

**EVANS  
EDWARD  
PAYSON**

THE CRIMINAL  
PROSECUTION AND  
CAPITAL PUNISHMENT OF  
ANIMALS

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The Criminal Prosecution and Capital Punishment of Animals:*

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# Edmund P. Evans

## The Criminal Prosecution and Capital Punishment of Animals

### INTRODUCTION

The present volume is the result of the revision and expansion of two essays entitled "Bugs and Beasts before the Law," and "Modern and Mediæval Punishment," which appeared in *The Atlantic Monthly*, in August and September 1884. Since that date the author has collected a vast amount of additional material on the subject, which has also been discussed by other writers in several publications, the most noteworthy of which are Professor Karl von Amira's *Thierstrafen und Thierprocesse* (Innsbruck, 1891), Carlo d'Addosio's *Bestie Delinquenti* (Napoli, 1892), and G. Tobler's *Thierprocesse in der Schweiz* (Bern, 1893), but in none of these works, except the first-mentioned, are there any important statements of facts or citations of cases in addition to those adduced in the essays already mentioned, for which the writer was indebted chiefly to the extensive and exceedingly valuable researches of Berriat-Saint-Prix and M. L. Ménebréa,

and the *Consilium Primum* of Bartholomew Chassenée, cited in the appended bibliography. Professor Von Amira is a very distinguished and remarkably keen-sighted jurist and treats the matter exclusively from a jurisprudential point of view, his main object being to discover some general principle on which to explain these strange phenomena, and thus to assign to them their proper place and true significance in the historical evolution of the idea of justice and the methods of attaining it by legal procedure.

Von Amira draws a sharp line of technical distinction between Thierstrafen and Thierprocesse; the former were capital punishments inflicted by secular tribunals upon pigs, cows, horses, and other domestic animals as a penalty for homicide; the latter were judicial proceedings instituted by ecclesiastical courts against rats, mice, locusts, weevils, and other vermin in order to prevent them from devouring the crops, and to expel them from orchards, vineyards, and cultivated fields by means of exorcism and excommunication. Animals, which were in the service of man, could be arrested, tried, convicted and executed, like any other members of his household; it was, therefore, not necessary to summon them to appear in court at a specified time to answer for their conduct, and thus make them, in the strict sense of the term, a party to the prosecution, for the sheriff had already taken them in charge and consigned them to the custody of the jailer. Insects and rodents, on the other hand, which were not subject to human control and could not

be seized and imprisoned by the civil authorities, demanded the intervention of the Church and the exercise of its supernatural functions for the purpose of compelling them to desist from their devastations and to retire from all places devoted to the production of human sustenance. The only feasible method of staying the ravages of these swarms of noxious creatures was to resort to “metaphysical aid” and to expel or exterminate them by sacerdotal conjuring and cursing. The fact that it was customary to catch several specimens of the culprits and bring them before the seat of justice, and there solemnly put them to death while the anathema was being pronounced, proves that this summary manner of dealing would have been applied to the whole of them, had it been possible to do so. Indeed, the attempt was sometimes made to get rid of them by setting a price on their heads, as was the case with the plague of locusts at Rome in 880, when a reward was offered for their extermination, but all efforts in this direction proving futile, on account of the rapidity with which they propagated, recourse was had to exorcisms and besprinklings with holy water.

D’Addosio speaks of the actions brought against domestic animals for homicide as penal prosecutions, and those instituted against insects and vermin for injury done to the fruits of the field as civil suits (*processi civili*); but the latter designation is not correct in any proper sense of the term, since these actions were not suits to recover for damages to property, but had solely a preventive or prohibitive character. The judicial process was

preliminary to the utterance of the malediction and essential to its efficacy. Before fulminating an excommunication the whole machinery of justice was put in motion in order to establish the guilt of the accused, who were then warned, admonished, and threatened, and, in cases of obduracy, smitten with the *anathema maranatha* and devoted to utter destruction. As with all bans, charms, exorcisms, incantations, and other magical hocus-pocus, the omission of any formality would vitiate the whole procedure, and, by breaking the spell, deprive the imprecation or interdiction of its occult virtue. Ecclesiastical thunder would thus be robbed of its fatal bolt and reduced to mere empty noise, the harmless explosion of a blank cartridge.

The Church was not wholly consistent in its explanations of these phenomena. In general the swarms of devouring insects and other noxious vermin are assumed to have been sent at the instigation of Satan (*instigante sathana, per maleficium diabolicum*), and are denounced and deprecated as snares of the devil and his satellites (*diaboli et ministrorum insidias*); again they are treated as creatures of God and agents of the Almighty for the punishment of sinful man; from this latter point of view every effort to exterminate them by natural means would be regarded as a sort of sacrilege, an impious attempt to war upon the Supreme Being and to withstand His designs. In either case, whether they were the emissaries of a wicked demon or of a wrathful Deity, the only proper and permissible way of relief was through the offices of the Church, whose bishops and other clergy were

empowered to perform the adjurations and maledictions or to prescribe the penances and propitiations necessary to produce this result. If the insects were instruments of the devil, they might be driven into the sea or banished to some arid region, where they would all miserably perish; if, on the other hand, they were recognized as the ministers of God, divinely delegated to scourge mankind for the promotion of piety, it would be suitable, after they had fulfilled their mission, to cause them to withdraw from the cultivated fields and to assign them a spot, where they might live in comfort without injury to the inhabitants. The records contain instances of both kinds of treatment.

It was also as a protection against evil spirits that the penalty of death was inflicted upon domestic animals. A homicidal pig or bull was not necessarily assumed to be the incarnation of a demon, although it was maintained by eminent authorities, as we have shown in the present work, that all beasts and birds, as well as creeping things, were devils in disguise; but the homicide, if it were permitted to go unpunished, was supposed to furnish occasion for the intervention of devils, who were thereby enabled to take possession of both persons and places. This belief was prevalent in the Middle Ages, and is still taught by the Catholic Church. In a little volume entitled *Die Verwaltung des Exorcistats nach Massgabe der römischen Benediktionale*, of which a revised and enlarged edition was published at Stuttgart in 1893 for the use of priests as a manual of instruction in performing exorcisms, it is expressly stated by the reverend author, Dr.

Theobald Bischofberger, that a spot, where a murder or other heinous crime has been committed, if the said crime remains undetected or unexpiated, is sure to be infested by demons, and that the inmates of a house or other building erected upon such a site will be peculiarly liable to diabolical possession, however innocent they may be personally. Indeed, the more pure and pious they are, the greater will be the efforts of the demons to enter into and annoy them. Not only human beings, but also all cattle after their kind, and even the fowls of the barnyard are subject to infernal vexations of this sort. The infestation thus produced may continue for centuries, and, although the property may pass by purchase or inheritance into other hands and be held successively by any number of rightful owners, the demons remain in possession unaffected by legal conveyances. If each proprietor imagines he has an exclusive title to the estate, he reckons without the host of devils, who exercise there the right of squatter sovereignty and can be expelled only by sacerdotal authority. Dr. Bischofberger goes so far as to affirm that it behoves the purchaser of a piece of land to make sure that it is unencumbered by devils as well as by debts, otherwise he may have to suffer more from a demoniac lien than from a dead pledge or any other form of obligation in law. Information concerning the latter can be obtained at the registry of deeds, but it is far more difficult to ascertain whether the infernal powers have any claims upon it, since this knowledge can be derived only inferentially and indirectly from inquiries into the character of

the proprietors for many generations and must always rest upon presumptive evidence rather than positive proof. Our author does not hesitate to assert that houses which have been the abodes of pious people from time immemorial ought to have a higher market value than the habitations of notoriously wicked families. It is thus shown that “godliness is profitable” not only “unto all things,” but also, as mediæval writers were wont to say, unto some things besides, which the apostle Paul in his admonitions to his “son Timothy” never dreamed of. We are also told that the *aura corrumpens* resulting from diabolical infestation imparts to the dwelling a peculiar taint, which it often retains for a long time after the demons have been cast out, so that sensitive persons cannot enter such a domicile without getting nervously excited, slightly dizzy and all in a tremble. The carnal mind, which is at enmity with all supernatural explanations of natural phenomena, would seek the source of such sensations in an *aura corrumpens* arising from the lack of proper ventilation, and find relief by simply opening the windows instead of calling in a priest with aspergills, and censers, and *benedictiones locorum*.

We have a striking illustration of this truth in the frequent cases of “bewitched kine.” European peasants often confine their cattle in stalls so small and low that the beasts have not sufficient air to breathe. The result is that a short time after the stalls are closed for the night the cattle get excited and begin to fret and fume and stamp, and are found in the morning weak and exhausted and covered with sweat. The peasant attributes these

phenomena to witchcraft, and calls in an exorcist, who proceeds to expel the evil spirits. Before performing the ceremony of conjuration, he opens the doors and windows and the admission of fresh air makes it quite easy to cast out the demons. A German veterinarian, who reports several instances of this kind, tried in vain to convince the peasants that the trouble was due, not to sorcery, but to the absence of proper sanitary conditions, and finally, in despair of accomplishing his purpose in any other way, told them that if the windows were left open so that the witches could go in and out freely, the demons would not enter into the cattle. This advice was followed and the malign influence ceased.

The ancient Greeks held that a murder, whether committed by a man, a beast, or an inanimate object, unless properly expiated, would arouse the furies and bring pestilence upon the land; the mediæval Church taught the same doctrine, and only substituted the demons of Christian theology for the furies of classical mythology. As early as 864, the Council of Worms decreed that bees, which had caused the death of a human being by stinging him, should be forthwith suffocated in the hive before they could make any more honey, otherwise the entire contents of the hive would become demoniacally tainted and thus rendered unfit for use as food; it was declared to be unclean, and this declaration of impurity implied a liability to diabolical possession on the part of those who, like Achan, “transgressed in the thing accursed.” It was the same horror of aiding and abetting demons and enabling them to extend their power over mankind that caused a

cock, which was suspected of having laid the so-called “basilisk-egg,” or a hen, addicted to the ominous habit of crowing, to be summarily put to death, since it was only by such expiation that the evil could be averted.

A Swiss jurist, Eduard Osenbrüggen (*Studien zur deutschen und schweizerischen Rechtsgeschichte*. Schaffhausen, 1868, p. 139-149), endeavours to explain these judicial proceedings on the theory of the personification of animals. As only a human being can commit crime and thus render himself liable to punishment, he concludes that it is only by an act of personification that the brute can be placed in the same category as man and become subject to the same penalties. In support of this view he refers to the fact that in ancient and mediæval times domestic animals were regarded as members of the household and entitled to the same legal protection as human vassals. In the Frankish capitularies all beasts of burden or so-called juments were included in the king’s ban and enjoyed the peace guaranteed by royal authority: *Ut jumenta pacem habent similiter per bannum regis*. The wergild extended to them as it did to women and serfs under cover of the man as master of the house and lord of the manor. The beste covert, to use the old legal phraseology, was thus invested with human rights and inferentially endowed with human responsibilities. According to old Welsh law atonement was made for killing a cat or dog belonging to another person by suspending the animal by the tail so that its nozzle touched the ground, and then pouring wheat over it until its body

was entirely covered. Old Germanic law also recognized the competency of these animals as witnesses in certain cases, as, for example, when burglary had been committed by night, in the absence of human testimony, the householder was permitted to appear before the court and make complaint, carrying on his arm a dog, cat or cock, and holding in his hand three straws taken from the roof as symbols of the house. Symbolism and personification, as applied to animals and inanimate objects, unquestionably played an important part in primitive legislation, but this principle does not account for the excommunication and anathematization of noxious vermin or for the criminal prosecution and capital punishment of homicidal beasts, nor does it throw the faintest light upon the origin and purpose of such proceedings. Osenbrüggen's statement that the cock condemned to be burned at Bâle was personified as a heretic (Ketzer) and therefore sentenced to the stake, is a far-fetched and wholly fanciful explanation. As we have already seen, the unfortunate fowl, suspected of laying an egg in violation of its nature, was feared as an abnormal, inauspicious, and therefore diabolic creature; the fatal cockatrice, which was supposed to issue from this egg when hatched, and the use which might be made of its contents for promoting intercourse with evil spirits, caused such a cock to be dreaded as a dangerous purveyor to His Satanic Majesty, but no member of the Kohlenberg Court ever thought of consigning Chanticleer to the flames as the peer of Wycliffe or of Huss in heresy.

