

tinguished by the character of *urbanitas*, I do not see. I 10
 If it is not the whole complexion of a composition, (as it appears to me,) that entitles it to thi's distinction, and if the term is to be applied to single expressions, I should rather give the character of *urh* ■ to those sayings which are of the kind called *droll*, but which yet are not droll, such as the following : 111. It was said of Asinius Pollio, who could adapt himself alike either to business or to pleasure, *that he was a man for all hours* ; and of a pleader, who spoke with ease extemporaneously, *that he had all his wit in ready cash*. Such, too, was the saying of Pompey, which Marsus notices, addressed to Cicero, who expressed distrust of his party ; go over to Ccesar, then, and you will fear me.* Though this, if it had been uttered on a less important occasion, or in another spirit, or by any other person than Pompey, might have been numbered among droll sayings. 112. To these may be added what Cicero wrote to Cerellia,t assigning a reason why he so patiently endured the proceedings of Casar : *These things must be borne, either with the mind of a Cato or with tin tomach o/ a Cicero* ; for the word stomach carries with it something like a jest.

These reflections, which struck me with regard to the definitions of Marsus, I could not withhold from my readers ; in which, though I may have erred, I have not deceived them, having pointed out at the same time a different opinion, which it is free for those, who approve it, to follow.

CHAPTER IV.

Remarks on *altercation* or discussion, § 1-5. Too much neglected by some pleaders, 6, 7. Qualifications requisite for success in it; acuteness, knowledge of the case, good temper, attention to the main question, 8-13. Further observations, 14-16. We may dissemble our strength, in order to mislead our adversary, 17, 18. Disposition of the judge to be observed, 19, 20. The student should exercise himself in this department, 21. Order of proofs is important, 22.

1. IT might appear that I should not enter upon precepts

* As Cicero was constantly saying that he was afraid of Caesar and his army, Pompey said to him, Go over to Caesar, and you will then **fear me**, you who are always afraid of the enemy. *Capperonier*.

† A learned and philosophical lady with whom Cicero had some correspond3nce, of which the sentence in the text is the only remaining fragment. *Scalding*. See Dio Case. b. xlvi. p. 461, ed. Reim.

concerning *discussion** until I have treated of every particular regarding continuous speaking ; for recourse is had to discussion last of all ; but, as it depends on invention alone, and can have no concern with arrangement, nor requires any, great ornament from style, or much assistance from memory or delivery, I think that, before I proceed to the second of the five parts, I shall treat of this, which is connected wholly with the first, in a not improper place, if I speak of it here. 2. It is a matter which other writers have neglected, perhaps because sufficient regard seemed to have been paid to it in the other rules of the art ; for it consists either in attack or defence, concerning which a considerable number of directions have been given ;+ since whatever is proper with regard to proofs in a continued speech, must also necessarily be applicable to the brevity and conciseness of discussion, in which no other topics are introduced than are in the rest of the pleading ; they are only treated in another manner, that is, by way of question and answer. Almost all that is necessary to be observed with respect to this head has been noticed by me § in the part relating to witnesses. 3. Yet, as I am pursuing this work on an extensive plan, and as an orator cannot be called accomplished without ability in discussion, let me devote a little particular attention to this point also, which, indeed, in some causes, contributes greatly to insure success. 4. For as, with regard to the general *quality* of an action, when it is considered whether it was justly done or otherwise, continuous speaking is most required, which also sufficiently sets forth, for the most part, questions of *definition* or *exception*,¹¹ as well as all those in which a fact is admitted, or inferred, by

• *Altercationis.*] *Altercatio* is disputation consisting in answers and replies, or, as Quintilian says a little farther on, *brevis et concisa actio*, as opposed to *actio continua* or *perpetua*, which is not interrupted by any questions from the opposite party. There is an excellent example of *altercatio* in Cicero's Epist. ad Att. i. 16. *Capperonier*.

† That is, after the regular pleading of the cause. *Turnebus*.

§ The commentators refer to b. iii. c. 9, but there are allusions to the subject in various passages of the work, especially in book v., where proof and refutation are formally noticed. *Spalding*.

