

contests in the forum, let him aspire to victory in the schools, and learn to strike at the vital parts of his adversary and to protect his own. Let the preceptor exact such manly exercise above all things, and bestow the highest commendation on it when it is displayed ; for though youth are enticed by praise to what is faulty, they nevertheless rejoice at being commended for what is right. 23. At present, there is this evil among teachers, that they pass over necessary points in silence, and the useful is not numbered among the requisites of eloquence. But these matters have been considered by me in another work,* and must frequently be noticed in this. I now return to my prescribed course.^t

* What work is meant is unknown ; perhaps the treatise *de Causis Corrupter Eloquentiae*, which is lost. See b. vi. Introd.

^t See iii. 6, 60; iii. 9, 1; Introduction to this book, sect. 5.

CHAPTER XIII.

Refutation twofold, § 1. Why it is more difficult to defend than to accuse, 2, 3. Deprecation not to be adopted without some ground of defence, 4-6. Nothing to be gained by silence in regard to matters that cannot be defended, 7-11. We may attack some of our adversary's arguments in a body, some singly, 12-14. What arguments may be easily refuted, 15, 16. What arguments of our adversary may be turned to our advantage, 17, 18. Many will fall under conjecture, definition, quality, 19-21. Some of the adversary's arguments may be treated as unworthy of notice, 22. Precedents, which he assumes to be applicable to his case, we must endeavour to prove inapplicable, 23, 24. We may repeat the statements of the adversary so as to weaken them, 25-27. We may sometimes expose the whole charge, sometimes particular parts of it, 28. How we make arguments common to both sides adverse to us ; how discrepancies in the pleading of the adversary are to be exposed, 29-33. Some faults easily shown, 34, 35. Not to neglect arguments of our adversary, and not to be too anxious to refute them all, 36, 37. How far we should spare our adversary personally, 38-44. Some pleaders, in endeavouring to expose their adversaries, give occasion against themselves, 45-48. Sometimes, however, we may represent that there are contradictions in his statements, 49, 50. A pleader ought to appear confident of the justice of his cause, 51, 52. Order which we must observe in supporting our own arguments and refuting those of the opposite party, 53-55. We must support our proofs and refutations by the power of eloquence, 56-58. Foolish dispute between Theodorus and Apollodorus, 59, 60.

1. *Refutation* may be understood in two senses ; for the part of the defender consists wholly in refutation ; and what, ever is said by either party in opposition to the other, requires to be refuted. It is properly in the latter sense that the fourth place* is assigned to it in judicial pleadings. But the manner of conducting both is similar ; for the principles of argument in refutation can be drawn from no other sources than those used in affirmation ; nor is the nature of the common places, or thoughts, or words, or figures,^t at all different.

2. It has, in general, little to do with moving the passions.

It is not without reason, however, that it is thought more

* There are five parts in a cause, or judicial pleading, the exordium, the statement of facts, the confirmation, the refutation, and the peroration. *Capperonier.*

^t This word is to be understood here, apparently, in the same sense as in iv. 2, 118. *Spalding.*

difficult (as Cicero*- often testifies) *to defend* than *to accuse*. 'In the first place, accusation is more simple, for a charge may be brought in one way, but may be overthrown in many ; and it is sufficient for the accuser, in general, that what he advances appear true ; while the defendant has to deny, to justify, to take exceptions,^t to excuse, to deprecate, to soften, to extenuate, to avert, to affect contempt,⁺ to ridicule ; and accordingly, on the accuser's side, the pleading is for the most part straightforward and, so to speak, open-mouthed ; while on that of the defendant a thousand turns and artifices are required. 3. The accuser, too, generally sets forth what lie has previously meditated at leisure ; the defendant has frequently to oppose what is entirely unexpected. The accuser produces his witnesses ; the defendant has to refute him by arguments drawn from the cause itself. The accuser finds matter for his speech in the odiousness of the charges,§ even though they are false, as parricide, for instance, or sacrilege, or treachery to the state ; which the defendant can only deny. Hence even moderate speakers have succeeded in accusations ; while none but the most eloquent have proved able defenders ; for, to dispatch what I mean in a word, it is as much more easy to accuse than to defend, as it is to make wounds than to cure them.

4. It is a point of great importance to consider *what* the opposite party has said, and *in what manner*. We must first of all examine, therefore, whether that which we have to answer belongs properly to the cause, or has been introduced into it extrinsically ; for if it be inherent in the cause, we must either deny it, or justify it, or prove that the action is illegally brought ; besides these there is scarcely any means of defence in any kind of trial. 5. *Deprecation*,(at least such as is without appearance of defence, is extremely rare, and before such

* Spalding observes that he cannot direct his reader to any passages of the kind in Cicero. Turnebus refers to *Do Off.* ii. 14, but that passage is hardly applicable to the subject; "another to which he refers in the *Orator*," says Spalding, "I cannot find. That Cicero was oftener engaged in defences than in accusations is apparent from his own testimony in the *Divinatio in Cæciliūm*, and from his speeches."

Transferat.] See note on *iii. 6, 23*.

§ Comp. *iv. 1, 38; v. 13, 22*.

§ *Accusator criminum invidid, &c.* Gesner justly observes that the reposition & should be inserted before *criminum*.

|| Comp. *vii. 4, 17*.

judges only as are confined to no certain form of decision ;* and even those pleadingst before Caius Caesar and the Trium. viri, in behalf of men of the opposite party, though they depend chiefly on intreaty, yet mingle with it some defensive arguments ; .for it is surely the expression of a bold defender to exclaim,+ *What object have we had in view, Tabero, but that we might have the power which Cesar now has ?* 6. But if on any occasion, in pleading for another before a sovereign prince, or any other personage who may condemn or acquit at his pleasure, we have to say that lie whose cause we undertake is worthy indeed of death, but of such a character that his life may be spared by a merciful judge, we must consider, first of all, that we shall not have to do with an adversary, but with an arbitrator, and, in the next, that we shall have to adopt the style of deliberative rather than of judicial oratory ; for we shall have to counsel him to prefer the praise of humanity to the pleasure of vengeance. 7. As for pleadings before judges that must give sentence according to law, it would be ridiculous to offer precepts in regard to those who confess their guilt. Charges, therefore, which cannot be denied, or set aside by taking exceptions on a point of law, must be justified, whatever be their nature, or we must abandon our cause.

