there is not some reason, something to which judgment is directed, and something which chiefly contains the substance of the matter in question. But as these things vary according to the nature of causes, and as they are taught by most of the writers on judicial pleadings, let them be reserved for the part* in which I shall treat of such affairs. For the present, as I have dividedt causes into three kinds, I shall follow the order which I have prescribed to myself.

CHAPTER VII.

Of panegyric or laudatory eloquence ; not wholly distinct from practical discussion, § 1, 2. An orator does not always speak on doubtful points, 3, 4. Panegyric sometimes requires proof and defence, and very frequently amplification, 5, 6. Praise of the gods, 7-9. Praise of men more varied, 10, 11. Men extolled for personal endowments and fortunate circumstances, 12-14. For mental qualifications, 15, 16. For memorials which they leave of themselves, 17, 18. In censure the case is reversed, 19-21. On praise of the living, 22. It makes a difference where a panegyric is delivered, 23, 24. Advantage may be taken by the orator of the proximity of certain virtues to certain vices, 25. Praise of cities, places, public works, 26, 27. What *state* **most prevailed in this** department of oratory, 28.

1. **I** SHALL commence with that species of oratory which is devoted to praise and censure. This species Aristotle, and Theophrastus who follows him, seem to have excluded altogether from the practical department of speaking," and to have considered that its only object is to please the audience, an object which is indeed intimated by its name *epideictic* from firrdeixvu 1, *to display*. 2. But the usage of the Romans has given it a place in civil transactions ; for funeral orations are often a duty attached to some public office, and are frequently assigned to the magistrates by a decree of the -; 'no o ; and to commend or censure a witness is not without ef(crt on the

and of the greatest efficiency for obtaining it, especially **on** the side of the plaintiff. *Capperonier.* See c. 11, sect. 4-10.

* C. 11.

I See the end of c. 3, and the whole of c. 4.

$ Opposing the *epideictic*, as being for display, to the *pragmatic*, or practical.

teBult of trials ; while it is lawful, also, to produce panegyristsi 3n behalf of accused persons ;% and the written compositions; published *against Cicero's competitors,t against LAcius Piso, Clodius, and Curio,* are full of invective, and yet were,received as opinions in the senate. 3. But I do not deny that somee discourses of this kind have been composed merely for ostou-: tation, as those in praise of the gods, and of the heroes, of former times; a fact by which a question noticed above+ is solved, and by which it is shown that those were mistaken who. thought that an orator would never speak on any but doubtful, subjects. 4. Are the praises of Jupiter Capitolinus, a perpetual. subject at the sacred contests, doubtful ? Or are they not; treated in oratorical style?

But as panegyric which is employed for practical purposes,. requires proof, so that which is composed for display, calls. sometimes for some semblance of proof ; 5. as the orator who should say that Romulus was the son of Mars, and was nursed, by a she-wolf, would offer in proof of his celestial origin, the. the arguments that, being thrown into a running stream, he. could not be drowned; that he had such success in all his' undertakings, that it is not incredible that he was sprung from the god who presides over war ; and that the people of those. times had no doubt that he was even received into heaven.. 8. But some particulars in such subjects will be treated as if, they required defence ; as in a panegyric on, Hercules, the, orator would perhaps apologize for his change of dress with the queen of Lydia, and the tasks, as we are told, imposed. upon, him. But the peculiar business of panegyric is to *amplify* and. *embellish its* subjects.

This kind of eloquence is devoted chiefly to gods or men;', though it is sometimes employed about animals and things iii-. animate. 7. In praising the gods, we shall, in the first place

* If a man, for instance, was publicly accused, and had previously governed a province well, ten deputies might be sent from it to appear as his ***laudatores*** or eulogists on his trial. Such deputies were sent' from Marseilles and Narbonne to speak in praise of Fonteius. ***Turne*** bus. See Cie. in Verr. v. 22.

t Quintilian means the attacks made by Cicero upon Catiline and, Antonius, his competitors for the consulship. The fragments that remain of them are called *Oratao in Togd Candidd.* Seethe argument of Asconius Pedianus on that oration.

$ C. sect. 3.

express a general veneration for the majesty of their nature, and shall then eulogize the peculiar power of each, and such of their inventions as have conferred benefit on mankind. 8. In regard to Jupiter, for instance, his power in ruling all things is to be extolled ; in regard to Mars, his supremacy in war ; in regard to Neptune, his command of the sea. In respect to inventions, we extol, in praising Minerva, that of the arts ; in praising Mercury, that of letters ; in praising Apollo, that of medicine ; in praising Ceres, that of corn ; in praising Bacchus, that of wine. Whatever exploits, also, antiquity has recorded as performed by them, are to receive their encomium. Parentage, too, is a subject of panegyric in regard to the gods, as when any one is a son of Jupiter ; antiquity, as to those who were sprung from Chaos ; and offspring, as Apollo and Diana are an honour to Latona. 9. We may make it a subject of praise to some that they were born immortal ; and to others, that they attained immortality by their merits ; a kind of glory which the piety of our own emperor has made an honour to the present age.

10. The praise of men is more varied. First of all it is distinguished with respect to time, that which was before them, and that in which they themselves lived ; and, in regard to those who are dead, that also which followed their death. Antecedent to the birth of a man will be his country, parents, and ancestors, to whom we may refer in two ways ; for it will be honourable to them either to have equalled the nobility of their forefathers, or to have ennobled a humble origin by their achievements. 11. Other subjects for eulogy may also sometimes be found in the time that preceded a man's birth ; such as occurrences, for example, that denote(' his future eminence by prophetic ' indications or auguries ; as the oracles are said to have foretold that the son of Thetis would be greater than his father. 12. The praises of a man personally should be derived from the qualities of his mind, body, or external circum stances. The merits of corporeal and accidental advantages are of less weight than those of the mind, and may be treated in many ways. Sometimes we celebrate beauty and strength with honour of words, as Homer extols them in his Agamemnon and Achilles. Sometimes comparative weakness may contribute much to our admiration, as when Homer says that Tydeus was small of stature, yet a warrior. 13. Fortune, too,

gives dignity, as in kings and princes ; for in their condition there is the ampler field for displaying merit ; and among people of other conditions, the less resources a person has, the greater honour he acquires by making a praiseworthy use of them. All advantages, indeed, which are external to us, and which have fallen to us accidentally, are not subjects of praise to a man merely because he possessed them, but only in case he employed them to good purpose. 14. For wealth, and power, and influence, as they offer most opportunities for good or evil, afford the surest test of our morals ; since we are sure to be either better for them or worse.

15. Praise of the good qualities of the mind is always just; but more than one way may be pursued in the treatment of it; for sometimes it is more honourable to follow the progress of a person's life and the order of his actions ; so that his natural genius, shown in his early years, may be first commended, then his advancement in learning, and then his course of conduct, including not only what he did, but what he said ; sometimes it will be better to divide our praises among the several kinds of virtues fortitude, justice, temperance, and others, and to assign to each the honour of that which has been done under its influence. 16. Which of these two methods will be the more eligible for us, we shall have to consider according to our subject, keeping in mind, however, that the celebration of those deeds is most pleasing to the audience which the object of our praise is said to have been the first to do, or to have done alone, or with the aid of but few supporters ; and whatever else he may have effected beyond hope or expectation, and especially what he has done for the good of others rather than for his own.

17. Of the time which follows the death of persons, it is not always in our power to treat ; not only because we sometimes praise them while they are still living, but because few occasions offer on which divine honours, or public decrees, or statues erected at the expense of the state, can be celebrated. 18. Among such subjects for eulogy, I would reckon monuments of genius, which may be admired through all ages ; fog some, like Menander,* have obtained more justice from th(udgment of posterity than from that of their contemporaries Children reflect glory upon their parents, cities on thei-

* The comic poet. See x. 1, 72 ; Aul. (.fell. xvii. 4.

founders, laws on those who have made them, arts on their inventors ; and institutions also on their authors, as it was appoirited by Numa, for instance, that we should worship the gods, 'and by Publicola that the consuls should lower the fasces before the people.

