

INDEX.

- actio auctoritatis*, an action on *mancipium*, 61; introduced by XII Tables, 68; origin of penalty, 71; nature of, 75; warranty enforced by, 148
- *commodati*, age of, 185; its formula, 186
- *de dolo*, not connected with *doli clausula*, 109
- *de modo agri*, Voigt's theory of, 61; Paulus' account of, 61; nature of, 68
- *de peculio &c.*, nature of, 210
- *depositi*, differed from Paulus' *actio*, 86; theories of Voigt and Ubbelohde, 87
- *dictae dotis*, supposed by Voigt, 36
- *emti*, origin of, 137; did not include warranty, 148, 150
- *exercitoria*, nature of, 208
- *ex stipulatu*, its origin, 105; its connection with *doli clausula*, 106, 107; developed from *condictio incerti*, 108; alleged connection with *a. emti*, 137
- actio fiduciae*, Voigt's theory of, 76; Praetorian origin, 193
- *hypothecaria*, origin of, 200
- *in factum*, function of, 159; instances of, 162, 170, 185, 188
- *institoria*, nature of, 209
- *mandati*, origin of, 161; formula of, 162
- *negotiorum gestorum*, use of, 163; wider use, 167
- *operarum*, a Praetorian remedy, 12
- *pecuniae constitutae*, character of, 212
- *pecuniae nuncupatae*, supposed, 182
- *per sponsionem*, involved sum of money, 16; use of *sponsio* in, 114, 118; instance in *constitutum*, 213
- *pigneraticia*, origin of, 192
- *pro socio*, origin of, 170
- *Publiciana*, origin and formula of, 140, 141
- *quasi-Seruiana*, see *a. hypothecaria*.
- *quod iussu*, nature of, 207;

- actio recepticia*, character of, 215, 217
 — *Seruiana*, age and function of, 198
 — *societatis*, radically different from *a. pro socio*, 175
 — *tributoria*, nature of, 209
adstipulatio, nature of, 110; a form of agency, 168
aduersaria, function of, 124
aes confessum, meaning of, 43; debtors of, how treated, 45
 Alfenus Varus, on *actio pignerticia*, 192; on *a. de peculio*, 211
 Aquilius Gallus, author of *actio de dolo*, 109, 113; and of Aquilian formula, 111
arrha, use of, in sales, 146
auctoritas, meaning of, 68; duration of, 69; how produced, 69; ways of escaping, 70
- Bechmann, theory as to *nexum*, 23, 25; as to function of witnesses, 27; as to object of coinage, 28; theory as to *dotis dictio*, 34; on rule of XII Tables, 55, 56, 59; on contents of *lex mancipi*, 60, 61, 62; as to action on *dicta*, 66; on penalty of *actio auctoritatis*, 70; on *fiducia*, 76, 78; on age of *actio emti*, 144
- Bekker, theory of witnesses, 27; on *fiducia*, 76; on *sponsio*, 94; his classification of *sponsio*, 114; theory of *emtio*, 137; on age of *a. emti*, 144
- Bruns, on *constitutum*, 214; on *receptum*, 215
- Caesar, S. Iulius, grants *actio mandati*, 161
- Cato, on *locatio conductio*, 156; on *hypotheca*, 199
- cautio*, a kind of stipulation, 118
- censor, his connection with sales, 152, 153
- cessio in iure*, *fiducia* annexed to, 76, 77
- chirographum*, nature of, 132
- Cicero, remarks on the oath, 9, 10, 17, 39; on *sacrae leges*, 11; his use of *nexum*, 23, 25, 28; declares it obsolete, 25; as to character of *nuncupatio*, 61; allusions to *dicta*, 65, 66; as to *actio auctoritatis*, 72; mentions *satisfactio sec. mancipium*, 81, 150; in his time *uadium* was a form of stipulation, 82, 83; on *pecunia credita*, 101; on written stipulations, 112; on *actio per sponsionem*, 115; illustrates *expensilatio*, 124, 129; on *actio pro socio*, 175; silent as to *commodatum &c.*, 184; on *depositum*, 188; on difficulty of *praedictura*, 207; mentions *constitutum*, 212
- codex*, uses of, 124, 126
- cognitores*, function of, 165
- coinage, probably introduced by decemvirs, 42, 57; exclusive right of, 181
- collegia*, their connection with *societates*, 177
- comitia*, vote in, compared to *nexum*, 20
- commodatum*, nature of, 187

INDEX.