Of negation I have specified two forms ; that *the matter in question did not happen*, or that *what did happen is not the matter in question*. What cannot be justified, or set aside on a point of law, must necessarily be denied, not only if a definition of it may prove in our favour, but even if nothing but simple denial is left to us. 8. If *witnesses* be produced, we may say much against them ; if *writings*, we may descant on the resemblance of hands. Certainly nothing can be worse than confession. When there is no ground either for justification or denial, the last resource for maintaining our cause is *legal exception*. 9. But, it may be said, there are some charges which can neither be denied nor justified, and to

* Turnebus and Gedoyn understand judges that are above the law, as sovereign princes, the senate, or the people. Spalding thinks that the allusion is to such judges as are meant, *iii. 10, 1*, to whom the prætor might appoint *viuitas et diversas formulas judicandi*. The former notion seems to suit better with what follows.

+ We have no knowledge of any such pleadings except that of Cicero for Ligarius.

+ Pro Ligari. c. 4.

which no legal exception can be taken. *A woman is accused, for instance, of adultery, who, after being a widow a year, had a child;* here there can be no case for the judge. It is, therefore, most foolishly directed that what cannot be justified should be pretended to be forgotten and passed in silence, for that is the point on which the judge has to pronounce. 10. But if what the accuser alleges be foreign to the cause, or merely accessory to it, I should prefer to say in the defence that it has nothing to do with the question, that it is needless to dwell upon it, and that it is of less importance than our adversary represents it; or I might, indeed, in such a case, pardon the pretence of forgetfulness to which I just now alluded ; for a good advocate ought not to fear a slight censure for negligence if he can thus save his client.

11. We must consider also whether we ought to attack the charges of an accuser in a body, or overthrow them one by one. We may assail a number at once, if they are either so weak that they may be borne down in a mass, or #o annoying that it is not expedient to engage them in detail ; for we must then struggle with our whole force, and, if I may be allowed the expression, must fight with the enemy front to front. 12. Sometimes, if it be difficult to refute the allegations on the other side, we may compare our arguments with those of our opponents, provided there be a probability of making ours appear the stronger. Such arguments against us as are strong from their number must be separated ; as, in the example which I gave a little above, *You were the heir of the deceased ; you were poor ; you were harassed for a large sum of money by your creditors ; you had offended the deceased, and you know that he purposed to alter his will.* 13. These arguments, taken together, have much weight; but if you divide them, and consider them separately, they will be like a great flame, which had its strength from a large mass of fuel, but which will dwindle away when that which nourished it is withdrawn, or like large rivers, which, if they are divided into rivulets, become fordable in any part. The form of our refutation, therefore, must be adapted to the interest of our cause ; we may sometimes state the arguments of our adversary separately, and sometimes collect them into a body ; 14. for, in certain cases, what our opponent has deduced from several particulars, it will be sufficient for us to include in a single

proposition ; for example, if the accuser shall say that the defendant had many motives for committing the crime with which he charges him, we may, without recapitulating all the alleged motives, deny simply that the argument from the motives ought to be regarded, because it is not to be supposed that every man ivho had a motive for committing a crime has committed it. 15. Yet it is best for the prosecutor, in general, to group arguments and for the defendant to disperse them.

But the defendant must consider *in what manner* that which has been stated by the prosecutor must be refuted. If it be evidently false, it will be sufficient to deny it; as Cicero, in pleading for Cluentius,[#] denies that he, whom the accuser bad affirmed to have fallen down dead on drinking from a cup, died the same day. 16. To refute allegations that are inconsistent, or idle, or foolish, requires no art, and it is therefore unnecessary to give either precepts or examples concerning them. That also which is said to have been done in secret, (they call it the *obscum* kind of charge,) and without witness or proof, is sufficiently weak in itself (for it is enough that the adversary cannot attest it) ; and it is the same with whatever has no reference to the question. 17. It is the business of a pleader, however, at times, ,to represent the statements of the adversary in such a way that they may either appear contradictory, or foreign to the question, or incredible, or superfluous, or favourable to our side rather than his own. *It is a charge against Oppiust that he embezzled the provisions intended for the soldiers ;* a grave accusation ; but Cicero shows that it was inconsistent with other charges brought by the same prosecutors, who accused Oppius, at the same time, of attempting to corrupt the soldiers with largesses. 18. *The accuser of Cornelius + engages to produce witnesses of the law having been read by him when tribune;* this charge Cicero renders ineffectual by admitting it. *Quintus Ctvcius solicits the office of prosecuting Verres, because he had been Verres' quasor ;* but Cicero § made that very circumstance appear in his own, favour.

* C. 66.

f C. 10, sect. 69.

\$ See iv. 3, 13.

Divinat. in Quint. Cincil. c. 2, 6, 11, et passim. He was a Jew by birth, according to Plutarch, Life of Cicero, as well as the other Csecilius mentioned by Quintilian, iii. 1, 16. Spalding.