§ B. v. c. 7.

|| *Quivstiones fsnitionis* (et) *actionis.*] *Actio* is here to be interpreted *status translatus*, or "state of exception." See iii. 6, 23. *Spalding*. We must read *qucestiones* in the plural, as Spalding observes ; and it will be better to insert *et* between the two other substantives.

conjecture * from artificial proof ;t so in those causes, (a very ituineros class,) which either depend solely on proofs called iilartificial4 or such as are of a mixed kind, the heat of discussion is frequently most fierce ; nor should we say that .ad'ocates point their swords at each other in any part of a cause more closely than in this. 5. For the strongest arguments must here be inculcated on the mind of the judge ; whatever we promised in the course of our pleading must be made good ; and the false allegations of the opposite party must be refuted. There is no part of a cause, indeed, in which the judge is more attentive ; and some pleaders, though but of moderate power in speaking, have, by their excellence in disputation, gained a just title to the name of advocates. 6. But some, on the other hand, satisfied with having bestowed, on their clients the showy labour of declamation, quit the benches at the close of it, attended with a crowd of flatterers, and leave to ignorant and mean practitioners § the conduct of the battle which ought to decide the cause. 7. Accordingly, in private causes, we may see some advocates chosen for *pleading* and others for the *establishment of proofs*. But ii these duties are to be divided, the latter is surely of more importance than the former ; and it is dishonourable to oratory to say that inferior pleaders profit their clients more than those of greater ability. At public trials, however, the voice of the crier cites him who has pleaded ¶ as well as the other advocates.

8. For such disputation, then, there is need, in the first place, of a quick and active intellect, and of a ready and keen judgment. For we have no time to reflect, but must speak at once, and aim a blow at our adversary at the same time that we parry his attempt on ourselves. As , it is of the greatest importance, therefore, to every part of an orator's duty, to know his whole cause not only accurately, but familiarly, so it is of the utmost necessity, in altercation with our adversary, to have a thorough knowledge of all the cha-

* *Statu conjecturali I* See b. iii. c. 6.

+ See b. v. c. 1.

\$ See b. v. c. 1.

§ *Pullatce turbce.] Comp. ii. 12, 10.* But it is the *pragmatics that are* here understood, as Turnebus justly remarks. *Spalding.*

¶ He cannot go off, as in private **causes.**

ratters, instruments, times, and places - connected with it; otherwise we shall often be put to silence, or, if others suggest replies to us, we must, from necessary haste to speak, unreasoningly acquiesce in what they, say ; . whence it will sometimes happen that in trusting to others, we shall nave to blush for their folly. Nor is the matter made clear by these monitors.* 9. Some advocates, too, try undisguisedly to bring us to a quarrel ; for we may see many of them, transported apparently with wrath, calling upon the judge *to attend, and* saying that *what is suggested is contrary to fact, and that he who is to decide the cause should understand the evil which is-kept out of sight.* 10. He who would be a good disputant, therefore, must be free from the vice of passionateness ; for no affection of the mind is a greater enemy to reason ; it carries us out of the cause, leads us, frequently, to offer and inc--r gross insults, sometimes draws upon us the indignation of the judges themselves. Moderation is better, and sometimes even sufferance ; for allegations made by the opposite party must not only be refuted, but must be held up to contempt, must be undervalued and ridiculed ; nor can wit find any better place for exercise than this. Such is the case as long as matters are conducted with order and due respect to us r but against turbulent adversaries we must show a bold face,; and oppose impudence with firmness. 11. For there ara some speakers of such a hardened front that they assail us with loud bluster, interrupt us in the middle of a **speech, and** confuse and disturb the whole proceedings ; these we must be so far from imitating, that we must vigorously repel them their insolence must be put down ; and we must at times appeal to the judges or presiding magistrates that the times for speaking may be fairly observed. It is no task for an indolent mind, or an excessively modest character; and that which is called *honesty* often bears a false name, and should rather be *called imbecility.*

12. What is of the greatest value in disputation is *acuteness*, which doubtless does not come from art; (since what is natural is not taught ;) but it may be improved by art. 13. The chief requisite is, to keep the point in dispute, and that which we wish to establish, constantly before our eyes ; because, if we keep to one object, we shall not be led into useless altercation,

* *Negiee tamen hoc ipsis monitoribus clarescit.] Burmann would read neque tamen lis his 7nonitoribus clarescit.*

or waste the time due to the cause in railing; and, if our adversary commit such errors, we shall have the pleasure of taking advantage of them.

