Continued attention of Romanists to adultery seems to be assured by the complexities of the topic, also by changing scholarly trends and fashions. Roman law displays peculiarities not found elsewhere, by distinguishing between charges brought by father/husband of the adultera, and those by any other accuser. The former bring their charge iure mariti vel patris, others do so iure extranei. The differences concern various points relating to the proceedings, and are designed to give father/husband a privileged position in comparison with others. This differentiation occupies a central place in the texts — indeed one might say excessively so, but we shall not have to go into it. Also, we shall not concern ourselves with the disentangling of the loosely, indiscriminately used terms adulterium and stuprum, the confusion of which has led to some mistaken conclusions.

'Scholarly trends and fashions' refers to the fluctuating fortunes of interpolationism. Where at the beginning of the century no text was safe from the searching scrutiny of sharp-eyed and acute-thinking scholars, and their square brackets, this 'n'est pas conforme à la méthode qui est pratiquée de nos jours'. As a result of gradually shifting scholarly opinion, currently an extreme anti-interpolationist approach is 'die herrschende Meinung'. Where is the truth? Who knoweth, but hardly in one-sided dogma. While the very existence of interpolations is not denied, one should yet start from the given text, deviation from which needs to be justified.

Luckily, we do not have to cover all this ground once more. All we intend to do here is to re-examine a single text of Papinian, a text which stands out amongst the others, but to which — we would submit — justice has not yet been done. This is D. 48,5,12(11),7 (lib. sing. de adulteriis) which reads as follows:

Quaerebatur, an iure mariti possit accusare vir cam feminam, quae, cum ei desponsa fuisse, alii in matrimonium a patre fuisse tradita. respondit: novam rem instituere huiusmodi accusatorem existimo, qui adulterii crimen obicere desiderat propter hoc tantum, quod priori sibi desponsa puella a patre in matrimonium alii fuerit tradita.

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1. For the latest, but certainly not the last study, see Hans Ankum, La sponsa adultera: problèmes concernant l'accusatio adulterii en droit romain classique, in Estudios de derecho romano en honor de Alvaro d'Ors, 1987, p. 161-198.
2. Ibid., p. 163ff.
3. Ankum, p. 188.
Rather peculiar is the fact that the would-be accuser ostensibly wishes to bring his charge *iure mariti*, even though he never was the husband of the alleged adulteress.

It need cause no surprise that his suggestion or request was summarily rejected by Papinian. Even so, the assertion that the question is due to a 'mauvaise connaissance juridique' may merit qualification. It is no doubt correct, even unavoidable – within the framework of Roman marriage law, which assigns to *sponsalia* only a rather limited effect. But this should not be understood as implying that the suggestion stems from sheer ignorance. Rather, one may venture to think that the questioner's approach reflects a definable legal background; what frustrates his expectations is the fact that they are not compatible with the Roman rules governing the case. A wide gulf separates the petitioner from the jurist: theirs is 'a dialogue of the deaf', there is no meeting of minds.

After all that has happened the questioner still regards himself as husband (even though the relationship has not been consummated). It is this startling fact which probably underlies the expression *iure mariti*. This has to be understood literally, non-technically, not as a reference to the Roman procedural idiosyncracy noted at the beginning. Of the technical *ius mariti* the questioner may well have been unaware: he is not at all concerned with the question in what capacity he is to proceed; he merely relies on his claim that he is husband. Note also that the jurist – rightly so – pays no attention to any aspect of procedure; in his rejection he goes right to the heart of the matter: the alleged facts, this only (*hoc tantum*) that *priori sibi desponsa puella a patre in matrimonio alii fuerit tradita*, do not amount to a criminal sexual offence – neither to *adulterium* nor to *stuprum*. Even if one were to assume (which is by no means certain, nor even likely) that the girl's father acted in a high-handed fashion, and did not inform his prospective son-in-law (the questioner) of his change of mind, even then a case of *alteri sponsa alteri nupta* would result only in a *nota infamiae*, according to the edict of the praetor. Various texts discuss the possibility of a husband's accusation relating to sexual misbehaviour prior to consummation of the marriage, but our text would be the only one concerning misbehaviour standing alone, i.e., not followed by marriage.

The questioner's argument, possibly expressed in much greater detail, may have run as follows: 'This girl has been betrothed to me; hence – even prior to consummation – she is properly called my 'wife'; she is not capable of entering into a marriage relationship with another man. In law, her purported marriage is a nullity; beyond its being without legal efficacy, because it was carried out in full knowledge of all the facts, both by her father and by herself, it amounts to adultery.' The questioner knows full well that his own relationship with his former bride has been rendered altogether impossible by the accusations which he levels against her; all he wishes to achieve now is to frustrate the intentions and acts of the father, the girl and of his competitor. But within the Roman framework this is no more than a day-dream. He may have protested to his 'father-in-

6. See, e.g., the three cases joined i D. 48,5,14(13).6, and another *ibid.*, 8.