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AURELIA;

OR,

THE JEWS OF CAPENA GATE.

Freely Translated from the French of M. A. Quignon

PART SECOND.—THE SLAVE.

CHAPTER VI.—(CONTINUED.)

'Let us go! Let us go!' was the unanimous cry.

'Yes, let us go,' repeated Olinthus. 'Our cause is holy and God will bless it.'

'Your cause is iniquitous, and God would turn away from you!' said a voice, which all heard, and at which all stopped.

It was the voice of the Pontiff who had just arrived, having heard the rumor of Cecilia's misfortune.

'My children,' resumed the venerable priest, with severity, 'since when was violence permitted to the disciples of Christ? When did they learn to trample upon the laws? Centurion, was it to sustain or overthrow them that the Emperor gave you this sword?'

A deep silence had succeeded to the tumult.—These men but now so impetuous, remained silent and collected, listening to the voice whose authority they respected.

'Father,' spoke at last Olinthus in a respectful tone, 'is not the law odious which robs a father of his daughter? Must we permit that our sister perish in slavery? Does Christ recognize masters and slaves?'

'My son,' replied the Pontiff, 'Christ inspires feelings of humanity and gentleness which will cause slavery to disappear in the course of time; but He has never said to the slave:—'Thou shalt revolt against thy master,' nor to the citizen:—'You will tear down, with violence, that which exists.' Await patiently the designs of God, and however unjust and barbarous institutions may be, respect them until His breath shall destroy them. Let us teach the master charity towards his slaves, let us teach the world that all men are brothers, and the spirit of God will do the rest. Renounce, then, all design of rescuing Cecilia by force, from the master God has given her. It is the law! Learn to submit to it.'

Olinthus bowed to the wisdom of the holy interpreter of the religion of Christ, although he felt his blood boiling in his veins and his heart ready to burst with suppressed grief. Yet, he could not help exclaiming sorrowfully:—

'O father, father! Cecilia is then lost forever?'

'No, Olinthus,' said Petronilla who had come near him. 'I have the confident hope that this child who, alone among us, has had the happiness to sacrifice herself for God, will be returned to you by His Almighty hand. Let us go to Flavia Domitilla; she has authority enough to conquer this man's refusal, treasures enough to tempt his avarice.'

'Go, my son,' said the Pontiff, 'this is just and permitted. During your absence, I shall lift up my hands to God and I trust my prayers will be heard.'

'We shall all pray for your success,' cried all these men and women, filled with holy enthusiasm, and they followed the steps of the Pontiff.

Flavia Domitilla offered Parmenon an enormous sum of money if he would relinquish his rights on the young girl.

Parmenon remained immovable. The Consul Flavius Clemens, himself, interfered, now beseeching the slave-trader, now threatening him with all his authority.

Parmenon was undisturbed by threats and prayers. He showed the law to the Consul, and quietly told him that he intended to preserve and defend his legal rights.

The reader has doubtless, already suspected that Marcus Regulus was behind Parmenon and maintained him in this obstinacy.

'See,' the astute plotter would say to his vile tool! 'how all these Jews are coming to us!—Oh, I shall obtain all their secrets through that young girl. Their millions of sesterii! . . . It is laughable! Will not the Emperor give them to me? . . . And, besides, am I not rich enough? What I want is power, honors, and I shall have them. Parmenon, you wretch, if you falter I will turn you over to the pretor!'

'There was a terrible secret between Regulus and Parmenon. Flavia Domitilla and Flavius Clemens struggled vainly to overcome this unknown obstacle.

But were the laws of Rome so barbarous that they admitted the violation of the first law of nature? Would not a court of justice annul this abominable contract by which a father had sold his child!

Pliny-the-Younger, the noble and brilliant pleader, and Pegasus, the great jurisconsult, were called upon to solve these momentous questions. Both were filled with indignation; both replied that long since Rome had ceased to see such shameful outrages, and promised that this monstrous deed of sale should be cancelled.

It was determined that Cecilius should claim his daughter before the tribunal of Recuperators.

Parmenon was duly summoned to appear. Marcus Regulus prepared himself for the important struggle about to commence.

CHAPTER VII.—A CHAPTER ON ROMAN LAW.

Three things had been treated by the Roman legislator with the same dryness of heart and inflexibility of spirit, although two were animated by the breath of God, and the third might be vivified by the thought of man.

These three things were: 'the child,' 'the slave,' and 'the soil.'

All three corresponded to a solitary centre, the master—('dominus') the keystone of the Roman legislation, which held them by the same title and with the same inviolable power.

In the beginning the right of property had been the material possession of things; later when it received a legal definition, the transfer to a third party required a second taking possession 'by the hand,' the symbol and instrument of all human power.

