

CHAPTER X.

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1. I Now proceed to speak of *arguments*; for under this term we include all that the Greeks call *ivdtgk;wara, icrr7Elei;tkara*, and *cczoSei ers*, of which, though there is some difference in the names, yet the meaning is nearly the same. The word *enthymema*, (which we translate, indeed, as we cannot render it otherwise, *by commentum* or *commentatio*, but we had better use the Greek word itself,) has three meanings; one, which signifies everything that is conceived in the mind; (but with this meaning we have now no concern;) another, which signifies a proposition with a reason; 2. a third, which signifies a conclusion of an argument, deduced from consequents or opposites; % although with regard to this sense authors differ; for some call a conclusion from consequents an *epicheirema*; but more will be found of opinion that a conclusion from opposites only should be called an *enthymeme*; and hence Cornificius gives it the appellation *contrarium*. 3. Some have called it a *rhetorical syllogism*, others an *imperfect syllogism*, because it is not comprised in distinct parts, or in the same number of parts, as the regular syllogism, such exactness, indeed, not being required in the orator.

4. Valgius+ calls the epicheirema *aggressio*, ° attempt.'

• See c. 8, sect. 5.

1 Compare v. 14, 2; viii. 5, 9; Cicero Topic. Q. 13.

+ See iii. 1, 10

Celsus thinks that it is riot our management of the subject,' but the subject itself which we attempt, (that is, the argument by which we propose to prove anything, and which, though not yet set forth in words, is fully conceived in the mind,) that is called an *epicheirema*. 5. Others are of opinion that it is not an intended or imperfect proof, but a complete one, proceeding even to the last species,' that ought to receive this appellation; and hence its proper acceptation, and that which is most in use, is that in which it is understood to be a certain comprehension of a thought which consists at least of three parts.+ 6. Some have called an *epicheirema a reason*, § Cicero, 11 more happily, *a reasoning*; although he seems to have taken that name rather from the syllogism than from anything else; for he calls the *status syllogistic us ¶ a* "ratiocinatory state," and gives examples from the philosophers; and, as there is some affinity between the syllogism and the epicheirema, he may be thought to have adopted that term judiciously.

7. As to the *clr6beI-srs*, it is an *evident proof*; and hence the term *ygatkp rxai ccwo8si-srs*, "linear demonstrations," among geometers. Coocilius thinks that it differs from the epicheirema only in the manner of its conclusion, and that an *u'ri-&Eisrs* is an imperfect epicheirema, for the same reason for which we said an enthymeme differs from a syllogism; for an enthymeme is a part of a syllogism. Some think that the apodeixis is included in the epicheirema, and is the part of it which contains the proof. S. But authors, however different in other respects, concur in defining both of them so far similarly, as to say that the reasoning in them is from that which is certain in order to give confirmation to that which is doubtful; a quality which is common to all arguments, for what is certain is never deduced from what is uncertain. To all these

* *Nostram administrationem.* Capperonier aptly refers us to ii. 18, 5 whence we understand that by *admnistratio* is to be understood *irpats* as opposed to *Oewpia*. Spalding.

' *Vltimam specie».* Compare sect. 56; vii. 1, 23. Porphyry says Spalding, called it *to E1&Kwarov ti&us*. The more common appellation, observes Capperonier, is *species infima*.

\$ The major, minor, and conclusion. See Cie. De Inv. i. 34, and c. 14 of this book, sect. 6-9, where it is shown how the Epicheirema is made to consist of five parts.

§ Who gave it this name, we cannot now discover Spalding-

~ De Inv. i. 31, 34.

~j See iii. 6, 15.

forms of argument the Greeks give the general name of *xi6reig*, which we might by a literal interpretation render *fides*, "faith;" but we shall make the sense of it clearer if we call it *proof*.

9. But the word *argument* has itself also several significations; for the subjects of plays,* composed for acting on the stage, are called *arguments*; Asconius Pedianus, in explaining the topics of the orations of Cicero, says *The argument is this* Cicerot himself, in writing to Brutus, says, " Fearing lest I should bring from thence any evil upon my Cato, though the *argument* was far from similar," etc. ; whence it appears that every subject for writing is so called. 10. Nor is this wonderful, when the word is common even among artisans ; t Virgil § also has *argumentum ingens*, " a great argument;" and a work of any considerable number of heads is vulgarly called *argumentosum*, " argumentative." But we have now to speak of that sense of the word *argument*, which includes *proof*, *indication*, *credibility*, *aggression*, which are all used as names for the same thing, but, in my opinion, with too little distinction. 11. For *proof* and *credibility* are established not only by arguments dependent on reasoning, but by such as are called *inartificial*. As to *signs*, which Celsus || *calls indications*, I have already distinguished ¶ them from arguments.

Since, then, an *argument* is a process of reasoning affording a *proof*, by which one thing is gathered from another, and which establishes what is doubtful by reference to what is certain, there must assuredly be something in a cause that does not require *proof*; for unless there be something which is true, or which appears true, and from which support may be gained for what is doubtful, there will be no ground on which we can prove mything. 12. As certainties, accordingly, we have, in the first place, what is perceived by the senses, as what we see, what we hear, as *signs* or *indications*; next, what is admitted by the general consent of mankind, as, *that there are gods*, and that

* *Comp. ii. 4, 2.*

t See note on ii. 20, 10.

§ Artificers not only call the material on which they work *argu-
roentum*, but also the elaboration and construction of their material Chus Cicero in *Verr. iv. 56* says *ex ebore diligentissime perfecta argy-
nenta in valvia erant, that is, simulacra de8cripta.* Turnebus.

¶ *An. vii. 791.*

|| *Me. J* I have no doubt, says Spalding, that it is Celsus who is meant.

' See c. 9, sect. 2.

respect is to be paid to parents ; 13. also, what is established by the laws, or what is passed into general usage, with the concurrence, if not of the whole world, at least of than community or people among whom we have to plead, as indeed, in what is called legal right, most points are, settled, not by positive laws, but by common custom ; and, lastly, whatever is agreed between the two parties, whatever is proved, or whatever our adversary does not dispute, 14. For thus will arise an argument, *As the world is governed by a providence,* the state ought to be governed by some ruling power;* showing that if it is acknowledged that the world is governed by a providence, the state ought likewise to be governed. 15. But to him who would handle arguments properly, the nature and quality of all things whatever ought to be known, as well as their general effects ; for it is by such knowledge that arguments called *eixosa*, " probable," are established. 16. Now of *probability* there are three degrees ; one, which rests on very strong grounds, because that to which it is applied generally happens, as *that children are loved by their parents*; a second, somewhat more inclined to uncertainty, as *that he who is in good health to-day will live till to-morrow*; a third, which is only not repugnant to credibility, as *that a theft committed in a house was committed by one of the household.* 17. Hence it is that Aristotle, in his second book on the Art of Rhetoric,t has so carefully considered what generally attends on various things and persons, and what things or what persons nature has rendered friendly or unfriendly to other things or other persons ; as, *what accompanies riches, or ambition, or superstition; what the good approve; what the bad pursue; what soldiers or husbandmen desire;* and *by what means things are severally shunned or sought.* 18. But this subject I do not intend to pursue ; for it is not only long, but even impracticable, or rather infinite ; and it is plain, moreover, to the common understanding of all. If any one shall desire, however, to be enlightened upon it, I have shown him from whom he may seek instruction. 19. But all probability, on which the far greater part of reasoning depends, flows from sources of this nature, *whether it be credible that a father was killed by his son; that a father committed*

* *Comp. c. 7, sect. 35.*

t In the first seventeen chapters.

