



THE ORATIONS

VOLUME 1

CICERO

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PREFACE.

The text generally followed in the present translation is that of Orellius. This volume was for the most part printed off before Professor G. Long's new edition of the Verrine Oration appeared; so that the translator has been able to avail himself of the assistance afforded by it only in a slight degree. For many important illustrations, especially of points connected with Roman law, he refers the student to that edition.

C. D. Y.

THE SPEECH OF M. T. CICERO AS THE ADVOCATE OF P. QUINTIUS.

THE ARGUMENT.

Caius Quintius and Sextus Nævius, one of the public criers, had been partners, having their chief business in Gallia Narbonensis—Caius died, and left his brother Publius his heir, between whom and Nævius there arose disputes concerning the division of the property of the partnership. Caius had left some debts, and Publius proposed to sell some lands which his brother had acquired as private property near Narbonne, for the purpose of liquidating them. Nævius interposed difficulties in the way of his doing so, and by various artifices tried to make it appear that Quintius had forfeited his recognizances; which would have given a different complexion to the whole case, as to forfeit one's recognizances was a crime liable to the punishment of infamia at Rome. Cicero undertook the defence of Quintius at the request of Roscius the actor—Nævius's cause was conducted by Hortensius, the greatest advocate at Rome. It is doubtful whether this really was the first cause in which Cicero was engaged, as many think that he himself speaks in this oration of having been concerned in other trials previously, and that the speech for Sextus Roscius was his first. Quintius gained the verdict.

I. The two things which have the greatest influence in a state,—namely, the greatest interest, and eloquence, are both making against us at the present moment; and while I am awed ^{Ref. 002} by the one, O Caius Aquillius, I am in fear of the other:—I am somewhat awed, apprehending that the eloquence of Quintius Hortensius may embarrass me in

speaking; but I am in no slight fear lest the interest of Sextus Nævius may injure Publius Quintius. And yet it would not seem so disastrous for us that these things should exist in the highest degree in the other party, if they existed also to a moderate extent in us; but the fact is, that I, who have neither sufficient experience nor much ability, am brought into comparison with a most eloquent advocate; and that Publius Quintius, who has but small influence, no riches, and few friends, is contending with a most influential adversary. And, moreover, we have this additional disadvantage, that Marcus Junius, who has several times pleaded this cause before you, O Aquillius, a man practised in the conduct of other causes also, and much and frequently concerned in this particular one, is at this moment absent, being engaged on his new commission; ^{Ref. 003} and so they have had recourse to me, who, even if I had all other requisite qualifications in ever so high a degree, have certainly scarcely had time enough to be able to understand so important a business, having so many points of dispute involved in it. So that also, which has been used to be an assistance to me in other causes, is wanting to me in this one; for in proportion to my want of ability, have I endeavoured to make amends for that want by industry, and unless time and space be given to one, it cannot be seen how great his industry is. But the greater our disadvantages, O Caius Aquillius, are, with so much the more favourable a disposition ought you, and those who are your colleagues in this trial, to listen to our words, that the truth, though weakened by many disadvantages, may be at last re-established by the equity of such men as you. But if you, being the judge, shall appear to be no protection to a desolate and helpless condition against power and influence; if before this tribunal the cause is found to depend on interest, not on truth; then indeed there is nothing any longer holy and uncontaminated in the state,—

no hope that the firmness and virtue of the judge may counterbalance the lowly condition of any one. But undoubtedly before you and your colleagues truth will prevail, or else, if it be driven from this place by power and influence, it will not be able to find any place where it can stand.

II. I do not say this, O Caius Aquillius, because I have any doubt of your own good faith and constancy, or because Publius Quintius ought not to have the greatest hopes from those whom you have called in as your assessors, being, as they are, among the most eminent ^{Ref. 004} men in the state. What then? In the first place, the magnitude of the danger causes a man the greatest fear, because he is staking all his fortunes on one trial; and while he is thinking of this, the recollection of your power does not occur to his mind less frequently than that of your justice; because all men whose lives are in another's hand more frequently think of what he, in whose power and under whose dominion they are, can do, than of what he ought to do,—Secondly, Publius Quintius has for his adversary, in name indeed, Sextus Nævius, but in reality, the most eloquent, the most gallant, the most accomplished men of our state, who are defending Sextus Nævius with one common zeal, and with all their power: if, indeed, defending means so to comply with the desire of another, that he may the more easily be able to overwhelm whomsoever he chooses by an unjust trial; for what, O Caius Aquillius, can be mentioned or spoken of more unjust or more unworthy than this, that I who am defending the liberties, ^{Ref. 005} the fame, and fortunes of another should be compelled to open the cause, especially when Quintus Hortensius, who in this trial fills the part of the accuser, is to speak against me; a man to whom nature has given the greatest possible fluency and energy in speaking? Matters are so managed, that I, who ought rather to ward off the darts of our adversary and to heal