14. To those who have meditated carefully what may be objected on the opposite side, or what replies may be made on their own, all occasions * may be turned to advantage. It is a kind of artifice employed at times, however, to contrive that certain points, which have been concealed in the course of the pleading, may be suddenly brought forth in the subsequent discussion; starting out as it were in an unexpected sally, or a spring from an ambush. This is a plan which may be adopted when there is some particular in the cause on which we cannot speak satisfactorily at once, but which we can make clear when time is given us for consideration."* 15. What is secure and solid, it will be best to bring forward at the commencement of our proceedings, that we may insist upon it the oftener and the longer. It seems scarcely necessary to direct that a disputant should not be turbulent and clamorous merely, like people who are utterly strangers to learning; for audacity, though it may be troublesome to the adversary, is at the same time hateful to the judge. 16. It is inexpedient, too, to contend long for a point which you cannot carry; for where you must be conquered, it is better to yield; because, if there be several points in dispute, the good faith which we show with regard to one will cause us to be more trusted with respect to others, or, if there be but one point, a lighter penalty may be inflicted on us in consequence of a candid acknowledgment. To persist in vindicating a fault, especially when it is exposed, is to commit another fault.

17. While the contest is undecided, there is great skill and artifice in drawing on our adversary when wandering from the point, and forcing him to go as far from it as possible, in such a way that he may exult at times in false hopes of success. Some points in our evidence may accordingly with advantage be kept back; for our opponents will perhaps press for them with importunity, and risk the whole of their cause on what

* *Omnia te+npora.*] Capperonier and Spalding agree with Rollin in thinking that *terpora* should be expunged.

f *Citi o limo facto.*] *Facto*, observes L3urmann, can hardly be Quinilian's word. He proposes *iinpetui* or *incursui*.

Ad diaponendurn.] I have no doubt that Quintilian wrote *dispiciandum*. *Comp. x. 7, 20. Spuldiag.*

they think that we cannot produce, adding authority to our proofs by the earnestness with which they demand them.

18. It may be of use, too, at times, to abandon some point to our adversary, which he may think in his favour, in order that, while he is grasping it, he may let slip something of greater importance; or to offer him his choice of two things, either of which he will choose to his disadvantage; a course which may be adopted with more effect in discussion than in regular pleading, because in the one we reply to ourselves, and in the other we convict our adversary, as it were, on his own confession.

19. It is the part of an acute pleader to observe, above all, by what remarks the judge is most impressed, and to what he listens with disapprobation; a circumstance which may often be discovered from his looks, and sometimes from some word or gesture. He ought then to insist upon whatever promotes his object, and to withdraw adroitly from whatever is prejudicial to him. It is in such a way that physicians act; they continue or cease to give medicines, just as they see that they are relished or loathed by the patient. 20. Sometimes, if it is not easy to make a point that we have stated clear, we may raise another question, and fix the attention of the judge, if possible, upon it; for when you yourself cannot answer to a thing, what is to be done but to find something else to which your opponent may be unable to answer? 21. In regard to most parts of a disputation, as I observed,* the same is to be said as in regard to the examination of witnesses, the difference being only with respect to persons; as in the one case the contest is between advocates, and in the other between the witness and the advocate. But to exercise one's self in disputation is much more easy; for it is possible, and may be of the greatest advantage, to choose, in conjunction with some one engaged in the same studies, a subject, either true or fictitious, for discussion, and to take different sides upon it after the manner of altercations in the courts; a practice which may also be adopted in respect to the simple sort of questions.f

22. I would also have an advocate understand in what order his various proofs should be brought before the judge in such disputations; and the same plan may be adopted with

* Sect. 2.

I understand questions, *theses*, as distinct from causes; see v. 10, 53' ii. 19. *Svaldino.*

regard to them as with regard to the arguments in his speech, namely, that the strongest be placed first and last ; for the former dispose the judge to believe him, and the latter to decide in his favour.

CHAPTER V.

Of judgment and sagacity ; their importance, § 1-6. Examples from Demosthenes, 7, 8. From Cicero, 9, 10. Conclusion of the book, 11.

1. HAVING treated of this head to the best of my ability, I should not hesitate to pass at once to *disposition*, which follows next in order, were I not apprehensive that, as there are writers who place *judgment** under invention, I might be thought by some to have purposely omitted that subject, though it is a quality, in my opinion, so blended and mixed with every part of oratory that its influence is inseparable from even a single thought or word ; and it is not communicable by art any more than taste or smell. 2. All that 1. can do, accordingly, is to teach, and persevere in teaching, what is to be imitated or avoided in each department of the art, in order that judgment may be exercised in reference to it. I shall continue to teach, therefore, that we must not attempt what cannot be accomplished; that we must avoid all arguments that are contradictory or common to both sides ;t and that nothing in our speech must be barbarous or obscure ; but the observance of all such rules must be under the guidance of common sense, which cannot be taught.