\$ Aristotle.

incest with his daughter; and, again, *whether poisoning be credible in a step-mother, or adultery in a man of licentious life; also, whether it be credible that a crime was committed in the sight of the whole world, or that false testimony was given for a small bribe*; because each of these crimes proceeds from a peculiar cast, as it were, of character; I mean generally, not always, else all reasoning about them would be absolute certainty, and not mere probable argument.

20. Let us now examine the *places of arguments*; although, indeed, the topics of which I have previously spoken* are regarded as *places of argument* by some rhetoricians. By *places*, let me observe, I mean, not *common places*, in the sense in which the word is generally understood, in reference to *luxury, adultery*, or such subjects; but *the seats of arguments, in which they lie concealed, and from which they must be drawn forth*. 21. For as all kinds of fruits are not produced in all countries, quid as you will be unable to find a bird or a beast, if you are ignorant where it is usually produced or makes its abode, and as, among the several kinds of fishes, some delight in a smooth and others in a rocky bottom of the water, while particular sorts are confined to particular regions or coasts, and you could not attract the ellops + or the scarus § to our shores, so every kind of argument is not to be got from every place, and is consequently not everywhere to be sought; 22. otherwise there would be much wandering about, and, after enduring the utmost labour, we should not be able to find, unless by chance, that for which we should seek without method. But if we ascertain where particular arguments offer themselves, we shall, when we come to the place where they lie, easily discern what is in it.

23. First of all, then, arguments are to be drawn from *persons*; there being, as I said,¹¹ a general division of all arguments into two kinds, those which concern *things*, and those which concern *persons*; and the accidents of things being *cause, time, place, opportunity, instruments, manner*, and the

* In the preceding chapter. *Spalding.*

t. **II. 4.**, 22; v. 12, 16; 13, 57.

§ A fish that was thought a delicacy by the ancients. Some have supposed it to be the same as the *acipenser*, or sturgeon; Pliny pronounced them different, H. N. ix. 17, 27; xxxii. 11, 54.

¶ This the Romans also thought a delicacy. See Plin. 11. cc. It is mentioned by Horace, Ovid, Martial, and Petrouius.

|| C. 8, sect. 4.

like. As to *persons*, I do not undertake to treat of every particular concerning them, as most rhetoricians have done, but only of those topics from which arguments may be drawn. 24. These, then, are, *birth*, for people are mostly thought similar in character to their fathers and forefathers, and sometimes derive from their origin motives for living an honourable or dishonourable life; *nation*, for every nation has its peculiar manners, and the same thing will not be alike probable in regard to a Barbarian, a Roman, and a Greek; 25. *country*, for, in like manner, the laws, institutions, and opinions of states have their peculiarities; *sex*, for you would more readily believe a charge of robbery with regard to a man, and poisoning with regard to a woman; *age*, for different modes of action belong to different periods of life; *education* and *discipline*, for it makes a difference by whom, and in what manner a person has been brought up; 26. *bodily constitution*, for beauty is often drawn into an argument for libertinism, and strength for insolence, and the contrary qualities for contrary conduct; *fortune*, for the same charge is not equally credible in reference to a rich and a poor man, in reference to one who is surrounded with relations, friends, and clients, and one who is destitute of all such support; *condition*, for it makes a great difference whether a man is illustrious or obscure, a magistrate or a private person, a father or a son, a citizen or a foreigner, free or a slave, married or a bachelor, the father of children or childless; 27. *natural disposition*, for avarice, passionateness, sensibility, cruelty, austerity, and other similar affections of the mind, frequently either cause credit to be given to an accusation or to be withheld from it; *manner of living*, for it is often a matter of inquiry whether a person is luxurious, or parsimonious, or mean; *occupations*, for a countryman, a lawyer, a trader, a soldier, a mariner, a physician, act in very different ways. 28. We must consider also *what a person affects*, whether he would wish to appear rich or eloquent, just or powerful. *Previous doings and sayings*, too, are to be taken into account; for the present is commonly estimated from the past. To these some add *commotion of the mind*, which they wish to be understood in the *sense of* a temporary excitement of the feelings, as anger, or fear; 29. and *designs*, which respect the present, past, and future, but these, though they are accidents of persons, should yet be

referred, I think, as considered in themselves, to that species of argument which we derive from motives ; as also certain *dispositions of mind*, in regard to which it is considered whether a particular person is a *friend* or an *enemy* of another person. 30. They specify also the *name* among the topics of argument in regard to a person ; and the name must certainly be termed an accident of a person, but it is rarely the foundation of any reasoning, unless when it has been given for some cause, as *Sapiens, Magnus, Plenus*,^{*} or has suggested some thought to the bearer of it, as Lentulus's name led him to think of joining the conspiracy of Catiline, because dominion was said to be promised by the Sibylline books and the predictions of the soothsayers *to three Cornelii*, and he believed himself, as he was a Cornelius, to be the third after Sylla and Cinna. 31. As to the conceit of Euripides,[†] where the brother of Polynices reflects on his name, as an argument of his disposition, it is extremely poor. For jesting, however, occasion is frequently furnished by a name,[‡] and Cicero has more than once indulged in it in his pleadings against Verres. Such, and of such a nature, are the common subjects of argument with regard to persons. All I cannot enumerate, either under this head or under others, but content myself with showing the way to those who may inquire farther.

32. I now come to *things*, among which *actions* are most closely connected with persons, and must therefore be first considered. In regard, then, to everything that is done, the question is, either *why*, or *where*, or *when*, or *in what manner*, or *by what means*, it was done, 33. Arguments are consequently derived from *the motives for actions done or to be done*; the *matter* of which motives, which some of the Greek writers call *uxrt* and others *buva,urs*, they divide into two kinds, subdividing each kind into four species ; for the motive for any action is generally connected with the *acquisition*, the *augmentation*, the *pre-*

• I retain this reading, on the authority of all good copies, but no reason for the name has hitherto been given, nor has the name itself been found in any record or monument of antiquity. Galleus and Obrrecht conjecture *Planucus*, Gesner *Planua* from the Greek *irXavos*. Burmann thinks that *Plenus* may have been a surname of Crassus in the sense of *Dives*. Spalding.

^t See Sallust, Cat. 47; Orat. in Catil. U 4.

⁷ Phoeniss. 639, 640.

See vi. 3, 53.

servation, or the *enjoyment*, of some *good*, or the *avoidance*, *diminution*, *endurance*, of some *evil*, or *delivery* from it; considerations which have great weight in all our deliberations.

