

Book II

I. SOME men of Crotona, when they were rich in all kinds of resources, and when they were considered among the most prosperous people in Italy, were desirous to enrich the temple of Juno, which they regarded with the most religious veneration, with splendid pictures. Therefore they hired Zeuxis of Heraclea at a vast price, who was at that time considered to be far superior to all other painters, and employed him in that business. He painted many other pictures, of which some portion, on account of the great respect in which the temple is held, has remained to within our recollection; and in order that one of his mute representations might contain the preeminent beauty of the female form, he said that he wished to paint a likeness of Helen. And the men of Crotona, who had frequently heard that he exceeded all other men in painting women, were very glad to hear this; for they thought that if he took the greatest pains in that class of work in which he had the greatest skill, he would leave them a most noble work in that temple.

Nor were they deceived in that expectation: for Zeuxis immediately asked of them what beautiful virgins they had; and they immediately led him into the palaestra, and there showed him numbers of boys of the highest birth and of the greatest beauty. For indeed, there was a time when the people of Crotona were far superior to all other cities in the strength and beauty of their persons; and they brought home the most honourable victories from the gymnastic contests, with the greatest credit. While, therefore, he was admiring the figures of the boys and their personal perfection very greatly; "The sisters," say they, "of these boys are virgins in our city, so that how great their beauty is you may infer from

these boys." "Give me, then," said he, "I beg you, the most beautiful of these virgins, while I paint the picture which I promised you, so that the reality may be transferred from the breathing model to the mute likeness." Then the citizens of Crotona, in accordance with a public vote, collected the virgins into one place, and gave the painter the opportunity of selecting whom he chose. But he selected five, whose names many poets have handed down to tradition, because they had been approved by the judgment of the man who was bound to have the most accurate judgment respecting beauty. For he did not think that he could find all the component parts of perfect beauty in one person, because nature has made nothing of any class absolutely perfect in every part. Therefore, as if nature would not have enough to give to everybody if it had given everything to one, it balances one advantage bestowed upon a person by another disadvantage.

II. But since the inclination has arisen in my mind to write a treatise on the art of speaking, we have not put forth any single model of which every portion was necessarily to be copied by us, of whatever sort they might be; but, having collected together all the writers on the subject into one place, we have selected what each appears to have recommended which may be most serviceable, and we have thus culled the flower from various geniuses. For of those who are worthy of fame or recollection, there is no one who appears either to have said nothing well, or everything admirably. So that it seemed folly either to forsake the sensible maxims brought forward by any one, merely because we are offended at some other blunder of his, or, on the other hand, to embrace his faults because we have been tempted by some sensible precept which he has also delivered.

But if in other pursuits also men would select all that was found most sensible from many sources, instead of devoting themselves to one fixed leader, they would err less on the side of arrogance; they would not persist so much in error, and they would make less enormous mistakes through ignorance. And if we had as deep an acquaintance with this art as he had with that of painting, perhaps this work of ours might appear as admirable in its kind as his picture did. For we have had an opportunity of selecting from a much more copious store of models than he had. He was able to make his selection from one city, and from that number of virgins only which existed at that time and place; but we have had opportunity of making one selection from all the men who have ever lived from the very first beginning of this science, being reduced to a system up to the present day, and taking whatever we thought worth while from all the stores which lay open before us.

And Aristotle, indeed, has collected together all the ancient writers on this art, from the first writer on the subject and inventor of it, Tisias, and has compiled with great perspicuity the precepts of each of them, mentioning them by name, after having sought them out with exceeding care; and he has disentangled them with great diligence and explained their difficulties; and he has so greatly excelled the original writers themselves in suavity and brevity of diction, that no one is acquainted with their precepts from their own writings, but all who wish to know what maxims they have laid down come back to him as to a far more agreeable expounder of their meaning.

And he himself has set before us himself and those too who had lived before his time, in order that we might be

acquainted with the method of others, and with his own. And those who have followed him, although they have expended a great deal of labour on the most profound and important portions of philosophy, as he himself also, whose example they were following, had done, have still left us many precepts on the subject of speaking. And other masters of this science have also come forward, taking their rise, as it were, in other springs, who have also been of great assistance in eloquence, as far at least as artificial rules can do any good. For there lived at the same time as Aristotle, a great and illustrious rhetorician, named Isocrates; though we have not entirely discovered what his system was.

But we have found many lessons respecting their art from his pupils and from those who proceeded immediately afterwards from this school.

III. From these two different families, as it were, the one of which, while it was chiefly occupied with philosophy, still devoted some portion of its attention to the rhetorical science; and the other was wholly absorbed in the study and teaching of eloquence; but both kinds of study were united by their successors, who brought to the aid of their own pursuits those things which appeared to have been profitably said by either of them; and those and the others their predecessors are the men whom we and all our countrymen have proposed to ourselves as models, as far as we were able to make them so; and we have also contributed something from our own stores to the common stock.

But if the things which are set forth in these books deserved to be selected with such great eagerness and care as they were, then certainly, neither we ourselves nor others will repent of our industry. But if we appear either rashly to have

passed over some doctrine of some one worth noticing, or to have adopted it without sufficient elegance, in that case when we are taught better by some one, we will easily and cheerfully change our opinion. For what is discreditable is, not the knowing little, but the persisting foolishly and long in what one does not understand; because the one thing is attributed to the common infirmity of man, but the other to the especial fault of the individual.

Wherefore we, without affirming anything positively, but making inquiry at the same time, will advance each position with some doubt, lest while we gain this trifling point of being supposed to have written this treatise with tolerable neatness, we should lose that which is of the greatest importance, the credit, namely, of not adopting any idea rashly and arrogantly. But this we shall endeavour to gain both at present and during the whole course of our life with great care, as far as our abilities will enable us to do so. But at present, lest we should appear to be too prolix, we will speak of the other points which it seems desirable to insist on.

Therefore, while we were explaining the proper classification of this art, and its duties, and its object, and its subject matter, and its divisions, the first book contained an account of the different kinds of disputes, and inventions, and statements of cases, and decisions. After that, the parts of a speech were described, and all necessary precepts for all of them were laid down. So that we not only discussed other topics in that book with tolerable distinctness, we spoke at that same time in a more scattered manner of the topics of confirmation and reprehension; and at present we think it best to give certain topics for confirming and reprehending, suited to every class of causes. And because it has been

explained with some diligence in the former book, in what manner argumentations ought to be handled, in this book it will be sufficient to set forth the arguments which have been discovered for each kind of subject simply, and without any embellishment, so that, in this book, the arguments themselves may be found, and in the former, the proper method of polishing them. So that the reader must refer the precepts which are now laid down, to the topics of confirmation and reprehension.

IV. Every discussion, whether demonstrative, or deliberative, or judicial, must be conversant with some kind or other of statement of the case which has been explained in the former book; sometimes with one, sometimes with several. And though this is the case, still as some things can be laid down in a general way respecting everything, there are also other rules and different methods separately laid down for each particular kind of discussion. For praise, or blame, or the statement of an opinion, or accusation, or denial, ought all to effect different ends. In judicial investigations the object of inquiry is, what is just; in demonstrative discussion the question is, what is honourable; in deliberations, in our opinion, what we inquire is, what is honourable and at the same time expedient. For the other writers on this subject have thought it right to limit the consideration of expediency to speeches directed to persuasion or dissuasion.

Those kinds of discussions then whose objects and results are different, cannot be governed by the same precepts. Not that we are saying now that the same statement of the case is not admissible in all of them, but some kinds of speech arise from the object and kind of the discussion; if it refers to the demonstration of some kind of life, or to the delivery of some opinion. Wherefore now, in explaining controversies, we shall

have to deal with causes and precepts of a judicial kind; from which many precepts also which concern similar disputes, will be transferred to other kinds of causes without much difficulty. But hereafter we will speak separately of each kind.

At present we will begin with the conjectural statement of a case, of which this example may be sufficient to be given:-- A man overtook another on his journey as he was going on some commercial expedition, and carrying a sum of money with him; he, as men often do, entered into conversation with him on the way; the result of which was, that they both proceeded together with some degree of friendship; so that when they had arrived at the same inn, they proposed to sup together and to sleep in the same apartment. Having supped, they retired to rest in the same place. But when the innkeeper (for that is what is said to have been discovered since, after the man had been detected in another crime) had taken notice of one of them, that is to say, of him who had the money, he came by night, after he had ascertained that they were both sound asleep, as men usually are when tired, and took from its sheath the sword of the one who had not the money, and which sword he had lying by his side. and slew the other man with it, and took away his money, and replaced the bloody sword in the sheath, and returned himself to his bed.

But the man with whose sword the murder had been committed, rose long before dawn and called over and over again on his companion; he thought that he did not answer because he was overcome with sleep; and so he took his sword and the rest of the things which he had with him, and departed on his journey alone. The innkeeper not long afterwards raised an outcry that the man was murdered, and

in company with some of his lodgers pursued the man who had gone away. They arrest him on his journey, draw his sword out of its sheath, and find it bloody; the man is brought back to the city by them, and put on his trial. On this comes the allegation of the crime, "You murdered him," and the denial, "I did not murder him;" and from this is collected the statement of the case. The question in the conjectural examination is the same as that submitted to the judges, "Did he murder him, or not?"

V. Now we will set forth the topics one portion of which applies to all conjectural discussion. But it will be desirable to take notice of this in the exposition of these topics and of all the others, and to observe that they do not all apply to every discussion. For as every man's name is made up of some letters, and not of every letter, so it is not every store of arguments which applies to every argumentation, but some portion which is necessary applies to each. All conjecture, then, must be derived either from the cause of an action, or from the person, or from the case itself.

The cause of an action is divided into impulsion and ratiocination. Impulsion is that which without thought encourages a man to act in such and such a manner, by means of producing some affection of the mind, as love, anger, melancholy, fondness for wine, or indeed anything by which the mind appears to be so affected as to be unable to examine anything with deliberation and care; and to do what it does owing to some impulse of the mind, rather than in consequence of any deliberate purpose.

But ratiocination is a diligent and careful consideration of whether we shall do anything or not do it. And it is said to have been in operation, when the mind appears for some

particular definite reason to have avoided something which ought not to have been done, or to have adopted something which ought to have been done; so that if anything is said to have been done for the sake of friendship, or of chastising an enemy, or under the influence of fear, or of a desire for glory or for money, or in short, to comprise everything under one brief general head, for the sake of retaining, or increasing, or obtaining any advantage; or, on the other hand, for the purpose of repelling, or diminishing, or avoiding any disadvantage;--for those former things must fall under one or other of those heads, if either any inconvenience is submitted to for the purpose of avoiding any greater inconvenience, or of obtaining any more important advantage; or if any advantage is passed by for the sake of obtaining some other still greater advantage, or of avoiding some more important disadvantage.

This topic is as it were a sort of foundation of this statement of the case; for nothing that is done is approved of by any one unless some reason be shown why it has been done. Therefore the accuser, when he says that anything has been done in compliance with some impulse, ought to exaggerate that impulse, and any other agitation or affection of the mind, with all the power of language and variety of sentiments of which he is master, and to show how great the power of love is, how great the agitation of mind which arises from anger, or from any one of those causes which he says was that which impelled any one to do anything. And here we must take care, by an enumeration of examples of men who have done anything under the influence of similar impulse, and by a collation of similar cases, and by an explanation of the way in which the mind itself is affected, to hinder its appearing marvellous if the mind of a man has been instigated by such influence to some pernicious or criminal action.

VI. But when the orator says that any one has done such and such an action, not through impulse, but in consequence of deliberate reasoning, he will then point out what advantage he has aimed at, or what inconvenience he has avoided, and he will exaggerate the influence of those motives as much as he can, so that as far as possible the cause which led the person spoken of to do wrong, may appear to have been an adequate one. If it was for the sake of glory that he did so and so, then he will point out what glory he thought would result from it; again, if he was influenced by desire of power, or riches, or by friendship, or by enmity; and altogether whatever the motive was, which he says was his inducement to the action, he will exaggerate as much as possible.

And he is bound to give great attention to this point, not only what the effect would have been in reality, but still more what it would have been in the opinion of the man whom he is accusing. For it makes no difference that there really was or was not any advantage or disadvantage, if the man who is accused believed that there would or would not be such. For opinion deceives men in two ways, when either the matter itself is of a different kind from that which it is believed to be, or when the result is not such as they thought it would be. The matter itself is of a different sort when they think that which is good bad, or, on the other hand, when they think that good which is bad. Or when they think that good or bad which is neither good nor bad, or when they think that which is good or bad neither bad nor good.

Now that this is understood, if any one denies that there is any money more precious or sweeter to a man than his brother's or his friend's life, or even than his own duty, the accuser is not to deny that; for then the blame and the chief

part of the hatred will be transferred to him who denies that which is said so truly and so piously. But what he ought to say is, that the man did not think so; and that assertion must be derived from those topics which relate to the person, concerning whom we must speak hereafter.

VII. But the result deceives a person, when a thing has a different result from that which the persons who are accused are said to have thought it would have. As when a man is said to have slain a different person from him whom he intended to slay, either because he was deceived by the likeness or by some suspicion, or by some false indication; or that he slew a man who had not left him his heir in his will, because he believed that he had left him his heir. For it is not right to judge of a man's belief by the result, but rather to consider with what expectation, and intention, and hope he proceeded to such a crime; and to recollect that the matter of real importance is to consider with what intention a man does a thing, and not what the consequence of his action turns out to be.

And in this topic this will be the great point for the accuser, if he is able to show that no one else had any reason for doing so at all. And the thing next in importance will be to show that no one else had such great or sufficient reason for doing so. But if others appear also to have had a motive for doing so, then we must show that they had either no power, or no opportunity, or no inclination to do it. They had no power if it can be said that they did not know it, or were not in the place, or were unable to have accomplished it; they had no opportunity, if it can be proved that any plan, any assistants, any instruments, and all other things which relate to such an action, were wanting to them. They had no inclination, if their disposition can be said to be entirely alien to such

conduct, and unimpeachable. Lastly, whatever arguments we allow a man on his trial to use in his defence, the very same the prosecutor will employ in delivering others from blame. But that must be done with brevity, and many arguments must be compressed into one, in order that he may not appear to be accusing the man on his trial for the sake of defending some one else, but to be defending some one else with a view to strengthen his accusation against him.

VIII. And these are for the most part the things which must be done and considered by an accuser. But the advocate for the defence will say, on the other hand, either that there was no motive at all, or, if he admits that there was, he will make light of it, and show that it was a very slight one, or that such conduct does not often proceed from such a motive. And with reference to this topic it will be necessary to point out what is the power and character of that motive, by which the person on his trial is said to have been induced to commit any action; and in doing this it is requisite to adduce instances and examples of similar cases, and the actual nature of such a motive is to be explained as gently as possible, so that the circumstance which is the subject of the discussion may be explained away, and instead of being considered as a cruel and disorderly act, may be represented as something more mild and considerate, and still the speech itself may be adapted to the mind of the hearer, and to a sort of inner feeling, as it were, in his mind.

But the orator will weaken the suspicions arising from the ratiocination, if he shall say either that the advantage intimated had no existence, or a very slight one, or that it was a greater one to others, or that it was no greater advantage to himself than to others, or that it was a greater disadvantage than advantage to himself. So that the

magnitude of the advantage which is said to have been desired, was not to be compared with the disadvantage which was really sustained, or with the danger which was incurred. And all those topics will be handled in the same manner in speaking of the avoiding of disadvantage.