19. The same method will be observed in censure, but so as to set things in a different light ; for meanness of origin has been a dishonour to many ; and nobility itself has rendered others more conspicuous and more odious for their vices. To some, as is said to have been the case with Paris, mischief which it was foretold they should cause, has produced dislike ; oh others, as Thersites and Irus, deformity of person, or misfortune, has thrown contempt. In regard to others, good qualities corrupted by vices, have rendered them hateful thus we find Nireus represented by the poets as cowardly, aid P'leisthenes * as debauched. 20. Of the mind, too, there are as many vices as virtues; and both, as in panegyric, may be treated in two ways. On some men ignominy has been thrown after death ; as on Mtelius, whose house was levelled with the ground, and Marcus Manlius, whose prEenomen was not allowed to be borne by his posterity. 21. Of the vicious; also, we hate even the parents. To founders of cities it is an opprobrium to have drawn together a people noxious to those around them ; as was the case with the original author of the Jewish superstition ; so the laws of the Gracchi brought odium on their name; and any example of vice given to posterity disgraces its author, as that of the obscenity which a Persian is said to have first ventured to practise with a woman of Samos.; 22. With respect to the living, also, the judgments formed of them by others are proofs of their character ; and the honour or dishonour shown to them proves the orator's eulogy or censure to be just.

23. But Aristotle thinks it of importance to the orator to

* It is uncertain who Pleisthenes was, or whether the reading be sound. Some would read Cleisthenes, who is mentioned as an effeminate and licentious man by Aristophanes, Ran. 57, and 425 ; and by Suidas.

* Gesner and Spalding rightly suppose that Moses is meant, not Christ, as some have imagined; for Quintilian must surely have known, as Gesner remarks, that the origin of the Jews was of earlier Sate than the time of Christ.

+ Of this no mention is found elsewhere. *Spalding.*

consider the place in which anything is to be commended or censured ; for it makes a great difference what the manners of the audience are, and what opinions are publicly entertained among them ; as they will be most willing to believe that the virtues which they approve are in him who is eulogized, or that the vices which they hate are in him whom we censure. Thus the judgment formed by the orator as to the effect of his speech, even before the delivery of it, will be pretty certain. 24. Some praise of his audience, too, should always be mingled with his remarks, (for it makes them favourably disposed towards him,) and, whenever it is possible, should be so introduced as to strengthen his cause. A panegyric on literary studies will be received 'with less honour at Sparta than at Athens ; a panegyric on patience .and fortitude with greater. Among some people it is honourable to live by plunder*; among others to respect the laws. Frugality would perhaps have been an object of hatred with the Sybarites ; luxury would have been the greatest of crimes among the ancient Romans. 25. Similar diversity is found in individuals. A judge is most favourable to a pleader when he thinks that his sentiments coincide with his own. Aristotle also directs, (a precept which Cornelius Celsus has since carried almost to excess,) that, as there is a certain proximity of virtues and vices, we should sometimes avail ourselves of words that approach each other in sense, se as, for instance, to call a person brave instead of rash, liberal instead of prodigal, frugal instead of avaricious ; or, on the contrary, the vice may be put for the virtue. This is an artifice, however, which a true orator, that is, a good man, will never adopt, unless he happen of to be led to it by a notion promoting the public good.

26. Cities are eulogized in the same way as persons ; for their founder is to be considered as their parent; and antiquity confers much dignity on their inhabitants ; as we see in regard to people who are said to be sprung from the soil of their country. In' their transactions there are the same virtues and vices as 'in the conduct of individuals. Some have peculiar advantages to be noticed, as in their situation or defences. Citizens may be an honour to them, as children to parents.

27. Encomiums may also be bestowed on public works, in respect to which magnificence, utility, beauty, and the architect

" See Thucyd. i. 5 ; Horn. Odyss. iii. 71.

of them, are commonly considered. Magnificence, as in temples ; utility, as in walls ; beauty, and the architect, in both.

Panegyrics on places are also found ; as that on Sicily in **Cicero * ; in** which we regard, in like manner, beauty and utility,; , beauty in maritime regions, plains, and pleasant spots ; utility, in respect to healthfulness or fertility of soil. There is a kind of general praise, too, for honourable sayings or actions. 28. There is praise, indeed, for things of every kind ; for eulogies have been written on sleep and death, and by physicians on certain sorts of food.

While I do not admit, therefore, that this laudatory department of oratory relates only to questions concerning what is honourable, I think, at the same time, that it is chiefly comprised under *quality };* though certainly all three states ; may enter into this kind of composition, and Cicero has observed that Caius Caesar has availed himself of them in his invective on Cato. But the whole of panegyrical oratory bears some resemblance to deliberative, because, for the most part, that which is recommended in the one is praised in the other.

CHAPTER VIII.

Deliberative oratory not confined to questions of utility, § 1. Whether nothing is useful but what is honourable, 2, 3. Deliberative oratory not concerned wholly with the *state* of quality, 4, 5. What kind of exordium requisite in it, 6-9. Statement of facts, 10, 11. The passions to be moved, 12, 13. Whether it solely concerns affairs of government, 14. That a thing can be done, is either certain or uncertain, 17- 21. The three topics of persuasion, 22-26. Some do not distinguish topics from divisions of topics, 27, 28. The pleasing, the useful, and the honourable, 29-35. Use of examples, 36, 37. How things that are honourable may be recommended, and sometimes such as are at variance with honour, 38-47. Authority of the speaker, 48. Proacpopeiae, 49 -51. In the schools deliberative subjects have a great resemblance to controversies, 52-57. An error into which doclaimers fall, 58-66. Advantage of reading history, 67-70.

I Aar surprised, also, that deliberative oratory is confined

• Verr. ii. 1, *seqq. ;* also iv. 48.

t **The *state of*** quality, which refers not less to what is honourable than to what is just. ***Capperonier.***

+ **Those *of* conjecture, quality, and** definition. *Capperonier.*

9 Topic. c. 25.

by some authors wholly to matters of utility. If we ought to follow one sole object in it, the opinion of Cicero * would have greater weight with me, who thinks that this department of speaking is chiefly occupied about what is honourable t. N, or do I doubt, indeed, that those who adopt the former opinion, consider, according to a very noble principle, that nothing is advantageous but what is honourable. 2. This notion would certainly be very just, if the resolutions of the good and wise were always ready to support us. But in addressing the unlearned, to whom our opinions must often be delivered; and especially in haranguing the people, the majority of whom are ignorant, the two must be kept distinct, and we must speak more in conformity with ordinary apprehension. 3. For there are many who, though they may consider an action to be honourable, do not immediately allow it to be sufficiently advantageous, and, led by the prospect of advantage, approve what they cannot doubt to be highly dishonourable, as the treaty with the Numantines § and the passing under the yoke at the defile of Caudium.11

4. Nor is it sufficient to include deliberative oratory ¶ in the *state,* of quality, in which is comprised the question of what is honourable and what is useful ; for often, in respect to these, there is room for conjecture ; at times some definition is to be considered;** and occasionally, too, legal inquiries tt may occur, especially in reference to private proceedings, if ever a doubt arises *whether a thing be lawful. Of* conjecture I shall speak more fully a little below. *+ 5. As to definition, meanwhile, there is this question in Demosthenes, " Whether Philip should *give* or *restore §§* Halonnesus to the Athenians ?" and in Cicero, in

* De Orat. ii. 82.

t Dignitate.] That is, *h,onestate.* Capperonier.

+ We must not speak of that which is honourable as being necessarily advantageous.

§ Florus, ii. 18 ; Vell. Pat. ii. 90,

‖ Liv. ix. 1-11.

T Eas.] Sc. deliberativas, which occurs at the beginning of the chapter.

** That *is,* it may often come under the *status conjecturalis* or *status deinitivus.*

tt ***Legales-tractatus,],*** **Tla,at is, *legale&quastiones* orstatus. Capperonier.**

++. Sect. 16, 17.

