



THE ORATIONS

VOLUME 2

CICERO

The Orations

Volume 2

CICERO

*The Orations 2, Cicero
Jazzybee Verlag Jürgen Beck
86450 Altenmünster, Loschberg 9
Deutschland*

ISBN: 9783849651657

Translated by Charles Duke Yonge (1812 - 1891))

*www.jazzybee-verlag.de
admin@jazzybee-verlag.de*

CONTENTS:

THE FRAGMENTS WHICH REMAIN OF THE SPEECH OF
M. T. CICERO ON BEHALF OF MARCUS TULLIUS. Ref. 002

THE FRAGMENTS WHICH REMAIN OF THE SPEECH OF
M. T. CICERO ON BEHALF OF MARCUS FONTEIUS.

THE ORATION OF M. T. CICERO IN BEHALF OF AULUS
CÆCINA.

THE SPEECH OF M. T. CICERO IN DEFENCE OF THE
PROPOSED MANILIAN LAW

THE SPEECH OF M. T. CICERO IN DEFENCE OF AULUS
CLUENTIUS AVITUS.

THE FRAGMENTS OF THE SPEECH OF M. T. CICERO IN
DEFENCE OF CAIUS CORNELIUS.

THE FRAGMENTS OF THE SECOND SPEECH FOR
CORNELIUS.

THE FRAGMENTS OF THE SPEECH OF M. T. CICERO IN
HIS WHITE GOWN,

THE SPEECH OF M. T. CICERO IN OPPOSITION TO
PUBLIUS SERVILIUS RULLUS

THE SECOND SPEECH OF M. T. CICERO IN OPPOSITION
TO PUBLIUS SERVILIUS RULLUS

THE THIRD SPEECH OF M. T. CICERO IN OPPOSITION
TO PUBLIUS SERVILIUS RULLUS

THE SPEECH OF M. T. CICERO IN DEFENCE OF CAIUS
RABIRIUS, ACCUSED OF TREASON.

THE FIRST ORATION OF M. T. CICERO AGAINST LUCIUS
CATILINA. DELIVERED IN THE SENATE.

THE SECOND ORATION OF M. T. CICERO AGAINST LUCIUS CATILINA. ADDRESSED TO THE PEOPLE.

THE THIRD ORATION OF M. T. CICERO AGAINST LUCIUS CATILINA. ADDRESSED TO THE PEOPLE.

-

THE FOURTH ORATION OF M. T. CICERO AGAINST LUCIUS CATILINA DELIVERED IN THE SENATE.

THE ORATION OF M. T. CICERO IN DEFENCE OF L. MURENA, PROSECUTED FOR BRIBERY.

THE ORATION OF M. T. CICERO IN DEFENCE OF PUBLIUS SYLLA.

THE SPEECH OF M. T. CICERO FOR AULUS LICINIUS ARCHIAS, THE POET.

THE SPEECH OF M. T. CICERO IN DEFENCE OF LUCIUS FLACCUS.

THE SPEECH OF M. T. CICERO AFTER HIS RETURN. ADDRESSED TO THE SENATE.

THE SPEECH OF M. T. CICERO AFTER HIS RETURN. ADDRESSED TO THE PEOPLE.

THE SPEECH OF M. T. CICERO AGAINST PUBLIUS CLODIUS AND CAIUS CURIO.

THE SPEECH OF M. T. CICERO IN DEFENCE OF MARCUS ÆMILIUS SCAURUS. Ref. 127

FOOTNOTES:

THE FRAGMENTS WHICH REMAIN OF THE SPEECH OF M. T. CICERO ON BEHALF OF MARCUS TULLIUS.

Ref. 002

THE ARGUMENT.

Marcus Tullius had a farm; and a man of the name of Publius Fabius had bought another farm bordering on it. On the farm of Tullius there was a large field which Fabius coveted greatly; and as he could not obtain it by bargain, or by any legal process, (though he does seem to have tried this latter expedient.) he arms a gang of slaves, and sends them to take possession of the land: they murder Tullius's slaves, and demolish and burn the villa which he had there. After all this, Tullius prosecutes Fabius for the damage done. So that, as it seems, this speech ought rather to be called a speech against Publius Fabius than a speech on behalf of Marcus Tullius.

Formerly, O judges, I had determined to conduct this cause in a different manner, thinking that our adversaries would deny that their household was implicated in such a violent and atrocious murder. Accordingly, I came with a mind free from care and anxiety, because I was aware that I could easily prove that by witnesses. But now, when it has been confessed, not only by that most honourable man, Lucius Quintius, but when Publius Fabius himself has not hesitated to admit the facts which are the subject of this trial, I come forward to plead this cause in quite a different manner from that in which I was originally prepared to argue it. For then my anxiety was to be able to prove what I asserted had been done. Now all my speech is to be directed to this point, to prevent our adversaries from being in a better position, merely because they have admitted what they could not possibly deny though they

greatly wished to do so. Therefore, as matters stood at first your decision was more difficult, but my defence was easy. For I originally rested my whole case on the evidence; now I rest it on the confession of my adversary; and to oppose his audacity in acts of violence, his impudence in a court of justice, may fairly be considered as the task of your power, not of my abilities.—For what is easier than to decide on the case of a man who confesses the fact? But it is difficult for me to speak with sufficient force of that which cannot be by language made out worse than it is in reality, and cannot be made more plain by my speech than it is by the confession of the parties actually concerned.