10. As to other charges, the mode of refuting them all is much the same ; for they are either to be examined *by conjecture*, whether they are true ; or by *definition*, whether they properly concern the cause ; or, with regard to their *quality*, whether they are dishonourable, unjust, scandalous, inhuman, cruel, or deserve any other designation that falls under the head of quality. 20. It is to be considered, indeed, not only with regard to the first charges in an action, but throughout the whole of it, whether it be *excessively rigorous*, as that of Labienus against Rabirius, under the *lex perduellionis* ;^{*} or *unfeeling*, as that of Tuhero against Ligarius, whom he accused when an exile, and exerted himself to the utmost to prevent C. rsar from pardoning him ; or *presumptuous*, as that against Oppius when he was accused on a letter of Cotta. 21. In like manner other actions may be contemplated, and shown to be *rash*, *insidious*, or *vindictive*. But the strongest allegation that you can bring against an action, is, either that it is fraught with danger to the public, as Cicero says in his defence of Tullius, *t who has ever laid down such a maxim, or to whom could it be permitted without danger to the whole community, to kill a man because he says that he is apprehensive of being killed by him ?*[§] or to the judges themselves, as Cicero, speaking for Oppius, exhorts the judges at some length *that they should not sanction that kind of action against the equestrian order*. 22. For some arguments, again, contempt may be at times

Rabirius was an aged senator, accused of having caused the death of the Tribune Saturninus, forty years after that event had taken place. Labienus brought the charge against him at the instigation of Julius Caesar, who wished to deter the senate from taking up arms against the popular party. The accusation was made, not on the ground of *lwsa majestas*, as was usual, but under the old *lex perduellionis*, the severity of which is apparent from Livy, i. 26. The duumviri appointed to try the cause, in conformity with that law, were Julius Coosar himself and his relative Lucius Cwsar, by whom he was condemned, and would have been put to death had he not appealed to the people. The people, too, would have ratified his condemnation, had it not been for a stratagem of Quintus Metellus Celer, who removed the military flag that waved over the Janiculum, and thus, according to ancient usage, broke off the proceedings. See Dion Cass. xxxvii. 26-28; and Cie. pro Rabirio passim.

t iv. 2, 131.

Ne ipse posterizls occideretur.] For *postcrius* Francius would read *pot ins*, Capperonier prizes. As the word is useless, I have not translated it.

expressed, as bring frivolous or having nothing to do with the question ; a course which Cicero frequently adopts ; and this affectation of contempt is sometimes carried so far, that we trample with disdain as it were upon that which we should be unable to refute by regular argument.

23. But since the greater part of such charges is founded upon *resemblances*,^{*} we must use our utmost efforts, in refuting them, to discover some discrepancy in what is stated. This is most easily found in legal questions ; for the law, to which we refer, was assuredly made with reference to other matters than that under consideration ; and so much more easily may variation in the different cases be made to appear.^t As to comparisons drawn from brute animals, or inanimate objects, it is easy to elude them. 24. As to examples from historical facts, if they bear hard upon us, they may be met in various ways ; if they are ancient, we may treat them as fabulous ; if they cannot be doubted, we may endeavour to show that they are inapplicable to the case ; for it is impossible that two cases should be alike in all respects ; for instance, if Scipio Nasica, after killing Gracchus, should be defended on the resemblance of his act to that of Ahala,[§] by whom Mwlius was killed, it may be said that *Mcelius aspired to sovereignty, but that Gracchus only brought forward some popular laws ; that Ahala was master of the horse, but Nasica a private individual.* If all other means fail us, we must then see whether it can be shown that even the fact adduced as a precedent was not justifiable. What is to be understood with regard to examples, is also to be observed with regard to *previous judgments*.[§]

25. From the remark which I made above, that it is of important to notice in what manner[¶] the accuser stated his charges, I wish it to be understood, that if he has expressed himself but feebly, his very words may be repeated by ourselves ; or, if he has used fierce and violent language, we may reproduce his matter in milder terms ; 26. as Cicero says in his defence of Cornelius,

* *Similibus conatat.*] Those arguments which are drawn *à strailli*, or, as we now say, *à para*. Capperonier.

t Scarcely any two cases being entirely similar.
§ iii. 7, 21 ; v. 9, 13.

¶ *De .Tudieatis.] Judieata or prcejudicia, or res antea judieatce, concerning which see the second chapter of this book.* Capperonier.
¶ See sect. 4.

*Ile took hold of the tablet of the law ; * and this we may do with a certain degree of deference to our client ; so that, if we have to speak on behalf of a man of pleasure, we may observe that a rather free course of life has been imputed to him ; and so we shall call a person *frugal* instead of *niggardly, or free of speech* instead of *slenderous.* [±] 27. We must at any rate take care not to repeat our adversary's charges with their proofs, or to amplify any point in them, unless such as we mean to ridicule, as is done in the following passage from Cicero : } *You have been with the army, says he ; for so many years you have not set foot in the forum; and, when you return after so long an interval of time, do you contend for honours with those who have made the forum as it were their dwelling-place ?* 28. In replies, too, the whole accusation may be sometimes repeated; a mode which Cicero adopts in his defence of Scaurus with reference to Bostar, [§] speaking in the character of his antagonist ; or, if we do not repeat the whole, we may take parts of it, and put them together, as in Cicero's defence of Varenus : ^{||} *When he was travelling through fields and solitary places with Pompulenus, they met, as they said, the slaves of Ancharius, when Pompulenus was killed, and Varenus immediately after bound, and kept in custody till his father should signify what he wished to be done with him.* Such a mode may always be adopted when the order of facts stated by the accuser appears improbable, and may be deprived of credit by a comment. Sometimes points which prejudice us collectively may be separated ; and this is generally the safest method. Sometimes the parts of a reply are naturally independent of each other ; of which no example need be given.*

29. Common arguments are easily apprehended, not only because they may be used by either party, but because they are of more service to the defendant than to the prosecutor ; for I think it no trouble to repeat what I have often

* See iv. 4, 8.

fi Comp. iv. 2, 117.

§ Pro Muran. c. 9.

§ iv. 1, 69. Scaurus was accused of having caused the death of Bostar.

|| v. 10, 69.

