

## CHAPTER II.

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1. IT is most natural, and ought to be most usual, that when the judge has been prepared by the methods which have been noticed above, the matter, on which he is to give judgment, should be stated to him. 2. This is the narrative, or statement of the case; but, in touching upon it, I shall purposely pass over the too subtle distinctions of those who make several kinds of statements; for they will have an exposition, not only of the business on which the question is brought before the judges, but of the *person* whom it concerns, as, *Marcus Pali-canus, a man of humble birth, a native of Picenum, loquacious rather than eloquent*;\* or of the *place* at which it occurred, as, *Lampsacus, judges, is a town on the Hellespont* ;† or of the *time*, as,

\* We learn from Aulus Gellius, i. 15, that these words are taken from the lost history of Sallust. The man characterized in them is doubtless the same that Cicero, Brut. c. 62, calls *aptiorem auribus imperitorum*. Compare Val. Max. iii. 8 Rom. 3 ; Ascon. Ped. p. 19, ti 1 ; ad Cic. Div. c. 3, et Act. in Verr. pr. c. 15 ; Cic. ad Attic. i. 1, 18. *Spalding*.

† Cic. in Verr. i. 24.

In early spring, when from the hoary hills  
The cold snow melting flows ;

or of the *causes* of the occurrence, which historians very often give, when they show whence arose a war, a sedition, or a pestilence. 3. In addition to these distinctions, they call some statements *perfect*, others *imperfect* ; but who is not aware of such a difference ? They add that there is a kind of statement regarding *past fine*, which is the most common kind; another respecting the *present*, such as that of Cicero t about the stir of Chrysogonus's friends when his name was mentioned ; and a third relating to the *future*, which can be allowed only to prophets ; for *hypotyposis* + is not to be regarded as a statement of facts. 4. But let us turn our attention to matters of more importance.

Some have thought that there must always be a statement of facts ;§ but that this notion is unfounded, may be proved by many arguments. In the first place, there are some causes so brief, that they require only a mere proposition ¶ rather than a statement. 5. This may happen at times on either side, when there is either no exposition of matters, or when the parties are agreed about the fact, and there is no dispute but concerning the law ; as in such questions as these before the centumviri, *Whether a son or a brother ought to be the heir of a woman that dies intestate ; or whether puberty is to be decided by years or by a certain habit of body*. Or when there is indeed room for a statement of facts in the cause, but every particular of it is previously known to the judge, or has been fully set forth in the preceding part. 6. At times, again, it may happen only on one side, and more frequently on that of the prosecutor, either because it is sufficient for him to make a simple proposition, or because it is more advantageous for him to do so. It may be sufficient, for instance, to say, *I claim a certain sum of money lent on certain conditions ; or, I claim a legacy according to a*

' Virg. Georg. i. 43.

\* Pro Rose. Am. c. 23.

§ IX. 2, 40; Cic. De Orat. iii. 53.

§ From Seneca the father, p. 149, we learn that Apollodorus always required a statement of facts, but that Theodorus did not. *Spalding*.

¶ See the fourth *chapter* of this book; also c. 1, sect. 35, and iii. 6, 76.

*certain will.*' and it will be for the opposite party to show why such claims are not due. 7. It is sufficient for the prosecutor, and more advantageous, to open his cause in this way, *I say that the sister of Horatius has been killed by 'him,* for the judge comprehends the whole charge from this one proposition ; and then the way in which the act took place, and the motive for it, are left rather to be stated by the defendant. 8. As for the accused person, he will withhold a statement of facts, when the charge against him can neither be denied nor palliated, but will rest solely on a question of law ; thus, in the case of the man who, having stolen the money of a private person out of a temple, is accused of sacrilege, a confession will show more modesty than a statement. *We do not deny,* the defendant and his advocate may say, *that the money was taken from the temple ; but the accuser makes the charge that we are amenable to the law against sacrilege, though the money was private, and not consecrated; and it is for you to decide the question whether sacrilege has been committed.*

9. But though I allow that there are at times such reasons for giving no statement of facts, I dissent from those who think that there is no statement when an accused person merely denies the charge which is brought against him ; an opinion which is held by Cornelius Celsus, who considers that most trials for murder, and all those for bribery and extortion, are of this class ; 10. for he thinks that there are no statements of facts but such as give a general exposition of the charge on which judgment is to be pronounced ; yet he admits himself that Cicero gives a statement of facts in his oration for Rabirius Posthumus ; though Cicero denies that any money came into the hands of Rabirius, which was the very point on which the question rested ; and, in his statement of facts, he gives no exposition of the charge.

11. For my part, besides resting on the authority of eminent rhetoricians, I am myself of opinion that there are two kinds of statements in judicial causes ; the one sort being an exposition of the cause itself, and the other of the circumstances connected with it. 12. *I have not killed a man;* here there is no statement of facts ; it is admitted that there is none ; but there will be one, and sometimes a long one, in reply to the support of the accusation, and in regard to the

past life of the accused, the causes by which an innocent man has been brought into peril, and other circumstances by which the charge is rendered incredible. 13. For the accuser does not say merely, *You have killed,* but states by what proofs he can establish his assertion ; as in tragedies, when Teucer accuses Ulysses of having killed Ajax,\* saying that *lie was found in a solitary place, near the dead body of his enemy. and with a blood-stained sword in his hand,* Ulysses does not merely reply that the deed was not committed by him, but affirms that there was no enmity between Ajax and himself, and that they had been rivals only for glory ; and then adds how lie came into that lonely spot, saw the (dead body lying on the ground, and drew the sword out of the wound. To this statement are subjoined various arguments.t

14. But there is a statement of fact even when the accuser says, *You were in the place in which your enemy was killed,* and the defendant says, *I was not,* for he must show where he was. For the same reason, causes of bribery and extortion may have several statements of this kind, as there may be several heads of accusation ; in which statements, indeed, the charges will be denied, but resistance must at the same time be made to the accuser's arguments, sometimes singly, sometimes in a body, by an exposition of matters totally different from his.

15. Will a person accused of bribery act wrong in stating what sort of parents he had, how he himself has lived, or on what pretensions he relied when lie proceeded to stand for office ?

Or if a man is accused of extortion, may lie not advantageously give an account of his past life, and of the means by which lie brought upon him the resentment of his whole province, or of his accuser, or some particular witness ?

16. If such an account is not a statement of facts, neither is that first speech of Cicero in behalf of Cluentius, commencing with the words *!lulus Cluentius Habitus;*+ for there is nothing in that speech about the poisoning, but merely about the

\* We find nothing of this sort in the tragedies now extant relating to this subject. That of Sophocles represents Ulysses as friendly to Teucer. "palding.