221

- commodatum*, origin of, 183
- concepta uerba*, formula of oath, 10, 13
- condictio certae pecuniae*, its origin, 100; its formula, 104; its *sponsio*, 116; its extension, 182
- *incerti*, its origin and use, 105
- *triticaria*, its introduction, 104; its formula, 104
- consortium*, nature of, 172
- constitutum*, character of, 211; its two actions, 213
- contract, a product of trade, 1; germ of, in formless agreement, 6; eventually discards forms, 8; public was formless, 7; *nexum*, first genuine instance of, 30; modern notions of, 34; characteristics of primitive, 38; formalism not earliest stage of, 38; formal under XII Tables, 88; five forms of, under XII Tables, 89; development of, by praetor, 158
- Costa, on age of *actio emti*, 144
- curatores*, function of, 165
- Curtius, on etymology of *uas*, 82
- Czylharz, theory of *dotis dictio*, 34
- Danz, on consequences of breach of oath, 10; theory as to *sponsio*, 13, 19; answered by Girtanner, 19; theory as to *dotis dictio*, 35
- decemvirs, probably introduced coinage, 42, 57
- Degenkolb, on *fiducia*, 76; on the *fiduciae instrumentum*, 77
- delegatio*, nature of, 110
- Demelius, on age of *actio emti*, 144; on age of *a. mandati*, 161; on origin of *a. depositi*, 188
- depositum*, origin of, 186; theory of development, 189
- Dernburg, on etymology of *uadimonium*, 82; on nature of *praedia*, 205
- dictum*, nature of, 65–67; contents of, 67
- Dion Cassius, on nexal penalty, 49
- Dionysius, on mode of taking oath, 10; on outlawry of patrons, 12; as to legislation of Servius Tullius, 27; on law of dowry, 32
- doli clausula*, introduction of, 106; forms of, 108; effect of, 108; no connection with *actio de dolo*, 109
- dotis datio*, nature of, 32
- *dictio*, probably older than XII Tables, 31; of obscure origin, 32; history of, 32–37; instances of, 33, 35; theories as to origin of, 33–36; nature of action unknown, 36; form of, 37; an instance of public approval, 38; no trace of, in XII Tables, 39
- Drusus, Marcus, grants *actio mandati*, 161
- duplum*, penalty of *actio de modo agri*, 61; in *actio depositi*, 190
- edict, on *actio Publiciana*, 141;

- on *pacta conuenta*, 158; on *negotiorum gestio*, 168; on remedies for *pecunia credita*, 182; on *commodatum*, 186; on *depositum*, 190; on *receptum nauatarum*, 214
- edict, Aedilician, referred to by Plautus, 144; and by Cicero, 151
- emptio uenditio*, origin of, 135–139; Bekker's and Mommsen's theories, 137; public form of, 138; and its results, 139; gradual recognition of, 140–143
- exceptio doli*, introduction of, 109, 113
- *rei uenditae*, function of, 140, 142
- expensilatio*, form of, 123–130; history of, 130–132
- Festus, gives language of XII Tables, 40; defines *uindex*, 48; on *locatio*, 152; on *hypotheca*, 199
- fideiussio*, third form of suretyship, 122–123; also a form of agency, 168
- fidepromissio*, a form of suretyship, 120–122
- fides*, the bond between contracting parties, 4; violation of, punished, 5; placed under divine protection, 7; Bekker on function of, 145
- fiducia*, doubtful if older than XII Tables, 31; was it a *lex Mancipi*? 75; a formless ancillary agreement, 76, 78; later history of, 193
- foenus*, a loan with interest, 181
- *nauticum*, nature of, 182
- formalism, means of establishing contract, 8; not earliest stage of contract, 38
- Gaius, on exceptional use of *sponsio*, 15; as to *nexi liberatio*, 24, 28; on *dotis dictio*, 33, 35; on *mancipatio*, 54, 64; on *fiducia*, 76; his account of *usureceptio*, 77; on modes of making *uadimonium*, 84; on unusual forms of sale and hire, 87, 88; on *lex Aebutia*, 91; on effect of *lex Silia*, 101; on *sponsio poenalis*, 117; on *expensilatio*, 127, 129, 132; on *chirographum*, 133; on *locatio conductio*, 152; on use of double formulae, 163; on *procuratio*, 167; on *collegia*, 178; silent as to *commodatum* &c., 183; on *actio depositi*, 189; on *actio de peculio*, 210; on *constitutum*, 213
- Gallus, Aelius, on *nexum*, 24
- Gellius, remarks on *uadimonium*, 32, 80, 84; quotes XII Tables, 43, 49; gives substance of same, 47, 48; explains nexal penalty, 49; on *lex Aebutia*, 91; on *consortium*, 172
- Girard, on *actio auctoritatis*, 71
- Girtanner, derivation of *sponsio*, 14, 18; theory of its origin, 19, 20

