

28. Since I have now set forth, even more circumstantially than was requisite, what is taught on these points by the writers of books on rhetoric ; and since I have already* specified the several parts of judicial causes, my next book shall treat of *proems or exordia*.

- C. 9. rea . 1.

BOOK IV.

INTRODUCTION.

the grandsons of the sister of Domitian committed to the tuition of Quintilian ; a new motive for care in composing his work. He proceeds to speak of the exordium of a speech, the statement of facts, the proof, the refutation of adverse allegations, and the peroration.

1. AFTER finishing, my dear Marcellus Victor, the third book of the work dedicated to you, and completing about the fourth part of my task, a motive for fresh diligence, and deeper solicitude as to the judgment that I may deserve from the public, have occurred to me. Hitherto we were but comparing studies, as it were, between ourselves ; and if my method of instruction was but little approved by others, I thought myself likely to be quite contented with our domestic advantage, deeming it sufficient to regulate the education of your son and my own. 2. But since Domitian Augustus has vouchsafed me the charge of his sister's grandsons,* I should not sufficiently feel the honour of his divine judgment, if I were not to estimate the greatness of my undertaking as proportioned to this distinction. 3. For what pains can I spare in the cultivation of the morals of youth, in order that the most upright of censors t may have reason to approve them ? Or in promoting their studies, that I may not be found to have disappointed, in this respect, the expectations of a prince most eminent, not only in other accomplishments, but also in eloquence? 4. And if no one is surprised that the greatest

* They were the sons of Flavius Clemens and Domitilla, the granddaughter of Vespasian, who was the daughter of another Domitilla, the sister of Domitian ; the name of the latter Domitilla's husband is unknown. See Suet. Dom. c. 15; Dion. Cass. p. 1112, ed. Reim. Spalding.

t Similar adulation is bestowed by Velleius Paterculus on Tiberius, ii. 94, 104, 123. Domitian assumed to himself the titles *Of Dominos* and *Dens*, as is related by Suetonius, Dom. c. 13. See also Martial, Ep. v. 81 ; x. 72 ; iii. 12, 15, 9, 10. See Barthius ad Stat. Sylv. i. 1, 62. Spalding.

I Sanctissimns censor.] Domitian was the first of the Roman emperors that assumed the title of supreme censor; see Dion. Cass. lib. lxvii. p. 1104, ed. Reim. On some coins he is styled censor *perpetuus*.

poets have often invoked the Muses, not only at the beginning of their works, but, on advancing in their course, and arriving at some point of great importance, have renewed their addresses, and used as it were fresh solicitations, 5. I myself shall surely be pardoned also, if I now do that which I omitted to do when I entered on my subject, and call all the deities to my aid, and especially him than whom there is no deity more auspicious or more peculiarly favourable to learning ; in order that he may inspire me with ability proportioned to the expectation which he has raised of me, may propitiously and kindly support me, and render me in reality such as he has supposed me to be.

6. For such devotional feeling, this, though my greatest, is not my only reason ; for besides, as my work advances, the parts on which I am entering are more important and more difficult than those which have preceded them. It is now to be shown, in the next place, what is the process of judicial causes, which are extremely numerous and diversified ; what is the purpose of the exordium ; what is the proper form of a statement of facts ; what constitutes the force of proofs, either when we confirm our own assertions, or overthrow those of our adversary ; and what is the power of a peroration, either when the memory of the judge is to be refreshed by a short recapitulation, or when, what is far the most effective, his feelings are to be excited. 7. On these particulars, some authors, as if they dreaded the weight of the whole in a body, have preferred to write separately, and even thus have published several books on each of them ; while I, having ventured to embrace them all, see before me a labour almost boundless, and am oppressed with the very thought of the task which I have undertaken. But, as I have begun, I must persevere ; and, if I fail in strength, must nevertheless proceed with courage.

CHAPTER I.

Etymology of the word proem, § 1-3. An erroneous practice in the schools and in the forum, 4. Object of the proem or exordium, 5. How the good will and attention of the judge may be gained by allusion to different characters concerned in the cause, 6-19. Farther observations on the same subject, 20-27. Difference between the exordium and the conclusion, 28, 29. Matters connected with the characters and the cause to be considered, 30-34. Solicitude to be shown by the pleader ; brevity to be promised ; accurate division of matter to be made, 33-36. To conciliate the judge must be the pleader's constant object throughout his speech, 37-39. Five kinds of causes, 40-41. Some make two purposes of a proem, proposition and insinuation; the latter more easy for the advocate than for his client, 42-49. An unnecessary rule of the Apollodoreans, 50, 51. Points to be regarded in the exordium, 52-60. The speaker's memory must not fail him in it, 61. Its length must be proportioned to the cause, 62. Whether apostrophe, and other figures of speech, may be used in it, 63-71. Whether a formal exordium is always necessary, 72-75. Mode of transition to the statement of facts, 76-79.