34. But right actions have such motives ; wrong ones, on the contrary, proceed from false notions ; for the origin of them is from the objects which men *fancy* to be good or evil ; and hence arise errors of conduct, and corrupt passions, among which may be reckoned *anger*, *envy*, *hatred*, *avarice*, *presumption*,^{*} *ambition*, *audacity*, *timidity*, and other feelings of a similar nature. Sometimes fortuitous circumstances are added, as *drunkenness*, or *mistake*, which sometimes serve to excuse, and sometimes to give weight to a charge, as *when a man is said to have killed one person while he was lying in wait for another*.

35. Motives, moreover, are constantly investigated not only to establish, but to repel, accusations, as when an accused person

maintains that he acted rightly, that is, from a laudable motive ; on which point I have spoken more fully in the third book.^t 36. Questions of definition, too, sometimes depend upon motives, as *whether he is a tyrannicide who killed a tyrant by whom he had been caught in adultery*; and *whether he is guilty of sacrilege who took down arms suspended in a temple to drive enemies out of his city*.

37. Arguments are also drawn from *places* ; for it often concerns the proof of a fact, *whether the scene of it was mountainous or level, maritime or inland, planted or uncultivated, frequented or lonely, near or distant, suitable or unsuitable for the alleged purpose*; considerations which Cicero treats with very great effect in his defence of Milo. 38. These and similar points most commonly relate to questions of fact, but sometimes also to questions of *law*, as *whether a place be private or public, sacred or profane, our own or belonging to another*, as we consider in regard to a person whether he be a *magistrate*, or a *father*, or a *foreigner*. 39. For hence questions arise ; as, *You have taken the money of a private individual, but, as you took it from a temple, your crime is not mere theft, but sacrilege.-You have killed an adulterer, an act which the law allows, but as you committed it in a brothel, it is murder.-You have done violence, but as, you did it to a magistrate, an action for treason may be brought*

^{* Spes.]} In a bad **sense**; hope of obtaining that to which we have **no** right.

^t C. 11, sect. 4-9.

against you. 40. Or, on the other hand, a person may argue, *I had a right to act in such a way, for I was a father, or I was a magistrate.* But it is to be observed that arguments derived from *place* afford * matter for dispute as to questions of fact as well as regarding points of law. *Place*, too, frequently affects the *quality* of an action ; for the same act is not allowable or becoming in all places alike ; and it is likevise of consequence before what people a question is tried ; for every people has its peculiar customs and laws. 41. Place has also influence in commendation or disparagement ; as Ajax says in Ovid,^t *A gimus ante rates causam, et tecum confortur Ulysses ? Do we plead our cause before the ships, and is Ulysses compared with me ?* To Milo, too, it was made a subject of reproach, among other things, that *Clodius had been killed by him amidst the monuments of his ancestors.* 42. Place has influence, moreover, in *deliberative* oratory, as well as *time*, solve remarks on which I shall subjoin.

Of *time*, as I have already observed in another place,\$ there are two acceptations, since it is viewed either *generally* or *specially*. *Generally*, as when we say, *now, formerly, in the time of Alexander, during the struggle at the siege of Troy* ; or whatever relates to the *present, past, or future*. *Specially*, when we speak of received divisions of time, as *in the summer, in the winter, by day, by night, or of accidental occurrences at any particular period, as during a pestilence, in a war, at a banquet.* 43. Some of our Latin authors have thought that sufficient distinction was made if they called time *in general* merely *time*, and *special* portions of it *times*. To say nothing more on that point, regard to time in both senses is to be had both in *deliberative* and *epideictic*, but most frequently in *judicial, pleading.* 44. For it gives rise to questions of law,\$ and determines the quality of actions, and has great influence

* *Sed circa facti controversiam argumena presstant, circa juris littera materjam questionum.* / The reader will observe that *presstant*, as Spalding remarks, refers to *hcec quidem ac similia* in sect. 38, *argumenta* being in the accusative case. " 11 faut done remarquer que les arguments tirés du *lieic*, en même temps qu'ils servent à établir le fait, lout la iuatiere des questions de droit." *Gedoyen.*

^t *Metam.* xiii. 5.

\$ III. 6, 25.

For instance, if a man surprises an adulterer, who escapes for the time, but is killed by him on a subsequent occasion. *Tumebus.*

in questions of fact, since it sometimes offers irrefragable proofs, as if a person should be said (as I supposed above *) to have signed a deed when he died before the date of it, or to have done something wrong when he was quite an infant or even not born. 45. Besides it is to be observed that arguments of all kinds are readily drawn either from circumstances that *preceded* the fact in question, or occurred *at the same time* with it, or *happened after* it : From *previous* circumstances, as, *You threatened the deceased with death, you went out at night, you went before him off the road;* and motives for deeds, too, relate to time past : 46. From *con temporatwoits* circumstances, which some have distinguished more nicely than was necessary, dividing them into that which *is combined* with an act, as,, *A noise was heard, and that which is attached to an act, as, A cry was raised :* From *subsequent* circumstances, as, *You concealed yourself ; you fled ; discolorations and swellings appeared on the body.* The defendant also will direct his thoughts to the same divisions of time in order to discredit the charge that is brought against him.

47. In these considerations is included all that concerns deeds and words ; but under two aspects ; for some things are done because something else will follow ; and others because something else was done before ; as when it is alleged against a man accused of trafficking in women, that he bought a beautiful woman who had been found guilty of adultery ; or against a rake accused of parricide that he had said to his father, *You shall not reproach me any more* ; for the former is not a trafficker in women because he bought the woman, but he bought her because he was a trafficker in women ; and the latter did not kill his father because he uttered those words, but uttered the words because he meditated killing his father.

4\$. As to fortuitous occurrences, which also afford ground for arguments, they doubtless belong to subsequent time, but are generally distinguished by some peculiarity in the persons whom they concern ; as if I should say, *Scipio was a better general than Hannibal; he defeated Hannibal.-He was a good pilot; he never suffered shipwreck.-He was a good husband-*

' C. 5, sect. 2.

} I hesitate at this example, says Spalding, as there is nothing bearing on any such case in the Roman law ; but I must suppose it, he adds, to have been a theme for declamation in the schools. No other commentator makes any remark about it.

man; he raised large crops. Or, in reference to bad qualities, *He was extravagant; he exhausted his patrimony. - He lived disgracefully; he was disliked by all.*

40.- We must also, especially in questions of fact, regard the *means* of which a party was possessed for probability inclines us to suppose that a smaller number was killed by a larger, a weaker by a stronger, people asleep by people awake, the unsuspecting by the well prepared. Opposite states of things lead to opposite conclusions. 50. Such points we regard in deliberative speeches ; and in judicial pleadings we keep them in view with reference to two considerations, *whether a person had the inclination, and whether he had the power*; for hope depending on power, often gives rise to inclination. Hence that conjecture in Cicero :* "Clodius lay in wait for Milo, not Milo for Clodius ; Clodius was attended with a body of stout slaves, Milo with a party of women ; Clodius was travelling on horseback, Milo in a carriage ; Clodius was unincumbered, Milo enveloped in a cloak." 51. Under means, also, we may include *instruments*, for they form part of appliances and resources ; and presumptive proofs, too, sometimes arise from instruments, as when *a sharp weapon is found sticking in a dead body*. 52. To all this is to be added *manner*, which the Greeks call *rgōros*, in reference to which the question is, *How a thing was done?* And it has relation both to the quality of an act and to the interpretation of writings, as if we should deny *that it is lawful to kill an adulterer with poison*, and say *that he ought to have been killed with a sword.*" It may concern questions of fact also ; as if I should say that a thing *was done with a good intention, and therefore openly; or with a bad intention, and therefore insidiously, in the night, and in a lonely place.*

53. But in regard to every matter, about the quality or nature of which there is any question, and which we contemplate independently of persons and all else that constitutes a cause, three points are doubtless to be considered, *whether it is, what it is, and of what nature it is.* But as certain topics of argument are common to all these, the three cannot be

^w *Pro Mil. c. 10.*

^t See sect. 40 of this chapter, and iii. 5, 4 ; iii. 5, 55, 66.
See sect. 88, and iii. 6. 27.

divided, and must accordingly be introduced under the heads under which they respectively happen to fall.

