COEMPTIO REDEMPTA†

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1. ROMAN MARRIAGE AS A "FREE" CONTRACT

The common lawyer proceeds, perhaps to a special degree, on certain inarticulate major premisses whenever he approaches the concept of marriage. Due to the course of English legal history, the law of marriage did not become a part of the common law before the jurisdiction of the ecclesiastical courts was transferred to the new secular courts; and now almost exactly a century after the Matrimonial Causes Act of 1857, the practitioner is mainly concerned with the law of marriage through the substantial and lucrative activity of breaking marriages as quickly as the crowded lists will allow. The virtual monopoly of the ecclesiastical courts over matrimonial business until 1857 has left on our law of marriage and divorce certain continuing marks, for instance, of the central role of "sin" and "offence" as the basis of matrimonial relief. Such doctrines certainly served the Church well as a means of preserving some temporal control over its members; and they also reflected the absorption by the Church, in the course of its own expansion, of much religious fervour of heathen converts to Christianity. Certainly it is clear that such fervour was readily adapted to the ends of reducing the status of women from that enjoyed in the mature Roman law, a potent fact for the future history of marriage, and of attributing to marriage a sanctity and a stringency of bond not previously found in that institution.

It must always be salutary therefore for the common lawyer to ponder on the institution of marriage in Roman law and history, showing, as it does, remarkable differences of basic concept. Yet this exercise is made as difficult as it is salutory by our inability to approach it free of such theological notions as those of the divine origin and therefore human indissolubility of marriage, of "crime against marriage," and of "guilty party" notions quite alien to the remarkable blending and interweaving of principles central to the Roman law. Roman law moreover, considered nullity as a purely secular and indeed almost

† *Bibliography.* The following abbreviations are used in the footnotes: BIDR = *Bullettino dell' Istituto di diritto Romano,* CIL = *Corpus Inscriptionum Latinarum,* FIRA = *Fontes Iuris Romani Anteiustiniani,* FV = *Fragementa Vaticana,* RIDA = *Revue Internationale des Droits de l' Antiquité,* TLL = *Thesaurus Linguae Latinae,* VIR = Vocabularium Iurisprudentiae Romanae. In addition to the works cited herein the following should also be referred to: Rossbach, *Untersuchungen ueber die romische Ehe* (1853); Koschaker, "*Eheschiessung und Kauf nach alten Rechten*", (1950), *Archiv Orientalni,* 210-196; Volterra, "*Ancora sulla manus e sul matrimonio*", (1949) *Studi Solazzi* 675-688; "*Nuove osservazioni sulla 'conventio in manum'*" (1951) 3 *Atti . . .* Verona 29-45; Kaser, "*Ehe und conventio in manum*" (1950) 1 *Jura* 64-101; Carrelli, *Coemptio matrimonii causa* (1933); Jean Gaudemet, "*Observations sur la Manus*" (1953) 2 *Archives d'Histoire du Droit Oriental* 323-353; Koestler, (1947) 55 ZSS 65; Duell, (1944) 1 *Festschrift Wenger* 204 ff., of which unfortunately only those of Volterra and Gaudemet were available to the present writer. For an account of the status of women in laws earlier than the Roman see René Dekkers, "*Epitomae*" (1953) 2 *Archives d'Histoire du Droit Oriental* 153-193.

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technical legal matter, albeit derived from pontifical concepts, not as a beatification of elementary rules of eugenics; and treated divorce as the resolution of a contract, not as the punishment of an offence against a tolerated (but nevertheless, spiritual) union.

These positions were not, of course, reached by the Roman law except after a course of development. Excluding the period from Constantine to Justinian, when Christian principles had already made their mark, and the works of the classical jurists had already begun to suffer revisions and diversions we find a span of fully seven hundred years of Roman history during which there flourished a matrimonial law and ceremony very different from our own. We refer here to marriage as accompanied or unaccompanied by *manus* of the husband over the wife; and we are concerned in the present paper to uncover, free of modern preconceptions, the true historical role of *manus* in Roman marriage, and in particular the role of *coemptio* as a means for the creation of *manus*.

Although *manus* readily lends itself to be treated as a kind of absolute control by the husband over his wife associated with the creation of the marriage, and, indeed, as an exact equivalent to one form of creation of the marriage, we shall submit that this was not the case. For we consider that *manus*, at any and every period of Roman history at which it is presented to us, is nothing more nor less than a legal statement of the relationship, both personal and proprietary, existing between a man and a woman who were (except where a fictitious use was made of the ceremonies for other purposes) already married, and whose marriage had become effective by the performance of religious ceremonies. That is not to say that for the Roman jurists marriage constituted solely a religious bond, but only that for them the religious ceremonies constituted ample legal evidence of the *animus et corpus* they required for marriage. *Manus* was not a part of either the form or substance of the creation of marriage status. We also consider that the relationship denoted by *manus*, though enunciated in strong terms, so as to make the husband a "father" and "owner" of the wife and her property, served rather the function of giving to the governance of affairs of the married couple the Roman dignity and *humanitas* by submitting it to the surveillance of the family council, so important at all stages of Roman development.

Bearing these factors in mind we shall attempt to prove that the means of entering *manus* were developments of forms of proprietary acquisition utilised in the law of persons, so as to achieve such results as unity of property in a family, the establishment of the wife in her husband's family with a position equivalent to that enjoyed by each natural member, and the securing of rights on intestacy between husband, wife and children. In so doing we shall show that the Roman jurists, far from giving credence at law to such archaic social habits as bride-purchase and trial marriage, both refined and complicated their system of entry into *manus* so that even the indignity arising from the proprietary nature of the transaction was reduced to vanishing point by a form of purchase between husband and wife.

II. *MANUS* AND MARRIAGE AS DISTINCT LEGAL CONCEPTS

All textbook writers on Roman law emphasise that the power of the head of the family, the *patria potestas*, was of the utmost importance. Schulz[1], for example, calls it the "palladium of Romanism", and is at pains to show that

[1] *Classical Roman Law* (1951) ss. 88,240.

the Roman lawyers preserved the image even when little more than lip service was being paid to its original authority. Furthermore *potestas* involved such an extensive ambit of power as to include the persons and property of descendants whether naturally or artificially related to the *pater*. This much it is easy for us to understand for we are both familiar with and sympathetic to the claims of a patriarchal cosmogony and the existence of a patriarchal order within the family. On the other hand the common lawyer, for example, will look in vain among the rules of Roman law for either *primo* or *ultimo-geniture*, and may be surprised at the absence of a fixed age of majority involving release from the *potestas*.

Alongside this natural power of the oldest male[2] in a family, the Roman lawyers dealt with another classification of power, described as *manus*. This word, literally meaning "a hand",[3] and thus in itself involving the notion of power or control, has a particular usage among the jurists (and in the works of Cicero) namely, the power exercised by a man over a woman and her property as a result of the performance of acts recognised by the law as sufficient to give rise to such a power. At this stage we cannot afford to be more specific in description, though it is well known that *manus* is largely bound up with the relationship of husband and wife. Thus we cannot even say "woman not related to him by blood", for there would seem to be no objection to an emancipated *filiafamilias* entering into the *manus* of her father, brother or even of her son. Nor can we be sure that the Roman lawyers, before the introduction of Greek dialectic and the consequent applications of definitions and distinctions within the law,[4] attached any significance to the use of the terms *potestas* or *manus*. Thus in D.50.16.215,[5] it may well be that Paul in the original included *manus* under the heading *potestas*. For Gaius there is clear distinction between *in potestate, in manu, in mancipio esse*,[6] yet for him slaves are in the *potestas* of their masters, whereas Paul is content with *dominium* for slaves.[17] As far as *manus* is concerned, Gaius, at least, is quite definite on one point, namely, that only women may come under *manus*: "*Sed in potestate quidem et masculi et feminae esse solent; in manum autem feminae tantum conveniunt.*" (G.1.109.)

Now from this the assumption is frequently drawn that entry into *manus* by the fulfilment of the legal requirements constituted a Roman mode of entry into marriage. By this we mean, of course, marriage as a legal term, in the sense that persons between whom the manus bond existed were thereupon legally husband and wife, their children legitimate, their claims on intestacy secure

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[2] Except in the case of the adoption of a person older than oneself, as in Cicero, *De domo sua*, 14 (34-8).

[3] *Cf.* German and Anglo-Saxon "*Mund*". *Manus* and *caput* are well in evidence in the Roman law of status. It may be that *manus* as a term of art is older than both *potestas* and *mancipium* provided that "art" is not thought of as a legal term. See Livy, 34, 2, 11; Pliny, Letters 8, 18, 4; *Pap. Oxyr.* IX 1208, 6 (A.D. 291); X 1268, 9 (third century A.D.): τοῦ πατρὸς ἔχοντος αὐτὴν ὑπὸ τῇ χειρὶ κατὰ τους Ῥωμαίων νόμους.

Thus *manus* in the legal sense is never divided until Justinian; *Inst.* 1.12.6; Code 8.48.6 (A.D. 531). On these passages David and Nelson, *Gai Institutionum* (1954) (*Leiden*), *Kommentar* 149, says:—"*Uebrigens wuerde, stets vorausgesetzt, dass die Inst 1, 12, 6; tatsaechlich sua manu dimitterent enthalten haben, die justinianische Kommission nicht vor der Gefahr zurueckgeschreckt sein, sich zweideutig auszudruecken, da sua manu auch 'eigenhaendig' bedeuten kann.*" But for *potestas* see "*Patriciorum auspicia in duas divisa sunt potestates . . .* " cited Bremer, *Jurisprudentiae antehadrianae* 1, 163; Cicero, *Pro Murena* 12, 27 "*quae potestate mulierum continerentur*" and see *infra* n. 5.