† A.; *I am not to be accused of killing him because I was found near the body ;* else suspicion would have fallen upon you, his brother, if you had been found near it. *Tumebus.*

§ Cic. pru Cluent. c. 5.

causes by which his mother became his enemy. 17. Statements also relate to the cause, but are not part of the cause itself, which are given for the sake of example, as that in Cicero's speech against Verres concerning Lucius Domitius,\* who crucified a shepherd because he confessed that he had used a hunting-spear in killing a boar which he offered as a present to Domitius ; 18. or for the purpose of exposing some charge foreign to the case, as in Cicero's oration for Rabirius Posthumus :<sup>t</sup> *For as soon as he came to Alexandria, judges, the only method of preserving his money proposed by the king to Posthumus was this, that he should take the charge, and as it were stewardship, of the palace ;* or with the intention of exaggerating, as in the description of the journey of Verres.\*

10. Sometimes a fictitious statement of particulars is introduced ; either to rouse the feelings of the judges, as that in the speech for Roscius respecting Chrysogonus, which I mentioned a little above ; § or to amuse them with a little pleasantry, as that in the speech for Cluentius regarding the brothers Cepasii ; ¶ or, occasionally, to make a digression for the purpose of embellishment, as that in the speech against Verres ¶ concerning Proserpine : *It was in these parts that a mother is said formerly to have sought her daughter.* All these observations assist to show that he who denies may not only make a statement, but a statement concerning the very point which he denies.

20. Nor is the observation which I made above, that a statement is superfluous respecting a matter with which the judge is acquainted, to be taken absolutely ; for I wish it to be understood in this sense, that it is superfluous if the judge not only knows the fact, but takes such a view of it as is favourable to our side. 21. For a statement of facts is not made merely that the judge may comprehend the case, but rather that he may look upon it in the same light with ourselves.

\* In Verr. v. 3. Burmann thinks that *obtulerat* in the text should be *obtulerant*, as it was not the shepherd that presented the boar, but others, of whom Domitius inquired who had killed so large a beast.

<sup>t</sup> C. 10.

§ In Verr. i. 16, 17.

Sect. 3.

<sup>j</sup> Cie. pro Cluent. c. 20, 21.

¶ IV. 48.

Though, therefore, lie may not require to be informed, but only to be impressed in a certain way, we may make a statement with some preliminary remarks, as that, *we are aware that he has a general knowledge of the case, but entreat him not to be unwilling to listen to an account of particulars.* 22. Sometimes we may pretend to repeat our statement for the information of some new member taking his seat among the judges; sometimes, in order that even the by-standers may be convinced of the iniquity of what is asserted on the opposite side. In this case, the statement must be diversified with varieties of phraseology, to spare the judge the weariness of hearing what he already knows ; thus, we may say, *You remember,* and, *Perhaps it may be unnecessary to dwell on this point,* or, *But why should I say more on this subject, when you are already acquainted with it ?* or, *Of the nature of this affair, you are not ignorant;* or we may introduce various other phrases similar to these. 23. Besides, if a statement of facts seem always unnecessary before a judge to whom the cause is known, the pleading of the cause before him may seem also to be sometimes unnecessary.

24. There is another point about which there is still more frequently a question, *Whether the statement of facts is always to be immediately subjoined to the exordium ;* and those who hold the affirmative cannot be thought destitute of arguments to support them ; for as the exordium is made with the intent that the judge may be rendered more favourable by it, and more willing and attentive to understand the case, and as proof cannot be adduced unless the case be previously understood, it appears right that the judge should at once be made master of the facts. 25. But the nature of a cause sometimes justly changes this order ; unless, perchance, Cicero be thought, in that excellent oration which he wrote on behalf of Milo, and which he has left to us, to have injudiciously delayed his statement of facts, by introducing three questions\* before it ; or unless it would have been of any profit to relate how Clodius lay in wait for Milo, if it had been supposed impossible for an accused person, who confessed that he had killed a man, to be defended,

\* These three questions are to be gathered from what follows

1. About defending a man who confessed that he had killed another.  
2. About the pre-judgment of the senate. 3. About the feeling of Pompey. *Spaldiny.*

or if Milo had been already judged and condemned by the senate, or if Pompey, who, to favour some party, had surrounded the place of trial with a troop of armed men, had been dreaded by Milo as ill-disposed towards him. 26. These questions, therefore, were of the nature of an exordium, as they all served to prepare the judge. But in his speech for Varenus, also, he did not introduce his statement of facts until he had refuted certain allegations. This mode of proceeding will be of advantage, too, whenever the charge is not only to be resisted, but to be retorted on the opposite party, so that our own case being first established, our statement of facts may be the commencement as it were of a charge against our adversary ; as, in a passage of arms, care to ward off a blow takes the precedence of anxiety to inflict one

27. There are some causes, and indeed not a few, which are easy to be defended so far as to refute the charge on which the trial bears, but which labour under many grievous enormities of the defendant's former life ; and these must first be set aside, in order that the judge may listen favourably to the defence of the point about which the question really is. Thus, when Marcus Caelius is to be defended, does not his advocate judiciously repel the imputations against him of *luxury, licentiousness, and immorality*, before he proceeds to consider that of *poisoning* ? It is about these points that the whole of Cicero's pleading is employed. And does he not then make a statement about *the property of Palla,*" and explain the whole question respecting the *violence,*† which is defended by the pleading of Caelius himself ?+ 28. But the custom of the schools is our guide, in which certain points are proposed for us to speak upon, which we call *themata,*§ and beyond which there is nothing to be refuted † and thus it is that our statement of facts is always subjoined to our exordium. 29. Hence, too, is the liberty which the declaimers take to make a statement of facts even when they appear to speak in the second

" Cie. pro Cael. c. 10. We know nothing of that affair from any other quarter. *Spalding.* Palla was the name of a man whose property Caelius had been accused of appropriating to himself.

† In killing Dion the legate of the Alexandrines ; c. 10, and 21, 22.

For Caelius also defended himself in this cause ; comp. xi. ), 51 ; and Suet. de Clar. Rhet. c. 2. *Spalding.*

§ See c. 1, sect. 4.

place in a cause ; \* for when they speak for the prosecutor,† they make a statement of facts just as if they were speaking first, and a defence as if they were replying to the opposite party ; and such practice is very proper ; for as declamation is an exercise preparatory to pleading in the forum, why should not learners qualify themselves to take either the first or second place ? But, ignorant of the proceedings in the courts, they think that when they come into the forum no departure is to be made from the manner to which they have been accustomed in the schools. 30. Yet even in scholastic declamations it occasionally happens that a mere proposition † is in place of a statement of the case ; for what statement has he to make who accuses a jealous man of ill-treating his wife, or he who accuses a cynic§ of indecency before the censors, when the whole charge is sufficiently expressed by a single word, in whatever part of the speech it be introduced ? But on this head I have said enough.