As, therefore, on account of the reasons which I have stated, my system of defence must be changed, I must also forget for a little time, in the case of Publius Fabius, that lenity of mine which I practised at the previous trial, when I restrained myself from using any arguments which might have the appearance of attacking him, so much that I seemed to be defending his reputation with no less care than the cause of Marcus Tullius. Now, since Quintus has thought it not foreign to the subject to introduce so many statements, false for the most part and most wickedly invented, concerning the life and habits and character of Marcus Tullius, Fabius must pardon me for many reasons, if I do not now appear to spare his character so much, or to show the same regard for it now as I did previously. At the former trial I kept all my stings sheathed; but since, in that same previous trial, he thought it a part of his duty to show no forbearance whatever to his adversary, how ought I to act, I, a Tullius for another Tullius, a man kindred to me in disposition not less than in name? And it seems to me, O judges, that I have more need to feel anxious as to whether my conduct will be approved in having said nothing against him before, than blamed for the reply I now make to him. But I both did at that time what I ought to have done, and I shall do now what I am forced to do. For when it was a

dispute about money matters, because we said that Marcus Tullius had sustained damage, it appeared foreign to my character to say anything of the reputation of Quintus Fabius; not because the case did not open the door to such statements. What is my conduct then? Although the cause does require it, still, unless when he absolutely compels me against my will, I am not inclined to condescend to speak ill of him. Now that I am speaking under compulsion, if I say anything strong, still I will do even that with decency and moderation, and only in such a way that, as he could not consider me hostile to him at the former trial, so he may now know that I am a faithful and trustworthy friend to Marcus Tullius.

One thing, O Lucius Quintius, I should wish to obtain from you, which, although I desire because it is useful for me, still I request of you because it is reasonable and just,—that you would regulate the time that you take to yourself for speaking, so as to leave the judges some time for coming to a decision. For the time before, there was no end to your speech in his defence; night alone set bounds to your oration. Now, if you please, do not do the same; this I beg of you. Nor do I beg it on this account, because I think it desirable for me that you should pass over some topics, or that you should fail to state them with sufficient elegance, and at sufficient length; but because I do think it enough for you to state each fact only once. And if you do that, I have no fear that the whole day will be taken up in talking.

The subject of this trial which comes before you, O judges, is, What is the pecuniary amount of the damage inflicted on Marcus Tullius by the malice of the household of Quintus Fabius, by men armed and banded together in a violent manner. Those damages we have taxed; the valuation is yours; the decision given is that the amends shall be fourfold. As all laws and all legal proceedings which seem at all harsh and severe have originated in the

dishonesty and injustice of wicked men, so this form of procedure also has been established within these few years on account of the evil habits and excessive licentiousness of men. For when many families were said to be wandering armed about the distant fields and pasture lands, and to be committing murders, and as that fact appeared to concern not merely the estates of individuals, but the main interests of the republic, Marcus Lucullus, who often presided as judge with the greatest equity and wisdom, first planned this tribunal, and had regard to this object, that all men should so restrain their households that they should not only not go about armed to inflict damage on any one, but, even if they were attacked, should defend themselves by law, rather than by arms; and though he knew that the Aquilian law ^{Ref. 003} about damage existed, still he thought, that, as in the time of our ancestors both men's estates and their desires were less, and as their families, not being very numerous, were restrained by fear of important consequences, it very seldom happened that a man would be killed, and it was thought a nefarious and unprecedented atrocity; and therefore, that there was at that time no need of a system of judicial procedure with reference to bodies of men collected in a violent manner and armed; (for he thought that if any one established a law or a tribunal for matters which were not usual, he seemed not so much to forbid them as to put people in mind of them.) In these times, when after a long civil war our manners had so far degenerated that men used arms with less scruple, he thought it necessary to establish a system of judicial procedure, with reference to the whole of a man's household, in the formula, "Which was said to have been done by the household," and to assign judges, in order that the matter might be decided as speedily as possible; and to affix a severe punishment, in order that audacity

might be repressed by fear, and to take away that outlet, "Damage unjustly caused."

That which in other causes ought to have weight, and which has weight by the Aquilian law, namely, that damage had been caused by armed slaves in a violent manner,

Men must decide themselves when they could lawfully take arms, collect a band, and put men to death. When an action was assigned, this alone was to be the point at issue, "whether it appeared that damage had been inflicted by the malice of the household, by men collected and armed acting in a violent manner," and the word "unjustly" was not to be added; he thought that he had put an end to the audacity of wicked men when he had left them no hope of being able to make any defence.