[4] Schulz, *Roman Legal Science* (1946) 62 ff.

[5] " '*Potestatis' verbo plura significantur: in person magistratuum imperium: in persona liberorum patria potestas: in persona servi dominium.*"

[6] G. 1, 49; 1, 142; 2, 96; 3, 163. This was a set phrase of the *scribae* (draftsmen) also. See *Lex Salpensana, Rubric* XXII and text in I FIRA 204. *Cf. Epit. Ulp.* 19, 18; *Aulus Gellius* 4, 3; 18, 6.

[7] Later referred to as *Dominica potestas. Cf.* G. 3, 167.

and so on. It is true that most references to *manus* are connected with husband and wife and that the notion of ownership of a wife carrying with it a measure of control or power over her is one that is readily acceptable. Yet such power or control as was exercised by the man over the woman resulted solely from her entry into *manus*, and the creation of the *manus*-bond and entry into marriage were two different institutions[8]. *Manus* cannot be shown to have ever been a necessary legal consequence of marriage at any time in Roman law, nor was a marriage necessarily in existence between a man and woman in every case in which the *manus*-bond had been created. It must be acknowledged, however, that attempts to make an accurate judgment in this matter are, quite apart from the lack of reliable sources in the early period, considerably hampered by an inability to be certain as to the point in time at which the Romans achieved a disassociation between marriage as an institution at law and marriage as an act of 'religion'. Can we be sure that there existed such a division at the time of the Twelve Tables, for example? Or, to look at the matter another way, can we suggest that there would be a need for "laws" controlling the validity of entry into marriage, before "law" had evolved rules governing interstate succession, *ius conubii*, consanguinity, legitimacy and the like? Indeed, to determine the priority between marriage and legitimacy may be as fruitless a pursuit as to determine the same problem between the chicken and the egg,[9] particularly when we remember that for much of the early part of Roman legal history the pontiffs themselves were regularly associated with the direction and practice of the law. Even in the common law which knew a clear enough distinction between *ius* and *fas*, the ceremonies by which persons entered matrimony were never a subject for authoritative study.[10]

Yet in both systems of law the relationships, both personal and proprietary, between husband and wife were clearly governed by law alone. In Roman law this is true of the Twelve Tables, for already by this time jurisprudence had provided means of avoiding *manus* in one instance,[11] and it is only by recognising a clear distinction between marriage and *manus* that this development can be satisfactorily explained. For the Twelve Tables is, by and large, the code of a society that has made much progress and not one in which persons would be made to remain in doubt as to whether they were married or not. Thus the notion of *usus* as a type of trial liaison to be turned at the end of a year into a lawful marriage must be excluded. Certainly the introduction of the *usurpatio trinoctii* would do nothing to alleviate this position since it would remain open to the "wife" in each year to prevent the "marriage" from existing. Nor can we avoid this difficulty by treating *usus* as different from *coemptio* and *confarreatio*. Corbett, for example, believes "that the legal forms of marriage were (originally) identical with the forms for the creation of *manus*". Yet a few pages later he is "forced to admit the existence of free marriage prior to the Twelve Tables", that is a marriage that does not automatically involve *manus*, and regards *usus*

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[8] See Volterra, *La conception du mariage d'apres les jurisconsultes romains* (1941) and the same author in the *Bibliography supra*.

[9] Though the legitimacy of posthumous children seems to have been a secular matter and one on which a firm stand had been taken by the time of the Twelve Tables according to *Aulus Gellius* 3, 16, 12.

[10] The analogy is not accurate because the Ecclesiastical Court also applied "*ius*" not "*fas*". However, the significance lies in the willingness of the common law to leave the matter to another authority.

[11] G. 1, 111 "*Itaque lege duodecim tabularum cautum est, ut si qua nollet eo modo in manum mariti conuenire, ea quotannis trinoctio abesset atque eo modo cuiusque anni usum interrumperet*". On this see a recent paper by R. Filhol, "*L'Usurpatio Trinoctii*", presented to the *Institut de Droit Romain*, 22 January, 1955, in which the relationship of *confarreatio and trinoctium* is examined in the light of Aulus Gellius 10, 15.

"not as a form of marriage, but solely as a means of acquiring manus".[12]

These difficulties, however, disappear if we separate marriage and *manus*. There is no difficulty in allowing the marriage itself to be valid without legal form. The absence of discussion of form in the texts can be attributed quite simply to the fact that, if the jurists handled this field at all, their works have not survived. We may be certain that the religious ceremonies themselves gave sufficient indications of *animus* and *corpus*, indications which later became expressed in the terms *deductio in domum* and *consensus facit nuptias*.

Again, the most part of Gaius' treatment of the subject supports what has been said. Not only does he deal with marriage as a separate topic, he also uses language consistent with the distinction. The best example is G.1.139: "*Idem iuris est si cui post factum testamentum uxor in manum conveniat vel quae in manu fuit nubat.*"

We might also go further and suggest that it is only a woman *already married* who can enter into *manus*. Gaius speaks regularly of *mulier* or *uxor*, the two words being readily interchangeable for 'wife'.[13] In a case already cited[14] he uses the term *femina* but it is possible that here, as elsewhere[15] the word 'wife' would be ambiguous, especially since the *manus* which is to be entered need not be that of her husband. This much would be, however, an extreme hypothesis and would seem to put a great premium on marriage *tutelae evitandae causa vel sacrorum interimendorum causa vel testamenti faciendi causa!*[16]

III. *USUS AND COEMPTIO*: CURRENT THEORIES AND AN ALTERNATIVE SUGGESTION.

We are left then with *manus* itself, a relationship entered into primarily by husband and wife which had as its result the severance of the *patria potestas* of the wife's father and the creation for her of a position *filiae loco* to her husband. With regard to her property, this became the property of her husband, through *dotis nomine*.[17] Entry into *manus* was achieved *usu, farreo, coemptione*, three legal ceremonies of which conflicting accounts have survived. Here we shall be concerned with *coemptio*, though some reference to the other two institutions will be required. References to *coemptio* are not large in number. As might be expected, the most important source is Gaius, even though *manus* did not last as an effective part of the law for more than a century or so after his death. Besides his account in the Institutes, there are chance references in Cicero, Servius, Boethius and Isidore, combined with some inscriptional records. Yet the sum total of this material is neither sufficient to supply full answers to the many problems nor consistent in its information. Furthermore, the text of Gaius is deficient in some important places, and, when we remember that we are

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[12] *Roman Law of Marriage* (1929) 68, 86.

[13] There is as much distinction in many instances as between "wife" and "married woman". "*Uxor*" and "*vir*" are regularly paired as are "*mulier*" and "*maritus*", but there are many exceptions. Even a *mulier-virgo* distinction is not consistently maintained. Compare *Epit. Ulp.* 11, 20 and *Frag. Ulp. ad Edictum* I: "*Inuenimus apud veteres mulieris appelatione etiam virgines contineri*". Also see *Epit Ulp.* 7, 1-4; Paul *sent.* Titles 9-24; *F.V.* 305; *Collatio* 6.1.1.

[14] G. 1. 109.

[15] E.g., G. 1, 118; 115(a).

[16] It would also make nonsense of the text G. 1, 139 "*vel quae in manu fuit nubat*". For, since the process *coemptio fiduciae causa* only required the woman to remain *in mancipio* for a few moments, the *coemptionator* who thus changed the *causa* of the transaction would have to be struck by Cupid with much the same speed as Lucina would need in assisting the wife of a son in process of emancipation (See G. 1, 135.). The text may well be gloss, especially as it ends with a "*quasi*". For an interpretation of the text see Duell, (1944) 1 *Festchrift Wenger* 207, and against him, Gaudemet, *op. cit.* 333.

[17] Cicero, *Topica* 4, 23; *F.V.* 115.

dealing with a legal institution of some six to seven hundred years duration, the tendency to place too much reliance on what he tells us, either by way of taking his word for the actual provisions of the Twelve Tables or by way of adopting his statement of the law in his day as though it had been necessarily the same for all time, must be particularly guarded against.

Coemptio appears as a conveyance of the wife to the husband, the transaction taking the form of *mancipatio*, and the first problem is the establishment of *coemptio* in its correct historical setting. Most writers have been content to regard *coemptio* as old—Corbett, indeed, cites with apparent approval the suggestion that *coemptio* formed at one time part of *confarreatio*.[18] This, however, seems to go too far for, whereas *confarreatio* is entirely bound up with religion and is mentioned by the lawyers purely for the sake of completeness, *coemptio* has the air of being the product of juristic technique, especially in so far as it was used to bring *manus* into existence apart from marriage. Rossbach[19] considers that *coemptio*, as a form of bride-purchase, antedated *confarreatio*, as a purely religious ceremony, but there is no reason to suppose that *confarreatio* is not *sui generis* in that the involved ceremony was both a marriage and an entry into *manus*. In any event *confarreatio* seems to be used only for entry into certain of the higher priesthoods by the time of Cicero[20] and to have been confined to patricians.

