

Novel 140.

That marriage may be dissolved by mutual consent.

(Ut matrimonium ex consensu solvi possit)

Emperor Justin to Julianus, prefect of the City.

Preface. There is nothing more honorable among men than marriage, from which spring children and remoter descendants and the inhabitants of lands and cities and the best uniting-tie of the republic. We wish, accordingly, that marriages should be so fortunate for the contracting parties, as never to be the result of a sinister demon, and that the married people should never separate, if they do not have a just cause for dissolving the marriage. But since it is difficult for all to live accordingly - for it is impossible that there would not be among such a multitude some unreasoning hatred - we have thought it best to find some remedy for this, and especially for cases where the weakness of the mind has increased to the extent that an implacable hatred has arisen between the married couple. Antiquity, indeed, permitted such people to separate without danger, when they did so by mutual wish and consent, and many laws were passed which stated and provided this, and a dissolution of a marriage in this manner was, in the native tongue called a friendly divorce (bona gratia)<sup>(a)</sup>. Later, however, a law was enacted by our father,<sup>(b)</sup> of blessed memory, who exceeded all former emperors in piety and wisdom-bent as he was upon a laudable and firm purpose, without considering the miserable and infirm mind of others - which forbids the dissolution of marriage by mutual consent. And we have wished that it might remain in force and effect. But many have come before us, who bear the marriage contracted by them illy and abhor it, and who complain of the war and the fights arising at home on that account - a matter that is unfortunate and grievous - and they ask that the marriage may be dissolved, although they are unable to specify any cause for which the law allows that to be done with

impunity, We have put off their desire and earnest wish for some time, exhorting them and again threatening them to desist from their mutual and insane hatred, and to return to mutual concord and come to a better state of mind. But we accomplished nothing, since it is difficult to reconcile those who are once beset by an insane feeling and by hatred. And it came about that some of them resorted to mutual snares, using poison and other things to cause death, so that not even their children could bring them to a conciliatory mood toward each other.

(a) See note to C. 4 Nov. 22.

(b) Nov. 117 c. 10.

c. 1. Since we are of opinion that this is inconsistent with our times, we have directed our attention to the present law, by which we ordain, that, according to the ancient law marriage may be dissolved by mutual consent, and the penalty provided in the constitution of our father for those who dissolve marriage by mutual consent, shall not longer be in force. For if marriage is entered into through mutual affection, it is rightly dissolved by a contrary sentiment by those who declare such sentiment in a bill of divorce. It is clear that everything else stated in the laws, and particularly in the constitutions of our divine parent concerning marriages and children and causes for which marriage may be dissolved, and the provisions in case marriage is dissolved without cause and without mutual consent - as is permitted by the present constitution - and the provisions for penalties provided for them, shall also remain valid and in force pursuant to this, our present, law.

Epilogue. Your Glory will cause this our will, declared by the present imperial law, to be made known to all in this imperial city in the usual manner.

Given Sept. 14 (566).