3. From *judgment* I do not consider that *sagacity* greatly differs, except that judgment is employed about things which are evident in themselves, and sagacity about things that are obscure, having either not been noticed at all, or being of a doubtful nature. Judgment is very often sure ; sagacity is a certain reasoning, as it were, from the depths of things, generally weighing and comparing different arguments, and exercising the faculties both of invention and arbitration. 4. But such observations are not to be taken as universally true ; for sagacity is often exercised on some circumstance that *precedes the pleading* of a cause ; as Cicero, in pleading against Verres,

e See iii. 3, 5, 6.

t Cumn;unia.] See iii. 3. 5.

appears with great sagacity to have preferred occupying 'a shorter time with his speech to prolonging it to the year in which Quintus Hortensius was to be consul.*- 5. In the *conduct of a pleading*, sagacity holds the first and most influential place ; for it is required to determine what we ought to say, what to suppress, and what to defer ; whether it be better to deny a fact, or to justify it; when we should use an exordium, and of what kind ; whether we should give a statement of facts, and in what form ; whether we should rest our case on law or on equity ; what order is the most eligible what style we should adopt, and whether it be expedient to speak boldly, gently, or humbly. 6. But upon these points I have already, as occasion has allowed, given some directions, and I shall continue to do so in the rest of my work. I will make a few remarks here, however, by way of example, that it may be more clearly understood what it is that I think cannot be taught by rules of art. 7. The sagacity of Demosthenes is commended in this respect, that, when he was recommending war to the Athenians, who had previously tried it with little success, he showed that nothing had been done in it *with prudent management*, so their neglect might be made amends for, whereas if no error had been committed, there would have been no ground for better hopes for the future. 8. The same orator, too, when he feared to give offence if he reproached the people for their indolence in maintaining the liberty of their country, preferred to dwell on the praise of their ancestors, who had governed it with such effect ; for he thus found them willing to listen, and it naturally followed that, while they approved of the better, they repented of the worse. 9. As to Cicero, his speech for Cluentius alone is worth an infinity of examples. For what proof of sagacity in it shall I admire most ? The opening of the case, in which he deprives the mother, whose influence bore hard upon her son, of all credit ?

* When Cicero saw that it was in contemplation to prolong the proceedings to another year and another pretorship, and to rescue the accused by the aid of Hortensius and Metellus, who would then be consuls, he contrived to avoid protracting his pleading, and spending time on increasing the number of his charges, and called witnesses to support each individual charge that he had made, consigning them to Hortensius for examination ; a mode by which Hortensius was so fatigued, that he ceased to offer further opposition; and Verres, despairing of support, went of his own accord into *exile*. *Asconius Pedianus*.

Or his determination to transfer the guilt of having bribed the judges on the adverse party, rather than deny it, *on account*, as he *says, of the notorious infamy of their judgment*? Or his recourse, last of all, in so odious an affair, to the support of the law, a mode of defence by which he would have alienated the feelings of the judges, if they had not been previously softened? Or his protestation that he adopted that course contrary to the inclination of Cluentius? 10. Or what shall I commend in his speech for Milo? That he made no statement of the case until he had removed the prejudices entertained against the accused? That he threw the odium of having lain in wait upon Clodius, though the encounter was in reality fortuitous? That he commended the deed, and yet exculpates Milo from having intentionally committed it? That he put no supplications into the mouth of his client, but took the character of suppliant on himself? It would be endless to enumerate all the proofs of sagacity that he exhibits; how he divests Cotta of all credit; how he opposes himself in the place of Ligarius; how he rescues Cornelius 11 by alleging the openness of his confession. 11. I think it sufficient to observe, that there is nothing, not only in oratory, but in the whole conduct of life, more valuable than sagacity; that without it all instruction is given in vain; and that judgment can do more without learning than learning without judgment; for it is the part of that virtue to adapt our speech to places, circumstances, and characters. But as this part of my subject is somewhat comprehensive, and is intimately connected with oratorical effect, it shall be noticed when I proceed to give directions on speaking with propriety.**

- Comp. iii. 6, 93.
- t Comp. c. 1, sect. 25, 27.
- Comp. v. 13, 30.
- § Comp. v. 10, 93.
- || Comp. v. 13, 18, 26.
- ¶ See c. 3, sect. 34.
- ** B. xi. c. 1; comp. i. 5, 1.

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