Thence, the 'manicipation,' a unique form of sale, whose etymology—'manu capere'—indicates sufficiently the brutal meaning.

The child, the slave and the soil were mancipiated; that is the hand of the purchaser seized these three things with the same energy and the same immutable right. This new right made the child, the slave, and the soil equally the property of the master until he chose to transfer them by another manicipation.

But, the more precious the thing, the less easily the original right could cease.

Thus, land once mancipiated ceased to belong to its owner. The same with the slave, unless he was set free, for the power of the master extended beyond emancipation, through the rights of patronage and certain obligatory services imposed on the freedman.

But, over the child, the essential property, the power of the father never ceased entirely. Set free by the master who had bought it, it became again, legally, the property of the father who could sell it an indefinite number of times.

Such was the law framed by the inflexible genius of Romulus. The law of the Twelve Tables did not change this, but it limited the rights of the father on his son to three mancipations, after which the son was completely free from paternal authority. 'Si pater filium ter venunduit, filius a patre liber esto.'

As for the daughter, a single manicipation was sufficient to liberate her. The Roman legislation set little value on woman.

The son sold by his father suffered all the rigors of slavery. The only consolation reserved in his favor, by the law, was that he remained ingenuous and even a Roman citizen by right, whilst a slave in fact.

In order to understand the influence of Christianity on a society where such legislation existed, we must cast a look on the reign of Augustus, the luminous point between the greatest height of the Roman power, and its approaching fall.

Like the god Janus who opened the year, and whose double face contemplated the past and looked into the future, Augustus saw all the splendors of the republic, and the foreshadow of the dark days of the empire.

Before him all is bright, glorious, wonderful civilization; after him darkness, abasement, universal barbarism.

And nevertheless, what occurs during this resplendent period of the republic and this declining period of the empire? What is thought of the child? what is done with the slave? what becomes of the soil?

Until Augustus' time all remains mute, plunged in the immutability of death.

Omnis vita

Omnis sunt deserta, ostentant omnia moriem

After Augustus, and all at once, the child takes his place at the family hearth, the slave becomes again a man, the soil thrills under the first touch of the spirit which will animate it.

Up to that time there had been, doubtless, great poets, eminent historians, orators, philosophers and jurisconsults; yet what voice spoke in favor of the child, of the slave, of the soil, even? who mourned over this treble captivity? who condemned these institutions?

Among those Romans who glorified Brutus and Maclius Torquatus for the murder of their children, and who looked upon the slave as being assimilated to the brute creation, there were, doubtless, fathers truly worthy of that name, and really kind masters. Individual virtues were not wanting in the republic; and there could

not be found in the corrupt times of the empire such a large number of citizens remarkable for the excellence of their private life.

But this fact only gives more weight to our remarks. How is it that these virtuous republicans did not improve the legal status of their children, that they did not admit the slave was a man, that they did not understand that the soil, though an inert matter could be ruled by the will.

And how is it that the Romans of the decline, so miserably plunged in vice, should have suddenly risen above the brutal traditions of their ancestors; and that the first cries so long expected by suffering humanity should have been heard in their poetry, in their history, in their philosophy and their legislation? Strange contradiction! it was during the time of Nero, of Vitellius and Domitian, that these mysterious voices were heard which, condemning the past, prepared the future.

It seems as if Providence purposely left an interval between the reign of Augustus when there still lived the memory of ancient virtues, and the time when these would disappear under the influence of the monstrous vices of his successors, in order to show more clearly whence come these new doctrines and what was their heavenly origin.

It is, in fact, only when Peter appeared in Rome, when Paul spoke these great words 'My brethren,' that we see this hardness softening, the heart opening to the novel feelings of loving kindness, and the books and the law becoming at least the faint echo of this strange language, so different from what had hitherto existed.

The hour of God had come after that of man. He resumed the task which had baffled human wisdom, and as the first act of his presence, He imposed on these generations born of injustice and stationary in their egotism, the omnipotence of equality.

Thought prevailed on the ruins of form, and science became profound enough to be Christian. The jurisconsults prepared the emancipation of matter by making the mind and will of man prevail in his agreements; to them are due the glory and usefulness of those principles by virtue of which our modern society, unfettered and performing all its acts in the name of intellect, transmits the soil and all other things without having to touch them with the hand and casting them off like an uncomfortable garment.

Yet amidst this breaking of fetters, the child like the slave and the soil, was to retain the seal of servitude, from which triumphing Christianity alone could free the world.

No voice had yet been raised, strong and courageous enough to prohibit the sale of children by their father, for, the first text containing this great prohibition is a constitution of the emperors Diocletian and Maximian. This text upon examination, however, is found to admit a fact established by usage, rather than proclaim a prohibition no longer needed.