31. I shall now add some remarks on the method of stating a case. A statement of a case is an *account of a thing done, or supposed to have been done; which account is adapted to persuade;* or, as Apollodorus defines it, *a narrative to inform the auditor what the matter in question is.* Most writers, and especially those who are of the school of Isocrates, direct that it should be *lucid, brief, and probable.* It is of no consequence if, instead of *lucid,* we say *perspicuous,* or, instead of *probable, credible* or *apparently deserving of belief.* 32. Of this specification I approve ; though Aristotle † differs from Isocrates in one particular, as he ridicules the direction

• *Ut etiam secundo partem seorsum loco narrare videtur.] Dice de locis,* which learned men have laboured to explain, is nothing else but the order in speaking which was assigned to each advocate; for it was not invariably settled in the forum that the accuser should speak first, and the defendant reply ; see vii. 1, 37. He therefore spoke in the second place to whom the duty was committed of answering the statements on the opposite side, whether he was the prosecutor or the accused. In the schools, where there was no replying, there was no such order observed; v. 13, 50; vii. 1, 38. Hence we understand why Quintilian uses the expression *videantur narrare.* Comp. sect. 5. *Spalding.*

† Understand in *the second place, i.e.,* after the first advocate for the prosecutor has spoken. *Capperonier.*

§ See sect. 4.

§ See I declam. Quint. 283 ; *Cynicus dieerti filius.*

‡ Rhet. iii. 16, 4.

about brevity, as if it were absolutely necessary that a statement should be long or short, and as if there were no possibility of fixing on a just medium. As to the followers of Theodoros, they recognize only the last quality, saying that it is not always proper to state briefly or lucidly. 33. On this account I must the more carefully distinguish the various peculiarities of statements, in order to show on what occasions each quality is most desirable.

A. statement, then, is either *wholly in our own favour, wholly in that of our opponent, or a mixture of both.* If it be *wholly in our own favour,* we may be content with the three qualities of which the effect is that the judge more readily *understands, remembers, and believes.* 34. Nor let any one think me to blame for remarking that the statement which is wholly in our favour ought to be made probable, though it be *true;* for there are many narratives *true* which are not *probable,* and many *probable* which are not *true.* We must therefore take no less pains that the judge may believe what we say truly than what we invent. 35. The qualities, indeed, which I have just enumerated, are meritorious in other parts of our speech; for through our whole pleading we should avoid obscurity; a certain succinctness in what we say should be everywhere observed; and all that is advanced ought to be credible. But these qualities are most of all to be studied in that part which gives the first information to the judge; for if, in that part, he happens not to understand, not to remember, or not to believe, we shall exert ourselves to no purpose in the sequel.

36. The statement, however, will be *clear and perspicuous,* if it be expressed, first of all, in proper and significant words, not mean, nor far-sought, nor at variance with common use, and if it give a lucid account, also, as to circumstances, persons, occasions, places, and motives, and be delivered, at the same time, in such a way that the judge may without difficulty comprehend what is said. 37. This excellence is wholly disregarded by most speakers, who, prepared for the shouts of a multitude, whether suborned for the purpose or collected by chance, cannot endure the silence of an attentive auditory, and do not think themselves eloquent unless they hallow the whole court with noise and vociferation; they consider that to state a matter calmly belongs only to every-day conversation, and is in the power of even the most illiterate.

while, in truth, it is uncertain whether they will not or cannot perform that of which they express such easy contempt. 38. For if they try every department of eloquence, they will find nothing more difficult than to say what every one, when he has heard it, thinks that he himself would have said; and for this reason, that he does not contemplate it as said with ability, but with truth; but it is when an orator is thought to speak truth that he speaks best. 39. But now, as if they had found a wide field for themselves in their statement, they assume an extravagant tone of voice in this part of their speech, throw back their heads,\* strike their elbow against their sides, and revel in every sort of combination of thoughts and words; while, what is monstrous, their delivery pleases, and their cause is not understood. But let me put an end to these animadversions, lest I should gain less favour by prescribing what is right than ill-will by censuring what is wrong.

40. Our statement will be sufficiently concise, if, in the first place, we commence the exposition of the case at the point where it begins to concern the judge; next, if we say nothing foreign to the cause; and, lastly, if we retrench everything of which the absence will deduct nothing from the knowledge of the judge or the advantage of our client. 41. For there is often a brevity in parts, which nevertheless leaves the whole very long; as, *I came to the harbour; I beheld a vessel; I asked for how much it would take me; I agreed about the price; I went on board; the anchor was weighed; we loosed our cable, and set sail.* Here none of the phrases can be expressed with greater brevity; yet it would be sufficient to say, *I set sail from the harbour;* and whenever the event sufficiently indicates what has preceded it, we ought to be content with expressing that from which the rest is understood. 42. As I can easily say, therefore, *I have a grown-up son,* it is quite superfluous for me to indulge in circumlocution, and say, *Being desirous of having children, I married a wife, I had a son born to me, I reared him, and have brought him up to full age.* Some of the Greek writers, accordingly, have distinguished a *concise* exposition,

\* *Cervicem reponunt.] As a sign of self-satisfaction. So Cie. in Verr. iii. U): Tarnetne putanurus patronurn tuum in hoc crimine cervicu. lam jactaturum et populo se ac coroner. daturum?* Spalding.  
f *Sulvimus oran..]* See the *Epistle to Trypho, sect. 3.*

*avv-opov*, from *a brief* one, the first being free from everything superfluous, while the other may possibly want something that is necessary. 43. For myself, I make brevity consist, not in saying less, but in not saying more, than is necessary ; for as to repetitions, and *rauroXoyiar*, and *Ti i660.,oyiai*, which some writers on rhetoric desire to be avoided in a statement of facts, I say nothing about them, since such faults are to be shunned for other reasons than that of observing brevity.

44. We must no less be on our guard, however, against that obscurity which attends on those who abbreviate every part too much ; and it is better that there should be something superabundant in a statement than that anything should be wanting ; for what is unnecessary is attended with weariness, but what is necessary is not withheld without danger. 45. We must consequently avoid the conciseness of Sallust, (though in him it is accounted a merit,) and all abruptness in our language ; that which does riot escape a reader who has leisure to re-examine, is perhaps lost altogether upon a mere auditor, who has no opportunity of hearing it repeated ; and a reader, besides, is generally a person of learning; while a judge is often one whom the country sends to the courts\* to give a decision on what he can manage to understand ; so that perhaps everywhere, but especially in the statement of facts, we ought to adhere to a judicious medium in our language, and say just *what is necessary, and what is enough*. 46. But by *what is necessary* I would not wish to be understood what is barely necessary to state a fact ; for brevity ought not to be wholly unadorned, or it becomes mere rudeness. What attracts us, beguiles our attention ; the more agreeable a story is, the less long it appears ; and a pleasant and easy road, though it be of greater extent, fatigues us less than a shorter one that is rugged and unattractive. 47. Nor would I ever have so much regard to brevity as not to wish that everything should be inserted that can make the statement of facts