the wounds he has inflicted, am compelled to do so now, even when the adversary has cast no dart; and that that time is given to them to attack us when the power of avoiding their attacks is to be taken from us; and if in any particular they should (as they are well prepared to do) cast any false accusation like a poisoned arrow at us, there will be no opportunity for applying a remedy. That has happened through the injustice and wrong-doing of the prætor; first, because, contrary to universal custom, he has chosen that the trial as to honour or infamy ^{Ref. 006} should take place before the one concerning the fact; secondly, because he has so arranged this very trial, that the defendant is compelled to plead his cause before he has heard a word of the accuser's; and this has been done because of the influence and power of those men who indulge the violence and covetousness of Sextus Nævius as eagerly as if their own property or honour were at stake, and who make experiment of their influence in such matters as this, in which the more weight they have through their virtue and innoony the less they ought to make a parade of what influence they have. Since Publius Quintius, involved in and overwhelmed by such numerous and great difficulties, has taken refuge, O Caius Aquillius, in your good faith, in your truth, in your compassion; when, up to this time, owing to the might of his adversaries, no equal law could be found for him, no equal liberty of pleading, no just magistrate, when, through the greatest injustice, everything was unfavourable and hostile to him; he now prays and entreats you, O Caius Aquillius, and all of ye who are present as assessors, to allow justice, which has been tossed about and agitated by many injuries, at length to find rest and a firm footing in this place.

III. And that you may the more easily do this, I will endeavour to make you understand how this matter has been managed and carried out. Caius Quintius was the

brother of this Publius Quintius; in other respects a sufficiently prudent and attentive head of a family, but in one matter a little less wise, inasmuch as he formed a partnership with Sextus Nævius, a respectable man, but one who had not been brought up so as to be acquainted with the rights of partnership, or with the duties of a head of an established family. ^{Ref. 007} Not that he was wanting in abilities; for Sextus Nævius as a buffoon was never considered without wit, nor as a crier was he reckoned unmannerly. What followed? As nature had given him nothing better than a voice, and his father had left him nothing besides his freedom, he made gain of his voice, and used his freedom for the object of being loquacious with impunity. So there was no reason in the world for your taking him as a partner, except that he might learn with your money what a harvest money can produce. Nevertheless, induced by acquaintance and intimacy with the man, Quintius, as I have said, entered into a partnership with him as to those articles which were procured in Gaul. He had considerable property in cattle, and a well-cultivated and productive farm. Nævius is carried off from the halls of Licinius, ^{Ref. 008} and from the gang of criers, into Gaul and across the Alps; there is a great change in his situation, ^{Ref. 009} none in his disposition; for he who from his boyhood had been proposing to himself gain without any outlay, as soon as he spent anything himself and brought it to the common stock, could not be content with a moderate profit. Nor is it any wonder if he, who had his voice for sale, thought that those things which he had acquired by his voice would be a great profit to him; so that without much moderation, he carried off whatever he could from the common stock to his private house for himself. And in this he was as industrious as if all who behaved in a partnership with exact good faith, were usually condemned in a trial before an arbitrator. ^{Ref. 010}

But concerning these matters I do not consider it necessary to say what Publius Quintius wishes me to mention; although the cause calls for it: yet as it only calls for it, and does not absolutely require it, ^{Ref. 011} I will pass it over.

IV. When this partnership had now subsisted many years, and when Nævius had often been suspected by Quintius, and was not able conveniently to give an account of the transactions which he had carried on according to his caprice, and not on any system, Quintius dies in Gaul, when Nævius was there too, and dies suddenly. By his will he left this Publius Quintius his heir, in order that, as great grief would come to him by his death, great honour should also accrue to him. When he was dead, Publius Quintius soon after goes into Gaul. There he lives on terms of intimacy with that fellow Nævius. There they are together nearly a year, during which they had many communications with one another about their partnership, and about the whole of their accounts and their estate in Gaul; nor during that time did Nævius utter one single word about either the partnership owing him anything, or about Quintius having owed him anything on his private account. As there was some little debt left behind, the payment of which was to be provided for at Rome, this Publius Quintius issues notices that he shall put up to auction in Gaul, at Narbonne, those things which were his own private property. On this, this excellent man, Sextus Nævius, dissuades the man by many speeches from putting the things up to auction, saying that he would not be able at that time to sell so conveniently what he had advertised. That he had a sum of money at Rome, which if Quintius were wise he would consider their common property, from their brotherly intimacy, and also from his relationship with himself; for Nævius has married the cousin of Publius Quintius, and has children by her. Because Nævius was saying just what a good man ought, Quintius believed that he who imitated the language of

good men, would imitate also their actions. He gives up the idea of having an auction; he goes to Rome; at the same time Nævius also leaves Gaul for Rome. As Caius Quintius had owed money to Publius Scapula, Publius Quintius referred it to you, O Caius Aquillius, to decide what he should pay his children. He preferred submitting to your decision in this matter, because, on account of the difference in the exchange, it was not sufficient to look in his books and see how much was owed, unless he had inquired at the temple of Castor ^{Ref. 012} how much was to be paid in Roman money. You decide and determine, on account of the friendship existing between you and the family of the Scapulæ, what was to be paid to them to a penny.