54. Arguments, then, are drawn from *definition*, (*ex jinitione seu fine*, for both terms are in use,) of which there are two modes ; for we either inquire simply *whether such a thing is a virtue*, or with a definition previously given, *what virtue is.* Such definition we either express in a general way, as, *Rhetoric is the art of speaking well*, or with an enumeration of particulars, as *Rhetoric is the art of rightly conceiving, arranging, and expressing our thoughts, with an unfailing memory and with propriety of action.* 55. We also define a thing either by its nature, as in the preceding example, or by reference to etymology, as when we derive the sense of *assiduus* from *Ts* and *do*, that of *locuples* from *copia locorum*, or that of *pecuniosus* from *copia pecorum*.

To definitions seem especially to belong *genus, species, difference, property.* 56. From all these arguments are deduced. *Genus* can do little to establish species, but very much to set it aside ; what is a tree, therefore, is not necessarily a plane tree, but what is not a tree, is certainly not a plane tree ; nor can that which is not a virtue be justice ; and therefore we must proceed from the genus to the *ultimate species* ;* as to say, *Man is an animal*, is not enough, for *animal* is the genus ; and to say that *lie is mortal*, though it expresses a species, is but a definition common to other animals ; but if we say that he *is rational*, nothing will be wanting to signify what we wish. 57. On the contrary, *species* affords a strong proof of *genus*, but has little power to disprove it ; for that which is justice is certainly a virtue, while that which is not justice may be a virtue, if it is fortitude, prudence, or temperance. A *genus*, therefore, will never be disproved by proving a *species*, unless all the species, which are included under that genus, be set aside, as *That which is neither mortal nor immortal is not an animal.*

58. To genus and species writers add *properties and differences.* By properties a definition is established ; by differences it is overthrown. A *property* is that which either belongs only to one object, as *speech* and *laughter* to man, or belongs to it, but not to it alone, as *heat* is a property of fire. There may be also many properties of the same thing, as fire, for instance, *shines* as well as *heats.* Consequently, whatever property is omitted

* See sect. 5. Cicero Topic. c. 6.

in a definition, will weaken it ; but it is not every property introduced in it that will establish it. 59. It is very often a question, too, *what is a property* of something under consideration ; for instance, if it be asserted, on the etymology of the word, " It constitutes a man *a tyrannicide* to *kill a tyrant*," we may deny it, for if an executioner should kill a tyrant delivered to him to be put to death, he would not be called a tyrannicide, nor would a man be called so that had killed a tyrant unawares or unwillingly. 60. But that which is not *a peculiar property* will be a *difference*; as *it is one thing to be a slave and another to serve*; whence there is this distinction with regard to *addicti*, or insolvent debtors sentenced to serve their creditors : *He who is a slave, if he is set free, becomes a freedman ; but this is not the case with an addictus* ; and there are other points of difference between them, of which I shall speak in another place.* 61. They call that also a difference, by which, when the *genus* is distinguished into *species*, a species itself is particularized; as, *Animal* is the *genus*; *mortal*, a species, *terrestrial* or *two footed*, a difference; for we have not yet come to property, though the animal is distinguished from the *aquatic* or the *four footed*; but such distinction belongs, not so much to argument, as to exact expression of definition. 62. Cicero separates *genus* and *species*, which latter he calls *form*, from definition, and puts them under *relation*; as, for example, *if a person to whom all the silver of another person has been bequeathed, should claim also the coined silver*, he would found his claim upon *genus*; but *if a person, when a legacy has been left to a woman who should have been a *materfamilias* to her husband, denies that it ought to be paid to her who never came into her husband's power*, he reasons from *species*, because there are two sorts of marriages.^t

63. Cicero⁺ also shows that definition is assisted by *division*, which he makes distinct from *partition*, partition being the distribution of a whole into its parts, division that of a genus

• VII. 3, 26 ; iii. 6, 25.

^t The two sorts of marriages were *per coemptionem*, when the woman was delivered into the hand and power of the man, and was then called *materfamilias* ; the other was *citra coemptionem*, when the connexion was formed by cohabitation. *Turnebus*. See Cie. pro Flacc. 34. Adam. Rom. Ant. p. 426, 8vo. ed. "A legal marriage was either *cum conven' bone uxoris in manum viri*, or it was without this *conventio*." Smith's Diet. of Gr. and Rom. Ant. art. Marriage, Roman.

I Topic. c. 5, 7.

into its forms or species. The number of parts, he says, is uncertain ; for instance, *the parts of which a state consists*; but that of forms, certain, as *the number of forms of government*, which we understand to be three, that in which the power is in the hands of the people, that in which **it is** in those of a few, and that in which it is in those of one. 64. He, indeed, does not use these examples, because, writing to Trebatius, he preferred taking his instances from law. I have given such, as I think, plainer.

Properties have reference also to questions dependent on conjecture ;* for, as it is the property of a good man to act rightly, and of a passionate man to be violent in his language, it is supposed that he who acts rightly is a good man, and that he who is violent in his language is a passionate one ; and such as act or speak otherwise are supposed to be of opposite characters ; for when certain qualities are *not* in certain persons, the inference, though from opposite premises, is of a similar nature.§

65. *Division*, in a similar way, serves to prove and to refute. For proof it is sometimes sufficient to establish one half ; as in this example : *A man, to be a citizen, must either have been born a citizen, or have been made one*; but in refuting you must overthrow both particulars, and show that *he was neither born nor made a citizen*. 66. This node of reasoning is manifold; and there is a form of argument *by successive removals*, (I by which a whole allegation is sometimes proved to be false, and sometimes a portion of it, which is left *after successive removals*, is shown to be true. A whole allegation is proved to be false in this manner : *You say that you lent this money. Either then you had it of your own, or you received it from some one else, or you found it, or you stole it : If you neither had it of your own, nor received it from any one, nor etc., you did*

* Of forms there is always a certain number, and to omit any one of them in a definition is a fault ; but the number of parts is frequently infinite. *Turnebus*.

t III. 11, 18.

\$ That is, to the *status* termed *conjecturalis* by the rhetoricians; commonly called *questio de facto*. *Capperonier*.