One recent suggestion, however, has, without prejudice to the position, rearranged the commonly accepted picture with regard to *coemptio* and *usus*. Levy-Bruhl[21] has put forward the following view:—

> In ancient times, the Romans practised a marriage contracted without formality, which automatically produced *manus* at the end of a year, by the effect of *usus*. Then, *usus* falling into desuetude, for reasons and by processes which we will have to study, the marriage without formality naturally became a marriage without *manus*. Nonetheless, spouses who so desired were permitted to place themselves again in the condition of a marriage *cum manu*. The means was given to them by *coemptio*. Finally, *coemptio* itself fell into desuetude, so that *manus* ceased to exist. The evolution was complete at the end of the third century of our era.
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> *Coemptio* is thus not the survival of a real sale. It appears, rather, as an artificial procedure invented by ingenious practitioners to achieve by means of an adequate legal act that which in the previous age was produced by the double effect of marriage and prolonged cohabitation.

Levy-Bruhl thus considers *coemptio* to have been a purely juristic invention coming at a much later date to supply an apparent revival of the need for entry into *manus*. At first sight this is an attractive theory. Marriage is allowed to be effective in the absence of civil forms, a point already stressed and *manus* in its turn comes about at the end of each year without additional form.

> I wish to make it clear that during the first year when she is in the home of her husband without being under his *manus*, the woman is nevertheless married; she is his legitimate wife. In default of civil formalities, religious ceremonies have confirmed the marriage.[22]

Furthermore, the tendency of the jurists to make use of an existing legal institution to serve new ends is relied upon for the subsequent invention of *coemptio*. However, this theory seems to be over-simple, especially since it

[18] Corbett, *op. cit.* 79, n. 4.
[19] Cited Corbett, *op. cit.* 70, n.l.
[20] Inference from Cicero. *Pro Flacco* 34, 84 (*infra* p. 81) who omits *confarreatio*. *Cf.* Tacitus *Annals* 4, 16.
[21] *Nouvelles Etudes sur le Tres Ancien Droit Romain* (1947) 64, 76.
[22] *Op. cit.* 65.

involves the proposition that there never existed in the early period of Roman law any certain and clear-cut way of getting a woman into *manus*, at least not until the end of a year. Levy-Bruhl regards this year as a proving-period in which perhaps, "*elle a mis au monde un enfant ou elle presente des signes de maternite future*".[23] But if we look at less usual, though not extraordinary, cases this simple picture has no place nor does it serve as a reliable model. Thus there would be no point in delaying that, which was, at least before the introduction of the *trinoctium* by the Twelve Tables, inevitable. For if the wife had brought a large dowry and the husband was not rich, or again, if both the parties were *sui iuris* before marriage, so that there would be no father-in-law to please nor any *familia* in the full sense into which the new bride would need a year to be so carefully integrated, it is difficult to see what purpose a trial period could serve. Again, Levy-Bruhl himself says[24] "*au bout d'une annee si la femme a donne toute satisfaction a son mari, elle est, sans autre forme introduite dans la famille de celui-ci*". But even supposing this satisfaction is not apparent to the husband, there is no means of preventing the inevitable. Whatever view we take of *usus*, whether or not we try to equate it with *usucapio*, the husband cannot prevent *manus* from coming into existence. Indeed, if we say that he can divorce her, this only serves to emphasise the inevitability since such a drastic step is all that can prevent the creation of *manus*.[24a]

A further matter of importance is that the whole story of *usus*, later to be called *usucapio*,[25] appears to consist of a remedy to supplement acts at law that were defective "mechanically" without being contrary to law. Seen in this light it would seem to have been a much later development of the Roman law to allow a juridical status to be achieved by the effluxion of time alone. On the other hand, if we regard *usus* as nearly co-eval with *coemptio* but acting as a supplementary procedure then some measure of uniformity of meaning could be expected.[26] (This point will be expanded later.)

A final criticism of Levy-Bruhl's thesis is of a negative character but, nevertheless, is not without importance. No reason appears for the reintroduction of a means of entering into *manus*. According to his thesis, after the *ius trinoctii* was invented, wives had assiduously to take their annual leave of absence to avoid *manus*, until at last "*grace au consentement tacite du mari, toute se passe comme si le trinoctium etait accompli chaque annee*" and this became simply marriage *sine manu*. One can well imagine that this might be an uneasy state of affairs especially in the case where there hung in the background the son's *paterfamilias*, for he it would be into whose hands the proprietary rights arising from *manus* would fall, if not those over the wife's person.[27] Why, too, should the texts show Cicero talking in one place of *usus* and *coemptio* in equal terms, so as to give the impression that in the case in which he was engaged both were equally likely to have occurred, and in another place of

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[23] *Op. cit.* 69.

[24] *Op. cit.* 69.

[24a] The position of the donor of a dowry would also be uncertain since it could not be determined from year to year whether there was any chance of the dowry or its equivalent ever being recovered. For if the woman came under *manus* the dowry would be under the complete control of the husband.

[25] Thus G. 1, 111 "*nam velut annua possessione usu capiebatur*".

[26] For a comparative study of *usus* see C. Westrup, *Quelques observations sur les origines du mariage par usus et du mariage sans manus dans l'ancien droit romain.* (1926).

[27] The divisions of terminology to which we have already referred (*supra n.* 5) are made more confused by the conclusion that the wife of a son in power is *in manu filii*, G. 3, 3. (= *Collatio* 16, 2, 3.). As to rights over the person see Plutarch, *Rom.* 22 (text I FIRA 8); G. 1, 118; 118 (a) (? *noxae deditio* see Girard, 2 *Melanges* 325-6).

the common ignorance of the verbal formula that the *coemptio* required?[28] Furthermore, Aulus Gellius, the raconteur who brings out many a useful scrap of older legal history, tells us of Q. Mucius Scaevola, a contemporary of Cicero, using the *ius trinoctii* as an illustration of the way in which the Roman night and day were arranged so that the last six hours of a "night" were part of the next legal "day", implying that *usus* was still a familiar occurrence.

Even assuming that marriage without *manus* did come about in this fashion what need would there be for a new method of entering *manus?* If a *menage* already in existence wished to change its position in law, there would be no objection to the original "*consentement tacite du mari*" being equally tacitly withdrawn. Cicero in the speech *Pro Flacco* just mentioned, tells us that *usu in manum conventio* would need the consent of tutors. Although Levy-Bruhl regards this as a clue that by this time *usus* now needed some special authority to become effective,[30] the argument that Cicero gives that "*nihil potest de tutela legitima nisi omnium tutorum auctoritate deminui*" would have been equally valid in the earlier period after the marriage of a woman *sui iuris*.[31] This passage can only mean that in Cicero's time *usus* was still quite available for the creation of *manus* and that, if *manus* was not any longer a regular occurrence, there would have been no need to invent a new procedure.

What may be true, however, is that the name *coemptio* was a later creation of the jurists, and that all the difficulties surrounding the usage of this name may have been created without justification. The opinions of Coke and Blackstone as to the state of English law four or five hundred years before their time would receive less attention than those of Maitland on the very same period, and the changes of meaning that have occurred in the English legal terms such as copyhold, bargain and sale, fine, use and the like can at least allow us to entertain the possibility that a similar change of nomenclature occurred in the case of "entry into *manus* by conveyance."

Our thesis, therefore, is as follows: Marriage was from the earliest time "free" in the sense that a union sufficiently legal to allow the procreation of legitimate children could be brought into existence by a religious ceremony alone. Nevertheless, the customary grouping of persons and property as *familiae* required as a matter of routine that the wife should be transferred by *mancipatio per aes et libram* to her husband, and that this transfer should take place at the time of, or after, the marriage. In the case of a woman *sui iuris* there would be no one who could sanction the ceremony of mancipation, since the tutors did not have *patria potestas* nor, in the earliest period could the woman be regarded as capable of transferring herself. For a woman *sui iuris*, therefore, and also for cases in which the *mancipatio* had been defective, the doctrine of *usus* was allowed to operate. In the Twelve Tables the *decemviri* were able to make one inroad on this system. They could not interfere with the *mancipatio*; but they could, and did, leave it entirely up to the woman *sui iuris*, whether or not she allowed *manus* to come into being, the original consent of the tutors being essential to provide the *auctoritas* to the "transaction." At a much later date, the name *coemptio* was given to a slightly different ceremony based on *mancipatio*, which by then had become available to all women whether *alieni* or *sui juris*. The reason for the change was due to the practice that had come into being from about 200 B.C. onwards of using *manus* to avoid tutors, to destroy the *sacra* and to make a will. These, of course, were all

[28] *Pro Flacco* 34, 84 (*supra* n. 20). *De Oratore* 1, 56, 237 (cited *infra* n. 69).
[29] *Aulus Gellius* 3, 2.
[30] *Op. cit* 73.
[31] For text see *infra* p. 000.

matters of concern to a woman *sui juris* whether married or not. If *alieni juris* she would have neither tutors nor *sacra* nor property.

A. *The Usage of "Coemere" and its Related Forms in the Legal and Non-legal Sources.*

Before we examine the texts, we can consider some of the advantages that such an interpretation of the evidence gives us. In the first place it allows us to retain *manus* separate from marriage and makes the creation of the *ius trinoctii* reasonable at an early date when the idea of the *filiafamilias* choosing a family in which to become *alieni iuris* seems unlikely. Again it gives to *usus* a meaning more in keeping with its well-attested usage in other departments of the law. Lastly, by treating *coemptio* and *usus* as an allied pair of legal concepts[32] so as to avoid the almost "sacred trilogy" method that penetrated late Republican and subsequent law, and by thus treating *confarreatio* as separate, we need not attempt to see either *coemptio* or *usus* as bride-purchase or trial-marriage. For, however much the records of sociological phenomena display these latter as common patterns, history does not present them as purely juridical institutions; and, in any event, they were ways and means of entering into marriage itself rather than procedures at law for the creation of personal and proprietary rights over the wife. Furthermore, even the scanty remains that are now left of the Twelve Tables, show that the Romans had at that time reached such a stage of legal development as to deprive comparisons between the legal institutions of the Roman law, and the undifferentiated social institutions of other peoples, of any common basis for congruity.