Since, then, you have now heard what this judicial procedure is, and with what intention it was established, now listen, while I briefly explain to you the case itself, and its attendant circumstances.

Marcus Tullius had a farm, inherited from his father, in the territory of Thurium, O judges, which he was never sorry to have, till he got a neighbour who preferred extending the boundaries of his estate by arms, to defending them by law. For Publius Fabius lately purchased a farm of Caius Claudius, a senator,—a farm bordering on that of Marcus Tullius,—dear enough, for nearly half as much again (though in a wretched state of cultivation, and with all the buildings burnt down) as Claudius himself had given for it when it was in a good and highly ornamented condition, though he had paid an extravagant price for it.

I will add this also, which is very important to the matter. When the commander-in-chief died, though he wished to invest a sum of money, got I know not how, in a farm, he did not so invest it, but he squandered it. I do not very greatly wonder that, hampered as he was by his own folly, he

wished to extricate himself how he could. But this I cannot marvel at sufficiently, this I am indignant at, that he strives to remedy his own folly at the expense of his neighbours, and that he endeavoured to pacify his own ill-temper by the injury of Tullius.

There is in that farm a field of two hundred acres, which is called the Popilian field, O judges, which had always belonged to Marcus Tullius, and which even his father had possessed. That new neighbour of his, full of wicked hope, and the more confident because Marcus Tullius was away, began to wish for this field, as it appeared to him to lie very conveniently for him, and to be a convenient addition to his own farm. And at first, because he repented of the whole business and of his purchase, he advertised the farm for sale. But he had had a partner in the purchase, Cnæus Acerronius, a most excellent man. He was at Rome, when on a sudden messengers came to Marcus Tullius from his villa, to say that Publius Fabius had advertised that neighbouring farm of his for sale, offering a much larger quantity of land than he and Cnæus Acerronius had lately purchased. He applies to the man. He, arrogantly enough, answers just what he chooses. And he had not yet pointed out the boundaries. Tullius sends letters to his agent and to his bailiff, to go to the procurator of Caius Claudius, in order that he might point out the boundaries to purchasers in their presence. But he * * * * * refused to do this. He pointed out the boundaries to Acerronius while they were absent; but still he did not give them up this Popilian field. Acerronius excused himself from the whole business as well as he could, and as soon as he could; and he immediately revoked any agreement which he had with Fabius, (for he preferred losing his money to losing his character,) and dissolved partnership with such a man, being only slightly scorched. Fabius in the meantime brings on the farm picked men of great courage and strength, and prepares arms such as were suitable and fit for each of them; so that

any one might see that those men were equipped, not for any farming work, but for battle and murder. In a short time they murdered two men of Quintus Cadius Æmilianus, an honourable man, whom you all are acquainted with. They did many other things; they wandered about everywhere armed; they occupied all the fields and roads in an hostile manner, so that they seemed not obscurely but evidently to be aware of what business they were equipped for. In the meantime Tullius came to Thurium. Then that worthy father of a family, that noble Asiaticus, that new farmer and grazier, while he was walking in the farm, notices in this very Popilian field a moderate-sized building, and a slave of Marcus Tullius, named Philinus. "What business have you," says he, "in my field?" The slave answered modestly and sensibly, that his master was at the villa; that he could talk to him if he wanted anything. Fabius asks Acerronius (for he happened to be there at the time) to go with him to Tullius. They go. Tullius was at the villa. Fabius says that either he will bring an action against Tullius, or that Tullius must bring one against him. Tullius answers that he will bring one, and that he will exchange securities with Fabius at Rome. Fabius agrees to this condition. Presently he departs.

The next night, when it was near day-break, the slaves of Publius Fabius come armed and in crowds to that house which I have already mentioned, which was in the Popilian field. They make themselves an entrance by force. They attack the slaves of Marcus Tullius, men of great value, unawares, which was very easy to do; and as these were few in number and offered no resistance, they, being a numerous body well armed and prepared, murdered them. And they behaved with such rancour and cruelty that they left them all with their throats cut, lest, if they left any one only half dead and still breathing, they should get the less credit. And besides this, they demolish the house and villa. Philinus, whom I have already mentioned, and who had

himself escaped from the massacre severely wounded, immediately reports this atrocious, this infamous, this unexpected attack to Marcus Tullius. Tullius immediately sends round to his friends, of whom in that neighbourhood he had a numerous and honourable body. The matter appears scandalous and infamous to them all.

Listen, I entreat you, to the evidence of honest men touching those affairs which I am speaking of. Those things which my witnesses state, our adversary confesses that they state truly. Those things which my witnesses do not state, because they have not seen them and do not know them, those things our adversary himself states. Our witnesses say that they saw the men lying dead; that they saw blood in many places; that they saw the building demolished. They say nothing further. What says Fabius? He denies none of these things. What then further does he add? He says that his own household of slaves did it. How? By men armed, with violence. With what intention? That that might be done which was done. What is that? That the men of Marcus Tullius might be slain. If, then, they contrived all these circumstances with this intention, so that men assembled in one place, and armed themselves, and then marched with fixed resolution to an appointed place, chose a suitable time, and committed a massacre,—if they intended all this and planned it, and effected it,—can you separate that intention, that design, and that act from malice? But those words “with malice are added in this form of procedure with reference to the man who does the deed, not to him to whom it is done. And that you may understand this, O judges, attend, I beg of you, carefully. And, in truth, you will not doubt that this is the case.