But if the prosecutor has said that the man on his trial was pursuing what appeared to him to be an advantage, or was avoiding that which appeared to him to be a disadvantage, even though he was mistaken in that opinion, then the advocate for the defence must show that no one can be so foolish as to be ignorant of the truth in such an affair. And if that be granted, then the other position cannot be granted, that the man ever doubted at all what the case was, but that he, without the least hesitation, considered what was false as false, and what was true as true. But if he doubted, then it is a proof of absolute insanity for a man under the influence of a doubtful hope to incur a certain danger.

But as the accuser when he is seeking to remove the guilt from others must use the topics proper to an advocate for the defence; so the man on his trial must use those topics which have been allotted to an accuser, when he wishes to transfer an accusation from his own shoulders to those of others.

IX. But conjectures will be derived from the person, if those things which have been attributed to persons are diligently considered, all of which we have mentioned in the first book; for sometimes some suspicion arises from the name. But when we say the name, we mean also the surname. For the question is about the particular and peculiar name of a man, as if we were to say that a man is called Calvus because he is a man of a hasty and sudden disposition; or that ignorant Greeks have been deceived by men being called Clodius, or Caecilius, or

Marcus.

And we may also derive some suspicious circumstances from nature; for all these questions, whether it is a man or a woman, whether he is of this state or that one, of what ancestors a man is descended, who are his relations, what is his age, what is his disposition, what bodily strength, or figure, or constitution he has, which are all portions of a man's nature, have much influence in leading men to form conjectures.

Many suspicions also are engendered by men's way of life, when the inquiry is how, and by whom, and among whom a man was brought up and educated, and with whom he associates, and what system and habits of domestic life he is devoted to.

Moreover, argumentation often arises from fortune; when we consider whether a man is a slave or a free man, rich or poor, noble or ignoble, prosperous or unfortunate; whether he now is, or has been, or is likely to be a private individual or a magistrate; or, in fact, when any one of those circumstances is sought to be ascertained which are attributable to fortune. But as habit consists in some perfect and consistent formation of mind or body, of which kind are virtue, knowledge, and their contraries; the fact itself, when the whole circumstances are stated, will show whether this topic affords any ground for suspicion. For the consideration of the state of a man's mind is apt to give good grounds for conjecture, as of his affectionate or passionate disposition, or of any annoyance to which he has been exposed; because the power of all such feelings and circumstances is well understood, and what results ensue after any one of them is very easy to be known.

But since study is an assiduous and earnest application of the mind to any particular object with intense desire, that argument which the case itself requires will easily be deduced from it. And again, some suspicion will be able to be inferred from the intention; for intention is a deliberate determination of doing or not doing something. And after this it will be easy to see with respect to facts, and events, and speeches, which are divided into three separate times, whether they contribute anything to confirming the conjectures already formed in the way of suspicion.

X. And those things indeed are attributed to persons, which when they are all collected together in one place, it will be the business of the accuser to use them as inducing a disapprobation of the person; for the fact itself has but little force unless the disposition of the man who is accused can be brought under such suspicion as to appear not to be inconsistent with such a fault. For although there is no great advantage in expressing disapprobation of any one's disposition, when there is no cause why he should have done wrong, still it is but a trifling thing that there should be a motive for an offence, if the man's disposition is proved to be inclined to no line of conduct which is at all discreditable. Therefore the accuser ought to bring into discredit the life of the man whom he is accusing, by reference to his previous actions, and to show whether he has ever been previously convicted of a similar offence. And if he cannot show that, he must show whether he has ever incurred the suspicion of any similar guilt; and especially, if possible, that he has committed some offence or other of some kind under the influence of some similar motive to this which is in existence here, in some similar case, or in an equally important case, or in one more important, or in one less important. As, if with

respect to a man who he says has been induced by money to act in such and such a manner, he were able to show that any other action of his in any case had been prompted by avarice.

And again it will be desirable in every cause to mention the nature, or the manner of life, or the pursuits, or the fortune, or some one of those circumstances which are attributed to persons, in connexion with that cause which the speaker says was the motive which induced the man on his trial to do wrong; and also, if one cannot impute anything to him in respect of an exactly corresponding class of faults, to bring the disposition of one's adversary into discredit by reference to some very dissimilar class. As, if you were to accuse him of having done so and so, because he was instigated by avarice; and yet, if you are unable to show that the man whom you accuse is avaricious, you must show that other vices are not wholly foreign to his nature, and that on that account it is no great wonder if a man who in any affair has behaved basely, or covetously, or petulantly, should have erred in this business also. For in proportion as you can detract from the honesty and authority of the man who is accused, in the same proportion has the force of the whole defence been weakened.

If it cannot be shown that the person on his trial has been ever before implicated in any previous guilt, then that topic will come into play which we are to use for the purpose of encouraging the judges to think that the former character of the man has no bearing on the present question; for that he has formerly concealed his wickedness, but that he is now manifestly convicted; so that it is not proper that this case should be looked at with reference to his former life, but that his former life should now be reprov'd by this conduct of his, and that formerly he had either no opportunity of doing

wrong, or no motive to do so. Or if this cannot be said, then we must have recourse to this last assertion,--that it is no wonder if he now does wrong for the first time, for that it is necessary that a man who wishes to commit sin, must some time or other commit it for the first time. If nothing whatever is known of his previous life, then it is best to pass over this topic, and to state the reason why it is passed over, and then to proceed at once to corroborate the accusation by arguments.

XI. But the advocate for the defence ought in the first place to show, if he can, that the life of the person who is accused has always been as honourable as possible. And he will do this best by recounting any well-known services which he has rendered to the state in general; or any that he has done to his parents, or relations, or friends, or kinsmen, or associates; or even any which are more remarkable or more unusual, especially if they have been done with any extraordinary labour, or danger, or both; or when there was no absolute necessity, purely because it was his duty; or if he has done any great benefit to the republic, or to his parents, or to any other of the people whom I have just mentioned; and if, too, he can show that he has never been so influenced by any covetousness as to abandon his duty, or to commit any error of any description. And this statement will be the more confirmed, if when it is said that he had an opportunity of doing something which was not quite creditable with impunity, it can be shown at the same time that he had no inclination to do it.

But this very kind of argument will be all the stronger if the person on his trial can be shown to have been unimpeachable previously in that particular sort of conduct of which he is now accused; as, for instance, if he be accused of having

done so and so for the sake of avarice, and can be proved to have been all his life utterly indifferent to the acquisition of money. On this indignation may be expressed with great weight, united with a complaint that it is a most miserable thing; and it may be argued that it is a most scandalous thing, to think that that was the man's motive, when his disposition during the whole of his life has been as unlike it as possible. Such a motive often hurries audacious men into guilt; but it has no power to impel an upright man to sin. It is unjust, moreover, and injurious to every virtuous man, that a previously well-spent life should not be of the greatest possible advantage to a man at such a time, but that a decision should be come to with reference only to a sudden accusation which can be got up in a hurry, and with no reference to a man's previous course of life, which cannot be extemporised to suit an occasion, and which cannot be altered by any means.

But if there have been any acts of baseness in his previous life, or if they be said to have undeservedly acquired such a reputation, or if his actions are to be attributed by the envy, or love of detraction, or mistaken opinion of some people, either to ignorance, or necessity, or to the persuasion of young men, or to any other affection of mind in which there is no vice; or if he has been tainted with errors of a different kind, so that his disposition appears not entirely faultless, but still far remote from such a fault; and if his disgraceful or infamous course of life cannot possibly be mitigated by any speech,--then it will be proper to say that the inquiry does not concern his life and habits, but is about that crime for which he is now prosecuted; so that, omitting all former actions, it is proper that the matter which is in hand should be attended to.

XII. But suspicions may be derived from the fact itself, if the administration of the whole matter is examined into in all its parts; and these suspicions will arise partly from the affair itself when viewed separately, and partly from the persons and the affairs taken together. They will be able to be derived from the affair, if we diligently consider those circumstances which have been attributed to such affairs. And from them all the different genera, and most subordinate species, will appear to be collected together in this statement of the case.

It will therefore be desirable to consider in the first place what circumstances there are which are united to the affair itself,--that is to say, which cannot be separated from it; and with reference to this topic it will be sufficient to consider what was done before the affair in question took place, from which a hope arose of accomplishing it, and an opportunity was sought of doing it; what happened with respect to the affair itself, and what ensued afterwards. In the next place, the execution of the whole affair must be dealt with, for this class of circumstances which have been attributed to the affair has been discussed in the second topic.

So with reference to this class of circumstances we must have a regard to time, place, occasion, and opportunity, the force of each particular of which has been already carefully explained when we were laying down precepts for the confirmation of an argument. Wherefore, that we may not appear to have given no rules respecting these things, and that we may not, on the other hand, appear to have repeated the same things twice over, we will briefly point out what it is proper should be considered in each part. In reference to place, then, opportunity is to be considered; and in reference

to time, remoteness; and in reference to occasion, the convenience suitable for doing anything; and with reference to facility, the store and abundance of those things by means of which anything is done more easily, or without which it cannot be done at all.

In the next place we must consider what is added to the affair, that is to say, what is greater, what is less, what is equally great, what is similar. And from these topics some conjecture is derived, if proper consideration is given to the question how affairs of greater importance, or of less, or of equal magnitude, or of similar character, are usually transacted. And in this class of subjects the result also ought to be examined into; that is to say, what usually ensues as the consequence of every action must be carefully considered; as, for instance, fear, joy, trepidation.

But the fourth part was a necessary consequence from those circumstances which we said were attendant on affairs. In it those things are examined which follow the accomplishment of an affair, either immediately or after an interval. And in this examination we shall see whether there is any custom, any action, any system, or practice, or habit, any general approval or disapproval on the part of mankind in general, from which circumstance some suspicion at times arises.

XIII. But there are some suspicions which are derived from the circumstances which are attributed to persons and things taken together. For many circumstances arising from fortune, and from nature, and from the way of a man's life, and from his pursuits and actions, and from chance, or from speeches, or from a person's designs, or from his usual habit of mind or body, have reference to the same things which render a statement credible or incredible, and which are combined

with a suspicion of the fact.

For it is above all things desirable that inquiry should be made in this way, of stating the case first of all, whether anything could be done; in the next place, whether it could have been done by any one else; then we consider the opportunity on which we have spoken before; then whether what has been done is a crime which one is bound to repent of: we must inquire too whether he had any hope of concealing it; then whether there was any necessity for his doing so; and as to this we must inquire both whether it was necessary that the thing should be done at all, or that it should be done in that manner. And some portion of these considerations refer to the design, which has been already spoken of as what is attributed to persons; as in the instance of that cause which we have mentioned. These circumstances will be spoken of as before the affair, --the facts, I mean, of his having joined himself to him so intimately on the march, of his having sought occasion to speak with him, of his having lodged with him, and supped with him. These circumstances were a part of the affair, --night, and sleep. These came after the affair, --the fact of his having departed by himself; of his having left his intimate companion with such indifference; of his having a bloody sword.

Part of these things refer to the design. For the question is asked, whether the plan of executing this deed appears to have been one carefully devised and considered, or whether it was adopted so hastily that it is not likely that any one should have gone on to crime so rashly. And in this inquiry we ask also whether the deed could have been done with equal ease in any other manner; or whether it could have happened by chance. For very often if there has been a want of money, or means, or assistants, there would not appear to have been

any opportunity of doing such a deed. If we take careful notice in this way, we shall see that all these circumstances which are attributed to things, and those too which are attributed to persons, fit one another. In this case it is neither easy nor necessary, as it is in the former divisions, to draw distinctions as to how the accuser and how the advocate for the defence ought to handle each topic. It is not necessary, because, when the case is once stated, the circumstances themselves will teach those men, who do not expect to find everything imaginable in this treatise, what is suitable for each case; and they will apply a reasonable degree of understanding to the rules which are here laid down, in the way of comparing them with the systems of others. And it is not easy, because it would be an endless business to enter into a separate explanation with respect to every portion of every case; and besides, these circumstances are adapted to each part of the case in different manners on different occasions.

XIV. Wherefore it will be desirable to consider what we have now set forth. And our mind will approach invention with more ease, if it often and carefully goes over both its own relation and that of the opposite party, of what has been done; and if, eliciting what suspicions each part gives rise to, it considers why, and with what intention, and with what hopes and plans, each thing was done. Why it was done in this manner rather than in that; why by this man rather than by that; why it was done without any assistant, or why with this one; why no one was privy to it, or why somebody was, or why this particular person was; why this was done before; why this was not done before; why it was done in this particular instance; why it was done afterwards; what was done designedly, or what came as a consequence of the original action; whether the speech is consistent with the

facts or with itself; whether this is a token of this thing, or of that thing, or of both this and that, and which it is a token of most; what has been done which ought not to have been done, or what has not been done which ought to have been done.

When the mind considers every portion of the whole business with this intention, then the topics which have been reserved, will come into use, which we have already spoken of; and certain arguments will be derived from them both separately and unitedly. Part of which arguments will depend on what is probable, part on what is necessary; there will be added also to conjecture questions, testimony, reports. All of which things each party ought to endeavour by a similar use of these rules to turn to the advantage of his own cause. For it will be desirable to suggest suspicions from questions, from evidence, and from some report or other, in the same manner as they have been derived from the cause, or the person, or the action.

Wherefore those men appear to us to be mistaken who think that this kind of suspicion does not need any regular system, and so do those who think that it is better to give rules in a different manner about the whole method of conjectural argument. For all conjecture must be derived from the same topics; for both the cause of every rumour and the truth of it will be found to arise from the things attributed to him who in his inquiry has made any particular statement and to him who has done so in his evidence. But in every cause a part of the arguments is joined to that cause alone which is expressed, and it is derived from it in such a manner that it cannot be very conveniently transferred from it to all other causes of the same kind; but part of it is more rambling, and adapted either to all causes of the same kind, or at all events

to most of them.

XV. These arguments then which can be transferred to many causes, we call common topics. For a common topic either contains some amplification of a well understood thing, --as if any one were desirous to show that a man who has murdered his father is worthy of the very extremity of punishment; and this topic is not to be used except when the cause has been proved and is being summed up;--or of a doubtful matter which has some probable arguments which can be produced on the other side of the question also; as a man may say that it is right to put confidence in suspicions, and, on the contrary, that it is not right to put confidence in suspicions. And a portion of the common topics is employed in indignation or in complaint, concerning which we have spoken already. A part is used in urging any probable reason on either side.

But an oration is chiefly distinguished and made plain by a sparing introduction of common topics, and by giving the hearers actual information by some topics, and by confirming previously used arguments in the same way. For it is allowable to say something common when any topic peculiar to the cause is introduced with care; and when the mind of the hearer is refreshed so as to be inclined to attend to what follows, or is reawakened by everything which has been already said. For all the embellishments of elocution, in which there is a great deal both of sweetness and gravity, and all things, too, which have any dignity in the invention of words or sentences, are bestowed upon common topics.

Wherefore there are not as many common topics for orators as there are for lawyers. For they cannot be handled with elegance and weight, as their nature requires, except by

those who have acquired a great flow of words and ideas by constant practice. And this is enough for us to say in a general way concerning the entire class of common topics.