We may proceed then to the texts and first of all to an examination of the antecedents and extensions of the word *coemptio*. It is well known that the word "*emere*" has not always meant "to buy". Festus for example, s.v. *emere* says: "*Emere, quod nunc est mercari, antiqui accipiebant pro sumere*".[33] As for the verb, so also for the noun, with the extra qualification that the Latin language was generally slow to acquire nouns. Before the introduction of money into regular use — and the numismatic evidence cannot substantiate a date earlier than 250 B.C. for this to have occurred — *mancipatio* with standard formula of *emptus esto*[34] was an institution of regular usage and long standing, occurring in emancipation, adoption and the making of a will. Although it is doubtful whether Pomponius is referring to the actual words of the Twelve Tables, it is most likely that some form of *emere*, verb or noun occurred therein. "*Quoniam lex XII tabularum emptionis verbo omnium alienationem complexa videretur*".[35] (D.40.7.29,1.) Centuries after the Twelve Tables, the

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[32] As, we submit, were *mancipatio* and *usus* well before the Twelve Tables. For the trilogy method see Goudy, *Trichotomy in Roman Law* (1910). But as Schulz, *Roman Legal Science* (1946) 63, n. 9. says "Goudy conceives the subject too narrowly; there is no point in singling out division into three".

[33] Also *s.v.* "*abemito*". "The ceremony of *mancipatio* shows sale in its earliest form, translated *donnant donnant*, and the double name, *emptio venditio*, understood in the older senses of the words *emere* and *venum dare* tells the same story", de Zulueta, *Roman Law of Sale* (1945) 3. Compare *Epit. Ulp.* 19, 4, 5. It is this late development of sale in Roman law that makes it impossible to accept the opinion of Corbett, *op. cit.* 83 that the jurists had got beyond thinking of sale when dealing with *coemptio*. Even as late as 77 A.D. it is probably unsafe to say, when dealing with a "*Cadastre*", "*La formule émit se rencontre dans le cadastre A au lieu de solvit, la location a bail perpetuelétant ainsi assimilée a une sorte de vente*", A. Piganiol, "*La pluralité des cadastres d'Orange*" (1953) 2 *Archives d'Histoire du Droit Oriental* 374.

[34] On the question whether the formula contained "*esto*" or "*est*" see G. 1, 119; 2, 104; 3, 167; *F.V.* 50; Boethius *ad Ciceronis Topica* 5, 28. For literature see David and Nelson, *op. cit.* (*supra* n. 3) 153. Examples from the inscriptions show no firm use of the verb *emere* in the sense of "buying". See FIRA I 300 (*Donatio Flavii Syntrophi*, line 22). The common form is, however, *emit mancipioque accepit*. See e.g. III FIRA 287. On *emere* in the *Carmen Fratrum Arvalium* see 43 BIDR 212.

[35] But see *Epit. Ulp.* 2, 4 and note thereto in I FIRA 51.

jurists were still disputing the action of sale, especially the question whether the presence of money is necessary or not to constitute a price. Such disputes would seem to indicate that if *coemptio* were a legal institution of longer standing than *emptio-venditio* then *coemptio* would either have been regarded as a use of *mancipatio* to which none of the later laws of sale need apply, or as a form of *permutatio*. This latter supposition would perhaps require us to attach some significance to the prefix "*co-*", particularly as the Sabinians thought that *permutatio* was the original form of *emptio-venditio*, and the whole classical period was needed to establish a clear distinction between the two. Even in the Digest Paul is allowed to say: "*Origo emendi vendendique a permutationibus coepit*". (D.18.1.1.pr.).

If we are content to recognise *coemptio* as having been in existence from time immemorial, then all the affiliation with the law of sale, as eventually expounded in connection with the contract *emptio-venditio* becomes unnecessary. We need neither be concerned with the question ' "Who took the *nummus unus* representing the bride-piece?" — for the only part played by the vendor in *mancipatio* is to be present and accept this coin',[36] nor need we say "*La femme se vend directement a son mari*",[37] unless we are clear in our minds that we are speaking only fictitiously. Gaius himself was responsible for starting the selling hare and Servius and Boethius and Isidore merely made the chase more confusing. In G.1.113 we find: "*Coemptione vero in manum conveniunt per mancipationem, id est per quandam imaginariam venditionem*".[38]

Now one of the strange aspects of this part of Gaius' first commentary is that he describes the ceremony twice within a very short space, i.e., G.1.112, and 119, using much the same language in each case. This can, of course, be quite adequately explained for our present purpose by taking the stand that the whole work is an edition of lecture-notes, using this term to refer either to notes of lectures to be given or of lectures that have been given. What is more important, however, is to realise that this term '*imaginaria venditio*', is an adequate description of all *mancipationes* for, whatever the *causa* behind the conveyance may have been, in the time of Gaius the money handed over was not actually weighed and so even in *emptio* of a *res mancipi* the payment of the price was a separate matter entirely.[39] If we look in the law of *emptio* itself, however, we find a different picture. Paul, for example, in the "Sentences" says: "*Inter virum et uxorem contemplatione donationis imaginaria venditio contrahi non potest*". (Paul. Sent. 23, 4.). This text, though taken from a title "on gifts between husband and wife' 'is obviously concerned with the law of sale as applied to the creation of a voluntary disposition. Now although *every mancipatio* was expressed to be for a 'consideration of one shilling', the *venditio* in Paul's sense would not be *imaginaria* if by the contract *emptio-venditio* which was the *causa mancipationis* there was a *pretium verum*.[40]

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[36] Corbett, *op. cit.* 81.

[37] Lévy-Bruhl, *op. cit.* 77.

[38] "*Id est*" or "*sive*" are conjectures for three spaces in the MS. For apparatus see David and Nelson, *op. cit.* 133-4. *Cf. infra* n. 41.

[39] By this we mean that a single coin was in use in the ceremony itself, even though the price was mentioned in the accompanying *stipulatio*. See the model formula preserved in the Transylvanian triptych (3 CIL 940, III FIRA 285) cited and explained de Zulueta, *Roman Law of Sale* (1945) 76. By this time the touching of the coin was of no more significance than touching the seal of a conveyance in English law.

[40] Using "shilling" to refer to the *aes* of the formula. There are *Digest* references which speak of the "*imaginaria venditio*" but, since *mancipatio* had by that time disappeared, the distinction between *mancipatio* = conveyance plus phrases looking like the completion of a sale, and *venditio* = contract coupled with stipulations, was no longer capable of causing confusion.

Gaius himself is well aware of this distinction. When dealing with obligations in the third book, the order of his treatment of *solutio imaginaria* proves as much. Thus he first says '*acceptilatio autem est veluti imaginaria solutio*' and then, four sections later, '*est etiam alia species imaginariae solutionis per aes et libram*'.[41]

The true picture is demonstrated satisfactorily in the *Laudatio Turiae*[42]: "*Ita necessario te cum universis patris tutelam eorum, qui rem agitabant, reccidisse: sororem omnium rerum fore expertem, quod emancupata esset Cluvio*". Here there is no suggestion that Cluvius 'bought' or even 'co-bought' the sister as his wife. Rather is the term '*emancupata*' used implying that she was not even mancipated to her husband but emancipated, a difference which Gaius, in a mutilated part of the text, shows to have lain in the words used in the ceremony.

The history of the verb *coemere*, its noun *coemptio* and the other words derived therefrom, has, it is suggested, the power to provide support for our thesis of late terminology. The particular significance of the prefix "*co-*" involves a problem, one indeed which apparently made two of our authorities, Servius and Boethius, infer the existence of mutual purchase between husband and wife, a point that may be left for later discussion. Again, if we abandon the view so far stated, namely that entry into *manus* by *mancipatio* was the original method, then there is some evidence in favour of Levy-Bruhl's theory of *coemptio* as a later invention of the jurists to be obtained from the apparent novelty of usage of *coemptio* and allied words, though it is fair to say that Levy-Bruhl does not proceed on these lines.

In the first place we find among the extant works of the Roman jurists no use of the verb *coemere* in any of its parts to describe the process of entry into *manus*. This, it is submitted, is important, for continuously Gaius seems to feel compelled to use no other expression than *coemptionem facere*. In only one passage[43] is there any suggestion of "buying" at all and it is precisely in this passage that one of the MS enigmas lies.

Leaving aside Gaius and turning to Cicero, whom we may at least rate as a "lawyer" by comparison with the other authors from whom we get our information, we find the same absence of the verb *coemere* in the sense with which we are concerned. In his *Pro Murena*, the important reference, he uses the expression *coemptionem facere* both of men and women.[44] Thus among the writers it is only Servius and Boethius who definitely use the verb:

> *Teque sibi generum Tethys emat omnibus undis.* (Georg 1, 31.) *quod autem ait 'emat', ad antiquum nuptiarum pertinet ritum, quo se maritus et uxor inuicem coemebant, sicut habemus in iure* (Servius).
>
> *Generum pro marito positum multi accipiunt* (Scholia Danielis).
>
> *Coemptio vero certis sollemnitatibus peragebatur et sese in coemendo invincem interrogabant.* (Boethius *Ad Ciceronis Topica* 3, 14.)

