the time of Servius, Rome had no law of contract; for men must have bought and sold, or at least bartered, from earliest times—must have rented houses, hired labour, made loans, carried goods, and have been parties to a variety of other transactions inevitable amongst a people engaged to any extent in pastoral, agricultural, or trading pursuits. It is true that a patrician family with a good establishment of clients and slaves had within itself ample machinery for supplying its ordinary wants, and was thus to some extent independent of outside aid; but there were not many such families, and the plebeian farmers and the artizans of the guilds were in no such fortunate position. There must, therefore, have been contracts and a law of contract; but the latter was very imperfect." (*c*).

Now, the basis and vital principle of pure Contract in its origin was, of course, the "Conventio," or agreement of the parties, in respect of the subject-matter of the transaction between them; but in the early Roman law it was impossible to obtain the aid of the civil tribunals to enforce an agreement unless it was embodied in some precise form, or was accompanied by some ceremonial act of the parties before witnesses. Passing over the more or less indeterminate archetypes of Contract, "Jusjurandum" and "Sponsio," we arrive at an important stage in the process of development when "Nexum" appears—and "Nexum" is a province of Roman jurisprudence which may properly be said to be the Armageddon of the critics (*a*). In this form of transaction, which was primarily one of loan, when the parties were "ad idem" in respect of the subject-matter of their negotiations the ceremonial operation necessary to be superimposed upon their agreement, to make it capable of legal enforcement, proceeded in this wise: The raw copper, which stood for the money that was being advanced, was first weighed in a pair of scales by an official "libripens" (*b*); then

(*c*) Sec. 12, p. 49.

(*a*) Anyone desirous of studying the controversy surrounding the subject may refer to Bechmann, Der Kauf, I., p. 130; Mommsen, Hist. Rome, I., ii., p. 162 n; Bekker, Aktionen des röm. Privat. I., 22 ff; Huschke, Das Nexum, p. 16 ff; Clark, Early Roman Law, sec. 22; Buckler, Orig. and Hist. Contr. in Rom. Law, pp. 22-31.

(*b*) Mr. Buckler (op. cit., p. 52) controverts the view that the libripens was a public official. He bases his opinion upon the following clause of the XII Tables: "Qui se sierit testarier libripensue fuerit ni testimonium fatiatur improbus intestabilisque esto." There is, however, strong authority for the view that the libripens was an officer of the State. Cf. Kelke's Rom. Law, p. 61.