The judicial prosecution of animals, resulting in their excommunication by the Church or their execution by the hangman, had its origin in the common superstition of the age, which has left such a tragical record of itself in the incredibly absurd and atrocious annals of witchcraft. The same ancient code that condemned a homicidal ox to be stoned, declared that a witch should not be suffered to live, and although the Jewish lawgiver may have regarded the former enactment chiefly as a police regulation designed to protect persons against unruly cattle, it was, like the decree of death against witches, genetically connected with the Hebrew cult and had therefore an essentially religious character. It was these two paragraphs of the Mosaic law that Christian tribunals in the Middle Ages were wont to adduce as their authority for prosecuting and punishing both classes of delinquents, although in the application of them they were undoubtedly incited by motives and influenced by fears wholly foreign to the mind of the Levitical legislator. The extension of Christianity beyond the boundaries of Judaism and the conversion of Gentile nations led to its gradual but radical transformation. The propagation of the new and aggressive faith among the Greeks and Romans, and especially among the Indo-Germanic tribes of Northern Europe, necessarily deposed, degraded and demonized the ancestral deities of the proselytes, who were taught henceforth to abjure the gods of their fathers and to denounce them as devils. Thus missionary zeal and success, while saving human souls from endless perdition, served also to

enlarge the realm of the Prince of Darkness and to increase the number of his subjects and satellites. The new convert saw them with his mind's eye skulking about in obscure places, haunting forest dells and mountain streams by day, approaching human habitations by night and waiting for opportunities to lure him back to the old worship or to take vengeance upon him for his recreancy. Every untoward event furnished an occasion for their intervention, which could be averted or repelled only by the benedictions, exorcisms or anathemas of the Church. The ecclesiastical authorities were therefore directly interested in encouraging this superstitious belief as one of the chief sources of their power, and it was for this reason that diabolical agencies were assumed to be at work in every maleficent force of nature and to be incarnate in every noxious creature. That this doctrine is still held and this policy still pursued by the bishops and other clergy of the Roman Catholic Church, no one familiar with the literature of the subject can deny.

Besides the manuals and rituals already cited, consult, for example, *Die deutschen Bischöfe und der Aberglaube: Eine Denkschrift von Dr. Fr. Heinrich Reusch*, Professor of Theology in the University of Bonn, who vigorously protests against the countenance given by the bishops to the crassest superstitions. For specimens of the literature condemned by the German professor, but approved by the prelates and the pope, see such periodicals as *Monat-Rosen zu Ehren der Unbefleckten Gottes-Mutter Maria* and *Der Sendbote des göttlichen Herzens Jesu*,

published by Jesuits at Innsbruck in the Tyrol.

It is a curious fact that the most recent and most radical theories of juridical punishment, based upon anthropological, sociological and psychiatric investigations, would seem to obscure and even to obliterate the line of distinction between man and beast, so far as their capacity for committing crime and their moral responsibility for their misdeeds are concerned. According to Lombroso there are *i delinquenti nati fra gli animali*, beasts which are born criminals and wilfully and wantonly injure others of their kind, violating with perversity and premeditation the laws of the society in which they live. Thus the modern criminologist recognizes the existence of the kind of malefactor characterized by Jocodus Damhouder, a Belgian jurist of the sixteenth century, as *bestia laedens ex interna malitia*; but although he might admit that the beast perpetrated the deed with malice aforethought and with the clear consciousness of wrong-doing, he would never think of bringing such a creature to trial or of applying to it the principle of retributive justice. This example illustrates the radical change which the theory of punishment has undergone in recent times and the far-reaching influence which it is beginning to exert upon penal legislation. In the second part of the present work the writer calls attention to this important revolution in the province of criminology, discussing as concisely as possible its essential features and indicating its general scope and practical tendencies, so far as they have been determined. It must be remembered,

however, that, although the savage spirit of revenge, that eagerly demands blood for blood without the slightest consideration of the anatomical, physiological or psychological conditions upon which the commission of the specific act depends, has ceased to be the controlling factor in the enactment and execution of penal codes, the new system of jurisprudence, based upon more enlightened conceptions of human responsibility, is still in an inchoate state and very far from having worked out a satisfactory solution of the intricate problem of the origin and nature of crime and its proper penalty.

In 1386, an infanticidal sow was executed in the old Norman city of Falaise, and the scene was represented in fresco on the west wall of the Church of the Holy Trinity in that city. This curious painting no longer exists, and, so far as can be ascertained, has never been engraved. It has been frequently and quite fully described by different writers, and the frontispiece of the present volume is not a reproduction of the original picture, but a reconstruction of it according to these descriptions. It is taken from Arthur Mangin's *L'Homme et la Bête* (Paris, 1872), of which all the illustrations are more or less fancy sketches. A full account of the trial and execution is given in the present volume.

The iconographic edition of Jocodus Damhouder's *Praxis Rerum Criminalium* (Antverpiæ, 1562) contains at the beginning of each section an engraving representing the perpetration of the crimes about to be discussed. That at the head of the chapter entitled "De Damno Pecuario" is a lively picture of the injuries

done by animals and rendering them liable to criminal process; it is reproduced facing page 161 of the present work.

The most important documents, from which our knowledge of these judicial proceedings is derived, are given in the [Appendix](#), together with a complete list of prosecutions and excommunications during the past ten centuries, so far as we have been able to discover any record of them.

The bibliography, although making no claim to be exhaustive, comprises the principal works on the subject. Articles and essays, which are merely a rehash of other publications, it has not been deemed necessary to mention. Such, for example, are “Criminalprocesse gegen Thiere,” in *Miscellen aus der neuesten ausländischen Literatur* (Jena, 1830, LXV. pp. 152-55), Jörgensen’s *Nogle Frugter af mit Otium* (Copenhagen, 1834, pp. 216-23); Cretella’s “Gli Animali sotto Processo,” in *Fanfulla della Domenica* (Florence, 1891, No. 65), all three based upon the archival researches of Berriat-Saint-Prix and Ménabréa, and Soldan’s “La Personification des Animaux in Helvetia,” in *Monatsschrift der Studentenverbindung Helvetia* (VII. pp. 4-17), which is a mere restatement of Osenbrüggen’s theory.

In conclusion the author desires to express his sincere thanks to Dr. Laubmann, Director of the Munich Hof- und Staatsbibliothek, as well as to the other custodians of that library, for their uniform kindness and courtesy in placing at his disposal the printed and manuscript treasures committed to their keeping.

# CHAPTER I

## BUGS AND BEASTS BEFORE THE LAW

It is said that Bartholomew Chassenée,<sup>1</sup> a distinguished French jurist of the sixteenth century (born at Issy-l'Évêque in 1480), made his reputation at the bar as counsel for some rats, which had been put on trial before the ecclesiastical court of Autun on the charge of having feloniously eaten up and wantonly destroyed the barley-crop of that province. On complaint formally presented by the magistracy, the official or bishop's vicar, who exercised jurisdiction in such cases, cited the culprits to appear on a certain day and appointed Chassenée to defend them.

In view of the bad repute and notorious guilt of his clients, Chassenée was forced to employ all sorts of legal shifts and chicane, dilatory pleas and other technical objections, hoping thereby to find some loophole in the meshes of the law through which the accused might escape, or at least to defer and mitigate the sentence of the judge. He urged, in the first place, that inasmuch as the defendants were dispersed over a large tract

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<sup>1</sup> The name is also spelled Chassanée and Chasseneux. In the Middle Ages, and even as late as the end of the eighteenth century, the orthography of proper names was very uncertain.

of country and dwelt in numerous villages, a single summons was insufficient to notify them all; he succeeded, therefore, in obtaining a second citation, to be published from the pulpits of all the parishes inhabited by the said rats. At the expiration of the considerable time which elapsed before this order could be carried into effect and the proclamation be duly made, he excused the default or non-appearance of his clients on the ground of the length and difficulty of the journey and the serious perils which attended it, owing to the unwearied vigilance of their mortal enemies, the cats, who watched all their movements, and, with fell intent, lay in wait for them at every corner and passage. On this point Chassenée addressed the court at some length, in order to show that if a person be cited to appear at a place, to which he cannot come with safety, he may exercise the right of appeal and refuse to obey the writ, even though such appeal be expressly precluded in the summons. The point was argued as seriously as though it were a question of family feud between Capulet and Montague in Verona or Colonna and Orsini in Rome.

At a later period of his life Chassenée was reminded of the legal principle thus laid down and urged to apply it in favour of clients more worthy of its protection than a horde of vagrant rodents. In 1540 he was president of the judicial assembly known as the Parliament of Provence on a memorable occasion when the iniquitous measure for the extirpation of heresy by exterminating the Waldenses in the villages of Cabrières and

Merindol was under discussion. One of the members of the tribunal, a gentleman from Arles, Renaud d'Alleins, ventured to suggest to the presiding officer that it would be extremely unjust to condemn these unfortunate heretics without granting them a hearing and permitting an advocate to speak in their defence, so that they might be surrounded by all the safeguards of justice, adding that the eminent jurist had formerly insisted upon this right before the court of Autun and maintained that even animals should not be adjudged and sentenced without having a proper person appointed to plead their cause. Chassenée thereupon obtained a decree from the king commanding that the accused Waldenses should be heard; but his death, which occurred very soon afterwards, changed the state of affairs and prevented whatever good effects might have been produced by this simple act of justice. [Cf. Desnoyers: *Recherches*, etc. (*vide Bibliography*), p. 18.]

In the report of the trial published in the *Thémis Jurisconsulte* for 1820 (Tome I. pp. 194 sqq.) by Berriat Saint-Prix, on the authority of the celebrated Jacques Auguste De Thou, President of the Parliament of Paris, the sentence pronounced by the official is not recorded. But whatever the judicial decision may have been, the ingenuity and acumen with which Chassenée conducted the defence, the legal learning which he brought to bear upon the case, and the eloquence of his plea enlisted the public interest and established his fame as a criminal lawyer and forensic orator.

Chassenée is said to have been employed in several cases of this kind, but no records of them seem to have been preserved, although it is possible that they may lie buried in the dusty archives of some obscure provincial town in France, once the seat of an ecclesiastical tribunal. The whole subject, however, has been treated by him exhaustively in a book entitled *Consilium primum, quod tractatus jure dici potest, propter multiplicem et reconditam doctrinam, ubi luculenter et accurate tractatur quaestio illa: De excommunicatione animalium insectorum*. This treatise, which is the first of sixty-nine consilia, embodying opinions on various legal questions touching the holding and transmission of property, entail, loans, contracts, dowries, wills, and kindred topics, and which holds a peculiar place in the history of jurisprudence, was originally published in 1531, and reprinted in 1581, and again in 1588. The edition referred to in the present work is the first reprint of 1581, a copy of which is in the Royal Court and State Library of Munich.