¶ ^{scry} good
think, on ve

great ingenuity, and, Quintiliau hd made

grounds, by conjectured Gesner,

that he who is the first to employ a common argument, render it adverse to him ; for that is adverse to him which his opponent can use equally well. * *You say it is not probable that Marcus Cotta contemplated so great a crime ; and is it credible, then, that Oppil(s) attempted to commit so great a crime ?* 30. But it is the part of a skilful pleader to discover in the case of his adversary particulars that are at variance with one another, or that may be made to appear at variance ; and such contradictions are sometimes evident on the very face of a statement, as those noticed by Cicero on the trial of Caelius ; t *Clodia says that she lent Calius money, which is a sign of great friendship on her part ; yet alleges that poison was prepared for her by Calius, which is a sign of the most violent hatred on his.* 31. So, in his speech for Ligarius, *Tubero, says he, makes it a crime in Ligarius that he was in Africa; and yet complains that he himself was not admitted into Africa by Ligarius.* Sometimes an inadvertent remark of our opponent affords us an opportunity of exposing his statements; an opportunity given chiefly by those who are fond of fine thoughts, and who, enticed by some opening for their eloquence, do not sufficiently regard what they assert, fixing their attention on the passage before them, and not on the whole scope of the cause. 32. What could appear more prejudicial to Cluentius [§] than the mark of infamy set on him by the censors? What could have seemed more to his disadvantage than that the son of Egnatius ^{||} had been disinherited by his father for the very crime of corrupt judgment by which Cluentius had procured the condemnation of Oppianicus ? 33. But Cicero shows that these two facts contradict one another : *But I think that you, Accius, should consider carefully whether you would have the judgment of the censors, or that of Egnatius, to carry the greater weight. If that of Egnatius, you think that judgment light which the censors have pronounced against others, for they expelled this very Egnatius, whom you represent as a man* f

this remark to his pupils orally, for there is no observation of the kind to be found in the work before us. Spalding.

* Comp. c. 20.

¶ Cic. pro Cal. c. 13.

C. 3.

§ Cic. pro Cluent. c. 48.

|| The son of Egnatius had been one of the judioee on the trial of Oppianicus.

authority, from the senate. If that of the censors, they retained Eynatius the son, whom his father had disinherited by exercising censorial functions, in the senate, when they ejected his lather from it.

34. As to some faults, there is far more folly in committing them than acuteness in noting them. I mean such as advancing *a disputable* for an *indisputable* argument, *a converted* for an *acknowledged* fact, a point *common to many causes*, for one *peculiar* to the cause in hand, or introducing anything *Vulgar, superfluous, too late for the purpose, or incredible*. For it is incident to incautious speakers to aggravate a charge, when it is still to be proved ; to dispute about an act when the question is about the agent ; to attempt what is impossible ; to break off a discussion as finished when it is scarcely commenced ; to prefer speaking of the party instead of the Cause ; to attribute to things the faults of persons, as, for example, *accusing the decemviral power instead of Appius* ; to contradict what is evident; to say what may be taken in another sense from that which they intend ; to lose sight of the main point of the cause ; to reply to something that, is not asserted. 35. This mode of reply, indeed, may be adopted as an artifice in some cases, as when a bad cause requires to be supported by foreign aid ; thus *when Verres** was accused of *extortion, he was defended for having bravely and actively defended Sicily against pirates*.

36. The same rules may be given with regard to objections that we may have to encounter ; but they require the more attention in this case, as many speakers fall into two opposite errors as to objections. Some, even in the forum, neglect them as matters troublesome and disagreeable, and content, for the most part, with what they have premeditated, speak as if they had no opponent ; an error which is still more common in the schools, in which not only are objections disregarded, but the declamations themselves are in general so framed, that nothing can be said on the opposite side. 37. Others, erring from too great caution, think that they must reply, if not to every word, at least to every thought or insinuation, even the lightest, of their adversary ; a task which is endless and superfluous ; for then it is the cause that is refuted, and not the pleader. For my own part, I shall consider a speaker eloquent only when

* Cicero in Verr. v. 1.

he speaks in such a way that whatever he says to benefit his party, the credit of it may seem to be due to his talents, and not to his cause, and, if he says anything to injure his party, the blame of it may seem attributable to his cause and not to his talent.

38. Invectives, such as that against Rullus[%] for the obscurity of his language, against Pisot for his foolishness of speech, against Antony,['] for his ignorance of things and words, as well for his stolidity, are allowed to passion or just resentment, and are of effect in exciting dislike towards those whom the speaker may wish to render hateful. 39. The mode of reply adopted towards advocates should be different ; though at times not only their mode of speech, but even their character, their look, their walk, their air, are excusably attacked ; as Cicero, in speaking against Quintius,[§] assails not only such personal peculiarities, but even *his purple-bordered toga descending to his heels* ; for Quintius had pressed hard upon Cluentius by his turbulent harangues.

40. Sometimes, for the purpose of effacing an unpleasant impression, what is said severely by one party is eluded with a jest by the other. In this way Triarius was mocked by Cicero ; for when he had observed that the pillars of the house of Scaurus were conveyed through the city on waggons, Cicero retorted, *And I, who have pillars from the Alban mount, had them brought in panniers*. Such ridicule is more freely allowed against an accuser, whom concern for his client sometimes leads a defender to assail with severity. 41. But what is allowed against all pleaders, without any violation of good manners, is *complaint*, if they can be said to have craftily passed in silence, or abbreviated, or obscured, or put off any point. 42. A change in the direction of the defence, too, is often a subject of blame ; a point on which Accius^{||} objects in pleading against Cluentius, and . Eschines^{IT} in his speech against Ctesiphon, Accius complaining that Cicero would adhere only to the letter of the law, and .Eschines that Demosthenes would say nothing

* Cic. De Lege Agraria, ii. 5.

+ Cic. in Pis. c. 1 and 30.

Philipp. ii. 4 ; iii. 4 ; xiii. 19.

§ Cic. pro Cluent. c. 4 0.

|| Cic. pro Cluent. c 62.

