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CURIOSITIES OF THE LAW

A. ANIMAL PRISONER AT THE BAR

During this past summer the Circuit Court of Frederick County, Virginia, gave the newspaper columnists something to speak of when it solemnly imposed the death penalty upon a dog tried and convicted of sheep stealing. It is not recorded whether the dog had a sheepish look on his face or not, however, had he known the long court record of his kind he might well have had. The record also fails to state whether or not the trial was by a jury of his peers.

As a matter of fact, the circuit court had it been looking for precedent, could have found quite a bit of it in this matter of bringing dumb animals to trial and in sentencing them for their crimes.

“Hanging of his cat on Monday
For killing of a mouse on Sunday.”

The couplet that has come down to us from *Drunken Barnaby's Four Journeys* (edition of 1805 page 5) was no idle witticism. Once it might have been introduced with all propriety before the bar. For the modern version of law holding the owner alone responsible and its ruling as to animals would have occasioned derision at the time when the animal itself was the proper party defendant. Between 1120 and 1750 ninety-two animals are said to have been prosecuted in France alone, while a report before the Royal Society by Berriot-Saint-Prix present a list of some two hundred cases in which animals were prosecuted between the years 1200 and 1750.

But this predicament of having law courts take part in an animal act, as it were, rests upon greater antiquity than that. In the most ancient of all Codes,—that of Hammurabi, enacted at approximately 2250 B. C., (R. F. Harper) and embodying the laws that had ruled the Babylonians from some years previous according to the estimates of experts (Delphian Course Vol. 1) contains the following with regard to the ox: If a wild bull (*alap zu-ga-am*) gored a man in its charge (*i-na a-la-ki-su*) and killed him, no claim could be made (*Portion 250*); but if its vice

(*ba-ab-ta-su*) had been known to its owner, and he had cut or blunted its horns (*kar-ni-su la u-sar-ri-im*), or kept it in restraint (*la u-sa-an-ni-ik-ma*), compensation must be made. (*Portion 252* enacted the amount to be paid in case it was a slave, free man or what not). This antique from Babylonian statutes is not dissimilar to the law governing such cases in our country at the present time, but it seems that later the Babylonian came to the Hebrew view of the matter.

This is found in *Exodus 21, 28 sqq.* where the Hebrew law requires that "if an ox is wont to be push with his horns (*naggah*)" the ox was to be stoned,—and by way of further punishment to the ox we suppose,—the flesh thereof was not to be eaten. If this propensity had been known to the owner and he had failed to keep it under restraint (*samar*), the owner was to be put to death. No provision was made as to the edibility of the flesh in the second case. (Cp. Frazer, *Pausanias*, 2, 370 *sqq.* and for medieval examples, Bring-Gould, *Curiosities of Olden Times*, pp. 57 *sqq.*, (Edinburgh, 1895). At the present time the parents of the victim may lay claim to the animal (Jaussen, *Revue Biblique*, 1901, p. 600). Also see *The Laws of Moses and the Code of Hammurabi* by S. A. Cook, published at London, in 1903.)

But we need not go so far afield for examples. Not long ago a justice of the peace in Connecticut tried and fined a dog for worrying the cat of a neighbor lady and the dog itself was incarcerated for the offense. A few years ago (about 1924) one of the justices of the peace in a town near South Bend tried and convicted a chimpanzee for publically smoking a cigarette in violation of the laws of Indiana. The case came up in much the following manner: The chimpanzee that was the subject of the "monkey business" on the part of the local justice, was a part and parcel of a show that exhibited near South Bend. During the course of its act the monk puffed of the noxious weed, then under ban in accordance with Indiana's sumptuary statute regarding fags. The animal was promptly arrested, tried and fined five dollars. The plea that the animal knew not whereof it did and that it was not one whit capable of harboring malicious or criminal intent fell upon deaf ears. It seemed that the local jail would have a strange prisoner but finally the showman relented and paid the fine.

It has been stated that dogs can as yet, be the subjects of judicial proceedings in England, although the writer has found no case upon which to rest the assertion. Whether or not that is the case in Switzerland, it is nevertheless true that as late as 1906 a dog was tried there for being a *particeps criminis* in the murder of one Marger.