1. THAT which is called the beginning, or exordium in Latin, the Greeks seem with greater reason to have termed the „*proemion* : for by our writers is signified only a commencement, but the Greek rhetoricians plainly show that this is the part preliminary to the entrance on the subject on which the orator is to speak. 2. For whether it be because *πρῶτον* signifies a tune, and players on the lyre * have called the short prelude that they execute, for the purpose of conciliating favour, before they enter upon the regular contest for the prize,† a proemium, orators, in consequence, have distinguished the address which they make to gain the good will of the judges, before they commence their pleading, by the same appellation ; 3. or whether, because the Greeks call a way *ὁδὸς*, it became a practice to call that a proemium which precedes the entrance on a subject ; it is certainly the proem, or exordium, that produces a good effect on the judge before he understands what the cause is ; and we act erroneously in the schools, in using exordia of such a nature

* Aristot. Rhet. iii. 14, 1.

† Legitimum certamen.] Some read *carmen*, observes Rollin. Spalding says that he met with *carmen* in the text only of one manuscript but saw it in the margin of some others. "It is the dymn that is meant, in which they contended for the honour and reward of skill. Examples are numerous; see, e.g. Sueton. Ner. c. 12, 22, 23." Guner

if the judge was thoroughly acquainted with the cause. 4. The liberty taken in this respect arises from the circumstance that the usual idea of the cause* is given previous to the commencement of the declamation. Such kind of exordia may be adopted indeed in the forum in *second* processes, but in a *first* process it seldom or ever, unless we chance to appear before a judge to whom the matter has become known in some other quarter.

5. In giving an exordium at all there is no other object but to prepare the hearer to listen to us more readily in the subsequent parts of our pleading. This object, as is agreed by most authors, is principally effected by three means, securing his *good will* and *attention*, and by rendering him desirous of further information; not that these ends are not to be kept in view throughout the whole pleading, but because they are pre-eminently necessary at the commencement, when we gain admission as it were into the mind of the judge in order to penetrate still farther into it.

6. As to *good will*, we either gain it from persons connected with the cause, or have it from the cause itself. But in respect to persons, regard is not to be had to three only, (as most rhetoricians have supposed,) the *prosecutor*, the *defendant*, and the *judge*; for the exordium sometimes takes its complexion from the character of the pleader; and though he speaks sparingly and modestly concerning himself, yet, if he be deemed a good man, much influence, in reference to the whole cause, may depend on that consideration; for he will then be thought to bring the support of his party not merely the zeal of an advocate, but almost the testimony of a witness. 7. Let him be regarded as coming to plead, therefore, from being induced by obligations of kindred or friendship, or above all, if it be possible, by respect to his country, or for some strong considerations of precedent. This, without doubt, is still more to be observed by the parties

* *Illa velut imago litis.* That is, the *thema*, which is prefixed to the declamation, as in those of Seneca and Quintilian. See iv. 2, 28; vii. 4. *Spalding.*

t Secundis actionibus-primis quidem rara.] Secundæ actiones are such as the *libri secundas actions* against Verres, when, as the trial could not be brought to an end at once, it was adjourned for three years. Not that this *secunda actio* really took place; but such is the way in which Cicero represents the case. *Primes actions* are mentioned in i. 9, 16. *Spalding.*

themselves, so that they may seem to go to law from some important and honourable motive, or even from necessity.

8. But as the authority of the speaker becomes thus of the highest efficacy, if, in his undertaking the business, all suspicion of meanness, or hatred, or ambition, be far removed from him, so it is a sort of tacit commendation to him, if he represents himself as weak, and inferior in ability to those acting against him, a practice which is adopted in most of the exordia of Messala. 9. For there is a natural feeling in behalf of those oppressed; and a conscientious judge most willingly listens to an advocate whom he does not suspect of any design to draw him from justice. Hence arose that dissembling of the speakers of antiquity to conceal their eloquence, so extremely different from the ostentation of our times.

10. We must also take care not to appear *insolent, malignant, overbearing, or reproachful* towards any man or body of men, especially such as cannot be wounded without exciting an unfavourable feeling in the judge. 11. That nothing should be said against the judge himself, not only openly, but nothing even that can be understood as adverse to him, it would be foolish in me to advise, if such things did not sometimes take place.

The character of *the advocate for the opposite party* may sometimes afford us matter for an exordium; if we speak of him sometimes with honour, making it appear that we fear his eloquence and influence, so as to render them objects of suspicion to the judge; or sometimes, though very rarely, with contempt, as Asinius Pollio, in pleading for the heirs of Urbina,* enumerates the choice of Labienus as advocate for the opposite party among the proofs of the badness of their cause. 12. Cornelius Celsus denies that such remarks constitute exordia, as having no relation to the cause; I, however, am led to form a contrary opinion, not only by the authority

* To the enmity between Asinius Pollio and Labienus I have alluded on i. 5, S. The Urbinian case, as far as it can be understood from two other passages in which it is noticed, (vii. 2, 5, 26,) was of the following nature: Certain persons, who, resting their claims either on blood or on relationship, sought to get possession of the property of Urbina, were opposed by Clusinius Figulus, whom the claimants declared to be a slave, his real name being Sosipater; and whose character Pollio tried to depreciate by remarking on his connexion with a man so unprincipled as Labienus. Comp. xii. 1, 13. *Spalding.*

of the greatest authors, but because i consider, for my own part, that whatever relates to the pleader of the cause relates to the cause itself ; since it is but natural that judges should be ' more inclined to believe those whom they are more inclined to, hear.