If the trial were assigned to proceed on this ground, that the fact to be proved was, “That it had been done by the household,” then if any household itself had been unwilling to appear personally in the slaughter, and had either

compelled or hired the assistance of other men, whether slaves on free men, all this trial, and the severe justice of the prætor, would be at an end. For no one can decide that, if the household were not present at a transaction, in that transaction the household itself committed damage with men armed, in a violent manner. Therefore, because that could be done, and done easily too, on that account it was not thought sufficient for investigation to be made as to what the household itself had done, but as to this point also, "What had been done by the malice of the household." For when the household itself does anything, men being collected together and armed, in a violent manner, and inflicts damage on any one, that must be done by malice. But when it forms a plan to procure such a thing to be done, the household itself does not do it, but it is done by its malice. And so by the addition of the words "by malice" the cause of both plaintiff and defendant is made more comprehensive. For whichever point he can prove, whether that the household itself did him the damage, or that it was done by the contrivance and assistance of that household, he must gain his cause.

You see that the prætors in these last years have interposed between me and Marcus Claudius with the insertion of this clause,—“From which, O Marcus Tullius, Marcus Claudius, or his household, or his agent, was driven by violence.” And what follows is according to the formula in the terms in which the prætor’s interdict ran, and in which the securities were drawn up. If I were to defend myself before a judge in this way,—to confess that I had driven men out by violence—to deny that there was malice in it,—who would listen to me? No one, I suppose; because, if I drove out Marcus Claudius by violence, I drove him out by malice; for malice is a necessary ingredient in violence; and it is sufficient for Claudius to prove either point,—either that he was driven out with violence by me myself, or that I contrived a plan to have him driven out with violence.

More, therefore, is granted to Claudius when the interdict runs thus, "from which he was driven by violence, by my malice," than if it had merely said, "whence he was driven by me by violence." For, in this latter case, unless I had myself driven him out, I should gain my cause. In the former case, when the word "malice" is added, whether I had merely originated the design, or had myself driven him out, it is inevitable that it should be decided that he had been violently driven out by me with malice.

The case in this trial, O judges, is exactly like this, and, indeed, identical with it. For I ask of you, O Quintius, if the point in question were, "What appeared to be the pecuniary amount of the damage done by the household of Publius Fabius, by armed men, to Marcus Tullius," what would you have to say? Nothing, I suppose; for you confess everything, both that the household of Publius Fabius did this, and that they did it violently with armed men. As to the addition, "with malice," do you think that that avails you, that by which all your defence is cut off and excluded? for, if that addition had not been made, and if you had chosen to urge, in your defence, that your household had not done this, you would have gained your cause if you had been able to prove this. Now, whether you had chosen to use that defence, or this one which you are using, you must inevitably be convicted; unless we think that a man is brought before the court who has formed a plan, but that one who has actually done an action is not; since a design may be supposed to exist without any act being done, but an act cannot exist without a design. Or, because the act is such that it could not be done without a secret design, without the aid of the darkness of night, without violence, without injury to another, without arms, without murder, without wickedness, is it on that account to be decided to have been done without malice? Or, will you suppose that the pleading has been rendered more difficult for me in the very case in which the prætor intended that a scandalous

plea in defence should be taken from him? Here, now, they do seem to me to be men of very extraordinary talent, when they seize themselves on the very thing which was granted to me to be used against them; when they use rocks and reefs as a harbour and an anchorage. For they wish the word "malice" to be kept in the shade; by which they would be caught and detected, not only since they have done the things themselves which they admit having done, but even if they had done them by the agency of others.

I say that malice exists not in one action alone, (which would be enough for me,) nor in the whole case only, (which would also be enough for me,) but separately in every single item of the whole business. They form a plan for coming upon the slaves of Marcus Tullius: they do that with malice. They take arms: they do that with malice. They choose a time suitable for laying an ambush and for concealing their design: they do that with malice. They break open the house with violence: in the violence itself there is malice. They murder men, they demolish buildings: it is not possible for a man to be murdered intentionally, or for damage to be done to another intentionally, without malice. Therefore, if every part of the business is such that the malice is inherent in each separate part, will you decide that the entire business and the whole transaction is untainted with malice? What will Quintius say to this? Surely he has nothing to say, no one point, I will not say on which he is able to stand, but on which he even imagines that he is able. For, first of all, he advanced this argument, that nothing can be done by the malice of a household. By this topic he was tending not merely to defend Fabius, but to put an end utterly to all judicial proceedings of this sort. For if that is brought before the court with reference to a household, which a household is absolutely incapacitated from doing, there is evidently no trial at all; all must inevitably be acquitted for the same reason. If this were the only case, (it would be well, indeed, if it were,) but if it

were the only case, still you, O judges, being such as you are, ought to be unwilling that an affair of the greatest importance, affecting not only the welfare of the entire republic but also the fortunes of individuals—that a most dignified tribunal, one established with the greatest deliberation, and for the weightiest reasons, should appear to be put an end to by you. But this is not the only thing at stake.* * * * * the decision in this case is waited for with so much anxiety as shows that it is expected to rule not one case only, but all cases.* * * * *