• *In decurias.] Decurie of the judices*, of which Augustus constituted four, and Caligula added a fifth. Each of these consisted of a thousand or more *judices*, who, as they were mostly engaged in tilling their grounds, and came into the city only when required to act as *judices*, were for the most part rude and illiterate. These *decnria'* were *fui* trials on public matters ; for private causes there were the *con; ilio centumviralia*. Spaldino.

credible ; for one that is every way plain and curtailed may be called not so much *a statement* as *a confession*. There are also many statements that are necessarily long from the nature of the case, and for attending to them, as I recommended above,\* the judge must, be prepared by the conclusion of the exordium ; and we must then study, by every art in our power, to take something from the length and something from the tediousness of our narrative. 48. We shall make it somewhat less long, if we defer such particulars as we can to another part of our speech, not without specifying, however, what we defer : *What motives he had for killing him, whom he took as accomplices, how he disposed his ambush, I shall relate when I offer my proofs*. 40. Some particulars, too, may be set aside, as it were, out of the course of the narrative ; an expedient of which we have an example in Cicero: *Fulcinius died; for many circumstances that attended the event, I shall omit, as being unconnected with the cause*. Division also lessens the tediousness of a statement: *I shall relate what took place before the commencement of the affair; t I shall relate what occurred during the course of it; I shall relate what happened afterwards*. 50. Thus there will appear rather to be three short narratives than a single long one. Sometimes it will be proper to break our statements by a short interlocution *You have heard what occurred before; hear now what followed*. Thus the judge will be relieved at the conclusion of the first part, and will prepare himself for entering as it were upon a new subject. 51. But if, when all these artifices have been tried, the detail of particulars will still extend to a great length, a kind of recapitulation at the end of each part will not be without its advantage, such as Cicero\* gives even in a short, statement: *Hitherto, Crsar, Quintus Ligarius is free from all blame ; he left his home not onhy for no war, but without there being even the least suspicion of war, etc.*

5"). As to *credibility* in our statement, it will not be wanting, if we first consult our own judgment, so as to advance nothing contrary to nature ; and if, in addition, we assign causes and motives for the facts which we detail ; (I do not mean for all,

\* C. 1. sect. 79.

*t Ante ipsum rei contractwm.] Every affair is said *contrahi*, when it is entered upon, and hence *contractus* is used for *initium*. Spalding.*

§ Pro Ligar. c. 2.

but for those about which there is any question;) and if we represent our persons, at the same time, as of a character in accordance with the facts which we wish to be believed of them ; a person *accused of theft*, for instance, as *covetous ; of adultery*, as *libidinous ; of homicide*, as *rash ;* or the contrary, if we are on the defence ; and we must do the same with regard to places, occasions, and similar particulars. 53. There is also a certain management of the narrative which gives it credibility, as in plays and pantomimes ; for some things naturally follow and attach themselves to others, so that, if you make the first part *of* your statement judiciously, the judge himself will understand what you are going to say afterwards. 54. Nor will it be without advantage if we scatter here and there some seeds of proof, but so as not to forget that we are stating a series *of* facts and not *of* arguments. Occasionally, however, we may even confirm what we advance with some degree of proof, but simple and short ; for example, in a case *of* poisoning, we may say, *He was well when he drank, he fell down suddenly, and a blackness and swelling of the body immediately followed.* 55. Preparatory remarks produce the same effect, as when it is said that the accused was *strong, armed, and on his guard, in opposition to those who were weak, unarmed, and unsuspecting.* On everything, indeed, of which we have to treat under the head *of* proof, as *character, cause, place, time, instrument, occasion,* we may touch in our statement *of* facts. 56. -Sometimes, *if* these considerations fail us, we may even confess that *the charge, though true, is scarcely credible,* but observe that *it must be regarded on this account as a greater atrocity ; that we know not how it was committed, or why ; that we wonder at the occurrence, but will nevertheless prove the truth of it.* 57. But the best of all preparations *of* this kind are those of which the intention is not apparent ; as in Cicero every circumstance is most happily premised by which *Clodius may be proved to have lain in wait for Milo, and not Milo for Clodius ;* but what has the greatest effect is that most artful assumption of an air of simplicity : *Milo having been in the senate-house that day, returned home as soon as the senate broke up, changed his shoes and his dress, and waited a short time, while his wife, as is usual, was getting ready.* 58. How well is Milo represented as having done nothing with premeditation, nothing with haste! This effect that

master of eloquence produces not only by the circumstances which he narrates, and by which lie signifies Milo's delay and composed manner *of* departure, but by the familiar and ordinary words which he uses, and his well concealed art in adopting them ; for if the particulars had been stated in other terms, they would have warned the judge, by their very sound,\* to be on his guard against the pleader. 59. To most people this passage appears lifeless, but it is hence manifest how wholly the art escaped the judge, when it is hardly observed even by a reader.

Such are the qualities that render a statement of facts credible. 60. As to directions that we should avoid contradictions or inconsistencies, if any one needs them, he will receive further instruction in vain, though some writers on rhetoric introduce such matters into their works, imagining that they were hidden from the world till they were sagaciously discovered by themselves

61. To these three properties of a statement of facts some add *magnificence*, which they call *αεγὰ ὄργε'ραία*, but which is neither appropriate to all pleadings, (for what place can language, raised above the ordinary level, have in most causes about private property, about loans *of* money, letting and hiring, and interdicts ?) nor is always beneficial, as is evident from the last example from the speech for Milo.

62. Let us bear in mind, too, that there are many causes in which we have to confess, to excuse, to extenuate what we state, in all which cases magnificence of language is utterly inadmissible. It is therefore no more our business, in making a statement, *to speak magnificently*, than to speak *dolefully*, or *invidiously*, or *gravely*, or *agreeably*, or *politely*; qualities which, though each is commendable in its proper place, are not to be assigned, and as it were devoted, to this part peculiarly.

63. That quality, also, which Theodectes assigns peculiarly to the narrative of facts, desiring that it should be not only magnificent but *pleasing*, is, though very suitable to that part of a speech, merely common to it with other parts. There are some, too, who add *clearness*, or what the Greeks call *ivafyeia*.

\* I read *strepitu ipso* (not *ipsum*) *judicem*, a conjecture of Rollin, approved by Spalding.

64. Nor will I deceive my reader so far as to conceal from him that Cicero \* desires several qualities in a statement of facts ; for besides requiring it to be plain, and *concise*, and *credible*, he would have it *self-evident*, *characteristic*, and *suitable to the occasion*. But everything in a speech ought to be in some degree *characteristic* and *suitable to the occasion*, as far as is possible. *Self evidence* in a narrative, as far as I understand the meaning of the term, is doubtless a great merit, (as what is true is not only to be told, but ought to a certain extent to make itself seen,) but it may surely be included under perspicuity, which some, however, have even thought hurtful at times, because in some cases, they say, truth must be disguised. 65. But this is an absurd observation ; for lie who wishes to disguise truth, wishes to relate what is false as if it were true and, in what he relates, he must still study that his statement may seem self-evident.