13. As to the character of the *prosecutor*, it may be treated in various ways ; sometimes his worth may be asserted, sometimes his weakness commended to notice. Sometimes a statement of his merits may be proper, when a pleader may speak with less reserve in praise of another's worth than lie would in that of his own. Sex, age, condition, are of great influence, as in the case of women, old men, or wards, when they plead in the character of wives, parents, or children. 14. Commiseration alone, indeed, has effect even upon a right-minded judge. But such matters are to be lightly touched, and not exhausted, in an exordium.

The character of the *adversary* is commonly attacked with references to topics of a similar nature, but directed against him ; for on the powerful envy must be shown to attend, on the mean and abject, contempt ; on the base and criminal, hatred ; three qualities that have great power in alienating the favour of the judges. 15. Nor is it enough merely to state such particulars, (for this is in the power even of the ignorant,) but most of them must be magnified or extenuated, as may be expedient ; for to give effect to them is the business of the orator ; the mere expression of them may be inherent in the cause itself.

16. The favour of the *judge* wP, shall conciliate, not merely by offering him praise, (which ought indeed to be given with moderation, though it is to be remembered at the same time, that the privilege of offering it is common to both parties,) but by turning his praises to the advantage of our cause, appealing, in behalf of the *noble* to his dignified station, in behalf of the *humble* to his justice, in behalf of the *unfortunate* to his pity, in behalf of the *injured* to his severity ; and using similar appeals in other cases. 17. I should wish also, if possible, to know the character of the judge, for, according as it may be violent, gentle, obliging, grave, austere, or easy, it will be proper to make his feelings subservient to our cause where they fall in with it, and to soften them where they are repugnant to it.

18. But it sometimes happens, also, that he who sits as

judge is either our enemy or the friend of our opponent, a circumstance which ought to claim the attention of both sides, but more particularly, perhaps, of that to which the judge seems to incline. For there is sometimes, in unprincipled judges,* a foolish propensity to give sentence against their friends, or in favour of parties with whom they are at enmity, and to act unjustly that they may not seem to be unjust.

19. Some have been judges, too, in their own causes. I find, for instance, in the books of observations published by Septimius,f that Cicero was engaged in a cause of that nature ; and I myself pleaded the cause of Queen Berenice+ before that queen herself. In this case the mode of procedure is similar to that in those which I have just mentioned ; for he who pleads in opposition to the judge exaggerates the confidence of his client, and he who pleads in his favour expresses apprehension of feelings of delicacy on his part. 20. Opinions, moreover, such as the judge may appear to have brought with him in favour of either party || are to be overthrown or established. Fear¶ is sometimes to be removed from the mind of the judge ; as Cicero, in his speech for Milo, strove to convince the judges that they were not to think the arms of Pompey arrayed against them ; and sometimes to be held out to

* *Pravis iudicibus hic ambitus.*] Aldus reads *pravus*.

¶ To this Septimius and his work no other writer appears to make any allusion. . . . The cause in which Cicero was engaged cannot have been like any of those of his pleading with which we are acquainted, as those of Ligarius, Deiotarus, Marcellus, (to which Turnebus compares it,) for those were causes of Caesar himself, before whom they were pleaded. *Spalding*.

§ She with whom Titus was in love, and to whom he even promised marriage, but was obliged to send her away from Rome against his will and her own; Suet. Tit. c. 7. She was the daughter of the elder Agrippa, king of Judea, and widow of Herod, her own uncle, king of Chalcis in Syria. As she twice resided at Rome, first in the reign of Vespasian, and afterwards in that of Titus, when she attempted to revive that prince's affection for her, she might have had legal disputes from various causes, but I find no allusion to any elsewhere. *Spalding*.

§ The orator who pleads against the judge, boasts of the confidence of his party in having nothing to fear from the judge, though he is also their opponent. The orator who is on the judge's side, intimates his fear that the judge, from false delicacy, may give sentence against himself, though his cause is just. *Rollin*.

|| *Præcipue.*] *Præc alter& parte*, though he ought to be strictly impartial. *Spalding*.

¶ *'~ vi. 1, 13. Alnkloveen.*

them, as Cicero acted in his pleadings against Verres.* 21. But of the two modes of producing fear in the judges, the one 'is common and well received, when we express concern, for example, *that the Roman people may not think unfavourably of them; or that their privilege of sitting as judges may not be transferred from them to another body;*' but the other is unusual and violent, when the speaker threatens the judges with a charge of bribery; a threat which it is certainly safer to address to a larger body of judges than to a small one, for the bad are alarmed and the good pleased, but to a single judge I should never recommend it to be used, unless every other resource has failed. 22. But should necessity drive us to it, it is no part of oratorical art, any more than to appeal from the judgment of the tribunal, (though an appeal is often advantageous,) or to impeach a judge before he gives sentence; for one who is not an orator may threaten and denounce.

23. If the nature of the cause itself afford us topics for conciliating the judge, it will be proper, above all, that such of them be selected for introduction into the exordium as may appear most favourable to our object. On this head Virginius; is in error, for he says Theodorus is of opinion that from every question in the cause some thought may be selected for the exordium. 24. Theodorus does not say this, but merely that the judge is to be prepared for the most important points; a precept in which there would be nothing objectionable, if it did not enjoin that as a general rule which every pleading does not admit, and which every cause does not require. For when we rise to open the case on behalf of the prosecutor, while it is still unknown to the judge, how shall we bring forward thoughts from every question in it? Surely the subject must previously be stated. Let us admit that some questions may then be brought forward, (for so the form of our pleading sometimes requires,) but must we, therefore, bring forward all the most important ones, that is, the whole cause? If so, the statement of facts will be dispatched in the exordium.