Shall I say that violence was done by the household of Publius Fabius? Our adversaries do not deny it. That damage was done to Marcus Tullius? You grant that—I have carried one point. That this violence was done by armed men? You do not deny that—I have carried a second point. You deny that it was done with malice; on this point we join issue.* * * * * Nor, indeed, do I see any need of looking for arguments by which that trivial and insignificant defence of his may be refuted and done away with. And yet I must speak to the statements which Quintius has made; not that they have anything to do with the matter, but that it may not be thought that anything has been granted by me, merely because it has been overlooked.

You say that inquiry ought to be instituted whether the men of Marcus Tullius were slain wrongfully or no. This is the first inquiry that I make about the matter,—whether that matter has come before the court or not. If it has not come, why then need we say anything about it, or why need they ask any questions about it? But if it has, what was your object in making such a long speech to the prætor, to beg him to add to the formula the word “wrongfully,” and because you had not succeeded, to appeal to the tribunes of the people, and here before the court to complain of the injustice of the prætor because he did not add the word “wrongfully.” When you were requesting this of the prætor,—when you were appealing to the tribunes, you said that

you ought to have an opportunity given to you of persuading the judges, if you could, that damage had not been done to Marcus Tullius wrongfully. Though, therefore, you wish that to be added to the formula of the trial, in order to be allowed to speak to that point before the judges; though it was not added, do you nevertheless speak to it as if you had gained the very thing which was refused to you? But the same words which Metellus used in making his decree, the others, whom you appealed to, likewise used. Was not this the language of them all,—that although that which a household was said to have done by means of men armed and collected in a violent manner, could not possibly be done rightly, still they would add nothing? And they were right, O judges. For if, when there is a refuge open to them, still slaves commit these wickednesses with the greatest audacity, and masters avow them with the greatest shamelessness, what do you think would be the case if the prætor were to decide that it is possible that such murders should be committed lawfully? Does it make any difference whether the magistrates establish a defence for a crime, or give people power and liberty to commit crime? In truth, O judges, the magistrates are not influenced by the extent of the damage, to assign a trial in this formula. For if it were the case, the magistrates would not give recuperators rather than a judex, ^{Ref. 004}—not an action against the whole family, but against the one who was proceeded against by name; nor would the damages be estimated at fourfold, but at double; and to the word “damage” would be added the word “wrongfully.” Nor, indeed, does the magistrate who has assigned this trial depart from the provisions of the Aquilian law about other damage, in cases in which nothing is at issue except the damage. And to this point the prætor ought to turn his attention.

In this trial, you see the question is about violence; you see the question is about armed men; you see that the demolition of houses, the ravaging of lands, the murders of men, fire, plunder, and massacre are brought before the court. And do you wonder that those who assigned this trial thought it sufficient that it should be inquired whether these cruel, and scandalous, and atrocious actions had been done or not; not whether they had been done rightly or wrongfully? The prætors, then, have not departed from the Aquilian law which was passed about damage; but they appointed a very severe course of proceeding in the case of armed men acting with violence. Not that they thought that no inquiry was ever to be made as to the right or the wrong; but they did not think it fit that they who preferred to manage their business by arms rather than by law should argue the question of right and wrong. Nor did they refuse to add the word "wrongfully" because they would not add it in other cases; but they did not think that it was possible for slaves to take arms and collect a band rightfully. Nor did they refuse because they thought, that if this addition were made, it would be possible to persuade such men as these judges that it had not been wrongfully done, but because they would not appear to put a shield in the hands of those men in a court of justice, whom they had summoned before the court for taking those arms which they did take.

The same prohibitory law about violence existed in the time of our ancestors which exists now. "From which you, or your household, or your agent have this year driven him, or his household, or his agent, by violence." Then there is added, with reference to the man who is being proceeded against, "When he was the owner;" and this further addition also, "Of what he possessed, having acquired it neither by violence, nor secretly, nor as a present." The man who is said to have driven another away by violence has many pleas of defence allowed him, (and if he can

prove any one of them to the satisfaction of the judge, then, even if he confesses that he drove him out by violence, he must gain his cause,) either that he who has been driven out was not the owner, or that he had got possession from him himself by violence, or by stealth, or as a present. Our ancestors left so many pleas of defence, by which he might gain his cause, even to the man who confessed himself guilty of violence.