Boethius goes on to attribute this information to the Institutes of Ulpian: *Quam sollemnitatem in suis institutis Ulpianus exponit.*[46] However it is doubtful

[41] G. 3, 169 and 173. Compare *Epit. Ulp.* 20, 2 "'*His duobus testamentis abolitis hodie solum in usu est, quod per aes et libram fit, id est per mancipationem imaginariam.*'"

[42] 6 CIL 15, 27, III FIRA 209. This source, a funeral oration, dates from the years 8-2 B.C. See J. C. van Oven "*Laudatio Turiae* 11. 13-26" (1949) 3 RIDA 373.

[43] G. 1, 113. Examined more fully *infra* p. 83.

[44] *Pro Murena* 12, 27 "*horum ingenio senes ad coemptiones faciendas interimendorum sacrorum cause repertit sunt,*" and a few lines later " . . . *mulieres quae coemptionem facerent* . . . ". Inscriptional evidence for *mancipationem facere* IL III FIRA 243 = 6 C/.. 20, 278 (dedication of a sepulchral monument).

[45] Texts from David and Nelson, *op. cit.* 136-137.

[46] Girard, *Textes* (1937) (ed. Senn) reads "*exposuit*".

whether we can cite Ulpian as a user of the verb. In the first place, as Baviera declares,[47] Boethius *"refert magis ad sententiam quam ad verba"*, (though Mommsen preferred to treat Boethius as more reliable[48]); and secondly it is unlikely that "a high-placed jurist wrote a short and necessarily elementary text-book of this character or that . . . his book would not have displaced Gaius' out of date and defective work in the law school".[49] Since so much of the passage G.1.110-19 is met with in the *Ad Topica* it may well be that Gaius is intended, for, living in the West at a time when the works of Gaius were treated as a canon, he could have had access to an older copy of *The Institutes*.

Isidore, the last and latest of the writers on *coemptio* avoids the prefix *"co-"* and states: *"Nam antiquus nuptiarum erat ritus, quod se maritus et uxor invicem emebant, ne videretur uxor ancilla, sicut habemus in iure"*.[50] (Orig. Etym. 5.24,26.).

Turning to the inscriptions we have in the *Laudatio Turiae* immediately preceding the passage already cited: *"Temptatae deinde estis, ut testamentum patris, quo nos eramus heredes, rupt (um diceretur* Mommsen, *diceretis* Arangio-Ruiz*) coemptione facta cum uxore"*. But here there is only a use of the familiar expression *coemptionem facere*. It will be noted, in addition, that in this passage we have a definite illustration of a husband being described as having 'made' a *coemptio*. However, both Levy-Bruhl and Corbett cite an inscription of greater importance which they have taken from Rossbach's *Untersuchungen ueber die roemische Ehe*.[51] The text as given by the former is as follows: *"Cons.Aug.Pub. Claud. Quaes. aer. Antoninam Volumniam virginem volent. auspi. e parent. suff. coemit."* Levy-Bruhl uses this text to support the proposition that a woman making a *coemptio* acted with the *auctoritas* of her parents, whereas Corbett, who is content to state the inscription as *virginem volentem e parentibus coemit*, uses it, as he puts it, 'to more than neutralize' the suggestion of self-sale, thus being in agreement with Levy-Bruhl.

Rossbach's work was, unfortunately, unavailable to the writer and so it is not possible here, either to be sure that the inscription is fully reported in either of the two authors mentioned, or to be free from doubts that the inscription has been accurately expanded, bearing in mind the date of Rossbach's work (1853). Nor again can we supply information regarding the date of the text.

Such doubts as we may entertain do not, however, interfere with our present thesis. For the fact that an inscription, most likely as late as the third century A.D., uses the verb *coemere* in the technical sense, may not bear any more significance than that there existed a common formula for such inscriptions. Nor are we concerned to deny that *auctoritas* was required. We may doubt, however, whether *both* parents could give *auctoritas*; only *paterfamilias* could legally do so. Again *"volent"* could be expanded into *"volentibus"*, and *"auspi. e parent."* could be *"auspicibus e parentibus"* (or even *"auspice parente"*), thus making a telescoped non- technical description of the fact that the parents agreed to, and witnessed, the marriage and the *coemptio*, which may well have taken place on the same day. Lastly, if *"Cons.Aug"* could be expanded to *"consultis auguribus"*, this would either support the telescoped version, just stated, or possibly refer to a *coemptio-confarreatio*.[52]

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[47] II FIRA 307.

[48] Bruns, *Fontes* (6 ed. 1893) 75.

[49] Schulz, *Roman Legal Science* (1946) 171-2.

[50] Text from Bruns, *Fontes* (7 ed. 1909) Part II, 81. On the similarities between Servius and Isidore see Philipp IX RE. 2076 s.v. "Isidoros".

[51] Lévy-Bruhl, *op. cit.* 76; Corbett, *op. cit.* 83; Rossbach 77-8. The inscription is not in Dessau, *Inscriptiones Latinae Selectae* nor did a search reveal it in the CIL.

[52] The abbreviation *"suff"* appears to be out of context for it is usually found with

An examination of the verb *coemere* in its non-legal sense, however, tells a different story. For the *Thesaurus Linguae Latinae*,[53] shows that it was used by a wide variety of authors including Terence, Cicero, Caesar, Livy, Horace, Suetonius, Pliny, Festus and others. More significant is the information that the jurists did use it in its non-legal sense. Ulpian,[54] for example, cites a part of the imperial *mandata* and this, coupled with other Digest references,[55] and the already-noted absence of its use by the jurists in the legal sense, may indicate that they were alive to a difference in meaning and did not regard *coemptio* as a single noun representing *coemere*.

The authors we have just mentioned used the verb to mean 'buying-up', or as the Thesaurus puts it "*pretio in unum emere, emendo colligere.*" We may, therefore, doubt whether this would have been appropriate to entry into *manus*, for whichever hypothesis concerning the early or late invention of *coemptio* we adopt, a name which so emphatically brought the element of purchase into notice would not be suitable.

However, on examining the noun *coemptio* we are faced with a completely opposite state of affairs. *Coemptio* is not used at all, whether by jurists or by any other writers, in the straightforward sense of 'a buying' or 'a buying-up' until the fifth - sixth centuries A.D. By this time entry into *manus* by *coemptio* or by any other means, had become so much forgotten that, as we have seen, three writers felt that this ancient institution, this "*antiquus nuptiarum ritus*",[56] merited an explanation which turned out as a "tradition".[57] In addition, the Theodosian Code and Novels, followed in turn by the Code and Novels of Justinian, had, during the same space of time, given a new meaning in law to the noun, *emptio frumentaria a fisco facta vel proviciis imputata*. Thus, the original meaning has become accepted "in law" as far as the noun is concerned, though in a late period and due to the disappearance of an earlier legal meaning.

Coemptio as denoting entry into *manus* is, of course, sufficiently well attested. Gaius, Cicero, the *Laudatio Turiae* have already been mentioned and the three writers of the later period, perhaps influenced by the noun's new legal meaning, use both noun and verb in the way we have described. Arnobius Afer also speaks of the trilogy, "*usu farreo coemptione*".[58]

Apart from the verb and the noun which show such markedly opposite usages, we have also the noun *coemptionator*. As might be expected, this ungainly substantive is a juristic term only and means "a man who is *accipiens* in the ceremony called *coemptio*". Gaius uses it in a number of passages, often in the expression *parentes et coemptionatores*, and it occurs once in the Epitome Ulpiani, also coupled with *parens*.[59] There is, of course, no corresponding term *coemptionatrix*, nor is *coemptionator* of common gender, for in *mancipatio* the initiative is taken by *mancipio accipiens*, the other party being passive through-

"*consul*" meaning "*suffectus*". Perhaps "*suis*" or "*suo*" is intended. For "*auspex*" see the important passage Cicero *Pro A. Cluentio* 5, 14 "*Nubit genero socrus nullis auspicibus, nullis auctoribus, funestis ominibus omnium.*"

[53] III *Thesaurus Linguae Latinae* 1411-12.

[54] D. 47. 11. 6, pr.

[55] D. 14. 3. 5, 1; D. 3. 5, 10 (11). See also Porphyrio *ad. Hor. epist.* 2. 2. 166, "*nihil in iure distat, olim an nuper coemas, dum emendi potestas sit*".

[56] It will be noted that they speak of the marriage, not of a ceremony conferring *manus*.

[57] On this matter David and Nelson, *op. cit.* 137 say: "*Vielleicht kann man sogar noch weiter gehen: Da sich beide Grammatiker wohl auf eine Tradition (Vergilkommentar?) gestuetzt haben, wird die sich bei ihnen findende Auffassung jedenfalls auch schon fuer das 3. Jahrh. sehr wahrscheinlich. Dies wuerde durch die Schol. Dan bestaetigt werden, wenn diese wirklich, wie angenommen wird . . . , jedenfalls auf das 3 Jahr. zurueckgehen.*"

[58] C. Theod. 14. 16. 3 (A.D. 434), Nov. Theod. 5. 3. 1 (A.D. 441); C. Just. 10. 27. *titulus*; Nov. Just. 7, 12; 7, 18; 7, 26. Contemporary writers such as Boethius also used the word in this sense.

[59] *Epit. Ulp.* 11, 5.

out. Thus, even though the polite expression *coemptionem facere* was accepted as a legal term of art no noun could have been created to designate the other participant.[60]

We may well ask why such a long-winded word was created and why a noun *coemptor* would not have sufficed. Such a noun does exist but it is used in a different sense: "*hic accusationis auctor, hic advocatorum conductor, hic testium coemptor*". (Appuleius Apol: 74.)