* The first *actio* against Verres, which is wholly in place of an exordium, as it is indeed called by Asconius Pedianus, being preliminary to the examination of the witnesses. *Spalding*.

† From the senators to the knights, or from the knights to the senators; changes which were several times made. *Capperonier*.

III. 1, 21.

25. Or if, as frequently happens, the cause is somewhat difficult, should we not try to gain the goodwill of the judge in other parts of the pleadings, and not present the bare roughness of every point to his mind before we have attempted to incline it in our favour? If such matters were always rightly managed at the opening of a speech, there would be no need of any formal exordium. 26. At times, accordingly, some particulars, which may be of great effect in conciliating the favour of the judge, may be previously* introduced, and not without advantage, in the commencement.

What points, again, are likely to gain us favour in causes, it is not necessary for me to enumerate; for they *will* be manifest to the pleader, when he understands the nature of a cause; and all particulars, in so great a variety of suits, cannot possibly be specified. 27. But as it is for the service of a cause to *discover* and *amplify* its favourable points, so it is expedient to *refute*, or at least to *extenuate*, whatever is prejudicial to it. Compassion may also spring from the nature of our cause, if we have suffered, or are likely to suffer, any severe misfortune.

28. Nor am I inclined, as some are, to think that an exordium differs from a peroration only in this respect, that in a peroration is narrated what has gone before, and in an exordium is set forth what is to come. The difference rather lies in this, that in the introduction the kind feelings of the judge should be touched, but cautiously and modestly; while in the peroration we may give full scope to the pathetic, we may attribute fictitious speeches to our characters, and evoke the dead and produce their children; attempts which are not made in exordia.

29. But as to those feelings of pity, which I mentioned above, it is necessary not only to excite them in our favour in the exordium, but to turn away the effect of them from our opponent; and as it is for our advantage that our lot should be thought likely to be deplorable if we should be defeated, so is it that the pride of our adversary should be apprehended as likely to be overbearing if he should conquer.

Interim.] "In the mean time," i.e., before proceeding to the body of the speech.

† *Pignora eorum.*] We should read *reorum*, which Spalding first conjectured, and afterwards found in the passage as cited by Cassiodorus in *Rhetoribus Pithenianis*, p. 333.

§ I suppose that he refers to sect. 27. *Spalding*.

30. But exordia are often taken from matters which are not properly concerns of our clients or their causes, but which yet in some way relate to both of them. With the persons of our clients are connected not only their wives and children, to whom I have previously alluded,* but their relatives and friends, and sometimes countries and cities, and whatever else may be injured by the failure of those whom we are defending.

31. To the cause, among external circumstances, may be referred the occasion, from which is derived the exordium in behalf of Cælius; t the place, from which is taken that in behalf of Clætorius; l the appearance of things, whence that in behalf of Milo; § public opinion, whence that against Verres; and in short, that I may not specify everything, the report respecting the trial, the expectation of the people; for, though none of these things form part of the cause, they yet have a connexion with the cause. 32. Theophrastus adds that an exordium may be derived from the form of the pleading, as that of Demosthenes for Ctesiphon appears to be, when he entreats to be allowed to speak as he himself may think most proper, rather than according to the mode which the prosecutor has laid down in his charge. ll

33. Confidence often suffers from being thought to partake of presumption. But artifices which procure us favour, and which, though common to almost all pleaders, are not to be neglected, even if for no other reason than that they may not be first employed against us, as to wish, to express detestation, to enterat, to show anxiety; because if a cause appears to be brought forward which is new, important, atrocious, and of consequence in regard to precedent, it generally renders the judge extremely attentive, and especially if he is moved by concern for himself or his country; and his feelings must then be excited by hope, fear, admonition, sup-

* I consider the allusion to be to sect. 28, not, as Gesner thinks, to sect. 13. Spalding.

t Pro Cool. c. 1. *Miretur quod diebus festis, &c.*

§ C. 2. *Moveor etiam loci ipsius insolentid, &c.*

§ C. 1. *Hac novi judicii nova forma, &c.*

ll Act. pr. c. 1. *Inveteravit enim jam opinio, &c.*

Ti tEschines had solicited the judges not to allow Demosthenes to indulge in any irregularity, but to oblige him to reply to the charges in the same order in which he himself had stated them. Hence Demosthenes took his exordium. T%mebus.

plication, and even by false representations,* if we think that they will be of service to us.

34. It also has effect in securing the attention of the audience, if they think that we shall not detain them long, or enter upon matters foreign to the subject. Such attention in itself makes the judge desirous of information, and especially if we can state, briefly and clearly, the substance of the matter of which he has to take cognizance; a method which Homer and Virgil have adopted at the commencement of their poems.

