symbol. v. 1. p. 175, says that the Greeks of old sat during feasts at sacrifices, and spoke but little, deeming the gods to be present; cf. Ovid. Fast. 6, 305. "Stuck, as usual, treats at length on the subject, Antiqq. Convival. 2, 34. 13) Cf. Hor. Od. 1, 27, 8; Juven. 2, 120; St. Luke 7, 37. 14) According to Varro, Isid. 1. 20. Etym.; see Stuck. 2, 34. p. 409.

470. Music, dances, and tricks, *lusus*, formed a share of the entertainments at feasts and dinner parties; games were very common after dinner over wine, particularly those practised by young people, and usual among the Greeks, which may be called amatory, such as the *cottabus*, *κότταβος*, *κοτταβίζειν* (see Schneid. Lex.), in which by dropping wine from one cup into

another, they drew omens as to their hopes in love from the sound of the falling drops¹; or by attempting to strike the ceiling with the moist pips of fruit slipping from between the finger and thumb²; and by throwing dice, they augured of the favourable or unfavourable inclinations of a mistress or god from the cast³. They determined *quem Venus arbitrum dicet bibendi*, and were accustomed *regna vini sortiri talis*, etc.; but these were not exactly games (§ 464). Music was invariably the accompaniment of feasts, and we need not infer that the Romans adopted its use on these occasions from the Greeks, though among the latter it was inseparable from festive mirth, as it held so distinguished a rank in the details of the symposia, of which a few have been handed down to us in the pages of Xenophon, Plato, and Plutarch. However, they certainly borrowed from the Greeks the custom of introducing at feasts dancing to the notes of the flute, performed by dancing girls, in light dresses, and accompanied with indelicate gestures⁴. A more reputable amusement at dinner parties consisted in the *acroama*, or the enjoyment derived from listening to a recitation or reading by persons called *anagnostæ* (§ 494), or to instrumental or vocal music⁵. I shall here conclude my remarks on their diet.

1) See Groddeck. *Antiquar. Versuche*, erste Samml. p. 163, sqq. a work praised by Creuz. § 287; Jacobs, in *Wieland. Attisch Museum* 3. p. 473; Plaut. *Trin.* 4, 3, 4; *Hor. Od.* 2, 14, 26; *Juven.* 3, 108; though I leave to others to decide whether they apply to the point in question. 2) Cf. *Hor. Sat.* 2, 3, 272, explained by *Pollux* 9, 128. 3) Cf. *Plaut. Capt.* 1. 1, 4; *Asin.* 5, 2, 54, *aliisque locis*. 4) Cf. *Macrob. Sat.* 2, 1; *Quint.* 2, 2; *Hor. Od.* 3, 6, 21; *Amm. Marc.* 14, 6; *Olympiod.* p. 148, who praises the convivial temper of Constantius: 'Ὡς καὶ ἐρίξεν τοῖς μίμοις πολλάκις, παίζουσι πρὸ τῆς τραπέζης. *Juven.* 11, 162: "Forsitan exspectes, ut Gaditana canoro Incipiat prurire choro, plausuque probatæ Ad terram tremulo descendant clune puellæ." See *Pignor de Serv.* p. 180. 5) Cf. *Cic. pro Arch.* 9; *Nep. Att.* 14.

471. As for the daily life and routine of the poorer,

humbler and more numerous class of citizens, which was called *turba forensis* (§ 143 and 400), it will suffice to remark that they passed their time in attendance as *clientes* in the vestibules of their patrons' houses, at the Campus Martius, or in the Forum, or spent their idle hours in the theatres¹, being supported by the largesses and munificence of their patrons and candidates for office, but chiefly by grants from the public fund, *ærarium*² (§ 395). The rich and powerful spent their day as follows: the early part they devoted to receiving their clients and friends³, with the *officiosa sedulitas*⁴, of which Horace speaks. From nine in the morning they attended to public business in the Forum⁵, in courts of justice, at public meetings, and in the senate. Then from their prandium to dinner-time, *cæna*, they frequented public walks, *ambulacra*, and particularly the gymnasia⁶, and amused themselves with games, particularly tennis, *pila*, of which the Romans were exceedingly fond.

1) Cf. Meier. p. 53, sqq. 2) See Meier. p. 1. p. 11, sqq.
 3) See § 141. loc. Mart. 4) Ep. 1, 7, 8. 5) Hence the usual expression, *in forum venire*, Cic. ad Div. 13, 10; *forum attingere*, ib. 5, 8. and 15, 16; pro Mur. 9; *de foro decedere*, Nep. Att. 10; *studia fori*, Tac. Agr. 9; *ferrea jura insanumque forum*, Virg. Georg. 2, 502. 6) Cf. Tac. Ann. 14, 47.

472. Before dinner, it was usual to bathe. Baths in private houses, and public baths, *thermæ*, in the times of the Cæsars, were numerous, of vast extent, and great splendour, and are the most wonderful structures of Rome¹: some, whose ruins still remain as those of Diocletian, were as extensive as villages. The exterior circuit consisted of arcades, *porticius*, *xystis*, connecting the loftier parts of the building, and was generally four-sided: within it was an open space surrounding an inner building which contained the enormous range of *thermæ*. The various parts of the edifice were named after the numerous uses to which they were adapted. Those in the open air were *xysti* (§ 49), and those in

the body of the edifice were the *frigidaria*, *tepidaria*, *caldaria* (§ 461), *sphæristeria*, ball-court (§ 474), *elæothesia*, etc. In bathing they used the *guttus*, *strigilis*, and mere waited on by *unctores*, etc. Both before and after bathing they amused themselves with different bodily exercises, for which the parts of the thermæ, which we have mentioned, were excellently adapted.

1) There is a remarkable passage in Seneca, Epist. 86, on the simplicity of the baths of the primitive Romans, and the luxury and extravagance attending them in later times.

473. We have thus briefly treated of some particulars in the private habits of the Romans, which have been treated of in many volumes, severally, by writers on antiquities; many of them well deserve investigation provided it be not directed towards frivolous particulars, nor employed in attempts to ascertain things which the very nature of the subject renders unascertainable. And, in conclusion, we will briefly glance at that department of the subject which seems to me to afford the widest field and most inviting aspect, and which would tempt me far beyond the prescribed limits of my work, so numerous and varied are the subjects themselves, even without their appendages and adjuncts; I can therefore merely mention their custom of being carried about in palanquins, *lecticæ*¹, by bearers, *lecticarii* and *hexaphori*², and of travelling in carriages, *rheda*, *essedæ*³, *tensæ*⁴, *pilenta*⁵, or on mules and horses laden with packsaddles, *sagmata*. Other subjects are suggested by their life in the country, their farms and villas, fish-ponds⁶, and methods of fishing with nets and lines, of fowling with birdlime, *gluten*, and with nets supported on props, *amites*; and of hunting with dogs, toils, decoys, and *venabula*, spears. I might also treat of the customs and duties of hospitality, and of the tokens or pledges of it, *tesseræ hospitales*, and of the

luxuries of their women, particularly in dress and finery; their mills, and methods of making and baking bread; their lamps and candelabras, inns, taverns, tippling houses, slave-dealers, songs, etc. etc. But having already occasionally touched on most of these subjects, I shall merely make a few remarks on their gambling.

1) Cf. Juven. 4, 21. 1, 32 and 158. 3, 240. 6, 477; Mart. 11, 99, 11. 2) Mart. 2, 81; Catull. 10, 14, sqq. 3) Cf. Cic. Att. 6, 1; Phil. 2, 24; Prop. 2, 23. 43, 2. 1, 86: "Esseda cælati siste Britanna jugis." 4) Cf. Fest. in *tensam*; Cic. Verr. 1. 59. 3, 3; Liv. 5, 41. 9, 40; Suet. Aug. 43; Vesp. 5. 5) Cf. Liv. 5, 25; Hor. Ep. 2, 1, 192; Virg. *Æn.* 8, 666. 6) See Varro de R. R. 3, 17.

GAMES OF CHANCE.

474. We have mentioned the games introduced by the Romans at their feasts: other games were the *pila*, and dice, *alea*¹, for the practice of which the thermæ were notorious. Games at ball, *pila*², (*σφαῖρα, σφαιριστική*), were those played with the *pila trigonalis*, so called either from its shape or from the players standing at the three corners of a triangle: *follis* was the foot-ball, a larger species inflated; *paganica*, the game of rustics, stuffed with feathers, and less soft than the *follis*³; *harpastum*, a small kind of ball introduced by the Greeks, and so named from its being scrambled for⁴ whenever it struck the ground, from *ἀρπάζειν*. Technical terms of the game were *datatim*⁵, *raptim*⁶, *expulsim*⁷.

1) Cf. Juven. 1, 88. 2) Cf. Mart. 4, 19. 7, 31; Sen. de Ben. 2, 17. 3) Mart. 14, 45. 4) Cf. Mart. 4, 19, 6 and 7, 66: "Harpasto quoque subligata ludit." 5) Plaut. Curc. 2, 3, 17; and in frag. Enn.: "Quasi in choro pila ludens datatim dat se, et communem facit," etc. 6) Novius ap. Non.: "In molis ludunt raptim pila, datatim moroso." 7) Varro ap. Non. See the commentators on Plautus, ut supra.

575. *Alea* was applied, I think, to all games involving hazard, and depending on chance, since the term is used metaphorically of any peril or danger, and parti-

cularly of games with the *tesseræ* and *tali*¹. The dice, *tesseræ*², were cubes, such as those in use now, marked on each face with dots. The Greeks and Romans also played as boys do now with bones, or *tali* made of bones, called by the Greeks ἀστράγαλοι, whence ἀστραγαλίζειν³. Ivory, silver, and gold *tali* were also made in the shape of the natural bones, of ivory, gold⁴, or silver; they had four flat and two curved faces, but Schneider in his Lexicon states all six faces to have been curved; they are figured in Pict. Herculan. 1. Tab. 1. On their flat faces were fourteen points, viz., *ace*, called *unio*; and on the opposite side six, *senio*; on the other sides three, *ternio*, and four, *quaternio*. They seldom fell on their two ends; if they did, and stood so, it was called *talus rectus*. Three *tesseræ* and four *tali* was the number generally used; both were thrown, whence the terms *jacere*, *mittere*, *jactus*, *ludere talis*, *tesseris*: the dice-box was called *fritillus*, *turricula*, or *phimus*, and the table or board, *tabula lusoria*, *aleatoria*⁵, *forus*, *alveus*. The most lucky cast in playing with the *tesseræ* was sixes, *seniones*; the worst cast, ace, *uniones*⁶: in the *tali*, the luckiest cast was when dissimilar numbers⁷ turned up, such as one, three, four, six; the worst cast when similar numbers turned up: in both games, the luckiest throw was called *Venus* or *basilicus*; the worst, *canes*⁸. I find twenty-eight stated as the amount of a cast of four *tali*, and sixty-two to a main of three *tesseræ*; but my calculation gives thirty-five to the former, and fifty-six to the latter.

Tesseræ were also used in the game *duodecim scripta*, in which counters, *lapilli* or *calculi*, were placed according to the cast of the dice⁹. Some suppose this game to have been not unlike modern backgammon, though not with much probability, and the description of the method of placing counters according to the cast

of the dice does not favour the supposition of its resemblance to chess. The game mentioned in the epigram of Agathias, which De Pauw¹⁰ has attempted to explain, though evidently different from that referred to by Ovid, has a resemblance to the *duodecim scripta*: on the other hand, the *carmen ad Calpurnium Pisonem*, and the description by Ovid of the game which he compares to the *latronum prælia*¹¹, both agree with chess in its resemblance to a contest¹², and make no mention of the use of dice. Terms applied to all these games are, *ludere latrunculis*, *latruncularia*, *calculus ducere*, *reducere*. Another game of chance was that of odd and even¹³, and in practice called *micare digitis*¹⁴, when one held up a finger or more, and another guessed how many he held up; it was practised in making bargains¹⁵.

1) Concerning both and the practices in playing, cf. Ovid. A. A. 3, 353. 2) From *τέσσαρες*, *quatuor*? The following words are derived from *tessera*, and are of various meanings; *tesserula*, Gell. 18, 3; *tessella* (§ 462), *tesseraius*, applied to a soldier § 370, *ars tesseraria*, Amm. Marc. 14, 6. 3) Cf. Plin. 33, 8. 4) Cf. Mart. 14, 14; Suet. Tib. 14. 5) Cf. Suet. Aug. 71; Mart. 14, 17. 6) Cf. Suet. Aug. 71. 7) Mart. 14, 14: "Cum steterit nullus vultu tibi talus eodem, Munera me dices magna dedisse tibi." 8) Concerning the luckiest and most unlucky casts, see Prop. 4, 9, 17, "Me quoque per talos Venerem quærente secundos, Semper damnosi subsiluerunt canes;" concerning the *canes*, Ovid. Trist. 2, 473,—"quo possis plurima jactu Fingere, damnosos effugasque canes." Suet. Aug. 71, and from a letter of Augustus, "Talis enim jactatis, ut quisque canem aut senionem miserat, in singulos talos singulos denarios in medium conferebat, quos tollebat universos, qui Venerem jecerat." 9) Cf. Cic. de Orat. 1, 50; Quint. 11, 2; Ovid. A. A. 364. 10) In the diatribe de veterum alea ad epigramma Agathia Scholastici; Traj. ad Rhen. 1726. 11) In describing which the author indulges his fancy: his seventeen verses are to be reckoned among the most remarkable concerning the methods of the ancients in playing on a board with pieces (*calculi*), called by him *vitrei milites*, black and white, and directed by the mere skill of the players, not by chance. 12) Ovid. A. A. 3, 357. 13) Cf. Hor. Sat. 2, 3, 248; Suet. Aug. 71. 14) Cf. Cic. de N. D. 2, 41; de Off. 3, 23 and 3, 19, "Dignus, quicum in tenebris mices," Petron. 44; Suet. Aug. 13, "Patrem et filium pro vita rogantes, sortiri vel micare (al. *dicicare*) jussisse, ut alterutri concederetur." 15) Cf. Grut. Inscript. p. 647. No. 6.

MARRIAGES AND DIVORCES.

476. Among the customs of domestic life, I shall include marriage and the education of children, in which certain laws gave to husbands and fathers an authority long severely exercised.

We have already said (§ 82) that a legal marriage could only obtain between persons who were both citizens of Rome; and formerly only when both were either patricians or plebeians: some even suppose it was required that for a marriage to be legal, both parties were required to be of the same house, *gens*. To legal marriage, *justum matrimonium*, is opposed *contubernium*. For such a marriage a betrothal, *sponsio, fides*, of the bride to the bridegroom, with the consent of their guardians or parents, and in the presence of their relations, was requisite: to this rite belonged the *arrhæ sponsaliæ*¹ (*ἀρραβὼν, pignus*), and the wedding ring, *annulus pronubus*². We meet with the expressions and terms *spondere* (*σπένδω*), *sponsus, sponsare, sponsu adligare; sponsalia efficere, contrahere, parare, præbere; sponsaliorum dies, cæna, etc.*

1) Cf. Plaut. Mil. Gl. 4, 1, 11; Paul. in Pandd. 33, 2, 38; C. J. 5, 1, 5, and 5, 2, 1. 2) Juven. 6, 25: "Conventum tamen et pactum et sponsalia nostra Tempestate paras, jamque a tonsore magistro Pectoris, et digito pignus fortasse dedisti."