INDEX.

223

- Gneist, theory of *chirographum*, 133
- gods, appeal to, as sanction, 5, 6; withdraw protection from offender, 11
- Gordian, constitution of, 197
- Hunter, criticism of Maine, 17
- Huschke, theory of *nexum*, 27, 28; as to nexal penalty, 44; on nexal formula, 53; on *fiducia*, 75; on *interdictum Saluvianum*, 197
- hypotheca*, history of, 194–200; a mere *pactum*, 195; distinct from *pignus*, 199
- Ihering, on *leges Mancipi*, 62; theory of *auctoritas*, 69; and of its penalty, 71; on *fiducia*, 76; as to original form of *stipulatio*, 98; on *praedes*, 203
- interdictum, sponsio* used in, 117
- *Saluvianum*, function of, 196
- Isidorus, derives *stipulatio*, 97
- iudicatum*, meaning of, 45, 47
- Iulianus, gives instance of *dotis dictio*, 35
- iusiurandum*, a solemn declaration, 7; history of, 9–13; derivation and formula of, 9; nature of, 13; different from *sponsio*, 19; not peculiar to Romans, 22; perhaps the original form of *uadimonium*, 84, 85
- Justinian, survival of oath to days of, 12; *sponsio* as contract survived to, 95; *expensilatio* obsolete under, 132; fused *receptum* with *constitutum*, 211; on *actio recepticia*, 216
- kalendarium*, use of, 125
- Karlowa, on *nexi solutio*, 53; theory of *auctoritas*, 69; on *uadimonium*, 80; on abolition of *nexum*, 93
- Karsten, on age of *mutuum*, 181
- Keller, on *leges Mancipi*, 62
- Kohler, on analogies to *nexum*, 51
- Labeo, on *foenus nauticum*, 183; on *actio quod iussu*, 208; on *constitutum*, 212
- Lastig, theory as to *societas*, 175
- law, early, had few contracts, 2; monopoly of priestly order, 6
- English, punishment of theft compared, 11; actions of, compared, 159; duties of common carrier, 214
- religious, early support of promises, 4; probably sanctioned *sponsio*, 17
- Leist, early history of *sponsio*, 14; researches into Aryan law, 22; on nature of *uadimonium*, 82; theory of *actio pro socio*, 175
- Lenel, theory as to double formulae, 163; on *actio hypothecaria*, 200; on *receptum*, 215, 217