35. As to the length of it, it should be such as to resemble a proposition rather than an exposition, and show, not how every particular in the cause occurred, but on what particulars the pleader intends to speak. Nor do I know that a better example of such a summary can be found than that of Cicero in his speech for Aulus Cluentius: 36. "I have remarked, judges, that the whole speech of the accuser is divided into two parts; t of which one appeared to me to rest, and principally to depend, on the odium, now long prevalent, arising from the judgment of Junius, the other to touch, for form's sake, timidly and diffidently, on the question of the charge of poisoning, though it is on this point that the present inquiry has according to law been instituted." All this, however, is more easy for the defender than the prosecutor, because by the one the judge is merely to be warned, by the other he must be informed.

~7. Nor shall any authors, however eminent, induce me to entertain the opinion that I may sometimes dispense with rendering the judge attentive and willing to listen. (Not that I am ignorant of the reason which is alleged by them, namely, that it is for the advantage of a bad cause that its nature should not be understood; but the truth is, that the judge's ignorance of a cause does not arise from inattention on his

* *Vanitate.*] That is *mendacio*, as Capperonier has rightly explained it. Badius, Rollin, 2,nd Gedoyn, fixing their thoughts unhappily on their own language, understand it in the sense of *ambitione judicis*; and I am surprised to see that Gesner is similarly inclined. Compare xi. 2, 22. . . How Quintilian can uphold his orator, who is to be a good man, in this *vanita.*, I leave for others to consider. Spalding.

fi Cluentius had been accused, first of having procured the condemnation of Oppianicus by bribing the judges, or rather jury, in the trial before Junius; secondly, of having given poison to Oppianicus Tarcebus.

art, but from error into which he is led.) 38. Suppose that our adversary has spoken, and has perhaps produced conviction at the judge ; we require that his opinion should be changed, and it cannot be altered unless we render him attentive and willing to listen to what we are going to say. How are we to do it then ? I consider that some of our adversary's arguments must be weakened, or depreciated, and noticed with a sort of contempt, in order to lessen the strong feeling of favour which the judge has for the opposite party ; a method which Cicero adopted in pleading for Ligarius. 39. For what else was the object of that irony,* but that Caesar might be induced to give less attention to the cause, as presenting no extraordinary features? What is the purpose of the speech for Ceilius, but that the charge might seem less important than it was thought to be?

But of the rules which I have proposed, it is evident that some are applicable to one sort of causes, and some to another. 40. The kinds of causes, too, most rhetoricians pronounce to be five, the *honourable*, the *mean*, the *doubtful* or *ambiguous*, the *paradoxical*, and the *obscure* ; that is, the *evbo~ov*, the *ubo~ov*, the *iaapfbo~ov*, the *xagci8o~oy*, and the *bu6aagaxo~ovO, roV*. Some think that to these it is proper to add the *base*, which some comprehend under the mean, others under the paradoxical. 41. What they call *paradoxical*, is something that is brought to pass contrary to human expectation. In an *ambiguous* cause we should make it our chief object to render the judge well affected, in an *obscure* one *desirous of information*, in a *mean* one *attentive*. As for an *honourable* cause, it has sufficient attraction in itself to conciliate ; in one that is *paradoxical* or *base*, there is need of palliation.

42. Hence some divide the exordium into two parts, the *introduction* and the *insinuation*; in order that in general, in the introduction, there may be a straightforward request for the judge's goodwill and attention ; but, as this cannot be made in a dishonourable cause, some insinuation may then be directed cautiously into his mind, especially if the aspect of

* Comp. sect. 70.

† This has reference only to the *judiciale genus causarum*, of which these five *genera* are in reality *species* ; they are mentioned by Cicero de Inv. i. 15; Fortunatianus, p. Pith. 60 ; Snip. Victor, p. ejusd. 243. *Rpalding*.

the cause is not even plausible, either because the ground of it is dishonourable in itself, or because it is disapproved by the public ; or if, again, the cause suffers from the appearance of a patron or a father against a client or a son,* which render it unpopular, or from that of an old or blind man, or 'an infant, which excites feelings of compassion. 43. What arts we must adopt to counteract these difficulties, rhetoricians teach us at great length, imagining cases for themselves, and treating them according to the forms of judicial processes; but such peculiarities, as they spring from varieties of causes of which we cannot give rules as to every species, unless they be comprehended under general heads, might be enumerated to infinity. 44. For every difficulty a remedy must therefore be sought from the peculiar nature of the case. Let it, however, be laid down as a general rule, that we should turn from that which is prejudicial to us to that which is favourable. If we are perplexed about our cause, the character of our client may aid us ; if about our client, the nature of our cause ; if nothing that can be a support to us, presents itself, we may seek for something to damage our adversary ; for as it is our greatest wish to gain more favour than our adversary, so it will be our next object to incur less dislike. 45. In regard to offences which cannot be denied, we must endeavour to make them appear less heavy than has been represented, or to have been committed with another intent, or to have no reference to the present question, or to be capable of being expiated by repentance, or to have been already sufficiently punished. Such allegations it is easier for the advocate to make, therefore, than for his client ; for he can praise without incurring the charge of conceit, and may sometimes even blame to advantage. 46. He will sometimes, accordingly, pretend that he is moved with concern, (like Cicero in his speech for Rabirius Posthumus,) in order to gain the ear of the judge, and will assume the sincerity of a person who feels the truth of what he says with a view to gain greater belief when he proceeds to justify or disprove the charges against his client. We are, therefore, to consider first of all whether we should adopt the