This curious dissertation originated, as it appears, in an application of the inhabitants of Beaune to the ecclesiastical tribunal of Autun for a decree of excommunication against certain noxious insects called huberes or hurebers, probably a kind of locust or harvest-fly. The request was granted, and the pernicious creatures were duly accursed. Chassenée now raises the query whether such a thing may be rightfully and lawfully done (*sed an recte et de jure fieri possit*), and how it should be effected. "The principal question," he says, "is whether one can

by injunction cause such insects to withdraw from a place in which they are doing damage, or to abstain from doing damage there, under penalty of anathema and perpetual malediction. And although in times past there has never been any doubt on this point, yet I have thought that the subject should be thoroughly examined anew, lest I should seem to fall into the vice censured by Cicero (*De Off.* I. 6), of regarding things which we do not know as if they were well understood by us, and therefore rashly giving them our assent." He divides his treatise into five parts, or rather discusses the subject under five heads: "First, lest I may seem to discourse to the populace, how are these our animals called in the Latin language; secondly, whether these our animals can be summoned; thirdly, whether they can be summoned by procurators, and, if they are cited to appear personally, whether they can appear by proxy, *i. e.* through procurators appointed by the judge who summons them; fourthly, what judge, whether layman or ecclesiastic, is competent to try them, and how he is to proceed against them and to pass and execute sentence upon them; fifthly, what constitutes an anathema and how does it differ from an excommunication." Chassenée's method of investigation is not that of the philosophic thinker, who marshals facts under general laws and traces them to rational causes, but combines that of the lawyer, who quotes precedents and examines witnesses, with that of the theologian, who balances authorities and serves us with texts instead of arguments. He scrupulously avoids all psychological speculation or metaphysical

reasoning, and simply aims to show that animals have been tried, convicted, and sentenced by civil and ecclesiastical courts, and that the competence of these tribunals has been generally recognized.

The documentary evidence adduced is drawn from a great variety of sources: the scriptures of the Old and New Testament, pagan poets and philosophers, patristic theologians and homilists, mediæval hagiologists, Virgil, Ovid, Pliny, Cicero, Cato, Aristotle, Seneca, Silius Italicus, Boethius, Gregory the Great, Pico della Mirandola, the laws of Moses, the prophecies of Daniel, and the Institutes of Justinian are alike laid under contribution and quoted as of equal authority. All is fish that comes to his net out of his erudition, be it salmon or sea-urchin. If twelve witnesses can be produced in favour of a statement, and only two against it, his reason bows to the will of the majority, and accepts the proposition as proved. It must be added, however, to his credit, that he proceeds in this matter with strict impartiality and perfect rectitude, takes whatever evidence is at hand, and never tries to pack the witness-box.

His knowledge of obscure and now utterly forgotten authors, secular and ecclesiastic, is immense. Like so many scholars of his day he was prodigiously learned, without being remarkable for clearness or originality of thought. Indeed, the vastness of his erudition seems rather to have hampered than helped the vigorous growth of his intellectual faculties. He often indulges in logical subtleties so shallow in their speciousness, that they ought

not to deceive the veriest smatterer in dialectics; and the reader is constantly tempted to answer his laboured argumentations, as Tristram Shandy's Uncle Toby did the lucubrations of Corporal Trim, by "whistling half-a-dozen bars of Lillibullero." The examples he adduces afford striking illustrations of the gross credulity to which the strongly conservative, precedent-mongering mind of the jurisconsult is apt to fall an easy prey. The habit of seeking knowledge and guidance exclusively in the records and traditions of the past, in the so-called "wisdom of ages," renders him peculiarly liable to regard every act and utterance of antiquity as necessarily wise and authoritative.

In proof of the power of anathemas, Chassenée refers to the cursing of the serpent in the Garden of Eden, causing it to go upon its belly for all time; David's malediction of the mountains of Gilboa, so that they had neither rain nor dew; God's curse upon the city of Jericho, making its strong walls fall before the blasts of trumpets; and in the New Testament the withered fig-tree of Bethany. The words of Jesus, "Every tree that bringeth not forth good fruit is hewn down and cast into the fire," he interprets, not merely as the best means of getting rid of a cumberer of the orchard, but as a condemnation and punishment of the tree for its delinquencies, and adds: "If, therefore, it is permitted to destroy an irrational thing, because it does not produce fruit, much more is it permitted to curse it, since the greater penalty includes the less" (*cum si liceat quid est plus, debet licere quid est minus*).

An English professor of divinity, Richard Chevenix Trench,

justifies the withering of the fruitless fig-tree on the same ground or, at least, by a similar process of reasoning: "It was punished, not for being without fruit, but for proclaiming by the voice of those leaves that it had such; not for being barren, but for being false." According to this exegesis, it was the telling of a wilful lie that "drew on it the curse." The guilty fig is thus endowed with a moral character and made clearly conscious of the crime for which it suffered the penalty of death: "Almost as soon as the word of the Lord was spoken, a shuddering fear may have run through all the leaves of the tree, which was thus stricken at the heart." As regards the culpability and punishableness of the object, the modern divine and the mediæval jurist occupy the same standpoint; only the latter, with a stricter judicial sense, insists that there shall be no infliction of punishment until the malefactor has been convicted by due process of law, and that he shall enjoy all the safeguards which legal forms and technicalities have thrown around him and under whose covert even the vilest criminal has the right to take refuge. The Anglican hermeneutist, on the contrary, would justify the curse and admit the validity of the anathema, although it was only the angry expression of an unreasonable impatience disappointed in not finding fruit at the wrong season, "for the time of figs was not yet."

A curious and characteristic specimen of the absurd and illogical inferences, which Chassenée is constantly deducing from his texts, is the use he makes of the passage in Virgil's first Georgic, in which the poet remarks that "no religion has

forbidden us to draw off water-courses for irrigating purposes, to enclose crops with fences, or to lay snares for birds," all these things being essential to successful husbandry. But from the right to snare birds, our jurisprudent infers the right to excommunicate them, since "no snares are stronger than the meshes of an anathema." Far-fetched deductions and wretched twaddle of this sort fill many pages of the famous lawyer's dissertation.

Coming down to more recent times, Chassenée mentions several instances of the effectiveness of anathemas, accepting as convincing testimony the ecstasies of saints and the extravagant statements of hagiologists without the slightest expression of doubt as to the truth of these legends. Thus he relates how a priest anathematized an orchard, because its fruits tempted the children of his parish and kept them away from mass. The orchard remained barren until, at the solicitation of the Duchess of Burgundy, the ban was removed. In like manner the Bishop of Lausanne freed Lake Lemán from eels, which had become so numerous as seriously to interfere with boating and bathing; on another occasion in the year 1451 the same ecclesiastic expelled from the waters of this lake an immense number of enormous blood-suckers, which threatened to destroy all the large fish and were especially fatal to salmon, the favourite article of food on fast-days. This method of procedure was both cheap and effective and, as Felix Malleolus informs us in his *Tractatus de Exorcismis* (I), received the approbation of all the learned doctors of the University of Heidelberg: *omnes studii Heydelbergensis*

*Doctores hujusmodi ritus videntes et legentes consenserunt.* By the same agency an abbot changed the sweet white bread of a Count of Toulouse, who abetted and protected heresy, into black, mouldy bread, so that he, who would fain feed souls with corrupt spiritual food, was forced to satisfy his bodily hunger with coarse and unsavoury provender. No sooner was the excommunication removed than the bread resumed its original purity and colour. Egbert, Bishop of Trier, anathematized the swallows, which disturbed the devotions of the faithful by their chirping and chattering, and sacrilegiously defiled his head and vestments with their droppings, when he was officiating at the altar. He forbade them to enter the sacred edifice on pain of death; and it is still a popular superstition at Trier, that if a swallow flies into the cathedral, it immediately falls to the ground and gives up the ghost. Another holy man, known as John the Lamb, cursed the fishes, which had incurred his anger, with results equally fatal to the finny tribe. It is also related of the honey-tongued St. Bernard, that he excommunicated a countless swarm of flies, which annoyed the worshippers and officiating priests in the abbey church of Foigny, and lo, on the morrow they were, like Sennacherib's host, "all dead corpses." William, Abbot of St. Theodore in Rheims, who records this miraculous event, states that as soon as the execration was uttered, the flies fell to the floor in such quantities that they had to be thrown out with shovels (*palis ejicientes*). This incident, he adds, was so well known that the cursing of the flies of Foigny became proverbial and formed

the subject of a parable. [*Vita S. Bernardi*, auctore Wilhelmo abbate S. Thod. Rhem. I. 11.] According to the usual account, the malediction was not so drastic in its operation and did not cause the flies to disappear until the next day. The rationalist, whose chill and blighting breath is ever nipping the tender buds of faith, would doubtless suggest that a sharp and sudden frost may have added to the force and efficacy of the excommunication. The saint resorted to this severe and summary measure, says the monkish chronicler, because the case was urgent and “no other remedy was at hand.” Perhaps this lack of other means of relief may refer to the absence of “deacons with fly-flaps,” who, according to a contemporary writer, were appointed “to drive away the flies when the Pope celebrateth.”

The island Reichenau in Lake Constance, which derives its name from its fertility and is especially famous for the products of its vineyards and its orchards, was once so infested by venomous reptiles as to be uninhabitable by human beings. Early in the eighth century, as the legend goes, it was visited by St. Pirminius, and no sooner had he set foot upon it than these creatures all crawled and wriggled into the water, so that the surface of the lake was covered for three days and three nights with serpents, scorpions and hideous worms. Peculiar vermifugal efficacy was ascribed to the crosier of St. Magnus, the apostle of Algau, which was preserved in the cloister of St. Mang at Füssen in Bavaria, and from 1685 to 1770 was repeatedly borne in solemn procession to Lucerne, Zug, Schwyz and other

portions of Switzerland for the expulsion and extermination of rats, mice, cockchafers and other insects. Sometimes formulas of malediction were procured directly from the pope, which, like saints' curses, could be applied without legal formalities. Thus in 1660 the inhabitants of Lucerne paid four pistoles and one Roman thaler for a document of this kind; on Nov. 15, 1731, the municipal council of Thonou in Savoy resolved to join with other parishes of that province to obtain from Rome an excommunication against insects, the expenses for which are to be assessed *pro rata*;<sup>2</sup> in 1740 the commune of Piuro purchased from His Holiness a similar anathema; in the same year the common council of Chiavenna discussed the propriety of applying to Rome for an execratory against beetles and bears; and in December 1752 it was proposed by the same body to take like summary measures in order to get rid of a pest of rodents. In 1729, 1730 and 1749 the municipal council of Lucerne ordered processions to be made on St. Magnus' Day from the Church of St. Francis to Peter's Chapel for the purpose of expelling weevils. This custom was observed annually from 1749 to 1798. The pompous ceremony has been superseded in Protestant countries by an officially appointed day of fasting and prayer.

In his "First Counsel" Chassenée not only treats of methods of procedure, and gives forms of complaints to be drawn up and

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<sup>2</sup> "Item: a été délibéré que la ville se joindra aux paroisses de cette province qui voudront obtenir de Rome une excommunication contre les insectes et que l'on contribuera aux frais au *pro rata*."

tendered to the tribunal by the injured party, as well as useful hints to the pettifogger in the exercise of his tortuous and tricky profession, but he also discusses many legal principles touching the jurisdiction of courts, the functions of judges, and other characteristic questions of civil, criminal, and canonical law. Animals, he says, should be tried by ecclesiastical tribunals, except in cases where the penalty involves the shedding of blood. An ecclesiastical judge is not competent *in causa sanguinis*, and can impose only canonical punishments, although he may have jurisdiction in temporal matters and punish crimes not involving a capital sentence. [*Nam iudex ecclesiasticus in causa sanguinis non est competens iudex, licet habeat jurisdictionem in temporalibus et possit crimina poenam sanguinis non existentia (exigentia is obviously the correct reading) castigare.* Cons. prim. IV. § 5.] For this reason the Church never condemned heretics to death, but, having decided that they should die, gave them over to the secular power for formal condemnation, usually under the hollow and hypocritical pretence of recommending them to mercy. In the prosecution of animals the summons was commonly published from the parish pulpit and the whole judicial process bore a distinctively ecclesiastical character. In most cases the presiding judge or official was the vicar of the parish acting as the deputy of the bishop of the diocese. Occasionally the curate officiated in this capacity. Sometimes the trial was conducted before a civil magistrate under the authority of the Church, or the matter was submitted to the adjudication

of a conjurer, who, however, appointed two proctors to plead respectively for the plaintiff and the defendant and who rendered his verdict in due legal form. Indeed, the word “conjurer” seems to have been used as a popular designation of the person, whether priest or layman, who exercised judicatory functions in such trials, probably because, as a rule, the sentence could be executed only by conjuration or the invocation of supernatural aid.