XVI. Now we will proceed to explain what common topics are usually available in a conjectural statement of a case. As for instance:-- that it is proper to place confidence in suspicions; or that it is not proper: that it is proper to believe witnesses; or that it is not proper: that it is proper to believe examinations; or that it is not proper: that it is proper to pay attention to the previous course of a man's life; or that it is not proper: that it is quite natural that a man who has done so and so should have committed this crime also; or that it is not natural: that it is especially necessary to consider the motive; or that it is not necessary. And all these common topics, and any others which arise out of any argument peculiar to the cause in hand, may be turned either way.

But there is one certain topic for an accuser by which he exaggerates the atrocity of an action; and there is another by which he says that it is not necessary to pity the miserable. That, too, is a topic for an advocate for the defence by which the false accusations of the accusers are shown up with indignation; and that by which pity is endeavoured to be excited by complaints. These and all other common topics are derived from the same rules from which the other systems of arguments proceed; but those are handled in a more delicate, and acute, and subtle manner; and these with more gravity, and more embellishment, and with carefully selected words and ideas. For in them the object is, that that which is stated may appear to be true. In these, although it is desirable to preserve the appearance of truth, still the main object is to give importance to the statement. Now let us pass on to another statement of the case.

XVII. When there is a dispute as to the name of a thing, because the meaning of a name is to be defined by words, it is called a definitive statement. By way of giving an example of this, the following case may be adduced. Caius Flaminius, who as consul met with great disasters in the second Punic war, when he was tribune of the people, proposed, in a very seditious manner, an agrarian law to the people, against the consent of the senate, and altogether against the will of all the nobles. While he was holding an assembly of the people, his own father dragged him from the temple. He is impeached of treason. The charge is--"You attacked the majesty of the people in dragging down a tribune of the people from the temple." The denial is--"I did not attack the majesty of the people." The question is--"Whether he attacked the majesty of the people or not." The argument is--"I only used the power which I legitimately had over my own son." The denial of this argument is--"But a man who, by the power belonging to him as a father, that is to say, as a private individual, attacks the power of a tribune of the people, that is to say, the power of the people itself, attacks the majesty of the people." The question for the judges is-- "Whether a man attacks the majesty of the people who uses his power as a father in opposition to the power of a tribune." And all the arguments must be brought to bear on this question.

And, that no one may suppose by any chance that we are not aware that some other statement of the case may perhaps be applicable to this cause, we are taking that portion only for which we are going to give rules. But when all parts have been explained in this book, any one, if he will only attend diligently, will see every sort of statement in every sort of cause, and all their parts, and all the discussions which are incidental to them. For we shall mention them all.

The first topic then for an accuser is a short and plain definition, and one in accordance with the general opinion of men, of that name, the meaning of which is the subject of inquiry. In this manner: - "To attack the majesty of the people is to detract from the dignity, or the rank, or the power of the people, or of those men to whom the people has given power." This definition being thus briefly set forth in words, must be confirmed by many assertions and reasons. and must be shown to be such as you have described it. Afterwards it will be desirable to add to the definition which you have given, the action of the man who is accused, and to add it too with reference to the character which you have proved it to have. Take for instance--"to attack the majesty of the people." You must show that the adversary does attack the majesty of the people, and you must confirm this whole topic by a common topic, by which the atrocity or indignity of the fact, and the whole guilt of it, and also our indignation at it, may be increased.

After that it will be desirable to invalidate the definition of the adversaries; **L** but that will be invalidated if it be proved to be false. This proof must be deduced from the belief of men concerning it, when we consider in what manner and under what circumstances men are accustomed to use that expression in their ordinary writing or talking. It will also be invalidated if the proof of that description be shown to be discreditable or useless, and if it be shown what disadvantages will ensue if that position be once admitted. And it will be derived from the divisions of honour and usefulness, concerning which we will give rules when we lay down a system of deliberations. And if we compare the definition given by our adversaries with our own definition, and prove our own to be true, and honourable, and useful,

and theirs to be entirely different. But we shall seek out things like them in an affair of either greater, or less, or equal importance, from which our description will be proved.

XVIII. Now, if there be more matters to be defined,--as for instance, if we inquire whether he is a thief or a sacrilegious person who has stolen sacred vessels from a private house,-- we shall have to employ many definitions; and then the whole cause will have to be dealt with on a similar principle. But it is a common topic to dwell on the wickedness of that man who endeavours to wrest to his own purposes not only the effect of things, but also the meaning of words, in order both to do as he pleases, and to call what he does by whatever name he likes.

Then the first topic to be used by an advocate for the defence, is also a brief and plain definition of a name, adopted in accordance with the opinion of men. In this way:-- To diminish the majesty of the people is to usurp some of the public powers when you are not invested with any office. And then the confirmation of this definition is derived from similar instances and similar principles. Afterwards comes the separation of one's own action from that definition. Then comes the common topic by which the expediency or honesty of the action is increased.

Then comes the reprehension of the definition of the opposite party, which is also derived from all the same topics as those which we have prescribed to the accuser. And afterwards other arguments will be adduced besides the common topic. But that will be a common topic for the advocate of the defence to use, by which he will express indignation that the accuser not only alters facts in order to bring him into danger, but that he attempts also to alter

words. For those common topics which are assumed either for the purpose of demonstrating the falsehood of the accusations of the prosecutor, or for exciting pity, or for expressing indignation at an action, or for the purpose of deterring people from showing pity, are derived from the magnitude of the danger, not from the nature of the cause. Wherefore they are incidental not to every cause, but to every description of cause. We have made mention of them in speaking of the conjectural statement of a case; but we shall use induction when the cause requires.

XIX. But when the pleading appears to require some translation, or to need any alteration, either because he is not pleading who ought to do so, or he is not pleading with the man he ought, or before the men whom he ought to have for hearers, or in accordance with the proper law, or under liability to the proper punishment, or in reference to the proper accusation, or at the proper time, it is then called a transferable statement of the case. We should require many examples of this if we were to inquire into every sort of translation, but because the principle on which the rules proceed is similar, we have no need of a superfluity of instances. And in our usual practice it happens from many causes that such translations occur but seldom. For many actions are prevented by the exceptions allowed by the praetors; and we have the civil law established in such a way that that man is sure to lose his cause who does not conduct it as he ought. So that those actions greatly depend on the state of the law. For there the exceptions are demanded, and an opportunity is allowed of conducting the cause in some manner, and every formula of private actions is arranged. But in actual trials, they occur less frequently, and yet, if they ever do occur at all, they are such that by themselves they have less strength, but they are confirmed by the assumption

of some other statement in addition to them. As in a certain trial which took place: "When a certain person had been prosecuted for poisoning, and, because he was also accused of parricide, the trial was ordered to proceed out of its regular order, when in the accusation some charges were corroborated by witnesses and arguments, but the parricide was barely mentioned; it was proper for the advocate for the defence to dwell much and long on this circumstance; as, nothing whatever was proved respecting the death of the accused person's parent, and therefore that it was a scandalous thing to inflict that punishment on him which is inflicted on parricides; but that that must inevitably be the case if he were convicted; since that it is added as one of the counts of the indictment, and since it is on that account that the trial has been ordered to be taken out of its regular order. Therefore if it is not right that that punishment should be inflicted on the criminal, it is also not right that he should be convicted, since that punishment must inevitably follow a conviction." Here the advocate for the defence, by bringing the commutation of the punishment into his speech, according to the transferable class of topics, will invalidate the whole accusation. But he will also confirm the alteration by a conjectural statement of the case when employed in defending his client on the other charges.

XX. But we may give an example of translation in a cause, in this way:--When certain armed men had come for the purpose of committing violence, and armed men were also prepared on the other side; and when one of the armed men with his sword cut off the hand of a certain Roman knight who resisted his violence; the man whose hand had been cut off brings an action for the injury. The man against whom the action is brought pleads a demurrer before the praetor, without there being any prejudice to a man on trial for his life. The man

who brings the action demands a trial on the simple fact; the man against whom the action is brought says that a demurrer ought to be added. The question is--"Shall the demurrer be allowed or not?" The reason is-- "No, for it is not desirable in an action for damages that there should be any prejudged decision of a crime, such as is the subject of inquiry when assassins are on their trial." The arguments intended to invalidate this reason are--"The injuries are such that it is a shame that a decision should not be come to as early as possible." The thing to be decided is--"Whether the atrocity of the injuries is a sufficient reason why, while that point is before the tribunal, a previous decision should be given concerning some greater crime, concerning which a tribunal is prepared." And this is the example. But in every cause the question ought to be put to both parties, by whom, and by whose agency, and how, and when it is desirable that the action should be brought, or the decision given; or what ought to be decided concerning that matter.

That ought to be assumed from the divisions of the law, concerning which we must speak hereafter; and we then ought to argue as to what is usually done in similar cases, and to consider whether, in this instance, out of wickedness, one course is really adopted and another pretended; or whether the tribunal has been appointed and the action allowed to proceed through folly or necessity, because it could not be done in any other manner, or owing to an opportunity which offered for acting in such a manner; or whether it has been done rightly without any interruption of any sort. But it is a common topic to urge against the man who seeks to avail himself of a demurrer to an action, that he is fleeing from a decision and from punishment, because he has no confidence in the justice of his cause. And that, owing to the demurrer, everything will be in confusion, if matters are not conducted

and brought into court as they ought to be; that is to say, if it is either pleaded against a man it ought not, or with an improper penalty, or with an improper charge, or at an improper time; and this principle applies to any confusion of every sort of tribunal. Those three statements of cases then, which are not susceptible of any decisions, must be treated in this manner. At present let us consider the question and its divisions on general principles.

XXI. When the fact and the name of the action in question is agreed upon, and when there is no dispute as to the character of the action to be commenced; then the effect, and the nature, and the character of the business is inquired into. We have already said, that there appear to be two divisions of this; one which relates to facts, and one which relates to law. It is like this: "A certain person made a minor his heir; but the minor died before he had come into the property, which was under the care of guardians. A dispute has arisen concerning the inheritance which came to the minor, between those who are the reversionary heirs of the father of the minor,--the possession belongs to the reversionary heirs." The first statement is that of the next of kin-- "That money, concerning which he, whose next of kin we are, said nothing in his will, belongs to us." The reply is--"No; it belongs to us who are the reversionary heirs according to the will of his father." The thing to be inquired into is--To whom does it rightfully belong? The argument is--"For the father made a will for himself and for his son as long as the latter was a minor; wherefore it is quite clear that the things which belonged to the son are now ours, according to the will of the father." The argument to upset this is--"Aye, the father made his own will, and appointed you as reversionary heir, not to his son, but himself. Wherefore, nothing except what belonged to him himself can be yours by his will." The point to be determined

is, whether any one can make a will to affect the property of his son who is a minor; or, whether the reversionary heirs of the father of the family himself, are not the heirs of his son also as long as he is a minor." And it is not foreign to the subject, (in order that I may not, on the one hand, omit to mention it, or, on the other, keep continually repeating it,) to mention a thing here which has a bearing on many questions. There are causes which have many reasons, though the grounds of the cause are simple; and that is the case when what has been done, or what is being defended, may appear right or natural on many different accounts; as in this very cause. For this further reason may be suggested by the heirs--"For there cannot be more heirs than one of one property, for causes quite dissimilar; nor has it ever happened, that one man was heir by will, and another by law, of the same property." This, again, is what will be replied, in order to invalidate this--"It is not one property only; because one part of it was the adventitious property of the minor, whose heir no one had been appointed by will at that time, in the case of anything happening to the minor; and with respect to the other portion of the property, the inclination of the father, even after he was dead, had the greatest weight, and that, now that the minor is dead, gives the property to his own heirs."

The question to be decided is, "Whether it was one property?" And then, if they employ this argument by way of invalidating the other, "That there can be many heirs of one property for quite dissimilar causes," the question to be decided arises out of that argument; namely, "Whether there can be more heirs than one, of different classes and character, to one property?"

XXII. Therefore, in one statement of the case, it has been understood how there are more reasons than one; more topics

than one to invalidate such reasons; and besides that, more questions than one for the decision of the judge. Now let us look to the rules for this class of question. We must consider in what the rights of each party, or of all the parties (if there are many parties to the suit), consist. The beginning, then, appears derived from nature; but some things seem to have become adopted in practice for some consideration of expediency which is either more or less evident to us. But afterwards things which were approved of, or which seemed useful, either through habit, or because of their truth, appeared to have been confirmed by laws; and some things seem to be a law of nature, which it is not any vague opinion, but a sort of innate instinct that implants in us; as religion, piety, revenge for injuries, gratitude, attention to superiors, and truth. They call religion, that which is conversant with the fear of, and ceremonious observance paid to the gods; they call that piety, which warns us to fulfil our duties towards our country, our parents, or others connected with us by ties of blood; gratitude is that which retains a recollection of honours and benefits conferred on one, and acts of friendship done to one, and which shows itself by a requital of good offices; revenge for injuries is that by which we repel violence and insult from ourselves and from those who ought to be dear to us, by defending or avenging ourselves, and by means of which we punish offences; attention to superiors, they call the feeling under the influence of which we feel reverence for and pay respect to those who excel us in wisdom or honour or in any dignity; truth, they style that habit by which we take care that nothing has been or shall be done in any other manner than what we state. And the laws of nature themselves are less inquired into in a controversy of this sort, because they have no particular connexion with the civil law of which we are speaking, and also, because they are somewhat remote from ordinary understandings. Still it is

often desirable to introduce them for the purpose of some comparison, or with a view to add dignity to the discussion.

But the laws of habit are considered to be those which, without any written law, antiquity has sanctioned by the common consent of all men. And with reference to this habit there are some laws which are now quite fixed by their antiquity. Of which sort there are many other laws also, and among them far the greatest part of those laws which the praetors are in the habit of including in their edicts. But some kinds of law have already been established by certain custom: such as those relating to covenants, equity, formal decisions. A covenant is that which is agreed upon between two parties, because it is considered to be so just that it is said to be enforced by justice; equity is that which is equal to all men; a formal decision is that by which something has been established by the declared opinion of some person or persons authorized to pronounce one. As for regular laws, they can only be ascertained from the laws. It is desirable, then, by trying over every part of the law, to take notice of and to extract from these portions of the law whatever shall appear to arise out of the case itself, or out of a similar one, or out of one of greater or less importance. But since, as has been already said, there are two kinds of common topics, one of which contains the amplification of a doubtful matter, and the other of a certain one, we must consider what the case itself suggests, and what can be and ought to be amplified by a common topic. For certain topics to suit every possible case cannot be laid down; and perhaps in most of them it will be necessary at times to rely on the authority of the lawyers, and at times to speak against it. But we must consider, in this case and in all cases, whether the case itself suggests any common topics besides those which we have mentioned.

Now let us consider the juridical kind of inquiry, and its different divisions.

