

rules might thus be accumulated; but these, being framed on no general principles, would often, in their application to new cases, be found to err against material justice. No application of reason or philosophy had ever been made to the discovery of legal principles; for every rule was only the decision of an individual judge, according to what appeared just and equitable in the case before him. It has been a question agitated between the partisans of the popular cause and the advocates for the extension of the powers of monarchy, whether the kings of Rome were absolute, both in their legislative and ministerial capacity; or whether, in order to ratify such laws as they had the right of suggesting and proposing, it was necessary to obtain the consent and sanction of the people. In a question, to which, from the uncertainty of all that regards the early history of the Romans, it is not possible to give a positive answer, and where the opinions of historians are nothing more than their own conjectures, we may be allowed, like them, to reason according to what appears most probable. Since, therefore, it is a certain fact, that the regal dignity itself was elective, and that the choice lay in the people, it seems a natural presumption, that the people, acquiring and retaining so important a right, would not have abandoned every other article of their power or consequence. At the same time, it must be owned, that the right of electing the kings does not appear to have been a conventional prerogative of the people; but to have been, probably, the consequence of the first king's dying a violent death, without leaving children,—a circumstance which must necessarily have occasioned an election to the vacant office. But be this as it may, it is certainly probable, that the people who elected the official lawgiver would likewise assume or reserve to themselves some restraining or controlling influence in the laws to be enacted. The kings, we therefore suppose, submitted to the consideration of the people, in the comitia, those laws which they were desirous of enacting, and took their sense by the majority of suffrages.

These laws, after the expulsion of the Tarquins, were collected into one body by Papirius, or Papisius, a patrician; and from him took the name of *Jus Civile Papirianum*, or *Papirianum*. But in the beginning of the commonwealth, such was considered to be the imperfection of this code and its want of authority, that it fell entirely into neglect, and all judicial proceedings were regulated either by custom or the opinions of individual magistrates. In this situation the want of a regular system of jurisprudence, which should be a standard of procedure to all the judges, and a known and fixed rule of conduct for the people, began to be universally felt. Commissioners, as we have seen, were at length appointed to frame and digest such a code.

The Decemviri engrossed in their collection several of the ancient laws of the kings. They retained likewise all the more recent laws which had been passed in favor of the people, as that

was a condition stipulated at the time of their appointment to office: and on the report of the deputies said to have been sent into Greece for collecting the laws of the different republics, they borrowed from them such as they judged most suitable to the Roman constitution. These laws, after being exposed for a certain time in the forum, and submitted to the judgment of the people, who it does not appear made any alteration in them, were engraven on ten tables of brass, to which two others were added a short time afterwards. These Twelve Tables became the basis of the Roman jurisprudence. Livy remarks, that in his time, amidst the infinite number of additional laws, these continued to possess the greatest authority. And Cicero, speaking of the Twelve Tables, gives them the highest encomium, affirming that they throw great light on the manners and customs of ancient times, and contain more wisdom than the libraries of all the philosophers.* It was, he tells us, a common practice for the youth to commit these laws to memory.

The laws of the Twelve Tables were classed in the following order. The *first* table enacted the form of judicial proceedings before the several tribunals. In the *second* were classed the laws regarding theft, breach of trust, and robbery. The *third* treated of debtors and creditors; the *fourth* of the *patria potestas*, or powers which a father had over his children; the *fifth* of inheritances and guardianships; the *sixth* contained the laws regarding property and possession; the *seventh* related to the punishment of different crimes and delicts; the *eighth* contained regulations regarding land estates, public roads, boundaries, and plantations; the *ninth* related to the privileges of the people, or the rights of Roman citizens; the *tenth* contained the regulation of funerals; the *eleventh* treated of religion and the worship of the gods; and the *twelfth* enacted regulations regarding marriage, and the rights of husbands and wives.†

This digest of jurisprudence gave, on the whole, great satisfaction to all ranks of men; but among the statutes of the last table was one law most impolitic in the present situation of affairs, and

* *Plurima, inquit Crassus, est in XII Tabulis antiquitatis effigies; quod et verborum prisca vetustas cognoscitur, et actionum genera quædam majorum consuetudinem vitamque declarant: Sive quis civilem scientiam contempletur, quam Scævola non putat oratoris esse propriam, sed cujusdam ex alio genere prudentiæ, totam hanc descriptis omnibus civitatis utilitatibus, ac partibus, XII Tabulis contineri videbitis: sive quem ista præpotens et gloriosa philosophia delectat (dicam audacius,) hosce habet fontes omnium disputationum suarum, qui jure civili et legibus continentur.—Fremant licet omnes, dicam quod sentio: Bibliothecas, mæhercule, omnium philosophorum unus mihi videtur XII Tabularum libellus, si quis legum fontes, et capita viderit, et auctoritatis pondere, et utilitatis ubertate superare.—Cicero de Oratore, lib. i.*