Another point, which strikes us very comically, but which had to be decided before the trial could proceed, was whether the accused were to be regarded as clergy or laity. Chassenée thinks that there is no necessity of testing each individual case, but that animals should be looked upon as lay persons. This, he declares, should be the general presumption; but if any one wishes to affirm that they have *ordinem clericatus* and are entitled to benefit of clergy, the burden of proof rests upon him and he is bound to show it (*deberet estud probare*). Probably our jurist would have made an exception in favour of the beetle, which entomologists call *clerus*; it is certain, at any rate, that if a bug bearing this name had been brought to trial, the learning and acuteness displayed in arguing the point in dispute would have been astounding. We laugh at the subtleties and quiddities of mediæval theologians, who seriously discussed such silly questions as the digestibility of the consecrated elements in the eucharist; but the importance attached to these trivialities was not so much the peculiarity of a single profession as the mental habit of the age, the result of scholastic training and scholastic

methods of investigation, which tainted law no less than divinity. Nevertheless the ancillary relations of all other sciences and disciplines to theology render the latter chiefly responsible for this fatal tendency.

Chassenée also makes a distinction between punitive and preventive purposes in the prosecution of animals, between inflicting penalties upon them for crimes committed and taking precautionary measures to keep them from doing damage. By this means he seeks to evade the objection, that animals are incapable of committing crimes, because they are not endowed with rational faculties. He then proceeds to show that “things not allowable in respect to crimes already committed are allowable in respect to crimes about to be committed in order to prevent them.” Thus a layman may not arrest an ecclesiastic for a delict fully consummated, but may seize and detain him in order to hinder the consummation of a delict. In such cases, an inferior may coerce and correct a superior; even an irrational creature may put restraint upon a human being and hold him back from wrong-doing. In illustration of this legal point he cites an example from Holy Writ, where “Balaam, the prophet and servant of the Most High, was rebuked by a she-ass.”

Chassenée endeavours to clinch his argument as usual by quoting biblical texts and adducing incidents from legendary literature. The province of zoö-psychology, which would have furnished him with better material for the elucidation of his subject, he leaves untouched, simply because it was unknown

to him. If crime consists in the commission of deeds hurtful to other sentient beings, knowing such actions to be wrong, then the lower animals are certainly guilty of criminal offences. It is a well-established fact, that birds, beasts and insects, living together in communities, have certain laws, which are designed to promote the general welfare of the herd, the flock or the swarm, and the violation of which by individual members they punish corporally or capitally as the case may require. It is likewise undeniable, that domestic animals often commit crimes against man and betray a consciousness of the nature of their acts by showing fear of detection or by trying to conceal what they have done. Man, too, recognizes their moral responsibility by inflicting chastisement upon them, and sometimes feels justified in putting incorrigible offenders, a vicious bull, a thievish cat or a sheep-killing dog, summarily to death. Of course this kind of punishment is chiefly preventive, nevertheless it is provoked by acts already perpetrated and is not wholly free from the element of retributive justice. Such a proceeding, however, is arbitrary and autocratic, and if systematically applied to human beings would be denounced as intolerable tyranny. Chassenée insists that under no circumstances is a penalty to be imposed except by judicial decision —*nam poena nunquam imponitur, nisi lex expresse dicat*— and in support of this principle refers to the apostle Paul, who declares that “sin is not imputed when there is no law.” He appears to think that any technical error would vitiate the whole procedure and reduce the ban of the

Church to mere *brutum fulmen*. If he lays so great stress upon the observance of legal forms, which in the criminal prosecution of brute beasts strike us as the caricature and farce of justice, it is because he deems them essential to the effectiveness of an excommunication. The slightest mispronunciation of a word, an incorrect accentuation or false intonation in uttering a spell suffices to dissolve the charm and nullify the occult workings of the magic. The lack of a single link breaks the connection and destroys the binding force of the chain; everything must be “well-thought, well-said and well-done,” not ethically, but ritually, as prescribed in the old Avestan formula: *humata hûkhta huvarshta*. All the mutterings and posturings, which accompany the performance of a Brahmanical sacrifice, or a Catholic mass, or any other kind of incantation have their significance, and none of them can be omitted without marring the perfection of the ceremonial and impairing its power. An anathema of animals pronounced in accordance with the sentence passed upon them by a tribunal, belongs to the same category of conjurations and is rendered nugatory by any formal defect or judicial irregularity.

Sometimes the obnoxious vermin were generously forewarned. Thus the grand-vicars of Jean Rohin, Cardinal Bishop of Autun, having been informed that slugs were devastating several estates in different parts of his diocese, on the 17th of August, 1487, ordered public processions to be made for three days in every parish, and enjoined upon the said slugs to quit the territory within this period under penalty of being

accursed. On the 8th of September, 1488, a similar order was issued at Beaujeu. The curates were charged to make processions during the offices, and the slugs were warned three times to cease from vexing the people by corroding and consuming the herbs of the fields and the vines, and to depart; “and if they do not heed this our command, we excommunicate them and smite them with our anathema.” In 1516, the official of Troyes pronounced sentence on certain insects (*adversus brucos seu eurucas vel alia non dissimilia animalia, Gallicè urebecs*, probably a species of *curculio*), which laid waste the vines, and threatened them with anathema, unless they should disappear within six days. Here it is expressly stated that a counsellor was assigned to the accused, and a prosecutor heard in behalf of the aggrieved inhabitants. As a means of rendering the anathema more effective, the people are also urged to be prompt and honest in the payment of tithes. Chassenée, too, endorses this view, and in proof of its correctness refers to Malachi, where God promises to rebuke the devourer for man’s sake, provided all the tithes are brought into the storehouse.

The archives of the old episcopal city of St. Jean-de-Maurienne contain the original records of legal proceedings instituted against some insects, which had ravaged the vineyards of St. Julien, a hamlet situated on the route over Mt. Cenis and famous for the excellence of its vintage. The defendants in this case were a species of greenish weevil (charançon) known to entomologists as *rychites auratus*, and called by different names,

amblevin, bêche, verpillion, in different provinces of France.

Complaint was first made by the wine-growers of St. Julien in 1545 before François Bonnivard, doctor of laws. The procurator Pierre Falcon and the advocate Claude Morel defended the insects, and Pierre Ducol appeared for the plaintiffs. After the presentation and discussion of the case by both parties, the official, instead of passing sentence, issued a proclamation, dated the 8th of May, 1546, recommending public prayers and beginning with the following characteristic preamble: "Inasmuch as God, the supreme author of all that exists, hath ordained that the earth should bring forth fruits and herbs (*animas vegetativas*), not solely for the sustenance of rational human beings, but likewise for the preservation and support of insects, which fly about on the surface of the soil, therefore it would be unbecoming to proceed with rashness and precipitance against the animals now actually accused and indicted; on the contrary, it would be more fitting for us to have recourse to the mercy of heaven and to implore pardon for our sins." Then follow instructions as to the manner in which the public prayers are to be conducted in order to propitiate the divine wrath. The people are admonished to turn to the Lord with pure and undivided hearts (*ex toto et puro corde*), to repent of their sins with unfeigned contrition, and to resolve to live henceforth justly and charitably, and above all to pay tithes. High mass is to be celebrated on three consecutive days, namely on May 20th, 21st, and 22nd, and the host to be borne in solemn procession with songs and supplications round

the vineyards. The first mass is to be said in honour of the Holy Spirit, the second in honour of the Blessed Virgin, and the third in honour of the tutelar saint of the parish. At least two persons of each household are required to take part in these religious exercises. A *procès-verbal*, signed by the curate Romanet, attests that this programme was fully carried out and that the insects soon afterwards disappeared.

About thirty years later, however, the scourge was renewed and the destructive insects were actually brought to trial. The proceedings are recorded on twenty-nine folia and entitled: *De actis scindicorum communitatis Sancti Julliani agentium contra animalia bruta ad formam muscarum volantia coloris viridis communi voce appellata verpillions seu amblevins*. The documents, which are still preserved in the archives of St. Julien, were communicated by M. Victor Dalbane, secretary of the commune, to M. Léon Ménebréa, who printed them in the appendix to his volume: *De l'origine de la forme et de l'esprit des jugements rendus au moyen-âge contre les animaux*. Chambéry, 1846. This treatise appeared originally in the twelfth tome of the *Mémoires de la Société Royale Académique de Savoie*.

It may be proper to add that Ménebréa's theory of "the spirit, in which these judgments against animals were given," is wholly untenable. He maintains that "these procedures formed originally only a kind of symbol intended to revive the sentiment of justice among the masses of the people, who knew of no right except might and of no law except that of intimidation and violence.

In the Middle Ages, when disorder reigned supreme, when the weak remained without support and without redress against the strong, and property was exposed to all sorts of attacks and all forms of ravage and rapine, there was something indescribably beautiful in the thought of assimilating the insect of the field to the masterpiece of creation and putting them on an equality before the law. If man should be taught to respect the home of the worm, how much more ought he to regard that of his fellow-man and learn to rule in equity.”

This explanation is very fine in sentiment, but expresses a modern, and not a mediæval way of thinking. The penal prosecution of animals, which prevailed during the Middle Ages, was by no means peculiar to that period, but has been frequently practised by primitive peoples and savage tribes; neither was it designed to inculcate any such moral lesson as is here suggested, nor did it produce any such desirable result. So far from originating in a delicate and sensitive sense of justice, it was, as will be more fully shown hereafter, the outcome of an extremely crude, obtuse, and barbaric sense of justice. It was the product of a social state, in which dense ignorance was governed by brute force, and is not to be considered as a reaction and protest against club-law, which it really tended to foster by making a travesty of the administration of justice and thus turning it into ridicule. It was also in the interest of ecclesiastical dignities to keep up this parody and perversion of a sacred and fundamental institute of civil society, since it strengthened their

influence and extended their authority by subjecting even the caterpillar and the canker-worm to their dominion and control.

But to return to the records of the trial. On the 13th of April, 1587, the case was laid before “his most reverend lordship, the prince-bishop of Maurienne, or the reverend lord his vicar-general and official” by the syndics and procurators, François Amenet and Petremand Bertrand, who, in the name of the inhabitants of St. Julien, presented the following statement and petition: “Formerly by virtue of divine services and earnest supplications the scourge and inordinate fury of the aforesaid animals did cease; now they have resumed their depredations and are doing incalculable injury. If the sins of men are the cause of this evil, it behoveth the representatives of Christ on earth to prescribe such measures as may be appropriate to appease the divine wrath. Wherefore we the afore-mentioned syndics, François Amenet and Petremand Bertrand, do appear anew (*ex integro*) and beseech the official, first, to appoint another procurator and advocate for the insects in place of the deceased Pierre Falcon and Claude Morel, and secondly, to visit the grounds and observe the damage, and then to proceed with the excommunication.”