XXIII. The juridical inquiry is that in which the nature of justice and injustice, and the principle of reward or punishment, is examined. Its divisions are two; one of which we call the absolute inquiry, and the other the one which is accessory. That is the absolute inquiry which itself contains in itself the question of right and not right, not as the inquiry about facts does, in an overhand and obscure manner, but openly and intelligibly. It is of this sort:--When the Thebans had defeated the Lacedaemonians in war, as it was a nearly universal custom among the Greeks, when they were waging war against one another, for those who were victorious to erect some trophy on their borders, for the sake only of declaring their victory at present, not that it might remain for ever as a memorial of the war, they erected a brazen trophy. They are accused before the Amphictyons, that is, before the common council of Greece. The charge is, "They ought not to have done so." The denial is, "We ought." The question is, "Whether they ought." The reason is, "For we gained such glory by our valour in that war that we wished to leave an everlasting memorial of it to posterity." The argument adduced to invalidate this is: "But still it is not right for Greeks to erect an eternal memorial of their enmity to Greeks." The question to be decided is: "As for the sake of celebrating their own excessive valour Greeks have erected an imperishable monument of their enmity to Greeks, whether they have done well or ill?" We, therefore, have now put this reason in the mouth of the Thebans, in order that this class of cause which we are now considering might be thoroughly understood. For if we had furnished them with that argument which is perhaps the one which they actually

used, "We did so because our enemies warred against us without any considerations of justice and piety," we should then be digressing to the subject of retorting an accusation, of which we will speak hereafter. But it is manifest that both kinds of question are incidental to this controversy. And arguments must be derived for it from the same topics as those which are applicable to the cause depending on matters of fact, which has been already treated of. But to take many weighty common topics both from the cause itself, if there is any opportunity for employing the language of indignation or complaint, and also from the advantage and general character of the law, will be not only allowable, but proper, if the dignity of the cause appears to require such expedients.

XXIV. At present let us consider the assumptive portion of the juridical inquiry. But it is then called assumptive, when the fact cannot be proved by its own intrinsic evidence, but is defended by some argument brought from extraneous circumstances. Its divisions are four in number: comparison, the retort of the accusation, the refutation of it as far as regards oneself, and concession.

Comparison is when any action which intrinsically cannot be approved, is defended by reference to that for the sake of which it was done. It is something of this sort:--"A certain general, when he was blockaded by the enemy and could not escape by any possible means, made a covenant with them to leave behind his arms and his baggage, on condition of being allowed to lead away his soldiers in safety. And he did so. Having lost his arms and his baggage, he saved his men, beyond the hopes of any one. He is prosecuted for treason." Then comes the definition of treason. But let us consider the topic which we are at present discussing.

The charge is, "He had no business to leave behind the arms and baggage." The denial is, "Yes, he had." The question is, "Whether he had any right to do so?" The reason for doing so is, "For else he would have lost all his soldiers." The argument brought to invalidate this is either the conjectural one, "They would not have been lost," or the other conjectural one, "That was not your reason for doing so." And from this arise the questions for decision: " Whether they would have been lost?" and, " Whether that was the reason why he did so?" Or else, this comparative reason which we want at this minute: "But it was better to lose his soldiers than to surrender the arms and baggage to the enemy." And from this arises the question for the decision of the judges: "As all the soldiers must have been lost unless they had come into this covenant, whether it was better to lose the soldiers, or to agree to these conditions?"

It will be proper to deal with this kind of cause by reference to these topics, and to employ the principles of, and rules, for the other statements of cases also. And especially to employ conjectures for the purpose of invalidating that which those who are accused will compare with the act which is alleged against them as a crime. And that will be done if either that result which the advocates for the defence say would have happened unless that action had been performed which is now brought before the court, be denied to have been likely to ensue; or if it can be proved that it was done with a different object and in a different manner from that stated by the man who is on his trial. The confirmation of that statement, and also the argument used by the opposite party to invalidate it, must both be derived from the conjectural statement of the case. But if the accused person is brought before the court, because of his action coming under the

name of some particular crime, (as is the case in this instance, for the man is prosecuted for treason), it will be desirable to employ a definition and the rules for a definition.

XXV. And this usually takes place in this kind of examination, so that it is desirable to employ both conjecture and definition. But if any other kind of inquiry arises, it will be allowable on similar principles to transfer to it the rules for that kind of inquiry. For the accuser must of all things take pains to invalidate, by as many reasons as possible, the very fact on account of which the person on his trial thinks that it is granted to him that he was right. And it is easy to do so, if he attempts to overturn that argument by as many statements of the case as he can employ.

But comparison itself, when separated from the other kinds of discussion, will be considered according to its own intrinsic power, if that which is mentioned in the comparison is shown, either not to have been honourable, or not to have been useful, or not to have been necessary, or not so greatly useful, or not so very honourable, or not so exceedingly necessary.

In the next place it is desirable for the accuser to separate the action which he himself is accusing, from that which the advocate for the defence compares with it. And he will do that if he shows that it is not usually done in such a manner, and that it ought not to be done so, and that there is no reason why this thing should be done on this account; for instance, that those things which have been provided for the sake of safety, should be surrendered to the enemy for the sake of safety. Afterwards it will be desirable to compare the injury with the benefit, and altogether to compare the action

which is impeached with that which is praised by the advocate for the defence, or which is attempted to be proved as what must inevitably have ensued; and then, by disparaging the one, at the same time to exaggerate the importance of the mischief caused by the other. That will be effected if it be shown that that which the person on his trial avoided was more honourable, more advantageous, and more necessary than that which he did. But the influence and character of what is honourable, and useful, and necessary, will be ascertained in the rules given for deliberation.

In the next place, it will be desirable to explain that comparative kind of judicial decision as if it were a deliberative cause, and then afterwards to discuss it by the light thrown on it by rules for deliberation. For let this be the question for judicial decision which we have already mentioned:--"As all the soldiers would have been lost if they had not come to this agreement, was it better for the soldiers to be lost, or to come to this agreement?" It will be desirable that this should be dealt with with reference to the topics concerning deliberation, as if the matter were to come to some consultation.

XXVI. But the advocate for the defence will take the topics in accordance with which other statements of the case are made by the accuser, and will prepare his own defence from those topics with reference to the same statements. But all other topics which belong to the comparison, he will deal with in the contrary manner.

The common topics will be these;--the accuser will press his charges against the man who confesses some discreditable or pernicious action, or both, but still seeks to make some defence, and will allege the mischievous or discreditable

nature of his conduct with great indignation. The advocate for the defence will insist upon it, that no action ought to be considered pernicious or discreditable, or, on the other hand, advantageous or creditable, unless it is ascertained with what intention, at what time, and on what account it was done. And this topic is so common, that if it is well handled in this cause it is likely to be of great weight in convincing the hearers. And there is another topic, by means of which the magnitude of the service done is demonstrated with very great amplification, by reference to the usefulness, or honourableness, or necessity of the action. **L** And there is a third topic, by means of which the matter which is expressed in words is placed before the eyes of those men who are the hearers; so that they think that they themselves also would have done the same things, if the same circumstances and the same cause for doing so had happened to them at the same time.

The retorting of a charge takes place, when the accused person, having confessed that of which he is accused, says that he did it justifiably, being induced by the sin committed against him by the other party. As in this case:--"Horatius, when he had slain the three Curiatii and lost his two brothers, returned home victorious. He saw his sister not troubled about the death of her brothers, but at the same time calling on the name of Curiatius, who had been betrothed to her, with groans and lamentation. Being indignant, he slew the maid." He is prosecuted.

The charge is, "You slew your sister wrongfully." The refutation is, "I slew her lawfully." The question is, "Whether he slew her lawfully." The reason is, "Yes; for she was lamenting the death of enemies, and was indifferent to that of her brothers; she was grieved that I and the Roman people

were victorious." The argument to invalidate this reason is, "Still she ought not to have been put to death by her brother without being convicted." On this the question for the decision of the judges is, "Whether when Horatia was showing her indifference to the death of her brothers, and lamenting that of the enemy, and not rejoicing at the victory of her brother and of the Roman people, she deserved to be put to death by her brother without being condemned."

XXVII. For this kind of cause, in the first place, whatever is given out of the other statements of cases ought to be taken, as has been already enjoined when speaking of comparison. After that, if there is any opportunity of doing so, some statement of the case ought to be employed by which he to whom the crime is imputed may be defended. In the next place, we ought to argue that the fault which the accused person is imputing to another, is a lighter one than that which he himself committed; in the next place, we ought to employ some portion of a demurrer, and to show by whom, and through whose agency, and how, and when that matter ought to have been tried, or adjudged, or decided. And at the same time, we ought to show that it was not proper that punishment should have been inflicted before any judgment was pronounced. Then we must also point out the laws and the course of judicial proceeding by which that offence which the accused person punished of his own accord, might have been chastised according to precedent, and by the regular course of justice. In the next place, it will be right to deny that it is proper to listen to the charge which is brought by the accused person against his victim, when he who brings it did not choose to submit it to the decision of the judges; and it may be urged that one ought to consider that on which no decision has been pronounced, as if it had not been done; and after that to point out the impudence of those men who

are now before the judges accusing the man whom they themselves condemned without consulting the judges; and are now bringing him to trial on whom they have already inflicted punishment. After this we may say that it is bringing irregularity into the courts of justice, and that the judges will be advancing further than their power authorizes them, if they pronounce judgment at the same time in the case of the accused person, and of him whom the accused person impeaches. And in the next place, we may point out if this rule is established, and if men avenge one offence by another offence, and one injury by another injury, what vast inconvenience will ensue from such conduct; and that if the person who is now the prosecutor had chosen to do so too, there would have been no need of this trial at all; and that if every one else were to do so, there would be an end of all courts of justice.

After that it may be pointed out, that even if the maiden who is now accused by him of this crime had been convicted, he would not himself have had any right to inflict punishment on her; so that it is a shameful thing that the man who would have had no right to punish her, even if she had been convicted, should have punished her without her being even brought to trial at all. And then the accused person may be called upon to produce the law which he says justifies his having acted in such a manner.

After that, as we have enjoined when speaking of comparison, that that which is mentioned in comparison should be disparaged by the accuser as much as possible; so, too, in this kind of argument, it will be advantageous to compare the fault of the party on whom the accusation is retorted with the crime of the accused person who justified his action as having been lawfully done. And after that it is necessary to point out

that that is not an action of such a sort, that on account of it this other crime ought to have been committed. The last point, as in the case of comparison, is the assumption of a judicial decision, and the dilating upon it in the way of amplification, in accordance with the rules given respecting deliberation.

XXVIII. But the advocate for the defence will invalidate what is urged by means of other statements from those topics which have already been given. But the demurrer itself he will prove first of all, by dwelling on the guilt and audacity of the man to whom he imputes the crime, and by bringing it before the eyes of the judges with as much indignation as possible if the case admits of it, and also with vehement complaint; and afterwards by proving that the accused person chastised the offence more lightly than the offender deserved, by comparing the punishment inflicted with the injury done. In the next place, it will be desirable to invalidate by opposite arguments those topics which are handled by the prosecutor in such a way that they are capable of being refuted and retorted; of which kind are the three last topics which I have mentioned. But that most vehement attack of the prosecutors, by which they attempt to prove that irregularity will be introduced into all the courts of justice if power is given to any man of inflicting punishment on a person who has not been convicted, will have its force much weakened, first of all, if the injury be shown to be such as appears intolerable not only to a good man, but absolutely to any freeman; and in the next place, to be so manifest that it could not have been denied even by the person who had done it; and moreover, of such a kind that the person who did chastise it was the person who above all others was bound to chastise it. So that it was not so proper nor so honourable for that matter to be brought before a court of justice, as for it

to be chastised in that manner in which, and by that person by whom it was chastised; and lastly, that the case was so notorious that there was no occasion whatever for a judicial investigation into it. And here it will be proper to show, by arguments and by other similar means, that there are very many things so atrocious and so notorious, that it is not only not necessary, but that it is not even desirable to wait for the slow proceedings of a judicial trial.

There is a common topic for an accuser to employ against a person, who, when he cannot deny the fact of which he is accused, still derives some hope from his attempt to show that irregularity will be introduced into all courts of justice by such proceedings. And here there will come in the demonstration of the usefulness of judicial proceedings, and the complaint of the misfortune of that person who has been punished without being condemned; and the indignation to be expressed against the audacity and cruelty of the man who has inflicted the punishment. There is also a topic for the advocate for the defence to employ, in complaining of the audacity of the person whom he chastised; and in urging that the case ought to be judged of, not by the name of the action itself, but with reference to the intention of the person who committed it, and the cause for which, and the time at which it was committed. And in pointing out what great mischief will ensue either from the injurious conduct, or the wickedness of some one, unless such excessive and undisguised audacity were chastised by him whose reputation, or parents, or children, or something else which either necessarily is, or at least ought to be dear to every one, is affected by such conduct

XXIX. The transference of an accusation takes place when the accusation of that crime which is imputed to one by the

opposite party is transferred to some other person or circumstance. And that is done in two ways. For sometimes the motive itself is transferred, and sometimes the act. We may employ this as an instance of the transference of the motive: --"The Rhodians sent some men as ambassadors to Athens. The quaestors did not give the ambassadors the money for their expenses which they ought to have given them. The ambassadors consequently did not go. They are impeached." The charge brought against them is, "They ought to have gone." The denial is, "They ought not." The question is, "Whether they ought." The reason alleged is, "Because the money for their expenses, which is usually given to ambassadors from the public treasury, was not given to them by the quaestor." The argument brought to invalidate that reason is, "Still you ought to have discharged the duty which was entrusted to you by the public authority." The question for the decision of the judges is, "Whether, as the money which ought to have been supplied from the public treasury was not furnished to those men who were appointed ambassadors, they were nevertheless bound to discharge the duties of their embassy." In this class of inquiry, as in all the other kinds, it will be desirable to see if anything can be assumed, either from a conjectural statement of the case, or from any other kind of statement. And after that, many arguments can be brought to bear on this question, both from comparison, and from the transference of the guilt to other parties.

But the prosecutor will, in the first place, if he can, defend the man through whose fault the accused person says that that action was done; and if he cannot, he will declare that the fault of the other party has nothing to do with this trial, but only the fault of this man whom he himself is accusing. Afterwards he will say that it is proper for every one to

consider only what is his own duty; and that if the one party did wrong, that was no reason for the other doing wrong too. And in the next place, that if the other man has committed a fault, he ought to be accused separately as this man is, and that the accusation of the one is not to be mixed up with the defence of the other.

But when the advocate for the defence has dealt with the other arguments, if any arise out of other statements of the case, he will argue in this way with reference to the transference of the charge to other parties. In the first place, he will point out to whose fault it was owing that the thing happened; and in the next place, as it happened in consequence of the fault of some one else, he will point out that he either could not or ought not to have done what the prosecutor says he ought: that he could not, will be considered with reference to the particulars of expediency, in which the force of necessity is involved; that he ought not, with reference to the honourableness of the proceeding. We will consider each part more minutely when talking of the deliberative kind of argument. Then he will say, that everything was done by the accused person which depended on his own power; that less was done than ought to have been, was the consequence of the fault of another person. After that, in pointing out the criminality of that other person, it will be requisite to show how great the good-will and zeal of the accused person himself was. And that must be established by proofs of this sort:--by his diligence in all the rest of the affair; by his previous actions, or by his previous expressions. And it may be well to show that it would have been advantageous to the man himself to have done this, and disadvantageous not to have done it; and that to have done it would have been more in accordance with the rest of his life, than the not having done it, which was owing to the fault of

the other party.

XXX. But if the criminality is not to be transferred to some particular person, but to some circumstance, as in this very case--"If the quaestor had been dead, and on that account the money had not been given to the ambassadors," then, as the accusation of the other party, and the denial of the fault is removed, it will be desirable to employ the other topics in a similar manner, and to assume whatever is suitable to one's purpose from the divisions of admitted facts. But common topics are usually nearly the same to both parties, and then, after the previous topics are taken for granted, will suit either to the greatest certainty. The accuser will use the topic of indignation at the fact; the defender, when the guilt belongs to another and does not attach to himself, will urge that he does not deserve to have any punishment inflicted on him.