"Once upon a time,"—and we might well begin in that manner because the story is as fantastic as a fairy tale.—animals were held to be as liable as men for their criminal acts and torts. One of the earliest cases coming to our attention was that of a sow running loose in Falaise, in 1386, biting a child on the face and arm to the extent that the child died. The Ecclesiastical authorities impounded the sow and turned it over to the civil authorities as was the custom in that day. A solemn trial was held. Lawyers represented both sides. The sow, in the end, was found guilty. The judgment was that the prisoner be mangled and maimed in head and leg and then hanged. What seems all the more fantastic to us is that the sow was dressed in a man's clothes, led out into the public square and killed by a special executioner procured from Paris.

Pigs were by far the worst offenders extant in the animal world in those days and a record of the sheriff of Mantes and Meullant tells of the execution of a sow on March 15, 1403. It would seem that the age of the swine made little difference in some cases for in 1394, a mere pig, (as some of our sensation-alists would now say) was found guilty of the murder of a child in the Parish of Roumaygne and condemned to be hanged.

Perhaps the earliest of the "pig cases" concerned a pig burned to death for eating a child at Fontenayaux-Roses, which we are informed is near Paris itself, in 1266.

But lenience was shown in at least one case. Six sucklings were allowed to go free by the court of Savigny in 1457, presumably we think, because they were of a tender age. It appears that the sow and six sucklings were indicted for the murder of a child named Jehan Martin. The sow was convicted and suffered the death penalty but the piglets were restored to their owner, Jehan Bailly, on condition that he furnish sufficient bond for their reappearance should damning evidence be secured against them. It is most interesting to note that even their

owner resented the stigmata of criminalism that hung to them and about thirty days later he turned them over to the court, refusing to be responsible for them. With the chivalry of that date the unfortunate swine were thereupon declared forfeited to "the noble damsel Katherine de Barnault, Lady of Savigny", and as far as the records go she had no scruples about harboring the youngsters.

They used to go at it hammer and tongs in these pig cases too. The legal points were always heatedly contested, as a case arising within the jurisdiction of the monastery of Noyen-Moutier bears witness. The pig had been condemned for murder and the controversy arose on a more or less technical point of law. The custom had always allowed the lord abbot to deliver criminals to be executed to the provost of Saint-Diez wholly naked and to keep the clothes of the condemned. The pig was led out with a rope. The question, was whether or not this was in accordance with custom, for a roped pig surely was not a naked one. The court decided that the case of a pig was an exception to the rule.

No being was too small for the prosecutors of days gone by to deal with. As a result we find that the list of animals at the bar includes mice, leeches, caterpillars, snails, slugs, worms, moles, turtle-doves, rats, flies, bulls, cocks, asses, mules and bugs. The idea was somewhat along these lines, according to Train: Whenever a pestilence swept a town and the townspeople determined that it was due to an over abundance of mice or rats the first step was to bring legal action against the mice or rats for the purpose of removing them—if not to fairer fields,—at least from the town. However, they were sticklers for legality and the animals were always granted due process of law.

Therefore all of that certain class of animals under suspicion would be summoned to appear in court. A day would be set for their appearance and a lawyer appointed to defend them. On the day appointed the defendants usually did not put in an appearance and therefore lost the case by default. Having lost the case they were ordered to leave the city by a certain date and if they ignored the order the ecclesiastics were asked to exorcise them. In some cases it appears that the reluctant beasts paid the penalty for tarrying too long and placing themselves in the

way of this sentence, but in other cases it would seem that the Devil had somewhat the upper hand in the community and the animals went on as though naught had happened.

It was in connection with such a case that one of the greatest of all animal lawyers, a man whose legal brilliance cannot be questioned for a moment, came into prominence. Bartholomew Chassenee is a name that should be remembered by all who take an interest in strategic movements at the bar. Chassenee owed his fame to the rats of Autun, and equally, the rats of Autun owed their lives and a great deal of their publicity in history, to Chassenee.