§§ " The island *of* Halonnesus was anciently held by the Athenians *but, in* the time of Philip, was occupied by pirates, whom Philip

his Philippics, " What is a tumult?" Is there not, too, the question, similar to those in judicial causes, about the statue of Servius Sulpicius, " whether statues are to be erected to those only who perish on an embassy by the sword ?"t 6. The deliberative department of oratory, therefore, (which is also called the suasory,) while it consults concerning the future, inquires also into the past. It has two objects, *to persuade* and *to dissuade.*

An exordium, such as is usual in judicial pleadings, it does not require ; because whoever consults an orator is already well-disposed to hear him. Yet the commencement, whatever it bo, ought to have some resemblance to an exordium ; for we must not begin abruptly, or with whatever we may fancy, because in every subject there is something naturally first. 7. In speaking before the senate, and, indeed, before the people, the same object is to be kept in view as in addressing judges, namely, that of securing the goodwill of the majority of those to whom we speak. Nor is this to be thought surprising, when the favour of the audience is sought even in panegyrics, where the purpose is not to attain any advantage, but merely to bestow praise. 8. Aristotle, indeed, and not without reason, thinks that we may often commence, in deliberative speeches, with an allusion to ourselves, or to the character of him who differs in opinion from us ; borrowing this method, as it were, from judicial pleadings ; sometimes in such a manner, that our subject may be made to appear of less or greater importance than our audience imagine it...T 9. In panegyrics, he thinks that the exordium may be allowed the utmost latitude; since it is sometimes taken from something foreign to the subject, as Isocrates has taken his in his oration in praise of Helen ;§ or from something bordering on the subject,

ejected from it, but, when the Athenians asked for possession of it, he refused to give it them, saying that it was his own. T ho speech exhorts the Athenians not *Xaμ9dvedv avrrty, aXX'* diroaau9avew, not to receive it as given, but as restored to them." Libanius s Argument to the speech of Demosthenes concerning Halonnesus. See JEsch. against Ctesiphon, p. 65, ed. Steph. *Spalding.*

* Philipp. viii. 1, 2. The senate deliberated whether they should call the hostile operations against Mark Antony a *bellum* or a *tumultus.*

1' Philipp. ix. 1. Sulpicius was sent on an 9mbassy to Mark Antony, and being unwell at the time, and it being winter, suffered so much nom the journey that he died.

$ Rhet. iii. **14,** 11.

Isocratea commences with remarks on the rhetoricians an.1

as the same orator, in his Panegyric, complains that " more honour is paid to the good qualities of the body than to those of the mind;" and as Gorgias, in his oration at the Qlyinpic games, extols those who first instituted such meetings. Sallust, following, doubtless, the example of these orators, has commenced his histories of the Jugurthine War and the Conspiracy of Catiline with introductions having no relation to his narratives. 10. But I am now to speak of deliberative oratory, **in** which, even when we adopt an exordium, we ought to content ourselves with one that is short, resembling as it were an initial chapter or statement.

As to a regular statement of facts, a private subject of discussion, will never require it, at least a statement of the matter on which an opinion is to be given ; for no man is ignorant of the particulars on which he consults others. 11. Statements, however, of many external circumstances relative to the subject of deliberation may be introduced In deliberative addresses to the people a statement setting forth the orde, of circumstances is indispensable. 1•?. Deliberative oratory requires appeals to the feelings more than any other kind of eloquence ; for indignation is often to be kindled and allayed ; and the minds of the audience are to be moved to fear, eagerness, hatred, benevolence. Sometimes, too, pity is to be excited, whether we have, for example, to recommend that aid be given to a besieged town, or whether we be called upon to lament the overthrow of a people in alliance with us.

13. But what is of most weight in deliberative speeches is authority in the speaker ; for he who desires everybody to trust to his opinion about what is expedient and honourable, ought to be, and to be esteemed, a man of the greatest judgment and probity. In judicial pleadings it is commonly thought allowable for a man to indulge, in some degree, his own feelings ; but every one supposes that counsel is given by a speaker in accordance with his moral principles.

14. Most of the Greek rhetoricians have been of opinion that the businesss of all this kind of oratory is with addresses to the multitude, and have confined it wholly to. affairs of government. Even Cicero * considers it chiefly with reference

sophists, who used to treat. of absurd and trifling matters in th it speeches. *Turnebus.*

A De Orat. ii. 81-83.

to that department, and accordingly says that for those who are to give advice concerning peace, war, levies of troops, public works, or revenues, the two things chiefly to be known are the *resources* and *the manners of the people* whom they address ; so that his arguments may be derived at once from the particular circumstances and from the character of his hearers. 15. To me it appears that there is greater variety in this field of eloquence ; for the classes of persons who consult, and the kinds of advice that may be given, are extremely numerous.

In persuading and dissuading, then, three particulars are chiefly to be regarded : *what is the subject of deliberation ; who those that deliberate are ;* and *what is the character of him that would influence their deliberations.*

16. As to that which is the subject of deliberation, it is either certain that it may be carried into effect, or uncertain. If it be uncertain, its uncertainty will be the sole point for consideration, or, I should say, the chief point, for it will often happen that we shall assert, first of all, that a thing, even if it could be done, ought not to be done, and, next, that it cannot be done. But when the question is respecting something uncertain, the point is conjectural,* as *whether the Isthmus can be cut through, or the Pontine marshes drainad,t or a harbour made at Ostia ?‡.* Or *whether Alexander was likely to find lands beyond the ocean ?*++ 17. But even in regard to things which are acknowledged tc, be practicable, there will sometimes be room for conjecture : as if it were inquired, for instance, *whether it would ever happen that the Romans would subdue Carthage ; whether Hannibal would return if Scipio transported his army into Africa ; whether the Samnites would keep faith if the Romans were to lay down their arms.§* As to some things, too, it is credible both that they can be done, and that they will be done, but *at some other time, or in some other place,* or *in same other manner.*

18. Where there is no place for conjecture other points are

* *Conjeetura eat.]* That is, *status eonjecturalis,* or *facti qucestio.* Cap. peronier.

† Respecting both these undertakings, see Suet. Caws. c. 44; Calig, c. 21 ; Nero, c. 19. On digging through the Isthmus, there is a little treatise attributed to Lucian. *Spalding.*

$ See ii. 21, 18.

§ See the first of the *Suasorice* of FA,
At the *Furcw Caudina ;* see see

to be regarded. In the first place the deliberation will be held, either on account of the matter itself, on which opinions are asked, or on account of some extrinsic reasons that affect it. The senate deliberates, for example, with regard, to the matter itself, when they consider *whether they 'shall vote pay for the army.* 19.* This is a simple question. Reasons 'are adduced for doing a thing, as when the senate deliberates *whether they shall deliver up the Fabii to the Gauls threatening war;]-* or for not doing it, as when Julius Cwsar deliberates *whether he shall persist in marching into Germany,* when his soldiers were everywhere making their wills.$ 20. These two questions offer more than one point for consideration ; for as to the former, the reason for deliberating is, that the Gauls are threatening war, but a question may also be raised, *whether even, without such threatening, those ought not to have been given up, who, being sent as ambassadors, had engaged in battle contrary to law, and had killed the king § to whom they had received communications ? 21.* As to the other subject, Caesar would, doubtless, not have deliberated at all, if it had not been for the consternation of his troops ; yet there is room for inquiring *whether, independently of that circumstance, it would have been proper for him to proceed into Germany.* But we must always speak first on that 'point which might be a subject for deliberation even if other circumstances were detached from it.