In compliance with this request, the distinguished Antoine Filliol was appointed procurator for the insects, with a moderate fee (*salario moderato*), and Pierre Rembaud their advocate. The parties appeared before the official on the 30th day of May and the case was adjourned to the 6th of June, when the advocate,

Pierre Rembaud, presented his answer to the declaration of the plaintiffs, showing that their action is not maintainable and that they should be nonsuited. After approving of the course pursued by his predecessor in office, he affirms that his clients have kept within their right and not rendered themselves liable to excommunication, since, as we read in the sacred book of Genesis, the lower animals were created before man, and God said to them: Let the earth bring forth the living creature after his kind, cattle and creeping thing, and beast of the earth after his kind; and he blessed them saying, Be fruitful and multiply and fill the waters of the seas, and let fowl multiply in the earth. Now the Creator would not have given this command, had he not intended that these creatures should have suitable and sufficient means of support; indeed, he has expressly stated that to every thing that creepeth upon the earth every green herb has been given for meat. It is therefore evident that the accused, in taking up their abode in the vines of the plaintiffs, are only exercising a legitimate right conferred upon them at the time of their creation. Furthermore, it is absurd and unreasonable to invoke the power of civil and canonical law against brute beasts, which are subject only to natural law and the impulses of instinct. The argument urged by the counsel for the plaintiffs, that the lower animals are made subject to man, he dismisses as neither true in fact nor pertinent to the present case. He suggests that the complainants, instead of instituting judicial proceedings, would do better to entreat the mercy of heaven and

to imitate the Ninevites, who, when they heard the warning voice of the prophet Jonah, proclaimed a fast and put on sackcloth. In conclusion, he demands that the petition of the plaintiffs be dismissed, the monitorium revoked and annulled, and all further proceedings stayed, to which end the gracious office of the judge is humbly implored (*humiliter implorato benigno officio judicis*).

The case was adjourned to the 12th and finally to the 19th of June, when Petremand Bertrand, the prosecuting attorney, presented a lengthy replication, of which the defendants' advocate demanded a copy with due time for deliberation. This request led to a further adjournment till the 26th of June, but as this day turned out to be a *dies feriatas* or holiday, no business could be transacted until the 27th, when the advocate of the commune, François Fay (who seems to have taken the place of Amenet, if he be not the same person), in reply to the defendants' plea, argued that, although the animals were created before man, they were intended to be subordinate to him and subservient to his use, and that this was, indeed, the reason of their prior creation. They have no *raison d'être* except as they minister to man, who was made to have dominion over them, inasmuch as all things have been put under his feet, as the Psalmist asserts and the apostle Paul reiterates. On this point, he concludes, our opponent has added nothing refutatory of the views, which have been held from time immemorial by our ancestors; we need only refer to the opinions formerly expressed by the honourable Hippolyte Ducol as satisfactory. The advocate for the defence

merely remarked that he had not yet received the document ordered on the 19th of June, and the further consideration of the case was postponed till the 4th of July. Antoine Filliol then made a rejoinder to the plaintiffs' replication, denying that the subordination of the lower animals to man involves the right of excommunicating them, and insisting upon his former position, which the opposing counsel had not even attempted to disprove, namely, that the lower animals are subject solely to natural law, "a law originating in the eternal reason and resting upon a basis as immutable as that of the divine law of revelation, since they are derived from the same source, namely, the will and power of God." It is evident, he adds, that the action brought by the plaintiffs is not maintainable and that judgment should be given accordingly.

On the 18th of July, the same parties appear before the official of St. Jean-de-Maurienne. The procurator of the insects demands that the case be closed and the plaintiffs debarred from drawing up any additional statements or creating any further delay by the introduction of irrelevant matter, and requests that a decision be rendered on the documents and declarations already adduced. The prosecuting attorney, whose policy seems to have been to keep the suit pending as long as possible, applies for a new term (*alium terminum*), which was granted.

Meanwhile, in view of the law's long delay, other measures were taken for the speedier adjustment of the affair by compromise. On the 29th of June, 1587, a public meeting was

called at noon immediately after mass on the great square of St. Julien, known as Parloir d'Amont, to which all hinds and habitants (*manants et habitants*) were summoned by the ringing of the church bell to consider the propriety and necessity of providing for the said animals a place outside of the vineyards of St. Julien, where they might obtain sufficient sustenance without devouring and devastating the vines of the said commune. This meeting appears to have been held by the advice of the plaintiffs' advocate, François Fay, and at the suggestion of the official. A piece of ground in the vicinity was selected and set apart as a sort of insect enclosure, the inhabitants of St. Julien, however, reserving for themselves the right to pass through the said tract of land, "without prejudice to the pasture of the said animals," and to make use of the springs of water contained therein, which are also to be at the service of the said animals; they reserve furthermore the right of working the mines of ochre and other mineral colours found there, without doing detriment to the means of subsistence of said animals, and finally the right of taking refuge in this spot in time of war or in case of like distress. The place chosen is called La Grand Feisse and described with the exactness of a topographical survey, not only as to its location and dimensions, but also as to the character of its foliage and herbage. The assembled people vote to make this appropriation of land and agree to draw up a conveyance of it "in good form and of perpetual validity," provided the procurator and advocate of the insects may, on visitation and inspection of the ground,

express themselves satisfied with such an arrangement; in witness whereof the protocol is signed “L. Prunier, curial,” and stamped with the seal of the commune.

But this attempt of the inhabitants to conciliate the insects and to settle their differences by mutual concessions did not put an end to the litigation. On the 24th of July, an “Extract from the Register of the Curiality of St. Julien,” containing the proceedings of the public meeting, was submitted to the court by Petremand Bertrand, procurator of the plaintiffs, who called attention to the very generous offer made by the commune and prayed the official to order the grant to be accepted on the conditions specified, and to cause the defendants to vacate the vineyards and to forbid them to return to the same on pain of excommunication. Antoine Filliol, procurator of the insects, requested a copy of the *procès-verbal* and time for deliberation. The court complied with this request and adjourned the case till “the first juridical day after the harvest vacation,” which fell on the 11th of August, and again by common consent till the 20th of the same month.

At this time, Charles Emanuel I., Duke of Savoy, was preparing to invade the Marquisate of Saluzzo, and the confusion caused by the expedition of troops over Mt. Cenis interfered with the progress of the trial, which was postponed till the 27th of August, and again, since the passage of armed men was still going on (*actento transitu armigerorum*), till the 3rd of September, when Antoine Filliol declared that he could not

accept for his clients the offer made by the plaintiffs, because the place was sterile and neither sufficiently nor suitably supplied with food for the support of the said animals; he demanded, therefore, that the proposal be rejected and the action dismissed with costs to the complainants (*petit agentes repelli cum expensis*). The “egregious Petremand Bertrand,” in behalf of the plaintiffs, denies the correctness of this statement and avers that the spot selected and set apart as an abode for the insects is admirably adapted to this purpose, being full of trees and shrubs of divers kinds, as stated in the conveyance prepared by his clients, all of which he is ready to verify. He insists, therefore, upon an adjudication in his favour. The official took the papers of both parties and reserved his decision, appointing experts, who should in the meantime examine the place, which the plaintiffs had proffered as an asylum for the insects, and submit a written report upon the fitness of the same.

The final decision of the case, after such careful deliberation and so long delay, is rendered doubtful by the unfortunate circumstance that the last page of the records has been destroyed by rats or bugs of some sort. Perhaps the prosecuted weevils, not being satisfied with the results of the trial, sent a sharp-toothed delegation into the archives to obliterate and annul the judgment of the court. At least nothing should be thought incredible or impossible in the conduct of creatures, which were deemed worthy of being summoned before ecclesiastical tribunals and which succeeded as criminals in claiming the attention and

calling forth the legal learning and acumen of the greatest jurists of their day.

In the margin of the last page are some interesting items of expenses incurred: “*pro visitatione III flor.*,” by which we are to understand three florins to the experts, who were appointed to visit the place assigned to the insects; then “*solverunt scindici Sancti Julliani incluso processu Animalium sigillo ordinationum et pro copia que competat in processu dictorum Animalium omnibus inclusis XVI flor.*,” which may be summed up as sixteen florins for clerical work including seals; finally, “*item pro sportulis domini vicarii III flor.*,” three florins to the vicar, who acted as the bishop’s official and did not receive a regular fee, but was not permitted to go away empty-handed. The date, which follows, Dec. 20, 1587, may be assumed to indicate the time at which the trial came to an end, after a pendency of more than eight months. (*Vide [Appendix A.](#)*)

In the legal proceedings just described, two points are presented with great clearness and seem to be accepted as incontestable: first, the right of the insects to adequate means of subsistence suited to their nature. This right was recognized by both parties; even the prosecution did not deny it, but only maintained that they must not trespass cultivated fields and destroy the fruits of man’s labour. The complainants were perfectly willing to assign to the weevils an uncultivated tract of ground, where they could feed upon such natural products of the soil as were not due to human toil and tillage. Secondly, no one

appears to have doubted for a moment that the Church could, by virtue of its anathema, compel these creatures to stop their ravages and cause them to go from one place to another. Indeed, a firm faith in the existence of this power was the pivot on which the whole procedure turned, and without it, the trial would have been a dismal farce in the eyes of all who took part in it.

It is related in the chronicles of an ancient abbey (*Le Père Rochex: Gloire de l'Abbaye et Vallée de la Novalaise*), that St. Eldrad commanded the snakes, which infested the environs of a priory in the valley of Briançon, to depart, and, taking a staff in his hand, conducted them to a desert place and shut them up in a cave, where they all miserably perished. Perhaps the serpent, which suffered Satan to take possession of its seductive form and thus played such a fatal part in effecting the fall of man and in introducing sin into the world, may have been regarded as completely out of the pale and protection of law, and as having no rights which an ecclesiastical excommunicator or a wonder-working saint would be bound to respect. As a rule, however, such an arbitrary abuse of miraculous power to the injury or destruction of God's creatures was considered illegal and unjustifiable, although irascible anchorites and other holy men under strong provocation often gave way to it. Mediæval jurists frowned upon summary measures of this sort, just as modern lawyers condemn the practice of lynch-law as mobbish and essentially seditious, and only to be excused as a sudden outburst of public indignation at some exceptionally brutal outrage.

Properly speaking, animals cannot be excommunicated, but only anathematized; just as women, according to old English law, having no legal status of their own and not being bound in frankpledge as members of the decennary or tithable community, could not be outlawed, but only “waived” or abandoned. This form of ban, while differing theoretically from actual outlawry, was practically the same in its effects upon the individual subjected to it. Excommunication is, as the etymology of the word implies, the exclusion from the communion of the Church and from whatever spiritual or temporal advantages may accrue to a person from this relation. It is one of the consequences of an anathema, but is limited in its operation to members of the ecclesiastical body, to which the lower animals do not belong. This was the generally accepted view, and is the opinion maintained by Gaspard Bailly, advocate and councillor of the Sovereign Senate of Savoy, in his *Traité des Monitoires, avec un Plaidoyer contre les Insects*, printed at Lyons in 1668, but it has not always been held by writers on this subject, some of whom do not recognize this distinction between anathema and excommunication on the authority of many passages of Holy Writ, affirming that, as the whole creation was corrupted by the fall, so the atonement extends to all living creatures, which are represented as longing for the day of their redemption and regeneration.

One of the strong points made by the counsel for the defence in prosecutions of this kind was that these insects were sent to

punish man for his sins, and should therefore be regarded as agents and emissaries of the Almighty, and that to attempt to destroy them or to drive them away would be to fight against God (*s'en prendre à Dieu*). Under such circumstances, the proper thing to do would be, not to seek legal redress and to treat the noxious creatures as criminals, but to repent and humbly to entreat an angry Deity to remove the scourge. This is still the standpoint of Christian orthodoxy, Protestant as well as Catholic, and the argument applies with equal force to the impious and atheistic substitution of Paris green and the chlorate of lime for prayer and fasting as exterminators of potato-bugs. The modern, like the mediæval horticulturist may ward off devouring vermin from his garden by the use of ashes, but he strews them on his plants instead of sprinkling them on his own head, and thus indicates to what extent scientific have superseded theological methods in the practical affairs of life.