† A brief analysis of the laws of the Twelve Tables, and a very perspicuous commentary on their import, is to be found in Rosini, *Antiq. Rom.*, Dempsteri lib. viii.

which produced accordingly all that rancor and animosity between the orders, which might have been expected. This was a law prohibiting all intermarriage between the patricians and plebeians—a law which the inferior order could not help regarding as a mark of infamy and scorn. It was naturally felt as such, and the popular magistrates were not remiss in cherishing and exaggerating that impression on the minds of the people. It gave rise to a keen and animated debate in the *Comitia*, which Livy has minutely detailed in the fourth book of his history. The speech of the tribune Canuleius, on that occasion, though doubtless owing its principal merit to the talents of the historian, is a noble specimen of eloquence, and of that judicious intermixture of argument and irony which is peculiarly suited to a popular assembly. The law itself, though carried at the time, and engrossed among those of the Twelve Tables, was not of long duration. It was, in fact, the very first which the people, in their daily advancing progress to an equality of rights with the higher order, prevailed to have abrogated.

Thus we observe the Roman jurisprudence confined at first within very narrow bounds; a circumstance which necessarily gave great latitude to judges in the power of interpreting the statutes; and the inapplicability of these to the endless variety of cases must, of course, have greatly fomented the spirit of litigation. One admirable law, however, to be found in those tables, was the best antidote that could be devised for this enormous evil. This was an enactment, that all causes should be heard and determined in one day, between sunrise and sunset. This was a powerful restraint on every species of judicial chicanery, and operated as the best remedy against that delay, the worst of grievances, which often makes injustice itself more tolerable than the means of obtaining its redress.

From the laws of the Twelve Tables, the *Jurisconsulti* composed a system of forms and rules, by which the processes in the courts were conducted. The number of the laws was likewise increased, from time to time, by the *Plebiscita* and *Senatus consulta*; the former made by the people, without the authority of the senate, in the *Comitia tributa*; the latter enacted by the sole authority of the senate. To these we may add the laws framed by the authority of the *praetors*, after the institution of that magistracy, which was near a century posterior to the creation of the decemvirs. But of those different materials which composed the body of the Roman law, it is not necessary here to treat with greater amplitude.

The *decemviri*, like most men new in office, conducted themselves at first with much wisdom and moderation: each of them by turns presided as chief magistrate of the state, during a single day, having the fasces carried before him in token of sovereign power. The nine others had no other distinguishing symbol than

a single officer who preceded them, called *Accensus*. The presiding magistrate assembled the senate, took their advice, and carried into execution the result of their joint determination in the ordinary business of the commonwealth, but the whole decemviri applied with equal diligence to the administration of justice. They met every morning in the forum, to give audience to all complaints and processes. They seemed to be animated solely by the desire of maintaining public order; nor was there any symptoms of jealousy or party spirit. Even Appius Claudius, whom his colleagues seem to have regarded as the first in rank, affected no superiority. His conduct acquired him high popularity; and while he rendered impartial justice to those of every rank and station, he behaved with gentleness and courtesy to the meanest citizen. We shall presently see the purpose of this ambitious man.

The term of administration of the new magistrates had almost expired, when it was found necessary to make a supplement to the laws, of two additional tables. For that ostensible purpose, but more probably from the desire of preventing the election of tribunes, the senate decreed that there should be a new appointment of decemviri. The people, who were equally pleased to be relieved from the consular government, as the patricians from the tribunate, approved of the measure. Several senators aspired to the new office; while the artful Appius, with a show of modesty, affected to decline it. He was, therefore, chosen to preside at the election of the new decemviri, and thus entitled to give the first suffrage. To the surprise of all, he named himself, and suggested six others of the patrician order, and three of the plebeian. Such was the popularity he had acquired, and such the satisfaction of the people, in being admitted to a share in this important and honorable office, that his nomination was received with loud applause, and immediately agreed to; however displeasing we may presume it was to those of the higher order, who either envied the power, or penetrated into the ambitious designs of this artful man.

The colleagues whom Appius had named for himself were all men devoted to his interest, and, therefore, they followed an uniform system of measures. Resolved to retain their office for life, they determined no more to assemble either the Senate or the *Comitia*, but, in virtue of the plenary powers annexed to their office, to cut off all appeal—to support jointly the separate measures and decrees of each—and thus to perpetuate in their own persons a sovereign, absolute, and uncontrolled authority. This bold purpose, or at least the measures adopted for its accomplishment, it seems extremely difficult to reconcile to common prudence. All approaches to tyranny, if planned by wisdom, are gradual; and it is nothing less than madness in a magistrate to proclaim a purpose of tyrannizing upon his first entering upon office.