Come, now, let us consider another prohibitory law, which has also been now established on account of the iniquity of the times, and the excessive licentiousness of men.

And he read me the law out of the Twelve Tables, which permits a man to kill a thief by night, and even by day if he defends himself with a weapon; and an ancient law out of the sacred laws, which allows any one to be put to death with impunity who has assaulted a tribune of the people. I imagine I need say no more about the laws.

And now I, for the first time in this affair, ask this question:—What connexion the reading of these laws had with this trial? Had the slaves of Marcus Tullius assaulted any tribune of the people? I think not. Had they come by night to the house of Publius Fabius to steal? Not even that. Had they come by day to steal, and then had they defended themselves with a weapon? It cannot be affirmed. Therefore, according to those laws which you have read, certainly that man's household had no right to slay the slaves of Marcus Tullius.

“Oh,” says he, “I did not read it because of its bearing on that subject, but that you might understand this, that it did not appear to our ancestors to be anything so utterly intolerable for a man to be slain.” But, in the first place those very laws which you read, (to say nothing of other points,) prove how utterly our ancestors disapproved of any man being slain unless it was absolutely unavoidable. First of all, there is that holy law which armed men petitioned

for, that unarmed men might be free from danger. Wherefore it was only reasonable for them to wish the person of that magistrate to be hedged round with the protection of the laws, by whom the laws themselves are protected. The Twelve Tables forbid a thief—that is to say, a plunderer and a robber—to be slain by day, even when you catch him, a self-evident enemy, within your walls. “Unless he defends himself with a weapon,” says the law; not even if he has come with a weapon, unless he uses it, and resists; “you shall not kill him. If he resists, *endoplorato*,” that is to say, raise an outcry, that people may hear you and come to your aid. What can be added more to this merciful view of the case, when they did not allow that it might be lawful for a man to defend his own life in his own house without witnesses and umpires?

Who is there who ought more to be pardoned, (since you bring me back to the Twelve Tables,) than a man who without being aware of it kills another? No one, I think. For this is a silent law of humanity, that punishment for intentions, but not for fortune, may be exacted of a man. Still our ancestors did not pardon even this. For there is a law in the Twelve Tables, “If a weapon escapes from the hand” * * If any one slays a thief, he slays him wrongfully. Why? Because there is no law established by which he may do so. What? suppose he defended himself with a weapon? Then he did not slay him wrongfully. Why so? Because there is a law * * * * Still it would have been done by violence.* * Still in that very spot which belonged to you, you not only could not lawfully slay the slaves of Marcus Tullius, but even if you had demolished the house without his knowledge, or by violence, because he had built it in your land and defended his act on the ground of its being his, it would be decided to have been done by violence, or secretly. Now, do you yourself decide how true it is, that, when your household had no power to throw down a few tiles with impunity, he had power to commit an extensive

massacre without violating the law. If, now that that building has been demolished, I myself were this day to prosecute him on the ground "that it was done by violence, or secretly," you must inevitably either make restitution according to the sentence of an arbitrator, or you must be condemned in the amount of your security. Now, will you be able to make it seem reasonable to such men as these judges, that, though you had no power of your own right to demolish the building, because it was, as you maintain, on your land, you had power of your own right to slay the men who were in that edifice?

"But my slave is not to be found, who was seen with your slaves. But my cottage was burnt by your slaves." What reply am I to make to this? I have proved that it was false. Still I will admit it. What comes next? Does it follow from this that the household of Marcus Tullius ought to be murdered? Scarcely, in truth, that they ought to be flogged; scarcely, that they ought to be severely reprimanded. But granting that you were ever so severe; the matter could be tried in the usual course of law, by an every-day sort of trial. What was the need of violence? what was the need of armed men, of slaughter, and of bloodshed?

"But perhaps they would have proceeded to attack me." This, in their desperate case, is neither a speech nor a defence, but a mere guess, a sort of divination. Were they coming to attack him? Whom? Fabius. With what intention? To kill him. Why? to gain what? how did you find it out? And that I may set forth a plain case as briefly as possible, is it possible to doubt, O judges, which side seems to have been the attacking party?—Those who came to the house, or those who remained in the house? Those who were slain, or those, of whose number not one man was wounded? Those who had no imaginable reason for acting so, or those who confess that they did act so? But suppose I were to believe that you were afraid of being attacked, who ever laid down such a principle as this, or who could have this granded him

without extreme danger to the whole body of citizens, that he might lawfully kill a man, if he only said that he was afraid of being hereafter killed by him?

[The rest of this oration is lost.]

THE FRAGMENTS WHICH REMAIN OF THE SPEECH OF M. T. CICERO ON BEHALF OF MARCUS FONTEIUS.

THE ARGUMENT.

Fonteius had been prætor of Gallia Narbonensis for three years, and was accused now by the people of the province, and by Induciomarus, one of their princes, of great oppression and exaction in his government, and especially of imposing an arbitrary tax upon their wines. There were two hearings of this cause, but we have only this one speech of Cicero's with reference to it remaining; and this is in a very mutilated state.