But the removal of the criminality from oneself is effected when the accused person declares, that what is attributed to him as a crime did not affect him or his duty; and asserts that if there was any criminality in it, it ought not to be attributed to him. That kind of dispute is of this sort:--"In the treaty which was formerly made with the Samnites, a certain young man of noble birth held the pig which was to be sacrificed, by the command of the general. But when the treaty was disavowed by the senate, and the general surrendered to the Samnites, one of the senators asserted that the man who held the pig ought also to be given up." The charge is, "He ought to be given up." The denial is, "He ought not." The question is, "Whether he ought or not." The reason is, "For it was no particular duty of mine, nor did it depend on my power, being as young as I was, and only a private individual, and while the general was present with the supreme authority and

command, to take care that the treaty was solemnised with all the regular formalities." The argument to invalidate this reason is, "But since you became an accomplice in a most infamous treaty, sanctioned with the most formal solemnities of religion, you ought to be surrendered." The question for the judges to decide is, "Whether, since a man who had no official authority was present, by the command of the general, aiding and abetting in the adopting of the treaty, and in that important religious ceremony, he ought to be surrendered to the enemy or not." This kind of question is so far different from the previous one; because in that the accused person admits that he ought to have done what the prosecutor says ought to have been done; but he attributes the cause to some particular circumstance or person; which was a hindrance to his own intention; without having recourse to any admission. For that has greater force; which will be understood presently. But in this case a man ought not to accuse the opposite party, nor to attempt to transfer the criminality to another, but he ought to show that that has not and never has had any reference whatever to himself, either in respect of power or duty. And in this kind of cause there is this new circumstance; that the prosecutor often works up a fresh accusation out of the topics employed, to remove the guilt from the accused person. As for instance, --"If any one accuses a man who, while he was praetor, summoned the people to take up arms for an expedition, at a time when the consuls were in the city." For as in the previous instance the accused person showed that the matter in question had no connexion with his duty or his power, so in this case also, the prosecutor himself, by removing the action done from the duty and power of the person who is put on his trial, confirms the accusation by this very argument. And in this case it will be proper for each party to examine, by means of all the divisions of honour and expediency, by examples, and tokens,

and by arguing what is the duty, or right, or power of each individual, and whether he had that right, and duty, and power which is the subject of the present discussion, or not. But it will be desirable for common topics to be assumed from the case itself, if there is any room in it for expressions of indignation or complaint.

XXXI. The admission of the fact takes place, when the accused person does not justify the fact itself, but demands to be pardoned for it. And the parts of this division of the case are two: purgation and deprecation. Purgation is that by which (not the action, but) the intention of the person who is accused, is defended. That has three subdivisions,-- ignorance, accident, necessity.

Ignorance is when the person who is accused declares that he did not know something or other. As, "There was a law in a certain nation that no one should sacrifice a calf to Diana. Some sailors, when in a terrible tempest they were being tossed about in the open sea, made a vow that if they reached the harbour which they were in sight of, they would sacrifice a calf to the god who presided over that place. Being ignorant of the law, when they landed, they sacrificed a calf." They are prosecuted. The accusation is, "You sacrificed a calf to a god to whom it was unlawful to sacrifice a calf." The denial consists in the admission which has been already stated. The reason is, "I was not aware that it was unlawful." The argument brought to invalidate that reason is, "Nevertheless, since you have done what was not lawful, you are according to the law deserving of punishment." The question for the decision of the judge is, "Whether, as he did what he ought not to have done, and was not aware that he ought not to have done so, he is worthy of punishment or not."

But accident is introduced into the admission when it is proved that some power of fortune interfered with his intention; as in this case:--"There was a law among the Lacedaemonians, that if the contractor failed to supply victims for a certain sacrifice, he should be accounted guilty of a capital offence; and accordingly, the man who had contracted to supply them, when the day of the sacrifice was at hand, began to drive in cattle from the country into the city. It happened on a sudden that the river Eurotus, which flows by Lacedaemon, was raised by some violent storms, and became so great and furious that the victims could not by any possibility be conveyed across.

The contractor, for the sake of showing his own willingness, placed all the victims on the bank of the river, in order that every one on the other side of the river might be able to see them. But though everyone was aware that it was the unexpected rise of the river which hindered him from giving effect to his zeal, still, some people prosecuted him on the capital charge." The charge was, "The victims which you were bound to furnish for the sacrifice were not furnished." The reply was an admission of the fact. The reason alleged was, "For the river rose on a sudden, and on that account it was impossible to convey them across." The argument used to invalidate that reason was, "Nevertheless, since what the law enjoins was not done, you are deserving of punishment." The question for the decision of the judges was, "Whether, as in that respect the contractor did not comply with the law, being prevented by the unexpected rise of the river which hindered his giving effect to his zeal, he is deserving of punishment."

XXXII But the plea of necessity is introduced when the

accused person is defended as having done what he is accused of having done under the influence of compulsion. In this way:-- "There is a law among the Rhodians, that if any vessel with a beak is caught in their harbour, it shall be confiscated. There was a violent storm at sea; the violence of the winds compelled a vessel, against the will of her crew, to take refuge in the harbour of the Rhodians. On this the quaestor claims the vessel for the people. The captain of the ship declared that it was not just that it should be confiscated. The charge is, "A ship with a beak was caught in the harbour." The reply is an admission of the fact. The reason given is, "We were driven into the harbour by violence and necessity." The argument brought to invalidate that reason is, "Nevertheless, according to the law that ship ought to become the property of the people." The question for the decision of the judge is, "Whether, as the law confiscates every ship with a beak which is found in the harbour, and as this ship, in spite of the endeavours of her crew, was driven into the harbour by the violence of the tempest, it ought to be confiscated."

We have collected these examples of these three kinds of cases into one place, because a similar rule for the arguments required for these prevails in all of them. For in all of them, in the first place, it is desirable, if the case itself affords any opportunity of doing so, that a conjecture should be introduced by the accuser, in order that that which it will be stated was not done intentionally, may be demonstrated by some suspicious circumstances, to have been done intentionally. In the next place, it will be well to introduce a definition of necessity, or of accident, or of ignorance, and to add instances to that definition, in which ignorance, or accident, or necessity appear to have operated; and to distinguish between such instances and the allegations put forward by the accused person; (that is to say, to show that

there is no resemblance between them;) because this was a lighter or an easier matter, or one which did not admit of any one's being ignorant respecting it, or one which gave no room for accident or necessity. After that it must be shown that it might have been avoided; and, that the accused person might have prevented it if he had done this thing, or that thing; or that he might have guarded against being forced to act in such a manner. And it is desirable to prove by definitions that this conduct of his ought not to be called imprudence, or accident, or necessity; but indolence, indifference, or fatuity.

And if any necessity alleged appears to have in it anything discreditable, it will be desirable for the opponent, by a chain of common topics, to prove that it would have been better to suffer anything, or even to die, rather than to submit to a necessity of the sort. And then, from these topics, which have been already discussed when we spoke of the question of fact, it will be desirable to inquire into the nature of law and equity, and, as if we were dealing with an absolute juridical question, to consider this point by itself separately from all other points. And in this place, if there should be an opportunity, it will be desirable to employ instances in which there can be no room for any similar excuse; and also to institute a comparison, showing that there would have been more reason to allow it in them; and by reference to the divisions of deliberation, it may be shown that it is admitted that that action which was committed by the adversary is confessed to have been discreditable and useless; that it is a matter of great importance, and one likely to cause great mischief, if such conduct is overlooked by those who have authority to punish it.

XXXIII. But the advocate for the defence will be able to

convert all these arguments, and then to use them for his own purposes. And he will especially dwell on the defence of his intentions, and in exaggerating the importance of that which was an obstacle to his intentions; and he will show that he could not have done more than he did do; and he will urge that in all things the will of the doer ought to be regarded, and that it is quite impossible that he should be justly convicted of not being free from guilt; and that under his name the common powerlessness of mankind is sought to be convicted. Then, too, he will say that nothing can be more scandalous than for a man who is free from guilt, not also to be free from punishment. But the common topics for the prosecutor to employ are these, one resting on the confession of the accused person, and the other pointing out what great licence for the violation of the law will follow, if it is once laid down that the thing to be inquired into is not the action, but the cause of the action. The common topics for the advocate for the defence to employ are, a complaint of that calamity which has taken place by no fault of his, but in consequence of some overruling power; and a complaint also of the power of fortune and the powerless state of men, and an entreaty that the judges should consider his intentions, and not the result. And in the employment of all these topics it will be desirable that there should be inserted a complaint of his own unhappy condition, and indignation at the cruelty of his adversaries.

And no one ought to marvel, if in these or other instances he sees a dispute concerning the letter of the law added to the rest of the discussion. And we shall have hereafter to speak of this subject separately, because some kinds of causes will have to be considered by themselves, and with reference to their own independent merits; and some connect with themselves some other kind of question also. Wherefore,

when everything is cleared up, it will not be difficult to transfer to each cause whatever is suitable to that particular kind of inquiry; as in all these instances of admission of the fact, there is involved that dispute as to the law, which is called the question as to the letter and spirit of the law. But as we were speaking of the admission of the fact we gave rules for it. But in another place we will discuss the letter and the spirit of the law. At present we will limit our consideration to the other division of the admission of the fact.

XXXIV. Deprecation is when it is not attempted to defend the action in question, but entreaties to be pardoned are employed. This kind of topic can hardly be approved of in a court of justice, because, when the offence is admitted, it is difficult to prevail on the man who is bound to be the chastiser of offences to pardon it. So that it is allowable to employ that kind of address only when you do not rest the whole cause on it. As for instance, if you were speaking in behalf of some illustrious or gallant man, who has done great services to the republic, you might, without appearing to have recourse to deprecation, still employ it in this manner:-- "But if, O judges, this man, in return for the services which he has done you, and the zeal which he has displayed in your cause at all times, were now, when he himself is in such peril, to entreat you, in consideration of his many good actions, to pardon this one error, it would only be what is due both to your own character for clemency, and to his virtue, O judges, for you to grant him this indulgence at his request." Then it will be allowable to dwell upon the services which he has done, and by the use of some common topic to lead the judges to feel an inclination to pardon him.

Wherefore, although this kind of address has no proper place

in judicial proceedings, except to a certain limited extent; still, because both the portion which is allowable must be employed at times, and because it is often to be employed in all its force in the senate or in the council, we will give rules for it also. For there was a long deliberation in the senate and in the council about Syphax; and there was a long discussion before Lucius Opimius and his bench of assessors respecting Quintus Numitorius Pullus; and in this case the entreaty for pardon had more influence than the strict inquiry into the case. For he did not find it so easy to prove that he had always been well affected towards the Roman people, by employing the statement of the case founded on conjecture, as to show that it was reasonable to pardon him on account of his subsequent services, when he added the topics of deprecation to the rest of his defence

XXXV. It will be desirable, therefore, for the man who entreats to be pardoned for what he admits that he has done, to enumerate whatever services of his he is able to, and, if possible, to show that they are greater than those offences which he has committed, so that it may appear that more good than evil has proceeded from him; and then to put forward also the services done by his ancestors, if there are any such; and also to show that he did what he did, not out of hatred, or out of cruelty, but either through folly, or owing to the instigation of some one, or for some other honourable or probable cause; and after that to promise and undertake that he has been taught by this error of his, and confirmed in his resolution also by the kindness of those who pardon him, to avoid all such conduct in future. And besides this, he may hold out a hope that he will hereafter be able, in some respect or other, to be of great use to those who pardon him now; he will find it serviceable to point out that he is either related to the judges, or that he has been as far back as

possible an hereditary friend of theirs; and to express to them the earnestness of his good-will towards them, and the nobility of the blood and dignity of those men who are anxious for his safety. And all other qualities and circumstances which, when attributable to persons, confer honour and dignity on them, he, using no complaint, and avoiding all arrogance, will point out as existing in himself, so that he may appear to deserve some honour rather than any kind of punishment; and after that it will be wise of him to mention other men who have been pardoned for greater offences.

And he will do himself a great deal of good if he shows that he himself, when in power, was merciful and inclined to pardon others. And the offence of which he is now accused must be extenuated and made to appear as trifling as possible; and it must be shown to be discreditable, or at all events inexpedient, to punish such a man as he is. After that it will be advisable to seek to move pity by use of common topics, according to those rules which have been laid down in the first book.

XXXVI. But the adversary will exaggerate the offences; he will say that nothing was done ignorantly, but that everything was the result of deliberate wickedness and cruelty. He will show that the accused person has been pitiless, arrogant, and (if he possibly can) at all times disaffected, and that he cannot by any possibility be rendered friendly. If he mentions any services done by him, he will prove that they were done for some private object, and not out of any goodwill; or else he will prove that he has conceived hatred since; or else that all those services have been effaced by his subsequent offences; or else that his services are of less importance than his injuries; or that, as he has already received adequate honours

for his services, he ought also to have punishment inflicted on him for the injuries which he has committed. In the next place, he will urge that it is discreditable or pernicious that he should be pardoned. And besides that, it will be the very extremity of folly not to avail oneself of one's power over a man, over whom one has often wished to have power; and that it is proper to consider what feelings, or rather what hatred they ought to entertain towards him. But one common topic to be employed will be indignation at his offence; and another will be the argument, that it is right to pity those who are in distress, owing to misfortune, and not those who are in such a plight through their own wickedness.

Since, then, we have been dwelling so long on the general statement of the case, on account of the great number of its divisions, in order to prevent any one's mind from being so distracted by the variety and dissimilarity of circumstances, and so led into some errors; it appears right also to remind the reader of what remains to be mentioned of that division of the subject, and why it remains. We have said, that that was the juridical sort of examination in which the nature of right and wrong, and the principles of reward and punishment, were investigated. We have explained the causes in which inquiry into right and wrong is proceeded with. It remains now to explain the principles which regulate the distribution of rewards and punishments.

XXXVII. For there are many causes which consist of a demand of some reward. For there is often question before the judges of the rewards to be conferred on prosecutors, and very often some reward is claimed for them from the senate, or from the bench of judges. And it is not advisable that any one should think that, when we are adducing some instance which is under discussion in the senate, we by so doing are abandoning

the class of judicial examples. For whatever is said with reference to approving or disapproving of a person, when the consideration of the opinions of the judges is adapted to that form of expression, that, even although it is treated with reference to the language in which the opinion is couched, is a deliberative argument; still, because it has especial reference to some person, it is to be accounted also judicial. And altogether, a man who has diligently investigated the meaning and nature of all causes will perceive that they differ both in character and in form; but in the other divisions he will see them all consistent with each other, and every one connected with the other. At present, let us consider the question of rewards. Lucius Licinius Crassus, the consul, pursued and destroyed a band of people in the province of the Nearer Gaul, who were collected together under no known or regular leader, and who had no name or number of sufficient importance to be entitled enemies of the Roman people; but still they made the province unsafe by their constant sallies and piratical outbreaks. He returns to Rome. He demands a triumph. Here, as also in the case of the employment of deprecation, it does not at all concern us to supply reasons to establish and to invalidate such a claim, and so to come before the judges; because, unless some other statement of the case is also put forth, or some portion of such statement, the matter for the decision of the judges will be a simple one, and will be contained in the question itself. In the case of the employment of deprecation, in this manner: "Whether so and so ought to be punished." In this instance, in such a manner: "Whether he ought to be rewarded."