22. Some have thought that the topics for persuasion are the three considerations *what is honourable, what is useful,* and *what is necessary.* For the introduction of the third I find no motive ;ll for, when any force oppresses us, it may be necessary for us *to suffer* something, but certainly not *to* do anything ; but it is about *doing* that deliberation is concerned. 23. Or if they call that necessity to which men are driven by the fear of some greater evil, the question respect-

* *Livy, v. 59,* relates that the senate decreed pay for the soldiers from the public treasury, they having previously supported themselves in the field at their own expense ; a decree which was very pleasing to the people. *Turnebus.*

+ *Livy, v. 30.*

$ At the time when he was going to march against Ariovistus : Ca '& *B. G}. i. 39.*

§ Ie is called *dux by Livy, v. 36. Capperonier.*

ll According to the opinion of Aristotle, Rhet. i. 4, 2.

in; it will be one of expediency ; as *if the inhabitants of a besieged city, inferior in numbers to the besiegers, and in want of water and provisions, deliberate about surrendering to the enemy,* and it be said, that *it is necessary* for them to surrender, it must be added, *for otherwise they must be destroyed,* and thus it appears that it is *not necessary* for them to surrender, for the very reason that they may be destroyed if they prefer to submit to destruction. In fact, the Saguntines * did not surrender, nor those who were surrounded in the vessel of Opitergium. j- 24. In such circumstances, therefore, the question will be either concerning expediency, alone, or there will be hesitation between what is expedient and what is honourable. But, it may be said, if a man wishes to have children, he is under the *necessity* of taking a wife. Doubtless ; but he who wishes to have children must first be convinced that he ought to take a wife ; 25. and consequently there appears to me to be no place for deliberation when there is necessity, any more than when it is settled that a thing cannot be done ; for all deliberation is about something doubtful. Those, therefore, have made a better distinction who have called the third head *6uvardv,* which our countrymen term *possibile,"* possibility;" and though our Latin term may seem uncouth, yet it is the only one to be found.

26. That these three considerations do not enter into every subject of deliberation is too evident to make it necessary for me to demonstrate. Yet by most writers the number is increased ; for things are reckoned by them as *general considerations* which are but *special* objects for notice ; since what is lawful, just, pious, equitable, and merciful, *(mansuetum,* for so they interpret *rd 1ojµefov,)* and whatever else may be added of a similar character, may be included under *what is honourable. 27.* Whether, again, a thing be easy, important, pleasant, or free from danger, belongs to the consideration of *expediency.* These particular points for consideration arise from what is said in reply to us by our opponents : ***It** is indeed expedient, but it is difficult, of little importance, unpleasant, and dangerous. 28.* Yet some think that deliberation at times occurs concerning *agreeableness merely;* as when a consultation is held about the erection of a theatre, or the institution

* Liv. xxi. 14 ; Sil. Ital. ii. 696.

t See Flor. ii. 33; Lucan, iv. 462 *seqq.* They put cue another to dwith.

of games ; but I do not suppose that any man is so totally given up to pleasure as to look in a subject for deliberation to nothing but gratification. 29. For there must always be spmetl:ing that should be thought of higher consideration ; as in regard to games, the honour of the gods ; in regard to the erection of a theatre, useful relaxation from labour, and the unbecoming and inconvenient contention for places among the crowd, if there should be no theatre ; and religion, at the same time, will have its place in the consideration, as wo may call the theatre a temple, as it were, for the festival solemnized there to the gods.

30. Often, too, we say that advantage is to be disregarded, in order that we may do what is honourable ; (as when we counsel the people of Opitergium not to surrender themselves to the enemy, though they will perish unless they do so ;) and sometimes we may have occasion to set what is honourable below what is advantageous ; (as when we advise, as in the second Punic war, that the slaves should be armed ;*) 31. though even in the latter case we must not altogether admit that the proceeding is dishonourable ; (for we may say that all men are free by nature, and are formed of the same matter, and that some even of the slaves may be descended from noble ancestors;) and, in the former c.: ~e, when the danger is evident, other considerations may be alleged, as we may assert that, if they surrender, they may perish even more cruelly, should the enemy, for instance, not keep their word, or should Caesar, as is more probable, obtain the superiority. 32. But considerations which are so much opposed to one another, are frequently softened by some alteration in the words ; for expediency itself is altogether set at nought by that sect t who say not only that what is honourable is always preferable to what is expedient, but that nothing can even be expedient which is not honourable ; while, on the other hand, what we call honourable, another sect + calls vain, ostentatious, foolish, and more commendable in words than in reality.

33. Nor is what is advantageous compared only with what is disadvantageous, but things that are advantageous or disadvantageous are compared with one another ; as when we try to

* After the battle of Cannte : Florus, ii. 6 ; Livy, xxii. 57.

The Stoics. *Gallœcs.*

$ The Epicureans. Gall *eus,*

determine, of two advantageous measures, which is the more >-Ldvantageous, or of two that are disadvantageous, which is the less so. The difficulty may be still increased ; for sometimes three subjects for deliberation may present themselves ; as whets Porrm.pey deliberated* whether he should betake himself to Parthia, or Africa, or Egypt. Thus it is not only inquired which of two courses is preferable, but which is the most eligible of three. 34. In questions of this kind, there will never occur any doubt as to a matter which is every way in our flavour ; for when there is no room for speaking against a nwasure what motive can there be for hesitating about it? Thus every subject for deliberation is generally nothing else but a subject for comparison ; and we must consider, both what we would attain and by what means, so that we may form an estimate whether there is greater advantage in that which we pursue, or greater disadvantage in the means by which we pursue it. 35. A question of advantage may also have reference to time it is expedient, but not now; or to place : not here; or to persons : not for us, or against those ; or to a particular mode of proceeding : not thus ; or to measure : not to so great a degree.

But we have still more frequently to take persons j- into consideration, with a view to what may be becoming; a point which is to be regarded in respect not only to ourselves but to those also who consult us. 36. Though examples, therefore, are of the utmost effect in deliberative oratory, because men are most easily led to consent to any measure by instances of similar proceedings, yet it makes a great difference whose authority is adduced, and to whom it is recommended ; for the feelings of those who listen to deliberative speeches are various. 37. Our audience may be also of two kinds ; for those who consult us, are either many, or single individuals ; and, as to each, distinctions are to be made ; since, with regard to a number of persons, it makes a great difference whether they are a senate, or a people, whether Romans, or Fidenates, whether Greeks, or Barbarians ; and, in respect to individuals, whether we recommend that public offices should be sought by Cato or by Caius lllarius, and whether Scipio the elder, or 1F'abius con-

e After the battle of Pharsalia ; sce Plutarch. Vit. Pomp. ; Lucan, viii. `56 segq.

t He now enters on the second part of the division which he made in sect. 15.

suit with us on the mode of conducting a war.* 38. We must in like manner look to sex, dignity, and age. But it is the character of our hearers that should lead us to make the chief difference in our addresses to them. To recommend honourable measures to those who are honourable is extremely easy ; but if we ever have occasion to enforce a right course of conduct on the unprincipled, we must be careful not to reproach them with the opposite nature of their life. 39. The minds of such an audience are to be influenced, not by dissertations on the nature of virtue, for which they have no regard, but by allusions to honour, and to the opinion of others, and if such arguments to their vanity do not move them, by showing the advantage likely to follow from what you advise, or rather perhaps, and with more effect, by showing them how much is to be dreaded if they act otherwise. 40. For besides the fact that minds of the lightest principles are most easily alarmed, I know not whether the fear of evil has not naturally more influence with the majority of mankind than the hope of good ; to whom also' the knowledge of what is vicious comes with greater facility than the knowledge of that which is virtuous. 41. Sometimes also actions which are scarcely honourable are recommended to the good ; and to those of a rather opposite character are proposed measures in which nothing but the advantage of those who seek the advice is regarded.

I am well aware what sort of reflection may at once occur to the reader of this passage. " Is this, then," lie may ask, " the practice that you recommend ?t and do you think it right?" 42. Cicero might absolve me, who writes in the following manner to l3rutus,+ (after mentioning many courses of conduct which might be fairly recommended to Czesar,§) should I act as an honest man, if I should recommend these measures! Certainly not; ,for the proper object of an adviser is the advantage of hint whom he advises. But the measures are right. 1VIw says otherwise ? But in giving advice there is

* In Livy, xxxviii. 40, Scipio and Fabius deliberate on the mode of conducting the war against Carthage ; Scipio recommends that it be transferred into Africa ; Fabius, that it be carried on in Italy. Turnebus.

t A passage very similar to that in Cicero pro Caelio, 4, 17: Ewe tgitur e.-t tua discipliaaa ? &c. See ix. 2, 15. Spalding.

