

courage, and yet allow no sepulchre containing his body to exist in Italy? Will any one by his vote banish this man from this city, when all other cities will gladly invite him to them if he is driven out from among you? O happy will that land be which shall receive him! Ungrateful will this land be if it banishes him; miserable if it loses him.

However, I must make an end. Nor, indeed, can I speak any longer for weeping; and this man forbids me to defend him by tears. I pray and entreat you, O judges, when you are giving your votes, to dare to decide as you think just. And believe me that man<sup>1</sup> will be sure greatly to approve of your virtue, and justice, and good faith; who, in selecting the judges, selected all the best, and wisest, and most fearless men whom he could find.<sup>2</sup>

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THE SPEECH OF M. T. CICERO IN DEFENSE OF CAIUS RABIRIUS POSTUMUS

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THE ARGUMENT.

When Gabinius, the colleague of Piso, returned from his province of Syria, he was prosecuted on two indictments; in the first prosecution Cicero appeared as a witness against him; but he was acquitted, as Cicero says in his letters to his brother Quintus (iii. 4), in consequence of the stupidity of Lentulus, the prosecutor, and the great exertion of Pompey, and the corruption of the judges. In the second prosecution Cicero was prevailed on by Pompey to defend him; but he was condemned to perpetual banishment.

The trial of Caius Rabirius Postumus, a Roman knight, arose out of that trial of Gabinius. It had been one of the articles against him, that he had received an enormous sum for restoring Ptolemy to his kingdom of Egypt; but when he was convicted, his estate was found inadequate

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<sup>1</sup> Cnæus Pompeius.

<sup>2</sup> Milo, as has been said before, was convicted by a majority of thirty-eight to thirteen, though Cato voted openly for his acquittal. He went into exile to Marsilles. Some years afterward, A. U. C. 706, Cælius, when prætor, recalled him from banishment, and endeavored to raise some public commotion in favor of Pompey, between whom and Cæsar (who was in his second consulship) the civil war was just breaking out. But he and Cælius were both killed by the soldiers with whom they were tampering.

to meet the damages which he was condemned to pay, and the deficiency was now demanded from those through whose hands the management of his money affairs had passed, and who were supposed to have been sharers in the spoil; and of these men the chief was Rabirius, who was now accused of having advised Gabinius to undertake Ptolemy's restoration; of having accompanied him; of having been employed by him to solicit the payment of the money, and of having lived at Alexandria for that purpose in the king's service as the public receiver of the king's taxes, and wearing the dress of an Egyptian. The prosecution was instituted under the provisions of the *Lex Julia*, concerning extortion and peculation. It was conducted by Caius Memmius Gemellus. Rabirius was acquitted; and, though it was to please Pompey that Cicero had undertaken his defense, he afterward attached himself to Cæsar, and was employed by him in the war in Africa and in Sicily.

I. IF there is any one, O judges, who thinks Caius Rabirius to be blamed for having intrusted his securely founded and well-established fortunes to the power and caprice of a sovereign, he may back his opinion by a reference not only to mine, but also to the feelings of the man himself who did so. For there is no one who is more grieved at the line of conduct which he then adopted than he is himself. Although we are very much in the habit of judging of the wisdom of a plan by the result, and of saying that the man whose designs have succeeded has shown a great deal of foresight, and that he who has failed has shown none at all. If the king had had any honesty, nothing would have been considered more sagacious than the conduct of Postumus; but because the king deceived him he is said to have acted as madly as possible; so that it appears now that nothing is a proof of a man being wise, unless he can foresee the future.

But still, if there be any one who thinks that Postumus's conduct, whether it proceeded from a vain hope, or from a not sufficiently considered calculation, or (to use the strongest possible terms) from pure rashness, deserves to be blamed, I will not object to his entertaining that opinion. But I do beg this, that as he sees that his designs have been punished with the greatest cruelty by fortune herself, he will not think it necessary to add any additional bitterness to the ruin which he is already overwhelmed. It is quite enough not to help to set men up again who have fallen through imprudence; but to press down those already fallen, or to increase their impetus when falling, is unquestionably most barbarous. Especially, O judges, when this principle is almost implanted by

nature in the race of man, that those men who are of a family which considerable glory has already distinguished, should with the greatest eagerness pursue the same path as their ancestors, seeing that the virtue of their fathers is celebrated in the recollection and conversation of all men; just as not only did Scipio imitate Paullus in his renown gained by military exploits; not only did his son imitate Maximus; but his own son also imitated Decius in the devotion of his life, and the exact manner of his death. Let small things, O judges, be compared in this way to great things.