Now it seems as though the rats of Autun were summoned before the judges thereof and Chassenee was given the task of defending them. On the date set for their appearance not a rat poked its head into the court room but that failed to daunt Chassenee in the least. He demurred, as we would say, claiming that the summons was defective in that it did not properly join all the parties and call in *all* of the rats in all of the parishes. This gained some time. On the next appearance he asked for an extension of time, pleading that some of the rats were too old and infirm and some too young and inexperienced to come on that day and had the trial held over and the time extended.

The day for trial finally came, however, and the rats were not at hand. Things looked black for the rodents as the other attorneys prepared to take a judgment by default. Then Chassenee pleaded duress. His clients, he reasoned, were restrained from attending court through grave fears of bodily injuries from the townspeople's cats and magnanimously vouched that if the townspeople would tie up all of their Tabbys or drive them beyond the boundaries, his defendants would stand ready and willing to attend. The judges held this to be reasonable. Hence every cat was ordered to give a bond that it would not molest or disturb the rats in any way. This decision was not a popular one and the owners of the cats refused to give bonds. The felines having failed to obey the order of the court, that tribunal dismissed the case at the next hearing, and the rats lived happily ever after. This trial mind you, was held with the greatest dignity and the participants were as serious as those in the most important cases that we have on the dockets today.

Later this same Bartholomew Chassenee produced a work in which he established the principle that animals could be the proper parties for excommunication and anathema, and that if they failed to obey the clerical authorities in such cases they could be properly turned over to the civil powers for capital punishment.

The judiciary of the Cistercian Abbey of Beaupre in sentenced a bull to the ignoble death of the gallows in 1499 for having "killed with ferocity" a boy fifteen years of age. That "safety first" is an old motto is indicated in that in 1565 a mule was condemned to death by burning, and to protect the executioners its feet were cut off before it was put to the stake.

That the people of that age were eminently fairminded is reflected in the fact that when the local hangman of Schweinfurt, Franconia, named Jack Ketch, summarily without trial, judgment or warrant hung a sow that had bitten a child, on the gallows green "publicly, and to the disgrace of the city", popular indignation ran so high that Ketch was obliged to run away from the city and did not appear in those parts again. When one considers the fact that the law is often taken into the hands of the mob with regard to human beings in this advanced day and age he fairness of the good people of Schweinfurt appears all the more commendable.

The learned attorney for the rats of Autun was not the only clever lawyer in those days. A procurator charged with defending the moles of the Commune of Stelvio, in Western Tyrol, appears to be equally deserving of the laurel wreath. He was unable to get his clients off completely but secured a mitigation of the punishment of banishment for all time by obtaining the provision that a "free safe conduct of fourteen days be allowed those which are with young".

Another case of canniness is given us on the authority of Felix Malleolus in "*Tractatus de Exorcis*". The peasants of the Electorate of Mayence in the fourteenth century he tells us, brought a charge against some Spanish flies. In view of "their small size and the fact that they had not as yet reached their majority" the trial judge appointed for them a curator who defended them with great dignity. He was unable to clear the flies and they were ordered banished, but he did obtain for them

a piece of land to which they could retire, which under the conditions, was considered quite a feat.

Many of the above cases are given on the authority of Mr. Arthur Train, one time special deputy attorney-general of the State of New York and prominent writer of short stories and essays having a decidedly legal twang. He has compiled the major portion in his book of legal essays, "*On the Trial of the Bad Men*". In his introduction to the chapter dealing with this matter he admits that he did not gather the material and does not know who did. "The bulk of it I took from a similar article in an old legal review written by an anonymous author, who no doubt stole it from some one else, who in turn was doubtless, were the truth to be known, as much a thief as his predecessor", says Train. To his yarns the writer has found somewhat to add and no doubt the next person who wishes to write on this alluring subject will heap it all together and steal the whole as graciously as it has been stolen so often in the past. Anyway we have the authority of Shakespeare for the assertion that—"each thing's a thief". (*Timon of Athens, Act IV, Scene 3.*)

But to the nameless man who first started this chain of unusual cases which are now to enlighten the world at large we express our sincere appreciation.

—JOSEPH P. McNAMARA.