477. Three kinds of marriage are mentioned, differing in the rites by which each was contracted, and originally in the connexion and legal bond consequent on them, viz. *confarreatio, coemptio* and *usus*¹. The most sacred was called *confarreatio*, and was contracted before ten witnesses, the Pontifex Maximus and Flamen Dialis (§ 324) offering sacrifice the while. The persons to be united (*confarreandi, quasi*), tasted of a cake made of wheat, *far* (*ζέα*), salt and water: the remainder with

a sheep was offered to the gods². The bride, called *nupta*, from veiling her head (*nubo*, *nubes*) with a veil called *flammeum*³ on her wedding-day, after that auspices had been taken, and the deities who presided over marriage had been invoked and honoured by the sacrifice of a sheep, *bidens*⁴, was conducted towards evening to her husband's house, with the following ceremonies⁵, from which arise the expressions *ducere uxorem*, *deductio*, *Juno domiduca*⁶.

1) See Caj. 1, 110. 2) Cf. Dionys. 2, 25; Tac. Ann. 4, 16; Serv. ad Georg. 1, 31; Boeth. Top. Cic. 3; Ulp. Fragmm. 9; Caj. 1, 110; Plin. 18, 3, "Quin et in sacris nihil religiosius confarreationis vinculo erat, novæque nuptæ farreum præferabant." 3) Cf. Luc. 2, 361, "Lutea demissos velarunt flammea vultus;" Juven. 6, 225, "flammea conterit;" see the note on § 482. 4) Cf. Serv. ad Æn. 4, 59. 5) Cf. Cat. 62, 119, sqq. 58, "Hesperæ, qui cælo fertur crudelior ignis? Qui gnatam possis complexu avellere matris, etc." cf. Pomp. in Pandd. 23, 2, 5. 6) Cf. Lucan. 2, 354, sqq.

478. The bride, holding a distaff in her hand, was torn, *pro forma*, by the bridegroom, from the arms of her mother or her nearest surviving relation, and refrained from stepping on the threshold of her home when leaving it, or of her husband's house when entering it. Two youths conducted her, *παράνυμφοι*, a third or several others leading the way with torches, (*fax*, *pinus*, *tæda nuptialis*)¹; a fourth followed with her *trousseau*, perhaps he who was called *camillus* (§ 329), and carried in a covered basket toys and linen for her children². The bride fastened woollen ribands on the door-posts of her husband's house, and anointed them with the fat of a sow or of a wolf³, and stepping on the fleece of a sheep at the entrance, called the bridegroom; he appeared, bringing the keys to his bride, which she delivered to a slave. Concerning the term *Caia*, see § 480. Then, they say, she touched fire and water⁴. The house was generally adorned with wreaths of flowers⁵; the hair of the bride was adorned with the *hasta*⁶ *cælibaris*⁷, the

reason and origin of which are uncertain⁸; she was dressed in the *tunica pura* (*recta*, Plin. VIII. 48), the *vitta pura*⁹, the *zona*, (whence *zonam solvere*)¹⁰: the *flammeum* (§ 477), the *prætecta*, the dress of virgins, which they consecrated to Fortuna Virginalis¹¹, and the *bullæ*, consecrated likewise, together with her playthings, to Venus¹² or to the family god, *lar familiaris*. The *cæna nuptialis* followed the bringing home, at which it was usual to scatter nuts to the guests¹³, after which the newly-married couple retired¹⁴, and the young people, boys and girls, sang the *hymenæum* or marriage song before the house door, and indulged in jokes upon the bridegroom¹⁵, and even on the bride, repeating the customary cries, *Hymen, O Hymenæe! Io, Hymenæe*¹⁶! *Talassio* (*Talassius, Talassus*) has some connection with *Hymenæus* or is synonymous to it, and is a word applied peculiarly to such occasions¹⁷; hence *Talassio servire*, Cat. LVII. 134, to marry; *Talassionem dicere*, Mart I. 36, 6, etc. The origin of the term is variously given by old authors; some derive it from the reputation of a certain Talassius, for having obtained the most beautiful of the Sabine women¹⁸; others from *τάλαρον, quasillum*, the basket in which wool was kept for spinning, it being the emblem of weaving wool, according to Varro apud Festum. On the following day the bride sacrificed to the gods, and her husband treated his friends to a feast (called *repositia*), and on their departure made them presents.

1) Cf. Creuz. § 69. 2) Cf. Varro de L. L. 6. p. 72; Fest. in *cumeram* and *cumerum*; Plaut. Cistell. 3, 1, 5; Rud. 4, 4, 37. 3) Plin. 28, 9, "— ne quid mali medicamenti *inferretur*." 4) Lipsius ad Tac. Ann. 4, 16, e Servio, "— quid enim est aliud dextræ, quam in manum convenire; quæ conventio eo ritu perficitur, ut aqua et igni adhibitis, duobus maximis elementis, natura conjuncta habeatur: quæ res ad farreatas nuptias pertinet, quibus Flaminem et Flaminicam jure pontificio in matrimonium necesse est convenire." Cf. Ovid. Fast. 4, 792; A. A. 2, 598, "Quos faciunt justos ignis et unda viros;" Varr. L. L. 4. p. 18. 5) See § 482. loc.; Juven.

Luc. 2, 354, "Festa coronato non pendent limine sarta." 6) A very small one, which Plutarch calls *δοπάτριον*; Ovid calls it *incurva*. I have, in vain, endeavoured to discover whether the epithet *cælibaris* is derived from *cælebs* or from some other root. 7) See Fest. in *celibari*; Plut. Q. R. 87; Arnob. l. 2, "Numquid—nubentium crinem cælibari hasta mulcetis?" Ovid. Fast. 2, 559, "Nec tibi, quæ cupidæ matura videbere matri, comat virgineas hasta recurva comas." 8) The ancients themselves give most contradictory accounts of the reason and origin of the custom. Festus in aliis, "Quæ in corpore gladiatoris stetisset abjecti occisique, ut, quemadmodum illa conjuncta fuerit cum corpore gladiatoris, sic ipsa cum viro sit.—vel, quod fortes viros genituras ominetur." Plutarch, among others, asks, if it was not symbolical of the first wives of the Romans having been married by violence, and taken by force of arms; or from the spear being sacred to Juno, who presided over brides. 9) Cf. Prop. 4, 3, 15; Idem 4, 11, 33, "Mox ubi jam facibus cessit prætexta maritis, vinxit et acceptas (some read *aspersas*) altera vitta comas." 10) Cat. 57, 52, "Tibi virgines zonula soluunt sinus." 11) Arnob. l. c. "Numquid — puellarum togulas fortunam defertis ad virginalem?" 12) Cf. Pers. 1, 70, "Veneri donatæ a virgine puppæ." 13) Cf. Cat. 57, 128, sqq.; Virg. Ecl. 8, 30. 14) Arnob. l. c. "—toga sternitis lectulos?" cf. Lucan. 2, 357, "—stat torus, et picto vestes discriminat auro." 15) Cf. *Fescennina locutio*. Cat. 57, 127. 16) See Catull. 57, 58. 17) Cf. Liv. 1, 9; Dionys. 2, 31; Plut. Rom. 14; Q. R. 31; Serv. ad Æn. 1, 651; Fest. in *Tallassionem*. 18) See Liv. 1, 9.

479. The ceremony, *confarreatio*, by which, according to Servius, the Flamen and Flaminica (§ 324) were obliged to be married, *in nuptias convenire*, was in early times a common practice, but of rare occurrence under the Cæsars¹, and conferred certain privileges on the wife and her children which other kinds of marriage did not, though it would be difficult to say what they were. We read in Tacitus² that the Flamen Dialis was chosen from among those whose parents had been married by this rite, *confarreati*; others seem to think that only the children of such persons were called *patrimi* and *matrimi*; others, that he whose father was alive was called *patrimus*, he whose mother was living, *matrimus*, and he whose parents both survived, *patrimus* and *matrimus*³. However, I am inclined to think that those things which constitute the rights and duties of a wife were entailed on any woman who was married by any one of the three kinds of union,

such as the title of *materfamilias*, (*domina, hera, matrona*,) a right of succeeding to the whole of her husband's property if he died intestate, or of inheriting an equal share with his children, and of sharing in her husband's property, and a participation in his sacred things (§ 78 and 79), and also became subject to her husband (*in manum veniebat*⁴). The husband had great power over his wife as well as over his children; he was himself her judge and punisher in case of her offending seriously, or he might intrust her punishment to her relatives⁵.

1) Cf. Tac. Ann. 4, 16. 2) Cf. Caj. 1, 112, and the remarks of Dirksen. Versuche zur Kritik. p. 115. 3) Cf. Fest. in *patrimēs* and *flaminia*; Cic. de H. R. 11; Tac. Ann. 4, 53; Zos. 2, 5 and 6. 4) Cf. Caj. 1, 109; Cic. Top. 3, "Si ita Fabiæ pecunia legata est a viro, si ei viro mater familias esset: si ea in manum non convenerat, nihil debetur. Genus enim est uxor: ejus duæ formæ, una matrumfamilias, earum, quæ in manum convenerunt, altera earum, quæ tantummodo uxores habentur: qua in parte cum fuerit Fabia, legatum ei non videtur." Cf. Cic. pro Flacco, 34. 5) Cf. Dionys. 2. 25, and the remarks of Dirksen. Versuche p. 296; Plin. 14, 13; Suet. Tib. 35; Tac. Ann. 13, 32.

480. As anything became a person's property, by being possessed by him for a certain space of time (§ 100), so a wife became the lawful property of her husband, and thus was transferred from her father's into her husband's power, by cohabiting with him, with the consent of her father or guardian¹, for a whole year without being three nights absent². Any wife who had been absent was said to be *usurpata*, not *usu capta*; she neither became subject to her husband's authority, nor enjoyed all the rights of a wife, being styled *matrona* merely (according to Gellius³), not *materfamilias*, and considered only as *uxor*⁴.

The following is said to have been the method of marriage termed *coemptio*, a process by which the woman acquired a husband, or became mistress of property by the custom of *mancipatio* (§ 97), as Caius states⁵. The bridegroom asked the bride if she wished to become *materfamilias*, and she in return asked of him

if he wished to become *paterfamilias*: if he answered in the affirmative she gave him one of three asses which she had for the purpose, hence it was called *coemptio*: another of the pieces of money she carried in her shoe, and afterwards dedicated it to the Lares, on the fire-place; the third she kept in her pocket, and took out when she came to the nearest cross-roads, and thus she became her husband's⁶. Some, however, think that the custom, *coemptio*, which is found among other nations, was not a distinct ceremony originally, but formed part of the rite *confarreatio*, and afterwards was the only ceremony preserved, the other portions falling into disuse⁷. From a passage in Cicero⁸ we may collect that the custom of styling the husband *Caius* and the wife *Caia* pertained to the rite of *coemptio*, though some have applied it⁹ to all species of marriage ceremonies¹⁰.

1) Cf. Cic. pro Flacco 34. 2) C. Caj. 1, 111. 3) Gell. 18, 6. 4) Cf. § 479; Cic. Top. 3. 5) Caj. 1, 113, sq. 6) Cf. Varro ap. Non. c. 12, n. 50; Boeth. in Top. Cic. 4; Serv. ad Æn. 4, 103; Cic. pro Flacco 34; pro Mur. 12; de Orat. 1, 56. 7) Cf. Creuz. § 65. 8) Cic. pro Mur. 12, "— putarunt omnes mulieres, quæ coemptionem facerent, Cajas vocari." 9) Quint. 2, 7, "— quia, tam Cajas esse vocitatas, quam Cajos, etiam ex nuptialibus sacris adparet." 10) Some say that the bride was asked, at her husband's door, who she was, and she answered *Caia*: see the Epitome de Prænom., ascribed to Jul. Paris.; or, as Plutarch says, she was taught to say, *ubi tu Caius, ego Caia*; and that the custom originated in memory of *Caia Cæcilia Tanaquil*, the wife of *Tarquin P.*, who was renowned for being a notable worker in wool, then considered the highest accomplishment in a woman. See Plin. 8, 48; Fest. in *Caia*; Plut. Q. R. 30; cf. Creuz. § 69.

481. Cohabitation, *concubinatus* (§ 82), which had never been severely forbidden, that I can find, was by the laws *Julia* and *Papia Poppæa* permitted, with some exceptions, and even made equal to lawful marriage in the eye of the law, as marriage even at that time began to be shunned by many who felt averse to its burdens¹. From that time the term concubine (*amica, sodalici-*

aria, convictrix), formerly equivalent to *pellex*, became less dishonouring: however, public censure applied the terms *quæstuarìa, provincialis*, to those concubines who, though not living in adultery, were living with men whose lawful wives they never could be (see Hein. Synt. App. 39, 40). Moreover, no married man was allowed a concubine, nor a bachelor, more than one, and the affinity which prevented marriage prevented cohabitation also between parties.

1) Cf. Plin. Ep. 4, 15.

482. The laws of the XII Tables, and even more ancient laws, permitted divorce, but not at the request of the wife, nor even at the husband's request, unless for serious reasons. The law of Romulus punished him who lightly repudiated his wife, by the forfeiture of his property, giving one portion to the wife, and consecrating the other to Ceres¹. Lawful reasons were afforded by the wife's committing adultery, dealing in sorcery, exchanging her husband's offspring for other persons' children, or murdering her own; or by causing her husband's [keys to be counterfeited for her own use, or by drinking wine against his orders². But in those times, so chaste were the morals of the people, that divorces were seldom or never heard of³; during the demoralised state of the city they were very frequent, and often when the husband could furnish but frivolous reasons, or even none at all, as in the case of Æmilius Paulus. Some repudiated their wives when grown old; and some married women of bad character, that they might have a good reason for repudiating them, and yet not refunding their dowry, which they would have been obliged to do if they had not a lawful pretext. Wives also, as we find, deserted their husbands on the slightest provocation, or on none at all⁴; this shameful practice was frequently but vainly opposed by laws. The ceremo-

nies requisite in divorcing differed formerly, and depended on the different kinds of marriage between the parties; terms common to all modes were, *repudiare*, *repudium renuntiare*, *mittere*, *remittere*, *dicere*; and peculiar modes were *diffarreatio* and *remancipare*⁵: some of the modes are known, and consisted in breaking the tablets containing the articles of marriage, in the presence of seven witnesses⁶, taking the keys from the wife⁷, and pronouncing forms of speech such as, *res tuas tibi habeto*, *tuas res tibi agito*, *exi*, *exi ocius*, *vade foras*, and the like⁸: hence the terms *exigere foras*⁹, *ejicere foras*. In case of absence a letter announced the act of divorce to the wife, to which practice the terms *renuntiatio*, *nuntium remittere uxori*¹⁰ belong. Other particulars I shall omit.

1) See Plut. in Rom. 22, and the remarks of Dirksen Versuche, p. 298.

2) Cf. Plut. in Rom.; Gell. 10, 23; Plin. 14, 12.

3) Cf. Gell. 4, 13; Valer. M. 2, 1, 4; Dionys. 2, 25.

4) Cf. Cic. ad Div. 8, 7; Sen. de Ben. 3, 16; Mart. 6, 7; Juven. 6, 224,

Imperat ergo viro; sed mox hæc regna relinquit,

Permutatque domos, et flammea conterit, inde

Avolat, et spreti repetit vestigia lecti.

Ornatas paulo ante fores, pendentia linoquit

Vela domus, et adhuc virides in limine ramos.

Sic crescit numerus, sic fiunt octo mariti

Quinque per autumnos.

5) Cf. Fest. in *remancipatam*. 6) Cf. Tac. Ann. 11, 30; Juven. 9, 75.

7) Cf. Cic. Phil. 2, 28.

8) Cf. Mart. 11, 105; Juven.

6, 144, "Tres rugæ subeant, — Collige sarcinulas, dicet libertus, et exi;" and (v. 170) he facetiously alludes to the formula used in divorces, "Tolle tuum, precor, Hannibalem victumque Syphacem In castris, et cum tota Carthagine migra." 9) Cf. Ter. Hec. 2, 1, 45.

10) Cf. Cic. de Orat. 1, 40.

