as in mediæval codes, a large discretion being left to the judges. Torture was used both in civil and criminal trials, but in the former only upon slaves and freedmen or infamous persons—such as gladiators—and where the truth could not be otherwise elicited, as in cases affecting the inheritance *(res hereditariae).* Its place in the case of free citizens was taken by the reference to the oath of the party (see Oath). During the republic torture appears to have been confined to slaves in all cases, but with the empire (according to Dion Cassius under Tiberius) a free man became liable to it if accused of a crime, though not as a witness. If a Christian, of however high a condition, he was subject to torture during the period between the edict of Diocletian in 303 and the edict of toleration of Galerius in 311. This short period excepted, the liability of a free man depended upon two conditions, the nature of the accusation and the rank of the accused. On an accusation of treason every one, whatever his rank, was liable to torture, for in treason the condition of all was equal.@@1 The same was the case of those accused of sorcery *(magi),* who were regarded as *humani generis inimici.@@2* A wife might be tortured (but only after her slaves had been put to the torture) if accused of poisoning her husband. In accusations of crimes other than treason or sorcery, certain persons were protected by the dignity of their position or their tender age. The main exemptions were contained in a constitution of Diocletian and Maximian, and included soldiers, nobles of a particular rank, *i.e*., *eminentissimi* and *perfectissimi,* and their descendants to the third generation, and *decuriones* and their children to a limited extent—that is to say, they were subject to the torture of the *plumbatae* in certain cases, such as fraud on the revenue and extor­tion. In addition to these, priests (but not clergy of a lower rank), children under fourteen, and pregnant women were exempt. A free man could be tortured only where he had been inconsistent in his depositions. No one was to be chained in prison before trial, nor could a prisoner be tortured while awaiting trial. The rules as to the torture of slaves were numerous and precise. It was a maxim of Roman law that torture of slaves was the most efficacious means of obtaining truth.@@3 They could be tortured either as accused or as witnesses, but against their masters only in accusations of treason, adultery, frauds on the revenue, coining, and similar offences (which were regarded as a species of treason), attempts by a husband or wife on the life of the other, and in cases where a master had bought a slave for the special reason that he should not give evidence against him. The privilege from accusations by the slave extended to the master’s father, mother, wife, or tutor, and also to a former master. On the same principle a freedman could not be tortured against his patron. The privilege did not apply where the slave was joint property, and one of his masters had been murdered by the other, or where he was the property of a corporation, for in such a case he could be tortured in a charge against a member of the corporation. Slaves belonging to the inheritance could be tortured in actions concerning the inheritance. The adult slaves of a deceased person could be tortured where the deceased had been murdered. In a charge of adultery against a wife, her husband’s, her own, and her father’s slaves could be put to the torture. A slave manu­mitted for the express purpose of escaping torture was regarded as still liable to it. Before putting a slave to torture without the consent of his master, security must be given to the master for his value. The master of a slave tortured on a false accusation could recover double his value from the accuser. The undergoing of torture had at one time a serious effect upon the after-life of the

slave, for in the time of Gaius a slave who had been tortured could on manumission obtain no higher civil rights than those of a *dediticius.@@4* The rules of procedure were conceived in a spirit of as much fairness as such rules could be. Some of the most important were these. The amount of torture was at the discretion of the judge, but it was to be so applied as not to injure life or limb. The examination was not to begin by torture ; other proofs must be exhausted first. The evidence @@5 must have ad­vanced so far that nothing but the confession of the slave was wanting to complete it. Those of weakest frame and tenderest age were to be tortured first. Except in treason, the unsupported testimony of a single witness was not a sufficient ground for torture. The voice and manner of the accused were to be carefully observed. A spon­taneous confession, or the evidence of a personal enemy, was to be received with caution. Repetition of the torture could only be ordered in case of inconsistent depositions or denial in the face of strong evidence. There was no rule limiting the number of repetitions. Leading questions were not to be asked. A judge was not liable to an action for anything done during the course of the examination. An appeal from an order to torture was competent to the accused, except in the case of slaves, when an appeal could be made only by the master.6 The appellant was not to be tortured pending the appeal, but was to remain in prison.7 The principal forms of torture in use were the *equuleus,* or rack (mentioned as far back as Cicero), the *plumbatae,* or leaden balls, the *ungulae,* or barbed hooks, and the *fidiculae,* or cord compressing the arm. Other allusions in the *Digest* and *Code,* in addition to those already cited, may be shortly noticed. The testimony of a gladiator or infamous person (such as an accomplice) was not valid without torture.8 This was no doubt the origin of the mediæval maxims (which were, however, by no means universally recognized),— *Vilitas personae est justa causa torquendi testem,* and *Tortura purgatur infamia.* Torture could not be inflicted during the forty days of Lent.9 Robbers and pirates might be tortured even on Easter Day, the Divine pardon being hoped for where the safety of society was thus assured.10 Capital punishment was not to be suffered until after conviction or confession under torture.11 Withdrawal from prosecution *(abolitio)* was not to be allowed as a rule after the accused had undergone the torture.12 In charges of treason the accuser was liable to torture if he did not prove his case.13 The infliction of torture, not judicial, but at the same time countenanced by law, was at one time allowed to creditors. They were allowed to keep their debtors in private prisons, and most cruelly ill-use them, in order to extort payment.14 Under the empire private prisons were forbidden.15 In the time of Juvenal, if his sixth satire may be believed, the Roman ladies actually hired the public torturors to torture their domestic slaves. As a part of the punishment torture was in frequent use. Crucifixion, mutilation, ex­posure to wild beasts in the arena, and other cruel modes

*@@@1 Cod.,* ix. 8, 4.

*@@@2 Cod.,* ix. 18, 7.

*@@@3 Cod.,* i. 3, 8.

@@@4 Gaius, i. 13.

@@@5 The evidence on which the accused might be tortured was ex­pressed in Roman law by the terms *argumentum* and *indicium.* The latter term, as will be seen, afterwards became one of the most im­portant in the law of torture, but the analysis of *indicium* is later than Roman law. *Indicium* was not quite the same thing as *semiplena probatio,* though the terms appear to be occasionally used as synonyms. *Indicium* was rather the foundation or cause of *probatio,* whether *plena* or *semiplena.* An *indicium* or a concurrence of *indicia* might, according to circumstances, constitute a *plena* or *semiplena probatio.* The difference between the words may be illustrated by a passage from Justin, “Ad cujus rei probationem immittit indices,” xxxii. 2.

*@@@6 Dig.,* xlix. 1, 15.

*@@@7Cod.,* vii. 62, 12.

*@@@8 Dig.,* xxii. 5, 21, 2.

*@@@9 Cod.,* iii. 12, 6.

*@@@10 Cod.,* iii. 12, 10.

*@@@11 Cod.,* ix. 47, 16.

*@@@12 Cod.,* ix. 42, 3.

*@@@13 Cod.,* ix. 8, 3.

@@@14 See, for instance, Livy, vi. 36.

*@@@15 Cod.,* i. 4, 23; ix. 5.