- Leo, Emperor, his change in the stipulation, 112
- lex Aebutia*, *uadimonium* disappeared soon after, 84; generally fixes period, 90; nature of, uncertain, 91
- *agraria*, on *praedes*, 203
- *Apuleia*, its substance, 120
- *Aquila*, its date, 102
- *Calpurnia*, younger than *lex Silia*, 102, 104
- *Cicereia*, its contents, 121
- *Cincia*, its purport, 113
- *Cornelia*, contents of, 122
- *Furia*, regulated suretyship, 121
- *Iulia municipalis*, silent as to *commodatum* &c., 184
- *Malacitana*, on *praedictura*, 206
- *mancipi*, owes origin to XII Tables, 31, 39, 54; a covenant annexed to *mancipium*, 54; clause of XII Tables creating, 55; embodied in *nuncupatio*, 59; contents of, 60–64; other meanings of, 65, 68, 74
- *Poetilia*, caused disuse of *nexum*, 25; its substance described by Livy, 46, 92; provisions of, 92, 93
- *Publilia*, its bearing towards *uadimonium*, 85; its substance, 119
- *Rhodia*, substance of, 158
- *Silia*, did it introduce *sponsio*? 18; what we know of it, 19; introduced *l. a. per condictionem*, 100; did it create *stipulatio*? 101; its probable date, 102
- lex Titia*, its purport, 112
- libripens*, character of, 30, 54; probably a witness, 52
- Livy, describes *lex Poetilia*, 46, 92; mentions *expensilatio*, 131; mentions *societates*, 177
- locatio conductio*, origin of, 151–153; three forms of, 154
- Maine, Sir H., explanation of contract, 1, 2; theory of *sponsio*, 17; on *actio per sponsionem*, 115; on origin of *expensilatio*, 130
- mancipium* (or *mancipatio*), distinct from *nexum*, 23, 29; derivation of, 23; nature of, 54; modified by XII Tables, 55; Bechmann's theory of, 56, 57; is credit inconsistent with? 63; conception of, indirectly altered, 64; contained implied warranty of title, 70; *fiducia* annexed to, 76, 80; analysis of, 136
- mandatum*, nature of, 160; change in, 163
- Manilius, on *nexum*, 24
- manus iniectio*, regulated personal violence, 26; when exercised, 44; first proceeding in nexal action, 47; used by and against *uas*, 85; abolished in *nexum*, 93
- Marcellus, instance of *dotis dictio*, 35
- Meykow, theory as to *dotis dictio*, 33

INDEX.

225

- Mommsen, theory of origin of *emptio*, 137; on *praediatūra*, 202
- Moyle, on *fiducia*, 75; on *lex Furia*, 121
- Muirhead, on nexal action, 47, 50; on origin of *stipulatio*, 101; on date of *lex Silia*, 102, 103; theory of *emptio*, 137
- mutuum*, peculiarities of, 179; coeval with *emptio*, 181
- negotiorum gestio*, nature of, 167
- nexum*, application of public principle, 7; as form for loan of money by weight, 16; distinct from *sponsio*, 17, 20; compared to vote in *Comitia*, 20; peculiar to Romans, 22; history of, 22–31, 40–54; a loan by weight, 22, 28, 29; distinct from *mancipium*, 23, 29; origin of, 25; witnesses five in number, 26; Varro's remarks on, 29; primitive form of, 30, 40; altered by XII Tables, 40; verbal part strengthened, 41; altered by *lex Poetilia*, 46; theories as to extreme penalty, 49; why this was severe, 50; formula of, 53; abolition of penalties, 92; not abrogated, 93; died out before Empire, 94
- Niebuhr, on nexal penalty, 50
- nomen*, distinct from *expensilatio*, 127
- nouatio*, nature of, 110
- nuncupatio*, as the alleged parent of *sponsio*, 17; nature of, 55; established by XII Tables, 55; Bechmann's theory of, 56, 59; formula in Gaius, 59; description of slaves not allowed in, 62; distinct from *dictio*, 67; *fiducia* not contained in, 76
- oath* (see *iusiurandum*); not ordinarily available, 11; breach of, becomes moral offence, 12; enforced by *actio operarum*, 12
- Ofilius, on *lex Rhodia*, 158; on *actio negotiorum gestorum*, 168; on *a. exercitoria*, 208
- pactum*, a formless agreement, 5; recognized by edict, 158
- *adiectum*, was *dotis dictio* instance of? 34; *fiducia*, an instance, 80
- Pacuius, author of *actio commodati*, 185
- Papirius, commentaries of, 17
- Paulus, on *actio de modo agri*, 61; on *auctoritas* and its origin, 69; on *poenae infitiationis*, 71; as to requisites of *auctoritas*, 74; on *actio ex causa depositi*, 86, 87; defines *stipulatio*, 97; on *foenus nauticum*, 183
- Diaconus, gives formula of oath, 9, 11; defines *consponsor*, 19; defines *stipulatio*, 97
- pecunia credita*, three modes of creating, 101; extension of, 131, 182; Gaius' statement, 212
- people, appeal to, as sanction, 5, 7