THE EDUCATION OF CHILDREN.

483. We have elsewhere mentioned the ceremony of acknowledging a child, *puerum tollere*, the use of the *bullæ* and *toga prætexta* and *virilis* or *libera* (§ 450). The *toga virilis* was generally assumed with private

ceremonies by youths of good family, but frequently with public solemnities¹ by the sons of nobles. Its adoption was the entrance on public life², and to it refer the expressions *forum attingere, in forum venire, tirocinium*³ and *tiro*⁴ (§ 471). The day on which a man first shaved⁵ was also observed, and his beard was dedicated to some god, as the hair also was⁶; a boy was named on the eighth, a girl on the ninth day, called *dies lustricus* or *nominalis*, and the ceremonies *nominalia*⁷, whence also *dea nundina*⁸.

We have sufficiently treated elsewhere of paternal authority, of adoption and emancipation, and also of tutelage. The education of children was different in ancient times from what it became afterwards; for the discipline of boys was more strict when the luxuries furnished by wealth were unknown and the minds of the Romans uncultivated (§ 396); it was adapted by its severity to excite and cherish martial courage in the youthful mind, and hence consisted mainly in bodily exercises.

1) Cf. Suet. Cal. Tib. 54. 2) Entrée dans le monde. 3) Cf. Ovid. Fast. 3, 787; Plin. 8, 48. 4) Suet. Aug. 26; Tib. 54; Cal. 10. 5) Cf. Juven. 3, 186; Suet. Cal. 10; Nero 12, "Inter buthysiæ adparatum barbam primam posuit, conditamque in auream pyxidem et pretiosissimis margaritis adornatam Jovi Capitolino consecravit." 6) Cf. Cat. 62, *de coma Berenices*; Juven. 3, 186; Stat. Sylv. 3, 4. 7) Tertull. de Idol. 16. 8) See Macrob. Saturn. 1, 16.

484. When old customs were laid aside (§ 401), greater care in cultivating the powers of the mind in children as well as in adults was introduced, together with a milder discipline, by the example of the Greeks and under Greek instructors. From that time the early education of the sons of the nobles was intrusted to a Greek pedagogue, under whose instruction and management the pupil was initiated into a knowledge of his own language and Greek, as well as of writing

and elocution: on this primary part of education we have already sufficiently treated (§ 407). The method among the early Romans who had no schools on the Greek plan, nor *gymnasia*, was very different; then the boy was under the care of a private tutor and domestic attendant, rather for the sake of watching his moral than his intellectual improvement; and his bodily strength was developed by various public exercises, trainings, and customs, with a view to fit him for war: buildings for such purposes existed even in early times, generally *areæ* or *campi*, among which the Campus Martius was celebrated (§ 48 and 161). The general neglect of such training in boys is complained of universally by writers¹.

1) Cf. Hor. Od. 3, 2; 3, 6, 24, and 50, sqq.

FUNERAL RITES.

485. Friends and relatives gathered round the dying to bestow the last proofs of affection on them by kissing them¹, closing their eyes², receiving their last breath, and removing their rings (which, however, were replaced when the corpse was about to be burnt, as some conjecture from Propertius³), and uttering cries⁴, whence the expression *conclamatus*⁵, *corpora conclamata*, *conclamatum est*⁶, *hæve, vale*⁷. We find on these occasions the same rites nearly as those practised by the Greeks; the mode of conducting the funeral rites of great men was nearly as follows. It was customary to anoint the corpse after it had been washed; these unctions are mentioned in the XII Tables⁸, and, according to Servius, ad *Æn.* IX. 487, were performed by *pollinctores*, so called as if *os polline abluentes*⁹. The whole management and direction of the obsequies belonged to the *libitinarii*¹⁰, undertakers, so called from *Libitina*

or *Venus Libitina*¹¹. The corpse, *funus*, being anointed and dressed in the toga¹² according to the rank of the deceased¹³, the head having been, among great men at least, crowned¹⁴, and the insignia of rank, such as the *palma* of a conqueror, placed beside it, with a piece of money¹⁵ in its mouth to pay the ferryman (Charon), was placed on a bier and strewn with flowers¹⁶, and was for several days honoured by tears and lamentations, and by expressions, feigned or real, of the most poignant distress. A bough of cypress¹⁷ or of pine was stuck into the ground before the door of the deceased; hence the expressions *cupressus invisæ*¹⁸, *ferales*¹⁹, *funerea frons*. This laying in state was followed by the procession, *elatio, efferre, ἐκφέρεσθαι*²⁰. To these practices also apply *funus ducere*, Juven. I. 146; *facere*, Cic. de Legg. II. 24, and *justa facere*, which infers the due observance of all necessary rites, Cic. *ibid.* 22; *exsequiæ*, etc.

- 1) Cf. Cic. Verr. 5, 45; Quint. 9, c. extr.; Virg. *Æn.* 4, 684.
 2) Ovid. Trist. 3, 3, 43, "Nec mandata dabo, nec cum clamore supremo Labentes oculos condet amica manus?" 3) Prop. 4, 7, 9.
 4) Liv. 4. 40. 5) Lucan. 2, 22; Ovid. l. c. and v. 50; Lucr. 3, 468, "Unde neque exaudit voces, neque noscere vultus illorum potis est, ad vitam qui revocantes Circumstant, lacrymis rorantes ora genasque." 6) Ter. Eun. 2, 3, 57. 7) Catull. 101, extr.; cf. Virg. *Æn.* 11, 97. 8) See Cic. de Legg. 2, 24. 9) Cf. Ulp. l. 5. § 8, de Instit. Act. 10) Cf. Suet. Nero 39. 11) Cf. Hor. Od. 3, 30, 6; Sat. 2, 6, 19, "Libitinæ quæstus acerbæ;" Liv. 40, 19. 12) Cf. Liv. 34, 7; Juven. 3, 171, "Pars magna Italiæ est, si verum admittimus, in qua nemo togam sumit, nisi mortuus." 13) Cf. Virg. *Æn.* 6, 221; Serv. ad *Æn.* 3, 67. 14) Cf. Cic. de Legg. 2, 24. 15) Juven. 3, 265, "—jam sedet in ripa, — nec habet, quem porrigat, ore trientem." 16) Cf. Dionys. 11, 39. 17) Plin. 16, 33, "Cupressus. Diti sacra et ideo funebri signo ad domos posita." Festus on *Cupressus* says, the reason was because these trees when cut down do not sprout again; cf. Serv. ad *Æn.* 3, 64; Sen. ad Marc. 15. 18) Hor. Od. 2, 14, 22. 19) Virg. *Æn.* 6, 216. 20) Cf. Don. ad Ter. Andr. 1, 1, 90.

486. The procession, which was under the direction of the *designator*¹ or *dominus funeris*², was opened by the *siticines*, or funeral trumpeters³, and *præficæ*, or

hired female mourners who sang *næniæ*, verses containing the praises of the deceased⁴: next were carried the waxen figures, usually kept, as we have before said (§ 432), in the atrium⁵, the right of having which, some say, is meant by the term *jus imaginum* (§ 132), and mixed with them a crowd of mummers and maskers, representing in dumb show⁶ the actions, and even repeating and mimicking the expressions and voice of the deceased and of his ancestors: these were followed by the enfranchised slaves and freedmen⁷ preceding the corpse, surrounded by the friends and relatives in funeral dresses, and borne by them on an open bier, *lectica, feretrum*⁸, *torus*: according to some, the friends and relatives came next after the images. Other paraphernalia are mentioned, such as crowns won by the deceased, the plans of cities he had conquered, etc.

1) Hor. Ep. 1, 1, 5: "— Dum ficus prima calorque Designatorem decorat lictoribus atris." 2) Cf. Cic. ad Att. 4, 2; de Legg. 2, 24. 3) Cf. Gell. 20, 2; Hor. Sat. 1, 6, 43; Sen. de morte Claudii: "Et erat omnium formosissimum (funus), et impensa cura plenum, ut scires deum efferri; tibicinum, cornicinum omnisque generis æneatorum (al. senatorum) tanta turba, tantus conventus, ut etiam Claudius audire posset." On the use of the trumpet at funerals, see Prop. 2, 10, 19 (§ 445); cf. Hor. Sat. 1, 6, 143. 4) Cf. Fest. in *nænia*; Cic. de Legg. 2, 24; Hor. A. P. 431; Od. 2, 20, 21; Ovid. Fast. 6, 668, "Ducit supremos nænia nulla toros;" Quint. 8, 2, "Ut carmen funebre proprie nænia;" hence *nænia* is used of songs of grief (cf. Hor. Od. 2, 1, 38, "Cææ retractes munera næniæ"); and in fact of any lamentable event, even of any kind of song, and (as the French word *chanson*) it means, 'nonsense, trifles;' cf. Hor. Od. 3, 28, 16; Epist. 1, 1, 62. The word *lessum* was, by the ancients, thought to mean a funeral lament or howl: hence *lessum habere, facere*; cf. Cic. de Legibus, 2, 23; cf. Plaut. Truc. 4, 2, 18. 5) Cf. Juven. 8, init.; Prop. 2, 10, 19; Tac. Ann. 3, 76. 6) Cf. Plin. 35, 12; Polyb. 6, 53; Dionys. 7, 72; Suet. Tib. 57, and Vesp. 19: "—in funere Favo (?) archimimus personam ejus ferens, imitansque, ut est mos, facta ac dicta vivi," etc. 7) Cf. Liv. 38, 55. 8) Cf. Prop. 2, 10, 29.

487. The procession moved through the Forum, where it was customary for a funeral panegyric¹ to be pronounced before the rostra; the corpse was usually

buried beyond the city walls by the public highway². The ancients state that formerly the Romans were wont to be buried in their own farms or in the city³, and this is confirmed by the law of the XII Tables (p. 254): *Hominem mortuum in urbe ne sepelito, neve urito*⁴; but exceptions were granted in the case of illustrious men, who were frequently interred within the city, and sometimes in the Campus Martius⁵. Concerning the puticuli of the poor beyond the Esquiline hill consult Festus on the word *Puticulus*⁶. It seems that formerly it was more usual to bury⁷ the body than to bury the ashes after burning it: though the words *neve urito*⁸, in the law of the XII Tables, prove that it was practised even in those times. And in later times the custom of burying infants who died before cutting a tooth⁹, or, as others say, before they were forty days old¹⁰, obtained, and was observed in the case of members of the *gens Cornelia*¹¹. In the case of a man struck by lightning, see § 321. The funeral pile, *rogus* or *pyra*, was built according to the means and rank of the deceased, and kindled by the relatives¹², after having been sprinkled with odour, with averted eyes. On the burning pile were thrown valuables, especially the arms, clothes, and other property of the deceased or even of his friends. The corpse having been consumed during lamentations and weeping, and the fire having been quenched by wine, the friends and relatives collected the bones and parts of the ashes, and placing them with odours and other things in an urn, committed it to the sepulchre: to these practices *ossilegium*, *urnæ cinerariæ*, *ossariæ*, refer. Bodies not intended to be burnt were carried inclosed in coffins, *loculi*, *capuli*, *feretra*, *sarcophagi*.

1) Cf. Dionys. 4, 40, 11, 39; Plut. Public. 9. 2) Cf. Juven. 1, extr., "Quorum Flaminia tegitur cinis atque Latina;" Nepos in Att. c. extr. 3) Cf. Isid. Orig. 15, 11; Liv. 6, 36. 4) See Cic. de Legg. 2, 23. 5) Cf. Cic. ib.; Suet. Cæs. 84. 6) Hor.

Sat. 1, 8, 10; Suet. Aug. 72. 7) Cic. ib. 8) Cf. Cic. de Legg. 2, 22 and 23; Creuz. § 303. 9) See Plin. 7, 16. 10) To which the term *suggrundarium* was applied; sc. *sepulchrum*, a *suggrunda* v. *suggrundio*, a projecting roof; see Fulgent. Expos. Serm. Antiq. § 7; Creuz. § 302. 11) Cf. Cic. de Legg. 2, 22. 12) Cf. Virg. Æn. 6, 223. 13) Cf. Tac. Ann. 3, 2; Suet. Cæs. 84. 14) Cf. Tib. 1, 1, 75 (61), "Flebis et arsuro positum me, Delia, lecto;" Prop. 1, 17, 23, "Illa meum extremo clamasset pulvere nomen, Ut mihi non ullo pondere terra foret;" where the last verse paraphrases the common expression found on tombstones, *sit tibi terra levis!* 15) Cf. Tib. 1, 3, 5. 3, 2, 23; Prop. 1, 17, 12; Hor. Od. 2, 6, 22. 16) Cf. Hom. Iliad. extr.; Ovid. Trist. 3, 3, 65; Tib. 3, 2, 9, will furnish a commentary on this subject.

Ergo ego quum tenuem fuero mutatus in umbram,
 Candidaque ossa super nigra favilla teget,
 Ante meum veniat longos incomta capillos,
 Et fleat ante meum mœsta Neæra rogam.
 Sed veniat caræ matris comitata dolore.
 Mœreat hæc genero, mœreat illa viro.
 Præfatæ ante meos manes, animamque precatæ,
 Perfusæque pias ante liquore manus,
 Pars quæ sola mei superabit corporis, ossa
 Incinctæ nigra candida veste legant.
 Et primum annoso spargant collecta Lyæo,
 Mox etiam niveo fundere lacte parent.
 Post hæc carbaceis humorem tollere velis,
 Atque in marmorea ponere sicca domo.
 Illic, quas mittit dives Panchaia merces,
 Eoique Arabes, dives et Assyria,
 Et nostri memores lacrimæ fundantur eodem.
 Sic ego componi versus in ossa velim.
 Sed tristem mortis demonstret litera causam,
 Atquæ hæc in celebri carmina fronte notet:
 Lygdamus hic situs est; dolor huic et cura Neæræ,
 Conjugis ereptæ, causa perire fuit."

I may add from Propertius, 1, 17, 11, sqq., and a remarkable passage 2, 10, 16, sqq. 17) Cf. Ulp. Pandd. 37, 12, 2. 18) Cic. de Legg. 2, 24. 19) Cf. Plin. 2, 96. 36, 17.

488. *Suffitio* was also one of the funeral rites; on returning from the funeral the mourners and followers were purified, by being sprinkled with water, and by stepping over fire (vide Fest. in *aqua*.) The formula in breaking up the procession, was *ilicet*¹. The funeral was closed by a feast, *silicernium*², and games³, particularly shows of gladiators (§ 350), celebrated frequently at the monument, or even whilst the pile was

burning⁴. On the ninth day after, a sacrifice was offered, called *novendiale*, *inferiæ*⁵.

The ancients say that the funeral took place on the eighth day after death⁶, formerly at night, usually in the evening, and therefore they derive the word *funus* from *funales*, and *vespillo* from *vespera*, as if *vespero*⁷; in later times poor people⁸ and the young⁹ only were buried at night by torchlight, or by the light of waxen tapers, without procession.

1) Cf. Serv. ad Æn. 6. 215; Don. ad Ter. Phorm. 1, 431; Heaut. 5, 2, 21.

2) The ancients account in different ways for the derivation of this word, deriving it either from *silens* and *cerno*, as though it witnessed the presence of the silent dead: others from *silex* and *cæna*, *silicenum*, as if the food was laid on flint stones; this is approved of by Jos. Scaliger, who supposes *silicernium* to stand for *silicesnium*, as *cesna* for *cæna*. See Dacier ad Fest.

3) Cf. Suet. Cæs. 26; Serv. ad Æn. 5, 91; Fest. in *silicernium*.

4) Cf. Creuz. § 306.

5) Cf. Tac. Ann. 6, 5; Hor. Epod. 17, 48.

6) Cf. Serv. ad Æn. 5, 64; Tac. Ann. 13, 17.