§ For example, as it is the part of a merciful man not to do wanton injury, I shall infer, if a man commits wanton injury, that he is not merciful. *Turnebus*.

|| *Ex remotione.* I Cicero, Inv. i. 29, calls it *enumeration*, several particulars being enumerated, and all overthrown except one, which is then considered as proved.

dot lend it. 67. What is left is established as true in this Way : *This slave, whom you claim as your own, was either born 'n your house, or bought by you, or given to you, or left to you by will, or captured by you from the enemy, -or he belongs to mother person:* when it is shown that the suppositions are all infounded, except the last, it will be clear that the slave belongs to another. This kind of argumentation is dangerous, and must be conducted with great wariness, for if we omit one particular in the enumeration, our whole edifice will fall to the ground, to the amusement of our audience. 68. That diode is safer which Cicero uses in his speech for Cecina,* when he asks, *If this is not the point in question, what is it?* for thus all other points are set aside at once. That also is safer, in which two contrary propositions are advanced, of which it is sufficient for our purpose to establish either ; as in this example from Cicero :f *There is certainly no one so unfavourable to Cluentius as not to grant me one thing : If it is certain that those judges were bribed, they must have been bribed -either by Habitus or by Oppianicus ; if I show that they were not bribed by Habitus, I prove that they were bribed by Oppianicus ; if I make it appear that they were bribed by Oppianicus, I clear Habitus from suspicion.* 69. Or liberty maybe granted to our adversary to choose one of two propositions, of which one must necessarily be-true, and, whichever he chooses, it may be proved to be adverse to his cause. This is a mode which Cicero adopts in pleading for Oppius:\$ *Whether was it when he was aiming at Cotta, or when he was attempting to kill himself, that the weapon was snatched from his hand ?* And in that for Varenus :§ *The option is granted you, whether you would prefer to say that Varenus took that road by chance, or at the instigation and persuasion of the other ;* and he then shows that either supposition is equally adverse to the accuser. 70. Sometimes two propositions are stated of such a nature, that from either, if adopted, the same consequence follows : as

* C. 13.

t Pro Cluent. c. 23.

\$ Marcus Aurelius Cotta, proconsul of Bithynia, had dismissed his quvestor Publius Oppius on suspicion of embezzling the public money and plotting against his life, of which he was afterwards accused, and defended by Cicero. See [Dion. Cam. b. xxxvi. p. Reim. 100.](#) The only fraguiont of Cicero's speech that is extant is the one in the text. *Spalding.*

§ See iv. 2, 26; and the fragment in Ernonti, p. 1040.

in the common adage, *We must philosophize, though we must not philosophize;** or in the still more common question, *To what purpose is a figure,t if the subject is intelligible? to what, purpose if it is not intelligible?* and in this saying, *He who can endure pain, will tell lies under torture; he who cannot endure pain will tell lies.*

71. As there are three parts of time, so the order of things is comprised in three stages of progress ; for everything has a *beginning*, an *increase*, and a *completion*; as first, for instance, there is a quarrel, then one man's blood is shed, then that of several. Here then is an origin for arguments supporting one another ; for the *end* may be inferred from the *beginning*; as in the common saying, *I cannot expect a toga prectexta when I see the concncencencent of the web black*; or the *beginning* may be argued from the *end*; as *the resignation of the dictatorship* may be made an argument *that Sylla did not take arms with the object of making hincse f a tyrant.* 72. From the *increase* of a thing, in like manner, arguments may be drawn with regard both to its *beginning* and its *end*; and that not only in conjectures as to matters of fact, but in the consideration of points of law : as, *Is the end referable to the beginning ?* that is, *Ought the blood shed to be imputed to hint with whom the quarrel began ?*

73. Arguments are also drawn from *similarities* : *If continence be a virtue, abstinence is also a virtue ; If a guardian ought to give security, so likewise should an agent.* This argument is of the nature of that which the Greeks call *hraywryi*, Cicero* *induction.* From *dissimilarities* : *If joy is a good, pleasure is not therefore necessarily a good : What is lawful in regard to a woman, is not also lawful in regard to a minor.*§ From *contrarieties* : *Frugality is a good, for extravagance is a vice.*

\$ That is, says Turnebus, we must give some attention to philosophy, though we are not to spend our whole lives in it. A saying of Neoptolemus in a tragedy of Ennius, to that effect, is cited by Cicero de Or at. ii. 37.

t It is not properly a figure of language or of thought that is here intended, but that sort to which Quintilian alludes, ix. 1, 14, and of which he treats more fully, ix. 2, 65; see also vii. 4, 28. It is a mode of speech by which we indicate obscurely what we do not wish to express plainly. *Spalding.*

§ Topic. c. 10; De Inv. 1. 31.

§ An example from Cicero, Topic. c. 11 : "If you have contracted a debt to a woman, you can pay her without having recourse to a

ance is an evil : If war is the cause of sufferings, peace will be the remedy of them : If he deserves pardon who has done an injury unawares, he does not merit reward who has done a service unawares. 74. From contradictions : *He who is wise, is not a fool.*, From consequences or ^{adjuncts} : *If justice is a good, we ought to judge with justice : If deceit is an evil, we must not deceive* ; and such propositions may be reversed. v'or are the arguments that follow dissimilar to these ; so that they may properly be ranged under the same head, to which, indeed, they naturally belong : *What a man never had he has not lost : A person whom we love we shall not knowingly injure : or a person whom a man has resolved to make his heir, he has had, has, and will have,* affection.* But as such arguments are incontrovertible, they partake of the nature of necessary indications.^t 75. The latter sort, however, I call arguments from what is consequent, or what the Greeks call &xoxouaov, as *goodness is consequent upon wisdom*; (what merely follows, that is, tappens afterwards, or will be, I would distinguish by the reek erm *7ragEvr6pasvoY.*) But about names I am not anxious ; very one may use what terms he pleases, provided that the haracter of the things themselves be understood, and that he one be regarded as dependent on time, and the other on the nature of things. 76. Accordingly, I do not hesitate to all+ the following forms of argument consequential, (though rom what precedes in order of time they give an indication of what is to follow in order of time,) of which some have sought to make two kinds : the first regarding *action*, as exemplified a Cicero's speech for Oppius :[§] *Those whom he could not lead forth into the province against their will, how could he detain against their will?* the other regarding *time*, as shown in this passage against Verres :^{||} *If the Kalends of January put an end to the authority of the proctor's edict, why does not the corn-*

rustee; but what' you owe to a minor you cannot pay in the same aanner."

• *Habuit, habet, habebit.*] The last two words seem to be but little to the purpose. It was for that reason, perhaps, that Aldus omitted them ; but they are in all other copies. *Spaideg.*

^t *Signorum immutabilium.*] See c. 9.

[§] *Vocare*, or some such verb, is wanting in the text, as Regius and there observe.

[§] Sect. 69.

