

impair the legal rights of their children, or affect their right to inherit from their father, or to require aliment from him. If the father were guilty of an offence justifying his wife in divorcing him, and she remained unmarried, the children were to be given into her custody and maintained at the cost of the father; but if the mother were guilty, the father had the right of custody. If he were poor, and unable to support them and the mother was rich, she was obliged to take and maintain them. The parties were divested of their marital rights by the death of the husband or wife. Loss of liberty by either husband or wife. After five years since the captive was last known to be alive, his wife could marry again without divorcing her captive husband. Mere loss of citizenship did not dissolve the marriage unless either desired to give up the marriage (C. 5, 17, 1). Since marriage was considered a contract resting on mutual consent, it logically followed that the tie could be broken by the consent of the parties.

Before proceeding any further with our subject, it will become necessary for me to explain to you what is meant by the Modern Civil Law of Europe. I shall have occasion hereafter to speak very often of the Roman Law and the Modern Civil Law. In the 16th and 17th centuries there arose in Holland the classical school of Jurists, which at a later period was succeeded by the systematic and synthetic teachings of the Germans. The influence of the Dutch classical school upon the study of the Roman law was most important. They followed what the Germans termed the "Legal-Ordnung," that is the order observed by the compilers of the Pandects. The Pandects were founded on the writings of Geo. Fred Puchta, Karl Adolf Von Vangerow and Dr. Karl Ludwig Arndts. By the term "Pandekten" or Modern Civil Law is understood the systematic exhibition of the actually existing Roman Law in relation to private rights. These treatises on the Pandects do not embrace the theory of the pure Roman law, but are principles derived from that law applicable to the modern state of thought and civilization. Roman law is in force in nearly all the States of Europe, but in Germany it is confined to the minor States. Those States in which the civil law is adopted are designated "Common law countries." Its

sources are those four component parts collectively called the "Corpus Juris Civilis." Its utility extends so far only as the glossators have declared it to be applicable in practice.

By the modern civil law, when husband or wife gives to the other a just cause of separation, the guilty party suffers a pecuniary penalty. The guilty wife loses her *dos*, so far as she might have reclaimed it after the dissolution of the marriage; where no *dos* has been constituted, she loses one-fourth of her property, the ownership of which goes to the children, the usufruct to the father. In cases of the wife's *adultery*, the penalty is increased to a third. The guilty husband loses the "*Donatio propter nuptias*," and when none has been constituted he forfeits one-fourth of his property in favour of his children, the mother having the enjoyment of the usufruct. When there are no children, the property goes in both cases to the innocent husband or the innocent wife, as the case may be.

The laws in the several Grecian States, regarding divorce, were different, and in some of them, men were allowed to put away their wives on slight occasions. The Cretans permitted it to any man who was afraid of having too great a number of children. Among the Athenians, either husband or wife might take the first step. The wife might leave the husband or the husband might dismiss the wife. Adultery on the part of the wife was in itself a divorce; but the adultery, we may presume, must have been legally proved. The Spartans seldom divorced their wives. The Ephori fined Lysander for repudiating his wife. Ariston (Herod. VI, 63) put away his second wife that he might have a son, for his wife was barren. Anaxandrides was strongly urged by the ephori to divorce his barren wife, and on his not consenting, the matter was compounded by his taking another wife, thus he had two at once, which Herodotus observes was contrary to Spartan usage. Whether the divorce was voluntary or not, the wife could recover from her late husband all the property she had brought to him as dowry upon their marriage. The party opposed to the separation could institute an action against the dissolution of the marriage; but of the forms of the trial and its results, we have no information.

Adultery was the only cause of divorce