+ The letter is not extant. Cupperoaier.

§ Augustus.

not always room for what is right. *As* this question, however, is of a deeper nature, and does not concern deliberative speeches only, the subject is reserved by me for my twelfth book,* which will be my last. 43. I should not wish anything to be done dishonourably;t and, in the meantime, let these questions be considered to belong at least to the exercises of the schools ; for the nature of what is bad should be known, that we may the better support what is good.

44. If any one, however, recommend to a good man anything not quite honourable, let him remember not to recommend it *as dishonourable,* in the manner in which some declaimers urge Sextus Pompey to engage in piracy, for the very reason that it is nefarious and cruel; but some palliation must be thrown over what is disgraceful, even in addressing the immoral. 45. It is in this way that Catiline speaks in Sallust4 so that lie seems to rush daringly into a heinous enterprise, not through want of regard for honesty, but through indignation. It is thus also that Atreus speaks in Varius : §

> "I now endure gross wickedness, and now
> I'm forc'd to act it."

How much more then is this pretension to honour to be maintained before those who have a real regard to their character ! 46. Accordingly, if we advise Cicero to implore the mercy of Antony, or even to burn his Philippics, (supposing such to be the condition on which Antony offers him life,11) we shall not insist upon his love of life, (for if this has any influence on his mind, it will maintain that influence even though we remain silent,) but we shall exhort him to preserve himself for the service of his country. 47. He will have occasion for such a pretext, that he may not be ashamed of his suppli

" See the whole of the twelfth chapter.

* *Nee ego quicquam fieri turpiter relim.]* Though a dishonourable course may at times be recommended, Quintilian would not have it recommended as dishonourable, but would have some plausible pretext alleged for adopting it. *Rollin.*

I Catil. c. 20, ed. Cort.

§ In his Thyestes. See x. 1, 98. This was the Varius who waa the friend of Virgil and Horace.

‖ See Sen. Suasor. 6 and 7.

cations to Antony. Or if we advise Caius Casar * to assume kingly power, we shall assert that the state cannot subsist but under the rule of one master ; for he who deliberates' about a criminal proceeding, seeks only how he may appear to do as little wrong as possible.

48. It is of much importance, also, what the character of the adviser is ; because, if his previous life has been illustrious, or if the nobility of his birth, or his age or fortune, excites expectation, care must be taken that what he says may not be at variance with the dignity of him who says it ; but a character of a contrary nature requires a humbler tone ; for what is liberty in some, is, in others, called presumption-; to some their authority is sufficient support, while the force of reason itself scarcely upholds others.

49. In consequence *prosopopei6e* † appear to me the most difficult of all speeches of this kind ; for in them the task of sustaining a character is added to the other arduous points of suasory eloquence. Caesar, Cicero, and Cato, speaking on the same subject, must each express himself differently. But exercise in this department is extremely beneficial, both because it requires double effort,+ and because it greatly improves the powers of those who would be poets or historians. 50. To orators it is even indispensable ; for there are many speeches composed by Greek and Latin orators for others to use, to whose condition and character what was expressed in them was to be adapted. Did Cicero think uniformly in the same manner, or assume the same character, when he wrote for Cneius Pompey, for Titus Ampius, and for others? Did he not rather, looking to the fortune, dignity, and actions of each of them, express the very character of all to whom he gave words, so that, though they spoke in a better style than their own, they yet appeared to speak in their own persons ?

* Augustus. See the arguments used by Agrippa and Moccenas, to induce him to assume the sovereignty, in Dion Cassius. "But even the wisest of the Romans seem to have felt such alarm at the mention of the word *regnuna,* that Quintilian himself, who not only endured the rule of Domitian, but called it one of the greatest blessings that had ever fallen upon mankind, alludes, by no means obscurely, to affectation of sovereign power as *a rcs 9u'faa-ia, a* "criminal proceeding." *Spa.lding.*

† *By prosopopcue* he understands declamations in which the spt.ake assumes the character of another person, and represents him as delibe. rating. *Rollin.* See vi. 1, 25 ; ix. 2, 29, 37; xi. 1, 39.

+ For the reason given above, that the character must be sustained, and persuasive arguments found.

51. A speech is not less faulty which is unsuited to the person, than that which is unsuited to the subject, to which it ought to be adapted. Lysias, accordingly, is thought to d-- serve great praise for preserving so exact an air of truth in the speeches which he wrote for the illiterate.'c

It ought, indeed, to be a chief object with declaimers to consider what is suitable to different characters ; for they speak on but few subjects of controversy as advocates,- but generally harangue in the character of sons, fathers, rich men, old men, morose or good-natured persons, misers or superstitious people, cowards or jesters ; so that actors in comedy have scarcely more parts to master on the stage than they have in the schools. 52. All these representations of characters may be regarded as *prosopopeice,* which I include under deliberative orations, because they differ from them in nothing but the personation of a character, though this is sometimes introduced into those deliberative subjects, which, taken from history, are conducted under the real names of the speakers. 53. Nor am I ignorant that poetical and historical *prosopopeice* are sometimes given in the schools by way of exercise ; as the pleading of Priam before Achilles, or the address of Sylla to the people on laying down the dictatorship. But these will fall under some of the three heads into which I have divided causes ; for we have to intreat, to make declarations, to give reasons, and to do other things of which I have spoken above,+ in various forms and as the subject may require, both in the judicial, and in the deliberative, and in the demonstrative, kind of oratory. 54. But in all these § we very often utter fictitious speeches attributed to characters which we ourselves introduce ; as in Cicero's speech for Cu;lius, Appius Crocus, and Clodius, the brother of Clodia, are both represented as

* Such is the commendation bestowed upon him by Dionysius Halicarnassensis, p. 82.

+ In scholastic declamations the pupils spoke on few subjects as advocates, but generally i n the character of one of the parties concerned, as sons, fathers, old men, &c. ; and thus *prosopopeice* differed from *suasoriw* only in the character maintained ; for in *suasorice* the speaker gave advice in his own person, in *prosopopeice* in that of another. *Rollia.*

C. 4, sect. 3.

§ *In his.]* I consider the word *his as* referring to the three kinds of oratory which Quintilian has just mentioned, and riot, as Gedoyn thinks, to *rugare,* &c. ; though his view of the passage is not without speciousness. *ti1xddi y.*

addressing Clodia, the former being made to reproach her with her intrigues, and the other to admonish her about them.*

55. Matters for debate, too, are often introduced in the schools, which approach nearer to the judicial than the deliberative kind of oratory, and which are indeed compounded of the two ; as when a discussion is held before Cmsar about the punishment of Theodotus ; for it consists of an accusation and a defence, which are the proper parts of judicial pleadings. 5 6. But the question of expediency also enters into it ; it is inquired *whether it was to the advantage of Ccesar that Pompey was killed ; whether war is to be apprehended from the king. if Theodotus be put to death ; whether such war would not be embarrassing and dangerous at the present time, and likely to be of long duration.* *57.* Considerations also arise about the lion Curableness of the proceeding : as *whether it would be becoming in Orsar to avenge Pompey; whether it was to be apprehended that he would injure the cause of his party, if he should confess that Pompey was undeserving of death.* *58.* Deliberations on such questions may occur even in real causes.+

There has, however, prevailed among most declaimers, **in** regard to deliberative speeches, an error that has not been without its consequences ; for they have imagined that the deliberative style of speaking is different from the judicial, and indeed altogether opposed to it ; and they have accordingly affected abrupt commencements, a kind of oratory always vehement, and *a liberal embellishment,* as they call it,§ in their expressions, and have studied to make shorter notes,11

* C. 14, 15. The text is *Me iu castigationem, hic* in *hortationaa anaorum, compositus.* The soundness of *hortationem* is doubtful, but nothing better has been suggested. Gesner proposed *curationem,* which, I suppose, hardly satisfied himself, and has satisfied no one else. If we turn to the passage of Cicero, we find that the brother is made to dissuade the sister from following one who despises her, and to advise her, if she will still continue to intrigue, to seek some other object for her love.

t A rhetorician of Chios or Samos, who was the first to suggest to Ptolemy that Pompey, when he landed in Egypt, should be put to death. See Plutarch, Life of Pompey, c. 77, 80; Appian, B.C. ii. 84, 90 ; Seneca de Ira, ii. 2 ; Seneca Controvers. ii. 13.