Now this reference, which comes from a speech in court, shows us a new meaning for the root *coem-*, a meaning which may give us a clue to the origin of the term *coemptio* in its legal sense. The passage from Appuleius, (a contemporary of Gaius), clearly refers to corruption and venality, an ability to be bought or 'bought-up'. In so far as the verb *coemere* is concerned, we find only one reference to its use in this sense and this occurs in the Codex Theodosianus under the date 321 A.D.[61] *Coemptio* also occurs only once with this meaning.[62] Such a small number of references would not in themselves be much upon which to found a theory, especially since Appuleius is also using the terms *auctor* and *conductor* in a derogatory sense. There is, however, another "*coemptio* word" of very much earlier origin, namely, *coemptionalis*. All existing references to this word can be shortly stated.

> *Nunc Priamo nostro si quis emptor coemptionalem senem vendam ego, venalem quem habeo.* (Plautus. Bacch. 976.)
>
> *Quod mancipium quidem si inter senes coemptionalis venale prosscripserit Atticus, egerit non multum.* (Curius. Cic. epist. 7, 29, 1.)
>
> *Contemnalis (coemptionalis Goetz) senex: emptus, manumissus et tutor, auctor factus.* (Glossarium IV 36, 38.)

Unlike many of the references to law in the early Roman plays, which are suspected of being derived from the Greek originals, this example is clearly Roman in origin. Nor would the playwright have expected a laugh from his audience unless the institution was familiar to them. His meaning is not merely that the *senex* was a "cheap lot", one of the sort that might be bought "by the dozen", but rather a *senex* whose hand, as we could say, is for sale. For, as the Glossary shows, the practice was for a woman *sui iuris*, but naturally still under tutelage, to purchase and manumit a slave and then enter into his *manus*. At the time at which the play was written marriage between them may have had to take place first. For the slave this procedure would be something between a bargain and a degradation, since the better type would hope for manumission as a reward for his services and as a promotion for his children, and we may assume that even slaves had standards. For the woman, the advantages of being able to make a will, of avoiding *tutela* and of destroying the *sacra* would result.

Now this procedure is well known. Cicero in the *Pro Murena*[63] humorously

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[60] Since in the *testamentum per aes et libram* a woman could not be *familiae emptor* (*Epit. Ulp.* 20, 7), the question of nomenclature did not arise. There is an "*emptrix*" in D. 21. 2. 63 and C. Just 4. 54. 1 (A.D. 216) but feminine forms in *-ix* are not common and mostly of late origin. The whole form of the word *coemptionator* seems to require a verb *coemptionare*, and the appearance of the noun as early as Gaius is remarkable unless, as we shall suggest, it was created for a special purpose. For most nouns in *-ator* are of late origin and have a supporting verb in *-are*. Cf. *conicere, coniector, coniectare, coniectator*—of these only the last is late (but very late) and there is no *coniectionator*. See VIR s.v. *contrectatio, contrectator* and *conventionalis*. For *vendo*, although the passive *vendor* is not found, Latin uses *venditor* for the seller. *Vendito* is occasionally used but has a derogatory meaning. e.g., *ipsa sese venditat*, Plaut. Mil. 2. 3. 41 and see TLL s.v. *venditatio* and *venditator*. See also VIR *s.v. venditrix*.

[61] C. Theod. 6. 22. 1.

[62] Conc. Aurel. a. 549, 10, p. 104, 1.

[63] See *infra* n. 44.

accuses the lawyers of perverting existing legal institutions. Our present thesis, however, is that it was this "*perverted*" process which changed the original *mancipatio* ceremony and which, by being derived from the notion of 'buying-up' or venality in the original word, gave rise to the singular use of language which we have already discussed. Furthermore, it was this irreverent use of existing legal institutions, invented first on behalf of women *sui juris*, that made *usus* no longer necessary, except in the cases where the *mancipatio* had been defective — these being perhaps corrected by statute.[64] But since we have left aside *usus* so far, a fuller explanation is needed.

B. *A New Suggestion Concerning Usus*

We have maintained that entry into *manus* was old and that in this case the consent of the *paterfamilias* would be necessary if the woman was in *potestate*. There is no textual proof of this specifically relating to *manus* because by the time of Gaius the new hybrid *coemptio* had allowed the emphasis to lie on the woman's ability *facere coemptionem*, and even though in Gaius' time the *paterfamilias* must have been *mancipio vel in manum dans*, this fact is suppressed.[65] But for the time of the Twelve Tables and earlier, it is submitted that, quite apart from the *mancipatio* being invalid for some reason, the *tutores* had no authority *feminam in manum mancipiove dare*. Thus a mancipation with the *auctoritas* of the *tutors* would be technically invalid and would, therefore, need the cure of *usus* just as if it had turned out in a *mancipatio* of a woman *alieni iuris* that the formula had been spoken incorrectly, or that one of the witnesses or the *libripens* had not been a Roman citizen. To this list we could perhaps add that the parties might not have had *ius conubii* before the Lex Canuleia, but this would raise another line of investigation not germane to the present study.

The only textual support for this view comes from Cicero, from a time in fact when the end of *usus* was already in sight. Unfortunately, the textual references to *usus* are lamentably few since by the time of Gaius it was totally forgotten. [65a] Nor, since two hundred years separate the two writers, need we wonder at this.

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[64] Strictly speaking, if our theory is correct, *usus* would have been necessary since we maintain that the tutors had no authority to allow the *mancipatio* of the woman, and *coemptio* is only this original *mancipatio* preceded by another by which the slave was purchased. However, since in the use of the procedure *fiduciae causa*, immediate emancipation was envisaged, the lawyers may have turned a blind eye to the formal defect. The explanation of G. 1, 111 "*Sed hoc totum ius partim legibus sublatum est, partim ipsa desuetudine oblitteratum est.*", could be that a statute provided that a woman *sui juris* did not require *usus* to complete *coemptio matrimonii causa* nor if she wished to enter into *manus* by *mancipatio* alone.

[65] There is no statement, apart from the inscription dealt with earlier, that a *paterfamilias* must take part in the ceremony of entry into *manus* as transferor: compare G. 1, 118 and 118a, where Gaius is concerned with manumission as 1, 123 shows (though whether *coemptionator* includes a husband acting *fiduciae causa* is not clear). For the old rules of entry into *manus* prior to *coemptio*, but foreign to Gaius, G. 1, 117 would be sufficient. In the *Collatio*, Paul says, 4. 2. 3. " . . . *patri, si in filia sua, quam in potestate habet, aut in ea, quae eo auctore, cum in potestate esset, uiro in manum conuenerit* . . . ", and Papinian, 4. 7. 1 uses the same language, both texts referring to the *Lex Iulia de adulteriis*. On these passages see Lévy-Bruhl *op. cit.* 75-6 and Corbett *op. cit.* 81-3. Nothing may turn on the use of the term "*auctor*", though if it has a weaker meaning than transferor or vendor, this lends support to our argument because it is the term "*auctor*" that is used in Cicero, *Pro Flacco* 34, 84 (which we are about to cite in the text) and in Cicero, *Pro A. Cluentio* 5, 14, *supra* n. 52.

We may further note that the expressions "*manui dare, manui accipere (recipere)*" are not found until Justinian, *Institutes* 1. 5. pr. For "*mancipio dare*" see G. 1, 140; 1, 162; 1, 172;2, 59, 102, 204, 220; 4, 79, 117, 131a; F.V. 264 (Papinian). There is no authority for the expression "*in manum dare*" used here. This may be explained by the absences of references earlier than Cicero who, speaking only of *coemptio*, does not deal with the original ceremony by way of *mancipatio*.

[65a] M. Villers claims to have discovered the features of *usus* and *trinoctium* in the mar-

"In manum, inquit, convenerat. Nunc audio. Sed quaero, usu an coemptione? Usu non potuit. Nihil enim potest de tutela legitima nisi omnium tutorum auctoritate deminui. Coemptione? Omnibus ergo auctoribus — in quibus certe Flaccum fuisse non dices." (Pro Flacco 34, 84.)

By treating this as meaning that the consent or *auctoritas* of the tutors is essential to create a *iusta causa* at the initiation of the *usucapio* period, all difficulties with this passage are avoided. Furthermore, it must be remembered that it is only the woman *sui iuris* who will have property of her own and who will be thus particularly affected by the operation of *manus*. For her advantage, too, the *ius trinoctii* would have been primarily invented, though, if our suggestion that *usus* also cured defective *mancipationes* is correct, women *alieni iuris* would also have had the new-fangled *locus poenitentiae*. This would account for the position in Cicero's speech in which the orator does not seem to regard either *usus* or *coemptio* as obviously impossible. Indeed it has always been a consequence of the view that *usus* was a type of trial marriage that such an institution appeared uncouth, and hence the discovery of its unquestioned availability in Cicero's time has been a stumbling block in the path of the "emancipation of women" which is presumed to have been greatly achieved by his era. Whatever may have been the case three hundred years before the Twelve Tables, we can surely credit the Romans in the three hundred years suceeding that Code, with having evolved a juristic remedy such as we have described.