ⁱ Lib. L c. 42.

mencement of its authority bear date from the Kalends of January ? 77. Both these examples are of such a nature that if you reverse the propositions they lead to an opposite conclusion ; for it is also a necessary consequence that they who could not have been retained against their will, could not have been led forth against their will.*

78. Those arguments, too, which are drawn from particulars that mutually support each other, and which some rhetoricians wish to be deemed of a peculiar kind, (they call them ix *rvv crabs &XX, IXa, l'* Cicero+ terms them *ex rebus sub eandem rationem venientibus*.) I would rank with those of necessary consequence ; as, *If it is honourable for the Rhodians to let their customs, it is also honourable in Hermocreon to farm them* ; and, *what it is proper to learn, it is also proper to teach.*

79. Of which nature is the happy saying of Domitius Afer, not expressed in this manner, but having a similar effect : *I accused, you condemned.*[§] There is also a kind of argument from two propositions *relatively consequent*, and which proves the same thing from opposite statements ; as, *He who says that the world was produced, says also that it will come to an end ; for everything which is produced comes to an end.* 80. Similar to this is the kind of argument by which that which is done is inferred from that which does, or the contrary ; which rhetoricians call an argument *from causes*. Sometimes the consequence *necessarily* happens, sometimes *generally*, though *not necessarily*. Thus *a body, for example, casts a shadow in the light, and, wherever there is a shadow, it necessarily proves that there is a body.* 81. Sometimes, as I said, the consequence is not necessary, whether with reference to the cause and the effect together, or to the cause or effect severally. Thus, *The sun darkens the skin ; but it does not necessarily follow that he whose skin is dark has been darkened by the sun. A road makes a man dusty : but it is not every road that*

* The text has, *Consequens cnim est eos, qui inviti duci non potuerint, invitatos non potuisse retineri*, but it is justly observed by Gesner that the infinitives ought to change places. He thinks that the mistake may have been Quintilian's own.

^t Aristot. Rhet. ii. 23, 3.

[§] De Inv. i. 20.

[§] There is a similar expression, as the critics have observed, in Ovid Metain. xiii. 308. *An falso Palemedem criminae turpe eat Aecuskaae enihi, vobis damndisse decorui a I*

brows up dust ; nor does it follow that every man who is dusty was been on a road. 82. Arguments of necessary consequence joth frdm cause and effect* are such as these : If it is wisdom that makes a man good, a good man is necessarily wise ; and so, It is ; the part of a good man to act uprightly, of a bad man to act dishonourably; and accordingly those who act uprightly are considered good, and those who act dishonourably, bad; and this is a just conclusion. But if we say that exercise generally makes the body strong, it will not follow that whoever is strong, has taken exercise, or that whoever has taken exercise, is strong; for, because fortitude secures us from fearing death, will, it follow that whoever does not fear death is to be thought a man of fortitude ; nor if the sun gives men the head-ache, does it follow that the sun is not useful to men. 83. The following kind of argument belongs chiefly to the suasory department of Ratory : Virtue confers glory, therefore it is to be followed ; pleasure brings infamy, therefore it is to be avoided.

84. But we are judiciously admonished by writers on Ratory that causes are not to be sought too far back ; as Uedea, for example, says in the play, " Would that never in the grove of Pelion," as if "the felling of a fir-tree to the earth" there had had the effect of producing her misery or guilt ; or as Philoctetes says to Paris,* " If you had controlled our passion, I should not now be miserable;" for, retracing causes in this way, we may arrive at any point whatever.

85. To these I should think it ridiculous to add what they all the conjugate argument, had not Cicero § introduced it. An example of it is, That they who do a just thing do justly, which certainly needs no proof, any more than *Quod compasum est, compascere licere*, " On a common pasture it is common to every man to send his cattle to feed."

86. Some call those arguments, which I have specified as drawn from causes or efficients, by another name,* *sx~icosrs*,

• Spalding's text has *quae utique fiunt*, and he interprets *utique* by *cessari6*, but he inclines to favour *utrinque*, which occurs in three manuscripts, and which will signify, as he remarks, *4 causis et ab rectius*.

t Eurip. Med. v. 3.

t In the Philoctetes of Accius, as Philander supposes.

§ *Cie. Topic. 3. Aristot. Topic. ii. 3* ; Rhetor. i. 7, 27.

¶ Spalding has *alieno nomine* ; Capperonier reads *alio nomine* on the conjecture of Regius.

that is, issues, for nothing is indeed considered in them but how one thing results from another.

Arguments called apposite or comparative are such as probe the greater from the less, the less from the greater, or equals from equals. 87. A conjecture about a fact is supported by arguing from something greater : as, If a man commits sacrilege, he will also commit an ordinary theft; from something less, as, He who readily and boldly tells a lie, will commit perjury; from something equal, as, He who has taken a bribe to pronounce unjust judgment also take a bribe to bear false witness. 88. A question about a point of law is supported in a similar way : from something greater, as, If it is lawful to kill an adulterer, it is also lawful to scourge him; from something less, as, If it is lawful to kill a thief in the night, how much more is it lawful to kill an armed robber? from something equal, as, The punishment which is justly pronounced on him who has killed his father, is also justly pronounced on him who has killed his mother. All these arguments find a place in causes in which we proceed by syllogism.*

89. The following furnrs are more suitable for questions dependent on definition or quality : If strength is good for bodies, health is not less so:\$ If theft is a crime, much more is sacrilege : If abstinence is a virtue, so is continence : If the world is ruled by a providence, a state must be directed by a government : If a house cannot be built without a plan, what are we to think of the conduct of a fleet or an army ? 90. To me it would be sufficient to notice this form merely as a genus, but it is divided by others into species ; for arguments are deduced by them from several things to one, and from one to several, (as in the common remark, What happens once, may happen often) from a part to the whole, from genus to species, from that which contains to that which is contained, from the more difficult to the more easy, from the more remote to the

* III. 6, 15.

t See b. iii. c. 6.

\$ All the commentators have passed this sentence in silence, except Spalding, who is staggered at the comparison between the respective values of strength and health, and proposes for *sanitas* to read *inanitas*, with some suitable alteration in the other words. He says that he has met with nothing similar elsewhere. I read with Gedoyn, *Si robur corporibus bonum est, non minus sanitas*. Spalding's text has, *S. r. c. 6, non est, ma. S.*

arer, and from the opposites of all these to their opposites ; but such arguments are all of the same nature ; for they are drawn from greater things and less, or from things of equal force ; and, if we pursue such distinctions, there will be

end of particularization ; for the comparison of things is finite, and, if we enumerate every kind, we must specify things that are *more pleasant, more agreeable, more necessary, more honourable, more useful.* But let me abstain from peaking of more, lest I fall into that prolixity which I wish

to avoid. 92. As to the examples of this kind of arguments, their number is incalculable ; but I will notice only a very few. From *the greater*, in Cicero's speech for Cwcina :*- *Shall that which alarms armed troops be thought to have caused no alarm in a company of lawyers ?* From *the easier*, in his speech against Clodius and Curio :† *Consider whether you could so easily have been made prretor, when he, to whom you had given way, was not made prwtor ?* 93. From *the more difficult*, in his speech for Ligarius :‡ *Observe, I pray you, rubero, that I, who do not hesitate to speak of my own act, speak boldly of that of Ligarius ;* and, in the same speech, § *Has not Ligarius ground for hope, when liberty is granted me to intercede with you even for another ?* From the less, in his speech for Cvecina :§ *Is the knowledge that - there were armed men a sufficient ground for you to prove that violence was committed, and is the fact of having fallen into their hands insufficient ?* 94. To sum up the whole in a few words, then, arguments are drawn from *persons, causes, places, time*, (of which we distinguished three parts, the *preceding*, the *coincident*, and the *subsequent*,) *manner*, (that is, how a thing has been done,) *means*, (under which we included *instruments*,) *definition, genus, species, differences, peculiarities, removal, division, beginning, increase, completion, similarity, dissimilarity, contraries, conse-*

* 15.

t See iii. 7, 2.