II. For, when we were children, this man's father, Caius Curius, was a most gallant chief of the equestrian order, and a most extensive farmer of the public revenues, a man whose greatness of spirit as displayed in carrying on his business men would not have so greatly esteemed, if an incredible kindness had not also distinguished him; so that while increasing his property, he seemed not so much to be seeking to gratify his avarice, as to procure additional means for exerting his kindness. My client, being this man's son, although he had never seen his father, still under the guidance of nature herself,—who is a very powerful guide,—and instigated by the continual conversation of every one in his family, was naturally led on to adopt a similar line of conduct to that of his father. He engaged in extensive business. He entered into many contracts. He took a great share of the public revenues. He trusted different nations. His transactions spread over many provinces. He devoted himself also to the service of kings. He had already previously lent a large sum of money to this very king of Alexandria; and in the mean time he never ceased enriching his friends; sending them on commissions; giving them a share in his contracts; increasing their estates, or supporting them with his credit. Why need I say more? He gave a faithful representation of his father's career and habits of life in his own magnanimity and liberality.

In the mean time, Ptolemaeus being expelled from his kingdom with treachery, with evil designs (as the Sibyl said, an expression of which Postumus found out the meaning) came to Rome. This unhappy man lent him money, as he was in want and asked for it; and that was not the first time (for he had lent him money before while he was king, without seeing *him*). *And he thought that he was not lending his money rashly, because no one doubted that he would be restored to*

his kingdom by the senate and people of Rome. But he went still farther in making him presents and loans. And he lent him not his own money only, but also that of his friends. A very foolish thing to do—who denies it? at all events, who is there who does not now remind him of it? How could one think that a sensible proceeding which has turned out ill? But it is difficult not to carry out to the end a line of conduct which one has begun with sanguine hopes.

III. The king was a suppliant to him. He asked him every sort of favor; he promised him every sort of recompense. So that Postumus was at last compelled to fear that he might lose what he had already lent, if he put a stop to his loans. But no one could possibly be more affable, no one could be more kind than the king; so that it was easier to repent having begun to lend than to find out how to stop.

Here first rises a charge against my client. They say that the senate was bribed. O ye immortal gods! is this that much-desired impartiality of the courts of justice? Those who have bribed us are put on their trial, we who have been bribed are exposed to no such dangers. What, then, shall I do? Shall I here defend the senate, O judges? I ought, indeed, to do so here and every where, so well has that body deserved at my hands. But that is not the question at the present moment; nor is that affair in the least connected with the cause of Postumus. Although money was supplied by Postumus for the expense of his journey, and for the splendor of his appointments, and for the royal retinue, and though contracts were drawn up in the Alban villa of Cnæus Pompeius when he left Rome; still he who supplied the money had no right to ask on what he who received the money was spending it. For he was lending it not to a robber, but to a king; nor to a king who was an enemy of the Roman people, but to him whose return to his kingdom he saw was granted to him by the senate, and intrusted to the consul to provide for; nor to a king who was a stranger to this empire, but to one with whom he had seen a treaty made in the Capitol.

But if the man who lends money is to blame, and not the man who has made a scandalous use of the money which has been lent to him, then let that man be condemned who has made a sword and sold it, and not the man who with that sword has slain a citizen. Wherefore, neither you, O Caius Memmius, ought to wish the senate, to support the authority

of which you have devoted yourself from your youth upward, to labor under such disrepute, nor ought I to speak in defense of conduct which is not the subject of the present inquiry. For the cause of Postumus, whatever it is, is at all events unconnected with the cause of the senate. And if I show that it has no connection with Gabinius either, then certainly you will have not a leg to stand upon.

IV. For this cause is an inquiry, "What has become of the money?" a sort of appendix as it were to an action which has been already decided, and in which a man has been convicted. An action was brought successfully against Aulus Gabinius, and he was condemned in damages; but no securities were given for the payment of them, nor did the people get out of his property a sum sufficient for the payment of those damages. The law is impartial. The Julian law orders that what is deficient should be required of those into whose hands the money, which the man who has been convicted received, came. If this is a new provision in the Julian law,—as there are many clauses of a severer and stricter tendency than those which are found in the ancient laws,—let us also have this new description of tribunal before which to prosecute the inquiry. But if this clause is transferred word for word not only from the Cornelian law but from the Servilian law, which is older still; then, in the name of the immortal gods, what is it that we are doing, O judges? Or what is this new principle of new legal proceedings that we are introducing into the republic? For the ancient mode of proceeding was well known to all of you, and if practice is the best of teachers it ought to be known to me above all men. For I have prosecuted men for extortion and peculation; I have sat as judge; I have conducted inquiries as praetor; I have defended many men; there is no step in such proceedings which can give a man any facility in speaking in which I have not taken a part.