After all as we have here shown, the entry into *manus* was at all times primarily a matter of arrangement of property,[66] and we may well suggest that the only reason why *manus* itself remained so long on the scene is that it gave the wife intestate succession rights to her husband, rights which may even have been additional to the possibility of her claiming *bonorum possessio unde liberi* on the death of her own father, particularly if this occurred after the death of her husband. Again the praetor's assistance *unde vir et uxor* was of very low priority, though a wife in *manus* could make a claim *unde liberi* to the estate of her husband. However we cannot say whether *manus* existed because of the low priority etc., or whether the praetor's rules were the result of the persistence of *manus*, for it is just conceivable that a man could count his wife *in manu* as a *filia* to satisfy the *Lex Iulia et Papia Poppaea*.

All that we are concerned to establish at present is that the tutors had a proprietary interest in the *tutela* and that their consent would be essential so that the husband could, as it were, claim his wife had been obtained *'nec vi, nec clam, nec precario'*. Thus Cicero, in the present speech, certainly treats Valeria and Andro as married, and can only be requiring the consent of all the tutors to give effect to the entry into *manus*.

We may summarise our present conclusions before giving attention to the suggestion of mutual purchase, which apparently crept in as a Vergilian tradition and which has usually been treated as a misunderstanding based on false etymology. In the first place *mancipatio* was, we claim, the original and fundamental source of entry into *manus*, and that from the earliest times the set words in that ceremony were adjusted to allow the woman to be *filiae loco* to the husband.[67] Secondly the whole point of the arrangement was proprie-

riage of Nero and Poppaea; see Filhol *op. cit. supra* n. 11 typescript 18. *Cf.* Martial 12. 77. 5.

[66] On what follows see *Epit. Ulp.* 26, 7 (compare G. 3, 14; 324; Paul *Sent.* 4, 10, 3) and the Berlin Fragment attributed to Paul in III FIRA 427.

[67] So much so that a *coemptio matrimonii causa* is described by Gaius as being undertaken " . . . *ut apud eum filiae loco sit* . . . " 1, 114, even though a woman will *always have*

tary, a demand, perhaps, from society that the *"conventions matrimonielles"* should be clearly established at the time of marriage. We know that from very early times the position *filiae loco* was not an adequate description of her personal standing in the husband's *familia*, the pontifical law controlling the husband in this respect.[68] Thirdly, the woman *sui iuris*, of whom in earlier times there would be relatively few unmarried, was, due to the inappropriateness of the *mancipatio* ceremony to her case — the *tutores*, for example, could never have sold her into slavery — required to be involved in the proprietary remedy called *usus*, a remedy originally concerned with defective *mancipatio*. Fourthly, at some time near enough to Plautus to allow his line to have its full humour, *manus* was put to other uses, primarily the avoidance of tutors and the creation of a testamentary capacity, by allowing the *in manum accipiens* to be a very old slave *emptus et manumissus* for this purpose. Fifthly, this new arrangement became used *matrimonii causa*, the wife purchasing the husband fictitiously.[69] By using this method, the wife *sui iuris* was relieved from the need of waiting for the year of *usus* to operate and, at any rate, by the time of Gaius she could use *coemptio* with her husband to avoid tutors, (perhaps if he, as *coemptionator*, manumitted her without dissolving the marriage he could give her an option of tutors), quite apart from using *coemptio matrimonii causa*. Sixthly, though this is mere speculation, the wife *in potestate patris* regularly used this process as it seemed more in keeping with the freer position that women had obtained. Thus *"eo auctore"*,[70] used with reference to the *paterfamilias* when she "made" a *coemptio*,[71] refers both to the *mancipatio* of the husband who as "slave" would be *res mancipi* and to the subsequent *mancipatio* of the wife by the husband.

C. *A New Interpretation of the "Mutual Purchase" Tradition.*

If these conclusions are acceptable, the suggestions of mutual purchase made by the unreliable Vergilian tradition of the later commentators may perhaps be explained in a different way. In so doing, we need not necessarily vindicate the tradition as it appeared to those who handed it on. For Servius and his successors may well have misunderstood what they learned, or even merely argued from a false etymological inference.

Most of the evidence which has caused the difficulty has already been extracted in this paper.[72] To it, however, we may add another part of the Vergil tradition: *"mulier atque vir inter se quasi emptionem faciunt"*. (Servius ad Aen. 4, 103.) Also we must mention a text of outstanding importance from the Institutes of Gaius. Indeed it is the recent adoption of Huschke's reading

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this *locus* if she makes a *coemptio* with her husband; see G. 1, 114, 115b, 118, 136, 137a.

[68] Plutarch *Rom.* 22 cites a *Lex Regia* which he attributes to Romulus; τὸν δ' ἀποδόμενον γυνᾶικα θύεσθαι χθονίοις θεοῖς (Text I FIRA 8). Whatever meaning is given to this, and whether the wife is supposed to be in *manus* or not, a daughter's position was evidently not so secure.

[69] It may be the complicated wording which the consecutive ceremonies of purchase required that occasioned Cicero's remark in *De oratore* 1. 56, 237:—*"Nam neque illud est mirandum, qui quibus verbis coemptio fiat nesciat, eundem eius mulieris, quae coemptionem fecerit, causam posse, defendere"*.

[70] See *supra n.* 65.

[71] With the caution that the *Collatio* texts in *supra* n. 65 refer to *in manum conventio*, not to *coemptio* specifically.

[72] Modern opinion is virtually unanimous in condemning the evidence out of hand; see, for example, Lévy-Bruhl, *op. cit.* 76, n. 30 *"C'est sans doute a cette formation, du mot coemptio, mal comprise, qu'est due la doctrine enseignée par les auteurs de basse époque, comme Servius et Bocce, justement qualifée de niaiserie, par P.-F. Girard, selon laquelle les deux époux se seraient achetés mutuellement."* It is of interest to note that Servius also deals with *confarreatio* and, as Filhol explains, *op. cit.* typescript 13-14, saw in the marriage of Dido and Aeneas an example of the ideal Roman union, *confarreatio*, as opposed to *coemption*, the *"libera servitus"*.

of this text by the new edition of Gaius under the care of David and Nelson which shows that the problem is not yet dismissed. Corbett, for example, writing in 1929-30, had considered that "the view that there was a mutual fictitious purchase — is now generally and rightly abandoned".[73]

> *Coemptione vero in manum conveniunt per mancipationem id est per quandam imaginariam venditionem: nam adhibitis non minus quam v testibus civibus Romanis puberibus, item libripendaemiteummulierem cuius in manum convenit.* (G.1.113.)

We have previously mentioned that Gaius uses the word "buying" in one place only[74], and it was this text that was there referred to. Various interpretations have been proposed, for this is one of those textual problems where, since no sense can be got out of the words as they stand, an editor can postulate omissions of any kind or suggest the intrusion of an unintelligent gloss.

It would, indeed, be more satisfactory if we could suggest that the whole passage from *"nam"* to *"convenit"* was a post-Gaian addition, especially since the whole ceremony of mancipation is described again in G.1.119., and this latter passage has the air of mentioning and describing the ceremony for the first time.[75] Yet we cannot take this drastic step of solving the purchase problem by eliminating it, but must examine the readings suggested. Most of these read *"libripende"* and treat the *"a"* as a mistake for *"e"*, though Muirhead[76] reads "*a*" as equivalent to "*asse*". Leaving the other suggestions to a footnote[77], we can cite that of Huschke, "tempting", as de Zulueta declares[78]. "if there were solid support for mutual purchases", *"libripende emit eum (mulier et is) mulierem cuius in manum convenit"*. This has the merit of retaining all the text and has as its basis the common palaeographical phenomenon of an omission by the scribe due to the repetition of a word — *mulier* — within a short space, and the consequent movement of the eye to the second appearance of the word. However, this reading takes the problem out of the hands of the Vergil-tradition authorities and rests it under the authority of Gaius himself. When we remember that Boethius acknowledged Ulpian as the source of his information, we are entitled to suspect that the "support" may be "solid", it being a misunderstanding of the evidence that has led us to think otherwise. To this end we may propose another reading which requires no supposition that words have been omitted: *"librepende emit cum muliere is cuius in manum convenit"*.

Unfortunately, since no copy of Studemund's *Apographum* is available, we have not been able to ascertain whether the letters "*e*" in "*eum*" and "*m*" in "*lierem*" are clearly legible, for the emendations we are proposing are reasonably like the accepted reading to be justifiable. [79] Again the use of *'cum'* with the verb *'emere'* is not otherwise known.[80]

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[73] Corbett, *op. cit.* 82.

[74] *Supra* n. 43.

[75] Thus, although most of the details have been given in G. 1, 113, in G. 1. 119 the description is preceded by "*eaque res ita agitur*".

[76] *Roman Law* (2 ed. 1899) 413. See also *"Nouveaux Documents de Procédure dans les Tablettes d'Herculanum"* (a paper presented to the *Institut de Droit Romain* on 25th March, 1955, by V. Arangio-Ruiz, typescript 22 " . . . *ma)nc(ipi)o asse aere dedisset*" the establishment of a dowry *circa* A.D. 79).

[77] Krueger *emit is mulierem*; Kuebler *emit vir mulierem*; Goeshen *emit nummo mulierem*; Reinach *emit nummuli aere is*; Goudsmit *eam.*

[78] de Zulueta, *The Institutes of Gaius*, Part I (1946) 34, n. 6.

[79] *"Emit cum"* would thus be equal to *"coemit"*. The expression *"Coemptionem facere cum"* is used by Gaius, 1, 114, Cicero *Topica* 4, 23, the *Laudatio Turiae supra* p. 000. Compare the legal term *"compromissio"*; Livy 1. 35. 4 *cum coniuge ac fortunis omnibus commigrasse*; G. 3, 161 *habere, agere mecum*; *Aulus Gellius* 18, 6, 8 *in matrimonium cum viro convenisset.* See also next note.