V. All these things Quintius did by the advice and at the instigation of Nævius: nor is there anything strange in his adopting the advice of the man whose assistance he thought at his service. For not only had he promised it in Gaul, but every day he kept on saying at Rome that he would pay the money as soon as he gave him a hint to do so. Quintius moreover saw that he was able to do so. He knew that he ought; he did not think that he was telling lies, because there was no reason why he should tell lies. He arranged, therefore, that he would pay the Scapulæ as if he had the money at home. He gives Nævius notice of it, and asks him to provide for the payment as he had said he would. Then that worthy man,—I hope he will not think I am laughing at him if I call him again a most worthy man,—as he thought that he was brought into a great strait, hoping to pin him down to his own terms at the very nick of time, says that he will not pay a penny, unless a decision is first come to about all the affairs and accounts of the partnership, and unless he knew that there would be no dispute between him and Quintius. We will look into these matters at a future time, says Quintius, but at present I

wish you to provide, if you please, what you said you would. He says that he will not do so on any other condition; and that what he had promised no more concerned him, than it would if when he was holding a sale by auction, he had made any bidding at the command of the owner. Quintius being perplexed at this desertion, obtains a few days' delay from the Scapulæ; he sends into Gaul to have those things sold which he had advertised; being absent, he sells them at a less favourable time than before; he pays the Scapulæ with more disadvantage to himself than he would have done. Then of his own accord he calls Nævius to account, in order, since he suspected that there would be a dispute about something, to provide for the termination of the business as soon as possible, and with the smallest possible trouble. He appoints as his umpire his friend Marcus Trebellius; we name a common friend, a relation of our own, Sextus Alphenus, who had been brought up in his house, and with whom he was exceedingly intimate. No agreement could be come to; because the one was willing to put up with a slight loss, but the other was not content with a moderate booty. So from that time the matter was referred to legal decision. ^{Ref. 013} After many delays, and when much time had been wasted in that business, and nothing had been done, Nævius appeared before the judge.

VI. I beseech you, O Caius Aquillius, and you the assessors in this suit, to observe carefully, in order that you may be able to understand the singular nature of this fraud, and the new method of trickery employed. He says that he had had a sale by auction in Gaul; that he had sold what he thought fit; that he had taken care that the partnership should owe him nothing; that he would have no more to do with summoning any one, or with giving security; if Quintius had any business to transact with him, he had no objection. He, as he was desirous to revisit his farm in Gaul, does not summon the man at present; so he departs

without giving security. After that, Quintius remains at Rome about thirty days. He gets any securities which he had given other people respited, so as to be able to go without hindrance into Gaul. He goes; he leaves Rome on the twenty-ninth of January, in the Consulship of Scipio and Norbanus;—I beg of you to remember the day. Lucius Albius the son of Sextus of the Quirine tribe, a good man and of the highest reputation for honour, set out with him. When they had come to the place called the fords of Volaterra, they see a great friend of Nævius, who was bringing him some slaves from Gaul to be sold, Lucius Publicius by name, who when he arrived in Rome told Nævius in what place he had seen Quintius; and unless this had been told Nævius by Publicius, the matter would not so soon have come to trial. Then Nævius sends his slaves round to his friends; he summons himself all his associates from the halls of Licinius and from the jaws of the shambles, and entreats them to come to the booth of Sextus by the second hour of the next day. They come in crowds; he makes oath that Publius Quintius has not appeared to his bail, and that he has appeared to his. A long protest to this effect is sealed with the seals of noble men. They depart: Nævius demands of Burrienus the prætor, that by his edict he may take possession of Quintius's goods. ^{Ref. 014} He urged the confiscation of the property of that man with whom he had had intimacy, with whom he actually was in partnership, between whom and himself there was a relationship, which while his children lived could not possibly be annulled. From which act it could easily be perceived that there is no bond so holy and solemn, that avarice is not in the habit of weakening and violating it. In truth, if friendship is kept up by truth, society by good faith, relationship by affection, it is inevitable that he who has endeavoured to despoil his friend, his partner, and his relation of fame and fortune,

should confess himself worthless and perfidious and impious. Sextus Alphenus, the agent of Publius Quintius, the intimate friend and relation of Sextus Nævius, tears down the bills; carries off one little slave whom Nævius had laid hold of; gives notice that he is the agent, and that it is only fair that that fellow should consult the fame and fortunes of Publius Quintius, and await his arrival. But if he would not do so, and believed that by such methods he could bring him into the conditions which he proposed, then he asked nothing as a favour, and if Nævius chose to go to law, he would defend him at the trial. While this is being done at Rome, meantime Quintius, contrary to law and to custom, and to the edicts of the prætors, is driven by force by the slaves which belonged to both him and Nævius, as partners, from their common lands and estates.