1 Comp. c. 62.

Comp. ii. 12, 9. *Spalding.*

§ *Previores cornmcntarios.]* They brought less written matter from home, and rose to speak relying on their own ardour and resolution to

forsooth, for deliberative than for j udiciai subjects. 59. For my part, though I do not see that there is any need for a regular exordium in deliberative speeches for the reasons which ,I have previously stated, I still do not understand why we should commence with furious exclamation ; for he who is asked his opinion on a question proposed, does not, if he is a man of sense. begin immediately to cry out, but endeavours to gain the confidence of those who consult him by a modest and rational entrance on the subject. 60. Or why should the style of the speaker be like a torrent, and uniformly vehement, when counsel requires in the most eminent degree moderation and calm reasoning? I admit that, in judicial pleadings, the tone of the speaker is often lowered in the exordium, the statement of facts, and the argumentative portions, and that, if you take away these three parts, there will remain something like the substance of which deliberative orations consist, but that substance ought to be more calm, not more violent and furious.

61. As to grandeur of diction, it is not to be affected by those who declaim deliberative speeches more than by others ; but it comes more naturally to them ; for to those who imagine their own subjects, great personages are generally most attractive, such as those of kings, princes, people, senates, with important topics for discussion ; and thus, when the style is suited to the matter, it assumes a degree of magnificence from it. 62. With regard to real causes the case is different, and therefore Theophrastust has pronounced that the language in all deliberative oratory should be free from every kind of affectation ; following in this respect the authority of his master,t though he does not hesitate frequently to differ from him ; 63. for Aristotle was of opinion § that the panegyrical department of oratory was the best adapted four improvement in composition, and next to it the judicial ; since the first is

pour forth words. Compare sect. 63. *Commentarii* here are notes made for future orations; see i. 8, 19 ; iii. 6, 59 ; and Cie. Brut. c. 44 extr. But as they made fewer notes for their speeches, the speeches were in consequence shorter. Comp. sect. 68. *Spaldimq.*

Sect. 6.

t III. 1, 15.

$ Aristotle.

See Rhet. iii. 12, 5 ; where, however, the reasons which Quintilian adds are not given. *Spalding.*

devoted wholly to display, and the 'latter requires art so as even to deceive the hearers if expediency demands ; but *counsel* needs nothing but truth and prudence. **64.** With, these critics in respect to panegyric, I agree ; for all other writers have expressed themselves of a similar opinion ; but in judicial and deliberative subjects I think that the manner of speaking is to be adapted to the matter, according to the nature of the question that may be under consideration. 65. I see that the Philippics of Demosthenes are distinguished by the same merits as the speeches which he pronounced in judicial causes ; and the opinions of Cicero delivered in the senate, and his speeches to the people, exhibit a splendour of eloquence not less luminous than that which appears in his accusations and defences. ' Yet he speaks of the deliberative kind of oratory in this way :* *The language ought to be uniformly simple and grave, and more distinguished for studied thoughts than for studied phraseology*. *66.* That there is no kind of oratory to which thQ application of examples is more suitable, all writers are justly agreed, as the future seems for the most part to correspond to the past, and experience is regarded as some attestation to reason.

67. As to shortness or length in such speeches, it depends. not on the nature of the subject,f but on the compass of it ; for as in deliberations the question is generally more simple, so in judicial affairs it is often of less extent..

All these remarks he will find to be true, who shall prefer, instead of growing grey over the treatises of the rhetoricians, to read, not speeches only, but also histories ; for in history the orations pronounced to the people, and the opinions delivered in councils of state, generally afford examples of persuasion and dissuasion. *68.* He will find, too, that in deliberative speeches the commencements are not abrupt that the diction in judicial pleadings is often more animated

* Partitiones Oratories, c. 27 fin.

t Genere maters c.] Whether it be *demonstrative, deliberative,* or jsdiaial, it is not on the particular *kind* that the length or brevity ought to depend. *Capperonier.*

$ Quintilian blames certain teachers, who directed that *judicial* speeches should be of coLsiderable length, and deliberative speeches shorter, whereas length is not to be measured by the kind of cause, but by the subject, and consequently *deliberative* are sometimes longer than *judicial* speeches. *Turnebus.*

that style is suited to the matter in one class as well as in the other!; and that the speeches in courts of justice are sometimes shorter than those in public councils. 69. Nor will he find in them the faults into which some of our declaimers fall, who indulge in coarse iiivectives against those that dissent in opinion from them, and speak, on the whole, as if they were the natural adversaries of those who ask their advice ; and thus exhibit themselves in the character rather of railers than of counsellors. 70. Let young men know that these remarks are written for their admonition, that they may not allow themselves to be taught otherwise than they will have to speak, and spend their time upon learning that which they will have to unlearn. But, whenever they shall be called to give counsel to their friends, to pronounce an opinion in the senate, or to offer advice if the emperor consult them, they will be taught by practice what they cannot perhaps receive on the credit of precepts.

CHAPTER Ix.

Of judicial oratory; the departments of it often injudiciously increased; the proper number is five, § 1-6. The order to be observed in speaking and writing, 7-9.

1. I Am now to speak of the *judicial* kind of oratory, which is extremely varied, but lies in the two duties of *attack* and *defence.* The divisions of it, as most authors are of opinion, are five, the *exordium,* the *statement of facts,* the *proof* of what we advance, the *refutation* of our adversary, and the *peroration.* 2. To these some have added *partition, proposition,* and *digression ;* the first two of which evidently fall under *proof ;* for you must necessarily *propose* what you are going to prove, as well as *conclude* after you have proved ; and, if *proposition* is a division of a cause, why is not also *conclusion P As* for *partition,* it is only one of the duties of *arrangement,* which is a portion of oratory in general, equally pervading all its parts and the whole body of each, like invention and delivery. 3. We are therefore, not to consider partition as one division of a speech

• Which no writer on oratory has yet considered as a division of it. ***Spalding.***

taken as a whole, but as belonging to every single question in it; for what question is there in which the orator may not state what he is going to say in the first place, what ini the second, and what in the third ; and this is the business of partition. How ridiculous is it then, that each question should be a species of proof, and that partition, which is but a species of question, should be called a part of the speech as a whole ? 4. But as for *digression,* or, what has become a more common term, ***excessus,*** " excursion," if it be *without* the cause, it cannot be a part of the cause ; and, if it be *within* the cause, it is an aid or ornament to the parts from which it proceeds ; for if whatever is ***in*** the cause is to be called a part of the cause, why is not every *argument, comparison, common place, address to the feelings,* and *example,* called a part of the cause ?

5. I do not, however, agree with those who, like Aristotle,' omit *refutation,* as comprehended under proof; for proof establishes, refutation overthrows. Aristotle t also makes an innovation to a certain degree, by placing next to the exordium, not the *statement of facts,* but the *proposition ;* but this he does because he thinks the proposition the *genus,* and the statement of facts the *species ;* and supposes that there is not always a necessity for the first, but for the second always and in all cases.

