

a single piece of it was weighed in the presence of five witnesses and delivered by the lender to the borrower as a symbolic delivery of the whole ; thereafter (according to Huschke (c) and Giraud (d), whose formula Dr. Muirhead (e) considers might not be wide of the mark, although history has not preserved the precise words) the lender, the sole speaker in the transaction, addressed the borrower as follows : "Quod ego tibi mille libras hoc aere aeneaque libra nexas dedi, eas tu mihi post annum jure nexi dare damnas esto." The effect of this formula was to establish what has been indifferently called the "nexum," "obligatio," or "vinculum juris" between the parties. The ceremony closed with an appeal to the witnesses for their testimony to the consummation of the contract. It should, perhaps, be mentioned here that after the introduction of coinage the etiquette of the scales was so far modified that they were simply touched with a single "aes," representing the money transferred by the contract of loan—hence the transaction was designated "per aes et libram."

The remedy for breach of the contract on the part of the debtor (nexum), at least before the Code of the XII Tables, extended to the loss of his personal freedom, and his reduction to the status of a slave of his creditor. The release ("nexi solutio") of the obligation could only be effected by a ceremony similar to that attending its creation ; the amount of the loan being weighed by the libripens and solemnly returned to the creditor by the debtor in the presence of witnesses (a).

It is quite true Sir Henry Maine's view (b) that Contract was but an extension of the ancient "Conveyance," and that the "Nexum," with its similar ceremony of the scales and witnesses, was, therefore, the earliest form of Contract to be found in the Roman law, has been keenly disputed by Mr. Hunter (c). The latter holds the opinion that the "Stipulatio" (a survival of the primordial "Sponsio") at least synchronizes with the contractual

(c) Ueber das Recht des Nexum, p. 50.

(d) Des Nexi, ou de la condition des débiteurs chez les Romains, p. 67.

(e) Roman Law, sec. 31, p. 153. Cf. Salkowski, Roman Private Law, bk. iii., p. 553, et seq.

(a) Cf. Gaius, iii. 174, 175 ; Buckler's Origin and Hist. Contract in Rom. Law, p. 31 ; and Hunter's Rom. Law, 3rd ed., p. 459.

(b) Ancient Law, 14th ed., pp. 319-322.

(c) Hunter's Rom. Law, 3rd ed., pp. 525, 536-540.