66. But since we have come, by some chance as it were, to a more difficult kind of statements, let me say something on those causes in which the truth is against us ; in which case some have thought that the statement of facts should be wholly omitted. Nothing, certainly, is easier than such omission, except it be to forbear from pleading the cause altogether. But if, for some good reason, you undertake a cause of this sort, what art will there be in confessing by your silence that your cause is bad ? unless you think that the judge will be so senseless as to decide in favour of that which he knows that you are unwilling to tell him. 67. I do not dispute that as some things in a statement may be denied, others added, and others altered, so likewise some may be suppressed ; but such only are to be suppressed as we ought or are at liberty to suppress. This is done sometimes for the sake of brevity, as when we say, for example, *He answered what he thought proper*.

68. Let us distinguish, therefore, the different kinds of causes ; for in causes in which there is no question about the charge, but only about a legal point, we may, though the matter be against us, admit the truth : *He took money from a temple, but it was that of a private individual; and he has therefore not committed sacrilege. He carried off a maiden ;*

\* De Orat. ii. 80 ; Topic. c. 26 ; Part. Orat. c. 9.  
t See v. 13,16.

*yet option \* is not to be granted to her father.* 69. *He dishonoured a well-born youth ; and the youth, on being dishonoured, hung himself, yet the author of his dishonour is not to be capitally punished as being the cause of his death, but is to pay ten thousand sesterces, the fine imposed on him who is guilty of such a crime.* But. in such confessions something of the bad impression may be removed which the statement of our opponent may have produced; since even our slaves speak apologetically concerning their own faults. 70. Some things, also, we may palliate without assuming the tone of narrative : *He did not, as our opponent alleges, enter the temple for the purpose of stealing, or watch for a favourable moment for accomplishing such object ; but, tempted by the opportunity, the absence of the guards, and the sight of money, which has too strong an influence over human resolution, he yielded. But what has this to do with the question ? He transgressed, and became a thief. ? It is of no use to palliate an act of which we do not shrink from the penalty.* 71. Sometimes, too, we may seem even to condemn our own client; addressing him, for example, thus : *Would you have me say that you were excited with wine ? That you fell into an error ? That you were led astray in the darkness ? All this may perhaps be true; but you have nevertheless dishonoured a free-born person ; you must pay ten thousand sesterces.* Sometimes, again, our cause may be guarded by a careful opening, and then fully stated. 72. Every thing was adverse to the three sons who conspired to kill their father ; they had drawn lots, and had entered their father's chamber, at night, one after another, while lie was sleeping ; but, as none of them had the heart to kill him, they confessed the whole matter to him when lie awoke.

\* The woman on whom a rape was committed had the privilege of choosing whether the ravisher should be put to death or marry her ; but the father had, by law, no choice in the case. *Gesner*. To the *vitiatar loa clectious* there is an allusion in the Dialogue de Orat. c. 35 ; comp. vii. 8, 4. *Spalding*.

.. By the *Seatinian* or *Seantinian* law. Some other passages in ancient writers are at variance with what Quintilian says about the amount of the fine, as is shown by *Bach*, *Hist. Jurispr. Hon-I. ii. 2, 29*. But the same amount is specified in the *Declamations* attributed to Quintilian, 252 and 370. *Spalding*.

*\$ Nium quam.* Spalding observes that he has been unable to find this expression in any other author, and proposes to read *nium quantum*, which is a common phrase.



73. Yet if the father (who indeed divided his estate among them,\* and defended them when accused of parricide) should lead thus, *is brought against young men whose father is still alive, and appears on their behalf; and to give a regular statement of the case, therefore, would be superfluous, since the law has no bearing on it; but if you require a confession of my own misconduct, I was an austere father, and a tenacious guardian of that property which would have been better managed by them;* 74. and should then observe that *they were prompted to the act by youths whose fathers were more indulgent, but had nevertheless such feelings as was proved by the fact that they could not kill their father; for that it would have been needless for them to take an oath to kill him, if they had had the resolution to do so without it, nor would there have been any need of a lot, had not each of them been desirous to be exempted from the act;* all arguments of this nature, such as they are, would find the minds of the audience more favourably disposed to receive them, when softened by the brief defence offered in the first proposition. 75. But when it is inquired *whether a thing occurred, or what sort of thing occurred,* how, though everything be against us, can we avoid making a statement, if we adhere to what is due to our cause? The accuser has made his statement, and, not confining himself to intimate how matters took place, has added much to our prejudice, and exaggerated it by his language; his proofs have been brought; his peroration has excited the judges, and left them full of indignation; they naturally wait to hear what will be advanced on our side. 76. If we advance nothing, the judges must necessarily believe that what our opponent has said really happened, and that it happened just as he represented it. What then, it may be asked, shall we tell the same story as our opponent? If the question is about *quality,* (which is the next consideration after that of *fact* is settled,) we must tell the same story certainly, but not in the same

\* This father had previously divided his estate among his sons who plotted against his life, and when they were accused of intended parricide by the father's relations, (as is ingeniously conjectured by the interpreters calling himself Turnebus) who would succeed to the estate if the son were proved guilty, the father himself appeared as advocate for his children on their trial. *Spalding.* The structure of the passage, as he adds, is by no means clear; the word *subicitur* is probably corrupt

way; we must assign other causes for actions, and give another view of them. 77. We may extenuate some things by the terms in which we speak of them; *luxury* may be mentioned under the softer term of *gaiety, avarice* under that of *frugality,* and *carelessness* under that of *good nature.* A certain degree of favour, or at least of commiseration, we may gain by our look, tone, or attitude. A confession of itself will sometimes draw tears.

As to those who are of a contrary opinion about a statement, I would willingly ask them whether they mean to justify, or not to justify, that which they do not mean to narrate? 78. For if they neither justify facts, nor make a statement of them, their whole cause will be betrayed; but if they mean to offer a justification, it is surely necessary for them, for the most part, to state what they intend to justify. Why, then, should we not make a statement of that which may be refuted, and make it, indeed, with that very object? 79. Or what difference is there between *proof* and *a statement of facts,* except that a statement is a connected exposition of that which is to be proved, and proof is a verification of that which has been stated? Let us consider, then, whether such a statement, in opposition to that of our opponent, ought not to be somewhat longer and more verbose than ordinary, by reason that we have to prepare the mind of the judge, and by reason of particular arguments that we may introduce; (I say particular arguments, and not a continued course of *argumentation;*) and it will give great effect to our statement if we affirm, from time to time, that *we shall establish what we say; that the strength of our cause could not be shown in the first exposition of it; that we intreat the judges to wait, suspend their opinions, and trust that we shall make good our point.* 80. Finally, we must relate whatever can be related otherwise than our adversary has related it; or, for the same reason, exordia in such causes may be thought superfluous, since what further purpose have they, than to render the judge more disposed to understand the cause? But it is admitted that there is nowhere greater use for them, than where the mind of the judge is to be freed from some prepossession conceived against us.