Thomas Aquinas, the “angelic doctor,” in his *Summa Theologiæ* raises the query, whether it is permissible to curse irrational creatures (*utrum liceat irrationabiles creaturas adjurare*). He states, in the first place, that curses and blessings can be pronounced only upon such things as are susceptible of receiving evil or good impressions from them, or in other words, upon sentient and rational beings, or upon irrational creatures and insentient things in their relation to rational beings, so that the latter are the objects ultimately aimed at and favourably or unfavourably affected. Thus God cursed the earth, because it is

essential to a man's subsistence; Jesus cursed the barren fig-tree symbolizing the Jews, who made a great show of leafage in the form of rites and ceremonies, but bore no fruits of righteousness; Job cursed the day on which he was born, because he took from his mother's womb the taint of original sin; David cursed the rocks and mountains of Gilboa, because they were stained with the blood of "the beauty of Israel"; in like manner the Lord sends locusts and blight and mildew to destroy the harvests, because these are intimately connected with the happiness of mankind, whose sins he wishes to punish.

It is laid down as a legal maxim by mediæval jurists that no animal devoid of understanding can commit a fault (*nec enim potest animal injuriam fecisse quod sensu caret*). This doctrine is endorsed by the great theologian and scholastic Thomas of Aquino. If we regard the lower animals, he says, as creatures coming from the hand of God and employed by him as agents for the execution of his judgments, then to curse them would be blasphemous; if, on the other hand, we curse them *secundem se*, i.e. merely as brute beasts, then the malediction is odious and vain and therefore unlawful (*est odiosum et vanum et per consequens illicitum*). There is, however, another ground, on which the right of excommunication or anathematization may be asserted and fully vindicated, namely, that the lower animals are satellites of Satan "instigated by the powers of hell and therefore proper to be cursed," as the Doctor angelicus puts it. Chassenée refers to this opinion in the treatise already cited (I. § 75), and

adds “the anathema then is not to be pronounced against the animals as such, but should be hurled inferentially (*per modum conclusionis*) at the devil, who makes use of irrational creatures to our detriment.” This notion seems to have been generally accepted in the Middle Ages, and the fact that evil spirits are often mentioned in the Bible metaphorically or symbolically as animals and assumed to be incarnate in the adder, the asp, the basilisk, the dragon, the lion, the leviathan, the serpent, the scorpion, etc., was considered confirmatory of this view.

But not all animals were regarded as diabolical incarnations; on the contrary, many were revered as embodiments and emblems of divine perfections. In a work entitled *Le Liure du Roy Modus et de la Reyne Racio* (The Book of King Mode and Queen Reason), which, as the colophon records, was “printed at Chambéry by Anthony Neyret in the year of grace one thousand four hundred and eighty-six on the thirtieth day of October,” King Mode discourses on falconry and venery in general. Queen Reason brings forward, in reply to these rather conventional commonplaces, “several fine moralities,” and dilates on the natural and mystic qualities of animals, which she divides into two classes, sweet beasts (*bestes doulces*) and stenchy beasts (*bestes puantes*). Foremost among the sweet beasts stands that which Milton characterizes as

“Goodliest of all the forest, hart and hind.”

According to the Psalmist, the hart panting after the water-brooks represents the soul thirsting for the living God and is the type of religious ardour and aspiration. It plays an important part in the legends of saints, acts as their guide, shows them where holy relics are concealed, and causes St. Eustace and St. Hubert to abandon the chase and to lead lives of pious devotion by appearing to them with a luminous cross between its antlers. The ten branches of its horns symbolize the ten commandments of the Old Testament and signify in the Roman ritual the ten fingers of the outstretched hand of the priest as he works the perpetual miracle of transubstantiation of the eucharist.

Chief of the stenchy beasts is the pig. In paganism, which to the Christians was merely devil-worship, the boar was an object of peculiar adoration; for this reason the farrow of the sow is supposed to number seven shotes, corresponding to the seven deadly sins. To the same class of offensive beasts belong the wolf, typical of bad spiritual shepherds, and the fox, which is described as follows: "Reynard is a beast of small size, with red hair, a long bushy tail and an evil physiognomy, for his visage is thin and sharp, his eyes deep-set and piercing, his ears small, straight and pointed; moreover he is deceitful and tricky above all other beasts and exceedingly malicious." "We are all," adds Queen Reason in a moralizing strain, "more or less of the brotherhood of Saint Fausset, whose influence is now-a-days quite extended." Among birds the raven is pre-eminently a malodorous creature and imp of Satan, whereas the dove is a sweet beast and the chosen vessel

for the outpouring of the Holy Spirit, the form in which the third person of the Trinity became incarnate.

This division of beasts corresponds in principle to that which is given in the Avesta, and according to which all animals are regarded as belonging either to the good creation of Ahuramazda or to the evil creation of Angrô-mainyush. The world is the scene of perpetual conflict between these hostile forces summed up in the religion and ethics of Zarathushtra as the trinity of the good thought, the good word, and the good deed (*humata, hûkhta, huvarshta*), which are to be fostered in opposition to the evil thought, the evil word, and the evil deed (*dushmata, duzhûkhta, duzhvarshta*), which are to be constantly combated and finally suppressed. Every man is called upon by the Iranian prophet to choose between these contraries; and not only the present and future state of his own soul, the complexion of his individual character, but also the welfare of the whole world, the ultimate destiny of the universe, depend, to no inconsiderable extent, upon his choice. His thoughts, words, and deeds do not cease with the immediate effect which they are intended to produce, but, like force in the physical world, are persistent and indestructible. As the very slightest impulse given to an atom of matter communicates itself to every other atom, and thus disturbs the equilibrium of the globe – the footfall of a child shaking the earth to its centre – so the influence of every human life, however small, contributes to the general increase and ascendancy of either good or evil, and helps to

determine which of these principles shall ultimately triumph. In the universal strife of these “mighty opposites,” the vicious are the allies of the devil; while the virtuous are not merely engaged in working out their own salvation, but have also the ennobling consciousness of being fellow-combatants with the Deity, who needs and appreciates their services in overcoming the adversary. This sense of solidarity with the Best and the Highest imparts additional elevation and peculiar dignity to human aims and actions, and lends to devotion a warmth of sympathy and fervour of enthusiasm springing from personal attachment and loyalty, which it is difficult for the Religion of Humanity to inspire. The fact, too, that evil exists in the world, not by the will and design of the Good Being, but in spite of him, and that all his powers are put forth to eradicate it, while detracting from his omnipotence, frees him from all moral obliquity and exalts his character for benevolence, thus rendering him far more worthy of love and worship and a much better model for human imitation than that “dreadful idealization of wickedness” which is called God in the Calvinistic creed. The idea that the humblest person may, by the purity and rectitude of his life, not only strengthen himself in virtue, but also increase the actual aggregate of goodness in the universe and even endue the Deity with greater power and aggressive energy in subduing and extirpating evil, is surely a sublime thought and a source of lofty inspiration and encouragement in well-doing, although it has been degraded by Parsi Dasturs – as all grand conceptions and ideals are apt to be

under priestly influences – into a ridiculous and childish hatred of snakes, scorpions, frogs, lizards, water-rats, and other animals supposed to have been produced by Angrô-mainyush.

Plato held a similar theory of creation, regarding it not as the manifestation of pure benevolence endowed with almighty power, but rather as the expression of perfect goodness working at disadvantage in an intractable material, which by its inherent stubbornness prevented the full embodiment and realization of the original purpose and desire of the Creator or Cosmourgos, who was therefore obliged to content himself with what was, under the circumstances, the only possible, but by no means the best imaginable, world. The Manicheans attributed the same unsatisfactory result to the activity of an evil principle, which thwarted the complete actualization of the designs of the Deity. So conspicuous, indeed, is the defectiveness of nature as a means of promoting the highest conceivable human happiness, so marked and manifold are the causes of suffering in all spheres of sentient existence, and so often do the elements seem to conspire for the destruction of mankind, raging relentlessly like a wild beast

“Red in tooth and claw  
With ravin,”

that every cosmogony has been compelled to assume the persistent intervention of some malignant spirit or perverse

agency as the only rational explanation of such a condition of things. The orthodox Christianity of to-day gives over the earth entirely to the sovereignty of Satan, the successful usurper of Eden, and instead of bidding the righteous to look forward to the final re-enthronement and absolute supremacy of truth and goodness in this world as the consoles them with the vague promise of compensation in a future state of being. Even this remote prospect of redemption is confined to a select few; not only is the earth destined to be burned with fire on account of its utter corruption, but the great majority of its inhabitants are doomed to eternal torments in the abode of evil spirits.

“One far-off divine event,  
To which the whole creation moves,”

Scientific research also leads to the same conclusions in respect to the incompleteness of Nature's handiwork, which it is the function of art and culture to amend and improve. Everywhere the correcting hand and contriving brain of man are needed to eliminate the worthless and noxious productions, in which Nature is so fatally prolific, and to foster and develop those that are useful and salutary, thus beautifying and ennobling all forms of vegetable and animal life. By a like process man himself has attained his present pre-eminence. Through long ages of strife and struggle he has emerged from brutishness and barbarism, and rising by a slow, spiral ascent, scarcely

perceptible for generations, has been able gradually to

“Move upward, working out the beast,  
And let the ape and tiger die.”

The more man increases in wisdom and intellectual capacity, the more efficient he becomes as a co-worker with the good principle. At the same time, every advance which he makes in civilization brings with it some new evil for him to overcome; or, as the Parsi would express it mythologically, every conquest achieved by Ahuramazda and his allies stimulates Angrômainyush and his satellites to renewed exertions, who convert the most useful discoveries, like dynamite, into instruments of diabolical devastation. The opening of the Far West in the United States to agriculture and commerce, and the completion of the Pacific Railroad, not only served to multiply and diffuse the gifts of the beneficent and bountiful spirit (*speñtô mainyush*), but also facilitated the propagation and spread of the plagues of the grasshopper and the Colorado beetle. The power of destruction insidiously concealed in the minutest insect organism often exceeds that of the tornado and the earthquake, and baffles the most persistent efforts of human ingenuity to resist it. The genius and energy of Pasteur were devoted for years to the task of detecting and destroying a microscopic parasite, which threatened to ruin for ever the silk industry of France; and the Phylloxera and Doryphora still continue to

ravage with comparative impunity the vineyards of Europe and the potato-fields of America, defying at once all the appliances of science for their extermination and all the attempts of casuistic theology to reconcile such scourges with a perfectly benevolent and omnipotent Creator and Ruler of the Universe. It is the observation of phenomena like these that confirms the modern Parsi in the faith of his fathers, and reveals to him, in the operations of nature and the conflicts of life, unquestionable evidences of a contest between warring elements personified as Hormazd and Ahriman, the ultimate issue of which is to be the complete triumph of the former and the consequent purification and redemption of the world from the curse of evil. The Parsi, however, recognizes no Saviour, and repudiates as absurd and immoral any scheme of atonement whereby the burden of sin can be shifted from the shoulders of the guilty to those of an innocent, vicarious victim. Every person must be redeemed by his own good thoughts, words, and deeds, as creation must be redeemed by the good thoughts, words, and deeds of the race. After death, the character of each individual thus formed appears to him, either in the form of a beautiful and brilliant maiden, who leads him over the Chinvad (or gatherer's) bridge, into the realms of everlasting light, or in the form of a foul harlot, who thrusts him down into regions of eternal gloom.

But to return from this digression; it is not only in the Venidad that certain classes of animals are declared to be creations of the archfiend, and therefore embodiments of devils;

additional proofs of this doctrine were derived by mediæval writers from biblical and classical sources. A favourite example was the metamorphosis of Nebuchadnezzar, who, when given over to Satan, dwelt with the beasts of the field and ate grass as oxen, while his hair grew like eagles' feathers and his nails like birds' claws. Still more numerous and striking instances of this kind were drawn from pagan mythology, which, being of diabolical origin, would naturally be prolific of such phenomena. Thus, besides centaurs and satyrs, "dire chimeras" and other "delicate monsters," there were hybrids like the semi-dragon Cecrops and transformations by which Io became a heifer, Dædalion a sparrow-hawk, Corone a crow, Actæon a stag, Lyncus a lynx, Mæra a dog, Calisto a she-bear, Antigone a stork, Arachne a spider, Iphigenia a roe, Talus a partridge, Itys a pheasant, Tereus Ascalaphus and Nyctimene owls, Philomela a nightingale, Progne a swallow, Cadmus and his spouse Harmonia snakes, Decertis a fish, Galanthis a weasel, and the warriors of Diomedes birds, while the companions of Ulysses were changed by Circe, the prototype of the modern witch, into swine. All these metamorphoses are adduced as the results of Satanic agencies and proofs of the tendency of evil spirits to manifest themselves in bestial forms.