- periurium*, meaning of, 10
- Pernice, theory of *actio mandati*, 167
- pignus*, history of, 190
- Plautus, mentions *syngrapha*, 132; did he know *actio emti*? 144; on *locatio conductio*, 154, 155; did he know *actio mandati*? 161; on agency, 165; on *societas*, 171; on *mutuum*, 181; on *commodatum*, 184; on *depositum*, 187; on *pignus*, 190; silent as to *fiducia*, 192; mentions *hypotheca*, 197
- Polybius, gives formula of oath, 9, 11
- Pomponius, remarks on XII Tables, 17; discusses *receptum*, 215
- pontiffs, protected *sponsio*, 15
- Pott, on etymology of *uas*, 82; and of *praes*, 203
- praediatura*, Leist on origin of, 82; its connection with *societas*, 178; nature of, 202; doubtful etymology, 203
- procuratio*, nature of, 163, 166
- promise, three early modes of enforcing, 3; oath most binding form of, 9
- promissio dotis*, nature of, 32
- *iurata operarum*, a survival, 12; analogous to *dotis dictio*, 35
- quaestor*, connection of, with sales, 153
- Quintilian, on condition of nexal debtor, 29; on nexal penalty, 49
- receptum nautarum*, nature of, 214
- *argentariorum*, theories as to, 215; its probable character, 217
- res Mancipi*, not covered by *nexum*, 24, 26; transferred by *mancipium*, 54
- Romulus, laws of, 19
- Rudorff, on *fiducia*, 75; on formula of *sponsio*, 116
- sacer*, use as epithet, 11, 12
- sacra lex*, meaning of, 11
- sale of public lands, formless, 7, 138, 143; early *mancipium*, a form of, 55; completely formless after XII Tables, 88; four elements of, 136; recognition of, 143
- Salvius Iulianus, not author of interdict, 196
- satisdatio secundum Mancipium*, Voigt's theory of, 81; use of, 150
- Savigny, on form of *expensilatio*, 124; on its origin, 130; his theory of *praedia*, 205
- Scaevola, Q. Mucius, on *nexum*, 24; on *locatio conductio*, 155; on use of *actio mandati*, 169; on *a. pro socio*, 172; on *commodatum*, 184; discusses *depositum*, 187
- self-help, earliest method of redress, 3; scope of narrowed, 4; regulated by XII Tables, 47; resorted to in *iusiurandum* and in *nexum*, 84
- Serius Sulpicius, mentions *foenus nauticum*, 182; his classification of contracts, 183; on *actio institoria*, 209

INDEX.