81. As to *conjectural* causes,]- in which the question is

*Eo etiam.] Eandem ob causam.* Spalding. That is, on the supposition that we were to make no statement.

t When the accused denies that he is guilty of the fact charged

about fact, they do not so often require an explanation of the point on which a decision is to be given, as of the circumstances from which a knowledge of it is to be collected. As the, prosecutor will represent those circumstances in an unfavourable light, the defendant must try to remove the unfavourable impression produced by him ; the circumstances must be laid before the judge by the one in a different way from that in which they are presented to him by the other. *SQL.* But, it may be said, some arguments are strong when advanced in a body, but of less force when separated. This remark, I answer, does not apply to the question *Whether we ought to make a statement, but how we ought to make one.* For what hinders us from accumulating a variety of evidence in our statement, and to promise to produce Or to divide our statement into portions, to give proofs under each portion as it is brought forward, and so proceed to what follows ? R3. For I do not agree with those who think that we must always relate matters in the order in which they occurred; I consider rather that we should relate them in the order which is best for our cause. This may be effected by various artifices ; for sometimes we may pretend that something has escaped our memory, with a view to introduce it into a place better suited to our purpose ; sometimes we may quit the proper order, and assure the judge that we shall afterwards return to it, as the case will thus be rendered clearer ; sometimes, after relating a fact, we may subjoin the motives that preceded it ; 8-t. for there is no fixed law for a defence, or any invariable rule ; we must consider what is best adapted to the nature of the case, and to the occasion ; and must act as in regard to a wound, which, according to its state, must either be dressed at once, or, if the dressing can be delayed, must be bound up in the meanwhile. 85. Nor would I consider it unlawful to repeat a thing *several times*, as Cicero has done ill his speech for Cluentius ; a liberty which is not only allowed to be taken, but is sometimes even necessary, as in cases of extortion, and all such as are not at all complicated.\*- It is the part of a fool, indeed, to be led by a superstitious regard for rules to

against him, he will hardly make a statement of it, unless he throws the guilt upon some other party *Turnebus.*

\* *Comp. c. 1,* sect. 74 ; c. 4, sect. 4.

act against the interest of his cause.\* 86. It is the practice to put the statement of facts before the proofs, that the judge may not be ignorant of the point about which the question is ; and why, then, if every circumstance is to be established or refuted, is not every circumstance to be stated in our narrative ? For myself, as far as any account is to be made of my practice, I know that I used to adopt that method whenever the interest of any cause required it, and with the approbation, too, of men of experience, and of those who sat in judgment; and in general, (a remark which I do not make from vanity, for there are many, with whom I was associated in pleading, who can contradict me if I speak falsely) the duty of stating the case was assigned to me. 87. Yet I would not on that account say that we should not more frequently follow the order of facts. In some facts the order cannot be changed without impropriety; as if we should say, for example, that a woman *had a child*, and should afterwards say that *she conceived*; that a will was *opened*, and then that it *was sealed*; and if, in speaking of such matters, you chance to mention first that which happened last, it is best to make no allusion to that which happened first.

88. There are also at times *false* statements ; t of 'which two kinds are introduced in the forum ; one, which depends on extrinsic support ; as Publius Clodius rested his cause on the testimony of witnesses, when he affirmed that he was at Interamna the night on which he committed a heinous crime at Rome ; the other, which must be supported by the ability of the pleader ; and this relies sometimes on a mere assumption of modesty in him, whence it appears to me to be called *complexion*; sometimes on a peculiar representation of the case. 89. But, whichever of the two modes we adopt, our first care must be that what we invent, be possible ; next that it be ill accordance with person, place, and time, and have a character and order that are probable ; and, if it be practicable, our representation should be connected with something that is acknowledged to be true ; or be supported by some argument relative to the question ; for what is altogether sought from without the cause, is apt to betray the licence which we take in inventing. 90. We must be extremely watchful, too, that no two particulars (as often happens with *tellers* of fiction)

\* *Comp. c. 1,* sect. 04, 65 ; and c. 5, sect. 7.

+ *Comp. sect. 1U*

contradict one another ; (for some things may suit *very* well with certain parts\* of our case, and yet not agree with each other on the whole;) and also that they be not at variance with what is acknowledged to be true ; it being a maxim even in the schools, that the complexion is not to be sought from without the argument. 91. But both in the schools and in the forum, the speaker ought to keep in mind, throughout the whole case, what he has invented, since what is not true is apt to be forgotten, and the common saying is just, that a liar ought to have a good memory. 92. Let us consider, also, that if the question be concerning an act of our own, we must adhere to one particular statement; but if concerning the act of another, we may bring it under a variety of suspicious aspects. In some scholastic causes, however, in which it is supposed that a person under accusation does not answer to the questions put to him,<sup>t</sup> liberty is granted to enumerate all the answers that might have been given. 93. But let us remember that we are to feign only such things as are not liable to be disproved by evidence ; and these are such as proceed only from our own thoughts, of which we alone are conscious ; such as are supposed to have been said by the dead, of whom none will appear to refute them ; or by one who has the same interest with ourselves, for he will not contradict us; or even by our adversary, as in denying them he will gain no credit. 91. As to imputed motives from dreams and superstitious feelings, they have lost all credibility from the ease with which they are invented.

Nor is it sufficient to adopt a certain *colour* in our statement of facts, unless it preserve a consistency through the whole case ; especially as the only mode of establishing certain points lies in *asseveration* and *persistence*; 95. as the parasite (who claims as his son a youth that had been three times disinherited + by a rich man, and allowed to return to him,) will

\* *Partibus blandiuntvr.] Partibus* is in the ablative case ; *quibusdam* in *partibus* ; *secundum quasdam partes*. Capperonier. " Il est des choses qui se concilient avec certaines parties." *Gedoy*n.

<sup>t</sup> When the subject is such that the accused opposes an obstinate silence to every interrogatory, or is, for some reason, not allowed to reply ; for though no reply was introduced in scholastic declamations in general, (see sect. 28,) yet I do not suppose that Quintilian intends here to say this of all declamations whatever. *~palding*.

It is to be understood that the rich man had thrice signified an in-

have some *colour* for asserting that poverty was his reason for exposing the boy ; that the character of parasite was assumed by him merely because he had a son in that house, and that the innocent youth was disinherited three times only because he was not the son of the person who disinherited him. 96. But unless he exhibit, throughout all his speech, the affection of a father, and that in the most ardent manner, together with the hatred of the rich man towards the youth, and his own fear for him, as knowing that he will stay with the greatest danger in a house in which he is so detested, he will not escape the suspicion of being a suborned claimant.