[80] Gerhard von Beseler, *"Fruges et Paleae II"* (*Festschrift* Fritz Schulz, Band I) (1951)

The only other piece of evidence that we have is from Nonius Marcellus: *Nubentes veteri lege Romana asses III ad maritum venientes solere pervehere atque unum, quem in manu tenent, tamquam emendi causa marito dare . . .* Inde Vergilius Georg.lib.1,31.[18] This again is a part of the Vergil tradition, but, unlike the other passages, does not refer to the law nor to the ceremony of *coemptio*.

How then do we explain these passages, assuming that there is some truth to be extracted from them? We can, first of all, pass over the whole matter as a mistaken inference from false etymology, namely the attribution to the prefix "co-" the notion of "together" or even "simultaneously".[82] Again we can explain the problem by saying that questions and answers from the marriage ceremony itself have influenced the interpretation of the legal formalities, particularly since Servius and others refer to "*nuptiae*" in their descriptions.[83]

If we argue from the thesis we have already expounded we can propose a different interpretation. For we have tried to give the prefix "co-" no other meaning than one of "extra force",[84] not buying but "buying-up", and have also drawn upon the taint of venality which the word was capable of bearing.[85] Seen in this light, there is no room for the extraction of any reference to mutuality in the word itself and so, if Servius and the others did make such extractions as "*grammatici*", they were guilty of error. On the other hand, the extended ceremony which we have declared to be *coemptio* does consist of two *mancipationes*, both of them *imaginariae venditiones*, the first occurring when the wife "empts" the 'slave' husband, and the second when the husband "empts" the wife.[86] Now the important point is that in law, these are not mutual purchases, but entirely separate transactions, not having any theoretical connection. If this interpretation is true, Servius and the others may well be excused as non-lawyers for misunderstanding the position and for "creating" the verb *coemere* in a legal sense.[87]

IV. CONCLUSION

The Roman law of marriage has within recent years been subjected to many new hypotheses. We may therefore be pardoned if we have attempted to overthrow some accepted notions. In the absence of further texts we can hardly hope for complete success in interpreting those already preserved, and

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9 gives a multitude of examples of the "*leoninische cum*". One, certainly not "*jactatur inanis*" (Virgil, Geo. 3, 124!) for our purpose is "*si sponsionem fecissent Gellius cum Turio*". Much of the Roman matrimonial terminology contains the prefix "*co-*". The regular term for entry into *manus* (and later in *matrimonium*) is *convenire* with a noun *conventio*. Neither of these words is used with a man as subject. It would be tempting to suggest a "lost" *convenere*, some parts of the verbs *venire* and *venere* being similar! However, the unique use of a verb *convendere* by Tiberian *Carm.* 2, 17, makes such a suggestion improbable. If there was an older term for entry into *manus* it has disappeared by the time our sources begin. For by then the notion of agreement was implicit in *convenire* and in *conventio* which helped to make the terms more acceptable. The verb really means "to assemble" and should have a plural noun, e.g., G. 3, 79 "*Postea iubet convenire creditores*" and D. 2. 14. *passim*, but is used consistently for entry into *manus* with both single and plural nouns. See VIR s.v. *convenire* I B and *conventio* I. The verbs *locare* and *conducere* figure in the matrimonial terminology as *collocare* and *ducere*.

[81] For the full text see David and Nelson, *op. cit.* 136.

[82] As does Lévy-Bruhl, *supra* n. 72. Compare W. Buckland, *Textbook of Roman Law* (1932) 119 n. 9: "not a necessary implication of the word and in itself improbable".

[83] Both Cicero, *Pro Murena* 12, 27 and Boethius, *Ad Ciceronis Topica* 3, 14 appear to refer to the question and answer between husband and wife in the marriage ceremony itself, similar in terms to the "Do you, M., take . . . " in the present-day marriage service.

[84] See *supra* n. 80. *Cf. conflagare, concutere, confirmare* in the *Thesaurus L. L.*

[85] *Supra* p. 78.

[86] Using "*empt*" to mean either "accept" or "buy" according to changes in meaning of "*emere*" with the development of the law of sale.

[87] The phrase "lease and release" could be capable of similar misinterpretation.

must, therefore, be prepared to speculate with ideas, however remote the possibility of reaching a universally accepted conclusion. For by writing at a time so distant from the events and by relying so often on insufficiently spaced historical records, we constantly run into error by ignoring either the passage of time, or the isolation from Roman public life in which the study of the Roman law must inevitably have functioned. We cannot know how reliable Gaius is for the Twelve Tables, for example, nor whether his inclusion of the law relating to *manus* is an attempt at completeness by a teacher of law, as opposed to the lack of respect shown for legal history by the jurists of the classical period, who barely mention *manus* at all. Indeed it is quite possible that *manus* was obsolete by Gaius' time, except *fiduciae causa*.[88]

We may, therefore, emphasise that there is nothing against treating *manus* as quite apart from marriage, nor against treating marriage as incapable, by itself, of creating personal and proprietary rights *enforceable at law* between husband and wife. If, when referring to Roman law up to the period in which Gaius wrote, we can think of marriage as consisting in law of a contract merely, the capacity to contract being governed by such law as to consanguinity as the pontiffs had handed on coupled with *ius conubii* from public law, then we leave our minds clear for such "law of husband and wife" as is comprised in dowry, actions between the parties, settlements etc., all of which was dealt with by the Roman lawyer by asking the question *"Cum manu?"* or *"Sine manu?"* This is exactly similar to modern continental law where the matrimonial regime to be applied to the affairs of husband and wife is usually chosen by them at the time of the marriage, without in any way affecting the validity of the ceremony itself.[89]

Once thought on this matter is disentangled from conceptions of marriage as a closely regulated legal institution, except as a *causa* for legal transactions, and in relation to the prohibited degrees of blood, no subsequent changes of technique by the jurists need seem alarming. The religious rites of marriage provided whatever sanctity was felt necessary, and the law in its permutations of ways and means for "conveying" person and property, did not need to be spellbound by the handling of a sacred contract. The jurists regularly diverted legal institutions with great flexibility, and we see no reason to suppose that entry into *manus* (so regularly expressed by *conventio* = agreement) was not subject to manipulation for different purposes, nor that the use of the new procedure for an old purpose would be impossible. Taking this stand we can, it is submitted, gather up the existing texts without rough handling (and, it is hoped, *non illotis manibus*), and at the same time give some comfort to the souls of Servius, Boethius and Isidore, however little they may in fact deserve it.

APPENDIX.

One text that has remained doubtful is G.1.115 (b) which appears to be concerned with a *coemptio* made by a wife with a husband, for a purpose other

[88] Even here the occasions for its use must have been small. Inheritance between mother and children, and the right of women to make a will had been achieved by Hadrian. There was also the *ius liberorum*, often given as a privilege even though no children had been born, Paul *Sent.* 4. 9. 9. Gaius does say, G. 1, 114 *"quae uero alterius rei causa facit coemptionem"* (a passage which for some reason is repeated four times by the Verona MS) *"aut cum viro suo aut cum extraneo"*, but gives only "evading a tutorship" as an example of *"alter res"*. However, he does also specifically say that *confarreatio* is still in use and that *usus* is obsolete, G. 1, 110-12.

[89] Thus in Roman, Continental and English law, *conventions matrimonielles* and marriage settlements would be invalid at law if, for example, the marriage was a nullity.

than that of organising the matrimonial regime (*matrimonii causa*). No full reading has been proposed of the MS. letters as they stand, the various editors being content to supply a sentence giving the sense of what was written: ". . . *sed hanc necessitatem coemptionis faciendae ex auctoritate divi Hadriani senatus remisit.*" (G.1.115 (a).)

G.1.115 (b) (2½ lines are illegible, as follows:)

c(?g)en (?t) sitar. eniimrefeminaea(?m) ci f (?p)an (?ta)teis . . . . . sii . . . . . fidu (?ai) c (?i) iaecausaeume tresiisecer(?p) ti (?e) sp (?m) e(?m)m(?ip)p(?s)ve(?n) n(?i) nihilo minus filiae loco incipit esse: nam si omnino qualibet ex causa uxor in manu viri sit, placuit eam filiae iura nancisci.

Of the latter part of the illegible portion, Krueger[90] gives the reading: "*sed quae fiduciae causa cum viro suo fecerit coemptionem, nihilo minus*" rell.

We can offer the following reading, which though it does not seem to make satisfactory sense, may provide a basis for further study:

'cen (=censuit) si tamen inter (or censuitque sen (=senatus) si inter) feminam c (=cum) i(n)fant (ibu)s (tribu)s e(t virum) fiduciae causa eum (or eam) et res eius certis p (=pecuniis) emp uen (or certis =certis pecuniis (p having been omitted)p =per emp = emptionem uen = uenditionem).

Now this is virtually nonsense grammatically, but it may be possible with a renewed study of the Verona MS. to extract a better reading. If such a reading can reveal something consistent with the tenor of the version we have given here, we shall have gained some extra information about *coemptio fiduciae causa*, particularly in respect of Hadrian's Senatusconsultum.[91]

[90] David and Nelson, *op. cit.* 145.

[91] Krueger's reading seems to make the text unduly repetitive, but in a teaching manual this would not matter and, in any event, such repetition also occurs in another partially illegible passage. For "*censuit*" see G. 1, 182 (*Cf. Lex Urson.* 96, 12 "*censuerunt*"). For transactions by women having the *ius liberorum*, see III FIRA 247 and 302.