VII. Think, O Caius Aquillius, that Nævius did everything at Rome with moderation and good sense, if this which was done in Gaul in obedience to his letters was done rightly and legally. Quintius being expelled and turned out of his farm, having received a most notorious injury, flies to Caius Flaccus the general, who was at that time in the province; whom I name to do him honour as his dignity demands. How strongly he was of opinion that that action called for punishment you will be able to learn from his decrees. Meantime Alphenus was fighting every day at Rome with that old gladiator. He had the people indeed on his side, because that fellow never ceased to aim at the head. ^{Ref. 015} Nævius demanded that the agent should give security for payment on judgment being given. Alphenus says that it is not reasonable for an agent to give security, because the defendant would not be bound to give security if he were present himself. The tribunes are appealed to, and as a positive decision was demanded from them, the matter is terminated on the footing of Sextus Alphenus undertaking

that Publius Quintius should answer to his bail by the thirteenth of September.

VIII. Quintius comes to Rome; he answers to his bail. That fellow, that most energetic man, the seizer of other men's goods, that invader, that robber, for a year and a half asks for nothing, keeps quiet, amuses Quintius by proposals as long as he can, and at last demands of Cnæus Dolabella, the prætor, that Quintius should give security for payment on judgment being given, according to the formula, "Because he demands it of him whose goods he has taken possession of for thirty days, according to the edict of the prætor." Quintius made no objection to his ordering him to give security, if his goods had been possessed, in accordance with the prætor's edict. He makes the order; how just a one I do not say,—this alone I do say, it was unprecedented: and I would rather not have said even this, since any one could have understood both its characters. He orders Publius Quintius to give security to Sextus Nævius, to try the point whether his goods had been taken possession of for thirty days, in accordance with the edict of the prætor. The friends who were then with Quintius objected to this: they showed that a decision ought to be come to as to the fact, so that either each should give security to the other, or else that neither should; that there was no necessity for the character of either being involved in the trial. Moreover, Quintius himself cried out that he was unwilling to give security, lest by so doing he should seem to admit that his goods had been taken possession of in accordance with the edict: besides, if he gave a bond in that manner, he should be forced (as has now happened) to speak first in a trial affecting himself capitally. Dolabella (as high-born men are wont to do, who, whether they have begun to act rightly or wrongly, carry either conduct to such a height that no one born in our rank of life can overtake them) perseveres most bravely in committing injustice: he bids him either give security or give a bond;

and meantime he orders our advocates, who objected to this, to be removed with great roughness.

IX. Quintius departs much embarrassed; and no wonder, when so miserable a choice was offered him, and one so unjust, that he must either himself convict himself of a capital offence if he gave security,^{Ref. 016} or open the cause himself in a capital trial if he gave a bond. As in the one case there was no reason why he should pass an unfavourable sentence on himself (for sentence passed by oneself is the hardest sentence of all), but in the other case there was hope of coming before such a man as a judge, as would show him the more favour the more without interest he was, he preferred to give a bond. He did so. He had you, O Caius Aquillius, for the judge; he pleaded according to his bond; in what I have now said consists the sum and the whole of the present trial.

You see, O Caius Aquillius, that it is a trial touching not the property of Publius Quintius, but his fame and fortunes. Though our ancestors have determined that he who is pleading for his life should speak last, you see that we, owing to this unprecedented accusation of the prosecutor's, are pleading our cause first. Moreover, you see that those who are more accustomed^{Ref. 017} to defend people are to-day acting as accusers; and that those talents are turned to do people injury, which have hitherto been employed in ministering to men's safety, and in assisting them. There remained but one thing more, which they put in execution yesterday,—namely, to proceed against you for the purpose of compelling you to limit the time allowed us for making our defence; and this they would easily have obtained from the prætor if you had not taught him what your rights and duties and business were. Nor was there any longer any assistant left to us but yourself by whose means we could obtain our rights against them. Nor was it even enough for them to obtain that which might be

justified to everybody; so trifling and insignificant a thing do they think power to be which is not exercised with injustice.