Such was the grave interest of the question to be discussed before the tribunal of the Recuperators, in connection with Cecilia's sale by her father.

On the one side was the formal and pitiless text of the Law of the Twelve Tables, so long observed, forming part of the fundamental law of Rome, and which had never been abrogated or even modified by any contrary legislation.

On the other, the general feeling, public indignation, the voluntary abandoning of a barbarous law, and the secret but certain tendencies of the public mind towards generous ideas more worthy of man and of the sanctity of family ties.

Would these considerations prevail against a law which had once been deemed just and necessary?

And if usage and morals which may sometimes transform the law through long and universal practice, were invoked, would they be powerful enough and sufficiently in conformity with Roman reason to triumph over a positive text and to erase it from the brazen Tables deposited in the Capitol under the custody of the protecting god of the empire?

CHAPTER IX.—BEFORE THE PRETOR.

The Pretor decided summarily, cases of little importance or of easy proof, as we have seen an example in the case of Parmenon's claim against Cecilius. But in grave cases as when a citizen claimed as his own a thing in the possession of another party, the latter upon being summoned was obliged to produce in court the thing claimed, in order that the plaintiff might identify it and that there should not be, therefore, any possible error as to the object in litigation.

This preparatory proceeding was a necessary formality which preceded all trial. It gave rise to singular, and as in Cecilia's case, painful scenes, on account of the struggle which it was customary for the contending parties to engage, assisted by their witnesses and their friends—the plaintiff endeavoring to wrench the thing claimed

from his opponent's hands, and the latter resisting with the same energy.

The Pretor then feigned to perceive the quarrel going on under his eyes. He ordered the contending parties to be separated and brought before him. He then heard their respective arguments, and generally decided that the possessor should retain the thing, until further trial, but should deposit with his adversary a guarantee equivalent to the value of his claim.

Subsequently to this first hearing, the plaintiff's demand was again examined, and the Pretor sent the case for trial before the Recuperators designated by him. The questions upon which this tribunal was to decide were submitted by the Pretor, thirty days after the first hearing.

The suit brought for the recovery of Cecilia was of too great importance for the formalities required by law not to be strictly and rigorously complied with.

Consequently, on the day appointed, the Pretor Publius Aufidius Namusa proceeded to the Forum and took his seat on the permanent tribunal of the urban pretorship, which was situated at the eastern end of the place, a little below and to the left of the Arch of Fabius.

A large and tumultuous crowd had already assembled in the Forum to enjoy the moving spectacle of the struggle between a father and the man who had robbed him of his daughter; and to gloat upon the tears and despair of the child. In all times there has been found people eager to contemplate with morbid curiosity the sorrows of others.

We shall seek among this crowd, the persons directly interested in the case at issue.

We find near the tribunal, Cecilius, clad in the garments of a suppliant and with his hair smeared with ashes. It is easy to read on his careworn face the cruel emotions that fill his breast at this solemn hour. Near him stands his lawyer, the celebrated Pliny-the-Younger. He is there to assist the wretched father in his sad trial; and he endeavors in vain to teach him the dignity and moderation which the occasion demands.

Not far from these, stands Olinthus accompanied by a few of his brethren and by some pious woman who have come to sustain his courage, and to comfort Cecilia by their presence and their sympathetic tears. A dark gloom overspreads the handsome features of the young centurion; but, nevertheless, a gleam of hope anon brightens his eyes from which the happy light of old has flown.

The devoted Gurgus has not failed to come to the Forum. He has brought with him some of his men, and now and then gives them his instructions, in a low voice but with considerable warmth. His project is to take advantage of the heat of the struggle to give a sound beating to the hateful Parmenon.

This illegal intervention is certainly derogatory to the dignity of the Pretor and the respect due to justice; but it will be a great consolation for Gurgus, and, in truth, we have not the heart to censure the poor respillo.

As for Parmenon and his victim, they have not yet made their appearance in the Forum.—But Marcus Regulus is sneaking through the crowd, and the inference is that the slave-dealer cannot be far.

Marcus Regulus has declared openly that he would take up Parmenon's case, and appear in person, to plead before the Pretor. This has surprised no one, for the case is shameful enough to suit Regulus, even if he did not have a more direct personal interest in its issue—a fact, however, not generally known.

But Cecilius, Pliny-the-Younger, Olinthus and all Cecilia's friends are well aware that he is the cause of the young girl's misfortune, although they do not suspect the secret motives of his persecution.

Regulus manages to not come too near the old man and his friends, for he augurs little good from their threatening looks.