7) See Serv. ad Æn. 11, 143. Cf. Don. ad Ter. Andr. 1, 1, 51; Fest. in *vespæ*; Prop. 4, 11, 46: "inter utramque facem."

8) Cf. Dionys. 4, 40; Suet. Dom. 17.

9) Serv. l. c.

489. The different kinds of tombs, and the parts of them, were named *bustum*, *tumulus*, *conditorium*, *monumentum*, *cæmeterium*¹ (*κοιμητήριον*), *cinerarium*²; *hypogæa*, were catacombs, and *columbarium*, the burial-place of the freedmen and slaves of Livia Augusta, so called from its shape, and illustrated by Gorius³; *cenotaphium* (*κενοτάφιον*, an empty tomb), *mausoleum*. Sepulchres were also termed *singularia*, *familiaria*, *gentilitia*, etc. In tombs, there are frequently found coins, urns, flasks (*ampullæ*, *phialæ*) for holding tears⁴ or perfumes, sepulchral lamps⁵, etc. The use of grave-stones (*saxa*, *cippi*, *columnæ sepulchrales*) was as common as it is now, and from the numbers still preserved, inscriptions, *epitaphia*, have been collected commemorative of the names, titles, affection, piety, and other qualities of the dead usually engraven on tombstones⁶. We have

already said (§ 94 and 95) that sepulchres were sacred, and under the jurisdiction of the pontifex.

1) Tertull. de Anima c. 51. 2) Found on inscriptions in Grut.; for instance, p. 850. n. 10, 418. n. 11. 3) See Champollion Résumé d'Archéol. v. 1. p. 108. 4) Some at present doubt this; cf. Tib. 3, 2, 25. 5) See Guther. de jure Man. l. 2. c. 32; Thes. Græv. v. 12. 6) Cf. Tib. 1, 3. 54, 3. 2, 27; Prop. 2, 1, 82: "— breve in exiguo marmore nomen ero;" 7, 83; Ovid. Trist. 3, 3, 71.

490. Funerals were either public and announced by proclamation, *indictiva* and *ensoria*¹, or else private, *tacita*, *translatitia*, *plebeia*², etc. Among public funerals, those of the Cæsars are particularly remarkable, and were of a distinct kind, called *consecratio*, *apotheosis*, and the defunct emperor was in consequence termed *divus*. On these occasions the image of the deceased was burnt on a lofty pile, from the top of which an eagle flew upwards as though bearing the spirit to Olympus³. Slaves and the poor were carried to the grave on a *sandapila*, coffin or bier, by *vespillones*, *vespæ*⁴, or to the pile by *ustores*; these were also called *sandapilarii*, and afterwards *lecticarii*⁵, and the bier, *vilis arca*, Hor. Sat. I. 8, 9, *orciniana sponda*, Mart. X. 5, 9. We have already said the funerals of persons under age were conducted without pomp; vast sums were frequently expended on those of the rich⁶; on public funerals enormous; and sometimes incredible sums were lavished by the Romans, whose profuse expenditure on magnificent exhibitions we have elsewhere stated to have proceeded to inconceivable lengths. Instances of this are found in the funerals of Sylla⁷ and Poppæa⁸. Cicero⁹ mentions that by the laws of the XII Tables (p. 254) lavish expenditure on funerals was forbidden: they prohibited the use of gold on these occasions, *ne aurum addatur*¹⁰, or more than ten flute-players, *tibicines* (§ 444), or three hired mourners,

ricinia, and also *neve lessum funeris ergo habento* (mulieres), and *rogum ascia ne polito*¹¹; expressions not understood even by the ancients. Pliny says there was a still more ancient law, *vino rogum ne respergito*. Pliny, XIV. 12.

1) Cf. Tac. Ann. 4, 15. 2) Cf. Sen. de Tranq. c. 1; Suet. Nero, 33; Ovid. Trist. 1, 3, 22. 3) Herod. 4, 2. 4) Fest. in *vespa*. 5) Cf. Juven. 8, 175. 6) Called by Cicero *arbitria*, in Pis. 9, post domo 37, post red. in s. 7. 7) Plut. Sylla 38. 8) Plin. 12, 18. 9) De Legg. 2, 23-25. 10) Another law thus grants an exception to this law. (Cic. de Legg. 2, 24; see p. 255.): "Quoi auro dentes vincti escunt, ast im cum illo sepelire urereve se fraude esto." See Bœttig. Sabina, v. 1. p. 58. 11) Cf. Cruz. § 305.

NAMES. FAMILIES.

491. We have elsewhere mentioned that houses, *gentes*, were divided into patricians and plebeians, and their subsequent intermixture by marriage and adoption; that foreigners received Roman names together with the freedom of the city, and that freedmen received those of their masters, also the *dies nominalis* (§ 483). A few particulars remain to be briefly noticed.

It is supposed that the custom of Romans having more than one name, arose from the union of the Romans with the Sabines¹: and this supposition seems strengthened by our finding but one name in the earliest periods, as Numitor, Amulius, Romulus, Celer: and at the same period two names among neighbouring nations, as Titus Tatius, Numa Pompilius, and others; from which circumstance we might more readily believe that two names were customary among the Romans, unless we were obliged to seek for instances among the Sabines; besides, an additional proof is found in the fact of a third name being introduced among Roman families from various causes, which many circumstances

lead us to suppose ; and unless we imagine that some of the Roman families had, from the first, three names, we must suppose that in all instances in which it occurs the third name was so introduced ; and if we adopt this hypothesis, we shall not be surprised at finding in some families at Rome, even in the days of Cicero, only two names : more usually we find three, often four, and seldom five. In these cases the second is the name of the *gens* or house, as Tullius, Cornelius, Julius, Pompeius : the first is the *prænomen*, as Caius, Aulus, Cneius, Marcus, Publius, given severally to persons of the same family, as Marcus and Quintus Cicero, Caius and Tiberius Gracchus ; the third name was the *cognomen*, serving to distinguish families of the same *gens* or tribe, as Scipio and Lentulus in the *gens Cornelia*, Drusus, Gracchus, and Asellio in the *gens Sempronia* : a fourth or fifth name was called *agnomen*, and served to distinguish families, being assumed or given for various reasons, as Lupus, Sura, Spinther, in the families of the Lentuli, who were of the *gens Cornelia* ; in other instances they were confined to the individual, as the nicknames Cunctator, Africanus, and others of the same kind.

1) Cf. Lyd. 1, 21 and 22.

492. The meaning of the names and *prænomina* is uncertain ; in *cognomina* and *agnomina* it is frequently more evident¹ ; as that of Cicero from *cicer*, Lentulus from *lens*, Serandus from *serendo*, Pilumnus from *pilum* a pestle invented by him for bruising corn² ; names of *gentes*, tribes, also can be traced to similar sources, as the Fabii from *faba*. Many names also are derived from the bodily defects of the person³, as Pætus, Strabo, Scaurus, Nævius ; and others from their appearance, as Crassus ; other names from different and frequently dubious causes, and some from the history of the bearer,

as Coriolanus, Africanus, Creticus, Macedonicus, Allobrogicus, Corvinus, Torquatus, Cunctator. In the *prænomina*, antiquaries distinguish between Roman names, and foreign names which occur in earlier periods, as Lucumo, Aruns, Numa, Petro, and others. It was customary for the eldest son to assume his father's prænomen, younger sons those of relatives: daughters generally bore the name of the *gens*, as Octavia, Julia, Livia, Pomponia, Cornelia; and even when married, still retained it; but the name Agrippina, furnishes an instance of a woman named after her father's *cognomen* and yet retaining her mother's name. I find that the learned are not agreed as to whether daughters formerly bore *prænomina*; and as we find that in later times two sisters were distinguished by the addition of *major* and *minor*⁴, and that of several the eldest was called *prima*, the next *secunda*, and so on, we may conclude that it was not customary⁵. Affection coined the diminutives, such as Drusilla, Livilla, Tulliola, etc.

Among the most celebrated of the Roman *gentes*, from which some of the tribes were named (§ 143), we meet with the following; gens Antonia, Æmilia, Claudia, Cornelia, Fabia, Hortensia, Horatia, Junia, Julia, Manlia, Papiria, Postumia, Sempronia, Sulpicia, and others. Many treatises on the Roman names by recent writers have appeared⁶.

1) Cf. Lydus 1, 22 and 23. 2) See Plin. 18, 3. 3) Cf. Hor. Sat. 1, 3, 44, sqq. 4) Cf. Tac. Ann. 4, 44. 5) Cf. Suet. Cæs. 50; Varro de L. L. 8. p. 113. 6) A list of houses and families whose names occur on medals is given by Champollion-Figeac Résumé d' Archéol. v. 2. p. 237.

OFFICES, AND HOUSEHOLDS OR ESTABLISHMENTS OF SLAVES.

493. I shall here make some concluding observations in addition to what I have already said concerning

slaves (§ 51, etc.). It is well known that the Romans did not employ persons of a free and liberal condition in offices which in our civilized state are filled by hired servants, nor even in those situations which are looked on as respectable and honourable now in noble and wealthy families; consequently they were intrusted to slaves, who were also the usual barbers, cobblers, tailors, and artisans in general, whose condition at Rome we have mentioned (§ 380 and 381). This practice being continued in the rich and luxurious days of Rome, it necessarily followed that their numbers were prodigiously multiplied, and the more so when the fortunes of private individuals became enormous, and the cultivation of their extensive estates and farms was in the hands of slaves (§ 378)¹: hence in the city itself, and still more in the country, such a multitude of them was required² by the rich and powerful as to us seems incredible; and even the poorer citizen, who lived on the liberality of his patrons, had several³. An establishment of slaves, whether it consisted of few or many, was termed *familia*, and of these the rich had *familie urbanæ* and *rusticæ*, which were subdivided into classes, *ordines*.

1) Cf. Plin. 18, 6; Flor. 3, 19; Petron. 48 and 53; Sen. Ep. 88, de Benef. 7, 10: "O miserum, si quem delectat sui patrimonii liber magnus, et vasta spatia terrarum colenda per vinctos, et immensi greges pecorum per provincias ac regna pascendi, et familia bellicosus nationibus major, et ædificia privata laxitatem urbium magnarum vincentia!" 2) Cf. Athen. Deipn. 6, 20; Plin. 33, 1; Petron. 37 and 47. 3) Cf. Juven. 3, 166 and 248, sqq.

494. In the town establishment of slaves, *familia urbana*, the duties of some were confined to the house, those of others to out-of-doors work; to the former class belonged the *dispensator*, steward¹, whose services were similar to those of the *actor*, *ratiocinator*², who kept the accounts, and the *procurator*³ and *actuarius*⁴; these, and the *atriensis*⁵, who had the charge of the atrium,

were of the first grade. The nature of these offices requires that several of the same class were to be found in the country establishment. Of another class were the *cubicularius*, groom of the chambers⁶, and *admissionalis*, clerk of the closet⁷, who introduced those who sought audience⁸, and were found in the establishment of the emperors, or of great men. The doorkeeper, *ostiarius* or *janitor*, who often stood at his post in chains⁹, was of the lowest grade, and yet one of the *mediastini*¹⁰. Other offices were those of the *silentiarii*, ushers; *horarii*¹¹, who announced the hour; *librarii*, who kept or copied books¹²; *anagnostæ*, who read during meals (§ 470); *amanuenses*¹³, *medici* (§ 420), *pædagogi* (§ 484), *capsarii*¹⁴, who carried children's books, etc. to school; *lorarii* (§ 55) and *tortores*¹⁵, who punished and scourged refractory slaves.

1) Cf. Cic. ap. Non. 3, 18; Suet. Vesp. 22; Juven. 1, 91.
 2) Cf. Suet. Claud. 28. 3) Cf. Cic. de Or. 1, 58; Colum. 1, 6; Petron. 30. 4) Cf. Petron. 53. 5) Cf. Cic. Parad. 5, 2, in Pis. 27; Plaut. Asin. 2, 2, 80; Colum. 12, 3. 6) Cf. Cic. ad Att. 6, 2; Suet. Dom. 17; Lampr. Comm. 15: "Cubicularios suos libenter occidit, cum omnia ex nutu eorum semper fecisset." 7) Cf. Suet. Vesp. 14; Sen. de Clem. 1, 10; De Benef. 6, 33: "Non sunt isti amici, qui agmine magno januam pulsant, qui in primas et secundas admissiones digeruntur," etc. 8) Cf. Lamprid. in Alex. c. 4; Suet. l. c.; Lydus 2, 17. 9) Cf. Ovid. Am. 1, 6; Suet. Rhet. 3. 10) Cf. Cic. Cat. 2, 1; Colum. 1, 9, 2, 13. 11) Salvian. de Gubern. p. 96 (108): "Servi pavent silentiarios, pavent procuratores." I have mentioned *silentiarii* as officers in the palace § 232; cf. Lyd. 2, 17. 12) Cf. Cic. Fam. 16, 21; ad Att. 12, 6, 13) Cf. Suet. Aug. 67; Cæs. 74; Cic. de Orat. 3, 60. 14) Cf. Hor. Sat. 1, 6, 78; Juven. 10, 116: "Quisquis adhuc uno partam colit asse Minervam, Quem sequitur custos angustæ vernula capsæ." 15) Cf. Juven. 14, 21.

495. Women of rank¹ had a numerous establishment of slaves, such as *lecticarii*, *janitricæ*, *librariæ*, as well as those who attended on them at their toilet, and had the charge of their wardrobe², who were mostly females, such as the *cosmetæ* (from *κοσμεῖν*) and *ornatricæ*³, as well as needlewomen, *servæ ab acu*, and head-dressers or tire-

women, *servæ a tutulis*⁴, the minutest portions of the dress being assigned severally to distinct persons, so that each might become more perfect in her respective department. Men also were employed on some of these offices, as the *cinerarius* or *ciniflo*, who heated the curling-irons, or, as Boettiger explains it, who prepared ashes for dyeing the hair⁵. Slaves attached to the service of the table were the *vocator*⁶, *invitator*⁷, *opsonator*⁸, who purchased provisions; *coquus*, *pistor*, *diætarius*, who had the care of the apartments and, as some say, the charge of the triclinium or cœnatio in particular (§ 468); *structor*, who disposed the dishes on the table; *carptor*⁹, the carver; and *diribitor*, who distributed the dishes to the guests (§ 166); also the *prægestator*¹⁰, (*πρωγεύστης*), who tasted the food first; *pincerna*¹¹, the cupbearer, who is by Apuleius styled *pocillator*¹², *puer ad cyathum*¹³, from *potione*¹⁴. Out-of-door slaves, were such as the *insularius*¹⁵, who had the charge of the detached apartments separated by an open space from the house, and called *insulæ*, and which were generally let to different people; the *balneator*; *viridarius*, or gardener; *tabellarius*¹⁶, who carried letters, though he is sometimes mentioned as keeping the accounts; the *fugitivarius* (§ 55); *vocator* or *nomenclator*¹⁷, who informed his master of the names of those who waited on him or met him, and was employed by candidates canvassing voters (§ 184); *pedissequus*¹⁸, and others. Among the slaves in a country establishment, we meet with the *villicus*, *actor*, *sutor*, *sarcinator*, *textor*, *molio*¹⁹, *rhedarius*²⁰, *arator*, *vinitor*, *venator*, *magister pecorum*, *bubulcus*, *molitor*, and *pistor*²¹, who baked bread and cakes.

1) On which there is a remarkable passage in Juvenal 6, 476; cf. Prop. 4, 7. 2) See Bœtt. *Sabina*. 3) Ovid. A. A. 3, 239: "Tuta sit ornatrix: odi, quæ sauciat ora Unguibus, et rapta brachia figit acu." 4) Cf. Ovid. Am. 2, 7, 23. 5) *Sabina*, p. 1. p. 144; cf. Heindorf. ad Hor. Sat. 12, 98. 6) Sen. de Ira 3, 37; Mart.