5 Comfy. iii. 6, 3.

on the subject of the law. But our declaimers should be especially admonished not to offer such objections as may be easily answered, or imagine that their opponent is an absolute fool. But as fertile common-places, and thoughts that may please the multitude, occur to us, we make to ourselves matter for our speeches, moulding it to our fancy ; so that this verse may be not disadvantageously borne in mind

*Non male respondit; mala enim prior ille rogtrat.**

The answer's nonsense; that we all admit;
But nonsense only could th' objection fit.

43. Such a practice will be fatal to us in the forum, where we shall have to reply to our adversary, and not to ourselves. It is said that Accius being asked why he did not plead causes, when he displayed in his tragedies such power in making able replies, gave this reason, *that on the stage he made his characters say what he wished, but that in the forum his adversaries would say what he did not wish.* 44. It is therefore ridiculous in exercises which are preparatory to the forum, to consider what reply may be made before we consider what objections may be offered ; and a good teacher ought to commend a pupil when he ably imagines anything favourable to the opposite side as much as when he conceives anything serviceable to his own.

45. There is another practice with regard to objections that seems to be always permissible in the schools, but ought rarely to be allowed in the forum. For where when we have to speak first on the side of the prosecutor,^t in a real cause, how can we make replies to objections, when our opponent has not yet spoken ? 46. Many speakers, however, fall into this absurdity, whether from a habit contracted in the schools, or from fond-Mess for speaking, and afford amusement and sport to those who answer them, and who sometimes jestingly remark that *they said nothing, and could have said nothing so foolish;* sometimes, that *they have been well reminded by their opponent, and thank him for his assistance;* but most frequently, what is, indeed, a very strong argument in their favour, that *their oppo-*

* Whence this verse comes, says Spalding, I know not. I have borrowed Guthrie's translation of it.

^t *Nam loco a petitore primo / Quando primo loco dicimus a petit id eat, in gratiam petitoris. (kipperonier.)*

nent would never have replied to objections that had not been made, unless he knew that such objections were well founded, and had been impelled to acknowledge their justice by the voice of conscience. 47. Thus Cicero, in his speech for Cluentius says, *You have repeatedly observed, that you are informed that I intend to defend this cause by the aid of the letter of the law. Is it so ? Am I then to suppose that I am secretly betrayed by my friends ? Is there some one among those, whom I fancy to be my friends, that reports my designs to the enemy ? Who is it that told you of my intention ? Who has been so perfidious ? To whom have I communicated it ? No one, I conceive, is to blame ; it was, doubtless, the law itself that informed you.* 48. But some, not content with answering imaginary objections, amplify whole portions of them, saying that *they knew the opposite party would say so and so, and support their assertions with such and such arguments.* This practice Vibins Crispus, a man of pleasing and refined humour, very happily ridiculed when 1 was at the bar : I, said lie, in reply to an opponent of that sort, *do not make those objections, for to what purpose is it that they should be twice made ?* 49. Sometimes, however, something like an answer to an objection may be made, if anything be comprised in the depositions on the part of the adversary be discussed in a private consultation of advocates,^t for we shall then reply to something said by the opposite party and not to anything imagined by ourselves ; or if the cause be of such a nature that we can state certain objections besides which no others can be offered ; as, for example, when stolen goods are found in a house, he who is accused of having stolen them must, if he deny the charge, necessarily say either *that they were brought thither without his knowledge, or deposited with him, or given to him;* to all which allegations we may reply, even though they have not been advanced. 50. In the schools, too, we may very properly obviate objections,* so as to exercise ourselves for speaking in

• C. 52.

^t *Adorationibus.* By this word I understand private meetings of the advocates. *Spalding.* " Patronorum et amicorum consultationes." *Turnebus.*

^t *At in scholis recta et contradictionibus occurremus, ut in utrumque locum, id est primum et secundum, simul exerceamur.* This is the form in which Spalding gives this passage. But the copies vary. Some of the manuscripts have *recta et plenaribus contradictionibus.* *Turnebus*

both places, the first and the second, on the side of the prosecutor. Unless we do so, we shall never acquire practice in combating objections, as we have no adversary to whom we are called upon to reply.

51. It is also a fault in a pleader to be too anxious, and to labour at removing every thing that stands in his way ; for such solicitude excites distrust in the judge ; and very frequently arguments, which, if stated off hand, would have removed all doubt, but which are tardily advanced through excessive precaution, lose credit, because the advocate himself seems to think something additional necessary to support what he alleges. An orator, therefore, should carry confidence in his manner, and speak as if he had the highest assurance of the success of his cause, 52. This quality, like all others, is eminently apparent in Cicero ; for his extraordinary affectation of security is like security itself ; and there is such authority in his language as supplies the place of proof, so that we do not venture to doubt his statements. But he who can perceive what is the strongest point in his adversary's case and his own, will easily judge what arguments lie will have to oppose or to urge,

53. As to *order*, there is no part of a cause in which it will give us less trouble ; for, if we are the prosecutors, we have first to support our own allegations, and then to refute what is brought against them ; if we are defendants, we have to commence with refutation. 54. But from what we advance against any objection there arise other objections, and sometimes to a great extent ; as the *hands** of gladiators, which are called

and Burmann would therefore read *recte et probationibus et contradictionibus*, so that there may be two objects to which *utrumque locum* may properly be referred.

* *Gladiatorium manus.* / This passage is almost wholly unintelligible to us, from our want of knowledge of the gladiatorial movements to which Quintilian refers. "By comparing the passage," says Spalding, "with vi. 4, 8, ix. 1, 20, and passages of other authors, it is pretty clear that *manus* is used for *ictus*, in conformity with the interpretation of the old scholiast on Statius Theb. vi. 788; see also Lucan. vi. 190.