* If a client pleads against his patron, or a son against his father, the very appearance and presence of either the patron or the father on the trial, (to say nothing of the unfavourable feeling among the audience), discourages the client or the son. *Rollin*.

character of a party in the suit or of an advocate, whenever either is in our power. *In* the schools, indeed, there is free choice ; but in the forum, it is rare that a person is competent to plead his own cause. 47. A youth learning to declaim, however, ought to plead causes, such at least as chiefly depend on the pathetic, in the character of the parties themselves ; for the feelings cannot be transferred ; and the emotion received from another person's mind is not communicated with the same force as that which proceeds from our own. 48. For these reasons there is thought to be need of *insinuation*, *if* the pleading of our opponent has taken effect on the mind *of* the judges, or *if* we have to address them when their attention is fatigued; from the one *of* which difficulties we shall extricate ourselves by promising to bring our own proofs, and by eluding the arguments of the adversary, and from the other by giving hopes that we shall be brief, and by recurring to those other means by which I have shown* that the judge may be rendered attentive. 49. A little pleasantry, too, seasonably introduced, refreshes the minds of the judges, and gratification, from whatever quarter produced, relieves the tedium of listening. Nor is the art of anticipating what is likely to be said against us without its use ; as Cicero sayst that *he knew some had expressed surprise that he, who had for so many years defended many, but prosecuted none, should now appear as the accuser of Verres* ; and then shows that the accusation *of Verres* is a defence *of the allies*. This rhetorical artifice is called *prolepsis*, or anticipation." 50. As it is useful at times, it is now almost constantly adopted by some declaimers, who think that they must never begin but with something contrary to their real subject.

Those who follow Apollodorus deny that there are only the three ways which I have specified\$ of propitiating the judge, and enumerate various other sorts of them, almost infinite in number, derived from *the character of the judge*, from *notions formed of circumstances relating to the cause*,§ from *opinions entertained of the cause itself*, and from the elements of which every cause is composed, as *persons, deeds, words, motives*

* Sect. 33, 34.

At the commencement of the *Divinatio in Q. Cccilium*.

Sect. 5.

5 Comp. Sect. 31.

seasons, places, occasions, and the like. 51. That advantage may really be taken of these particulars, I readily admit, but consider that they all come under the three heads speafilled ; for *if I* make the judge *propitious, attentive, and ready to be informed*, I find nothing more that I need desire ; as the very fear,* which appears to have the greatest influence independent *of* these particulars, both secures the attention *of* the judge, and deters him from showing partiality to the opposite side.

52. Since it is not sufficient, however, to indicate to learners what enters into the nature *of* an exordium, without instructing them also how an exordium may be best composed, I add that he who is going to speak should reflect *what* he has to say, *before whom, for or against whom, at what time or place, amidst what concurrence of circumstances, under what prepossession of the public; what opinion it is likely that the judge has formed* previous to the commencement *of* the pleadings, and what the speaker has to *desire or deprecate*. Nature herself will lead him to understand what he ought to say first. 53. But now they think anything with which they happen to start, an introduction, and whatever occurs to them, especially if it be some thought that pleases them, serves them, forsooth, for an *exordium*. Many points, doubtless, may be introduced into the exordium which are derived from other parts of the cause, or which are common to the exordium with other parts ; but nothing will be said preferably in any particular part, but that which cannot be said equally well in any other part.

54. There is much attraction in an exordium which derives its substance from the pleading of our opponent, for this reason, that it does not appear to have been composed at home, but to be produced on the spot, and from the suggestion of the subject; it increases the reputation of the speaker for ability, from the facility which he exhibits, and, from wearing the appearance of a plain address, prompted by what has just been said, gains him the confidence *of* his audience ; insomuch that, though the rest of his speech may be written and carefully studied, the whole *of* it nevertheless seems almost entirely extemporaneous, as it is evident that its commencement received no preparation at all. 55. Very frequently, too, an exordium will be pleasing from a certain modesty in the

* Sect. 20, seqq. *Spalding*.

thoughts, style,* tone, and look of the speaker, so far that even in a cause which hardly admits of controversy, the confidence of the orator ought not to display itself too plainly ; for the judge generally detests assurance in a pleader, and, as he knows^l his own authority, tacitly looks for a due portion of respect. 56. We must take no less care, also, that we may not excite suspicion in the exordium ; and therefore no appearance of study ought to be shown in it, because all art on the part of the orator seems to be directed against the judge. 57. But to avoid the suspicion of using art is the achievement of the highest art ; a precept which is given by all writers on rhetoric, and with the utmost propriety ; yet the present practice, from the state of things in our times, is somewhat at variance with it ; because on certain trials, especially capital ones, and those before the centumviri, } the judges themselves require to be addressed in careful and formal speeches,+ and think themselves slighted if study is not apparent in every pleading before them, desiring not only to be instructed but to be pleased. 58. Moderation in such a practice is difficult,§ but it may be so far observed that we may give our oratory the appearance of carefulness and not of cunning.