227

- Serius Tullius, laws of, 11; probably fixed number of witnesses, 27, 31; alleged author of coinage, 57
- societas*, Ulpian's classification, 169
- *omnium bonorum*, history of, 172; its fraternal character, 173
- *negotii alicuius*, theories of origin, 174–176
- *nectigalium*, its peculiar character, 176
- sponsio*, a solemn declaration, 7; history of, 13–22; Danz' theory, 13, 19; derivations of, 13, 14, 18; connected with oath, 13; stages of development, 14, 15, 21; exceptional use of, in Gaius, 15; as form for loan of coined money, 16; not mentioned in XII Tables, 16, 39; Sir H. Maine's theory of origin, 17; Voigt's theory, 18; Girtanner's theory, 19, 20; nature of, 21; lacked advantage of *nexum*, 30; supposed connection with *dotis dictio*, 34; three functions, 95; connection with *stipulatio*, 96; in procedure, 113–118; in suretyship, 118–123
- *poenalis*, its nature, 114, 116
- *praeiudicialis*, its nature, 113, 114; instance in *constitutum*, 213
- stipulatio*, easiest mode of contracting loan, 94; connection with *sponsio*, 96; derivation of, 97; a final simplification of *sponsio*, 97; a substitute for *nexum*, 103; results of, 109, 110
- stipulatio duplae*, use of, in sale, 148
- *iudicatum solui*, nature of, 118
- *operarum*, equivalent to oath, 12
- *pro praede litis et vindictarum*, a bond, 118
- *recte habere licere*, use of, 149
- *simplicae*, when used, 70; how framed, 111; use of, in sale, 149
- Sutras*, on wine sacrifice at betrothals, 14; on *consortium*, 172
- syngrapha*, nature of, 132
- tabulae*, ambiguity of, 124, 128; use of, in *hypotheca*, 202
- Terence, gives instance of *dotis dictio*, 33, 34
- Tertullian, on nexal penalty, 49
- Theodosian code, on *dotis dictio*, 33
- Theophilus, illustrates *chirographum*, 133; discusses *constitutum*, 212; on *receptum*, 215
- Trebatius, on *actio neg. gestorum*, 168
- Twelve Tables, on nature of oath, 9, 54; use of *sacer* in, 11; do not mention *sponsio*, 16, 17, 54; intended to reform law, 17; was *sponsio* older than? 18; alleged interpolation in, 23; used *nexum*

- as technical term, 24; regulated personal violence, 26, 47; forms of contract under, 31; Gellius' remarks on, 32, 80; causes leading to, 39; not much concerned with contract, 39; principally with *nexum*, 40; quoted by Festus and Gellius, 40, 43; Voigt's interpretation of, 44, 47; fix qualification of *uindex*, 48; why fixed severe penalties, 51; two changes in *nexum*, 53; introduce *lex Mancipi*, 31, 39, 54; clause modifying *mancipium*, 55; create *auctoritas*, 68; regulated *usucapio*, 69; laid penalties on witnesses, 52, 73; mentioned *uadimonium*, 80; on *actio ex causa depositi*, 86, 87; show complete formalism of contract, 88; characteristics of contract under, 89
- uadimonium*, existed under XII Tables, 31, 80; discussed by Voigt, 80; two kinds of, 81; primitive form disappeared early, 84; possibly a kind of *iusiurandum*, 85; afterwards clothed in ordinary *sponsio*, 86; inadequate, 123
- Varro, derivation of *sponsio*, 14, 97; on its use in money transactions, 16; as to *res nexa*, 24; loose definition of *nexus*, 28, 52; on sales by mancipation, 69, 70; on *uas*, 82
- Ubbelohde, theory of *actio ex causa dep.*, 87; on *a. pignoratitia*, 192
- Verrius, derivation of *sponsio*, 14
- uindex*, defined by Festus, 48
- Ulpian, on *iurata promissio*, 12; on mode of creating *dos*, 32, 33; on distinction between *dicta* and *promissa*, 33, 67; on *mancipatio*, 54, 55, 64; on *societas*, 169; distinguishes *hypotheca*, 199; on *constitutum*, 215
- Voigt, on consequences of breach of oath, 10; theory as to origin of *sponsio*, 18; on action of *dotis dictio*, 36; theory of nexal action, 44, 47; on *lex Mancipi*, 60; on *actio de modo agri*, 61; on penalty of *auctoritas*, 73; on *fiducia*, 75, 76, 77; on *uadimonium*, 80, 81; gives formula of *uadimonium*, 83; on *actio ex causa depositi*, 86; theory of *stipulatio*, 97, 101; his history of the *formulae*, 99; on origin of *actio ex stipulatu*, 106; on forms of *doli clausula*, 108; on processual *sponsio*, 115, 116; on Roman book-keeping, 126; on origin of *expensilatio*, 130; on age of *actio emti*, 142, 144; on *locatio conductio*, 154; on author of *actio commodati*, 186; theory of *receptum*, 215
- usureceptio*, character of, 79; in cases of *praedictura*, 206
- witnesses, called in for *nexum*, 26; number fixed at five, 26