Towards the end of the ninth century the region about Rome was visited by a dire plague of locusts. A reward was offered for their extermination and the peasants gathered and destroyed them by millions; but all efforts were in vain, since

they propagated faster than it was possible to kill them. Finally Pope Stephen VI. prepared great quantities of holy water and had the whole country sprinkled with it, whereupon the locusts immediately disappeared. The formula used in consecrating the water and devoting it to this purpose implies the diabolical character of the vermin against which it was directed: "I adjure thee, creature water, I adjure thee by the living God, by Him, who at the beginning separated thee from the dry land, by the true God, who caused thee to fertilize the garden of Eden and parted thee into four heads, by Him, who at the marriage of Cana changed thee into wine, I adjure thee that thou mayst not suffer any imp or phantom to abide in thy substance, that thou mayst be indued with exorcising power and become a source of salvation, so that when thou art sprinkled on the fruits of the field, on vines, on trees, on human habitations in the city or in the country, on stables, or on flocks, or if any one may touch or taste thee, thou shalt become a remedy and a relief from the wiles of Satan, that through thee plagues and pestilence may be driven away, that through contact with thee weevils and caterpillars, locusts and moles may be dispersed and the maliciousness of all visible and invisible powers hostile to man may be brought to nought." In the prayers which follow, the water is entreated to "preserve the fruits of the earth from insects, mice, moles, serpents and other foul spirits."

This subject was treated in a lively and entertaining manner by a Jesuit priest, Père Bougeant, in a book entitled *Amusement*

*Philosophique sur le Langage des Bestes*, which was written in the form of a letter addressed to a lady and published at Paris in 1739. In the first place, the author refers to the intelligence shown by animals and refutes the Cartesian theory that they are mere machines or animated automata. This tenet, we may add, was not original with Descartes, but was set forth at length by a Spanish physician, Gomez Pereira, in a bulky Latin volume bearing the queer dedicatory title: "*Antoniana Margarita opus nempe physicis, medicis ac theologis non minus utile quam necessarium*," and printed in 1554, nearly a century before the publication of Descartes' *Meditationes de prima philosophia* and *Principia philosophiae*, which began a new epoch in the history of philosophy.

If animals are nothing but ingenious pieces of mechanism, argues the Jesuit father, then the feelings of a man towards his dog would not differ from those which he entertains towards his watch, and they would both inspire him with the same kind of affection. But such is not the case. Even the strictest Cartesian would never think of petting his chronometer as he pets his poodle, or would expect the former to respond to his caresses as the latter does. Practically he subverts his own metaphysical system by the distinction which he makes between them, treating one as a machine and the other as a sentient being, endowed with mental powers and passions corresponding, in some degree, to those which he himself possesses. We infer from our own individual consciousness that other persons, who act as we do,

are free and intelligent agents, as we claim to be. The same reasoning applies to the lower animals, whose manifestations of joy, sorrow, hope, fear, desire, love, hatred and other emotions, akin to those passing in our own minds, prove that there is within them a spiritual principle, which does not differ essentially from the human soul.

But this conclusion, he adds, is contrary to the teachings of the Christian religion, since it involves the immortality of animal souls and necessitates some provision for their reward or punishment in a future life. If they are capable of merits and demerits and can incur praise and blame, then they are worthy of retribution hereafter and there must be a heaven and a hell prepared for them, so that the pre-eminence of a man over a beast as an object of God's mercy or wrath is lost. "Beasts, in that case, would be a species of man or men a species of beast, both of which propositions are incompatible with the teachings of religion." The only means of reconciling these views, endowing animals with intellectual sense and immortal souls without running counter to Christian dogmas, is to assume that they are incarnations of evil spirits.

Origen held that the scheme of redemption embraced also Satan and his satellites, who would be ultimately converted and restored to their primitive estate. Several patristic theologians endorsed this notion, but the Church rejected it as heretical. The devils are, therefore, from the standpoint of Catholic orthodoxy, irrevocably damned and the blood of Christ has made no

atonement for them. But, although their fate is sealed their torments have not yet begun. If a man dies in his sins, his soul, as soon as it departs from his body, receives its sentence and goes straight to hell. The highest ecclesiastical authorities have decided that this is not true of devils, who, although condemned to everlasting fire, do not enter upon their punishment until after the judgment-day. This view is supported by many passages and incidents of Holy Writ. Thus Christ declares that, when the Son of man shall come in his glory, he shall say unto them on his left hand, "Depart from me, ye cursed, into everlasting fire prepared for the devil and his angels." Here it is not stated that the devils are already burning, but that the fire has been "prepared" for them, a form of expression which leads us to infer that they were not yet in it. Again the devils, which Christ drove out of the two "exceeding fierce" demoniacs, protested against such interference, saying, "Art thou come hither to torment us before the time?" This question has no significance, unless we suppose that they had a right to inhabit such living beings as had been assigned to them, until the time of their torment should come on the last day. Père Bougeant is furthermore of the opinion that, when these devils were sent miraculously and therefore abnormally into the swine, they came into conflict with the devils already in possession of the pigs, and thus caused the whole herd to run violently down a steep place into the sea. Even a hog, he thinks, could not stand it to harbour more than one devil at a time, and would be driven to suicide by having an intrinsic

and superfluous demon conjured into it. A still more explicit and decisive declaration on this point is found in the Epistle of Jude and the Second Epistle of Peter, where it is stated that the angels which kept not their first estate the Lord hath reserved in everlasting chains under darkness unto the judgment of the great day. These words are to be understood figuratively as referring to the irrevocableness of their doom and the durance vile to which they are meanwhile subjected. That they are held in some sort of temporary custody and are not actually undergoing, but still awaiting the punishment, which divine justice has imposed upon them, the sacred scriptures and the teachings of the Church leave no manner of doubt.

Now the question arises as to what these legions of devils are doing in the meantime. Some of them are engaged in “going to and fro in the earth and walking up and down in it,” in order to spy out and take advantage of human infirmities. God himself makes use of them to test the fealty of men and their power of holding fast to their integrity under severe temptations, just as the Creator made fossils and concealed them in the different strata of the earth, in order to see whether Christian faith in the truth of revelation would be strong enough to resist the seductions of “science falsely so called.” Other devils enter into living human bodies and give themselves up to evil enchantments as wizards and witches; others still reanimate corpses or assume the form and features of the dead and wander about as ghosts and hobgoblins. Not only were pagans regarded

by the Christian Church as devil-worshippers and exorcised before being baptized, but it is also a logical deduction from the doctrine of original sin, that a devil takes possession of every child as soon as it is born and remains there until expelled by an ecclesiastical functionary, who combines the office of priest with that of conjurer and is especially appointed for this purpose. Hence arose the necessity of abrenunciation, as it was called, which preceded baptism in the Catholic Church and which Luther and the Anglican reformers retained. Before the candidate was christened he was exorcised and adjured personally, if an adult, or through a sponsor, if an infant, to "forsake the devil and all his works." These words, which still hold a place in the ritual, but are now repeated in a perfunctory manner by persons, who have no conception of the magic potency formerly ascribed to them, are a survival of the old formula of exorcism. In the seventeenth century there was a keen competition between the Roman Catholic and the Lutheran clergy in casting out devils, the former claiming that to them alone had been transmitted the exorcising power conferred by Christ upon his apostles. The Protestant churches finally gave up the hocus-pocus and during the eighteenth century it fell into general discredit and disuse among them, although some of the stiffest and most conservative Lutherans never really abandoned it in principle and have recently endeavoured to revive it in practice.

The Catholic Church, on the contrary, still holds that men,

women and cattle may be possessed by devils and prescribes the means of their expulsion. In a work entitled *Rituale ecclesiasticum ad usum clericorum S. Fransisci* by Pater Franz Xaver Lohbauer (Munich, 1851), there is a chapter on the mode of helping those who are afflicted by demons (*Modus juvandi afflictos a daemone*). The author maintains that nearly all so-called nervous diseases, hysteria, epilepsy, insanity, and milder forms of mental alienation, are either the direct result of diabolical agencies or attended and greatly aggravated by them. A sound mind in a sound body may make a man devil-proof, but Satan is quick to take advantage of his infirmities in order to get possession of his person. The adversary is constantly lying in wait watching for and trying to produce physical derangements as breaches in the wall, through which he may rush in and capture the citadel of the soul. In all cases of this sort the priest is to be called in with the physician, and the medicines are to be blessed and sprinkled with holy water before being administered. Exorcisms and conjurations are not only to be spoken over the patient, but also to be written on slips of consecrated paper and applied, like a plaster, to the parts especially affected. The physician should keep himself supplied with these written exorcisms, to be used when it is impossible for a priest to be present. As with patent medicines, the public is warned against counterfeits, and no exorcism is genuine unless it is stamped with the seal and bears the signature of the bishop of the diocese. According to Father Lohbauer, the demon is the efficient cause of the malady,

and there can be no cure until the evil one is cast out. This is the office of the priest; the physician then heals the physical disorder, repairing the damage done to the body, and, as it were, stopping the gaps with his drugs so as to prevent the demon from getting in again. Thus science and religion are reconciled and work together harmoniously for the healing of mankind.

The Catholic Church has a general form of *Benedictio a daemone vexatorum*, for the relief of those vexed by demons; and Pope Leo XIII., who was justly esteemed as a man of more than ordinary intelligence and more thoroughly imbued with the modern spirit than any of his predecessors, composed and issued, November 19, 1890, a formula of *Exorcismus in Satanam et Angelos Apostatas* worthy of a place in any mediæval collection of conjurations. His Holiness never failed to repeat this exorcism in his daily prayers, and commended it to the bishops and other clergy as a potent means of warding off the assaults of Satan and of casting out devils. In 1849 the Bishop of Passau published a *Manuale Benedictionum*, and as late as 1893 Dr. Theobald Bischofberger described and defended the practice of the papal see, in this respect, in a brochure printed in Stuttgart and entitled *Die Verwaltung des Exorcistats nach Massgabe der römischen Benediktionale*.

That these formulas are still deemed highly efficacious is evident from the many recent cases in which they have been employed. Thus in 1842 a devil named Ro-ro-ro-ro took possession of “a maiden of angelic beauty” in Luxemburg and

was cast out by Bishop Laurentius. This demon claimed to be one of the archangels expelled from heaven, and appears to have rivalled Parson Stöcker and Rector Ahlwardt in Anti-semitic animosity; when the name of Jesus was mentioned, he cried out derisively: “O, that Jew! Didn’t he have to drink gall?” When commanded to depart, he begged that he might go into some Jew. The bishop, however, refused to give him leave and bade him “go to hell,” which he forthwith did, “moaning as he went, in melancholy tones, that seemed to issue from the bowels of the earth, ‘Burning, burning, everlastingly burning in hell!’ The voice was so sad,” adds the bishop, “that we should have wept for sheer compassion, had we not known that it was the devil.”