I. * * For I defend Marcus Fonteius, O judges, on this ground, and I assert that after the passing of the Valerian law, from the time that Marcus Fonteius was quæstor till the time when Titus Crispinus was quæstor, no one paid it otherwise. I say that he followed the example of all his predecessors, and that all those who came after him, followed his. What, then, do you accuse? what do you find fault with? For because in these accounts, which he says were begun by Hirtuleius, he misses the assistance of Hirtuleius, I cannot think that he either does wrong himself, or wishes you to do wrong. For I ask you, O Marcus Plætorius, whether you will consider our case established, if Marcus Fonteius, in the matter respecting which he is now accused by you, has the man whom you praise above all others, namely Hirtuleius, for his example; and if Fonteius is found to have done exactly the same as Hirtuleius in the matters in which you commend Hirtuleius? You find fault with the description of payment. The public registers prove that Hirtuleius paid in the same

manner. You praise him for having established these peculiar accounts. Fonteius established the same, with reference to the same kind of money. For, that you may not ignorantly imagine that these accounts refer to some different description of debt, know that they were established for one and the same reason, and with reference to one and the same sort of money. For when * * *

II. * * * * * No one—no one, I say, O judges—will be found, to say that he gave Marcus Fonteius one sesterces during his prætorship, or that he appropriated one out of that money which was paid to him on account of the treasury. In no account-books is there any hint of such a robbery; among all the items contained in them there will not be found one trace of any loss or diminution of such monies. But all those men whom we ever see accused and found fault with by this sort of inquiry, are overwhelmed with witnesses; for it is difficult for him who has given money to a magistrate to avoid being either induced by dislike of him, or compelled by scrupulousness, to mention it; and in the next place, if the witnesses are deterred from appearing by any influence, at all events the account-books remain uncorrupted and honest. Suppose that every one was ever so friendly to Fonteius; that such a number of men to whom he was perfectly unknown, and with whom he was utterly unconnected, spared his life, and consulted his character; still, the facts of the case itself, the consideration of the documents, and the composition of the account-books, have this force, that from them, when they are once given in and received, everything that is forged, or stolen, or that has disappeared, is detected. All those men made entries of sums of money having been received for the use of the Roman people; if they immediately either paid or gave to others equally large sums, so that what was received for the Roman people was paid to some one or

other at all events nothing can have been embezzled. If any of them took any money home * * *

III. Oh, the good faith of gods and men! no witness is found in a case involving a sum of three million two hundred thousand sesterces! Among how many men? Among more than six hundred. In what countries did this transaction take place? In this place, in this very place which you see. Was the money given irregularly? No money at all was touched without many memoranda. What, then, is the meaning of this accusation, which finds it easier to ascend the Alps than a few steps of the treasury; which defends the treasury of the Ruteni with more anxiety than that of the Roman people; which prefers using unknown witnesses to known ones, foreign witnesses to citizens; which thinks that it is establishing a charge more plainly by the capricious evidence of barbarians than by documents written by our fellow citizens? Of two magistracies, each of which is occupied in handling and dealing with large sums of money, the triumvirate ^{Ref. 005} and the quæstorship, such accurate accounts have been rendered, that in those things which were done in the sight of men, which affected many men's interests, and which were set forth both in public and private registers, no hint of robbery, no suspicion of any offence can possibly arise. The embassy to Spain followed, in a most disturbed time of the republic; when, on the arrival of Lucius Sylla in Italy, great armies quarrelled about the tribunals and the laws; and in this desperate state of the republic * * *

If no money was paid, of what sum is that fiftieth a part?

Since his cause is not the same as that of Verres * * * * * a great quantity of corn from Gaul; infantry, and a most numerous army from Gaul, a great number of cavalry from Gaul * * *

That after this the Gauls would drink their wine more diluted, because they thought that there was poison in it

I. * * * * that in the time of this prætor Gaul ^{Ref. 006} was overwhelmed with debt. From whom do they say that loans of such sums were procured? From the Gauls? By no means. From whom them? From Roman citizens who are trading in Gaul. Why do we not hear what they have got to say? Why are no accounts of theirs produced? I myself pursue and press the prosecutor, O judges; I pursue him, I say, and I demand witnesses. In this cause I am taking more pains and trouble to get them to produce their witnesses, than other advocates for the defence usually take to refute them. I say this boldly, O judges, but I do not assert it rashly. All Gaul is filled with traders,—is full of Roman citizens. No Gaul does any business without the aid of a Roman citizen; not a single sesterce in Gaul ever changes hands without being entered in the account-books of Roman citizens. See how I am descending, O judges, how far I seem to be departing from my ordinary habits, from my usual caution and diligence. Let one set of accounts be produced, in which there is any trace whatever which gives the least hint of money having been given to Fonteius; let them produce out of the whole body of traders, of colonists, of publicans, of agriculturists, of graziers, but one witness, and I will allow that this accusation is true. O ye immortal gods! what sort of a cause is this? what sort of a defence? Marcus Fonteius was governor of the province of Gaul, which consists of those tribes of men and of cities, some of whom (to say nothing of old times) have in the memory of the present generation carried on bitter and protracted wars with the Roman people; some have been lately subdued by our generals, lately conquered in war, lately made remarkable by the triumphs which we have celebrated over them, and the monuments which we have