97. It happens at times in the declamations of the schools, (I know not whether it can possibly happen in the forum,) that both parties make the same allegations, and each supports them on its own behalf ; as in this cause : 98. *A wife informed her husband that her step-son had endeavoured to seduce her. and had appointed a time and place for their meeting; the son, on his part, brought a similar charge against his step-mother, only naming a different time and place; the father finds his son in the place which the wife had named, and his wife in that which the son had named ; he divorced his wife, and, as she said nothing, disinherited his son.* Nothing can be said on behalf of the young man, which may not also be said on behalf of his step-mother. 99. What is common, however, to both parties, will be stated ; and then, from the comparison of persons, from the order in which the informations were given, and from the silence of the wife, when divorced, arguments will be drawn. 100. Nor ought we to be ignorant that there are some cases which do not admit of any *colouring*, but are simply to be defended ;<sup>t</sup> as was that of the rich man, who lashed with a scourge the statue\* of a poorer

tention to disinherit his son, which the laws did not allow him to carry into execution. Hence the son is said in the text to *beabsolutees* or sent back to his father's house. The rich man, thus repeatedly disappointed, suborns a parasite whom he had in his house to claim the young man as his own son, hoping to get rid of him by that means. There were, in reality, no laws with regard to disinheriting ; they were merely fictions of the schools. *S'palding*.

\* As when a person rests his defence solely on the law. *Spalding*.

<sup>t</sup> Badius Ascensius aptly illustrates this passage by citing a passage from Paulus, Digest. xlv. 10, 27: "If the statue of your father, elected on his monument, has been injured by stones thrown at i\*

man, that was his enemy, and was in consequence accused of committing an insult. A pleader cannot say in palliation of such an act that it was that of a sensible man ; but he may perhaps succeed in defending it from penalty.

101. But if part of a statement be in our favour, and part against us, we must deliberate, according to the nature of the case, whether we ought to blend those parts together, or keep them distinct. If the facts which make against us be the more numerous, those which are in our favour will be overwhelmed by them. In such a case, then, it will be best to divide them, and, after stating and confirming the circumstances that are favourable to us, to adopt against the rest such remedies as we have already\* specified. 102. If the facts in our favour be the more numerous, we may very well unite them, that those which are adverse to us, being placed as it were in the midst of our auxiliaries, may have less force. Neither the one, nor the other, however, are to be exposed undefended ; but we must take care to support such as favour us with proof, and add reasons why such as are against us are not to be credited ; because, unless we make a distinction, it is to be feared that the good may be polluted by the contamination of the evil.

103. The following directions, too, are commonly given respecting the statement of facts ; that no digression is to be made from it ; that we are to address ourselves constantly to the judge ; that we are to speak in no character but our own ; and that we are to introduce no argumentation ; and some even add that we are not to attempt to excite the feelings. These precepts, doubtless, are to be in general observed ; or, I may say, never to be departed from, unless the nature of our cause obliges us to disregard them. 104. In order that our statement may be clear and concise, nothing can be so seldom justifiable in it as digression ; nor ought there ever to be any except such as is short, and of such a nature that we may seem to be hurried into it, out of our right course, by the strength of

you cannot bring an action against the thrower of the stones for violation of a sepulchre, but you may for the injury done to the statue ; as Labeo writes." Something similar is mentioned by Palladius, vi. 11, in regard to the statue of Theagenes an athlete. *Spalding*, Sect. (i5, *scqq.*  
f C. 1, sect. (i3,

our feelings. 105. Such is that of Cicero • respecting the marriage of Sasia : *Oh, incredible wickedness in a woman! such as has not been heard of, in the whole course of human life, except in this one female ! Oh, unbridled and immoderate lasciviousness . ' Oh, unparalleled audacity ! Not to have feared, if not the power of the gods, or the opinion of men, at least that very night, and those nuptial torches ! Not to have respected the threshold of the chamber, or the couch of her daughter, or the very walls themselves, the witnesses of her former marriage !* 106. As to constantly addressing the judge, a brief diversion of our speech from him sometimes intimates a thing more concisely, and gives it more effect. On this point, accordingly, I hold the same opinion as I expressed respecting the exordium ; and I think the same with regard to the *prosopopeia* ; which, however, not only Servius Sulpicius has used in his defence of Aufidia, " *That you were languid with sleep, should I suppose, or oppressed with a heavy let haryy !* " etc., but Cicero himself, in speaking of the ship-masters,\*, (for that passage is a statement of facts,) exclaims, " *For liberty to enter, you will give so much,* " etc. 107. In his pleading for Cluentius,§ too, does not the conversation between Stalenus and Bulbus contribute greatly to the rapidity of the narrative, and to its credibility ? And that lie may not be supposed to have fallen into this manner undesignedly, (a supposition which is indeed wholly incredible with regard to such an orator,) lie recommends, in his *Oratorical Partitions*,¶ I that the statement of facts should display agreeableness, something to excite surprise and expectation, unexpected results, conversations between different people, and all the feelings of the mind. 108. Continued argumentation, as I observed,¶ we must never use in our statement of facts ; though we may

\* Pro Cluent. c. 5.

+ Servius Sulpicius, the friend of Cicero, a very celebrated lawyer, is said to have spoken in defence of Aufidia, not only here, but in x. 1, 22 ; and this makes it the more difficult to explain vi. 1, 20, where a speech of his against Aufidia is mentioned ; for we learn from x. 1, 11k, and 7, 30, that there were only three of his speeches extant, and it is hardly credible that two of them were on opposite sides in the same cause. Of Aufidia's case we find no mention in any other writer.

*Spalding*.

I In Verr. v. 45.

C. 2'.

II C. 9.

i Sect. 79, 103.

introduce a *single argument* occasionally, as Cicero does in his speech for Ligarius,\* when he says that he had governed his province in such a way as made it expedient for him that there should be peace. We may also introduce in our statement, if the subject requires, a short defence of our client's conduct, or a reason for it : for we are not to state things as a witness, but as an advocate. 109. The simple account of a fact may be such as this : *Quintus Ligarius went into Africa as lieutenant-general with Caius Considius.* But how does Cicero give it ? *Quintus Liyarius, when there was not even a suspicion of war, went into Africa as lieutenant-general with Caius Considius.* 110. In another place, again, *Ile set out, not only to no war, but ?tot even upon the least suspicon lfwar.±* When it was sufficient for him, too, in proceeding to state a fact, to say, *Quintus Liyarius allowed himself to be involved in no transaction,* he adds, *looking back to his home, and being desirous to return to his friends.* Thus what he stated he made credible by giving a reason for it, and made a strong impression, at the same time, on the feelings of his audience.§ 111. I am the more surprised at those, therefore, who think that we are not to touch the feelings in a statement of facts. If they mean, indeed, that we are not to work on them long, or as in the peroration, they are of the same opinion with myself ; for tediousness is to be avoided ; otherwise, why should I not move the judge while I am instructing him? 112. Why should I not secure, if possible, at the very opening of my case, the object which I am desirous to attain at the conclusion of it, especially as I shall find his mind more manageable, when I come to proofs, if it has previously been swayed by indignation or pity ? 113. Does not Cicero,§ in a very few words, touch all the feelings by describing the scourging of a Roman citizen, not only showing the condition of the sufferer, the place of the outrage, the nature of the infliction, but extolling the spirit with which he bore it ? For he exhibits him as a man of great magnanimity, who, *when he was lashed with rods, uttered no*

\* C. 2.