X. But since Hortensius urges you to come to a decision, and requires of me that I should not waste time in speaking, and complains that when the former advocate was defending this action it never could be brought to a conclusion, I will not allow that suspicion to continue to exist, that we are unwilling for the matter to be decided, nor will I arrogate to myself a power of proving the case better than it has been proved before; nor yet will I make a long speech, because the cause has already been explained by him who has spoken before, and brevity, which is exceedingly agreeable to me, is required of me, who am neither able to devise ^{Ref. 018} nor to utter many arguments. I will do what I have often observed you do, O Hortensius; I will distribute my argument on the entire cause into certain divisions. You always do so, because you are always able. I will do so in this cause, because in this cause I think I can. That power which nature gives you of being always able to do so, this cause gives me, so that I am able to do so to-day. I will appoint myself certain bounds and limits, out of which I cannot stray if I ever so much wish; so that both I may have a subject on which I may speak, and Hortensius may have allegations which he may answer, and you, O Caius Aquillius, may be able to perceive beforehand what topics you are going to hear discussed. We say, O Sextus Nævius, that you did not take possession of the goods of Publius Quintius in accordance with the edict of the prætor. On that point the security was given. I will show first, that there was no cause why you should require of the prætor power to take possession of the goods of Publius Quintius; in the second place, that you could not have taken possession of them according to the edict; lastly, that you did not take possession of them. I entreat you, O Caius Aquillius, and

you too the assessors, to preserve carefully in your recollections what I have undertaken. You will more easily comprehend the whole business if you recollect this; and you will easily recal me by the expression of your opinion if I attempt to overstep those barriers to which I have confined myself. I say that there was no reason why he should make the demand; I say that he could not have taken possession according to the edict; I say that he did not take possession. When I have proved these three things, I will sum up the whole.

XI. There was no reason why you should make the demand. How can this be proved? Because Quintius owed nothing whatever to Sextus Nævius, neither on account of the partnership, nor from any private debt. Who is a witness of this? Why, the same man who is our most bitter enemy. In this matter I will cite you—you, I say, O Nævius, as our witness. Quintius was with you in Gaul a year, and more than that, after the death of Caius Quintius. Prove that you ever demanded of him this vast sum of money, I know not how much; prove that you ever mentioned it, ever said it was owing, and I will admit that he owed it. Caius Quintius dies; who, as you say, owed you a large sum for some particular articles. His heir, Publius Quintius, comes into Gaul to you, to your joint estate,—comes to that place where not only the property was, but also all the accounts and all the books. Who would have been so careless in his private affairs, who so negligent, who so unlike you, O Sextus, as not, when the effects were gone from his hands who had contracted the debt, and had become the property of his heir, to inform the heir of it as soon as he saw him? to apply for the money? to give in his account? and if anything were disputed, to arrange it either in a friendly manner, or by the intervention of strict law? Is it not so? that which the best men do, those who wish their relations and friends to be affectionate towards them and honourable, would Sextus Nævius not do that, he who so burns, who is so

hurried away by avarice, that he is unwilling to give up any part of his own property, lest he should leave some fraction to be any credit or advantage to this his near relation. And would he not demand the money, if any were owing, who, because that was not paid which was never owed, seeks to take away not the money only, but even the life of his relation? You were unwilling, I suppose, to be troublesome to him whom you will not allow even to live as a free man! You were unwilling at that time modestly to ask that man for money, whom you now wish nefariously to murder! I suppose so. You were unwilling, or you did not dare, to ask a man who was your relation, who had a regard for you, a good man, a temperate man, a man older than yourself. Often (as sometimes happens with men), when you had fortified yourself, when you had determined to mention the money, when you had come ready prepared and having considered the matter, you being a nervous man, of virgin modesty, on a sudden checked yourself, your voice failed you, you did not dare to ask him for money whom you wished to ask, lest he should be unwilling to hear you. No doubt that was it.

XII. Let us believe this, that Sextus Nævius spared the ears of the man whose life he is attacking! If he had owed you money, O Sextus, you would have asked for it at once; if not at once, at all events soon after; if not soon after, at least after a time; in six months I should think; beyond all doubt at the close of the year: but for a year and a half, when you had every day an opportunity of reminding the man of the debt, you say not one word about it; but now, when nearly two years have passed, you ask for the money. What profligate and extravagant spendthrift, even before his property is diminished, but while it is still abundant, would have been so reckless as Sextus Nævius was? When I name the man, I seem to myself to have said enough. Caius Quintius owed you money; you never asked for it: he died; his property came to his heir; though you saw him

every day, you did not ask for it for two years; will any one doubt which is the more probable, that Sextus Nævius would instantly have asked for what was owed to him, or that he would not have asked for two years? Had he no opportunity of asking? Why, he lived with you more than a year: could no measures be taken in Gaul? But there was law administered in the province, and trials were taking place at Rome. The only alternative remaining is, either extreme carelessness prevented you, or extraordinary liberality. If you call it carelessness, we shall wonder; if you call it kindness, we shall laugh; and what else you can call it I know not; it is proof enough that nothing was owing to Nævius, that for such a length of time he asked for nothing.