Now we will furnish some topics suitable for the investigation into the principles of rewards.

XXXVIII. The principle, then, on which rewards are conferred is distributable into four divisions: as to the services done; the person who has done them; the kind of reward which is to be conferred; and the means of conferring it. The services done will be considered with reference to their own intrinsic merits, and to the time, and to the disposition of the man who did them, and to their attendant circumstances. They will be examined with reference to their own intrinsic merits, in this manner:--Whether they are important or unimportant; whether they were difficult or easy; whether they are of a common or extraordinary nature; whether they are considered honourable on true or false principles. And with reference to the time at which they were done:--If they were done at a time when we had need of them; when other men could or would not help them; if they were done when all other hope had failed. With reference to the disposition of the man who did them:--If he did not do them with a view to any advantage of his own, but if he did everything else for the express purpose of being able to do this afterwards. And with reference to the attendant circumstances:--If what was done appears not to have been done by chance, but in consequence of some deliberate design, or if chance appears to have hindered the design.

But, with respect to the man who did the service in question, it will be requisite to consider in what manner he has lived, and what expense or labour he has devoted to that object; whether he has at any time done any other similar action; whether he is claiming a reward for himself for what is in reality the result of another person's exertions, or of the kindness of the gods. Whether he has ever, in the case of any one else, pronounced that he ought not to be rewarded for such a reason; or, whether he has already had sufficient

honour paid to him for what he has done; or, whether what has been done is an action of such a sort that, if he had not done it, he would have been deserving of punishment; but that he does not deserve reward for having done it; or, whether he is premature in his demand for a reward, and is proposing to sell an uncertain hope for a certain reward; or, whether he claims the reward in order to avoid some punishment, by its appearing as if the case had already been decided in his favour.

XXXIX. But as to the question of the reward, it will be necessary to consider what reward, how great a reward is claimed, and why it is claimed; and also, to what reward, and to how great a reward, the conduct in question is entitled. And in the next place, it will be requisite to inquire what men had such honours paid them in the time of our ancestors, and for what causes those honours were paid. And, in the next place, it will be urged that they ought not to be made too common. And this will be one common topic for any one who speaks in opposition to a person who claims a reward; -- that rewards for virtue and eminent services ought to be considered serious and holy things, and that they ought not to be conferred on worthless men, or to be made common by being bestowed on men of no particular eminence. And another will be, to urge that men will become less eager to practice virtue when the reward of virtue has been made common; for those things which are scarce and difficult of attainment appear honourable and acceptable to men. And a third topic is, to put the question, whether, if there are any instances of men who, in the times of our ancestors, were thought worthy of such honours on account of their eminent virtue, they will not be likely to think it some diminution of their own glory, when they see that such men as these have such rewards conferred on them. And then comes the

enumeration of those men, and the comparison of them with those against whom the orator is speaking. But the topics to be used by the man who is claiming the reward are, first of all, the exaggeration of his own action; and next, the comparison of the actions of those men who have had rewards conferred on them with his own; and lastly, he will urge that other men will be repelled from the pursuit of virtue if he himself is denied the reward to which he is entitled.

But the means of conferring the rewards are taken into consideration when any pecuniary reward is asked for; for then it is necessary to consider whether there is an abundance of land, and revenue, and money, or a dearth of them. The common topics are,--that it is desirable to increase the resources of the state, not to diminish them; and that he is a shameless man who is not content with gratitude in requital of his services, but who demands also solid rewards. But on the other hand, it may be urged, that it is a sordid thing to argue about money, when the question is about showing gratitude to a benefactor; and that the claimant is not asking wages for a piece of work, but honour such as is due for an important service.

And we have now said enough about the statements of cases; now it seems necessary to speak of those controversies which turn upon the letter of the law.

XL. The controversy turns upon the letter of the law when some doubt arises from the consideration of the exact terms in which it is drawn up. That arises from ambiguity, from the letter of the law, from its intention, from contrary laws, from ratiocination, and definition. But a controversy arises from ambiguity, when it is an obscure point what was the intention of the writer, because the written words mean two or even

more different things. In this manner:--"The father of a family, when he was making his son his heir, left a hundredweight of silver plate to his wife, in these terms: 'Let my heir give my wife a hundredweight of silver plate, consisting of such vessels as may be chosen.' After he was dead, the mother demands of her son some very magnificent vessels of very valuable carving. He says that he is only bound to give her those vessels which he himself chooses." Here, in the first place, it is necessary to show if possible that the will has not been drawn up in ambiguous terms, because all men in ordinary conversation are accustomed to employ that expression, whether consisting of one word or more, in that meaning in which the speaker hopes to show that this is to be understood. Then it is desirable to prove that from both the preceding and subsequent language of the will, the real meaning which is being sought may be made evident. So that if all the words, or most of them, were considered separately by themselves, they would appear of doubtful meaning. But as for those which can be made intelligible by a consideration of the whole document, these have no business to be thought obscure.

In the next place, it will be proper to draw one's conclusion as to the intentions which were entertained by the writer from all his other writings, and actions, and sayings, and his general disposition, and from the usual tenor of his life; and to scrutinise that very document in which this ambiguous phrase is contained which is the subject of the present inquiry, all over, in all its parts, so as to see whether there is anything opposite to that interpretation which we contend for, or contrary to that which the adversary insists on adopting. For it will be easy to consider what it is probable that the man who drew up the document intended, from its whole tenor, and from the character of the writer, and from

those other circumstances which are characteristic of the persons concerned. In the next place, it will be desirable to show, if the facts of the case itself afford any opportunity for doing so, that that meaning which the opposite party contends for, is a much more inconvenient one to adopt than that which we have assumed to be the proper one, because there is no possible means of carrying out or complying with that other meaning; but what we contend for can be accomplished with great ease and convenience.

As in this law (for there is no objection to citing an imaginary one for the sake of giving an instance, in order to the more easy comprehension of the matter):--"Let not a prostitute have a golden crown. If such a case exists, it must be confiscated." Now, in opposition to a man who contended that that was to become public property in accordance with this law, it might be argued, "that there could be no way of making a prostitute public property, and there is no intelligible meaning for the law if that is what is to be adopted as its proper construction; but as to the confiscation of anything made of gold, the management and the result is easy, and there is no difficulty in it."

XLI. And it will be desirable also to pay diligent attention to this point, whether if that sense is sanctioned which the opposite party contends for, any more advantageous, or honourable, or necessary object appears to have been omitted by the framer of the document in question. That will be done if we can prove that the object which we are attempting to prove is either honourable, or expedient, or necessary; and if we can also assert that the interpretation which our adversaries insist upon, is not at all entitled to such a character. In the next place, if there is in the law itself any controversy arising from any ambiguity, it will be requisite to

take great care to show that the meaning which our adversaries adopt is provided for in some other law. But it will be very serviceable indeed to point out how the testator would have expressed himself, if he had wished the interpretation which the adversary puts upon his words to be carried into execution or understood. As for instance, in this cause, the one, I mean, in which the question is about the silver plate, the woman might argue, "That there was no use in adding the words 'as may be chosen,' if the matter was left to the selection of the heir; for if no such words had been inserted, there could have been no doubt at all that the heir might have given whatever he himself chose. So that it was downright madness, if he wished to take precautions in favour of his heir, to add words which might have been wholly left out without such omission prejudicing his heir's welfare."

Wherefore, it will be exceedingly advisable to employ this species of argument in such causes:--"If he had written with this intention he would not have employed that word; he would not have placed that word in that place," for it is from such particulars as these that it is easiest to collect the intention of the writer. In the next place, it is necessary to inquire when the document was drawn up, in order that it may be understood what it was likely that he should have wished at such a time. Afterwards it will be advisable to point out, by reference to the topics furnished by the deliberative argument, what is more useful and what more honourable to the testator to write, and to the adversary to prove; and it will be well for both parties to employ common topics, if there is any room for extending either argument.

XLII. A controversy arises with respect to the letter of the document and to its meaning, when one party employs the very words which are set down in the paper; and the other

applies all his arguments to that which he affirms that the framer of the document intended. But the intention of the framer of the document must be proved by the man who defends himself, by reference to that intention, to have always the same object in view and the same meaning; and it must also, either by reference to the action or to some result, be adapted to the time which the inquiry concerns. It must be proved always to have the same object in view, in this way:-- "The head of a house, at a time when he had no children, but had a wife, inserted this clause in his will: 'If I have a son or sons born to me, he or they is or are to be my heir or heirs.' Then follow the ordinary provisions. After that comes the following clause: 'If my son dies before he comes into the property, which is held in trust for him, then,' says the clause, 'you shall be my reversionary heir.' He never has a son. His next of kin raise a dispute with the man who is named as the heir, in the case of the testator's son dying before he comes into the property which his guardians are holding for him." In this case it cannot be said that the meaning of the testator ought to be made to suit the time or some particular result, because that intention alone is proved on which the man who is arguing against the language of the will relies, in order to defend his own right to the inheritance.

There is another class of topics which introduce the question as to the meaning of expressions, in which the mere simple intention of the framer is not endeavoured to be proved, for that has the same weight with reference to every period and every action; but it is argued that it ought to be interpreted with reference to some particular action, or to some event happening at that particular time. And that is especially supported by the divisions of the juridical assumptive mode of investigation. For then the comparison is instituted; as in the

case of "a man who, though the law forbade the gates to be opened by night, did open them in a certain war, and admitted some reinforcements into the town, in order to prevent their being overwhelmed by the enemy if they remained outside the gates; because the enemy were encamped close to the walls." Then comes the retorting of the charge; as in the case of "that soldier who, when the common law of all men forbade any one to kill a man, slew his own military tribune who was attempting to offer violence to him." Then comes the exculpation; as in the case of "that man who, when the law had appointed some particular days within which he was to proceed on his embassy, did not set out because the quaestor did not furnish him with money for his expenses." Then comes the admission of the fact by way of purgation, and also by the excuse of ignorance; as "in the case of the sacrificing a calf ;" and with reference to compulsion, as "in the case of the beaked ship ;" and with reference to accident, as "in the case of the sudden rise of the river Eurotas." Wherefore, it is best that the meaning should be introduced in such a way, as that the framer of the law should be proved to have intended some one definite thing; else in such a way that he should be proved to have meant this particular thing, under these circumstances, and at this time.

XLIII. He, therefore, who is defending the exact language of the law, will generally be able to use all these topics; and will always be able to use the greater part of them. First of all, he will employ a panegyric of the framer of it, and the common topic that those who are the judges have no business to consider anything except what is expressly stated in the law; and so much the more if any legal document be brought forward, that is to say, either the law itself, or some portion of the law. Afterwards--and this is a point of the greatest importance--he will employ a comparison of the action or of

the charge brought by the opposite party with the actual words of the law; he will show what is contained in the law, what has been done, what the judge has sworn. And it will be well to vary this topic in many ways, sometimes professing 'o wonder in his own mind what can be said against this argument; sometimes recurring to the duty of the judge, and asking of him what more he can think it requisite to hear, or what further he expects; sometimes by bringing forward the adversary himself, as if in the position of a person making an accusation; that is to say, by asking him whether he denies that the law is drawn up in that manner, or whether he denies that he himself has contravened it, or disputed it. If he denies either of these points, then one must avow that one will say no more; if he denies neither of them, and yet continues to urge his arguments in opposition to one, then one must say that it is impossible for any one ever to expect to see a more impudent man. And it will be well to dwell on this point as if nothing besides were to be said, as if nothing could be said in contradiction, by reciting several times over what is written; by often contrasting the conduct of the adversary with what is written; and sometimes by recurring vehemently to the topic of the judge himself; in which one will remind the judge of what oath he has taken, of what his conduct is bound to be; and urge that there are two causes on account of which a judge is bound to hesitate, one if the law be obscurely worded, the other if the adversary denies anything. But as in this instance the wording of the law is plain, and the adversary admits every fact that is alleged, the judge has now nothing to do but to fulfil the law, and not to interpret it.

XLIV. When this point has been sufficiently insisted on, then it will be advisable to do away with the effect of those things which the adversary has been able to urge by way of objection. But such objections will be made if the framer of

the law can be absolutely proved to have meant one thing, and written another; as in that dispute concerning the will which we mentioned just now: or some adventitious cause may be alleged why it was not possible or not desirable to obey the written law minutely. If it is stated that the framer of the law meant one thing, and wrote another, then he who appeals to the letter of the law will say that it is our business not to discuss the intention of a man who has left us a plain proof of that intention, to prevent our having any doubt about it; and that many inconveniences must ensue if the principle is laid down that we may depart from the letter of the law. For that then those who frame laws will not think that the laws which they are making will remain firm; and those who are judges will have no certain principle to follow, if once they get into the habit of departing from the letter of the law. But if the intention of the framer of the law is what is to be looked at, then it is he, and not his adversaries, who relies on the meaning of the lawgiver. For that that person comes much nearer to the intention of the framer of a law who interprets it from his own writings, than he who does not look at the meaning of the framer of the law by that writing of his own which he has left to be as it were an image of his meaning, but who investigates it under the guidance of some private suspicions of his own.

If the party who stands on the meaning of the lawgiver brings forward any reasons, then, in the first place, it will be necessary to reply to those reasons; to urge how absurd it is for a man not to deny that he has acted contrary to the law, but at the same time to give some reason for having acted so. Then one will say too that all things are turned upside down; that formerly prosecutors were in the habit of trying to persuade the judges that the person who was being prosecuted before them was implicated in some fault, and of

alleging some reasons which had instigated him to commit this fault; but that now the accused person himself is giving the reasons why he has offended against the laws. Then it will be proper to introduce this division, each portion of which will have many lines of argument suitable to it: in the first place, that there is no law with reference to which it is allowable to allege any reasons contrary to the law; in the next place, that if such a course is admissible in any law, this is such a law that it is not admissible with respect to it; and lastly, that, even if such reasons ever might be alleged, at all events this is not such a reason.

XLV. The first part of the argument is confirmed by pretty nearly the same topics as these: that the framer of the law was not deficient in either ability, or pains, or any faculty requisite to enable him to express plainly what his intention was; that it would not have been either displeasing or difficult to him to insert such an exception as that which the opposite party contends for in his law, if he thought any exception requisite; and in fact, that those people who frame laws often do insert clauses of exceptions. After that it is well to enumerate some of the laws which have exceptional clauses attached to them, and to take especial care to see whether in the law itself which is under discussion there is any exception made in any chapter, or whether the same man who framed this law has made exceptions in other laws, so that it may be more naturally inferred that he would have made exceptions in this one, if he had thought exceptions requisite; and it will be well also to show that to admit of a reason for violating the law is the same thing as abrogating the law, because when once such a reason is taken into consideration, it is no use to consider it with reference to the law, inasmuch as it is not stated in the law. And if such a principle is once laid down; then a reason for violating the

law, and a licence to do so, is given to every one, as soon as they perceive that you as judges decide the matter in a way which depends on the ability of the man who has violated the law, and not with reference to the law which you have sworn to administer. Then, too, one must point out that all principles on which judges are to judge, and citizens are to live, will be thrown into confusion if the laws are once departed from; for the judges will not have any rules to follow, if they depart from what is set down in the law, and no principles on which they can reprove others for having acted in defiance of the law. And that all the rest of the citizens will be ignorant what they are to do, if each of them regulates all his actions according to his own ideas, and to whatever whim or fancy comes into his head, and not according to the common statute law of the state.