7, 85, 11. 7) See Pignor. de Serv. p. 111. 8) Sen. Ep. 47: "Adjice obsonatores, quibus dominici palati notitia subtilis est, qui sciunt, cujus rei illum sapor excitet," etc. 9) Cf. Sen. l. c. et de V. B. 17; Mart. 10, 48, 15; Juven. 5, 120,

"Structorem interea, ne qua indignatio desit,
Saltantem spectas, chironomonta volanti
Cultello, donec peragat dictata magistri
Omnia, nec minimo sane discrimine refert,
Quo gestu lepores, et quo gallina secetur."

Petron. 36, "— Carpe, inquit (Trimalchio); Processit statim scissor, et ad symphoniam ita gesticulatus laceravit obsonium, ut putares essedarium, hydraula cantante, pugnare." See Pignor. de Serv. p. 178. 10) Cf. Suet. Claud. 44; Inscript. ap. Grut. p. 63. n. 5 and 9. p. 602. n. 4.; conf. Arnob. l. 4. p. 13: "— an rite pulmenta condita sint, prægustatoris fungitur atque experitur officio," and the note of Heraldus on these passages, p. 160; cf. Pignor. de Serv. p. 125 and 133. 11) Cf. Ascon. in Cic. Verr. 1, 26; Lamprid. Alex. Sev. 41. 12) Met. l. 6. p. 179. l. 10. p. 247. 13) Cf. Suet. Cæs. 49; Juven. 13, 44; Hor. Od. 2, 29, 7. 14) Met with in an epitaph; see Pignor. p. 132. 15) Cf. Ulp. Pandd. 1, 15, 4: "Insularios (sc. servos), et eos, qui negligenter ignes apud se habuerint, potes (Præfectus Vigilum) fustibus vel flagellis cædi jubere." 16) Cf. Pomp. Pand. 7, 8; 16, 50. 16; 166. 17) Cf. Cic. ad Famil. 14, 22; Symm. 4, 20 and 3, 30. 18) Cf. Cic. ad Att. 2, 16; Nep. Att. 13. 19) Cf. Pignor. p. 429; Popina de Operis Servorum, p. 98. 20) Cf. Capit. in Max. et Balb. 5; see Pignor. p. 429. 21) Bakers originally served as cooks; cf. Fest. in *coquum*; see Pignor. p. 94 and 95, where he quotes a passage in Lampr. Heliog. 27, in which *pistores*, *dulciarii* (confectioners), and *lactarii* (dairymen?), are mentioned as of distinct trades. Cf. Apul. Met. 10: "Hic panes, crustula, lucunculos, et complura scitamenta mellita." Mart. 14, 222: "Mille tibi dulces operum manus ista figuras Exstruit: huic uni parca laborat apis." Idem 11, 32, 7: "Hinc pistor fatuas facit placentas."

APPENDIX.

A summary of the subjects treated of, and works referred to, in this work, in the order in which they occur.

IN sections 4 and 5 I have pointed out the sources of our knowledge of Roman antiquities, distinguishing the works which embrace exclusively the whole of the subject from the portions dedicated to it in other works; to which latter class belong the papers, dissertations, and commentaries, in the transactions of learned societies and academies, which belong to the subject. Another class of works are those, such as *Brisson de Formulæ* and *Alexander ab Alexandro Genialium Dierum*, which treat of Roman antiquities together with various other subjects, and the works of some writers, such as *Stuck*, who, in treating of one department of the subject, seem to have intended to glance at the whole.

The latest treatises on this subject are *T. A. Wolfe's Vorlesungen über d. Römischen Alterthümer*, prepared for furnishing a course of lectures, edited by *Gurtler*, Leipsic, 1831, and the *Précis des Antiquités Romaines* of *P. Bergerou*, at Brussels, 1835.

Valuable works on Roman jurisprudence lately published, are *W. A. Macieiwski's Principia Jur. Rom.* and his *Hist. Jur. Rom.*, 2nd edit., Warsaw, 1825; also the *Précis de l'Histoire du Droit Romain*, by *Gibbon*, revised by *L. A*

Warnkœnig, at Liege, 1821; and the *Geschichte des Rœmischen Rechts bis auf Justinian*, by Walter, professor in the university of Bonn, published in 1834. The work of Dirksen, to which I have referred § 261, must be particularly mentioned under this head.

Since the publication of Fabricius's *Bibliograph. Antiq.* (p. 3), I know of no one who has produced a similar work; several have published catalogues of works among which are some on antiquities, such as the *Handbuck der Philol. Bûckerkunde*, at Bremen, 1823, of J. Phil. Krebs. *Haubold's Institutiones Juris. Rom. Literariæ*, must be classed with works on jurisprudence.

I have mentioned some of the classical authors on antiquities, § 409 to 421, and a few inscriptions, § 426. It was inconsistent with the limits of my work to discuss the degree of credit and authority to be given to Wachsmuth and Niebuhr, whom I quote most frequently among modern writers on my subject; in my lectures I shall not fail to do so. I have availed myself of the works of Greek and Roman writers on any point, indifferently: in this summary I shall occasionally mention the works of both which have reference to Roman antiquities.

§ 8 to 36. These sections contain a comprehensive account of the whole Roman empire; that is, of all countries known to ancient geographers.

Greek authors whose works are entirely or partly extant, and treat of geography, are, Eratosthenes, who died A. C. 194; fragments of his writings are preserved in the works of Strabo and others: Scymnus, who wrote a poem in iambic verse, styled *Περίήγησις*; Strabo, who lived under Augustus and Tiberius, xvii Books of Geography; Claudius Ptolemy, of the second century after Christ, viii Books on Geography; Agathemer, ii Books of Brief Geographical Explanations; Marcianus, of the fourth century it is thought, ii Books of the Circumnavigation of the Outer Ocean; some fragments of the *Epitome of Geography of Artemidorus* by Marcianus, are also extant; also the *Ἐθνικά* of Stephanus of Byzantium, preserved in the *Epitome of Hermolaus*, of the sixth century.

Works treating on different geographical topics are the *Periplus of Hanno the Carthaginian*, translated into Greek from the Punic; the *Periplus of Scylax of Caryæ*, of an uncertain date; the celebrated account of the Voyage beyond the Straits of Gibraltar by Pytheas, so often quoted by Strabo, and whose statements have been so fiercely attacked and defended by modern writers; fragments of the *Periplus of Nearchus*, who sailed with Alexander the Great, preserved in the *Indica* of Arrianus.

Hudson and Bredow have edited with illustrations the minor Greek geographers: for an account of Latin geographers see § 418. Valuable works of modern writers are, Phil. Cluver's *Introductio in Univers. Geographiam*, Amsterdam, 1697: the *Notitia Orbis Antiqui* of Christ. Cellarius, Leipsic, 1701—1706, with the remarks of Swartze, 1731 and 1773, 2 vols. 4to.: the *Primæ Lineæ Orbis Antiqui Monumentis suis illustr.* of J. Oberlin, Strasburg, 1776 and 1790: the *Geographie Ancienne Abrégée* of D'Anville, Paris, 1768 and 1783, 3 vols.: the *Geographie d. Griechen und Römer*, by K. Mannert, at Nuremberg, begun 1782, not yet completed (1837): the *Geographie d. Griechen und Römer bis auf Ptolomæus*, by F. A. Ukert, Weimar, 1816: and the *Geographiæ Antiquæ Compendium in usum Scholarum*, edited by F. A. Bosse, Leyden, 1818. I need not mention those geographers who have illustrated particular portions of countries. D'Anville's *Atlas Orbis Antiqui* is a valuable work.

§ 37 to 40. Dionysius Halicarnasseus has treated more fully of the subject contained in these sections than any ancient author extant: the *Origo Gentis Romanæ* of S. Aur. Victor is connected with their subject also.

Valuable works by modern writers are Cluverius's *Italia Antiqua*; Beaufort's *Dissertation sur l'Incertitude des Cinq Premiers Siècles de l'Histoire Romaine*, the Hague, 1750; of a later date is the *Römische Geschichte* of B. G. Niebuhr, a portion of which was published at Berlin, 1811, in 2 vols.; it has since appeared in a more extensive form. I may mention *Die æltere Geschichte des Römischen Staates unter*

sucht, by W. Wachsmuth, as one of the works in which Niebuhr's views are combated.

§ 41 to 50. Works of ancient writers on these subjects, still extant, are, the treatise of Sextus Rufus, *De Regionibus Urbis Romæ*, and a work by Pub. Victor on the same subject; both to be found in *Thes. Græv.* vol. iii. (Venice edition, to which I always refer in this work.) Among later works of importance are the *Diss. septem historico-criticæ Rom. Antiq. illustrantes*; *Thes. Sall.* i. by Jul. Minutolus; *De Urbe Roma*, by And. Circino, *ib.* vol. ii. p. 18—656; *Urbis Romæ Topographia*, by Barth. Martianus *Thes. Græv.* vol. iii; *Antiquæ Urbis Imago*, by Onuphrius Panvinius; *Urbis Romæ Descriptio et de XIV. Urbis Regionibus Commentarius*, by Guid. Pancirollus; *Roma Vetus ac recens*, by Al. Donatus; *Roma Vetus*, by Famianos Nardino, translated from Italian into Latin. (All these works are in the *Thes. Græv.* vol. iii. and iv.) The *Roma Antiqua Nardini*, by Antonio Nibby, Rome, 1820, in 4 vols. is a different and modern work. *Ausführl. Beschreib. d. Stadt Rœm.* by Christ. Adler, Altona, 1781, 4to.; *Descrizione Topografica delle Antichità di Roma*, by Venuti, Rome, 1763, 2nd edition 1803; *Descrizione de Roma*, by Carlo Fea, Rome, 1823, 3 vols.; *Antichità Romane designate ed incise*, by Giamb. Piranesi, Rome, 1748—56, 4 vols. fol.; *Œuvres sur l'Architecture et les Antiq. Gr. et Rom.*, by J. B. Piranesi and his brother; new edition with notes by Visconti; Versailles and Paris, 17 vols. fol.; *Nuova Descrizione de Monumenti Antichi ed Oggetti d'Arte*, by D. Carlo Fea, Rome, 1820. Some of the works above mentioned, either wholly or in part, refer rather to Archæology than to the description of Rome.

Munter has written *De occulto Nomine Urbis Romæ*, in his *Antiquarische Abhandl.* No. 1. The works of Lipsius and Vossius (§ 45) are generally consulted on its magnitude and population. Particular Roman ruins and monuments have been described severally in works; some buildings in several works, such as *De Publ. et Milit. Imperiū Romani Viis*, by Nic. Bergier, *Thes. Græv.* x. p. 7—610, published also in French, at Paris, 1662. *Über das Pantheon*, by Hirt., in the

Museum der Alterthuns Wissensch. vol. i. ; De Circi Antiquitate et Structura, by Miniana, in the supplement to the Thes. Græv. vol. v. ; Bulenger de Circo Romano Ludisque Circensibus, Thes. Græv. vol. ix. ; Bulenger de Theatro, ib. ix. ; J. Lipsius de Amphitheatro, the third vol. of his works ; Maffei de Amphitheatro, suppl. to Thes. Græv. vol. v. ; Baccius de Thermis Veterum, Venice, 1571, 1712, and in the Thes. Græv. vol. xii. ; Octavius Ferrarius de Thermis, suppl. Thes. Græv. vol. iii. ; Cameron, the Baths of the Romans explained, London, 1772, fol. ; Bellori veteres Arcus Augustorum Triumphis insignes, Rome, 1690 ; I. M. Suaresi, Arcus Septimii Severi, Rome, 1676 ; Bartoli and Bellori, Columna Trajana and Columna Antonina ; I. Vignoles de Columna Antonini Pii, Rome, 1705 ; Ciacconius, illustrations of the Column to C. Duillius, see the note on section 426 ; R. Fabretti de Aquis et Aquæductibus veteris Romæ, Thes. Græv. vol. iv. ; and a work by Zoega, de Usu et Origine Obeliscorum, Rome, 1797, fol.

There is also a work extant by Frontinus, an ancient writer, De Aquæductibus.

§ 51 to 64. Our principal sources of information on subjects discussed in these sections, are, certain chapters (tituli) of Justinian, of the Institutions of Caii, and of the Pandects, on the condition, rights, rank, and manumission of slaves.

Modern writers quoted are, Laurentius Pignorius de Servis et eorum apud veteres ministeriis, Augsburg 1613, Padua 1676 ; and Titus Popina de Operis Servorum, Antwerp 1606, Amsterdam 1673. Other writers on the subject are, L. Ant. Muratori, Diss. Sopra i Servi e Liberti ant. ; A. F. Gorius Descriptio Monumenti seu Columbarii Servorum Liviæ Augustæ et Cæsarum, Florence, 1727 ; Burigny sur les Esclaves Romains, in the Mémoires de l'Acad. des Inscript. et Belles Lettres, vol. xxxv. ; Venuti de dea Libertate ejusque cultu ap. Rom. et de pileo Libert., Rome, 1762 ; Burigny, Mém. de l'Acad. vol. xxxvii. ; Gøtz de Pistrinis veterum 1730 ; Golling de Catasta Servorum, in the Thes. Dissert. of Martin, Nuremberg, 1763.

Many others are mentioned by Creuzer, and also by

Haubold in his *Epicrisis ad Antiq. Rom. Synt. Heineccii*, p. 919; among others, *Unterholzner von der Formen der Manumissio per Vindictam*.

§ 65 to 127. The learned and often-quoted works of Car. Sigonius, *de Antiquo Jure Civium Romanorum* (*Thes. Græv. vol. i.*), *de Antiquo Jure Italiæ* (*ib. vol. ii.*), *de Antiquo Jure Provinciarum* (*ib.*), illustrate the civil condition of the inhabitants of the Roman empire, and their various privileges.

Other writers on the subject are, P. Manutius, *de Civitate Romana*, *Thes. Græv. vol. i.*; Ezech. Spanheim, *Orbis Romanus*, *ib. vol. xi.*; and Alb. Diebr. *Trekell Selectarum Antiquitatum Rom. pars I.* Hague, 1744. In our days, the celebrated Savigny has endeavoured to explain some points more fully in his *Geschichte d. Röm. Rechts im Mittelalter*.

§ 65 to 70. On the rights of citizenship and the *Jus Quiritium*, consult F. Conrad's *Diss. de Jure Quir. a Civit. Rom. non diverso*, Helmstat, 1742; W. Cramer's work *de Juris Quirit. et Civit. Discrimine*; and Mylius's *Disceptatio de Jure Quiritium*, Leipsic, 1732.

§ 71 to 113. Particular privileges enjoyed by Romans have been accurately described by several writers; Haubold in his *Epicrisis ad Synt. Antiq. Rom. of Heineccius* has mentioned the latest and most approved works on the subject.

§ 114 to 127. Among ancient authors on the *Municipes*, Gellius, particularly a passage xvi. 13, is most remarkable; besides the *Epistle of Fronto*, lately recovered (*lib. ii. ad Amicos, epistol. 11.*) Modern writers on the subject, deserving of notice are, Mazzochi, in *æneas Tabulas Heracleenses*; *Trekell, Select. Antiq.*; Savigny, *Gesch. d. Röm. Rechts im Mittelalter*. The whole subject is fully and prolixly discussed by Fr. Roth in his work *de Re Municipali Romanorum*, Stutgard, 1801. Early writers are, *Wasteau de Jure et Jurisdictione Municipiorum*, in *Ælrich's Thes. Diss. Jurid. vol. i.* and *Guid. Pancirollus de Magistratibus Municipalibus*, *Thes. Græv. vol. i.*

Concerning the rights and government of the colonies, con-

sult Heyne's *Prolusiones de Veterum Coloniæ Jure*, in his *Opuscula Academica*, vols. i. and iii. ; Rud. Wicker's *Dissert. Inaug. de Coloniis Veterum*, Groningen, 1825 ; and concerning the colonial magistrates, see Ever. Otto de *Ædilibus Coloniæ et Municipiorum*, Leipsic, 1732.

