

IN discussing the relation of *master* and *servant*, I shall, first, consider the several sorts of servants, and how this relation is created and destroyed: secondly, the effect of this relation with regard to the parties themselves: and, lastly, it's effect with regard to other persons.

I. As to the several sorts of servants: I have formerly observed^a that pure and proper slavery does not, nay cannot, subsist in England; such I mean, whereby an absolute and unlimited power is given to the master over the life and fortune of the slave. And indeed it is repugnant to reason, and the principles of natural law, that such a state should subsist any where. The three origins of the right of slavery, assigned by Justinian^b, are all of them built upon false foundations. As, first, slavery is held to arise "*jure gentium*," from a state of captivity in war; whence slaves are called *mancipia, quasi manu capti*. The conqueror, say the civilians, had a right to the life of his captive; and, having spared that, has a right to deal with him as he pleases. But it is an untrue position, when taken generally, that, by the law of nature or nations, a man may kill his enemy: he has only a right to kill him, in particular cases; in cases of absolute necessity, for self-defence; and it is plain this absolute necessity did not subsist, since the victor did not actually kill him, but made him prisoner. War is itself justifiable only on principles of self-preservation; and therefore it gives no other right over prisoners, but merely to disable them from doing harm to us, by confining their persons: much less can it give a right to kill, torture, abuse, plunder, or even to enslave, an enemy, when the war is over. Since therefore the right of *making* slaves by captivity, depends on a supposed right of slaughter, that foundation failing, the consequence drawn from it must fail likewise. But, secondly, it is said that slavery may begin "*jure civili*;" when one man sells himself to another. This, if only meant of contracts to serve or

^a pag. 127.

jure gentium, aut jure civili: nascuntur ex

^b *Servi aut fiunt, aut nascuntur: fiunt ancillis nostris. Inst. 1. 3. 4.*