Again, a lay brother connected with an educational institute in Rome became diabolically possessed on January 3, 1887, and was exorcised by Father Jordan. In this instance the leading spirit was Lucifer himself, attended by a host of satellites, of whom Lignifex, Latibor, Monitor, Ritu, Sefilie, Shulium, Haijunikel, Exaltor, and Reromfex were the most important. It took about an hour and a half to cast out these demons the first time, but they renewed their assaults on February 10th, 11th, and 17th, and were not completely discomfited and driven back into the infernal regions until February 23rd, and then only by using the water of Lourdes, which, as Father Jordan states, acted upon them like poison, causing them to writhe to and fro. Lucifer was especially rude and saucy in his remarks. Thus, for example, when Father Jordan said, “Every knee in heaven and on the earth

shall bow to the name of Jesus,” the fallen “Son of the Morning” retorted, “Not Luci, not Luci – never!”

It would be easy to multiply authentic reports of things of this sort that have happened within the memory of the present generation, such as the exorcism of a woman of twenty-seven at Laas in the Tyrol in the spring of 1892, and the expulsion of an evil spirit from a boy ten years of age at Wemding in Bavaria by a capuchin, Father Aurelian, July 13th and 14th, 1891, with the sanction of the bishops of Augsburg and Eichstätt. In the latter case we have a circumstantial account of the affair by the exorcist himself, who, in conclusion, uses the following strong language: “Whosoever denies demoniacal possession in our days confesses thereby that he has gone astray from the teaching of the Catholic Church; but he will believe in it when he himself is in the possession of the devil in hell. As for myself I have the authority of two bishops.” In a pamphlet on this subject printed at Munich in 1892, and entitled *Die Teufelsaustreibung in Wemding*, the author, Richard Treufels, takes the same view, declaring that diabolical possession “is an incontestable fact, confirmed by the traditions of all nations of ancient and modern times, by the unequivocal testimony of the Old and New Testaments, and by the teaching and practice of the Catholic Church.” Christ, he says, gave his disciples power and authority over all devils to cast them out, and the same power is divinely conferred upon every priest by his consecration, although it is never to be exercised without the permission of his bishop.

Doubtless modern science by investigating the laws and forces of nature is gradually diminishing the realm of superstition; but there are vast low-lying plains of humanity that have not yet felt its enlightening and elevating influence. It has been estimated that nine-tenths of the rural population of Europe and ninety-nine hundredths of the peasantry, living in the vicinity of a cloister and darkened by its shadow, believe in the reality of diabolical possession and attribute most maladies of men and murrain in cattle to the direct agency of Satan, putting their faith in the “metaphysical aid” of the conjurer rather than in medical advice and veterinary skill.

Unfortunately this belief is not confined to Catholics and boors, but is held by Protestants, who are considered persons of education and superior culture. Dr. Lyman Abbott asserted in a sermon preached in Plymouth Church, that “what we call the impulses of our lower nature are the whispered suggestions of fiend-like natures, watching for our fall and exultant if they can accomplish it.” But while affirming that “evil spirits exercise an influence over mankind,” and that cranks like Guiteau, the assassin of President Garfield, are diabolically possessed, the reverend divine would hardly risk his reputation for sanity by attempting to exorcise the supposed demon. The Catholic priest holds the same view, but has the courage of his convictions and goes solemnly to work with bell, book and candle to effect the expulsion of the indwelling fiend.

The fact that such methods of healing are sometimes

successful is adduced as conclusive proof of their miraculous character; but this inference is wholly incorrect. Professor Dr. Hoppe, in an essay on *Der Teufels- und Geisterglaube und die psychologische Erklärung des Besessenseins* (*Allgemeine Zeitschrift für Psychiatrie*, Bd. LV. p. 290), gives a psychological explanation of these puzzling phenomena. "The priest," he says, "exerts a salutary influence upon the brain through the respect and dignity which he inspires, just as Christ in his day wrought upon those who were sick and possessed with devils." Indeed, it is expressly stated by the evangelist that Jesus did not attempt to do wonderful works among people who did not believe. According to this theory the exorcism effects a cure by its powerful action on the imagination, just as there are frequent ailments, for which a wise physician administers bread pills and a weak solution of powdered sugar as the safest and best medicaments. Professor Hoppe, therefore, approves of "priestly conjurations for the expulsion of devils as a psychical means of healing," and thinks that the more ceremoniously the rite can be performed in the presence of grave and venerable witnesses, the more effective it will be. This opinion is endorsed by a Catholic priest, Friedrich Jaskowski, in a pamphlet entitled *Der Trierer Rock und seine Patienten vom Jahre 1891* (Saarbrücken: Carl Schmidtke, 1894). The author belongs to the diocese of Trier and is therefore under the jurisdiction of the bishop, Dr. Felix Korum, whose statements concerning the miracles wrought and the evidences of divine mercy manifested during

the exhibition of the "holy coat" in 1891 he courageously reviews and conclusively refutes. The bishop had printed what he called "documentary proofs," consisting of certificates issued by obscure curates and country doctors, that certain persons suffering chiefly from diseases of the nervous system had been healed, and sought to discover in these cures the working of divine agencies. Jaskowski shows that in several instances the persons said to have found relief died shortly afterwards, and maintains that where cures actually occurred they "were not due to a miracle or any direct interference of God with the established order of things, but happened in a purely natural manner." He quotes the late Professor Charcot, Dr. Forel, and other neuropathologists to establish the fact that hetero-suggestion emanating from a physician or priest, or auto-suggestion originating in the person's own mind, may often be the most effective remedy for neurotic disorders of every kind. In auto-suggestion the patient is possessed with the fixed idea that the doing of a certain thing, which may be in itself absolutely indifferent, will afford relief. As an example of this faith-cure Jaskowski refers to the woman who was diseased with an issue of blood, and approaching Jesus said within herself: "If I may but touch his garment, I shall be whole." This is precisely the position taken by Jesus himself, who turned to the woman and said: "Daughter, be of good comfort; thy faith hath made thee whole." Jaskowski also quotes the declaration of the evangelist referred to above, that in a certain place the people's lack of

faith prevented Jesus from doing many wondrous works, and does not deny that on this principle, which is now recognized by the most eminent physicians, some few of the hundreds of pilgrims may have been restored to health by touching the holy coat of Trier; and there is no doubt that the popular belief in Bishop Korum's assertion that it is the same garment which Jesus wore and the woman touched, would greatly increase its healing efficacy through the force of auto-suggestion (see my article on "Recent Recrudescence of Superstition" in Appleton's *Popular Science Monthly* for Oct. 1895, pp. 762-66).

The Bishop of Bamberg in Bavaria has been stigmatized as a hypocrite because he sends the infirm of his flock on a pilgrimage to Lourdes or Laas or some other holy shrine, while he prefers for himself the profane waters of Karlsbad or Kissingen. But in so doing he is not guilty of any inconsistency, since a journey to sacred places and contact with sacred relics would not act upon him with the same force as upon the ignorant and superstitious masses of his diocese. His conduct only evinces his disbelief in the supernatural character of the remedies he prescribes. The distinguished French physician, Professor Charcot, as already mentioned, recognized the curative power of faith under certain circumstances, and occasionally found it eminently successful in hysterical and other purely nervous affections. In some cases he did not hesitate to prescribe a pilgrimage to the shrine of any saint for whom the patient may have had a peculiar reverence; but in no instance in his experience

did faith or exorcism or hagiolatry heal an organic disease, set a dislocated joint or restore an amputated limb. What Falstaff says of honour is equally true of faith, it “hath no skill in surgery.”

But to return from this digression, Père Bougeant’s theory of the diabolical possession of pagans and unbaptized persons would provide for comparatively few devils, and the gradual diffusion of Christianity would constantly diminish the supply of human beings available as their proper habitations. The ultimate conversion of the whole world and the custom of baptizing infants as soon as they are born would, therefore, produce serious domiciliary destitution and distress among the evil spirits and set immense numbers of them hopelessly adrift as vagabonds, and thus create an extremely undesirable diabolical proletariat. This difficulty is avoided by assuming that the vast majority of devils are incarnate in the billions of beasts of all kinds, which dwell upon the earth or fly in the air or fill the waters of the rivers and the seas. This hypothesis, he adds, “enables me to ascribe to the lower animals thought, knowledge, feeling, and a spiritual principle or soul without running counter to the truths of religion. Indeed, so far from being astonished at their manifestations of intelligence, foresight, memory and reason, I am rather surprised that they do not display these qualities in a higher degree, since their soul is probably far more perfect than ours. Their defects are, as I have discovered, owing to the fact that in brute as in us, the mind works through material organs, and inasmuch as these organs are grosser and less perfect in the lower animals

than in man, it follows that their exhibitions of intelligence, their thoughts and all their mental operations must be less perfect; and, if these proud spirits are conscious of their condition, how humiliating it must be for them to see themselves thus embruted! Whether they are conscious of it or not, this deep degradation is the first act of God's vengeance executed on his foes. It is a foretaste of hell."

Only by such an assumption, as our author proceeds to show, is it possible to justify the ways of man to the lower animals and to reconcile his cruel treatment of them with the goodness of an all-wise and all-powerful maker and ruler of the universe. For this reason, he goes on to explain, the Christian Church has never deemed it a duty to take the lower animals under its protection or to inculcate ordinary natural kindness towards them. Hence in countries, like Italy and Spain, where the influence of Catholicism has been supreme for centuries, not only are wild birds and beasts of chase relentlessly slaughtered and exterminated, but even useful domestic animals, asses, sumpter-mules and pack-horses, are subjected to a supererogation of suffering at the hands of ruthless man. As the pious Parsi conscientiously comes up to the help of Ahuramazda against the malevolent Angrô-mainyush by killing as many as possible of the creatures which the latter has made, so the good Catholic becomes an efficient co-worker with God by maltreating brutes and thus aiding the Almighty in punishing the devils, of which they are the visible and bruisable forms. Whatever pain is

inflicted is felt, not by the physical organism, but by the animated spirit. It is the embodied demon that really suffers, howling in the beaten dog and squealing in the butchered pig.

There are doubtless many persons of tender susceptibilities, who cannot bear to think that the animals, whose daily companionship we enjoy, the parrot we feed with sugar, the pretty pug we caress and the noble horse, which ministers to our comfort and convenience, are nothing but devils predestined to everlasting torture. But these purely sentimental considerations are of no weight in the scale of reason. "What matters it," replies the Jesuit Father, "whether it is a devil or another kind of creature that is in our service or contributes to our amusement? For my part, this idea pleases rather than repels me; and I recognize with gratitude the beneficence of the Creator in having provided me with so many little devils for my use and entertainment. If it be said that these poor creatures, which we have learned to love and so fondly cherish, are fore-ordained to eternal torments, I can only adore the decrees of God, but do not hold myself responsible for the terrible sentence; I leave the execution of the dread decision to the sovereign judge and continue to live with my little devils, as I live pleasantly with a multitude of persons, of whom, according to the teachings of our holy religion, the great majority will be damned." The crafty disciple of Loyola, elusive of disagreeable deductions, is content to accept the poodle in its phenomenal form and to make the most of it, without troubling himself about "des Pudels Kern."

This doctrine, he thinks, is amply illustrated and confirmed by an appeal to the consentient opinion of mankind or the argument from universal belief, which has been so often and so effectively urged in proof of the existence of God. If the maxim *universitas non delinquit* has the same validity in the province of philosophy as in that of law, then we are justified in assuming that the whole human race cannot go wrong even in purely metaphysical speculation and that unanimity in error is a psychological impossibility. The criterion of truth, *quod semper, quod ubique, quod ab omnibus*, by which the Roman hierarchy is willing to have its claims to ecclesiastical catholicity and doctrinal orthodoxy tested, is confined to Christendom in its application and does not consider the views of persons outside of the body of believers. In the question under discussion the argument is not subject to such limitations, but gathers testimony from all races and religions, showing that there is not a civilized nation or savage tribe on the face of the earth, which does not regard or has not regarded the lower animals as embodiments of evil spirits and sought to propitiate them. That "the devil is an ass" is a truth so palpable that it has passed into a proverb. Baal-zebub means fly-god; and the Christian Satan betrays his presence by the cloven foot of the goat or the solid hoof of the horse. In folk-lore, which is the *débris*

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