Many particulars concerning the colonies are to be found in Cicero's speech de *Lege Agrariæ* ; I have pointed out in section 126 remarkable passages in ancient writers touching the rationale of their rights. There is a well-known passage in Velleius, book I. concerning the dates when each colony was settled. A work still extant by Sext. Jul. Frontinus, on the colonies, informs us of the founders, settlers, and allotments of different provinces. Onuphrius Panuvinus, a modern writer, may also be consulted ; see his *Imp. Rom.* in the *Thes. Græv.* vol. i.

I have mentioned, with approbation, in sections 123 and 124, the comments of Savigny on the *Jus Latii*, and *Jus Italicum*, and his opinion concerning the *Præfecturæ*, § 126. In the *Thes. Græv.* vol. ii. are to be found the observations of Nic. Rigault and others on public lands, *De Populi Fundis*.

§ 129 to 144. A portion of the work of Cicero de *Republicæ*, discovered in our times, may be added to the information furnished by the ancients on the subject of these sections. Niebuhr has suggested some startling and paradoxical opinions which have been copied into Schulze's *von d. Volksversammlung. d. Röm.*, and other later writers : see *Creuz. Abriss. d. Röm. Antiq.* § 87, etc. Wachsmuth generally differs from Niebuhr.

There is a remarkable passage in Pliny on the equestrian order, which I have quoted : among modern writers is Eybennius de *Ordine Equestri*, Strasburg, 1684. Beaufort was among the first who took a correct view of the subject ; see his *Republique Romaine*, vol. i. p. 144. Pitiscus shows us how many different opinions on the subject have been broached.

Concerning the *Jus Imaginum*, see *Benedict. de Imag. Rom. Nobilitatis Insignibus*, Torgau, 1784. Vertot, in his *Histoire des Révol.* gives a very fair account of the poverty

of the plebeians. On the agrarian laws, see a work published at Paris 1779, *Recherches sur l'Administr. des Terres*, etc. Rud. Wickers has published an inaugural essay, *De Patronatu et Clientela Romanor.*, Groningen, 1825. Boindin's *Discours sur les Tribus Romains*, is highly spoken of; *Acad. des Inscript.* vol. i. Those who are not seeking for new views on the subject, will find Beaufort and Onuphrius Panuvinus sufficiently explicit; the latter may be consulted in the *Thes. Græv.* vol. i. p. 350. Niebuhr has suggested original opinions on this subject.

A passage in Cicero's work, *De Republ.* ii. 22, has created fresh difficulties on the subject of the *Centuriæ*, and occasioned Niebuhr's essay *Über d. Nachricht von d. Comitien der Centurien*, Bonn, 1823. The qualification of the classes of citizens is very well treated of by him, *Röm. Gesch.* vol. i.

§ 146 to 172. Works most frequently quoted concerning the *Comitia*, are Nich. Gruchius *de Comitiiis Romanorum*, iii Books, Paris, 1555; and in the *Thes. Græv.* vol. i. p. 630; C. Ferd. Schulze has lately treated of the same subject, learnedly and copiously, *Von der Volksversammlungen der Römer*, Gotha, 1815: where this author follows Niebuhr, he is open to the same objections as he is; in other respects his work is excellent. Among earlier writers is Aicherius *Brevis Institutio de Comit. vet. Roman.*

§ 173 to 182. Molitor (§ 178) is one of the earliest writers on the Roman senate, as is Zamoscius, who is often referred to; both are to be found in the *Thes. Græv.* vol. i. Nearer to our times are, Chapman, *History of the Roman Senate*, Cambridge, 1750; and Curt. on its state under the *Cæsars*, *Comment. de Senatu Romano post tempora Reipublicæ Liberæ*, Halle, 1768.

§ 183 to 218. The work, now lost, of Junius Gracchanus *de Pōtestatibus*, treated of the magistrates of the Roman empire, as we learn from the preface to Laur. Lydus *de Magistr.* This last work, published at Paris 1812, is frequently referred to by me, and is almost wholly introduced into Creuzer's work on *Antiquities*; to which may be added

the Epistle of J. D. Fuss to C. B. Hase, Liege, 1820; also the work of Dom. Floreus de Sacerdotiis et Magistratibus Romanorum, incorrectly attributed to Fenestella; and dissertations on the same subjects by F. Hottoman, *Thes. Græv. ii.*; of P. Faber, *Thes. Sall. iii.*; of Prevot, *ib.*; and of J. Gulielmus, *ib.*

On particular magistrates, see C. F. Hommelius, *Prolusio, de Forma Tribunalis et Majestate Prætoris*, published in Nieu-poort's work; Fr. C. Conrad's essay *De Prætoře Peregrino*, in his *Parerga*, Helmstadt 1735–1739; Acoluthus de *Prætoře Romanorum Fiscali*, 1758. Concerning the prætor's edict, see § 192.

Concerning the powers of the dictators, see Couture sur le clou sacré, *Acad. des Inscript. vol. vi.* Cic. de *Republ. ii. 33*, furnishes a fresh passage referring to the tribuneship, see *Creuz. § 151*; Olearius de *Ædilibus Rom. Læipsic, 1692*, belongs to this subject; Duker's remarks on *Livy VII. 16*, refer to the *Mensarii (Quinqueviri Mensarii)*.

Concerning magistrate's officers, Trolz de *Scribis Veter. Roman*, may be consulted; also Massbach de *Præconibus vet.*, Erfurt, 1767; and Salmasius de *Secretariis*, *Thes. Sall. ii.*

§ 219 to 240. Works referring to the administration of the emperors, are those of Robertellus de *Magistr. Imperatorum*, *Thes. Græv. vol. iii.*; de la Blérierie, *Du Gouvernement Romain sous les Empereurs*, *Acad. des Inscript. xxi, xxiv*, and his *Dissert. sur la Puissance Imperiale Chez les Romains*, *ib. xix.*; also his essay *De la Puissance Tribunitiale des Empereurs*, *ib. xxv.* Gibbon has described the Decline and Fall of the Roman Empire, in a work of great research and authority, and Montesquieu has beautifully illustrated its rise and decay in his *Considerations sur les Causes de la Grandeur des Romains et de leur Décadence*. A portion of the work of Lydus is devoted to the *Præfectus Prætorio* and his establishment of officers. Of more recent writers on the subject, I have mentioned with commendation, Pancirolus and Gutherius; to which may be added, D. Ritter's *Historia Præfecturæ Prætorianæ*, Wittemberg, 1745; and a

dissertation by Arn. Drakenborg on this office, and one on the *Præfecti Urbis*, to be found in *Ælrich Thes. Diss. Jurid.* vol. i. and also published at Bareith, 1787. There is an earlier work *de Præfecto Urbis* by Fel. Contelorius, in the *Thes. Sall.* vol. i.

Bergier has treated amply of the public posting establishment, in his work *de Public. et Milit. Imp. Rom.* Viis. IV.

§ 241 and 242. See authors mentioned on § 114 and 127.

§ 243 to 259. I have quoted occasionally passages concerning the provinces in Cicero's works; almost all that we know of the administration of provinces, is to be found in his letters to Atticus, to his brother Quintus, and in his speeches, particularly in that against Verres.

Panvinus, Sigonius, and Beaufort of a still later date, I have already mentioned; one of the latest works on this subject is that of P. Antoine du Pin, *De Jure Provinciarum Imp. Rom.*, Leyden, 1807.

Writers on particular points connected with the subject are, Mongault, *Sur les Honneurs Divins rendus aux Gouverneurs des Provinces*, *Acad. des Inscript.* vol. i., and Mascosius *de Procuratoribus Cæsaris*.

§ 260 and 261. Roman law is contained in the *Corpus Juris Civilis*, and other remains of the ancients (§ 421).

Modern writers of note on the subject are, P. Manutius *de Legibus Roman.* in the *Thes. Græv.* vol. i., and also forming an Appendix to the *Corpus Jur. Antiq.* of Rosinus; and Ant. Augustinus *de Legibus et Senatus Consultis* (ib. ii.). This writer, as well as Heineccius, Bach, and others, have published an index of Roman laws mentioned by ancient writers.

Works on the code of the XII Tables, are those of Bonamy *sur l'Origine des Lois des XII Tables*, *Acad. des Inscript.* vol. xii.; Juncker's *Fragmenta XII Tab. ex restitutione Funccii*, Gottingen, 1756; Dirksen's work lately published, see sections 205 and 261: and J. H. Van der Heim *de Jacob. Gothofredi Meritis in Restituendis XII Tabularum Legibus*, in the annals of the Univers. of Leyden, 1823. The

language of the tables has been investigated by Suringar in his essay *de Ant. Interpretibus Scriptorum Latin.*, Leyden, 1829.

Concerning the legislative powers of the prætors, see Andr. Cath. Holt *de Jure Prætorio apud Romanos tum apud Anglos*, in the *Annals of the Univ. of Leyden*, 1821.

On particular laws, see Haubolt's *Instit. Jur. Rom. Liter.*, vol. i. p. 306, etc. Basil, 1731; Beckman's *Diss. Acad. d. x.*; Beck *de lege Regiâ*, Leipsic, 1780; Schott *de lege Villia Annali. ib.* 1765; Heineccius's *Commentary on the Lex Julia and Lex Pappia Poppæa*, Leipsic, 1778, and on the *Lex Ælia Sentia* in his *Syntag. Ant. Rom. I.* 6, 12.

Concerning the *Senatusconsulta*, see Ant. Augustinus *de Leg. et Senatuscons.*; Hottoman *de Senatu et insignibus aliquot Senatuscons.*, *Thes. Græv.* vol. ii. Heineccius and others give a catalogue of the Decrees of the Senate. On Edicts, see Bauchaud *sur les Edits des Magistrats Rom.*, *Acad. des Inscript.* vol. xxxix., Ziegler *de Edicto Ædilitio* in his *Dissert. Select.*; and Cappelen Hunthan *de Rescriptis Principum Rom.*, in Ælrich's *Thes. Diss. Jurid.* vol. i.

§ 262 to 278. Cicero's speeches furnish a copious source of information concerning courts of law, trials, and law in general.

Information is also to be found in C. Sigonius *de Judiciis*, III books, *Thes. Græv.* ii.; and De Brett *de Ordine Antiq. Judic. apud Rom.*, *Thes. Sall.* ii.

On certain points we may consult Caius and Dupont's *Disquisitiones de Legis Actionibus*, (see § 271); Massé, *Disputatio de Cic. Orat. in Verr.*, Leyden, 1824; Ed. Broquet, on the question as to what was the mode of proceeding in public trials among the Romans, in the *Transactions of the Univ. of Ghent*, 1821; Siccama *de Judicio Centumvirali*, *Thes. Græv.* ii.; Schreiter *de Antiquit. Sacramentorum in Vet. Romæ judiciis solennium*, Leipsic, 1740; Magius *de Equuleo*, Amsterdam, 1664.

§ 279 to 316. Ovid's six books of *Fasti* afford us the best information concerning the superstitious festivals and religious observances of the Romans (§ 334). Of modern works

the most ample are, that of Struve; *De Ritibus Sacris Systema Absolutius*, Jena, 1701; and those of Rosinus and Kipping. Nieupoort has devoted but a small space to this subject, from p. 164 to 314. Beaufort, who does not enter into details, is still briefer (p. 1 to 89 of his work). I shall not mention those who have written on particular idols.

§ 317 to 323. Works on the Roman priesthood, are those of Ralp. Volaterranus *de Magistr. et Sacerdotiis*, *Thes. Sall. iii.*; of Henry Bebelius *de Sacerdot. et Mag.* *ib.*; Merula *de Sacerdotibus Romanis*, Leyden, with his other works, 1634; Bos *de Pont. Max. Romæ Vet. Thes. Græv. vol. v.*; and *de Pontificatu Max. Imperat. Rom. ib.*; J. Guther, four Books, *de Vet. Jure Pontificio U. Rom.*; Morin, *Dissert. surles Augures*, *Acad. des Inscript. vol. i.*; Ald. Manutius *de Auspiciis*, *Thes. Sall. i.*; Aug. Niphus, two Books, *de Auguriis*, *Thes. Græv. vol. v.*; Bulenger *de Aug. et Auspiciis*, *ib.*; Mascov. and Babener *de Jure Auspicii apud Rom.*, Leipsic, 1744; Schœpflin *de Ausp. Rom.*, Augsburg; Bellus *de partibus Templi Auguralis*, *Thes. Græv. v.*; Bulenger *de Ominibus, de Prodigiiis, de Terræ Motu et Fulminibus*, *ib.*; Valerinus *de Fulminum significationibus*, *ib.*; Ostertag *de Ausp. ex Acuminibus*, Ratisbon, 1780; Panvinius *de Sibyll. et Sybill. Carminibus*; Gallæus *de Sibyll. Amst. 1688*; Reinesius *de Sibyll. Oraculis*, Jena, 1683; Bulenger *de Sortibus*, *Thes. Græv. v.*; the *Syntagma de Vesta et Vestalibus* of J. Lipsius, the third vol. of his works, and in the *Thes. Græv. vol. v.*; Nadal, *Histoire des Vestales*, *Acad. des Inscript. vol. iv.*; Eisenhardt *de Vestalibus*, Helmstadt, 1752; Widder *de Speculo Ardente Vestalium*; Dupuy *sur la Manière dont les Anciens rallumaient le Feu Sacré*, *Acad. des Inscript. vol. xxviii.*; Marinus, *preces et munera Fratrum Arvalium detecta*, Rome, 1778, Wagner *de Fecialibus*, Helmstadt, 1734.

§ 331 to 333. The second volume of Stuck's works, containing an account of the sacrifices of heathens, and many parts of Struve, refer to the religious practices of the Romans. Particular subjects have been treated of by Brow. von Niedeck, *de Pópulorum vet. ac recen. Adorationibus*, Amsterdam, 1713; Zabem *de Ritu veterum admovendi ma-*

num ori in adorationibus, Augsburg, 1763 ; Schumann de Lectisterniis Rom. in Sacro Codice frustra quæsitis, Leipsic, 1739 ; Thomasinus de Donariis ac Tabellis Votivis, in the Thes. Græv. vol. xii. ; Schütz de Votis veterum, Leipsic, 1665 ; Lomeyer de Lustrationibus, Zutphen, 1700 ; J. B. Hansen de Jurejurando veterum, Thes. Græv. vol. v. ; Erycius Puteanus de Jurejur. antiquor. in quo de Puteali Libonis, ib. ; F. B. Ferrarius, seven Books, de Vet. Acclamationibus et Plausu, Thes. Græv. vol. vi. ; and the treatise of Berthaldus de Ara, in the same collection.

§ 334 to 346. Ovid, as I have already said, has amply treated of the Roman festivals. Modern writers on the subject are Morestellus, author of *Alypius, seu de Prisc. Roman. Feriis*, Lyons, 1606 : writers on particular points are, Bærner de *Saturnalibus*, Leipsic, 1751 ; Spon de *Origine Strenarum*, Thes. Græv. vol. ix. ; De la Nauze, sur le *Calendrier Romain*, Acad. des Inscript. vol. xxvi. ; Blondell, *Histoire du Calendrier Romain*, Paris, 1682 ; *Vetus Calend. Rom.* Thes. Græv. vol. viii. ; *Kalendar. Rusticum Farnesianum*, ib. : the Calendar prefixed to the *Fasti* of Ovid in the same collection ; the Commentary of Siccama in *Fastos Kal. Rom.*, with the Scholia of P. Ciacconius and P. Manutius, is published in the *Antiq. Rom.* of Rosinus ; *Petavius Kal. vet. Rom.* in the Thes. Græv. vol. viii. Works upon the *Fasti* of the Magistracy are, *Fasti Magistr. Rom. restituti*, by Pighius, Thes. Græv. vol. xi. ; *Fasti Consulares anonymi*, by Noris, ib. ; *Epistola Consularis*, by H. Noris, ib. ; *Fasti Cons. Idatiani*, ib. ; and Reland's *Fasti Cons.*, Utrecht, 1715.

