

a father from disturbing a harmonious union, unless, as Marcus Aurelius added, for very weighty reasons. The father could not of course take away his daughter from her husband if she were not emancipated.

*Divorce by mutual consent (divortium bona gratia).*—From the foundation of Rome to the time of Justinian, divorces might take place by mutual consent without any check from the law whatever. For a long time divorce was not abused by the Romans, but toward the latter part of the Republic and under the Empire divorces became very common. Seneca notices this laxity of manners; and Juvenal (6 Sat., 20th line) gives a remarkable instance of a Roman matron who is said to have gone the round of eight husbands in five years. Pompey divorced his wife Mucia for alleged adultery. Cicero speaks of Paula Valeria as being ready to serve her husband with notice of divorce on his return from his Province. Cicero himself divorced his wife Terentia after living with her thirty years. Justinian prohibited divorces by the mutual consent of the parties, except in three cases: First, when the husband was impotent; second, when either husband or wife desired to enter a monastery; third, when either of them was in captivity for a certain length of time. At a later period Justinian enacted that persons dissolving a marriage by mutual consent should forfeit all their property and be confined for life in a monastery, which was to receive a third of the forfeited property, the remaining two-thirds going to the children of their marriage. This severity, so much at variance with the Roman spirit, indicates the growing power of the clergy. Justinian's nephew and successor repealed his uncle's prohibition, and restored divorces *bona gratia*. Before the Lex Julia de Adulteriis no special form was observed,—either party could dissolve the marriage by telling the other that it was at an end. The husband generally took the keys from his wife, put her out of his house, gave her back her dowry, and so dissolved the marriage. This might be done in the wife's absence. Cicero divorced his wife Terentia by letter.

The Lex Julia de Adulteriis required a written bill of divorce (*libellus repudii*); the written record of the marriage was destroyed and the divorce publicly registered. There must be a deliberate intention to break up the marriage,

and the repudiation was considered valid, although there was no excuse for it, and it was unnecessary even to acquaint the other party with the change in their condition. If the wife made a bill of divorce in the presence of the requisite witnesses, the marriage was dissolved without delivery of the bill to the husband, and even without his knowledge of it. It was proper, however, to deliver the bill of divorce to the other party. The laws of the XII Tables seem to have recognized freedom of divorce, although it is said that no one took advantage of the liberty for 500 years, until Sp. Carvilius put away his wife for barrenness by order of the Censor. The censors were the only check on divorce during the Republic. L. Antonius was expelled from the Senate on account of his unjustifiable repudiation of his wife. A wife *in manu* could not divorce her husband; but if he divorced her, she could require him to release her from the *manus*. The power of repudiation was reciprocal.

By the Julian law (*lex Julia et Papia Pappæa*) if the wife was guilty of adultery, her husband in divorcing her was allowed to retain a sixth part of her dowry (*dos*). If the fault was less serious, he could only retain one-eighth (Ulp. Frag. C. 5, 12, 24).

If the husband were guilty of adultery, the wife could command immediate restitution of her dowry. If the fault was less serious, he must restore the dowry in six months. The penalties ceased if both sides were in fault.

Constantine's legislation was against capricious repudiation, and specified the causes for divorce without incurring penalties.

A woman could repudiate her husband without blame in case he was guilty of murder, or prepared poisons, or violated tombs.

If she divorced her husband on account of being a drunkard (*ebriosus*) or gambler (*aleator*), or associating with loose women (*mulier cularius*), she forfeited her dowry and was punishable with deportation.

A husband could divorce his wife without blame: 1. If she were an adulteress; 2. Preparer of poisons; 3. Or a procuress. If for any other cause than one of these three, he forfeited all interest in his wife's dowry; and his first wife, if he married again, could take the second wife's dowry as well.

Honorius and Theodosius ignoring the consti-