6. But with regard to the divisions which I have made, it is not to be understood that that which is to be delivered first is necessarily to be contemplated first;4 for we ought to consider, before everything else, *of what nature the cause is; what is the question in it ; what may profit or injure* ***it ;*** next, *what is to be maintained or refuted;* and then, *how the statement of facts should be made.* 7. For the *statement §* is preparatory to proof, and cannot be made to advantage, unless it be first settled what it ought to promise as to proof. Last of all, it is to be considered how the judge is to be conciliated; for, until all the bearings of the cause be ascertained, we cannot know what sort of feeling it is proper to excite in the judge, whether

Rhet. ii. 26, 3 ; iii. 13, 4 ; 17, **14.**

+ Rhet. iii. 13.

$ Cie. de Inv. i. **14; de** Orat. ii. 77; see also Quint. iii. **6, 12.**

§ Expositio.] Take care not to confound it with **propoeitio. It in** plainly the same as *narratio.* Spaldin .

R

inclined to severity or gentleness, to violence or laxity, to itlflexibility or mercy.

S. Yet, I do not, on these accounts, agree with those who think that the exordium is to be written last ;'* for though it is proper that hat effect materials to be ıp produced by each particular, should settle w et we ought certainly to before we begin to speak or write, y 9. No man, begins begin with that which is naturally first. does to paint a portrait, or mould a statue, with the feet ; any art find its at will be the case if we have no time ı to write, to be. Else what Will not so preposterous a practice disappoint our speech ? to be first contem- tis ? The orator's materials are, therefore and then to be written plated in the order in which we direct,~ iii the order in which he is to deliver them.

CHAPTER X-

on

A cause rests either on one point of controversy, or on several ; points of the same or of different kinds, § 1, 2. Comparison, We must first settle the kind of cause ; what points are to 3, 4. be considered next, 5.

h. EVERY cause, in which there is one method for a plaintiff, and another for a defendant, consists either in a controversy about one charge or about several. The one is called *simple,* the other *complex*. A question about *a theft by itself,* is single and independent. When *act of adultery by itself,* there are several questions, they may be either of the same kind, charge e in sacrilege a charge g and homicide at the same time. as in This d union of charges does not now + occur in public trials, because the r take but is frequent in the ıcauses tried before the empeto a ors and ı the senate, and used to be common in those that came before the people ; and disputes between private individuals nften require practice.

* Antonius. in Cicero ıº sum Fa ore, pentiont *this as his* 't Namely, *sin* since the p *qwrstiones perpetuce* were instituted. *See* Odam s Born. Ant, p, 116, 8vo. Qd,

one judge to determine as to many different points of law.

2. Nor will there be more than two kinds of causes, even in cases where one party prosecutes the same suit, and oii the same ground, against several ; or two against one ; or several against several ; as we sometimes see occur in actions about inheritances ; because, though there be several parties, the cause is still but one, unless indeed the condition * of the parties give rise to distinct questions.

3. There is, however, said to be a third kind, different from these, called *comparative;* and sonic consideration with regard to comparison frequently happens in some part of a cause ; as when, in a case before the centumviri, there arises, after other questions, one of this kind, *which of two persons s better enti tled to an- inheritance ?* But it seldom happens that trials are appointed in the forum t merely for that object, and only in cases of *divination,* which take place for the purpose of appointing an accuser, or sometimes between informers to decide *which of two has a better claim to a reward.*

4. To this number some have indeed added a fourth, called *dyrixariyogia, "* recrimination," or *mutual accusation;* but others think that this is comprehended under the comparative kind ; and the case of reciprocal suits + will be similar to it ; a case which happens very frequently ; and if this ought also to be called *uvrixarnyog/a,* (for it has no proper appellation with us,) there will be two kinds of it, one in which the parties bring the same charge against each other ; the other in which they bring different charges. The case is similar with regard to demands.

5. When the nature § of the cause has been determined, we shall then have to consider, whether the fact, which is made a charge by the accuser against the defendant, is to be denied,II

* As in the trial respecting two legitimate sons and one illegitimate, e. 6, sect. 95. *Turnebus.*

f Hence it is evident that the centumviri did not sit in the forum. *Capperonier.*

$ When the accuser claims one thing from the defendant, and the defendant another thing from the accuser. The French term is *recun- vcntion.* Capperonier.

§ *Genus causcr..l* That is, what kind *of judicial cause* it is; for *genus* does not here refer to the threefold division into demonstrative, deliberative, and judicial *Capperonier.*

ll *Status infitialis, or facti qucestio.*

or to be justified,* or to be called by another name,t or to be excluded $ from that particular sort of process. By this means the states of causes are determined.

CHAPTER XI.

Hermagoras's method of proceeding ; the question, § 1-3. The mode of defence, 4-6. The point for decision, 7, 8. The ground or substance of the cause, 9. The question and the point for decision may be conjoined or separate, according to the nature of the cause, 10-17. Opinions of Cicero, 18-20. Hermagoras too fond of nice subdivisions, 21-25. Method of Theodorus, 26, 27. Conclusion, 28.

1. WHEN these matters are settled, Hermagoras thinks that we must next consider what is the *question, the mode of defence,§ the point for judgment,* ‖ the duviXov,'f or *point " containing" the accusation,* or, as some call it it, the *firmamentum,* or *"foundation "* of the cause.

Questio7t, in its more general sense, is understood to mean everything on which two or more plausible opinions may be advanced. 2. But in regard to judicial matters, it is to be taken in two senses ; one, when we say that a cause involves several questions, among which we include even those of least importance ; the other, when we mean the great question on which a cause turns. It is of the second that I now speak, and it is from this that the *state* has its origin : *Has a thing been done ?** What has been done ?tt Has it been justifiably done ?;+ 3.* These interrogatories Hermagoras, Apollodorus, and many other writers, call properly questions; Theodorus, as I observed,§§

' *Status qualitatis.*
t Status defcnitivus.
+ Status translativus.
§ *Ratio.] "* Moyen de ddfense." *Oedoyn.* Ratio *est qud id, quod factwm esse constat, defenditur ;* sect. 4.
‖ Judicatio.] To *rcpi,'d ,VOV,* the point on which the judges have to pronounce a decision. *Capperonier.*
¶ *Quod continet accusationem.* Auct. ad Hereun. i. 16.
*• *Status conjecturalis.*
++ *Status de'@nitivus.*
++ *Status qualitatis.*
§§ C. 6. sect. 2, 5; and see sect. 26 Df this chapter.

terms them *general heads,* and the minor questions, or those dependent on them, *special heads ;* as it admitted that one question may arise from another question, and that a species* may be divided into species. 4. This principal question of all, then, they call the *(11rr;p,a.*

The *mode of defence* is that process by which what is admitted to have been done is justified. To exemplify it, why should I not use that instance which almost all writers have adopted ? *Orestes killed his mother :* this is admitted ; he rays that *he killed her justly :* the state will then be that of quality ; the question, *Whether he killed her justly :* the ground of defence will be that *Clytemnestra killed her husband, the father of Orestes :* this is called the *alrtov.*

The *point for judgment,* the *x?tvoaavov,* will be, in this case, *whether even a mother guilty of such a crime ought to be killed by her son.*

5. Some have made a distinction between *airtov* and *eeiria,* making the, first signify the cause for which a trial becomes necessary, as *the killing of Clytemnestra ;* the second, the ground on which the deed is justified, as *the killing of Agamemnon.* But such has been the disagreement as to the sense of these words, that some call *a}rke* the cause of the trial, and *alrtov* the cause of the deed, while others use them in senses exactly contrary. Among the Latins some have adopted the terms *initium, "* commencement," and *ratio,* "reason;" some include both under the same term. Fi. Cause also appears to arise from cause, u7rtov i airlou, as, *Clytemnestra killed Agamemnon because he had sacrificed their common daughter, and brought home a captive as his concubine.* The same authors are of opinion that in one question there may be several grounds of defence ; as, for example, *if Orestes adds another cause for having killed his mother, namely, that he was forced to obey an oracle;* and that, whatever number of causes for the deed may be alleged, there are the same number of points for judgment ; as it will also be a point for judgment *whether he ought to have obeyed the oracle. 7.* But even one alleged cause for a deed may, as I conceive, give rise to several questions and points for judgment ; as in the case

• Logicians divide a species into individuals, but deny that it can be divided into other species, unless it be put in the sense of genus, ... *in* which sense Quintilian seems to use it here. *Regius.*

of the man, who, after he had killed his wife on catching her in adultery, subsequently killed the adulterer, who at first escaped, in the forum ; for the alleged cause for the deed is but one *He eras an adulterer;* but several questions and points for judgment may arise, as *whether it was lawful to kill him at that time, or in that place.* 8. But as, when there are several questions, and all have their states, there is yet but one state **in** the cause to which everything is referred, so there is but one proper point for, judgment, on which the decision is pronounced.