But the matter is obscure, as well in itself as in relation to that which is compared to it." "Nothing is more certain," says Burmann, "than that *manus prince*, *secundx*, *4c.*, are modes of assault, in which the gladiators were disciplined by the masters of the schools." Capperonier refers to *cequis manibus* in Ammian. Marcell. xxiv. 4, 18, which however affords little illustration.

the *second*, become the *third*, if the *first* was intended to pro Yoke the assault of the adversary, and the *fourth*, if the challenge be repeated, so as to make it necessary to stated on guard twice and to attack twice ; and this process may lead still further.

55. Refutation includes also that simple kind of proof of which I have given an example above,* proceeding from the feelings, and consisting in mere affirmation, such as that of Scaurus, of which I have already spoken ; and I know not whether such sort of proof may not even be used more frequently when a denial is made. But the chief object of each party must be to see where the main point lies ; for it too frequently happens in a cause that many points are disputed, while judgment is to be passed on few.

56. In these particulars consists the art of proving and refuting ; but it requires to be supported and embellished by the powers of the speaker ; for however well adapted our arguments may be to establish our case, they will nevertheless be but weak unless they are urged with extraordinary vigour by him who uses them. 57. Those common-place observations, accordingly, concerning *witnesses*, *written evidence*, *arguments*, and other matters of the kind, produce great impression on the minds of the judges ; as well as those peculiarly arising from the cause, in which we *praise* or *blame* any action, show that it is *just* or *unjust*, or make it appear *greater* or *less*, *worse* or *better*, than it really is. Of these some are useful in the comparison of one argument with another, others in the comparison of several, others in influencing the decision of a whole cause. 58. Some, too, serve to prepare the mind of the judge, others to confirm it in the opinions which he has already formed ; and such preparation or confirmation has reference sometimes to particular heads, and may be offered as may be suitable for each. 59. I wonder, therefore, that it should have been disputed, and with no small acrimony, between two leaders of opposite sects as it were, *whether argumenta from moral considerations should accompany each particular head*, as Theodorus would have it, or *whether the judge should be informed before his feelings are excited*, as Apollodorus directs ; as if no middle course could be pursued, and

• C. 12, sect. 12.
t C. 12, **act.** 10,

as if nothing could be ordered to suit the interests of the cause. But it is men who do not speak in the forum themselves that give these directions ; and their systems of rules, which they have composed at leisure and at ease, are disturbed by the necessary confusion of battle. 60. For almost all authors, who have set forth methods of speaking, as a kind of mysteries,* have bound us not only to certain subjects for our arguments, but by fixed laws as to the form of expressing them. But having offered these few remarks on this head, I shall not shrink from communicating what I myself think about it, that is, what I observe to have been the practice of the most eminent orators.

CHAPTER XIV.

Of the enthymeme and its parts, §. 1-4. Of the epicheirema and its parts, 5-9. Not always of the same form, 10-13. The epicheirema of the orators is the syllogism of the philosophers, 14-16. All the parts of it not always necessary to be specified, 17-19. Three modes of opposing this form of argument, 20-23. How the enthymeme differs from the syllogism, 24-26. We must not crowd our speech with rhetorical forms of argument, 27-32. We must not leave our arguments unembellished, 33-35.

1. *TuE* term *enthymeme* rhetoricians apply not only to the argument itself, that is the *matter* which is used for the proof of any thing else, but to the enunciation of the argument, which they make, as I said, two-fold ; one from *consequents*, which consists of a proposition and a proof immediately following it; as in this passage of Cicero's speech for Lijarius : *The cause was then doubtful, because there was something that might be sustained on each side; but now that side must be deemed the stronger to which even the gods have given support;* this is an enthymeme, for it contains a proposition and a reason, but no logical conclusion, and is therefore an imperfect syllogism ; 2. the other from *opposites*, which some call

• Burmann -compares Cie. de Orat. i. 47 : *Explicit nobis, et ills divendi mysteria enunciet.* Gesner refers to c. 14, sect. 27.

t C. 10, sect. 2.

+C 6

the only form of enthymeme,* and in which the proof is much stronger. Such is that in the speech of Cicero for Milo : *You sit therefore as avengers of the death of a man to whom you would be unwilling to restore life even if you thought it could be restored by your means.* 3. This form is sometimes made to consist of several clauses, of which we have an example by the same orator on behalf of the same client : *Him, therefore, whom he would not kill to the satisfaction of all, was he willing to kill to the dissatisfaction of some? Him, whom he did not dare to kill with the sanction. of the law, in a favourable place, at a favourable time, and with intpunit^{1/2}, did he boldly resolve to kill unjustly, in an unfavourable place, at an unfavourable time, and at the hazard of his own life?* 4. But the best kind of enthymeme appears to be that in which a reason is subjoined to a proposition dissimilar or opposite, as in this passage of Demosthenes :\$ *For, if acts have at times been committed against the laws, and you have imitated them, it does not follow that you should therefore escape punishment, but much rather that you should be condemned ; for if any of the violators of laws had been condemned, you would not have written this, and, if you are condemned, no other will write anything similar.*

5. Of the *epicheirema* § four, five, and even six parts are made by some rhetoricians ; Cicero¹¹ makes at most five ; the *proposition*, or *major*, with its *reason*; the *assumption*, or *minor*, with its *proof*; and, as the fifth, the *conclusion*; but as the *major* has sometimes no need of a reason, and the *minor* no need of proof, and as there is sometimes, too, no need of a conclusion, he thinks that the epicheirema may at times consist of only four, or three, or even two parts. 6. To

• See c. 10, sect. 2.

t C. 29.

\$ In Androtonem, p. Reisk. 595.