§ 347 to 355. Works upon public games and shows, are those of Modius de *Triumphis Ludis et Spectaculis Veterum*, in the *Thæs. Gronov.* xi. ; Taffini de *Anno et Ludis Sæcular.* Thes. Græv. vol. viii. ; Onuphr. Panvinus de *Lud. Sæc.* ib. ix. ; Walther de *Quinquennialibus et Decenn. Imperat. Rom.* Wittemberg, 1748 ; Onuphr. Panvin. de *Ludis Circensibus*, Thes. Græv. vol. ix. ; Bulenger de *Circo Rom. Ludisque Circens.* ib. ; Oct. Ferrarius de *Lud. Circ.* and de *Gladiator.* ; J. Lipsius, two Books on the *Saturnalia*, he treats of the gladiatorial shows in the third volume of his works.

Concerning dramatic or scenic exhibitions, consult Calliachus de Ludis Scenis Mimorum et Pantomim., *Thes. Sall.* ii., also Oct. Ferrarius de Pantomimis et Mimis, *ib.* ii.; Boindin sur les Masques et les Habits de Théâtre, *Acad. des Inscript.* vol. iv.; Mariscottus de Larvis, *Thes. Græv.* vol. ix. Of later writers Schlegel has been mentioned with approbation, *Uber Dram. Kunst, Vorles* iii.

§ 356 to 359. The most valuable works of early writers on chronology, are the *Chronicon* of Prosper. Aquit., in the *Thes. Græv.* vol. xi., and the *Chronicon* of Eusebius; of later writers, Jos. Scaliger de *Emendatione Temporum*, and his *Thes. Temporum*; and Dionys. Petavius de *Doctrina Temporum*, and his *Rationarium Temporum*.

For the *Fasti*, see sections 334 to 346. Works on particular points in chronology, are, that of Bondeterra, *Antiq. Lat. et Gr. ad Vet. Anni Rationem attinentes*, Padua, 1740; that of Jos. Scaliger de *Vet. Anno Rom.* extracted from his *Emendatio Temp.*, in the eighth volume of the *Thes. Græv.*; Johnston de *Annis et Mensibus*, *ib.*; Adrianus Junius de *Ann. et Men.*, *ib.*; Freret de *l'Année de J. César*, *Acad. des Inscript.* vol. xvi.; P. Manutius de *Intercalatione*, *Thes. Sall.* i.

Treatises on the time-keepers of the ancients, are those of Draudius de *Clepsydris Veterum*, Gex, 1732; Martinus von d. *Sonnenuhrem d. Alten*, Leipsic, 1777; Eryc. Puteanus de *Nundinis Romanis*, *Thes. Græv.* vol. viii.; and a treatise de *Mantissa* (anything given over and above in a bargain) *Nundinis et Mercatibus*, in the *Syntagma Juris* of E. Tholosanus, in the same collection.

§ 360 and 377. Ancient writers on military subjects are Vegetius, Frontinus, Higynus (*Thes. Græv.* vol. x.); Ælianus, author of the *Tactica*; and Æneas Tacticus, author of a treatise de *Toleranda Obsidione*, edited by Conrad Orellius, Leipsic, 1818: and of historians, Polybius, Livy, Cæsar, and Appian. Creuzer has devoted from p. 272 to 327 to this subject.

Later writers on this branch of antiquities are J. Lipsius, five Books de *Militia Rom.*, a commentary on Polybius, vol.

third of his works ; the *Res Militaris Romana*, of Franc. Patricius, in the *Thes. Græv.* vol. x. ; Schelius de *Custod. Castorum*, etc. etc., *ib.* ; De Folard, *Commentaire sur Polybe*, in the translation of Polybius by Thuillier, Paris, 1727 ; Fr. Robertellus de *Legionibus Rom.* *ib.* ; Bœcler, *Dissertationes de Legionibus Rom.* *ib.* ; Le Beau, de la *Legion Romaine*, *Acad. des Inscript.* vol. xxv. and in other volumes ; Aldus Manutius de *Principilo*, *Thes. Sall.* vol. i. ; Caryophilus de *Clypeis Veterum*, Leyden, 1751 ; Schœpflin de *Galeis Veterum* ; De la *Chausse de Signis Militar.* in the *Mus. Rom.* of this author, to be found in the *Thes. Græv.* vol. x. ; Schelius, notes on Polybius de *Castris*, *ib.* ; see section 372 ; J. Lipsius, five Books of *Poliorectica*, the third volume of his works ; and Joli de Maizeray, *Traité sur l'Art des Sièges et les Machines des Anciens*, Paris, 1779.

The following authors have written on the naval tactics and battles of the ancients : Doletus de *Re Navali*, *Thes. Græv.* vol. xi. ; Scheffer de *Militia Navali vet.* v., also de *Varietate Navium*, *Thes. Gronov.* vol. xi. ; Le Roi sur la *Marine des Anciens*, *Acad. des Inscript.* vol. xxxviii. ; Meibomius de *Fabrica Triremium*, *Thes. Græv.* vol. xii. ; and the *Commentary of Opelius* on this work, *ib.* ; Vossius de *Trirem. et Liburnicarum construct.* *Thes. Græv.* vol. xii. ; and there is a treatise, *De Tutelis et insignibus navium*, in the *Opuscula of Dav. Ruhnke*, Leyden, 1807.

The pay, advantages, honours, punishments, and discharges of the military have been treated of by Fr. Robertellus in his work, *De Commodis Præmiis et Donis Militaribus*, in the *Thes. Græv.* vol. x. ; Vincent Cantarenus de *milit. Roman. Stipendio*, *ib.* ; Eryc. Puteanus *Syntagma de Stip. Milit.* apud Rom. *ib.* ; Onuphrius Panvinius de *Triumpho*, *ib.* ix. ; Marlianus de *Triumphis vet. Rom.* Venice, 1555 ; an essay by Nadal in the *Transactions of the Academie des Inscriptions*, vol. iii. ; Fr. Robertellus de *Pœnis Militum*, *Thes. Græv.* vol. x. ; and Le Beau, de *Délits et des Peines Militaires*, *Acad. des Inscript.*, vol. xlii.

§ 378 and 379. I have mentioned ancient writers on agriculture (§ 419), to whom may be added Pliny, *Hist. Nat.*

18. 3, etc.; and of later writers, Binkes de Agricult. præ Mercatura apud Rom. favore, Leyden, 1819.

§ 380 to 382. From the numerous writers on this subject may be selected, Murray, Origines Panificii, Göttingen, 1768; Meursius, de Pistoribus Panariis, etc. etc., in the second part of his Exercitat. Critic. p. 181; Koch's Commentary de Spiribus Pistoriis, Dresden, 1733; Wachter de Ærariis et Ferrariis, in his Archæol. Numism. p. 3; Poterie des anciens, in the Résumé d'Archeol. of Champollion Figeac, vol. ii. p. 292; Beckmann, Beiträge z. Geschichte d. Erfindungen, vol. iv. p. 119; see also Böttiger's Sabina, vol. ii. p. 106.

§ 383 to 385. On Usury at Rome, see Hubertus de Argentaria vet., in the Thes. Diss. Jurid. of Ælrich, vol. i.; Salmasius de Usuris, Leyden, 1638; I. F. and J. Gronovius de Centesimis Usuris, Leyden, 1661.

§ 386 to 388. Ancient writers on this subject, are Priscian de Nummis et Pond., Thes. Græv. vol. xi.; Remnius Fannius de Pond. et Mensuris, ib. Among later writers are Eisenschmid de Pond. et Mens. et de Nummis vet., Augsburg, 1737; Arbuthnot, Tabulæ Antiqu. Nummorum, etc., etc., translated into Latin by Kœnig, Utrecht, 1756; Bœck, Staatshaushaltung der Athener; Letronne, Considerations sur l'Evaluation des Monn. Gr. et Rom.; Budæus de Asse, Paris, 1514—Cologne, 1548; B. von Laar de Rom. Pond. et Mens., Leyden, 1810; a treatise, De Assibus Imminutis, in Wachter's Archæol. Num.; Banduri Bibliotheca Nummaria, Hamburg, 1719; Snellius de Re Nummaria, in the Thes. Gron. vol. ix.; Jos. Scaliger de Re Num. Antiqua, ib.; Freher de Re Moneta Veterum Rom. Thes. Græv. vol. xi.; T. F. and J. Gronovius de Sestertiis, Leyden, 1691; Freret, Essai sur les Mesures Longues des Anciens, Acad. des Inscript. vol. xxiv.; D'Anville, traité des Mesures Itinéraires, Paris, 1769; and sur le Mille Rom. by the same author in the twenty-eighth volume of the Transactions of the Academie des Inscript.

§ 389 to 395. The principal authors who have written on the taxes of the Romans are mentioned in the note on section 394. Other early writers are Bulenger de Tributis ac

Vectig. Pop. Rom. Thes. Græv. vol. vii., and Cantarenus de Frument. Rom. Largitione, ib.

§ 396 to 416. Consult le Moine, *Considerations sur l'Origine et les Progres des Belles Lettres chez les Romains*, Paris, 1749; Meiner's *Geschichte d. Verfalls d. Sitt. d. Wissensch. u. d. Sprache d. Rœm.*, Vienna, 1791; J. C. Voorduin, in the *Annals of the University of Ghent*, year 1821; Cellarius de *Studiis Romanorum Literariis*, Halle, 1689; de *Stud. Liberalibus Urbium Romæ et Constantinop.*, Helmstadt, 1657. On the Latin language, see Funck de *Origine*, etc., *Linguæ Latinæ*; on its decayed state, the *Bibliotheca Lat. Med. et Infimæ Ætatis* of J. A. Fabricius, Hamb. 1734; Du Cange, *Glossar. ad Scriptores Med. et Infimæ Latinitatis*, Paris, 1733. On the subject of libraries at Rome, see Ech. *Reusch. de Biblioth. Rom.*, Helmstadt, 1734.

Accounts of classical authors and critiques of their works, and bibliographical information in general, may be found in the *Bibliotheca Latina* of J. A. Fabricius, enlarged by J. A. Ernest, Leipsic, 1773, 3 vols. 8vo.; in Th. Chr. Harles's *Introd. in Notit. Litt. Romanæ*, Leipsic, 1794; and in Bœhr's *Geschichte d. Rœm. Litterat.*, Carlsruhe, 1828. The following have included Greek authors with Latin: W. D. Fuhrmann, *Handb. der Class. Lit.* Rudolst, 1804, his *Anleit zur Gesch. d. Class. Litteratur d. Griechen und Rœmer.*, 1816, 2 vols. 8vo., and the *Hist. Græc. et Rom. Litteraria*, by H. Weittingh, at Delft, 1825.

§ 417 to 421. Consult Benevenuto *Della Condizione de Medici presso gli Antichi*, Perugia, 1779; and Wesseling's, *Itineraria Veterum Roman.*, Amsterdam, 1735.

§ 422 to 429. Herm. Hugo de *Prima Scribendi Origine*, Utrecht, 1738; J. N. Funck de *Scriptura Veterum*; Ald. Manutius de *Vet. Notar. explan.* Venice, 1566; Ursatus de *Notis Romanis*, Thes. Græv. vol. xi.; Nicolai de *Siglis Veterum*, Leyden, 1703; an appendix on the Ciphers and Abbreviations of the Romans at the end of Nieupoort's work on *Roman Antiquities*; Schwartz de *Ornamentis Librorum*, Leipsic, 1756; Schætten *Historia Librariorum Vet. et Medii ævi*, Leipsic, 1710.

Works on inscriptions are, the *Thesaurus Inscriptionum* of Gruter, enlarged by Græv., Amsterdam, 1707; the *Inscriptiones Antiquæ* of R. Fabretto, with emendations by Gruter, Rome, 1699 and 1707; *Syntagma Inscript. Antiq.* of Reinesius, Leipsic, 1682; Norris, *Thes. Vet. Inscript.* by Muratori, Milan, 1742, and a supplement to it by Donatus, Lucca, 1775; *Inscriptiones* by Morcelli, with explanations, Rome, 1783.

Works on particular inscriptions are, that by Giacconi, *Columna C. Duilii Illustrata*, in the *Thes. Græv.* vol. iv.; also *Inscriptio Scipionis Barbati*, *ib.*

For inscriptions on coins, see on sections 386 to 388, and besides the works there referred to, *La Science des Medailles*, by L. Jobert, Paris, 1739; *Savot sur les Medailles Antiques*, in Latin, in the *Thes. Græv.* vol. xi.; Barthelemy, *Essai d'une Palæographie Numismatique*, Acad. des Inscript. vol. xxiv.; Zaccaria, *Istituz. Antiquario-nummaria*, Roma, 1772; Wachter, *Archæolog. Numm.*, Leipsic, 1740; T. Eckhel, *Doctrina Nummorum Vet.* 1792; T. E. Mionnet, *Description des Medailles Gr. et Rom.*, Paris, 1822; Patinus, *Thesaurus Numism.*, Paris, 1672; *Thesaurus Morellianus seu Famill. Rom. Numism. omnia*, published by Havercamp, Amsterdam, 1734; Vaillant, *Num. Familiarum*, Amst. 1703; *Nummi Imperat. Rom. selecti*, Rome, 1773; *Nummi Coloniæ et Municipiorum*, Paris, 1695; Patinus, *Nummi Imperator. Rom.*, Augsburg, 1671; Zoega, *Nummi Ægyptii Imperatorii*, Rome, 1787; Ezech. Spanheim de *Usu et Præstantia Numismatum*, Amst. 1717, 2 vols. fol.

§ 430 to 446. Consult *Bulenger de Pictura, Plasticæ, Statuaria*, Lyons, 1627; *Winckelman's Works*, Dresden, 1808—1820; his *Gesch. d. Kunst. d. Alterthums*, Dresden, 1764; J. A. Ernest, *Archæologia Litteraria studio G. H. Martini*, Leipsic, 1760; the *Grundriss d. Archæol. of Ch. D. Beck*, Leipsic, 1816; Zoega, *li Bassi Rilievi Antichi di Roma*, 1807; and Caryophilus de *Antiq. Marmoribus*, Utrecht, 1743; *Stosch Gemmæ Antiq. cælataæ*, engraved by Picard, Amst. 1724, folio, and remarks on the work by Winckelman, *Florence*, 1760; Rubenius's essay, *De Gemma Tiberiana*, in

the *Thes. Græv.* vol. xi.; J. D. Lippert, *Dactyliotheca*, Leipsic, 1762, edited by Heyne, Leipsic, 1763, with a supplement, Dresden, 1776; Abr. Gorlæus, *Dactyliotheca*, with notes by J. Gronovius, Leyden, 1707; Le Blond et Larcher *Diss. sur les Vases Murrhius*, *Acad. des Inscript.* vol. xliii.; Von Veltheim, *uber d. Vasa Murrhina*, Helmstadt, 1791; C. H. Roloff, *uber d. Murrin. Gefässe d. Alten*, in the *Museum der Alterthums Wissensch. of Wolf*, vol. ii. p. 507; Junius de *Pictura Veterum*, Rotterdam, 1694, fol.; Pensel *super. Antiq. Picturarum Generibus*, Halle, 1771; Fr. Aug. Walter, *d. Wiederhergestellte Mahlerkunst d. Alten*, Berlin, 1820; a paper *sur le Peinture a l'Encaustique*, in the *Transact. of the Acad. des Inscript.* vol. xxviii.; Bellorius, *Picturæ Antiq. Sepulchri Nasonum explicatæ*, *Thes. Græv.* vol. xii.; Jo. Ciampinus de *Veter. Monum. præcip. Musivis, Operibus*, Rome, fol., 1690; Furietti de *Musivis*, Rome, 1752.