XIII. What if I show that this very thing which he is now doing is a proof that nothing is due? For what is Sextus Nævius doing now? About what is there a dispute? What is this trial on which we have now been occupied two years? What is the important business with which he is wearying so many eminent men? He is asking for his money. What now, at last? But let him ask; let us hear what he has to say. He wishes a decision to be come to concerning the accounts and disputes of the partnership. It is very late. However, better late than never; let us grant it. Oh, says he, I do not want that now, O Caius Aquillius; and I am not troubling myself about that now: Publius Quintius has had the use of my money for so many years; let him use it, I do not ask anything. What then are you contending for? is it with that object that you have often announced in many places,—that he may no longer be a citizen? that he may not keep that rank which hitherto he has most honourably preserved? that he may not be counted among the living? that he may be in peril of his life and all his honours? that he may have to plead his cause before the plaintiff speaks, and that when he has ended his speech he may then hear the voice of his accuser? What? What is the object of this? That you may the quicker arrive at your rights? But if you

wished, that might be already done. That you may contend according to a more respectable form of procedure? But you cannot murder Publius Quintius, your own relation, without the greatest wickedness. That the trial may be facilitated? But neither does Caius Aquillius willingly decide on the life of another, nor has Quintus Hortensius been in the habit of pleading against a man's life. But what reply is made by us, O Caius Aquillius? He asks for his money: we deny that it is due. Let a trial take place instantly; we make no objection; is there anything more? If he is afraid that the money will not be forthcoming when the decision is given, let him take security that it shall be; and let him give security ^{Ref. 019} for what I demand in the very same terms in which we give security. The matter can be terminated at once, O Caius Aquillius. You can at once depart, being delivered from an annoyance, I had almost said, no less than that Quintius is exposed to. What are we doing, Hortensius? what are we to say of this condition? Can we, some time or other, laying aside our weapons, discuss the money matter without hazard of any one's fortunes? Can we so prosecute our business, as to leave the life of our relation in safety? Can we adopt the character of a plaintiff, and lay aside that of an accuser? Yes, says he, I will take security from you, but I will not give you security.

XIV. But who is it that lays down for us these very reasonable conditions? who determines this,—that what is just towards Quintius is unjust towards Nævius? The goods of Quintius, says he, were taken possession of in accordance with the edict of the prætor. You demand then, that I should admit that; that we should establish by our own sentence, as having taken place, that which we go to trial expressly to prove never did take place. Can no means be found, O Caius Aquillius, for a man's arriving at his rights as expeditiously as may be without the disgrace and infamy and ruin of any one else? Forsooth, if anything were

owed, he would ask for it: he would not prefer that all sorts of trials should take place, rather than that one from which all these arise. He, who for so many years never even asked Quintius for the money, when he had an opportunity of transacting business with him every day; he who, from the time when he first began to behave ill, has wasted all the time in adjournments and respiting the recognizances; he who, after he had withdrawn his recognizances, drove Quintius by treachery and violence from their joint estate; who, when he had ample opportunity, without any one's making objection, to try a civil action, ^{Ref. 020} chose rather a charge that involved infamy; who, when he is brought back to this tribunal, whence all these proceedings arise, repudiates the most reasonable proposals; confesses that he is aiming, not at the money, but at the life and heart's blood of his adversary;—does he not openly say, “If anything were owing to me, I should demand it, and I should long ago have obtained it; I would not employ so much trouble, so unpopular a course of legal proceeding, and such a band of favourers of my cause, if I had to make a just demand; I have got to extort money from one unwilling, and in spite of him; I have got to tear and squeeze out of a man what he does not owe; Publius Quintius is to be cast down from all his fortune; every one who is powerful, or eloquent, or noble, must be brought into court with me; a force must be put upon truth, threats must be bandied about, dangers must be threatened; terrors must be brandished before his eyes, that being cowed and overcome by these things, he may at last yield of his own accord.” And, in truth, all these things, when I see who are striving against us, and when I consider the party sitting opposite to me, seem to be impending over, and to be present to us, and to be impossible to be avoided by any means. But when, O Caius Aquillius, I bring my eyes and my mind back to you, the greater the labour and zeal

with which all these things are done, the more trifling and powerless do I think them. Quintius then owed nothing, as you prove yourself. But what if he had owed you anything? would that have at once been a reason for your requiring leave from the prætor to take possession of his goods? I think that was neither according to law, nor expedient for any one. What then does he prove? He says that he had forfeited his recognizances.

XV. Before I prove that he had not done so, I choose, O Caius Aquillius, to consider both the fact itself and the conduct of Sextus Nævius, with reference to the principles of plain duty, and the common usages of men. He, as you say, had not appeared to his recognizances; he with whom you were connected by relationship, by partnership, by every sort of bond and ancient intimacy. Was it decent for you to go at once to the prætor? was it fair for you at once to demand to be allowed to take possession of his goods according to the edict? Did you betake yourself to these extreme measures and to these most hostile laws with such eagerness as to leave yourself nothing behind which you might be able to do still more bitter and cruel? For, what could happen more shameful to any human being, what more miserable or more bitter to a man; what disgrace could happen so heavy, what disaster can be imagined so intolerable? If fortune deprived any one of money, or if the injustice of another took it from him, still while his reputation is unimpeached, honour easily makes amends for poverty. And some men, though stained with ignominy, or convicted in discreditable trials, still enjoy their wealth; are not forced to dance attendance (which is the most wretched of all states) on the power of another; and in their distresses they are relieved by this support and comfort; but he whose goods have been sold, who has seen not merely his ample estates, but even his necessary food and clothing put up under the hammer, with great disgrace to himself; he is not only erased from the list of men, but he is