+ Cicero pro Ligar. c. 3. But the words in Cicero are greatly at variance from those which are given by Quintilian : *Vide, quaso, Tubero, at, qui de meo facto non dubitem dicere, de Ligarii non audeam confiteri.*

§ C. 10.

L C. 16.

¶ See sect. 66.

quences, causes, effects, issues, connexion, comparison ; each of ¶, which is divided into several species.

95. It seems necessary to be added that arguments are deduced not only from acknowledged facts, but from fictions or suppositions, or, as the Greeks say, *xaO' b'r6AF6rv* : and this kind of arguments is found in all the same forms as the other kinds, because there may be as many species of fictitious as of true arguments. 96. By using fiction, I here mean advancing something, which, if it were true, would either solve a question, or assist to solve it, and then showing the resemblance of the point supposed to the point under consideration. That

young men, who have not yet left the school, may understand this process the better, I will illustrate it by some examples more suitable to that age.* 97. The law is, that *he who does not maintain his parents is to be imprisoned* ; a man does not maintain his parents, and yet pleads that he ought not to go to prison ; he will perhaps have recourse to supposition, *if he were a soldier, if he were an infant, if he were absent from home on the public service.*† And to oppose the *option\$* of a man distinguished for bravery, we might use the supposition, *if he ask for supreme power, or for the overthrow of temples.* 98. This is a form of argument, of great force against the letter of a law. Cicero adopts it in his defence of Cwcina : § *whence you, or your slaves, or your steward-if your steward alone had driven me out-but if you have not even a single slave but him who drove me out - ;* and there are several other examples in that speech. 99. But the same sort of fiction is of great use in considering the quality of an act : || *If Catiline, with the troop of villains that he took with him, could judge of this affair, he would condemn Lucius Murcena.* It serves also for amplification : *If this had happened to you at supper over those*

* That is, such as those to which they have been accustomed in the schools of the rlietoiweians. || *1)aldbnq.*

t He will endeavour to show that in the circumstances in which he is placed, he ought to be exempt from maintaining his parents as much as if he were a soldier, &c.

§ To those who had displayed eminent bravery in the field permission was given to choose some reward. This was a fertile subject for the schools, as may be seen in the declamations attributed to Seneca and Quintilian. Comp. vii. 5, 4. *Spalding.*

¶ C. 19. The words are given imperfectly by Quintilian.
|| Pro Murwn. c. 38,

*monstrous cups of yours** — and, *If the republic had a*
advice.t

100. These are the common topics of proofs which we find specified, and which it is hardly satisfactory to mention under general heads, as a numberless multitude of arguments springs from each of them, nor, on the other hand, does the nature of things allow us to pursue them through all their species ; a task which those who have attempted have incurred the double disadvantage of saying too much and of not saying all. 101. Hence most students of rhetoric, when they have fallen into these inexplicable labyrinths, have, as being fettered by the inflexible restrictions of rules, lost all power of action, even that which they ought to have from their own mind, and, keeping their eyes fixed on a master, have ceased to follow the guidance of nature. 102. But as it is not sufficient to know that *all proofs are to be drawn from, persons or front things*, because each of these general heads branches out into an infinity of others, so lie who shall have learned that arguments are to be deduced from *preceding or coincident or subsequent circumstances*, will not necessarily be qualified to judge what arguments proper for any particular cause are to be deduced from such circumstances ; 103. especially as most proofs are taken from what is inherent in the nature of a cause, and have nothing in common with any other cause ; and these proofs, while they are the strongest, are also the least obvious, because, though we learn from rules what is common to all causes, what is peculiar to any particular cause we have to discover for ourselves. 104. This kind of arguments we may well call arguments from *circumstances*, (as we cannot otherwise express the Greek word *Ir?l6rcabij;*) or from those things which are proper to any individual cause. Thus in the case of the priest guilty of adultery,* who, by virtue of the law by which he had the power of saving a life, wished to save his own life, the argument proper to the cause, in opposing him,

* Cic. Philipp. ii. 25.

} Cic. Catilin. i. 7.

\$ A case very similar to this is treated in the 284th of the Declamations attributed to Quintilian, of which the title is this : " Let a priest have the power of saving one person from capital punishment let it be lawful to kill adulterers : a man surprises a priest in the commission of adultery, and, putting him to death, though he claimed his life on the ground of the law, is accused of murder." Spalding.

would be, *you would not save one criminal only, for, if you are released, it will not be lawful to kill the adulteress;* for* this argument the law supplies, which prohibits killing the adulteress without the adulterer. 105. Thus, too, in that controversy, in which the law is, *that the bankers might pay the half of what they owed, but demand payment of the whole of what was due to them;* and one banker requires the whole of his debt from another banker, the proper argument for the creditor, from the nature of the cause, is, " that it was expressly inserted in the law that a *banker* might demand the whole of a debt, for with regard to other people, there was no need of a law, as every one had the right of exacting a debt in full except from a banker." \$ 106. But many new considerations present themselves in every kind of subject, and especially in those cases which depend upon writing, because there is often ambiguity, not only in single words, but, still more, in words taken, together. 107. These points for consideration must necessarily vary, from the complication of laws and other written documents produced to support or overthrow them, as one fact brings to light another, and one point of law leads to the consideration of another : as, *I owed you no money; -why? you never summoned me for a debt; you took no interest from me; you even borrowed money from me yourself.* A law says, *A son who does not defend his father when accused of treason is to be disinherited;* a son denies that he is amenable to this law *unless his father be acquitted;* and what is his proof? Another law, which says that *he who is found guilty of treason is to be sent into exile with his defender.* 108. Cicero, in his speech for Cluentius, says that Publius Popilius and Tiberius Gutta were *found guilty, not of having bribed the judges, but of having tried to bribe them.* What is the proof?

* As it is said in the declamation just mentioned : *Quid quod ille pro duo bus petebat? nam adultera sine adultero non poterat occidi.* So *Dig. xlvi. 5, 32: Dams utrumquc occidat; nam si alterum occidat, lege Cornelia (do Sicariis) reu8 Brit.* See Schulting. *Jurispr. Ante-Just. p. 746. Spalding.*

† On this law I can throw no light either from the forum or from the schools. But the argument of the creditor seems incomplete. Spalding.

* In concluding thus the creditor makes an admission against himself, for, if a banker was not required to pay more than half his debts, he himself could not expect from his debtor more than half of what was owing to him.

