The subject of this paper is an attempt to study, at a broad level, the attitude to litigation of the parties to a dispute at the time of the Twelve Tables. I am concerned not so much with the formal steps through which an action proceeded as with what the parties themselves intended to achieve through the use of the procedures established (or regulated) by the Twelve Tables. The practical aspects of Roman litigation have recently been examined by Professor Kelly. In his book on Roman Litigation he has emphasised that what actually happened when a dispute arose between two persons might diverge very considerably from what the rules of law prescribed should happen. It is because I accept this point but think that the evidence can bear a different interpretation from that suggested by Professor Kelly that I have been led to add to what he has written. The best starting point is a summary of Professor Kelly's conclusions in so far as they relate to the time of the Twelve Tables.

Professor Kelly has represented early Roman legal procedure as belonging to a stage of transition, a stage marking the division between a system of pure self help and a system of procedures prescribed and enforced by the state. There are courts and there are officers appointed by the state to control the conduct of litigation. The judges who decide the dispute are selected through the co-operation of the parties with an officer of the state and their decisions are binding on the parties. But there are as yet no means of compulsion or coercion available to the state either to secure the enforcement of a judgement or even to see that the procedure laid down for bringing disputes before the court is complied with. Hence the system of procedure in which the state intervenes only
partially still preserves the fundamental disadvantage of the system of pure self help: the lack of an effective sanction to secure compliance with its rules\(^1\).

It has to be assumed (although Professor Kelly does not touch on this point) that the absence of effective sanctions provided by a central authority is not quite so serious in the legal system of the time of the Twelve Tables as in the earlier system of self help. At the time of the Twelve Tables the intervention of the state has at least minimised the extent to which superiority of force can nullify a legal right. A plaintiff even though vastly superior in strength to the defendant might hesitate to use his power against the defendant until he had a judgement from the court, and the judgement would not be given unless he could make out a good case\(^2\). Under the old system a plaintiff sufficiently powerful could simply compel his weaker opponent to do as he wished. On the other hand — and this is the situation which Professor Kelly especially emphasises\(^3\) — where it is the defendant who is in the physically stronger position then both in the old and the new systems the plaintiff is helpless. Under the old system where pursuance of one's right is entirely dependent upon self help a plaintiff has a chance of success only if his opponent occupies a position no stronger than his own. Under the system set out in the Twelve Tables his position in reality is no better despite the deceptive detail with which the Tables regulate the commencement of an action.

The Tables open with a set of laws prescribing the manner in which a plaintiff is to summons a defendant to court\(^4\). After the actual summons has been verbally made by the plaintiff the de-


2) However on Professor Kelly's premises it follows that a plaintiff might choose to ignore the court altogether and enforce his claim directly against a weaker defendant, leaving him to attempt to bring a legal action by way of redress if he could.

3) Kelly, *op. cit.*, 4f.

4) 1.1: "Si in ius vocat (ito). Ni it, antestamino: igitur em capito". 2: "Si calvitur pedemve struit, manum endo iacito". 3: "Si morbus aevitasve (vitium) escit, iumentum dato. Si nolet, arccram ne sternito".