After that it will be suitable to ask the judges why they occupy themselves at all with the business of other people; -- why they allow themselves to be harassed in discharging the offices of the republic, when they might often spend the time in promoting their own ends and private interests;-- why they take an oath in a certain form;--why they assemble at a regular time and go away at a regular time;--why no one of them ever alleges any reason for being less frequent in his discharge of his duty to the republic, except such as is set down in some formal law as an exception. And one may ask, whether they think it right that they should be bound down and exposed to so much inconvenience by the laws, and at the same time allow our adversaries to disregard the laws. After that it will be natural to put the question to the judges, whether, when the party accused himself endeavours to set down in the law, as an exception, that particular case in which he admits that he has violated the law, they will consent to it. And to ask also, whether what he has actually

done is more scandalous and more shameless than the exception which he wishes to insert in the law;--what indeed can be more shameless? Even if the judges were inclined to make such an addition to the law, would the people permit it? One might also press upon them that this is even a more scandalous measure, when they are unable to make an alteration in the language and letter of the law, to alter it in the actual facts, and to give a decision contrary to it; and besides, that it is a scandalous thing that anything should be taken from the law, or that the law should be abrogated or changed in any part whatever, without the people having any opportunity of knowing, or approving, or disapproving of what is done; that such conduct is calculated to bring the judges themselves into great odium; that it is not the proper time nor opportunity for amending the laws; that this ought only to be brought forward in an assembly of the people, and only to be done by the people; that if they now do so, the speaker would like to know who is the maker of the new law, and who are to obey it; that he sees actions impending, and wishes to prevent them; that as all such proceedings as these are exceedingly useless and abundantly discreditable, the law, whatever it is like, ought, while it exists, to be maintained by the judges, and hereafter, if it is disapproved of, to be amended by the people. Besides this, if there were no written law, we should take great trouble to find one; and we should not place any confidence in that man, not even if he were in no personal danger himself; but now, when there is a written law, it is downright insanity to attend to what that man says who has violated the law, rather than to the language of the law itself. By these and similar arguments it is proved that it is not right to admit any excuse which is contrary to the letter of the law.

XLVI. The second part is that in which it is desirable to prove

that if such a proceeding is right with respect to other laws, it is not advisable with respect to this one. This will be shown if the law appears to refer to matters of the greatest importance, and usefulness, and honourableness, and sanctity; so that it is disadvantageous, or discreditable, or impious not to obey the law as carefully as possible in such a matter. Or the law may be proved to have been drawn up so carefully, and such great diligence may be shown to have been exercised in framing each separate provision of it, and in making every exception that was allowable, that it is not at all probable that anything proper to be inserted has been omitted in so carefully considered a document.

The third topic is one exceedingly necessary for a man who is arguing in defence of the letter of the law; by which it may be urged, that even if it is decent for an excuse to be admitted contrary to the letter of the law, still that excuse which is alleged by his adversaries is of all others the least proper to be so alleged. And this topic is necessary for him on this account, --because the man who is arguing against the letter of the law ought always to have some point of equity to allege on his side. For it is the greatest possible impudence for a man who wishes to establish some point in opposition to the exact letter of the law, not to attempt to fortify himself in so doing, with the assistance of the law. If therefore the accuser in any respect weakens the defence by this topic, he will appear in every respect to have more justice and probability in favour of his accusation. For all the former part of his speech has had this object, --that the judges should feel it impossible, even if they wished it, to avoid condemning the accused person; but this part has for its object the making them wish to give such a decision, even if it were not inevitable.

And that result will be obtained, if we use those topics by which guilt may be proved not to be in the man who defends himself, by using the topic of comparison, or by getting rid of the accusation, or by recrimination, or by some species of confession, (concerning all which topics we have already written with all the precision of which we were capable,) and if we take those which the case will admit of for the purpose of throwing discredit on the argument of our adversary;--or if reasons and arguments are adduced to show why or with what design those expressions were inserted in the law or will in question, so that our side of the question may appear established by the meaning and intention of the writer, and not only by the language which he has employed. Or the fact may be proved by other statements and arguments.

XLVII. But any one who speaks against the letter of the law will first of all introduce that topic by which the equity of the excuse is proved; or he will point out with what feelings, with what design, and on what account he did the action in question. And whatever excuse he alleges he will defend according to some of the rules which I have already given with respect to assumptions. And when he has dwelt on this topic for some time, and set forth the principles of his conduct and the equity of his cause in the most specious manner he can, he will also add, in opposition to the arguments of his adversaries, that it is from these topics for the most part that excuses which are admissible ought to be drawn. He will urge that there is no law which sanctions the doing of any disadvantageous or unjust action; that all punishments which are enacted by the laws have been enacted for the sake of chastising guilt and wickedness; that the very framer of the laws, if he were alive, would approve of this conduct, and would have done the very same thing

himself if he had been in similar circumstances. And that it is on this account that the framer of the law appointed judges of a certain rank and age, in order that there might be men, not capable merely of reading out what he had written, which any boy might do, but able also to understand his thoughts and to interpret his intentions. He will add, that that framer of the law, if he had been intrusting the laws which he was drawing up to foolish men and illiterate judges, would have set down everything with the most scrupulous diligence; but, as it is, because he was aware what sort of men were to be the judges, he did not put down many things which appeared to him to be evident; and he expected that you would be not mere readers of his writings, but interpreters of his intentions. Afterwards he will proceed to ask his adversaries-- "What would you say if I had done so and so?" "What would you think if so and so had happened?" "Suppose any one of those things had happened which would have had a most unfailling excuse, or a most undeniable necessity, would you then have prosecuted me?" But the law has nowhere made any such exception. It follows, therefore, that it is not every possible circumstance which is mentioned in the written law but that some things which are self-evident are guarded against by unexpressed exceptions.

Then he will urge, that nothing could be carried on properly either by the laws or by any written document whatever, or even in daily conversation, or in the commands given in a private household, if every one chose to keep his eyes on the exact language of the order, and not to take into consideration the intentions of him who uttered the order.

XLVIII. After that he will be able, by reference to the divisions of usefulness and honour, to point out how inexpedient or how dishonourable that would have been

which the opposite party say ought to have been done, or to be done now. And on the other hand, how expedient and how honourable that is which we have done, or demand should be done. In the next place, he will urge that we set a value on our laws not on account of their wording, which is a slight and often obscure indication of their intention, but on account of the usefulness of those things concerning which they are written, and the wisdom and diligence of those men who wrote them. Afterwards he will proceed to describe what the law is, so that it shall appear to consist of meanings, not of words; and that the judge may appear to be obedient to the law, who follows its meaning and not its strict words. After that he will urge how scandalous it is that he should have the same punishment inflicted on him who has violated the law out of some mere wickedness and audacity, as on the man who, on account of some honourable or unavoidable reason, has departed not from the spirit of the law, but from its letter. And by these and similar arguments he will endeavour to prove that the excuse is admissible, and is admissible in this law, and that the excuse which he himself is alleging ought to be admitted.

And, as we said that this would be exceedingly useful to the man who was relying on the letter of the law, to detract in some degree from that equity which appeared to be on the side of the adversary; so also it will be of the greatest advantage to the man who is speaking in opposition to the letter of the law, to convert something of the exact letter of the law to his own side of the argument, or else to show that something has been expressed ambiguously. And afterwards, to take that portion of the doubtful expression which may serve his own purpose, and defend it; or else to introduce some definition of a word, and to bring over the meaning of that word which seems unfavourable to him to the advantage

of his own cause; or else, from what is set down in the law to introduce something which is not set down by means of ratiocination, which we will speak of presently. But in whatever matter, however little probable it may be, he defends himself by an appeal to the exact letter of the law, even when his case is full of equity, he will unavoidably gain a great advantage, because if he can withdraw from the cause of the opposite party that point on which it principally relies, he will mitigate and take off the effect of all its violence and energy. But all the rest of the common topics taken from the divisions of assumptive argument will suit each side of the question. It will also be suitable for him whose argument takes its stand on the letter of the law, to urge that laws ought to be looked at, not with reference to the advantage of that man who has violated them, but according to their own intrinsic value; and that nothing ought to be considered more precious than the laws. On the other side, the speaker will urge, that laws depend upon the intention of the framer of them, and upon the general advantage, not upon words; and also, how scandalous it is for equity to be overwhelmed by a heap of letters, and defended in vain by the intention of the man who drew up the law.

XLIX. But from contrary laws a controversy arises, when two or more laws appear to be at variance with one another. In this manner:--There is a law, "That he who has slain a tyrant shall receive the reward of men who conquer at Olympia; and shall also ask whatever he pleases of the magistrate, and the magistrate shall grant it to him." There is also another law--"When a tyrant is slain, the magistrate shall also put to death his five nearest relations." Alexander, who was the tyrant of Pherae, a city in Thessaly, was slain by his own wife, whose name was Thebe, at night, when he was in bed with her; she, as a reward, demands the liberty of her son whom she had by

the tyrant. Some say that according to this law that son ought to be put to death. The matter is referred to a court of justice. Now in a case of this kind the same topics and the same rules will suit each side of the question; because each party is bound to establish his own law, and to invalidate the one contrary to it. First of all, therefore, it is requisite to show the nature of the laws, by considering which law has reference to more important, that is to say, to more honourable and more necessary matters. From which it results, that if two or more, or ever so many laws cannot all be maintained, because they are at variance with one another, that one ought to be considered the most desirable to be maintained, which appears to have reference to the most important matters. Then comes the question also, which law was passed last; for the newest law is the most important. And also, which law enjoins anything, and which merely allows it; for that which is enjoined is necessary, that which is allowed is optional. Also one must consider by which law a penalty is appointed for the violation of it; or which has the heaviest penalty attached to it; for that law must be the most carefully maintained which is sanctioned by the most severe penalties. Again, one must inquire which law enjoins, and which forbids anything; for it often happens that the law which forbids something appears by some exception as it were to amend the law which commands something. Then, too, it is right to consider which law comprehends the entire class of subjects to which it refers, and which embraces only a part of the question; which may be applied generally to many classes of questions, and which appears to have been framed to apply to some special subject. For that which has been drawn up with reference to some particular division of a subject, or for some special purpose, appears to come nearer to the subject under discussion, and to have more immediate connexion with the present action. Then arises the question, which is

the thing which according to the law must be done immediately; which will admit of some delay or slackness in the execution. For it is right that that should be done first which must be done immediately. In the next place, it is well to take pains that the law one is advocating shall appear to depend on its own precise language; and that the law with a contrary sense should appear to be introduced with a doubtful interpretation, or by some ratiocination or definition, in order that that law which is expressed in plain language may appear to be the more solemn and efficient. After that it will be well to add the meaning of the law which is on one's own side according to the strict letter of it; and also to explain the opposite law so as to make it appear to have another meaning, in order that, if possible, they may not seem to be inconsistent with one another. And, last of all, it will be a good thing, if the cause shall afford any opportunity for so doing, to take care that on our principles both the laws may seem to be upheld, but that on the principle contended for by our adversaries one of them must be put aside. It will be well also to consider all the common topics and those which the cause itself furnishes, and to take them from the most highly esteemed divisions of the subjects of expediency and honour, showing by means of amplification which law it is most desirable to adhere to.

L. From ratiocination there arises a controversy when, from what is written somewhere or other, one arrives at what is not written anywhere; in this way:--"If a man is mad, let those of his family and his next of kin have the regulation of himself and of his property." And there is another law--"In whatever manner a head of a family has made his will respecting his family and his property, so let it be." And another law--"If a head of a family dies intestate, his family and property shall belong to his relations and to his next of

kin." A certain man was convicted of having murdered his father. Immediately, because he was not able to escape, wooden shoes were put upon his feet, and his mouth was covered with a leathern bag, and bound fast, then he was led away to prison, that he might remain there while a bag was got ready for him to be put into and thrown into a river. In the meantime some of his friends bring tablets to the prison, and introduce witnesses also; they put down those men as his heirs whom he himself desires; the will is sealed; the man is afterwards executed. There is a dispute between those who are set down as his heirs in the will, and his next of kin about his inheritance. In this instance there is no positive law alleged which takes away the power of making a will from people who are in such a situation. But from other laws, both those which inflict a punishment of this character on a man guilty of such a crime, and those, too, which relate to a man's power of making a will, it is possible to come by means of ratiocination to a conclusion of this sort, that it is proper to inquire whether he had the power of making a will.

But we think that these and such as these are the common topics suitable to an argument of this description. In the first place, a panegyric upon, and a confirmation of that writing which you are producing. Then a comparison of the matter which is the subject of discussion, with that which is a settled case, in such a manner that the case which is under investigation may appear to resemble that about which there are settled and notorious rules. After that, one will express admiration, (by way of comparison), how it can happen that a man who admits that this is fair, can deny that other thing, which is either more equitable still, or which rests on exactly similar principles; then, too, one will contend that the reason why there is no precise law drawn up for such a case, is because, as there was one in existence applicable to the

other case, the framer of that law thought that no one could possibly entertain a doubt in this case; and afterwards it will be well to urge that there are many cases not provided for in many laws, which beyond all question were passed over merely because the rule as to them could be so easily collected out of the other cases which were provided for; and last of all, it is necessary to point out what the equity of the case requires, as is done in a plain judicial case.

But the speaker who is arguing on the other side is bound to try and invalidate the comparison instituted, which he will do if he can show that that which is compared is different from that with which it is compared in kind, in nature, in effect, in importance, in time, in situation, in character, in the opinion entertained of it; if it is shown also in what class that which is adduced by way of comparison ought to stand, and in what rank that also ought to be considered, for the sake of which the other thing is mentioned. After that, it will be well to point out how one case differs from the other, so that it does not seem that any one ought to have the same opinion of both of them. And if he himself also is able to have recourse to ratiocination, he must use the same ratiocination which has been already spoken of. If he cannot, then he will declare that it is not proper to consider anything except what is written; that all laws are put in danger if comparisons are once allowed to be instituted; that there is hardly anything which does not seem somewhat like something else; that when there are many circumstances wholly dissimilar, still there are separate laws for each individual case; and that all things can be proved to be like or unlike to each other. The common topics derived from ratiocination ought to arrive by conjecture from that which is written to that which is not written; and one may urge that no one can embrace every imaginable case in a written law, but that he frames a law

best who takes care to make one thing understood from another. One may urge, too, that in opposition to a ratiocination of this sort, conjecture is no better than a divination, and that it would be a sign of a very stupid framer of laws not to be able to provide for everything which he wished to.

LI. Definition is when a word is set down in a written document, whose exact meaning is inquired into, in this manner:--There is a law, "Whoever in a severe tempest desert their ship shall be deprived of all their property; the ship and the cargo shall belong to those men who remain by the ship." Two men, when they were sailing on the open sea, and when the ship belonged to one of them and the cargo to another, noticed a shipwrecked man swimming and holding out his hands to them. Being moved with pity they directed the ship towards him, and took the man into their vessel. A little afterwards the storm began to toss them also about very violently, to such a degree that the owner of the ship, who was also the pilot, got into a little boat, and from that he guided the ship as well as he could by the rope by which the boat was fastened to the ship, and so towed along; but the man to whom the cargo belonged threw himself on his sword in despair. On this the shipwrecked man took the helm and assisted the ship as far as he could. But after the waves went down and the tempest abated, the ship arrived in harbour. But the man who had fallen on his sword turned out to be but slightly wounded, and easily recovered of his wound. And then every one of these three men claimed the ship and cargo for his own. Every one of them relies on the letter of the law to support their claim, and a dispute arises as to the meaning of the words. For they seek to ascertain by definitions what is the meaning of the expressions "to abandon the ship," "to stand by the ship," and even what "the ship" itself is. And the

question must be dealt with with reference to all the same topics as are employed in a statement of the case which turns upon a definition.