§ Quintilian, after noticing several opinions about the parts of an epicheirema, at last adopts that of Aristotle, that there are three necessary parts of it, the *proposition*, the *assumption*, and the *conclusion*. That which is the subject of inquiry is comprehended in the *proposition*, which logicians call the *major*; that by which it is proved is called the *assumption* or *minor*; and that which is collected from the *major* and *minor* is the *conclusion* or *inference*. Turnebus. Cicero makes five parts by attaching a reason to the *major* and a proof to the *minor*.

|| De Inv. i, 37 ; Script. ad Herenn. 1 18.

me. as well as to the greater number of authors, there appears to be not more than three ; for such is the nature of reasoning, that there must be something about which there is a question, and something by which it is to be proved ; and a third may be added as resulting from the agreement of the two former. Thus there will be first the *proposition*, or major ; secondly, the *assumption*, or minor; and thirdly, the *conclusion*; for the reason of the first part and the proof of the second may be included in those parts to which they are attached. 7. Let us take, accordingly, an example of the five parts from Cicero :* *Those things are better managed which are regulated by some plan than those which are conducted without any fixed design;*

this," says Cicero, " they call the first part, and think that it ought to be established with various reasons and the most copious eloquence possible." For myself, I consider the whole proposition with its reasons as but one part ; else, if the reasoning be called a part, and that reasoning be various, there must necessarily be various parts. 8. He then gives the assumption, or minor: *But of all things nothing is managed better than the whole world* ; "and," he adds, "of this assumption they introduce its proof as a fourth part;" but I say the same concerning the assumption as concerning the proposition. 9. " In the fifth place," he continues, " they place the conclusion, which either infers that only which necessarily results from all the preceding parts, as, *Therefore the world is regulated by some plan* ; or, after briefly bringing together the proposition and assumption, adds what is collected from them, as, *But if those things are better managed which are regulated by a plan than those which are conducted without a plan, and if of all things nothing is managed better than the whole world, it follows therefore that the world is regulated by a plan.*" A third part I accordingly admit.

10. In the three parts, however, which I have made, there is not always the same form. There is ONE FORM in which the same is expressed in the conclusion as in the major proposition : *The soul is immortal, for whatever has its motion from itself, is immortal* : *But the soul has its motion from itself* *Therefore the soul is immortal.* This form prevails not only in detached arguments, but throughout all causes, such at least

us are simple, and in the various questions in causes.* 11. For all causes and all questions have *a first proposition* : as, *You have committed sacrilege* ; and, *It is not every one that has killed a man that is guilty of murder* : and attached to this a; proposition, *a reason*, (which, however, is more expanded in causes and portions of causes than in detached arguments,) and, lastly, *a conclusion*, in which they commonly show, either by a full enumeration of particulars, or a short recapitulation, what they have established. In this kind of epicheirema the proposition is doubtful, for it is about the proposition that the question is. 12. In ANOTHER FORM the conclusion is not indeed the same as the major proposition, but has the same force *Death is nothing to us, for what is dissolved into its elements, is Without consciousness ; and that which is without consciousness is nothing to us.* In a THIRD FORM the proposition is not the same as the conclusion : *All animated things are better than things inanimate : But nothing is better than the world : The world therefore is animated.* What is here the conclusion might be made the major proposition ;t for the reasoning might be stated thus : *The world is animated, for all animated things are better than things inanimate.*t 13. But this major proposition is either an acknowledged truth as in the last example, or requires proof, as, *He who wishes to lead a happy life, ought to become a philosopher* ; this is not universally admitted ; and the conclusion cannot be drawn unless the premises be established. The minor proposition, too, is sometimes universally acknowledged, as, *But all wish to live a happy life*, and sometimes requires to be proved, as, *What is dissolved into its elements is void of consciousness*, for it is uncertain whether the soul, when detached from the body, may not be immortal, or exist at least for a certain time. I may observe that what some call the *assumption*, or minor proposition, others call the *reason*.

U. But the epicheirema differs in no respect from the

* In quicunque. J *Qua'stiones* are to be distinguished from the *causa universa* ; see iii. 6, 9, 10. Spalding.

t All editions have *Me potest videri de re contentio* ; but as no good sense can be extracted from the words, Spalding proposes to read *Ilce potest etiam videri intatio*, i. e. *propositio*. I have adopted this conjecture in my translation.

\$ He has made this example bipartite instead of tripartite, as Spalding observes.

syllogism, except that the syllogism has a greater number of forms, and infers truth from truth ; while the epicheirema is generally employed about probabilities ; for if it were always possible to prove what is disputed by what is acknowledged, there would scarcely be any work for the orator in the matter ; since what need would there be of superior ability to reason *thus* : 15. *The property belongs to me, for I am the only son of the deceased, or, I am the sole heir, since by the laws respecting property the property of a testator is given to the heir according to the purport of the will ; and to me therefore the property belongs.* 16. But when the reason given becomes itself a matter of dispute, we must render that certain by which we seek to prove what is uncertain; for instance, if it be said by the adversary, *You are not his son, or, You are not legitimate, or, You are not the only son, or, again, You are not the heir, or, The will is not valid, or, You are not capable of inheriting, or, You have co-heirs,* we must establish a just ground on which the property ought to be adjudged to us. 17. But when a long chain of reasoning intervenes, a recapitulatory conclusion is requisite. In other cases, a proposition and reason may often be sufficient :* *The laws are silent amidst arms, and do not require their sanction to be waited for, when he who would wait for it must suffer an unjust death before a just penalty could be exacted.* Hence it has been observed that the form of enthymeme which rests upon *consequents* is similar to *a reason.* Sometimes, again, a single proposition is judiciously given alone, without any reason, as that which we just now cited, *The laws are silent amidst arms.* 18. We may also commence with the reason, and then draw a conclusion, as, in the same speech, *But if the twelve tables allow a thief to be killed with impunity under any circumstances, and a thief in the day if he defend himself with a weapon, who can suppose that in whatever case a man has been killed, he who killed him must suffer punishment ?* Cicero has also made some variation in this form, and put the reason in the third place : *When he sees that the sword is sometimes put into our hands by the laws themselves.* 19. The following sentence, again, takes the form of that which precedes : *But how can death be unjustly inflicted on a tier-in-wait and a robber ?* This is the proposition. *What is the object of our escorts, of our*

9 Cic. Pro Mil. c. 4.

weapons ? This is the reason. Which certainly we should not, be allowed to have, if we were under no circumstances to make use of them. This is a conclusion from the proposition and the reason.