On the music of the ancients, see Fr. Blanchinus, *Diss. de Tribus Generibus Instrum. Musicæ Veter. Organicæ*, Rome, 1742; Bartholinus de *Tibiis*, Amster. 1679; Lampe de *Cymbalis Vet.* Utrecht, 1703; Meister de *Organo Hydraulico*; B. Bacchinus and J. Toll de *Sistris*, *Thes. Græv.* vol. vi.; H. Boss, *Isiacus. seu de Sistro*, *Thes. Sall.* ii.

§ 447 to 457. See the works on sections 463 to 473, works on Roman customs referred to; also Malliot, *Recherches sur les Mœurs, les Costumes, et les Usages des Anciens Peuples*, Paris, 1804; Bayfius de *Re Vestiaria*, *Thes. Græv.* vol. vi.; Rubenius de *Re Vestiaria præcipue de Lato Clavo*, *ib.*; Oct. Ferrarius de *Re Vest.*, *ib.*; *Analecta de Re Vest.*, *ib.*; *Costumes des Grecs et des Romains*, Paris, 1772.

Works on particular points are such as that of Ald. Manutius de *Toga*, *Thes. Græv.* vol. vi.; Bos de *Lato Clavo Senatorum*, *Thes. Sall.* ii.; Bartholinus de *Pænula*, *Thes. Græv.* vol. vi.; Donius de *utraque Pænula*, *ib.*; Raynaudi de *Pileo*, *ib.*; Balduin de *Calceo Antiq. et Mystico*, and Rubenius de *Calceo Senat.*, Amsterdam, 1677; Sperling de *Crepidis Vet.* *Thes. Gronov.* vol. ix.; J. Scheffer de *Antiq. Torquibus*, *ib.* vol. xii.; *De la Chaussée de Vasis*, Bullis, Armillis, etc. *ib.*; Casp. Bartholinus de *Inauribus Vet.*, Amst. 1676; Kirchman de *annulis*, Sleswick, 1657, and Leyden,

1672; P. Burmann de Jure Ann. Aur., Utrecht, 1734; Kornmann de Annulo Triplici, etc. etc., Leyden, 1672; G. Longus de Annulis, Leyden, 1672.

On female dress, see Bœttiger's *Sabina oder Morgenszenen im Putzzimmer einer reichen Römerin*, Leipsic, 1806.

§ 458 to 462. On the private dwellings and public buildings of the Romans, consult the essays of Minutolus which I have mentioned with approbation in section 41. On particular subjects connected with them see Sagittarius de *Januis Vet. Thes. Græv. vol. vi.*; Molinus de *Clavis*, Upsal, 1684, and in the *Thes. Sall. iii.*; and for similar information, see Lipsius on *Tacit. Ann. ii.*

§ 463 to 473. Casalius de *Ritibus Roman.*, Rome, 1644, Erfurt, 1681; Meiner's *Gesch. d. Verfalls*, etc., Leipsic, 1782; Meierotto *uber Sitten*, etc. 3rd edit., Berlin, 1814; D'Arnay, de la *Vie privee des Romains*, Lausanne, 1760; Couture on the same subject, *Acad. des Inscript. vol. i.*; Meursius de *Luxu Rom. Thes. Græv. vol. viii.*; Nadal du *Luxe des Dames Rom.*, *Acad. des Inscript. vol. iv.* Creuzer has treated amply of the repasts of the Romans; consult also Stucke's three Books *Antiq. Conviv.*, etc. Leyden, 1695, fol.; Bulenger de *Conviviis*, *Thes. Græv. xii.*; Baccius de *Conviviis*, *ib. ix.*; Eryc. *Putcanus Reliquiæ Convivii Prisci*, *ib. xii.*; Schwartze de *Comissionibus Vet.*, Altenburg, 1744; Baruffaldus de *Armis Convivalibus*, *Thes. Sall. iii.*; Vinc. Batus de *Potu Ant. Thes. Græv. vol. xii.*; Meibomius de *Cerevisiis Vet.*, *ib. ix.*; Barry, *Obs. on the Wines of the Ancients*, Lond. 1775; Freinsheim de *Calido Potu*, Lanzoni de *Coronis et Unguentis in Conviviis Vet.*, *Thes. Sall. iii.*, and Ciacconius de *Triclinio*, Leipsic, 1758; and Bach de *Thermis Veterum*, *Thes. Græv. vol. xii.*

§ 473. Consult Janson of Louvain de *Mensis Lecticis*, etc., 1701; Alstorpius de *Lectis et Lecticis*, Amsterdam, 1704; J. Scheffer de *Re Vehiculari*, Frankfort, 1671, 4to.; G. Green de *Rusticatione et Villis*, Leipsic, 1667, and *Thes. Sall. vol. i.*; Stucke, *Antiq. Convivales*, book i. c. 23; Rob. Castelli, the *Villas of the Ancients illustrated*, London, 1728, fol.; Eckerman de *Rusticatione Vet. Rom.* Upsal, 1740; Natalis Comes, four Books, de *Ludis Agrest. præci-*

pue de Venatione, London, 1726 ; Winderlich de Veterum Popinis, in the Transaction of the Societas Latina of Jena, vol. iii. p. 267 ; Boessius on the Ibis of Ovid, p. 113 ; Treuner Dissert. de Molis, Jena, 1695 ; Gotz de Pistrinis Veterum, Acad. des Inscript. vol. iii. On fishponds, see Varro de Re Rust. iii. 17 ; and also Thomasinus de Tesseris Hospitalitatis, Amst. 1670.

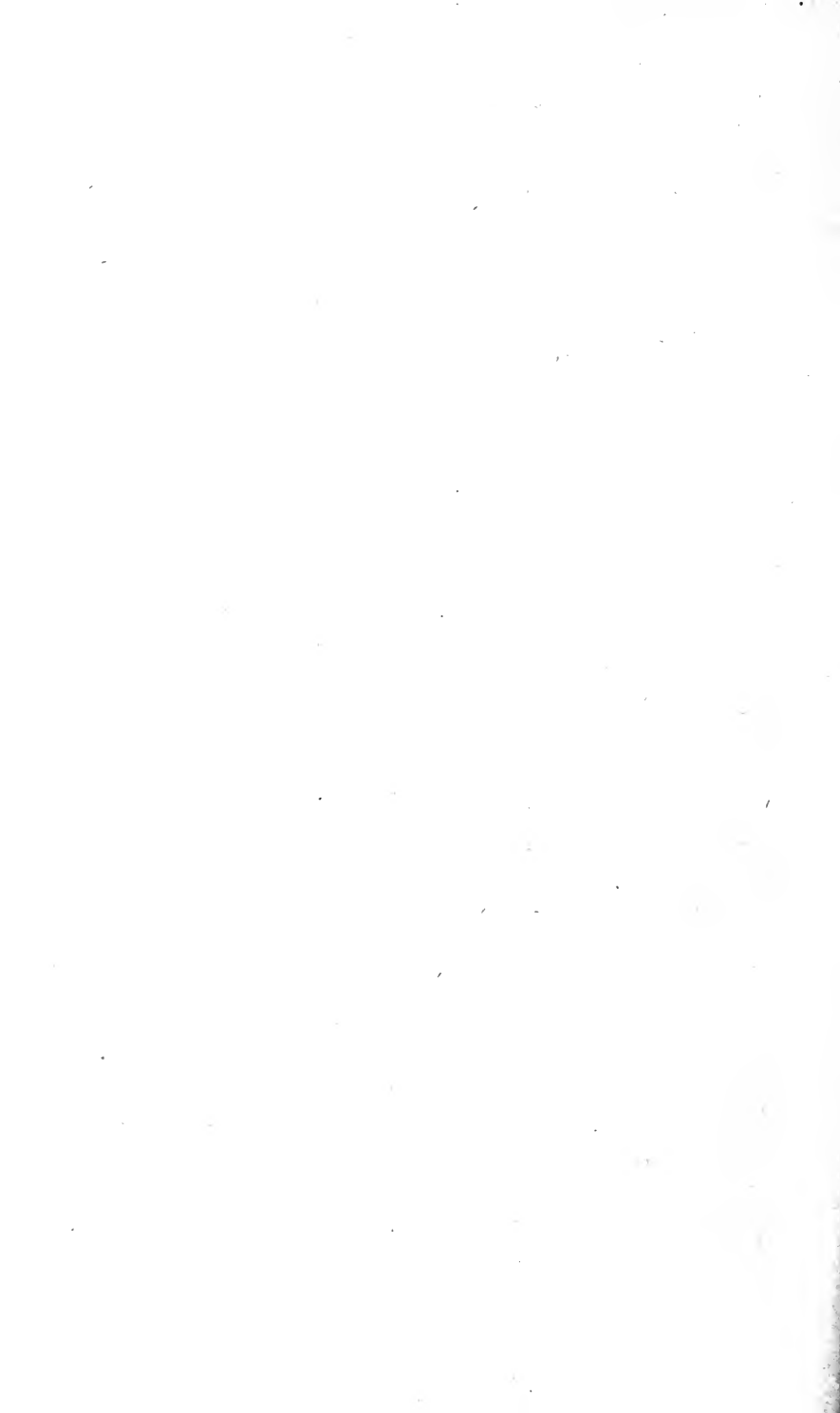
§ 474 and 475. See Bulenger de Ludis Privatis Vet., Lyons, 1627 ; Calcagnius de Talorum, Tesserarum, et Calculorum Ludis, in the Thes. Gronov. vol. vii. ; Des Jeux de Hazard en usage chez les Romains, Acad. des Inscript. vol. i. ; De Pauw, de Alea Vet., Utrecht, 1726.

§ 476. Sigonius de Ant. Ritu Connubiorum in his work, de Antiq. Jur. Civ. Rom. ; Laurentius de Sponsalibus, Thes. Gronov. vol. viii. ; Brisson de Ritu Nuptiarum, Thes. Græv. vol. viii. ; Brower de Jure Connub., Delft, 1714 ; and Creuzer, p. 54, etc.

§ 483. Bartholinus de Ritu Puerperii Rom., Rome, 1677 ; Bork de Vet. Rom. in Educandis Liberis Solertia, Gex, 1784.

§ 485 and 486. Creuzer has treated amply of the funeral rites of the Romans, p. 356, etc. of his work. The following works refer both to the entire subject and to its particular points, Kirchman de Funeribus, Hamburg, 1605 ; Laurentius de Funeribus Antiq., Thes. Gronov. vol. xi. ; Giraldus de Sepulchris, etc. ; Morestelli Pompa Feralis, Thes. Græv. vol. xii. ; De la Chausse, Lucernæ Sepulchrales, ib. ; Oct. Ferrarius de Luc. Sepulchr. ib. ; Schœpflin de Apotheosi Imperat. Roman., in his Comment. Hist. et Crit., Basle, 1741 ; Lanzoni de Luctu Mortuali Vet. Thes. Sall. iii. ; Barufaldas de Præficus, ib. ; H. Noris Cenotaphia Pisanæ C. et L. Cæsarum, Venice, 1681, Pisa, 1764 ; Pict. Ant. Sepulchri Nasonum, Thes. Græv. vol. xii. ; Guthier de Jure Manium, ib. ; Scyffert de Nummis in Ore Defunctorum repertis, 1709.

§ 491. Augustinus de Gentibus et Fam. Rom. Thes. Græv. vol. vii. ; Streinnius de Gent. et Fam. ib. ; Ruperti Stemmata Gent. Rom., Gottingen, 1795 ; Sigonius de Nominibus Roman. in Thes. Græv. vol. ii.



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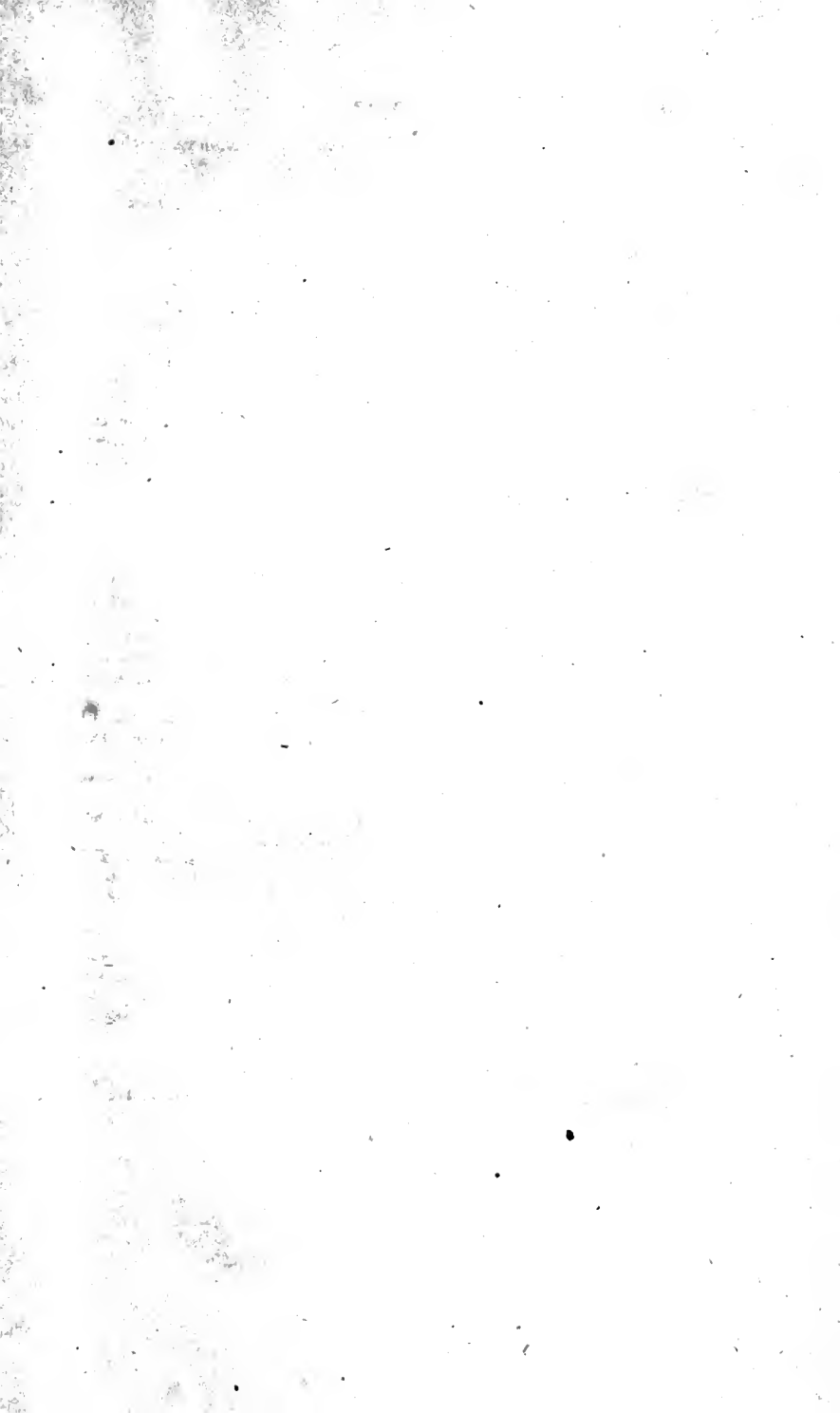
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