removed out of sight, if possible, even beneath the dead. An honourable ^{Ref. 021} death forsooth often sets off even a base life, but a dishonoured life leaves no room to hope for even an honourable death. Therefore, in truth, when a man's goods are taken possession of according to the prætor's edict, all his fame and reputation is seized at the same time with his goods. A man about whom placards are posted in the most frequented places, is not allowed even to perish in silence and obscurity; a man who has assignees and trustees appointed to pronounce to him on what terms and conditions he is to be ruined; a man about whom the voice of the crier makes proclamation and proclaims his price,— he has a most bitter funeral procession while he is alive, if that may be considered a funeral in which men meet not as friends to do honour to his obsequies, but purchasers of his goods as executioners, to tear to pieces and divide the relics of his existence.

XVI. Therefore our ancestors determined that such a thing should seldom happen; the prætors have taken care that it should only happen after deliberation; good men, even when fraud is openly committed, when there is no opportunity of trying the case at law, still have recourse to this measure timidly and hesitatingly; not till they are compelled by force and necessity, unwillingly, when the recognizances have often been forfeited, when they have been often deceived and outwitted. For they consider how serious a matter it is to confiscate the property of another. A good man is unwilling to slay another, even according to law; for he would rather say that he had saved when he might have destroyed, than that he had destroyed when he could have saved. Good men behave so to the most perfect strangers, aye, even to their greatest enemies, for the sake both of their reputation among men, and of the common rights of humanity; in order that, as they have not knowingly caused inconvenience to another, no

inconvenience may lawfully befall them. He did not appear to his recognizances. Who? Your own relation. If that matter appeared of the greatest importance in itself, yet its magnitude would be lessened by the consideration of your relationship. He did not appear to his recognizances. Who? Your partner. You might forgive even a greater thing than this, to a man with whom either your inclination had connected you, or fortune had associated you. He did not appear to his recognizances. Who? He who was always in your company. You therefore have hurled upon him, who allowed it to happen once that he was not in your company, all those weapons which have been forged against those who have done many things for the sake of malversation and fraud. If your poundage was called in question, if in any trifling matter you were afraid of some trick, would you not have at once run off to Caius Aquillius, or to some other counsel? When the rights of friendship, of partnership, of relationship are at stake, when regard should have been had to your duty and your character, at that time you not only did not refer it to Caius Aquillius or to Lucius Lucilius, but you did not even consult yourself; you did not even say this to yourself,—“The two hours are passed; Quintius has not appeared to his recognizances; what shall I do?” If, in truth, you had said but these four words to yourself, “What shall I do?” your covetousness and avarice would have had breathing time; you would have given some room for reason and prudence; you would have recollected yourself; you would not have come to such baseness as to be forced to confess before such men that in the same hour in which he did not appear to his recognizances you took counsel how utterly to ruin the fortunes of your relation.

XVII. I now on your behalf consult these men, after the time has passed, and in an affair which is not mine, since you forgot to consult them in your own affair, and when it was the proper time. I ask of you, Caius Aquillius, Lucius Lucilius, Publius Quintilius, and Marcus Marcellus;—A

certain partner and relation of mine has not appeared to his recognizances, a man with whom I have a long standing intimacy, but a recent dispute about money matters. Can I demand of the prætor to be allowed to take possession of his goods? Or must I, as he has a house, a wife, and children at Rome, not rather give notice at his house? What is your opinion in this matter? If, in truth, I have rightly understood your kindness and prudence, I am not much mistaken what you will answer if you are consulted. You will say at first that I must wait; then, if he seems to be shirking the business and to be trifling with it too long, that I must have a meeting of our friends; must ask who his agent is; must give notice at his house. It can hardly be told how many steps there are which you would make answer ought to be taken before having recourse to this extreme and unnecessary course. What does Nævius say to all this? Forsooth, he laughs at our madness in expecting a consideration of the highest duty, or looking for the practices of good men in his conduct. What have I to do, says he, with all this sanctimoniousness and punctiliousness? Let good men, says he, look to these duties, but let them think of me thus; let them ask not what I have, but by what means I have acquired it, and in what rank I was born, and in what manner I was brought up. I remember, there is an old proverb about a buffoon; "that it is a much easier thing for him to become rich than to become the head of a family." This is what he says openly by his actions, if he does not dare to say it in words. If in truth he wishes to live according to the practices of good men, he has many things to learn and to unlearn, both which things are difficult to a man of his age.

