

G A I
INSTITVTIONES

OR

INSTITUTES OF ROMAN LAW
BY GAIUS

WITH A TRANSLATION AND COMMENTARY

BY THE LATE

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tenens ita dicit: HVNC EGO HOMINEM EX IVRE QUIRITIVM MEVM ESSE AIO ISQVE MIHI EMPTVS ESTO HOC AERE AENEAQVE LIBRA; deinde aere percutit libram idque aes dat ei a quo mancipio accipit quasi pretii loco.

§ 120. Eo modo et serviles et liberae personae mancipantur; animalia quoque quae mancipi sunt, quo in numero habentur boues, equi, muli, asini; item praedia tam urbana quam rustica quae et ipsa mancipi sunt, qualia sunt Italica, eodem modo solent mancipari.

§ 121. In eo solo praediorum mancipatio a ceterorum mancipatione differt, quod personae serviles et liberae, item animalia quae mancipi sunt, nisi in praesentia sint, mancipari non possunt; adeo quidem, ut eum (*qui*) mancipio accipit, adprehendere id ipsum quod ei mancipio datur necesse sit; unde etiam mancipatio dicitur, quia manu res capitur; praedia vero absentia solent mancipari.

§ 122. Ideo autem aes et libra adhibetur, quia olim aereis tantum nummis utebantur, et erant asses, dupundii, semisses, quadrantes, nec ullus aureus vel argenteus nummus in usu erat, sicut ex lege XII tabularum intellegere possumus; eorumque nummorum vis et potestas non [in numero erat sed in pondere——as|ses librales erant, et dupundii——]; unde etiam dupundius dictus est quasi duo pondo, quod nomen adhuc in usu retinetur. semisses quoque et quadrantes pro

following words: THIS MAN I CLAIM AS BELONGING TO ME BY RIGHT QUIRITARY AND BE HE (OR, HE IS) PURCHASED TO ME BY THIS INGOT AND THIS SCALE OF BRONZE. He then strikes the scale with the ingot, which he delivers to the mancipator as by way of purchase money.

§ 120. By this formality both slaves and free persons may be mancipated, and also such animals as are mancipable, namely, oxen, horses, mules, and asses: immovables also, urban and rustic, if mancipable, such as Italic lands and houses, are aliened by the same process.

§ 121. The only point wherein the mancipation of land and buildings differs from the mancipation of other things is this, that mancipable persons, whether slaves or free, and animals that are mancipable, must be present to be mancipated: it being necessary that the alienee should grasp the object to be mancipated with his hand, and from this manual prehension the name of mancipation is derived; whereas land and buildings may be mancipated at a distance from them.

§ 122. The reason of using a bronze ingot and a weighing scale is the fact that bronze was the only metal used in the ancient currency, which consisted of pieces called the as, the double as, the half as, the quarter as, and that gold and silver were not used as media of exchange, as appears by the law of the Twelve Tables: and the value of the pieces was not measured by number but by weight. Thus the as was a pound of bronze, the double as two pounds, whence its name (*dupondius*), which still survives; while the half as and quarter as

rata scilicet portione ad pondus examinati erant.—qui dabat *olim* pecuniam, non numerabat eam, sed appendebat; unde serui quibus permittitur administratio pecuniae dispensatores appellati sunt et—

§ 123. —coemptio— a quidem quae coemptionem fac— seruilem conditionem a—| mancipati mancipataeue seruorum loco constituuntur, adeo quidem, ut ab eo cuius in mancipio sunt neque hereditatem neque legata aliter capere possint, quam *<si>* simul eodem testamento liberi esse iubeantur sicut iuris est in persona seruorum. sed differentiae ratio manifesta est, cum a parentibus et a coemptionatoribus isdem uerbis mancipio accipiantur quibus serui; quod non similiter fit in coemptione.

were masses defined by weighing those respective fractions of a pound. Accordingly, money payments were not made by tale, but by weight, whence slaves entrusted with the administration of money have been called cashiers.

§ 123. If it is asked in what respect coemptive conveyance differs from mancipation, the answer is this, that coemption does not reduce to a servile condition, whereas mancipation reduces to so completely a servile condition that a person held in mancipation cannot take as heir or legatee under the will of the person to whom he is mancipated, unless he is enfranchised by such will, thus labouring under the same incapacity as a slave: the reason too of the difference is plain, as the form of words employed in mancipation by a parent or previous acquirer by coemption is identical with that used in the mancipation of slaves, but it is not so in coemptive conveyance.

In what respects did domestic bondage (mancipium or mancipii causa) differ from slavery (servitus)? Bondage was an institute of jus civile, slavery an institute of jus gentium, § 52. Bondage was the result of mancipation by a parent or coemptionator, and only a Roman citizen was capable of becoming a bondsman. The proprietor has possession of the slave, the lord has no possession of the bondsman, 2 § 90. The bondsman was civis Romanus, though what became of his political capacities during his bondage is uncertain; and he was liber, though alieni juris; he was free in respect of the rest of the world, he was only a bondsman in respect of the person in whose mancipium he was. Thus the status of mancipium was relative; a man could only be in mancipio in relation to a given domestic lord: whereas the status of slavery was absolute; a man might be a slave without an owner (servus sine domino): for instance, a person condemned for a capital crime, who was called the slave of punishment (servus poenae, Inst. 1, 12, 3), or a slave abandoned (derelictus) by his owner. Accordingly, falling into servitus was maxima capitis diminutio, while falling into man-