That *their accusers, who were themselves found guilty of trying to bribe, were reinstated, according to law, * after having proved Popilius and Gutta guilty of the same offence.*

109. But no less care ought to be taken as to what you advance, than as to the manner in which what you advance is to be proved. Here the power of invention, if not the greatest, is certainly the first requisite ; for as arrows are useless to him who knows not at what he should aim, so arguments are useless to him who has not ascertained to what point they are to be applied. 110. This is what cannot be attained by art ; and accordingly, though several orators, after having studied the same rules, will doubtless use arguments of a similar kind, yet some will devise more arguments for their purpose than others. Let the following cause, which involves questions by no means common with other causes, be given as an example. 111. *W" hen Alexander had demolished Thebes, he found a document in which it was stated that the Thebans had lent the Thessalians a hundred talents. Of this document Alexander made a present to the Thessalians, as he had had their assistance In the siege. But subsequently, when the Thebans were re-established by Cassander, they demanded payment of the money from the Thessalians.* The cause was pleaded before the Amphictyons. It was admitted that the Thebans had lent a hundred talents, and had not been repaid. 112. The whole controversy depends on this point, that Alexander is said to have made the present to the Thessalians. But it is admitted also that no money was given by Alexander to the Thessalians ; and it is therefore a question *whether that which was given was the same as if he had given them money.* 113. Of what profit, then, will grounds of argument be, unless I first settle that *the gift of Alexander was of no avail, that he could not give, and that he did not give.* The commencement of the pleading on the part of the Thebans is at once easy and such as to conciliate favour, as they seek to recover as their right that which was taken from them by force ; but then a sharp and vehement dispute arises about the rights of war, the Thessalians alleging that upon those rights depend kingdoms and people, and the boundaries of nations and cities. 114. We have

* Whoever was convicted under any law, might, if he proved another person guilty under the same law, be reinstated in his former condition. *Tumebus.* See Dig. xlvi. 14.

therefore to discover, on the other side, how this cause differs from causes concerning other things that fall into the hands of a conqueror ; and the *difficulty* in this respect lies not so much in the proof as in the proposition to be advanced. We, may state in the first place, that, *in regard to whatever can be brought before a court of justice the right of war can have no power; that things taken away by arms cannot be retained except by arms; that, consequently, where arms prevail, the judge has no power, and that when the judge has power, arms have none.* 115. Such a statement is first to be made, that an argument, such for example as the following, may be brought to support it *That prisoners of war, if they e f ct a return into their country, are at once free, because what is taken by force of arms cannot be held except by force of arms.* It is peculiar to the cause, also, that the Amphictyons are the judges in it. (For, concerning the same question, there is one mode of proceeding before the centumviri and another before a private judge.*)

116. On the *second head*, we may allege that the *right to the money* could not have been given by Alexander to the Thessalians, as *right can belong only to him who holds it, and, being incorporeal, cannot be grasped in the hand.* This is a proposition more difficult to conceive, than it is, when you have conceived it, to support it with arguments ; such, for example, as the following : that *the condition of an inheritor is different from that of a conqueror, because right passes to the one, and the mere property to the other.* 117. It is also an argument peculiar to the cause itself that *the right over what was owing to a whole people could not have passed into the hands of the conqueror, because what a whole people had lent, was due to them all, and as long as a single one of them survived, he was a creditor for the whole sum; and that all the Thebans had not fallen into the power of Alexander.* 118. This argument, such

* *Privatum judicem.* Take care not to take *judex privatus* in the sense of *judex causae private.* For the centumviri themselves were es only of private causes. But "privati judices were such as were appointed on arbitrations, and on many kinds of trials, by the praetor, being themselves almost all private individuals, and accustomed to have the assistance of lawyers in their proceedings, as Aquilius assisted in the cause of Quintius in Cicero ; and it is probable that there was no settled body or order of men from whom such judges were chosen," Bach. Hist. Juris. ii. 1, 28. *Spalding.*

1. The right to withhold the payment of the money to the Thebans.

is its force, is not upheld by external support, but sustains itself by itself.

On, the *third head* the commencement of the argumentation will rest on the more obvious assertion that the *right did not lie in the writing*, * a proposition which may be supported by many confirmations. The intention of Alexander may also be brought into question, and it may be inquired *whether he meant to oblige or to deceive the Thessalians*. It is likewise an argument peculiar to the cause, and the commencement, as it were, of a new discussion, *that the Thebans, even though it be admitted that they lost their right, must be thought to have recovered it by their re-establishment*. Under this head may be inquired, too, what were the views of Cassauder? But all pleading on behalf of equity had the highest influence with the Amphictyons.

119. I make these observations, not because I think that the knowledge of the general topics from which arguments are drawn is useless, (for if I had thought so, I should have given no precepts respecting them,) but that those who have studied them, may not think themselves, while they neglect other points, complete and consummate masters of their art; and may understand, that unless they acquire other accomplishments, on which I shall soon give instructions, they will have attained but dumb knowledge. 120. For the power of finding arguments was not a result of the publication of books on rhetoric; all kinds of arguments were conceived before any instruction was given respecting them; and writers afterwards published the forms of them when they were observed and collected. It is a proof of this fact, that writers on rhetoric use old examples of argumentation, extracting them from the orators, and producing nothing new of their own, or anything that has not been said before. 121. The real authors of the art, therefore, are the orators; though certainly some thanks are due to those by whom our labour has been diminished; for the arguments which preceding orators have discovered,

* The advocate of the Thebans will say that the right of the Thebans does not properly lie or consist in the writing, as right is incorporeal, and cannot be taken in the hand, and that, accordingly, though Alexander gave the Thessalians the document by which it appeared that they had borrowed a hundred talents from the Thebans, it did not follow that the Thessalians were thus freed from the obligation of payment. *Capperonier.*

one after another, by the aid of their natural genius, it is not necessary for us to seek, and yet they are all accurately known to us. But this is not sufficient to make an orator, any more than to have studied in the pal-estra is sufficient to make an athlete, unless the body be also strengthened by exercise, continence, food, and, above all, by constitutional vigour; while, on the other hand, all these advantages are of no avail without the assistance of art.

122. Let students of eloquence consider also, that every point to which I have called their attention is not to be found in every cause; and that, when a subject for discussion is brought before them, they need not search for every topic of argument, and knock as it were, at its door, to know whether it will answer, and serve to prove what they desire; they need not do this, I say, unless while they are still learners, and destitute of experience. 123. Such examination, indeed, would render the process of speaking infinitely slow, if it were always necessary to examine the several kinds of arguments, and ascertain, by trial, which of them is fit and proper for our purpose; and I know not whether all rules for argument would not be a hindrance to us, unless a certain penetration of mind, engendered in us by nature and exercised by study, conducted us straight to all the considerations suited to any particular cause. 124. For, as the accompaniment of a stringed instrument, when joined to the notes of the voice, is a great assistance to it, yet, if the hand of the player be slow, and hesitates to which string each note of the voice corresponds, until every string has been sounded and examined, it would be better for the singer to be content with what his unassisted power of voice enables him to accomplish. Thus, too, our system of study ought to be fitted and applied, as it were, after the manner of a stringed instrument, to rules of this 'nature

125. but such an effect is not to be produced without great practice, in order that, as the hand of the musician, though he be attending to something else, is yet led by habit to produce grave, acute, or intermediate notes, so the variety and number of arguments in a case may not embarrass the judgment of the orator, but may present and offer themselves to his aid; and that, as letters and syllables require no meditation on the part of the writer, so reasons may follow the orator as of their own accord.