erected, and lately mulcted, by the senate, of their lands and cities: some, too, who have fought in battle against Marcus Fonteius himself, have by his toil and labour been reduced under the power and dominion of the Roman people. There is in the same province Narbo Martius, ^{Ref.} ⁰⁰⁷ a colony of our citizens, set up as a watch-tower of the Roman people, and opposed as a bulwark to the attacks of those very natives. There is also the city of Massilia, which I have already mentioned, a city of most gallant and faithful allies, who have made amends to the Roman people for the dangers to which they have been exposed in the Gallic wars, by their service and assistance; there is, besides, a large number of Roman citizens, and most honourable men.

II. Of this province, consisting of this variety of people, Marcus Fonteius, as I have said, was governor. Those who were enemies, he subdued; those who had lately been so, he compelled to depart from the lands of which they had been deprived by the senate. From the rest, who had been often conquered in great wars, on purpose that they might be rendered obedient for ever to the Roman people, he exacted large troops of cavalry to serve in those wars which at that time were being carried on all over the world by the Roman people, and large sums of money for their pay, and a great quantity of corn to support our armies in the Spanish war. The man who has done all these things is now brought before a court of law. You who were not present at the transactions are, with the Roman people, taking cognisance of the cause; those men are our adversaries who were compelled to leave their lands by the command of Cnæus Pompeius; those men are our adversaries who having escaped from the war, and the slaughter which was made of them, for the first time dare to stand against Marcus Fonteius, now that he is unarmed. What of the colonists of Narbo? what do they wish? what do they think? They wish this man's safety to be ensured by

you; they think that theirs has been ensured by him. What of the state of the Massilians? They distinguished him while he was among them by the greatest honours which they had to bestow; and now, though absent from this place, they pray and entreat you that their blameless character, their panegyric, and their authority may appear to have some weight with you in forming your opinions. What more shall I say? What is the inclination of the Roman citizens? There is no one of that immense body who does not consider this man to have deserved well of the province, of the empire, of our allies, and of the citizens.

III. Since, therefore, you now know who wish Marcus Fonteius to be attacked, and who wish him to be defended, decide now what your own regard for equity, and what the dignity of the Roman people requires; whether you prefer trusting your colonists, your traders, your most friendly and ancient allies, and consulting their interests, or the interests of those men, whom, on account of their passionate disposition, you ought not to trust; on account of their disloyalty you ought not to honour. What, if I produce also a still greater number of most honourable men to bear testimony to this man's virtue and innocence? Will the unanimity of the Gauls still be of more weight than that of men of such great authority? When Fonteius was governor of Gaul, you know, O judges, that there were very large armies of the Roman people in the two Spains, and very illustrious generals. How many Roman knights were there, how many military tribunes, how many ambassadors came to them! what eminent men they were, and how frequently did they come! Besides that, a very large and admirably appointed army of Cnæus Pompeius wintered in Gaul while Marcus Fonteius was governor. Does not Fortune herself appear to have intended that they should be a sufficient number of sufficiently competent witnesses of those things which were done in Gaul while Marcus Fonteius was prætor? Out of all that number of men what witness can

you produce in this cause? Who is there of all that body of men whose authority you are willing to cite? We will use that very man as our panegyrist and our witness. Will you doubt any longer, O judges, that that which I stated to you at the beginning is most true, that there is another object in this prosecution, beyond causing others, after Marcus Fonteius has been overwhelmed by the testimonies of these men, from whom many contributions have been exacted, greatly against their will, for the sake of the republic, to be for the future more lax in governing, when they see these men attacked, who are such men that, if they are crushed, the empire of the Roman people cannot be maintained in safety.

IV. A charge has also been advanced that Marcus Fonteius has made a profit from the making of roads; taking money either for not compelling people to make roads, or for not disapproving of roads which had been made. If all the cities have been compelled to make roads, and if the works of many of them have not been passed, then certainly both charges are false,—the charge that money has been given for exemption, when no one was exempted; and for approval, when many were disapproved of. What if we can shift this charge on other most unimpeachable names? not so as to transfer any blame to others, but to show that these men were appointed to superintend that road-making, who are easily able to show that their duty was performed, and performed well. Will you still urge all these charges against Marcus Fonteius, relying on angry witnesses? When Marcus Fonteius was hindered by more important affairs of the republic, and when it concerned the republic that the Domitian road should be made, he entrusted the business to his lieutenants, men of the highest characters, Caius Annius, Bellienus, and Caius Fonteius. So they superintended it; they ordered what seemed necessary, as became their dignity, and they sanctioned what seemed well done. And