But, whatever we may judge of the designs of these decemvirs, it is certain that they endeavored to maintain their authority by extreme violence, and as certain that they became almost immediately the objects of public indignation. From their first appearance in the forum, they were preceded by twelve lictors, who constantly carried the fasces armed with axes. Their suite was commonly composed of a number of the most licentious patricians; profligates loaded with debt or stained with crimes; men whose pleasure lay in every species of disorder, and who contributed a desperate aid to those ministers whose power protected them in their lawless excesses.

Such was the miserable situation of Rome under her new governors, that many of the principal citizens betook themselves for refuge to the allied states. It was no wonder that the Æqui and Volsci, those perpetual enemies of the Romans, should judge this a favorable season for an attack upon the territory of the republic. In this emergency, the decemviri became sensible of their want of that substantial power which is founded on popularity; they were obliged to convoke the senate, and thus acknowledge the necessity of a decree of that body before a single citizen would enter the rolls. By the senate's decree, three bodies of troops were raised; two marched against the enemy, and with them eight of the decemvirs. Appius and one of his colleagues retained the other body in Rome, for the defence of the city and the support of their own authority, which an outrage of the most flagrant nature was now very speedily to bring to its termination.

Appius, sitting in judgment in his tribunal, had cast his eyes upon a young woman of uncommon beauty, who daily passed through the forum, in her way to the public schools. Virginia, a maiden of fifteen years of age, was the daughter of a plebeian, a centurion, at that time absent with the army. Appius had been informed of her situation: she was betrothed to Icilius, formerly one of the tribunes, then serving against the enemy; and their marriage was to be celebrated as soon as the campaign was at an end; an obstacle which served only to increase the passion of this flagitious magistrate, who determined, at all hazards, to secure her as his prey. After many fruitless attempts to corrupt the fidelity of those domestics to whom Virginia had left the charge of his daughter, (for she had lost her mother,) Appius devised a scheme which he thought could not fail to put Virginia entirely within his power. He employed Marcus Claudius, one of his dependents, a infamous and shameless man, to claim the young woman as his own property. Marcus pretended that she was the daughter of one of his female slaves, who had sold her when an infant to the wife of Virginius, who had no children. He therefore pretended to reclaim what was his own, and attempted by force to carry her home to his house. The people interposed with great earnestness to protect the young woman; and Marcus,

declaring that he meant nothing but what was just and lawful, brought his claim before the tribunal of the decemvir. Numitorius, the uncle of Virginia, represented that her father, the guardian and protector of his child, was at this time absent, and in arms for the defence of his country. He asked a delay only of two days, in order to send for him from the camp, and demanded, in the mean time, that, as her nearest relation, the damsel should be committed to his care. The decemvir, with the show of much candor, allowed that there was great equity in the request of sending for Virginius, which he therefore immediately granted, but urged at the same time that this delay ought not to be prejudicial to the right of a master who claimed his slave. He therefore decreed that Marcus should take the young woman to his house, on giving security to produce her upon the return of her father. The flagrant injustice of this decree excited a cry of universal indignation. Marcus, advancing to lay hold of Virginia, was repulsed by the people, and particularly by Icilius, her intended husband, who, being apprized of the affair, had flown in rage and distraction to the forum. The tumult became so violent, that Appius, alarmed for his own safety, thought proper to suspend the execution of his decree, and to allow the young woman to remain under the protection of her friends till the arrival of her father. He despatched, in the meantime, a messenger to the army, desiring that his colleagues would on no account permit Virginius to quit the camp. But this unfortunate man, whom his friends had found means to inform of the situation of his child, was already on his way. He got to Rome without hindrance, and, to the confusion of the decemvir, appeared next day in the forum, supporting in his arms his daughter drowned in tears. An immense crowd attended; and all awaited the issue of this interesting question, their breasts alternately agitated with fear, with compassion, and indignation.