This is what I assert:—that no one ever was put on his trial on the formula, "What had become of that money," who had not been summoned as a witness on the action for damages. But in the action in this instance, no one was summoned except in consequence of something said by witnesses, or something which appeared in the accounts of private individuals, or in the accounts of the cities. Therefore, when actions were being brought, those men were usually present

who had some apprehension about themselves; and then when they were summoned, then, if they thought it advantageous for them, they proceeded at once to contradict what had been said. But if they were afraid of unpopularity, because the facts in question were recent, they answered at some future time; and when they had done this, many of them gained their object.

V. But this is quite a novel way of managing business, and one utterly unheard of before this time. In the previous action Postumus's name never once occurs. In the action, do I say? You yourselves, O judges, lately sat as judges on Aulus Gabinius. Did any one witness then mention Postumus? Any witness? did ever the prosecutor name him? Did you, in short, in the whole of that trial once hear the name of Postumus?

Postumus, then, is not an additional criminal implicated in the cause which has been already decided. But still one Roman knight has been dragged before the court as a defendant, on a charge of extortion and peculation. On what account-books is this charge founded? On some which were not read on the trial of Aulus Gabinius. By what witness is it supported? By some one who never once mentioned his name at that time. On the sentence of what arbitrator do they rely? On one in which no mention whatever was made of Postumus. In accordance with the provisions of what law? Of one under which he is not liable.

Here now, O judges, the affair is one which has need of all your acuteness and of all your good sense. For you ought to consider what it is becoming to you to do, and not what is lawful for you. For if you ask what is lawful, you certainly have the power to remove any one whom you please out of the city. It is the voting tablet which gives you that power; and at the same time it conceals the capricious exercise of it. No one has any need to fear the consciousness of the tablet, if he has no reverence for his own conscience. Where, then, is the wisdom of the judge shown? In this, that he considers not only what he has the power to do, but also what he ought to do; and he does not recollect only what power has been committed to him, but also to what extent it has been committed. You have a tablet given you on which to record your judgment. According to what law? To the Julian law about extortion and peculation. Concerning what defendant?

Concerning a Roman knight. But that body is not liable to the operation of that law. \* \* \* \* \*

But now I hear what you say. Postumus, then, is prosecuted under that law, from the operation of which not only he, but his whole order, is released and wholly free.

VI. Here I will not at present implore your aid, O Roman knights,—you whose privileges are attacked by this prosecution,—before I implore you, O senators, whose good faith toward this order of knights is at stake; that good faith which has been often experienced before, and which has been lately proved in this very cause. For when—when that most virtuous and admirable consul Cnæus Pompeius made a motion with respect to this very inquiry—some, but very few, unfavorable opinions were delivered, which voted that prefects, and scribes, and all the retinue of magistrates were liable to the provisions of this law, you—you yourselves, I say—and the senate, in a very full house, resisted this; and although at that time, on account of the offenses committed by many men, people's minds were inflamed so that even innocent people were in danger, still, though you could not wholly extinguish its unpopularity, at all events you would not allow fuel to be added to the existing fire.

In this spirit did the senate act. What next? What are you, O Roman knights, what are you about to do, I pray? Glaucia, a profligate but still a shrewd man, was in the habit of warning the people when any law was being read to attend to the first line of it. If the first word was "dictator, consul, prætor, master of the horse," then not to trouble themselves about it; they might know that it was no concern of theirs. But if it began "Whoever after the passing of this law," then they had better take care that they were not made liable to any new judicial proceedings.

Now do you, O Roman knights, take care. You know that I was born of your order; that all my feelings have always been enlisted in your cause. I say nothing of what I am now saying but with the deepest anxiety and the greatest regard for your order. Other men may be attached to other men and to other orders; I have always been devoted to you. I warn you, I forewarn you; I give you notice while the affair and the cause are still undecided; I call all men and gods to witness. While you have it in your power, while it is lawful for you, beware lest you establish for yourselves and for your order a

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