9. As to the euvexov, (which, as I said, some call *continens,* others *firmamentum,* and Cicero * *the strongest argument of the defender, and the fittest point for adjudication,)* some regard it as that after which nothing remains to be ascertained ; some, as that which is the strongest point for adjudication. 10. The reason of the deed is not a point for consideration in all causes; for what reason for the deed need be sought, when the deed is altogether denied ? But when the reason of the deed is an object of consideration, they deny that the ultimate point for decision rests on the same ground as the first question ; an observation which Cicero makes both in his *Rhetorica t* and his *Partitiones.$* 11. For, when it is said, *It was done ; it was not done ; was it done ?* the question rests on conjecture, and the judication rests on the same ground as the question, because the first question and the ultimate decision are about the same point. But when it is said, *Orestes killed his mother; he killed her justly ; no, but unjustly ; did he kill her justly ?* the question rests on the consideration of quality ; but this is not yet the point for decision. When then will it be ? After the statement, *She had killed my father ; but you ought not, therefore, to have killed your mother; ought Orestes to have killed her?* here is the point for decision. 1;2. The fundamental point of the defence I will give in the words of Cicero § himself : °° if Orestes were inclined to say that the disposition of his mother towards his father, towards himself and his sisters, towards his kingdom, and towards the reputation of his race and family, had been of such a nature that her children felt of all people most obliged to inflict punishment on her." 13. Others also use such examples as these : *the law says, let him who has exhausted his patrimony not be allowed*

" **Inv.** L **14.** t Inv. i. 14. ' C 30 § Inv. i. 14,

to address the people; but the defendant exhausted his upon public works; and the question then is, *whether whoever has exhausted his patrimony is not to be allowed ;* and the point for judgment, *whether he who has exhausted his patrimony in such a way is not to be allowed. 14.* Or the case of the Auruncan soldier,* who killed the tribune Caius Lusius, when he made dishonourable advances to him, in which the question *is, whether he killed him justly ;* the ground of defence, *that he made dishonourable advances;* the point for judgment, *whether it were lawful for a person to be killed zincondemned ; whether it were lawful for a tribune to be killed by a soldier.*

15. Some also regard the question, as in one *state, and* the point for decision in another ; the question *whether Milo did right in killing Clodius, is* in the *state* of quality;t the point for decision, *whether Clodius lay in wait forMilo, is* in the *state* of conjecture.$ 16. They say also that a cause often strays into some matter which does not properly belong to the question, and on which the decision is pronounced. I am not at all of their opinion ; for the questioI , for instance, *whether every man who has exhausted his patrimony is forbidden to address the people,* must have its decision ; and, therefore, the question and the point for decision will not be different ; but there will be more than one question, and more than one point for decision. 17. In the case of Milo, too, is not the question of fact considered with reference to the question of quality ? for if Clodius lay in wait, it follows that he was justly killed. But when the cause goes into some other matter, and recedes from the question which was first proposed, the question will be in the *state* in which the point for decision is.

18. Respecting these matters even Cicero is in some degree at variance with himself ; for in his *Rhetorica,* as I said above,§ 118 has followed Hermagoras ; in his *Topica,1I* he expresses

" The story is noticed by Cicero, Pro Mil. c. 4, and Val. Max. vi. 1, 12, and is related at length by Plutarch in his Life of Marius. Plutarch calls the soldier Trebonius ; Valerius calls him Caius Plotius. It is also mentioned in the third of the declamations attributed,to Quintilian. Of what country the soldier was a native no other author specifies. *Spalding.*

t Question of right.

$ Question of fact.

§ C. 6, s.ct. 59.

~ C, 25

himself of opinion that the *xOwopuvov,* the point of judgment, is the consideration arising from the *state ;* and in addressing Trebatius,.a lawyer of his time, he calls it *the point about which, the' discussion is,* and terms the particulars in which that point is contained *continentia,* the " containing particulars;" *the firmamenta, "supports" as it were of the defence, without which there would be no defence at all. 19.* But in his *Partitiones Oratorice** be calls the *firmamentum* that which is opposed to the defence ; because the *continens,* the " containing point," as it is the first thing, is advanced by the accuser ; while the *ratio, "* mode of defence," proceeds from the defendant ; and from the opposition of the *ratio* and *firmamentum* arises the question for decision.

Those authors, therefore, have settled the matter more iudiciously and concisely, who have made the *state,* and the *containing point,* and the *question for decision,* to be all the same, and have pronounced the *containing point* to be that without which there would be no discussion. 20. In this " containing point" they seem to me to have included both allegations, *that Orestes killed his mother,* and *that Clytemnestra killed Agamemnon.* The same writers think that the *state* and *the point for judgment* always concur ; and indeed any other opinion would have been at variance with their views.

21. But this studied subtilty about names of things is but ostentatious labour, and has only been noticed by me that I might not appear to have given too little consideration to the work which I have taken in hand ; but a master who teaches without affectation need not split his mode of teaching into such minute distinctions. 22. Excessive subdivision is a fault into which many rhetoricians have fallen, and especially Hermagoras, a man otherwise of great sagacity, and deserving of admiration on many accounts, and censurable only for too anxious diligence, so that even what we blame in him is not unworthy of some degree of commendation. 23. But the way which I follow is far shorter, and for that reason plainer, and will neither fatigue the learner with long windings, nor enervate the body of his language by portioning it out into minute particulars.† For he who sees what point it is that comes

• C. 29.

† A mixture of metaphors unusual with Quintilian.

into controversy ; what the opposite side wishes to do with regard to it, and by what means ; what his own side has to do, (a particular especially to be regarded,) cannot be without a full understanding of all the matters on which I have just spoken. 24. Nor can there, we may say, be any person, not utterly devoid of sense, and a stranger to all practice in pleading, that does not know what it is that gives rise to a discussion, (which is called by the rhetoricians the *cause* and the *containing point,)* what is the question between two parties, and on what point judgment must be given ; which three things are indeed all the same ; for the subject of the question is that which comes into controversy, and judgment Js given respecting that which is the subject of the question.

25. But we do not perpetually keep our attention fixed on these matters, but, moved with the desire of obtaining praise by whatever means, or carried away with the pleasure of speaking, we allow ourselves to wander from our subject ; since matter without the cause is always more abundant than within it, for in the controversy itself there is indeed comparatively little, and everything else is beyond its limits ; and, in the one case, we speak only of matters in which we have been instructed, in the other, on whatever we please. 26. Nor is it so much to be charged upon ourselves that we should discover the *question,* the *containing point,* and the *point for judgment,* (for to discover them is easy,) as that we should always look steadily to our object, or at least, if we digress from it, should recover sight of it, lest, while we are striving for applause, our arms should drop from our grasp.

27. The school of Theodorus, as I said,* distinguishes every thing into *heads ;* under which term several particulars are comprehended. Under the first only the main question, the same as the *state;* under the next, other questions, which refer to the main question ; under the third, the proposition with its proofs. The word is used in the same sense in which we say *caput rei est,* " it is the head of the business;" in Menander,* *xs~ccXawov eeri.* But, in general, whatever is to be proved will be *a head,* whether of greater or lesser importance.

• See sect. 3.

+ Turnebus supposes that Menander the **rhetorician is meant; Galleeus and Spalding,** with **more probability, Menander the writer of comedies.**