+ Pro Lig. c. 1, 2.

§ *Affectfla quoque implevit.*] *Affect us*, as Spalding observes, is in the geiitive case, but lie would rather read *afectu*, as the ablative is more u eial with Quintilian. Cicero, says Gesner, excited the pity of the judges for Ligarius.

In Verr. v. 62.

*groan, and made no supplication, but only exclaimed that he was a Roman citizen,* to the disgrace of his oppressor, and with confidence in the laws. 114. Has he not also, through the whole of his statement, excited the greatest detestation of the treatment of Philodamus,"I and caused the tears of his audience to overflow at his punishment, not so much relating that they wept, as exhibiting them weeping, *the father, that his son was to die, and the son that his father was to die?* What more touching could any peroration present? 115. It is late, too, to bring the feelings, at the end of a speech, to bear on particulars which we have previously narrated with coolness ; the judge has become familiarized to them, and hears, without any excitement, that with which he was not moved when it was new to him ; and it is difficult for us to change the temper of his mind when once it is settled. 116. For my own part, (for I will not conceal my opinion, though that which I am going to say rests rather upon experience than upon precepts,) I think that the statement of facts requires, as much as any part of a speech, to be adorned with all the attractions and grace of which it is susceptible. But it makes a great difference what the nature of the case which we state is. 117. In the smaller sort of cases, therefore, such as private ones in general are, the garb of the statement ought to be neat, and, as it were close-fitting ; there should be the greatest care with regard to words, which, when we enlarge upon the common topics of morality.+ are poured forth with rapidity, and particular expressions are often lost in the profusion of language in which they are enveloped ; but here every word ought to be expressive, and, as Zeno+ says, *tinctured with peculiar signification;* the style should be apparently artless, but as agreeable as possible ; 118. there should be no figures borrowed from poetry, and received on the authority of the ancients contrary to the simplicity of language, (for the diction should be as pure as possible,) but such only as lessen tedium by variety, and relieve attention by change, so that we ma}' not fall into similar terminations, similar phrases, and similar constructions ; for a statement has no other attractions,

\* In Verr. i. 31).

+ C. I, Sect. 53.

Y Zcno of Citium is doubtless meant. That *be* wrote on language and conihusitun appears from Diog. Laert. vii. 4, 39, 40. Spaldsnfr.

acid; if it be not recommended by such graces, must fail to please. 119. Nor is the judge in any part more attentive ; and consequently nothing that is expressed with effect is lost upon him. Besides he is more inclined, I know not how, to believe what gratifies his ear, and is led by being pleased to being persuaded.

120. But when the cause is of greater moment, it will be proper to speak of heinous crimes in a tone of invective, and of mournful occurrences in one of pity ; not that the topics for exciting the feelings may be exhausted, but that an outline of them, as it were, may be presented ; and that it may at once appear what the full picture of the case will be. 121. Nor would I dissuade a speaker from reviving the strong feeling of the judge, when exhausted with attention, by some remark, especially if thrown in with brevity ; such, for instance, as *this : The servants of Milo did what every one would have wished his servants to do in such circumstances ;* or occasionally, perhaps, a little more boldly, as this :\* *The mother-in-law marries her son-in-law, without auspices, without any to sanction the union, and with the most fatal omens.* 122 As this practice was adopted even in days when every speech was composed rather for use than for show and the judges were still more austere, how much more aptly may it be done now, when pleasure has made its way even into trials for life and fortune ? How far we ought to conform to this taste of our age, I will give my opinion in another place. § Meantime I allow that some concession is to be made to it.

123. A probable representation of circumstances which appears to conduct the [audience](#), as it were, to a view of the case, has, when subjoined to what is really true, a powerful effect ; such, for example, as the description given by Marcus Coelius of Antonius. § They find him sunk in the sleep of drunkenness,

" Cic. pro Cluent. c. 5.

t Rollin and Gesner think that the preface to book [viii. is](#) meant ; also *viii. 3, 6, seqq.* Perhaps we may suppose an allusion to *xii. 9, 5. Spalding.*

See i. 6, 29, and Val. Max. iv. 2 Rom. 7.

I have no doubt that this was the Caius Antonius who was the colleague of Cicero in the consulship, the uncle of Mark Antony the triumvir. That lie was accused by C. Coelius, when a young man, we know from many writers; see Cic. pro C. Coel. c. 7 and 31. *Spalding.*

§ Namely the centurions, who brought him news of the approach of the enemy.

*snoring with the whole force of his lungs, and repfating eructation on eructation, while the most distinguished of his female companions were stretched across towards him from their several couches, and the rest lying round in every direction; 124. who, however, becoming aware of the approach of the enemy, attempted, half dead with terror, to awaken Antonius; they called him aloud by name to no purpose ; they raised his head; one whispered gentle sounds into his ear ; another struck him forcibly with her hand; but when at length he became conscious of the voice and touch of each, he only threw his arms round the neck of her that was next to him ; he could neither sleep after being roused, nor keep awake from the effects of drunkenness ; but was tossed about, half asleep and half awake, in the hands of centurions and harlots.* Than this description nothing could be imagined more probable ; nothing offered as a greater subject of reproach; nothing exhibited more vividly.

125. Nor can I omit to remark how much credit *the authority of the speaker* gives to his statement ; an authority which we ought to secure chiefly by our general conduct, but also by our style of oratory ; since the more grave and serious it is, the more weight it must give to our assertions. 126. We must especially avoid, therefore, in this part of our speech, all suspicion of artifice, (for nowhere is the judge more on his guard,) so that nothing may appear fictitious or studied, but that all may be thought to emanate rather from the cause than from the advocate. i 2 i . But this manner our modern pleaders cannot tolerate ; we think that our art is lost if it is not seen, whereas art, if it is seen, ceases to be art. We doat upon praise, and think it the great object of our labour; and thus betray to the judges what we wish to display to the bystanders.

128. There is also a sort of *repetition* of the statement, which is called by the Greeks *επιρροή*: a thing more common in school declamations than in the forum. It was introduced with this object. that, as the statement of facts ought to be brief, the case might afterwards be set forth more fully and with more embellishment, in order to move indignation or pity. To this practice I think that we should have recourse but seldom, and never so as to repeat the whole order of circumstances ; for we may effect the same object by recurring to particulars here, and there. Let him, however, that shall