Now, having explained all those argumentations which are adapted to the judicial class of causes, we will proceed in regular order to give topics and rules for the deliberative and demonstrative class of arguments; not that there is any cause which is not at all times conversant with some statement of the case or other; but because there are nevertheless some topics peculiar to these causes, not separated from the statement of the case, but adapted to the objects which are more especially kept in view by these kinds of argumentation.

For it seems desirable that in the judicial kind the proper end is equity; that is to say, some division of honesty. But in the deliberative kind Aristotle thinks that the proper object is expediency; we ourselves, that it is expediency and honesty combined. In the demonstrative kind it is honesty only. Wherefore, in this kind of cause also, some kinds of argumentation will be handled in a common manner, and in similar ways to one another. Some will be discussed more separately with reference to their object, which is what we must always keep in view in every kind of speech. And we should have no objection to give an example of each kind of statement of the case, if we did not see that, as obscure things are made more plain by speaking of them, so also things which are plain are sometimes made more obscure by a speech. At present let us go on to precepts of deliberation.

LII. Of matters to be aimed at there are three classes; and on the other hand there is a corresponding number of things to be avoided. For there is something which of its own intrinsic force draws us to itself, not catching us by any idea of

emolument, but alluring us by its own dignity. Of this class are virtue, science, truth. And there is something else which seems desirable, not on account of its own excellence or nature, but on account of its advantage and of the utility to be derived from it--such as money. There are also some things formed of parts of these others in combination, which allure us and draw us after them by their own intrinsic character and dignity, and which also hold out some prospect of advantage to us, to induce us to seek it more eagerly, as friendship, and a fair reputation; and from these their opposites will easily be perceived, without our saying anything about them.

But in order that the principle may be explained in the more simple way, the rules which we have laid down shall be enumerated briefly. For those which belong to the first kind of discussion are called honourable things; those which belong to the second, are called useful things; but this third thing, because it contains some portion of what is honourable, and because the power of what is honourable is the more important part, is perceived to be altogether a compound kind, made up of a twofold division; still it derives its name from its better part, and is called honourable. From this it follows, that there are these parts in things which are desirable, --what is honourable, and what is useful. And these parts in things which are to be avoided,--what is dishonourable, and what is useless. Now to these two things there are two other important circumstances to be added,--necessity and affection: the one of which is considered with reference to force, the other with reference to circumstances and persons. Hereafter we will write more explicitly about each separately. At present we will explain first the principles of what is honourable.

LIII. That which either wholly or in some considerable portion

of it is sought for its own sake, we call honourable: and as there are two divisions of it, one of which is simple and the other twofold, let us consider the simple one first. In that kind, then, virtue has embraced all things under one meaning and one name; for virtue is a habit of the mind, consistent with nature, and moderation, and reason. Wherefore, when we have become acquainted with all its divisions, it will be proper to consider the whole force of simple honesty.

It has then four divisions--prudence, justice, fortitude, and temperance. Prudence is the knowledge of things which are good, or bad, or neither good nor bad. Its parts are memory, intelligence, and foresight. Memory is that faculty by which the mind recovers the knowledge of things which have been. Intelligence is that by which it perceives what exists at present. Foresight is that by which anything is seen to be about to happen, before it does happen. Justice is a habit of the mind which attributes its proper dignity to everything, preserving a due regard to the general welfare. Its first principles proceed from nature. Subsequently some practices became established by universal custom, from a consideration of their utility; afterwards the fear of the laws and religion sanctioned proceedings which originated in nature, and had been approved of by custom.

Natural law is that which has not had its origin in the opinions of men, but has been implanted by some innate instinct, like religion, affection, gratitude, revenge, attention to one's superiors, truth. Religion is that which causes men to pay attention to, and to respect with fixed ceremonies, a certain superior nature which men call divine nature. Affection is that feeling under the influence of which kindness and careful attention is paid to those who are united to us by ties of blood, or who are devoted to the service of their country.

Gratitude is that feeling in which the recollection of friendship, and of the services which we have received from another, and the inclination to requite those services, is contained. Revenge is that disposition by which violence and injury, and altogether everything which can be any injury to us, is repelled by defending oneself from it, or by avenging it. Attention is that feeling by which men obey when they think those who are eminent for worth or dignity, worthy of some special respect and honour. Truth is that by which those things which are, or which have been previously, or which are about to happen, are spoken of without any alteration.

LIV. Conventional law is a principle which has either derived its origin in a slight degree from nature, and then has been strengthened by habit, like religion; or, if we see any one of those things which we have already mentioned as proceeding from nature strengthened by habit; or, if there is anything to which antiquity has given the force of custom with the approbation of everybody: such as covenants, equity, cases already decided. A covenant is that which is agreed upon between two parties; equity is that which is equally just for every one; a case previously decided is one which has been settled by the authoritative decision of some person or persons entitled to pronounce it.

Legal right is that which is contained in that written form which is delivered to the people to be observed by them.

Fortitude is a deliberate encountering of danger and enduring of labour. Its parts are magnificence, confidence, patience, and perseverance. Magnificence is the consideration and management of important and sublime matters with a certain wide seeing and splendid determination of mind. Confidence is that feeling by which the mind embarks in great and

honourable courses with a sure hope and trust in itself. Patience is a voluntary and sustained endurance, for the sake of what is honourable or advantageous, of difficult and painful labours. Perseverance is a steady and lasting persistence in a well-considered principle.

Temperance is the form and well-regulated dominion of reason over lust and other improper affections of the mind. Its parts are continence, clemency, and modesty. Continence is that by which cupidity is kept down under the superior influence of wisdom. Clemency is that by which the violence of the mind, when causelessly excited to entertain hatred against some one else, is restrained by courtesy. Modesty is that feeling by which honourable shame acquires a valuable and lasting authority. And all these things are to be sought for themselves, even if no advantage is to be acquired by them. And it neither concerns our present purpose to prove this, nor is it agreeable to our object of being concise in laying down our rules.

But the things which are to be avoided for their own sake, are not those only which are the opposites to these; as indolence is to courage, and injustice to justice; but those also which appear to be near to and related to them, but which, in reality, are very far removed from them. As, for instance, diffidence is the opposite to confidence, and is therefore a vice; audacity is not the opposite of confidence, but is near it and akin to it, and, nevertheless, is also a vice. And in this manner there will be found a vice akin to every virtue, and either already known by some particular name--as audacity, which is akin to confidence; pertinacity, which is bordering on perseverance; superstition, which is very near religion,--or in some cases it has no fixed name. And all these things, as being the opposites of what is good, we class among things to

be avoided. And enough has now been said respecting that class of honourable things which is sought in every part of it for itself alone.

LV. At present it appears desirable to speak of that in which advantage is combined with honour, and which still we style simply honourable. There are many things, then, which allure us both by their dignity and also by the advantage which may be derived from them: such as glory, dignity, influence, friendship. Glory is the fact of a person's being repeatedly spoken of to his praise; dignity is the honourable authority of a person, combined with attention and honour and worthy respect paid to him. Influence is a great abundance of power or majesty, or of any sort of resource. Friendship is a desire to do service to any one for the sake of the person himself to whom one is attached, combined with a corresponding inclination on his part towards oneself. At present, because we are speaking of civil causes, we add the consideration of advantage to friendship, so that it appears a thing to be sought for the sake of the advantage also: wishing to prevent those men from blaming us who think that we are including every kind of friendship in our definition.

But although there are some people who think that friendship is only to be desired on account of the advantage to be derived from it; some think it is to be desired for itself alone; and some, that it is to be desired both for its own sake and for the sake of the advantage to be derived from it. And which of these statements is the most true, there will be another time for considering. At present it may be laid down, as far as the orator is concerned, that friendship is a thing to be desired on both accounts. But the consideration of the different kinds of friendship, (since they are partly formed on religious considerations, and partly not; and because some

friendships are old, and some new; and because some originated in kindness shown by our friends to us, and some in kindness shown by ourselves to them; and because some are more advantageous, and others less,) must have reference partly to the dignity of the causes in which it originates, partly to the occasion when it arises, and also to the services done, the religious motives entertained, and its antiquity.

LVI. But the advantages consist either in the thing itself, or in extraneous circumstances; of which, however, by far the greater portion is referable to personal advantage; as there are some things in the republic which, so to say, refer to the person of the state, --as lands, harbours, money, fleets, sailors, soldiers, allies; by all which things states preserve their safety and their liberty. There are other things also which make a thing more noble looking, and which still are less necessary; as the splendid decorating and enlarging of a city, or an extraordinary amount of wealth, or a great number of friendships and alliances. And the effect of all these things is not merely to make states safe and free from injury, but also noble and powerful. So that there appears to be two divisions of usefulness, --safety and power. Safety is the secure and unimpaired preservation of a sound state. Power is a possession of things suitable to preserving what is one's own, and to acquiring what belongs to another. And in all those things which have been already mentioned, it is proper to consider what is difficult to be done, and what can be done with ease. We call that a thing easy to be done, which can be done without great labour, or expense, or annoyance, or perhaps without any labour, expense, or annoyance at all, and in the shortest possible time. But that we call difficult to be done which, although it requires labour, expense, trouble and time, and has every possible characteristic of difficulty about it, or, at all events, the most numerous and most

important ones, still, when these difficulties are encountered, can be completed and brought to an end.

Since, then, we have now discussed what is honourable and what is useful, it remains for us to say a little of those things which we have said are attached to these other things; namely, affection and necessity.

LVII. I think, then, that necessity means that which cannot be resisted by any power; that which cannot be softened nor altered. And that this may be made more plain, let us examine into the meaning of it by the light of examples, so as to see what its character and how great its power is. "It is necessary that anything made of wood must be capable of being burnt with fire. It is necessary that a mortal body should at some time or other die." And it is so necessary, that that power of necessity which we were just now describing requires it; which cannot by any force whatever be either resisted, or weakened, or altered. Necessities of this kind, when they occur in oratory, are properly called necessities; but if any difficult circumstances arise, then we shall consider in the previous examination whether it, the thing in question, be possible to be done. And it seems to me, that I perceive that there are some kinds of necessity which admit of additions, and some which are simple and perfect in themselves. For we say in very different senses:--"It is necessary for the people of Casilinum to surrender themselves to Hannibal;" and, "It is necessary that Casilinum should come into the power of Hannibal." In the one case, that is, in the first case, there is this addition to the proposition--"Unless they prefer perishing by hunger." For if they prefer that, then it is not necessary for them to surrender. But in the latter proposition such an addition has no place; because whether the people of Casilinum choose to surrender, or prefer

enduring hunger and perishing in that manner, still it is necessary that Casilinum must come into the power of Hannibal. What then can be effected by this division of necessity? I might almost say, a great deal, when the topic of necessity appears such as may be easily introduced. For when the necessity is a simple one, there will be no reason for our making long speeches, as we shall not be able by any means to weaken it; but when a thing is only necessary provided we wish to avoid or to obtain something, then it will be necessary to state what advantage or what honour is contained in that addition. For if you will take notice, while inquiring what this contributes to the advantage of the state, you will find that there is nothing which it is necessary to do, except for the sake of some cause which we call the adjunct. And, in like manner, you will find that there are many circumstances of necessity to which a similar addition cannot be made; of such sort are these:--"It is necessary that mortal men should die;" without any addition:--"It is not necessary for men to take food;" with this exception,--"Unless they have an objection to dying of hunger."

Therefore, as I said before, it will be always proper to take into consideration the character of that exception which is added to the original proposition. For it will at all times have this influence, that either the necessity must be explained with reference to what is honourable, in this manner:--"It is necessary, if we wish to live with honour;" or with reference to safety, in this manner:--"It is necessary, if we wish to be safe;" or with reference to convenience, in this manner:-- "It is necessary, if we are desirous to live without annoyance."

LVIII. And the greatest necessity of all appears to be that which arises from what is honourable; the next to it is that which arises from considerations of safety; the third and least

important is that which has ideas of convenience involved in it. But this last can never be put in comparison with the two former. But it is often indispensable to compare these together; so that although honour is more precious than safety, there is still room to deliberate which one is to consult in the greatest degree. And as to this point, it appears possible to give a settled rule which may be of lasting application. For in whatever circumstances it can happen by any possibility that while we are consulting our safety, that slight diminution of honesty which is caused by our conduct may be hereafter repaired by virtue and industry, then it seems proper to have a regard for our safety. But when that does not appear possible, then we must think of nothing but what is honourable. And so in a case of that sort when we appear to be consulting our safety, we shall be able to say with truth that we are also keeping our eyes fixed on what is honourable, since without safety we can never attain to that end. And in these circumstances it will be desirable to yield to another, or to put oneself in another's place, or to keep quiet at present and wait for another opportunity. But when we are considering convenience, it is necessary to consider this point also, --whether the cause, as far as it has reference to usefulness, appears of sufficient importance to justify us in taking anything from splendour or honour. And while speaking on this topic, that appears to me to be the main thing, that we should inquire what that is which, whether we are desirous of obtaining or avoiding it, is something necessary; that is to say, what is the character of the addition; in order that, according as the matter is found to be, so we may exert ourselves, and consider the most important circumstances as being also the most necessary. Affection is a certain way of looking at circumstances either with reference to the time, or to the result, or management of affairs, or to the desires of men, so that they no longer appear to be such as they were

considered previously, or as they are generally in the habit of being considered. "It appears a base thing to go over to the enemy; but not with the view which Ulysses had when he went over. And it is a useless act to throw money into the sea; but not with the design which Aristippus had when he did so." There are, therefore, some circumstances which may be estimated with reference to the time at which and the intention with which they are done; and not according to their own intrinsic nature. In all which cases we must consider what the times require, or what is worthy of the persons concerned; and we must not think merely what is done, but with what intention, with what companions, and at what time, it is done. And from these divisions of the subject, we think that topics ought to be taken for delivering one's opinion.

LIX. But praise and blame must be derived from those topics which can be employed with respect to persons, and which we have already discussed. But if any one wishes to consider them in a more separate manner, he may divide them into the intention, and the person of the doer, and extraneous circumstances. The virtue of the mind is that concerning the parts of which we have lately spoken; the virtues of the body are health, dignity, strength, swiftness. Extraneous circumstances are honour, money, relationship, family, friends, country, power, and other things which are understood to be of a similar kind. And in all these, that which is of universal validity ought to prevail here; and the opposites will be easily understood as to their description and character.

But in praising and blaming, it will be desirable to consider not so much the personal character of, or the extraneous circumstances affecting the person of whom one is speaking,

as how he has availed himself of his advantages. For to praise his good fortune is folly, and to blame it is arrogance; but the praise of a man's natural disposition is honourable, and the blame of it is a serious thing.

Now, since the principles of argumentation in every kind of cause have been set forth, it appears that enough has been said about invention, which is the first and most important part of rhetoric. Wherefore, since one portion of my work has been brought down to its end from the former book; and since this book has already run to a great length, what remains shall be discussed in subsequent books.

[The two remaining books are lost.]