Appius, determined to prosecute his purpose, had ordered the troops to surround the forum. He now called on Marcus to make his demand, and to produce the proofs of his claim. To these Virginius was at no loss to give the most satisfactory answers, which fully exposed the villany of the imposture. Appius was not to be thus foiled. With the most unparalleled effrontery, he stood forth as a witness as well as a judge; declaring that it was consistent with his own knowledge that the plea of Marcus was true. He therefore gave his final sentence, that the slave should be delivered up to her lawful master, and ordered his officers to enforce, without delay, the execution of his decree. The soldiers were removing the crowd, and Marcus, together with the lictors, was advancing to seize Virginia, who clung for protection around the neck of her father. "There is," said he, "but one way, my dear child, to save thy honor and preserve thy liberty." Then seizing a knife from the stall of a butcher—"Thus," said he, striking her to the heart, "thus, I send thee to thy forefathers, un-

polluted and a free woman." Then turning to the tribunal of Appius, "Thou monster!" cried he, "with this blood I devote thy head to the infernal gods!" Appius, in a transport of rage, called out to the lictors to seize Virginius; but he, rushing out from the forum, and making way for himself with the knife which he held in his hand, while the multitude favored his escape, got safe without the city, and arrived in a few hours at the camp. Meantime Numitorius and Icilius exposed the bleeding body to the sight of the whole people, who, inflamed to the highest pitch of fury, would have torn Appius to pieces, had he not found means to escape amidst the tumult, and to conceal himself in the house of one of his friends.

Valerius and Horatius, two of the senators, men of consular dignity, and who had opposed the last creation of decemviri, now put themselves at the head of the people. They promised them the redress of all their wrongs, and the abolition of those hated magistrates; but urged that they should first wait the resolution of the army, which could not fail to coincide with their own.

The unfortunate Virginius had no sooner acquainted his fellow-soldiers of what had happened, than there was a general insurrection. Without regard to the orders of the decemvirs in the camp, the whole army, headed by their centurions, marched to Rome, and, retiring to the Aventine mount, chose ten leaders, with the title of military tribunes. They then declared their determined purpose of abolishing the decemvirate, and reestablishing the consular government, together with the tribunes of the people. The senate was assembled. The decemvirs thought proper voluntarily to resign their office. Valerius and Horatius were chosen consuls; and the popular magistrates, the tribunes, were elected with the same powers as formerly, which reinstated the people at once in all their rights and privileges.

Among the tribunes first chosen were Virginius, Icilius, and Numitorius. It may be believed that their vengeance against the infamous Appius was not long delayed. Virginius cited him before the people, at whose orders he was seized and thrown into prison, where, a few days after, he was found dead. It was suspected, says Dionysius, that he was privately strangled by order of the tribunes; but other authors, with more probability, affirm that he chose to escape a certain and ignominious fate by a voluntary death. His colleague Oppius, the chief abettor of his crimes, had the same catastrophe, and the rest underwent a voluntary banishment, while their goods were forfeited to the public use. Such is the history of the decemvirate, that inauspicious and short-lived magistracy, which was thus violently terminated in the third year after its institution.*

* An amusing comparison may be made of the talents of the two great his

CHAPTER VI.

Law against intermarriage of Patricians and Plebeians repealed—Military Tribunes created—Creation of Censors—Their high powers of office—A regular pay assigned to the Army introduces a new balance into the Constitution—Consequences of—Siege of Veii—Romans begin to extend their conquests—Reflections on the state of the Republic at this period—War with the Gauls—Its fabulous aspect—New popular Laws—Institution of the office of Prætor,—of Quæstor—of Ædile—Licinian law limiting property in land

No sooner was tranquillity in some measure reestablished in the city of Rome, than the consuls Valerius and Horatius, at the head of a large army, animated with the spirit of patriotism which the late events had strongly stimulated, marched against the enemy. The Volsci and Æqui sustained a complete defeat; but the senate, jealous, as is said, of the too great popularity of the successful generals, thought proper to refuse them the honors of a triumph. The consuls, indignant at this insult, applied to the people, who unanimously decreed them this reward of their services. Thus the senate most imprudently threw away its privileges; and every day gave some new accession of weight to the scale of the people.

Two powerful barriers which at this time subsisted between the patricians and plebeians, were the law which prevented the intermarriage of these orders, and another ordinance which excluded the plebeians from the consulate and higher offices of the state. It was only necessary to remove these two obstructions, to bring the separate ranks to a perfect equality in every substantial privilege of Roman citizens; and the plebeians were determined to leave no means untried for the accomplishment of this end.

On the occasion of a new war, the ordinary device was practised of refusing to enter the rolls. In this purpose the people were

torians of the Roman republic, Livy and Dionysius of Halicarnassus, in the accounts they have given of that celebrated event, the death of Virginia by the hand of her father, and its important consequences. In Livy, we have a concise, clear, and animated narrative, where no circumstance is superfluous, no observation strained or far-fetched, nor any thing omitted which contributes to the effect of the picture. In Dionysius, we wade through a minute detail of facts, and a laborious legal discussion, resembling the report of a law-process in which every argument is brought forward, and every reflection anticipated, that the mind can form upon the case. It is easy to judge which method of writing is best adapted to historical composition. Vide Liv. lib. iii. c. 31—59 and Dion. Hal., Ant. Rom., lib. xi.