Of the old precepts this still remains in force, that *no unusual expression, no highly audacious metaphor, nothing borrowed from what is obsolete and antiquated, or from poetic license, should appear in the exordium.* 59. For we are not as yet admitted to full freedom of speech, and the attention of the audience, being still fresh, keeps us under restraint, but when their minds are propitiated and warmed, greater liberty will be tolerated, and especially when we have entered on those moral topics JJ of declamation whose natural fertility prevents the boldness of an expression from being observed amid the splendour of beauty that surrounds it.¶

60. Our style in the exordium ought not to resemble that of the argumentative, or sentimental, or narrative parts of our

* *Compositions.*] *Sc. verborum. Capperonier.*

t See iii. 10, 3.

§ *Comp. iv. 2, 122; v. 10, 115.*

§ *Comp. iv. 1, 9; xii. 9, 5.*

¶ *Locos.*] See. ii. 1, 11; 4, 22.

l See c. 2, sect. 117; and ix. 4, 29.

speech. Nor should our manner be too prolix +^l or circumlocutory, but should wear the appearance of simplicity and unaffectedness, not promising too much either in words or look. A mode of delivery in which all art is concealed, and which, as the Greeks say, is, *ave-ri-a-ros*, «unostentatious," steals often most successfully on the mind of the hearer. But such points are to be managed according to the way in which it is expedient that the minds of the judges should be impressed.

61. To be confused in memory, or to lose our fluency of speech, has nowhere a worse effect than at the commencement, as a faulty exordium may be compared to a countenance disfigured with scars ; and that pilot is surely one of the worst who runs his vessel aground as it is leaving the harbour. As to the length of an exordium, it must be regulated by the nature of the cause. 62. Simple causes require but a short introduction ; such as are perplexed, suspicious, or unpopular, demand a longer one. But those who have prescribed laws for all exordia, saying that they must be limited to four sentences,t make themselves ridiculous. Yet immoderate length in the introduction is no less to be avoided, lest the speech should seem to have a head of disproportionate size, and lest that which + ought to prepare the hearer should weary him.

63. The figure by which the orator's address is turned from the judge, and which is called *apostrophe*, some rhetoricians wholly exclude from the exordium, being doubtless led by some show of reason to form such an opinion on this point ; for it must be admitted that it is most natural for us to address ourselves chiefly to those whose good will we desire to secure.

64. At times, however, some striking thought § may be neces-

* *Oratio-deducta.*] Stating matters in a long series, as *deducere Barmen* in Ovid. *Burmenn.*

t *Intra quatuor senas.*] That is, four sentences; & *avoiatg*, expressed in as many periods ; four propositions of reasonable length. *Capp. toner.* Something of this kind must have appeared in books on rhetoric in Quintilian's time. *Spalding.*

§ *Spalding* retains *quo* in his text, but proposes *quod* in his note, to which I have made my version conformable.

§ *Sensus aliquis.*] That is, *sententia quadam eximia*, some remarkable observation ; such as the Greeks mean by *vóilua*, and the Italian& by *conchetto*. *Capperonier.*

sary to our exordium, * and this may be rendered more lively and spirited if directed to another person. Should this be the case, by what law, or by what superstitious regard for rules, should we be prevented from giving force to our conceptions by this figure? 65. Writers of books on the art, indeed, do not proscribe the figure as being illicit, but because they do not think it advantageous; and thus, should the advantage of using it be proved, we shall be forced to adopt it for the same reason for which we are now prevented. 66. Demosthenes directs his remarks to Eschines in his exordium; Cicero, in commencing his speech for Ligarius, addresses himself to Tubero, and, in the beginning of those for several other persons, speaks to whomsoever he pleases. 67. His exordium to the speech for Ligarius, indeed, would have been much more languid, if it had been in any other form; as the reader will better understand, if he directs to the judge all that most spirited part which is in this form, *You have, therefore, Tubero, that which is most to be desired by an accuser,* etc., for then the address would seem really *turned away*, **, and the whole force of it would be lost if we were to say, *Tubero therefore has that which is most to be desired by an accuser.* 68. In the first method the orator urges and presses on his opponent; in the second he would merely make a statement. The case would be similar with the passage in Demosthenes, if you alter the turn of it. Has not Sallust, too, adopted an exordium directly addressed to Cicero, against whom he was pleading, starting with the words, *I should bear your reproaches, Marcus Tullius, with concern and indignation,* etc. ? § The same form has been chosen by Cicero in his attack on Catiline, *How long then will you abuse our patience,* etc. ? 69. And that we may not wonder at the use of the apostrophe, Cicero, in his defence of Scaurus, who was accused of bribery, (a, pleading

* *Hoc procmio.*] In hoc ipso, de quo jam agimus, procmio. *Spalding.*

t P. 228, extr. ed. Reisk.

+ *Vera averaa videatur oratio.*] A play, as Spalding observes, on the word *apostrophe*.

These words are found at the commencement of the declamation against Cicero, falsely attributed to Sallust. It is probable that the author of that declamation, finding the words in Quintilian, pressed them, as well as those in ix. 3, 89, *O Ro7nule Arpinas*, into his own service. See my translation of Sallust, p. 276.

which is found in his commentaries,* for he defended Scaurus twice,) employs the *prosopopeia*,^t making another person speak for his client; and in his oration for Rabirius Posthumus,⁺ and in that also for Scaurus when accused of extortion, the introduces *examples* in the exordium; while in his speech for Cluentius he commences, as I have previously observed,[§] with *partition*.