20. This mode of argument is refuted in three ways ; that is, it is attacked in each of its parts ; for the proposition may be combated, or the assumption, or the conclusion, or sometimes all the three. For example, the proposition that *He is justly killed who lies in wait to kill,* may be combated, for the first question in the defence of Milo is, *Whether he should be allowed to live who confesses that a man has been killed by his hand ?* 21. The assumption, or minor proposition, may be assailed by all the arts which I have mentioned in the chapter on refutation.* As to the reason, we may observe that it is sometimes true when the proposition to which it is attached is false ; and that a false reason is sometimes attached to a true proposition. *Virtue is a good,* is a true proposition ; but if any one add as a reason, *because it makes men rich,* a false reason is given for a true proposition. 22. As to the conclusion, it is either denied to be just when it expresses something different from what can be fairly deduced from the premises, or is alleged to have nothing to do with the question : *A tier-in-wait is justly put to death, for he who prepared himself to offer violence as an enemy, ought also to be repelled as an enemy;* *Clodius, therefore, as an enemy, was justly put to death :* here the conclusion is false, for it has not yet been proved that Clodius was a Tier-in-wait. 23. On the other hand, it would be a just conclusion to say, *A tier-in-wait, therefore, as an enemy, was justly put to death,* but it would be nothing to the purpose ; for it had not previously been proved that Clodius was a Tier-in-wait. But though the proposition and reason may be true, and the conclusion false, yet if the proposition and reason are false, the conclusion cannot be true.

24. The *enthymeme* is called by some an oratorical syllogism, by others a part of a syllogism, because the syllogism has, always its regular proposition and conclusion, and establishes by means of all its parts that which it has proposed ; while the enthymeme is satisfied if merely what is stated it it be understood. 25. A syllogism is of this form : *Virtue is the only*

• C. 13 of this book.

good, for that only is good of which none can make an ill use: But none can make an ill use of virtue : Therefore virtue is the only good : the enthymeme will consist only of the consequents, Virtue is a good, because none can make an ill use of it. A negative syllogism will be of this nature : Money is not a good, for that is not a good of which any one can make a bad use : But any one can make a bad use of money : Therefore money is not a good: here the enthymeme will consist of the opposites : Is money a good, when any one can make a bad use of it ? 26. The following sentence has the syllogistic form : If money, which consists of coined silver, comes under the general term silver, he that bequeathed all his silver bequeathed also his money consisting in coined silver: But he (lid bequeath all his silver: Therefore he bequeathed also his money consisting of silver; but for an orator it is sufficient to say, When he bequeathed all his silver, he bequeathed also his money which consists of silver.

Z7. I think that I have now gone through the mysteriest of those who deliver precepts on rhetoric. But judgment must be exercised in applying such directions as I have given. For though I do not think it unlawful to use syllogisms occasionally in a speech, yet I should by no means like it to consist wholly of syllogisms, or to be crowded with a mass of epicheiremata and enthymemes, for it would then resemble the dialogues and disputations of logicians, rather than oratorical pleading ; and the two differ widely from one another. 28. Your men of learning, who are seeking for truth amongst men of learning, examine every point with the utmost minuteness and scrupulosity, with the view of bringing it to clearness and certainty, claiming to themselves the offices of discovering and judging what is right, of which they call the one *romxj*,

the art of finding arguments," and the other *xger:xn'*, " the power of judging of their soundness ;" 29. but we orators must compose our speeches to suit the judgment of others, and must frequently speak before people altogether uneducated, or at least ignorant of any other literature than what we teach them, and unless we allure them by gratification, attract them force, and occasionally excite their feelings, we shall never

* *An bonum est pecunia, &c.]* Spalding dislikes the **abrupt interrogation, and would read negatively, non bonum est, &c.**

t *Sacra.]* See c. 13, sect. 60.

impress upon them what is just and true. 30. Oratory should be rich and brilliant; but it will have neither of those qualities, if it be pieced out of regular and frequent syllogisms, expressed almost always in the same form, for it will then incur contempt from appearing mean, and aversion from looking servile ; if it is copious, it will excite satiety ; if it attempts to be swelling, it will meet disdain. 31. Let it hold its course, therefore, not along foot-paths, but through open fields ; let it not be like subterraieaii springs confined in narrow channels, but flow like broad rivers through whole valleys, forcing a way wherever it does not find one. For what is a greater misery to speakers than to be slaves to certain rules, like children imitating copies set them, and, as the Greeks proverbially express it, *taking constant care of the coat which their mother has given them P* 32. Must there always be proposition and conclusion, from consequents and opposites? Is the speaker not to animate his reasoning, to amplify it, to vary and diversify it with a thousand figures, making his language appear to grow and spring forth naturally, and not to be manufactured, looking suspicious from its art, and showing everywhere the fashioning of the master? What true orator has ever spoken in such a way ? In Demosthenes himself are not the traces to be found of such regularity and art very few ? Yet the Greeks of our own day (the only respect in which they act less judiciously than ourselves) bind their thoughts as it were in chains, connecting them in an inexplicable series, proving what is undisputed, confirming what is admitted, and calling themselves, in these points, imitators of the ancients ; but if they are asked whom they imitate, they will never give an answer.

33. Of figures I shall speak in another place.+ At present, it seems necessary only to add, that I do not agree with those who think that arguments are always to be expressed in a pure, lucid, and precise style, but neither copious nor ornate. That they should be precise and perspicuous indeed, I admit, and, on matters of little consequence, set forth in plain

* This proverb is given by Plutarch in his first oration *de Alexandri Fortune*, vol. ii. p. 330 B.

t Arte suspecta.i Many copies have *suscepta*, which will also make good sense. The reader must be careful, as Spalding remarks, not to take either of them in the ablative case.

+ Book ix. 1, 2, 3.