XVIII. I did not hesitate, says he, when the recognizances were forfeited, to claim the confiscation of his goods. It was wickedly done; but since you claim this for yourself, and demand that it be granted to you, let us grant it. What if he has not forfeited his recognizances? if the whole of that

plea has been invented by you with the most extreme dishonesty and wickedness? if there had actually been no securities given in any cause between you and Publius Quintius? What shall we call you? Wicked? why, even if the recognizances had been forfeited, yet in making such a demand and confiscation of his goods, you were proved to be most wicked. Malignant? you do not deny it. Dishonest? you have already claimed that as your character, and you think it a fine thing. Audacious? covetous? perfidious? those are vulgar and wornout imputations, but this conduct is novel and unheard-of. What then are we to say? I fear forsooth lest I should either use language severer than men's nature is inclined to bear, or else more gentle than the cause requires. You say that the recognizances were forfeited. Quintius the moment he returned to Rome asked you on what day the recognizances were drawn. You answered at once, on the fifth of February. Quintius, when departing, began to recollect on what day he left Rome for Gaul: he goes to his journal, he finds the day of his departure set down, the thirty-first of January. If he was at Rome on the fifth of February we have nothing to say against his having entered into recognizances with you. What then? how can this be found out? Lucius Albius went with him, a man of the highest honour; he shall give his evidence. Some friends accompanied both Albius and Quintius; they also shall give their evidence. Shall the letters of Publius Quintius, shall so many witnesses, all having the most undeniable reason for being able to know the truth, and no reason for speaking falsely, be compared with your witness to the recognizance? And shall Publius Quintius be harassed in a cause like this? and shall he any longer be subjected to the misery of such fear and danger? and shall the influence of an adversary alarm him more than the integrity of the judge comforts him? For he always lived in an unpolished and uncompanionable manner; he was of a melancholy and unsociable disposition; he has not

frequented the Forum, or the Campus, or banquets. He so lived as to retain his friends by attention, and his property by economy; he loved the ancient system of duty, all the splendour of which has grown obsolete according to present fashions. But if, in a cause where the merits were equal, he seemed to come off the worse, that would be in no small degree to be complained of; but now, when he is in the right, he does not even demand to come off best; he submits to be worsted, only with these limitations, that he is not to be given up with his goods, his character, and all his fortunes, to the covetousness and cruelty of Sextus Nævius.

XIX. I have proved what I first promised to prove, O Caius Aquillius, that there was absolutely no cause why he should make this demand; that neither was any money owed, and that if it were owed ever so much, nothing had been done to excuse recourse being had to such measures as these. Remark now, that the goods of Publius Quintius could not possibly have been taken possession of in accordance with the prætor's edict. Recite the edict. "He who for the sake of fraud has lain hid." That is not Quintius, unless they be hid who depart on their own business, leaving an agent behind them. "The man who has no heir." Even that is not he. "The man who leaves the country in exile." At what time, O Nævius, do you think Quintius ought to have been defended in his absence, or how? Then, when you were demanding leave to take possession of his goods? No one was present, for no one could guess that you were going to make such a demand; nor did it concern any one to object to that which the prætor ordered not to be done absolutely, but to be done according to his edict. What was the first opportunity, then, which was given to the agent of defending this absent man? When you were putting up the placards. Then Sextus Alphenus was present: he did not permit it; he tore down the notices. That which was the first step of duty was observed by the agent with the greatest diligence. Let us

see what followed on this. You arrest the servant of Publius Quintius in public: you attempt to take him away. Alphenus does not permit it; he takes him from you by force; he takes care that he is led home to Quintius. Here too is seen in a high degree the attention of an industrious agent. You say that Quintius is in your debt; his agent denies it. You wish security to be given; he promises it. You call him into court; he follows you. You demand a trial; he does not object. What other could be the conduct of one defending a man in his absence I do not understand. But who was the agent? I suppose it was some insignificant man, poor, litigious, worthless, who might be able to endure the daily abuse of a wealthy buffoon. Nothing of the sort: he was a wealthy Roman knight; a man managing his own affairs well: he was, in short, the man whom Nævius himself, as often as he went into Gaul, left as his agent at Rome.

XX. And do you dare, O Sextus Nævius, to deny that Quintius was defended in his absence, when the same man defended him who used to defend you? and when he accepted the trial on behalf of Quintius, to whom when departing you used to recommend and entrust your own property and character? Do you attempt to say that there was no one who defended Quintius at the trial? "I demanded," says he, "that security should be given." You demanded it unjustly. "The order was made." Alphenus objected. "He did, but the prætor made the decree." Therefore the tribunes were appealed to. "Here," said he, "I have you: that is not allowing a trial, nor defending a man at a trial, when you ask assistance from the tribunes." When I consider how prudent Hortensius is, I do not think that he will say this; but when I hear that he has said so before, and when I consider the cause itself, I do not see what else he can say; for he admits that Alphenus tore down the bills, undertook to give security, did not object to go to trial in the very terms which Nævius proposed; but on this condition, that according to custom and prescription, it