70. But these figures are not, because they may sometimes be used effectively, to be used perpetually, but only whenever reason prevails over rule; as we may sometimes employ the simile, provided it be short, the metaphor, and other figures, (which the timid and careful teachers of rhetoric prohibit,) unless that noble specimen of irony in the speech for Ligarius, which I noticed a little above,^{||} gives offence to any reader.

71. Other faults in exordia they have exposed with greater justice. That sort of exordium which may be adapted to several causes is called *vulgar*; ¶ (a species which, though regarded with little favour, we may occasionally adopt with advantage, and which is not always avoided by the greatest orators;) that which our opponent may use as well as ourselves, is termed *common*; that which our opponent may turn to his own purpose, is designated as *commutable*; that which has no just connexion with the cause, is styled *detached*; that which is derived from some other subject, *transplanted*; some, again, are blamed as *long*, or *contrary to rule*. Most of these faults, however, are not peculiar to the exordium, but may be found in any or every part of a speech.

72. Such are the points to be noticed with respect to the exordium, as often as there may be occasion for one; which is not always the case, for it is sometimes superfluous; as when the judge, for instance, is sufficiently prepared without it, or

* See x. 7, 30. The other trial of Scaurus was for extortion. Cicero's defence of him on that occasion was published. Scaurus was acquitted of extortion, and found guilty of bribery. See Dr. Smith's Diet. of Biog. and Mythol.

+ He introduces in his exordium some one speaking for the accused; a figure even more bold than the apostrophe. The commentaries mentioned in the text are entirely lost. *Spalding.*

C. 1, extr.

§ Sect. 36.

|| Sect. 39.

¶ See ad Herenn. l. 7 extr.; Cie. de Inv. i. 18; Quint. v. 13, 34. *Spalding.*

when the subject itself requires no introduction. Aristotle,* indeed, denies that it is ever necessary in addressing able judges. Sometimes, too, we cannot employ an exordium, even if we wish ; as when the judge is much occupied, when time is short, or when a superior authority † obliges us to enter at once upon our subject. 73. Sometimes, on the other hand, the nature of an exordium is found in other parts of the speech ;+ for in the statement of facts, or in the course of our arguments, we occasionally ask the judges to attend, or to be favourable to us ; a practice by which Prodicus thought that they might be roused when disposed to sleep. 74. The following passage is an example : *Then Caius Varenus, § he who was killed by the slaves of Ancharius, (to this point, judges, pay, I beseech you, the most careful attention,)* etc. If the cause, moreover, consists of many heads, ¶ a proper introduction must be prefixed to each head : as, *Listen now to what follows ;* or, *now proceed to the next particular.* 75. But even among the proofs themselves many observations occur that serve the purpose of an introduction, such as Cicero makes in his speech for Cluentius, ¶ when about to speak against the censors, and in that for Muræna,** when he makes an apology to Servius. But this practice is so common as to make it unnecessary to establish it by examples.

76. Whether, when we have used an exordium, we afterwards commence a statement of facts, or proceed at once to produce our proofs, that point ought to be stated *last* in our introduction, with which the commencement of the sequel will most naturally unite itself. 77. But the affectation in the schools, of disguising the transition in some striking thought,

* Rhet. iii. 14, 8. See Quint. xii. 10, 52.

+ If the emperor, for instance, should be judge. *Spalding.*
 † *Non exordio.]* These words, observes Spalding, are to be taken as one.

§ *Comp. iv. 2, 26; ix. 2, 56,* where the same passage is quoted. Lucius Varenus, as far as can be judged from a very few fragments of this lost oration of Cicero, was accused of having killed Caius Varenus and Salarius, and of having attempted the life of Cneius Varenus. Cicero endeavours to transfer the guilt from Lucius Varenus to the slaves of Caius Ancharius Rufus, (vii. 2, 10,) but was unsuccessful, for Lucius Varenus was condemned. vii. 2, 36. *Spalding.*

¶ *Multiplex causa.]* See iii. 10, 1 ; iv. 2, 85.

¶ C. 42.

* C. 2.

and trying to gain applause, forsooth, for what is little more than a trick,* is frigid and puerile ; though Ovid constantly indulges in it in his *Metamorphoses* ; but, for him, necessity may be some excuse, as he had to unite things the most discordant into the semblance of a whole. 78. But what need is there for the orator to conceal his transitions, and impose upon the judges, when they require to be admonished to give their attention to the order of particulars ? The commencement of the statement of facts will even be lost upon them, if they are not aware that such statement is begun. 79. Accordingly, as it is best not to rush abruptly into our statement, so it is preferable not to pass to it without notice. But if a long and perplexed exposition is to follow, the judges must be specially prepared for it ; as Cicero has done in many places, and more remarkably in this : † *I shall make a rather longer introduction than ordinary to demonstrate this point, and I entreat you, judges, not to receive it unfavourably ; for, when the commencement is understood, you will with far more ease comprehend the sequel.*

Such are the principal notions which I have conceived respecting the exordium.

* *Ut ipse transitus efficiat aliquam utique sententiam, et hujus velut prævstigice plausum petat.]* " That the transition itself may form some particular thought, and may seek applause for this trick, as it were." Spalding would read *petant*, sc. *oratores*. Capperonier observes that *sententia* is here the same as *γυνῶν* or *ὀβριπᾶ*.

† Pro Cluent. c. 4 extr.