After some delay, which only increased the feverish curiosity of the crowd, Parmenon made his appearance with Cecilius, and surrounded by a numerous escort. He had evidently sought to make an insolent display of his right of brutal possession. The young girl was led forward like a victim ready for the sacrifice. She wore the coarse tunic of the slaves, and her hands were tightly bound together with a rope, the end of which was held by one of Parmenon's men.

Four months had elapsed since the poor child had fallen into the power of this wretch; for, notwithstanding the zeal and activity of her friends, the tedious delays of judicial proceedings, protracted by the efforts of Regulus, could not be overcome. Her person bore the evidence of the cruel sufferings to which she had been subjected. Her face was pale and thin, the bloom of youth and beauty had already faded away. And yet she found sweet smiles for the dear beings she saw in the crowd.

At the sight of his daughter, a loud cry es-

aped from the Tax-gatherer's lips, and with one bound he was near her, clasping her in his arms, and calling upon the gods to restore her to him.

Parmenon seized Cecilius round his waist and endeavored to wrench him from his daughter's embrace, but all his strength could not move the old man who stood immovable like a bronze statue.

Olinthus drew his short sword, and the bonds which held his betrothed captive fell to the ground, cut in twain.

Meanwhile, Gurgus was performing wonders. Already Parmenon's escort had been dispersed by the respillo and his stout companions; the wretch, himself, struggling vainly, was about to succumb under their blows. For a single instant Cecilia found herself free, in the midst of her friends! But the Pretor has spoken in the name of the law; licitors lower their faces over the young girl's head, and the struggle ceases.

All bowed to the majesty of justice and the respect due to the popular and feared Roman magistrate.

Regulus only waited for this intervention, and Pliny-the-Younger, himself, asked that the case should proceed with the calmness and moderation which should accompany judicial decisions.

Publius Aufidius Namusa, then called upon the two adversaries to come forward and state their difference. Cecilius making an effort to overcome his emotion, stood up before the Pretor, and declared that he had come to claim his daughter unjustly held by Parmenon.

The latter replied that the thing vindicated was indeed the daughter of Cecilius, but that the latter, by a regular act of manicipation, had transferred all his rights upon her to him, Parmenon.

He appealed to the testimony of the five witnesses to the sale, by whom he has taken care to be accompanied; and he placed before the Pretor the act of manicipation drawn up by the testator.

It was now the duty of the two lawyers to present the question in its legal character.

Pliny-the-Younger, in a short improvisation, set forth: 'That the fact of Cecilia's manicipation to Parmenon was not disputed—it was unfortunately but too certain; but that, in law, this manicipation could not hold good, for two reasons: First, because the sale of a daughter by her father should be deemed null and void according to the spirit of the new Roman laws; second, even if it were valid in law it should be set aside on the ground that Cecilius had been subjected to influences and made to entertain fears which controlled his will and destroyed the liberty of his consent.'

'When the time comes,' added Pliny-the-Younger, and his penetrating glance was fixed on Regulus, 'I shall prove these facts by uncontrovertible testimony. For the present, all the Pretor must needs know, is that the object of the action we claim the right to bring, is to attack the principle of an abominable sale, and, at all events, to oppose to it the exception 'quod metus causa' (the exception 'quod metus causa' could be filed whenever one of the parties to a contract alleged that at the time said contract was made, he was under the influence of a real fear which impairing or destroying his liberty of judgment, prevented consent) which suffices to violate radically any convention.

Marcus Regulus knew very well that whatever the grounds of opposition taken against Cecilius' claim, the Pretor would not fail to authorize the trial. Assuming, therefore, an air of ease, he replied that he would make no opposition to the trial demanded by Cecilius; that he would show, when the time should come, that the sale was perfectly valid, both in law and from having been freely consented by the father; but that he protested against the allegation that Cecilius had been subjected to any undue influence or terror. He therefore, demanded that, provisionally, the young girl purchased and paid for by Parmenon, a legally authorized slave-dealer, should be adjudged to the latter and remain in his possession.

Pliny-the-Younger endeavored to obtain that Cecilia should be placed in the care of a third party, during the litigation; but the manicipation not having been attacked in its form, and having the conditions of an authentic act, the Pretor decided that Parmenon should not be deprived of the services of his slave unless by a final sentence of the court annulling the sale.

Cecilia was therefore adjudged to Parmenon. Then, the Pretor sent the party before the tribunal of the Recuperators, but reserved a delay of thirty days to prepare the form of trial.

Parmenon, protected by the magistrate's licitors, wished to enjoy the brutal satisfaction of insulting the sorrow of his adversaries, by replacing on Cecilia's wrists, the bonds cut by Olinthus. He proceeded to perform this task slowly, in the Forum, defying the anger of those who threatened him, and laughing at the tears